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7 Oral Arguments
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12 In the Matter of the Application of)
13 Southwestern Bell Telephone Company)
14 to Provide Notice of Intent to File)
15 an Application for Authorization to) Case No. TO-99-227
16 Provide In-Region InterLATA Services)
17 Originating in Missouri Pursuant to)
18 Section 271 of the Telecommunications)
19 Act of 1996.)
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21
22 NANCY M. DIPPELL, Presiding,
23 SENIOR REGULATORY LAW JUDGE.
24
25 CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case No. TO-99-227, in
3 the matter of the application of Southwestern Bell Telephone
4 Company to provide notice of intent to file an application
5 for authorization to provide in-region interLATA services
6 originating in Missouri pursuant to Section 271 of the
7 Telecommunications Act of 1996.

8 My name is Nancy Dippell. I'm the judge
9 assigned to this matter, and we have come here today for
10 oral arguments on a motion filed by Southwestern Bell to
11 update the performance measures plan of the Missouri -- the
12 performance remedy plan of the Missouri interconnection
13 agreement, also known as, and probably referred to often
14 here today as the M2A.

15 I'm going to begin by letting everyone make
16 entries of appearance. I believe counsel have all provided
17 written entries. So if you would like to introduce yourself
18 and state who you're here representing today, go ahead and
19 begin with that.

20 Southwestern Bell?

21 MR. CONROY: Thank you, Judge. Anthony Conroy
22 and Paul Lane representing SBC Missouri. Our address is
23 One SBC Center, St. Louis, Missouri 63101, Suite 3516.

24 JUDGE DIPPELL: Staff?

25 MR. WILLIAMS: Nathan Williams, Senior Counsel

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1 with the Missouri Public Service Commission, P.O. Box 360,
2 Jefferson City, Missouri 65102.

3 JUDGE DIPPELL: Office of the Public Counsel?

4 MR. DANDINO: Michael Dandino, Office of the
5 Public Counsel, Post Office Box 7800, Jefferson City,
6 Missouri 65102, representing the Office of the Public
7 Counsel and the public.

8 JUDGE DIPPELL: State of Missouri?

9 MR. MOLTENI: Ronald Molteni, Assistant
10 Attorney General, on behalf of the State of Missouri,
11 P.O. Box 899, Jefferson City, Missouri 65102.

12 JUDGE DIPPELL: And, Mr. Lumley, do you want
13 to go ahead?

14 MR. LUMLEY: Thank you, Judge. Carl Lumley of
15 the Curtis Oetting law firm, here today representing AT&T
16 Communications of the Southwest, Inc., Nuvox Communications
17 of Missouri, XO Missouri, Inc., MCI WorldCom Communications,
18 Inc., and MCI Network Services, Inc.

19 JUDGE DIPPELL: And were any of the other
20 counsel present wanting to make entries of appearance this
21 morning, Ms. Morgan?

22 MS. YOUNG: Judge, appearing on behalf of
23 McLeod USA Telecom Services, Inc, Mary Ann Young, with
24 William D. Steinmeier, P.C., P.O. Box 104595, Jefferson
25 City, Missouri 65110.

1 JUDGE DIPPELL: Thank you. Okay. We've come
2 here today for oral arguments, and even though the
3 Commission has a rule on oral arguments, we won't strictly
4 follow that rule today. We're going to proceed with
5 Southwestern Bell going first, arguing the finer points of
6 its motion, and then we'll have Staff, Office of the Public
7 Counsel and the State, AT&T and MCI and the others. And
8 then if McLeod also has something to add, they may do so.

9 We'll -- we may have questions from the Bench
10 as we go along. They may be after you're done, and then at
11 the end, after all the questions, I'll give each of you an
12 opportunity to make some final remarks, closing remarks, and
13 I will conclude at that time with Southwestern Bell.

14 I'm going to go ahead and go off the record
15 for a few moments and see if the Commissioners are ready to
16 join us.

17 Go off the record.

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

19 JUDGE DIPPELL: Let's go back on the record.
20 We're ready then to begin with Southwestern Bell to give
21 some opening remarks.

22 MR. CONROY: Thanks, Judge. Good morning.

23 My name is Tony Conroy. I represent SBC
24 Missouri in this proceeding, and in particular with its
25 motion to update the M2A that was filed back in March of

1 2002. Thought it would be a good idea, since it's been a
2 while since the M2A was approved, to go through a little bit
3 of background as to where we came from.

4 The M2A was approved by the Commission in
5 March of 2001, and it was based in part on the Texas 271
6 agreement that was developed earlier and approved by
7 the Texas PUC. But the M2A also includes results of
8 Missouri-specific arbitrations that were conducted by this
9 Commission and also includes things that go beyond what SBC
10 Missouri was required to do under the Federal Act. And, in
11 fact, the Commission recognized that when it approved the
12 M2A in March of 2001.

13 Attachment 17 of the M2A is what we're really
14 here to talk about today, and that is the performance remedy
15 plan, and that was part of the M2A that was approved.
16 Attachment 17 of the performance rem-- is the performance
17 remedy plan, and it contains not only the performance remedy
18 plan which is Attachment 17, it also contains three
19 appendices, the main one of those being the business rules,
20 which is what -- when you hear today being talked about
21 Version 1.7 or 2.0 or 3.0, that generally is referring to --
22 what the parties are referring to are the business rules
23 that are attached to the performance remedy plan as
24 Attachment 17.

25 Under the performance remedy plan, SBC's

1 performance measurements are divided into three categories;
2 Tier 1, Tier 2 and diagnostic. Tier 1 involves liquidated
3 damages that are payable to individual competitive carriers
4 called CLECs whenever performance for that carrier falls
5 below a certain level, whether that's a parity standard or
6 the benchmark established in the business rules, after
7 applying statistical tests to ensure that the difference in
8 the performance are not merely the result of random
9 variation.

10 Tier 2 assessments are different and they're
11 payable to the Missouri State Treasury. And then within
12 Tier 1 and Tier 2 categories, there are further
13 classifications of high, medium and low, all as described in
14 the performance remedy plan and its attachments.

15 So again, when we talk about Version 1.7,
16 which is the version of the business rules that was included
17 in the M2A approved by the Commission in March of 2001, and
18 Version 2.0 and Version 3.0, we're talking about the
19 business rules that are attached to the performance remedy
20 plan.

21 As described in the preamble section, the
22 opening sections of the performance remedy plan, Section 6.4
23 of the performance remedy plan, which is Attachment 17,
24 describes the six-month review process for changes and
25 modifications and new performance measurements, and it also

1 describes the limited circumstances under which those
2 changes can be implemented in the M2A. And the relevant
3 portions of 6.4, which is really the key section of the
4 performance remedy plan that we're here to talk about today,
5 is the first part of it and the last part of it.

6 The first part of it provides every six months
7 a CLEC may participate with SWBT, other CLECs and Commission
8 representatives to review the performance measures to
9 determine whether measurements should be added, deleted or
10 modified, whether the applicable benchmark standard should
11 be modified or replaced by parity standards, and whether to
12 move a classification of a measure to high, medium, low,
13 Diagnostic, Tier 1 or Tier 2. That's described in the
14 six-month review process.

15 The last portion of Section 6.4 of
16 Attachment 17 provides that any changes to existing
17 performance measures and this remedy plan shall be by mutual
18 agreement of the parties and, if necessary, with respect to
19 new measures and the appropriate classification by
20 arbitration.

21 As I think I've mentioned earlier, the M2A
22 approved by the Commission in March of 2001 includes
23 Version 1.7 of the business rules for the performance
24 measurements.

25 Version 1.7 was relatively new when the

1 Commission approved the M2A in March of 2001, but shortly
2 thereafter the Texas Commission PUC conducted a six-month
3 review as contemplated by the first section of Section 6.4,
4 and this process conducted in Texas produced Version 2.0 of
5 the business rules. And when SBC Missouri filed its
6 original motion to update the M2A, that's what we were
7 asking the Commission to update Attachment 17 for, to
8 include that Version 2.0 with three minor -- three limited
9 exceptions that we didn't agree to from the Texas
10 proceeding.

11 The motion to update was filed on March 18th
12 of 2002, and there were those three areas of business rules
13 or areas that -- from the Texas proceeding that we did not
14 agree with, and those were identified in our motion to
15 update the M2A.

16 After that, in August of 2002, the Texas
17 Commission conducted another six-month review, and -- in
18 August of 2002, which resulted in a Version 3.0 of
19 performance measurement business rules. And that Order, the
20 Texas order -- that's Order No. 45. You'll probably hear it
21 discussed. That came out in October of 2002.

22 So since we filed our motion, there's actually
23 been another step that's been taken, and we're now at the
24 point where we have two sets of changes, neither of which
25 have been implemented in the M2A. But even though when we

1 filed our motion to update the M2A, we're asking the
2 Commission to adopt a version of -- version of 2.0 that we
3 agreed with, we are now asking the Commission to move
4 forward and go ahead and adopt 3.0, which contains the
5 changes from 2.0, so we have a more recent and updated
6 version.

7 JUDGE DIPPELL: Mr. Conroy, let me ask you
8 just one question here. Does Version 3.0 contain the three
9 provisions from 2.0 that Southwestern Bell disagreed with?

10 MR. CONROY: Some. There are -- there were
11 three -- the three things that were identified when we filed
12 Version 2.0 were the special access performance measurements
13 which the Texas Commission has carved out and put into a
14 separate arbitration proceeding, and that has not been
15 finalized. That is not included in Version 3.0, nor has it
16 been implemented in Texas. Okay?

17 The second thing was Performance
18 Measure 1.2. That has been implemented in Texas, and that
19 we are willing -- we are now willing to agree to that, and
20 it is included in Version 3.0 that we filed on May 16th.
21 Okay? And that's the version that everybody should be going
22 from is the version of the performance measurements that we
23 filed in response to the Commission's order on May 16th,
24 just ten days ago or so.

25 And then the third would be the performance

1 measurement 13, and that issue has not been fully and
2 completely resolved by the Texas Commission either, and that
3 actually is a change to the remedy plan -- involves a change
4 to the remedy plan and we're not agreeable -- it hasn't been
5 implemented in Texas, but we're not agreeable to doing it in
6 Missouri either.

7 Essentially one of the three of that first set
8 is included in Version 3.0. And I'll go ahead and answer
9 the next question, which is, of the five performance
10 measurement issues that we identified later that we
11 disagreed with in Texas coming out of the 3.0 version, all
12 of the -- all of these we disagreed with when we filed our
13 response to Staff's pleading in November -- or actually it
14 was early December of last year -- with the exception of the
15 K Table changes, the other four from Version 3.0 we are now
16 agreeable to implementing in Missouri.

17 JUDGE DIPPELL: Okay.

18 MR. CONROY: So the two main things that would
19 be the changes, not to the business rules, but changes to
20 the performance remedy plan itself. But the K Table changes
21 relate to Sections 8.3 and 11.1.1 of Attachment 17. They're
22 not specifically changes to the business rules themselves.

23 I've just gone through a lot of what I was
24 going to say, so I'm glad you asked that question.

25 So where we are today is, frankly, we have a

1 lot more agreement, I think, with most, if not all, parties
2 here than disagreement. We have a couple of issues, and
3 what we have proposed -- I will say this, what we proposed
4 in Missouri that the Commission adopt as Version 3.0 is the
5 exact same Version 3.0 that has been implemented in Texas
6 and has been implemented in Arkansas and has been proposed
7 in Kansas, but it's not yet implemented in Kansas, so I
8 can't say that it's effective there yet.

9 And Oklahoma's -- there's no proceeding
10 currently to move to 3.0, but that may or may not come, I
11 guess, in the future. But the version that we filed here on
12 May 16th is exactly what has been implemented in Texas of
13 3.0 of the business rules and what has been implemented in
14 Arkansas.

15 The K Table change in Texas has been appealed
16 to the Federal District Court in Texas, and the Texas -- the
17 parties have agreed that those changes, which really just
18 have the effect of increasing the amount of money,
19 liquidated damages, that SBC has to pay to the CLECs for
20 Tier 1, liquidated damages, that has been stayed by
21 agreement pending the appeal in Federal District Court.

22 So both Texas and Arkansas, who have already
23 implemented this Version 3.0, neither one of those states
24 has implemented the changes to the K Table that SBC Missouri
25 does not agree should be implemented in Missouri.

1 JUDGE DIPPELL: Commissioner Gaw?

2 COMMISSIONER GAW: Just to follow up, if SBC
3 were not to prevail in the federal court, do you have a
4 position about where you would be with Missouri if that were
5 to occur?

6 MR. CONROY: That decision is some time off,
7 but I will tell you that right now, our position would be
8 that we would not be agreeable to those changes in Missouri.
9 From our viewpoint, Commissioner, our performance that we
10 report monthly has been going up, getting better. Changes
11 to the K Table would make us pay more liquidated damages in
12 the face of better performance. So we would -- that just
13 doesn't make any sense.

14 COMMISSIONER GAW: I understand your position.
15 Has Arkansas taken a position in regard to what -- to a
16 decision about what it will do with those penalties --

17 MR. CONROY: No.

18 COMMISSIONER GAW: -- pending the outcome of
19 the federal court matter?

20 MR. CONROY: Arkansas hasn't taken a position
21 on it, other than, I would say, that the way Arkansas is set
22 up is once something becomes effective in Texas, Arkansas
23 has basically said, Texas, you handle this problem for us,
24 and if it becomes effective in Texas, it sort of
25 automatically --

1 COMMISSIONER GAW: So, in effect, Arkansas'
2 future is tied to this Texas appeal?

3 MR. CONROY: Yes. In a sense, yes.

4 COMMISSIONER GAW: Okay. Thank you.

5 MR. CONROY: Our proposal at this point is --
6 it's fairly laid out in our May 16th pleading, but the
7 proposal is that the Commission adopt this version of 3.0 of
8 the business rules, along with the changes we identified in
9 that pleading and, in effect, it would permit the
10 Commission, I think, to sort of do a quick overhaul of the
11 Attachment 17 -- maybe not quick is the right word, but it's
12 an overhaul of Attachment 17 to get -- and the business
13 rules in particular to get from being sort of at the back of
14 the pack, which is where we are now, Version 1.7, which
15 we're the only former Southwestern Bell state that has
16 Version 1.7 to go -- to be sort of together with Arkansas
17 and Texas, and having that version of 3.0 implemented and
18 effective.

