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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

May 17, 2000
Jefferson City, Missouri
Volume 10

In the Matter of an Investigation)
for the Purpose of Clarifying and)
Determining Certain Aspects)
Surrounding the Provisioning of) Case No. TO-99-483
Metropolitan Calling Area Service)
After the Passage and)
Implementation of the)
Telecommunications Act of 1996.)

NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.

SHEILA LUMPE, Chair,
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

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2 JUDGE DIPPELL: Let's go ahead and go on the
3 record.

4 We ended yesterday with Commissioner
5 Drainer's questions for Mr. Kohly, and she was going
6 to continue that.

7 MATTHEW KOHLY testified as follows:

8 QUESTIONS BY COMMISSIONER DRAINER:

9 Q. Good morning, Mr. Kohly.

10 A. Good morning.

11 Q. How are you this morning?

12 A. Wonderful.

13 Q. Well, that's great.

14 Okay. I need you to help me with a few
15 things here. First, though, I want to go back to your
16 GT-- and I guess it would be a GTE/TCG interconnection
17 agreement.

18 A. There is a GTE/AT&T agreement, and there's a
19 TCG/GTE agreement.

20 Q. All right. Well, do you know any more about
21 those agreements than you did yesterday afternoon?

22 A. No, I do not.

23 Q. Well, then I want you to clarify for me what
24 you do know. How is the compensation arrangement set
25 up in those agreements with respect to MCA?

1 A. I do not know specifically how the
2 compensation pertains to the MCA. My recollection is
3 that for local, exchange of local traffic, the
4 arbitration decision called for per minute
5 compensation, but I believe the parties have agreed to
6 a bill and keep arrangement.

7 Q. Stop. But that's not part of the
8 interconnection agreement, is it?

9 A. That I believe is in the interconnection
10 agreement.

11 Q. The bill and keep?

12 A. I believe so. And that is for when we are
13 directly interconnected or competing in GTE territory,
14 which we are not at this time. So that agreement has
15 not been operationalized.

16 Q. Okay. But would that be if you had
17 facilities, you mean, if you were direct with your own
18 facilities?

19 A. It would be that if we are operating in GTE
20 territory, either using our own facilities, UNEs, or I
21 guess possibly resale, and currently we are not
22 operating in the GTE territories.

23 Q. Well, okay. Tell me how that's different
24 then from Southwestern Bell's agreement, because in
25 the Southwestern Bell agreement you had no section

1 that would allow for bill and keep?

2 A. Right. Originally AT&T, MCI proposed bill
3 and keep, and if that was not adopted then local
4 reciprocal compensation rates. Southwestern Bell for
5 local areas requested their reciprocal compensation
6 rates. The Commission set reciprocal compensation
7 rates, and that was what was contained in the
8 agreement.

9 Q. Why would you not -- well, if you're
10 agreeable to doing bill and keep for GTE, would you
11 not be agreeable to doing bill and keep with
12 Southwestern Bell of MCA?

13 A. The GTE agreement, one, has not been
14 operationalized. Two --

15 Q. So does that mean you're not going to honor
16 it when it is operationalized?

17 A. No. We will abide by it, but it calls for a
18 bill and keep arrangement for an interim period, and I
19 believe that is like a nine-month period where then if
20 the traffic is imbalanced they will switch to a
21 per-minute compensation.

22 So under that agreement, if one party
23 requested it, we would revert back to bill and keep if
24 the traffic was out of balance.

25 Q. Okay. Isn't AT&T here before us in this

1 case, though, because you really want to get into the
2 CLEC competitive market and in the metropolitan areas
3 it's imperative that you be able to have MCA?

4 A. In the operation in the -- I'm sorry -- the
5 optional tiers it is a necessity to offer MCA service
6 to compete, yes, what we need.

7 Q. Then wouldn't it behoove AT&T to even look
8 favorably on a bill and keep if that's what it took to
9 get in at this time?

10 A. Certainly our goal is to get in and fully
11 implement and operate in the optional MCA tiers. I
12 don't that -- bill and keep is not our first choice.
13 We have an interconnection agreement that calls for
14 per-minute compensation.

15 One concern we have is that switching to
16 bill and keep at this juncture will require a
17 significant renegotiation period to modify the
18 agreement and implement that, and if that --

19 Q. Why?

20 A. The interconnection agreement calls for
21 per-minute compensation, and if we were to switch to
22 bill and keep, it's not clear when that would apply.
23 Are we going to be required to have per-minute
24 compensation for some traffic within the MCA yet bill
25 and keep for other? We would have to consider the

1 record exchange, are we going to continue to exchange
2 records.

3 Q. Well, and didn't you in your testimony say
4 that if the Commission wanted to go to bill and keep,
5 that you would ask that you not have to have a record
6 exchange?

7 A. If the Commission were to require bill and
8 keep for CLECs as a condition of offering MCA service,
9 we would want to be treated just like the ILECs under
10 that bill and keep arrangement. My understanding is
11 today they do not exchange records, and we would
12 expect to have that same treatment. It makes no sense
13 to treat CLECs differently under a mandated bill and
14 keep than it would ILECs.

15 Q. So if the Commission were to order that to
16 move this forward you needed to go to bill and keep
17 but that you didn't have to exchange records, that
18 would be more favorably looked on by AT&T?

19 A. It would be more favorably looked on, yes.

20 Q. Okay. Now, help me with the designated NXXs
21 that would be for MCA only. Do you think it's
22 possible, in a timely fashion, for all carriers that
23 want to be operating in the MC area -- MCA areas to
24 let each other know which NXXs they're going to be
25 designating as MCA so that the switches can be

1 programmed?

2 A. I think initially it would just require an
3 exchange of letters saying here are my MCA codes. We
4 have sent a similar letter out when our TCG tariff was
5 approved to Southwestern Bell, GTE and Orchard Farm to
6 notify them of our codes.

7 I think in the long run we may need another
8 process on an ongoing basis to track those codes, but
9 I think initially an exchange of letters or some kind
10 of notification would solve the problem at least
11 initially.

12 Q. Okay. With respect to the actual facilities
13 you use, there was a question to you I believe by
14 Mr. Lane on, for you to transit your traffic, that you
15 could be using either your own facilities or
16 Southwestern Bell's?

17 A. Under the assumption that we had facilities
18 that would let us route directly to, I think his
19 example was GTE.

20 Q. Do you have some facilities that you would
21 be able to route in the MCA areas?

22 A. Currently today, my understanding is we
23 transit Southwestern Bell to route to the other
24 carriers. I do not know if we have facilities, but
25 since we're currently transiting, my guess would be we

1 do not.

2 Q. Now, if you're using Southwestern Bell's
3 facilities, do you believe that you should be paying
4 them something for when they do carry even MCA traffic
5 for you, for the transiting?

6 A. Currently today we would pay a transit fee.
7 We would also pay, with respect to them, a terminating
8 compensation rate, and they would pay us a terminating
9 compensation rate. So as long as we're getting paid
10 for all functions or we're exchanging compensation
11 equally, then I think that's appropriate.

12 What I don't think is appropriate is to
13 require CLECs to pay a transit charge, but you've
14 mandated bill and keep, then require us to pay a
15 transit charge but not require the other MCA
16 participants.

17 Q. Because you're saying that Bell would carry
18 their traffic at no transit charge with respect to the
19 carrier --

20 A. That's my understanding, yes.

21 Q. -- on meet point billing issues?

22 A. That's my understanding, yes. And if bill
23 and keep is mandated for all, I think it should -- if
24 we have to mandate bill and keep in the interest of
25 fairness, I think it should be consistent.

1 Q. And no additional charges?

2 A. Right.

3 Q. Talk to me about the small companies that
4 are a part of the MCA areas such as Mr. Stowell
5 yesterday who was a witness and when you talk about
6 Orchard Farms. Can AT&T now through TCG as a CLEC
7 have an MCA customer and send them your traffic?

8 A. Yes. Currently today we would rely on the
9 transit function of Southwestern Bell. We can route
10 traffic to Orchard Farm.

11 Q. And if they have an MCA customer call you
12 back, will you be able to know that that's MCA and not
13 charge them a terminating access?

14 A. We would have no idea unless we were given
15 records of what that traffic was, and because we don't
16 know we would terminate it.

17 Q. Well, but again, if you had the NXX, does it
18 tell you that that -- which of their NXXs are
19 designated as MCA, wouldn't you be able to tell?
20 Wouldn't you be able to program your switch to know?

21 A. I'm not familiar with the record exchange,
22 but my understanding is that there's a problem with
23 exchanging records. So it would hit our facilities.
24 We may not know who sent it, but we would terminate
25 it.

1 That's not necessarily something we would be
2 disagreeable to. As long as our traffic would be able
3 to terminate in this area, we would certainly
4 terminate traffic to customers -- to our customers if
5 people have called them.

6 Q. Well, do you have a switch?

7 A. Yes.

8 Q. Well, if a small ILEC has a switch where
9 they program it to know which ones are MCA, why can't
10 you program your switch?

11 A. We can on the outbound side, on the
12 originating side. We can program our switch to route
13 that traffic to them and not impose charges upon our
14 customer.

15 What we can't do, my understanding is, with
16 the record exchange today, know who is sending us
17 traffic. So we will terminate that traffic, and we
18 won't know whether it's MCA traffic or not, but we
19 will go ahead and terminate that traffic. We will not
20 expect compensation.

21 Q. So are you telling me an Orchard Farms with
22 Southwestern Bell now, in order for them to know who
23 each other's MCA customers are, they're doing it by a
24 record exchange?

25 A. No, they're not. I think on the originating

1 side --

2 Q. No. Let's talk terminating. If Orchard
3 Farms sends something to a GTE or a SWBT or a Sprint
4 exchange and it's terminated there, how do they know
5 not to charge for terminating access?

6 A. My understanding of the process would be, if
7 it goes to a non-MCA number, access charges would
8 apply. There would be a record exchange for that.
9 There would be no records exchanged for MCA traffic.
10 And I think that's the amount -- the small companies
11 could address this better, but there's a total amount.
12 They back out what records show access should apply,
13 and then the rest is hopefully just MCA traffic.

14 But there is nothing that I know of that
15 would identify MCA traffic specifically.

16 Q. Is that where we get into the problem, when
17 they back it out, if there's wireless in there, they
18 can't tell the difference between MCA and wireless?

19 A. That's my understanding, yes.

20 Q. In your direct testimony on page 30, you
21 state when you're talking about collectibility and
22 prices that the CLEC should have the option of
23 providing MCA service at no additional charge?

24 A. Correct.

25 Q. That would be in the optional exchanges?

1 A. Right, where the additive would be we may
2 not want to charge an additive for that, include it in
3 our basic package.

4 Q. Well, in competition, to get to competition
5 we talk about barriers to entry, but another piece of
6 that is that of predatory pricing. If a large company
7 such as AT&T were offering a service at no charge, you
8 don't see that as potential predatory pricing?

9 A. CLECs, even AT&T, do not have the market
10 power to sustain predatory pricing.

11 Q. And you have a study that can tell me that?

12 A. Not an official study that kicks out a model
13 that says it's not predatory pricing, but CLECs have
14 3 percent of the market in aggregate. I don't see how
15 that they can sustain predatory pricing to drive
16 others from the market.

17 And when you look at if we provide it at no
18 extra charge, we may have a higher basic rate, we may
19 have a higher bundled rate. So yes, the additive may
20 be zero, but we may have something else, you know, a
21 higher basic rate that includes MCA. So it may not be
22 truly at no additional charge.

23 But even if it is, competitive companies do
24 not have market power to engage in predatory pricing.
25 I mean, that is why the statutes allow flexible

1 pricing for competitive companies that has not given
2 the same flexibility to noncompetitive companies.

3 Q. Do you know if the statutes say you can have
4 flexible pricing down to giving the service away?

5 A. The statutes allow, for any other service
6 CLECs provide, complete flexibility in setting prices.

7 Q. So you're not concerned about setting it at
8 zero and having that as an unfair advantage over other
9 companies?

10 A. As long as it's competitive companies doing
11 it, no.

12 Q. Well, philosophically I struggle with this
13 part of your testimony because in our small rural
14 exchanges where we want to have 1+ long distance
15 service, AT&T had serious concerns about the access
16 rates. And although I won't say that AT&T abandoned
17 the service, they can do dial around or 10-10 dialing
18 because of concerns of financial disadvantage. I see
19 where in the metropolitan area you're proposing
20 possibly giving the service away. And maybe that
21 doesn't call for a response, but I -- would you like
22 to respond?

23 A. I would like to. I think they are two very
24 different situations. Again, when I say giving MCA
25 service away, it will be bundled with other services.

1 Obviously it would be very foolish of us just to offer
2 optional MCA and no other services. We couldn't do it
3 even if we wanted to.

4 So when you say giving it away, it's, one,
5 as a competitive company gaining market share; two,
6 most likely it's a bundle of other services. So it's
7 very different than offering toll stand-alone at 9
8 cents a minute and paying 20 cents per minute in
9 access. I think they're two different situations.

10 Q. Well, if you bundled it in, are you telling
11 me that you would bundle it in to your other services
12 in those areas so that it did recover the cost, or
13 would it possibly be subsidized by other areas of the
14 MCA?

15 A. As competitive companies, we cannot sustain
16 below-cost service, and we would have to price it so
17 that offering the service in total recovered its cost.
18 Maybe for a period to gain market share you could run
19 at a loss for a short period of time, but eventually
20 you cannot sustain the low cost pricing.

21 That is the same argument that we raised in
22 providing toll in the areas of high access. We cannot
23 sustain that loss on a long-term basis.

24 Q. Okay. On page 9 of your testimony, you
25 stated that AT&T believes the Commission has already

1 made the decision that CLECs are authorized to provide
2 MCA service. Why then do we need to reaffirm that?

3 A. I think several companies have not
4 acknowledged the order that CLECs are MCA
5 participants. That's why we're having the call
6 blocking so that our customers cannot receive locally
7 dialed toll-free calls.

8 Obviously we're -- our position is we're
9 entitled to offer that service. Companies disagree.
10 Our position is we have the authority to do it, and we
11 need the orders reaffirmed so that other companies
12 abide by those orders.

13 Q. You need it reaffirmed or you need us to
14 order that there not be screening and that any CLEC be
15 able to have conditions made available to them that
16 are out of MCA?

17 A. I think both would take care of the problem.

18 Q. I just want to reaffirm for myself on your
19 rebuttal testimony, on page 15, you do talk about
20 calling scopes and being able to modify the calling
21 scope.

22 I understood you to say that if you modified
23 the calling scope that you would recognize that it
24 wouldn't possibly not be viewed as local and would
25 have the normal toll compensation; is that true?

1 A. That's correct. Just like an example I
2 point to is Local Plus. They pay terminating access
3 to the carriers where it's outside of the Commission
4 mandated calling scope. We acknowledge we would have
5 to do the same.

6 Q. On page 7 of your surrebuttal testimony, on
7 lines 21 through 23, you state that the Commission
8 should explicitly state that the ILECs can adjust MCA
9 rates subject to the regulatory scheme in which they
10 operate in order to maintain -- to remain competitive.
11 Why?

12 A. Several of the companies I think in the
13 technical conferences and some of their testimony, for
14 example some of the price cap companies, have stated
15 that they do not know if they have the authority to
16 lower MCA prices.

17 And so to clarify that, make a statement
18 saying price cap companies are free to lower their MCA
19 price in order to remain competitive would alleviate
20 those concerns.

21 Q. Okay. Finally, this case, not some future
22 case looking at different potential solutions or
23 solutions with NXXs, what is it that AT&T believes the
24 Commission has to order in order for CLECs to be
25 active in the metropolitan areas?

1 A. I believe the Commission must order or
2 reinforce its current orders that CLECs are authorized
3 to provide mandatory and optional MCA service; that if
4 they designate a code as an MCA code, the other ILECs
5 or any LEC operating in that territory need to
6 recognize that as an MCA code and allow their
7 customers to place locally dialed calls to that
8 customer. That will take care of our anticompetitive
9 concerns.

10 Q. How difficult will it be for the ILECs and
11 the CLECs to accommodate passing that type of
12 information so that calls are not blocked?

13 A. I think the LECs can exchange letters with
14 obviously attachments identifying their NXX codes,
15 identifying which ones should be treated as optional
16 MCA codes, which ones are in the mandatory zone, so
17 that everybody has the information to program their
18 switches correctly. I think that is all that is
19 required is to exchange the information to allow this
20 to go forward.

21 Q. And this is important to me. Is AT&T/TCG
22 willing to cooperate and work closely with the small
23 companies that are part of these MCA areas to assure
24 that they know which calls, outgoing and incoming, are
25 MCA that AT&T is responsible for and that you don't

1 hide behind the shield of being behind either GTE's or
2 Bell's or Sprint's interconnection agreement?

3 A. We are certainly willing to cooperate, to
4 negotiate the appropriate agreements that would take
5 care of those concerns.

6 Q. Will you make them happen?

7 A. I don't know who would have to originate the
8 process, but certainly we will work to do that.

9 Q. In good faith?

10 A. In very good faith.

11 Q. In spite of whether you have to or not
12 according to any federal act?

13 A. Yes.

14 Q. And finally, just because I'm curious,
15 Mr. Johnson asked you about the settlements between
16 Bell and AT&T, and you didn't know what settlements
17 there should be, and he seemed to be surprised that
18 you didn't know. Are you cutting checks in
19 settlements for AT&T to Southwestern Bell these days?

20 A. No, I'm not. They won't give me that
21 authority.

22 Q. And I'm not surprised you didn't know.

23 COMMISSIONER DRAINER: No other questions.

24 JUDGE DIPPELL: Thank you.

25 QUESTIONS BY JUDGE DIPPELL:

1 Q. Mr. Kohly, I just have one question, and
2 that's just my lack of knowledge of all the acronyms
3 involved. You talked about POU reports. What are POU
4 reports?

5 A. Can you give me a cite?

6 Q. No. You said it in your testimony.

7 MR. ENGLAND: Excuse me. Was that PIU?

8 JUDGE DIPPELL: Maybe it was PIU.

9 THE WITNESS: PIU has kind of evolved over
10 time. It started out as percent interstate usage.
11 Rather than have metering devices, they would take --
12 based on a study or an assumption, assume a certain
13 percentage of traffic was interstate, a certain amount
14 was intrastate. Moving into the local
15 interconnection, I think sometimes they're POU
16 reports, what percentage of traffic you send is local,
17 what percentage is of other jurisdictions.

18 JUDGE DIPPELL: Okay. Thank you.

19 Is there recross based on questions from the
20 Bench from Intermedia?

21 MR. STEWART: No questions.

22 JUDGE DIPPELL: Birch?

23 MR. MIRAKIAN: No questions.

24 JUDGE DIPPELL: McLeod?

25 MS. YOUNG: No questions.

1 JUDGE DIPPELL: Gabriel?

2 MR. LUMLEY: Yes, briefly.

3 RECROSS-EXAMINATION BY MR. LUMLEY:

4 Q. With regard to Commissioner Drainer's
5 questions about pricing flexibility, we all kind of
6 talk about that, but you understand that it still
7 requires submission of a tariff change to the
8 Commission and the Commission still has ultimate
9 jurisdiction over competitive and noncompetitive
10 companies, it's just that it's a different degree of
11 review?

12 A. Correct. You would have to file a tariff
13 that would have to be approved by the Commission.

14 Q. And furthermore, if somebody had a problem
15 with a tariff that was in effect, they could still
16 file a complaint about it?

17 A. They could either file to intervene in that
18 tariff or later if there were concerns they could
19 certainly file a complaint.

20 MR. LUMLEY: That's all I have.

21 JUDGE DIPPELL: Nextlink?

22 MR. COMLEY: No questions.

23 JUDGE DIPPELL: Staff?

24 MR. POSTON: No questions.

25 JUDGE DIPPELL: Public Counsel?

1 MR. DANDINO: No questions.

2 JUDGE DIPPELL: Sprint?

3 MS. GARDNER: No questions. Thank you.

4 JUDGE DIPPELL: GTE?

5 MR. DORITY: Yes, thank you.

6 RECROSS-EXAMINATION BY MR. DORITY:

7 Q. Mr. Kohly, in response to some questions
8 from Commissioner Drainer you were talking about the
9 pricing. I think it was on page 30 of your testimony.

10 A. My direct?

11 Q. Of your direct, yes. I think the specific
12 lines were 22 and 23 where you state that this would
13 include allowing CLECs to have the option of providing
14 MCA service at no additional charge to consumers.

15 A. Correct.

16 Q. Did you remember that line of questioning?

17 A. Yes.

18 Q. As I understand it, as you've testified, in
19 the mandatory zones MCA is a part and priced as a part
20 of basic local service; is that correct?

21 A. Correct.

22 Q. If you were going to be offering MCA in the
23 optional tiers and giving it away, how would that be
24 reflected on the customer's bill if you were to bundle
25 it with basic local?

1 A. We would hope we would not -- we could offer
2 a bundle of services that would tell a customer what's
3 in it, and that bundle would include MCA and there
4 would be a price for it.

5 Q. Which could be zero?

6 A. Yes, or it could be a bundle of 20 services
7 with a price of \$40. So I mean, it's kind of
8 semantics. Is the optional MCA zero or is it \$39 and
9 everything else is a dollar?

10 Q. Well, under the Commission's rules in
11 Chapter 33 which apply to both ILECs and CLECs, I
12 believe that telecommunications companies are required
13 to specifically show in detail what a customer is
14 paying for basic local service. I'm just curious if
15 you were to bundle that, how would that be reflected
16 on the bill?

17 A. Currently the rule -- well, obviously in the
18 mandatory zone where it's part of basic local there
19 would be a line item for that or the bill would
20 identify that.

21 Commission rules also state that for
22 optional features you have to make it explicit for the
23 first month, and then after that you no longer have to
24 make it explicit to be part of the bill.

25 So I would think our billing systems could

1 do that where the first month the information we send
2 the customer explicitly lists every feature they're
3 receiving, and then possibly, if we chose to, and
4 assuming I'm correct on the Commission rule, we can
5 then have a package called "The Works" -- I guess
6 that's taken -- "The Stuff" and have that part of it.

7 (Laughter.)

8 MR. DORITY: Thank you, Mr. Kohly.

9 JUDGE DIPPELL: Southwestern Bell?

10 RE-CROSS-EXAMINATION BY MR. LANE:

11 Q. Could you explain, Mr. Kohly, how AT&T
12 determines percentage of local use in the POU report
13 that you described?

14 A. No, I cannot.

15 Q. Is it based on records that AT&T maintains
16 or do you know?

17 A. As I said before, I do not know.

18 Q. In response to a question from Commissioner
19 Drainer, you said that, with regard to NXXs, that you
20 wanted a situation where if the CLEC designated a code
21 it must be recognized as an MCA code.

22 My question is, are you in agreement that
23 you would have to actually be using the numbers in
24 that code to provide MCA service or could you just
25 designate the code without regard to whether you were

1 providing MCA service to customers using that code?

2 A. In that code we would have to be providing
3 MCA service. However, again, it could be bundled. We
4 hope to be able to bundle it with our other service
5 offerings so that we may not offer a service without
6 MCA.

7 Q. Okay. The code would have to be used
8 exclusively for MCA service, right?

9 A. Yes.

10 Q. Now, with regard to calling scope
11 modifications, I believe you said in response to a
12 question from Commissioner Drainer that if you modify
13 the calling scope, that you wouldn't expect to have
14 toll-free return calling; is that accurate?

15 A. Correct. If we add an exchange, we don't
16 expect anyone else to do anything to have toll-free
17 calling from that exchange.

18 Q. My understanding of AT&T's position is that
19 except for the price of the service and intercompany
20 compensation, that you're otherwise willing to follow
21 the terms of the MCA plan; is that a fair statement?

22 A. Do you have any specifics?

23 Q. No. I'm asking you for your position based
24 on your position with AT&T.

25 A. I'm trying to think what else is in that

1 Order. Certainly we want flexibility in pricing. We
2 want our interconnection agreements to maintain the
3 compensation. If that wants to be changed, we should
4 do that under arbitration negotiation procedures.

5 As part of pricing flexibility, we'd like
6 flexibility to bundle that with our other service
7 offerings. Other than that, I'm not aware of anything
8 else we would ask for.

9 Q. Okay. So aside from intercompany
10 compensation and pricing, if you otherwise follow the
11 terms of the MCA plan, then all of the numbers in the
12 NXX that you would designate to be an MCA code would
13 be providing MCA service as opposed to something else?

14 A. Yes. But again, in areas where we do not
15 offer non-MCA service or we offer it at no additional
16 charge as part of basic local, we want to be able to
17 use one code, because we don't have any non-MCA
18 customers. We want to be able to use one code instead
19 of having to have two that may not have any customers
20 in it.

21 Q. If you're offering a different service that
22 has different calling scope than MCA, then you
23 wouldn't be using the MCA code NXXs for that service;
24 is that right?

25 A. If MCA service is part of that calling

1 scope, yes, we would.

2 Q. So you're asking to be able to offer a
3 different calling scope and still call it MCA service?

4 A. No. For example, you currently offer Local
5 Plus in conjunction with MCA service. I'm not aware
6 that you have taken out new NXX codes specific to MCA
7 service plus Local Plus.

8 So that is what we are asking for is to be
9 able to combine our MCA service with other calling
10 features as well or other calling aspects. In that
11 case, we would not want another NXX code.

12 Q. I'm just trying to make sure I understand
13 you. Are you talking about kind of a back-door
14 approach that you could expand the calling scope of
15 the MCA by combining it with another service?

16 A. No, I'm not. I'm comparing it to what you
17 currently do with Local Plus. I guess if that's a
18 back-door approach, then I guess I am.

19 What I am talking about is taking the MCA
20 plan, adding maybe an expanded scope, maybe reselling
21 Local Plus, maybe allowing some other calling within
22 the MCA footprint, calling that MCA service for
23 purposes of having the ILECs recognize that code as
24 within the MCA.

25 Q. So in the example that we had used earlier

1 in your testimony, you could add Washington, Missouri
2 as part of an additional calling scope, still assign
3 that MCA NXX code and expect others to abide by that?

4 A. What we're asking is to be able to offer MCA
5 service with other services. So if we added that
6 extra exchange, we would provide MCA service plus
7 calling to Lexington, and we would expect that our MCA
8 code would be recognized by other ILECs within the
9 MCA.

10 We don't want any different treatment for
11 the MCA. We want to be able to vary that calling
12 scope on an outbound basis, just like you do today
13 with Local Plus.

14 Q. So to be clear, in my example for
15 Washington, Missouri, you're saying yes, you want to
16 be able to add Washington, Missouri to your local
17 calling scope, still call it MCA, and have it be
18 recognized by other ILECs; is that right?

19 A. Yes, because we're offering MCA service.

20 Q. Now, you had indicated in response to a
21 question from Commissioner Drainer that you thought it
22 would be appropriate for a CLEC to be able to offer
23 MCA service at no additional charge?

24 A. That's correct.

25 Q. And is AT&T agreeable to letting ILECs and

1 other CLECs resell that zero-priced MCA service?

2 A. No. There are very different concerns when
3 an ILEC does it because of market share, and that is
4 why reflected in the statutes is different pricing
5 standards for noncompetitive companies than for
6 competitive companies.

7 There is a concern that the monopoly
8 provider, that a noncompetitive monopoly provider
9 could engage in predatory pricing because of the
10 market power and market share they have.

11 Q. I'm asking a different question, though.
12 Are you agreeable to allowing an ILEC or a CLECs to
13 resell your zero-priced MCA service?

14 A. We've not had a request, I guess, to resell
15 it. So I have no idea. We have an -- we follow our
16 obligations under the Act.

17 Q. Okay. If the Commission ordered that in
18 this case, that if you offer a zero-priced MCA service
19 that you had to resell it, do you have a problem with
20 that?

21 A. I don't understand how that would work.

22 Q. Regardless of whether you understand how it
23 would work, if the Commission orders it, do you
24 consider that a problem for AT&T?

25 A. I guess until I understand how it would

1 function, I can't answer that question.

2 Q. On the transiting function questions that
3 you were asked by Commissioner Drainer, my
4 understanding of it was that you have a problem if
5 you're required to pay a transiting function to
6 South-- pay for a transiting function to Southwestern
7 Bell if an ILEC isn't required to pay for a transiting
8 function for a call that eventually terminates to a
9 CLEC; is that a fair statement?

10 A. It is in that if we have to go to bill and
11 keep, in the interest of being fair for everybody,
12 then I think it needs to be an equal bill and keep for
13 everyone. There's no reason if we have to all be fair
14 and have the same compensation for CLECs to be treated
15 differently under that idea of fairness than it would
16 be for ILECs.

17 Q. And so if the Commission determines that
18 anybody who chooses to use a transiting carrier to get
19 your traffic through, that they have to pay for that
20 transiting function, if it applies equally to CLECs
21 and ILECs, then you wouldn't have a problem; is that
22 right?

23 A. No, as long as it were consistent.

24 Q. And doesn't that strike you as being
25 reasonable, that if either the CLEC or the ILEC asks

1 another party to step into the middle of its call and
2 carry it, that it ought to have to pay something for
3 that call?

4 A. That would depend on the total arrangement
5 between the carriers.

6 Q. Since each carrier on each end has the
7 ability to utilize its own facilities if it wants to,
8 doesn't it strike you as reasonable that if they
9 choose to use another carrier to do it, they ought to
10 pay for it?

11 A. Again, when the Commission set up the MCA,
12 they did not require the ILECs to pay a transit
13 charge.

14 Q. I'm talking about on a going-forward basis.

15 A. I think their order, for whatever reason
16 they did that, still stands, and I don't know why that
17 would need to be changed.

18 Q. All right. The Commission is looking at
19 those issues now. If they look at it and say, if
20 anybody chooses to use a carrier to transit its
21 traffic, be that an ILEC or CLEC, they have to pay for
22 it, would you agree that's a reasonable approach?

23 A. Yes, as long as it is a cost-based rate
24 subject to TELRIC pricing and all that, yes. But
25 again, rather than do that, I think it would be more

1 appropriate to let the interconnection agreements
2 govern the compensation arrangements.

3 Q. Yesterday in response to a question from
4 Commissioner Drainer you made the statement that under
5 the MCA plan that Southwestern Bell receives some
6 \$900,000 a month in increased revenues out of the
7 implementation of that plan. Do you recall that?

8 A. Yes. That was my understanding based on the
9 testimony of Bill Voight.

10 Q. You don't have any personal knowledge? Your
11 testimony was based upon what you heard or thought you
12 heard from Mr. Voight as opposed to what you
13 personally know yourself; is that a fair statement?

14 A. That's correct. I also -- and I've not
15 verified this. I understand it was part of the
16 exhibit you offered yesterday in the complete version,
17 but I have not reviewed that.

18 Q. And it says what it says; is that right?

19 A. It says what it says.

20 Q. And is it your understanding that total from
21 the implementation of OCA, COS and MCA that
22 Southwestern Bell was or was not revenue neutral, or
23 do you know?

24 A. That was not my understanding in total.

25 MR. LANE: That's all I have. Thank you.

1 JUDGE DIPPELL: Cass County?

2 MR. ENGLAND: Yes, please.

3 RECROSS-EXAMINATION BY MR. ENGLAND:

4 Q. Mr. Kohly, let's get back to the
5 identification of NXXs so people know who's in and
6 who's out of the MCA, if we can.

7 Assuming the Commission in your opinion or
8 in your terms reaffirms the notion that CLECs are
9 equal participants in the MCA and sets the terms and
10 conditions under which they will be equal
11 participants, as I understand, your preference is to
12 just have the individual CLEC or ILEC, whoever the
13 originating carrier is, notify everybody that they now
14 have a new NXX that's to be considered an MCA NXX; is
15 that correct?

16 A. As an immediate step to get competitors, get
17 everyone understanding who's an MCA, yes. I think on
18 a going-forward basis there will probably need to be a
19 more centralized process developed. I do not know
20 what the appropriate process is.

21 Q. I guess that was my next question is, would
22 you be -- would you object to the notion of a neutral
23 third party that would administer that process so that
24 there could be some verification whether or not, in
25 fact, that new NXX is a qualifying MCA?

1 A. That would probably be appropriate.

2 Q. Let's talk a little bit about the payment or
3 charging of access charges by an ILEC such as Orchard
4 Farm. I think that was the example that Commissioner
5 Drainer used and explored with you.

6 Would you agree with me that ILECs such as
7 Orchard Farm bill for access based on records that are
8 given to them by another carrier? In other words,
9 they do not currently bill today based on end office
10 recordings?

11 A. With respect to Feature Group D, the AT&T
12 interexchange network, I believe you do provide
13 records to us, end office records. With respect --
14 and I'm not certain of that. With respect to Feature
15 Group C, my understanding is that you may not have the
16 appropriate terminating records.

17 Q. With respect to Feature Group D, it's not
18 necessarily the end office but the end tandem,
19 correct?

20 A. Right.

21 Q. And that may or may not be owned by the end
22 office company?

23 A. Right. But my understanding, I don't think
24 there's any problems with the Feature Group D network.

25 Q. Well, let's get back to Orchard Farm for

1 example. If the call comes in via Feature Group D,
2 they're given records by their tandem company, in that
3 case Southwestern Bell Telephone Company, from which
4 they bill terminating access, correct?

5 A. I don't know who provides the records. I
6 know we get access bills from Orchard Farm.

7 Q. Let's take an intraLATA Feature Group C call
8 today. There are no recordings at the end tandem, are
9 there, if you know?

10 A. I do not know.

11 Q. Okay. Well, let me just ask you a
12 hypothetical. From AT&T's perspective, as an emerging
13 CLEC, would you prefer to bill access for calls
14 terminating to your network based on recordings you
15 make at your end office or would you rather rely on
16 the originating records of other carriers to tell you
17 how much to bill?

18 A. Our preference would be to use standard
19 Category 11 terminating records to bill traffic.
20 Where the traffic is de minimus, we're willing to go
21 with the bill and keep arrangement or in this
22 situation with a bill and keep arrangement.

