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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

October 27, 1997
Jefferson City, Missouri
Volume I

In the Matter of AT&T Communications)
of the Southwest, Inc.'s Petition for)
Second Compulsory Arbitration Pursuant) Case
to Section 252(b) of the) No. TO-98-115
Telecommunications Act of 1996 to)
Establish an Interconnection Agreement)
with Southwestern Bell Telephone)
Company.)

BEFORE:

AMY E. RANGLES, Presiding,
REGULATORY LAW JUDGE.

SHEILA LUMPE, Chair,
M. DIANNE DRAINER,
HAROLD CRUMPTON,
CONNIE MURRAY,

COMMISSIONERS.

REPORTED BY:

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

2 (Written Entries of Appearance filed.)

3 JUDGE RANGLES: We are on the record in Case
4 No. TO-98-115 in the matter of AT&T Communications of
5 the Southwest, Inc.'s petition for second compulsory
6 arbitration pursuant to Section 252(b) of the
7 Telecommunications Act of 1996 to establish an
8 interconnection agreement with Southwestern Bell
9 Telephone Company.

10 At this time we will take entries of
11 appearance.

12 Southwestern Bell?

13 MR. LANE: Paul G. Lane, 100 North Tucker,
14 Room 618, St. Louis, Missouri, 63101, representing
15 Southwestern Bell Telephone Company.

16 MR. DeFORD: Paul S. DeFord with the law
17 firm of Lathrop and Gage. Our address is 2345 Grand
18 Boulevard, Kansas City, Missouri, 64108, appearing on
19 behalf AT&T Communications of the Southwest,
20 Incorporated.

21 MR. DANDINO: Michael Dandino, Office of the
22 Public Counsel, Post Office Box 7800, Jefferson City,
23 Missouri, 65102, representing the Office of the Public
24 Counsel and the Public.

25 JUDGE RANGLES: At this point I will just

1 state on the record that the purpose of this hearing
2 is for the parties to answer the Commission's
3 questions that were stated in its order of October 17
4 and any additional questions that the Commission has.

5 Since there are no preliminary matters, we
6 will go off the record, and I will get the
7 Commissioners.

8 (A recess was taken.)

9 JUDGE RANGLES: We are on the record.
10 Why don't you go ahead and enter your
11 appearance on behalf of the Staff?

12 MS. BAKER: Penny G. Baker and Steve Gunn on
13 behalf of the Staff of the Missouri Public Service
14 Commission.

15 JUDGE RANGLES: Okay. AT&T, would you like
16 to make your presentation?

17 MR. DeFORD: Thank you, your Honor.

18 First, I would like to thank the Commission
19 for the opportunity to address what AT&T views as a
20 very critical issue. I think that presentation of
21 these issues to the Commission is very important.
22 Absent resolution of these issues, it's not likely
23 that AT&T would be able to actually begin competing in
24 Missouri on anything other than a total services
25 resale basis, so moving forward with this is of

1 incredible importance.

2 Next I would like to introduce some people
3 that I've brought along. We've taken to heart the
4 Commission's directive that we have people here with
5 the authority to bind the company.

6 We have Mark Witcher. He is the general
7 attorney for AT&T for this region.

8 MR. WITCHER: Good morning, folks.

9 MR. DeFORD: Also I have Kevin Zarling. He
10 is the new Missouri-specific AT&T attorney. And also
11 I have Nancy Krabill. She has headed the negotiations
12 for all of the issues that we're seeking to address
13 here and I think could actually answer some specific
14 questions if the Commission has any about those
15 issues.

16 To put this in perspective, I think
17 essentially what has occurred is the parties have
18 taken the Commission's December 11th order on the
19 initial arbitration and sat down and discussed the
20 issues and hammered out language, and we've actually
21 filed an interconnection agreement albeit somewhat
22 limited.

23 In negotiating and discussing the first
24 arbitration order, it became apparent to the parties
25 that there were issues that neither party had

1 contemplated nor had we addressed the issues in the
2 first arbitration. At some point, actually in April,
3 I believe, we determined that we needed to formally
4 request that we address the new issues and sit down
5 and try to hammer those out.

6 You could probably get a sense of what the
7 new issues are by taking a look at the interconnection
8 agreement that we filed. There are gaps, essentially.
9 If you look at it, I think they are designated by
10 bracket R bracket, I think is the phrase that we've
11 used. And basically what that designates is that one
12 party or the other wasn't willing or didn't believe
13 that that issue had been addressed, so we T'd those up
14 for a second round of arbitration and came to the
15 Commission with the formal petition pursuant to
16 Section 252(b) of the '96 Act.

17 We believe those issues are right for
18 Commission decision, and I think we have discussed
19 before we went on the record, we would be pleased to
20 go through the Commission's questions one at a time so
21 that we have each party addressing the question and we
22 kind of get a sense of order to the process. Thank
23 you.

24 JUDGE RANGLES: Southwestern Bell?

25 MR. LANE: Your Honor, I think we just

1 agreed to go through the issues one at a time. I
2 don't have an introductory statement to make. I would
3 be ready to start after -- I believe AT&T would go
4 first on the initial question.

5 JUDGE RANGLES: Staff, I believe you said
6 you don't want to make a statement.

7 MS. BAKER: I will answer what questions the
8 Commission would like me to.

9 JUDGE RANGLES: Okay. Mr. Dandino?

10 MR. DANDINO: Thank you, your Honor. May it
11 please the Commission?

12 I have just a brief statement. Public
13 Counsel's position is that we are concerned with the
14 arbitration, mostly because any long delay in this,
15 or, you know, dispute over jurisdiction which extends
16 very long is going to postpone competition in the
17 state of Missouri. We're anxious to try to see this
18 resolved and we are willing to offer our help in any
19 way which we can or in the process to try to speed it
20 along.

21 That's all I have, and we will be willing to
22 respond to any questions. Thank you.

23 JUDGE RANGLES: Chair Lumpe, do you want to
24 ask questions?

25 CHAIR LUMPE: No.

1 JUDGE RANGLES: We'll go ahead and start
2 with --

3 COMMISSIONER DRAINER: Off the record.
4 (A discussion off the record.)

5 JUDGE RANGLES: Back on the record.

6 At this point, AT&T, if you would like to
7 stand up and address the Commission's first question
8 in its October 17 order?

9 MR. DeFORD: Sure. I believe the first
10 question related to whether the parties were willing
11 to present the issues in a voluntary mediation, and I
12 think the answer to that question from AT&T's
13 perspective is yes.

14 The concern that we would have would be
15 going through a mediation process obviously will take
16 time, and I think we would be concerned that we would
17 be pushing up against the January 5 statutory
18 deadline. We would be concerned that we not take up
19 the time going through a mediation process and not get
20 the issues submitted properly in arbitration.

21 JUDGE RANGLES: Southwestern Bell?

22 MR. LANE: On that issue, Southwestern Bell
23 is also agreeable to going through a mediation process
24 subject to the Commission first deciding that it has
25 jurisdiction to hear the arbitration so that the

1 mediation would be intended to narrow the issues that
2 would ultimately be arbitrated before the Commission.
3 If the Commission determines that it doesn't
4 have jurisdiction to hear the second arbitration, then
5 in our view the mediation wouldn't be productive.
6 JUDGE RANGLES: Staff?
7 MS. BAKER: I don't believe that this is an
8 appropriate question for Staff to answer in that Staff
9 is not a party.
10 JUDGE RANGLES: Okay. OPC?
11 MR. DANDINO: We have no comment, your
12 Honor.
13 JUDGE RANGLES: The second question, AT&T?
14 The question is, "If the parties participate in
15 mediation, to what extent may the information elicited
16 during that process be used in the event the
17 Commission finds it has jurisdiction to pursue
18 subsequent arbitration under the Act?"
19 JUDGE RANGLES: Would you like to ask a
20 question first?
21 CHAIR LUMPE: On this first question --
22 JUDGE RANGLES: On the first question,
23 Item A?
24 CHAIR LUMPE: No, I don't think I have any
25 questions.

1 JUDGE RANGLES: Vice-chair Drainer?

2 COMMISSIONER DRAINER: No. I'll save my
3 questions until I finish with all of their questions.

4 COMMISSIONER MURRAY: I would like to ask a
5 question at this point on this particular issue, and
6 that is I'd like for each of the parties to address
7 the federal act and the fact that Section A refers to
8 agreements arrived at through negotiation and it
9 provides for voluntary negotiations and mediation, and
10 then separately from that subsection -- or Section B
11 provides for agreements arrived at through compulsory
12 arbitration. And in the section referring to
13 mediation it says that any party negotiating an
14 agreement through this section may at any point in the
15 negotiation ask the Commission to participate.

16 In that you are claiming that these are new
17 issues, so, therefore, you would be acting upon
18 receiving a request for network elements, I would
19 assume that you are claiming are new issues, would you
20 be willing to go forward under the mediation
21 provisions -- and it sounds like from Southwestern
22 Bell's opening statements that you would not be --
23 separate and apart from the compulsory arbitration
24 section?

25 MR. DeFORD: Yes, your Honor, I believe that

1 we certainly would be willing to submit to mediation.
2 I think the problem that we have right now is because
3 of the date we actually sat down to begin negotiating
4 for the new issues, we've got a clock running on us, I
5 believe, and I don't know what would happen, I guess,
6 if we went beyond that while we were still attempting
7 to mediate.

8 COMMISSIONER MURRAY: Does that clock not --
9 does that clock apply to voluntary negotiation and
10 mediation, though, or is that -- since the parties may
11 ask the Commission for mediation at any point in the
12 negotiation, is that clock running if you just ask for
13 mediation?

14 MR. DeFORD: I think had we -- had we come
15 to the Commission without having made the request to
16 negotiate the second set of issues, I think had we
17 done that differently and come back to the Commission
18 in the context of maybe the first arbitration and
19 requested the Commission hammer out the decision on
20 the additional issues, I guess, if you will, the clock
21 would not be running, and we would be in, I suppose, a
22 completely separate mode. I think you could mediate
23 probably without limitation, although I would be
24 somewhat concerned that you have to start the process
25 with the incumbent LEC at some point, and I would be

1 afraid that starting that process would start a second
2 clock running.

3 So I guess the answer to the question is I
4 believe we've got a statutory deadline, and we've got
5 a clock in this particular circumstances that is
6 running, and I'm not sure that we can do anything to
7 stop that.

8 COMMISSIONER MURRAY: What's Southwestern
9 Bell's position on that?

10 MR. LANE: I don't think it's dissimilar.
11 You may have asked a different question than -- I
12 understood your question to be if the Commission finds
13 that it does not have jurisdiction over the second
14 arbitration, would the parties nevertheless be willing
15 to go forward with the mediation, and I'm not sure
16 that I heard AT&T's response to that because I think
17 their answer assumed that the Commission did have
18 jurisdiction over a second arbitration. What they say
19 I agree with, if the Commission does have jurisdiction
20 for a second arbitration. The clock is running and we
21 need to comply with the statutory time frames.

22 In the Commission finds that it doesn't have
23 jurisdiction, this mediation provision in my view
24 doesn't apply. It's intended to be part of a process
25 where interconnection agreement negotiations begin and

1 lead to agreement or lead to arbitration, and
2 mediation is a path along the way. But if there is no
3 jurisdiction at the end of the road, I don't think
4 that mediation provision applies.

5 The problem that we would have with going
6 ahead with it, if the Commission finds that there is
7 no jurisdiction, I don't believe it would be
8 particularly productive. The parties have engaged in,
9 I hope everybody would say, good faith negotiations on
10 all of the issues that are pending out there. We've
11 spent literally months and thousands of person hours
12 on this -- on these issues, and we've resolved not
13 just the ones that the Commission was presented with,
14 a list of the 41 issues, but we've resolved literally
15 hundreds of other issues. And I think we're at the
16 point now where I don't believe, without the hammer at
17 the end of the road there, that the Commission has the
18 arbitration decision, that a voluntary mediation
19 process would bring us any farther than we are today.

20 COMMISSIONER MURRAY: Does Staff have a
21 response?

22 MS. BAKER: I would agree with Southwestern
23 Bell, that I don't believe that under the statute the
24 mediation provision is separate from the arbitration.
25 I believe that it is -- you file -- or you send a

1 letter asking for negotiations, and then you mediate
2 or not, but the final conclusion is to ask for
3 arbitration within the 135- to 160-day window.

4 COMMISSIONER MURRAY: Well, it appears to me
5 that the interpretation here that's being given of
6 this is that these are new issues, if you are coming
7 back for arbitration, but you are not considering them
8 new arbitration if you are looking at it under the
9 mediation section.

10 MS. BAKER: No, because what I'm saying is
11 when they filed a letter with Bell asking them for
12 addition-- to negotiate the additional issues, those
13 were the new issues. Those are the same new issues
14 that we're talking about. And what I'm saying is
15 because of the way the statute reads, to me, the
16 mediation comes along the way before arbitration if
17 the parties agree to that so that they are new issues
18 for this 135- to 165-day (sic) window.

19 COMMISSIONER MURRAY: But if the Commission
20 did not -- or determined that it did not have
21 jurisdiction to pursue a second round of arbitration,
22 then could not those new issues be mediated?

23 MS. BAKER: I don't believe so. I believe
24 that the mediation would have to take place before the
25 135-day -- 135- to 160-day window.

1 COMMISSIONER MURRAY: Thank you.

2 MR. DANDINO: Your Honor, just a --

3 COMMISSIONER MURRAY: I am sorry.

4 MR. DANDINO: Just a brief comment. I look

5 in terms of the -- probably the way Staff and

6 Southwestern Bell was saying, that the negotiations

7 and the mediation are really just a part of the same

8 process. I think the mediation is a negotiation

9 process because the parties are still talking; they

10 are still trying to work it out. It's just that the

11 third party is using its -- its good graces and good

12 offices of the Commission to help facilitate that, so

13 there is still that the parties can reach an

14 agreement.

15 I think the arbitration is complete when

16 it's completely over. There is -- there is either an

17 agreement or there is an impasse. And I think at any

18 time during an arbitration you can always, you know,

19 sit in the back of the room and try to negotiate it

20 out, and if the parties sound like they are agreeable,

21 that they could get someone from the Staff to help

22 mediate it. But I think it's still a -- it is not a

23 formal mediation process. You are still in an

24 arbitration process.

25 COMMISSIONER MURRAY: Well, I read the

1 statute a little differently, I guess, because I read
2 it to say that you have two types of agreements, those
3 arrived at through negotiation, voluntary negotiation,
4 including mediation, or you have those arrived at
5 through compulsory arbitration.

6 MR. DANDINO: That's correct, because you
7 have one that the parties agree to, whether it's
8 through mediation and negotiation, or is the final
9 agreement compelled on one of the parties.

10 COMMISSIONER MURRAY: But the parties are
11 coming back before us and they are saying these are
12 new issues and, therefore, it's like we are bringing a
13 whole new set of arbitration. It's not the first part
14 where these are new issues. We are bringing a new --
15 request for a new arbitration. Therefore, why
16 couldn't the parties bring a request for a new
17 mediation separate from arbitration?

18 MR. DANDINO: Well, I think the answer is
19 that they couldn't agreed. They couldn't agree and
20 don't -- didn't choose to do the mediation.

21 COMMISSIONER MURRAY: And if they have no
22 choice, no other choice --

23 MR. DANDINO: They are not required to do
24 mediation. And if they don't -- if the Commission
25 doesn't have jurisdiction to do the arbitration, I

1 could see their point. Why would they want to use
2 your good graces if you don't have jurisdiction to
3 hear an arbitration?

4 COMMISSIONER MURRAY: So you see the
5 jurisdictional issues to be applicable to both
6 equally?

7 MR. DANDINO: Certainly.

8 COMMISSIONER MURRAY: Okay. Thank you.

9 JUDGE RANGLES: Chair Lumpe?

10 CHAIR LUMPE: I guess the question I was
11 trying to clarify is does the fact of the request of
12 arbitration then preempt the mediation?

13 MS. BAKER: Yes. What you have is a
14 timeline. If you look at it as a picture on a line,
15 they -- AT&T filed a letter with Southwestern Bell on
16 whatever date that was. That started the timeline.
17 Okay? And along that timeline they were negotiating,
18 they could have mediated among themselves, but once
19 they got to 135 days to 160 days, the window required
20 by the statute, they had to file for arbitration.

21 So could they go back and mediate now, I
22 think they can, but the arbitration still sits. And
23 the timeline is still running on that arbitration
24 because it started the day that AT&T filed a letter
25 with Southwestern Bell indicating it wanted to

1 negotiate this new set of issues.

2 So if you look at it on a timeline, the
3 letter was filed, which is what started the timeline.
4 They could have negotiated in any manner that they
5 wanted. They could have mediated. They could have
6 drawn straws. They could have done whatever they
7 wanted to along the way, but once they got to that
8 window of 135 to 160, they had to file their
9 arbitration request or waive that right.

10 CHAIR LUMPE: So assuming jurisdiction, once
11 the request for arbitration was made, then your
12 interpretation is that the mediation section of the
13 statute is -- you're into the arbitration section?

14 MS. BAKER: What I'm saying is that I think
15 the parties can agree to mediate, but the arbitration
16 still sits here and it's on this same original
17 timeline that it was. It doesn't move. It just --

18 CHAIR LUMPE: It's there?

19 MS. BAKER: It could be held in abeyance, I
20 suppose you could say, until -- if the parties agree
21 to mediate for a certain amount of timeline.

22 CHAIR LUMPE: Thank you.

23 JUDGE RANGLES: The second question I stated
24 earlier, "If the parties participate in mediation, to
25 what extent may the information elicited during that

1 process be used in the event the Commission finds it
2 has jurisdiction to pursue subsequent arbitration
3 under the Act?"

4 Mr. DeFord?

5 MR. DeFORD: This one is actually a little
6 easier, I think. Typically, I don't believe that
7 information that is elicited through a mediation is
8 considered as evidence in an arbitration. In these
9 circumstances, however, I don't think AT&T would have
10 any problem with allowing the use of any of that type
11 of information. I don't think that anything would
12 come from the mediation that we wouldn't expect to
13 present again for the Commission in an arbitration, so
14 we would certainly be willing to permit the use of
15 that information.

16 JUDGE RANGLES: Mr. Lane?

17 MR. LANE: We had one mediation, your Honor,
18 that was conducted here under the auspices of the
19 Commission and it involved MCI and it was early on.
20 It was the parties' inability to agree on a standard
21 non-disclosure agreement that caused us not to be able
22 to negotiate, so we asked -- we, Southwestern Bell,
23 asked for mediation, and in the course of that
24 process -- Judge Roberts was one of the mediators in
25 the case, and I think what was said up front in that

1 mediation was appropriate, and that was that at the
2 timeline Judge Roberts said neither he nor the other
3 person that was participating in the process was going
4 to play any role in the subsequent arbitration if one
5 was held, and that anything that was said and done in
6 the course of that mediation would not be utilized in
7 the context of any subsequent arbitration. And the
8 parties all agreed that that was appropriate, although
9 we also said at the timeline that Judge Roberts -- we
10 had no problem at all with him remaining in the case
11 because the issues that were being debated there
12 weren't the same issues that were going to be debated
13 in the arbitration. In the mediation we were only
14 arguing about trying to get a non-disclosure agreement
15 signed. That non-disclosure agreement was not an
16 issue in the subsequent arbitration.

17 Now, this situation, I think, would be a
18 little bit different. If we have a mediation with an
19 arbitration at the end of the road, then we would
20 think that it's best for the persons involved in the
21 mediation not to be a part of the ultimate
22 decision-making that comes from the Commission. And
23 the purpose of that is, I think, obvious that the
24 nature of a mediation is in the nature of a settlement
25 agreement, settlement discussions, and if you've got

1 the parties there knowing that everything they say or
2 propose in the course of that can ultimately become
3 part of the arbitration itself, then it tends to
4 stifle the free flow of discussion and the ability of
5 the parties to come to reach an agreement.

