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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
TRANSCRIPT OF PROCEEDINGS  
Oral Argument  
March 7, 2006  
Jefferson City, Missouri  
Volume 6

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

KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE.

CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

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

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APPEARANCES:

W.R. ENGLAND III, Attorney at Law  
BRIAN T. McCARTNEY, Attorney at Law  
MELISSA MANDA, Attorney at Law  
Brydon, Swearngen & England, P.C.  
312 East Capitol  
P.O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166

FOR: Petitioners.

PAUL WALTERS, JR., Attorney at Law  
15 East 1st Street  
Edmond, OK 73034  
(405) 359-1718

FOR: Cingular Wireless.

MARK P. JOHNSON, Attorney at Law  
Sonnenschein, Nath & Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
(816) 460-2424

FOR: T-Mobile USA.

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

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JUDGE JONES: This is the on-the-record presentation or oral arguments for Case No. TO-2006-0147, in the matter of the petition for arbitration of unresolved issues in a Section 251(b)(5) agreement with T-Mobile USA, Incorporated.

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I'm Kennard Jones, the Arbitrator assigned to this matter. Although there aren't any Commissioners present, they will be joining us soon. At this time we'll take entries of appearances, beginning with Petitioners.

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MR. ENGLAND: Thank you, your Honor. Let the record reflect the appearance of W.R. England, Brian McCartney and Melissa Manda on behalf of the Petitioners in these arbitration cases. Our mailing address is Post Office Box 456, Jefferson City, Missouri 65102.

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JUDGE JONES: Thank you, Mr. England. Cingular?

MR. WALTERS: Your Honor, appearing for Cingular Wireless, Paul Walters, Junior; mailing address 15 East First Street, Edmond, Oklahoma 73034.

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

MR. JOHNSON: Thank you, your Honor. Appearing on behalf of T-Mobile USA, Incorporated, Mark Johnson. My address is 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

1                   JUDGE JONES: Thank you all. Is it warm in  
2 here to anyone, other than myself?

3                   Before we get started, I should note,  
4 Petitioners filed a motion to extend the time by which  
5 they file these rerun cost studies, and I issued an Order  
6 granting that motion simply because it was necessary for  
7 me to do that, which didn't allow you-all time to respond.  
8 If you'd like to, you can respond now. Did you have any  
9 objection to that extension of time, either T-Mobile or  
10 Cingular?

11                   MR. WALTERS: Your Honor, Cingular had no  
12 objection at all.

13                   JUDGE JONES: Okay. T-Mobile?

14                   MR. JOHNSON: T-Mobile had no objection  
15 either.

16                   JUDGE JONES: All right. With that, then,  
17 Petitioners may go ahead and proceed with your opening  
18 statement.

19                   MR. ENGLAND: Thank you, your Honor.  
20 Judge, members of the arbitration panel -- I see some are  
21 in the room -- Commission members, to the extent they're  
22 able to make it --

23                   JUDGE JONES: They're probably listening.

24                   MR. ENGLAND: Okay. For purposes of my  
25 argument today, I'm going to address a number of issues in

1 the final report which we believe are in error and need to  
2 be changed. I'm not going to address all of the issues we  
3 have with the final report. By not addressing all issues,  
4 however, I don't mean to waive or concede our original  
5 positions as were filed in this case. It's more a  
6 reflection of lack of time and resources to address those  
7 issues. I will try to focus, however, on the more  
8 significant issues that we believe affect us.

9                   As everyone is aware, the FCC rules require  
10 incumbent local exchange carriers like Petitioners to base  
11 their rates for transport and termination of wireless  
12 tariff (sic) on forward-looking economic costs. This to  
13 some degree requires the parties to develop hypothetical  
14 networks, assuming networks in the future that don't  
15 necessarily mirror or match what is in place today, as  
16 well as costs that may be incurred in the future that  
17 don't necessarily or are not necessarily incurred today or  
18 in the past.

19                   Petitioners have clearly met the burden of  
20 demonstrating or calculating their forward-looking costs  
21 through the use of the HAI model. It is the only  
22 off-the-shelf forward-looking economic cost model that  
23 we're aware of that's available for use by the  
24 Petitioners, readily available to us, easy to use,  
25 relatively speaking. While it is very complex, at least

1 it can be made available to Petitioners.

2                   This model was first developed and  
3 supported by the large interexchange carriers, AT&T and  
4 MCI, and as Mr. Schoonmaker commented, it was considered  
5 biased, if you will, towards the interexchange carriers  
6 and against incumbent local exchange carriers. The HAI  
7 model's been widely used, widely debated and accepted in a  
8 number of jurisdictions. It also underpins some of the  
9 portions of the FCC's synthesis model. So it enjoys a  
10 great deal of support.

11                   This model that the Petitioners used in  
12 this case was the same model that was used by small ILECs  
13 in the Alma arbitration with T-Mobile heard earlier or in  
14 the middle of last year, and essentially the same model  
15 techniques and results that were produced by Petitioners  
16 in this case are the same that were produced in the Alma  
17 case and accepted in that case.

18                   T-Mobile and Cingular in the instant case  
19 have used the same witness at least T-Mobile used in the  
20 Alma case, Mr. Conwell. But although the HAI model is  
21 readily available, although Mr. Conwell has now been  
22 involved with it at least in Missouri since the summer of  
23 last year, he elected not to purchase the necessary  
24 software, which costs no more than \$150 to install it on  
25 his computer, and instead created a spreadsheet approach

1 that attempted to, I believe, mirror or copy the HAI  
2 results. He touted this as more transparent, easier to  
3 use, easier to understand.

4 I think it's significant to note, however,  
5 that when given the opportunity to revise his cost studies  
6 consistent with the directions of the preliminary  
7 arbitration report issued in this case, Respondents  
8 declined to take that invitation and have not produced any  
9 revised results, relying instead on continuing criticism  
10 of the Petitioner's study and Petitioner's inputs and  
11 assumptions.

12 Now, while Mr. Conwell produced a little  
13 more analysis and a little more criticism of the HAI model  
14 in this arbitration as opposed to the Alma arbitration,  
15 his results were very similar, at least his end results  
16 were very similar. The rates he was proposing for  
17 Petitioners ranged from a low of one-quarter of 1 cent per  
18 minute to approximately 1.5 or one and a half cents per  
19 minute.

20 Mr. Conwell in this proceeding continues to  
21 pick and choose between forward-looking inputs and  
22 assumptions on the one hand or existing or embedded inputs  
23 and assumptions on the other hand, depending on which  
24 input seems to drive the lowest cost.

25 However, instead of rejecting the

1 Respondents' cost recommendations in this case as  
2 counterintuitive as it did in the Alma case, this  
3 arbitration panel has in large part adopted Respondent's  
4 pick and choose method to drive Petitioner's costs down to  
5 unreasonably low levels.

6           For example, the revised cost studies which  
7 Petitioners were required to run as a result of the  
8 preliminary arbitration report dropped the average rate  
9 for the Petitioners approximately 60 percent, from  
10 8.7 cents a minute to 3.45 cents per minute. Now in the  
11 final report additional decisions have been made adverse  
12 to Petitioners which will only drive those costs lower.

13           If it is the goal of this Commission to  
14 shift virtually all of the transport and termination costs  
15 of Petitioners to their end users and essentially give  
16 carriers such as Respondent the use of Petitioner's  
17 networks at rates comparable to or less than what they pay  
18 for use of larger carriers who have lower costs, then I  
19 think they have -- the Commission has succeeded.