23 But going forward, we think the appropriate
24 fix would be consistent with industry standard, not a
25 kind of Missouri-specific work-around.

1 Q. I'm not sure I got an answer to my question.
2 Would you rather bill from terminating records you
3 create or would you rather rely on originating
4 carriers throughout the LATA to tell you what they
5 sent you? It's a simple question. Can I get your
6 preference on that, if you have one?

7 A. Can you restate the question?

8 Q. Sure. As an emerging CLEC, would you prefer
9 to bill for terminating access for calls that
10 terminate to your network based on recordings that you
11 make or based upon originating records that other
12 carriers create and send and send to you?

13 A. We'd obviously prefer the terminating, our
14 own records.

15 Q. Sure. One other question or line of
16 questions with respect to this transiting notion. I
17 want to make sure you and I understand or are on the
18 same wavelength as far as bill and keep is concerned.

19 Assuming we go to a full bill and keep for
20 all parties in the MCA, is it your understanding that
21 there should be any payments for a transiting
22 function?

23 A. Not wanting to get into the middle of a
24 fight between small ILECs and Southwestern Bell --

25 Q. Well, I think you're already there.

1 (Laughter.)

2 So do your best to work your way out of it.

3 A. I think you need to treat them consistent.
4 If a transit charge is appropriate, I think it should
5 apply to all. If it's not a -- revenue neutrality
6 reason for the ILECs or whatever you don't have it,
7 then CLECs shouldn't have it either.

8 Q. Well, let's explore your understanding of
9 what goes on today under the bill and keep arrangement
10 that we have, and we'll use the Kansas City MCA which
11 is on the board behind you.

12 But today, as I understand it, if an MCA
13 customer in one of the Cass County exchanges, we'll
14 say Peculiar where its office is, makes an MCA call to
15 a customer in Lathrop's exchange in the north side of
16 the metropolitan area, that today is transited by
17 Southwestern Bell before being terminated, correct, or
18 certainly some other carrier besides Lathrop and Cass
19 County?

20 A. That would be my understanding.

21 Q. And under the bill and keep arrangement we
22 have today, is it your understanding that there's no
23 payment for transiting as well as terminating the
24 call?

25 A. That's correct.

1 Q. Is it then your position if you -- if the
2 Commission adopts a full bill and keep as a result of
3 this proceeding for all MCA participants, including
4 CLECs, that there would continue to be no compensation
5 for transiting functions regardless of who performs
6 them?

7 A. If the Commission continued the existing
8 bill and keep arrangement, then there would be no
9 charge for the transiting function.

10 Q. And that would be fair, in your opinion?

11 A. We don't want bill and keep mandated in this
12 proceeding. We want per-minute compensation.

13 Q. I understand that.

14 A. And if we are drug into -- or if we are
15 mandated to the bill and keep environment, then we
16 want to be treated equitably.

17 Q. And that's my question. That would be fair,
18 wouldn't it?

19 A. It would be treating us consistently with
20 how the other carriers are treated today. I do not
21 believe there's a reason to treat us differently. I'm
22 not saying it's necessarily fair to SWBT and the other
23 transit functions, but we want to be consistent. If
24 we have to have bill and keep to be fair, then we want
25 the same deal you have.

1 Q. And if you don't pay for transiting charge
2 just like we don't pay for one today, that would be
3 consistent, correct?

4 A. That would be consistent.

5 Q. And I assume that would then be fair?

6 A. It would be treating us consistently with
7 the existing arrangement.

8 Q. Fair enough.

9 MR. ENGLAND: Thank you, Mr. Kohly.

10 JUDGE DIPPELL: MITG?

11 MR. JOHNSON: Thank you.

12 RE CROSS-EXAMINATION BY MR. JOHNSON:

13 Q. Just one line of questions, Mr. Kohly. I'm
14 going back to the GTE/TCG St. Louis interconnection
15 agreement. That was approved by the Commission?

16 A. Yes.

17 Q. And originally it provided for a usage
18 sensitive reciprocal compensation?

19 A. Yes. And that agreement applied when we
20 were operating or competing against GTE in its own
21 territory.

22 Q. And it's my understanding that, since that's
23 not quite operational yet, you and GTE have agreed
24 that you're just going to use bill and keep?

25 A. It is a -- it's called more of an

1 understanding than an official agreement that we have.
2 It's an understanding that we will use bill and keep.
3 The carrier can change that at the time.

4 Q. Your original order approving the
5 interconnection agreement requires submitting it back
6 to the Commission for approval, does it not?

7 A. To that interconnection agreement, yes.
8 That interconnection agreement only governs when we
9 are operating in GTE territory.

10 Q. The understanding that you're not going to
11 use it, that's not an amendment to the agreement?

12 A. Again, that agreement only applies when
13 we're operating in GTE territory. So it does not
14 apply to the situation you're talking about where we
15 are competing with Southwestern Bell and exchanging
16 traffic with GTE.

17 Q. Has that agreement been memorialized in
18 writing?

19 A. Which one?

20 Q. The agreement to use bill and keep instead
21 of usage.

22 A. The understanding that we have currently
23 today, no, it is not.

24 Q. So it's not been submitted back to the
25 Commission; is that correct?

1 A. No, and again as more of an understanding
2 that that will be the process until we work something
3 else out.

4 Q. It's also, based on what I thought I heard
5 you say yesterday, you've got -- this agreement
6 includes the notion that if the traffic becomes
7 imbalanced to where either side sees more than
8 10 percent going the other way, what's going to happen
9 in that event?

10 A. Let me, I guess, back up. We have an
11 interconnection agreement with GTE, and that agreement
12 applies when we operate in GTE territory in
13 competition with them. That is where there's a
14 per-minute compensation that's kind of -- calls for
15 per-minute compensation, but the parties also agree to
16 bill and keep unless there's a traffic imbalance.
17 That is one agreement. That only applies when we're
18 in their territory competing with them.

19 Then we have characterized, I guess, more of
20 an understanding with them that when we're competing
21 in another territory and we're exchanging traffic
22 between us, we'll do bill and keep.

23 Q. So the 10 percent imbalance was part of the
24 original agreement?

25 A. The 10 percent imbalance would apply only to

1 the interconnection agreement that applies when we are
2 operating in their territory.

3 Q. And that hasn't happened yet?

4 A. That has not happened yet.

5 MR. JOHNSON: Thank you.

6 JUDGE DIPPELL: Commissioner Drainer?

7 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

8 Q. I just have one question to follow up on
9 something you were talking to Mr. Lane about, and this
10 is your Lexington, adding the Lexington exchange.
11 Now, first I want to clarify. You said that right now
12 Southwestern Bell would have an NXX that's designated
13 for MCA, and a customer in that NXX would have MCA,
14 plus they could have Local Plus.

15 And all you're wanting is to be able to have
16 the same thing where you'd have an NXX that was MCA,
17 and I kind of further heard that maybe you're going to
18 give everybody MCA. So you won't need another NXX
19 because everybody's going to get it. So here's my
20 question. Am I right so far, that was your
21 understanding?

22 A. Right.

23 Q. Okay. Now, here's where I need it
24 clarified. You have a customer and they're getting
25 MCA and you're going to let them have an extended

1 calling scope to Lexington. Are you going to have
2 that additional service have another name such as,
3 "Extra Stuff", or are you going to want to bury it in
4 the MCA name?

5 A. If we were required to just have MCA be the
6 existing service and have names for everything else,
7 we would not oppose that. I don't know if
8 marketing --

9 Q. You wouldn't oppose what?

10 A. I understand there's certain that if we use
11 the MCA name and our service is in any way different,
12 there's a concern that that may cause confusion.

13 Q. Well, Southwestern Bell has Local Plus.
14 There's other plans out there. AT&T has a ton of
15 plans. So you really shouldn't be opposed to having
16 MCA, MCA Plus Lexington or "Stuff" or whatever you
17 want to call it, should you?

18 A. We wouldn't oppose it. I guess the point
19 I --

20 Q. Okay.

21 A. Do you want me to make my point? No. Okay.

22 Q. Sure, but I've got to be in a meeting in
23 three minutes, so make your point.

24 A. The point is, I'm not concerned -- or I'm
25 not convinced or I don't believe that the use of MCA

1 with a little variation will create customer
2 confusion. But if that's determined and we have to
3 have MCA be the standard offering, then that will do
4 it. We won't oppose that.

5 Q. Okay. That's what I needed clarified.

6 COMMISSIONER DRAINER: Thank you.

7 JUDGE DIPPELL: Is there any additional
8 cross-examination questions based on the
9 Commissioner's questions? I'm just going to ask you
10 as a group. Raise your hand.

11 (No response.)

12 Okay. Is there redirect by AT&T?

13 MR. DeFORD: Yes, thank you.

14 REDIRECT EXAMINATION BY MR. DeFORD:

15 Q. Mr. Kohly, first going back to yesterday,
16 I'd like to direct your attention to Exhibit 50. Do
17 you have that before you?

18 A. Yes, I do.

19 Q. I believe that, at the request of Mr. Lane,
20 you identified that as a true and correct copy of the
21 Interconnection Agreement between -- or a portion of
22 the Interconnection Agreement between AT&T and
23 Southwestern Bell; is that right?

24 A. That's correct.

25 Q. Take a look at page 30 of that document,

1 please.

2 A. Yes.

3 Q. Do there appear to be strike-outs on that
4 page?

5 A. Yes, there are. And after looking through
6 it more closely on other pages, there are various
7 strike-outs.

8 Q. Page 32, the signature block isn't executed;
9 is that correct?

10 A. There are no signatures on the signature
11 block.

12 Q. And with respect to Attachment 12 to that
13 document, does it appear there are also mark-ups and
14 strike-outs on that as well?

15 A. There are.

16 Q. Would you like to amend your answer? Is
17 this a true and accurate copy of the Interconnection
18 Agreement between AT&T and Southwestern Bell?

19 A. I would like to amend that answer. It is
20 not a -- the final document. Appears to be a draft
21 that was discussed probably through negotiations.
22 There are mark-ups indicating things to be removed and
23 others that may be added.

24 Q. I think Mr. Lane also asked you some
25 questions about the content of that document. I think

1 he asked whether that document addressed the company's
2 prospective retail offerings; is that correct?

3 A. Correct, and it states that any carrier may
4 offer its own retail offerings.

5 Q. It doesn't purport to address what those
6 retail offerings or calling scopes are; is that right?

7 A. Not on Southwestern Bell's, only retail
8 offerings.

9 Q. Do you know if there's a reason why MCA
10 wouldn't have been mentioned in that?

11 A. Yes. MCA is not a Southwestern Bell retail
12 offering that they are free to adjust the calling
13 scope. It is a Commission-mandated calling scope, and
14 so there would be no reference to that because it's
15 not a retail offering.

16 Q. In response to some questions from
17 Commissioner Drainer, I believe she asked you what the
18 Commission should order in this case in your opinion.

19 I'll direct your attention to page 29 in
20 your direct testimony. Would you like to clarify your
21 answer to Commissioner Drainer in light of that
22 testimony?

23 A. I would point to, I guess, the six points
24 raised at the top of page 29, lines 3 through 15, that
25 need to be done to allow CLECs to fully operationalize

1 MCA service. Do you want me to read those into the
2 record?

3 Q. Sure.

4 JUDGE DIPPELL: I don't think we need them
5 read into the record. They're in your testimony, your
6 direct testimony.

7 THE WITNESS: Okay.

8 BY MR. DeFORD:

9 Q. Mr. Lane also asked you some questions about
10 whether AT&T would be willing to resell MCA at a zero
11 rate. Do you recall that line of questioning?

12 A. Yes, I do.

13 Q. Would AT&T sell MCA service at zero or would
14 that be some sort of a packaged offering?

15 A. It would be a package offering where the
16 additive may be zero, but certainly there will be
17 other pieces to that package that will have rates
18 associated with them.

19 Q. So that would never be a stand-alone
20 offering that would be available for resale?

21 A. Correct. If we sell, just go in the
22 business of optional MCA and offer nothing else, we
23 would not sell it for zero.

24 MR. DeFORD: Thank you, Mr. Kohly. That's
25 all I have.

1 JUDGE DIPPELL: Thank you. Mr. Kohly, you
2 may be excused.

3 (Witness excused.)

4 JUDGE DIPPELL: Does AT&T have any further
5 witnesses?

6 MR. DeFORD: Yes, we have a surprise
7 witness. Just kidding.

8 MR. LANE: It's me.

9 (Laughter.)

10 JUDGE DIPPELL: Then I believe we're ready
11 for Intermedia's witness.

12 (Witness sworn.)

13 CHERYL MELLON testified as follows:

14 DIRECT EXAMINATION BY MR. STEWART:

15 Q. Please state your name and give your
16 business address.

17 A. My name is Cheryl Mellon. My business
18 address is 3625 Queen Palm Drive, Tampa, Florida.

19 Q. By whom are you employed and in what
20 capacity?

21 A. I'm employed by Intermedia Communications as
22 Director of Integrated Local Services in our marketing
23 organization.

24 Q. Are you the same Cheryl Mellon who caused to
25 be prepared and filed in this proceeding rebuttal

1 testimony which has been previously marked for
2 purposes of identification as Exhibit 14?

3 A. Yes.

4 Q. Do you have any changes or corrections to
5 that testimony?

6 A. Yes, I do. On page 9, lines 14 through 16,
7 I need to strike after yes in the answer, the first
8 sentence.

9 JUDGE DIPPELL: Could you repeat that for
10 me?

11 THE WITNESS: Yes. Page 9, lines 14 through
12 16, the first sentence after yes.

13 BY MR. STEWART:

14 Q. Any further corrections?

15 A. No, none that I'm --

16 Q. If I asked you the same questions today that
17 are contained in your prefiled rebuttal testimony,
18 would your answers be the same?

19 A. Yes.

20 MR. STEWART: Your Honor, I move the
21 admission of Exhibit 14, and I tender the witness for
22 cross-examination.

23 JUDGE DIPPELL: Is there any objection to
24 Exhibit 14 with that correction coming into the
25 record?

1 (No response.)
2 Then I'll receive that into the record.
3 (EXHIBIT NO. 14 WAS RECEIVED INTO EVIDENCE.)
4 JUDGE DIPPELL: Is there cross-examination
5 by AT&T?
6 MR. DeFORD: None, your Honor.
7 JUDGE DIPPELL: Birch?
8 MR. MIRAKIAN: No, thank you.
9 JUDGE DIPPELL: McLeod?
10 MS. YOUNG: No questions, thank you.
11 JUDGE DIPPELL: Gabriel?
12 MR. LUMLEY: No, your Honor.
13 JUDGE DIPPELL: Nextlink?
14 MR. COMLEY: No questions, thank you.
15 JUDGE DIPPELL: Staff?
16 MR. POSTON: No questions.
17 JUDGE DIPPELL: Public Counsel?
18 MR. DANDINO: No questions.
19 JUDGE DIPPELL: Sprint?
20 MS. GARDNER: No questions.
21 JUDGE DIPPELL: GTE?
22 MR. DORITY: No questions.
23 JUDGE DIPPELL: Southwestern Bell?
24 MR. LANE: Always.
25 CROSS-EXAMINATION BY MR. LANE:

1 Q. Good morning.

2 A. Good morning.

3 Q. On page 8 of your testimony, beginning on
4 line 13, you describe an Intermedia service in the MCA
5 area that established an outbound calling scope of
6 MCA-3 and 4 in addition to Tiers 1 and 2. Do you see
7 that?

8 A. Yes.

9 Q. And is that -- is that the service that
10 Intermedia had in effect before it filed the MCA
11 tariff as a result of the Memorandum of Understanding?

12 A. Yes. From an outbound calling scope, we
13 allowed our customers to call those customers in the
14 Principal Zone 1, 2, 3 and 4.

15 Q. And were you offering your service to all of
16 the customers that wanted to subscribe to it in
17 Tiers 1 and 2, 3 and 4?

18 A. Yes.

19 Q. If there were calls that went beyond that
20 outbound local calling scope, were they toll calls?

21 A. Yes.

22 Q. A call to a customer in MCA Tier 5 would be
23 a toll call?

24 A. Yes.

25 Q. And that would be regardless of whether that

1 Tier 5 customer was an MCA subscriber or not?

2 A. Yes.

3 Q. Do you maintain that the tariff that you had
4 on file prior to January 22nd of this year was an MCA
5 service tariff?

6 A. I maintain that in that tariff we stated we
7 would mirror all of the existing local extended
8 calling plans provided by Southwestern Bell, and if in
9 such that is MCA, then yes.

10 Q. Okay. Would you agree with me that you
11 didn't call your service MCA service?

12 A. Yes, I would agree.

13 Q. And would you agree with me that the calling
14 scope that you provided them was less than what the
15 MCA calling scope consisted of?

16 A. It was less for the extent that we didn't
17 include the subscribers in Tier 5. However, it was
18 greater in the extent that we included all subscribers
19 in 3 and 4 whether they -- all customers in 3 and 4,
20 whether they were subscribers to the MCA plan or not.

21 Q. Would agree with me that your treatment of
22 calls to MCA subscribers of Southwestern Bell in
23 Tier 5 is the same as what Southwestern Bell proposed
24 to treat your customers in Zones 1, 2, 3 and 4?

25 Excuse me. I've got to reask that question.

1 A. Yes.

2 Q. Would you agree with me that your treatment
3 of Southwestern Bell's MCA customers in Tier 5, i.e.
4 charging a toll call to call them, was the same as
5 Southwestern Bell's proposed treatment of your
6 company, that is its customers in Tiers 1 and 2 would
7 have to pay a toll charge when they call your
8 customers in Tiers 3 and 4?

9 A. I'm just trying to follow the logic. So
10 you're saying that if because we did not include your
11 MCA subscribers in 5 and it was as a toll call, then
12 is that the same as what you're proposing in terms of
13 treating our customers?

14 Q. Right.

15 A. I suppose in some -- in one extent, but I
16 don't believe -- I think it's an apples and oranges
17 sort of comparison.

18 Q. To the extent you're both -- that both
19 companies are charging toll to their own customers to
20 call what each has described as an MCA subscriber in
21 an outbound calling scope, then they're similar,
22 right?

23 A. Yes.

24 Q. Let me talk about the terms of the
25 Memorandum of Understanding between Southwestern Bell

1 and Intermedia for a minute. Would you agree with me
2 that the arrangement is interim?

3 A. Yes.

4 Q. And that the parties have agreed that it
5 will be revised to comply with whatever order the
6 Commission issues in this case?

7 A. Yes.

8 Q. And that the compensation will be
9 retroactively trued up to the decision of the
10 Commission in this case so long as we have the
11 decision by November 5th of this year?

12 A. Yes.

13 Q. That even if the agreement -- or even if the
14 Commission's decision comes after November 5th, we'll
15 still revise the agreement on a prospective basis,
16 right?

17 A. I would -- if the Commission's decision
18 comes after November 5th, I don't see revising the
19 agreement at all. I would see the Commission's
20 decision taking the place of the agreement.

21 Q. Whenever the Commission issues its decision,
22 the parties will comply with that on a going-forward
23 basis, right?

24 A. Yes.

25 Q. And would you agree with me that the

1 agreement which was signed on December 3rd, that the
2 parties expected the decision of the Commission to
3 have been issued by November 5th this year?

4 A. Yes.

5 Q. And we still expect and hope that, right?

6 A. Yes.

7 Q. And would you agree with me that
8 Southwestern Bell in a Memorandum of Understanding and
9 in the negotiations insisted that it would be provided
10 to the Commission and that it would be made available
11 to other CLECs?

12 A. I do not agree with the first part of your
13 statement that you insisted it would be provided to
14 the Commission. I do agree that you -- I do agree
15 that you agreed to provide that to other CLECs.

16 MR. LANE: If I may approach the witness.

17 JUDGE DIPPELL: Would you like to show her
18 attorney?

19 MR. LANE: Sure.

20 BY MR. LANE:

21 Q. Let me show you the Memorandum of
22 Understanding which has been attached to one of the
23 exhibits in this case and ask if you'd look in
24 particular at paragraph 9 and agree with me that it
25 provides that the parties agree that this Memorandum

1 of Understanding will be provided to the Missouri
2 Public Service Commission to be maintained with the
3 Missouri Interconnection Agreement?

4 A. I don't disagree that the Memorandum of
5 Understanding says that. I thought, and maybe I
6 misunderstood, that you asked me if Southwestern Bell
7 insisted that it be provided to the Commission during
8 our negotiations. That was why I answered as I did.

9 Q. Okay. Is it your contention that that was
10 Intermedia's desire and it was Southwestern --
11 Southwestern Bell was opposed to it?

12 A. My contention is that Intermedia insisted
13 that the agreement be provided to the Commission.

14 Q. And Southwestern Bell was certainly in
15 agreement with that, were they not?

16 A. Eventually, yes.

17 Q. And that it would be made available to other
18 CLECs as well, right?

19 A. Yes.

20 Q. For clarification, would you agree with me
21 that a call that would be originated by a Southwestern
22 Bell customer calling to an Intermedia MCA subscriber
23 that would be subject to the 2.6 cent minute of use
24 charge would also have a counter-balancing charge from
25 Intermedia to Southwestern Bell for the cost of

1 terminating that call?

2 A. Help me understand that.

3 Q. Would you agree with me that the
4 interconnection agreement between Southwestern Bell
5 and Intermedia provides for reciprocal charging to
6 terminate a call originated by the other party's
7 customer?

8 A. Yes.

9 Q. And that that charge continues to apply when
10 calls are terminated by Intermedia that have been
11 originated by Southwestern Bell?

12 A. Yes.

13 Q. Would you agree with me that Southwestern
14 Bell advised Intermedia in April of 1999 that the
15 translations had been made in error with regard to
16 treating Intermedia's NXXs as being in the MCA code
17 and that they needed to be corrected?

18 A. Yes.

19 Q. And would you agree with me that Intermedia
20 and Southwestern Bell began negotiations on how to
21 handle that issue?

22 A. Yes.

23 Q. Would you agree with me that it was more
24 than five months beyond that before Southwestern Bell
25 took any action with regard to those -- changing the

1 translations for those NXXs?

2 A. Yes.

3 Q. And that after they were changed, then they
4 were changed back within several days; is that right?

5 A. Well, what happened is they were changed
6 with no notice to us. So we started receiving calls
7 from our customers because their customers were no
8 longer able to call them as they had in the past.

9 Q. Okay.

10 A. And for three days, we spent three days
11 working with Southwestern Bell trying to identify what
12 the problem was and why the policies changed.

13 Yes, after three days, we were told that's
14 what had happened, that you had retranslated the
15 numbers, and then with another two to three days you
16 reestablished the existing translations.

17 Q. So Ms. Mellon, the answer to my question was
18 within several days after that occurred it was changed
19 back, and you would agree to that; is that correct?

20 A. Yes.

21 Q. Now, let's talk about the steps that were
22 available to Intermedia during this five-month
23 negotiation period that preceded changing back of the
24 translations.

25 Would you agree that the Interconnection

1 Agreement between Intermedia and Southwestern Bell
2 gave Intermedia a number of options if it felt that
3 Southwestern Bell was, in fact, required to send it
4 toll-free calls from its customers to your customers
5 in the optional zones of the MCA?

6 A. I don't -- I am not totally familiar with
7 our Interconnection Agreement. So I can't answer
8 that.

9 Q. You haven't read the Southwestern
10 Bell/Intermedia Interconnection Agreement?

11 A. No, not the whole agreement. I'm in
12 marketing. I leave that to my regulatory and policy
13 people.

14 Q. You were involved in the negotiations; isn't
15 that correct?

16 A. Yes.

17 Q. Would you agree with me that Intermedia did
18 not enter into any kind of dispute resolution process
19 that may have been provided for in the Southwestern
20 Bell/Intermedia Interconnection Agreement?

21 A. Yes.

22 Q. Would you agree with me that Intermedia
23 didn't pursue any type of arbitration that may have
24 been provided for under the Interconnection Agreement?

25 A. Yes, because we were continuing to negotiate

1 in good faith and were optimistic about reaching a
2 resolution.

3 Q. Be fair to say that you weren't in a hurry
4 to reach a resolution between April and September
5 because you were continuing to receive the calls?

6 A. No, that wouldn't be fair. We were
7 constantly being given new deadlines where you would
8 retranslate our customers' numbers. So we had a sense
9 of urgency to resolve this issue. We didn't want that
10 to happen. So we wanted to come to a decision and
11 agreement. So no, I would not say that at all.

12 Q. During the period of time that the
13 negotiations were taking place, would you agree that
14 Intermedia was already getting what it wanted,
15 toll-free run calling from Southwestern Bell's
16 customers?

17 A. Yes.

18 MR. LANE: That's all I have. Thank you.

19 JUDGE DIPPELL: Cass County?

20 MR. McCARTNEY: Yes, thank you.

21 CROSS-EXAMINATION BY MR. McCARTNEY:

22 Q. Good morning.

23 A. Good morning.

24 Q. Where does Intermedia operate?

25 A. Intermedia operates in the St. Louis

1 metropolitan area.

2 Q. Is Intermedia terminating traffic to the
3 Orchard Farm exchange in the St. Louis area?

4 A. Intermedia does not directly terminate
5 traffic to Orchard Farm. We use the transit. We
6 terminate traffic to Southwestern Bell.

7 Q. At page 8, I think, of your testimony, the
8 part that Mr. Lane referred to --

9 JUDGE DIPPELL: Mr. McCartney, could I get
10 both you and the witness to speak up a little bit?
11 You're talking to each other, and I'm afraid we're not
12 going to be able to hear you on this side.

13 BY MR. MCCARTNEY:

14 Q. Page 8 of the testimony you state, and you
15 can look at it, When Intermedia began providing
16 service in the St. Louis MCA area, you established an
17 outbound local calling scope that encompassed MCA
18 Tiers 3 and 4 --

19 A. Yes.

20 Q. -- in addition to 1 and 2. Does that
21 include the Orchard Farm exchange?

22 A. Yes, it does. At that time it did. We now,
23 since the Memorandum of Understanding, have changed
24 our translations to match that of the existing MCA.

25 Q. No traffic -- I'll ask it this way. No

1 traffic is terminating from any Intermedia customers
2 to the MCA?

3 A. It could be. I don't know.

4 Q. It could. How would you go about -- in your
5 data requests you said that none is. How --

6 A. I understand. We would -- if we had a
7 customer -- we don't operate in the Orchard Farm
8 exchange, but if one of our customers in the exchanges
9 that we do operate in were to call Orchard Farm, then
10 yes, the traffic would terminate there.

11 Q. Would that be local traffic or toll traffic?

12 A. It would depend. We would pass the
13 traffic -- it would depend if the customer's a
14 subscriber to the MCA plan. We now have mirrored the
15 existing MCA plan and existing MCA NXXs.

16 So in our switch, if it was an MCA
17 subscriber's NXX, then it would originate out of our
18 switch as a local call and be passed to Southwestern
19 Bell that way. I would assume that if Southwestern
20 Bell also recognized it as an MCA subscriber, they
21 would terminate it to you that way, but I don't know.

22 Q. And are there any records of those calls
23 that would be given to Orchard Farm?

24 A. I really don't know. We -- I know that we
25 are now passing 92-99 records with Southwestern Bell.

1 That's my understanding. But I'm not in the billing
2 area, so I really don't know.

3 Q. Would you agree that Section 3C of your
4 Interconnection Agreement with Southwestern Bell
5 specifically states that you will not send to
6 Southwestern Bell any local traffic that's destined
7 for the network of a third party unless and until
8 Intermedia has the authority to exchange that traffic
9 with a third party?

10 A. As I said, I'm not that familiar with the
11 Interconnection Agreement. If you say it's there,
12 then I'll agree. However, we have met with
13 representatives from Orchard Farm to have discussions
14 about an agreement.

15 Q. If this Commission were to order all parties
16 to have bill and keep arrangements and continue the
17 MCA, would Intermedia be willing to segregate the
18 noncompensable MCA traffic onto a separate trunk in
19 order to resolve some of these billing questions?

20 A. I don't know. I don't know what that would
21 cost us to do. I'm not an engineer, obviously, and I
22 don't know what the process is that that would be. So
23 I don't know.

24 MR. McCARTNEY: Thank you.

25 JUDGE DIPPELL: MITG?

1 MR. JOHNSON: Yes, a few questions.

2 CROSS-EXAMINATION BY MR. JOHNSON:

3 Q. In the St. Louis area where you're
4 operating, do you have any interconnection agreements
5 with carriers other than Southwestern Bell?

6 A. No, we do not.

7 Q. Do you own your own switch?

8 A. Yes, we do.

9 Q. Do you have any IXC affiliates who also make
10 use of the switch?

11 A. We provide long distance services under our
12 Intermedia. We have no affiliates.

13 Q. So you are --

14 A. We are a local long distance company, yes.

15 Q. Okay. Thank you.

16 Do you have any agreements with GTE with
17 respect to traffic that's terminating to them --

18 A. No.

19 Q. -- indirectly?

20 A. No, we do not.

21 Q. Are you -- you said you might not be that
22 familiar with your record creation process. Are you
23 sending any records to GTE?

24 A. I do not know.

25 Q. You do have traffic that would terminate, I

1 assume, with some of these GTE exchanges such as
2 Augusta, Defiance, New Melle, Wentzville?

3 A. We possibly could.

4 Q. St. Peters?

5 A. We could.

6 Q. And you don't have an Interconnection
7 Agreement with GTE?

8 A. No, we do not.

9 Q. Do you know whether or not Southwestern Bell
10 is sending GTE information as to how much traffic
11 that's originated by Intermedia and terminating to
12 GTE?

13 A. I do not know.

14 Q. Do you know whether or not Intermedia is
15 keeping track of the traffic it's sending to these
16 non-Southwestern Bell companies on your own? Are you
17 retaining records for --

18 A. Not to my knowledge.

19 Q. Who would be the person in your company, in
20 Intermedia, that would know all that technical detail?

21 A. Someone from our billing organization.

22 Q. Do you have a name of the person that's
23 responsible for that department?

24 A. Not one that I can provide you right now. I
25 mean, we can get -- we can get back with that, but I

1 don't know a specific name at this time.

2 Q. So would it be fair to say that you don't
3 know if Intermedia's creating records that Bell's
4 using in passing downstream or whether Southwestern
5 Bell is creating the records?

6 At your interconnection between you when you
7 hand traffic off to Bell --

8 A. Yes.

9 Q. -- are you doing the recording and creating
10 records or is Southwestern Bell?

11 A. I don't know.

12 Q. I would assume that in your Interconnection
13 Agreement the rate that Southwestern Bell charges you
14 to transit a call that's going to another carrier is
15 less than the rate they charge you to transport and
16 terminate to one of their own customers; is that
17 right?

18 A. I have no idea.

19 Q. You don't know if there's a rate
20 differential?

21 A. No, I don't.

22 Q. As I understood it, you were part of the
23 negotiation team for this Interconnection Agreement?

24 A. Not the Interconnection Agreement. The
25 Memorandum of Understanding.

1 Q. Oh, the memorandum?

2 A. Yes.

3 MR. JOHNSON: That's all I have. Thank you
4 very much.

5 JUDGE DIPPELL: Thank you. We're going to
6 take a 15-minute break now and I will see if there are
7 questions from the Bench and then we'll do redirect.
8 So come back at ten after.

9 Off the record.

10 (A recess was taken.)

11 JUDGE DIPPELL: Let's go ahead and go back
12 on the record.

13 We were ready for Commission questions for
14 Ms. Mellon. Chair Lumpe, did you have questions?

15 QUESTIONS BY CHAIR LUMPE:

16 Q. Ms. Mellon, I just had one question. In
17 AT&T's testimony they suggest six things that would
18 make the program work satisfactorily, and I think
19 Gabriel has testimony where they list five things.
20 Are there -- do you think those would take care of the
21 issues that are of concern to Intermedia?

22 A. Yes, I do.

23 Q. Okay. Is there anything you would add to
24 it?

25 A. No.

1 CHAIR LUMPE: All right. Thank you. That's
2 all I have.

3 JUDGE DIPPELL: Are there any recross
4 questions based on the Chair's question?

5 (No response.)

6 Is there redirect?

7 MR. STEWART: Just two, I believe.

8 REDIRECT EXAMINATION BY MR. STEWART:

9 Q. First of all, Ms. Mellon, in response to
10 questions from the attorney for Orchard Farm, I
11 believe, you talked about a -- you mentioned a meeting
12 that Intermedia had with Orchard Farm. How long ago
13 did that meeting occur, if you know?

14 A. I do not know how long. It's been a number
15 of months, but we did have that meeting, and my
16 understanding was that we were waiting for them to
17 provide additional information in terms of what they
18 were looking for from the standpoint of the agreement.

19 Q. And so it would be Intermedia's position,
20 would it not, that we'd be willing to -- well, you
21 tell me. What's Intermedia's position?

22 A. Intermedia's position is that we would be
23 more than willing to work with any of the independent
24 LECs to work out an agreement.

25 Q. In response to some questions from counsel

1 for Southwestern Bell regarding the Memorandum of
2 Understanding, I believe he referred you to
3 paragraph 9 of the Memorandum of Understanding where
4 it provides that the memorandum would be provided to
5 the Public Service Commission.

6 Is there a difference between providing
7 something and seeking Commission approval of
8 something?

9 A. Yes, there is. We were insisting that the
10 Memorandum of Understanding be provided to the
11 Commission for approval under the Act, but as a
12 condition of the Memorandum of Understanding that
13 language was removed and Southwestern Bell would not
14 agree to that.

15 Q. Would you say Southwestern Bell insisted
16 upon that language that's contained in the Memorandum
17 of Understanding?

18 A. Yes.

19 Q. But Intermedia would not have had a problem
20 had Bell been willing to agree to submitting the
21 memorandum for Commission approval?

22 A. Absolutely not.

23 MR. STEWART: No other questions.

24 JUDGE DIPPELL: Thank you, Ms. Mellon. You
25 may be excused.

1 (Witness excused.)

2 JUDGE DIPPELL: Were there any other
3 Intermedia witnesses?

4 MR. STEWART: None.

5 JUDGE DIPPELL: And we're up to your Birch
6 witness in order, but since she's unavailable until
7 after lunch -- is that still correct?