6 And I think that the Missouri Arbitration
7 Act contemplates just that. We'll come to it later,
8 but it's Chapter 435 of the Revised Statutes of
9 Missouri, and if we look at Section 435.014,
10 Subdivision 2, it says, and it makes it very clear,
11 that any arbitration or mediation that's conducted
12 under the auspices of the Missouri Arbitration Act is
13 to be considered in the nature of settlement
14 discussions and nothing that's said or done in the
15 course of that should be utilized or introduced into
16 evidence later.

17 While that statute isn't applicable directly
18 to this type of mediation, I think it is instructive
19 as to what mediation is intended to be, and that is an
20 opportunity for the parties under the auspices of some
21 third party to come together to try to reach some
22 additional agreements that they weren't able to reach
23 on their own.

24 And so we would think it wouldn't be
25 appropriate for the persons involved in that to be a

1 participant in the arbitration down the road or for
2 positions taken by the parties in that arbitration or
3 in the mediation to be introduced into the arbitration
4 proceeding.

5 JUDGE RANGLES: Ms. Baker?

6 MS. BAKER: I would be happy to respond if
7 the Commission would like for me to.

8 JUDGE RANGLES: Mr. Dandino, how would you
9 answer the question?

10 MR. DANDINO: I would just like to point out
11 maybe a procedure which the Missouri Court of Appeals
12 in the Eastern District and Western District use.
13 They have a settlement docket, and they docket a case
14 and they appoint it a judge which is separate from the
15 panel which is scheduled to hear the case, and meets
16 with the lawyers, and they are instructed to bring
17 someone who can negotiate and deal with them or have
18 them available, and that the judge meets with them for
19 the purpose of narrowing the issues and exploring any
20 possibility of settlement. That judge then is not a
21 part of the process. And that is done for the purpose
22 of promoting and facilitating negotiations. So that
23 might be, you know, something to use. Thank you.

24 JUDGE RANGLES: The next question is, "Does
25 the Commission have the authority to retain or appoint

1 an external party to conduct the arbitration and
2 present the Commission with a proposed disposition for
3 Commission action?" The second part of the question
4 is, "Would the parties be willing to proceed to
5 arbitration if the Commission chose to contract with a
6 surrogate professional arbitrator to fill the formal
7 role of arbitrator? If so, what qualifications should
8 be required of the proposed arbitrator?"

9 MR. DeFORD: I think the direct answer is
10 that AT&T does believe the Commission has the
11 authority to contract with some entity to conduct an
12 arbitration. I guess I would be somewhat concerned,
13 having spent some timeline working for the State, that
14 that's not an easy process to go through to actually
15 ask for bids to provide that type of a service. I
16 think that it would take a substantial amount of
17 timeline, and I would be concerned that it's probably
18 not a practical solution.

19 Having said that, I think AT&T would be
20 willing, and actually we would even suggest, that it
21 may be proper and appropriate under these
22 circumstances for the Commission to delegate its
23 authority to conduct the straight arbitration to the
24 Executive Secretary and to maybe the entire Staff and
25 allow for a very flexible process. And they could

1 conduct the hearings in a very informal fashion and
2 then present a recommended decision of the arbitration
3 issues -- or the arbitrated issues, I should say, to
4 the Commission for its approval. I think that would
5 probably resolve some of the critical things that face
6 the Commission.

7 I know that the timing of this is probably
8 not as convenient as it could be, and I know that the
9 adjudication division is incredibly busy as well. I
10 think that in another case that I'm familiar with it's
11 possible that it can't even be brought to hearing
12 until April. So given the constraints on the
13 Commission resources and the Adjudication Division
14 resources, we would have absolutely no problem with
15 the delegation of that arbitration authority to the
16 Executive Secretary or the Executive Secretary and the
17 Staff to conduct the proceedings as they see fit.

18 And in answering the final question, I think
19 that probably the only qualification of an arbiter is
20 if we are going to conduct the proceeding, I think it
21 probably would have to be an attorney just so that
22 they could -- the rule of the sandbox. Somebody is
23 going to have to decide and keep the lawyers in line.
24 Sad but true. I think that that's probably the only
25 qualification that would be helpful, if the person

1 also had some background in telecommunications and, I
2 guess, public utility law in general and some
3 familiarity with the Act, obviously.

4 JUDGE RANGLES: Southwestern Bell?

5 MR. LANE: Thank you, your Honor.

6 I think I disagree with AT&T on this point.
7 Under the federal Telecommunications Act the right to
8 conduct an arbitration and to make the decision is
9 that of the Commission. There is not any Provision
10 there for the appointment of a third party to come and
11 conduct the arbitration in lieu of the Commission.

12 Instead, if the Commission is unable or
13 unwilling to act, and there is jurisdiction in the
14 case, then the Act calls for the FCC to take over that
15 role if the state Commission chooses not to.

16 Now, having said that, is there a rule that
17 a third party could play in this? I think the answer
18 is yes, that if the Commission does find it has
19 jurisdiction and that an arbitration will be held at
20 the end of the road, mediation can be productive and
21 the Commission, if it wants to engage a third party to
22 help participate in the mediation process, I think
23 that might be beneficial. If the Commission wants to
24 reserve its resources of its advisory staff or someone
25 else to assist in the arbitration itself rather than

1 participate in the mediation process, then that may be
2 an appropriate decision.

3 I don't know who exactly the mediator should
4 be. Obviously, someone who understands something
5 about the telecommunications industry, but the problem
6 with that is, is that almost everybody out there is
7 either associated with an incumbent local exchange
8 company or a new entrant or consults for them, so it's
9 difficult to find a third party under those
10 circumstances. But I do think a mediation would be
11 appropriate, but not in arbitration.

12 JUDGE RANGLES: Thank you.

13 Ms. Baker?

14 MS. BAKER: Would the Commission like me to
15 respond to that?

16 If possible I think I agree with both
17 parties. Since they don't agree with one another,
18 that's a little more difficult, but I think they agree
19 upon one thing, and that is that even though
20 Southwestern Bell believes you can't delegate to an
21 outside party, and AT&T believes that the Commission
22 does have that authority, I think they both agree that
23 you could delegate a mediation role to someone within
24 your own staff.

25 In that Southwestern Bell indicated that

1 they would agree that the Commission could utilize its
2 advisory staff or anyone on Staff for arbitration, I
3 believe that you could say the same for mediation. So
4 I believe that the Commission does have that
5 flexibility.

6 I think I actually agree with Southwestern
7 Bell that you can't completely delegate arbitration to
8 an outside party, but I believe that you could utilize
9 an outside party to make recommendations to you that
10 you then adopt as your order, because I don't believe
11 that that would be delegation of your authority.

12 So from that standpoint, I believe that you
13 do have that flexibility to engage an outside party or
14 utilize someone on Staff that might not be otherwise
15 involved in the arbitration, or a mediator.

16 JUDGE RANGLES: Mr. Dandino?

17 MR. DANDINO: Thank you, your Honor.

18 I agree in part with all three. I think the
19 Commission can -- can delegate the -- the process, but
20 they cannot delegate making of the final decision in
21 arbitration. That has to remain with the Commission.
22 Southwestern Bell said that, you know, that's where
23 the power for the arbitration lies with this
24 Commission, and it has to make the decision.

25 Basically, you could appoint an arbitrator,

1 it almost could be a special master. What a court
2 would do is to appoint someone to gather facts and to
3 make recommendations, and as long as the other parties
4 had that input and knew what was coming before them, I
5 think that would satisfy some notion of due process.

6 As to going to an outside arbitrator, once
7 again, I do share AT&T's concern about the timeline,
8 and having a background in government, it would take a
9 long timeline to get someone. And then, of course,
10 locating someone, either you are going to get someone
11 who has some knowledge about the telecommunications
12 business, or you are going to find someone who knows
13 nothing about it and just say, "We want a professional
14 arbitrator whose job it is to make decisions, to hear
15 evidence, make decisions, and then make
16 recommendations to the Commission, a lawyer, a retired
17 judge, someone who can hear evidence, make decisions,
18 and submit those things in clear communication to the
19 Commission."

20 I understand -- Martha Hogerty told me that
21 the State of Alaska, not Arkansas, Alaska had adopted
22 a procedure and they had an outside arbitrator who
23 engaged in basically a baseball arbitration and that,
24 and the person knew nothing about the
25 telecommunications industry. He was a professional

1 arbitrator.

2 I think as long as you have -- and as far
3 as using the Staff or the Executive Secretary, that
4 might be a very good solution given the timeline
5 frame. You have someone who's familiar with the
6 telecommunications industry, but yet has not been
7 involved in the -- in the case exactly, also has the
8 advantage of knowing how this Commission thinks, what
9 type of issues they look for and can basically also
10 give clues and signals to the parties saying, "If I
11 were you, I would settle this because the Commission
12 could go this way."

13 A lot of that is a role I think that you
14 want in a mediator, whether it's a mediator or an
15 arbitrator. I think you need that. You need that,
16 where they can sit there and say -- say to the
17 parties, "I have some familiarity with maybe how the
18 Commission may rule based on my experience." And I've
19 had judges tell me, "You don't want me to rule on
20 this," and I think you need to have someone tell the
21 parties that. "You don't want the Commission to rule
22 on this. Either settle it, or I'm going to suggest
23 this approach."

24 That's all I have. Thank you.

25 JUDGE RANGLES: Commissioner Drainer?

1 COMMISSIONER DRAINER: At this point I want
2 to ask a couple of clarification questions because
3 I -- we gave some direction or guidance on some of the
4 things we wanted answered today in this order we put
5 out for the hearing, but I think we left a lot of
6 things unasked, and I don't want the parties at this
7 point to think we are just going down one row.

8 First of all, before we get into additional
9 questions on the Missouri Arbitration Act and just
10 going through the federal act, I want to know if the
11 parties believe that this Commission has the
12 jurisdiction to do second and third rounds of
13 arbitration when they are new issues, when they are
14 not just continued issues from the first arbitration,
15 but they are open issues that have not been
16 arbitrated? Do I have the jurisdiction to do that?

17 Mr. DeFord?

18 MR. DeFORD: I think the answer to that is
19 absolutely yes. I think if you look at the Act it
20 contemplates that a new entrant may actually change
21 the way it intends to do business and it may discover,
22 as we did in this instance, that there are new things
23 that you hadn't contemplated or couldn't have foreseen
24 when you make the initial request. You know, this is
25 all new. No one has ever done this type of thing

1 before to my knowledge.

2 Maybe the best example would be to take a
3 look at some of the -- some of the entities that are
4 actually in business already. I think Dial U.S. has
5 what can be characterized as a total service resale
6 agreement only. I don't believe that there are any
7 references to or anything -- anything that addresses
8 unbundled network elements in its interconnection
9 agreement with Southwestern Bell. I think it would be
10 entirely appropriate for Dial U.S. to go back to
11 Southwestern Bell and to ask for negotiation of an
12 interconnection agreement to provide services with
13 unbundled network elements, basically changing the way
14 they were to do business.

15 And there are any number of factors I would
16 think that play into that decision. It may not be
17 profitable to be in the business as a total-services-
18 resale-only provider.

19 So I think the Act does contemplate that,
20 you know, the triggering mechanism is asking for
21 resolution or asking for negotiation of issues, and I
22 don't think that there is any limitation in the Act on
23 the number of times that that could happen. I mean,
24 it -- it is likely that, you know, technology and just
25 change over timeline will mandate that the

1 relationship between the parties change, and I think
2 it's -- it would be naive of us to think that we're
3 going to be able to just agree to change the agreement
4 because this is a pretty contentious subject.

5 COMMISSIONER DRAINER: Mr. DeFord, may I
6 ask, in your opinion, are these new issues? These
7 were not issues that anybody was hiding the ball and
8 just thought they wouldn't bring up and just hoped
9 they would work it out?

10 MR. DeFORD: Yes, I think that they are new
11 issues. To some extent I think there may be issues in
12 there that we will tell you that we believe we had
13 submitted in the first arbitration and that we had a
14 decision from the Commission but we weren't able to
15 implement, and there may be some issues that
16 Southwestern Bell believes were in the first
17 arbitration and that we just are not able to reduce to
18 writing in the implementing language.

19 I think that that's definitely the minority
20 of the issues. I think most of them are just new.

21 COMMISSIONER DRAINER: Well, if you had
22 issues that were in the first arbitration then I
23 really ought not be looking at them, should I, unless
24 you're telling me that you can't implement them
25 because they are open issues due to true technology

1 assumptions that you made that then turned out not to
2 be practical?

3 MR. DeFORD: I believe that they would
4 probably be characterized as new issues in that when
5 we brought what we thought would resolve the issues to
6 the Commission we didn't know what the fallout --

7 COMMISSIONER DRAINER: What the
8 implementation --

9 MR. DeFORD: -- we didn't know what the
10 fallout of those would be. And, frankly, I believe
11 that there are probably some things T'd up in this
12 that will address some things that happened well after
13 the Commission order. The Eighth Circuit ruling, for
14 one thing.

15 So I think the answer is that we believe
16 that the issues that we have raised are truly new or
17 that we certainly didn't know about and didn't bring
18 to the Commission in the first round because we just
19 certainly -- we just weren't aware of the issue being
20 in dispute.

21 COMMISSIONER DRAINER: Okay. Thank you.

22 Mr. Lane, do I have the jurisdiction and are
23 these all new issues?

24 MR. LANE: Sure. To correct one thing first
25 on Dial U.S., just for the record, it is a full

1 interconnection agreement with regard to them. It's
2 not just resale. It's all unbundled network elements
3 as well. That was the course of the negotiations with
4 them, and it wasn't until the very end that they
5 decided they also wanted the ability to resell, and we
6 added that to the agreement, so they have a full
7 agreement. If there is any question in the
8 Commission's mind on that, it is on file with the
9 Commission.

10 Does the Commission have some jurisdiction
11 in this case, the Act doesn't really tell us exactly
12 what to do here, if a second arbitration is or is not
13 permitted. The legislative history that I have been
14 able to discover doesn't yield any information on that
15 issue either, so I think we're in an area that's
16 uncharted, and the Commission probably has some
17 discretion.

18 I think if you look at both extremes of what
19 you could do, both extremes are probably
20 inappropriate. At one extreme you could say that an
21 initial arbitration decision is in effect forever and
22 that the parties are never able to come back and
23 renegotiate and have a second arbitration. That
24 doesn't make sense, I don't think, to anyone. Prices,
25 for example, are set based on costs, and costs change

1 over timeline, and the Commission would want to change
2 the prices over timeline, so I don't think you would
3 want to say that a party gets only one arbitration.

4 The other extreme is maybe a party that has
5 maybe a series of five, six, seven arbitrations
6 pending before the Commission seeking to re-raise
7 issues or add them one at a timeline. I think in lack
8 of the Commission's resources, they would be well
9 within their authority to say that's not what the Act
10 contemplates.

11 That's not the situation we have here,
12 obviously, and so we are somewhere in between those
13 two extremes.

14 One approach the Commission could take is to
15 say a party gets a single arbitration until the term
16 of its initial contract comes to a close. If the term
17 of the contract is two years or three years, you can
18 say, "All right. I'll let you timeline your second
19 arbitration to begin so that we can have a new
20 agreement signed and in place and ready to go the day
21 your old one ends." That's a reasonable approach for
22 the Commission to take.

23 We're dealing with issues here in the very
24 beginning of it, though, and the Commission may choose
25 to go farther and may say, "All right. To the extent

1 these are truly new issues, I understand that it's all
2 a new area here, and so I'm willing to take on a
3 second arbitration under these circumstances for the
4 first timeline. I think that would be appropriate for
5 the Commission to do.

6 Are these all new issues? Well, some are;
7 some aren't. If you want to go back and look at the
8 contract that was attached to one of the AT&T's
9 witnesses in the case, some of the issues, I think,
10 are the same. AT&T, unlike MCI, agreed that it wasn't
11 asking the Commission to try to, in the first
12 arbitration, to handle all of the issues that were in
13 the contract, and they agreed to withdraw that.

14 I think some of them are the same, and I
15 think some of them are truly new, that AT&T, as
16 they've gotten farther in the process in some other
17 states with the provision of local service, has seen
18 things that they would like to have in Missouri and in
19 other states, and so they asked for those, too. And
20 so I think that some are truly new and some probably
21 were within their initial contract that they filed
22 with the Commission that they withdraw in the course
23 of that first arbitration.

24 COMMISSIONER DRAINER: That's real nice,
25 Mr. Lane. You did a lot of dumping on the record on

1 things I could do, but you did not answer. Do you
2 think I have jurisdiction to do a second arbitration?
3 Yes or no, please, in your humble opinion.

4 MR. LANE: I would say -- I mean, I can't
5 answer just straight yes or no. I think, yes,
6 probably you do, and I would say that it's appropriate
7 to do so.

8 COMMISSIONER DRAINER: Okay. Because I need
9 to know that because that's what I'm going to have to
10 decide. Right?

11 MR. LANE: Sure.

12 COMMISSIONER DRAINER: I mean, let me just
13 be real blunt here this morning because I -- each
14 Commissioner has to decide whether or not we take
15 these up and whether they have been determined new,
16 and I won't be able to hedge, so I need to know if the
17 parties --

18 MR. LANE: I was trying to -- sure.

19 COMMISSIONER DRAINER: I need to know if the
20 parties are coming to me in good faith, too, and when
21 this is going to be in arbitration, you know, do I
22 have the right to do it, and the other part is, then,
23 if I don't, or even if I think I do but, say, as a
24 collective body we decide we're not going to, then
25 what happens? You know, where do we go from here if

1 this -- I can't just turn my back and then hope you
2 will work it out because if you're going to work it --
3 I guess the way I look at it is if you were going to
4 work it out, you would have done mediation.

5 I mean -- and I believe in good faith you
6 spent thousands of personnel hours looking at these
7 issues, these new issues and implementation things
8 that now are a problem. But once you got past that
9 you obviously decided that it didn't have any value
10 to ask for mediation because it wasn't going to get
11 you there, and I am very much concerned that we need
12 to move forward with competition, as Mr. Dandino
13 said. We need to move forward, and if we've got a
14 January 5th statutory deadline, I need to know what I
15 have to do to get us there, and it seems like turning
16 my back isn't the answer, but if we don't turn our
17 back, I need to know that you-all think we have the
18 jurisdiction to do this arbitration and that you are
19 agreeing to that. And if you agree that we have the
20 jurisdiction, which you are both saying yes, and if
21 we've got to move forward to January 5th, I don't have
22 a lot of timeline here, folks.

23 How do we get there? Which brings me to my
24 next point, which was that you just brought up --
25 Mr. DeFord brought up that we could possibly take

1 Staff or the Executive Secretary, which I am not going
2 to take my Executive Secretary. That's not his job,
3 okay, whether he is an attorney or not. That's not
4 his job, unless the Commission determines that -- I
5 think that -- I appreciate that you want to tell us
6 that our law judges are busy, and I know that, but all
7 of our Staff is.

8 So my next thing is if we are going to do an
9 arbitration, if we are going to get past this, and we
10 hear suggestions that we use Staff somehow or an
11 advisory staff, can we use a law judge and an
12 attorney, an advisory staff, and kind of have this
13 collective master as Mr. Dandino is saying, to sit
14 down and do hard arbitration to at least put together
15 very succinctly the position that kind of get us to
16 baseball arbitration that it is either going to be
17 this language or this language, which was done at the
18 end of your other arbitration, and it comes back to
19 the Commission with their suggestions, and you-all
20 realize it is going to be a win/lose, and is that
21 something that's possible to do?

22 MR. DeFORD: From our perspective,
23 absolutely. We think that would be just fine.

24 We -- I threw out the Executive Secretary
25 only because I knew he was an attorney, and that's --

1 there is no magic to that.

2 And we think that it would be agreeable --
3 for us we would -- we would suggest that we file one
4 round of testimony, and then basically we would make
5 our subject matter experts available, you know, and in
6 an informal setting we would just allow whoever the
7 Commission decides to delegate this to ask whatever
8 questions to become as comfortable as they want with
9 the subject matter. You know, I would contemplate
10 scheduling it by issue, collocation and poles for a
11 day, or something like that, I believe.

12 COMMISSIONER DRAINER: If you filed your
13 testimony, would you have your proposed language
14 hammered out, exactly what the language was that AT&T
15 needed?