19 JUDGE DIPPELL: Commissioner Murray, did you
20 have a question?

21 COMMISSIONER MURRAY: Yes, I do.

22 JUDGE DIPPELL: Go ahead.

23 COMMISSIONER MURRAY: Mr. Conroy, just to
24 follow up a little bit on Arkansas' position, has Arkansas
25 taken the position that SBC can challenge the performance

1 standards that -- performance measurements whether or not
2 you have agreed to the changes in Texas?

3 MR. CONROY: Yes. Arkansas process -- and I'm
4 not an Arkansas lawyer, but I'm familiar with what they've
5 done in Arkansas. The Arkansas process is a -- the changes
6 are automatic. I mean, the Arkansas Commission doesn't --
7 they essentially -- they've lost a lot of control over their
8 Attachment 17. You bring the Texas results, drop them into
9 the Attachment 17, and then the Order that they adopted that
10 process in in Arkansas gave SBC Arkansas the right to
11 challenge them separately in Arkansas separate from what's
12 happening in Texas actually.

13 COMMISSIONER MURRAY: So in other words, if
14 you want to challenge one of the provisions, you can ask for
15 a stay?

16 MR. CONROY: Yes, you can ask for a stay.
17 Haven't had to do that in Arkansas yet with respect to the
18 K Table changes, because the Arkansas process only applies
19 to the business rules. That automatic process only applies
20 to the business rules, and the K Table changes are not
21 changes to the business rules. They're changes to the
22 actual performance remedy plan in the body of Attachment 17.

23 But, yes, the Arkansas process would permit
24 SBC Missouri -- I suppose any party to seek a stay or
25 challenge in Arkansas the changes.

1 COMMISSIONER MURRAY: And the other states'
2 position as to the decisions made in Texas, subsequent
3 decisions in Texas, Kansas?

4 MR. CONROY: Kansas -- SBC Kansas is required
5 to bring those changes to Kansas and file them. It's not --
6 it's not as automatic, I would say, as Arkansas is.
7 Arkansas is really just -- Arkansas, even the effective date
8 of the changes goes to the -- goes to the effective date in
9 Texas in Arkansas.

10 But Kansas -- and in Kansas we have filed
11 Version 3.0, the exact same version that we filed here, and
12 they are -- they have a proceeding currently in which
13 they're considering the adoption of 3.0.

14 Oklahoma -- I don't know if you're interested,
15 but I'll tell you because it's the only state left. They do
16 not have any kind of an automatic updating process or even
17 formal updating process.

18 COMMISSIONER MURRAY: What did they do with
19 the provisions of 2.0 that you disagreed with?

20 MR. CONROY: They implemented some and did not
21 implement others, and I'd have to check of the three. I can
22 actually get that. I have that material. I can look at it
23 and answer your question when I get a chance to come back up
24 here. There's only three of them, and they basically
25 implemented some and waited on the others.

1 COMMISSIONER MURRAY: Thank you.

2 JUDGE DIPPELL: Did you have -- we interrupted
3 you in the middle of your remarks. Do you have anything
4 further?

5 MR. CONROY: I don't have a lot further, other
6 than to say that with respect to Staff's position in the
7 case, we -- I believe Staff's position is -- is that the
8 provisions of Section 6.4 require that for changes to the
9 performance remedy plan or to the business rules, that
10 requires the agreement of Southwestern Bell, SBC Missouri as
11 it says in the -- as it says in the M2A.

12 We do have an -- I don't really think it's a
13 huge -- hugely relevant issue here. We do have a
14 disagreement, really, with respect to calling the M2A a
15 statement of generally available terms and conditions which
16 Staff has in their -- in their comments. It's different for
17 a variety of reasons under the Act. We don't really feel --
18 and the history of the M2A, I think, supports that it's not
19 a statement of generally available terms and conditions
20 under Section 252F of the Act.

21 We actually filed a statement of generally
22 available terms and conditions a long time ago, before we
23 filed our -- or in connection with earlier versions of 271
24 in Missouri and that was pulled down.

25 But the statement of generally available terms

1 and conditions is something that has pretty limited
2 application under the Act. And M2A is really a different
3 creature that was more of a voluntary commitment that
4 contained things in addition to what was required under the
5 Act, in addition to what is required under the Act.

6 But I think Staff's in agreement and, frankly,
7 I think the CLECs are probably in agreement that it would be
8 the right decision for the Commission to adopt Version 3.0
9 as was filed and get the M2A updated to where we have a
10 current set of performance measures.

11 JUDGE DIPPELL: Okay. Commissioners, did you
12 have any additional questions?

13 Commissioner Murray?

14 COMMISSIONER MURRAY: Follow up to that.
15 Mr. Conroy, when you say that -- did you say the M2A itself
16 you don't think should be called a statement of generally
17 available terms and conditions?

18 MR. CONROY: I guess we can call it whatever
19 we want, but it's not a statement of generally available
20 terms and conditions as that -- as that type of a document
21 is described in the Federal Act. It's certainly -- it is
22 available, M2A's available and it's generally available to
23 any CLEC that wants to, on a streamline basis, come in and
24 have an interconnection agreement, a complete
25 interconnection agreement based on the M2A. It's a very

1 simple process.

2 So it is generally available to CLECs, but it
3 is not the creature that's described in Section 252F of the
4 Federal Act as a statement of generally available terms and
5 conditions.

6 COMMISSIONER MURRAY: And would you explain
7 how it differs?

8 MR. CONROY: It differs -- there are several
9 reasons it differs. One of the main reasons it differs, the
10 performance remedy plan is a good example of that. That is
11 something that is not required under the Federal Act. The
12 liquidated damages provisions to CLECs, you won't find any
13 provision to the Federal Act that describes that or permits
14 that.

15 The performance remedy plan, including the
16 liquidated damages provision, was one of the voluntary
17 commitments of SBC Missouri that was included in the M2A
18 that would not necessarily be appropriate under a statement
19 of generally available terms and conditions.

20 There are other reasons it's not a statement
21 of generally available terms and conditions. If you look at
22 Section 252 of the Act, it appears that the statement of
23 generally available terms and conditions only applies if a
24 CLEC hasn't requested interconnection. There are time
25 limits that are pretty limited that don't really make it to

1 be the same type of a framework that the M2A is.

2 But the voluntary commitments that were
3 contained in the M2A is one of the big reasons that it is --
4 it's like a statement of generally available terms and
5 conditions in the sense that it is generally available, but
6 it's -- it's like an enhanced version.

7 COMMISSIONER MURRAY: So is there no
8 difference in its availability?

9 MR. CONROY: Well, there would be no
10 difference in its availability, I don't believe, if we had a
11 statement of generally available terms and conditions in
12 Missouri under Section 252 of the Act. We don't. The M2A
13 is probably at least as available, if not more available, to
14 CLECs than the statement of generally available terms and
15 conditions.

16 COMMISSIONER MURRAY: And I'm sorry, but I'm
17 trying to understand why it would then matter -- I mean, is
18 there any practical reason that it -- other than the fact
19 that it's not really required by the Act, is there any
20 practical difference as to what we call it?

21 MR. CONROY: Only a legal difference in the
22 sense that Section 252F of the Act describes this statement
23 of generally available terms and conditions as sort of a
24 backup type of document. As a practical matter, I don't
25 believe there's any, except for the fact that the CLEC gets

1 more under the M2A than they would under -- than they likely
2 would under a statement of generally available terms and
3 conditions.

4 The practical effect in terms of CLECs getting
5 into business, ease of getting an interconnection agreement,
6 that whole perspective, there's no practical difference.

7 COMMISSIONER MURRAY: How about any practical
8 difference as to the length of time that it might be
9 available to CLECs?

10 MR. CONROY: I don't recall if Section 252F,
11 when it describes the statement of generally available terms
12 and conditions, contains any restrictions or guidelines,
13 requirement in terms of how long the effective life of a
14 statement of generally available terms and conditions would
15 be. I can check that. I have the Act with me. But I don't
16 really see a practical difference there either. Certainly
17 not to this point.

18 COMMISSIONER MURRAY: All right. Thank you.

19 JUDGE DIPPELL: Commissioner Gaw, did you have
20 any additional questions? Commissioner Forbis?

21 I just have a couple, Mr. Conroy. What would
22 Southwestern Bell's response be to this Commission adopting
23 a procedure like Kansas on updating the performance remedy
24 plan?

25 MR. CONROY: We would object. We don't think

1 it's consistent with the M2A that we agreed to in March of
2 2000 -- well, leading up to the Commission's approval of the
3 M2A in March of 2001.

4 The language in the M2A is fairly clear,
5 remarkably clear, I think. If there's changes that come out
6 of the six-month process to the performance remedy plan that
7 we do not agree with -- and let's make -- well, we'll be
8 clear. There's been a lot of agreement. You're seeing five
9 sort of areas of disagreement and those are being
10 highlighted in this proceeding, but there have been a lot of
11 areas of agreement. So that cooperative collaborative
12 process is working mostly.

13 But Section 6.4 is pretty clear that -- and it
14 doesn't allow you to say, Texas, take care of our dirty work
15 and we'll just take whatever you get down there. It's not
16 an arbitration proceeding.

17 If there's going to be a change that we don't
18 agree with -- actually not even a change -- for new
19 performance measurements that come out of that six-month
20 review process that we're not agreeable to, Section 6.4 says
21 there has to be an arbitration proceeding, and that's not
22 what Tex-- that's not really what Kansas has either.

23 JUDGE DIPPELL: And if this Commission decides
24 to adopt the version that you-all most recently filed, which
25 is, as I understand it, 3.0 with those things held out,

1 there's at least the K Tables issue.

2 MR. CONROY: Actually, just so we're clear,
3 Version 3.0 generally refers to the business rules and
4 there's no holding out of K Table issues for the business
5 rules.

6 JUDGE DIPPELL: Okay. So the K Tables is a
7 totally separate change from whatever version?

8 MR. CONROY: It's a change -- yes, it's a
9 change that's in the performance remedy plan itself,
10 Attachment 17.

11 JUDGE DIPPELL: You can see why I get this
12 confused, I hope.

13 MR. CONROY: Absolutely.

14 JUDGE DIPPELL: But if this Commission decides
15 to adopt the changes that Bell filed on May 16th --

16 MR. CONROY: Yes.

17 JUDGE DIPPELL: -- how does that apply in
18 Missouri, in your opinion?

19 MR. CONROY: I guess first I would say that
20 version -- just so we're clear on what Version 3.0 it is,
21 that's the exact same Version 3.0 that has been implemented
22 in Texas and Arkansas. If the Commission approves that, it
23 would -- for CLECs that opt into the M2A for their
24 interconnection agreement on a going-forward basis, that
25 would become the new Attachment 17 and its appendices that

1 that CLEC would have as part of its interconnection
2 agreement.

3 For CLECs with existing M2A-based
4 interconnection agreements, it's a little bit different
5 because they have -- they already have an interconnection
6 agreement. What we proposed in that case is that we would
7 have a very standard short amendment that we would propose
8 to those CLECs that basically had the new version of
9 Attachment 17, containing the exact same changes that we
10 submitted to the Commission on May 16, and they could --
11 we've also proposed a streamline process where they could
12 adopt that new Attachment 17 and its appendices to be their
13 new Attachment 17th in their M2A-based interconnection
14 agreement on a going-forward basis.

15 That doesn't really get total uniformity,
16 because CLECs may decide or may not respond or they may
17 decide to keep what they've got or for whatever reason they
18 may not decide to change. But at least it gives them the
19 option, and it makes the going-forward M2A to be the
20 current -- to contain the current version of Attachment 17.

21 So there's -- I hope that answers your
22 question. There's really two pieces of it, depending on
23 whether it's a new CLEC coming in and adopting the M2A or
24 somebody who has the M2A already, an interconnection
25 agreement based on the M2A that has the old version of

1 business rules.

2 JUDGE DIPPELL: And if Bell offers this
3 amendment to the CLECs, does that then open up the
4 possibility of failed negotiations which would lead to
5 arbitration at that point?

6 MR. CONROY: Certainly if a CLEC wanted to
7 arbitrate the issue of something that's contained in the new
8 Version 3.0, I believe they can do that, yes. I mean,
9 that's -- that's why in Section 6.4 it talks about there has
10 to be an arbitration before these changes that are not
11 agreeable are implemented.

12 I don't -- I don't think you'd end up with
13 dozens, because I think one CLEC, if they were interested in
14 doing so, would arbitrate and then if -- whatever the result
15 was, if the other CLECs liked it, they could adopt the
16 results for section -- pursuant to Section 252I of the Act,
17 as long as they adopt all the legitimately related
18 provisions that are identified in the M2A.

19 JUDGE DIPPELL: Let me make sure I've got all
20 my questions.

21 MR. CONROY: I guess I would like to add that
22 I don't think there's ever going to be a time when you can
23 say, here is exactly what -- for instance, in Texas --
24 exactly what they've done in Texas and it's static and it's
25 never going to change.

1 The process is designed to keep updating, and
2 so it's not really possible to wait or it's not -- it's not
3 likely that if the Commission waits longer there will be
4 something that everybody is perfect with. I think this is
5 pretty close. So there's not going to be a time where
6 everything is -- there's going to be an easier decision.

7 JUDGE DIPPELL: Okay. Commissioner Gaw?

8 COMMISSIONER GAW: Just real quick. I think
9 that I know the answer to this question; maybe you've
10 already given it. But if -- if this -- if Version 3.0 were
11 adopted but there were -- obviously, there would still be,
12 at least for a time and perhaps for a fairly -- I don't know
13 how long it could go into the future, other versions,
14 previous versions that are in interconnection agreements.

15 Under the pick-and-choose concept and whatever
16 else allows you to go into other interconnection agreements
17 to adopt them, will those still be viable options for new
18 agreements or will they be superseded by the -- in some
19 fashion by the adoption of 3.0?

20 MR. CONROY: For new agreements, it's
21 important not to forget that the M2A is just one route.

22 COMMISSIONER GAW: I understand that.

23 MR. CONROY: Okay. And so --

24 COMMISSIONER GAW: Go ahead.

25 MR. CONROY: -- if a CLEC begins negotiations

1 with SBC, they can say, you know what, we looked at the M2A;
2 there's some things we like, there's some things we don't
3 like. We'd like to negotiate and, if necessary, arbitrate.
4 And they could propose, frankly, whatever they'd like in
5 that context.

6 COMMISSIONER GAW: I guess what I'm asking is
7 whether or not they could say, we want those provisions, and
8 SBC would have to comply with it. Let's say they wanted to
9 take --

10 MR. CONROY: The answer is yes. They could
11 adopt somebody else's existing interconnection agreement
12 that has Version 1.7 in it under Section 252I of the Act.