8 MR. MIRAKIAN: That's correct.

9 JUDGE DIPPELL: I'd like to go ahead to
10 McLeod's first witness if they're prepared.

11 MR. KRUSE: Yes, your Honor. I would
12 request because of scheduling concerns that we alter
13 our witness list slightly to put Mike Starkey on first
14 in the order rather than last.

15 JUDGE DIPPELL: That's fine. You can go
16 ahead and begin with Mr. Starkey.

17 We can go off the record while they switch
18 places.

19 (Discussion off the record.)

20 JUDGE DIPPELL: Let's go ahead and go back
21 on the record.

22 (Witness sworn.)

23 JUDGE DIPPELL: Go ahead.

24 MICHAEL STARKEY testified as follows:

25 DIRECT EXAMINATION BY MR. KRUSE:

1 Q. Could you please state your name for the
2 record.

3 A. My name is Michael Starkey.

4 Q. And what is your position?

5 A. I am the president of QSI Consulting,
6 Incorporated.

7 Q. Are you the same Michael Starkey that caused
8 to be filed in this proceeding direct, rebuttal and
9 surrebuttal testimony?

10 A. Yes, I am.

11 Q. Okay. Do you have any corrections to make
12 in any of that testimony?

13 A. I have just a few corrections. Starting
14 with my direct testimony on page 5, line 17, primarily
15 editorial in nature. I need to put an apostrophe
16 between the acronym CLEC and the S to make it
17 possessive. In that same sentence I need to take out
18 the word "to", such that that sentence would now read,
19 Defining traffic from an MCA customer to a CLEC's
20 customer as toll traffic.

21 The next correction is on page 6. It's at
22 line 16. Again, I need to take out the word "a", such
23 that it now reads, If that dealership is served by
24 McLeod USA.

25 The next corrections are in my rebuttal

1 testimony. At page 3, line 25, I need to take out the
2 phrase "if not disgusted", such that that would read,
3 In addition I am troubled with Southwestern Bell's
4 fiction.

5 The second correction is on page 4.

6 JUDGE DIPPELL: I'm sorry. What line was
7 the page 3 correction on?

8 THE WITNESS: Line 25.

9 JUDGE DIPPELL: Thank you.

10 THE WITNESS: The next correction is on
11 page 4, lines 3 and 4. I need to just sort of reword
12 that sentence, unfortunately. I need to take out the
13 following words: "Preserve the status quo of the
14 existing," and then also the words "and to make those
15 plans," such that the sentence would now read, In this
16 proceeding, CLECs such as McLeod USA are asking
17 nothing more than for the MPSC to make the MCA plans
18 available to all carriers.

19 The third and final correction in the
20 rebuttal is on page 7, line 20. After the acronym MOU
21 I need to remove the word "understanding". And that
22 is the entirety of my corrections.

23 BY MR. KRUSE:

24 Q. Is this testimony true and correct to the
25 best of your knowledge, information and belief?

1 A. Yes, it is.

2 Q. Okay. If I asked you the questions here
3 today, would your answers be the same?

4 A. Yes, they would be.

5 MR. KRUSE: Your Honor, I would like to
6 offer Exhibits 20, 21 and 22 into the record and I
7 tender the witness for cross-examination.

8 JUDGE DIPPELL: Are there any objections to
9 Exhibits 20, 21 and 22 with those corrections coming
10 into the record?

11 (No response.)

12 Then I will receive those into the record.

13 (EXHIBIT NOS. 20, 21 AND 22 WERE RECEIVED
14 INTO EVIDENCE.)

15 JUDGE DIPPELL: Is there cross-examination
16 of Mr. Starkey by AT&T?

17 MR. DeFORD: No, thank you, your Honor.

18 JUDGE DIPPELL: Intermedia?

19 MR. STEWART: No, questions, your Honor.

20 JUDGE DIPPELL: Birch?

21 MR. MIRAKIAN: No questions.

22 JUDGE DIPPELL: Gabriel?

23 MR. LUMLEY: No questions, your Honor.

24 JUDGE DIPPELL: Nextlink?

25 MR. COMLEY: No questions.

1 JUDGE DIPPELL: Staff?

2 MS. KARDIS: No questions.

3 JUDGE DIPPELL: Public Counsel?

4 MR. DANDINO: No questions.

5 JUDGE DIPPELL: Sprint?

6 MS. GARDNER: No questions.

7 JUDGE DIPPELL: GTE?

8 MR. DORITY: No questions, thanks.

9 JUDGE DIPPELL: Southwestern Bell?

10 MS. McDONALD: Yes, please.

11 CROSS-EXAMINATION BY MS. McDONALD:

12 Q. Good morning, Mr. Starkey.

13 A. Good morning.

14 Q. I want to make sure that I understand your

15 position as set forth in your testimony. Is it your

16 position that under the Federal Telecommunications Act

17 incumbent local exchange carriers are obligated to

18 enter into reciprocal compensation arrangements where

19 the ILEC would compensate the CLEC when the CLEC

20 terminates the ILEC's calls if traffic is defined as

21 local traffic?

22 A. Yes, for the following reasons, that the FCC

23 has suggested that for local traffic reciprocal

24 compensation is the appropriate compensation

25 mechanism. Bill and keep is also an option if traffic

1 is relatively in balance.

2 Q. Okay. And that would be what you refer to
3 as an in-kind payment?

4 A. Yes, it would be.

5 Q. Okay. An MCA plan as defined in the
6 Commission's Report and Order in 92-306 required what
7 you considered in-kind payments for bill and keep
8 intercompany compensation with regard to all ILECs
9 that were required to provide the MCA service in the
10 three metropolitan calling areas; is that correct?

11 A. My understanding of the Commission's Order
12 in that particular docket is that it adopted the
13 stipulation of the three signatory parties, Sprint, or
14 United at that time, Southwestern Bell and GTE, and
15 that bill and keep between those three companies was
16 the method of compensation.

17 Q. And would you also agree that that was the
18 method of compensation between the other ILECs as a
19 result of the Commission's Order?

20 A. The Commission's Order speaks to support
21 payments made by the three large ILECs in that
22 respect. I'm not certain of the extent to which those
23 support payments are made. I don't know how that
24 actually works. So I guess my answer would be I don't
25 know. I know that the Commission adopted bill and

1 keep between those three companies.

2 Q. Okay. Is it your position that if bill and
3 keep is to continue to exist between members of the
4 metropolitan calling area plans, both equity and
5 competitive neutrality require that intercompany
6 compensation also be made available to CLECs
7 participating in the MCA plan?

8 A. I'm sorry. Could I hear that one more time?

9 Q. Sure. If bill and keep is to continue to
10 exist between members of the metropolitan calling area
11 planning, meaning the ILECs because they're the people
12 that you just said were in the metropolitan calling
13 area plan under the bill and keep intercompany
14 compensation arrangement, is it your position that
15 both equity and competitive neutrality require that
16 this intercompany compensation arrangement also be
17 made available to the CLECs who either are or seek to
18 participate in that MCA plan?

19 A. Well, I think equity and competitive
20 neutrality situations aside, I think bill and keep is
21 an option in negotiations for termination of local
22 traffic for any carrier. So yes, I would suggest that
23 bill and keep should be an option, as should
24 reciprocal compensation.

25 Q. And if you were the Commission, would it be

1 fair to say that bill and keep intercompany
2 compensation could also be a prerequisite to allowing
3 the CLECs to participate in the MCA plan?

4 A. No, I wouldn't agree with that.

5 Q. Could you tell me why the Commission
6 couldn't make that determination?

7 A. I'm sorry. Was your question could the
8 Commission make that determination?

9 Q. Uh-huh.

10 A. I'm sorry. I understood it to be should the
11 Commission make that determination.

12 I'd be a little uncomfortable talking about
13 what the Commission can and can't do. I'd be more
14 comfortable talking about what they should do. As I
15 explained in my testimony, the FCC has set up the
16 method by which payments for the termination of local
17 traffic should be made, and it has rules specific to
18 that particular compensation.

19 It's my opinion that the Missouri Commission
20 has undertaken the role prescribed by the FCC in
21 defining what a local calling area is. Once traffic
22 is defined as local under that particular definition,
23 then the rules of the FCC apply, and the rules of the
24 FCC allow for first negotiations and then for
25 reciprocal compensation for the termination of local

1 traffic. It also provides the option of bill and keep
2 if traffic is relatively in balance.

3 Q. And would it be fair to say that in the
4 FCC's orders they have not ruled out the possibility
5 that bill and keep intercompany compensation could be
6 the applicable compensation between companies for
7 local exchange of traffic?

8 A. My understanding is that -- and again, I'm
9 interpreting the FCC's rules. So I'll be careful.
10 But my understanding is that ILECs have in the past,
11 RBOCs specifically, have taken the position that bill
12 and keep cannot be mandated in an arbitration, that it
13 is available only through negotiation.

14 I don't know that I necessarily read the
15 rule the same way, but the FCC certainly says that --
16 the FCC certainly points to reciprocal compensation as
17 sort of a default mechanism whenever negotiations
18 aren't able to come up with a compensation mechanism
19 that is mutually acceptable by both parties.

20 Q. Okay. Well, let me see if I understand what
21 you've just told me. I think you said you didn't want
22 to take a position on whether or not the Commission
23 could order bill and keep intercompany compensation as
24 a prerequisite for CLEC participation in the MCA plan,
25 right?

1 A. I mean, I could give you an answer, but it
2 would be -- I mean, basically would be largely a legal
3 interpretation. So I'd be a little uncomfortable
4 doing that.

5 Q. And your answer was rather what you believe
6 it should do?

7 A. Correct.

8 Q. And as far as what is currently existing,
9 you would agree that there is bill and keep
10 intercompany compensation within the metropolitan
11 calling areas?

12 A. Based on agreement of the parties.

13 Q. And a Commission order mandating that
14 arrangement?

15 A. Adopting their agreement in my
16 understanding.

17 Q. And then adopting their agreement, do you
18 believe the parties are free to move away from what
19 the Commission ordered?

20 A. My understanding of the Commission's Order
21 in this case is that three parties, United, GTE and
22 Southwestern Bell, agreed to a particular type of
23 compensation, bill and keep in this particular
24 instance. The Commission approved that stipulation on
25 their behalf.

1 The extent to which those parties are free
2 to renegotiate that particular type of compensation, I
3 haven't read anything in the Order that would preclude
4 that.

5 Q. Okay. Have you had an opportunity to review
6 Southwestern Bell's MCA tariff?

7 A. Not for purposes of this proceeding. I
8 probably did back in '92, but --

9 Q. Okay. Did you have an opportunity to review
10 the Commission's Order, or I guess you're referring to
11 it as an adoption of the stipulated agreement in
12 TO-92-306?

13 A. Yes, I read that Order.

14 Q. Okay. And would you agree that a SWBT
15 customer in the principal -- if a SWBT customer in the
16 principal zone calls another Southwestern Bell
17 customer in Tier 3, for example Chesterfield, that
18 does not subscribe to MCA service, the customer in the
19 principal zone's going to incur a toll charge for
20 making that call?

21 A. I think that's correct. Let me make sure
22 just so I'm completely accurate.

23 Mr. Voight in his testimony provided a
24 fairly easy-to-understand delineation of what is a
25 particular toll call and what is not given the current

1 MCAs. I'm having trouble finding it. Just a second.

2 And the question was a Zone 1 customer to a
3 Zone 3 customer?

4 Q. Uh-huh.

5 A. Yes, my understanding is if the Zone 3
6 customer was not an MCA subscriber, then the Zone 1
7 customer would pay toll charges.

8 Q. And if a Southwestern Bell customer in the
9 principal zone calls a CLEC customer in Tier 3, in
10 other words Chesterfield, would you agree that the
11 customer in the principal zone would incur a toll
12 charge for making that call?

13 A. My understanding is, under Southwestern
14 Bell's interpretation of the MCA today, that is, in
15 fact, the case. But my understanding is also that
16 that is why we're here.

17 Q. But that currently is what is occurring,
18 correct?

19 A. Yes.

20 Q. Now, if a Southwestern Bell -- would you
21 agree with me that if a Southwestern Bell customer in
22 Tier 3 calls a CLEC customer in Tier 3, that that is
23 going to be considered a local call?

24 A. Yes, I believe so.

25 Q. Okay. And in that situation, there would be

1 no 1+ dialing for the CLEC customer to call the
2 Southwestern Bell customer or vice versa?

3 A. An intra Zone 3 call would not require 1+.

4 Q. And with regard to the first two examples
5 where the principal zone customer's calling a non-MCA
6 subscriber in Tier 3 and/or when the principal zone
7 was calling the CLEC customer in Tier 3, in both of
8 those situations it was a 1+ call, correct?

9 A. That's my understanding under the current
10 arrangement.

11 Q. And based on your testimony, and I think
12 just factually, you'd agreed with me that CLECs didn't
13 exist in 1992, correct?

14 A. They did. I don't think they were certified
15 to provide local service in Missouri at that time.

16 Q. Okay. Well, with that qualifier, you agree
17 that they were not providing local service here?

18 A. Not in Missouri, not switched local service
19 anyway.

20 Q. Now, if the Commission determines that to
21 date the CLECs are not participants in the MCA plan,
22 would you agree that the calling patterns for the
23 South-- the calling pattern for the Southwestern Bell
24 customer does not depend on the identity of the called
25 party's telecommunications carrier, rather it depends

1 on whether the called party is actually a participant
2 in the MCA plan?

3 A. Well, given the particular scenario you've
4 described, the hypothetical, I would say that that is
5 by definition true.

6 The problem is that CLECs do exist and that
7 they do serve customers in Zone 3, as we spoke about
8 earlier, and if this Commission precludes them from
9 participating in the MCA, then the real world
10 situation will be that different charges and different
11 dialing patterns will apply whenever customers call
12 from the Southwestern Bell exchange to a competitor.
13 That's a simple reality.

14 Q. Okay. Well, that really wasn't my question,
15 because my question had to do with the fact that we
16 would -- that the Commission would determine that to
17 date the CLECs haven't participated in the MCA.

18 If the Commission were to make that
19 determination, wouldn't it be fair to say that
20 Southwestern Bell is treating its own customer based
21 not on the identity of the calling party's
22 telecommunications carrier, but rather on whether or
23 not the called party is a participant in the MCA plan?

24 A. No, I don't think it is fair to say that. I
25 mean, you could say that Southwestern Bell is just

1 following the rules of the MCA, but it is Southwestern
2 Bell that is at this point standing in the way of
3 allowing those competitors to provide MCA service.

4 So from a customer standpoint, when they
5 pick up the phone to make a call and they determine
6 whether they're going to call a Southwestern Bell
7 customer or a customer of McLeod USA, for example, and
8 different rates apply and different terms of dialing
9 apply, there's no doubt that that customer's making a
10 decision on is this a competitor's customer or is this
11 a Southwestern Bell customer?

12 I mean, the customers don't understand, I
13 don't think, and I don't want to sell them short.
14 Some of them, I'm sure they do. The customers don't
15 understand or care probably for that matter whether
16 someone's in the MCA or not. They just know they have
17 to make a different type of call and they have to pay
18 a different rate to get to a competitor's customer,
19 and that's the decision they're going to make in the
20 marketplace about whether to change customers or not.

21 Q. Okay. Well, you would --

22 A. I mean change carriers.

23 Q. You would agree with me that the
24 Southwestern Bell principal zone customer who calls
25 the non-MCA Tier 3 Southwestern Bell customer also

1 dialed 1+? You just said that, correct?

2 A. They do.

3 Q. So are you saying that there's customer
4 confusion for that customer because they don't know
5 whether or not the participant is in the MCA plan and
6 they don't care?

7 A. That's not what I'm saying at all. In fact,
8 what I think I'm relying on is -- and I have an
9 example in my testimony. Let's say you're a Zone 3
10 customer and you're a car dealership. You subscribe
11 to the MCA as much to be able to receive calls as you
12 do as to be able to make those calls.

13 If McLeod USA comes to that same car
14 dealership and is not allowed to participate in the
15 MCA, that customer has to make a real competitive
16 decision. If people from Zone 1 now have to make a
17 long distance call to reach me if I go with McLeod USA
18 and they'd still be able to make local calls if I
19 stayed with Southwestern Bell, the extent to which
20 McLeod USA is allowed in the MCA has had a significant
21 and dramatic negative impact on competition.

22 Q. And so based on what you just said, the
23 determination of whether or not McLeod USA is actually
24 a participant in the MCA plan is the determining
25 factor?

1 A. The determining factor of what? It's not
2 the determining factor of whether that customer -- let
3 me say it this way.

4 You can say that the fact that McLeod USA
5 isn't a participant in the MCA is a factor. What I'm
6 saying is, though, you have to look at why McLeod USA
7 isn't a participant in the MCA. At this point it's
8 because they don't have that option.

9 Given that option, customers wouldn't have
10 to make those choices between competitors based not on
11 quality of service that they could be provided by
12 those competitors or the prices they pay or anything
13 else. They'd have to -- they'd be able to make those
14 choices -- they're required to make those choices
15 based solely on the fact that McLeod USA at this point
16 in precluded from being in the MCA plan.

17 Q. So participation -- whether or not the
18 McLeod customer is a participant in the MCA plan is
19 definitely a determining factor, is that what I just
20 heard you say?

21 MR. KRUSE: Your Honor, I'm going to object.
22 I think he's answered this question a couple of times
23 to the best of his ability, and it's the same question
24 that's been asked over for the third or fourth time
25 now. And the witness can -- if he can answer any

1 differently than he's already answered, that's fine,
2 but --

3 MS. McDONALD: Well, I would disagree with
4 that objection completely because it's a question that
5 really requires a yes or a no answer, and every single
6 time I asked a question that only required a yes or no
7 answer I got other examples of things he wanted to
8 talk about which had nothing to do with the question
9 that I asked.

10 MR. KRUSE: Your Honor, I think what
11 counsel's -- that the reason she's getting -- she may
12 not like the answer. That doesn't mean that she gets
13 to keep asking the question over again until she gets
14 the answer that she wants.

15 JUDGE DIPPELL: I don't think that the
16 witness answered yes or no to her question, but what I
17 did hear the witness say was, I don't understand your
18 question.

19 So you're asking the question, Is it a
20 determining factor? I don't think the witness
21 understood a determining factor of what. So perhaps
22 you should rephrase your question and the witness
23 should answer yes, no, I don't know, I don't
24 understand your question.

25 THE WITNESS: Okay.

1 MS. McDONALD: Okay. Thank you, your Honor.

2 BY MS. McDONALD:

3 Q. My question is simply, isn't it fair to say
4 that the determining factor of whether a call is going
5 to be a toll call is not based on the identity of the
6 called party, rather it's based on whether or not the
7 called party is a participant in the MCA plan?

8 A. I'm not good at yes or no answers. Yes, but
9 I don't think that tells the whole story.

10 Q. Okay. Thank you.

11 Now, I want to make sure I understand
12 another point that you made in your testimony, I
13 believe. Is it your opinion that the current MCA
14 prices charged by the ILECs were set at a level
15 intended to provide those carriers with revenue
16 neutrality?

17 A. I know that was the underlying rationale.
18 I'm trying to remember exactly how those rates were
19 constructed. I'm trying to remember whether I
20 participated in that actually. I know that was the
21 underlying rationale. I don't know the extent to how
22 that was executed.

23 Q. Okay. I'll move on from that.

24 Now, in your testimony you also address a
25 case that was decided by the United States Court of

1 Appeals for the District of Columbia Circuit Court,
2 and although I don't think you named that case in your
3 testimony, I understood you to be referring to Bell
4 Atlantic Telephone Companies vs. the FCC.

5 A. Can you reference me to the testimony where
6 it is?

7 Q. It's in your surrebuttal testimony, I know
8 that. Page 6, first question and answer, lines 1
9 through looks to me like 12.

10 A. Of the surrebuttal?

11 Q. Uh-huh.

12 A. Yes. That was the appellate court decision
13 vacating the FCC declaratory ruling. Yes, that's the
14 Bell Atlantic case.

15 Q. Okay. And that decision was rendered, I
16 think you said, March 24th of this year. Did you say
17 that or did I know that?

18 A. I don't see where I said that.

19 MS. McDONALD: Okay. Well, just for ease of
20 reference, your Honor, at this time I would ask that
21 this exhibit be marked as Exhibit 52, which is the
22 Bell Atlantic Telephone Companies case.

23 JUDGE DIPPELL: I'm sorry. What is it?

24 MS. McDONALD: Bell Atlantic Telephone
25 Companies vs. FCC.

1 JUDGE DIPPELL: Does that have a docket
2 number?

3 MS. McDONALD: It's No. 99-1094, and the
4 decision was made March 24th, 2000. It's also
5 consolidated with 99-1095, 99-1097, 99-1106, 99-1126,
6 99-1134, 99-1136 and 99-1145.

7 JUDGE DIPPELL: And did you have copies of
8 that for everyone?

9 MS. McDONALD: Yes. And also, just so it's
10 clear, the cite for that is 206 Fed3d, page 1.

11 (EXHIBIT NO. 52 WAS MARKED FOR
12 IDENTIFICATION.)

13 JUDGE DIPPELL: Go ahead. I've marked that
14 as Exhibit 52 for identification.

15 BY MS. McDONALD:

16 Q. Okay. Mr. Starkey, you have had a couple of
17 minutes to look at this decision that I just handed
18 you as Exhibit No. 52, and would you say that it
19 accurately reflects the Court's decision in this case,
20 I've given you a full and complete copy?

21 MR. LUMLEY: Your Honor, I have to object to
22 the competency of this witness to verify a court
23 opinion.

24 JUDGE DIPPELL: Sustained.

25 MS. McDONALD: Okay. At this time then I

1 would just ask that the Commission take judicial
2 notice of this opinion.

3 JUDGE DIPPELL: Would there be any objection
4 to the Commission taking notice of this opinion of the
5 Court of Appeals?

6 MR. LUMLEY: Your Honor, the only comment I
7 would make is that I don't understand that it's
8 incumbent on me to ask you to take notice of judicial
9 precedent that I intend to rely on in this case, and
10 as long as we're not varying that rule, I don't have
11 an objection.

12 JUDGE DIPPELL: You're correct. I think
13 the -- this is obviously an opinion of the Court of
14 Appeals, so it's judicial precedent, but -- so if you
15 want to ask the witness questions about it, that's
16 fine.

17 MS. McDONALD: Okay. Thank you, your Honor.
18 BY MS. McDONALD:

19 Q. Would it be fair to say that this decision
20 addressed whether calls to Internet service providers
21 within the caller's local calling area are themselves
22 considered local calls?

23 A. I think it's fair to say that's a component
24 of the discussion in the decision.

25 Q. And you addressed that briefly in your

1 testimony, correct?

2 A. I did.

3 Q. And the -- and is it your understanding that
4 the FCC had previously determined that these calls
5 were not local calls?

6 A. I don't have the declaratory ruling in front
7 of me, but I think what it said was that at least a
8 portion or substantial portion of these calls were
9 interstate calls.

10 Q. And based on this court opinion which you
11 read apparently in preparing your testimony, would it
12 be fair to say that the court noted in this opinion
13 that the ILECs argued that were reciprocal
14 compensation for calls to ISPs was, quote, hardly
15 reciprocal since ISPs do not make outgoing calls?

16 MR. DANDINO: Your Honor, I'm going to
17 object. I believe the opinion speaks for itself. I
18 don't think you have to cross-examination this witness
19 on what the opinion says. It says what it says.

20 JUDGE DIPPELL: I agree the opinion says
21 what it says. However, the witness did in his
22 testimony speak as to his understanding of the
23 opinion.

24 I won't allow the -- I won't allow questions
25 regarding his legal opinion about the court decision.

1 However, I will allow her to ask what his
2 understanding is of the opinion, which I believe is
3 how she phrased her question.

4 Would you like to reask your question?

5 MS. McDONALD: I'm sorry?

6 JUDGE DIPPELL: Would you like to ask it
7 again?

8 MS. McDONALD: Sure.

9 BY MS. McDONALD:

10 Q. Is it your understanding in reviewing this
11 opinion and preparing your testimony that the court
12 noted that the ILECs argued that the reciprocal
13 compensation for calls to Internet service providers
14 was hardly reciprocal since ISPs do not make outgoing
15 calls?

16 A. I don't doubt that. I don't see that
17 specific reference. I don't doubt that the ILECs
18 argued that. I don't see that specific reference in
19 here, though. I wouldn't be surprised that it is.

20 Q. Okay. And is it your understanding, having
21 reviewed that case, that the court determined that the
22 issue at the heart of the case was whether a call to
23 an Internet service provider was local or long
24 distance and that the court noted that neither
25 category fit clearly?

1 A. I think that is at the heart of the case. I
2 think the court did recognize that. More specifically
3 I think at the heart of the case was the FCC's use of
4 the Indiana call analysis for purposes of supporting
5 its conclusion that a portion of this traffic was
6 interstate in nature and its definition or its use of
7 the term terminate as it was used in Part 69 of its
8 rules to suggest that this type of traffic did not
9 terminate at an ISP server.

10 Q. Okay. And when you reviewed this opinion to
11 prepare your testimony, would it be fair to say
12 that -- or is it your understanding that the court
13 stated that the calls to Internet service providers
14 are not quite local but they're not quite long
15 distance?

16 A. Luckily that portion of my copy is
17 highlighted so it's easy to see. Yes, they did indeed
18 say that. They also -- I mean, they also said other
19 things that would lead us to believe that they thought
20 it was local.

21 For example, whenever they -- whenever they
22 agreed to some extent with the MCI Worldcom view that
23 these calls don't differ from calls to, I think they
24 used pizza parlors, they may have used chat lines or
25 some -- let me just find it here -- travel agencies

1 and credit card verification firms.

2 I don't think the -- the court was not
3 making a determination whether it was local or toll.
4 The court was simply vacating the FCC's decision
5 supporting the idea that it was interstate, suggesting
6 that they hadn't done the proper analysis.

7 Q. Okay. So based on that understanding, would
8 you say that it is your understanding that the court
9 vacated the FCC's ruling and remanded the case to the
10 FCC so that the FCC could explain its decision to
11 treat end-to-end analysis as controlling the issue of
12 whether or not calls to ISPs were local or nonlocal?

13 JUDGE DIPPELL: Let me step in one moment.
14 I'm going to clarify what I ruled on earlier. I guess
15 I'll allow the witness to tell his understanding of
16 the court decision as long as those questions are
17 leading to somehow questions about this witness'
18 position in this case. I mean, the Commission can
19 interpret the court decision. Are we headed there?

20 MS. McDONALD: I sure hope so.

21 JUDGE DIPPELL: Okay. You may answer the
22 question, if you remember it.

23 THE WITNESS: I'm sorry. Could I hear it
24 one more time?

25 BY MS. McDONALD:

1 Q. Sure. My question was, that is it your
2 understanding that the court vacated the FCC's ruling
3 and remanded the case for further explanation from the
4 FCC with regard to its decision to treat end-to-end
5 analysis as controlling the issue of whether or not
6 calls to ISPs were local or nonlocal?

7 A. I don't know that I would construe it
8 exactly that way. I would agree with the fact that
9 the court vacated the FCC's decision, declaratory
10 ruling, and remanded it back to the FCC for further
11 decision-making, and the court specifically identified
12 the end-to-end analysis as being unsatisfactorily
13 explained as to why it's a controlling factor.

14 But I don't know that the sole purpose of
15 remanding the particular -- remanding this back to the
16 FCC was that they further explain the end-to-end
17 analysis. I think that kind of prejudices what the FCC
18 will do. I think the FCC agreed to simply say, We
19 chose the wrong analysis. End-to-end does not
20 control.

21 So I don't think it's a matter of further
22 explanation as much as it is a matter of redeciding
23 the issue whether the end-to-end analysis is
24 controlling.

25 Q. Okay. So you would say that, upon remand,

1 the FCC is free to make a decision with regard to
2 whether or not this traffic is local or not local? Is
3 that your testimony?

4 A. I think I could agree with that
5 characterization. It's been remanded. The original
6 ruling has been vacated, and the FCC now must make a
7 decision with respect to classifying this particular
8 type of traffic.

9 Q. Okay. Now, I have a few other questions
10 about your testimony with regard to the NXX database
11 that you suggest should be developed.

12 A. Yes.

13 Q. Now, it's my understanding that you think
14 that there should be a database developed and that the
15 Commission should appoint an NXX database
16 administrator. Is that your testimony?

17 A. It is largely, though I'd like to suggest
18 that -- I'd like to clarify, I guess, that I see this
19 case really in two stages. One is what are the
20 competitive impacts of precluding the competitors from
21 operating within the MCA and providing service to
22 customers consistent with the MCA? The second one is,
23 does the MCA need to be changed in order to better
24 accommodate CLECs and/or to add additional benefits to
25 the public?

1 My recommendation is that some change be
2 made with NXX codes really occurs in that second phase
3 of the proceeding, in my opinion. So it isn't
4 necessarily determinative and doesn't need to be
5 decided in order to decide whether CLECs should be
6 allowed within the MCA or not.

7 I've suggested that one possible scenario
8 for solving the problem of differing -- needing a
9 different NXX for MCA customers verses an NXX for
10 non-MCA customers could be solved by a database that
11 identifies MCA customers regardless of the NXX.

12 Q. Okay. And that's the portion of your
13 testimony where you say that you think that a
14 technical committee should be formed to address
15 whether or not that could be done; is that correct?

16 A. I think that's a good option, yes.

17 Q. And if they shouldn't go that option and
18 they're going to continue NXX segregation, then you
19 believe that you would need a database to be developed
20 and have a database administrator; is that my
21 understanding of what you're saying?

22 A. I think that's one option I put forward. I
23 think another option, and perhaps a better option, is
24 the one put forth by Mr. Voight which would simply
25 allow all NXXs for CLECs to be turned up as MCA NXXs.

1 Q. And that would assume that the CLECs have no
2 non-MCA subscribers, I take it?

3 A. I don't think you need to assume that. I
4 mean, basically it's simply a matter of switch
5 translations and how calls are routed. If a call is
6 made to a CLEC, then it would be routed as a local
7 call in terms of because it would be identified as an
8 MCA exchange.

9 Q. Okay. So if it was identified as an MCA
10 exchange, wouldn't it follow that the CLEC's customer
11 is an MCA subscriber?

12 A. The only reason I hesitate to say yes to
13 that is because saying someone is an MCA subscriber
14 probably entails simply more than how calls are
15 directed to them. It entails what rates they're
16 charged, how they're marketed, whether the CLEC would
17 call that an MCA customer or not. I don't know. I
18 don't know that the Commission has to define that.

19 I was simply trying to determine a way in
20 which we could overcome the problem in differing
21 dialing -- different dialing scenarios for calls going
22 to CLECs versus ILECs and the need to have separate
23 NXXs for MCA and non-MCA customers.

24 Q. Let me ask you this. If the Commission were
25 to accept your recommendations, at least it looked to

1 me like it was a recommendation that there should be a
2 database and a database administrator who would
3 maintain this NXX database, would you agree that that
4 would be a fairly costly task?

5 A. I would agree that it would require some
6 amount of resources. I don't know the amount.

7 Q. Okay. And I believe, and I want to make
8 sure I understood your testimony, that if the
9 Commission were to take that route and decide that an
10 NXX database should be developed, that a possibility
11 is that you could receive assistance economically to
12 support the development of this application from both
13 ILEC and CLEC participants; is that your testimony?

14 A. Just on a very specific, could you point me
15 in my testimony to where you're referring?

16 Q. Sure. I think it is on -- I know it's on
17 page 10, line 17. I just don't know if it's rebuttal
18 or surrebuttal.

19 A. It looks like it's probably rebuttal.

20 Q. Okay.

21 A. I'm sure that's true. Yes. Okay. Now, I
22 apologize. Can I hear the question one more time?

23 Q. Sure. If the Commission were to decide that
24 they should have an NXX database, is it your position
25 that, to fund this database development, an option

1 would be for both ILECs and CLECs to monetarily
2 support that database?

3 A. Certainly that's an option, yes.

4 MS. McDONALD: That's all the questions I
5 have at this time. Thank you.

6 JUDGE DIPPELL: Cass County?

7 MR. MCCARTNEY: Yes, thank you.

8 CROSS-EXAMINATION BY MR. MCCARTNEY:

9 Q. Good morning.

10 A. Good morning.

11 Q. Could you turn to page 15 of your direct
12 testimony?

13 A. Okay.

14 Q. Beginning at line 30, you state, The
15 carriers making a nondiscriminatory decision not to
16 use bill and keep arrangements for transporting and
17 terminating local MCA traffic should be given the
18 ability to assess cost-based rates for such traffic.

19 My first question, who will make the
20 decision whether a carrier's decision not to use bill
21 and keep is nondiscriminatory or not?

22 A. I think what I had in mind here is that
23 payments made to the termination of local traffic are
24 generally left to negotiations first, and then if not
25 available for agreement, then they are arbitrarily

1 mediated and then arbitrated.

2 The extent to which something is
3 nondiscriminatory I assume would be the decision of
4 the Commission in an arbitration.

5 Q. Let's say that the Commission chooses rather
6 just to order all parties that are operating in the
7 MCA to use their bill and keep intercompany
8 compensation letting CLECs in.

9 A. Okay.

10 Q. Would McLeod be willing to segregate the
11 noncompensable MCA traffic onto a separate trunk?

12 A. I think you'd probably have to ask
13 Mr. Wissenberg or Mr. Oberschelp those questions.

14 Q. Can you answer questions about where McLeod
15 is operating in the state now and how they're
16 exchanging traffic?

17 A. Again, the specifics are probably better for
18 Mr. Wissenberg and Mr. Oberschelp.

19 Q. Would you be aware of McLeod's
20 interconnection agreements, Section 37?

21 A. Not as well as they would.

22 MR. McCARTNEY: Could the Commission, your
23 Honor, just take judicial notice that there is an
24 Interconnection Agreement with Southwestern Bell in
25 your files approved in Case No. TO-2000-26 so I don't

1 have to introduce it?

