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TRANSCRIPT OF PROCEEDINGS

Oral Argument

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Volume 2

In the Matter of a Commission)
Inquiry into the Possibility of)
Impairment Without Unbundled Local) Case No. TO-2004-0207
Circuit Switching When Serving the)
Mass Market)

LEWIS MILLS, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

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

2 JUDGE MILLS: We're on the record this morning
3 for oral argument on a motion to compel in Case
4 No. TO-2004-0207, which is styled in the matter of a
5 Commission inquiry into the possibility of impairment
6 without unbundled local circuit switching when serving the
7 mass market.

8 We'll begin by taking entries of appearance,
9 starting sort of towards my left, Mr. Comley.

10 MR. COMLEY: Thank you, Judge. Let the record
11 reflect the entry of appearance of Mark W. Comley, Newman,
12 Comley & Ruth, P.C. on behalf of AT&T Communications of the
13 Southwest, Inc., AT&T Local Services on Behalf of TCG
14 St. Louis and TCG Kansas City, Inc., Birch Telecom of
15 Missouri and Ztel Communications.

16 JUDGE MILLS: Mr. Lumley.

17 MR. LUMLEY: Good morning. Carl Lumley
18 appearing on behalf of MCImetro Access Transmission
19 Services, LLC, Brooks Fiber Communications of Missouri,
20 Inc., MCI WorldCom Communications, Inc., Intermedia
21 Communications, Inc. and XO Missouri.

22 JUDGE MILLS: Mr. Gryzmala.

23 MR. GRYZMALA: Good morning, your Honor. Bob
24 Gryzmala on behalf of Southwestern Bell Telephone, LP, doing
25 business as SBC Missouri.

1 JUDGE MILLS: Thank you. As I understand from
2 our brief conversation before we went on the record, I think
3 you-all have managed to narrow the field somewhat. So if we
4 can get to that, so we know exactly which DRs as to which
5 entities we're still talking about, I think that might be a
6 good place to start.

7 MR. GRYZMALA: Your Honor, at this time I'll
8 indicate that the motion, as you may know, is directed to
9 MCI, and I refer to MCI, your Honor, in the sense of all the
10 companies for which Mr. Lumley has entered his appearance
11 for which responses were made, and XO.

12 We would withdraw at this time our motion to
13 compel relative to XO for items -- or rather DRs 4-05, 4-08,
14 4-15, and 4-18. I would represent that information provided
15 us has narrowed the scope of our motion with respect to a
16 couple of other DRs, your Honor, and those appear to be
17 DRs 4-03, 4-04, but there are others that have not been
18 resolved and they remain.

19 With regard to MCI, we would at this time
20 withdraw our motion with respect to 4-07.

21 JUDGE MILLS: Okay. Is that all?

22 MR. GRYZMALA: I'm sorry?

23 JUDGE MILLS: Is that all?

24 MR. GRYZMALA: Yes, your Honor.

25 JUDGE MILLS: Okay. I think since you've --

1 since Bell has filed its reasons that you want to compel
2 this information on paper, and MCI and XO have not had a
3 chance to respond, I'm going to let Mr. Lumley respond.

4 First I've got just a few sort of clarifying
5 questions for SBC. What was the date that the DRs were
6 submitted to MCI?

7 MR. GRYZMALA: DRs were originally submitted,
8 your Honor, on November 25.

9 JUDGE MILLS: Okay. Same date for XO?

10 MR. GRYZMALA: To all carriers, your Honor.
11 And as a result of more analysis and thinking thereafter, it
12 was determined that in some respects certain subparts of
13 certain DRs were duplicative and that generated a reduced
14 set, if you will, on December 3. That version is the
15 version that we attached to the motion, your Honor.

16 JUDGE MILLS: Okay. So nothing additional was
17 added on December 3rd, you just took stuff away; is that
18 correct?

19 MR. GRYZMALA: I'm sorry?

20 JUDGE MILLS: When you modified the original
21 DRs on December 3rd, you didn't add anything, you simply
22 took stuff away?

23 MR. GRYZMALA: In 90-plus percent, 95 percent
24 plus cases -- I can't say with 100 percent certainly -- the
25 clear theme was to eliminate duplication and to combine DRs.

1 I can't say there isn't one out there that I may have
2 missed.

3 JUDGE MILLS: Responses were received from
4 both MCI and XO on December 15th; is that correct?

5 MR. GRYZMALA: Thereabouts, and thereafter,
6 after objections.

7 JUDGE MILLS: The original responses?

8 MR. GRYZMALA: Right, initially.

9 JUDGE MILLS: Okay. Now, in your motion to
10 compel, as part of the relief you request you want
11 opportunity to file supplemental testimony. Which testimony
12 to which phase are you talking about supplementing?

13 MR. GRYZMALA: We believe that would be likely
14 directed to the Phase 3 portion of the proceeding, which
15 would have to do with loop and transport.

16 JUDGE MILLS: So you're talking about the
17 direct testimony in Phase 3 that you filed just this week;
18 is that correct?

19 MR. GRYZMALA: Yes, but it would not preclude
20 the filing of testimony, I believe, your Honor, I don't have
21 the schedule in front of me, but I believe it's due on
22 March 1, because that testimony will rely to some extent
23 upon the CLECs, MCI's and NuVox's -- or MCI's and XO's
24 responses to discovery.

25 JUDGE MILLS: Assuming we get something

1 resolved here today and we -- and you get responses that
2 I've ruled that you're entitled to get within a timely
3 fashion, I don't see any need to give you ten more days to
4 supplement your March 1 testimony.

5 MR. GRYZMALA: Assuming timeliness of the
6 responses, your Honor, we agree. That's a fair assessment.

7 JUDGE MILLS: So when you ask in your motion
8 for the opportunity to supplement testimony, you're talking
9 about the testimony that was already filed in Phase 3?

10 MR. GRYZMALA: At the time I wrote the motion,
11 your Honor, that was not my actual thinking because, as I
12 recall, we filed the motion on the same date as we actually
13 filed our direct case. That was on January 12th. It was
14 not clear to me at what point, candidly, your Honor, a
15 motion would be heard, a relief -- relief might be
16 forthcoming, and so it was a protective device to ensure
17 that in the end there is some -- there is no prejudice
18 because we hadn't been able to get the responses we were
19 hopeful of getting.

20 JUDGE MILLS: Then let me ask you this: Was
21 the testimony that you've already filed for Phase 3, has
22 that -- will that need to be supplemented as a result of the
23 information that you may receive?

24 MR. GRYZMALA: I don't think there's any
25 question about that, your Honor, yes.

1 JUDGE MILLS: You think it will?

2 MR. GRYZMALA: I think it some respects, if I
3 recall accurately, our witness said that further information
4 is being developed in discovery, yes, your Honor.

5 JUDGE MILLS: Okay. I think that -- that sort
6 of gives me an idea of where we are now. So let's go on to
7 responses from Mr. Lumley, and if you can, try to keep me
8 from being confused. So speak to the DR subpart number and
9 to which companies you're talking about, and I'll try and
10 keep my notes clear so I know where we are.

11 MR. LUMLEY: Yes, your Honor. A couple of
12 general observations. With regard to the supplement that
13 was filed yesterday, it refers to the first set of
14 attachments as the general objections of my clients, and I
15 just want to point out that the attachment includes first a
16 set of general objections, but then followed by a set of
17 specific objections to specific questions.

18 Secondly, because of schedule yesterday and
19 the time at which this was delivered to us, and apparently
20 there was some troubles with e-mail transmissions and the
21 size of the attachments and what have you, I wasn't able to
22 print out the attached responses and go over them and verify
23 that they're complete. I assume that they are. If there's
24 a problem, I assume we can straighten that out today.

25 But just to follow up on your question, to

1 give you a clear record, the objections were timely served
2 on December the 5th. MCI provided a preliminary response on
3 December 11th by supplying -- DR 8 asked for copies of
4 responses to Staff's discovery. Those questions in large
5 part are the same questions that Southwestern Bell actually
6 asked with some variation.

7 And so we supplied those responses on
8 December 11th, which was actually early. We then supplied
9 our additional responses on the 15th of December, writing
10 specific responses to SBC's questions, a supplemental
11 response on December 22nd, and I think what was called a
12 revised response on January the 9th of this year.

13 And with regard to XO, they also made a
14 preliminary response on December 11, which was a copy of a
15 response to Staff's DRs, except XO had only been served with
16 one question, so it wasn't as complete a set of information
17 as MCI's had been. And then they responded on December
18 15th, supplemented on December 29th, and supplemented again
19 on January 9th.

20 Turning to the -- and I'll go through the XO
21 questions first.

22 JUDGE MILLS: Before we do that, what -- out
23 of all those supplements and revised responses, what is it
24 that I have that Southwestern Bell -- that SBC provided to
25 me?

1 MR. GRYZMALA: What I provided you, your
2 Honor -- and just one preliminary clarification if I may. I
3 may be wrong, but I believe that the record would show that
4 with regard to MCI's supplemental responses of December
5 22nd, my understanding is that those were limited to DR 1.
6 So they would not be germane to this particular proceeding.

7 And with respect to XO's preliminary response
8 of December 11, Mr. Lumley alluded to, I believe, a single
9 question as it were, that too involved only DR 1, which is
10 switching.

11 Apart from that, what I provided, your Honor,
12 was in portions 2 and 3, which are MCI and XO respectively,
13 each of the responses presented for each of the filings
14 made. So if, for example, you moved toward the back of the
15 group, you'll have the most recent responses. And that is
16 what my emphasis is on this morning because, quite candidly,
17 we would want the last word.

18 And I have page numbers to which I can refer
19 you so it will make it a little bit easier perhaps for all
20 of us so we can move to the pages that we are focusing on.

21 JUDGE MILLS: Mr. Lumley, do you have a copy
22 that's paginated similarly to the one that Mr. Gryzmala's
23 referring?

24 MR. LUMLEY: I do not. I was not able to get
25 that printed before I had to leave the office. One of the

1 reasons they were able to withdraw things is we had some
2 conversations about what all the responses were, and some
3 things have been sent to a different SBC attorney and that
4 kind of thing. We straightened that out.

5 So I'm assuming that they provided you
6 everything based on those conversations. If they didn't, I
7 think we'll discover pretty quickly and we can sort that
8 out.

9 JUDGE MILLS: Okay.

10 MR. LUMLEY: The first -- and I would just ask
11 Mr. Gryzmala, if I'm skipping something, let me know. I
12 think I have a comprehensive list, so we can take them in
13 order.

14 The first one that I show for XO as still
15 being in dispute is DR 4-03, and we believe that we fully
16 responded to the question. It asked for amount of capacity
17 and level of capacity on -- it's referring back -- I believe
18 it's on transport facility. The question refers back to a
19 prior question. And in our January 9th response, we
20 identify facilities and their capacity.

21 I would note that we had made a general
22 objection as to the use of the words capacity and capable as
23 being vague, but we still answered the questions.

24 JUDGE MILLS: Okay. And it appears to me from
25 my copy at least that the response itself is highly

1 confidential.