13 COMMISSIONER GAW: I'm not sure that that
14 makes sense. I'm just asking --

15 MR. CONROY: They could not -- if the
16 Commission adopts Version 3.0, they could not adopt the M2A
17 and get Version 1.7, but that doesn't foreclose a CLEC
18 adopting somebody else's.

19 COMMISSIONER GAW: Who may already have that,
20 as long as that -- as long as those are still in existence?

21 MR. CONROY: Every -- as far as I know, every
22 Commission-approved interconnection agreement in Missouri --

23 COMMISSIONER GAW: Can be adopted.

24 MR. CONROY: Well, and has Version 1.7 right
25 now.

1 COMMISSIONER GAW: Yeah. That's what I
2 thought. Thank you.

3 MR. CONROY: I just want to make -- I haven't
4 read Attachment 17 of every single interconnection
5 agreement, but certainly there are a lot of existing
6 interconnection agreements that have Version 1.7 as --

7 COMMISSIONER GAW: Yeah. I understand.

8 MR. CONROY: And not every single one does.

9 COMMISSIONER GAW: And I understand that.
10 Thank you.

11 JUDGE DIPPELL: Thank you, Mr. Conroy.
12 Staff?

13 MR. WILLIAMS: Nathan Williams appearing on
14 behalf of Staff.

15 Basically, it's Staff's position that the
16 Missouri 271 interconnection agreement is a statement of
17 generally available terms, which gives the Commission more
18 latitude in what it might do with that agreement than if it
19 were bound by the terms of the agreement.

20 Aside from that, at this point in the
21 proceeding, because of the -- what is in the record, it's
22 Staff's position that what Bell has filed as Attachment A to
23 their May 16th filing, according to Mr. Conroy, that's the
24 same -- substantively the same document as to the business
25 rules as what Staff received by an e-mail that was dated May

1 5th.

2 Based on that representation, other than an
3 error on page, I believe it's 135, where there's a reference
4 to the Texas Commission which should be to the Missouri
5 Commission, the Staff's satisfied that that document --
6 those documents do reflect what should be done in Missouri
7 at this stage, based on everybody agreeing that at least
8 those changes should be made.

9 Staff's not opposed to further changes.
10 However, the state of the record at this point in time
11 really doesn't show why those changes should or should not
12 be made. There was a proceeding down in Texas, however it
13 was Texas and some of the -- even though it's a
14 collaborative or other states have the opportunity to
15 participate, some of the information that was brought into
16 the record down in Texas was state specific.

17 And basically, currently on the state of the
18 record before this Commission, the Staff's not in a position
19 to be advocating the changes beyond those which the parties
20 have agreed to should be made.

21 Earlier there were some questions regarding
22 the Arkansas order, and in its April 11, 2002 filing, the
23 Staff included a quotation from the Arkansas order that
24 states what is happening in Arkansas or changes that occur
25 in Texas. Also, as Southwestern Bell's indicated, what

1 happens in Texas is a moving target, with changes due to
2 motions for reconsideration and numerous other activities
3 that occur, including appeals to federal courts.

4 Staff's understanding at this time as to the
5 Performance Measure 13 issue, the Texas Commission's got a
6 separate proceeding going and it has backed off on what it
7 put in Order 33 regarding the change in the penalty level,
8 pending completion of an audit that's being done, was
9 performed by Hewlett Packard, which there's still some
10 ongoing issues with. To the Staff's knowledge, the Texas
11 Commission has not taken that issue back up at this time.

12 I'm prepared to answer any questions the
13 Commission may have.

14 JUDGE DIPPELL: Commissioner Murray, did you
15 have questions for Staff?

16 COMMISSIONER MURRAY: Just a couple perhaps.
17 Are there any disagreements between Staff and the position
18 that SBC Missouri is taking as to these changes?

19 MR. WILLIAMS: Not as to the changes at this
20 point in time on the record in this proceeding.

21 COMMISSIONER MURRAY: Thank you. I think
22 that's all I have.

23 MR. WILLIAMS: I mean, aside from the notation
24 I made earlier about the reference to the Texas Commission.

25 COMMISSIONER MURRAY: Well, let me ask you one

1 more question. About the calling of the statement of
2 generally available terms and conditions, you said it gives
3 the Commission more latitude. Can you be more specific what
4 you're talking about?

5 MR. WILLIAMS: The Missouri 271
6 interconnection agreement does set out a process for
7 arbitration by parties to that agreement, for changes to it.

8 COMMISSIONER MURRAY: And you're saying if we
9 don't call the M2A a statement of generally available terms
10 and conditions under the Act, that that would change?

11 MR. WILLIAMS: I'm saying the Commission's not
12 a party to that agreement. I do recall back whenever the
13 271 process was going on that Bell represented there would
14 be a quid pro quo, we'll give you the Missouri 271 agreement
15 if you'll recommend to the FCC that we be given
16 authorization to engage in interLATA telephone.

17 COMMISSIONER MURRAY: Okay. So calling it a
18 statement of generally available terms and conditions under
19 the Act, even though it goes beyond what the Act required,
20 you're saying it was done in accordance with compliance with
21 the Act and should be called --

22 MR. WILLIAMS: Staff's just taking the
23 position that under the statutory provisions that fall
24 within the terms of the statement of generally available
25 terms.

1 COMMISSIONER MURRAY: I guess I'm still trying
2 to understand the practical difference, if there is any.

3 MR. WILLIAMS: Only that I think Southwestern
4 Bell's taking the position that the Commission's limited to
5 what's contained within the terms of the 271 agreement, and
6 Staff's taking the position that's not the case.

7 COMMISSIONER MURRAY: The Commission is
8 limited in what respect?

9 MR. WILLIAMS: To the process that's set out
10 in the Missouri 271 interconnection agreement in terms of
11 arbitration. The agreement calls for, I don't recall if
12 it's jointly selected, but an independent arbitrator on
13 disputed issues.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE DIPPELL: Wait just a minute,
16 Mr. Williams.

17 Did you have a question, Commissioner Gaw?

18 COMMISSIONER GAW: Yeah, I think so. If we
19 adopt this as the new version of M2A, is it Staff's position
20 that the version that's currently considered M2A 1.7 would
21 go away, as far as the terms of acceptable conditions are
22 concerned?

23 MR. WILLIAMS: I don't believe it would just
24 go away.

25 COMMISSIONER GAW: I'm not talking about

1 adopting other versions. I'm asking you whether or not
2 Staff's recommendation is that this replace Version 1.7
3 instead of it being an additional option?

4 And I recognize there may be some terms that
5 would be in conflict under that.

6 MR. WILLIAMS: What it is is a remedy plan,
7 and for purposes of the payments that are made to the State
8 Treasury and the credits that are made to CLECs, it would be
9 replaced. That would be Staff's position.

10 COMMISSIONER GAW: Is there anything that
11 they're not inconsistent in regard to 3.0? Is all of it
12 about the issue of acceptable standards? That's an issue in
13 front of us.

14 MR. WILLIAMS: What's an issue in front of you
15 is Southwestern Bell's performance, not what it has to make
16 available.

17 COMMISSIONER GAW: All right. Thank you. So
18 in regard to the issue of the schedule, Schedule K; is that
19 right?

20 MR. WILLIAMS: Yes. The K Table.

21 COMMISSIONER GAW: The K Table. Thank you.

22 Is Staff taking a position in regard to
23 whether or not that table is the new -- the version that's
24 in dispute in Texas, whether or not the position of the
25 Texas Commission is a position that Staff believes is

1 appropriate?

2 MR. WILLIAMS: No, not at this time.

3 COMMISSIONER GAW: Is Staff intending to take
4 a position on that issue?

5 MR. WILLIAMS: At the appropriate time, Staff
6 would take a position on that issue.

7 COMMISSIONER GAW: When will the appropriate
8 time be?

9 MR. WILLIAMS: The problem with the K Table
10 right now is, again, that was developed in Texas. There's
11 been no record developed in Missouri as to why or why not
12 the K Table would be appropriate.

13 COMMISSIONER GAW: I guess my question is,
14 what would that process be and when would it -- when would
15 it be started?

16 MR. WILLIAMS: Well, Staff had actually hoped
17 to initiate the process whenever it filed the aspects of the
18 remedy plan for 3.0 early in the proceeding. Staff was
19 anticipating that the parties would come in and respond as
20 to why, from a substantive perspective, those changes should
21 or should not be adopted in Missouri or if something else
22 should. At this stage, that has not occurred.

23 COMMISSIONER GAW: Does that need direction
24 from the Commission itself or is that something Staff would
25 initiate on its own?

1 MR. WILLIAMS: Apparently it wouldn't hurt if
2 the Commission gave some direction.

3 COMMISSIONER GAW: All right. That's all I
4 have. Thank you.

5 JUDGE DIPPELL: Commissioner Forbis? You have
6 a question?

7 COMMISSIONER FORBIS: I got a little turned
8 around now. Making changes to the M2A I thought happened
9 either two ways, by mutual agreement of all the parties or
10 through arbitration process.

11 MR. WILLIAMS: By the terms of the M2A, that
12 is correct.

13 COMMISSIONER FORBIS: So explain to me about
14 the Commission opening a process or Staff recommending to
15 the Commission that a process be opened. What would the
16 outcome of that be then? Did I understand what you were
17 saying right before?

18 MR. WILLIAMS: It's Staff's position that the
19 Commission's not limited by the processes that are set out
20 in the M2A. And, in fact, the Commission could put
21 performance requirement on Southwestern Bell -- I guess I
22 should say SBC Missouri -- regardless of the M2A, if that
23 were appropriate.

24 COMMISSIONER FORBIS: And would introduce
25 those into the -- input them in the M2A as an attachment or

1 something entirely separate?

2 MR. WILLIAMS: I think they can be done as
3 something entirely separate from the M2A altogether.

4 COMMISSIONER FORBIS: Would that be a
5 recommended approach at some point, or do you think all of
6 these items should be contained in the M2A?

7 MR. WILLIAMS: I think with what's going on in
8 this proceeding, it would be better if things were within
9 the scope of the M2A.

10 COMMISSIONER FORBIS: Thank you.

11 JUDGE DIPPELL: Commissioner Murray?

12 COMMISSIONER MURRAY: Thank you. With regard
13 to your statements about the -- is it the K Tables? Is that
14 the appropriate reference?

15 MR. WILLIAMS: Yes.

16 COMMISSIONER MURRAY: Is there any reason that
17 Staff feels that there needs to be a change?

18 MR. WILLIAMS: Staff's not advocating a change
19 at this point in time.

20 COMMISSIONER MURRAY: So why would Staff
21 suggest that the Commission open a proceeding to consider a
22 change?

23 MR. WILLIAMS: I don't know that Staff's
24 suggested that. I believe I was asked whether or not, if
25 that was to be considered, if Staff would pursue that on its

1 own or if some other party or if the Commission should
2 direct something.

3 COMMISSIONER MURRAY: So you weren't -- you
4 weren't suggesting that the Commission should do that?

5 MR. WILLIAMS: No.

6 COMMISSIONER MURRAY: I misunderstood you.
7 Thank you.

8 JUDGE DIPPELL: And just a couple more.

9 What would Staff's position be if the
10 Commission were to consider adopting a procedure like
11 Kansas?

12 MR. WILLIAMS: I think the procedure that's
13 currently being followed where someone comes in and
14 initiates a change in Missouri is the way it should be.

15 JUDGE DIPPELL: And let me -- I think you
16 answered this when Commissioner Gaw was questioning you, but
17 I'll ask it the same way I asked Southwestern Bell, just to
18 make sure.

19 If the Commission makes the changes that Bell
20 filed as they filed on May 16th, which is the easiest way I
21 know to keep it straight, how do you believe that that will
22 then apply in Missouri with regard to the M2A?

23 MR. WILLIAMS: Again, I believe that would
24 change the payments that are made to the State Treasury
25 and/or may have that impact, and it may have impact on

1 credits that are made to CLECs, and it will have changes as
2 to how -- the information Bell captures for performance and
3 reports.

4 JUDGE DIPPELL: And do you believe that that
5 will just affect the agreements that get adopted after those
6 changes? How will it affect the agreements that are already
7 in existence?

8 MR. WILLIAMS: If you're tal-- I think it
9 would affect probably payments as to those agreements
10 perhaps, but I don't think it will affect what's made
11 available to those parties under the M2A. It's the remedy
12 plan that's in issue.

13 JUDGE DIPPELL: And Staff is still
14 participating, right, in the Texas reviews as they come up?

15 MR. WILLIAMS: Yes.

16 JUDGE DIPPELL: When is the next review
17 scheduled?

18 MR. WILLIAMS: Well, the T2A is about to
19 expire, and Southwestern Bell has an offer on the table to
20 agree to extend it if certain conditions are met. I don't
21 know if -- when there will be another review down in Texas
22 on the 271 agreement that's in place down there.

23 JUDGE DIPPELL: And I just want to make sure.
24 Mr. Conroy said that what they filed on 5/16 is the same as
25 what has been implemented in Texas and Arkansas. Do you

1 agree with that statement?

2 MR. WILLIAMS: With the understanding that the
3 word "implemented" is what people are operating under. It's
4 my understanding that as to the issues that are pending in
5 the Federal District Court case, that Southwestern, SBC
6 Texas is putting money in an escrow in the event it may have
7 to pay out in the future, pending resolution of that matter.
8 But to the -- with the understanding that implemented means
9 what people are acting under currently, yes.

10 JUDGE DIPPELL: And not necessarily what was
11 approved in the -- in Texas?

12 MR. WILLIAMS: Certainly not what was ordered
13 by the Texas Commission.

14 JUDGE DIPPELL: I think that's all the
15 questions I have. Thank you, Mr. Williams.

16 Mr. Dandino?

17 MR. DANDINO: Thank you, your Honor. May it
18 please the Commission? I don't think I can offer as much
19 insight into the details as Mr. Williams and Mr. Conroy did,
20 but I did want to review a couple general points and also
21 respond to some of the specific points that the
22 Commissioners raised questions to Mr. Williams and
23 Mr. Conroy.

24 The biggest point I want to make from the
25 Office of the Public Counsel is I think it's been this

1 Commission's stance, and I know it's been the stance of the
2 Office of the Public Counsel, is that Missouri should be no
3 worse off than any other state. I don't think we should be
4 at a competitive disadvantage with any other state. And,
5 therefore, I think it's important for us to reap the
6 benefits of the most recent version of the performance
7 standards.

8 And I think by using the final -- the final as
9 in a final decision which is implemented under that plan is
10 very -- is very important. I think that's probably a proper
11 standard to use to adopt this in here, which essentially
12 means that you take the 3.0 as it's presently implemented in
13 Texas and in Arkansas. Now, that doesn't mean that Missouri
14 should forego the Schedule K. I think right now that that
15 could be moved to the back burner, but I think it's
16 important for Missouri to have the same performance measures
17 as the other states.