2 JUDGE DIPPELL: Is there a specific section?

3 MR. MCCARTNEY: Section 37.

4 JUDGE DIPPELL: 37?

5 MR. MCCARTNEY: Yes.

6 JUDGE DIPPELL: Would there be any objection
7 to the Commission taking official notice of the
8 Interconnection Agreement, and that's between
9 McLeod --

10 MR. MCCARTNEY: Southwestern Bell and
11 McLeod.

12 JUDGE DIPPELL: -- and Southwestern Bell in
13 Case No. TO-2000-26 and specifically Section 37 of
14 that agreement?

15 (No response.)

16 The Commission will take notice of that.

17 MR. MCCARTNEY: Those are all my questions.
18 Thank you.

19 JUDGE DIPPELL: MITG?

20 MR. JOHNSON: Thank you.

21 CROSS-EXAMINATION BY MR. JOHNSON:

22 Q. Good morning.

23 A. Good morning.

24 Q. I take it that you're testifying on McLeod's
25 behalf more from a policy standpoint than a

1 familiarity with their system, their interconnection
2 agreements, their record exchange process?

3 A. I think that's fair, yes.

4 Q. Have you personally been involved in
5 interconnection agreement negotiations?

6 A. Not with McLeod USA.

7 Q. With other carriers?

8 A. Yes, I have.

9 Q. Have you ever been involved in an
10 interconnection agreement negotiation that involved
11 more than two companies?

12 A. I don't think so.

13 Q. Have you ever seen an interconnection
14 agreement that was signed by more than two companies?

15 A. The reason I'm hesitating is I've seen a
16 whole bunch of them. I want to make sure that I don't
17 misstate. I don't believe so.

18 Q. Well, I know in some of your testimony you
19 talk about the rules regarding reciprocal compensation
20 arrangements, and it's my understanding that if two
21 parties agree to reciprocal compensation, that's
22 usually reduced to an agreement and submitted to the
23 Public Service Commission for approval; is that right?

24 A. That's my understanding in its normal
25 course, yes.

1 Q. So the situation that we have in Missouri
2 with trying to, if you will, overlay reciprocal
3 compensation concepts from the FCC rule onto a plan
4 that involves more than two carriers is a little bit
5 problematic for me, and I'm trying to understand what
6 your recommendations to the Commission are.

7 A. Okay.

8 Q. If McLeod wants to have reciprocal
9 compensation with Orchard Farms, are you suggesting
10 that Orchard Farms and McLeod would have to get
11 together and negotiate an agreement and have it
12 submitted and approved by the Commission?

13 A. I think that's probably the preferred way,
14 yes.

15 Q. Looking at page 11 of your direct testimony,
16 at lines 11 through 18 you were citing an FCC rule
17 regarding defining reciprocal compensation?

18 A. Yes.

19 Q. And would you agree with me that that rule
20 talks about an arrangement between two carriers?

21 A. It does.

22 Q. And just above that on page 11 you talk
23 about local traffic as being traffic between a LEC and
24 a telecommunications carrier other than a CMRS
25 provider?

1 A. It does say that.

2 Q. Do you understand that language is
3 indicating that local traffic is traffic between two
4 telecommunications carriers as defined in their
5 reciprocal compensation agreement?

6 A. Not necessarily. I wouldn't read the FCC's
7 rule to preclude an option or to preclude a
8 circumstance where more than two carriers are involved
9 with carrying the call. I think the reason the FCC
10 probably uses two carriers here is the FCC defines
11 traffic by where it originates and where it
12 terminates. Only one carrier can originate a call and
13 only one carrier can terminate a call.

14 If those are the two carriers that it's
15 talking about, that doesn't preclude an option of
16 another carrier getting involved in transporting the
17 call or any intermediate switching function.

18 Q. And that part of the phrase there at line 7
19 that talks about a local service area established by
20 the state commission, is that establishment of the
21 local service area by the state commission done in the
22 context of approving that Interconnection Agreement?

23 A. When you talk about the local service area,
24 where again are you pointing in my testimony?

25 Q. Line 7 where you're reciting Rule 51.71B

1 that defines local traffic.

2 A. No, I don't think -- I don't think the local
3 service area that's being defined there is necessarily
4 defined within an interconnection agreement. I think
5 it's probably more generally defined by commissions
6 within other proceedings as they did in the MCA
7 proceeding for all carriers.

8 Q. So if I had interpreted the establishment of
9 local traffic between two carriers as what those
10 carriers agreed to and submitted to the Commission,
11 you have a different view of how the local traffic
12 definition is developed?

13 A. I think I do have a little bit different
14 view. I think it may be more practice than it is a
15 requirement, but state commissions have generally
16 defined local calling areas not within individual
17 interconnection agreements or arbitrations. They may
18 very well have in some circumstances, and I guess it
19 could be argued in the AT&T/SBC arbitration in this
20 case that they did that very thing in requiring that
21 reciprocal compensation be paid in both mandatory and
22 optional MCA exchanges.

23 But I think more generally I would argue
24 that commissions generally set local calling exchange
25 areas more generally.

1 Q. Would you also agree with me, then, that
2 reciprocal compensation is for transport and
3 termination of local traffic? That's what you provide
4 on behalf of the rules?

5 A. Yeah.

6 Q. And on page 11, lines 15 through 18, I
7 believe you've given us a definition of termination
8 for purposes of reciprocal compensation?

9 A. Page 11, line 15?

10 Q. Yes, sir. I'm looking at lines 15 through
11 18 where you say "Likewise termination is defined as."

12 A. Yes, I see that.

13 Q. Where did you take that definition from? Do
14 you have that with you today?

15 A. I probably have it on my computer. I
16 probably don't have a hard copy.

17 Q. That's from the FCC's rules?

18 A. That's from the FCC's rule.

19 Q. Do you remember how the FCC defined
20 transport?

21 A. Not off the top of my head, but I could find
22 it.

23 Q. You don't have it here with you?

24 A. It's on my computer. Actually, I may have.
25 Let me look. I think the Commission's rules are in my

1 binder on the table back there. I apologize.

2 Q. Subject to check, would you agree with this
3 definition, and I'm looking at the Rule 47 CFR
4 51.701C, The transmission and any necessary tandem
5 switching of local telecommunications traffic subject
6 to Section 252B5 of the act from the interconnection
7 point between the two carriers to the terminating
8 carrier's end office switch?

9 A. Subject to check, I would accept that that
10 is what it says.

11 Q. If that's the definition of transport, for a
12 call from Hillsboro that goes through Southwestern
13 Bell's switch but then goes to Orchard Farms to
14 terminate, would you agree that there's no transport
15 between -- there's no transport involved in that call?

16 A. No, I wouldn't agree to that. It wouldn't.

17 Q. Is McLeod operating in -- do you know what
18 exchanges McLeod is operating in?

19 A. I don't specifically.

20 Q. Let's suppose that McLeod is operating here
21 as a switch in downtown St. Louis.

22 A. Okay.

23 Q. Hands that call off to Bell's tandem there
24 in St. Louis and Bell's facility takes it, it
25 terminates to Orchard Farms up here. In that

1 situation, is there any transport between McLeod and
2 Orchard Farms that McLeod has provided?

3 A. Yes. The call when it leaves the McLeod
4 switch will be transported on at least likely a
5 portion of McLeod's network to the Southwestern Bell
6 tandem. That portion of the call is transported by
7 McLeod for termination to Orchard Farms.

8 Q. That is transport between McLeod and
9 Southwestern Bell, not between McLeod and Orchard
10 Farms?

11 A. I think the way I would define that is that
12 it transported the call over its path from downtown
13 St. Louis, it appears, and Orchard Farm. Between two
14 carriers really isn't relevant in my mind. That's a
15 transportable call in a given geographical area.

16 Q. The interconnection McLeod has with
17 Southwestern Bell, do you know whether or not it's a
18 direct interconnection? Do the facilities physically
19 interconnect at some point?

20 A. They would have to, yes.

21 Q. Do you know whether or not there's any
22 direct facility interconnection point between the
23 facilities of McLeod and the facilities of Orchard
24 Farm?

25 A. I don't know exactly what you mean by direct

1 connection, but there would be a connection that would
2 very well entail using the Southwestern Bell network
3 between the two.

4 Q. Do McLeod's facilities touch Orchard Farm's
5 facilities?

6 A. I don't know for sure. It wouldn't surprise
7 me if they do not.

8 MR. JOHNSON: Thank you. That's all I have.

9 JUDGE DIPPELL: There are questions from the
10 Bench, Vice Chair Drainer.

11 QUESTIONS BY COMMISSIONER DRAINER:

12 Q. Good morning.

13 A. Good morning.

14 Q. Just a couple. Basically, you give your
15 proposal on page 14 of your direct testimony on what
16 actions you think the Commission needs to take.

17 A. Yes.

18 Q. It seems many of your proposals are very
19 similar to those that were given in Mr. Kohly's
20 testimony; is that correct?

21 A. They are quite similar, yes.

22 Q. Is there anything that you see as additional
23 actions that need to be taken or any of your actions
24 that you would alter at this time?

25 A. I'd hate to think that I covered everything

1 in the six actions I put there because they're kind of
2 broad policy statements about what should be done.

3 Nothing comes specifically to mind that
4 would have to be done in addition, though I don't
5 doubt in the implementation of these six actions
6 another issue might arise, but nothing comes
7 specifically to mind that would have to be done in
8 addition. I don't have any specific changes to the
9 proposal.

10 Q. Do you believe that the Commission can order
11 that these actions be taken and that they can be done
12 in a timely fashion? By timely fashion I mean comply
13 with the order in 30 days.

14 A. I think some of them would take longer to
15 implement than others.

16 Q. Such as?

17 A. I think the Commission could -- let me just
18 review real quick. I don't remember exactly which
19 actions do what. I remember what they do in total.

20 Let me just say that I think what could be
21 done and what needs to be done most immediately is a
22 statement by the Commission that CLECs be allowed to
23 participate in the MCA, and I think Mr. Voight
24 actually -- I might alter my actions here a little bit
25 because I think Mr. Voight has hit upon a good way to

1 do that quickly, which is to define the NXXs of the
2 CLECs as MCA exchanges such that traffic going to them
3 could use the local dialing pattern.

4 I think that could be implemented very
5 quickly, would not take a lot of time, and I think
6 it's critical for allowing these folks to compete in
7 the Missouri marketplace.

8 Q. Okay. Stop. Are you referring to his MCA-2
9 proposal?

10 A. I don't think so. I think in his -- I don't
11 want to misstate his testimony, but my understanding
12 from his testimony was he gave a number of actions.

13 Q. Okay. So you're just saying that they would
14 have the NXXs that are designated as MCA?

15 A. Right. They just keep their current NXXs,
16 but in the translations of other companies' switches
17 they'd be defined as MCA exchanges so the local
18 dialing pattern would apply to calls that were
19 terminated to those numbers.

20 Q. But that would be all calls, wouldn't it?

21 A. It would be all calls that go to those
22 CLECs.

23 Q. Not just MCA customers?

24 A. Right. I guess that's why I kind of
25 struggled with Southwestern Bell's question earlier.

1 Depends how you define an MCA customer, I guess, but
2 all calls to those CLECs would be using the local
3 dialing pattern.

4 Q. And so you haven't thought about cost
5 recovery or revenue neutrality issues that might be
6 encompassed in that?

7 A. Well, I thought about both. I don't
8 think -- I don't understand -- I don't think that
9 there would be a -- I can't imagine why there would be
10 a large amount of cost associated with defining NXXs.

11 Q. But you don't know?

12 A. I haven't done a specific analysis, no.

13 Q. So you really want to ask this Commission to
14 order something without knowing the revenue impact on
15 the companies?

16 A. Well, I thought we were talking about costs.
17 The revenue impact in my opinion is immaterial. If
18 we're talking about --

19 Q. What about the cost to the companies, to
20 increase their cost?

21 A. Certainly this Commission has to take the
22 responsibility for understanding what the impact of
23 its decisions are.

24 Q. Okay. Thank you.

25 Then you discuss, I think, that the

1 Commission can order one of your actions and tell
2 everyone they have like 90 days from issuance of the
3 final order to have a solution or action, No. 5.

4 Please tell me how you came up with 90 days
5 being sufficient to have a solution brought to the
6 Commission.

7 A. I wouldn't sit here and say that 90 days is
8 better than 89 or 91. I think I was just taking a
9 time frame that's more immediate versus less
10 immediate. But I've been involved in a number of
11 workshops, technical committee meetings that are
12 ordered by commissions. Once the commission makes an
13 order to do something, things happen far more quickly
14 than when they don't.

15 I think 90 days would be sufficient to come
16 up with a way in which to implement this. But as I
17 said earlier, this really is sort of a second phase of
18 what I think is most important in this proceeding.
19 It's sort of how do you fix this NXX problem? I think
20 the most important is how do you get CLECs into the
21 MCA as quickly as possible?

22 Q. With respect to the small companies that are
23 part of the MCA, doesn't the Commission have the
24 responsibility that as the CLECs become part of the
25 competitive environment, that they are able to measure

1 and know what traffic is MCA traffic so that traffic
2 that is not MCA traffic they can receive terminating
3 access for?

4 A. My understanding -- the answer to your
5 question is yes.

6 Q. Okay.

7 A. And just to add to that a little, my
8 understanding was in the original -- or what the
9 Commission did in the Ameritech -- I'm sorry -- the
10 SBC/AT&T Interconnection Agreement was, arbitration,
11 was that it suggested the traffic between, let's say,
12 a CLEC and a third-party independent company is what I
13 have in mind, wouldn't necessarily be done in access
14 charges unless an agreement was reached both on the
15 originating and terminating side. If I'm mistaken in
16 that, I apologize, but that was my understanding.

17 Q. Do you not believe that McLeod USA would
18 have the responsibility to work with other ILECs that
19 they do not have an agreement with such as
20 Southwestern Bell? Do you have any agreement with
21 Southwestern Bell if you don't have one with the small
22 telephone companies that you have the responsibility
23 to work with them?

24 A. Absolutely, yes. As I said earlier, I think
25 negotiations in that respect are the best way to

1 handle the issue of intercompany compensation.

2 Q. Does the Commission have to order you to in
3 good faith resolve that or do you think that's
4 something that McLeod USA would do on its own?

5 A. I think they would do it on their own, and I
6 think we're required by the federal act to do that.

7 Q. And have they started working with CLECs --
8 or the other ILECs?

9 A. I don't know that. Mr. Wissenberg or
10 Mr. Oberschelp might know that.

11 Q. But if you haven't, you will?

12 A. Again, I feel more comfortable with them
13 speaking for the company since I'm simply a consultant
14 in their respect, but I assume that they would.

15 Q. As their consultant, would you advise them
16 to do that?

17 A. Absolutely.

18 COMMISSIONER DRAINER: I have no other
19 questions.

20 JUDGE DIPPELL: Thank you. Is there recross
21 based on questions from the Bench, AT&T?

22 MR. DeFORD: None, your Honor.

23 JUDGE DIPPELL: Intermedia?

24 MR. STEWART: No questions.

25 JUDGE DIPPELL: Birch?

1 MR. MIRAKIAN: No questions.
2 JUDGE DIPPELL: Gabriel?
3 MR. LUMLEY: No questions.
4 JUDGE DIPPELL: Nextlink?
5 MR. COMLEY: No questions.
6 JUDGE DIPPELL: Staff?
7 MR. POSTON: No questions.
8 JUDGE DIPPELL: Public Counsel?
9 MR. DANDINO: No questions, your Honor.
10 JUDGE DIPPELL: Sprint?
11 MS. GARDNER: No questions.
12 JUDGE DIPPELL: GTE?
13 MR. DORITY: No questions.
14 JUDGE DIPPELL: Southwestern Bell?
15 MS. McDONALD: No questions.
16 JUDGE DIPPELL: Cass County?
17 MR. MCCARTNEY: No questions.
18 JUDGE DIPPELL: MITG?
19 MR. JOHNSON: No questions.
20 JUDGE DIPPELL: Is there redirect?
21 MR. KRUSE: No, your Honor.
22 JUDGE DIPPELL: Very good. Mr. Starkey, you
23 may be excused.
24 (Witness excused.)
25 JUDGE DIPPELL: Let's go ahead and take a

1 ten-minute break 'til 11:30 and come back with our
2 next witness. Then we'll start with the McLeod's
3 witness Oberschelp.

4 Go off the record.

5 (A recess was taken.)

6 JUDGE DIPPELL: Let's go ahead and go back
7 on the record.

8 Mr. Kruse, would you like to call your next
9 witness?

10 MR. KRUSE: Yes, thank you. I'd like to
11 call Jeff Oberschelp.

12 (Witness sworn.)

13 JEFF OBERSCHELP testified as follows:

14 DIRECT EXAMINATION BY MR. KRUSE:

15 Q. Could you please state your name for the
16 record.

17 A. Jeff Oberschelp.

18 Q. And what is your position?

19 A. Vice President and General Manager for
20 Missouri and Kansas.

21 Q. By whom are you employed?

22 A. McLeod USA.

23 Q. Are you the same Jeff Oberschelp that caused
24 to be filed direct testimony which has been marked as
25 Exhibit 16 in this proceeding?

1 A. Yes, I am.

2 Q. Do you have any corrections or additions to
3 make to that testimony?

4 A. I just have one minor correction. It's on
5 page 3, line 11. After "MCA plan and", I need to
6 insert the words "their description of". So the
7 reading is, "MCA plan and their description of its
8 interpretation by SWBT.

9 Q. Mr. Oberschelp, is this testimony true and
10 correct to the best of your knowledge, information and
11 belief?

12 A. Yes, it is.

13 Q. If I asked you the questions set forth in
14 your testimony here today, would your answers be the
15 same?

16 A. Yes, they would.

17 MR. KRUSE: Your Honor, I would like to
18 offer Exhibit 16 into the record, and I tender the
19 witness for cross-examination.

20 JUDGE DIPPELL: Is there any objection to
21 Exhibit 16 as corrected coming into the record?

22 (No response.)

23 Then I'll receive it in the record.

24 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE DIPPELL: Is there cross-examination

1 by AT&T?

2 MR. DeFORD: None, your Honor. Thanks.

3 JUDGE DIPPELL: Intermedia?

4 MR. SAPPERSTEIN: No questions, your Honor.

5 JUDGE DIPPELL: Birch?

6 MR. MIRAKIAN: No questions.

7 JUDGE DIPPELL: Gabriel?

8 MR. LUMLEY: No, your Honor.

9 JUDGE DIPPELL: Nextlink?

10 MR. COMLEY: No questions.

11 JUDGE DIPPELL: Staff?

12 MR. POSTON: No questions.

13 JUDGE DIPPELL: Office of the Public

14 Counsel?

15 MR. DANDINO: No questions.

16 JUDGE DIPPELL: Sprint?

17 MS. GARDNER: No questions.

18 JUDGE DIPPELL: GTE?

19 MR. DORITY: No questions.

20 JUDGE DIPPELL: Southwestern Bell?

21 MS. McDONALD: Yes, please.

22 CROSS-EXAMINATION BY MS. McDONALD:

23 Q. Good afternoon.

24 I have just a few questions about your
25 understanding of exactly how calls are being treated

1 today. Specifically, if there's a Southwestern Bell
2 customer in the principal zone in the St. Louis
3 metropolitan area and he calls a Southwestern Bell
4 subscriber in Tier 3 of the St. Louis metropolitan
5 area and that customer in Tier 3 is an MCA subscriber,
6 is your understanding that that call would be toll
7 free?

8 A. Yes.

9 Q. Okay. Now, if a Southwestern Bell customer
10 in the principal zone calls a Southwestern Bell
11 customer in Tier 3 that is not an MCA subscriber,
12 would it be our understanding that a toll call would
13 apply to that call?

14 A. Yes.

15 Q. Now, if a Southwestern Bell customer in
16 Tier 3 called a CLEC customer in Tier 3, would it be
17 your understanding that there would be no toll charge
18 for that call?

19 A. That's correct.

20 Q. Okay. Could you turn to page 5, and
21 specifically looking at lines 1 to 3 of your
22 testimony. Would you agree with me that that sentence
23 is not quite accurate based on your testimony because,
24 as you've just stated, a SWBT non-MCA subscriber in
25 Tier 3 that is called by a principal zone subscriber,

1 in fact, would incur a toll charge?

2 MR. KRUSE: Your Honor, I object. I think
3 that's a complete mischaracterization of what he -- I
4 mean, his written testimony doesn't use any particular
5 examples with tiers. I think Mr. Oberschelp was
6 clearly making the point that in some situations
7 Southwestern Bell customers are charged a toll call
8 for a call that normally would be a toll-free call.

9 MS. McDONALD: And I would respond to that
10 objection that it appears that McLeod's attorney
11 desires to testify on his behalf when that is not, in
12 fact, what that sentence says.

13 MR. KRUSE: I'm a little bit confused by the
14 line of questioning to begin with. It's virtually
15 stipulated -- I think it's almost -- we've almost
16 stipulated in this case, especially with the
17 prehearing work that Staff did sending out their
18 framework outlining the tiers and the calls that were
19 toll calls and so forth and that, and I don't know why
20 we're going back over whether it's a toll call from a
21 Tier 3 subscriber out to Tier 5 and whatnot.

22 JUDGE DIPPELL: I'm going to allow her to
23 ask the question. I'm not -- I'm not sure if she's --
24 or let me say it this way. She's trying to make a
25 point that his testimony here today is different than

1 his written testimony. If that's the case, I would
2 like that to be clarified.

3 I will ask her to refrain from
4 characterizing what the witness' testimony is. If
5 it's a mischaracterization, that will avoid that.

6 MS. McDONALD: Okay. Shall I start again?

7 JUDGE DIPPELL: Yes, please.

8 BY MS. McDONALD:

9 Q. Okay. Let me just make sure I can read your
10 sentence right on page 5, lines 1 through 3. Would I
11 be accurate when I say that that sentence says, As a
12 result, SWBT MCA customers calling CLEC MCA customers
13 are charged toll rates that would not be charged if
14 the CLEC MCA subscriber was a customer of SWBT? Did I
15 read that correctly?

16 A. That's what's stated.

17 Q. Okay. And that, without qualification, is
18 not accurate; is that correct?

19 A. Correct. Without qualification, that is not
20 accurate.

21 Q. Now, can you tell me if a McLeod MCA-3
22 subscriber calls a Birch MCA-5 subscriber in the
23 St. Louis metropolitan area, what intercompany
24 compensation applies to that call?

25 A. No, I can't.

1 Q. Because you don't know?

2 A. Because I don't know.

3 Q. Okay.

4 A. At this point McLeod USA is a resale
5 provider. We're not a facilities-based provider. My
6 testimony is geared towards our ability to move to
7 facilities-based.

8 Q. Okay.

9 MS. McDONALD: Your Honor, at this time, the
10 remainder of my questions for this witness involve
11 highly confidential information.

12 JUDGE DIPPELL: Okay. Are there non-- let's
13 go ahead and do any non-in-camera cross-examination
14 questions of the other parties and then we'll come
15 back to that. Is there cross-examination from Cass
16 County?

17 MR. MCCARTNEY: Yes, please.

18 CROSS-EXAMINATION BY MR. MCCARTNEY:

19 Q. Does McLeod have facilities in the exchange
20 of Orchard Farm out there in MCA-3 at this time?

21 A. I don't believe that we have any collocation
22 equipment, nor do I believe we have fiber in that
23 area.

24 Q. Do you have an Interconnection Agreement
25 with Orchard Farm at this time?

1 A. I don't know if we do or do not. That's
2 handled by another portion of the company.

3 MR. COMLEY: Judge Dippell, we're having
4 difficulty hearing counsel.

5 JUDGE DIPPELL: Mr. McCartney, if you would
6 speak into the microphone, it would help. We did kick
7 on the air conditioner. It added some background
8 noise.

9 BY MR. McCARTNEY:

10 Q. If the Commission in this case orders all
11 the parties operating in the MCA to use a bill and
12 keep type of intercompany compensation, would McLeod
13 be willing to segregate the noncompensable MCA traffic
14 onto separate trunks?

15 A. Again, I don't know that I'm the guy that
16 can answer that question. We're a segregated company
17 relative to functions, and my function is
18 implementation rather than policy.

19 Q. Would the next guy be able to answer it?

20 A. I don't know that he will or won't. Sorry.

21 Q. Let's say that McLeod originates -- as a
22 hypothetical, let's say that you are facilities-based
23 now. McLeod originates a call from the principal
24 St. Louis zone there and it terminates to the Orchard
25 Farm exchange. Would that be a local call or a long

1 distance call?

2 A. Again, my testimony is really describing our
3 ability to compete with what are perceived to be
4 inferior product opportunities, and that's really my
5 area of responsibility. So I don't know that answer.

6 Q. Are you familiar with the Interconnection
7 Agreement with Southwestern Bell and McLeod?

8 A. I know we've got one.

9 MR. MCCARTNEY: Those are all my questions.

10 JUDGE DIPPELL: MITG?

11 MR. JOHNSON: I don't have any questions for
12 him.

13 JUDGE DIPPELL: Thank you. There's no
14 questions from the Bench for this witness.

15 Is there redirect on those questions, and
16 then we'll do redirect after the in-camera portion as
17 well?

18 MR. KRUSE: Just one question, your Honor.

19 REDIRECT EXAMINATION BY MR. KRUSE:

20 Q. Mr. Oberschelp, based on your understanding
21 of the way that the MCA works, is it true that
22 Southwestern Bell is currently charging toll rates on
23 calls to CLEC customers that in some instances would
24 not be charged if the customer were a subscriber of
25 Southwestern Bell service?

1 A. The answer to that is I think what I tried
2 to describe on page 4 and 5 of the testimony, which is
3 there are certain circumstances where a CLEC
4 facility-based customer would be charged a toll charge
5 that a Southwestern Bell customer would not be
6 charged.

7 MR. KRUSE: Thank you. That's all I have.

8 JUDGE DIPPELL: Okay. Then we'll go ahead
9 and go off the record so we can go into the in-camera
10 session.

11 (Discussion off the record.)

12 JUDGE DIPPELL: We're back on the record.
13 You believe there's --

14 MR. KRUSE: I was just going to suggest if
15 we could approach the Bench and be glad to discuss
16 with Ms. McDonald kind of what the nature of her
17 questions are, we may be able to short circuit a lot
18 of time here, because I'm not sure that Mr. Oberschelp
19 is probably going to have a lot of knowledge if the
20 document that I think she is -- scratch document. If
21 the nature of the questions is kind of what I think it
22 is, I don't think Mr. Oberschelp is going to know.

23 MS. McDONALD: Well, I would just say this.
24 It might really speed things up and we can not have
25 any questions. If McLeod would just stipulate to

1 their answer to our Data Request No. 2, then I would
2 provide copies of this to the appropriate parties and
3 I would not -- I would refrain from asking questions
4 about that answer from this witness.

5 JUDGE DIPPELL: We can go off the record.

6 (Discussion off the record.)

7 JUDGE DIPPELL: Back on the record.

8 MR. LANE: Your Honor, I think we've
9 probably reached a stipulation that will avoid the
10 need to go in-camera. It's my understanding that
11 McLeod has agreed to submit a late-filed exhibit that
12 will contain the number of access lines that it served
13 in the state of Missouri as of the end of 1998, the
14 end of 1999 and then as of today or the end of the
15 last month they have figures for.

16 With that stipulation, we wouldn't need to
17 go in-camera and ask this witness any questions.

18 JUDGE DIPPELL: Is that your understanding,
19 Mr. Kruse, what Mr. Land said?

20 MR. KRUSE: Yes, that's fine.

21 JUDGE DIPPELL: So it would be a late-filed
22 exhibit?

23 MS. McDONALD: Well, I was going to suggest,
24 and my understanding of our agreement was that we
25 would stipulate to that response to that Data Request,

1 making that data response -- I mean, making that
2 document No. 53, and then our subsequent document
3 would be 54.

4 JUDGE DIPPELL: Okay. I guess my question
5 is --

6 MS. McDONALD: But they would both be HC.

7 JUDGE DIPPELL: -- is how are the other
8 parties getting an opportunity to cross-examine on the
9 information contained in Exhibit 54?

10 MR. LANE: I think with any late-filed
11 exhibit, your Honor, if a party has an objection to
12 it, you typically give them ten days to respond and
13 object to the introduction of that evidence.

14 Given what it is, I doubt that any other
15 party would have an objection to the number of lines.

16 MR. KRUSE: It's merely line count
17 information.

18 JUDGE DIPPELL: I guess is that -- that's
19 just information that this witness doesn't have
20 anyway, is that -- or this witness does have that
21 information? I'm trying to figure out why we need to
22 do it later instead of just go ahead and go in-camera
23 and get it on the record now.

24 MR. KRUSE: We were just trying to save
25 time, your Honor.

1 JUDGE DIPPELL: We're not doing a very good
2 job of that.

3 MR. LANE: We'll do it either way. We're
4 just trying to save the need of going in-camera.

5 JUDGE DIPPELL: I think I would prefer that
6 we go ahead and go in-camera and get the information
7 on now and let the other parties have an opportunity
8 to question the witness with regard to it.

9 MS. McDONALD: Your Honor, I would ask that
10 I be allowed to approach the witness.

11 JUDGE DIPPELL: Certainly, and we will be
12 in-camera from this point forward.

13 (REPORTER'S NOTE: At this time, an
14 in-camera session was held, which is contained in
15 Volume No. 11, Pages 635 through 647 of the
16 transcript.)

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1 JUDGE DIPPELL: I believe then -- is Birch's
2 witness available now?

3 MR. MIRAKIAN: Yes.

4 JUDGE DIPPELL: I think we'll go back to the
5 original order and take Birch's witness next.

6 MR. MIRAKIAN: Or would it make more sense
7 to do the last McLeod?

8 MR. KRUSE: Whatever you prefer, counsel.

9 MR. MIRAKIAN: I'm perfectly happy having
10 your last witness go. We can wait until after that,
11 if that would be more -- cause more continuity.

12 JUDGE DIPPELL: Okay. Just to keep the
13 record more clear, we'll just finish McLeod's witness.
14 We'll finish McLeod's witness and then take Birch's
15 witness. We should be able to get both of those.

16 Do you want to go ahead and call your next
17 witness, then, Mr. Kruse?

18 MR. KRUSE: Yes. I would like to call
19 Martin Wissenberg.

20 (Witness sworn.)

21 JUDGE DIPPELL: Thank you. You may proceed,
22 Mr. Kruse.

23 MARTIN WISSENBERG testified as follows:

24 DIRECT EXAMINATION BY MR. KRUSE:

25 Q. Would you please state your name for the

1 record.

2 A. My name is Martin Wissenberg.

3 Q. And what is your position?

4 A. I'm a Senior Financial Analyst for McLeod
5 USA.

6 Q. Are you the same Martin Wissenberg that
7 caused to be filed direct, rebuttal and surrebuttal
8 testimony in this proceeding?

9 A. Yes, I am.

10 Q. And do you have any corrections to make to
11 any of your testimony?

12 A. Yes, I have a few for clarification. On my
13 direct testimony, page 6, line 19, I'd like to replace
14 the word "treated" with "costed". So it would read,
15 An SWBT customer in MCA Tier 5 the call is costed by
16 Southwestern Bell Telephone as an intraLATA call.

17 For my rebuttal testimony, on page 5,
18 line 5, I'd like to replace the word "without" with
19 the words "and reduce." So line 5 would read, For
20 SWBT to terminate return calls as local calls and
21 reduce additional burden to SWBT's network.

22 And in my surrebuttal testimony on page 3,
23 line 9, I'd like to add just for clarification after
24 2.6 the word "cents", c-e-n-t-s. So it would say,
25 SWBT seeks to impose a 6.2 cent, excuse me, singular,

1 surcharge on return calling.

2 Q. Do you have any other corrections you wish
3 to make, Mr. Wissenberg?

4 A. No, not at this time.

5 Q. Is this testimony then true and correct to
6 the best of your knowledge, information and belief?

7 A. Yes, to the best of my knowledge.

8 Q. And if I were to ask you the same questions
9 here today as were set forth in your prefiled
10 testimony, would your answers be the same?

11 A. Yes, I believe so.

12 MR. KRUSE: Okay. Your Honor, I would like
13 to offer Mr. Wissenberg's direct, rebuttal and
14 surrebuttal testimony which has been marked as
15 Exhibits 17, 18 and 19 into the record, and I tender
16 the witness for cross-examination.

17 JUDGE DIPPELL: Are there any objections to
18 Exhibits 17, 18 and 19 as corrected coming into the
19 record?

20 (No response.)

21 Then I'll receive those into the record.

22 (EXHIBIT NOS. 17, 18 AND 19 WERE RECEIVED
23 INTO EVIDENCE.)

24 JUDGE DIPPELL: Is there cross-examination
25 by AT&T?

1 MR. DeFORD: No, thank you.
2 JUDGE DIPPELL: Intermedia?
3 MR. SAPPERSTEIN: No questions.
4 JUDGE DIPPELL: Birch?
5 MR. MIRAKIAN: No questions.
6 JUDGE DIPPELL: Gabriel?
7 MR. LUMLEY: No, your Honor.
8 JUDGE DIPPELL: Nextlink?
9 MR. COMLEY: No questions.
10 JUDGE DIPPELL: Staff?
11 MR. POSTON: No questions.
12 JUDGE DIPPELL: Office of the Public
13 Counsel?
14 MR. DANDINO: No questions, your Honor.
15 JUDGE DIPPELL: Sprint?
16 MS. GARDNER: No questions, thank you.
17 JUDGE DIPPELL: GTE?
18 MR. DORITY: No questions.
19 JUDGE DIPPELL: Southwestern Bell?
20 MS. McDONALD: I have some questions. Thank
21 you.
22 CROSS-EXAMINATION BY MS. McDONALD:
23 Q. Good afternoon.
24 Would you agree with me that if a customer
25 ports its MCA NXX number when changing its service

1 provider from Southwestern Bell to a CLEC,
2 Southwestern Bell's customers do not incur toll
3 charges to call this customer because SWBT recognizes
4 this NXX code as an MCA code?