16 MR. DeFORD: Yes.

17 COMMISSIONER DRAINER: Would Southwestern
18 Bell put in its proposed language exactly what it
19 proposed was the appropriate language in an
20 arbitration?

21 MR. LANE: Sure.

22 COMMISSIONER DRAINER: But then you would
23 have it as direct testimony? But you would have it as
24 testimony that then went to this collective master
25 that Mr. Dandino is mentioning, whether it be a law

1 judge with an attorney from Staff as advisory to look
2 at it first or --

3 MR. DeFORD: Yeah, I guess I would suggest
4 filing a round of testimony basically just to put a
5 little bit of meat around that -- you know, we've got
6 that list of issues, and I think that we would have
7 testimony so that it would be (a) easy to identify the
8 expert who would be appropriate to answer questions on
9 every single issue that we would present for the
10 determination, and I think it could probably be done
11 in -- if we were to conduct it in that fashion, I
12 think we could probably do it in about a three-day
13 hearing. I think there is some precedent, I think,
14 that that's been done in -- in at least Oklahoma.

15 I think you guys may have to help me on
16 this. I think second rounds have typically been
17 compressed.

18 COMMISSIONER DRAINER: By the Commission or
19 has the hearing with the law judge and the
20 technical-type staff?

21 MR. DeFORD: I believe in Oklahoma there is
22 an administrative law judge that basically heard all
23 of the issues, then wrote an order, made an
24 recommendation and then the Commission approved that.

25 COMMISSIONER DRAINER: Mark, is that what --

1 he looks like he is --

2 MR. WITCHER: There have been different
3 procedures adopted in various different states. I
4 think, yes, in Oklahoma an ALJ did make basically the
5 first cut and the decision and then provided his
6 recommendations to the full Commission, and the full
7 Commission made determinations on that.

8 In Texas we just finished the second -- the
9 second arbitration, and the process there was
10 testimony and there was a three-day hearing basically
11 that resolved most -- most of the types of issues
12 we're talking about here. And that was before the
13 Commissioners, but it was a -- they was very, very
14 limited cross-examination. It was primarily offered
15 to the Commission Staff that was the advisory staff
16 for them to ask questions and to make up their own
17 minds as to their recommendation to the Commission,
18 and they then made a recommendation to the Commission,
19 and the Commission then adopted it.

20 So that's -- there are different shades that
21 have been adopted in the states, but that's what we're
22 talking about here, is generally consistent with that
23 kind of process.

24 COMMISSIONER DRAINER: Mr. Lane, what do you
25 think of the Oklahoma or Texas process or the process

1 that we were discussing here of getting in testimony
2 and having it go before a law judge and Staff and
3 brought to the Commission for final blessing?

4 MR. LANE: As long as there is a hearing and
5 as long as the Commission is the ultimate body
6 determining the answer, I think that's within the
7 Commission's jurisdiction to do it.

8 COMMISSIONER DRAINER: How many issues have
9 we got left?

10 MR. LANE: That's where I disagree on how
11 long it's going to take. I think we've identified
12 200 issues that AT&T has raised, and remember we had
13 41 the last timeline around, so it took more than
14 three days the last timeline for 41. I hope we go
15 faster and do better, but I don't think it's realistic
16 to think it's going to take three days.

17 COMMISSIONER DRAINER: Okay. Let's be
18 honest. They raised them, but you didn't resolve
19 them, so they are your issues together. Okay.

20 MR. DeFORD: And I think that a lot of the
21 timeline that was spent in the first round, and, once
22 again it's against the interest all of the lawyers, we
23 wasted a lot of timeline frankly with
24 cross-examination. And I think maybe we were slightly
25 more guilty than other parties in that regard.

1 But I think the type of proceeding that
2 we're contemplating, the lawyers would have a much,
3 much more reduced role. I think that where we kind of
4 lost ourselves the last timeline was that in trying to
5 present the issues, we didn't make clear exactly what
6 it was we were asking, and I think that a lot of that
7 was just lost. We presented 41 pretty general things,
8 and we ended up not getting where we needed to be.

9 I think that the issues that are presented
10 this timeline are very specific, very detailed, and
11 they would lend themselves to having subject matter
12 experts kind of take the lead, make whatever
13 presentation they need to make to explain what it is
14 that we want, what we're asking for, and then let, you
15 know, the ALJ and the Commissioners ask questions and
16 clarify exactly what the issue is, what the position
17 of the parties are, and make the decision.

18 COMMISSIONER DRAINER: Let me ask,
19 Mr. Dandino, because you seem to have expressed very
20 much my concern and my heart burn that we need to move
21 on with the competition, if you had to make this
22 happen and make this all happen by January 5th, what
23 does this Commission need to do, real world? Do I
24 just turn my back and say, "I'm not going to do a
25 second arbitration" or do I say, "I'm going to take

1 the second arbitration?" What do I do to make it
2 happen?

3 MR. DANDINO: I think you have the
4 jurisdiction to handle this. It's a continuing
5 process. I think the parties legitimately -- or at
6 least they legitimately feel they have unresolved
7 issues. If you don't determine those issues, who
8 does? I think the Telecommunications Act contemplated
9 that this Commission resolve these issues.

10 So I think I would take it on this, use a
11 special-master-type situation.

12 First of all, I would meet with the parties
13 and see if you could whittle through those 200 to see
14 if you could --

15 COMMISSIONER DRAINER: The special master
16 would?

17 MR. DANDINO: Yes, to whittle through. And
18 I'm not even saying mediation. I'm saying maybe as a
19 pre-arbitration, as a review, to see if any of those
20 issues were actually resolved and everything. Maybe
21 he could make a recommendation to the Commission
22 saying that was resolved. The parties really don't
23 have a dispute over it.

24 But, anyway, to go through it to see if --
25 and with the parties, to go through with it, and then

1 get down to those issues. Then I think Mr. DeFord
2 brought up a fine procedure. Just have the experts
3 file some -- file their testimony, have an opportunity
4 for the Commissioners, the master, the Staff's
5 advisory experts, and the counsel, you know, can ask
6 questions, give them at least an opportunity to
7 cross-examine the other side's expert for -- to
8 preserve some due process considerations.

9 Then the master makes a recommendation in
10 writing with -- with the language -- I think with the
11 language, "You should resolve the issue this way and
12 adopt this language."

13 And the parties have -- you know, have that,
14 have a quick turnaround. They could make a quick
15 comment to the Commission on -- in a brief on this
16 thing, and then the Commissioner issues the decision.

17 I think -- if you use that type of a process
18 I think you could -- it can be done within this period
19 of timeline. It's not going to be easy, but it's, you
20 know, I think it's doable.

21 COMMISSIONER DRAINER: Mr. Dandino, if I,
22 the Commission as a body, were to decide to do that
23 and to tell the parties to first do the pre-- to get
24 in here with the 200 issues and have the master, have
25 a law judge, an attorney from Staff and a couple or so

1 advisers sit down and work through all of this before
2 it actually has the hearing dates with testimony, and
3 then even to have the hearing to go through for Q and
4 A and then bring a recommendation to the Commission,
5 what is Public Counsel's role in this process? Would
6 you want to sit in on the -- every meeting whether
7 it's the pre-arbitration meetings? Obviously, the
8 hearing I would think you would want --

9 MR. DANDINO: I would certainly want to be a
10 part of the hearing. I think even in the
11 pre-arbitration, you know, I certainly would like to
12 be part of it. I don't think it's really necessary,
13 because I think it's almost a refinement of the
14 petition for arbitration. And --

15 COMMISSIONER DRAINER: So you would see
16 yourself in the hearing with the Master?

17 MR. DANDINO: I would think so where I could
18 have our expect be able to, you know, suggest --
19 suggest some questions or something to cross-examine
20 on.

21 COMMISSIONER DRAINER: Okay. And then maybe
22 file some final comments?

23 MR. DANDINO: File some comments at the
24 timeline of the -- based on the -- on the master's --

25 COMMISSIONER DRAINER: -- testimony?

1 MR. DANDINO: -- recommendation?

2 COMMISSIONER DRAINER: So you would see the

3 master filing with us a written recommendation that

4 you would also -- that all parties would see?

5 MR. DANDINO: That all parties would comment

6 on.

7 COMMISSIONER DRAINER: So it would be that

8 the law judge, the attorney and advisors would, once

9 again, like, file a recommendation, all parties would

10 see that recommendation and give final comment, and

11 then the Commission would make the decision?

12 MR. DANDINO: That's correct, your Honor.

13 COMMISSIONER DRAINER: Okay. Mr. Lane, do

14 you have any comment on that process?

15 MR. LANE: I think that process would

16 probably work. It continues what I think is

17 important. We have to have a hearing at some point

18 with a record prepared so that whatever party that is

19 not satisfied can have the opportunity to take the

20 appeal that's provided for us.

21 The Commission is the ultimate determiner

22 under that and that's what's required under the Act.

23 And I think it's appropriate -- you know, I wasn't

24 sure from Mr. Dandino's statement about whether the

25 Commission would participate or not participate in the

1 hearing process itself. That wasn't clear to me. I
2 think it would be appropriate for the Commission to
3 have that opportunity so that they can hear it.

4 And I believe we -- we're preparing
5 testimony now on the assumption that there will be
6 something there, and we have about, I think, ten
7 witnesses or so that are lined up on these issues, so
8 we would be prepared to meet whatever schedule the
9 Commission sets on it.

10 COMMISSIONER DRAINER: Two weeks?

11 MR. LANE: Have the hearing in two weeks?

12 COMMISSIONER DRAINER: Uh-huh.

13 MR. LANE: Yeah. We'd need to check
14 schedules, but, yeah, we can do that.

15 Let me say this: I think the real problem
16 is the January 5 date --

17 COMMISSIONER DRAINER: Right.

18 MR. LANE: -- in that that's what caused the
19 Commission to raise the jurisdiction question. We
20 didn't raise it. We didn't ask to have the
21 arbitration dismissed. I think that the -- that the
22 Commission -- we would be willing to agree, and I
23 don't know whether AT&T would, but we would be willing
24 to agree that negotiations on these "new issues"
25 started at a different date. Pick a date that is

1 consistent with the Commission's schedule so that it
2 can hear this in the kind of timeline that it wants,
3 but still move quickly because the Commission wants to
4 have competition get started here.

5 If the January 5 day is not good, and we
6 want to say it's February 5 or March 5, I'll agree,
7 and we'll sign some agreement that makes it clear that
8 that's the date that the negotiations started, and
9 that would start the nine-month clock, if that's what
10 we need to do to meet that --

11 COMMISSIONER DRAINER: But isn't something
12 already on file that started the clock, so wouldn't
13 you really be saying, "Well, we didn't really mean
14 it"?

15 MR. LANE: Well, let me say this: AT&T
16 application's for the second arbitration, Appendix A
17 is the letter that sets out that we interpreted and
18 have agreed to act as if that's the second request for
19 arbitration. I think if you read that, you wouldn't
20 get that impression that they've identified some 200
21 new issues that we're going to do.

22 The letter really reads as if let's now talk
23 and try to implement the Commission's December 11th
24 decision in the first arbitration. We've treated it
25 as that, and we're fine with treating it that way if

1 the Commission wants to, but if the January 5 date is
2 a problem, we're also agreeable to having a different
3 start date be the start date for these negotiations
4 and then having the nine-month period fall on
5 February 5th or March 5th, or whatever the Commission
6 deems appropriate.

7 And I don't know that AT&T -- they may or
8 may not agree with that.

9 COMMISSIONER DRAINER: Well, since you
10 brought it up, and I will be ending my questions, but
11 I need to get a few of these things on the table, the
12 reality of what we're dealing with.

13 But, Mr. DeFord, based on what Mr. Lane
14 just said, is the -- is there any way around the
15 January 5th date legally? I don't think I can change
16 the federal law.

17 MR. DeFORD: That's the concern we would
18 have. I think that for better or worse, and it may
19 not be the most crystal clear thing that you could lay
20 your hands on, but I believe Ms. Krabill is here. I
21 think the intent was to actually begin addressing the
22 issues that the parties, for better or worse, had
23 decided that, you know, were not resolved in the first
24 round of the arbitration.

25 And, unfortunately, I don't believe that the

1 date is mine to extend. I would -- I would like to
2 have the flexibility, and I know that apparently there
3 are other jurisdictions in which the parties have
4 agreed. You know, they picked date X and said, "We
5 started on this particular date." I know that has
6 been done. I don't know where those things end. I
7 don't know how they end up, so I guess I would have
8 some substantial concern with --

9 COMMISSIONER DRAINER: That they could be
10 challenged.

11 MR. DeFORD: I would think that it could be.

12 The other thing I would have some concern
13 about is that I'm not sure I would be very comfortable
14 taking that to an Article 3 judge. I've had too many
15 instances where a federal judge has informed me that,
16 whether I like it or not, I cannot confer jurisdiction
17 on the court. I've been told to go away in some
18 pretty unpleasant ways, so I guess I would have some
19 substantial concern about extending this out by
20 agreement of the parties.

21 COMMISSIONER DRAINER: Did you at -- one
22 other final thing. You-all stated that you negotiated
23 in good faith, and you obviously did not see fit to
24 come before and do mediation before you came for the
25 arbitration. But do you think that in good faith that

1 you-all really did look under every rock and try to --
2 in the first round you felt you were getting to a
3 solution and that you did not know about these issues?

4 MR. DeFORD: Yeah, I think that's true.

5 And, as I said, we do have Ms. Krabill here who was
6 actually a participant and headed up the negotiations
7 on AT&T's behalf for all of those things, and she
8 knows the details of all of the issues.

9 I don't think we would have actually come
10 back to the Commission had we thought that we could
11 resolve those issues between the parties. I think
12 that this was kind of the last choice. There was
13 nothing else to do, and we did push it up to the -- to
14 near the final day in which we could actually make the
15 filing.

16 So, no, this was not something we took
17 lightly. We just didn't run off and file another
18 arbitration because it was the simplest, easiest way
19 out of this.

20 COMMISSIONER DRAINER: Mr. Lane, do you have
21 anything to add to that?

22 MR. LANE: No, I don't.

23 JUDGE RANGLES: At this timeline we are
24 ready for Question D from the Commission October 17th
25 order, which stated, "Given the Act, does the

1 Commission have jurisdiction to arbitrate these issues
2 under the state arbitration statute? If so, are the
3 parties willing to arbitrate the issues presented in
4 this request under the Missouri Arbitration Act found
5 in Chapter 435 RSMo 1994?"

6 COMMISSIONER CRUMPTON: Pardon me, Judge. I
7 was a little late arriving, and I informed the court
8 that I would be late. I would like to ask some
9 questions on C, if you don't mind.

10 JUDGE RANGLES: Certainly.

11 COMMISSIONER CRUMPTON: Okay. Continuing
12 with the line of questioning that preceded me, is it
13 the feeling of the parties that we could use non-Staff
14 individuals with technical experience in these issues
15 that you are presenting?

16 MR. DeFORD: I believe we may have had a
17 little bit of a difference of opinion on that when we
18 touched on that earlier. In AT&T's opinion, the
19 Commission can delegate its authority outside of the
20 Commission.

21 And I think the concern that we would have
22 is timing. I know how cumbersome the State procedures
23 are for hiring outside consultants and experts, and I
24 think that it would be so timeline consuming that we
25 would probably end up pushing up against, if not going

1 beyond, the January 5th deadline.

2 I think the critical thing is that the
3 Commission would have to approve or actually act upon
4 whatever recommendation that this outside entity would
5 make, what recommendation it would make to the
6 Commission.

7 COMMISSIONER CRUMPTON: So your answer is
8 what to my question? Yes or no?

9 MR. DeFORD: The answer is yes, I believe
10 you can.

11 COMMISSIONER CRUMPTON: Is that your
12 feeling?

13 MR. LANE: No. And I forget exactly when
14 you came in, Commissioner. What we had said on that
15 issue was that under the Act the Commission doesn't
16 have the authority to tell somebody else to conduct
17 the arbitration.

18 COMMISSIONER CRUMPTON: I did not say the
19 arbitration, but to sit in and to provide us with
20 technical input on the issues.

21 MR. LANE: Sure, in an arbitration the
22 Commission can use its advisory staff to assist it. I
23 think that's perfectly fine. And if they want to go
24 outside to a third party in the context of a mediation
25 to help narrow some of the issues, I think that's

1 fine, but ultimately the Commission has to be the one
2 that makes the decision under the Act.

3 COMMISSIONER CRUMPTON: Are you-all familiar
4 with ATIS?

5 MR. LANE: No.

6 COMMISSIONER CRUMPTON: Okay. This is a
7 technical committee established by the industry to
8 deal with technical issues, and I think it was a
9 forerunner of Committee Team 1. Are you-all familiar
10 with that?

11 (No verbal response.)

12 COMMISSIONER CRUMPTON: Okay. Have these
13 200 issues been resolved, all of them, in other
14 jurisdictions?

15 MR. DeFORD: I believe the answer to that is
16 yes. I'm not absolutely certain. I know that it's at
17 least in process in Kansas. I believe that many or
18 most have been addressed in Oklahoma. And I think
19 that maybe all have been addressed in Texas.

20 Any help?

21 MR. ZARLING: I would say, yeah,
22 Commissioner. About 75 percent of these issues
23 were -- that's a real approximation -- T'd up and
24 resolved one way or another in Texas in the second
25 arbitration that was conducted in August.

1 MS. KRABILL: The only things that are
2 different would be those things that are specific to
3 Missouri and/or Texas. We have many issues that are
4 common to all jurisdictions.

5 COMMISSIONER CRUMPTON: Right. And I'm not
6 restricting this question to Southwestern Bell
7 territories. AT&T is a national body and you have
8 dealt with these issues in other jurisdictions.
9 Right?

10 MR. DeFORD: (Nodded head.)

11 COMMISSIONER CRUMPTON: Were you their
12 representative on the other issues -- I mean, in the
13 other jurisdictions?

14 MS. KRABILL: No, sir.

15 COMMISSIONER CRUMPTON: You have only dealt
16 with these issues in the Southwestern Bell territory?

17 MS. KRABILL: That's correct.

18 COMMISSIONER CRUMPTON: Can you give me some
19 feel for the type of issues that we're talking about?
20 Are these operational kinds of issues dealing with the
21 actual interconnection process, the maintenance
22 process?

23 MS. KRABILL: Many are operational issues
24 that arose during implementation. Many of them
25 arised (sic) out of not only facilities-based

1 interconnection but also the UNI-based environment,
2 where we're looking to order a UNI elements from
3 Southwestern Bell.

4 We also have some issues having to do with
5 performance measurements around that service once it
6 gets up. We have a chunk of things about UNI parody.
7 Does the service provided by the UNI elements --
8 should that service provide a parody within the POTS
9 like service that Southwestern Bell provides to its
10 own customers.

11 So I think many of them do have to do with
12 the UNI or the facilities-based aspects.

13 COMMISSIONER CRUMPTON: Okay. Give me a
14 couple of simple examples of what we're talking about,
15 what kind of issues? Give me an example.

16 MS. KRABILL: One issue is should the -- for
17 operational issues, should the interfaces between the
18 companies be according to AT&T's view of the industry
19 standards versus Southwestern Bell's? Should we able
20 to order loops and switch ports in combinations, to
21 get a real specific example out there. There are some
22 implications with the Eighth Circuit, a recent
23 decision out of the Eighth Circuit Court that will
24 impact that.

25 Another issue is for the performance

1 measurement, should -- and we are a part of a
2 subcommittee that's working on these issues in Texas.
3 Should these services provided by the UNI elements
4 specifically, as well as resale and facilities-based
5 come out of parody with what Southwestern Bell
6 provides their own customers?

7 COMMISSIONER CRUMPTON: Okay. Now, I want
8 to get on this timing issue. When was it that AT&T
9 submitted the list of unresolved issues to
10 Southwestern Bell or South-- vice versa? When did
11 Southwestern Bell see the list or create its own
12 components of the list and you-all sat down and agreed
13 that this was the area of contention or that this list
14 made up the area of contention?