18 Now, one of the points that was raised was
19 about the M2A being generally available terms and
20 conditions. My understanding and my memory back to when
21 this was all starting here is that I think I would agree
22 with Mr. Conroy that -- that the M2A and the generally
23 available terms and conditions is really two separate tracks
24 and two separate parts of the law. And I think we've really
25 foregone the generally available terms and conditions.

1 Right now we're under the Track B, I think
2 it was referred to, and we've gone through that process and
3 the M2A is a representation of that process. But as
4 Commissioner Murray was pointing out, what is the real
5 difference between generally available terms and conditions
6 and the M2A?

7 I think we're looking at generally available
8 terms and conditions is a term of art under the -- under the
9 Federal Telecommunications Act, and it has probably the --
10 it probably has even better effect is that someone can
11 either take those -- the M2A or it can negotiate. It has
12 quite a bit of flexibility. That's what I wanted to discuss
13 on that.

14 The other point is, I think Mr. Williams is
15 right, though, in saying that the M2A cannot be seen as a
16 complete limitation on this Commission to -- to impose any
17 other -- any other requirement. I don't think that state
18 law would authorize this -- this Commission to contract away
19 their legally vested authority. I think they cannot do
20 that. But I think they can -- they can -- they can propose
21 other remedies. Of course, then it falls under -- then
22 Southwestern Bell's going to have their own remedies
23 or the CLECs, which ends up being arbitration. I think
24 that's how that situation works.

25 I'm also a little concerned of -- when we're

1 talking about -- in 6.4 about whether the parties agree to
2 it is -- I just raise this question. I'm not sure I know
3 the answer. Maybe the other parties can answer it. 6.4 is
4 if the parties don't agree on this, then they have to go to
5 arbitration. Well, the Commission isn't a party under the
6 M2A, if I recall. So I'm wondering who -- does Southwestern
7 Bell arbitrate with the other CLECs? The process there is
8 something I think the Commission needs to consider.

9 And I think that's -- that's the extent of my
10 remarks. Thank you.

11 JUDGE DIPPELL: Commissioner Murray, did you
12 have questions for Mr. Dandino?

13 COMMISSIONER MURRAY: Let me think just a
14 moment.

15 JUDGE DIPPELL: While Commissioner Murray's
16 looking at her questions, I'll just ask -- and, Mr. Dandino,
17 I'm not sure how familiar you are with the exact agreements,
18 but I'll ask you the same thing. Mr. Conroy said that the
19 version that they filed on May 16th was the same as is
20 implemented in Texas and Arkansas. Is that your
21 understanding as well?

22 MR. DANDINO: Just from representations of
23 counsel. I have not made a separate investigation.

24 JUDGE DIPPELL: Did you have a question,
25 Commissioner Murray?

1 COMMISSIONER MURRAY: Mr. Dandino, you talked
2 about the generally available terms and conditions being a
3 term of art under the Act, and on a prac-- as a practical
4 matter, aren't the terms and conditions of every
5 interconnection agreement between SBC Missouri and any CLEC
6 generally available to any CLEC who wishes to adopt them?

7 MR. DANDINO: Certainly. Certainly. Maybe
8 the best example is to put it in capital letters. Generally
9 available terms and conditions, in quotations, that is a
10 term that is specifically used in the Telecommunications
11 Act. If you put it in small letters, of course, that's what
12 the M2A is, any other interconnection agreement.

13 COMMISSIONER MURRAY: So practically I still
14 don't see any difference.

15 MR. DANDINO: The practical effect I see is
16 there's a -- there's a track, a method, methodology under
17 the section that provides for that document or that process
18 called generally available terms and conditions. Then
19 there's another process that's available when you go through
20 the Track B, Section 271 process. They're different. I
21 can't tell you all the differences in there.

22 But as a -- going back to as a practical
23 matter, I think you're getting the benefits on both. I just
24 don't -- I think that just by terming it the generally
25 available terms and conditions triggers a probably --

1 probably scholars of the Telecommunications Act, and
2 certainly triggers an idea or a concept that is different
3 from what you and I would be talking about.

4 COMMISSIONER MURRAY: Okay. So you're saying
5 it would be more appropriate not to label it that?

6 MR. DANDINO: I'd just call it the M2A or the
7 standard. Maybe call it the standard available
8 interconnection agreement.

9 COMMISSIONER MURRAY: Something other than
10 using those specific words from the Act?

11 MR. DANDINO: Right. I think that's going to
12 lead to confusion, as it has, I think.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE DIPPELL: Commissioner Gaw, did you have
15 questions?

16 COMMISSIONER GAW: I don't think so.

17 JUDGE DIPPELL: Commissioner Forbis?

18 I have one for Mr. Dandino. What would the
19 office of the Public Counsel's opinion be if this Commission
20 were to decide to adopt a procedure like Kansas?

21 MR. DANDINO: I'm really not familiar with the
22 Kansas procedure.

23 JUDGE DIPPELL: Okay. Thank you very much.

24 Mr. Molteni?

25 MR. MOLTENI: Thank you, Judge, Commissioners.

1 I just want to echo the comments that Mr. Dandino made, so
2 I'm going to be very brief.

3 Following up on a specific point he made about
4 the Commission, by state law not being able to abdicate or
5 contract away its responsibilities, not just state law, it's
6 good public policy and it's something that the Commission
7 Staff argued and our office argued in the Court of Appeals
8 of the Western District earlier this year with respect to
9 the AmerenUE experimental alternative rate plan case.

10 The State of Missouri doesn't have a position
11 on the detailed changes or the requested changes. We would
12 just ask the Public Service Commission to keep two
13 fundamental concepts in mind.

14 One is something Mr. Dandino articulated,
15 although I think we're going to articulate in the converse
16 way, and that is to make sure that CLECs wanting to compete
17 in Missouri are on at least as good a footing as CLECs in
18 other SBC territories.

19 And the second is the broader concept of doing
20 what you can as a Commission to foster competitive
21 opportunities available to CLECs in Missouri.

22 JUDGE DIPPELL: Commissioner Murray, any
23 questions for Mr. Molteni?

24 COMMISSIONER MURRAY: I don't believe so.
25 Thank you.

1 JUDGE DIPPELL: Commissioner Gaw?
2 COMMISSIONER GAW: No.
3 JUDGE DIPPELL: Commissioner Forbis?
4 COMMISSIONER FORBIS: No.
5 JUDGE DIPPELL: I don't believe I have any
6 questions for you either, Mr. Molteni.
7 MR. MOLTENI: Thank you very much.
8 JUDGE DIPPELL: Mr. Lumley?
9 MR. LUMLEY: Good morning. As this Commission
10 and the FCC have recognized, it's essential to have an
11 effective performance remedy plan to make sure that the
12 conditions that were established for admitting Southwestern
13 Bell to the interLATA market are not just met on paper but
14 are met on an everyday basis in the marketplace. That was
15 the purpose of this plan, was to prevent what's been called
16 backsliding in the industry, and it's an important subject
17 that we're addressing today.
18 It was also recognized throughout the process
19 of approving the M2A and the FCC granting the interLATA
20 relief for SBC in Missouri that this was to be an evolving
21 process on a multi-state basis with a goal of uniformity in
22 terms of what these performance details would be in the
23 area.
24 As has been indicated in the other comments,
25 we really don't have material facts in dispute here. And,

1 therefore, I disagree with Staff that there's any need for a
2 formal record for the Commission to take action at this
3 time.

4 We really have a narrow dispute in terms of
5 what are the legal ramifications of what has occurred
6 elsewhere and what should be the results in this state based
7 on what we all agree has occurred and what we argue should
8 be the results. There's general agreement that we need to
9 move from Version 1.7 to Version 3.0 in this plan and make
10 this updated model available to CLECs, either new
11 entrants, you know, that are looking at the M2A as a whole
12 or current market participants that would have the right to
13 update their existing agreements.

14 So what do we have in dispute? I submit that
15 there's three points for the Commission to resolve for us.
16 The first is the question of the inclusion of the changes to
17 the K Table that have been discussed.

18 Second, an item that has not been discussed
19 yet today, and that is some unilateral changes that were
20 made by SBC in Appendix 2, which is page 135 of the -- what
21 Mr. Williams mentioned, which has to do with disposition
22 codes.

23 And third, which is a topic that has been
24 discussed in questions and comments, and that is, where do
25 we go from here should we establish a process to make this

1 happen faster in the future?

2 With regard to the K Table changes, first to
3 just discuss the specifics of what we're talking about, and
4 SBC had their own spin to this in terms of how they
5 described these changes, but it's important to note that
6 the Texas Commission concluded that because of the way the
7 K Table was set up before and as it still is in Missouri
8 today, Southwestern Bell was not paying penalties on very
9 significant violations because they were being allowed to
10 exclude those violations from the calculations.

11 So the Texas Commission made three changes.
12 It said, if you have a violation in two consecutive months,
13 we're not going to allow you to ignore those violations
14 anymore until you show us that you've got your act back
15 together and you're not violating it anymore on a consistent
16 basis.

17 Secondly, we're going to look at the dollar
18 amounts involved and we're not going to allow you to
19 unilaterally exclude very significant violations that would
20 have substantial penalties attendant to them.

21 And third, they said, we're not going to allow
22 you to ignore violations that occur in an area where there's
23 less than ten transactions. So that if not much is going on
24 but you have a problem there, we're going to make you --
25 we're going to hold you accountable for it.

1 Our position is that you should include these
2 changes in Missouri. However, we also acknowledge that
3 they're not actually in effect anywhere else, and we're not
4 suggesting that you be the first to put them in effect. We
5 acknowledge that there is a dispute going on in Texas.

6 Our point is that you should set things up now
7 and say that we want those changes included, we'll submit
8 them to a stay, and we'll see what happens in Texas. What
9 we don't want to see happen is a two-year court battle in
10 Texas over these provisions and then the CLECs and the State
11 of Texas prevail, and then we have to have another two-year
12 battle up here over these changes.

13 Before I go on to the other two points, I
14 think it's a good opportunity to move on to the issue of the
15 legal dispute that's before us and how do you implement this
16 particular change that Southwestern Bell obviously does not
17 agree to. First and foremost, as the Staff has indicated,
18 this Commission is not a party to the M2A. The Commission
19 approved the M2A as a document being held out on a general
20 basis to CLECs as a condition to recommending approval to
21 the FCC under Section 271. So we believe there's several
22 legal bases for the Commission to take further action in
23 this area.

24 The first is, you can conclude that, absent
25 these changes and based on the reasoning of the Texas

1 Commission, that there should be concern that Bell's
2 performance is not adequate and that you should bring that
3 to the attention of the FCC under Section 271D6. The 271
4 process is not a one-way street. It's a two-way street, and
5 you can end up having to go back to start if there's major
6 violation.

7 Secondly, we agree with Staff that this
8 Commission has jurisdiction under Section 252F to say that
9 these generally available terms are not adequate and that
10 further changes are in order. We do not agree that
11 something is taken out of the realm of 252F just because it
12 may or may not include things that are more than could
13 possibly be mandated by law. It's generally available terms
14 of interconnection.

15 And third, Section 261 of the Act recognizes
16 that this Commission retains authority to impose conditions
17 to assure that competition can continue to develop.

18 But on top of all that, the M2A provisions
19 themselves establish a basis for making these changes.
20 Section 6.4 of Attachment 17 describes a process which it
21 calls a six months review process by which the parties
22 involved that are interested can discuss changes to these
23 performance measures, and if either an agreement is reached
24 or an arbitrated decision is made, the changes are to be
25 implemented.

1 What's difficult to understand is, on the one
2 hand on numerous occasions in its pleadings and in its
3 comments today, SBC describes what's gone on in Texas as the
4 six-month review process, and there's no dispute that it's
5 been a multi-state process. Yet on the other hand, they
6 would suggest to you that somehow after those discussions,
7 when the parties presented their points of dispute to the
8 Texas Commission and it made formal decisions, some of which
9 are now being appealed to court, that that didn't fulfill
10 the requirement of arbitration.

11 There's been no explanation as to how that
12 could possibly be the case. I don't think the Texas
13 Commission would conclude that it wasted its time and its
14 decision had no impact. There's nothing in Section 6.4 that
15 specifies what type of arbitration is to take place.
16 There's nothing that says it can't be a multi-state process.
17 There's nothing that says it can't be done by the Texas
18 Commission. There's nothing that says it has to be done by
19 this Commission for this state. Doesn't preclude the fact
20 that parties could hire an independent arbitrator like AAA.
21 It just says that if you can't reach an agreement, there'll
22 be an arbitration to resolve the dispute.

23 We submit that that's occurred. Based on the
24 information provided to you, we think you can reach that
25 conclusion, and on these bases we believe that you can

1 direct that the changes regarding the K Table be filed and
2 then held in abeyance pending the results of the Texas
3 court's review.

4 I'd also point out that SBC has filed changes
5 to pages of Attachment 17, in addition to Version 3.0, in
6 its package of material. So we're not just talking about
7 changing an appendix or an exhibit to Attachment 17, but we
8 are talking about changes to sections in there as well.
9 There's no reason you can't direct changes to Sections 8.3
10 and 11.1.1.

11 The second point of dispute has to do with
12 Appendix 2 to Version 3.0. This dispute arose when SBC
13 filed what it labeled as its compliance document with the
14 Texas Commission. It's compliance Version 3.0, subsequent
15 to the Texas Commission's ruling on the points in dispute.
16 What Appendix 2 sets forth is -- they're called disposition
17 codes, and they all are numbers in the 1300s, or 1301, 1302,
18 this kind of numbering situation.

19 These codes have to do with performance
20 measures that involve trouble reports, repair, out of
21 service, restoring service, these kind of issues, and these
22 codes have to do with the way a particular complaint is
23 labeled. For example, 1301's a request for directories. So
24 if somebody didn't get their white pages and they have to
25 make a request for it, that's excluded. That's not an

1 out-of-service, it's not a repair situation. So that's what
2 these codes have to do with.

3 The codes that Southwestern Bell added as
4 noted in pleadings that AT&T has filed with you, I believe,
5 on December 12th, are 1315, 1327 through 29, 1340, 1356, and
6 1374 and 75.

7 Now, in the Texas process, the Texas
8 Commission ruled that any changes to these disposition codes
9 which resulted in particular transactions being excluded
10 from any kind of calculation of performance, there would
11 either have to be agreement reached or there would have to
12 be formal decision made consistent with the provisions of
13 the X2A agreements.