5 A. In the current configuration of the system,
6 yes.

7 Q. Could you turn to page 5 of your direct
8 testimony, lines 10 through 11?

9 A. Yes.

10 Q. And explain to me?

11 A. Lines 10 and 11?

12 Q. Uh-huh.

13 A. I believe I further clarified that in my
14 surrebuttal testimony. I did not say that they are
15 currently using those screening techniques but have
16 the capacity to.

17 Q. So you're not saying that that is
18 currently --

19 A. No.

20 Q. -- occurring? You're just saying it's a
21 possibility?

22 A. It is a possibility.

23 Q. Okay. Now, if a McLeod MCA subscriber in
24 Tier 3 calls a Southwestern Bell MCA subscriber in
25 Tier 5, would you agree that McLeod determines whether

1 or not its customer would have to pay a toll charge to
2 call Southwestern Bell's customer?

3 A. We -- I believe it's been set up in all the
4 testimony that we believe we have the right to charge
5 our customers as we so desire.

6 Q. Okay.

7 A. My question came up in the cost that we
8 would incur for the termination of that call.

9 Q. Okay. Turning to your testimony on page 6,
10 lines 16 through 21, I understand that you're saying
11 now with your corrected testimony that line's going to
12 be reading McLeod USA provides service to this
13 customer using McLeod's own switching facilities.
14 When this new McLeod USA customer places a call to a
15 SWBT customer in MCA Tier 5, the call is costed by
16 SWBT as an interLATA toll call though SWBT would have
17 treated the same call as local if the new MCA McLeod
18 USA customer would have stayed with SWBT.

19 When you changed the costed, can you explain
20 to me exactly what you meant by that?

21 A. It has to do with the costs we incur to
22 establish a call. Those aren't -- that is nothing to
23 do with the revenue we generate from our customer, but
24 what it costs us in order to establish a call for the
25 customer and terminate it to its final destination.

1 There are different costing structures based
2 on termination, access rates. If it terminates as a
3 local call, we go to our Interconnection Agreement.
4 If it terminates as an intrastate intraLATA call, it
5 goes to a different pricing structure, which is a
6 higher pricing structure.

7 Q. So this sentence then means that it would
8 have been costed according to an Interconnection
9 Agreement now, but before when the McLeod USA customer
10 was still a SWBT you -- a SWBT customer that it --
11 that SWBT did not incur costs in transiting that call?

12 A. No. I'm saying that if they were a
13 Southwestern Bell customer, they would not -- the
14 customer would not see a reflected increase in price.
15 And we being the customer at this point, we do see an
16 increased cost from that same location terminating to
17 another MCA-5 customer.

18 It goes back to does SWBT recognize McLeod
19 prefixes as participating in the MCA. If it does not,
20 then they -- as far as I can tell, SWBT seems
21 justified, feels justified in charging an intraLATA
22 termination rate as opposed to the Interconnection
23 Agreement rate. That's my understanding from reading
24 the documents.

25 Q. Okay. Then I still don't understand what

1 the last half of the sentence on page 6 means when you
2 start the call is costed by SWBT as an interLATA call
3 even though SWBT would have treated the same call as
4 local if the new McLeod USA customer would have stayed
5 with SWBT. Whose costs are you talking about?

6 A. Well, the costs change. When they're in
7 Tier 3 calling to Tier 5, if they have the MCA package
8 in Tier 3 and the customer receiving the call in
9 Tier 5 has an MCA package, there's no additional call.
10 That call is treated as local by Southwestern Bell
11 Telephone because both customers are MCA participants.

12 Q. If they were both Southwestern Bell
13 customers?

14 A. Yes. If McLeod takes over that customer,
15 it's my understanding that Southwestern Bell will no
16 longer recognize that customer's telephone as
17 participating in the MCA and, therefore, will charge
18 us to terminate the call for us according to intraLATA
19 termination rates.

20 Q. Okay. So you're in this whole thing talking
21 just about the intercompany compensation with regard
22 to these calls, not at all with regard to what the
23 actual customer is paying?

24 A. Absolutely not. You are absolutely correct.
25 I am not -- we'll get to it. Yes, I'm dealing with

1 the costing structure which is what I analyzed, the
2 costs that will be incurred.

3 Q. Okay.

4 A. For instance, if we kept that customer as a
5 resale customer, we would not incur an additional
6 cost.

7 Q. Okay. Let me just see if I can give you an
8 example so that maybe I've got this clear in my head.
9 But if a Southwestern Bell Tier 5 subscriber calls a
10 McLeod Tier 3 subscriber, would you agree that the
11 Tier 5 Southwestern Bell subscriber is not going to
12 incur a toll charge for placing that call to a McLeod
13 customer?

14 A. According to my understanding of the way
15 things are written now, that would be correct, because
16 MCA-5 customers do have the right to terminate to an
17 MCA-3 customers.

18 Q. Okay. Then turning to your testimony which
19 follows that last sentence that I was just struggling
20 with, the next sentence says, SWBT's Tier 5 MCA
21 subscriber now also incurs intraLATA toll charges when
22 they call the McLeod USA Tier 3 MCA customer solely as
23 a result of the customer's switch from SWBT to the
24 CLEC.

25 A. I believe my surrebuttal testimony inverted

1 those numbers. So it was likewise Southwestern
2 Bell -- SWBT's Tier 3 MCA customer. The threes and
3 the fives were inverted in that paragraph according to
4 my surrebuttal.

5 Q. Okay. Well, so in other words, this
6 sentence on page 7 is inaccurate as it appears right
7 here?

8 A. Yes, and the correction is in the
9 surrebuttal.

10 Q. Okay.

11 A. I believe that's on page 11 of my
12 surrebuttal.

13 Q. Okay. But that even more confuses me
14 because that sentence says, SWBT does not necessarily
15 recognize calls from SWBT's Tier 5 MCA subscribers to
16 McLeod USA Tier 3 MCA subscribers as local. I thought
17 we just agreed that we did consider that call local?

18 A. I was noting that in Mr. Hughes' rebuttal
19 statements that he seems to suggest that Southwestern
20 Bell does not necessarily recognize these calls as
21 local. I was just referring to his rebuttal
22 testimony.

23 Q. Okay. But it's your understanding that we
24 do consider those calls local?

25 A. Based on the testimony I've heard earlier,

1 yes.

2 Q. And before when you told me that I needed to
3 make the switch with regard to the McLeod USA Tier 3
4 MCA subscriber, it appears to me that in your
5 surrebuttal testimony you say that the CLEC recipient
6 is in Tier 3, not the other way around, and if you go
7 back to page 7, the CLEC customer was in Tier 3?

8 A. That's the confusion of the MCA program.
9 It's just hard to keep track of who, where and what.

10 Q. Okay. So we would agree that, just so we're
11 clear, that the surrebuttal testimony doesn't clarify
12 the problem that you've got with the testimony on
13 page 7, but it is our agreement that SWBT's Tier 5 MCA
14 subscriber can call McLeod's Tier 3 subscriber?

15 A. Based on the testimony I've heard today,
16 that's what I heard people saying. Based on my
17 reading of the tariff, that would make sense.

18 MR. KRUSE: May I make a suggestion? Maybe
19 since there appears to be some confusion still with
20 the correction he made in his surrebuttal testimony,
21 if there's no objection, maybe we could just formally
22 correct the direct testimony and just change -- the
23 numbers were inverted, and just invert the three and
24 the five, and then that might alleviate some of the
25 confusion.

1 JUDGE DIPPELL: Would there be any objection
2 to the witness correcting that line of his direct
3 testimony? It's actually lines 1 and 2 on page 7.

4 THE WITNESS: And I believe line 4 also.

5 JUDGE DIPPELL: Do you have other questions
6 Mrs. McDonald?

7 MS. McDONALD: Yes, I do. I'm sorry.

8 BY MS. McDONALD:

9 Q. Turning to your testimony which is your
10 rebuttal testimony, page 5, lines 13 through 15, you
11 state, At the point of handoff McLeod USA, not SWBT,
12 should have the right to charge our customers for the
13 termination of calls on our network as approved by the
14 Commission.

15 In that sentence, are you suggesting that
16 McLeod should be and/or is permitted to charge its
17 customers to receive incoming calls?

18 A. I'm sorry. Which lines were you referring
19 to?

20 Q. Lines 13 through 15.

21 A. Rather than a per-call charge for
22 termination of calls, I was thinking more along the
23 lines of we would have a line rate established, and
24 incorporated in that line rate would be the costs that
25 anyone would have for both receiving and terminating

1 calls as we control that end of the cost structure.

2 Q. So McLeod is not saying that it should
3 charge its customers --

4 A. To receive --

5 Q. -- to receive incoming calls on a per-minute
6 basis; it's just simply saying that it could include a
7 charge within the normal bill for incoming calls as
8 the way the MCA is currently set up today?

9 A. As part of the line rate.

10 Q. Turning to page 13 of your direct testimony,
11 I'd like to discuss with you some of the figures that
12 you have.

13 Now, would you agree that with regard to the
14 chart at the top of page 13, resale costs in the MCA
15 market, that McLeod does not pay LATA termination
16 charges when it provides telecommunication services as
17 a reseller?

18 A. Not directly, no. We do in -- we are
19 charged by Southwestern Bell a charge for terminating
20 those calls. It's a discounted charge. We still have
21 costs that we incur for those calls to be terminated.

22 Q. But it would be fair to say that with regard
23 to the resold costs, the LATA termination is not a
24 separate line item charge that should be reflected in
25 a resale cost for McLeod because that would be

1 absorbed in the other costs, I assume, that you've
2 listed above, for example the average line cost?

3 A. No. It's usually an additional toll charge.
4 We receive -- we receive tape information that says
5 here's the charge that we have for a line at the
6 discounted rate, and here's a charge that we have for
7 any intraLATA toll charges that we're responsible for
8 for which we can margin, but there's still a cost for
9 that.

10 Q. So it would be your position, then, that
11 when McLeod resells SWBT services, that is not
12 actually SWBT who pays the terminating costs for
13 terminating that call?

14 A. SWBT pays it and we pay SWBT.

15 Q. Well, I guess can you explain to me where
16 the \$3.15 cost came from?

17 A. Sure. I took an average number of intraLATA
18 minute terminations, which I believe I estimated at
19 about 60, and multiplied it times four and a half
20 cents.

21 Q. Okay. And can you tell me again why you
22 chose 60 and why you chose four and a half cents?

23 A. I took the intraLATA termination we
24 currently experience on our Southwestern Bell
25 Telephone bills and averaged it per line.

1 Q. And the four and a half cents reflects?

2 A. Is a negotiated rate with Southwestern Bell
3 for terminating intraLATA traffic.

4 Q. Okay. Now, turning to the right column in
5 Tier 3, you have an MCA additive for an MCA business
6 customer which you list as an average cost of 37.77.
7 Do you see that?

8 A. Yes.

9 Q. Okay. Now, would it be fair to say that the
10 MCA additive for an MCA business customer is \$24.80?

11 A. It's \$24.80 for a customer in a line B rate.
12 It's higher for a customer in a line A rate. I
13 believe it's \$70.70, but I'm not certain.

14 Q. Okay. I guess you're going to have to
15 explain that a little bit more to me because I thought
16 that it was pretty well established that the MCA rate
17 for a Tier 3 customer would be 24.80, that you would
18 get a discount off of that rate. And it appears to me
19 that rather than having a Tier 3 business customer
20 charge, you've combined the rates for Tier 3, 4 and 5,
21 which would not accurately represent the Tier 3 resale
22 costs for McLeod.

23 A. You are correct, and the titles are
24 incorrect here. That should be Zone 1 and Zone 3
25 rather than Tier 1 and Tier 3. I apologize.

1 Q. Okay. So these figures are not going to be
2 able to accurately reflect the MCA Tier 1 customer
3 cost or the MCA Tier 3 customer cost?

4 A. They're -- again, they're zone descriptions
5 that I found in a SWBT document where the principal
6 MCA-1/MCA-2 areas were designed -- defined as Zone 1,
7 Zone 2 was the MCA-3 area, and Zone 3 -- no. I'm
8 sorry. Zone 2 was line rate B COs, exchange areas,
9 and Zone 3 was -- oh, my. I don't remember the
10 details. They're the three zones and Springfield is
11 the fourth zone. I believe Zone 2 was line rate B and
12 Zone 1 was line rate A.

13 Q. Okay. So back to my original question,
14 these -- now changing the tiers to zone, these numbers
15 that you've provided here on page 13 won't tell me the
16 resale costs in the MCA tiers as we know them today,
17 the principal zone Tiers 3, 4 and 5 being separated
18 out; is that correct?

19 A. They give an average of Zone 1 and Zone 3
20 costs.

21 Q. Okay. But did you just tell me you don't
22 know exactly what Zone 3 is?

23 A. I'd want to get the documentation to confirm
24 that.

25 Q. Okay. But as you sit here, you couldn't

1 tell me what Zone 3 is?

2 A. Would you like my best guess? No.

3 Q. I would only like to know if you know what
4 Zone 3 is.

5 A. I do not recall the exact boundaries of
6 Zone 3. I know that Zone 1 is the principal area and
7 MCA-1 and MCA-2.

8 Q. Okay. Let's just turn from the resale costs
9 down to the UNE costs. Can you agree with me that as
10 the number of customers increase, the amount of
11 network costs per customer wouldn't necessarily
12 decrease?

13 A. As the number of customers increase?

14 Q. Uh-huh.

15 A. Yes, I could.

16 Q. Okay. And you've indicated in your
17 testimony, I believe, correct me if I'm wrong, that
18 you were leasing DS3s which you describe as dedicated
19 circuits for backbone construction; is that correct?

20 A. Yes.

21 Q. Okay. And would it be fair to say that your
22 network costs on line 17 are the costs associated with
23 leasing that equipment?

24 A. We tried to forward look as we estimated
25 that network cost, and yes, that would be an estimate

1 of the cost as we approach an 80 percent usage on
2 those.

3 Q. Okay. And what do you consider an 80
4 percent usage on those DS3s?

5 A. That those DS3s would be used 80 percent of
6 the time.

7 Q. Let me ask you this. How many customers or
8 access lines do you spread your network costs over?

9 A. How many customers or access lines?

10 Q. When you came up with the \$10 figure, does
11 that in any way reflect the number of customers and/or
12 access lines that the charge for this network would be
13 spread over?

14 MR. KRUSE: Excuse me. I think counsel
15 might be getting into -- starting to get into some
16 highly confidential information.

17 JUDGE DIPPELL: What was your last question,
18 counsel? Were you asking how many customers, or your
19 last question was does this number include customers?
20 Did you use customers?

21 MS. McDONALD: Does this \$10 figure in any
22 way reflect the number of customers or access lines
23 that he spread his network costs over, I believe was
24 the gist of the question.

25 JUDGE DIPPELL: I don't believe the answer

1 to that one will be highly confidential.

2 THE WITNESS: We tried to estimate based on
3 lines.

4 BY MS. McDONALD:

5 Q. Okay. Well, then my next question is, how
6 many access lines did you assume when you spread the
7 network costs?

8 MR. KRUSE: I'm going to object to that
9 because I think --

10 JUDGE DIPPELL: Does the witness believe the
11 answer to that question to be proprietary information
12 that should be protected?

13 THE WITNESS: I believe so. I'm not
14 certain, but I believe that those are --

15 JUDGE DIPPELL: Do you have other questions?

16 MS. McDONALD: I do, but just in response to
17 that last objection, if they're forward-looking lines
18 and they're not lines that currently exist, and they
19 would have to be limited by the lines that could be
20 served out of the DS3, I guess I'm a little confused
21 about how that is a proprietary or highly confidential
22 number, but --

23 THE WITNESS: Our goal is to reduce that
24 number as much as possible into something that would
25 be a reasonable estimation of packing on that line.

1 We did not want to go with our current numbers because
2 we felt that would be an unfairly high estimate of the
3 cost per network.

4 JUDGE DIPPELL: Okay. Counsel, do you still
5 believe that information to be proprietary?

6 MR. KRUSE: If we're talking about specific
7 lines or percentage of lines, I do.

8 JUDGE DIPPELL: Okay.

9 MS. McDONALD: Do you want me to come back
10 to this?

11 JUDGE DIPPELL: I would like you to come
12 back to that. We'll go in-camera.

13 MS. McDONALD: Okay. Thank you.

14 BY MS. McDONALD:

15 Q. Now turning to the next line on this page,
16 MCA origination line, as I understand your testimony,
17 the MCA origination cost was based on the average
18 number of in-bound minutes for Illinois and Wisconsin
19 rounded down to 600 and multiplied by 2.6 cents a
20 minute; is that correct?

21 A. Yes.

22 Q. Now, would it be -- would you agree with me
23 that the UNE costs would decrease if McLeod and SWBT
24 reached a lower rate for the return calling provisions
25 rather than the 2.6 cents figure that you used?

1 A. If you multiplied 600 by a different -- a
2 lower number than 2.6, yes, that number would
3 decrease.

4 Q. Okay. And the UNE costs, you would also
5 agree, would decrease if McLeod and Southwestern Bell
6 agreed to a cap on the amount it would receive from
7 McLeod under an MOU-like agreement or some other
8 agreement; is that correct?

9 A. Yes, I would agree that to be a correct
10 statement.

11 Q. Okay. Now, would it be fair to say that
12 McLeod seeks to attract customers in Tier 3 of the
13 St. Louis metropolitan calling area in exchanges other
14 than Portage Des Sioux?

15 A. I'm not in marketing. I would be surprised
16 if we weren't looking in that direction.

17 Q. Okay. Now, would it be fair to say that
18 when you calculated the -- although it says local loop
19 last minute --

20 A. Local loop last.

21 Q. -- I think it's local loop last mile.

22 A. Yes. Thank you.

23 Q. Would it be fair to say that if you would
24 have used a Rate Group B figure for the UNE costs,
25 this number would substantially decrease?

1 A. It would be different. Which number would
2 substantially decrease?

3 Q. The local loop last mile, Tier -- well,
4 you're calling it zone.

5 A. Zone 1. As the Interconnection Agreement
6 defines it, Zones 1, 2 and 3.

7 Q. Okay. But I'm talking about the other one,
8 which we're now calling the Zone 3.

9 A. Yeah.

10 Q. And would you agree with me that that Zone 3
11 is the same as Rate Group A?

12 A. Yes.

13 Q. Okay. And would you agree with me that in
14 the metropolitan calling area in St. Louis, the only
15 Rate Group A exchange is Portage Des Sioux?

16 A. Not according to my understanding, no.

17 Q. Okay. Are you contending that Rate Group A
18 in any way contains all of the exchanges located in
19 MCA Tiers 3, 4 and 5?

20 A. It's my understanding that Line Rate A
21 applies in Gray Summit, Ware, Hillsboro, Antonia,
22 Herculaneum, Pevely, Eureka.

23 Q. So back to my original question, part of my
24 confusion I'm sure is in preparing for this I thought
25 you were talking about Tier 3. Now you're changing

1 your answer to Zone 3.

2 But back to my original question, with
3 regard to the actual exchanges that are located in
4 Tier 3, the only Tier 3 exchange that is also a Zone 3
5 exchange would be Portage Des Sioux; is that correct?

6 A. I am not certain. I understood Portage Des
7 Sioux to be a Line Rate B group, unless that's
8 changed. I'm not certain.

9 MS. McDONALD: That's all the questions I
10 have.

11 JUDGE DIPPELL: Okay.

12 MS. McDONALD: Other than my --

13 JUDGE DIPPELL: Other than in-camera
14 questions. Are there cross-examination from Cass
15 County?

16 MR. McCARTNEY: Yes, thank you.

17 CROSS-EXAMINATION BY MR. McCARTNEY:

18 Q. Good afternoon.

19 A. Hi.

20 Q. A McLeod MCA customer currently today in the
21 St. Louis principal zone calls out to Orchard Farm,
22 what type of record would be created for that?

23 A. Currently we're entirely in a resale
24 environment. So all that recordkeeping is kept by
25 Southwestern Bell.

1 Q. Do you exchange those records with
2 Southwestern Bell?

3 A. Any information we receive for any
4 termination, we pass all information that we receive.
5 So if we receive information, we pass it to
6 Southwestern Bell.

7 JUDGE DIPPELL: Mr. Wissenberg, could you
8 speak towards the microphone?

9 THE WITNESS: I'm sorry. Any information
10 that we receive in our switch we pass forward. So as
11 long as information is passed to us in terms of
12 origination, we pass that.

13 BY MR. MCCARTNEY:

14 Q. But it's not passed to the Orchard Farm
15 Telephone Company?

16 A. I don't know if Southwestern Bell passes it.

17 Q. Okay. Once you become facilities-based, I
18 understand you have the switches and everything all --

19 A. We're ready.

20 Q. What type of recordkeeping system is ready
21 to go for that? What type of records will you
22 exchange once you begin terminating or originating
23 traffic that goes to Orchard Farm on a facilities
24 basis?

25 A. I'm not certain of the records that will be

1 kept, but it would be greatly to our advantage to keep
2 very clear records of the calls that originated
3 locally since the Interconnection Agreement rate, as I
4 see it coming forward, would be far less than the
5 intrastate access rate to terminate those calls. So
6 we'd be very much interested in keeping clear records
7 of that.

8 Q. But do you have an Interconnection Agreement
9 now with Orchard Farms?

10 A. For local traffic, no. We don't provide
11 local service. Not that I'm aware of.

12 Q. Let's say that the Commission orders a --
13 hypothetically, the Commission orders MCA to continue,
14 CLECs to stay in the MCA, but they want to do that on
15 a bill and keep basis for everyone. Would McLeod be
16 willing to set up separate trunks to sort of segregate
17 the noncompensable traffic that would go to Orchard
18 Farm?

19 A. I can't speak for the company in that
20 record. I know that there would be a cost study done
21 to see what would be most cost effective and the best
22 way to establish a relationship with Orchard Farms.

23 Our goal is to work with the incumbent, with
24 any other provider to make sure we get the best
25 agreement for everyone involved.

1 Q. My last question is, are you familiar with
2 the Interconnection Agreement between Southwestern
3 Bell and McLeod that provides no local traffic
4 destined for the network of a third party will go to
5 that third party unless McLeod has authority to
6 exchange that traffic?

7 A. I'm not that familiar with the agreement. I
8 focused on the costing elements. The specifics of the
9 agreement, no. The costing elements are my focus.

10 MR. MCCARTNEY: Thank you. That's all.

11 MS. McDONALD: Is there cross-examination
12 from MITG?

13 MR. JOHNSON: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. JOHNSON:

15 Q. Mr. Oberschelp, I want to kind of work
16 backwards here.

17 In your answers to Ms. McDonald's questions
18 when you were telling how you arrived at \$3.15 per
19 line figure, as I understood it you took some cost
20 numbers and divided them by some usage numbers,
21 minutes of use?

22 A. I took some of our current usage, yes, based
23 on an average per line that we currently expense.

24 Q. And it then applies to me that you had
25 access to some type of information as to what the per

1 minute usage was for those lines?

2 A. For the intraLATA, we have a -- we had a
3 generic understanding of all of the minutes that were
4 terminated by Southwestern Bell from our resale
5 customers. Yes, we knew the total minutes that were
6 terminated intraLATA.

7 Q. And was that information information you
8 recorded yourself or was that information from
9 Southwestern Bell supplied to you?

10 A. Southwestern Bell supplied it.

11 Q. Now, are the calls that we're talking about
12 that would have shown up in that information, were
13 they 1+ calls, 1+ dialed calls or were they
14 seven-digit or ten-digit MCA-dialed calls?

15 A. I can't believe they'd be MCA-dialed calls
16 because as far as I understand the fee that we get
17 from Southwestern Bell, no MCA call records are
18 maintained.

19 Q. So you're only talking about access records?

20 A. Correct.

21 Q. Okay. In page 9 of the rebuttal testimony,
22 sir --

23 A. By the way, I'm Mr. Martin Wissenberg.

24 Q. Did I say Oberschelp? I'm very sorry.

25 A. Just want to be sure you're looking at the

1 right rebuttal testimony.

2 Q. I was looking up in the wrong part of my
3 notes.

4 At lines 10 through 14 you make --

5 A. On which page?

6 Q. Page 9, sir. You make the point that
7 requiring each CLEC to negotiate a separate
8 agreement -- this is your testimony, isn't it?

9 A. Yes, this would be my testimony. Well,
10 let's see what I'm stating and we'll see if it's my
11 testimony. Lines 10 through 15?

12 Q. 10 through 14.

13 A. Okay.

14 Q. If I'm paraphrasing that accurately, you're
15 opposing the notion of requiring each CLEC to
16 negotiate separate agreements with each ILEC and each
17 CLEC for MCA traffic because you view that as being
18 administratively burdensome?

19 A. It's my understanding that currently each
20 LEC tariffs rates for those -- for that service at a
21 local level, and we would fall to the tariff rate
22 unless something were intended to be negotiated
23 separately.

24 Q. The agreements that you're referring to
25 there are the reciprocal compensation agreements, or

1 what kind of agreements are you referring to?

2 A. Again, we're standing at the edge of my
3 understanding of this stuff. It's my understanding,
4 and it could be wrong, this is my guess, is that the
5 tariff already includes pricing for local termination,
6 that if there were not already an agreement, it would
7 fall back to that.

8 Q. Can you tell me what agreements you were
9 referring to? Are you talking about an assumption
10 that the local companies have a reciprocal
11 compensation termination rate in their tariffs?

12 A. Yeah, I assume that they do.

13 Q. You're the last McLeod witness that's
14 scheduled to appear; is that right?

15 A. As far as I know.

16 Q. I apologize. I thought you were the guy who
17 was going to be the go-to guy on these questions. So
18 if you don't know, that's fine.

19 In McLeod's Position Statement on 2B, do you
20 have that?

21 A. No.

22 Q. The Position Statement that McLeod filed,
23 are you familiar with that?

24 A. Not at all.

25 Q. Take my word for it that it suggests -- it

1 suggests that reciprocal compensation set forth in the
2 Interconnection Agreements should control over a
3 default bill and keep arrangement.

4 A. That makes sense.

5 Q. All right. And my question is, if the CLEC
6 can choose to depart from the default bill and keep
7 and negotiate a reciprocal compensation, if you did
8 that with Orchard Farms on an indirect interconnection
9 basis, does that make sense?

10 A. On an indirect interconnection basis?

11 Q. You're not sure what I'm referring to?

12 A. Like, we'd go to Southwestern Bell's tandem
13 and then it would go on to you?

14 Q. Yes.

15 A. Okay.

16 Q. If the balance of traffic was such that
17 there was more traffic coming from Orchard Farms to
18 your exchange in St. Louis than the reverse, it might
19 be in your interest to have a reciprocal compensation
20 arrangement instead of a bill and keep arrangement.
21 Does that make sense?

22 A. If we were receiving more minutes than we
23 were sending, that would probably have a positive
24 impact on our cash receipts -- I'm sorry -- outlay.

25 Q. So the dynamic that I was interested in is

1 that you would be using a reciprocal compensation
2 arrangement to get that advantage, if you will, over
3 Orchard Farms even though you're not directly
4 connected with Orchard Farms and you're not directly
5 competing with their customers in Orchard Farms. Do
6 you agree that that would be the result?

7 A. I could see that that would be a result,
8 yes.

9 MR. JOHNSON: That's all I have.

10 JUDGE DIPPELL: I'm going to go ahead with
11 the rest of the not in-camera portion and then we'll
12 come back to that at the very end.

13 Are there questions from the Bench for this
14 witness, Vice Chair Drainer?

15 COMMISSIONER DRAINER: Just a couple.

16 QUESTIONS BY COMMISSIONER DRAINER:

17 Q. I want to first of all wish you a good
18 afternoon.

19 A. Thank you.

20 Q. Second of all, I want to help you through
21 your Zone 1/Tier 1 testimony.

22 A. Thank you.

23 Q. You're most welcome. On page 12, line 4
24 should be changed to Zone 1 and line -- and Zone 3,
25 correct?

1 A. Yes.

2 Q. It is correct?

3 A. Yes, that would be correct. Thank you.

4 Q. Now, line 6 stays Tier 3 through Tier 1, I
5 believe, because what you really did when you had a
6 Zone 1 and a Zone 3 and did your analysis, and correct
7 me now if I'm wrong, I believe that what you were
8 doing is your Zone 1 is just the mandatory tiers --

9 A. Correct.

10 Q. -- bundled together with then averages. You
11 come up with average costs --

12 A. Yes.

13 Q. -- for those three tiers because those are
14 the mandatory tiers, and that's what your Zone 1 is?

15 A. Correct.

16 Q. And so then Zone 3 would be the optional
17 tiers, correct?

18 A. Zone 3 would be the Line Rate A tiers, and
19 Zone 2 would be the Line Rate B. Again, the St. Louis
20 area is kind of confusing for me, but it looks like
21 there's a different line rate depending on which
22 exchange you're in, an A and a B rate.

23 Q. So what you're telling me is you know that
24 your Zone 1 is the mandatory tiers?

25 A. Yes, I do.

1 Q. But your Zone 3 is not necessarily the
2 optional tiers?

3 A. Zone 3 is within the optional MCA tiers,
4 yes.

5 Q. It's within, so it's not all of the optional
6 exchanges, it's only some of them?

7 A. Yes.

8 Q. And it's the ones that have the rate groups
9 for A and B?

10 A. Line rate.

11 Q. The smaller exchanges?

12 A. Yeah.

13 Q. A has a smaller number of customers in that
14 exchange, correct?

15 A. Correct.

16 Q. All right. Line 13 then would also be
17 correct that Tier 1 would be Zone 1 and Tier 3 would
18 be Zone 3, correct?

19 A. Yes. Thank you.

20 Q. So I don't want to spend a lot of time on
21 this. I understand, then, that your Zone 1 is page
22 13, you're doing averages based on the mandatory MCA
23 areas. Your Zone 3, I guess what I would have to ask
24 you is, why did you not do a cost calculation for all
25 the exchanges in the optional tiers?

1 A. I chose to --

2 Q. What was your logic?

3 A. I was looking at a high and a low. I was
4 looking at the closest downtown and the furthest
5 option. Again, I was trying to --

6 Q. Stop a second. When you say further, when
7 you were trying to look at the exchanges
8 distance-wise, the furthest away, and they happened to
9 be A and B, is that what it is?

10 A. Let me refrain from that or back off from
11 that. I was looking at Zone 1 and Zone 3 as the
12 highest and lowest UNE cost areas.

13 Q. Okay. So --

14 A. Zone 2 is almost exactly in the middle for
15 the local loop last mile cost.

16 Q. So basically, your zones are the zones that
17 make up the interconnection agreements, those four
18 zones?

19 A. Yes.

20 Q. And is the fourth zone the Springfield?

21 A. Yes.

22 Q. So you were looking at basically Zone 1, the
23 metro area, downtown, and you were -- and then went to
24 three and you just decided to kind of drop the middle
25 one because it didn't have as much of a significant

1 difference or differential?

2 A. It was -- for me, it was confusing enough
3 trying to itemize which were the Zone 3 central
4 offices that were affected because they did float
5 across the three optional MCA tiers.

6 Q. Okay. Now, with respect to the questions
7 about the small ILECs and settlements with the small
8 incumbents, when McLeod USA was facilities-based and
9 you would be passing traffic, local traffic from MCA
10 to the small ILECs, is it McLeod USA's intention to
11 work and have agreements with those small ILECs for
12 settlement purposes?

13 A. Again, I don't make that final decision, but
14 that's how I've seen the company operate in the past.

15 Q. Can Mr. Oberschelp answer that as the vice
16 president and manager of the company? Would he be in
17 a better position to answer that than you? Don't look
18 at him. Please look at me.

19 A. I don't believe so.

20 Q. Well, I want him back on the stand when
21 we're finished with you, because I have few witnesses
22 who are from McLeod USA that are asking us to deal
23 with the MCA issue for them so they can be
24 competitive, and I want to know whether they in good
25 faith are going to negotiate with our small ILECs on

1 compensation or hide behind the Interconnection
2 Agreements they have with the large ILECs.

3 So what I would ask you is, would it be your
4 intent that you work for a company that in good faith
5 is going to work with our small ILECs for settlements
6 so that you're not passing them traffic that they're
7 not compensated for?

8 A. I have seen my company work to that end in
9 the past.

10 Q. And so you would believe that they would
11 work in good faith to do that?

12 A. Absolutely.

13 COMMISSIONER DRAINER: Thank you. No other
14 questions.

15 JUDGE DIPPELL: Is there recross based on
16 questions from the Bench, AT&T?

17 MR. DeFORD: No.

18 JUDGE DIPPELL: Intermedia?

19 MR. SAPPERSTEIN: No questions.

20 JUDGE DIPPELL: Birch?

21 MR. MIRAKIAN: No questions.

22 JUDGE DIPPELL: Gabriel?

23 MR. LUMLEY: No, your Honor.

24 JUDGE DIPPELL: Nextlink?

25 MR. COMLEY: No questions.

1 JUDGE DIPPELL: Staff?

2 MR. POSTON: No questions.

3 JUDGE DIPPELL: Public Counsel?

4 MR. DANDINO: No questions.

5 JUDGE DIPPELL: Sprint?

6 MS. GARDNER: No questions.

7 JUDGE DIPPELL: GTE?

8 MR. DORITY: No questions, thank you.

9 JUDGE DIPPELL: Southwestern Bell?

10 MS. McDONALD: I have just a couple of

11 questions for him based on what Commissioner Drainer

12 asked.

13 RECROSS-EXAMINATION BY MS. McDONALD:

14 Q. Would it be fair to say that if you would

15 have looked at Rate Group B, which actually contains

16 many of the exchanges in Tier 3 of the optional MCA,

17 that --

18 A. Zone 2, Rate Group B?

19 Q. Let's start with rate groups. You start

20 with the rate group. Would you agree with me that

21 many of the Tier 3 exchanges are Rate Group B

22 exchanges? For example, starting with St. Charles,

23 would you agree St. Charles is actually a Rate Group B

24 exchange?