20           If, on the other hand, if the goal of this  
21 Commission is to reasonably identify the forward-looking  
22 transport and termination costs of Petitioners and to  
23 assign them to carriers such as Respondent so that they  
24 pay a fair share of Petitioners' higher costs of providing  
25 service in the rural areas, then the final report has



1 fallen far short of that goal.

2 I'd like to address first the specific cost  
3 issues or cost matters that we have specific objections  
4 to. The first is the switch costs, and this has to do  
5 with the allocation of costs, switching costs between  
6 traffic-sensitive and non-traffic-sensitive costs. It's  
7 Issue No. 4 in the issue matrix and I believe reflected as  
8 Issue No. 4 in the final report.

9 This issue has to do with the proper  
10 allocation of switch costs between traffic-sensitive  
11 costs, which are typically recovered from carriers, and  
12 non-traffic-sensitive costs which are typically recovered  
13 from end users.

14 Petitioners, as you know, used the HAI  
15 input value which assigned approximately 70 percent of  
16 switching costs to traffic-sensitive costs. This was  
17 consistent with their belief that their switches are still  
18 substantially traffic sensitive. It is consistent with  
19 longstanding policy, and it is consistent with the FCC's  
20 2001 Multi-Association Group Order regarding interstate  
21 access rates.

22 The final report, however, adopts  
23 Respondent's position, which allocates only about  
24 10 percent of Petitioners' forward-looking switching costs  
25 to traffic-sensitive costs. As I said, this result is

1 contrary to longstanding practice and policy of this  
2 Commission to allocate a substantial portion of the  
3 switching costs to traffic-sensitive costs, and more  
4 importantly, it essentially shifts the burden of recovery  
5 of those costs, virtually all of those costs to the end  
6 users.

7                   Even though the final report finds that  
8 forward-looking switching costs for the Petitioners using  
9 the FCC numbers and inflating -- deflating them as  
10 Mr. Conwell proposes, were approximately \$428,000 of fixed  
11 investment for host or stand-alone switches, \$142,000 in  
12 fixed investment for remote switches and an additional  
13 \$76.56 per line, by adopting Respondent's position in this  
14 case, the final report only allocates \$18.33 per line to  
15 traffic-sensitive costs.

16                   And all of the fixed costs that you found  
17 appropriate for switching, forward-looking costs for  
18 switching have been allocated to non-traffic-sensitive  
19 costs. As I said, the practical effect is to shift  
20 recovery of all switch costs essentially to end users.

21                   Now, the basis for Respondent's position,  
22 and presumably the final report, is that there has been a  
23 change in technology and vendor pricing. Well, the record  
24 in this case is clear, there's been no change in  
25 technology. The digital switching currently in place in

1 Petitioners' office is the same digital technology that  
2 all parties use for purposes of their forward-looking  
3 analysis.

4                   There has -- the record is also clear,  
5 excuse me, that there is no evidence of change in vendor  
6 pricing. In other words, vendor pricing to small  
7 companies, such as Petitioners, has not changed. In fact,  
8 the only evidence in the record regarding vendor pricing  
9 is a letter from the large manufacturing Nortel indicating  
10 that significant portions of the switch remain traffic  
11 sensitive.

12                   So we believe on the issue of switching  
13 costs and the allocation between traffic-sensitive and  
14 non-traffic-sensitive costs, the final report needs to be  
15 changed to reflect the fact that more costs are  
16 attributable to traffic-sensitive costs than are currently  
17 being allocated.

18                   The next issue is interoffice cable links.  
19 That was Issue No. 7 in the issues matrix, and there were  
20 two aspects to this issue. There was the length of cables  
21 between host remote offices that some of the Petitioners  
22 have, and then a second issue is the length of cable from  
23 the host or a stand-alone switch if they don't have a host  
24 remote configuration to the outside world, the LEC-to-LEC  
25 network if you will.

1                   On the first issue, the host remote, the  
2 preliminary report found that we would assume existing  
3 host remote relationships or networks, and the HAI model  
4 has a module that can model host remote configuration  
5 based on existing switch locations for the Petitioners,  
6 and that's what was used for purposes of our revised cost  
7 studies.

8                   Respondents complain, however, that the HAI  
9 models -- excuse me -- the HAI models distances between  
10 offices using 90 degree angles and not the most direct  
11 route, I think they use the word airline route or airline  
12 miles. This criticism demonstrates either a complete lack  
13 of understanding of how landline networks are constructed  
14 or the lengths to which Respondent will go to unreasonably  
15 drive down forward-looking costs for Petitioners.

16                   Landline networks, in other words hard  
17 cable, are installed in either a public right of way or on  
18 private easements. If they're in public right of way,  
19 they tend to follow roads, which tend to run at right  
20 angles. If those lines are in private easements, they  
21 tend to follow lot lines and, again, run at right angles.  
22 In other words, landline networks are not installed as the  
23 crow flies, by bisecting parcels of property, running  
24 through farmland or running through buildings and other  
25 structures.

1                   The HAI model's assumption using 90 degree  
2 angles to calculate distances between host and remote  
3 offices is an engineering fact and is also the most  
4 practicable route between offices. The final report  
5 should not be disturbed on this aspect, and it should  
6 accept, if you will, the HAI model's model with respect to  
7 host remote configurations.

8                   The second issue is the distance between  
9 the host office or the stand-alone office of the  
10 Petitioner and the LEC-to-LEC network. In the preliminary  
11 report, we were directed to file revised cost studies  
12 assuming that the host office connected to the nearest  
13 switch of a large LEC, Southwestern Bell, CenturyTel,  
14 Sprint, or the nearest tandem switch, and we produced two  
15 revised cost studies under each of those scenarios.

16                   The final report, however, finds that a  
17 forward-looking transport cost should be based on existing  
18 or legacy meet points between Petitioners and the large  
19 LECs, such as SBC, CenturyTel and Sprint. This is clearly  
20 inappropriate because it relies on an embedded network  
21 that would not exist if Petitioners and large LECs were  
22 required to reconstruct or install new networks.

23                   Let me take the Granby Telephone Company,  
24 for example, and I'll use the old MTIA map since I didn't  
25 bring a new one, but the exchange boundaries haven't

1 changed.

2                   Granby Telephone Company in Granby,  
3 Missouri currently has a connection to Southwestern Bell's  
4 network in their central office. In other words,  
5 Southwestern Bell has built a facility, over the years  
6 they've built -- many years ago, excuse me, built a  
7 facility into Granby's office to deliver and obtain  
8 traffic from the Granby Telephone Company. That facility  
9 lies outside Southwestern Bell's network or exchange  
10 boundaries.

11                   In a forward-looking or future environment,  
12 it is clearly unreasonable to assume that Southwestern  
13 Bell or any other large LEC is going to build and maintain  
14 facilities outside of their exchange boundaries to handle  
15 the relatively small amount of traffic to and from a small  
16 company like Granby Telephone Company.

17                   The much more reasonable and obvious  
18 assumption is that Granby is going to have to build its  
19 network to that of Southwestern Bell, CenturyTel or  
20 Sprint, whichever is closer.

21                   Now, as we indicated in our comments on the  
22 preliminary report, we don't necessarily believe it's  
23 appropriate to assume that we have to build to the nearest  
24 large LEC switch or appropriate to build to the nearest  
25 large LEC tandem. And we used KLM as an example, a

1 company on the western side of the state headquartered in  
2 Rich Hill, Missouri. If KLM is required to build its  
3 network to the nearest large LEC tandem, that would be  
4 Springfield, a distance of over 100 miles away, and we're  
5 not proposing that we would do that in a forward-looking  
6 environment.