2 MR. LUMLEY: Correct.

3 JUDGE MILLS: Is that correct? Okay.

4 MR. LUMLEY: So just for clarity, question
5 4-02 was a list of ILEC wire centers to which they've
6 obtained transport facilities from a supplier other than the
7 incumbent LEC, and then question 4-03 is for each one -- I
8 guess it's referring back to both 4-01 and 4-02. 4-01 is
9 where you've gotten it from where you've deployed it
10 yourself. 4-02 is where you've gotten it from somebody
11 besides the ILEC. 4-03 is the capacity question.

12 And so we believe we fully responded. It
13 might be helpful if we just do these one at a time.

14 JUDGE MILLS: I was just thinking that. Let's
15 do. Mr. Gryzmala?

16 MR. GRYZMALA: Your Honor, our approach with
17 respect to 4-03 as to XO I would believe focus on page 90 of
18 the attachment, which I believe Mr. Lumley just accurately
19 referred to. We believe that the only remaining -- and
20 forgive me, but that when -- this was one of those instances
21 in which when the motion was written, it was without the
22 benefit of a supplemental response that was miscommunicated.
23 But in any case, we have it before us.

24 You'll notice, your Honor, that the response
25 provides information regarding the amount of capacity, and

1 there are specifics provided, notwithstanding the
2 preliminary objection. What is not there is the actual
3 amount used or obtained on each route. There's a difference
4 between the focus of the question, the amount of capacity
5 obtained, which to my way of thinking, to our way of
6 thinking is the amount actually used versus the level of
7 capacity that the facility is capable of supporting.

8 The DR response from XO indicates on its face
9 that the equipment located or the equipment to which the
10 answer refers to is capable of supporting the following
11 transport capacity. That is not completely responsive, and
12 so for that reason, your Honor, that was not one of those
13 that we completely withdrew because of that last item, the
14 amount used for each of the transport routes that are the
15 subject of the question.

16 JUDGE MILLS: Okay. I'm with you so far.
17 Mr. Lumley?

18 MR. LUMLEY: I guess our point is we don't see
19 the distinction between the amount of capacity obtained and
20 the level of capacity capable of supporting. I believe my
21 client felt that was the same thing and gave them the
22 answer. So we're not really sure what the distinction is.

23 JUDGE MILLS: To my mind, you've got a glass
24 that will hold 16 ounces. If you want to put more stuff in
25 there, you need to know whether there's any stuff in there

1 already. If it's a 16 ounce glass but 12 ounces of it is
2 already full, then it's -- for the purposes of expanding,
3 it's not really a 16 ounce glass anymore.

4 MR. LUMLEY: I understand that distinction. I
5 guess we were looking at the way the question was worded,
6 and capacity obtained is buying the 16 ounce glass, that you
7 buy the full capacity of it, and what is the capacity of
8 that 16 ounce glass? It's 16 ounces. We just didn't see a
9 distinction.

10 JUDGE MILLS: Okay.

11 MR. LUMLEY: So --

12 JUDGE MILLS: Do you have an objection to
13 providing the additional information now that you --

14 MR. LUMLEY: I don't have a problem trying to
15 clarify our response. I mean, if -- if they're clarifying
16 the question to state capacity actually in use, I can see if
17 there's a different response. I don't know that the answer
18 will be any different. They may still say it's the same.
19 But I can certainly check.

20 JUDGE MILLS: Okay.

21 MR. LUMLEY: If that will satisfy the issue.

22 JUDGE MILLS: At least for that one, I think
23 the way I'd like to leave it is that, Mr. Lumley, you'll go
24 back, check with your client, if you can furnish additional
25 information with this additional explanation of what the DR

1 was actually looking for, then great. Tell Mr. Gryzmala one
2 way or the other, and if we need to have additional
3 discussion, we can talk about it.

4 MR. LUMLEY: All right.

5 JUDGE MILLS: It seems to me that that
6 additional information is relevant, and --

7 MR. LUMLEY: Yeah. I don't think that's --
8 that was our problem. I just don't think they saw a
9 difference.

10 JUDGE MILLS: Okay. So it sounds like we have
11 a tentative understanding how to move forward on this one,
12 and if that doesn't work, then we'll talk again.

13 MR. LUMLEY: Yes, sir.

14 MR. GRYZMALA: Your Honor, one clarification,
15 if I may. I think it would be helpful. We would like to
16 know that amount of actual use for -- I'm trying to state
17 this without creating a highly confidential problem -- with
18 respect to each of the specific entries made associated with
19 the central offices.

20 For example, with, for example, the first
21 central office you'll see that there are two separate
22 entries made, a multiple number in the first and then a
23 single in the second. How much capacity is used with
24 respect to each of that multiple and that singular other is
25 what -- you know, to be more granular, if that's a fair

1 question, if I may clarify.

2 MR. LUMLEY: I understand that.

3 JUDGE MILLS: Okay.

4 MR. LUMLEY: The next one I see is question
5 4-04.

6 MR. GRYZMALA: Are we doing XO matters?

7 MR. LUMLEY: Right.

8 JUDGE MILLS: We're going straight through XO
9 and then we'll go through -- well, as straight through as we
10 can, but we'll go by DR by DR for XO and then DR by DR for
11 MCI.

12 MR. LUMLEY: And again, we believe we fully
13 responded, and I don't know that there's any ambiguity at
14 all this time. I think the response is fairly definitive.
15 And just so -- I'm referring to a January 9th supplemental
16 response.

17 JUDGE MILLS: Right.

18 MR. LUMLEY: And it's a highly confidential.

19 JUDGE MILLS: I think that's -- as far as I
20 know, that's the only XO responses I have a copy of were the
21 January 9th ones.

22 MR. LUMLEY: There certainly were others, but
23 I guess they may not be in dispute so it may not matter. We
24 can wait and see.

25 MR. GRYZMALA: Your Honor, if I may interject.

1 We will withdraw that issue.

2 JUDGE MILLS: Okay. So you're satisfied with
3 that response.

4 MR. GRYZMALA: I should have added that to the
5 original list. Excuse me. So that would be 4-04 we were
6 referring to?

7 MR. LUMLEY: Right.

8 MR. GRYZMALA: I just missed that on the
9 original list. I'm sorry.

10 MR. LUMLEY: And I suspect the answer may
11 be -- the next one I show still being --

12 JUDGE MILLS: Before you go on to the next
13 one, I misspoke. I don't just have the January 9th. I do
14 have some of the earlier ones.

15 MR. LUMLEY: The next one I show that's still
16 open is 4-06, and this may again be the same situation
17 because we -- it's a fairly definitive response provided on
18 January 9th.

19 MR. GRYZMALA: Your Honor, I'm not sure that I
20 draw the same conclusion. 4-06 asks the carrier to provide
21 a list of all the wire centers in which you offer transport
22 facilities to other carriers. The answer says that XO
23 states that it does not --

24 MR. LUMLEY: Wait. That's a highly
25 confidential response.

1 MR. GRYZMALA: I'm sorry.

2 MR. LUMLEY: I mean, if the concern is the
3 wording, I'm certain I can get my client to supplement a
4 different word to say the same thing.

5 MR. GRYZMALA: I only want to emphasize that
6 there's a difference between making an offering to third
7 parties and actually providing them a service.

8 MR. LUMLEY: I believe I understand the intent
9 of their answer was to answer the question.

10 JUDGE MILLS: Well, then, it sounds as though
11 that should be fairly easy to straighten out. And again,
12 like the 4-03, if not, let me know and we'll look at it
13 again.

14 MR. LUMLEY: Well, if they misread the
15 question -- I don't believe they did, but if they somehow
16 misread the question, then we'll give a different question,
17 but I suspect it will be substituting a word.

18 JUDGE MILLS: And, Mr. Gryzmala, if, in fact,
19 a revised response is given that mirrors the word in the
20 offer as opposed to the original offer, would that satisfy?

21 MR. GRYZMALA: Quite so, your Honor. If it
22 says it does not offer transport facilities to other
23 carriers, you know, in due form, that's exactly what the
24 question is directed to, yes, your Honor.

25 MR. LUMLEY: The next item I show at issue for

1 XO is 419; is that correct?

2 MR. GRYZMALA: That would be what I show, yes.

3 MR. LUMLEY: All right. We responded to this
4 question in the December 15th responses. I must have
5 written an incorrect date. I'm looking at the wrong
6 question. I apologize.

7 MR. GRYZMALA: I'm showing, your Honor,
8 Mr. Lumley, I'm showing I think December 29, is what I'm
9 looking at.

10 JUDGE MILLS: Unless I'm wrong, the only
11 response I see looks like it's in the December 15th package.

12 MR. LUMLEY: That's what I'm showing. That
13 response --

14 MR. GRYZMALA: I'm sorry. Could I just get
15 together with you?

16 MR. LUMLEY: Sure.

17 MR. GRYZMALA: I'm showing SBC request
18 No. 419, and then if I keep turning pages, it says
19 December 20 -- I'm sorry. December 15. Okay. Thank you.

20 MR. LUMLEY: And again, XO believes that they
21 have responded in full. They've indicated that they don't
22 maintain the information in exactly the form requested, but
23 nonetheless they tried to answer the question as best they
24 could. And you have to refer to the response to question
25 301, which I'm not -- I don't know. I assume that they

1 provided that, but that answer, which is a few pages
2 earlier, gives a lot of detail about certain locations,
3 certain collocation locations. And then in the responses to
4 419, specifically E through I, which were asking about how
5 things are connected, they've answered that.

6 From our perspective, the only thing that
7 wasn't really provided was the VNH coordinates, and we had a
8 general objection to having to look those up because they're
9 equally available to anybody. That applied to all the
10 questions. I'm not aware that that's really at issue.

11 But aside from that point, it's not a question
12 of us objecting to the question. We've answered as best we
13 can.

14 JUDGE MILLS: Mr. Gryzmala, this is sort of
15 getting a little technical, these particular subparts, and
16 I'm going to need a little more explanation about why the
17 response -- well, first of all, let me see if I can narrow
18 this down. To which portion -- the motion isn't entirely
19 clear. To which subpart are you looking for more
20 information from XO on 419?

21 MR. GRYZMALA: Certainly with respect to the
22 SBC Missouri central offices, my observation was that, as
23 indicated in the motion, there was no response to J and K.
24 But more important, there's a bigger issue that we have with
25 regard to the response that encompasses each of these

1 subparts, your Honor.

2 The question is directed to transport routes.
3 It asks the responding party to provide information, as it
4 says, for each Missouri CLLI to CLLI -- that's C-L-L-I (ck)
5 -- transport route. So it's transport route specific. It
6 reaches those transport facilities that are both
7 self-provisioned or, as I believe I see in the parentheses,
8 are used by another carrier to provide service to its
9 customers.

10 So it's about transport routes with
11 self-provisioned facilities or those that are wholesaled or
12 provided to a third party by MCI. Once those routes are
13 indicated, I gather by the responding party, then we are
14 supposed to -- we are hopeful of achieving these answers.

15 If you look at 301, my reading of 301, to
16 which XO referred us, and this is -- well, to which XO
17 referred us, simply identifies the SBC Missouri central
18 offices. The question asks on its face 301, for each ILEC
19 location in which the company's collocated, state this, that
20 and the other.