14 Now, SBC's position today is that there has to
15 be agreement or a change can't be made, but there's been no
16 agreement to these changes. They were just included, and
17 whether it was by error or not I don't know, because I've
18 not seen a substantive response to this point from SBC.
19 Clearly there's an error in Staff's position on this page
20 where there's a reference to the Texas Commission resolving
21 disputes over this particular page in the future. I'm not
22 sure that that's the case. I think that reference is
23 consistent with how the six-month review process has gone to
24 date.

25 But be that as it may, there is no agreement

1 and no formal decision by anybody that these codes should be
2 added to the category of items that are excluded or
3 transactions that are excluded. So we believe that those
4 changes should not be allowed, at least pending -- you know,
5 Southwestern Bell wants to tee up further disputes in Texas
6 over it or if they want to tee it up here, that's fine.
7 We'll obviously live with whatever formal decision is made.
8 It shouldn't be imposed on anybody unilaterally. That's a
9 very dangerous precedent to set.

10 The third issue we have, and it's been raised
11 in your question already, and that is, how do we deal with
12 these issues in the future. And we submit that the Kansas
13 process or something similar thereto is a good way to go.
14 The motion that got all of these proceedings today started
15 was filed in March of 2002, which was a substantial period
16 of time after Version 2.0 was discussed in a six-month
17 review process in Texas.

18 We think there should be a much faster pace to
19 keeping up with these things. We think that the ten-day
20 time period that the Kansas Commission has established is a
21 good one. We certainly recognize that Southwestern Bell or
22 anybody else would have the right to assert whatever
23 position they want to about such a filing.

24 We're not trying to establish any kind of an
25 automatic process where people can't be heard before this

1 Commission, but we think it's important that changes be
2 presented here on a very prompt basis. If there's disputes,
3 they can be filed promptly as well. Your rules require very
4 prompt responses to filings that are made here, and you can
5 deal with the dispute if it arises. If there is no dispute,
6 we can just implement the change.

7 So in summary, and consistent with
8 Mr. Conroy's opening remarks, there really aren't --
9 considering the scope of Version 3.0 and the number of
10 changes that are involved in it, there really aren't that
11 many items in dispute, but we do have three. We have the
12 need to make sure we keep pace with the other states by
13 bringing the K Table changes here and then holding them in
14 abeyance pending resolution of a legal dispute over them.
15 We have some unauthorized changes to Appendix 2 on the
16 existing codes, and we have the need to set some parameters
17 for ongoing changes to these performance measures.

18 Thank you.

19 JUDGE DIPPELL: Thank you.

20 Commissioner Murray, did you have questions?

21 COMMISSIONER MURRAY: Thank you.

22 Good morning, Mr. Lumley.

23 MR. LUMLEY: Good morning.

24 COMMISSIONER MURRAY: You indicated that the
25 Commission could determine that more terms and conditions

1 should be available. Is that at any time you're advocating
2 that the Commission could do that?

3 MR. LUMLEY: I think I understand your
4 question. I'm trying to connect it back to my remarks, and
5 I think I understand now where it -- yeah. We believe that
6 the Commission has general supervisory authority over SBC
7 and other telecommunications companies. SBC obviously comes
8 from a monopoly background and has different statutory
9 provisions that apply to it, in some instances, than apply
10 to other carriers. So there's different rules apply
11 depending on what the issue might be.

12 But we think clearly in the area of its
13 performance as a condition of continued participation in the
14 interLATA market, yes, you have the authority to look at
15 that marketplace, conclude that there's a problem and take
16 action on that problem. And that may be in conjunction with
17 directing changes to the M2A or it may be something totally
18 different, and certainly you would have to give notice and
19 an opportunity to be heard and those kind of things. I'm
20 not suggesting we can unilaterally take action against them.

21 COMMISSIONER MURRAY: And you're not limiting
22 it to just the performance measures, penalties connected
23 with performance measures or any specific item?

24 MR. LUMLEY: No. We think you have
25 authority -- I mean, it's outside the scope of today's

1 discussion, but we think you have authority to require other
2 terms of interconnection be available if you see that
3 there's a problem in the marketplace and things aren't
4 working, but specifically with regard to performance
5 measures, Section 261 identifies the quality of service is a
6 specific area of retained state jurisdiction.

7 COMMISSIONER MURRAY: And when we approved the
8 M2A originally, that was as a condition of entering the
9 interLATA market, correct?

10 MR. LUMLEY: Correct. Well, you found that if
11 they would offer that general -- generally available
12 interconnection agreement, that then they would have
13 satisfied the checklist, in addition to the other findings
14 you obviously made in that very extensive order.

15 COMMISSIONER MURRAY: But your position is
16 that we can at some time later say that we're no longer
17 satisfied with that as meeting the conditions?

18 MR. LUMLEY: Oh, clearly. There's no doubt
19 about it. The statute's very clear that the FCC can revoke
20 and take actions short of revoking, but can go as far as
21 revoking interLATA authority if there's a problem under
22 Section 271, and clearly you retained your position as a
23 recommending body to the FCC on that subject.

24 COMMISSIONER MURRAY: Wouldn't we have to have
25 a reason that something has happened since then that has --

1 that made us change our mind?

2 MR. LUMLEY: Certainly.

3 COMMISSIONER MURRAY: And what has
4 specifically changed since the adoption of the M2A that
5 warrants the changes that you are proposing here that SBC
6 Missouri does not agree with?

7 MR. LUMLEY: Well, there's only one category
8 or one change that fits that category, and that's the
9 changes to the K Table. And as the Texas Commission found,
10 you know, intentions were good and the K Table was designed
11 to try and accomplish things, but it wasn't working. And
12 what it was allowing SBC to do was exclude significant
13 violations from the calculation of the penalty amounts that
14 it had to pay, and thereby avoiding paying more substantial
15 penalties for its violations.

16 So basically, in shorthand, the conclusion was
17 that it wasn't working as designed and needs to be fixed.

18 COMMISSIONER MURRAY: Has SBC Missouri
19 improved its performance in terms of meeting the performance
20 measures over time since the adoption of the M2A?

21 MR. LUMLEY: As performance is being measured
22 under the existing terms, and based on Staff's reports that
23 they're filing with you monthly -- and I can't say that I've
24 grafted out and can be very detailed about it -- but I would
25 say that I agree that generally performance has been

1 improving as it's measured under those standards.

2 Obviously the whole point of moving to
3 Version 2.0 and Version 3.0 is that the parties felt that
4 there was problems with how that performance was being
5 measured in both directions.

6 COMMISSIONER MURRAY: In terms of the -- even
7 though not meeting performance standards would occur --
8 would be occurring on a less frequent basis that there
9 should be more penalties? Is that what the result would be,
10 fewer violations of the -- fewer nonperformances but higher
11 penalties?

12 MR. LUMLEY: But the problem is that the
13 reason the K Table -- the reason the Texas Commission wanted
14 to change the K Table is that it observed that very
15 significant violations were not even being counted in those
16 calculations. And I can't tell you today -- I mean,
17 probably somebody knows the answer to this, but I don't know
18 the answer -- what would happen if you reached back in, say,
19 18 months and redid the calculations under this new method,
20 I can't tell you what the result would be.

21 I know Southwestern Bell feels that they would
22 pay substantially more money, but that, in my mind, is a
23 recognition of the problem that the Texas Commission saw,
24 and that is that very significant violations were being
25 excluded from the calculations. Because it's not -- it's

1 not just a straight, you know, layperson calculation of,
2 okay, here's all the transactions and here's where all the
3 mistakes were made.

4 There's all these statistical measures that
5 are laid on top of that to try and eliminate what
6 statisticians would call random occurrences with a
7 scientific goal of trying to identify, you know, true
8 problem areas, as opposed to just penalizing somebody every
9 single time they made a mistake.

10 And I think everybody, obviously, since
11 there's very substantial agreement on Version 3.0, everybody
12 is still committed to that process.

13 But in terms of how you translate that
14 scientific analysis of mistakes into financial penalties,
15 the Texas Commission felt and we agree that there's problems
16 in that part of the process.

17 COMMISSIONER MURRAY: And would there be a
18 difference in the way it would affect Missouri versus the
19 way that measurement would affect Texas calculations?

20 MR. LUMLEY: In concept, there should be no
21 difference. Obviously the mistakes are being made in
22 separate states or the absence of mistakes are occurring in
23 separate states. So I don't think you could lay Texas and
24 Missouri and expect to see an identical percentage change in
25 penalties being paid because I don't think their

1 performances track that exactly. But I think you would
2 still look at it and say that they're consistent changes.

3 COMMISSIONER MURRAY: But it's not necessarily
4 a problem in Missouri just because it's a problem in Texas?

5 MR. LUMLEY: No. I disagree. I think the
6 K Table's being applied in the same way in Missouri and,
7 therefore, significant violations are being ignored in
8 Missouri as well. But I'm not going to tell you that it's
9 \$2 million in Texas and, therefore, it's \$1.5 in Missouri.
10 I don't think you can create that kind of equation. But
11 conceptually the problem exists, yes.

12 COMMISSIONER MURRAY: And you wouldn't have to
13 look at specific violations to see that -- you wouldn't have
14 to see the same types of violations are occurring in
15 Missouri?

16 MR. LUMLEY: I think you could do that if you
17 wanted to, but I don't believe you have to, because the
18 process that's been created, the six-month review process,
19 it's been presented to an informed decisionmaker and they've
20 made an arbitrated decision. And I believe you're entitled
21 to rely on that, but I'm not suggesting that you have to.
22 If you feel you need more information, that's your
23 prerogative.

24 COMMISSIONER MURRAY: All right. Then let me
25 go into your second item, Appendix 2 to 3.0. When were

1 those changes made in this -- you said they were
2 unilaterally made by SBC. When were they made?

3 MR. LUMLEY: My understanding is that when --
4 after the proceedings in Texas were finished, other than
5 this court proceeding, Southwestern Bell submitted Version
6 3.0 as directed by the Texas Commission. But in so doing,
7 on this particular page they included changes that had not
8 been agreed to and that had not been mandated by the Texas
9 Commission in this process. So that would have been
10 approximately September, October of last year, I believe --

11 COMMISSIONER MURRAY: Were they --

12 MR. LUMLEY: -- shortly before Staff advised
13 this Commission that it had been filed in Texas.

14 COMMISSIONER MURRAY: Were those disposition
15 codes examined in Texas?

16 MR. LUMLEY: The issue of whether or not
17 Southwestern Bell could make unilateral changes was
18 addressed. And the Texas Commission said, no, you can't,
19 but there's been no ruling on -- AT&T filed specific
20 objections to this complaint, and there's been no ruling
21 from Texas on that issue yet. Nor have they formally
22 approved what Southwestern Bell filed. It's just been
23 implemented.

24 COMMISSIONER MURRAY: So your position is that
25 what SBC submitted as Version 3.0 is not what was

1 implemented in Texas?

2 MR. LUMLEY: No. It probably is what they've
3 implemented, because they've probably implemented the
4 document they filed, but the Texas Commission has not issued
5 an Order that said, your filing is proper, and they haven't
6 issued a ruling on AT&T's objections. It was part -- as I
7 understand it, it was part of the settlement in the court
8 proceeding that Bell would implement these changes, other
9 than the K Table, and would then go through an escrow
10 process on the K Table changes.

11 And I didn't mention in my comment, but we're
12 not urging you to establish any kind of escrow procedure on
13 these dollars. We're just talking about resolving the
14 substantive issues subject to the litigation.

15 COMMISSIONER MURRAY: I think that's all for
16 right now. Thank you.

17 JUDGE DIPPELL: Commissioner Gaw?

18 COMMISSIONER GAW: Thank you.

19 Help me through this a minute. As far as our
20 choices in dealing with the K Tables are concerned, Missouri
21 could say, we choose to do nothing or, as a subcategory of
22 that, do nothing until we see what happens with the Federal
23 Court. That's one possible choice?

24 MR. LUMLEY: Certainly.

25 COMMISSIONER GAW: Another possibility is to

1 do what Arkansas has done and say, we're going to, as I
2 understand it, implement the changes but we're going to stay
3 it until the outcome. Maybe I mischaracterized.

4 MR. LUMLEY: Yeah, I think I agree with
5 Mr. Conroy that -- that the way the Arkansas revisions were
6 drafted, these K Table changes did not get filed and they've
7 not been stayed, because -- because they are not implemented
8 in Texas, nothing has happened with them in Arkansas.

9 COMMISSIONER GAW: All right. So what's the
10 implication of that?

11 MR. LUMLEY: We're --

12 COMMISSIONER GAW: What does that mean to
13 Arkansas?

14 MR. LUMLEY: Well, I'm sure that there will be
15 substantial debate on that point. As I understand it, I
16 think there will be an argument that since there's this stay
17 provision and escrowing, that there's a possible outcome in
18 Texas where these changes will be deemed to have been
19 implemented some time ago. And the Arkansas folks may take
20 the position, you know, we said any change that's
21 implemented in Texas is implemented here, so it was
22 implemented here a long time ago, figure that out.

23 I think that's one possible outcome. I'm sure
24 that there will be substantial debate about that.

25 COMMISSIONER GAW: Okay. So let me --

1 MR. LUMLEY: They could be at the other
2 extreme and just start on that day.

3 COMMISSIONER GAW: Let me -- let me just
4 phrase it as not being tied to Arkansas, then. Missouri
5 could say accord -- as I understand your position, that we
6 are adopting 3.0, including the K Table?

7 MR. LUMLEY: Right.

8 COMMISSIONER GAW: And either agree to a stay
9 of that pending the outcome or wait 'til we got stayed by
10 some court procedure?

11 MR. LUMLEY: I suppose that's a possibility.
12 That's not what we're advocating. I mean, we're basically
13 advocating what's been teed up, what's occurring in Texas
14 without -- we're not really pushing for escrow, and what's
15 teed up to occur in Kansas, which is SBC filed everything
16 and then requested a stay of these K Table changes.

17 COMMISSIONER GAW: All right. And that's what
18 you're advocating here?

19 MR. LUMLEY: Correct.

20 COMMISSIONER GAW: Which means what if the
21 outcome in Texas is adverse to SBC?

22 MR. LUMLEY: Then we don't have another fight
23 up here about it. We just stay in sync with Texas and
24 presumably Kansas, although I'm being predictive there, and
25 perhaps Arkansas as well.

1 COMMISSIONER GAW: Let me give you a scenario.
2 Let's say there were -- under the K Table there were
3 incidents that occurred subsequent to the stay and prior to
4 the final disposition of the Texas case. What does that
5 mean as far as from your-all's perspective of what you're
6 advocating? What would that mean about the penalties that
7 would incur?