15 MR. DeFORD: Commissioner, I'm not certain
16 that there is a date certain, again, that we could say
17 that we provided a comprehensive list of all of the
18 new issues. I think that what happened factually was
19 that there had been a series of meetings and it became
20 apparent that there were a number of issues that were
21 new and that the parties didn't have guidance from the
22 Commission on, and I think in early April we asked
23 that we sit down and talk about those new issues.

24 And I think beyond that, it may not have
25 been crystal clear exactly what we were going to talk

1 about at the timeline, and I think new things may have
2 developed as the discussions progressed, so . . .

3 COMMISSIONER CRUMPTON: When was the first
4 meeting?

5 MR. DeFORD: I would have to defer. I'm not
6 sure when the meetings actually began.

7 MS. KRABILL: April 7th our two -- teams
8 from our two companies met together to discuss
9 Missouri, the week of April 7th.

10 COMMISSIONER CRUMPTON: So you say April the
11 7th could be the day that you first began to realize
12 that you had these additional issues?

13 MS. KRABILL: Right. We sent a letter to
14 Southwestern Bell that you have.

15 COMMISSIONER CRUMPTON: Is that the letter
16 that was mentioned earlier?

17 MS. KRABILL: Yes.

18 COMMISSIONER CRUMPTON: The date on the
19 letter is --

20 MS. KRABILL: April 3rd.

21 COMMISSIONER CRUMPTON: -- April 3rd.

22 Now, in the event that we arrive at a
23 decision to create this artificial extension, who
24 within the universe would have standing enough to
25 challenge the decision? Who would -- do you

1 understand my question?

2 MR. DeFORD: I think I understand.

3 I believe obviously the parties to the case
4 may bring that type of a challenge. Beyond that, I
5 guess I would express some concern as I mentioned
6 earlier that a federal judge could determine that the
7 court has no jurisdiction to address the issue because
8 the Commission below had no authority to actually take
9 the case. That would be the greatest concern that I
10 would have in that regard.

11 And, you know, beyond the actual parties to
12 the arbitration, I've really not given any thought to
13 who may have standing to bring a challenge to the
14 decision of the Commission.

15 COMMISSIONER CRUMPTON: Can you think of
16 anyone?

17 MR. DeFORD: No.

18 COMMISSIONER CRUMPTON: Okay. So the
19 parties would be AT&T and Southwestern Bell?

20 MR. DeFORD: I would think, and the Office
21 of Public Counsel, of course.

22 COMMISSIONER CRUMPTON: Okay. So those
23 would be the three. And if there was an agreement
24 before we started, that all three parties agreed to
25 the extension, then they would -- we would not expect

1 them to challenge it?

2 MR. DeFORD: That's correct.

3 COMMISSIONER CRUMPTON: The extension --

4 MR. DeFORD: My concern is that those types

5 of decisions, jurisdiction is something that parties

6 cannot confirm, and I would be concerned that a court

7 on its own motion would raise the issue and basically

8 tell the parties, "What you have attempted to do is

9 inappropriate and you can't accomplish that."

10 COMMISSIONER CRUMPTON: Why would the court

11 take up the issue?

12 MR. DeFORD: Any number of reasons. I have

13 had issues like that raised just out of the blue.

14 COMMISSIONER CRUMPTON: Someone who is not a

15 party to the case could raise the issue before a

16 court?

17 MR. DeFORD: Actually, it wouldn't be

18 someone that I would be concerned about. It would be

19 the judge. The federal district judge himself or

20 herself could raise that issue. That's something that

21 happens somewhat frequently.

22 The court is -- the courts are generally not

23 inclined to deal with issues if they can dispose of it

24 on grounds other than dealing with it on the merits.

25 COMMISSIONER CRUMPTON: Mr. Lane?

1 MR. LANE: I understand some of his
2 concerns. I think, Commissioner, that the way this
3 process has worked that it would be legitimate for the
4 Commission to say to the parties, "Go out and tell us
5 the exact date you really started talking about these
6 200 issues that came up," because part of what
7 happened from April 3rd was negotiation about what the
8 Commission had just ordered in December and trying to
9 get an interconnection agreement put together for
10 that.

11 I think if we framed it in terms and said,
12 "Okay. We all agree that we started the
13 interconnection request on these 200 new issues on
14 such and such a date," then I think that that would
15 withstand any scrutiny that anybody would care to put
16 on it.

17 At the same timeline if the Commission --
18 we're comfortable to go forward with the January 5
19 decision as well. So either way is fine with us. But
20 I think it would be legitimate either way.

21 COMMISSIONER CRUMPTON: Well, in
22 Mr. DeFord's response, he mentioned the district
23 court. What district court is he talking about and
24 how would they get this matter before them?

25 MR. LANE: Under the federal act, if there

1 is an appeal from an arbitration decision, it does
2 go --

3 COMMISSIONER CRUMPTON: Okay. But you-all
4 would not appeal the extension. You're saying if any
5 other issue was appealed, the court may just kick it
6 out and say, "I'm sorry. You didn't abide by the law
7 so this is a non-issue." And then that means that the
8 parties are truly stuck with the decision of the
9 Commission; is that right?

10 MR. LANE: Right. I think, Commissioner, to
11 say it again, that if we agree in writing that the
12 negotiations on the new issues started on such and
13 such a date, I think that would withstand any federal
14 court scrutiny if any would come up.

15 MR. CRUMPTON: And I have a concern that the
16 parties have come to us and asked us to entertain this
17 additional 200 issues, when I really truly believe
18 that the parties knew that they had some of these
19 issues when they presented the first set of issues,
20 that you are presenting these to us. We want to
21 dispose of these issues right now, I mean, the minute
22 the decision is final, the Commission's decision is
23 final. I'm not looking forward to a challenge in an
24 additional court.

25 I mean, if you bring this to me, and -- I'm

1 getting to this baseball thing now, and you have to
2 pardon me if you-all covered this as well before my
3 arrival. I want to -- I want you to present the
4 issues to us, and say, "We will abide by your
5 decision." Now, if you are going to say that, this
6 matter shouldn't appear in another court.

7 Now, while I was a little late getting here,
8 did you-all agree that this is the way we would
9 proceed, or did you want us to offer a decision in an
10 environment in which you have the right to then
11 challenge us at a higher court?

12 MR. DeFORD: I think what we would certainly
13 be willing to do is present the issue along with our
14 language that we would suggest, that the Commission
15 pick or choose our language or Southwestern Bell's.

16 As to whether or not we would be willing to
17 go on record and state that we would not appeal that
18 decision, I don't think we could go quite that far,
19 and I would assume that based on the activity that
20 followed the first arbitration, I believe Southwestern
21 Bell actually did file an appeal, we would have to
22 participate in that appeal process. So I would expect
23 that it would be a stretch for either party to waive
24 its right to appeal on any decision.

25 COMMISSIONER CRUMPTON: Well, can you

1 respond to that, Mr. Lane? Are you in agreement with
2 him that your company is not willing to accept the
3 decision of this court as final?

4 MR. LANE: I do agree with Mr. DeFord,
5 Commissioner, that the federal act gives the right to
6 appeal if one wants to take it, and we're not in a
7 position where we would say we're willing to waive
8 that without knowing what the Commission's decision is
9 even going to be, and is it consistent with what the
10 requirements of the federal act are.

11 COMMISSIONER CRUMPTON: Is it possible for
12 you-all to provide a monetary value to the decision on
13 each of your points of view to the issues?

14 MR. WITCHER: Could you -- for the record,
15 I'm Mark Witcher. I'm the chief regular counsel for
16 AT&T for this region.

17 What precisely are you asking us to do? A
18 monetary value in the sense of the revenue that would
19 accrue one way or the other depending on the outcome?

20 COMMISSIONER CRUMPTON: Or the expense that
21 would be created on the party if the decision goes
22 against you? In other words, if you could provide us
23 with that type of information? I'm asking you if you
24 could provide us with that information.

25 MR. WITCHER: Let me just bounce something

1 off, and I presume you're talking about development
2 costs of those kinds of things. Those, I believe,
3 would have been part of the record in the decision
4 that was made in July and in October, if that's the
5 kind of thing you're talking about.

6 COMMISSIONER CRUMPTON: No. You're talking
7 about 200 other issues, and let's say that -- and I
8 don't know what the 200 are, so I'm not going to
9 speculate on it. I would think that if the Commission
10 rendered a decision that was not to one of the
11 parties' advantage, and it was of minor value, then I
12 would not expect the parties to take something like
13 that to a higher court. I would think that the kind
14 of issues that you would want to take to a higher
15 court would be those that have great financial impact
16 on your respective companies, and so . . .

17 MR. WITCHER: Yeah. And in addition to
18 that -- that is -- certainly, there are monetary
19 conditions or considerations that go into whether you
20 take anything up, because there are resources involved
21 in that. There are additional, and I think the
22 problem at least I'm having with the question is some
23 of the issues that we're talking about here, frankly,
24 are critical to us getting into the market in a UNI
25 environment to start with, and I'm frankly not sure

1 how to put a monetary value on -- on any loss of an
2 issue.

3 For instance, if you determined that we --
4 you know, just to pick one of the examples that
5 Ms. Krabill talked about, if we didn't get UNI parody,
6 for instance, and it was determined that that was --
7 because of that we were in a sufficiently adverse
8 competitive position that we couldn't come in. I'm
9 not -- we could try, if that's what you're asking us
10 to do, and I'll commit to try to do whatever you would
11 like us to do.

12 COMMISSIONER CRUMPTON: But if you can't do
13 it --

14 MR. WITCHER: But that makes it difficult
15 to -- because it's not a hard expense number. It's
16 a -- I mean, a loss of business, loss of -- in normal
17 parlance, a loss of profit, loss of revenue kind of
18 standard, and that's a difficult one to do. If you
19 have asked us to do that, we will make our best effort
20 to try to come up with something.

21 COMMISSIONER CRUMPTON: But if you can't,
22 you know, I can accept "No, we can't do that."

23 MR. WITCHER: I don't know. I don't know at
24 this point whether we can do that. I would be willing
25 to commit that we'll try to do that, if that's what

1 you would like us to do.

2 COMMISSIONER CRUMPTON: Okay. Well, that
3 was my last question, and I appreciate the judge
4 letting me have an opportunity to participate on this
5 issue.

6 JUDGE RANGLES: Are there any further
7 questions, or should we go on to Question D?

8 I did state that earlier on the record, but
9 I will repeat it quickly. "Given the Act, does the
10 Commission have jurisdiction to arbitrate these issues
11 under the state arbitration statute? If so, are the
12 parties willing to arbitrate the issues presented in
13 this request under the Missouri Arbitration Act found
14 in Chapter 435 RSMo 1994?"

15 Mr. DeFord?

16 MR. DeFORD: No. I think that's the short
17 answer.

18 I believe that the Commission does actually
19 have authority to act as arbiter under the state
20 statutes in certain circumstances. What we have
21 brought to the Commission in this circumstance is a
22 petition for arbitration under the federal act, and I
23 don't believe that the state act would contemplate
24 addressing those types of issues or dealing with this
25 type of a proceeding, this type of a case.

1 The other thing that would cause me some
2 concern about the Missouri Act is that I'm
3 uncomfortable or unclear on what the parties' rights
4 to appeal are from decisions under that statute, so I
5 guess I would have some concerns.

6 This thing is muddy enough as it is, and I
7 think if we start trying to mix state law in with the
8 federal act, it adds a layer of complication that,
9 frankly, I don't think we really need to address.

10 JUDGE RANGLES: Mr. Lane?

11 MR. LANE: We agree with AT&T on that point,
12 your Honor.

13 JUDGE RANGLES: Ms. Baker?

14 MS. BAKER: Actually, I believe I agree with
15 both of them, so -- but I would like to add one other
16 item, and that is under the State Arbitration Act, the
17 issues that they could appeal would be the state
18 court, but there are very, very limited items that are
19 specifically set forth in the state arbitration
20 statute, as opposed to there are no limitations, I
21 believe, as to what issues under the federal act you
22 can take to the federal court in an appeal.

23 JUDGE RANGLES: Mr. Dandino?

24 MR. DANDINO: I don't believe that the state
25 act applies. In addition, I would -- Arbitration Act

1 applies.

2 In addition, I would -- even though the
3 Commission acts as an arbitrator, I still think it is
4 a creature of the Legislature and governed under the
5 statutes and the constitution. And as an
6 administrative body, you still have to base decisions
7 on competent and substantial evidence, issue written
8 decisions and are bound by the General Administrative
9 Procedure Act and that body of case law. So you
10 really can't act just as a regular arbitrator. You
11 still have to act as a governmental administrative
12 agency. That's all I have.

13 JUDGE RANGLES: Question E is, "If the
14 parties are not willing to proceed under the MAA, upon
15 what authority do they seek a second round of
16 arbitration under the Act?"

17 AT&T?

18 MR. DeFORD: I think this one we've talked
19 about substantially already. I believe that we've
20 brought this to the Commission pursuant to
21 Section 252(b) of the federal act. I don't know that
22 there is anything else in the Act that we would
23 reference. I think that's sufficient.

24 JUDGE RANGLES: Southwestern Bell?

25 MR. LANE: I don't have anything to add to

1 what we said earlier on this subject, your Honor.

2 JUDGE RANGLES: Staff?

3 MS. BAKER: Nor does Staff.

4 JUDGE RANGLES: OPC?

5 MR. DANDINO: No comment.

6 JUDGE RANGLES: Any questions, Chair Lumpe?

7 CHAIR LUMPE: If I hear correctly, the

8 assumption is that -- from both sides is that we do

9 have jurisdiction, so if you were to appeal something,

10 you would not be appealing jurisdiction; is that

11 correct?

12 MR. DeFORD: That's correct

13 MR. LANE: That's correct.

14 COMMISSIONER DRAINER: Ms. Baker, would you

15 comment? Do you believe that this Commission has

16 jurisdiction under 252(b) to do the second round of

17 arbitration if they are open issues?

18 MS. BAKER: Yes, I would. I believe as I

19 indicated earlier, if you look at a timeline, when

20 AT&T set forth a letter to Southwestern Bell asking

21 for additional negotiations, those were new issues. I

22 think the parties will attest that they are not issues

23 that were determined by the Commission. That started

24 the timeline for arbitration.

25 I don't believe there is anything in the

1 statute which indicates that a second round cannot be
2 had. I believe that if you look to other states, many
3 states have gone to second rounds, and in some
4 instances I believe there are third rounds started.

5 I do agree with Mr. Lane that because the
6 Act is silent, the Commission could on one hand say
7 one, could on the other hand say 50. I don't believe
8 either of those is appropriate. However, I think the
9 Commission, because it does have some leeway with the
10 Act because it is not specific, can look to the public
11 policy, whether or not it wants to go forward, whether
12 or not going forward with the arbitration, doing a
13 second round, would bring competition to the state of
14 Missouri in a quicker timeline frame than not going
15 through that. I also think that --

16 COMMISSIONER DRAINER: Would you stop one
17 second there?

18 MS. BAKER: Uh-huh.

19 COMMISSIONER DRAINER: Do you believe that
20 going with the second round would bring competition
21 more quickly than should we just say no?

22 MS. BAKER: I'm very concerned at what might
23 happen if you just say no. AT&T and Southwestern Bell
24 have gone through a period of greater than 160 days
25 and have not been able to negotiate these issues. I

1 don't believe that -- and maybe they've gotten more
2 amenable to going forward and negotiating and getting
3 things solved, but I don't believe that just leaving
4 them by themselves without assistance is going to get
5 it decided any quicker. I don't think that AT&T would
6 have brought the arbitration request if they thought
7 they could have settled it on their own. I believe
8 Mr. DeFord indicated that earlier.

9 I do believe that the Commission can get
10 through a second round of arbitration by January 5th.
11 I think that it will be very difficult, but I would
12 suggest --

13 COMMISSIONER DRAINER: I don't want you to
14 just go on. You know, answer, please. Go ahead.

15 MS. BAKER: I think that if the Commission
16 looks at the January 5 date as the date that it has to
17 issue an order and backs up from there and gives the
18 parties timeline starting as soon as possible to start
19 a mediation where they have an -- and by "mediation,"
20 I'm only looking at it as a -- as a pre-runner to the
21 actual arbitration hearings. Look at it as a
22 prehearing conference, if you might, where the parties
23 get together and the advisory staff, whomever else the
24 Commission --

25 COMMISSIONER DRAINER: This gets back to the

1 master-type -- putting your --
2 MS. BAKER: That's what I'm calling
3 mediation. But look at it as sort of a prehearing
4 conference, which we have all of the timeline, and in
5 those prehearing conferences we many times settle most
6 of the issues and only take to the Commission the
7 issues that could not be settled. I think you can use
8 that same type of procedure in this case, only have
9 the prehearing conference or the masters, or whatever
10 you want to term it, last longer, and so that you only
11 have taking the Commission's timeline the actual
12 issues that they cannot agree upon. And I think that
13 you can do that.

14 Mr. Lane indicated it would take many, many
15 more days than three days for a hearing. I would
16 agree with that if you don't do this type of
17 negotiation up front. But I think the parties can
18 agree. I think that they can work towards an
19 agreement that gets them to the major issues that they
20 cannot agree upon, and then those -- I think the
21 Commission has some flexibility. I don't know that
22 prefiled written testimony is necessary.

23 I know that there are other states where the
24 Commission has indicated each side has a set amount of
25 timeline, 15 minutes, a half-hour, whatever the

1 Commission wants to give them. You present your
2 position on this issue, live, okay, and then the
3 Commission -- and then the other party gets to do the
4 same. And then the Commission can ask whatever
5 questions it wants to.

6 And you can set an issue for a specific
7 amount of timeline on a specific date, and the parties
8 need to have whatever technical people they need
9 there. You could go with that method.

10 You could do the prefiled testimony. You
11 could -- I mean, there are any number of different
12 ways you could do that. And I think that the
13 Commission -- once you get through a prehearing and
14 negotiation-type situation, that it would not take
15 that long.

16 The Commission could at the outset set the
17 hearing date and say, "This is what you're moving
18 towards. This is how many days we have for the
19 hearing." You know, you get them down to whatever can
20 be heard in those days, and then give the parties a
21 very short timeline, five days perhaps, to -- to file
22 a written -- a last -- this is the last thing I want
23 to say on the issues for the Commission to have to
24 consider when they make their decision on the last
25 round of arbitration.

1 I think that something like that is doable.
2 I'm not going to say it would be easy. I'm not going
3 to say it's not timeline intensive on whoever is
4 sitting in a room with them, but I believe that it can
5 be done, and I believe the Commission has the
6 jurisdiction to do that, and I believe that the
7 Commission should look to the public policy issues of
8 whether or not they think that it's necessary.

9 COMMISSIONER DRAINER: Thank you.

10 JUDGE RANGLES: Commissioner Crumpton, any
11 questions?

12 COMMISSIONER CRUMPTON: Yes.

13 Mrs. Baker, you talk about the schedule in
14 terms of the Commission creating the schedule. Could
15 the parties agree to a schedule and then present it to
16 us for our approval?

17 MS. BAKER: Well, I think what we don't have
18 here is timeline, and I'm concerned with the parties
19 getting together and presenting a proposal of a
20 hearing date or whatever. I think if the Commission
21 just dictates, "This is when we are available for the
22 hearing," then the parties -- I mean, then it's a
23 non-issue, and they can start working on the issues.

24 COMMISSIONER CRUMPTON: They have more
25 timeline than we do. I mean, how long would it take

1 them to start with January the 5th and back up like
2 you just described to us?

3 MS. BAKER: And I'm not talking about the
4 timeline it takes us to -- or the parties to do that.
5 What I'm talking about is when they submit it, how
6 quickly with the Commission approve it, and that's
7 what I'm talking about in terms of timeline.

8 If it were a very short process where they
9 filed something and the next day they knew whether the
10 Commission had approved it or not -- I was concerned
11 with the timeline it would take for it to be filed and
12 then approved and an order coming out on that issue
13 from the Commission. That's where I was concerned
14 with the timeline.