21 419 reaches far beyond that. And you'll
22 notice, your Honor, that we are talking about collocation
23 arrangements in 419 drawn from the very same Staff question
24 in large part. That means ILEC provided. It could be
25 shared. It can be non-ILEC provided. It could be a

1 collocation hotel, which would be somewhat of a shorthand
2 term for a location where there are multiple competing
3 providers that are collocated in a single building or
4 facility off of SBC Missouri's central office or wire center
5 premises.

6 My view of the answer was that in referring us
7 to 301, we simply got a replication of where MCI is
8 collocated and the kind of equipment and what have you that
9 is associated with a 301 answer. Didn't give us, your
10 Honor, route-specific information.

11 That is critical here, because the FCC's
12 analysis that it asks the state to perform is
13 route-specific. It's not likewise limited to routes that
14 simply have a collocation of SBC at the originating point,
15 as is 301 presumably. There is a route which is an A point
16 and a Z point. The order makes it pretty clear that
17 transport, dedicated transport has meaningfulness with
18 respect to an A CLLI code of an ILEC and a Z CLLI code.

19 JUDGE MILLS: So you're saying that in 301
20 you've got the answer to subpart A?

21 MR. GRYZMALA: Well, I only got half, because
22 if I read that correctly, there's no corresponding CLLI
23 code.

24 JUDGE MILLS: What is subpart H asking for,
25 then?

1 MR. GRYZMALA: Subpart A asks for --
2 JUDGE MILLS: No, H.
3 MR. GRYZMALA: -- each end of the route.
4 JUDGE MILLS: A asks for each end?
5 MR. GRYZMALA: The A CLLI code and the Z CLLI
6 code.
7 JUDGE MILLS: What does subpart H ask for?
8 MR. GRYZMALA: H?
9 JUDGE MILLS: Yes. How is that different
10 from A?
11 MR. LUMLEY: G and H actually.
12 MR. GRYZMALA: I'm sorry. I would modify my
13 answer. G and H directly associate that.
14 JUDGE MILLS: So G and H are giving you what
15 you're calling -- are asking for what you're calling a
16 Z CLLI code in your description?
17 MR. GRYZMALA: That's a fair assessment, or in
18 the case of an off -- or in the case of a situation in which
19 the collocation arrangement is situated -- no. I'll accept
20 that. That would be correct, your Honor. In this case the
21 A CLLI code is a SBC central office and the Z CLLI code has
22 not been provided.
23 JUDGE MILLS: So as far as subpart A is
24 concerned, the answer to 301 is okay? That's sufficient to
25 give you --

1 MR. GRYZMALA: If the assumption that those
2 codes represent the A CLLI code of the transport route, if
3 XO were to say that, for example. I don't know that it's
4 meaningful that it might be Z, but the FCC's order speaks in
5 terms of A CLLI to Z CLLI. I suppose some clarification
6 would -- if XO were say that these represent the A CLLI
7 codes and the corresponding Z CLLI codes for each of those
8 are as follows, or vice versa. But the point that you make
9 is still well taken. A and G and H collectively seek to
10 capture both ends of the route.

11 MR. LUMLEY: And trying to avoid actually
12 stating what the response is, I think it clearly indicates
13 in the responses to E through I that that's all there is.
14 It says that's all of them, and it's referring back to the
15 list in 301. And as I understand the answer, it's saying
16 they are all connected to each other.

17 So again, they believe they've answered their
18 question. It may not be laid out in a tabular form that
19 says all the different permutations, but I think it's still
20 telling them what they wanted to know.

21 MR. GRYZMALA: Well, your Honor, I only have
22 one last comment on that point. I think that's an important
23 addition, because with respect to G and H, which asked for
24 the connected office, if you look at the response, the
25 answer is XO does not maintain responsive data in the form

1 requested, and they identify the 301 as the wire centers of
2 collocation. If the answer, if the candid truthful answer
3 is that each of the COs that are identified in 3-01 are
4 interconnected with each of the others that are listed in
5 3-01 -- and the word use permutation is a perfection
6 example, because a permutation will give you just that and
7 that's the answer.

8 It's simply that I did not get that. My
9 reading of 3-01 is, here's where we're collocated and that's
10 it.

11 MR. LUMLEY: That's not it. There's a
12 sentence there that provides you more information.

13 MR. GRYZMALA: Well, I think it's important to
14 establish that each of the wire centers are connected with
15 each of the others, because, your Honor, only that will tell
16 us one by one which of the transport routes that we're
17 talking about in this 419.

18 MR. LUMLEY: So they're looking for --

19 MR. GRYZMALA: Greater specificity.

20 JUDGE MILLS: If, in fact -- it's my
21 understanding from what Mr. Lumley said that that is the
22 answer, and if, in fact, he's able to confirm that, will
23 that satisfy the objections to this DR?

24 MR. GRYZMALA: Give me just a moment, if you
25 would, please.

1 In part. I believe so, but in part. Your
2 Honor, one other thing about this question is that it is
3 directed to collocation arrangements which are situated at
4 offices other than SBC. Those are separate routes, separate
5 links in route.

6 MR. LUMLEY: If you look at the response to
7 302, that should eliminate your concern about that.

8 MR. GRYZMALA: I can appreciate that point. I
9 see the answer.

10 JUDGE MILLS: And the reason I ask the
11 question that way is because the motion to compel talks in
12 general about SBC wants identified both ends of the route,
13 but the subparts seem to have a lot more detail, and for
14 example, the type of transport, dark fiber DS1, DS3. And I
15 don't know that -- I'm trying to determine if the answer
16 that Mr. Lumley just gave is sufficient to satisfy the kind
17 of detail that's -- that you're seeking here.

18 MR. GRYZMALA: No. Before I move to those --
19 I'm sorry. Before I move to those other points, I just want
20 to be sure to clarify, as Mr. Lumley has, about collocations
21 at non-ILEC locations. But your point remains, and I agree,
22 that, for example, it's obvious that the street addresses
23 and what have you are resolved. B and C I believe is
24 resolved. D is resolved. It's referenced in the answer to
25 3-01.

1 I still don't see, however, answers to the
2 number of transport circuits connecting these facilities at
3 each end of the route, the type of dedicated transport,
4 which is critical, your Honor, because impairment analysis
5 on a transport route will have to do with, for example, the
6 form of transport, whether it be DS1, whether it be DS3.
7 And I don't see that -- dark fiber is referenced as well in
8 subpart F. I don't see that either. And just to round it
9 out, I don't believe I see J or --

10 MR. LUMLEY: J and K are separately answered.

11 MR. GRYZMALA: Well, if we can focus on F.

12 MR. LUMLEY: I think my understanding, if we
13 look at the response to E through I, the last line, there's
14 a five letter whereon, in capitals, my understanding is that
15 that answers the type of facilities and capacity.

16 JUDGE MILLS: And you could be right. I saw
17 that, but I don't know what it means.

18 MR. LUMLEY: So if we have to clarify the
19 answer anyway, you know, I'll just ask them to say that
20 that's what they meant, I guess, or tell me I'm wrong. But
21 that's how I interpreted the answer. There's no point. I
22 don't think there's anybody here that can answer it
23 definitively. That was just my understanding.

24 MR. GRYZMALA: Well, your Honor, I'm not sure
25 I understand that either, because --

1 MR. LUMLEY: No. I'm saying, I'll have them
2 clarify --

3 MR. GRYZMALA: Okay.

4 MR. LUMLEY: -- the responses regarding the
5 type of facilities and capacity. I'm assuming that's what
6 they were trying to do, but I'll just tell them to make it
7 more clear.

8 MR. GRYZMALA: And I would -- your Honor, if I
9 might, I think it's implicit in the question, but I would
10 like to ask for clarification on that, on this point. The
11 question reaches both self-provisioned transport facilities
12 and wholesale facilities.

13 I don't know that the answer -- I don't
14 believe the answer is at all going to be as useful unless
15 it's identified which kind of provisioning it responds to,
16 self-provisioned facilities or those which are used as well
17 for wholesale to third parties or perhaps exclusively for
18 wholesale. There may be scenarios under which there's more
19 than one thing occurring.

20 MCI may have transport facility from an A to a
21 Z point, for example, that it uses only to provide retail
22 service to its own customers. They may have a transport
23 facility, as some other responses that we have seen suggest,
24 that are wholesale or provided to third parties.

25 MR. LUMLEY: If you look at the response to

1 4-02, I think it eliminates that concern.

2 JUDGE MILLS: Yeah, I thought we'd already
3 gone through that.

4 MR. GRYZMALA: Okay: I apologize. I frankly
5 got MCI confused with this one.

6 JUDGE MILLS: Yeah. We may get into that some
7 more.

8 MR. LUMLEY: So on 419 my understanding is I'm
9 going to ask them to restate their answer to clarify the
10 connection of locations and the facilities connected to
11 them.

12 JUDGE MILLS: Right.

13 MR. LUMLEY: All right. The next one I show
14 still open is 5-05; is that correct?

15 JUDGE MILLS: Did we talk about 4-07? Wasn't
16 there something still outstanding with 4-07?

17 MR. LUMLEY: I show that's an MCI question
18 only.

19 JUDGE MILLS: Okay. Sorry.

20 MR. LUMLEY: Is that right, we're on 5-05?

21 MR. GRYZMALA: Yes, that's correct.

22 M4. LUMLEY: On December 15th, we did cross
23 reference -- sorry -- a response to 4-06, which at that time
24 was indicating we were still looking, but on January 9 we
25 did respond to that. So that cross reference is now

1 complete, and we're going to be clarifying that response
2 based on our discussions this morning, but that should take
3 care of that part of it.

4 With regard to -- so that's A, D and E. B and
5 C were answered directly. F through H, XO has indicated
6 that it doesn't have that information, although I would
7 point out that H is a question about wholesale facilities,
8 and the prior answer should eliminate that one.

9 So I'm kind of at a loss what to do. As I
10 understand it, my client has answered fully subject to this
11 clarification we've agreed to make to the extent that it
12 can.

13 MR. GRYZMALA: Your Honor, at the time the
14 motion was prepared, I believe Mr. Lumley is correct that
15 certain of these subparts referred to a response that was
16 provided relative to 4-06, which at the time was not made.
17 There was a later point at which there was a clarification
18 of 4-06, I assume, that Mr. Lumley's saying here that that
19 fairly new updates that newer response. That would resolve
20 issues A, B, C and D.

21 E, I need a little bit of help. I'm not clear
22 on how 4-06 resolves -- let me restate it. I'm not sure how
23 the answer to E, which refers us to 4-06, resolves E,
24 because this question as I read it is directed to loop
25 deployments. The question is not confined to the later

1 updated response in 4-06 that there is no transport.

2 So to be blunt, to the extent that XO
3 self-deploys it's own transport facilities, E would be a
4 question to address. In other words, we've carved out
5 wholesale, if you will, but the question is directed to loop
6 deployment, not just wholesale, if you will, but
7 self-provision, loops that XO provides for itself.

8 And that question simply ask, with regard to
9 those loops, identify from point to point what other units
10 can be reached, can you reach the entire location, can you
11 not, what amount of spare capacity do you have to that
12 location, and what amount of cross-connected termination
13 capacity is available at the collocation spot.

14 So at least with regard to self-provision
15 information, self-provision loops, I am still concluding
16 that E through H is open.