7                   However, the nearest large LEC switch is  
8 Shell City, which is a town of approximately 330 people,  
9 and a remote switch that is owned by CenturyTel. We don't  
10 think it's appropriate that KLM Telephone Company in the  
11 future would build a facility to connect to the LEC  
12 network to Shell City as it is just too small and  
13 inadequate to handle the traffic.

14                   What we believe is appropriate is that  
15 Petitioners will be required in a future-looking network  
16 to build to the nearest large LEC host or a stand-alone  
17 switch, one that is capable of handling the traffic to and  
18 from the small ILEC. In KLM's case, it would be Nevada,  
19 or Nevada. Excuse me. And that is a town of  
20 approximately 8,000, and clearly has the capacity to  
21 handle the traffic from KLM.

22                   So we believe the final report needs to be  
23 modified to allow for the additional transport and  
24 termination costs that Petitioners would incur in carrying  
25 the traffic from their host or stand-alone office to the

1 nearest large LEC stand-alone or host switch.

2 Respondent's own witness, Mr. Conwell,  
3 acknowledged the appropriateness of this arrangement when  
4 he discussed the possibility of a third scenario where a  
5 small LEC, in his example Cass County Telephone Company,  
6 would build to the nearest SBC facility. That exchange  
7 was in response to a question from, I believe, Mr. Voight  
8 of the arbitration panel and is in the transcript at  
9 pages 358 and 359.

10 One final issue on the cable links that  
11 needs to be addressed and was raised by Respondents in  
12 their March 1 response to the revised cost study.  
13 Respondents complain that Petitioners inappropriately  
14 increased the number of common trunks from their host and  
15 stand-alone offices to the tandem.

16 Well, we did increase the number of trunks  
17 from the host and stand-alone -- excuse me -- the host  
18 offices to the tandem, but this is not inappropriate. In  
19 fact, it is logical and necessary. In the original HAI  
20 study, it was assumed that each end office would connect  
21 to the nearest Southwestern Bell wire center regardless of  
22 whether there was a host or remote configuration.

23 However, when you assume a host remote  
24 arrangement, the amount and length of interoffice cables  
25 is significantly reduced, but the amount of traffic from



1 the host office to the tandem increases because all of the  
2 traffic that was coming from the remote offices and going  
3 directly to the Southwestern Bell wire center in the first  
4 analysis is now going through the host office. So the  
5 host office is carrying not only its own traffic but the  
6 traffic of its remote offices to the Southwestern Bell  
7 wire center, in which case the HAI model properly models,  
8 probably calculates additional trunks to handle the  
9 additional traffic flow.

10                   So while there is an increase in the trunks  
11 from the host office to the tandem, as identified by  
12 Respondents and we clearly admit, what they don't  
13 understand or seem to want to forget is that there is a  
14 significant reduction in the length of the trunks from the  
15 remotes to the tandem, and that is the reality of the host  
16 remote situation.

17                   The next cost issue I'd like to address is  
18 the sharing issue, or Issue No. 9. The final report  
19 states that Petitioners' position is that the HAI model  
20 assigns the entire cost of the interoffice fiber cable to  
21 transport with a portion of the cost assigned to  
22 structures. The final report then rejects Petitioners'  
23 position because assigning 100 percent of the cost of  
24 interoffice fiber cable to transport is, quote, extreme  
25 and unreasonable.

1                   The problem here is that the final report  
2 misstates Petitioners' position, and we pointed this out  
3 in our comments to the preliminary report, but it was not  
4 either recognized or understood.

5                   First, I can find no reference, by the way,  
6 or statement in Mr. Schoonmaker's testimony, which is  
7 referenced by the final report, where he made this  
8 statement. And, in fact, Mr. Schoonmaker's direct  
9 testimony did not address this specific issue because it  
10 wasn't raised and it wasn't known to Mr. Schoonmaker until  
11 he saw the direct testimony of the wireless carriers.

12                   Thus the first and only time that  
13 Petitioners were able to address and respond to this issue  
14 was in rebuttal, and without burdening the record too  
15 much, this is what Mr. Schoonmaker said:

16                   The question was, Mr. Conwell makes  
17 statements on lines 9 and 22 of page 70 of his testimony  
18 that the HAI models does not share any of the cost of the  
19 fiber cable with other services but assigns it all to  
20 transport. Do you agree with his statements?

21                   JUDGE JONES: Where are you reading from?

22                   MR. ENGLAND: This was Mr. Schoonmaker's  
23 rebuttal testimony, page 32, beginning with line 16, and  
24 it carries to the next page, page 33, line 3.

25                   JUDGE JONES: Thanks.

1                   MR. ENGLAND: Mr. Schoonmaker's answer was,  
2 I disagree with Mr. Conwell's statement. My review of the  
3 formulas in the wire center investment worksheet of the  
4 switching and transport module of the model has revealed  
5 that the cost of the fiber cable is assigned to nine  
6 different types of trunks. While a significant portion of  
7 these trunks are tandem trunks, which are assigned to the  
8 common transport cost element, another significant portion  
9 is assigned to the dedicated transport element, and  
10 smaller amounts are assigned to local tandem and local  
11 direct trunks, end of quote.

12                   So the HAI model and, therefore,  
13 Petitioners' cost studies do assume a sharing of the  
14 interoffice fiber cable. And the final report, to the  
15 extent it bases its finding on an erroneous premise, needs  
16 to be corrected in this regard. In fact, the final report  
17 should accept the HAI model and its assumed sharing.

18                   Issue No. 11 had to do with the overall  
19 common transport costs after making adjustments for some  
20 of the inputs that we've discussed. And the final report  
21 adopts as the forward-looking transport cost for each  
22 Petitioner the rerun costs to be filed by Mr. Schoonmaker,  
23 and now, with the extension of time, those are to be filed  
24 this Friday, March 10th.

25                   The report, however, notes that seven

1 Petitioners who did not provide cost data to Respondents  
2 in order for Respondents to complete their cost studies  
3 and directs those seven Petitioners to use a bill and keep  
4 arrangement until that cost data is produced.

5 Well, first of all, that cost data was  
6 produced and given to Respondents on February 24th, the  
7 same day we filed revised cost studies and comments on the  
8 preliminary order, but apparently Respondents chose not to  
9 mention that fact in their response to the Commission on  
10 March 1.

11 Second, the Respondent did not produce  
12 their own revised cost studies as permitted by the  
13 preliminary order. So whether the seven Petitioners  
14 provided this information is a moot point since it was  
15 only necessary for Respondents to complete their cost  
16 study, not for Petitioners to rerun theirs.

17 And that's my final and most important  
18 point. This information for these seven companies is  
19 simply not necessary for Petitioner to rerun their revised  
20 cost studies for all Petitioners. Excuse me. Both the  
21 revised cost studies that were filed on February 24th and  
22 those to be filed on Friday of this week will have  
23 individual company-specific forward-looking costs for all  
24 Petitioners, including the seven we've been discussing.  
25 The final report should, therefore, delete this particular

1 directive.