15 MR. DeFORD: Commissioner Crumpton, we've
16 actually kicked around a proposed schedule. I
17 believe we would be prepared to file testimony by
18 November the 12th, and I think we would suggest that
19 we actually begin whatever hearing and process there
20 is three days just immediately prior to Thanksgiving,
21 and our thought was we could conclude the entire
22 thing. It sounds like there may be some concern that
23 that can't be accomplished, but that would be our
24 goal.

25 COMMISSIONER CRUMPTON: Mr. Lane?

1 MR. LANE: We had filed a proposed schedule
2 with our response to the petition. We are past some
3 of the dates now where we said we would be prepared to
4 file testimony. We are in the process of putting it
5 together and can meet whatever schedule the Commission
6 sets on it, if it chooses not to adopt the schedule
7 that we laid out in our answer to the petition.

8 COMMISSIONER CRUMPTON: You said some of the
9 days have slipped by?

10 MR. LANE: I think we said October twenty-
11 something. I can't remember the exact date that we
12 said we would be prepared to file our direct
13 testimony.

14 COMMISSIONER DRAINER: You had October 20th
15 as your direct.

16 MR. LANE: Okay.

17 COMMISSIONER DRAINER: And you had rebuttal
18 testimony November 3rd, a hearing memorandum on
19 November 10th, a hearing on November 17th through the
20 26th, the briefs on December 12th, and a report and
21 order then by January 5th.

22 MR. LANE: We can --

23 COMMISSIONER CRUMPTON: But that's slipped.
24 Right?

25 MR. LANE: Well, obviously the filing of

1 direct has slipped, but we are prepared to meet that
2 schedule. And, obviously, we would have to set a date
3 maybe next week to file direct testimony, but we could
4 meet that date.

5 COMMISSIONER CRUMPTON: My question to you
6 is could you all agree, your company, agree with AT&T
7 on a final schedule for us to --

8 MR. LANE: Sure.

9 COMMISSIONER CRUMPTON: -- consider?

10 MR. LANE: Sure.

11 COMMISSIONER CRUMPTON: You could do that?

12 MR. LANE: Sure. I mean, I assume we could.
13 Sure.

14 COMMISSIONER CRUMPTON: How many days would
15 it take you to do that?

16 MR. LANE: To reach agreement?

17 COMMISSIONER CRUMPTON: Yeah.

18 MR. LANE: Well, we could do it this
19 afternoon.

20 COMMISSIONER CRUMPTON: Does that take care
21 of the timeline issue?

22 MS. BAKER: Yes. But my concern is that the
23 Commission give them some direction as to whether they
24 want testimony, prefiled testimony, or if they want to
25 do something different as far as bringing their

1 technical people in and giving them timeline to
2 explain the issues or doing some other kind of --
3 because I believe Mr. Lane's proposal calls for two
4 rounds of testimony, and the typical
5 contested-case-type proceeding -- and I don't think
6 you are limited to that for an arbitration. I believe
7 that the Commission has a greater deal of flexibility
8 for an arbitration.

9 COMMISSIONER CRUMPTON: And your answer
10 is -- my question was, would this take care of your
11 timeline issue?

12 MS. BAKER: Yes. I indicated yes, and then
13 I added the rest of that.

14 COMMISSIONER CRUMPTON: Okay. The yes is
15 what I was looking for.

16 MR. LANE: And I do agree with part of what
17 she said. If you contemplate a different process than
18 what we've contemplated, then we'd need to know that
19 or we wouldn't be reaching any agreement that made any
20 sense for you.

21 COMMISSIONER CRUMPTON: Okay. Thank you.

22 COMMISSIONER MURRAY: In light of the fact
23 that we're still on the question of under what
24 authority could we proceed under 252 of the Act, I
25 would like each party to address the question, in your

1 opinion, when and under what circumstances would the
2 Commission not have jurisdiction to proceed with a
3 round of arbitration under the Act?

4 MR. DeFORD: Actually, I believe that there
5 is a huge universe of, I guess, circumstances where
6 the Commission would not have authority to proceed.

7 COMMISSIONER MURRAY: Please tell us what
8 they are.

9 MR. DeFORD: I would -- I guess I would
10 start by saying if a party does not actually notice up
11 its intent or its request to negotiate and hammer out
12 an interconnection agreement and then attempts to come
13 to the Commission without having gone through that
14 preliminary process --

15 COMMISSIONER MURRAY: Let me interrupt you.

16 MR. DeFORD: Sure.

17 COMMISSIONER MURRAY: Let's say the parties
18 did everything in a timely manner as the Act set out.
19 Ten years from now do we still have jurisdiction to do
20 another round of arbitration?

21 MR. DeFORD: Yes, I believe so.

22 COMMISSIONER MURRAY: Ad infinitum?

23 MR. DeFORD: I think that the Act is
24 intentionally open. I believe that circumstances over
25 timeline will change. I think, you know, the intent

1 of the parties as to how they wish to conduct business
2 will change. Technological changes create new
3 unbundled elements. There are any number of things
4 that could happen that would cause the parties to be
5 forced, actually, to come back for additional
6 guidance.

7 COMMISSIONER MURRAY: And you really think
8 that Congress and the people who were lobbying
9 Congress for this act, including your company, and all
10 of the other large companies and small companies that
11 obviously knew this act was being passed, do you
12 really think that's what they contemplated?

13 MR. DeFORD: My opinion of Congress forming
14 intent is -- I'm not sure they ever really do.

15 COMMISSIONER MURRAY: Well, what about the
16 people who were lobbying Congress for the act? What
17 did AT&T contemplate?

18 MR. DeFORD: I believe AT&T did contemplate
19 that there would not be one. I think that AT&T
20 contemplated that this is a process which will evolve
21 over timeline. I think it had to be somewhat opened,
22 I think, in recognition of the fact that this is not
23 going to be a static one-time shot.

24 I mean, you're not going to have -- none of
25 the contracts -- none of the interconnection

1 agreements that I've seen have been open-ended. They
2 typically have end dates. You know, the question
3 would arise what happens when that contract expires?
4 I understand that some of the -- some of the entities
5 that have entered into interconnection agreements have
6 them as short as one year. So what happens if at the
7 end of the term of the agreement you're unable to go
8 back and have the issues addressed again or the prices
9 changed or any number of things?

10 COMMISSIONER MURRAY: So AT&T contemplated
11 not being able to negotiate, about having to go back
12 to state commissions over and over and over and over
13 again ad infinitum?

14 MR. DeFORD: I would say that what was
15 contemplated was some need to go back to state
16 commissions, or the FCC as the case may be, because I
17 think it would be naive of us to believe that we
18 could, you know, call Southwestern Bell or GTE or any
19 other incumbent local exchange company and say,
20 "Please agree with us so that we can enter the market
21 and compete with you."

22 COMMISSIONER MURRAY: At some point in this
23 process today, and I won't interrupt this progress
24 through these issues any further at this point to ask
25 that, but I -- at some point I want both parties to

1 address specifically what you have done to demonstrate
2 that you have negotiated in good faith. Don't do it
3 now, but think about that because I think that's a
4 very strong responsibility for the parties, and I
5 don't think this Commission or any other Commission
6 should have to arbitrate and re-arbitrate and
7 re-arbitrate ad infinitum because the parties cannot
8 sit down and negotiate.

9 I would like now to go to Southwestern
10 Bell's response on when and under what circumstances
11 in your opinion would this Commission ever lose
12 jurisdiction to re-arbitrate?

13 MR. LANE: And, again, I guess what we said
14 before still holds true. The Act isn't clear on
15 second arbitrations and third arbitrations, and I
16 think that the Commission has some discretion within
17 which it could operate and decide, yes, it will, or,
18 no, it won't hear a second arbitration.

19 I think at the least the Commission should
20 contemplate that at the expiration of a contract
21 approved by the Commission through either mediation or
22 arbitration or voluntary negotiations, that when that
23 expires there may be a need for a second arbitration.
24 At the very least I think the Commission would have to
25 say, yes, that's appropriate under the Act.

1 This is obviously a different circumstance
2 because it's a second arbitration before we get to a
3 first approved agreement and get them up and
4 operating. And if the Commission decides that that's
5 too much, I can understand that, but there may be
6 benefits to doing it this timeline because it's --
7 we're just getting started and presumably it won't
8 happen three, four, five times in the future. That's
9 the hope.

10 COMMISSIONER MURRAY: What are our
11 guidelines? When do we lose jurisdiction?

12 MR. LANE: Again, I have to say, there is
13 not a lot of guidelines in the Act. The Act doesn't
14 say one arbitration, two arbitrations, three or four.
15 It doesn't address it. It says the party submits a
16 request for an interconnection agreement and then
17 negotiate. Then the nine-month clock begins.

18 I think within that timeline the Commission
19 -- within that framework the Commission probably has
20 some discretion which it could say, yes, I do, or, no,
21 I don't have jurisdiction.

22 One thing it could say is, "Okay, I'm not
23 going to exercise any jurisdiction until the first
24 contract runs out, and you can timeline your second
25 arbitration so that we can have that." That's a

1 legitimate position for the Commission to take.

2 I think it's also legitimate for them to
3 say, "Here, now, the first timeline around, I'll hear
4 a second arbitration," because it's important and we
5 need to get the parties up and going.

6 COMMISSIONER MURRAY: Is it accurate to say,
7 then, that you don't agree with AT&T's interpretation
8 that there is no limit to the number of arbitrations
9 that we should do or we have jurisdiction to do?

10 MR. LANE: I don't agree with them. I think
11 that, obviously, if you are rehashing issues that were
12 raised or could have been raised the first timeline
13 around, that's not something the Commission has
14 jurisdiction to do.

15 COMMISSIONER MURRAY: There could be new
16 issues forever on interconnection, I would think.
17 There will be new technology.

18 MR. LANE: New things will --

19 COMMISSIONER MURRAY: There will be changes
20 in prices. Are we going to need to arbitrate each
21 timeline there is a change?

22 MR. LANE: There is -- in most of the
23 agreements that we've negotiated we've tried to
24 contemplate that there may be a new technology or new
25 something that comes out, and there is a process

1 that's included in most of the agreements that we've
2 had approved by the Commission that says how you go
3 about doing that under the existing agreement. So the
4 answer is I hope that there is not a lot of that, but,
5 obviously -- I mean, it is a very dynamic industry and
6 things can change.

7 The Commission, I think, has jurisdiction to
8 say, "Yes, I'll hear it," or it can say, "No, don't
9 come back to me until your initial agreement expires,
10 and then you can have -- raise that new issue at that
11 point." I think that's a legitimate position for the
12 Commission to take if it chooses.

13 COMMISSIONER MURRAY: All right. And one
14 more thing. Please think about what both parties have
15 done to demonstrate that they have negotiated in good
16 faith as to these open issues.

17 And would the Staff respond to my question
18 about when, if ever, and under what circumstances do
19 we lose jurisdiction to re-arbitrate?

20 MS. BAKER: I believe that as long as the
21 parties follow the requirement of the federal act,
22 that they be new issues, that they request of the
23 incumbent LEC to discuss those issues, and that they
24 meet the timeline window, the 135- to 160-day filing,
25 I believe that the Commission would have jurisdiction.

1 COMMISSIONER MURRAY: Forever?

2 MS. BAKER: Forever. I believe that --

3 COMMISSIONER MURRAY: That answered the

4 question.

5 MS. BAKER: Yeah.

6 COMMISSIONER MURRAY: OPC?

7 MR. DANDINO: Yes, I believe the Commission

8 has continuing jurisdiction in this. I might want to

9 compare it to maybe a court. If parties are disputing

10 a contract and they come to the court and the court

11 was the one that decided, it usually won't consider

12 that case again unless there is -- because there is

13 the same parties, same facts, same issues. But if the

14 facts change, substantially change, or if there was --

15 if the parties in the exercise of due diligence

16 couldn't have foresaw those facts when they were --

17 you know, when they were talking about it, then I

18 think they have a right to come back and ask for

19 another -- you know, ask for another decision on it.

20 COMMISSIONER MURRAY: Forever?

21 MR. DANDINO: You know, forever.

22 The Commission is there to resolve it when

23 the parties can't resolve it.

24 COMMISSIONER MURRAY: Thank you.

25 JUDGE RANGLES: At this point we will take a

1 ten-minute recess and go off the record.

2 (A recess was taken.)

3 JUDGE RANGLES: On the record.

4 Question F is, "The parties shall address
5 Section 252 of the Act, section by section, and
6 explain how each section authorizes, or prohibits,
7 subsequent arbitrations."

8 AT&T?

9 MR. DeFORD: To hopefully maybe speed things
10 along, we talked amongst ourselves on the break, and I
11 believe we may have actually at least touched upon all
12 of the remaining questions in some fashion or another
13 as we've gone through the discussion up to this point.

14 If, you know, the Commission wants, I
15 suppose we could attempt to go through the rest of
16 the questions as they are set forth, but I think we
17 have -- from our perspective, we have said pretty much
18 everything we had to concerning all of the remaining
19 questions and would be pleased to answer or add to
20 what we have done thus far.

21 JUDGE RANGLES: I think the Commission set
22 forth these questions and some of the Commissioners
23 may have held off on asking certain questions until we
24 got to those questions, so I'm loath to depart from
25 this procedure at this point.

1 Hopefully, though, you will keep your
2 answers brief if you feel you have already addressed
3 something in response to the Commissioners' questions.
4 COMMISSIONER CRUMPTON: I agree with them.
5 I just read, you know, maybe five or six after E, and
6 it looks like they have covered them. That's my
7 opinion.
8 JUDGE RANGLES: Not all of the parties may
9 have had a chance, though --
10 COMMISSIONER CRUMPTON: Sure.
11 JUDGE RANGLES: -- to say something on all
12 of those issues because of the order in which it was
13 presented, so I would like for you to -- if you have
14 nothing further to say --
15 MR. DeFORD: I really have nothing further,
16 especially to Question F. I think I have spent as
17 much timeline as I care to on Section 252.
18 JUDGE RANGLES: Southwestern Bell?
19 COMMISSIONER CRUMPTON: We like to hear your
20 voice.
21 MR. LANE: I don't have anything further to
22 add on Question F.
23 JUDGE RANGLES: Staff?
24 MS. BAKER: Nor does Staff.
25 JUDGE RANGLES: OPC?

1 MR. DANDINO: Nothing further, your Honor.

2 JUDGE RANGLES: Question G -- do any of the

3 Commissioners have questions?

4 (No response.)

5 JUDGE RANGLES: Question G, "If the parties

6 are not willing to proceed under the MAA, is it their

7 position that the federal act requires that a decision

8 must be rendered by January 5, 1998? If not, what

9 authority supports an argument that the nine-month

10 federal timeline frame does not apply to a second

11 arbitration?"

12 AT&T?

13 MR. DeFORD: At this timeline point I think

14 we would have to say that we do believe that the

15 January 5th date does apply. It's the deadline.

16 We have, however, agreed amongst us to go

17 back and, you know, look at our correspondence, look

18 at things that occurred between the companies, to see

19 if we can't come to a sensible later start date for

20 the proceeding.

21 We're pretty comfortable that that is a

22 start date, the April 3rd. If there is another start

23 date that we could, you know, justify through, I

24 guess, agreement of the parties that something

25 occurred after that, that we could find another start

1 date, we would be happy to file an amended petition, I
2 suppose. That's something that the parties are
3 looking at in the context of trying to come up with a
4 procedural schedule. We'll talk about that.

5 JUDGE RANGLES: Southwestern Bell?

6 MR. LANE: Yes, I think that we're
7 comfortable with the April 3rd letter as it starting a
8 second round of arbitration. The same timeline as I
9 said before, if you read that April 3rd letter that's
10 the attachment A to the petition, it's written in a
11 way that it appears to be negotiations to implement
12 the first arbitration order of the Commission.

13 And given that, I think that there is room
14 for the parties to go back and say, "Okay. When did
15 we really start talking about these new issues that
16 came up?" And we've agreed that we'll go back and
17 come back by this afternoon or first thing in the
18 morning, I hope, and say, "Okay. We can legitimately
19 agree that the 200 new issues that we've got, that we
20 really began talking about those on X date," and then
21 we would present that to the Commission if we're able
22 to reach some agreement on that.

23 JUDGE RANGLES: Staff?

24 MS. BAKER: I would voice some concern of
25 moving the start date, and it's not that I believe

1 that April the 3rd is any better than any other date.
2 My real concern would be that by selecting another
3 date that from their correspondence could be said to
4 be a better start date, then they are -- then they
5 are, in essence, saying that is their start date and
6 so their petition must be filed within the 135- to
7 160-day window.

8 And so for them to move that start date more
9 than 25 days, which is that window period, I think
10 would cause them a problem because then they would
11 have filed their -- their application or their
12 petition for arbitration outside the window allowed
13 for the -- under the federal act. So I think when
14 they look to the start date, they are going to have to
15 make sure that that start date then fits with the day
16 that they filed their petition so that it is still
17 within the window, the 135- to 160-day window.

18 Other than that, I have no concern with
19 finding a better start date. If they can look back on
20 their records and look to the date, an actual meeting
21 was had discussing new issues and opposed to
22 discussing what the Commission indicated in their
23 prior order, I think that is appropriate. But I
24 would -- would caution because of the one -- the
25 25-day-window period.

1 JUDGE RANGLES: Mr. Dandino?

2 MR. DANDINO: I would agree with Staff on

3 this issue, that while the parties can't just

4 arbitrarily select a day and -- for a start date, I

5 think the facts have to speak for themselves, and

6 there is that concern about the filing of the

7 petition. That's all I have.

8 CHAIR LUMPE: I have a question, Ms. Baker.

9 MS. BAKER: Yes.

10 CHAIR LUMPE: Is the trigger the day the

11 letter is sent requesting arbitration or when a

12 meeting is held? I thought it was when the letter of

13 request --

14 MS. BAKER: It doesn't indicate that it must

15 be a letter for request. It says on which an

16 incumbent local exchange carrier receives a request

17 for negotiation.

18 CHAIR LUMPE: Receives a request --

19 MS. BAKER: -- for negotiation, is what the

20 statute says.

21 CHAIR LUMPE: So that would be by whatever

22 means, a phone call, a letter, or what?

23 MS. BAKER: I believe what they have

24 indicated, and I don't have the letter right in front

25 of me, but the letter doesn't specifically indicate

1 that it's for a new round of arbitration. I think the
2 parties have indicated it could be read -- that the
3 April 3rd could be read to say that they need to start
4 writing the interconnection agreement based on the
5 Commission's order, and because of that, I think that
6 they could, in essence, find a different date where
7 they actually sat down and started negotiating.

8 If the letter were to say specifically, "We
9 are this day requesting negotiation of X new issues,"
10 then I think it would be a much more difficult
11 timeline moving the date. But because the parties
12 have indicated that the letter, which will speak for
13 itself, is somewhat vague as to what and when they are
14 requesting those negotiation to be, I think you can
15 move the date.

16 JUDGE RANGLES: Vice-chair Drainer?

17 COMMISSIONER DRAINER: The only question I
18 have, just for clarification, I received in my mail
19 this joint issues list, and if I were to add this up,
20 is this going to come up to your 200 issues?

21 MR. DeFORD: I haven't counted. I would
22 assume that it's pretty close.

23 COMMISSIONER DRAINER: But this will be
24 every issue. Correct?

25 MR. DeFORD: That's it, I believe.

1 MR. LANE: I'm not sure about the precise
2 number. Some of those, I think, were actually
3 resolved as we talked in that process. But going into
4 it, that's what it was, and that's the ballpark
5 number.

6 COMMISSIONER DRAINER: Okay. Thank you.

7 JUDGE RANGLES: Do you have a question?

8 COMMISSIONER CRUMPTON: No.

9 COMMISSIONER MURRAY: Yes.

10 The documents on file here regarding the
11 second round of arbitration state that -- I don't
12 have -- for some reason I don't have the petition by
13 AT&T in front of me, but I do have the response,
14 Southwestern Bell's response, and it refers to the
15 second request for arbitration concerning issues and
16 terms arising from AT&T's April 3rd, '97 request to
17 negotiate with Southwestern Bell.