17 And I would only point out one last thing, and
18 I apologize, I didn't address this. The response from F
19 through H is XO does not maintain responsive data. I would
20 like to delve into that a bit more, because it is
21 counterintuitive that XO would not know if it's a
22 point-to-point service or in a --

23 MR. LUMLEY: That's E.

24 MR. GRYZMALA: I'm sorry. Whether they have
25 access to the location, how much spare capacity, how much

1 spare DS1 or DS3 do you have going to that customer
2 location. F, G and H, it's completely counterintuitive that
3 a carrier would not maintain data about loops it deploys, of
4 the type that the question asks for.

5 JUDGE MILLS: And you made that point in the
6 motion to compel. Let's go with -- E is a slightly
7 different objection. It seems to me that what you're saying
8 there is that even after XO responded to 4-06, 4-06 really
9 doesn't deal with all of E, because you're asking about
10 self-deployed loops as well.

11 MR. LUMLEY: I would have to assume from their
12 answer that they didn't read it that way. It's following a
13 series of questions about wholesale. I would assume that
14 they read it as a continuance of that series of questions.
15 So I can certainly ask them to look at that again. I can
16 ask them to look at F through H again as well because they
17 may -- I don't know. They may have read that the same way.

18 But whether it's counterintuitive or not, I
19 don't know. I do think it's fairly intuitive that they know
20 whether or not they have information. If they say they
21 don't have it, they probably don't have it. But I can ask
22 them to reconsider that.

23 JUDGE MILLS: Well, I think -- and I'm going
24 to skip over E for right now, because I think that's a
25 little different. At least in terms of F through H, the

1 question doesn't ask for it in any particular form. This
2 isn't like rate design for gas where you're saying give me
3 your billing determinants and 3460s and we don't keep it
4 that way, we keep it by quarters. They're just saying
5 general information.

6 And if the answer is we don't have that
7 information, whether that's counterintuitive or not, that's
8 an answer. But to say you don't have it in the form
9 requested when the question doesn't specify a particular
10 form I think is -- strikes me as nonresponsive and possibly
11 evasive.

12 MR. LUMLEY: Well, I'll just have them
13 reconsider these responses. My assumption is, looking at
14 how they responded to 4-06, that they interpreted all of
15 these as wholesale questions. So I'll have them reconsider
16 all of it.

17 JUDGE MILLS: Okay.

18 MR. GRYZMALA: That's a fair outcome, your
19 Honor, I think.

20 JUDGE MILLS: And I think, you know, sooner
21 rather than later. I think we need to get moving on this.
22 These have been outstanding for a while.

23 MR. LUMLEY: Right. The last one I show for
24 XO is 5-07. They responded on December the 29th with an
25 Excel spreadsheet response, and was that the page that

1 didn't scan right?

2 MR. GRYZMALA: Yes.

3 MR. LUMLEY: That was the page that
4 Mr. Gryzmala supplied to you. Now, one of their points is
5 customer names, and we specifically objected to providing
6 that information. The FCC process talks about specific
7 locations, and we've identified the location by address. We
8 don't believe our customer names had anything to do with it.
9 It could be another customer tomorrow. It doesn't change
10 anything. It's the location that matters. So that is an
11 objection that we're asking for a ruling on.

12 There was a couple subparts to this about VNH
13 coordinates, which again we objected to, and I don't
14 understand that that's really at issue. So I believe
15 they've tried to respond to this again in full, subject to
16 the objection about customer names.

17 JUDGE MILLS: Mr. Gryzmala, why do you need
18 the names?

19 MR. GRYZMALA: I don't have the testimony in
20 front of me, your Honor. I can recheck that. It occurs to
21 me that AT&T's witness that filed testimony on Monday
22 suggested that in the loop analysis it would not be
23 sufficient to view a customer location as a mere building.
24 Rather, that the analysis would have to entail each of the
25 customers within that building such that you presumably

1 would not have a lack of impairment for loops unless you had
2 access to all customers in the building.

3 Stated another way, it would not -- it would
4 not be the case, to my recollection of AT&T's testimony,
5 that if there was a loop provided for a specific customer on
6 a specific floor in a specific building, that that would
7 permit a conclusion that that deployment goes into the
8 analysis for showing that there is no impairment at that
9 building location. In other words, it's customer specific.

10 That's my recollection. It's been a
11 continuing question with regard to what is a customer
12 location. I gather that Mr. Lumley's view, if I understand
13 him properly, is that when the FCC talks in terms of a
14 customer location, it would be sufficient to show, to build
15 a non-impairment, a trigger analysis on the address of the
16 building. I'm not sure that was AT&T's view, which makes
17 discrete customers then become pertinent.

18 MR. LUMLEY: Well, but the analysis does
19 involve multiple unit buildings and whether or not you have
20 access to the entire building or not. But they have
21 specific questions about that, which are generic, they
22 aren't tell us everybody in the building, just tell us
23 whether or not you have that kind of access, and it's really
24 a duplication of the questions in 5-05, but it still doesn't
25 require the identification of the customer's name.

1 You know, I don't really see any distinction
2 to asking them to reconsidering these responses in addition
3 to 5-05 in terms of these generic questions about access to
4 the buildings. It's basically a duplicate question. May in
5 large part be why they read 5-05 as a wholesale question,
6 because these are all questions about deployed loops. So I
7 really think we're going to get to the same place anyway.

8 So maybe if we can just identify specifically
9 any additional parts. I mean, it seems to me they've
10 answered A, except for the customer name that we're
11 objecting to. I don't think B's at issue. C, the code is
12 identified. D again I don't think is at issue, and then
13 there's circuit information.

14 So if we're just talking about F and G --

15 MR. GRYZMALA: May I ask, if I might, your
16 Honor, I think we're all looking at the same single
17 document, single page. Are we to construe the circuit level
18 that's listed in the middle column as responsive to E,
19 Mr. Lumley, in other words the number of DS1 or DS3 circuits
20 serving that address?

21 MR. LUMLEY: That's my understanding. Why
22 don't we just do this: Why don't I have them clarify this
23 response so it's tied more specifically to the questions,
24 then just try to make it more understandable.

25 MR. GRYZMALA: But I do think --

1 MR. LUMLEY: If we could have a decision on
2 the customer name issue, I think that's the only sticking
3 point. Anything else is just trying to make sure they
4 understand our response.

5 JUDGE MILLS: I don't see -- I mean, we do
6 this throughout the PSC, not just with telephones. We try
7 to be very specifically careful about divulging customer
8 names. I can't see that that particular name of the
9 customer is necessary for the analysis that we're doing
10 here. My ruling is you don't have to provide the names.

11 That wasn't really a question that was brought
12 up in any detail in the motion to compel, but from what I've
13 heard this morning, I don't think there's any reason to
14 provide it.

15 MR. LUMLEY: And as to the rest, I'll just
16 have them go over it all again and try and clarify this
17 spreadsheet response, maybe with some explanatory text so
18 it's clear which comments are responding to which question,
19 that sort of thing. And if there's -- there's a couple
20 things that seem to be missing, but I think they're
21 basically the same thing we're going to be looking at in
22 5-05 anyway.

23 MR. GRYZMALA: Right. Your Honor, the only
24 thing I would add to that is, to our way of thinking, the
25 page that was provided us did not respond to items F through

1 K, and those are important items to address.

2 JUDGE MILLS: Now, other than this one sheet
3 that I got this morning, where would I look for the most
4 recent, most complete response to 5-07.

5 MR. LUMLEY: I think this is it.

6 JUDGE MILLS: Is there one on January 1?

7 MR. LUMLEY: No, I don't believe so. It's the
8 spreadsheet response. I believe that the answer to H is
9 implicit because nothing's identified, but we can clarify
10 that. I and K are questions about wholesale service that I
11 believe other answers have clarified, but we can restate
12 that here.

13 So I think the only other potential sticking
14 point is J, and there was an objection to providing retail
15 pricing, I think mostly because it's available in our
16 tariffs. I assume we can just refer them to those.

17 JUDGE MILLS: Okay.

18 MR. GRYZMALA: Yeah. Your Honor, on those
19 points, our thinking would be that if it's not responded to
20 in this document, then we would appreciate an answer. If
21 with respect to a specific subpart, for example, a wholesale
22 oriented subpart the answer is not applicable, that would be
23 sufficient.

24 With regard to the price, I would not want to
25 forego items J -- just a moment. I want to make sure this

1 is -- I think, if I recall, K would be moot, would it not,
2 Mr. Lumley, because --

3 MR. LUMLEY: I believe so.

4 JUDGE MILLS: It's essentially not applicable.

5 MR. LUMLEY: I think their approach was, once
6 they said something's not applicable, they just were
7 skipping over it when it kept coming up again and again.

8 MR. GRYZMALA: If we could just have those
9 updates and clarifications, I think that would be all.

10 MR. LUMLEY: I'll have them do that.

11 JUDGE MILLS: So then it's really just F and G
12 that don't seem to have much of a response on this
13 spreadsheet.

14 MR. LUMLEY: And those same questions are in
15 5-05, so we'll be clarifying that.

16 MR. GRYZMALA: May I ask what H -- you
17 mentioned F, G, your Honor. Would H have been disposed of
18 entirely, because it's one thing to say that XO doesn't
19 provide?

20 MR. LUMLEY: I'm going to have them clarify
21 that. My assumption is that because nothing's included in
22 the spreadsheet, that was the answer, but we can clarify
23 that.

24 MR. GRYZMALA: That's F, G and H?

25 MR. LUMLEY: Right.

1 That's all that I show that was at issue for
2 XO. And with regard to your point about the timeliness of
3 the response, if we want to talk about a specific deadline.

4 JUDGE MILLS: I would say a week at the most,
5 a week from today, because it looks as though we'll be -- by
6 the time you-all get back to St. Louis, it'll be close to
7 the end of the day, I have a feeling today.

8 MR. LUMLEY: So are we ready to turn to MCI?

9 MR. GRYZMALA: Yes.

10 JUDGE MILLS: Let's go off the record for
11 about five minutes

12 (A BREAK WAS TAKEN.)

13 JUDGE MILLS: We're back on the record. Okay.
14 Let's do the same drill for MCI. We'll just sort of go one
15 by one and point/counter point sort of fashion and see if we
16 can sort of work them out as we go along and maybe refer
17 back to one as we need to.

18 MR. LUMLEY: First one I show at issue, your
19 Honor, for MCI is 4-02. The question seeks to identify wire
20 centers where MCI's obtained transport facilities from a
21 third party in a wholesale arrangement, and I don't know if
22 Mr. Gryzmala's had a chance to review it, but they asked the
23 same question in their second set of DRs. DR 11, identify
24 all transport facilities in the SBC Missouri territory you
25 have obtained in whole or in part from a supplier other than

1 SBC Missouri. MCI responded to that, and it's not
2 confidential. The answer was none. So I think that would
3 dispose of 4-02 as well.

4 MR. GRYZMALA: I will accept that
5 representation, your Honor. Frankly, we have a multitude of
6 responses to a second set of DRs and I have not gone through
7 them all.

8 JUDGE MILLS: I don't think I have responses
9 to those.

10 MR. LUMLEY: You wouldn't have that, but if
11 either one of you want to look at it, I brought my copy.

12 MR. GRYZMALA: Actually, your Honor, I do
13 recall this yesterday.

14 MR. LUMLEY: The next one I show at issue is
15 4-04, and the current response is, subject to objection,
16 they're still searching for information.