2                   The final cost issue has to do with  
3 dedicated transport. That was Issue No. 12. In the final  
4 report, there is some language at page 12 that says, only  
5 common transport costs should be included -- that's in  
6 these revised cost studies to be filed at the end of the  
7 week -- with no additional adjustments to this calculation  
8 or to any other calculation in which common transport is a  
9 component or is derived from such a calculation.

10                   Presumably this finding rejects that  
11 portion of Petitioners' revised cost study filed on  
12 February 24th which corrected the HAI model, which  
13 erroneously double counts common trunks as dedicated  
14 trunks. This error was explained in Mr. -- by  
15 Mr. Schoonmaker in his testimony during the arbitration  
16 and in the filing accompanying Petitioners' revised cost  
17 studies.

18                   When the HAI model counts the number of  
19 access dedicated trunks, it incorrectly assumes that each  
20 access common trunk would need an accompanying access  
21 dedicated trunk. Thus, the number of access dedicated  
22 trunks is overstated by the number of access common  
23 trunks.

24                   The change that Mr. Schoonmaker made in the  
25 model for the revised study that was filed on February

1 24th for each of the remote switches left the number of  
2 access common trunks unchanged, but reduced the number of  
3 access dedicated trunks in order to eliminate the double  
4 counting of access common trunks. We believe the final  
5 report should at the very least recognize this error in  
6 the HAI model and accept Mr. Schoonmaker's correction.

7           There are several non-cost issues that I  
8 would like to address. The first is the what I call IXC  
9 or interexchange carrier traffic issue. It's Issue  
10 No. 15, and there are two aspects to this issue. First is  
11 whether this is an appropriate issue between Petitioner  
12 and Cingular, and the second is whether Petitioner should  
13 have a reciprocal compensation obligation for landline  
14 traffic from their customers to wireline customers that is  
15 carried by an interexchange carrier or an IXC.

16           With respect to the first issue, the final  
17 report finds Cingular's failure to provide specific  
18 proposed language is not dispositive of the issue because  
19 the resolution of this issue is based on a legal rather  
20 than a factual determination.

21           Well, I would respectfully submit that  
22 whether this is a legal or factual matter is of no  
23 consequence because it is not an issue to be decided by  
24 this Commission as it is not an issue that currently  
25 exists between Petitioner and Cingular. While Cingular

1 may have identified this as an issue in its original  
2 answer to the petition for arbitration, it affirmatively  
3 stated both in testimony and in the statement of positions  
4 with respect to the issues list that it was, quote, taking  
5 no position, end quote, on this issue.

6           Accordingly, this issue, legal or factual,  
7 has been abandoned or waived by Cingular and is not ripe  
8 for decision and should not have been resolved in  
9 Respondent's or Cingular's favor against the detriment --  
10 or to the detriment rather of Petitioners.

11           The second issue is the more generic or the  
12 more common issue that you-all dealt with in the Alma  
13 case, and that is whether Petitioners have a reciprocal  
14 obligation or reciprocal compensation obligation for land  
15 to mobile traffic carried by an IXC.

16           And the final report essentially follows  
17 the Commission's earlier decision in the Alma/T-Mobile  
18 arbitration, but we note that that decision was a three to  
19 two decision, and more importantly, we note that the Alma  
20 decision failed to recognize and reconcile its finding  
21 with the FCC's statement in its March 2005 Notice of  
22 Proposed Rulemaking regarding intercarrier compensation.

23           Those -- that quote is at page 48 and 49, I  
24 believe, of our brief, and it is at page 18 of our  
25 comments again. And without burdening the record and

1 reciting that quote, I will just read a quick excerpt from  
2 it, and that is, quote, under the existing regimes, the  
3 calling party's carrier, whether LEC, IXC or CMRS  
4 provider, compensates the called party's carrier for  
5 terminating the call, end quote.

6                   Later in the Order the FCC specifically  
7 discusses intra-MTA calling between landline and wireless  
8 companies -- and wireless providers, excuse me, and asks  
9 whether or not their current regime should be changed, and  
10 they refer to the current regime as the calling party  
11 pays. That is, the IXC who carries the call is the one  
12 responsible for paying terminating compensation on the  
13 call.

14                   So the Commission's decision in the Alma  
15 case is directly contrary to the existing carrier  
16 compensation regime as identified by the FCC in its March  
17 2005 Notice of Proposed Rulemaking.

18                   The IXC is the originating carrier. It is  
19 the carrier responsible for carrying and routing the call.  
20 It is the carrier responsible for responding to any  
21 complaints the customer may have with respect to the  
22 quality of the call, what to charge for that call, and it  
23 should be the one that is responsible for paying  
24 compensation to terminating carriers for completing that  
25 call. But the Alma decision and the decision in this case



1 do not find that way and, in fact, find that the small  
2 ILEC is responsible for these calls over which it has no  
3 control nor an obligation to carry.

4           Also since the Commission's decision in  
5 Alma, the arbitration, the Texas Public Utilities  
6 Commission issued a decision in December of 2005 in an  
7 arbitration between SBC and a wireless carrier which  
8 essentially found in favor of SBC and found, if you will,  
9 in favor of Petitioners, as SBC's position before the  
10 Texas PUC and Petitioners' position before you are  
11 identical. And the Texas PUC sided with SBC on that, and  
12 we cited that again in our comments on the preliminary  
13 arbitration order.

14           Another non-cost issue is -- involves the  
15 compensation for wireless traffic that was delivered to  
16 Petitioners between the period February 1998 and February  
17 2001. This period of time is bracketed on the -- on the  
18 front end by the Commission order that allowed  
19 Southwestern Bell to change its own wireless tariff and no  
20 longer be responsible for paying terminating compensation  
21 to third-party LECs such as Petitioners for wireless  
22 traffic that SBC transited over its facilities and  
23 terminated to those small third-party carriers.

24           However, when the Commission relieved SBC  
25 of that obligation, it also specifically directed the

1 wireless carriers not to terminate traffic to those  
2 third-party carriers unless they had an agreement to do  
3 so. Well, in fact, no agreements were obtained during  
4 that period of time, and in February of 2001, the end  
5 period, if you will, or the end date of that three-year  
6 period, this Commission approved the wireless intrastate  
7 tariffs that Petitioners had filed with them to correct  
8 the situation.

9                   Now, the final report -- excuse me. The  
10 Petitioners have proposed that compensation for this  
11 period of time be the same as the final rates, terms and  
12 conditions that are adopted by this Commission as a result  
13 of this arbitration. The final report, however, won't  
14 address the issue and claims that it is not relevant to a  
15 determination here.

16                   We, first of all, believe clearly that it  
17 is an issue. We raised it at the earliest opportunity  
18 with these and other wireless carriers when we've been  
19 involved in negotiations, and when that couldn't be  
20 resolved in this case, we specifically listed it as an  
21 issue in our petition for arbitration and one which we  
22 believe the Commission cannot avoid and must address.

23                   As I said, all we're asking is that we be  
24 compensated for this traffic, and we're willing to accept  
25 compensation based on whatever the final rates, terms and

1 conditions are as a result of this case. Wireless  
2 carriers should be rewarded with free service for their  
3 failure to abide by this Commission's directive back in  
4 1998.

5 JUDGE JONES: And that's Issue No. 25.

6 MR. ENGLAND: No. Actually, I'm going to  
7 get -- Issue No. 25 is my next one. That was Issue  
8 No. 14. That issue involves both T-Mobile and Cingular.  
9 Issue 25 involves only T-Mobile, and that deals with  
10 traffic that was delivered during the period of time  
11 February 2001 to April 29th, 2005.