25 A. Yes.

1 Q. And Chesterfield is a Rate Group B exchange?

2 A. To the best of my understanding.

3 Q. And Manchester, for example, too, would be a
4 Rate Group B exchange?

5 A. Yes.

6 Q. Now, Rate Group B is the exact same as
7 Zone 2, correct?

8 A. It is my understanding that Zone 2 equates
9 to Rate Group B.

10 Q. And if you would have used the Zone 2 rate,
11 the price would drop substantially from 33.29 down to
12 \$20.71; is that correct?

13 A. Yes. It's my understanding that the
14 interconnection Zone 2 rate was 20.71, and you also
15 find Rate Group Bs and half of MCA-4 is Rate Group Bs
16 and more than half of MCA-5 is Rate Group Bs.

17 Q. So rate -- so Zone 3 here does not
18 accurately reflect the UNE costs for Tiers 3, 4 and 5
19 combined, it's rather the highest UNE cost?

20 A. The purpose of my numbers was a comparative
21 cost, and basically what happens when we go from a
22 resale environment to a UNE environment, even though
23 we are now providing the local switching services, our
24 costs increase in Zone 1 and 3.

25 If you look at the cost comparison from

1 resale in Zone -- the defining Zone 2 to UNE costs in
2 Zone 2, it's pretty much a wash even though we are
3 providing a significant amount of the costs for
4 trafficking that call.

5 So my analysis here was to show that, gosh,
6 we're going from a resale to a UNE-based product where
7 we're a facilities-based provider and yet our costs
8 are not decreasing. From a cost perspective, that
9 makes no sense in entering a market.

10 Q. But wouldn't you agree that your Zone 3 UNE
11 cost assumes the absolute highest rate group which
12 includes -- which does not include many of the
13 exchanges in the MCA optional tiers?

14 A. Yes, and I would also --

15 Q. So by definition, and following up on what
16 Commissioner Drainer asked you, the UNE cost in Zone 3
17 as stated in your testimony here is substantially
18 higher than it would be if you would have calculated
19 it based on exchanges within the optional MCA tiers?

20 A. Zone 3 are in the optional MCA tiers.

21 Q. But the exchange rate, I thought we went
22 through Rate Group B contains many of the exchanges
23 that compose the optional MCA tiers, and if you would
24 have used Rate Group B, that would be Zone 2, and
25 Zone 2 would reflect many of the exchanges that are

1 contained in the optional MCA; is that correct?

2 A. Zone 2 represents many of the exchanges that
3 are in -- Zone 2 represents many of the exchanges that
4 are in --

5 Q. The optional MCA tiers?

6 A. Yes, it does.

7 Q. And if you would have used Zone 2 rates,
8 your UNE costs in the MCA market would be
9 substantially lower?

10 A. I would easily say that it would be between
11 the Zone 1 and the Zone 3 costs for the UNE portion.
12 I would also say that the resale costs would be
13 between the Zone 1 and the Zone 3. So yes, I would
14 say they would be lower than Zone 3 and higher than
15 Zone 1.

16 MS. McDONALD: That's all I have.

17 JUDGE DIPPELL: Is there recross based on
18 questions from the Bench from Cass County?

19 MR. MCCARTNEY: No, thank you.

20 JUDGE DIPPELL: MITG?

21 MR. JOHNSON: No.

22 JUDGE DIPPELL: Okay. I forgot to ask my
23 question of the witness.

24 QUESTIONS BY JUDGE DIPPELL:

25 Q. And again, I just need to make sure all the

1 acronyms are clear. You used the acronym LMP in your
2 testimony. Can you tell me what that is?

3 A. That would be local number portability.

4 JUDGE DIPPELL: Thank you.

5 Are there any additional questions based on
6 my question?

7 (No response.)

8 Okay. Is there redirect?

9 MR. KRUSE: No, your Honor.

10 JUDGE DIPPELL: Okay. Then we can go ahead
11 and once again go in-camera and ask the remainder of
12 Southwestern Bell's questions.

13 We can go off the record.

14 (REPORTER'S NOTE: At this time, an
15 in-camera session was held, which is contained in
16 Volume No. 11, pages 689 through 691 of the
17 transcript.)

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1 JUDGE DIPPELL: Commissioner Drainer has
2 asked me to recall Mr. Oberschelp.

3 Sir, I realized I excused you earlier, but
4 if you don't actually leave the room you run the risk
5 of being recalled.

6 THE WITNESS: My mistake.

7 JUDGE DIPPELL: So you were under oath
8 earlier, and you are still under oath sitting in that
9 chair. Commissioner Drainer.

10 JEFF OBERSCHELP testified as follows:

11 QUESTIONS BY COMMISSIONER DRAINER:

12 Q. You don't mind being recalled?

13 A. I'm happy to be here.

14 Q. As you were in the room, I would appreciate
15 if you could answer my question to your colleague, if
16 you're going to facilities-based and as we really are
17 being asked to work through this very complicated
18 issue of MCA, it's not simple, and there are a lot of
19 relationships that have to be developed, in good faith
20 worked through to have this very important service
21 continue.

22 Is McLeod USA as a CLEC that wants to
23 operate in our metropolitan areas and have access to
24 the MCA service going to in good faith work with our
25 smaller ILECs in working out agreements to make sure

1 that they're compensated for the delivery of traffic
2 to them or terminated to them either through bill and
3 keep or some other compensation method?

4 A. I think what Martin said relative to the
5 company is that past practices have been that we work
6 reasonably, fairly and equitably at providing the
7 right answer. I don't think we would operate any
8 differently in Missouri.

9 Both Martin and I, while we have filed
10 testimony, neither one of us are executive officers of
11 the company. We aren't policy makers. Clearly we can
12 influence policy, and if you're asking me will I
13 influence policy and suggest that we deal with the
14 smaller ILECs in a reasonable manner to find the right
15 solution, the answer is yes.

16 Q. Do I have your word that you'll work very
17 hard to make sure that the settlement arrangements
18 that are made, that they aren't bypassed in this whole
19 process?

20 A. Yes, you have my word.

21 COMMISSIONER DRAINER: Thank you. No other
22 questions.

23 JUDGE DIPPELL: Is there any recross based
24 on Commissioner Drainer's question?

25 (No response.)

1 Is there any redirect?

2 MR. KRUSE: No, your Honor.

3 JUDGE DIPPELL: Thank you, Mr. Oberschelp.

4 You may be excused again.

5 COMMISSIONER DRAINER: But hang around.

6 THE WITNESS: I'm out of here.

7 (Laughter.)

8 JUDGE DIPPELL: Let's take a short break,

9 ten minutes.

10 (A recess was taken.)

11 JUDGE DIPPELL: We can go back on the

12 record. We're ready for Birch's first witness, and

13 she's already taken the stand. I'll go ahead and

14 swear you in.

15 (Witness sworn.)

16 JUDGE DIPPELL: Thank you. You may proceed,

17 Mr. Mirakian.

18 MR. MIRAKIAN: Thank you.

19 ROSE MULVANY testified as follows:

20 DIRECT EXAMINATION BY MR. MIRAKIAN:

21 Q. Would you please state your name and address

22 for the record.

23 A. It's Rose Mulvany. Address is 2020

24 Baltimore Avenue, Kansas City, Missouri 64108.

25 Q. And in what capacity are you employed and by

1 whom?

2 A. I am employed by Birch Telecom,
3 Incorporated. I am the Manager of Regulatory Affairs
4 for Kansas and Missouri.

5 Q. And did you cause to be prepared rebuttal
6 testimony that has been marked for admission as
7 Exhibit 15 in this?

8 A. Yes, I did.

9 Q. Do you have any corrections to your
10 testimony?

11 A. I actually have one. On page 7 of the
12 testimony, line 14, "is" should be "are", a-r-e.

13 Q. Is that it?

14 A. That's correct.

15 Q. If I were to ask you the same questions that
16 are contained in the testimony today, would you give
17 the same responses?

18 A. Yes, I would.

19 Q. And are those responses, to the best of your
20 knowledge, true and correct?

21 A. Yes, they are.

22 MR. MIRAKIAN: Then I would move to admit
23 Exhibit 15, Rose Mulvany's rebuttal testimony, and
24 tender her for cross-examination.

25 JUDGE DIPPELL: All right. Are there any

1 objections to Exhibit No. 15 coming into the record?
2 (No response.)
3 Then I will receive it in the record.
4 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)
5 JUDGE DIPPELL: Is there cross-examination
6 for Ms. Mulvany from AT&T?
7 MR. DeFORD: No, your Honor.
8 JUDGE DIPPELL: Intermedia?
9 MR. SAPPERSTEIN: No questions, your Honor.
10 JUDGE DIPPELL: McLeod?
11 MS. YOUNG: No questions.
12 JUDGE DIPPELL: Gabriel?
13 MR. LUMLEY: No questions.
14 JUDGE DIPPELL: Nextlink? No one present,
15 so we'll say no. Staff?
16 MR. POSTON: No questions.
17 JUDGE DIPPELL: Public Counsel?
18 MR. DANDINO: No questions.
19 JUDGE DIPPELL: Sprint?
20 MS. GARDNER: No questions.
21 JUDGE DIPPELL: GTE?
22 MR. DORITY: No questions.
23 JUDGE DIPPELL: Southwestern Bell?
24 MS. McDONALD: Yes, I have some questions.
25 CROSS-EXAMINATION BY MS. McDONALD:

1 Q. Good afternoon, Ms. Mulvany.

2 A. Good afternoon, Ms. McDonald.

3 Q. I want to make sure that I understand your
4 position. Is it Birch's position that CLEC customers
5 do not have the option of subscribing to MCA service?

6 A. They do not have the option of subscribing
7 to the MCA service?

8 Q. Uh-huh.

9 A. Could you point me to where you're looking
10 at in my testimony?

11 Q. Page 5, lines 15 through 16.

12 A. It is my -- it is Birch's position and it is
13 my testimony that currently our CLEC customers that --
14 or CLECs customers that would be facilities-based in
15 nature would not have the option of being recognized
16 as MCA subscribers.

17 Q. Okay. And if the Commission determines that
18 CLECs either can or must participate in the MCA plan,
19 is it Birch's position that the geographic calling
20 scopes for all local exchange carriers, being both
21 ILECs and CLECs, should be the same?

22 A. It is Birch's position that the geographic
23 calling scope should be at least what it is now.

24 Q. Okay. And is it Birch's position that the
25 Commission should allow CLECs to offer a widening

1 calling scope for toll-free outbound calls because it
2 would not affect any other LEC's MCA service?

3 A. Would you repeat that? I'm sorry.

4 Q. Sure. Is it Birch's position that
5 additionally CLECs should be allowed to have a larger
6 outbound calling scope because it would not affect any
7 other LEC's MCA service?

8 A. Currently, that's not something that's in
9 Birch's business plan. I can't -- Birch can't speak
10 on behalf of other CLECs and what they would want to
11 do.

12 Q. Okay. Now, have you read Birch's Position
13 Statement in this case?

14 A. I have reviewed it long ago.

15 Q. Okay. Would it be fair to say that with
16 regard to the question of, If permitted to participate
17 in the MCA plan, should CLECs be required to follow
18 the parameters of the MCA plan with regard to
19 geographic calling scope, bill and keep intercompany
20 compensation, use of segregated NXXs for MCA service
21 and deprice, at least in part Birch said that if a
22 CLEC chooses to offer its customers a larger calling
23 scope for outbound calling, that would be okay because
24 it would not affect the MCA calling scope fixed by
25 other local exchange carriers?

1 A. As I am rereading Birch's Position Statement
2 up here, I would agree that that's a correct
3 statement.

4 Q. Okay. Now, if that's true and a CLEC opts
5 to have a larger calling scope than the MCA plan, do
6 you agree that access charges would apply for calls
7 that terminate beyond the geographic scope of the
8 metropolitan calling area?

9 A. That access charges could apply or would
10 apply?

11 Q. Should apply.

12 A. I believe that they could apply.

13 Q. Okay. And do you at all believe that a CLEC
14 customer could enlarge the geographic calling scope of
15 the MCA plan and thereby avoid paying access charges?

16 A. I would have no knowledge of that.

17 Q. I want to understand your position with
18 regard to segregated NXX codes. Is it Birch's
19 position that segregated NXXs seem to be the only
20 practical way to distinguish between MCA and non-MCA
21 subscribers?

22 A. To the best of my understanding, current
23 configuration of how the MCA is set up, it seems to be
24 one of the primary ways. I don't know of any other
25 ways to do it currently.

1 Q. Okay. And is it Birch's position that
2 interconnection agreements should govern intercompany
3 compensation?

4 A. I believe that page 7 of my testimony, lines
5 16 through 18, would read that private agreements
6 reached between carriers either through
7 interconnection agreements or otherwise. So I believe
8 that other agreements could be reached other than
9 interconnection.

10 Q. Okay.

11 A. I don't know that there's anything out there
12 specifically referred to as reciprocal compensation
13 agreement. I'm not -- we wouldn't exclude that as a
14 possibility.

15 Q. Okay. And you would also believe, I take
16 it, based on that, that within an interconnection
17 agreement, intercompany compensation could be based on
18 local reciprocal compensation?

19 A. Yes. I would believe that it could be based
20 on that, yes.

21 Q. And would you agree that if the Commission
22 were to adopt local reciprocal compensation for calls
23 within the MCA, it is possible that some companies
24 could pay more in intercompany compensation for
25 terminating local calls than the company would receive

1 from its MCA subscriber via the MCA additive?

2 A. I believe that could be a possibility.

3 Q. Now, would you agree with me that the rates
4 as between an ILEC and a CLEC are governed by
5 interconnection agreements?

6 A. I would agree with that.

7 Q. And would you agree with me that rates
8 between local exchange carriers and their customers
9 are governed by tariffs?

10 A. I would agree with that.

11 Q. Would you agree that on or about March 7th,
12 1997 Birch applied for certificate of service
13 authority to provide basic local telecommunications
14 services?

15 A. I will -- subject to check, I would agree
16 with you that that's probably on or about the date
17 they applied.

18 Q. That would be TA-97-372?

19 A. That would have been prior to my time at
20 Birch, but yes.

21 Q. And at the time that they sought to provide
22 basic local telecommunications service, would it be
23 fair to say that Birch had no interconnection
24 agreement with any incumbent local exchange area in
25 whose service territory it sought to provide basic

1 local service?

2 A. I have no knowledge of that.

3 Q. Okay. Do you have any knowledge of whether
4 the Commission issued a Report and Order granting
5 Birch's certificate of service authority?

6 A. I'm going to speculate that we are operating
7 in the state of Missouri. Therefore, we probably have
8 been issued a certificate of authority from the
9 Missouri Commission.

10 Q. And when that happened, are you aware that
11 the Commission determined that the certification would
12 become effective when the Birch tariff became
13 effective?

14 A. That wouldn't surprise me.

15 Q. Okay. Now, would it be fair to say that in
16 the tariff that Birch subsequently filed with the
17 Missouri Public Service Commission, Birch outlined the
18 rights and obligations as between Birch and Birch's
19 customers?

20 A. It would seem consistent that would be the
21 case.

22 Q. And would it be fair to say that
23 Southwestern Bell didn't file Birch's tariff for
24 Birch?

25 A. I think that would be very fair to say.

1 Q. Okay. And when Birch filed its tariff, it
2 was Birch who determined as part of that tariff filing
3 what calling scopes Birch was going to provide to its
4 customers; is that correct?

5 A. I believe that would be correct.

6 Q. Okay. And it would be Birch, not
7 Southwestern Bell, who determines whether a call that
8 its customers makes is going to incur toll charges; is
9 that right?

10 A. With respect to an MCA call or any call?

11 Q. Any call.

12 A. I would say that would be true subject to
13 some qualification.

14 Q. Okay. What's the qualification?

15 A. I think, the way I understand what's been
16 described in this hearing as a screening process by
17 Southwestern Bell, if a CLEC customer,
18 facilities-based CLEC customer within the MCA, within
19 the optional tier of the MCA would call back into, for
20 instance, a Southwestern Bell customer in the
21 mandatory MCA, I believe that there would be a toll
22 charge applied to that CLEC customer because they're
23 not a participant in the MCA.

24 Q. Who's charging the toll charge?

25 A. I'm sorry?

1 Q. Who would be charging the CLEC customer that
2 toll charge?

3 A. As I understand, Birch would be charging the
4 CLEC customer that charge.

5 Q. So Birch did make the determination about
6 whether or not its customer is going to incur a toll
7 charge for calling back into the inner tiers of the
8 MCA?

9 A. And actually, you know what, I'm not sure
10 whether or not Birch charges its customers that toll
11 charge or whether Birch would not be charging that
12 toll, actually would be eating that charge.

13 Q. Okay.

14 A. Because I believe Southwestern Bell is
15 charging Birch that charge.

16 Q. Southwestern Bell is charging Birch what
17 charge?

18 A. For under a facilities-based service, I
19 believe that the toll charge is coming from
20 Southwestern Bell to Birch. I may -- that may not be
21 a true statement because honestly I have no knowledge
22 of the charges that are -- that are actually being
23 charged to Southwestern -- from Southwestern Bell to
24 Birch and Birch to its end users.

25 It's my understanding that -- it's my

1 understanding that Birch's customers would be
2 incurring that charge, and I guess that would be a
3 Birch charge to its customers.

4 Q. Okay. Well, I guess I'm trying to really
5 figure out what you're saying. Are you saying that if
6 I'm a Birch customer in MCA Tier 5 and I pick up the
7 phone to call a Southwestern Bell customer in the
8 principal zone, that that is or is not going to be a
9 toll charge or you don't know?

10 A. Honestly, I don't know.

11 Q. Well, let's assume that the Birch MCA-5
12 customer's calling into the principal zone of the
13 St. Louis metropolitan calling area and it's calling a
14 Southwestern Bell customer. Would you agree with me
15 that if there's going to be a toll charge for that
16 charge, Birch is going to put it on its bill to its
17 customer?

18 A. I would agree with you that that's a
19 possibility, but I don't know.

20 Q. Okay. And clearly Southwestern Bell isn't
21 going to send Birch's customer a bill for toll
22 charges, correct?

23 A. I would not expect it to, no.

24 Q. Okay. So would it be fair to say that it
25 would be factually inaccurate to state that SWBT does

1 not allow CLEC customers within the optional MCA to
2 place a call which was local prior to the conversion
3 to a CLEC without incurring a long distance charge as
4 stated on page 3, lines 21 through 23 of your
5 testimony?

6 A. I don't know if it would be fair to say
7 that. That is -- lines 21 through 23, to the best of
8 my understanding, is how the CLEC, a facilities-based
9 CLEC customer is being affected by the MCA situation
10 currently.

11 Q. Okay. Well, I guess I just don't understand
12 that because if you just told me that Birch would
13 determine whether its customer made a -- when calling
14 from Tier 5 into the principal zone, Birch's
15 customer -- Birch would decide whether its customer
16 would incur a toll charge, not Southwestern Bell,
17 correct?

18 And lines 21 through 23 say SWBT does not
19 allow the same CLEC customer within the optional MCA
20 to place a call which was local prior to the
21 customer's conversion to a CLEC without incurring long
22 distance charges. That's what it says, correct?

23 A. That is correct, that's what it says.

24 Q. Now, how would SWBT make any determination
25 with regard to whether or not Birch charges its

1 customers toll charges for calls?

2 A. I believe what I was referring to there was
3 the aspect which we called here in this hearing a
4 screening process by Southwestern Bell whereby it's my
5 understanding the traffic is routed differently from a
6 non-MCA NXX, which would be a CLEC NXX. I mean, for
7 clarification, that would probably not be the best way
8 to say it.

9 Q. Okay. And let me make sure I understand
10 exactly where we're going with this. I thought that
11 what we've heard here today for now a couple of days
12 at least was that Southwestern Bell may in some
13 instances be charging its customers toll for CLEC
14 customers in the optional MCA tiers, correct?

15 A. I've heard that, yes.

16 Q. Okay. Your sentence seems to say just the
17 opposite. Your sentence seems to say that
18 Southwestern Bell doesn't allow the CLEC customers to
19 place calls without incurring a toll charge. It's not
20 Southwestern Bell who determines at all what the CLEC
21 is charging the customer, correct?

22 A. Could be a byproduct, but yes, factually
23 it's correct. What you're stating is correct.

24 Q. Okay. So the sentence at lines 21 through
25 23 would be factually inaccurate?

1 A. I think, based on my explanation, based on
2 my explanation I made here, I agree that it probably
3 wasn't the best way to state it.

4 Q. Well, let's turn to page 4, lines 12 through
5 21. There you say, Customers of facility-based CLECs
6 are not permitted to complete all calls within the MCA
7 on a local basis. Now, will you agree with me that
8 Birch, the CLEC, determines the calling scope for its
9 customers?

10 A. I agree with that.

11 Q. So Birch determines whether or not the call
12 completes within the MCA, not Southwestern Bell,
13 correct?

14 A. I agree with that.

15 Q. So it would be inaccurate to state that
16 customers of facilities-based CLECs aren't permitted
17 to complete calls within the MCA on a local basis?

18 A. Factually, I believe that's an accurate
19 statement. I didn't -- you'll note there it doesn't
20 say SWBT does not permit them. It just says that
21 customers of facilities-based CLECs are not permitted
22 to complete all calls within the MCA on a local basis,
23 which I believe is kind of the issue.

24 Q. Which facility-based CLEC is not permitting
25 its customers to complete calls within the MCA on a

1 local basis?

2 A. It's been Birch's experience that some of
3 its facilities-based customers either in the Kansas
4 City or St. Louis areas are not permitted to
5 complete -- they are not permitted to dial those calls
6 either seven or ten-digit.

7 Q. Okay. Now, are you referring to a situation
8 in which certain calls were not going through between
9 Birch and Southwestern Bell when you make those
10 statements?

11 A. That would be my understanding.

12 Q. Okay. Would it be your understanding that
13 as soon as Birch brought that situation to
14 Southwestern Bell's attention, Southwestern Bell
15 remedied that problem?

16 A. I don't know.

17 Q. Okay. So you don't know one way or another
18 whether or not Birch's customers are having any
19 problems making calls within the MCA?

20 A. It's my understanding that either Birch's
21 resale or UNE platform customers are not having that
22 problem now.

23 Q. They're not having the problem?

24 A. They're not having that problem now.

25 Q. Okay. So turning back to lines 12 through

1 14, if that was a problem at one time, you're now
2 agreeable that it is not a problem?

3 A. It's not a problem for UNEP or resale
4 customers, as I stated. However, we have a switch in
5 St. Louis and a switch in Kansas City that we don't
6 believe we can make fully operational apparently
7 because of this problem. At this time it's a
8 significant barrier to us going completely to
9 switch-based service.

10 Therefore, we've decided to provision the
11 majority of our customers through UNE platform at this
12 time so we can provision, on the Missouri side we can
13 provision the service.

14 Q. Okay. Are you aware of a specific or any in
15 general customers that, and I'm talking about
16 facilities-based customers, that can't complete calls?

17 A. Currently?

18 Q. Correct.

19 A. I'm not aware of any.

20 Q. If you could, would you turn to page 6,
21 lines 16 through 17 of your direct testimony. Would
22 it be fair to say that those lines read -- well,
23 actually it starts at line 15, Since CLEC assigned
24 NXXs are not recognized by SWBT as being in the MCA,
25 CLEC customers are now required to pay toll charges

1 for some calls that were designated as local prior to
2 competition. Did I read that correct?

3 A. Yes.

4 Q. And would you agree with me again that if
5 the CLEC decides to charge its customers toll charge,
6 that's the CLEC's call?

7 A. It's my understanding that because CLECs are
8 not currently allowed to participate in the MCA,
9 that's the byproduct of the inability of CLECs to
10 participate within the MCA as it currently exists.

11 The byproduct is that what formerly would be
12 a local call to what would be formerly a SWBT
13 customer, for instance, now a CLEC customer, would now
14 become a long distance call to that customer.

15 Q. Okay. Well, would you agree with me that,
16 as local service provider, Birch would -- Birch would
17 decide what its customers' local calling scope is?

18 A. Yes.

19 Q. Not Southwestern Bell?

20 A. Correct.

21 Q. Okay. So Birch --

22 A. With respect to the MCA, however, I believe
23 that's been mandated by the Commission, what that
24 calling scope is.

25 Q. Okay. And it's your position that Birch is

1 not a participant in the MCA plan?

2 A. That's correct.

3 Q. Now, are you saying that Birch requires its
4 customers to pay toll on some calls within the MCA
5 that its customers used to not have to pay toll for?

6 A. That's my understanding.

7 Q. Now, are you aware of the contents of
8 Birch's tariff?

9 A. Generally.

10 Q. Okay. With regard to Birch's tariff, would
11 you agree that it generally describes the geographic
12 calling scopes the same as the MCA calling scopes?

13 A. That would not surprise me.

14 Q. Okay. Would you agree with me that Birch's
15 rates for this service are approximately -- well,
16 actually they're exactly the same as the Commission
17 ordered rates in 92-306 with the exception of Birch's
18 charge for its MCA-like service in St. Louis where
19 Birch provides this service at \$11.12 to residential
20 subscribers as opposed to the 20 -- \$12.35 Commission
21 ordered price, and that Birch provides this service
22 for its business customers at \$22.32 as opposed to
23 \$24.80 charge in the Commission mandated MCA plan?

24 A. To be honest with you, Ms. McDonald, I don't
25 know what the charges would specifically be without

1 checking the tariff.

2 Q. Okay. Do you have any reason to disbelieve
3 what I'm telling you?

4 A. No, I do not.

5 MR. MIRAKIAN: Your Honor, I object to that
6 question with respect to the tariff. I don't see
7 where it's relevant.

8 JUDGE DIPPELL: Do you have a response,
9 Ms. McDonald?

10 MS. McDONALD: I would say the tariff speaks
11 for itself.

12 BY MS. McDONALD:

13 Q. Okay. Would you agree, Ms. Mulvany, that
14 because Birch cannot be an active participant in the
15 MCA plan from your perspective, that it's offering
16 MCA-like service?

17 A. If the tariff pages you're referring to, and
18 that of course would be subject to check, it could be
19 offering something of that nature.

20 Q. Okay. Do you know if a Birch MCA-like
21 subscriber in Chesterfield, which is in Tier 3 of the
22 St. Louis metropolitan calling area, calls a McLeod
23 MCA subscriber in Augusta, which is this Tier 5 of the
24 St. Louis metropolitan calling area, what intercompany
25 compensation applies regarding this call?

1 A. I have no knowledge of that.

2 MS. McDONALD: The rest of my questions
3 regard highly confidential information.

4 JUDGE DIPPELL: Okay. Is there -- once
5 again, we'll save that for the end and come back to
6 any in-camera questions. Is there any
7 cross-examination from Cass County?

8 MR. MCCARTNEY: Yes, thank you.

9 CROSS-EXAMINATION BY MR. MCCARTNEY:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Where is Birch currently operating as a CLEC
13 in the state of Missouri?

14 A. Where in the state of Missouri?

15 Q. Yeah.

16 A. I would not be able to tell you all of the
17 various exchanges.

18 Q. Can you tell me St. Louis, Kansas City,
19 Springfield?

20 A. Fair to say that those would be included
21 within.

22 Q. All three of those?

23 A. Yes.

24 Q. Is Birch originating traffic in those three
25 areas that terminates to the MCA exchanges of Orchard

1 Farm in the St. Louis MCA and Cass County in Lathrop?

2 A. I don't know for certain. It's a
3 possibility.

4 Q. It's a possibility?

5 A. I don't know for certain.

6 Q. Okay. Are you familiar with the Data
7 Requests that we sent to Birch and that Birch
8 responded?

9 A. I'm familiar with them, yes.

10 Q. Okay. And that Data Request says, yes,
11 Birch has sent traffic that has terminated to those
12 exchanges. You don't know which --

13 A. I apologize. The Data Requests were
14 responded to by somebody else within our company with
15 that knowledge. I have no direct knowledge. If our
16 answers were yes, then I would suspect yes is the
17 answer.

18 Q. Are you saying that Birch is not currently
19 part of the MCA now, then, is that what I understood
20 your prior discussion with Ms. McDonald? Are they
21 currently participating in the MCA plan or are they
22 not?

23 A. To the best of my knowledge, I don't believe
24 any CLECs are able to be active participants within
25 the MCA.

1 Q. Then under what authority are you-all
2 terminating or sending the traffic that terminates to
3 those exchanges?

4 A. It's my understanding through our
5 provisioning of UNE platform service that we would
6 pass it over the Southwestern Bell network and it
7 would terminate to Orchard Farms or the LEC.

8 Q. What type of recordkeeping does Birch do?
9 Do you exchange records with Southwestern Bell?

10 A. I have no knowledge of whether or not we
11 exchange records with Southwestern Bell with respect
12 to your company. We are in the process of
13 establishing a 92-99 record process, and I believe
14 system limitations have prevented us from fully
15 implementing that.

16 Q. Do you know how long --

17 A. We progress every day.

18 Q. I see. How long has this been in place?
19 When did you start?

20 A. Honestly, I don't know when we started. We
21 have a vendor that is, I believe, a subsidiary of GTE
22 that is assisting us in that establishment of that
23 process, implementation of that process.

24 Q. Do you know how long you've been sending the
25 traffic to those exchanges?

1 A. No, I don't.

2 Q. How long have you been operating in the
3 state of Missouri?

4 A. I believe our certificate was -- I don't
5 know. I believe we applied for it in March of 1997.
6 I don't know the exact answer to that.

7 Q. And you say 92-99 records are the records
8 that will be developed?

9 A. That's my understanding, yes.

10 Q. Is that the same type of record that's being
11 exchanged today with Southwestern Bell?

12 A. I have no knowledge of what records we're
13 exchanging with Southwestern Bell.

14 Q. Do you know that some records are being
15 exchanged with Southwestern Bell?

16 A. I don't know if some are or some aren't.

17 Q. With respect to Birch's Interconnection
18 Agreement with Southwestern Bell, are you familiar
19 with Section 37 of that agreement that says Birch will
20 not send to Southwestern Bell any local traffic that's
21 destined to the network of a third party unless Birch
22 has the authority to exchange that traffic with the
23 third party?

24 A. I'm not familiar with that provision, no. I
25 would believe that if you're reading that that's a

1 provision, I could believe that that's in there.

2 Q. Would Birch be willing to -- let's say the
3 Commission hypothetically decides that the MCA plan
4 should continue, that CLECs should be allowed to
5 participate fully, and that bill and keep compensation
6 should be used for all LECs, both ILECs and CLECs.

7 Would Birch be willing to segregate that MCA
8 traffic out so that its on separate trunks, the
9 noncompensable MCA traffic?

10 A. Honestly, I don't know if -- I would imagine
11 we would also do a cost study to see what the most
12 cost-efficient means were to do that. However,
13 whatever way we could come up with to try to do that
14 to make it easier on both my company and your client's
15 company, I believe we would be amenable to that.

16 MR. MCCARTNEY: I think that's all my
17 questions.

18 THE WITNESS: Thank you.

19 JUDGE DIPPELL: MITG?

20 MR. JOHNSON: Thank you.

21 CROSS-EXAMINATION BY MR. JOHNSON:

22 Q. Ms. Mulvany, in the Position Statement and I
23 think during some of your prior answers today you used
24 the term UNEP?

25 A. Yes.

1 Q. And then I think I just heard you say UNE
2 platform. Is that the same thing?

3 A. Yes, sir.

4 Q. What does that mean?

5 A. It's the way in which specific unbundled
6 network elements are combined and the way in which
7 Birch predominantly provisions its local exchange
8 service at this point.

9 Q. So is Birch facility-based?

10 A. Under some definitions, yes. Under some
11 definitions, no.

12 Q. Do you have an interconnection agreement
13 with Southwestern Bell?

14 A. Yes, we do.

15 Q. Are you exchanging compensation with
16 Southwestern Bell?

17 A. I have no knowledge of that. I don't know.

18 Q. Do you have interconnection agreements with
19 Sprint or GTE?

20 A. To the best of my knowledge, we do not.

21 Q. Do you know how you're exchanging
22 compensation for traffic that you're sending to
23 terminate in GTE or Sprint's network?

24 A. No, sir, I don't.

25 Q. The Interconnection Agreement that you have

1 with Southwestern Bell, does it apply to St. Louis,
2 Kansas City and Springfield or are there separate
3 ones?

4 A. I believe we have one Interconnection
5 Agreement for Missouri exchanges within which we
6 operate. Southwestern Bell may have a different one.

7 Q. Besides providing local services, does Birch
8 also provide interexchange or toll services to its
9 customers?

10 A. Yes, it does.

11 Q. Does it do that with its own name or does it
12 have an IXC affiliate?

13 A. I believe now its in Birch's own name.

14 Q. And you said something earlier about your
15 switch in Kansas City and St. Louis not running or
16 something like that.

17 A. No. I didn't mean to imply that they were
18 not operational or couldn't be operational. We have
19 deferred provisioning service on a complete switch
20 basis in both of those markets, and we've deferred to
21 the UNE platform provisioning of service partly
22 because of problems we're experiencing with the MCA
23 issues we've been discussing this week.

24 Q. So that part provision is taking place in
25 Kansas City and St. Louis or also Springfield?

1 A. To be honest with you, I don't know. I
2 don't believe we have a switch in Springfield.

3 Q. The toll that you're providing, is it still
4 going through those switches? Is it just the local
5 side that you --

6 A. I don't know.

7 Q. Okay. Do you know whether or not your
8 Interconnection Agreement with Southwestern Bell has a
9 different compensation rate for traffic that transits
10 Bell's facility and terminates on another carrier's
11 facilities as opposed to traffic that both transits
12 and that terminates on Southwestern Bell's facilities?
13 Do you know whether there's a different rate for that?

14 A. I don't know if there is one. I'd have to
15 check.

16 MR. JOHNSON: I think that's all I have.
17 Thank you.

18 JUDGE DIPPELL: Okay. I believe Mr. Johnson
19 asked my acronym question this round. So there are no
20 questions from the Bench for this witness. Is there
21 any redirect?