17 Overall, I know they're having great
18 difficulty with any question that talks about transport
19 routes because their system does not identify things the way
20 the FCC did in terms of starting and ending points. It's
21 really more of a -- I don't even know how to describe it.
22 The way they referred it to me is it's like somebody asked
23 me which highway did you take to get here, and the answer
24 is, well, I took an airplane. That's the kind of struggle
25 they're having.

1 Additionally, they're having struggles because
2 they don't really ask people to tell them how they're using
3 facilities, and so they don't really know -- when a customer
4 who happens to be a carrier buys a facility from them, they
5 don't know that they're using it for retail purposes as
6 opposed to as an end user for its own purposes. These are
7 the kind of things they're struggling with.

8 And I really don't know what else to say other
9 than they're -- I know they're still trying to come up with
10 responses. I know they haven't stopped their efforts. I
11 don't know what else to do about it.

12 Do you want to go off the record for a second,
13 your Honor?

14 JUDGE MILLS: Yeah. We'll go off the record
15 for a few minutes.

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

17 JUDGE MILLS: Back on the record.

18 MR. GRYZMALA: Your Honor, I'm not entirely
19 sure how to respond, because I think as we walk through
20 these DRs and the responses, we will see multiple occasions
21 in which the responses that we are looking for information,
22 and as soon as we identify it we will update.

23 I can't answer the predicament that
24 Mr. Lumley's client has in responding. I can only tell you
25 that, with regard to 4-04, it asks for a list of wire

1 centers to which MCI has provided transport facilities to a
2 third party. One of the items that are front and central in
3 the FCC's order is whether there is impairment along a
4 particular transfer route -- transport route, whether due to
5 self-provisioning or to wholesale.

6 We have no other way of getting this
7 information than to ask the straightforward question of
8 providing, and others associated with is, is provide us a
9 list of those wire centers in Missouri in which you provide
10 transport facilities to a third party. That's where we
11 start, including the name of the provider.

12 If MCI, as I'm confident is the case,
13 wholesales transport to third parties -- and I say that
14 because, quite candidly, your Honor, other entities who have
15 provided us responses have identified WorldCom as a
16 wholesale provider. And I might add, if I recall properly,
17 that they have identified the locations at which WorldCom
18 has provided transport.

19 MR. LUMLEY: Who has, the other parties?

20 MR. GRYZMALA: I have --

21 MR. LUMLEY: I just want to understand.

22 MR. GRYZMALA: I understand. And I want to
23 caveat that, and I will say this, and I suppose it's okay to
24 read this. This is from Birch as one example.

25 MR. LUMLEY: I wouldn't know.

1 MR. GRYZMALA: Birch leases transmission
2 facilities that it claims are no longer defined as
3 transport. Birch maintains that these particular
4 transmission facility routes are irrelevant because they're
5 not considered to be transport, but yet they provide
6 those -- they identify WorldCom in their responses.

7 One can argue about whether or not they're
8 dedicated transport under the FCC's rules. The question is
9 simply directed to transport facilities. What facilities
10 does MCI have in the wire centers that they should identify
11 to us wherein they allow a third party to use those
12 facilities? There just really is no other more direct way
13 to answer or to ask the question.

14 JUDGE MILLS: And let me just make sure I'm
15 understanding where we are. The fullest response for MCI is
16 they're continuing to search for it?

17 MR. LUMLEY: Right.

18 JUDGE MILLS: But there's nothing more recent
19 that says found some, haven't found any?

20 MR. GRYZMALA: I didn't find any.

21 MR. LUMLEY: All I can do at this point is
22 indicate that you wanted responses updated no later than a
23 week from today, step up your efforts and either find it or,
24 instead of saying you're looking for it, tell us
25 specifically in an answer what the problem is. I don't know

1 what else to do.

2 JUDGE MILLS: Exactly. Just the fact that
3 you're looking for it isn't good enough. You need to say,
4 you know, we found this kind of stuff, we found that kind of
5 stuff, here's what we have that might help, here's what we
6 have that sort of relates to it and might get you there.
7 You need to provide something. This is fairly fundamental
8 stuff.

9 MR. LUMLEY: All right. I understand.

10 JUDGE MILLS: A week from today. Okay.

11 MR. LUMLEY: I think 4-06 would be in the same
12 situation.

13 JUDGE MILLS: How about 4-05?

14 MR. LUMLEY: I didn't show that as an issue.

15 MR. GRYZMALA: I don't either, your Honor.
16 Let me double check. If I may speak candidly, the motion is
17 not directed to 4-05. I would like to reach a resolution
18 among us if we can.

19 The reason why, your Honor, the motion was not
20 directed to 4-05 is because, if I recall, frankly, when we
21 talked among several lawyers, I think back on December 19,
22 there were some DRs that I identified on the phone. We
23 talked about them. I did not recall if 4-05 was among them,
24 but the fact remains, I don't want to have to come back on
25 the same issue, but the answer simply says, look, for the

1 wire centers that you provided in 4-04, tell us the amount
2 of capacity.

3 MR. LUMLEY: I think --

4 MR. GRYZMALA: So that if we could have an
5 answer to that, an update among us, an agreement, it's not
6 subject to the motion because I didn't raise it
7 specifically.

8 MR. LUMLEY: I think it's implicit that if --
9 we have a duty to continually update our responses under the
10 rules. So if we identify things in 4-04 that then would
11 trigger a response to 4-05, I think that's understood.

12 MR. GRYZMALA: Thank you.

13 JUDGE MILLS: 4-06, pretty much the same
14 thing?

15 MR. LUMLEY: Right. The next one I show,
16 then, is 4-08.

17 JUDGE MILLS: 4-07 was raised in the motion to
18 compel.

19 MR. LUMLEY: He withdrew that this morning.

20 JUDGE MILLS: You're right. Thank you. 4-08.

21 MR. LUMLEY: With regard to -- I see two parts
22 to this question. To the extent it asks about facilities
23 obtained from others, as I indicated in response to DR 11 is
24 that it doesn't do that. So there are no such facilities.
25 With regard to its own facilities, the response is that they

1 don't have the information.

2 JUDGE MILLS: So in terms of the wholesale or
3 resale, you don't do that anymore. In terms of the stuff
4 that you-all deploy, you don't maintain original cost
5 information. Is that the answer that you've given?

6 MR. LUMLEY: And my understanding is that in
7 their -- I don't have a total understanding, I'm sure, but
8 in their records, if somebody were to pour over it and say,
9 okay, at this location there's all these different pieces of
10 equipment, you could probably have an accountant pour over
11 the entire set of records and try and reassemble what the
12 cost is.

13 But they don't have the answer of I can go
14 here and find out what the cost is. It's just not kept that
15 way. And I don't know what would be involved in trying to
16 reassemble it, but my understanding is that they really just
17 can't do it.

18 I mean, part of the problem here, and I
19 understand where Southwestern Bell's coming from, they come
20 from a different set of reporting requirements, and so they
21 keep their books a certain way. MCI's not subject to those
22 requirements, doesn't keep its books that way. The
23 information is just not there.

24 JUDGE MILLS: Okay. Where would a full
25 response get us in terms of this docket, this case? Why do

1 you need to know the original cost and the installation
2 costs of these facilities?

3 MR. GRYZMALA: Your Honor, if nothing else, it
4 would be directly germane to the potential deployment
5 analysis. If I recall, there are a series of factors that
6 the Commission considers in determining whether carriers
7 have the opportunity to potentially deploy facilities, cost
8 being one -- actually several of them.

9 If I can just take a moment. Just as an
10 example, Rule 51.319(e)(2)(II), where neither trigger the
11 self-provisioning or the wholesale trigger is satisfied, the
12 state commission shall consider whether other evidence shows
13 the requesting carrier is not impaired without access to
14 unbundled dedicated DS3 transport along a particular route.
15 To make this determination, a state must consider the
16 following factors: The cost -- and one of them I'm seeing
17 here is, quote, the cost of equipment needed for
18 transmission.

19 It's directly germane. And to the extent that
20 transport is comprised, simply put, of fiber or cable and
21 the associated equipment on either or both ends, what
22 subject matter experts call optronics, those are the costs
23 that are relevant to a potential deployment case under the
24 transport rules of the FCC.

25 JUDGE MILLS: You think what they're looking

1 for there is historic cost?

2 MR. LUMLEY: And I believe that --

3 MR. GRYZMALA: That's a fair -- quite
4 candidly, your Honor, some of the responses I have seen from
5 other carriers are statements as to what the equipment costs
6 or statements as to what the optronics associated with the
7 cable typically cost. You know, for example, I'm just
8 trying to recall, the cost to install a DS3 facility
9 typically is X thousand dollars for my company, or the cost
10 to associate electronics associated with the fiber cable is,
11 generally speaking X amount for my company. These are the
12 costs we incur.

13 And in order to assess whether or not CLECs,
14 competitive carriers have an opportunity, meaningful
15 opportunity to be able to deploy transport, those are key
16 considerations. What are the costs? That's what this
17 question is in part germane to.

18 MR. LUMLEY: Well, I'm going to check, but I
19 don't believe the question asks for what would it cost you
20 to buy one today. I believe it was a historic cost
21 question. And we did object to the question as irrelevant,
22 but we nonetheless responded that we don't have the
23 information.

24 MR. GRYZMALA: And I don't know that it's
25 germane at this point, your Honor, to ask why that may no

1 longer be the case. Is that because of a record retention
2 requirement, the records were destroyed pursuant to a
3 recurring records destruction process and procedures we have
4 in force? Is it because this equipment was equipment
5 acquired from another company and we don't -- MCI does not
6 have this information?

7 There are multiple carriers involved here,
8 MCImetro Access transmission, WorldCom, Brooks, and it is
9 not entirely clear to me that there is all to be said. If
10 your Honor says that that is a sufficient answer, I will, of
11 course, accept that.

12 But given that this is pretty central
13 information to a potential deployment case, and I don't
14 disagree that if MCI has nothing more than historic costs,
15 then that's fair. I didn't ask for fair market value. We
16 didn't ask for fair market value. Neither did the Staff's
17 DR ask for fair market value. It asked for the cost.

18 JUDGE MILLS: The way I read it, it's asking
19 for information about specific facilities that are in place
20 that were put in place some time ago, obviously. I mean,
21 they're in place now. And you're asking for what it cost,
22 including installation.

23 And I guess I'm trying to get at how important
24 this is and how much of a burden it would be to reconstruct
25 the information, and it sounds as though it's going to be

1 quite laborious to reconstruct the historical cost for these
2 facilities, and I'm having a little difficulty finding --
3 figuring out exactly how the historical cost of already in
4 place facilities is really helping the inquiry.

5 I mean, it's one parameter. It gives you a
6 snapshot of what it cost then and you can perhaps
7 extrapolate to what it would cost in a similar location or
8 to do it now, but it certainly doesn't get you directly to
9 that answer by knowing the historical cost.

10 MR. GRYZMALA: I agree that it is a parameter,
11 because to the extent that the FCC refers to it, it would
12 seem to be more of a present sense. The FCC rule says that
13 we are to consider the following factors: The cost of
14 equipment needed for transmission, as well as installation
15 and other necessary costs involved in setting up services.