12 This is the period of time that  
13 Petitioners' wireless tariffs were on file with and  
14 approved by the Missouri Public Service Commission, and  
15 T-Mobile is the only carrier that has failed to abide by  
16 those tariffs and pay compensation to the Petitioners for  
17 traffic they delivered during this period of time.

18 Again, the final report refused to address  
19 this issue, finding that it was irrelevant. We do not  
20 believe that it is irrelevant, and we believe it is an  
21 issue that needs to be addressed. This is traffic that  
22 was delivered pursuant to a tariff which this Commission  
23 found appropriate, the Missouri Court of Appeals found  
24 appropriate, and the FCC found appropriate.  
25 This is traffic that was subject to a complaint before

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1 this Commission, and that complaint was resolved in  
2 Petitioners' favor and against T-Mobile.

3 T-Mobile has consistently refused to pay  
4 and, worse, continued to thumb their nose at the  
5 Commission's decision, as well as the Missouri court's  
6 decision, as well as the FCC decision, and instead pursued  
7 a litigation, a course of litigation to avoid payment of  
8 these amounts.

9 That litigation, however, prompted the most  
10 recent judge to hear the matter, Judge Laughery with the  
11 Federal District Court, the Western District of Missouri,  
12 to characterize T-Mobile's actions as, quote, transparent  
13 litigation strategy, and in that case rejected T-Mobile's  
14 appeal once again.

15 It is -- it is confusing at best to  
16 Petitioners, perhaps unimaginable, that this Commission is  
17 willing to reward T-Mobile for its transparent litigation  
18 strategy and allow them the benefit of what appears to be  
19 right now an extremely favorable traffic termination  
20 agreement, based on the decision in the final report,  
21 without requiring them to settle up for their past  
22 unlawful conduct.

23 At the very least, the Commission should  
24 suspend the exchange of traffic between Petitioners and  
25 T-Mobile and allow Petitioners to block T-Mobile's traffic

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1 pursuant to your enhanced record exchange rule until such  
2 time as these lawful tariff amounts are paid and paid in  
3 full.

4 Thank you, and that's all I have in my  
5 argument, but I'd be willing to answer any questions  
6 you-all may have.

7 JUDGE JONES: Mr. England, in regard to  
8 Issue No. 25, you suggested that the Commission at least  
9 suspend what? What was it that you said? Just repeat  
10 whatever you said.

11 MR. ENGLAND: Suspend operation -- well,  
12 exchange of traffic pursuant to the agreement that is  
13 being arbitrated here.

14 JUDGE JONES: And allow you-all to block  
15 traffic?

16 MR. ENGLAND: Right. As we all know and as  
17 was clearly admitted in the hearing, T-Mobile has other  
18 ways of getting that traffic to us. We had blocked that  
19 traffic at one time pursuant to our wireless tariff.  
20 There was no interruption in that traffic and it was  
21 delivered via interexchange carriers.

22 JUDGE JONES: Thank you. Commissioner  
23 Murray, do you have questions?

24 COMMISSIONER MURRAY: No. Thank you.

25 JUDGE JONES: Commissioner Gaw?

1 COMMISSIONER GAW: Not at the moment.

2 JUDGE JONES: Commissioner Clayton?

3 COMMISSIONER CLAYTON: I have a few  
4 questions.

5 Forgive me, Mr. England. We've had a few  
6 things going on today. We're going to be ducking out to  
7 do a few other things, and then we have another hearing  
8 that's going on at the same time.

9 MR. ENGLAND: I understand.

10 COMMISSIONER CLAYTON: I'm going to try to  
11 ask just a few general questions, if you would address  
12 those.

13 Going through each of the items that you've  
14 highlighted, each of the issue numbers, can you say  
15 whether each of these issues have all been dealt with by  
16 the arbitrator in this case the same as they were in the  
17 Alma case, or are there differences in these issues  
18 between the Alma decision and this one?

19 MR. ENGLAND: The -- there are similarities  
20 and there are differences.

21 COMMISSIONER CLAYTON: Can you start with  
22 the similarities, where the arbitrator decided the issue  
23 the same way, where there's the same result, and then  
24 identify the differences between the Alma decision and  
25 this one.

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1                   MR. ENGLAND: The most significant  
2 similarity is the decision, I believe, that's -- look at  
3 my notes. It's what I call the IXC-carried traffic issue,  
4 Issue No. 15.

5                   COMMISSIONER CLAYTON: Reciprocal  
6 compensation?

7                   MR. ENGLAND: Exactly. And the final  
8 report basically cites the Alma case as the basis for its  
9 decision in this case. So it's identical, in my opinion.

10                   The dissimilarity is the -- is in the cost  
11 issue. In the Alma case, the Commission accepted the HAI  
12 cost study submitted by Mr. Schoonmaker done on behalf of  
13 Alma and the companies involved in that arbitration and  
14 rejected Mr. Conwell's recommended rates, which were  
15 similarly low in that case, I believe less than a penny a  
16 minute, calling them counterintuitive.

17                   In this case, however, I have no idea how  
18 low our costs are going to go, but right now the range of  
19 costs as a result of the revised cost studies, as I said,  
20 the average went from 8.7 cents to 3.45 cents, a  
21 60 percent reduction.

22                   COMMISSIONER CLAYTON: Slow down. 8 dot?

23                   MR. ENGLAND: 7 cents per minute to an  
24 average of 3.45 cents per minute, or a 60 percent  
25 reduction, a range of individual rates that I believe is

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1 1.35 cents on the low end to 9.6 on the high end.

2 So I guess more generally while the final  
3 report deems so dovetail with the report in the Alma case  
4 on the IXC issue, it departs markedly on the issue of cost  
5 and rates.

6 COMMISSIONER CLAYTON: Okay. Any other of  
7 the issues that you identified that you want to note as  
8 being similar or different?

9 MR. ENGLAND: Not that readily come to  
10 mind.

11 COMMISSIONER CLAYTON: In that instance of  
12 costs, that would be -- that would be a difference that  
13 would be, I guess to characterize it, would be more  
14 harmful to your clients than from the Alma decision --

15 MR. ENGLAND: Correct.

16 COMMISSIONER CLAYTON: -- correct?

17 Also, on Issue No. -- Issue No. 25, the  
18 unpaid funds associated with the traffic exchanged during  
19 the period of February 2001 to April of 2005.

20 MR. ENGLAND: Yes, sir.

21 COMMISSIONER CLAYTON: Is that traffic that  
22 has been subject to complaint cases before the Commission?

23 MR. ENGLAND: It is for some of the  
24 Commissioners, not -- some of the Petitioners, not for  
25 all.



1                   COMMISSIONER CLAYTON: Okay. We disposed  
2 of one case that involved traffic and I guess left one  
3 case open. Are the Petitioners in this case part of the  
4 ones that were disposed of or are they part of the case  
5 that's still pending?

6                   MR. ENGLAND: I think I understand your  
7 question, and they were part of the case that was disposed  
8 of.

9                   COMMISSIONER CLAYTON: It was disposed of.

10                  MR. ENGLAND: And then T-Mobile, instead of  
11 taking appeal to the Missouri courts, went to the Federal  
12 District Court to appeal that, seeking an injunction  
13 stopping us from enforcing our tariffs, and that's when  
14 Judge Laughery rejected that appeal and characterized  
15 their actions as transparent litigation strategy.