18 I read the Act as requiring that that
19 timeline apply to the request to negotiate, and we've
20 got documents in this case saying that was the date.
21 If the parties want to agree to a different date,
22 would that not look strange to an appellate court that
23 the petition alleged one date and then suddenly it was
24 a different date in which there was the first request
25 for negotiation? How would you interpret-- how do you

1 think that would look, Mr. DeFord?

2 MR. DeFORD: Yeah, that was part of the
3 concern that I mentioned earlier. I think that that
4 is a date that we all, at least at this point, have
5 agreed that we did actually begin the second round. I
6 suppose that if we were able to come up with another
7 date where we could say that we actually requested,
8 you know, negotiations on a specific set of issues,
9 you know, laid them all out, I think that might be
10 understandable, something that a court would say,
11 "Yes, you can do that."

12 I'm also aware of a circumstance, I believe,
13 in another jurisdiction in which multiple letters had
14 been sent. The carrier I have in mind actually sent a
15 letter saying, "We would like to negotiate." For
16 whatever reason, they broke off the negotiations or
17 stopped. And then they just sent another letter, so
18 there would be in some circumstances, I would think,
19 you know, a series of dates that you could actually
20 look at and say, "This date would be appropriate as
21 would this date and would this date," but I don't know
22 that we actually have that circumstance here. That's
23 why we need to go back and take a look at what we have
24 between the companies.

25 COMMISSIONER MURRAY: If any of the other

1 parties would like to respond to that, you may. If
2 you don't want to, I can go on to my next question.

3 (No response.)

4 COMMISSIONER MURRAY: Okay. The next part
5 of my question is concerning this voluntary change of
6 jurisdiction, as I see it, the parties voluntarily
7 deciding to change what the federal act says, which I
8 don't think we can do. I'm very much opposed to that.
9 I'll just tell you that right now.

10 But I would like to pose the question to
11 Southwestern Bell, particularly, if we were to do
12 that, to agree that the request for negotiations
13 started on a date that was convenient for the
14 circumstances, and we assume jurisdiction to do a
15 second round of arbitration, and the court -- that
16 when one or both parties appealed our arbitration
17 decision and the court looked at -- first at the
18 jurisdictional issue, although neither petition would
19 raise it, if the court said the Commission did not
20 have jurisdiction for one reason or another, either
21 because they decided to waive the date and therefore
22 change what the federal act actually said, or because
23 the federal act doesn't provide for second rounds,
24 additional rounds of arbitration, if the court threw
25 it out on the jurisdictional basis, would we not be

1 back where we started with no agreement and no
2 competition?

3 MR. LANE: I don't believe so. We have an
4 agreement that we have entered into with AT&T that's
5 pending before the Commission. And, you know, we'll
6 probably make some filings concerning that, but that
7 is an agreement that covers unbundled network elements
8 and it covers resale and it covers things that they
9 can do to get up and get into the business.

10 I understand AT&T's perspective that they've
11 got additional things, additional questions and issues
12 that they want resolved, and we are supportive of a
13 way to get those resolved, but I think that they could
14 be in business and up and running under that agreement
15 ultimately when it's approved by the Commission and so
16 forth.

17 At the same timeline, then, they have other
18 options. If for any reason that isn't enough, then
19 there is Section 252(i) of the Act allows a company to
20 opt into a contract that's been entered into by
21 another company, and we've got several of those that
22 are "full agreements," both resale and
23 interconnection, that are out there and that's -- that
24 would be available as well. So I think there are a
25 couple of avenues open.

1 COMMISSIONER MURRAY: I'm glad you raised
2 that because I wanted to raise that section of the Act
3 also, and I wanted to ask, the status of that section,
4 and I think it's been called the most favored nations
5 clause, is that still applicable, or did the FCC find
6 that that section did not require -- did the recent
7 FCC decision change that?

8 MR. LANE: The recent Eighth Circuit
9 decision change that.

10 COMMISSIONER MURRAY: I'm sorry. The Eighth
11 Circuit.

12 MR. LANE: The FCC had adopted what was
13 called the pick-and-choose rule that let carriers say,
14 "I want this provision out of this agreement, but not
15 the rest that goes with it," and the Eighth Circuit
16 made it clear that you needed to adopt the entire
17 agreement.

18 And what we've said as a company and what
19 we've continued to do since then is to say, "You may
20 adopt an entire appendix." We've agreed voluntarily
21 to say -- I don't know if you recall the
22 interconnection agreements that we filed with the
23 Commission but they are very thick and they have a
24 standard section and then they have maybe eight or
25 nine appendices attached to it, and what we've said to

1 carriers is that we're willing and will allow anybody
2 to opted in on an appendix-by-appendix basis to take
3 what's been entered into and proved with another
4 carrier.

5 COMMISSIONER MURRAY: Do you think that
6 would be upheld as a legitimate -- did you adopt -- if
7 you -- if they adopted another company's agreement,
8 appendix by appendix, would that be the same
9 realistically as adopting another company's entire
10 agreement? In other words, would not some of those
11 sections maybe conflict with some from the original
12 agreement?

13 MR. LANE: I don't believe so, but I may not
14 be -- I may not be tracking with you. What we've said
15 is that there might be an appendix on resale, and
16 there is an appendix on unbundled network element
17 pricing, and there is an appendix on collocation.

18 As we've entered into negotiations with
19 carriers, we've said, "We're willing to let you take
20 the collocation appendix or the unbundled network
21 pricing appendix to this agreement." And as long as
22 we voluntarily agree to do that, and we reach an
23 agreement that we present to the Commission for
24 approval, those voluntary agreements don't even need
25 to comply with the Act itself. You can agree to

1 anything you want even if it doesn't comply with the
2 Act, so I think it would be clearly be permissible.

3 COMMISSIONER MURRAY: Okay. And that's --
4 how many of those are out there, how many agreements
5 that they could choose from?

6 MR. LANE: I think we have some 14 to 16
7 agreements that have been approved by the Commission.
8 Not all of them are what we would call full
9 agreements. Some of them are resale only. Others are
10 full agreements. I think we have Dial U.S., ACSI,
11 Brooks Fiber, MFS, with everything but unbundled loop
12 which was arbitrated. That agreement was approved.
13 It's otherwise full. Those are the ones that come to
14 mind, anyway.

15 COMMISSIONER MURRAY: Are there any issues
16 pending here that are not resolved in some other
17 interconnection agreement?

18 MR. LANE: I'm going to say probably so, but
19 I -- I haven't tried to do that analysis, but probably
20 so.

21 COMMISSIONER MURRAY: Thank you.

22 And just quickly, does AT&T have a response
23 to adopting an appendix from an existing agreement?

24 MR. DeFORD: Generally, your Honor, I don't
25 believe that any of the existing agreements are

1 sufficient in detail and in substance for us to
2 actually enter the market as planned.

3 The contract that we do have before the
4 Commission now does actually have some of the issues
5 relating to unbundled networks elements in it and
6 they've been resolved, but there are gaps, there are
7 holes, and I don't think there is any way we can fill
8 in those gaps or holes by adopting sections or
9 appendices of other agreements that are already
10 approved.

11 COMMISSIONER MURRAY: Anybody else want to
12 respond?

13 (No response.)

14 JUDGE RANGLES: No further questions?

15 (No response.)

16 JUDGE RANGLES: Question H, "If the parties
17 are not willing to present the MAA, are they willing
18 to waive the nine-month federal timeline? And, if so,
19 how does that waiver affect this Commission's
20 jurisdiction and the parties' rights to appeal the
21 arbitration result?"

22 AT&T?

23 MR. DeFORD: Again, I think we've addressed
24 this several times earlier. I don't think that the
25 timeline is ours to waive.

1 JUDGE RANGLES: Thank you.
2 Southwestern Bell?
3 MR. LANE: I agree with that. I don't think
4 you can waive the timeline, but I think you can do
5 what we said before. We can go back and now identify
6 the "actual" start date of the interconnection
7 negotiations on these new issues, and if we can
8 support that, if it's supportable from a factual
9 standpoint.
10 And I guess to respond to Commissioner
11 Murray's question before, I think it would be
12 appropriate for AT&T to file an amended petition for
13 arbitration that reflex that date, assuming the
14 parties were able to come to some agreement on that.
15 JUDGE RANGLES: Staff?
16 MS. BAKER: Staff would just reiterate its
17 concern that the start date not move more than 25 days
18 so that it still falls within the window, because I
19 believe that amending the application for arbitration
20 does no good if it then falls outside that window
21 that's required by the federal statute.
22 JUDGE RANGLES: Thank you.
23 OPC?
24 MR. DANDINO: I have no comment.
25 JUDGE RANGLES: Chairman, do you have any

1 questions?

2 CHAIR LUMPE: No.

3 JUDGE RANGLES: Do any of the commissioners

4 have any questions?

5 (No response.)

6 JUDGE RANGLES: Question I, "Should the

7 Commission decide to take this matter up as a second

8 compulsory arbitration under the Act, would the

9 parties be willing to immediately submit their

10 disputed issues to a mediation process under

11 Commission auspices to eliminate all resolvable

12 issues, and then proceed to arbitration on the

13 remaining issues?"

14 AT&T?

15 MR. DeFORD: I have nothing to add to what

16 we've stated previously.

17 JUDGE RANGLES: Southwestern Bell?

18 MR. LANE: Nothing to add. The answer is

19 yes.

20 JUDGE RANGLES: Staff?

21 MS. BAKER: Staff believes that the

22 Commission can do that if it so chooses.

23 JUDGE RANGLES: OPC?

24 MR. DANDINO: Nothing further to add.

25 JUDGE RANGLES: Do any of the Commissioners

1 have questions?

2 (No response.)

3 JUDGE RANGLES: Question J, "What result
4 could be expected should the Commission decide to take
5 this matter up as a second compulsory arbitration
6 under the federal act and require the parties to
7 immediately submit their disputed issues to a
8 mediation process before they would be permitted to
9 proceed to arbitration?"

10 Mr. DeFord?

11 MR. DeFORD: Again, I think that we have
12 thoroughly discussed that, and I don't have anything
13 to add.

14 JUDGE RANGLES: Southwestern Bell?

15 MR. LANE: I don't have anything to add to
16 that, your Honor.

17 JUDGE RANGLES: Staff?

18 MS. BAKER: Staff has nothing to add.

19 JUDGE RANGLES: OPC?

20 MR. DANDINO: Nothing to add.

21 JUDGE RANGLES: Do any of the Commissioners
22 have any questions?

23 COMMISSIONER DRAINER: I just want to
24 reiterate on this point the concern that what we
25 really ought to be doing is not back stepping to

1 mediation because there isn't the timeline. Even if
2 you are in that 25-day window, you are still to the
3 end of January. And that, I guess, what I'm asking
4 the parties is that they are both agreeable to a
5 process that would allow not mediation, but, rather,
6 more or less a first round arbitration with an
7 attorney from Staff and possibly a law judge and
8 technical staff acting as a master to sit down in what
9 Ms. Baker termed a long prehearing conference and beat
10 out the issues to narrow them down so that what would
11 come before the Commission in the hearing room itself
12 would be the narrowed-down issues, to narrow down the
13 timeline frame, and then allow for after that briefs
14 and then an order from the Commissioners.

15 MR. DeFORD: Yes, we are certainly willing
16 to do that.

17 MR. LANE: Yes.

18 COMMISSIONER DRAINER: Ms. Baker, did I miss
19 any points there? Did I leave any steps out?

20 MS. BAKER: The Commission should give some
21 indication of whether they want testimony or whether
22 they want live presentation of an issue. I think that
23 you can look at it both directions. With the
24 testimony, you are going to have it. You can look at
25 it over and over again; whereas, with the live

1 presentation it may take less preparation timeline on
2 the side of the parties so that they might spend more
3 timeline negotiating.

4 COMMISSIONER DRAINER: Well, if they filed
5 testimony, if you file a written testimony, and then
6 you go into a long prehearing-type conference, that
7 really is the first round of the arbitration before it
8 comes to the Commissioners in the form of some masters
9 working with you and you then narrow down those
10 issues -- let me just think out loud, if you don't
11 mind, for one second.

12 On one hand, I agree with you that that is
13 the parties taking a lot of timeline putting testimony
14 together. On the other hand, what I was hearing the
15 parties say is they're both rather close to having
16 testimony ready on all 200 issues?

17 MR. DeFORD: I don't know how close, but I
18 think we're certainly willing, and I think it would
19 probably be a worthwhile exercise to have the one
20 round of testimony.

21 COMMISSIONER DRAINER: I guess the other
22 question would be if we were even doing this process,
23 are the parties going to on each issue that's been
24 given to me in this docket write out their suggested
25 language for the contract so that we would have that?

1 Mr. DeFord?

2 MR. DeFORD: Yes, we would certainly have
3 contract language.

4 MR. LANE: Yes.

5 COMMISSIONER DRAINER: Okay. Now, the only
6 other thing I'm not clear on is should we take this
7 type of process or procedure so that we could have
8 this wrapped up in January? I can understand having a
9 Staff arbitration/mediation-type team working with the
10 companies in a prehearing conference. I guess my
11 concern with timelines is I do not see where they
12 could be giving us written recommendations in timeline
13 for replies from the parties and still get it out all
14 when there are 200 issues.

15 I mean, it seems that there would be value
16 in having Staff work in a prehearing-type conference,
17 but that the hearing would have to just be an
18 on-the-record hearing with questions and that the
19 Commission would have to then make a decision on each
20 issue and have proposed language that either party
21 files so that we would look at the testimony, we would
22 look at the language, and we would make a decision and
23 that cuts it.

24 MS. BAKER: Except the recommendations would
25 be on the issues that you're not hearing because those

1 would be the settled --

2 COMMISSIONER DRAINER: If they're settled, I
3 don't need to arbitrate them.

4 MS. BAKER: And I guess I'm confused as
5 to -- the piece we were talking about was making sure
6 that the negotiated issues were actually before you
7 and -- so that you could then adopt those into the
8 interconnection agreements because they have been
9 brought to you as part of the 200 issues.

10 COMMISSIONER DRAINER: Okay. Good point,
11 because maybe what you have there in you're
12 "prehearing conference," where you came to some
13 solution or resolution of some issues, you would have
14 the proposed language. That would be filed -- number
15 one, I don't know if it needs to be filed because it
16 would be in the contract, but if you were going to
17 file it, it would be filed and signed by both parties,
18 so, once again, we knew there was no misunderstanding,
19 that that would rather be filed like a stipulation and
20 agreement. I'm not a lawyer so I know Mr. DeFord
21 doesn't want me to be the master, but I would think
22 that that would be what you would have to do, so we
23 understand that both parties agreed on the language on
24 any particular issue.

25 MR. DeFORD: Yeah, I would agree.

1 MR. LANE: I think ultimately we would have
2 to have an agreement that we would bring to you for
3 approval under the Act.

4 COMMISSIONER DRAINER: Right.

5 MR. LANE: But is part of that process we
6 can -- if something gets resolved, we can lay it out
7 and present it to the Commission so they are aware of
8 it?

9 COMMISSIONER DRAINER: I guess you would
10 have to only because, Mr. Lane, if you didn't and then
11 we thought we dealt with all 201 issues, had the
12 hearing and resolved all of the other issues, and then
13 at the very end you went, "Well, there is" -- and it
14 gets to that, you know. "There is this one little
15 word that we thought we heard."

16 Yet if you-all did a kind of a stip and
17 agreement and these were resolved and this is our
18 proposed language and both parties signed off, then we
19 would know it was truly resolved and not something we
20 had to decide.

21 MR. LANE: Right. That's fine.

22 JUDGE RANGLES: Okay.

23 COMMISSIONER DRAINER: Okay. Thank you.

24 JUDGE RANGLES: Commissioner Crumpton?

25 COMMISSIONER CRUMPTON: And I think the

1 Commission should also reserve the right to use
2 outside technical support if we think we need it.

3 JUDGE RANGLES: Further questions?

4 (No response.)

5 JUDGE RANGLES: Question K, "If the
6 Commission finds it lacks jurisdiction to take up this
7 matter as a second mandatory arbitration under the
8 Act, and one party refuses to proceed under the
9 voluntary arbitration procedure set out in the MAA, or
10 refuses to voluntary mediation under the Act, what
11 will be the result? What are the remaining
12 alternatives?"

13 Mr. DeFord?

14 MR. DeFORD: Again, I think we probably have
15 addressed this fairly thoroughly. I suppose the only
16 alternative -- remaining alternative would be to seek
17 preemption at the FCC level, which I don't think is a
18 very doable thing in terms of the timing that we are
19 trying to target for market entry.

20 JUDGE RANGLES: Mr. Lane?

21 MR. LANE: I don't have anything further to
22 add, your Honor.

23 JUDGE RANGLES: Ms. Baker?

24 MS. BAKER: Nothing to add.

25 JUDGE RANGLES: Mr. Dandino?

1 MR. DANDINO: Nothing further.

2 JUDGE RANGLES: Chair Lumpe, do you have any

3 questions?

4 CHAIR LUMPE: Just a clarification again.

5 Your response, Mr. DeFord, was the

6 alternative is FCC preemption.

7 And did I hear you correct, Mr. Lane, the

8 alternative is that there are other agreements they

9 could take upon themselves to accept whether it's an

10 appendix here or an appendix there or the total

11 agreement, or whatever? That is the alternative?

12 MR. LANE: Yes, Commissioner.

13 COMMISSIONER DRAINER: Mr. Lane, have you

14 looked at each of these issues that are disputed by

15 AT&T and know that they could go to any approved

16 existing agreement here before the Missouri Commission

17 and just adopt those appendices and then resolve the

18 issue?

19 MR. LANE: No. I answered Commissioner

20 Murray that I have not undertaken to do that. And she

21 asked whether I thought they were all addressed, and I

22 said probably not, so I'm not making that kind of

23 representation to you. But it is enough for somebody

24 to get into business was the -- that -- we were just

25 trying to identify what the alternatives were, and

1 that's an alternative.

2 COMMISSIONER DRAINER: Okay. But the
3 federal act wasn't just so some folks could get into
4 business maybe at some inferior level. Right? So if
5 all of the issues haven't been resolved, you don't
6 want me to just let them get into business, so to
7 speak? We want to have compensation and allow people
8 to get in the business in fair fashion and we want to
9 be sure that there is due process when that happens?

10 MR. LANE: I -- we don't have any problem
11 with proceeding to get this done and taken care of. I
12 wouldn't characterize any of the agreements that we've
13 entered into as inferior, though. I mean, the
14 agreements that are out there, obviously those
15 companies believe that they are very appropriate for
16 them to get into business.

17 COMMISSIONER DRAINER: For them?

18 MR. LANE: Right.

19 COMMISSIONER DRAINER: But you cannot tell
20 me that they are fair and appropriate for AT&T, that
21 there may be some other things that --

22 MR. LANE: No. There's some -- I'm sure
23 there are some things.

24 COMMISSIONER DRAINER: -- they may need?

25 MR. LANE: Right.

1 COMMISSIONER DRAINER: So they may consider
2 them, if not inferior, not up to what they are
3 requesting for Southwestern Bell? And I didn't mean
4 to say that what they were doing was inferior, but
5 with relationship to what AT&T is asking for --

6 MR. LANE: Right.

7 COMMISSIONER DRAINER: And then assuming
8 then that we did not take up this matter and there are
9 not the appropriate appendices in place to allow them
10 to resolve all of their issues, then what is their
11 recourse?

12 MR. LANE: They have got an agreement that's
13 entered that's in front of the Commission that they
14 say is not enough. The only recourse if you don't
15 find that you have jurisdiction is for them to wait
16 until that agreement comes to a close and initiate
17 another arbitration at that point. I think at least
18 we've said that we think the Commission clearly has
19 jurisdiction at that point. If they find they don't
20 have it now, they would have it then.

21 COMMISSIONER DRAINER: Ms. Baker?

22 MS. BAKER: I believe that certainly that if
23 the Commission finds that it lacks jurisdiction now, I
24 believe that AT&T certainly can take it to the FCC and
25 ask them to preempt your jurisdiction.

1 I believe that as Mr. Lane stated that they
2 could be forced to wait until the end of their first
3 term, timeline their arbitration request for the next
4 timeline so that it hits at the same timeline that
5 their -- this current interconnection agreement runs
6 out.