8 MR. LUMLEY: That there would be a
9 recalculation. So they would keep track of what -- I mean,
10 it wouldn't even have to be a recalculation because, as in
11 Texas, they would be keeping track. So they would know at
12 any point in time what the different result would be.

13 COMMISSIONER GAW: But it would relate back to
14 the date of the adoption of the K Table?

15 MR. LUMLEY: Right. And, you know, likewise,
16 if they prevail in Texas, that's the end of the discussion
17 as well.

18 COMMISSIONER GAW: And then you're just -- you
19 continue with the current --

20 MR. LUMLEY: Correct.

21 COMMISSIONER GAW: -- penalty provisions; is
22 that accurate?

23 MR. LUMLEY: Right. Our goal here is to have
24 a set of uniform procedures that we can count on. These are
25 multi-state entities. Some of them are specific Missouri

1 subsidiaries, but they're still part of a national entity.

2 And, yes, there may be some CLECs that are
3 looking to stay with older versions, but that's not what my
4 clients want. They want to stay current, and I think fairly
5 consistent with Southwestern Bell to looking for the
6 simplicity and uniformity. We just have some specific
7 points in dispute.

8 COMMISSIONER GAW: Now, if Missouri took the
9 position that -- that it believed that it was not
10 appropriate to adopt this K Table without a record in
11 Missouri, if we took that position, what would your client's
12 position be in regard to how that process should take place?

13 And I gave you that presumption. If you want
14 to restate it, feel free to.

15 MR. LUMLEY: I think they would want the
16 opportunity to present to you the same kind of information
17 that was presented to the Texas Commission as to why these
18 changes are appropriate. And that could either be in this
19 kind of a generic, you know, whoever-is-interested-type
20 format or, if it had to be, I suppose, one or two carriers
21 could start their own cases about it one way or the other.

22 COMMISSIONER GAW: And, again, would you
23 contemplate that that -- if that decision were reached by
24 the Missouri Commission, that the only way to get that in
25 front of the Commission in regard to a record would be for

1 carriers to file something with the Commission if it weren't
2 continued in this generic docket?

3 Let me ask it again if you want me to.

4 MR. LUMLEY: I think I understand.

5 COMMISSIONER GAW: I'm looking for the options
6 as far as process is concerned.

7 MR. LUMLEY: I basically see two. Either you
8 invite us -- you say, in this context we're not comfortable,
9 we need something more, here's what we're going to do. Or
10 if you don't address it, we just have to evaluate our
11 option, one of which is to bring it back to your attention
12 in another fashion.

13 COMMISSIONER GAW: All right. I think
14 that's all I have. I'd like to get SBC's response on the
15 Appendix 2 issues in a moment.

16 JUDGE DIPPELL: Commissioner Forbis, did you
17 have questions?

18 COMMISSIONER FORBIS: Yeah. I think this goes
19 with what Commissioner Gaw was talking about, just so I can
20 be clear.

21 Your position was that the work of the Texas
22 Commission would -- it's sufficient in Missouri's situation
23 to basically be the arbitration, if you will, or those
24 findings are what we should take to put these changes into
25 the M2A, but there are Missouri-specific components in the

1 M2A, different from Texas?

2 MR. LUMLEY: That's correct.

3 COMMISSIONER FORBIS: So the differences
4 between the two states are not sufficient enough, or in this
5 particular instance they're -- they're not relevant that we
6 should not consider those differences and just take the
7 Texas position?

8 MR. LUMLEY: The difference is that
9 Attachment 17 has a specific process for -- that recognizes
10 that from the very beginning performance measures was to be
11 an evolving area. The other -- the other sections weren't,
12 even though there's always the possibility of technological
13 change and what have you, they didn't have this same
14 philosophy behind the section, which was, there was already
15 a six-month review going on.

16 I mean, it had already concluded in Texas and
17 Version 1.7 was created and brought here, you know, after
18 the T2A was created. So this whole philosophy of the
19 evolving Attachment 17 was already in place. So I think
20 it's a unique area of the M2A that we're dealing with. So
21 for these purposes, I don't think the differences between
22 the two states matter.

23 COMMISSIONER FORBIS: Okay. I'll mull that
24 over. Thank you.

25 JUDGE DIPPELL: Any other questions for

1 Mr. Lumley?

2 (No response.)

3 JUDGE DIPPELL: All right. Thank you,

4 Mr. Lumley.

5 MR. LUMLEY: Thank you.

6 JUDGE DIPPELL: I think we need to go ahead

7 and take a short break. We're going to take a ten-minute

8 break, and then I'm going to confer with the Commissioners

9 and see if they'd like to take a lunch break. So let's go

10 off the record.

11 (A BREAK WAS TAKEN.)

12 JUDGE DIPPELL: Mr. Conroy has come up. We're

13 going to just go ahead and finish up, because I don't

14 believe we'll have too much longer. So Mr. Conroy.

15 MR. CONROY: Thank you, Judge.

16 A couple things that I need to clarify from my

17 first presentation. There were questions on a couple of

18 issues. With respect to Oklahoma, Commissioner Murray, you

19 asked what had been adopted in Oklahoma on Version 2.0,

20 which, again, in Oklahoma, that's what they have, Version

21 2.0.

22 The only thing the one -- of the three

23 disputed performance measurement issues in Version 2.0 that

24 were identified -- that I've identified, performance, the

25 Business Rule 1.2 is the only one that was implemented in

1 Oklahoma. The special access issue was not. Of course,
2 that wasn't -- that wasn't implemented in Texas either. And
3 then the Performance Measure 13 issues were also not
4 implemented in Oklahoma, and they're still pending also in
5 Texas.

6 So of those three, it was the 1.2 issue which
7 is the same issue that we're willing to accept in Missouri
8 and is included in Version 3.0.

9 I also wanted to clarify with respect to what
10 is the process in Arkansas and what is not the process in
11 Arkansas. The Arkansas process is that changes to the
12 business rules are imported, if you will, on a notice
13 process and become effective in Arkansas based on the
14 effective date in Texas, but changes -- but does not apply
15 to changes in the performance remedy plan itself, which the
16 K Table change is. It is not a business rule change. It's
17 a change in the performance remedy plan in Attachment 17.

18 So if I mistakenly said in response to
19 Commissioner Gaw that whatever result comes from the Texas
20 court proceeding regarding the remedy plan, the K Table
21 remedy plan issue, that once -- assuming that had gotten
22 resolved -- that gets resolved, contrary to SBC Missouri's
23 position, that would not get automatically implemented in
24 Arkansas, because it is not a business rule change. It is a
25 change to the performance remedy itself, and their process

1 applies to business rules.

2 I also want to go back to the language
3 contained in 6.4 to make sure that it's clear that the
4 change -- the provisions in Section 6.4 state that changes
5 to existing performance measurements and the remedy plan
6 shall be by mutual agreement of the parties.

7 Arbitration is only appropriate with respect
8 to new performance measures. It is not appropriate with
9 respect to changes to existing performance measures which,
10 under the terms of the M2A,
11 6.4 of Attachment 16 can only be made by mutual agreement.

12 And that's consistent really with what -- and
13 I'll get into this in a little bit. We have a fundamental
14 disagreement with what the Commission's authority is with
15 respect to changing the M2A, whether this proceeding --
16 frankly, you know, in almost any proceeding, the M2A is
17 not -- the Commission's authority with respect to
18 interconnection agreements comes from the Federal Act.

19 It does not -- there's no authority under
20 state law for the Commission to have any sort of liquidated
21 damages provisions that force SBC Missouri to pay CLECs
22 liquidated damages for performance issues. There's no
23 authority under state law for you to do that.

24 This was an agreement, and one of the reasons,
25 frankly, that the M2A is of significant value to CLECs is

1 that this is an agreement that was reached, a voluntary
2 offering, if you will, by SBC Missouri that this plan with
3 all the provisions of the plan should be implemented and
4 agreeable to in Missouri back when the M2A was approved back
5 in March of 2001.

6 One of the provisions that we agreed to at
7 that time and are still agreeable to is the K Table issue.
8 The K Table, we agreed to the existing provisions in the K
9 Table that are contained in Section 8.3 and 11.1.1, because
10 they serve a legitimate purpose. They serve the purpose of
11 not penalizing SBC Missouri for performance that may appear
12 to be not up to what the requirements are, but because --
13 but does so because of random variation.

14 And there's -- this is not an interpretation
15 of what the K Table provisions mean. These are changes --
16 the Texas Commission has ordered changes to the K Table
17 provisions. It's not -- we're going to interpret them
18 differently. They're changing what we agreed to back in --
19 for Missouri in March of 2001.

20 There's been some additional discussion about
21 the Commission's authority and whether it makes any
22 difference with respect to whether this is a statement of
23 generally available terms and conditions or whether it
24 isn't. And our position is that, as a practical matter, it
25 is very similar. It's as available as a statement of

1 generally available terms of conditions would be, but it's
2 something different. It's a voluntary commitment. It's
3 another avenue that a CLEC has to get an interconnection
4 agreement with SBC Missouri, a streamlined and valuable
5 avenue.

6 But Section 252F, which talks about statement
7 of generally available terms and conditions, doesn't talk
8 about the Commission having any additional authority to make
9 changes to a statement that SBC Missouri would file. And
10 our position in that case, if this was a statement of
11 generally available terms and conditions, which we don't
12 believe it is, but if it was, that the Commission would not
13 have authority to mandate changes to the statement of
14 generally available terms and conditions.

15 Let me address the Appendix 2 issue,
16 Commissioner Gaw, because I know you asked about that. The
17 disposition codes that are the subject of that dispute were
18 implemented by SBC Missouri prior to the Version 3.0
19 compliance filing on November 1, 2002 in Texas. They were
20 published on the CLEC website prior to that date. The
21 business people and the network people had implemented
22 those, and they were implementing those and they were --
23 those were implemented.

24 They were not included, nor, frankly, did we
25 feel that they had to be included earlier on the list in

1 Appendix 2, but when we filed the compliance filing, we did
2 include the additional codes that had already been
3 implemented prior to that time and had been published on the
4 CLEC website, which all the CLECs use to interact. Those
5 have been published and implemented.

6 So they were listed on that compliance filing,
7 and AT&T objected in Texas to that list that was contained
8 on the compliance filing. That's still an open proceeding,
9 open issue. That hasn't been ruled on, that AT&T objection.
10 So it's not something that has been resolved.

11 But to clear up any -- if there's any
12 uncertainty about this was sort of sprung in on a compliance
13 filing, that is not the case. They had been already
14 implemented, and they were included on the CLEC website.

15

16 But, again, the Texas Commission is still
17 considering AT&T's objection to those disposition codes in
18 Attachment 2. Sorry, Appendix 2.

19 Does that answer --

20 COMMISSIONER GAW: I think it answers my
21 question. I guess, just to follow up, give me our choices
22 in dealing with that -- if you would, dealing with that
23 issue here, from your standpoint.

24 MR. CONROY: The choice would be -- our
25 recommendation would be that you approve the version of 3.0

1 and this Appendix 2 that we filed in Missouri, and if -- if
2 there is a -- as the basis for new -- new interconnection
3 agreements that CLECs can adopt the M2A, that would form the
4 basis there. If there is a dispute with an existing carrier
5 that has this section in that appendix, they can certainly
6 bring it to the Commission.

7 It hasn't happened, but the terms -- I mean,
8 the changes, it has to tie back to Section 6.4 and what
9 changes can be made. And this is more of a general comment,
10 but that section of Attachment 17 makes it very clear how
11 Attachment 17 and the appendices to it can be changed. And
12 we do not agree and we will not agree that the collaborative
13 process they conducted in Texas satisfies the arbitration
14 proceeding requirement in Section 6.4.

15 COMMISSIONER GAW: Specifically in regard to
16 Appendix 2, if for some reason AT&T prevails on its
17 objection, how does that impact what we're doing here and
18 our -- and what are our choices in waiting for that or not
19 waiting for that?

20 MR. CONROY: I think, at a minimum, you should
21 wait for that, but I don't think you should be bound by what
22 the Texas Commission decides on that issue.

23 COMMISSIONER GAW: On Appendix 2? On the
24 objection of AT&T to Appendix 2?

25 MR. CONROY: Right. You know, if you want to

1 cede jurisdiction of the Commission to Texas, that's what
2 you should do. But I don't think that's what should be
3 done. I don't think that's what the M2A provides for at
4 all.

5 COMMISSIONER GAW: I'm just looking for
6 process here. So from the standpoint of dealing with the --
7 with the disagreement on the Appendix 2 changes that we have
8 in front of us, SBC is advocating that we go ahead and
9 implement what SBC has in its language?

10 MR. CONROY: Actually, they've already been
11 implemented, based upon what I previously told you.

12 COMMISSIONER GAW: Right. I understand.

13 MR. CONROY: Basically the list that's
14 included in Appendix 2, go ahead and approve that. And
15 there was a reversal in Texas based upon the objection, that
16 any party that -- I mean, following the requirements of
17 Attachment 17, if they wanted to address that here, they
18 could choose to do that if they wanted to.

19 COMMISSIONER GAW: Okay. Thanks.

20 MR. CONROY: There were also questions about
21 whether the Commission should initiate some kind of a new
22 proceeding in connection with Version 3.0 and in connection
23 with perhaps the court proceeding in Texas, in connection
24 with that. And our position is that there is really no
25 reason to have a proceeding now and, in addition to that,

1 there would be -- the Commission would not have authority to
2 force the changes, the performance remedy plan changes, the
3 K Table changes that the Texas Commission is attempting to
4 impose in Texas.

5 And so there's no reason to have a proceeding
6 now, and we don't believe that there would be any authority
7 either under state law which, frankly, I don't believe is
8 appropriate. It's really a federal law issue.

9 The Act is where you get your authority to
10 approve these interconnection agreements. There would be no
11 authority for the Commission to adopt -- to open some sort
12 of a generic proceeding to change the M2A. It just isn't
13 either existing interconnection agreements based on the M2A
14 or as a document, sort of a model for adoption on a
15 going-forward basis.

16 COMMISSIONER GAW: May I ask a follow-up
17 question?

18 JUDGE DIPPELL: Yes. Go right ahead.

19 COMMISSIONER GAW: Is that SBC's position with
20 Texas, that they did not have authority?

21 MR. CONROY: Yes.

22 COMMISSIONER GAW: All right. Thanks.

23 MR. CONROY: There's a host of legal arguments
24 in Texas in court proceedings, but yes.

25 COMMISSIONER GAW: Including that?

1 MR. CONROY: Yes, including that. That's a
2 major one.

3 I would also address it now, since your
4 question prompted another comment that I wanted to make on
5 behalf of SBC, that the -- I disagree with the statement of
6 Mr. Lumley that there are no disputed factual issues, only
7 legal issues.