16 I don't disagree that historical information
17 may not be precise as of today's world. I don't disagree
18 with that. But it certainly would be relevant, it certainly
19 would be germane, and given that the FCC set the road map
20 for a potential deployment case, we believe that this is an
21 appropriate question.

22 JUDGE MILLS: I agree, and I would have no
23 problem if MCI said we don't want to give you that, I would
24 say you've got to, but that's not what they're saying.
25 They're saying, we don't have that. We could perhaps

1 laboriously reconstruct it, but we don't have it now.

2 And I don't -- I don't think it's close enough
3 to the final answer that making that kind of -- I mean,
4 assuming that it really is going to be that difficult that
5 you're going to have to pour through all those records and
6 try to recreate accounts, I don't think that that's going to
7 get you close enough to the present cost to make it worth
8 ordering them to do that.

9 MR. GRYZMALA: I'm wondering if there's
10 another way to approach it in terms of at least getting
11 something that would be germane, if we were not perhaps to
12 confine the response to those installations which have
13 occurred within the last particular time frame, a year or
14 two.

15 What I'm really -- what we're concerned with
16 in part is an argument that may emerge when the case
17 develops that CLECs are not as a practical matter able to
18 deploy their own transport because of the exorbitant,
19 outlandish costs involved, and that would be something we
20 would not want to encounter. We can't foreclose that it
21 will not happen. Certainly if that were the point to be
22 made, what costs that carrier has paid is right on the
23 money.

24 JUDGE MILLS: Certainly. I agree with that.

25 MR. LUMLEY: It seems to me that they -- you

1 know, it's all under the rubric of potential deployment, not
2 actual deployment, clearly looking at what would it cost you
3 to do it today because you haven't done it yet. If they
4 wanted to send us another DR, you know, that says, you know,
5 tell us if you're going to go out and put out a facility
6 today, what are your current rates from your suppliers,
7 that's a different question.

8 I assume that there has to be some kind of
9 engineering and planning department that can answer those
10 kind of questions so they make their decisions. But I
11 wouldn't want to have to respond within a week to a new
12 question if they submit a new question.

13 JUDGE MILLS: Well, that's also a different
14 kind of question, that's asking some planning guy to, you
15 know, give me an estimate on what it would cost today as
16 opposed to tell me what it cost yesterday and then after you
17 tell me what it's going to cost tomorrow I can compare that
18 and see which of those figures makes more sense.

19 How about the idea of limiting this to the
20 last year, would that -- would that data be available for
21 MCI?

22 MR. LUMLEY: I don't know the answer to that.

23 JUDGE MILLS: Why don't you look into that
24 and --

25 MR. GRZYMALA: If we could just say, for

1 example, during 2003, that would be sufficient for my
2 purposes, your Honor.

3 JUDGE MILLS: Okay.

4 MR. LUMLEY: Given that --

5 JUDGE MILLS: Also, I mean, the data is
6 probably fresher, maybe easier to get to, and it also limits
7 the number of instances that it would have to be recreated
8 if it had to be.

9 MR. LUMLEY: Right. I just don't want to
10 mislead anybody. I don't know the answer, by my guess
11 sitting here, given that they've been in bankruptcy for all
12 of 2003, I'm not optimistic that they're putting in new
13 facilities, but I can certainly ask.

14 JUDGE MILLS: Okay.

15 MR. GRYZMALA: We can always come back if
16 there's a continuing dispute, I suppose.

17 JUDGE MILLS: Try it that way first. I will
18 say this: If we get further down the road and MCI is trying
19 to raise the argument that cost is prohibitive, we can't
20 possibly deploy our own loops, I would look unfavorably at
21 you trying to sustain that argument without having provided
22 any of the underlying information in discovery. I don't
23 know if you're going to go there or not, but I think it
24 would be -- it would take a certain amount of chutzpah to
25 make that argument further down the road.

1 I think that's about as far as we're going to
2 get on that one.

3 MR. LUMLEY: I think we can take up a couple
4 at the same time now. If we look at 4-09, 4-10, 4-12 and
5 4-13, each of these questions seeks a legal conclusion, and
6 we've objected on that basis, and each of these questions in
7 one way or another says, tell us whether certain legal
8 standards in the FCC's rules have been met.

9 So we've objected because it calls for a legal
10 conclusion. Now, we've also indicated we're searching for
11 information. So we haven't totally refused to respond. But
12 I did indicate in an e-mail on January 5th to Mr. Gryzmala
13 that I -- based on what I was hearing, I did not anticipate
14 that there would be any response to these four questions.

15 I believe a number of my other clients, I know
16 they all raised the same objection because they did it at
17 the same time. A number of them in their response said, we
18 don't have anything, and that's satisfactory. I suppose we
19 can say that at this point. We haven't given -- I sent them
20 an e-mail saying I don't anticipate us having anything, but
21 I can make that more definitive.

22 JUDGE MILLS: Okay. Mr. Gryzmala, help me out
23 here. Doesn't 4-09, for example, assume that, well, in this
24 case MCI has investigated all this stuff?

25 MR. GRYZMALA: Well, not that it necessarily

1 has investigated, but whether it has information regarding
2 in the case of 4-09 do you have information with regard to
3 the deployment of your own transport facilities directed to,
4 in the case of the rule, and we do not agree that this calls
5 for a legal conclusion. The rules are written very plainly,
6 very specifically, very factually oriented. And in the case
7 of Part 2, provide information that you, MCI, are willing to
8 provide on a widely available basis dedicated DS3 transport
9 along that route. Do your facilities -- information
10 regarding whether your facilities on that route terminate in
11 a collocation arrangement at each end, et cetera.

12 Those are not questions that I think they
13 would have difficulty with. I think that they're
14 answerable. The FCC makes them squarely on point. And I
15 will allude once again to the prospect that if a carrier
16 such as MCI or another says that these conditions are not
17 met because of this, that or the other reason, then we have
18 an opportunity, we are entitled to go flush that out before
19 we hear it in the hearing room.

20 If by way of specific example a competing
21 program such as MCI agrees, yes, we deploy transport
22 facilities, but we're not willing to provide them on a -- to
23 others along that particular route --

24 MR. LUMLEY: But they've asked those questions
25 directly about our facilities.

1 MR. GRYZMALA: That's just one example, your
2 Honor.

3 MR. LUMLEY: This is, tell us whether you
4 believe there's any evidence out there that would help us
5 prove our case and meets these standards, and we do believe
6 it's calling for a legal -- it's one thing to say, tell
7 us -- answer this question factually. That's not what this
8 says. It says, tell us whether these standards have been
9 met.

10 JUDGE MILLS: That's what I was saying,
11 doesn't ever call for an investigation into the other
12 carriers. If the question is directed towards does MCI meet
13 any of these conditions, then that's a different question.
14 I'm not sure which way the question is being asked.

15 MR. GRYZMALA: I believe that's -- yes, sir.
16 I'm sorry. I believe that's the case. It can only apply to
17 the transport route of which MCI knows.

18 MR. LUMLEY: But they've already asked us
19 those questions directly. The factual question, do you off
20 it to others? I mean, they quote the language and direct it
21 to us in their other questions about our facilities.

22 MR. GRYZMALA: That's not true in all cases.
23 I don't know that I remember a question that are you
24 immediately willing to provide transport to others along
25 another route, or with respect to 4-10, what information do

1 you have with --

2 JUDGE MILLS: Let's not get to 4-10 yet.

3 MR. GRYZMALA: I'm sorry.

4 JUDGE MILLS: I'm still on 4-09. So the
5 intent in 4-09 was simply to have MCI answer these specific
6 questions with respect to MCI itself?

7 MR. GRYZMALA: Yes, sir.

8 JUDGE MILLS: And not to any other competing
9 carriers that they may have talked to?

10 MR. GRYZMALA: That's right.

11 JUDGE MILLS: And I think if you -- I think
12 it's relatively easy to say yes or no to each of those. In
13 fact, Mr. Lumley may be right. You probably have said yes
14 or no to those in other questions.

15 MR. GRYZMALA: And I will just add, your
16 Honor, if it wasn't explicit or even implicit, I note the
17 language in 4-09 that is directed to information regarding
18 the conditions along any route in your service areas, and I
19 take that to mean MCI's routes.

20 MR. LUMLEY: So we're going to be limiting
21 these questions to ourselves, our own facilities?

22 MR. GRYZMALA: Certainly for 4-09. I need to
23 go back and look at the others.

24 MR. LUMLEY: I think they're all the same.

25 MR. GRYZMALA: Well, we're handling them one

1 by one. I would agree with that, with regard to 4-10, your
2 Honor, if you wanted to move to that one as well.

3 JUDGE MILLS: Well, with regard to 4-09, to
4 the extent that -- I don't agree that it calls for a legal
5 conclusion, and I think if you look at -- if you look at the
6 subparts that SBC cited in its motion to compel, I think you
7 can answer those either yes, we do, no, we don't, see
8 response to 4-06 or 4-07. I mean, do you see a problem with
9 that?

10 MR. LUMLEY: Not as to our own facilities.

11 JUDGE MILLS: Right. That's what I'm talking,
12 just strictly for your own facilities.

13 Okay. 4-10.

14 MR. LUMLEY: I think it's the same.

15 JUDGE MILLS: Uh-huh.

16 MR. LUMLEY: Different rule recitation.

17 JUDGE MILLS: Yeah. Again, this is -- this
18 one also seems to assume that there's some sort of
19 investigation, that you've looked into what it would cost to
20 provide service along this route, whether the terrain is
21 hilly or not.

22 I don't -- I don't think that the question
23 calls for a legal conclusion. It may be that the answer is
24 we don't know, we're -- given the situation we're in, we're
25 not really out there looking for new routes that we're going

1 to deploy on, or we are or we have and we've looked at this
2 and these are the factors. As long as it's specifically
3 limited to MCI, I don't see any reason why you can't answer
4 it.

5 MR. LUMLEY: Going in order, 4-11's a little
6 different. And basically the status is that they're
7 continuing to see if they have any such information, but
8 this is information about others. Right now, as far as I
9 know, they don't have any. They know that I'm here.
10 They're working to update these if they could.

11 So I don't know what else to do with that. I
12 can give them a definitive response that as of now we don't
13 have any information that will -- that at least helps them
14 feel like we've been more clear.

15 JUDGE MILLS: Yeah. This one is a little
16 different. This one, pretty clearly it's asking about what
17 other providers are doing and what information you have
18 about them. You know, most of the ones where it says we
19 don't -- if it says something like we don't have information
20 in the form requested, that sort of raises my antenna a
21 little bit, but this one, if you don't have it you don't
22 have it.

23 You've been out there looking for it for
24 specific business reasons or you haven't been. If you
25 haven't been looking to see what other carriers are out

1 there doing, then it doesn't -- it doesn't raise any
2 problems with me to -- it doesn't seem unreasonable that you
3 wouldn't have this information. That's pretty much what the
4 answer says, that as far as you know you don't have any
5 response, but if you do, you'll keep looking for it and
6 bring it forward.