7 I think they could adopt portions of other
8 approved interconnection agreements; however, I would
9 voice some concern that there are some issues that
10 AT&T has requested be resolved that are not addressed
11 by those.

12 Other than those options, I'm not sure that
13 there are any other viable options.

14 COMMISSIONER DRAINER: Would you advise the
15 Commission to allow itself to be preempted by the FCC
16 if it can do anything to have that not happen?

17 MS. BAKER: Speaking as an attorney for the
18 Commission, I would never suggest that a Commission
19 give up jurisdiction voluntarily. Even to the point
20 of it having it stripped screaming and yelling, I
21 would never suggest that a Commission relinquish
22 jurisdiction, especially on an issue of this
23 magnitude. I would urge the Commission to exercise
24 the jurisdiction that it has.

25 COMMISSIONER DRAINER: Thank you.

1 Mr. Dandino, do you have any final comment
2 on this issue?

3 MR. DANDINO: No, I don't, your Honor.
4 Thank you.

5 JUDGE RANGLES: Commissioner Crumpton?

6 COMMISSIONER CRUMPTON: No questions.

7 JUDGE RANGLES: Commissioner Murray?

8 COMMISSIONER MURRAY: I have a few.

9 Mr. Lane, what is the expiration of the
10 current interconnection agreement? Is that --.

11 MR. LANE: With AT&T?

12 COMMISSIONER MURRAY: Uh-huh.

13 MR. LANE: I believe that it was a
14 three-year term, as I recall.

15 COMMISSIONER MURRAY: And would that be from
16 the date that this Commission approved it, or would
17 the effective date be --

18 MR. LANE: I believe -- I don't have it in
19 front of me. I believe that it's from approval.

20 COMMISSIONER MURRAY: Thank you.

21 Mr. DeFord, earlier you said something about
22 the parties cannot waive their right to appeal, and
23 one of the reasons you gave for that was that
24 Southwestern Bell has an appeal pending on the first
25 round of arbitration.

1 If the appeal is pending, isn't that -- does
2 that not mean that the first round of arbitration is
3 final?

4 MR. DeFORD: Actually, the appeal was
5 dismissed as not being right. I believe that was
6 filed too soon, so that has been dismissed, as far as
7 I know, probably about three weeks ago.

8 COMMISSIONER MURRAY: Okay. And if there
9 were -- if you were to -- if we were to determine that
10 we do not have jurisdiction to proceed with the second
11 round of arbitration, and you were to ask for
12 preemption, one result of that application would be --
13 could be, would it not, that that preemption would be
14 refused on the basis that second rounds of arbitration
15 are not provided in the Act. That's one possible
16 outcome, is it not?

17 MR. DeFORD: I would assume that that would
18 be the position that the Commission would take.

19 COMMISSIONER MURRAY: Which Commission?

20 MR. DeFORD: This Commission before the FCC.

21 COMMISSIONER MURRAY: And that's one
22 possible outcome of the FCC decision, is it not?

23 MR. DeFORD: Certainly.

24 COMMISSIONER MURRAY: And that would be a
25 fairly -- fairly expedient way to find out the FCC's

1 position on second rounds of arbitration, I would
2 think, would it not?

3 MR. DeFORD: I think I would disagree. I
4 think that would be kind of a hard way to get there.
5 I think that would be a very difficult case to make to
6 the FCC. It would basically be asking for an advisory
7 opinion.

8 COMMISSIONER MURRAY: You don't think this
9 second round of arbitration is difficult?

10 MR. DeFORD: I'm sure it is.

11 COMMISSIONER MURRAY: Okay. And my final
12 question is -- I'll pose it to you, AT&T, first: What
13 have you done to demonstrate negotiation in good faith
14 under the Act on these new issues?

15 MR. DeFORD: Actually, I think probably the
16 best person to answer that is Ms. Krabill. I think
17 she has participated in the negotiation process quite
18 literally from start to finish.

19 I understand that there have been maybe
20 dozens of individuals involved and, you know, hundreds
21 of hours expended. I'm sure that she can probably
22 fill you in on the details of the meetings and the
23 duration and the like.

24 JUDGE RANGLES: Mr. DeFord and Commissioner
25 Murray, I'm concerned that this is a witness, not an

1 attorney, and if you are going have a witness testify,
2 we need to have her sworn in.

3 Can you state your name again?

4 MS. KRABILL: Nancy Krabill.

5 (Witness sworn.)

6 JUDGE RANGLES: You may go ahead and answer
7 the question now.

8 MS. KRABILL: AT&T and Southwestern Bell
9 have had teams of employees dedicated to nothing else
10 but resolving these issues since -- well, since before
11 I came on board. I came on board in January of this
12 year.

13 COMMISSIONER MURRAY: Excuse me a moment. I
14 thought these issues just began in April.

15 MS. KRABILL: They did specific to Missouri.
16 You are absolutely right.

17 What we did prior to that was -- the first
18 state that he met on was Oklahoma. We signed a
19 non-disclosure agreement and said this is only
20 Oklahoma-specific. We talked about many of these
21 issues, and many of the issues do cut across several
22 states' jurisdictions.

23 But prior to April 7th, which is the actual
24 date that we began meeting as is referenced in the
25 April 3rd document, we were only discussing other

1 specific states.

2 COMMISSIONER MURRAY: But prior to April 3rd
3 were you negotiating with other states these same
4 issues that you are raising now here?

5 MS. KRABILL: Some of them were and some of
6 them weren't, but they all came up after the
7 December 16th award that we received after the record
8 closed on the first arbitration.

9 COMMISSIONER MURRAY: With other states,
10 they came up after that date?

11 MS. KRABILL: Right. So basically both of
12 our teams, I think, have done an incredible job of
13 dedicating entire, you know, staffs of people. We
14 had -- I was trying to count up, anticipating your
15 question -- I think that we had about 14 people that
16 were meeting pretty much full-time on Missouri
17 starting in the April timeline frame and continuing
18 even throughout -- even after -- from where I sit I
19 believe that we met the week of April 7th on
20 Missouri-specific, we signed a non-disclosure, and we
21 said, "Now we're talking about Missouri," spoke for a
22 week.

23 Our team, the UNI team, was always a little
24 bit late so it took us a couple of days to finish up,
25 so we had a week and a half of just focus on Missouri

1 issues. We filed a contract with the Missouri
2 Commission and also included as an output of that
3 meeting that started April 7th an issues matrix that
4 is somewhat similar to the one that you will see
5 before you on October 31st.

6 Some of the issues we've actually taken off
7 the table, and that's because we've continued to
8 negotiate since the April 7th timeline all of the way
9 through today. I mean, we're taking -- we took off
10 issues this past week that our companies have resolved
11 between us.

12 So, I mean, as a veteran and as a, you know,
13 somewhat battered veteran of this whole process, if
14 there is -- I cannot imagine what else our companies
15 could have done to resolve these issues.

16 COMMISSIONER MURRAY: Excuse me if this was
17 addressed earlier, but have there been any -- are
18 there any states in which Southwestern Bell and AT&T
19 have arrived at an interconnection agreement without
20 arbitration?

21 MS. KRABILL: No.

22 COMMISSIONER MURRAY: How about without a
23 second round of arbitration?

24 MS. KRABILL: I believe that in Oklahoma
25 there was a prehearing conference similar to what

1 you're discussing here for Missouri. It was not
2 called a second arbitration.

3 In Texas we've had a second arbitration, and
4 we've got issues pending in Kansas and Arkansas.

5 COMMISSIONER MURRAY: In Oklahoma do you
6 have an interconnection agreement now?

7 MS. KRABILL: Yes, we do.

8 COMMISSIONER MURRAY: And it is being
9 implemented?

10 MS. KRABILL: Yes, it is.

11 COMMISSIONER MURRAY: It has been approved
12 by the Commission and it is being implemented?

13 MS. KRABILL: Uh-huh.

14 COMMISSIONER MURRAY: So are you competing
15 in Oklahoma?

16 MS. KRABILL: We have plans to compete in
17 Oklahoma, yes.

18 COMMISSIONER MURRAY: And in what way is the
19 agreement being implemented?

20 MS. KRABILL: Well, one of the first market
21 entry strategies that we have is a business
22 facilities-based -- it's called digital link. I know
23 we have plans to begin that. We are also assessing
24 our own readiness as far as getting into the consumer
25 and small business market there as well.

1 COMMISSIONER MURRAY: Are the issues that
2 are before us here included in the Oklahoma agreement?
3 MS. KRABILL: Many of them are common to
4 Oklahoma.
5 COMMISSIONER MURRAY: And how many of them
6 are not, approximately?
7 MS. KRABILL: I think we threw around a
8 25 percent figure earlier. I think it might be less
9 than that.
10 COMMISSIONER MURRAY: Thank you.
11 Mr. Lane, what has Southwestern Bell done to
12 demonstrate negotiate in good faith under the Act on
13 these issues?
14 MR. LANE: I would, I guess, echo what
15 Ms. Krabill had said, that we've dedicated teams of
16 people. We've got an AT&T interconnection negotiation
17 team. I don't have the exact number of people that
18 comprise that negotiating team. My guess is around
19 eight to ten people.
20 And then each of the appendices that I
21 described earlier to the main agreement, there are
22 teams of people that negotiate and are the subject
23 matter experts for each of those individual
24 appendices.
25 And so there is -- I don't have the hours

1 that were spent, but my guess is that we're into the
2 thousands of hours in terms of person hours spent in
3 the negotiation process, and we've reached agreement
4 on a number of issues. Obviously, what's been filed
5 with the Commission is -- could be thousands of issues
6 that were resolved to go far beyond the 41 that had
7 been presented to the Commission earlier.

8 COMMISSIONER MURRAY: But these particular
9 issues that are presented here as unresolved new
10 issues, how much of your negotiation has been on these
11 specific issues?

12 MR. LANE: I don't have the figure to give
13 you in terms of hours, but once the issues were
14 identified they've been part of the process in the
15 matrix developed to set out what the issue is and what
16 the parties' positions have been, and then
17 negotiations have taken place from there since --
18 since those issues first began to be raised. But
19 I don't have a specific figure to give you in terms of
20 number of hours. I can try to develop that, but I
21 don't have that.

22 COMMISSIONER MURRAY: Well, I don't want to
23 create extra work here.

24 What -- at what point did -- I'd like to
25 know at what point the parties decided that

1 negotiation was no longer achieving anything. And I
2 guess I should ask that question to AT&T.

3 MR. DeFORD: I believe it was relatively
4 shortly before we filed the petition for the second
5 arbitration.

6 COMMISSIONER MURRAY: What made you decide
7 it was not productive to continue attempting to
8 negotiate?

9 MR. DeFORD: I think the negotiations have
10 actually continued and they still are going on.

11 COMMISSIONER MURRAY: So your only reason
12 for filing at that timeline was to be within the
13 deadline, I assume?

14 MR. DeFORD: That's correct.

15 COMMISSIONER MURRAY: What is your feeling
16 about the continued negotiations since that timeline?
17 What have you accomplished?

18 MR. DeFORD: I would say that, you know,
19 there has been some movement on both sides, and I
20 think some issues have been taken off the table and
21 some resolution, so, I guess, some things have moved
22 into the category where we don't have a dispute
23 anymore.

24 COMMISSIONER MURRAY: Now, do you honestly
25 believe that if this Commission did not agree to

1 arbitrate, that these two companies could not come to
2 an agreement?

3 MR. DeFORD: Oh, no. I'm sure that there is
4 some things that are just so fundamental that we can't
5 agree.

6 COMMISSIONER MURRAY: If you had no other
7 choice, what if there were nobody to say, "Well, we'll
8 hold your hand. We'll help you decide these difficult
9 issues"?

10 MR. DeFORD: I think the fundamental problem
11 here is -- I mean, if you were to step back and look,
12 both parties do not have the same goal here. There is
13 really little to be gained -- I don't think
14 Southwestern Bell, and I don't mean to say that they
15 are not devoting a substantial amount of effort and
16 acting in good faith, but there is literally no
17 business purpose that Southwestern Bell has in signing
18 an interconnection agreement which will allow AT&T or
19 any other competitor to enter the market and take
20 customers. So the unequal bargaining position that
21 the parties are in is going to drive all of this
22 until -- who knows how long?

23 COMMISSIONER MURRAY: I would like Mr. Lane
24 to respond to that.

25 MR. LANE: My agreement with AT&T ends on

1 this point.

2 Each side has issues that are incentives
3 that they point to the other. AT&T points to us and
4 says, "They don't have the incentive to get this done
5 because they don't want the competition in the local
6 exchange." We point to AT&T and say, "They don't want
7 this done because they don't want competition in the
8 long distance market," and until we get people up and
9 operating that meet the requirements of the federal
10 act, we can't get into long distance.

11 So, you know, I don't want it to be said --
12 I think both parties have negotiated in good faith,
13 but there is incentives, I think, that each side could
14 point to the other and say, "We can't get this done
15 because of them."

16 COMMISSIONER MURRAY: Do you believe that
17 you could not reach an agreement if there were no
18 arbitration?

19 MR. LANE: Well, I would hope that we could,
20 and, obviously, we've come quite a ways, but I will
21 say that the issues that are there, you know,
22 obviously we've tried to negotiate them and haven't
23 been able to at this point. But perhaps the
24 mediation-type process that we've talked about with
25 the arbitration at the end of the road would help

1 resolve more and have less to present to the
2 Commission.

3 COMMISSIONER MURRAY: Does either Staff or
4 OPC wish to comment?

5 MR. DANDINO: No. I'll stay out of that.

6 COMMISSIONER DRAINER: I would like to
7 answer something for Commissioner Murray. The
8 interconnection contract that they have is for three
9 years plus two one-year extensions, and it would go
10 into effect pursuant to an operation of law date that
11 was set out by the Commission, so as soon as we did
12 that.

13 And then I did want to ask the AT&T witness,
14 I was -- I wanted a clarification on Oklahoma. You
15 stated they had an arbitration but they also had what
16 we were talking about as kind of a bring-the-parties-
17 in-with-an-advisory-staff type situation and hammer
18 out -- is that -- did they do that, and then did they
19 get resolution at that point? That's all it took?

20 MS. KRABILL: They had all of that as part
21 of round one.

22 COMMISSIONER DRAINER: Okay. So that was
23 all part of that. That's the way they proceeded the
24 first timeline through.

25 And then when they finished with their

1 interconnection agreement, did it have in it not just
2 resale but the unbundled network element and the
3 additional issues that we have before us now, a large
4 majority of those same issues?

5 MS. Krabill: I believe it -- the large
6 majority would be the same, as is the case in Texas as
7 well.

8 COMMISSIONER DRAINER: And in both Texas and
9 Oklahoma those issues had to be resolved by the
10 Commission? They were not resolved by the parties?

11 MS. KRABILL: Correct.

12 COMMISSIONER DRAINER: Okay. Thank you.

13 JUDGE RANGLES: Commissioner Crumpton?

14 COMMISSIONER CRUMPTON: Yes. You mentioned
15 that in Oklahoma you -- the two companies met with
16 their teams to work on these issues, and I think this
17 also happened in Texas. And my question is, when in
18 Oklahoma and Texas did you first meet to work on these
19 issues?

20 MS. KRABILL: For round two? For
21 Oklahoma -- again, we met with Oklahoma to present all
22 of the issues to the Oklahoma Commission, and they
23 opted at that timeline to resolve all of the issues as
24 an output of round one.

25 COMMISSIONER CRUMPTON: So when was that?

1 When did you present them with all of the issues?

2 MS. KRABILL: I'd have to check my records,
3 but I believe it was probably in May.

4 MR. WITCHER: Yeah, it would have been late
5 spring or early summer.

6 COMMISSIONER CRUMPTON: Of this year?

7 MR. WITCHER: Yes.

8 MS. KRABILL: Right. For Texas we began our
9 round two discussions, I believe it was the first week
10 of June. And then we had full-blown round two in
11 August that commenced in September.

12 COMMISSIONER CRUMPTON: Do you understand,
13 my question is when did your teams start working on
14 these issues?

15 MS. KRABILL: Our teams began working on
16 Oklahoma-specific issues beginning the end of January
17 and that -- those sessions went all of the way through
18 February and March.

19 COMMISSIONER CRUMPTON: So January --
20 sometime in January.

21 MS. KRABILL: The end of January, yes.

22 COMMISSIONER CRUMPTON: And then Texas, when
23 did your teams start working on these issues?

24 MS. KRABILL: June, around June.

25 COMMISSIONER CRUMPTON: So by the timeline

1 you got to Texas, you knew, based on your experience
2 in Oklahoma, that you had these issues?

3 MS. KRABILL: Right.

4 COMMISSIONER CRUMPTON: Okay. And where are
5 you in Texas now with these issues?

6 MS. KRABILL: Texas has concluded its second
7 round of arbitration for all but the pricing issues,
8 so we know the outcome of these -- many of these
9 issues in Texas.

10 COMMISSIONER CRUMPTON: Did you present to
11 the Texas Commission a set of issues similar to the
12 41?

13 MS. Krabill: To what? The forty-- in round
14 two we submitted to Texas something very similar to
15 what you'll see on Friday. It is a list of disputed
16 issues.

17 COMMISSIONER CRUMPTON: But we got the 41 in
18 place of this round, this 200?

19 MS. KRABILL: You got the 41 in round one?

20 COMMISSIONER CRUMPTON: Right.

21 MS. KRABILL: Right.

22 COMMISSIONER CRUMPTON: The additional --
23 Okay. Maybe I'm confused.

24 But, anyway, you are saying that you had
25 what amounts to the 200 issues presented to the

1 Commission in Texas in June?

2 MS. KRABILL: That's correct.

3 COMMISSIONER CRUMPTON: And what was the

4 difference in the procedures in Texas and the

5 procedures in Missouri?

6 MS. KRABILL: Well, once we began our second

7 round of arbitration in Texas, we had -- we filed

8 testimony, and we filed written testimony. I don't

9 think we had rebuttal.

10 MR. WITCHER: No, we -- I can maybe answer

11 that. We had one round of testimony. There was some

12 discovery that took place, depositions and various

13 other types of things. The Commission then

14 scheduled -- it got kind of complicated because we had

15 to break some of the issues out in costing and

16 pricing.

17 But, basically, they scheduled four days of

18 hearing to resolve the non-costing and pricing issues

19 in August, and that involved AT&T, MCI, ACSI, MFS, and

20 TCG, I believe, so we all had various issues that were

21 kind of thrown into that.

22 The AT&T issues were resolved and

23 basically -- or heard in basically a three-day period.

24 The process was basically you had a block of issues

25 that were identified by the matrix. You know, we've

1 got collocation issues, for instance, and various
2 issues.

3 They set us up a block of timeline to deal
4 with those. You had a very limited cross-examination.
5 You had like three hours for the total period. You
6 had, like, an hour and a half total for cross for --
7 you know, you had to pick and choose what you wanted
8 to, and that was divvied up parties so that we had --
9 the petitioners had, like, half of that hour and a
10 half and Southwestern Bell would have the other half,
11 and you had to deal with all of the issues within --
12 that you wanted to within that short period of
13 timeline.

14 And then the bulk of the hearing, frankly,
15 that was set aside for the Commission advisory staff
16 to come in and ask questions on the issues that they
17 had clarification needs for. And so we did that.

18 We then did a brief that was about two weeks
19 after that. Then the Commission made a decision by
20 the end of September.

21 COMMISSIONER CRUMPTON: And then your
22 experience in Missouri, why -- I guess I'm trying to
23 figure out why we're so late, why we're so far behind
24 Texas and Oklahoma on these issues.

25 MR. WITCHER: It's -- from my perspective

1 it's a resource issue. It's a resource-intensive
2 issue for us. We -- we did, in the first round, go
3 through Southwestern Bell and GTE arbitrations in at
4 least the three -- at least three of the states and in
5 some cases five states and attempted then to work this
6 so that we -- we did try to work Texas first this next
7 timeline, and then follow up.

8 COMMISSIONER CRUMPTON: Okay. So were these
9 teams roving from state to state?

10 MS. KRABILL: We were sort of in one place,
11 but we would formally commence discussions on one
12 state. We would finish. We signed a new
13 non-disclosure and we would move onto the second
14 state.