8 It's clear to me that if the Commission --
9 first, we don't think there's authority, but even if there
10 was authority and you wanted to adopt a change in the
11 K Table, for instance, outside the authority in the M2A in
12 Attachment 17, there are clearly factual issues that the
13 Commission needs to address if it wants to do that.

14 I mean, the policy issues, the fact that
15 performance is increasing, and would it be the right
16 policy -- separate from the authority issue, would it be the
17 right policy to tinker with the formula that determines how
18 much we have to pay CLECs for claimed variations from the
19 performance measures? So it's not just a legal issue that
20 can be decided on Briefs, that type of an issue.

21 I made notes. I want to make sure I address
22 all the comments and questions, so I'm careful to check
23 this. Appreciate your patience.

24 Mr. Lumley started out his presentation by
25 talking about backsliding, and it should be clear to the

1 Commission that there is no backsliding involved here. The
2 performance is going up. And if you apply the same uniform
3 performance measurements that we've had since the beginning
4 of the M2A to now that you have to to determine whether
5 performance is changing for better or worse, it's getting
6 better. So the issue of backsliding should be of no -- not
7 that it shouldn't be of concern, but there's no backsliding
8 involved.

9 The issue of uniformity, the parties who
10 advocate that the M2A should be -- we should just take the
11 results from Texas and drop them into the M2A argue
12 uniformity, and SBC Missouri agrees that uniformity is a
13 goal, but not at the expense of specific provisions in the
14 M2A that talk about how changes can be made.

15 And as I discussed in my opening comments,
16 there's never going to be 100 percent uniformity. There
17 simply is not. And so uniformity is a goal for us also.
18 That's why the six-month performance review process produces
19 so much agreement in terms of what should be changed. But,
20 of course, there are a few areas of disagreement.

21 Again, with respect to the K Table changes, I
22 agree that there are -- the Texas Commission offered three
23 changes to the changes that they ordered to Section 8.3 and
24 11.1.1 resulted in three changes, as Mr. Lumley described,
25 but I would point out that those changes have not been

1 implemented anywhere else in any state; haven't been
2 implemented in Arkansas, they have not been implemented in
3 Texas, and it's not -- there was a reason that the K Table
4 was included with its very specific provisions in the
5 original M2A, and the changes that the Texas Commission has
6 ordered clearly were challenging that.

7 But they are -- they are not appropriate.
8 It's not what we agreed to. We did not agree to additional
9 financial exposure that -- the sole purpose of changing the
10 K Table at this point, the additional financial exposure
11 when performance is going up. I know I've repeated that,
12 but I want to make sure that's very clear.

13 COMMISSIONER GAW: Judge, may I ask a
14 question?

15 JUDGE DIPPELL: Go right ahead.

16 COMMISSIONER GAW: In regard to assessing the
17 issue of performance, is there -- and this may not be the
18 appropriate place to delve into this, but is there
19 any -- anything in the Texas proceeding that assessed SBC's
20 performance under the new standards that Texas adopted that
21 is subject of the -- of the federal court case?

22 MR. CONROY: I did not participate in the
23 Texas proceeding, but I will tell you that the Texas changes
24 involved -- they don't change the performance. They change
25 how that performance -- how the random variation that is

1 going to be there any time you're counting this number of
2 statistics, how that is assessed and how it is -- how it
3 results or produces the amount of money that SBC has to pay
4 to CLECs.

5 COMMISSIONER GAW: The information that's
6 reviewed is not the same necessarily, it's not equivalent.
7 There may be some changes in regard to determining how the
8 performance, what the performance was?

9 MR. CONROY: I'm not sure I understand your
10 question.

11 COMMISSIONER GAW: Well, I guess I'm asking
12 you if the information that's evaluated under the new
13 standard that Texas adopted is exactly the same as the
14 information that was evaluated under the previous test,
15 performance standards?

16 MR. CONROY: I believe the underlying
17 performance is the same, those measurements.

18 COMMISSIONER GAW: Is the information the
19 same? There must be some changes to what's being examined,
20 if I understand this.

21 MR. CONROY: There are changes to the way that
22 the information is used in order to determine the amount of
23 payments.

24 COMMISSIONER GAW: And if we looked at the
25 way -- the new method of analyzing that information, is

1 there information in -- or was there a record in the Texas
2 proceeding that gave any kind of an evaluation of what the
3 performance of SBC would look like under that new method?

4 MR. CONROY: There is -- there was -- in the
5 Texas proceeding there was -- and I know there is -- this is
6 the case in the court proceeding. There is an explanation
7 of how much additional payments.

8 COMMISSIONER GAW: That's not what I'm asking.
9 To me that's maybe comparing apples and oranges, if you're
10 evaluating what the payments would be under one performance
11 measurement system as compared to another one. I'm asking
12 whether or not there was an evaluation of the issue of
13 backsliding, to use your word, under -- if you just used
14 the new measurement, the new performance measurement in the
15 K Schedule or K Table?

16 Because you refer -- you're giving me
17 information that we have in regard to what has happened
18 under the current schedule in Missouri in regard to SBC's
19 performance, making representations which are part of other
20 records, I think. I'm asking whether or not there was any
21 evaluation of what that would have been in Texas with the
22 new performance measures in the K Table that Texas adopted.

23 MR. CONROY: I guess I'm having trouble. I'm
24 having trouble understanding, because you're combining --
25 and I'm sure it's my limitation.

1 COMMISSIONER GAW: No, I don't think so.

2 MR. CONROY: I'm having trouble because you're
3 combining the concept of performance measures, which are
4 included in Appendix 3 of the business rules, with these
5 provisions that are contained in the performance remedy plan
6 itself, which says, all right, you've got your measures,
7 here's the data.

8 COMMISSIONER GAW: Maybe I'm confused. There
9 was references in Mr. Lumley's remarks to how the evaluation
10 was done. It was my -- it was my understanding -- maybe you
11 dispute this -- that there is different -- there's a
12 different -- there are different things that may be looked
13 at, violations of performance that may not have been
14 considered as violations or outside the performance
15 standards in the current system. You made reference to
16 something about violations in two consecutive months.

17 MR. CONROY: I believe that's true.

18 COMMISSIONER GAW: And other things about
19 looking at the total dollar amounts involved and those
20 things and determining whether or not there was -- in other
21 words, they were picking up things in the new -- in the new
22 evaluation that may not have been picked up before?

23 MR. CONROY: And I would disagree to the
24 extent that he suggested that they were picking up new
25 performance statistics. What they were picking up was,

1 you're going to have to pay a little more or a lot more in
2 Texas, because we're not going to let you have the random
3 variation that you agreed to, but you're going to have to --
4 instead of two months, it's now one month.

5 COMMISSIONER GAW: All right. What I'm
6 looking for is whether or not there was an evaluation of
7 SBC's performance, what it would have been under the new
8 table over a period of time that went into the past to see
9 whether or not SBC's performance under that methodology
10 continued to improve as it did under the method that we have
11 currently.

12 MR. CONROY: Okay.

13 COMMISSIONER GAW: Do you see what I'm asking?
14 Is that any clearer?

15 MR. CONROY: I have -- and again, I apologize.
16 I'm sure it's my limitation. My difficulty is, is that if
17 you look back in time, the performance has not changed. If
18 you look back at the statistics for, let's say, the
19 preceding 12 months, they didn't go back and say, your
20 performance got worse.

21 What they did was say, you should have been
22 paying, you didn't get to take advantage of as much of these
23 K Table exclusions of these random variations that you
24 thought you did. So we're going to make it harder to
25 exclude things on a going-forward basis.

1 COMMISSIONER GAW: And if they had implemented
2 over that past 12 months -- if they had already implemented
3 the new K Schedule, K Table, what would have -- what would
4 SBC's performance have looked like in that time frame?

5 MR. CONROY: Okay. I think that I can answer
6 that, is that the performance may have appeared -- based on
7 payments to CLECs, performance would have appeared to be not
8 as good, because you're changing the rules for determining
9 performance. Even though the actual performance didn't
10 change, the underlying performance wouldn't have changed at
11 all under it.

12 COMMISSIONER GAW: At one point in time,
13 you -- in your presentation, you made reference to looking
14 at SBC's performance, that it's been doing better as time
15 has gone along. Do you remember that?

16 MR. CONROY: Yes, absolutely.

17 COMMISSIONER GAW: And what time frame were
18 you referring to when you said that?

19 MR. CONROY: From the beginning of time.

20 COMMISSIONER GAW: I don't know. I'm asking.

21 MR. CONROY: No. That's my answer.

22 COMMISSIONER GAW: The beginning of time for
23 you predates me.

24 MR. CONROY: I haven't been doing it that
25 long. From when we first started recording performance,

1 let's say, relatively contemporaneously with the approval of
2 the M2A, which was March of 2001, until now.

3 COMMISSIONER GAW: All right.

4 MR. CONROY: So over two years.

5 COMMISSIONER GAW: Right. Long ways back, two
6 years. And if during that time frame, instead of having the
7 evaluation under the thing that we've done, we've been doing
8 in Missouri, and Texas, I assume, has been doing up to this
9 point in time, if you had had the new process under the
10 K Table, would you be able to say the same thing?

11 MR. CONROY: I don't know that we've done an
12 analysis.

13 COMMISSIONER GAW: That's what I'm asking.
14 That's my question.

15 MR. CONROY: Okay. I don't know that we've
16 done an analysis that would say if you had these K Table
17 changes from the be-- from March of 2001 'til now, I think
18 our performance still would be improving.

19 COMMISSIONER GAW: It could be. And all I'm
20 asking is whether or not there was anything in Texas that
21 analyzed that. I don't know that there would have been, but
22 that's what I was inquiring about.

23 JUDGE DIPPELL: Mr. Lane, I believe, would
24 like to make a comment to that point.

25 MR. LANE: Just a quick one. I think there

1 may be some miscommunication.

2 The performance level is the same period.

3 If we've been operating at, let's say, 95 percent in

4 total on all the measurements combined, changes in the

5 K Table evaluation doesn't change, nothing changes. It was

6 95 percent then, it's 95 percent today. The only change is

7 now with the 95 percent performance, the same level, you've

8 got to pay more. That's the only effect of the

9 K Table change.

10 COMMISSIONER GAW: All right. Then I -- when

11 I have time, I've got to go back to Mr. Lumley, because I'm

12 not sure that I followed what he was saying.

13 JUDGE DIPPELL: Thank you.

14 COMMISSIONER GAW: Sorry about that.

15 MR. CONROY: Is that going to happen now?

16 JUDGE DIPPELL: No. We'll go ahead and -- you

17 go ahead and finish, Mr. Conroy. I kind of -- I said at the

18 beginning I was going to let everybody kind of have a second

19 bite at the apple, and then I will -- I'll give you-all a

20 third bite.

21 MR. CONROY: I apologize for breaking my own

22 five or ten minute time.

23 JUDGE DIPPELL: That's why we're here. We're

24 trying to get these things clarified in our minds, because

25 we haven't been as involved in it as all of you have been.

1 MR. CONROY: And, Commissioner Gaw, I hope
2 that answers your question because I know, based on my own
3 limitations, it took a long time to get there. But -- and I
4 think I said the same thing that Mr. Lane did, I would hope.

5 COMMISSIONER GAW: I think you've been trying
6 to say the same thing also, if I would have let you, but I
7 do need to go back to AT&T or to Mr. Lumley in a moment.

8 MR. CONROY: Just so it's clear, shifting
9 gears somewhat, the six-month review process that's
10 described in Section 6.4, Southwestern Bell or SBC Missouri
11 has agreed that for purposes of administrative efficiency,
12 the Texas PUC proceeding, they were ahead of everybody else
13 in terms of 271 activity in these five states, that they
14 could conduct that six-month review process.

15 But we did not agree ever to be bound by
16 decisions that the Texas PUC made to have those decisions
17 simply picked up and dropped into the M2A without having a
18 proceeding that -- in a manner that was not consistent with
19 Section 6.4 of the M2A.

20 I mean, there's a fundamental jurisdictional
21 issue here, I think, in terms of the states deciding their
22 own issues.

23 Mr. Lumley also mentioned that we had
24 submitted on May 16th, in addition to Version 3.0 business
25 rules, a few changes to pages from Attachment 17 in the M2A

1 itself. That is true. We agreed to make those changes, and
2 I would point out that the changes, and based on our
3 agreement that's appropriate under 6.4, the changes also are
4 what I would call ministerial, changing 1.7 to 3.0. They're
5 not substantive provision changes. But in any event, we
6 agreed to the changes. We think it's appropriate.

7 Commissioner Gaw, you hadn't come back yet
8 when I talked about, maybe you heard, what the status in
9 Arkansas was with respect to -- and if I had -- if I wasn't
10 clear when I answered that the first time for you, I want to
11 make sure that I was, because the K Table changes that are
12 the subject of court appeal in Texas would not -- assuming
13 that SBC lost its arguments and no further appeal was going
14 on in Texas, those changes would not automatically be put
15 into the A2A, the Arkansas Attachment 17 to their 2A
16 agreement, because the process in Arkansas is that changes
17 to the business rules get automatically updated, not changes
18 to the body of the performance remedy plan itself.

19 I think that's all I have, unless there are
20 any questions.

21 JUDGE DIPPELL: I just have one question. Let
22 me ask, Commissioner Murray, did you have any additional
23 questions for Mr. Conroy?

24 COMMISSIONER MURRAY: Just briefly,
25 Mr. Conroy.

1 The six months review process in 6.4 is --
2 would you -- would you phrase what you think that six-month
3 review process is designed to do?

4 MR. CONROY: It is designed to -- it actually
5 explains what it's designed to do. It's designed for the
6 parties to get together and decide what changes,
7 modifications, to review the performance measures to
8 determine whether measurements should be added, deleted or
9 modified, whether benchmark standards should be changed or
10 replaced by a parity standard.

11 The difference between benchmark and parity is
12 the parity standard is now -- comparing it to SBC's retail
13 performance and benchmark is just setting an arbitrary level
14 and saying you have to hit this.

15 COMMISSIONER MURRAY: Is that -- changing the
16 benchmark level, is that what was done in Texas with the K?

17 MR. CONROY: No. That would be an actual
18 change to the -- to a performance measurement in the
19 business rules would be changed from a benchmark to a parity
20 or change the benchmark standard itself. And there were
21 those that were done in the six-month review process.