7 MR. GRYZMALA: And your Honor, that may be the
8 case. I haven't checked the actual document, but reading
9 from my motion, I think the last definitive response is we
10 were continuing to search. If that results in a statement
11 that despite a new -- despite a diligent search we have been
12 unable to identify any information responsive to this,
13 that's one thing.

14 It does occur that for business reasons it
15 could easily be imagined that that would be a worthwhile
16 endeavor to look into, where in the event that MCI provides
17 certain transport routes, what information does it have
18 about its competitors who are also on those routes or
19 elsewhere, that it's exploring that. I think we've
20 recognized that.

21 JUDGE MILLS: And just as a form, that's
22 probably a better way to phrase the response, not that we're
23 looking for it, that we have looked, we haven't found any,
24 but we'll continue to look some more, which is exactly what
25 he said. That's sort of the way I read it.

1 MR. LUMLEY: Right. 4-12 I think is back in
2 the same category as 4-09 and 4-10, and 4-13 would be the
3 same.

4 MR. GRYZMALA: Right. I would agree, your
5 Honor. 4-12 and 4-13 would be limited to MCI facilities.

6 JUDGE MILLS: And again, like 4-09 and 4-10, I
7 think once you limit it to MCI, you ought to be able to
8 answer those relatively quickly, too.

9 MR. LUMLEY: I show the next one as 4-18. I
10 know that our -- in our additional responses of December 15
11 it indicates we're still searching. I guess this is just
12 from a lack of coordination about these different questions.
13 I apologize for that.

14 But in response to the exact same question
15 that Staff posed, which was the question Data Request 25-15
16 subquestion 18, the exact same question, which we provided
17 to Southwestern Bell. It was answered that there are none.

18 MR. GRYZMALA: May I have a moment, your
19 Honor?

20 JUDGE MILLS: Uh-huh.

21 MR. LUMLEY: And I wasn't even aware of this
22 until last night going through these things. Just something
23 that slipped through the cracks.

24 MR. GRYZMALA: I'm sorry. I just need a
25 little bit more help. I'm not finding that Staff response.

1 That resolves my concern, your Honor. The
2 answer is none.

3 JUDGE MILLS: That makes the second part of
4 4-18 nonapplicable. Okay.

5 MR. LUMLEY: With regard to 4-19, in our -- in
6 the December 15th response, proprietary spreadsheet
7 information was provided as Attachment C. Goes into 14
8 different locations with 13 columns of information, and
9 otherwise the response indicates that the data is not
10 maintained. So we believe we've responded as fully as we
11 can.

12 JUDGE MILLS: Okay. So this is one of the
13 ones, sort of like we talked about with XO, where only one
14 end of the route is identified, is that correct, one
15 end of the -- I'm sorry. Only one end of the routes that
16 SBC seeks information about is identified?

17 MR. GRYZMALA: I think that's --

18 JUDGE MILLS: That's how I read the motion.

19 MR. GRYZMALA: I think that's a fair
20 statement, your Honor. We have a CLLI code. We have a
21 collo address, city, but it doesn't address the remainder of
22 the same issues we talked about with XO identifying, so to
23 speak, the Z CLLI code, if you will, the other end of the
24 route. That's one example for 4-19.

25 JUDGE MILLS: Okay. I take it the information

1 in Attachment C is highly confidential?

2 MR. LUMLEY: Proprietary, yes.

3 JUDGE MILLS: I'm not going to talk about any
4 of the detail. Attachment C is -- is that the entire six or
5 seven pages, is that all Attachment C or is it the one
6 sheet?

7 MR. LUMLEY: No. It's one page. Looks like
8 this (indicating). Yes. And the next one is another
9 exhibit.

10 JUDGE MILLS: Okay.

11 MR. LUMLEY: I think actually it goes in -- I
12 think it's much more closely tied to the question than the
13 XO spreadsheet was. For example, it specifically answers
14 questions about spare capacity with a column labeled as
15 such.

16 It seems to me that the only clarification in
17 order would be the connection, which I suspect is the same
18 answer but can't definitively state that.

19 MR. GRYZMALA: I don't know what the response
20 would be, your Honor, if you look at it through a different
21 lens, because I think we heard suggestion to the effect
22 that, with regard to XO, it may be that if you line up these
23 various COs and run a permutation, XO may have meant to say
24 these are their routes. And it may be that this would be
25 the same approach here. Whether it yields the same or

1 different information I don't know.

2 There are substantially more COs in which MCI
3 is collocated, and if the forthcoming answer be in the form
4 that we talked about before, a permutation to the effect
5 that each of these central office CLLI codes has transport
6 to or from another or each of the other CLLI codes, yes,
7 then those questions may or may not be the same in all
8 respects. I don't know. But I don't know that without
9 getting that restated information.

10 MR. LUMLEY: I'll have them go over this with
11 the same intent as XO. I think in large part they're much
12 closer to the question than XO's spreadsheet, but with the
13 same intent of clarifying.

14 JUDGE MILLS: And if that is the answer that
15 each of the central offices is connected to each of the
16 others, then I don't see that there's any information --

17 MR. LUMLEY: Right.

18 JUDGE MILLS: -- about how they're connected
19 essentially, which I think you had with XO, at least
20 something that appeared to be.

21 MR. GRYZMALA: That's true.

22 MR. LUMLEY: There is a -- there's two columns
23 about capacity, the two farthest to the right.

24 MR. GRYZMALA: And it may be --

25 JUDGE MILLS: And those columns respond to E

1 and F?

2 MR. LUMLEY: I believe so. Again, I'll just
3 have them tie these things up directly so there's no
4 ambiguity about it.

5 MR. GRYZMALA: I don't know if, for example,
6 the one, the first CO, its connection to the seventh has the
7 same actual and spare capacity as its connection to the
8 eighth, if you will. We would envision additional line
9 entries that would capture routes, and then it may or may
10 not be that the additional columns remain the same.

11 MR. LUMLEY: Well, I suspect, as was stated in
12 the XO -- I don't know for sure. We'll get the
13 clarification. But the XO answer indicated that there was
14 an intermediate point. So I'll just have them clarify it.
15 It's not a matter of objection, so we'll just try and answer
16 more closely to the question.

17 JUDGE MILLS: And I'm not -- Mr. Gryzmala, are
18 you looking for something that's similar to the final column
19 on Attachment C with respect to each permutation, each
20 combination, each possible combination of the two central
21 offices listed in the first column?

22 MR. GRYZMALA: I think so. Let me develop
23 that a bit, because --

24 JUDGE MILLS: If you are, I think there's 13
25 central offices identified. If you look at all the

1 permutations, that would be 13 squared, 169. That's a big
2 spreadsheet.

3 MR. LUMLEY: It's actually more than that. 13
4 times 12 times 11 times 10, go all the way down, if I
5 remember my college algebra, which I don't want to remember,
6 so stop asking that.

7 JUDGE MILLS: At any rate, it's going to be a
8 much bigger spreadsheet than this. I'm just trying to get
9 an idea if that's the level of detail that you think you
10 need.

11 MR. LUMLEY: That was my point, that I suspect
12 there's an intermediate point. So it's a question of
13 whichever one want, do you plug the two together. I don't
14 know for sure. I understand what they're asking for.

15 MR. GRYZMALA: We don't have any alternative,
16 your Honor, because of the FCC's route-specific
17 requirements. So when we get into that permutation, it's
18 occurred that it could be difficult. If in the sense -- and
19 I'm not a network subject matter expert, but if to the
20 extent that each of these are routed to each other by means
21 of a single switch, for example, then it would seem to me
22 that these remaining columns are going to be fairly easily
23 answerable because the capacity is the capacity.

24 MR. LUMLEY: That's what I was trying to say,
25 but I'm speculating.

1 MR. GRYZMALA: And the usage is the usage, and
2 the type is the type of the equipment and that sort of
3 thing.

4 MR. LUMLEY: I assume we can clarify this
5 further.

6 MR. GRYZMALA: Our principal emphasis is to
7 identify each ends of the route, CLLI codes involved for
8 each end of the route, and then addressing the question with
9 that screen.

10 JUDGE MILLS: Okay.

11 MR. LUMLEY: Next one I show is 5-01, and I'm
12 not sure what the issue is. The question is, state whether
13 your company has deployed DS1, DS3 and dark fiber loops.
14 The answer is, MCI states that it has deployed DS1, DS3 and
15 dark fiber in the state of Missouri. So we feel we've fully
16 responded to the question.

17 MR. GRYZMALA: Your Honor, this may just be a
18 point of clarification that we would request of MCI. The
19 question was directed to loops, and the question should be
20 responded to in terms of loops.

21 I don't -- I mean, I think we fairly well
22 agree or have indicated that our understanding of the DR
23 responses is that MCI provides transport. I don't know that
24 that is what this is referring to. A loop is a loop. It is
25 not transport. It is to a customer location.

1 JUDGE MILLS: So if the answer was to be
2 modified saying that MCI states it has deployed DS1, DS3 and
3 dark fiber loops in the state of Missouri, that would be
4 satisfactory?

5 MR. GRYZMALA: That's right.

6 MR. LUMLEY: We can do it, but if you look at
7 our response to 5-03, we give all the detail about our DS1,
8 DS3 and dark fiber loops. I understand the word's missing,
9 but I don't really think there's any misunderstanding
10 because of that. But we can add the word.

11 MR. GRYZMALA: Your Honor, I just brought it
12 up as a point of clarification. I would not come here with
13 that single point.

14 MR. LUMLEY: I understand.

15 5-03 is the next one. We provided a
16 proprietary response, Exhibit F, which is, if I remember
17 right, fairly substantial. It's three pages of very small
18 print with, and I'm not going to count them, but something
19 on the order of 25 lines of information per page.

20 JUDGE MILLS: This is the Attachment F?

21 MR. LUMLEY: Correct. And then in our
22 response of January 9th we provided additional
23 clarification, on Attachment F, the far right, there's a
24 service code with some codes. At the bottom -- or at the
25 end of the last page of the exhibit, the codes are

1 explained. But then in our supplemental response to 5-07 we
2 provided a narrative, additional explanation of what that
3 meant in terms of the kinds of facilities available at these
4 sites.

5 So with that, with the explanation on
6 January 9th, and again it was in 5-07, not 5-03, but it's
7 explaining Attachment F. We feel we responded to the extent
8 possible and have indicated we don't have any other
9 information.

10 MR. GRYZMALA: Your Honor --

11 JUDGE MILLS: Hold on just a second. I want
12 to make sure I understand what you just said. You're saying
13 that in addition to Attachment F, the January 9th response
14 to 5-07 --

15 MR. GRYZMALA: Well, that's what I was going
16 to point out.

17 JUDGE MILLS: -- contains more information?

18 MR. GRYZMALA: 5-03 is what we're on now, and
19 I think your Honor will find the same approaches on 5-05 and
20 5-07, if I'm right, Mr. Lumley. Each of these three DRs are
21 still remaining to be discussed, and each turn to Exhibit --
22 or Attachment F.

23 JUDGE MILLS: The reason I'm asking about this
24 is I'm afraid I may be looking at the wrong date response,
25 because I don't see anything in response to 5-07 that really

1 provides any of the additional information.