15 But we did file a contract April 25th in
16 Missouri with the disputed issues matrix, and I think
17 that -- you know, we were hopeful to hear something,
18 you know, from Missouri on that.

19 COMMISSIONER CRUMPTON: Now, had
20 Southwestern Bell agreed that these were the issues?

21 MS. KRABILL: Southwestern Bell and AT&T
22 usually had different opinions as to what were correct
23 issues to bring before the Commission. We filed an
24 agreement. It was not a signed agreement. Maybe
25 is --

1 COMMISSIONER CRUMPTON: That's why I'm
2 asking you. It was not a signed agreement.

3 MS. KRABILL: Right. It was an agreement
4 that showed the end of negotiations. Here is where we
5 are. We had some disputed language in there. We had
6 a whole bunch that wasn't in there.

7 COMMISSIONER CRUMPTON: But that's invalid,
8 is it not?

9 MS. KRABILL: It's not a signed contract.

10 COMMISSIONER CRUMPTON: So that -- you're
11 just confusing me with that.

12 I think the real issue is the fact that
13 you-all have a manpower constraint and you're taking
14 the states up one right after the other. Is that a
15 correct characterization?

16 MR. WITCHER: Certainly. That is certainly
17 one. And, again, we did believe and attempt to try to
18 get resolution, you know, in April and June, I
19 believe, in Missouri.

20 COMMISSIONER CRUMPTON: With an unsigned
21 agreement.

22 MR. WITCHER: With an unsigned agreement.

23 COMMISSIONER CRUMPTON: Okay. I'm not
24 dealing with that.

25 MR. WITCHER: Okay.

1 COMMISSIONER CRUMPTON: You are confusing
2 me.

3 I'm trying to figure out -- I'm trying to
4 get a handle on what transpired differently in
5 Missouri than transpired in Texas and Oklahoma. You
6 used an unsigned agreement in Missouri. Did you use
7 an unsigned agreement in Texas and Oklahoma?

8 MR. WITCHER: No, sir. My understanding and
9 recollection is that we filed -- we filed for
10 arbitration in June in Texas and did not use --

11 COMMISSIONER CRUMPTON: -- an unsigned --

12 MR. WITCHER: -- an unsigned agreement.

13 COMMISSIONER CRUMPTON: Okay. So now we're
14 dealing with the same thing because now you're coming
15 to us with a request that both of you-all are agreeing
16 these are the issues. Right?

17 MR. WITCHER: That's our hope, yes.

18 COMMISSIONER CRUMPTON: Okay. I'm just
19 trying to get a picture, see, because some people may
20 want to attack us and say that we are holding up this
21 process, when, in fact, you-all are in charge of the
22 process as much as we are. We don't have the
23 opportunity to take up a set of issues unless you
24 present them to us in a correct fashion. And you have
25 constraints on your personnel, am I right, or am I

1 misunderstanding?

2 MR. WITCHER: That's accurate.

3 COMMISSIONER CRUMPTON: Sir?

4 MR. WITCHER: Yes, sir, that's accurate.

5 COMMISSIONER CRUMPTON: That's accurate?

6 MR. WITCHER: That we certainly do. Both

7 sides do certainly have manpower constraints.

8 COMMISSIONER CRUMPTON: I just want to feel

9 better as I leave here knowing that you are not, you

10 know, saying that we are holding up the development of

11 competition in the state of Missouri, because you are

12 making some decisions, too. Am I right?

13 MR. WITCHER: Yes, sir. And that's why we

14 had presented the -- we did file in September, I

15 believe it was, you know, the second request or the

16 second arbitration with the hope that we would get

17 that resolved in January.

18 COMMISSIONER CRUMPTON: In proper form this

19 timeline?

20 MR. WITCHER: It --

21 COMMISSIONER CRUMPTON: Am I right?

22 MR. WITCHER: We have not heard any

23 objection that it was not in proper form this

24 timeline.

25 COMMISSIONER CRUMPTON: Did Bell agree to

1 come with you?

2 MR. WITCHER: Bell did not agree. Bell has
3 responded, of course.

4 COMMISSIONER CRUMPTON: But they agreed that
5 this --

6 MR. WITCHER: We filed the application
7 ourselves.

8 COMMISSIONER CRUMPTON: They are agreeing
9 there are 200 issues?

10 (No response.)

11 COMMISSIONER CRUMPTON: Well, I'm not sure
12 if I feel better or not, but I will keep looking at
13 this record. I think Mr. Dandino understands why I am
14 feeling a little uneasy this morning. But I will
15 continue to look at this record.

16 Right now I'm feeling like Missouri was the
17 last state that you-all came to prepared to bring your
18 teams together to work on these issues.

19 MR. WITCHER: Actually, I'll let
20 Ms. Krabill, I think, speak to that a little bit more,
21 but Missouri at least was intended to be the state
22 right behind Texas. I think for circumstances --

23 COMMISSIONER CRUMPTON: So Texas was in
24 June, though?

25 MR. WITCHER: Texas was filed -- we filed in

1 June. Again, we have not had -- not had to initiate
2 second arbitrations anywhere other than Texas and
3 now -- and now Missouri.

4 In Kansas we're still working through the
5 issues. There is no jurisdictional deadline in Kansas
6 because they are working through it.

7 Oklahoma, they did a different procedure and
8 resolved these additional issues in the context --

9 COMMISSIONER CRUMPTON: With your
10 cooperation, of course?

11 MR. WITCHER: Yes, sir. Yes, sir.

12 COMMISSIONER CRUMPTON: Right.

13 MR. WITCHER: And then Arkansas, I'm not
14 sure that we're -- we're close in Arkansas at this
15 point on the second round of issues.

16 COMMISSIONER CRUMPTON: Well, with that
17 exchange I am feeling better, and thank you for the
18 opportunity to ask the questions.

19 JUDGE RANGLES: Commission Murray?

20 COMMISSIONER MURRAY: I apologize, but I do
21 have one last question, and that is -- and I'll start
22 again with AT&T.

23 Do you anticipate this being the final
24 resolution of all of the issues for interconnection
25 and going ahead with implementing competition between

1 AT&T and Southwestern Bell in its exchanges if all of
2 the issues that are presented to this Commission at
3 this timeline are resolved?

4 MR. DeFORD: That would be our expectation.

5 COMMISSIONER MURRAY: And how much do you
6 rely on that expectation? Is that a mild expectation
7 or a strong expectation or --

8 MS. KRABILL: These are the big issues that
9 are -- that are between our two companies, so this is
10 the major raft of stuff that we have between us to
11 resolve. I think that there -- you know, we talked
12 earlier about the fact that there is new technology
13 coming up.

14 There is some other issues that may be
15 initiated, and we have two ways of dealing with that
16 in the signed agreement. One of them is a special
17 request process and one of them is dispute resolution.
18 So having had this bulk of items resolved by the
19 Commission, I think that we can use those two other
20 items to get to the onesies, twosies that are going to
21 come up after that.

22 But this -- what we're looking at here are
23 some huge issues that we uncovered during
24 implementation that were no evident to us during the
25 first round.

1 COMMISSIONER MURRAY: And am I correct that
2 you are presenting issues here that you consider
3 essential to implementing an interconnection agreement
4 with the Southwestern Bell?

5 MS. KRABILL: Yes.

6 COMMISSIONER MURRAY: And you think that
7 these are the final issues that are essential to going
8 ahead with implementation of an agreement?

9 MS. KRABILL: I do. These are the big
10 issues that -- that cause conflict between our
11 companies, and I think that having had them resolved
12 we will be able to get into the market in a meaningful
13 fashion.

14 COMMISSIONER MURRAY: And you don't expect
15 to come back here for a third round of arbitration
16 before you can implement an interconnection agreement?

17 MS. KRABILL: I think that's the kind of job
18 security none of us want.

19 COMMISSIONER CRUMPTON: The answer is what?

20 MS. KRABILL: The answer would be no. You
21 know, at this point timeline I don't see coming back.
22 We've talked about how it would -- you now, I don't
23 see us on and on, forever and ever coming back to you
24 guys.

25 COMMISSIONER MURRAY: I would hope not.

1 Mr. Lane?

2 MR. LANE: I would hope not, too. I hope

3 this is it.

4 COMMISSIONER MURRAY: Do you see this as the

5 remaining issues before implementation of

6 interconnection can happen?

7 MR. LANE: Yes, as far as I know. Yes.

8 COMMISSIONER MURRAY: Staff?

9 MS. BAKER: As far as I know. I mean, I'm

10 not in any position to have looked at their

11 agreements, what they have agreed to in the past, what

12 they need to -- I'm not a technical person. The

13 companies say that they can interconnection with these

14 issues decided. I think we leave them to them.

15 COMMISSIONER MURRAY: Did they not say that

16 when they came for the first round of arbitration?

17 MS. BAKER: I think that they indicated --

18 from Issue 42 I was aware that there would be more

19 issues given that they said "and any other thing

20 necessary." I took that issue to mean that they

21 believed that there might be some additional issues,

22 but they just didn't know what they were.

23 COMMISSIONER MURRAY: Did they say that this

24 timeline?

25 MS. BAKER: I haven't looked at the issues

1 list. I believe it was filed Friday; is that correct?
2 I haven't looked at it. Is it -- look at
3 the last one.
4 COMMISSIONER DRAINER: Issue 202?
5 MR. DeFORD: There is no catch-all in there.
6 They are all specific.
7 MS. BAKER: Thank you.
8 COMMISSION MURRAY: OPC?
9 MR. DANDINO: I certainly hope this is the
10 last one.
11 COMMISSIONER DRAINER: I think that's a very
12 good point by Commissioner Murray, and I would like to
13 state it another way because I think it is a very good
14 point. If this Commission were to take on -- does
15 decide we have jurisdiction and do this second round,
16 what I would ask and expect is that if your
17 expectations is there is no third round, that there --
18 I'm not saying anyone hid the ball at all this last
19 timeline, but as you look back at these issues, that
20 you pull in not just your arbitration team of 14
21 people and ten people, but I would hold Mr. Bailey
22 responsible to make sure that his company on the
23 technical side looks at all of these issues and goes
24 to their engineers and goes to their economists and
25 goes to any of their technical experts that they have

1 with each of these issues and make sure that when
2 those are resolved, it gets the resolution that AT&T
3 think it's going to get so that we don't go through
4 this process, this very painful long process, "I think
5 we've really resolved something that makes it happen,
6 and then have AT&T come back and go, "Oops. They
7 forgot the widget that makes it work." And then what
8 happens is Southwestern Bell is held responsible for
9 people getting -- or saying "Oh, they probably knew
10 about that widget, but they just didn't let us know
11 about it."

12 I don't believe any of that has happened,
13 but what I would implore all of you to do, should we
14 take this on, is to look under each issue thoroughly,
15 make sure that what you are agreeing on once it's
16 resolved by language truly gets you the end result
17 because we're not going to keep fine-tuning these
18 documents. We can't do that.

19 And I do understand that three years from
20 now, as Mr. Lane says, if you come back after three
21 years there has been technological changes and before
22 you do an exchange you need a modification. I
23 understand that, but I don't want to go into third and
24 fourth rounds because we just forgot to talk about it
25 and we didn't have the right people in the room.

1 You've got to get the right people in the room. Is
2 that kind of understood?
3 I won't swear you in.
4 MR. BAILEY: It's a two-way street.
5 COMMISSIONER DRAINER: I said both. It is a
6 two-way street. I understand. But they have to be
7 very -- AT&T has to be very clear on what it's asking,
8 but you have to help each other out. You can't be
9 talking -- you have to talk what's under the issue and
10 what is it that they are asking for and how you make
11 it work.
12 MR. BAILEY: And I think that has occurred,
13 but I think as AT&T said --
14 COMMISSIONER DRAINER: You are not sworn in.
15 MR. BAILEY: I'll tell the truth.
16 JUDGE ROBERTS: The court reporter needs to
17 know who you are.
18 MR. BAILEY: William C. Bailey, Southwestern
19 Bell.
20 COMMISSIONER DRAINER: Okay. That's all I'm
21 asking. I want to clarify what Commissioner Murray is
22 saying. She is making a very good point, should we
23 have a second round, but what has to go with that is
24 really a full disclosure of technical issues behind
25 each question and unresolved issues so that we don't

1 get into third and fourth rounds.

2 MR. BAILEY: I don't think -- it is
3 certainly not our intent to have any more rounds. I
4 don't think it is AT&T's intent. I will -- one point,
5 though, that I think everybody needs to recognize is
6 that --

7 JUDGE RANGLES: I think if you are going to
8 be stating more than committing your company one way
9 or another we need to have you sworn in as a witness.

10 I don't know whether we've already answered
11 the Commissioner's question. At this point you are
12 taking questions from the Commissioners, so --

13 MR. BAILEY: I will be happy to be sworn in.

14 (Witness sworn.)

15 COMMISSIONER DRAINER: You had one point you
16 needed to make.

17 MR. BAILEY: At the last hearing several
18 attorneys, and I think both AT&T and Southwestern Bell
19 and MCI, felt that the major issue before the
20 Commission was the issue of prices that we charge one
21 another --

22 COMMISSIONER DRAINER: Right.

23 MR. BAILEY: -- and stated that, and a good
24 deal of that hearing resolved around the prices, and
25 those prices were ultimately resolved. I don't think

1 anyone realized the level of problems that they were
2 going to experience after they got past the pricing
3 issue. Everybody was totally focused on that pricing
4 issue. Once that was being resolved, they then
5 recognized the problems that came out of that. And,
6 unfortunately, that's always a possibility, that as
7 you go another layer of the onion deeper into the
8 thing, you may find that there was something you
9 haven't anticipated.

10 COMMISSIONER DRAINER: I understand that,
11 Mr. Bailey, that's why I was stating that I expect you
12 to think very deeply because I don't disagree with
13 you, but the first round was based a lot on the
14 economists and the financial experts. You have to
15 make sure that you have all of the different types of
16 experts available to look at each question, that there
17 are accountants there, there are economists there, or
18 engineers, that the companies have -- both companies
19 have the expertise and not just have it based on their
20 arbitration teams' shoulders to say, "Oh, well, that
21 sounds good," to find out that something can't be done
22 because we don't want you to come back because
23 everybody assumed that it would work and it didn't
24 work.

25 I'm sure the young man that cut the drop

1 cord to my telephone on Friday night assumed that he
2 could just put some duct tape around it and splice the
3 wires, twist it, put the duck tape around it, bury the
4 cable and my phone was going to work.

5 Commissioner Crumpton thought I was out
6 having a good timeline all weekend.

7 COMMISSIONER CRUMPTON: I sure did.

8 COMMISSIONER DRAINER: The phone did not
9 work. So this is not a place for assumptions. We
10 just need to be sure that the companies are both
11 committed to getting paperback to the technical expert
12 to make sure. And, of course, if there are areas that
13 are legal, that the legal experts are hammering it
14 out, so they don't come back and say, "Well, it was
15 good language, but it's unlawful." We need to tie it
16 down.

17 My final question, then, is are we going to
18 expect to see this with MCI? I won't ask Mr. Lumley
19 that. He is sitting in the room to answer that.

20 MR. LANE: He was hoping he could get sworn
21 in.

22 COMMISSIONER DRAINER: But, I mean, whatever
23 we are doing here, we need to move forward with you
24 with other companies either asking for mediation early
25 if you're not able to resolve these issues with the

1 company if there is a No. 42, to ask that we have
2 Staff work with mediation to keep these things moving
3 or, you know, we need to know what's going on because
4 that's another big one out there.

5 We don't want to be put on these 90-day
6 clocks. If mediation and having Staff work to help
7 hammer through and narrow these issues can be done,
8 then let's get doing it.

9 MR. LANE: I don't think we have with MCI a
10 request for interconnection that would cause a second
11 arbitration to be coming within the next X days. At
12 least I'm not aware of it. Maybe Mr. Lumley knows
13 something that I'm not aware of.

14 COMMISSIONER DRAINER: Under 252 can they
15 ask to have mediation now? Under that section can
16 they ask to have mediation on Issue 42 or any of the
17 other issues they thought of?

18 Could they be coming to this Commission to
19 ask that we mediate those additional issues?

20 MR. LANE: This has to be interconnection
21 negotiations beginning, and then either party can ask
22 for mediation, right.

23 What I'm saying is I'm not sure that they've
24 started the process to lead to a second arbitration.

25 COMMISSIONER DRAINER: All right. I guess I

1 would just hope that if we do that we pull in the
2 appropriate Staff as quickly as possible to keep the
3 process moving because we do want competition in
4 Missouri in as expedited a fashion as possible.

5 I have no other questions.

6 JUDGE RANGLES: Chair Lumpe, do you have any
7 other questions?

8 CHAIR LUMPE: No.

9 JUDGE RANGLES: Commissioner Crumpton?

10 COMMISSIONER CRUMPTON: No.

11 JUDGE RANGLES; Commissioner Murray?

12 COMMISSIONER MURRAY: No.

13 JUDGE RANGLES: I have just a couple of
14 questions.

15 Off the record.

16 (Discussion off the record.)

17 JUDGE RANGLES: Back on the record.

18 My first question is you've indicated that
19 the April 3 letter is ambiguous in your collective
20 opinions, as I've understood it, to me to suggest that
21 you have looked at evidence and concluded that the
22 request for interconnection actually started at a
23 later timeline. And I would like for each party to
24 state for me, or particularly AT&T and Southwestern
25 Bell, what is the latest date on which the evidence

1 supports that the request for interconnection began on
2 that date?

3 MR. DeFORD: That is actually the thing that
4 we've agreed with Southwestern Bell that we will go
5 back and look and see what documents have passed
6 between the companies. We were pretty comfortable
7 were the April 3rd because we did know that that T'd
8 up a meeting for April the 7th. So we're perfectly
9 happy to go back and look and see what documentation
10 between the companies exists.

11 JUDGE RANGLES: Do you have anything to add,
12 Mr. Lane?

13 MR. LANE: No, nothing to add to that.

14 JUDGE RANGLES: Would you mind submitting
15 that as a late-filed exhibit or a pleading by Monday?

16 MR. WITCHER: What is that? I'm sorry?
17 What is that?

18 JUDGE RANGLES: The date on which -- the
19 last date which you think the evidence supports the
20 request for interconnection was made.

21 MR. DeFORD: Sure.

22 JUDGE RANGLES: And that will --

23 COMMISSIONER CRUMPTON: Do they have to then
24 do an amendment? Would they have to amend their
25 request for arbitration at that point?

1 JUDGE RANGLES: I don't believe they would
2 have to.

3 COMMISSIONER CRUMPTON: But if they did,
4 would that shorten the timeline if they had evidence
5 that this was, in fact, what they wanted to do?

6 JUDGE RANGLES: If it was an earlier date
7 than April 3rd. If it would be a later date, then I
8 think it might lengthen the timeline.

9 COMMISSIONER CRUMPTON: All right.

10 JUDGE RANGLES: My second question is if
11 this Commission determines that it does not have
12 jurisdiction and then one or both of the parties
13 proceed to the federal court or to the FCC and
14 discover that no one else has jurisdiction to handle
15 this, how likely is it that the parties will agree to
16 submit their dispute to the Commission for arbitration
17 under the Missouri Uniform Arbitration Act?

18 AT&T, why don't you go first?

19 MR. DeFORD: I don't believe that we think
20 that the Missouri Act is workable, at least in these
21 circumstances, so very unlikely I would say.

22 JUDGE RANGLES: And your opinion, Mr. Lane?

23 MR. LANE: The same.

24 JUDGE RANGLES: I don't have any further
25 questions at this point.

1 COMMISSIONER DRAINER: I would just state
2 that if you can get anything in on an earlier date
3 earlier than Monday, do so.
4 MR. DeFORD: We will.
5 MR. LANE: We will.
6 JUDGE RANGLES: This concludes the
7 presentations and questions.
8 Are the parties interested in submitting
9 briefs?
10 MR. DeFORD: No.
11 JUDGE RANGLES: Okay. Off the record.
12 WHEREUPON, the hearing of this matter was
13 concluded.
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