22 MR. MIRAKIAN: Yes, there are just a couple.
23 REDIRECT EXAMINATION BY MR. MIRAKIAN:

24 Q. I wanted to go back into some of the
25 questions that Bell had asked about Birch's capacity

1 to give its customers MCA-like service or MCA service
2 on a toll-free basis.

3 When Birch -- when a Birch customer makes a
4 phone call that is not recognized as an MCA phone
5 call, are access charges applied by Southwestern Bell?

6 A. To the best of my knowledge, yes.

7 Q. Would Birch still be free to charge a --
8 call that a local call and eat the access charges?

9 A. I believe it would.

10 Q. Do you know whether Birch is doing that?
11 What's the policy decision been?

12 A. I don't know.

13 MR. MIRAKIAN: That's all I wanted to ask.

14 JUDGE DIPPELL: Then we'll go ahead and --
15 the audience is getting a workout today. We'll go
16 back in-camera so that Southwestern Bell can ask the
17 remainder of its questions.

18 (REPORTER'S NOTE: At this time, an
19 in-camera session was held, which is contained in
20 Volume No. 11, pages 723 through 724 of the
21 transcript.)

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1 JUDGE DIPPELL: And was that the only Birch
2 witness?

3 MR. MIRAKIAN: Yes.

4 JUDGE DIPPELL: I believe we're ready for
5 Gabriel's first witness.

6 MR. LUMLEY: Yes, your Honor.

7 (Witness sworn.)

8 JUDGE DIPPELL: You may proceed.

9 MR. LUMLEY: Thank you, your Honor.

10 EDWARD J. CADIEUX testified as follows:

11 DIRECT EXAMINATION BY MR. LUMLEY:

12 Q. Please state your name and business address.

13 A. Edward J. Cadieux, 16090 Swingley Ridge
14 Road, Suite 500, Chesterfield, Missouri 63017.

15 Q. And by whom are you employed and in what
16 position?

17 A. By Gabriel Communications, Inc. and on
18 behalf of its subsidiary companies in the position of
19 Executive Director - Regulatory and Public Affairs.

20 Q. And are you here today speaking on behalf of
21 those companies?

22 A. Yes, but most specifically for Gabriel
23 Communications of Missouri, Inc., which is the Gabriel
24 operating company in the state of Missouri.

25 Q. And are Exhibits 23, 24 and 25 your prepared

1 direct, rebuttal and surrebuttal testimonies
2 respectively that have been prefiled in this case?

3 A. Yes.

4 Q. And is Exhibit 26 a list of corrections that
5 you'd like to make to those prefiled testimonies?

6 A. Yes.

7 Q. And if I asked you the questions that are
8 listed in that -- in those prefiled testimonies as
9 corrected by the errata sheet today, would you give
10 the same answers?

11 A. Yes.

12 Q. And are those answers true to the best of
13 your knowledge?

14 A. Yes, although I might -- I do have one
15 additional correction.

16 Q. Would you please advise the Commission of
17 that correction.

18 A. Yes. It did not make it onto the errata
19 sheet. This is my surrebuttal testimony, so that's
20 Exhibit 25, page 2, line 1. There's a reference there
21 to several witnesses, one of which is Robert Cowdrey
22 of Sprint. That should be deleted. That's an
23 incorrect reference. So the position to which I'm
24 referring there in that -- in the testimony was not
25 taken by Mr. Cowdrey. I misread his testimony. So he

1 should be deleted.

2 Q. Any other corrections that you wish to make
3 at this time?

4 A. None that I'm aware of.

5 MR. LUMLEY: Your Honor, at this point I'd
6 move the admission of Exhibits 23, 24, 25 and 26 and
7 tender the witness for cross-examination.

8 MR. LANE: I don't have an objection. I
9 don't have a copy of Exhibit 26. Do you have that,
10 Carl, another one? I'm sure you may have given me
11 one, but I don't see it.

12 MR. LUMLEY: I've already noted them on my
13 copy, so I can just give you mine.

14 JUDGE DIPPELL: Are there any objections to
15 Exhibits 23, 24, 25 and 26 and the additional
16 corrections coming into the record?

17 (No response.)

18 Then I will admit those into the record.

19 (EXHIBIT NOS. 23, 24, 25 AND 26 WERE
20 RECEIVED INTO EVIDENCE.)

21 JUDGE DIPPELL: Is there any
22 cross-examination by AT&T?

23 MR. DeFORD: No questions.

24 JUDGE DIPPELL: Intermedia?

25 MR. SAPPERSTEIN: No questions.

1 JUDGE DIPPELL: Birch? No response.
2 McLeod?
3 MR. KRUSE: No questions, your Honor.
4 JUDGE DIPPELL: Nextlink?
5 MR. COMLEY: No questions, Judge.
6 JUDGE DIPPELL: Staff?
7 MR. POSTON: No questions.
8 JUDGE DIPPELL: Public Counsel?
9 MR. DANDINO: No questions, your Honor.
10 JUDGE DIPPELL: Sprint?
11 MS. GARDNER: I just have one.
12 CROSS-EXAMINATION BY MS. GARDNER:
13 Q. Mr. Cadieux, would you turn to page 6 of
14 your surrebuttal testimony, specifically line 21.
15 A. Line 21?
16 Q. Yes.
17 A. I see it, yes. I also had another -- this
18 is where I'm actually discussing the position of what
19 I call --
20 JUDGE DIPPELL: I'm sorry. Which page was
21 that?
22 THE WITNESS: It's page 6 of the
23 surrebuttal. It's what I refer to as forced
24 uniformity of MCA rates and calling scopes, and
25 Mr. Cowdrey did not support that position, and so the

1 same deletion should -- for the same reasons I made
2 the deletion on page 2, I guess the phrase "and Sprint
3 witness Cowdrey" should be deleted from line 21 on
4 page 6.

5 MS. GARDNER: Thank you. That's all I have.

6 JUDGE DIPPELL: GTE?

7 MR. DORITY: No questions, thanks.

8 JUDGE DIPPELL: Southwestern Bell?

9 MR. LANE: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. LANE:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. On page 7 of your rebuttal testimony, you
14 state that when the CLECs were certificated that they
15 were not restricted as to the services that they could
16 provide within the MCA. Do you see that?

17 A. Do you have a line reference?

18 Q. 5 through 7.

19 A. Yes.

20 MR. LANE: I'd like to get an exhibit marked
21 if I could, your Honor.

22 JUDGE DIPPELL: We're up to 54.

23 (EXHIBIT NO. 54 WAS MARKED FOR
24 IDENTIFICATION.)

25 BY MR. LANE:

1 Q. Mr. Cadieux, would you agree that Exhibit 54
2 is a copy of Gabriel Communications' Application for
3 Certification to Provide Basic Local Service in
4 Missouri?

5 A. It appears to be. I haven't looked to see
6 if all the attachments are here, but it appears to be.

7 Q. Would you agree with me that in paragraph 4
8 of the application that Gabriel describes the services
9 that it intends to offer in Missouri?

10 A. Yes.

11 Q. And is it fair to say that MCA service is
12 not specifically listed in the application in
13 paragraph 4 or otherwise?

14 A. No, it's not listed specifically by name. I
15 would say, though, obviously page 4 -- the paragraph 4
16 description of services is very broad, and in part it
17 says, We seek to offer and provide all forms of basic
18 local telecommunication services, local exchange
19 telecommunications services, exchange access services
20 and interexchange telecommunications services,
21 including but not limited to, and then goes and
22 provides a list.

23 Q. Is it Gabriel's position that if the
24 Commission did not want to give authority to Gabriel
25 to provide MCA service as had been outlined in

1 TO-92-306, that it would have to have restricted or
2 limited it in the order granting certification?

3 A. Yes. And I would go on to say that any such
4 restriction in my opinion would have been illegal
5 because the application and the Commission's grant of
6 the certification has to be interpreted in the context
7 not only of the 1992 MCA plan but also in the context
8 of the Telecom Act and implementing FCC rules and
9 Missouri statutes.

10 Q. And you don't consider it incumbent upon
11 Gabriel to advise the Commission that it intended to
12 offer MCA service so that the Commission could
13 determine whether or not it wanted to limit it in any
14 way?

15 A. No. As I said, paragraph 4 is extremely
16 broad. It asks for really the standard, I think as
17 broad as possible request under the statute, all
18 categories of services. We did not purport or attempt
19 to itemize every individual service. That's not
20 normally found in applications for certification.

21 MR. LANE: Could I get another exhibit
22 marked, your Honor?

23 JUDGE DIPPELL: No. 55.

24 (EXHIBIT NO. 55 WAS MARKED FOR
25 IDENTIFICATION.)

1 BY MR. LANE:

2 Q. Would you agree, Mr. Cadieux, that
3 Exhibit 55 is a copy of the Order from the Commission
4 in Case No. TA-99-173 that granted Gabriel a
5 certificate to provide local telecommunications
6 services in Missouri?

7 A. It appears to be.

8 Q. And would you agree that there's nothing in
9 the Order itself that mentions MCA service in any
10 respect?

11 A. I would agree, and I find that absolutely
12 not surprising for the very reasons I explained with
13 respect to the application itself.

14 Q. Would you agree with me that it would not be
15 until Gabriel filed a tariff that the Commission would
16 know that Gabriel had an intent to provide an MCA-type
17 service?

18 A. I don't know that I would agree with that.
19 Again, as I said, paragraph 4 of the application is
20 extremely broad, provides -- lists all the categories
21 of telecommunication services under the statutes on an
22 unrestricted basis and doesn't purport to provide a
23 full itemization. So no, I would not agree with that.

24 Q. Well, isn't it Gabriel's view that it has
25 the option to determine whether or not it wants to

1 provide an MCA service?

2 A. Yes.

3 Q. So it's not until you file a tariff that
4 says that you do want to provide MCA service that the
5 Commission can know that you have an intent to do so,
6 right?

7 A. I would agree that -- well, let me put it
8 this way. When we filed the application, the
9 Commission, I think, had reason to know and did know
10 that we were seeking the authority that was broad
11 enough to provide that service and had some
12 information on what services but not a full
13 itemization of specific services that we intended to
14 provide as part of application.

15 Q. If it --

16 A. And it's not until you get the tariff that
17 you see the very specific services that the party
18 intends to provide, I'd agree with you.

19 (EXHIBIT NO. 56HC WAS MARKED FOR
20 IDENTIFICATION.)
21 BY MR. LANE:

22 Q. Mr. Cadieux, you have in front of you an
23 exhibit that's been marked 56HC. Would you agree that
24 that's a response to Data Requests from Southwestern
25 Bell to Gabriel?

1 A. Yes.

2 Q. And only part of it is HC, right?

3 A. I believe that's the case. I haven't looked
4 at this. I'm sure that's the case.

5 Q. And just for --

6 JUDGE DIPPELL: I'm sorry, Mr. Lane. Just
7 let me -- you said response from Southwestern to
8 Gabriel. You meant from Gabriel to Southwest?

9 MR. LANE: If I said that, I misspoke. Yes,
10 your Honor. I'll reask the question just to make it
11 clear.

12 JUDGE DIPPELL: Thank you.

13 BY MR. LANE:

14 Q. Exhibit 56HC is a copy of response by
15 Gabriel to Data Requests from Southwestern Bell,
16 right?

17 A. That's correct.

18 Q. And the HC portion, just to be clear, is the
19 third page of that document which is the answer to
20 question No. 2, right?

21 A. Yeah. I believe that's the only one. I'd
22 have to look through the rest of this to make sure.

23 Q. Okay. If you would. I want to make sure I
24 don't need to go in-camera.

25 MR. LUMLEY: I believe that's correct.

1 THE WITNESS: Yes.

2 BY MR. LANE:

3 Q. And that the question No. 2, the answer to
4 which contains HC material, asks about number of
5 customers, right?

6 A. That's correct.

7 Q. And this includes the tariff pages that
8 Gabriel responded to that indicates what local
9 exchange services it's offering in Missouri, right?

10 A. Yes, at the time, and I do -- let me make
11 sure on the timing here. I'm not positive about
12 this. I -- well, let me take a look at the answer to
13 3 and I can tell you for sure.

14 I believe we've added a service, and I
15 apologize because we should have updated this Data
16 Request, but we've added a line of services or new
17 pricing called Millennium pricing, which I believe was
18 filed after this Data Request. I'm generally familiar
19 with that and can discuss it, but it doesn't change
20 the local calling areas or serving areas, but it's a
21 different pricing package.

22 Q. And would you describe what Millennium
23 services are?

24 A. Yeah. Again, it's a new pricing package
25 which includes just basic business lines at reduced

1 prices from what was in the prior tariffs and I
2 believe at some repackaged -- we have some services
3 that you pay a flat monthly fee of -- these are all
4 business services -- \$200 and then get a lower
5 business line than you would get if you just used --
6 just paid the straight business line.

7 So we -- and I think we did some -- I think
8 we did some what you might call unbundling of
9 features, some of the what I'll call a la carte lines
10 where you just buy that and pay the straight line fee
11 and not pay a monthly charge. I think we did some
12 unbundling of features that you now got those with
13 less features bundled and you could buy the features
14 a la carte. That's the kind of thing.

15 Q. Are the tariffs that are reflected in
16 Exhibit 56HC, are they still being offered by Birch?

17 A. Gabriel.

18 Q. Gabriel. Excuse me.

19 A. That's all right. I believe we have
20 grandfathered the pricing plans here in this tariff to
21 existing customers and existing locations. In effect,
22 in a sense what the Millennium pricing does, prior to
23 Millennium we had a la carte individual line pricing.
24 Then we added what we call the Advantage service,
25 which was the flat rate monthly charge plus a reduced

1 line charge.

2 When we went to Millennium, we grandfathered
3 the a la carte and the Advantage services as they
4 were, and then basically under Millennium we offer
5 essentially the same things with some repackaged or
6 unbundled features and lower prices. You can go a la
7 carte lines under Millennium. You can get a service
8 which is priced on a structure basis very similar to
9 Advantage under Millennium, meaning a flat rate 200 or
10 \$400 fee and then a lower line charge.

11 So we kind of brought everything under a
12 single umbrella and gave it a new name and revised the
13 prices, brought the prices down some, and did some
14 tinkering with the bundling of features and mostly
15 unbundling and making the features more a la carte.

16 Q. Okay. The Advantage service that you
17 referred to, is that included in Exhibit 56HC?

18 A. Yes. It's at -- it's original page 74 of
19 the tariff.

20 Q. As I've gone through it, it looks like
21 you've described three services, something that's
22 called Gabriel Integral Business Services?

23 A. Yes. That was really the a la carte first
24 tariff that was filed.

25 Q. And then you have a message toll service

1 tariff?

2 A. There's message toll service with all of
3 these. The rates can vary depending on which local
4 service option you take.

5 Q. Then you have a miscellaneous service called
6 Nonstandard Access Line?

7 A. Yes.

8 Q. And then the Gabriel Advantage Edge Service?

9 A. Right. And what we now have in our tariff
10 that differs from it, these are all grandfathered to
11 existing customers, existing locations, and now we
12 have the Millennium service that follows the
13 structures. Really gives the customers essentially
14 the same options with a little tweaking to the feature
15 bundling and the pricing.

16 Q. Okay. I want to ask, I guess, first about
17 the Nonstandard Access Line Service that is first
18 revised page 72 of Exhibit 56HC.

19 A. Okay.

20 Q. Could you describe what the calling scope
21 for the Nonstandard Access Line Service is?

22 A. In the footnote -- yes. In Footnote 2 it
23 covers that. It cross references to the Southwestern
24 Bell local exchange tariff.

25 Q. And is the calling scope for the Nonstandard

1 Access Line Service, is that equivalent to the basic
2 exchange calling scopes of Southwestern Bell?

3 A. Right. What you might call the local only
4 service, not the MCA subscriber service.

5 Q. All right. And so in the St. Louis
6 metropolitan area, if we look within the geography of
7 the MCA, is it fair to say that your Nonstandard
8 Access Line Service provides for flat-rate calling
9 within principal zone Tiers 1 and 2 of the St. Louis
10 area for customers who subscribe to it in that area?

11 A. Yes, I believe that's correct.

12 Q. And then for customers in the exchanges in
13 Tiers 3, 4 and 5, if they purchase that Nonstandard
14 Access Line Service, as I understand your description,
15 they would get the local calling scope within each
16 individual exchange?

17 A. Yes. And to the extent there may be any
18 existing EAS routes on there.

19 Q. Okay.

20 A. And I just mention, there are no -- to my
21 knowledge, there are no subscribers to that service.

22 Q. But it's -- it was an offering that you had?

23 A. Yes.

24 Q. All right. And in your rebuttal testimony
25 at page 18 you discuss something that you refer to as

1 a bare bones service.

2 A. Yes.

3 Q. Is this nonstandard access line the bare
4 bones service to which you refer?

5 A. Yes. It doesn't have any additional
6 features bundled with it, and it has the local only
7 calling scope, which is why -- what I make that
8 reference to.

9 Q. Okay. And under your Millennium service, is
10 the customer still able to purchase something that
11 gives just the bare bones local calling scope which
12 you've described?

13 A. No. Every service we offer other than what
14 we're calling the bare bones service has an MCA-wide
15 local calling scope associated with it.

16 Q. So your testimony on page 18 of your
17 rebuttal where you say Gabriel also offers a bare
18 bones local exchange service that has a smaller
19 calling scope, i.e. calling scope equivalent to SWBT's
20 local service, that's no longer a correct statement;
21 is that right?

22 A. No. That is a correct statement. We still
23 offer that service you refer to in Section 10 of the
24 tariff.

25 Q. Okay.

1 A. That's offered. It's just that no customer
2 has subscribed to it.

3 Q. I see. That's not a grandfathered service?

4 A. No, that one is not grandfathered.

5 Q. Okay.

6 A. The other thing I would say in terms of if
7 we offer that service, we've made the business
8 decision that if we offer it we'll do it on a resale
9 basis.

10 Q. Now, your view is that the CLEC has the
11 option to determine whether to participate in the MCA
12 plan, right?

13 A. Yes.

14 Q. Okay. And it does so by filing a tariff,
15 right?

16 A. In part.

17 Q. And that's how it actually makes the
18 offering known to its customer, right, or its
19 potential customer, it has to have a tariff to do so,
20 right?

21 A. In part, and I say in part because what we
22 put in our tariff is the outbound local calling area
23 which we control, because we control that through our
24 switch, and we have listed the outbound local calling
25 area in the tariff.

1 I use the qualification, in part, because in
2 order to be allowed to operate as a full participant
3 in the MCA plan, there's another piece of it which is
4 out of control which is we have to have the incumbent
5 local exchange carriers willing to honor designations
6 of CLEC NXXs as MCA NXXs.

7 Q. Now, which of the services, that is the
8 Gabriel Integral Business Services, the Gabriel
9 Advantage Edge Service and the Gabriel Nonstandard
10 Access Line Service, which of those is the MCA service
11 that you claim to be offering?

12 A. All of the services other than the
13 Nonstandard Access Line Service are, in our view, MCA
14 services, and that also includes the Millennium
15 service, because they all have local calling scopes
16 that are as defined in Section 4 of the tariff.

17 Q. Would you agree that none of the services
18 that you say are MCA services are denominated as such
19 in your tariff?

20 A. No, and I understand that there's concern
21 about confusion about calling it MCA service from a
22 marketing standpoint. We have no need or desire from
23 a marketing standpoint to call it MCA service. So we
24 decided, in part to avoid confusion, don't call it MCA
25 service in the tariff.

1 Q. And with regard to the Gabriel Advantage
2 Edge Service and Gabriel Integral Business Services
3 tariff, would you agree that both of those provide a
4 calling scope that's broader than the MCA plan?

5 A. Yes.

6 Q. Now, if the Commission or the other ILECs in
7 Missouri didn't believe that you should be a
8 participant in the plan, it's your contention that
9 they should have said so at the time that Gabriel
10 filed and before it had approval of these Advantage
11 Edge and Gabriel Integral Business Services tariffs,
12 right?

13 A. I don't know that I claim it's a -- it's
14 foreclosing in a legal sense, but I will say this,
15 that I believe the incumbent LECs certainly had an
16 opportunity at that point to raise the issue, because
17 those tariffs were filed in the context again of the
18 Telecom Act having passed and the implementing of FCC
19 rules and the opening of the local exchange market to
20 competition and dialing parity.

21 Q. Would you agree that there's nothing in the
22 Gabriel Advantage Edge or Integral Business Services
23 tariffs that advises either the Commission or
24 interested ILECs that this constitutes Gabriel's claim
25 that it was a participant in the MCA plan or that it

1 intended to vary the compensation arrangements among
2 carriers in the MCA?

3 A. Well, I'll -- I won't agree to the last
4 piece because I don't believe we are attempting to
5 vary the compensation arrangements. So I don't accept
6 that piece of the question.

7 Q. Okay. How about the first part?

8 A. Can you give me that again on a stand-alone
9 basis because I kind of started focusing on the second
10 part of the question.

11 Q. Well, if I remember it, too.

12 MR. LANE: Could you read that last question
13 back?

14 (THE REQUESTED TESTIMONY WAS READ BY THE
15 REPORTER.)

16 THE WITNESS: I would agree there's nothing
17 in the tariffs explicitly referencing MCA service. So
18 to that extent, there is not that notice.

19 However, as I've said before, I think the
20 filing of those services and other CLEC services in
21 the context of the Telecom Act and the FCC rules
22 already being in place, that if the incumbent LECs
23 were going to raise an issue about whether CLECs
24 should be permitted to be participants, it should have
25 been raised or at least could have been raised at that

1 point.

2 But I will go on to say and I will grant you
3 that until a CLEC tells an incumbent LEC that it wants
4 its NXXs treated as MCA NXXs, that you don't have
5 specific knowledge as to the CLEC's desire to be full
6 participants in the MCA plan. And by the time we
7 started in the service, we already knew what the
8 policy was and we knew we would have to be here before
9 we would have the opportunity to have those NXXs
10 treated as MCA NXXs.

11 BY MR. LANE:

12 Q. I take it from that you didn't make the
13 notifications you described because of your
14 understanding of what the policy is?

15 A. Right.

16 Q. And do you see the problem from the ILEC
17 perspective? If it's optional in your view for
18 Gabriel to participate or not participate in the MCA
19 plan and you file a tariff that doesn't identify that
20 it's your intention to be a participant in the MCA
21 plan through that tariff, that there wouldn't be
22 notice for the ILEC to come in and object to
23 participation in the MCA plan?

24 A. Well, again, I think the issue in a sense
25 was raised or should have been viewed as raised when

1 the CLECs came in with authority, requests for
2 authority that were unrestricted and that had tariffs
3 approved with local calling scopes which were at least
4 as great as the MCA calling scope.

5 I will grant you, though, on a CLEC-by-CLEC
6 basis I cannot fault Southwestern Bell or any other
7 incumbent LEC for not treating NXXs as MCA NXXs,
8 except for the fact that they, as it -- it was clear
9 to us that there was a blanket policy that that was
10 not going to be permitted, at least not without the
11 payment of a surcharge which we considered to be
12 illegal.

13 Q. But if it's optional for Gabriel in your
14 view to participate or not participate in the plan,
15 you recognize obviously that at least some of the
16 ILECs don't believe that they've been declared to be
17 participants in the plan, right? You knew that at the
18 time you filed the tariff, right?

19 A. I'm sorry.

20 Q. I'll rephrase.

21 A. That ILECs did not believe they were
22 participants?

23 Q. At the time that you filed this tariff, you
24 were aware that ILECs did not consider CLECs to be
25 participants in the MCA plan, right?

1 A. That's correct, at least with respect to
2 Southwestern Bell. I'm not sure if that was true for
3 all of the incumbents.

4 Q. And if it was optional in your view for
5 Gabriel to participate or not participate, one
6 wouldn't know that you intended by this tariff to
7 participate in the MCA plan until you later declared,
8 By the way, I'm now in the plan under this tariff,
9 right?

10 A. Specifically it couldn't be implemented for
11 Gabriel until that notification was given. However,
12 we were aware that other companies had requested that
13 and were refused.

14 Q. An ILEC or a commission reviewing this
15 tariff could view it, even under Gabriel's view, as
16 your election not to participate in the MCA, right?

17 A. No. Well, I think it could be uncertain,
18 because it doesn't state -- the tariff on its face
19 doesn't say what NXXs or which NXXs we want to be
20 treated as --

21 Q. Okay.

22 A. -- MCA NXXs.

23 Q. I want to go back if I could and ask a few
24 more questions about the Nonstandard Access Line that
25 you have described in your tariff. It's contained in

1 Exhibit 56HC.

2 As I understand it, you said that the --
3 that tariff permits a matching of the calling scope of
4 Southwestern Bell's standard local service in whatever
5 exchange it's being offered?

6 A. That's correct.

7 Q. And in St. Louis, that would mean a customer
8 in the metro exchange who subscribes to your
9 nonstandard access line would be able to call
10 throughout tiers 1 and 2 of the MCA plus the principal
11 zone?

12 A. I think I answered that previously with a
13 yes.

14 Q. And so if a customer of Gabriel that chose
15 to subscribe to the Nonstandard Access Line service
16 within the principal zone of the MCA made a call to a
17 customer in Tiers 3, 4 and 5 of the MCA, would that be
18 a toll charge?

19 A. Yes. But again, as I say, we have no
20 subscribers to that service.

21 Q. All right. But a customer can choose that
22 today from Gabriel if they want, right?

23 A. Yes.

24 Q. And is it true that it would not be a toll
25 charge from the mandatory zone into Tiers 3 through 5,

1 whether the called customer is a SWBT customer or a
2 Gabriel customer?

3 A. I want to be clear. Give me the scenario,
4 who's calling who, from where to where. I'm not sure.

5 Q. Okay. It's a Gabriel customer in the
6 mandatory zone who has subscribed to Nonstandard
7 Access Line Service under your tariff.

8 A. Okay.

9 Q. And that customer is placing a call to
10 Tiers 3 through 5. And my question is, is it a toll
11 call regardless of whether the called customer in
12 Tiers 3 through 5 is a Gabriel customer or a
13 Southwestern Bell customer?

14 A. I believe at the -- well, with Southwestern
15 Bell, I believe it depends on whether the Southwestern
16 Bell, the called party is an MCA subscriber or not,
17 because if it were an MCA subscriber, the call would
18 be treated -- that outbound call would be treated as
19 local, seven or ten-digit dialed.

20 Q. And if it's a Southwestern Bell non-MCA
21 subscriber, it would be a toll call?

22 A. That's correct.

23 Q. Now assume that the called customer in
24 Tier 3, and let's use a Chesterfield exchange, is also
25 a Nonstandard Access Line subscriber of Gabriel. How

1 is that call placed?

2 A. Well, we haven't had one. So that's why I'm
3 trying to think. I believe that's also going to be a
4 toll call.

5 Q. All right. And how about if the called
6 customer of Gabriel in Chesterfield is a subscriber to
7 your Advantage Edge or to your Gabriel Integral
8 Business Services tariff?

9 A. Well, we're provisioning -- if we provision
10 the service, it will only be via resale. So it would
11 be treated -- my understanding is that Southwestern
12 Bell is not screening calls, resale calls out to those
13 customers. So I believe it would be treated as a
14 local dialed call.

15 But again, we haven't had any of those
16 calls, so I don't have a track record. I might want
17 to think about that a little bit more, but on the face
18 of it, I think that's how it would be treated.

19 Q. So from Gabriel's perspective, if its
20 customer in the principal zone in St. Louis has
21 subscribed to the Nonstandard Access Line service, the
22 call could be either toll or local depending upon in
23 both instances whether the called party has subscribed
24 either to Southwestern Bell's MCA service or what
25 Gabriel says is its MCA service?

1 A. I believe that's correct, but the reason
2 that would be correct is that it's a function of
3 Southwestern Bell's switch. Since we're providing
4 that on a resale basis, we can't control how that call
5 is -- the dialing pattern of that call. So that's
6 controlled by Southwestern Bell.

7 Q. Because at this point you're choosing to
8 provide it on a resale basis, right?

9 A. Again, yes, if anybody asks for it, which no
10 one has.

11 Q. Right. And your tariff doesn't say that
12 you're only going to provide it via resale, does it?

13 A. It doesn't, but typically I've never --
14 well, I don't know if I've never seen it, but
15 typically you do not see carriers specifying in their
16 service, their service descriptions in their tariffs
17 how they're going to be provisioned, whether it's via
18 their own facilities or resale or a combination.

19 Q. Some do in Missouri, though, don't they?

20 A. I don't know. If there are, I'm not aware
21 of it, but my experience has been that that is not.
22 Sometimes I guess I've heard that discussed in
23 situations where maybe a carrier wants to price the
24 services differently because their provisioning costs
25 are different, but generally I've not found that to be

1 the case.

2 Q. So to go back and conclude the example, a
3 Gabriel Nonstandard Access Line Service in St. Louis
4 would dial on a local basis to receive -- to call a
5 Gabriel Advantage Edge customer in Chesterfield but
6 would dial on a toll basis to call a Southwestern Bell
7 non-MCA subscriber in Chesterfield?

8 A. I believe that's correct, and that's due to
9 how Southwestern Bell processes the call on the
10 originating end, because it's getting dial -- drawing
11 dial tone from Southwestern Bell.

12 Q. And from your perspective in offering a
13 tariff that calls for that to occur, Gabriel is
14 violating the dialing parity requirements of the
15 federal act, right?

16 A. Our tariff does not cause that to occur.
17 What causes that to occur is how Southwestern Bell
18 processes the call.

19 Q. If a customer did that and you offered a
20 service that allowed that to happen, in your view,
21 would that violate the federal act?

22 A. I can't agree with the premise. We're not
23 allowing that to happen. We don't control how you
24 program. The way to relieve it is to quit programming
25 your switch that way. We don't control it.

1 Q. Doesn't the problem arise because you've
2 chosen to offer a Nonstandard Access Line Service and
3 you've chosen to provision it by reselling
4 Southwestern Bell service?

5 A. No. It's occurred because of how
6 Southwestern Bell programs its switch.

7 Q. But Gabriel hasn't done anything until it
8 chooses to offer a service which utilizes that switch,
9 right?

10 A. I'm sorry. Could you state that again,
11 please?

12 Q. That wasn't a good question.
13 The issue or the potential violation doesn't
14 arise until Gabriel makes the affirmative choice to
15 offer a tariff and to provision the service via
16 resale, right?

17 A. It wouldn't occur at all but for the fact of
18 how Southwestern Bell programs its switch, over which
19 we have no control. So I don't know how you can say
20 that we are responsible.

21 Q. But don't you control whether you offer the
22 service and how you provision it?

23 A. We offer the -- we control how we provision
24 it, but we don't control the dialing pattern on the
25 originating end when the call is offered via resale.

1 If we offered -- I mean, we could offer this
2 on a facilities basis and then we'd have to -- we'd
3 promulgate -- we'd have to get NXX, an additional NXX
4 block for every one that we currently have and use up
5 a bunch of additional NXXs for a service that may
6 never -- or certainly at this point is not showing any
7 interest by customers.

8 Q. But you couldn't do that, in your view,
9 because it would be violative of the Federal Act?

10 A. Couldn't do what?

11 Q. Provision it on a facilities basis and have
12 different dialing patterns depending upon whether the
13 called customer is or isn't a subscriber to MCA.

14 A. If we were offering it off of dial tone, off
15 of our numbers and our dial tone we wouldn't, because
16 today we do not do that. Notwithstanding Southwestern
17 Bell's screening of our calls, we're not screening
18 anybody's calls. We're honoring everybody's NXX
19 designations on our switch and our numbers which we
20 control.

21 Q. On page 14 of your direct you state that
22 Gabriel has taken measures to offset what you have
23 termed MCA's screening. Do you see that?

24 A. Yes.

25 Q. Could you describe what the steps are that

1 you've taken?

2 A. We offer customers the option of FX service,
3 which allows them to draw dial tone from a distant
4 point, which mitigates the MCA screening.

5 Q. And is the charge for the FX service
6 reflected in Exhibit 56HC?

7 A. It's not. We offer the service as a
8 no-charge option, and it's not in those tariff pages,
9 but it is in -- I believe it's in the definitional
10 sections of the tariff as foreign exchange service.

11 Q. And when you say a no-charge option, you're
12 saying you don't assess any additional charge on your
13 customer for that?

14 A. No, because given that we're offering
15 service on a DS1 origination basis anyway, we don't
16 really believe there's a material incremental cost, at
17 least one we can identify, to offering a foreign
18 exchange service. So we offer it as a no-charge
19 option.

20 Q. And you draw a dial tone then out of
21 somewhere in the St. Louis metropolitan exchange in
22 the mandatory zone?

23 A. Yes.

24 Q. And then that permits any caller that's in
25 the St. Louis metropolitan exchange to call your

1 customer out in Tiers 3, 4 and 5 on a toll-free basis?

2 A. That's correct, because they have dial tone
3 presence as if they were a customer within the
4 mandatory tone.

5 Q. Now, on page 34 of your direct testimony you
6 make a recommendation that a CLEC should be permitted
7 to notify the ILEC which of its NXXs should be
8 considered as MCA numbers. Do you see that and recall
9 that?

10 A. It sounds familiar. If you have a specific
11 reference, I'll look to it, but I agree.

12 Q. That's your position, right?

13 A. Yes.

14 Q. And my question is, can the CLEC notify the
15 ILECs that an NXX is to be considered as an MCA
16 service even if all of the customers with numbers from
17 that NXX are not subscribing to an MCA service?

18 A. Could you repeat that?

19 Q. Yeah. Is it Gabriel's position that a CLEC
20 can notify the ILECs that a particular NXX is to be
21 considered as an MCA NXX even if all customers
22 utilizing numbers from that NXX are not subscribing to
23 an MCA service?

24 A. I think the answer, if I followed that
25 through, the answer to that is no. Under current

1 circumstances I would agree that if a CLEC designates
2 and then accepts as an MCA NXX, then all service
3 provided by any numbers within that NXX block would be
4 treated as -- would have to be MCA service.