16                  COMMISSIONER CLAYTON: And where was that  
17 case appealed?

18                  MR. ENGLAND: Now it's been appealed to the  
19 Eighth Circuit of Court of Appeals. We have a motion to  
20 dismiss that the Court said they would not deal with  
21 initially, they would take with the rest of the case, and  
22 now T-Mobile --

23                  COMMISSIONER CLAYTON: We were talking  
24 about that this morning.

25                  MR. ENGLAND: And now T-Mobile has filed a

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1 request to stay that appeal or to stay their own appeal,  
2 and I anticipate we'll be filing something in response to  
3 that.

4 COMMISSIONER CLAYTON: Okay. Would you  
5 explain, I asked the judge to have you repeat what exactly  
6 the Petitioners are requesting, and I think your response  
7 was that we should permit the suspension of the exchange  
8 of traffic and allow for your -- I guess for the  
9 Petitioners to block the traffic and force it to be  
10 transported through an IXC; is that correct?

11 MR. ENGLAND: Correct.

12 COMMISSIONER CLAYTON: Explain to me what  
13 prevents you from blocking that traffic today.

14 MR. ENGLAND: We were hoping to get it  
15 addressed in this case. So I'm not telling you that even  
16 if it's not addressed in this case we won't pursue  
17 blocking as well as collection in the circuit court if we  
18 can't get that resolved. Obviously we haven't gotten it  
19 resolved this far in the process. I suspect it will have  
20 to be fully litigated.

21 COMMISSIONER CLAYTON: Would you agree that  
22 this arbitration is a departure, not necessarily from the  
23 Alma decision, but a departure from past Commission  
24 decisions or past Commission arbitrations, especially with  
25 regard to reciprocal compensation?

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1                   MR. ENGLAND: Are you talking about the IXC  
2 traffic?

3                   COMMISSIONER CLAYTON: Yes.

4                   MR. ENGLAND: Yes. We believe that this  
5 Commission has addressed that issue contrary to the way it  
6 addressed it in Alma when it discussed and approved the  
7 Petitioner's wireless tariffs back in 2001. And it  
8 escapes me right now, but I believe there was some other  
9 recognition of the fact that the calling party's carrier  
10 should be the one that's financially responsible for  
11 paying the terminating compensation.

12                   And we think that the Alma is a departure  
13 from that concept. It's a departure from the status quo  
14 at least as identified by the FCC in their Notice of  
15 Proposed Rulemaking.

16                   COMMISSIONER CLAYTON: Okay. Thank you.

17                   JUDGE JONES: Commissioner Appling?

18                   COMMISSIONER APPLING: No questions.

19                   COMMISSIONER MURRAY: Can I ask one  
20 question?

21                   JUDGE JONES: Commissioner Murray.

22                   COMMISSIONER MURRAY: Mr. England, a Notice  
23 of Proposed Rulemaking is not a finding; is that correct?  
24 I mean, it's not something that we rely on as settled law,  
25 is it, language in a Notice of Proposed Rulemaking?

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1                   MR. ENGLAND: I don't know, Judge. I  
2 just -- I think to the extent that the FCC in my opinion  
3 correctly identified the state of affairs as far as  
4 intercarrier compensation is concerned, I think it may not  
5 be binding, but it's certainly a darn good indication of  
6 what I think the situation is.

7                   COMMISSIONER MURRAY: And that language  
8 that you quoted was regarding calling party pays; is that  
9 correct?

10                  MR. ENGLAND: Calling party apostrophe S  
11 carrier, yes.

12                  COMMISSIONER MURRAY: And I have to admit,  
13 I have not been listening closely to what you said because  
14 I've been reading other things, but is it not true that if  
15 the calling party's carrier pays, that a reciprocal  
16 compensation arrangement would also involve the calling  
17 party's carrier paying on a reciprocal basis, each party  
18 has calling customers?

19                  MR. ENGLAND: I think I understand your  
20 question, and I think I agree. Are you talking about the  
21 return call from the called party?

22                  COMMISSIONER MURRAY: I'm talking about any  
23 call from one of your client's customers would be a -- to  
24 a wireless carrier, for example, that would be one of your  
25 customers as the calling party?

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1                   MR. ENGLAND: That's correct. But their  
2 carrier in a long distance arrangement or a long distance  
3 calling arrangement is the IXC.

4                   COMMISSIONER MURRAY: We're back to that  
5 argument. Okay. Now I understand where you're going.  
6 Thank you.

7                   MR. ENGLAND: Okay.

8                   JUDGE JONES: Commissioner Gaw?

9                   COMMISSIONER GAW: No, not right now.

10                  JUDGE JONES: Thank you, Mr. England. Now,  
11 between Respondents, will -- both of you, I assume, will  
12 be giving statements particularly with regard to issues  
13 that are specific to you, but those common issues, will  
14 both of you be giving statements or one or the other?

15                  MR. WALTERS: Your Honor, on behalf of  
16 Cingular, I will be speaking on the cost issues, and  
17 Mr. Johnson will be speaking on the non-cost issues.  
18 There will be no overlap.

19                  JUDGE JONES: Proceed as you will between  
20 the two of you.

21                  MR. WALTERS: Commissioners, Judge Jones  
22 and advisory staff, my name is Paul Walters, Junior. I am  
23 an attorney licensed to practice law in Oklahoma, Texas  
24 and Missouri. I practice in all three states, although  
25 this is my first appearance before the Commissioners. I

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1 practice law with my father, and I do practice in all  
2 three states, and I'm here representing Cingular Wireless  
3 today.

4 I'd like to introduce you to Mr. Craig  
5 Conwell, who is the Respondents' cost expert. To the  
6 extent you have any technical number-related questions, if  
7 it's acceptable, I may defer the question to Mr. Conwell  
8 since that is his area of expertise, and I'll do my best,  
9 but numbers are not my strong suit.

10 I also would like to send my regrets for  
11 Mr. Mark Ashby, who's the head of Cingular's regulatory  
12 division. He had intended to be here today. He was here  
13 last night, but his young daughter fell out of a swing set  
14 and broke her arm last night. And so he caught a very  
15 early flight back home and is not able to be here today.

16 As I told Judge Jones, I will be speaking  
17 on only the cost issues. Those are Issues 1 through 13.  
18 I will not be speaking on all the cost issues, so don't  
19 worry about that, only certain of them.

20 Mr. Johnson will speak on the non-cost  
21 issues, and my presentation will be the bulk of our  
22 presentation. So if you find that I'm going 15 or 20  
23 minutes and you're worried that Mr. Johnson's going to go  
24 another 15 or 20, don't. His presentation will be quite a  
25 bit shorter.

1                   The cost issues in this case are very  
2 technical, and I personally and my client would like to  
3 thank the ALJ and the advisory staff for slogging through  
4 these issues because it's not easy. It's taken a lot of  
5 hard work, and we do appreciate that. The goal of  
6 everyone here, and that includes all of the litigants, the  
7 Commissioners, the advisory staff, is to establish proper  
8 transport and termination rates consistent with FCC  
9 regulations.

10                   And I want to assure you that my client,  
11 Cingular Wireless, wants to compensate each Petitioner for  
12 all of the costs that the Petitioners incur in terminating  
13 my client's traffic. I also want to assure you, however,  
14 that we do not want to compensate Petitioners for anything  
15 above their costs. We are in an extremely competitive  
16 industry, and in a competitive industry you cannot be  
17 paying subsidies to function or to subsidize parts of the  
18 network that are not being used to terminate our traffic.