22 So the purpose of it, I would say, is for the
23 parties who are operating under interconnection agreements
24 based on the M2A and the performance measurements to get
25 together to decide whether they think anything should be

1 changed.

2 And if they -- if the parties agree, then
3 those things can be changed in a relatively straightforward
4 manner. And if there's not an agreement, then Section 6.4
5 provides for process or a party to try to get changes
6 made -- actually not changes, but new measures in an
7 arbitration context.

8 COMMISSIONER MURRAY: So there's no process if
9 the parties don't agree, other than to propose something
10 new.

11 MR. CONROY: What we agreed to in the M2A in
12 Section 6.4 was that we'd have to agree to changes in
13 existing performance measurements and the performance remedy
14 plan itself. And that's the last -- sorry -- the
15 second-to-last sentence of Section 6.4 says any changes to
16 existing performance measures and the remedy plan shall be
17 by mutual agreement of the parties and, if necessary, with
18 respect to new measures, under appropriate classification by
19 arbitration.

20 COMMISSIONER MURRAY: Thank you.

21 JUDGE DIPPELL: Commissioner Gaw, did you have
22 any additional questions?

23 COMMISSIONER GAW: No.

24 JUDGE DIPPELL: Commissioner Forbis?

25 COMMISSIONER FORBIS: No.

1 JUDGE DIPPELL: Okay. I just -- again, I'm
2 sure I'm just not tracking along here.

3 MR. CONROY: I know the feeling.

4 JUDGE DIPPELL: Staff referred to some changes
5 on page 135. Are those the -- they referred to a mistake,
6 first of all, to the Texas Commission. Was that a mistake?

7 MR. CONROY: Yes. Should be Missouri
8 Commission.

9 JUDGE DIPPELL: And then later, I thought
10 Mr. Lumley also referred to some changes on that same page,
11 but I believe those were --

12 MR. CONROY: I think Mr. Lumley would like
13 Texas to stay in there, but it shouldn't. It should be
14 changed to the Missouri Commission.

15 JUDGE DIPPELL: Okay. And then --

16 MR. CONROY: I'd be happy to submit the
17 corrected page.

18 JUDGE DIPPELL: Page 135, is page 135 of -- is
19 that --

20 MR. CONROY: It's page 135 of the business
21 rules, which would be Appendix 3 to Attachment 17.

22 JUDGE DIPPELL: Okay. I wanted to make sure
23 that that's to the business rules.

24 MR. CONROY: Yes.

25 JUDGE DIPPELL: Okay. Just wanted to make

1 sure I knew exactly what was there.

2 All right. I believe that's all the questions
3 for you right now, Mr. Conroy. I am going to let you-all
4 make the final remarks as soon as we get a little additional
5 information from the other parties.

6 Staff, did you all have any rebuttal remarks?

7 MR. WILLIAMS: Nathan Williams for Staff. I'm
8 not sure if they're rebuttal. They're more explanatory.

9 The disposition codes that Mr. Conroy was
10 referring to, those were addressed down before the Texas
11 Commission at the last six-month review, and it's my
12 recollection that the business rules didn't necessarily
13 include an exhaustive list of the disposition codes, and
14 that Bell had added codes to its list that it was using for
15 the exclusions. And that became an issue during the
16 six-month review, and ultimately there was a change made to
17 include an exclusive listing as part of the T2A, which is
18 also included as part of the filing they made here.

19 I don't dispute that AT&T may have filed
20 something objecting in Texas. That's an oversight by Staff.
21 However, I know that was the genesis of the process. Bell,
22 I don't doubt, had provided notice to the companies about
23 the changes in the code, but there was no formal change made
24 to the T2A until Version 3.0.

25 And as to the K Table, it's Staff's

1 understanding that that is a device that's being used -- I
2 guess Bell's characterization is a statistical tool because
3 of noise, to filter for purposes of payment, and it does not
4 have anything to do with actual performance or the business
5 rules. But it does have an impact on payments that CLECs --
6 or credits that CLECs receive under the Tier 1 column.

7 JUDGE DIPPELL: Does that have an impact also
8 on penalties to the State?

9 MR. WILLIAMS: I don't believe it does. Or
10 payments, however you want to characterize it. Were there
11 any questions?

12 JUDGE DIPPELL: Commissioner Murray, did you
13 have additional questions for Staff?

14 COMMISSIONER MURRAY: Well, I hate to go
15 there, because I'm pretty confused about the disposition
16 codes and what actually happened with them and what has been
17 agreed to.

18 MR. WILLIAMS: The disposition codes are used,
19 as I understand it, as an exclusion under certain business
20 rules. And my recollection of the proceedings down in
21 Texas -- I know Randy Dysart was there, who's present here
22 today. Those codes were updated by Bell for presumably
23 internal purposes, but they also relayed them to the parties
24 for activities they felt were similar to those they were
25 currently excluding, and they enhanced their list of codes.

1 However, the list that was in the business
2 rule, to the extent there was one, was not updated and it
3 became an issue during the Texas proceedings on -- during
4 the last six-month review where this was all brought to
5 light. And the decision was made that there's an agreement,
6 basically, that there was ambiguity in the wording of the
7 rule, and they eliminated that ambiguity and that's
8 reflected in the current version of business rules in the
9 appendix, where there's a specific list. And any changes to
10 that list are to be brought before the Commission.

11 And I believe the parties are correct that
12 AT&T did file an objection to that -- the list that was
13 included, because it was different than what had been agreed
14 to before, and I don't know that it was an agreed-to list at
15 the time that 3.0 was filed.

16 COMMISSIONER MURRAY: So what is Staff's
17 position that we should do with those?

18 MR. WILLIAMS: Well, to the extent AT&T
19 disputes them, I would not include those disposition codes
20 on that list at this time, absent some explanation,
21 something more before this Commission to decide whether it's
22 appropriate to enhance that list or not.

23 COMMISSIONER MURRAY: Thank you.

24 JUDGE DIPPELL: Commissioner Gaw, did you have
25 any?

1 COMMISSIONER GAW: No, thanks.

2 JUDGE DIPPELL: Before you sit down,

3 Mr. Williams, I have one more.

4 MR. WILLIAMS: Certainly.

5 JUDGE DIPPELL: And I, kind of like

6 Commissioner Murray, I hate to go there, but I'm going to

7 bring it up one more time.

8 Is the issue -- and I'm not sure it is an

9 issue -- but the description of the M2A as a generally

10 available agreement or terms and conditions, is that

11 something that's necessary for the Commission to actually

12 determine with regard to this particular proceeding or this

13 particular motion?

14 MR. WILLIAMS: I don't think it's the

15 exclusive means by which the Commission gains authority with

16 that.

17 JUDGE DIPPELL: That's my question and you

18 stated it much more eloquently than I did. Thank you.

19 That's all.

20 MR. WILLIAMS: Thank you.

21 JUDGE DIPPELL: Does Office of the Public

22 Counsel have anything they'd like to add?

23 MR. DANDINO: I have nothing further. Thank

24 you.

25 JUDGE DIPPELL: State of Missouri?

1 MR. MOLTENI: No, ma'am.

2 JUDGE DIPPELL: Mr. Lumley?

3 MR. LUMLEY: I don't have any further comment,
4 but I think there was a question for me.

5 COMMISSIONER GAW: Thank you.

6 I think that I'm getting closer to
7 understanding this, Mr. Lumley, depending on your
8 explanation here. Is it accurate to say that there would be
9 no difference in the performance of Bell if the K Schedule
10 were adopted regard to the performance measurements
11 themselves?

12 MR. LUMLEY: If you ignore the other changes
13 that are in place moving from Version 1.7 to Version -- to
14 3.0, which could very well change those percentages. If you
15 imported the 3.0 back in time, I don't -- my current
16 understanding is the K Table itself would not change the
17 percentages. The point I was making, however, is that if
18 you went back in time and using the new version of the
19 K Table calculated penalties, you very well could see
20 penalties rising.

21 And I'm not talking about comparing what they
22 did pay to what they would have paid under a new system.
23 I'm talking about under that new system which does not allow
24 the exclusion of more significant violations, I think that
25 is a reflection of declining performance. However, I'm not

1 in any way stating that that would be the case, because I've
2 not seen the analysis.

3 COMMISSIONER GAW: You're saying you don't
4 know?

5 MR. LUMLEY: Correct.

6 COMMISSIONER GAW: And there was -- to your
7 knowledge, there wasn't anything that was done in the Texas
8 record that would have shed any light on that?

9 MR. LUMLEY: The only thing I've seen comes
10 from SBC, and I can't remember the time frame they looked
11 at. It was an \$8 million figure, if I'm remembering
12 correctly, and there they were comparing what they would pay
13 under the current system versus what they would have to pay
14 under the new one, so it wasn't --

15 COMMISSIONER GAW: It's a different kind of
16 analysis?

17 MR. LUMLEY: Right. That's the only kind of
18 analysis I've seen really.

19 COMMISSIONER GAW: If you could, to tie this
20 up for me, how -- what factors would there be in regard
21 to -- that you might be able to identify that might change
22 the view that SBC's performance has been improving in the
23 last two years if you did look at it under a change from 1.7
24 to 3.0, coupled with the K Schedule or K Table?

25 Do you know?

1 MR. LUMLEY: If you combine the two, I have no
2 idea what historic results would be if calculated under
3 Version 3.0. I've not seen anybody -- somebody may have
4 done that, but I've not seen that.

5 But intuitively, the purpose behind the Texas
6 Commission's changes was to prevent the exclusion of more
7 significant violations and, therefore, I think it's
8 certainly possible that you would see, if you imported this
9 back in time and recalculated, increasing penalties, because
10 these serious violations were not excluded. And I think
11 that would be a reflection of declining performance, even if
12 percentages were not changing.

13 COMMISSIONER GAW: I see. It could be the
14 other way, too?

15 MR. LUMLEY: Yes, it certainly could.

16 COMMISSIONER GAW: And your argument for why
17 Missouri should be able to implement the K Table without any
18 record being presented here is, again, what?

19 MR. LUMLEY: I don't believe that there's any
20 disputes that if there was a six-month review process, that
21 at the end of that process there were issues that were not
22 resolved, including the K Table changes, that the parties
23 formally presented that dispute to the Texas Commission and
24 that a decision was reached. And I believe that satisfies
25 the requirements of an arbitration under this clause.

1 I also believe that it's sufficient for the
2 Commission to look at the fact that this process was
3 undertaken somewhere else and these conclusions were
4 reached. And that's reason enough, based on the whole
5 intent behind Attachment 17, to ask for this change. But I
6 also acknowledge that, from that perspective, if you take it
7 out of Section 6.4 and don't rely on that, you certainly
8 have the right to hear the issues for yourself, too.

9 I'm not saying you're mandated in any means to
10 do it from that perspective, but I think that the parties to
11 the M2A -- to contracts that are based on the M2A do have
12 the right to point to that Texas decision and say, we were
13 down there, we participated and a decision was reached, and
14 it's over subject to the court.

15 COMMISSIONER GAW: The challenge in Texas to
16 the K Table, is your argument in regard to the Texas
17 Commission's jurisdiction in adopting that the same
18 arguments that you present here regard to Missouri
19 Commission's jurisdiction to adopt it?

20 Excluding the issue of whether or not we can
21 just adopt the arbitration of Texas as a matter of -- as
22 being appropriate under federal law, excluding that issue,
23 is the issue of the Missouri Commission's jurisdiction here
24 the same from AT&T's perspective as the issue of AT&T or
25 from your clients' perspective -- I hate to just name one --

1 as it is in Texas in regard to Texas jurisdiction?

2 MR. LUMLEY: Well, I think there's a
3 difference in that the parties voluntarily presented the
4 dispute to the Texas Commission for resolution. Obviously
5 Bell is not suggesting here that they're voluntarily doing
6 that before you. So I think that's the difference.
7 Otherwise --

8 COMMISSIONER GAW: And your argument, again,
9 as to why Missouri has jurisdiction over that issue, just
10 briefly.

11 MR. LUMLEY: On top of the -- or aside from
12 the contractual provisions?

13 COMMISSIONER GAW: Yes.

14 MR. LUMLEY: Okay. Three different points.
15 One, under Section 271D6, I believe you have the ability to
16 say, we see a problem. SBC, we expect you to fix the
17 problem. If you don't, we're going to notify the FCC of our
18 concern and that you didn't address it. You can't make a
19 decision under that provision because you're only a
20 recommending body under that statute.

21 Secondly, I submit that in order to get 217
22 relief, Bell did offer this model agreement, and that
23 invokes the provisions of 252F, and that you have the right
24 as has been developed in the pleadings, to require changes
25 under that provision.

1 And then third, under Section 261, you have
2 the right to assure compliance with performance standards
3 and quality of service issues like now.

4 COMMISSIONER GAW: Thank you.

5 JUDGE DIPPELL: Commissioner Murray, did you
6 have additional questions?

7 COMMISSIONER MURRAY: No.

8 JUDGE DIPPELL: I just have one more,
9 Mr. Lumley.

10 Going back to those codes, is it the position
11 of the CLECs that there are codes included in that May 16th
12 version that the CLECs have not agreed to?

13 MR. LUMLEY: Yes, that is our position.

14 JUDGE DIPPELL: And is that spelled out in
15 your pleadings that have been filed up to this point?

16 MR. LUMLEY: The point has been made in
17 several pleadings. The specific sections were identified
18 back in December in AT&T's pleading, and I've already read
19 them into the record so they'll be in the transcript.

20 JUDGE DIPPELL: Okay. Just wanted to make
21 sure that I had the right ones.

22 MR. LUMLEY: And, you know, whether or not
23 Bell published them, the point was that it was discovered
24 that they were trying to make a unilateral change. It was
25 objected to. The Texas Commission says, you can't make

1 unilateral changes. And that language is now included on
2 page 135, that there can't be unilateral changes. But,
3 nonetheless, there have been changes that haven't been
4 agreed to by anybody that are included in that page.

5 And just to clarify -- and I think Mr. Conroy
6 is correct in saying that Version 3.0 is Appendix 3 to
7 Attachment 17, the page 135 itself is Appendix 2 to
8 Version 3.0. So it's a little confusing.

9 JUDGE DIPPELL: Okay. Thank you.

10 Southwestern Bell like to have one last say?

11 MR. CONROY: I think we're okay.

12 JUDGE DIPPELL: Nothing further. All right
13 then. I believe we have heard it all, then, and asked all
14 of our questions, I appreciate you-all coming today and
15 presenting this to clarify the issues.

16 We are adjourned. We can go off the record.

17 WHEREUPON, the hearing of this case was
18 concluded.

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