5 Now, my understanding is, is that currently
6 that's because the switches basically do the routing
7 on an NXX basis.

8 Q. Okay. And just for clarification, then, the
9 CLEC customers would all have to subscribe to the
10 CLEC's version of MCA service in order to -- before
11 ILECs are required to provide toll-free return
12 calling, right?

13 A. I'm not sure I -- I'm not sure I disagree.
14 I'd state it differently, and I'm not -- I don't like
15 to use the toll-free return calling. I consider it
16 dialing parity. The ILECs do not -- ILECs need to be
17 notified as to which NXXs the CLEC wishes to have
18 treated as MCA NXXs. I agree with that.

19 Q. I mean, we may get into semantical
20 differences, but when you say you want to treat it as
21 an MCA NXX, that means that Southwestern Bell can't
22 charge its customers toll when they're placing a call
23 to a customer served by a number from that NXX?

24 A. It means that, and it means that the call
25 has to be treated in the same manner that Southwestern

1 Bell treats the call when the called party is an MCA
2 subscriber, which means it's locally dialed and no
3 toll charges. We believe that's required under the
4 dialing parity.

5 Q. Let me shift over and talk about
6 Southwestern Bell's proposal that compensation be
7 required for providing what we call the toll-free
8 return calling. Okay?

9 A. Yes.

10 Q. Would you agree that a call from a
11 Southwestern Bell customer in the mandatory zone is
12 assessed a toll charge when they call a nonsubscriber
13 in the optional zone?

14 A. Yes.

15 Q. And that if that nonsubscriber of
16 Southwestern Bell moves over to take service from a
17 CLEC, Southwestern Bell would lose toll in that case
18 if it were required to permit local dialing on calls
19 to that CLEC customer?

20 A. That's correct. But as I've said in my
21 testimony, whether you consider MCA service to be
22 local service, toll service or hybrid, the service is
23 subject to competition and, therefore, that kind of
24 revenue loss is inherent in a competitive market or
25 market that's been open to competition.

1 Q. Now, let me use the other example when the
2 Southwestern Bell customer in the mandatory zone calls
3 an MCA subscriber in the optional zone, that's dialed
4 locally and no toll today, right?

5 A. That's correct.

6 Q. And would you agree that Southwestern Bell
7 does lose the compensation that it was receiving for
8 providing that toll-free return calling when the
9 optional zone customer shifts service to a CLEC?

10 A. It loses the revenue it was receiving from
11 the optional MCA subscriber, which would be the basic
12 local -- the basic local rate plus the applicable MCA
13 additive.

14 As I have also noted in my testimony,
15 though, if that customer then decides a week later to
16 shift back to Southwestern Bell because they've had
17 service problems with the CLEC or whatever, the CLEC
18 loses the revenue, what I would say is the MCA-like
19 revenue that it was receiving from the customer.

20 Q. Would you agree with me that the MCA
21 additive that's paid by the optional zone customer was
22 set at a level that was designed to recover toll for
23 what had been toll prior to the creation of the MCA?

24 A. It's my understanding that from the MCA
25 order that is generally the case. How precise the

1 calculation was, whether it's turned out to be revenue
2 neutral in practice given the various volumes of
3 traffic, I don't know. But my understanding was that
4 that was the general purpose of setting the rates back
5 in 1992 when it was a monopoly market.

6 Q. You'd agree that the MCA additive that's
7 paid by the optional zone customer allows it to both
8 make outbound calling and then to receive inbound
9 toll-free calling, right?

10 A. Yes. By paying the additive, the customer
11 in the outer zone -- it's a condition of outbound
12 calling. For a call to be treated as local from the
13 inner zone to that customer, it's a condition that the
14 called party must be an MCA subscriber. So I think I
15 would agree with you.

16 Q. And if that customer in the optional zone
17 had been subscribing to MCA service moves over to a
18 CLEC, you agree that in that case obviously
19 Southwestern Bell isn't required to provide the
20 outbound calling service anymore to that customer,
21 right?

22 A. Right. The customer's getting outbound
23 calling from Gabriel off of Gabriel's dial tone.

24 Q. And the issue that arises between the CLECs
25 and at least some of the ILECs involves the position

1 that we should continue to provide what we call the
2 toll-free return calling when we're no longer being
3 compensated by the MCA additive, right?

4 A. Well, again, and I know you may consider it
5 semantics, but I consider the semantics to be
6 important. The fact that Southwestern Bell has lost
7 revenue in a competitive loss because the customer has
8 chosen to go to a CLEC does not in our view justify
9 what we believe is a violation of the dialing parity
10 rule. And to create a dialing disparity situation we
11 believe has a highly anticompetitive effect.

12 Q. And obviously, you know, we obviously have a
13 difference in opinion and in semantics as well, but
14 would you agree that it's the return calling feature
15 of MCA service that creates the issue that we have
16 between our companies today?

17 A. It's part of it, but it -- I mean, the
18 problem we have between the parties is not inherent in
19 the return calling feature. In our view, what we have
20 is -- the return calling feature can stand.

21 In our view what you need is compliance with
22 the dialing parity requirements which permits a CLEC
23 to allow its customers to have the same right that a
24 Southwestern Bell customer in the outer zones has,
25 which is to pay a rate which is an MCA-like rate and

1 receive inbound calling from the inner zones on a
2 toll-free basis.

3 Q. You'd agree today that CLECs in the optional
4 zones, their customers are treated in the exact same
5 way as Southwestern Bell's customers that are
6 nonsubscribers to MCA service, right?

7 A. Yes. They're treated as non-MCA subscribers
8 and have no ability to become MCA subscribers.

9 Q. Let me shift over and ask just a couple of
10 questions about bill and keep. Is it Gabriel's view
11 that it's appropriate -- well, first, if the
12 Commission has authority and, second, whether they
13 believe it's appropriate to move to a bill and keep
14 arrangement like the ILECs have with regard to MCA
15 traffic if the Commission determines on a prospective
16 basis that you're entitled to be in the MCA plan?

17 A. This gets a little bit complicated. So let
18 me try to break it up. Let me talk about the
19 authority first. I mean, the first thing I will tell
20 you is, you know, this is, I think, somewhat a case of
21 first impression, and people are having to interpret
22 how the Telecom Act and Interconnection Agreements
23 apply overlaid with the MCA.

24 But I do not believe that in this case it's
25 appropriate for the Commission to order bill and keep,

1 in effect to modify the Interconnection Agreements
2 real time in this case to go to bill and keep.
3 There's several reasons why I believe that.

4 Q. Okay. Let me stop you. Are you -- you
5 missed the first part of the question. You said it
6 was a complicated question, first impression. Do you
7 agree that the Commission has the authority to set as
8 a condition of CLEC participation in the MCA plan that
9 calls within the MCA should be on a bill and keep
10 basis?

11 A. I don't think so in this case. I think they
12 might be able to do something a little short of that,
13 which might be, for example, to say and I -- I'm
14 interpreting this in the context of the FCC rules.
15 I'd be more inclined to say that the Commission might
16 have the authority to say, I'm going to create a
17 rebuttable presumption for bill and keep in the four
18 inter-- for reciprocal compensation between a CLEC and
19 an ILEC where they're directly interconnected and
20 competing within the same territory, like Gabriel and
21 Southwestern Bell are.

22 Because the FCC rules, as I read them, say
23 that you can only do bill and keep if the traffic is
24 roughly in balance, but the Commission can create a
25 presumption for bill and keep and then allow the

1 parties an opportunity to rebut the presumption.

2 So for me the question is, in this case,
3 does the -- one of the questions is, does the
4 Commission have the record, a sufficient record to do
5 anything more than perhaps creating a rebuttable
6 presumption for bill and keep? While there's some
7 information, I don't think there's a -- the focus of
8 this case has not been on the traffic volumes, and I
9 don't know that there's really a lot of information on
10 traffic volumes between the parties.

11 So my view would be that the Commission does
12 not have a record in this case to order bill and keep.
13 They might have sufficient information or record to
14 create a rebuttable presumption and then basically say
15 the parties either in a separate docket or when they
16 come in to renegotiate their Interconnection
17 Agreements the next time have an opportunity to
18 address that issue.

19 There's one other reason why I think there's
20 potential problems with real time ordering amending of
21 the Interconnection Agreements between a CLEC and a
22 directly interconnected incumbent in this case, and
23 that's been discussed by, I forget which witness, but
24 the fact that you have midstream Interconnection
25 Agreements and business decisions that have been

1 implemented under Interconnection Agreements.

2 It's one thing -- one thing for the parties
3 to come in in midstream of an Interconnection
4 Agreement and voluntarily seek to amend the agreement.
5 I think it raises some questions about the
6 Commission's authority to come in midstream and
7 mandate a change.

8 But let me go one step further, because
9 again I think this is kind of complicated. On the
10 other hand, I want to make it clear, I fully believe
11 that this or any other state commission can take an
12 issue, whether it's reciprocal compensation or UNE
13 pricing, and take it out of the context of an
14 arbitration and, like many state commissions have with
15 UNE pricing, do a generic pricing docket and make a
16 decision and then prospectively implement those
17 results into a future Interconnection Agreement.

18 Q. All right. Let me go at it this way.
19 Gabriel comes at it from the view that they already
20 have the right and they're participants in the MCA
21 plan, right?

22 A. Uh-huh.

23 Q. The Commission may or may not share that
24 view. I want you to assume for a minute that the
25 Commission doesn't share that view, that it doesn't

1 believe today that CLECs can, but it's willing to make
2 them participants in the plan.

3 A. All right. I'm following.

4 Q. Now, you need to let me get my question out.
5 Under those circumstances, would you agree that if the
6 Commission decides to say, I'll allow CLECs to
7 participate in the MCA plan but I'm going to put a
8 condition on it that you move to bill and keep, then
9 that's permissible and the CLECs have the option to
10 either participate or not participate in the plan?

11 A. Okay. What I'd say is, if and to the extent
12 a commission order of that nature is in effect and has
13 not been stayed, we certainly will comply with the
14 Commission Order, but I want to make it clear that we
15 would consider -- for the reasons I've discussed, we
16 would consider that type of Commission Order to be
17 defective legally for those reasons I've just gone
18 through and subject to appeal.

19 But in any -- in any situation, if the
20 Commission issues an Order and it's not stayed, it's
21 legally effective, we will abide by the Commission
22 Order while we pursue any appellate process.

23 Q. Let me talk about calling scopes with you,
24 make sure I have your position correct. Is it
25 Gabriel's view that they're permitted to expand or

1 contract MCA calling scopes and still be treated as an
2 MCA participant with regard to those expanded or
3 contracted calling scopes?

4 A. Expand, yes, but I have stated in my
5 testimony an alternative that I think would be a
6 reasonable alternative for the Commission, which would
7 be to create a condition on the CLECs that if they
8 want an NXX, any of their NXXs to be treated as MCA
9 NXXs, then the CLEC should maintain a calling scope
10 which at least meets the calling scope of the
11 existing -- of the plan as adopted in 1992.

12 Q. Would you agree that if the CLEC's permitted
13 to expand the footprint of the MCA, that it could then
14 claim that it no longer was required to pay access
15 charges on calls from that expanded footprint
16 terminating to an ILEC within the MCA?

17 A. Okay. We've changed from talking about
18 expanded calling scopes to expanding the footprint,
19 and I'm not -- I need to know what you mean. I know
20 that term has been used in the hearing, but I need --
21 in order to answer that correctly, I need to know
22 specifically what you mean by expanding the footprint.

23 Q. I mean anything beyond the current
24 geographic scope of the MCA.

25 A. Anything what? Local calling scope? Here's

1 our -- here's the Gabriel position. I mean, in terms
2 of a CLEC's outbound local calling scope, as I said, I
3 think it would be reasonable for the Commission to
4 order that as a minimum it meet the existing --

5 Q. Let me do this. I'm not trying -- I'm
6 trying to ask simple questions to you. Let's use an
7 example.

8 A. Well, it's the term that I don't understand,
9 expanding the footprint.

10 Q. Let's say that Gabriel files a tariff to add
11 Washington, Missouri to its MCA-like service.

12 MR. LUMLEY: Your Honor, I'd like to
13 interrupt. A question was posed and the witness was
14 trying to answer the question, and unless you're going
15 to instruct the witness to stop answering, I think he
16 should be allowed to complete the answer. He
17 indicated he was going to state Gabriel's position in
18 response to a question. Unless counsel's withdrawing
19 the question, he should be allowed to complete his
20 answer.

21 MR. LANE: Okay. I withdraw the question.

22 BY MR. LANE:

23 Q. Assume an example of Washington, Missouri
24 and Gabriel files a tariff that adds that to the MCA
25 as part of Gabriel's Tier 5. Is it your position that

1 Gabriel can then take calls that originate from
2 Washington, Missouri, terminate them in the principal
3 zone of St. Louis, and not pay switched access
4 terminating charges?

5 A. Okay. I think I can answer your question,
6 but I have to tell you how I'm interpreting it in the
7 assumption.

8 When you say Gabriel adds as part of Tier 5
9 Washington, Missouri, what I understand you to mean is
10 Gabriel basically expands its serving area, because
11 right now its serving area in its tariffs does not
12 include Washington. So we expand our serving area,
13 and now we're going to offer customers in the
14 Washington area service.

15 If that's what the assumption, factual
16 assumption is, I would agree with you that we cannot
17 then make what we're -- if we're going to do that,
18 we'd have to have an NXX associated with the rate
19 center out in Washington, Missouri. I would agree
20 with you, and I think I stated it in my -- well, I'm
21 not sure if I stated it in my testimony.

22 We would agree that as a condition of coming
23 out of this case it would be reasonable to say that
24 the CLEC shall not declare an NXX as an MCA NXX if the
25 NXX is associated with a rate center that is outside

1 the geographical boundaries of the current MCA.

2 So I think the answer to your question is
3 no, we would not expect -- if that's what you mean by
4 expanding the footprint, my answer is no, we would not
5 expect to be able to expand the footprint.

6 That's different from us expanding our
7 outbound local calling scope and making a judgment
8 that we're willing to give our customers some expanded
9 flat-rate calling yet be on the hook to pay access
10 charges as applicable in that area outside the MCA.

11 Q. All right. Same example, then, it's the
12 St. Louis principal zone customer of Southwestern Bell
13 is calling out to Washington, Missouri to a Gabriel
14 MCA-like service customer. Are you in agreement that
15 Gabriel can't require Southwestern Bell to provide
16 toll-free return calling to Washington, Missouri?

17 A. Yes, because I'm agreeable to a condition in
18 this case that says that a CLEC could not designate an
19 NXX associated with a rate center outside of the MCA
20 as an MCA NXX.

21 Q. And absent an order from the Commission
22 specifically stating that, isn't it Gabriel's position
23 that it can add to the calling scope of the MCA and
24 require Southwestern Bell and others to provide
25 toll-free return calling to it?

1 A. You've mixed concepts again. Now you're
2 talking about calling scope. Calling scope is
3 different from expanding the footprint. We have --

4 Q. I'm trying to use the same example.

5 A. We would have no objection to a Commission
6 Order that says -- in fact, one of the things I would
7 recommend is that the Commission -- in terms of the
8 notification process, the Commission could have the
9 CLEC identify which of its NXXs are MCA NXXs and
10 certify that for each of those NXXs -- certify that it
11 has a local calling scope in that MCA that is at least
12 as large as the incumbent LEC's calling scope and
13 certify that the NXXs which it is designating as MCA
14 NXXs are not associated with rate centers located
15 outside of the geographic bounds of the MCA. We would
16 be completely acceptable to an order like that.

17 Q. And my question, Mr. Cadieux, is a simple
18 follow-up. Would you agree that that has to be part
19 of the Order because it's otherwise Gabriel's position
20 that it can vary the terms of the MCA plan merely by
21 filing a tariff to accomplish that?

22 A. No, I don't know that we've taken that
23 position that we can vary the terms of the MCA in all
24 respects. We certainly believe we can vary our -- we
25 should be able to vary our calling scopes and your

1 rates, but I don't know that we've taken that
2 position.

3 But again, it's moot because we're
4 completely agreeable to that. I mean, I never even
5 thought of the question because we have no desire to
6 attempt to do that.

7 Q. But there's lots of other CLECs out there
8 besides Gabriel?

9 A. Sure.

10 Q. The order has to --

11 A. Not lots, but some.

12 Q. The order has to cover the potential actions
13 of all of them, right?

14 A. I'm agreeing. I think that a condition of
15 an order would be perfectly acceptable.

16 MR. LANE: That's all I have. Thank you.

17 JUDGE DIPPELL: Mr. Lane, were you going to
18 offer Exhibits 54, 55 and 56?

19 MR. LANE: I'm sorry. Yes. I'd offer all
20 of them. Thank you.

21 JUDGE DIPPELL: Would there be any objection
22 to Exhibit No. 54 which was Gabriel's application for
23 a certificate for basic local?

24 MR. LUMLEY: No objection.

25 JUDGE DIPPELL: Then I'll receive that.

1 (EXHIBIT NO. 54 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE DIPPELL: Is there any objection to
3 Exhibit No. 55, which is the Order granting that
4 certificate?

5 MR. LUMLEY: No objection.

6 JUDGE DIPPELL: I will receive that.

7 (EXHIBIT NO. 55 WAS RECEIVED INTO EVIDENCE.)

8 JUDGE DIPPELL: Would there be any objection
9 to the Data Request, the responses of Gabriel to
10 Southwestern Bell's Data Requests in TO-99-483?

11 MR. LUMLEY: No objection.

12 JUDGE DIPPELL: Then I will receive those.

13 (EXHIBIT NO. 56HC WAS RECEIVED INTO
14 EVIDENCE.)

15 JUDGE DIPPELL: Is there cross-examination
16 by Cass County?

17 MR. ENGLAND: Yes, I'm afraid there is.

18 JUDGE DIPPELL: Let's take a ten-minute
19 break. Come back at 20 'til. We'll go 'til right at
20 five and we'll quit for the day.

21 (A recess was taken.)

22 JUDGE DIPPELL: Back on the record, and we
23 were to cross-examination by Cass County.

24 MR. ENGLAND: Thank you.

25 CROSS-EXAMINATION BY MR. ENGLAND:

1 Q. Good afternoon, Mr. Cadieux.

2 A. Good afternoon.

3 Q. Where in the state does Gabriel operate as a
4 CLEC?

5 A. Gabriel operates in the St. Louis, Kansas
6 City and Springfield areas.

7 Q. And if I read one of the Data Request
8 Responses that you gave to Southwestern Bell
9 correctly, did you begin operations in roughly June of
10 '99; is that right?

11 A. Yeah. Mid to late June, I believe, in
12 St. Louis.

13 Q. Okay. Was it different, then, for Kansas
14 City?

15 A. Kansas City came on -- well, Kansas City and
16 Springfield came on later. Kansas City I'm pretty
17 sure was August. I think they were both, Kansas City
18 and Springfield were the August/September time frame.

19 Q. And are your operations in all three
20 locations on both a facilities-based and resold basis?

21 A. To date, at least for switched service, I
22 believe it's solely facility-based. We may be
23 providing some resold point-to-point private line, but
24 I believe every customer to date is on a facilities
25 basis.

1 Q. Am I correct in assuming, then, that you
2 have Interconnection Agreements with -- or Agreement
3 singular with Southwestern Bell?

4 A. Yes.

5 Q. Do you have any other Interconnection
6 Agreements for the exchange of local traffic?

7 A. In the state of Missouri, no.

8 Q. That's all I'm interested in.

9 And if I read again your testimony
10 correctly, the Interconnection Agreement you have with
11 Southwestern Bell in Missouri is essentially the same
12 one that AT&T has with Southwestern Bell?

13 A. Yes. We adopted the AT&T arbitrated
14 agreement.

15 Q. At, I think it's page 40 of your direct
16 testimony, lines 11 through 17, you discuss your
17 calling scope. Do you see that?

18 A. Yes.

19 Q. And you -- I'm really kind of focusing on
20 the first couple of lines where you say, Actually
21 Gabriel's local calling scopes are larger than those
22 of the incumbent LECs within the representative MCA.
23 And as I understand, that's because geographically
24 it's not bigger, but you've opened up more NXXs; is
25 that right?

1 A. It's less restricted. I mean, the easy way
2 to state it is, the way I describe it is, we have
3 MCA-wide local calling scopes. A Gabriel customer
4 outbound getting dial tone off the Gabriel switch can
5 call a customer anywhere located within the same MCA,
6 irrespective of the tier, on a local dialed basis.

7 Q. And I guess that's where I was making the
8 distinction between NXXs. What it sounds like is what
9 you're offering is similar to what I believe
10 Mr. Voight, the Staff witness, was proposing as MCA-2,
11 where outbound calling would be to all customers
12 within the MCA, not just those that subscribe to MCA.

13 A. In that respect, it's -- I mean, it's a
14 different price. Well, I'm not sure to what extent
15 there's a pricing proposal. I guess there's not in
16 MCA-2. Yes, from an outbound calling standpoint, I
17 believe that's correct.

18 Q. And to try to make it a little more
19 specific, let's focus on St. Louis for example. Your
20 customer in the mandatory area would be able to call
21 customers in the Orchard Farm exchange, which is
22 Tier 3 as I understand the MCA, regardless of whether
23 they subscribe to MCA service or not?

24 A. Yes.

25 Q. Now, if I can, and the reason I'm getting a

1 little specific is when I read the tariff and, quite
2 honestly, for the first time today as I saw it in
3 Exhibit 56HC, but I don't believe this is HC. This is
4 a copy of your tariff. First revised page 49, do you
5 have that in front of you? I think it may be about
6 page 6 or six pages back. I'm sorry. It's the
7 responses to Data Requests.

8 A. Yes.

9 Q. Your Tariff Sheet 49, do you have that?

10 A. Yes.

11 Q. And Section 4.2.2, Local Calling Areas?

12 A. Yes.

13 Q. This is where you describe in your tariff
14 your outbound calling scope?

15 A. Yes.

16 Q. Let's focus first on metropolitan St. Louis.
17 You talk about the local calling area includes the
18 geographic area encompassed within the St. Louis
19 metropolitan exchanges, principal zone, MCA-1, MCA-2,
20 MCA-3. You have a semi colon, then you say MCA-4
21 including GTE's exchanges of St. Peters, O'Fallon and
22 Dardene. And then you have MCA, and again you list
23 the various GTE exchanges in Tier 5 essentially, or
24 MCA-5. What I didn't see was the Orchard Farm.

25 A. Yeah. When you say that, here's what I

1 don't know. I don't know whether when we -- I know
2 the intent was to expand to everybody for local
3 outbound calling, and we did this, I think, kind of in
4 stages. The first tariff we filed I believe had local
5 calling where the outbound was solely Southwestern
6 Bell exchanges in the -- in the MCA. We then added
7 GTE.

8 The intent was to also then add the other
9 smaller independent LEC exchanges. That hadn't
10 occurred in this tariff. I can't say for certain
11 whether it has in the Millennium tariff that was filed
12 subsequent to this.

13 Q. And I think the fact that the margin
14 notations indicated added text there for the GTE
15 exchanges would support what you're saying. Does it
16 appear that you came along after the fact and wanted
17 to make it clear that you were including the GTE
18 exchanges that also exist in the St. Louis MCA?

19 A. Yeah. And I can tell you the decision
20 making that went through that because I was involved
21 with GTE on that. We felt from a competitive
22 standpoint that we needed to give our customers the
23 ability to call out into the independent company
24 exchanges, and GTE was the first obviously because
25 they were the largest. They were the first one that

1 came to mind.

2 And when we considered whether to do that,
3 we made -- one of the critical evaluations you make
4 is, what's going to be your cost of doing that because
5 you're going to be just getting local flat-rate
6 service from your customer if you do make it part of
7 your local calling scope. You're going to forego any
8 toll revenue.

9 And so we evaluated what we thought we
10 would -- would be the compensation implication, and
11 our view of the law is that compensation implications
12 would be if we send a call to a GTE MCA subscriber, it
13 should be bill and keep because that's the same -- if
14 we've got a customer in downtown St. Louis who on day
15 one was a Southwestern Bell M-- Southwestern Bell
16 customer, so they're a mandatory MCA subscriber in
17 downtown St. Louis and they make that call out to GTE,
18 it's bill and keep.

19 Day two, that customer, the only thing that
20 happens is that customer in downtown St. Louis
21 switches their dial tone service to Gabriel. So
22 that's why we felt that calls from a nondiscriminatory
23 basis, from a consistency notion of making us the same
24 kind of compensation for calls to a -- calls to an
25 incumbent that has an adjoining MCA exchange that

1 we're not directly competing in, that it should be
2 treated the same way as it is as between Southwestern
3 Bell.

4 At the same time we recognize that for calls
5 to non-MCA NXXs we will be subject to access charges
6 because that's what Southwestern Bell is subject to.

7 So the notion was, okay, that's an
8 additional cost of doing business. I mean, we even
9 considered with respect to GTE when we made this
10 tariff change, because I know I was directly involved
11 in those discussions, we had considered, well, do we
12 maybe -- instead of just saying these GTE exchanges,
13 we just list the GTE MCA NXXs, and so that calls to
14 the GTE non-MCA NXXs would be toll. We charge our
15 customers toll.

16 But we decided, no, we're going to give it a
17 shot, see what the financials look like. We think --
18 we suspected that there was a pretty high
19 subscribership of MCA service and that most of the
20 traffic would be on a bill and keep basis.

21 And the same analysis applies even really
22 more strongly to the smaller companies because we
23 would expect to have less amounts of traffic going out
24 to Orchard Farm or Portage Des Sioux than we would to
25 GTE in Wentzville or some of the other exchanges on

1 the fringes in St. Charles County.

2 Q. Do you have an agreement with GTE to treat
3 those calls from your subscriber to GTE's MCA
4 subscriber on a bill and keep basis?

5 A. We don't have an agreement. Our position is
6 we don't need to have one, that under the Commission's
7 Order, the '92 Order and then the advent of CLEC
8 authorization and fitting that all in consistently
9 with the Telecom Act and the opening of markets and
10 nondiscrimination provisions, essentially for that
11 traffic we're covered under the intercompany
12 compensation arrangement that currently exists between
13 Southwestern Bell and GTE for traffic, traffic within
14 the MCA but to exchanges where the companies are not
15 directly competing.

16 Q. Now, your agreement was basically a clone,
17 if you will, of the Southwestern Bell/AT&T agreement,
18 the one you have with Southwestern Bell?

19 A. Yes.

20 Q. And would you agree with me that in the
21 context of the arbitration that eventually gave rise
22 to that agreement, that the Commission distinguished
23 calls within the MCA that went to third-party LECs
24 such as GTE?

25 A. I know there was a discussion of that and a

1 reference to access charges in that decision. I
2 haven't looked at it in a long time.

3 Q. It's quoted in Mr. Voight's testimony,
4 direct testimony. If you'd like to take a look at it,
5 it's here on page 52 and on the top of page 53.

6 A. Yes, I see that.

7 Q. Without getting into a big argument, it
8 seems to me the Commission made it pretty clear that
9 calls to third-party LECs, regardless of whether their
10 customers were MCA subscribers or not, would be
11 treated under traditional access until you had an
12 agreement to the contrary to do something different.

13 A. There is that language in there. I would
14 tell you what the -- Gabriel's position with respect
15 to that language is that language does not -- unlike
16 other language in the arbitration decision, that
17 language does not get embodied into an agreement
18 between us and the independents, and the independents
19 weren't parties to that case. Nor was Gabriel.

20 So I think there's an issue as to whether
21 the Commission had the parties before them such that
22 it gave them jurisdiction to make that issue binding
23 on the parties. Our general view, I mean, this is not
24 unique to Missouri. And it's been our experience in
25 essentially every market I've been involved in opening

1 up is what happens first is the CLEC and the serving
2 incumbent LEC with whom they're directly competing and
3 directly interconnecting get an interconnection
4 agreement, but there are numerous other carriers
5 sometimes, other facilities-based CLECs already
6 operating there, and potentially situations like this
7 where you have independent companies with exchanges
8 within an area where at least some of the traffic is
9 treated as local.

10 And it's been -- our position is until there
11 is an effective contract or an effective tariff that
12 applies to the traffic, there is no legal instrument
13 in place that establishes a compensation issue. And
14 so that's what I just for simplicity purposes refer to
15 as de facto bill and keep.

16 But here you have the additional factor of
17 the Commission already having established a
18 compensation regimen in the MCA case for dealing with
19 this kind of traffic, and it would be our -- another
20 reason, issue with applying access charges to CLECs is
21 the discriminatory issue, the one I was talking with
22 whoever I was talking with earlier, where the call --
23 it was you as a matter of fact.

24 The call from the downtown St. Louis
25 customer that's a Southwestern Bell customer on day

1 one that makes that call in the outer zone is on a
2 bill and keep basis when the called party is an MCA
3 subscriber.

4 And to say that the CLEC -- day two that
5 customer shifts over to the CLEC. To say now the CLEC
6 who makes -- customer places the exact same call has
7 to pay access charges for termination of that traffic
8 I believe is -- I think runs afoul of the unjust
9 discrimination statute.

10 And so it's all in that context that, okay,
11 what do you think the appropriate compensation
12 arrangement is? The alternative is, if --

13 JUDGE DIPPELL: Excuse me, Mr. Cadieux. I
14 don't even think we have a question pending anymore.

15 THE WITNESS: I'm sorry.

16 JUDGE DIPPELL: You've gone through three or
17 four issues. Do you have another question,
18 Mr. England?

19 MR. ENGLAND: Oh, yeah. I actually --
20 unlike some of the witnesses before him, I was
21 following what he was saying.

22 (Laughter.)

23 JUDGE DIPPELL: I was following what I was
24 saying as well. I just didn't think it followed any
25 question.

1 MR. ENGLAND: I can go on.

2 BY MR. ENGLAND:

3 Q. Okay. So perhaps you and I may have a
4 disagreement as to what the appropriate compensation
5 is for a call from your customer to an MCA customer of
6 a third-party LEC, but I think we can agree that if
7 there's a call today from your customer to a non-MCA
8 customer located in a third-party LEC's exchange, you
9 acknowledge that access ought to be paid on that?

10 A. I agree.

11 Q. And taking Mr. Lane's example of earlier, if
12 you, for example, want to offer your customer a larger
13 footprint, an expanded geographic area --

14 A. Let's be -- outbound calling scope?

15 Q. Yes.

16 A. Okay.

17 Q. Local.

18 A. Uh-huh.

19 Q. For some reason you perceive that there's a
20 market for customers who want -- in the downtown area
21 who want to call to Washington, Missouri, and you want
22 to offer them a local calling scope that includes that
23 as well as the rest of the MCA.

24 I think you would agree with me that in that
25 instance, even though it may be local to your

1 customer, when it extends beyond the MCA into that
2 exchange, access applies for the terminating portion
3 of it?

4 A. I agree. The principle that I would agree
5 with is what the CLEC identifies as its outbound local
6 calling scope is not controlling of the issue of what
7 the compensation arrangement is.

8 Q. Fair enough.

9 Do you have your Data Requests -- excuse
10 me -- the Data Requests that we sent to you?

11 A. I don't have them in front of me.

12 Q. I've got one extra copy. I've got an extra.
13 I'm going to try to do this with some questions, and
14 I'm going to try to paraphrase your responses. So if
15 I say or paraphrase something incorrectly, obviously
16 feel free to correct me.

17 But my understanding is -- let's focus on
18 the St. Louis MCA. Today you don't know whether
19 you're terminating calls from your St. Louis, we'll
20 call it mandatory zone customer to Orchard Farm; is
21 that right?

22 A. I don't know. The switch is capable of
23 doing that.

24 Q. That was going to be my next question.

25 You've indicated that you wouldn't block it if someone

1 made that call?

2 A. That's correct.

3 Q. All right. And that call could go to either
4 an Orchard Farm MCA customer or an Orchard Farm
5 non-MCA customer?

6 A. That's correct.

7 Q. And it would be, from your customer's
8 perspective, a local call as part of his local calling
9 scope?

10 A. I believe so, with the qualification that
11 I'm not positive whether in the Millennium filing that
12 we recently made, whether we expanded the local
13 calling scope to take in the Orchard Farm area. That
14 certainly was the intent, and if we've done that, then
15 yes, we're processing those calls on a local dialed
16 basis.

17 Q. We had also asked you for purposes of these,
18 we'll call them local calls, your customers' local
19 calls, what records you-all create --

20 A. Yes.

21 Q. -- to capture that, if you will. And in
22 your response you indicate -- and again, I'm
23 paraphrasing, but my understanding is that you
24 currently are not creating any records because of some
25 bugs in the recording software?

1 A. Yeah. We've been working since last spring
2 with vendors attempting to get software compatible
3 that draws the information off our switch and creates
4 the 92-99 records in an accurate manner, and we've
5 had -- we have had problems with working with multiple
6 vendors and getting them coordinated, with pulling the
7 information off the switch and getting it into the
8 billing system.

9 We think -- at the time these Data Requests
10 came in, I inquired to the billing folks that are
11 involved in that, and they believe they're at the end
12 of -- near the end of the tunnel of getting the 92-99
13 reports completely debugged, and at that point we will
14 be making them available.

15 Q. Well, my understanding is you're not the
16 only CLEC witness that has stated or testified here
17 that they're having trouble with 92-99 records and
18 aren't on line with them.

19 I guess the question I have to you, if you
20 know, what's so difficult about creating 92-99 records
21 when we've been told and this Commission has been told
22 many times they're industry standard records?

23 A. I'm not familiar with the details. I know
24 that it's -- we've been working with multiple vendors.
25 There's a vendor they call for mediation that draws

1 the information off a switch and then converts it into
2 billing, and we had problems getting those vendors
3 doing things in a compatible manner. I'm not sure.

4 Q. Okay. Would you --

5 JUDGE DIPPELL: Mr. England, I'm going to go
6 ahead and interrupt you. We're going to go ahead and
7 adjourn for the day, and we'll take up the rest of
8 your questions in the morning at 8:30.

9 We can go off the record.

10 WHEREUPON, the hearing of this case was
11 adjourned until 8:30 a.m., Thursday, May 18, 2000.

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