19                   So that's the fine line that we're trying  
20 to determine today is, under FCC regulations, what are  
21 Petitioners' costs. Everybody agrees that Petitioners are  
22 entitled to full compensation for all of their costs. And  
23 we've worked through many issues in this case. Cost  
24 studies have been rerun, and we feel, Respondents feel  
25 that we've achieved proper results with regard to

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1 switching costs. The switching costs are not identical to  
2 what we had proposed, but we feel they're within the zone  
3 of reasonableness, and as we said in our recent filing, we  
4 accept the switching cost in the rerun cost studies, and  
5 we have no objections to them.

6                   We feel like on the transport side that the  
7 final report could be needs a few modifications in order  
8 to be fully compliant with FCC rules and regulations.  
9 What I would like to do today is to discuss the areas in  
10 which we feel modifications could be appropriate to the  
11 final report. My goal today is to explain those  
12 modifications to you so that when I'm finished you'll  
13 understand the modifications that we're proposing, what  
14 they are and how to implement them.

15                   I'd like to give you an example with some  
16 numbers in it so you'll know exactly what I'm talking  
17 about, so it might make a little sense. One of the issues  
18 in determining transport and termination rates are cable  
19 costs.

20                   Now, when -- and let me say, let me mention  
21 this: I'm going to in my presentation be using some  
22 confidential information that was directed as  
23 confidential. I think everyone in the room has either  
24 signed the nondisclosure agreement or doesn't need to sign  
25 one, but am I okay in using certain of the confidential



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1 information?

2 JUDGE JONES: Well, let me -- we're going  
3 to have to go off. I'll just put it on mute, how about  
4 that? Are you going to go right into confidential  
5 information or --

6 MR. WALTERS: I was getting ready to.

7 JUDGE JONES: Let me go ahead and make sure  
8 everything's closed down to the outside. I'll tell you  
9 what, for sake of time, I don't know if this is streaming.  
10 I can see your picture on the Internet, but I don't know  
11 if anyone can hear me or not. There's no way for me to  
12 know that without leaving this seat. So why don't we go  
13 ahead and have the non-cost issues that I assume don't  
14 talk about -- you look like you're not ready to go.

15 MR. JOHNSON: Oh, I -- sure.

16 MR. WALTERS: And then come back with the  
17 cost issues?

18 JUDGE JONES: Yeah.

19 MR. JOHNSON: I hope you have the technical  
20 problems fixed quickly because I don't plan to take much  
21 time, as Mr. Walters had indicated.

22 Good afternoon, Commissioners. As Judge  
23 Jones said, I'm Mark Johnson. I'm here today on behalf of  
24 T-Mobile. And on the non-cost issues, the one issue that  
25 I really want to address has to do with reciprocal

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1 compensation. That's the issue that Mr. England described  
2 as the IXC traffic issue. I suppose to a certain extent  
3 it's a semantic issue. He doesn't want to use the term  
4 reciprocal compensation. We don't want to call it IXC  
5 traffic.

6 But the bottom line here is that, under FCC  
7 rules, for a call that is originated and terminated within  
8 the same major trading area, reciprocal compensation is  
9 required.

10 The parties agree that if the call is  
11 handed directly from the local exchange carrier to the  
12 wireless carrier, then reciprocal compensation is  
13 appropriate. The disagreement is where there is an  
14 intermediate carrier, in this case an interexchange  
15 carrier. In that situation, is reciprocal compensation  
16 appropriate?

17 Issue 15 of the -- in the issues matrix  
18 deals with that issue. In the final report the arbitrator  
19 found in Cingular and T-Mobile's favor on that issue, and  
20 we believe that he was absolutely correct in doing so.

21 In their comments concerning the  
22 preliminary arbitration report, and also in Mr. England's  
23 presentation to you this afternoon, two principal points  
24 are raised. First, mention is made of this Federal  
25 Communications Commission NPRM, Notice of Proposed

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1 Rulemaking issued last March. The second point relates to  
2 a recent decision of the Texas Public Utilities  
3 Commission, December of 2005 in a case between a paging  
4 carrier and SBC.

5 We believe that in both -- in both  
6 instances the reliance on those two -- on those matters is  
7 inappropriate. The arbitrator was correct in finding ding  
8 in the wireless carriers' favor. Let me tell you why.  
9 First, with respect to the FCC's Notice of Proposed  
10 Rulemaking, in their comments concerning the preliminary  
11 arbitration report, the Petitioners refer to a specific  
12 paragraph of that NPRM.

13 What they fail to do is refer to a couple  
14 of other paragraphs in that same NPRM, the same section of  
15 that NPRM. The paragraph that they refer to is No. 138.  
16 What we think that you also need to look at are  
17 paragraphs 134 and 135 which address the issue of  
18 compensation for calls that originate and terminate in the  
19 same MTA.

20 Let me quote to you from those two  
21 paragraphs, 134 and 135. In the local -- in the local  
22 competition First Report and Order, the Commission -- in  
23 this case that's the Federal Communications Commission --  
24 stated that traffic to or from a CMRS network -- that's a  
25 wireless company -- that originates and terminates within

1 the same major trading area is subject to reciprocal  
2 compensation obligations under Section 251(b)(5) -- that's  
3 the section of the Federal Telecommunications Act --  
4 rather than interstate or intrastate access charges.

5           Skipping down a sentence, thus,  
6 Section 51.701(b)(2) -- that's a reference to what we  
7 believe is the controlling FCC regulation on this issue.  
8 701(b)(2) of the Commission's rules defines  
9 telecommunications traffic exchanged between a LEC and a  
10 CMRS provider that is subject to reciprocal compensation  
11 as traffic that at the beginning of the call originates  
12 and terminates within the same major trading area.

13           And then the first sentence of the next  
14 paragraph, which is 135, says that the purpose of the  
15 intraMTA rule is thus to distinguish access traffic from  
16 Section 251(b)(5) CMRS traffic. Now, that term, intraMTA  
17 rule, refers to the rule that's codified in the FCC rule  
18 section that I just mentioned to you. That's 701(b)(2) of  
19 Section 51. That covers local exchange carrier to  
20 wireless carrier traffic.

21           There's nothing in that rule that addresses  
22 or creates any exception for traffic that goes through an  
23 interexchange carrier. That's different from 701(b)(1),  
24 the preceding section, which addresses traffic from one  
25 local exchange carrier to another local exchange carrier.

1 That section contains that exception. That section says  
2 that where there is an interexchange carrier in between,  
3 there's an exception from reciprocal compensation.

4 No such exception appears for calls from a  
5 local exchange carrier to a wireless carrier. Now, a case  
6 that we have relied heavily on and which the Petitioners  
7 don't want you to rely on is a decision by the Tenth  
8 Circuit Court of Appeals. It's called the Atlas Telephone  
9 case. And in that case, the court did precisely what I  
10 just did for you. It went through these two sections  
11 (b) (1) and (b) (2), and came to the conclusion that we urge  
12 to adopt in approving the arbitrator's report.

13 And here just for -- I'll just read a quick  
14 excerpt from that Atlas Telephone case, and for the  
15 record, this is 400 Fed 2d -- pardon me -- Fed 3rd 1256 at  
16 page 1265. Quote, regulation 51.701(b) (1) specifically  
17 excludes from reciprocal compensation requirements  
18 landline traffic exchanged between a LEC and a non-CMRS  
19 carrier that is interstate or intrastate exchange access  
20 in nature.