2 MR. LUMLEY: Are you looking at the
3 January 9th?

4 JUDGE MILLS: That's what I'm wondering. I
5 may not be, no. I bet I'm not.

6 MR. GRYZMALA: It should be page 59 if your
7 pages showed up.

8 MR. LUMLEY: So there we've given a narrative
9 response to explanation of these codes and the kind of
10 facilities that would be there, and further referred them to
11 a website for additional information and indicated that's
12 all we've got.

13 MR. GRYZMALA: Your Honor, let me -- let me
14 just go back to I think the one that we were on because I'm
15 trying to work this out. I think that the point for MCI's
16 purposes is that the attachment is all we have, and there's
17 nothing more that we're prepared to provide.

18 And if you look at 5-03, the first thing --
19 and again remember, the question was originally we just
20 passed this bridge, which is one of the reasons why I wanted
21 to cross this bridge on 5-05, clarifying we provide loops.
22 Well, when you get to 5-03 which was referred to and we
23 discussed that, the question again is, for each of -- the
24 question then becomes, for each DS1 or DS3 loop you've
25 deployed, tell us if you own it or you have a long-term

1 ten-year ERU, equal right of use, in other words, you have
2 some long-term expectation to have it.

3 When you look at the attachment, it doesn't
4 identify specifically for each of these addresses, and these
5 I take it are customer locations, where MCI's customer
6 locations are situated by address, city, zip and state. ,
7 what kind of loop we're talking about. Now, I guess the
8 only remaining information which is left to respond to the
9 rest of these DRs, 5-03, 5 and 7, is confined to the service
10 code. That's all that there is apart from the street
11 address, the city, the street or the state and zip.

12 So we're left to glean the rest from the
13 service codes. Now, the service codes tell us that F1, I
14 think that's FI, means up to three DS3 capacity for any
15 customer. And I -- you know, frankly, as a preliminary
16 matter, not all of these buildings even have an FI code
17 populated in them at all. So there's no indication as to
18 each of these locations, is there DS1 or DS3.

19 And I don't know what it means in the answer
20 when it says at page 59, FI means up to DS3 capacity for any
21 customer and there should be dark fiber. I don't know what
22 that means. Does that mean there is or isn't there. Is
23 there spare capacity or isn't there?

24 All I'm left to suggest is that with regard to
25 5-03, 5-05 on 5-7, and we can go into the details, the only

1 thing that responds on Attachment F to those specific and
2 important DRs, those are very important DRs, especially 5-05
3 and 5-07, is the service codes, and there are four service
4 codes in total if you look at the end of Attachment F.

5 And that's all there is, and I just don't
6 believe that that's responsive. Frankly, there are a fair
7 number of entries that --

8 JUDGE MILLS: Don't have any code.

9 MR. GRYZMALA: -- have nothing. So what does
10 that mean other than it's not an eligible address for
11 consideration by the Commission. We can go through each of
12 them. I just believe that the response should be to address
13 these locations and identify the information requested.

14 MR. LUMLEY: Well, all I can do is ask them to
15 clarify their response, be more direct in terms of the
16 subparts. I mean, they've indicated this is all the
17 information they've got, but I certainly understand it could
18 be made more clear, and I'll get more specific with them
19 about these subparts.

20 I think in large part a number of these
21 subparts have been answered in other questions where the
22 answer was not applicable, but that again can be clarified
23 here just so there's no misunderstanding. I don't know what
24 else to do.

25 JUDGE MILLS: I guess I'm -- I'm having a

1 little trouble figuring out exactly what the -- how much
2 information you really can get out of those codes. I take
3 it anything that has a code CR, MCI is saying the rest of
4 the questions really aren't relevant?

5 MR. LUMLEY: Right.

6 MR. GRYZMALA: And, your Honor, I candidly
7 don't understand that. I don't accept the concept, the
8 proposition that capacity is not relevant. I'm not entirely
9 sure what that means in the way it's couched. We really --
10 these DRs, to my way of thinking, were generated with a view
11 towards fine tuning questions in accordance with what the
12 FCC requires.

13 And we do need to have -- I would suspect that
14 the answer isn't mere clarification, but it should be a
15 deeper dig and specific responses to each of the DRs. Do
16 you own or have a long-term IRU on the facility? I
17 appreciate that there are a goodly number of buildings here,
18 but that's something that is beyond my control. These are
19 not SBC's facilities. They're MCI's.

20 MR. LUMLEY: Like I said, all I can do is ask
21 them to be more specific.

22 MR. GRYZMALA: And I would urge just one last
23 time, your Honor, how critical this information is
24 particularly for 5-05 and 5-07 and, again, how mindful we
25 are that when the day comes to have a hearing and we go

1 through these customer locations or go through the customer
2 location analysis in the loop impairment case, we need to
3 be -- we need to have full and complete, and I emphasis full
4 and complete information regarding each of these locations.
5 And that's what these set of three DRs I think we're talking
6 about is meant to be directed to. So I agree.

7 MR. LUMLEY: I think that leaves us with 5-04.

8 MR. GRYZMALA: Your Honor, I would only ask
9 once again, is there anything more you would like of SBC to
10 discuss with regard to 5-03, 5-05 and 5-07? I just want to
11 emphasize how important these are.

12 JUDGE MILLS: Exactly. I'm not ready to move
13 off of those yet. I'm still struggling with them. And I
14 guess I'm not sure -- well, and maybe the only way we'll
15 find out is for MCI to clarify and see how much more
16 detailed the clarification gets.

17 But frankly, it seems to me that if -- I mean,
18 if you just got all of these grouped into four different
19 codes -- well, five if you count no response -- I'm not sure
20 that further clarification of exactly what the code means is
21 really going to get to the information sought.

22 MR. LUMLEY: That's not what I'm suggesting.
23 I'm suggesting tying the answer specifically to their
24 subparts in the way that we discussed with XO.

25 JUDGE MILLS: And I think that would work if

1 the answer is -- if you tie it to it and add more
2 information. If you tie it to it and say, well, here's what
3 FN means and here's what FI means and if that's not enough
4 information for you we don't have any more, I'm not sure
5 that's going to do it.

6 MR. LUMLEY: No. I understand.

7 JUDGE MILLS: I think on those three at least
8 you need -- you need more detail that's responsive to the
9 subparts.

10 MR. LUMLEY: Right. I understand.

11 MR. GRYZMALA: I believe that would leave
12 5-04.

13 MR. LUMLEY: 5-04's, I guess, similar to some
14 of the other ones where we said we're still searching. They
15 did give a partial response, but as we -- as we determined
16 with questions like 4-04 and 4-05, you know, we'll complete
17 our search, tell them what has been found and that that's
18 all there is basically.

19 MR. GRYZMALA: My only comment there, your
20 Honor --

21 JUDGE MILLS: Hang on just a second. I'm
22 catching up on the latest response.

23 Okay. Mr. Gryzmala, go ahead.

24 MR. GRYZMALA: I don't disagree with
25 Mr. Lumley's general approach, but we would emphasize again,

1 this is very important, too, because the question simply
2 asks, for dark fiber you deploy, tell us whether you own it
3 or you have a long-term right of use to it, ten years. That
4 is information which maybe preliminarily MCI might have
5 thought that it does not maintain, but certainly a renewed
6 effort, particularly when the question is whether you own
7 this or not, one would think that would be an answer that
8 could be available.

9 JUDGE MILLS: And how much -- I mean, the last
10 response says they own the vast majority of it.

11 MR. GRYZMALA: This is true, but that won't --
12 I'm sorry.

13 JUDGE MILLS: I was just asking, how much more
14 detail do you need than that?

15 MR. GRYZMALA: Candidly, your Honor, the kind
16 of detail I would like would be an assurance that when a
17 case is sought to be made out on a particular customer
18 location involving the self-provisioned or wholesale loops,
19 that we don't get a response that MCI doesn't own that loop
20 or it doesn't have an indefeasible right of use.

21 That's a big concern. We're sort of hanging
22 out there under the thinking that, well, MCI owns most of
23 it, but we're talking about specific locations. What are we
24 going to encounter in the hearing room? Has SBC made out
25 its case? I don't want to get into the burden of proof

1 here. That's not -- this is maybe not the time.

2 But the point, I think, is that with regard to
3 a customer particular location, does MCI own that loop or
4 does it not? And I think from the FCC's perspective, even
5 if you don't own it, if you can lock it up for ten years
6 under an infeasible right of use, you effectively own it.

7 I think we need to know that, and I think MCI
8 knows that or could engage in a diligent search to identify
9 what some might think is information that most could easily
10 obtain.

11 JUDGE MILLS: And, Mr. Lumley, what's your
12 response? I mean, it says you're continuing to search for
13 it, but what's the likelihood that that's going to be
14 productive?

15 MR. LUMLEY: I don't know the answer to that.
16 I think, you know, as you know, this is a national case, and
17 I suspect by saying we have to respond in a week, I think it
18 moves to the top of the pile.

19 JUDGE MILLS: Then you have to respond within
20 a week.

21 MR. LUMLEY: We've already decided that.

22 JUDGE MILLS: Okay. Because I'm not -- I'm
23 dis-- I have difficulty disagreeing with Mr. Gryzmala's
24 contention that this is the kind of information that is in
25 there in the company somewhere and should not be that hard

1 to surface if someone was really trying hard.

2 MR. LUMLEY: I understand the assumption.

3 JUDGE MILLS: Okay. I think we've touched on
4 all of them and gotten at least a plan to go forward in the
5 near term on a response to them. Is that correct? Have we
6 missed any?

7 MR. LUMLEY: I don't believe so.

8 MR. GRYZMALA: I think we're -- I think we're
9 fine, your Honor. I will say this: I hope and assume that
10 MCI will engage in a diligent search for some of these
11 items. It's critical to understand that the loop and
12 transport case in many respects is different than other
13 cases, perhaps even a switching case. A good portion of
14 that case depends upon what competitive local exchange
15 carriers know, and SBC does not know where loops are, where
16 transport are.

17 And we all are working under a very difficult
18 burden. I agree, Mr. Lumley I will say on the record is
19 working hard from my perspective. My issue is not with Mr.
20 Lumley in any means. But I think it should be impressed
21 upon MCI that a strong, diligent top-of-the-pile search is
22 needed because Missouri, I believe, is one of the earlier
23 states, if I am correct, that is moving forward in the
24 southwest area. We've already filed our direct, and if
25 we're not at the front we're right near the front of those

1 states, and it's important. This information's important.

2 JUDGE MILLS: And I think Mr. Lumley has said
3 he understands that, and he will do his best to impress that
4 upon his client.

5 And for all of the ones we talked about --
6 well, the ones that we talked about and said that, there'll
7 be additional responses in a week. And if the additional
8 response is simply we looked for a week, we didn't find it,
9 then I expect to hear back, hear that back from one or both
10 of you.

11 Okay. Anything further?

12 MR. LUMLEY: No, sir.

13 MR. GRYZMALA: Thank you, your Honor, for
14 taking the time.

15 JUDGE MILLS: This is a relatively new model
16 for discovery disputes, and I think it's much more
17 productive than file some paper, wait ten days, file some
18 paper, file some paper. I think it works better for me to
19 be able to sit here and ask you questions and figure out
20 where we are. I think it's gone well.

21 If there's nothing further, we're off the
22 record.

23 WHEREUPON, the oral arguments were concluded.

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