21 Significantly, the Commission did not carry  
22 forward that same exception into regulation 701(b) (2).  
23 When in exercising its quasi-legislative authority an  
24 agency includes a specific term or exception in one  
25 provision of a regulation but excludes it in another, we

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1 will not presume that such term or exception applies to  
2 provisions from which it is omitted. It simply stands to  
3 reason, if they say it applies to one and it's silent in  
4 another regulation, then that exception doesn't go from  
5 the one regulation to the other.

6                   So in addressing this FCC NPRM, the  
7 Petitioner -- and urging you to disagree with the  
8 arbitrator's report in relying on that NPRM, the  
9 Petitioners are simply wrong.

10                   With respect to the second point they make,  
11 and this has to do with the recent Texas decision, again  
12 we believe that the Petitioners are incorrect in citing  
13 that. In that case, the Texas PUC -- and by the way, I  
14 think what you'll hear me say is that the Texas PUC made a  
15 mistake, and I think you will agree that that's not the  
16 first time a utility commission has made a mistake.

17                   But there the Texas PUC directly addresses  
18 the Atlas case that I just quoted to you a moment ago, and  
19 it says -- and by the way, this excerpt from the Texas  
20 case is quoted in the Petitioners' comments to the  
21 preliminary arbitration report, and it says as follows:  
22 Atlas did not, however, expressly discuss 1+ dialed  
23 traffic handled by an IXC. Thus, the Commission, in this  
24 case the Texas Commission, finds that the Atlas case is  
25 not relevant to this proceeding as it did not hold that

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1 intra-- pardon me intraMTA 1+ called handled by an IXC  
2 should be subject to reciprocal compensation.

3                   With respect to the Texas Commission, they  
4 just got it flat wrong. The Atlas case does address the  
5 issue of IXC-handled traffic, and let me quote to you,  
6 this is from page 1260 of the Atlas case,  
7 telecommunications traffic could be routed through an  
8 interexchange carrier.

9                   In this case the IXC was Southwestern Bell  
10 Telephone Company. The CMRS providers maintained that,  
11 regardless of the presence of the IXC, the  
12 telecommunications exchange referenced above is subject to  
13 the reciprocal compensation obligations found in  
14 Section 251(b) (5) of the Act.

15                   Going down a couple of sentences, in  
16 contrast, the RTCs, which is the Oklahoma term for rural  
17 carrier, maintained that traffic passing through an IXC is  
18 subject to the access charge or long distance calling  
19 regime.

20                   Thus, we think the Texas Commission just  
21 flat got it wrong. The Atlas case did address the issue  
22 that's before this Commission, and the Atlas case was  
23 correct in finding that reciprocal compensation is  
24 appropriate, just as the final report in its decision on  
25 Issue 15 was correct, and reciprocal compensation is

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1 appropriate for what the Petitioners call the 1+ -- pardon  
2 me -- the IXC traffic and what we would refer to as the  
3 reciprocal compensation traffic.

4 That's the only issue that I intended to  
5 address. If you have any questions about other non-cost  
6 issues or that issue itself, I'd be happy to at least try  
7 to respond.

8 JUDGE JONES: Commissioner Murray?

9 COMMISSIONER MURRAY: I don't think I have  
10 any questions right now. Thank you.

11 JUDGE JONES: Commissioner Gaw?

12 COMMISSIONER GAW: Is Issue No. 26 yours?

13 MR. JOHNSON: Let's see. 26?

14 COMMISSIONER GAW: It's a blocking issue.

15 MR. JOHNSON: If it's the issue that  
16 Mr. England was referring to, yes.

17 COMMISSIONER GAW: I think that's the issue  
18 he's referring to, but I'm not sure either.

19 MR. JOHNSON: Well, blocking is an issue  
20 for T-Mobile, that's correct.

21 COMMISSIONER GAW: Yes. Where are you-all  
22 on dealing with that issue?

23 MR. JOHNSON: I had a feeling you would ask  
24 that question.

25 COMMISSIONER GAW: Yeah, I figured.



1 MR. JOHNSON: We were thinking about that.  
2 Well, it is -- it's easy for me to say that we are -- that  
3 T-Mobile is following the judicial process, that it is  
4 exercising all of the avenues of judicial relief available  
5 to it.

6 What I'm afraid I can't address is what the  
7 specific status of that case is now because I'm not  
8 involved in the appeal. I know the money has not been  
9 paid. I mean, that's one point that I --

10 COMMISSIONER GAW: You're in agreement on  
11 that --

12 MR. JOHNSON: Yes, that's correct.

13 COMMISSIONER GAW: -- particular point?

14 MR. JOHNSON: But let me tell you that I've  
15 been authorized to say that T-Mobile will comply with the  
16 final decision of the judicial process.

17 COMMISSIONER GAW: Does Mr. England know  
18 where the case is?

19 MR. JOHNSON: It's at the Eighth Circuit;  
20 is that right?

21 MR. ENGLAND: Mark's correct that a  
22 different law firm is handling that appeal, and it is in  
23 the Eighth Circuit Court of Appeals right now.

24 COMMISSIONER GAW: So you're not in that  
25 case either?

1 MR. ENGLAND: We are.

2 COMMISSIONER GAW: Okay. I thought you  
3 were talking about more than just his law firm being  
4 different. That's why I was confused.

5 MR. ENGLAND: I'm sorry. T-Mobile is using  
6 a different law firm to represent them in the --

7 COMMISSIONER GAW: Yes.

8 MR. ENGLAND: -- federal case.

9 COMMISSIONER GAW: I got it. I wasn't sure  
10 whether you were also saying that your clients were using  
11 a different firm.

12 MR. ENGLAND: Not yet, but if I don't get  
13 results, they may.

14 MR. JOHNSON: Commissioner Gaw, this isn't  
15 a question you asked. Commissioner Clayton asked this  
16 question. And Commissioner Clayton, you asked about the  
17 similarities and differences between the Alma case and  
18 this case. Let me tell you one of the big differences.  
19 Mr. England is absolutely correct that the biggest  
20 difference has to do with costs.

21 I was involved in the T-Mobile case. I  
22 represented the company in that. What we all want to  
23 believe is that we've learn from what we've done in the  
24 past. What T-Mobile learned in that case was that we  
25 needed to put on a better case, and we did this time. In

1 the Alma case, Mr. Conwell -- and it's interesting. It  
2 seems that Mr. -- that the Petitioners are almost trying a  
3 case against Mr. Conwell here.

4 But in the Alma case, if you look at his  
5 testimony, it does not go into any level of detail similar  
6 to the detail that it goes into in this case. In that  
7 decision, even though the HAI model was also involved, the  
8 evidence which the -- in that case the single Respondent,  
9 T-Mobile, put on paled in comparison to the evidence which  
10 the two Respondents here, Cingular and T-Mobile, have  
11 presented to you.

12 So we think to that extent the cases are  
13 entirely different on the cost issues.

14 JUDGE JONES: Seeing no questions --

15 MR. JOHNSON: Thank you.

16 JUDGE JONES: -- thank you, Mr. Johnson.

17 MR. JOHNSON: I hope you've solved the  
18 technical problems.

19 JUDGE JONES: We have. Thanks.

20 MR. WALTERS: Are we okay for --

21 JUDGE JONES: We are on mute. You can say  
22 what you want and no one cares.

23 (REPORTER'S NOTE: At this point an  
24 in-camera session was held, which is contained in Volume 7  
25 of the transcript, pages 624 through 652.)