

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4

5 TRANSCRIPT OF PROCEEDINGS

6 Hearing

7 July 30, 1997
8 Jefferson City, Missouri
9 Volume I
10

11 In the Matter of the Joint Application of)
12 American Communications Services, Inc.,)
13 and Southwestern Bell Telephone Company)
14 for the Approval of Interconnection)
15 Agreement Under the Telecommunications) Case No.
16 Act of 1996.) TO-97-487

17 ELAINE E. BENSavage, Presiding
18 ADMINISTRATIVE LAW JUDGE.

19 SHEILA LUMPE,
20 M. DIANNE DRAINER,
21 HAROLD CRUMPTON,
22 CONNIE MURRAY,
23 COMMISSIONERS.

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1 ALJ BENSAVAGE: On the record. We are here
2 today for a hearing in Case No. TO-97-487 in the
3 matter of the Joint Application of American
4 Communications Services, Inc., and Southwestern Bell
5 Telephone Company for Approval of an Interconnection
6 Agreement Under the Telecommunications Act of 1996.

7 At this time we'll take oral entries of
8 appearance beginning with Staff.

9 MS. MCGOWAN: Cherlyn McGowan representing
10 the Staff for Missouri Public Service Commission,
11 P.O. Box 360, Jefferson City, Missouri 65102.

12 MR. CONROY: Tony Conroy representing
13 Southwestern Bell Telephone Company, 100 North Tucker,
14 Suite 630, St. Louis, Missouri, 63101.

15 MR. STEWART: Charles Brent Stewart of the
16 law firm of French and Stewart, 1001 Cherry Street,
17 Suite 302, Columbia, Missouri, 65201, appearing on
18 behalf of joint applicant, American Communications
19 Services, Inc.

20 ALJ BENSAVAGE: Let the record reflect that
21 there is no one here from the Office of the Public
22 Counsel. Off the record.

23 (Discussion off the record.)

24 ALJ BENSAVAGE: For the record, I would like
25 to indicate that the Commission is aware that language

1 similar to the language that we're going to discuss
2 today has been approved in prior interconnection and
3 resale agreements including the very first one
4 involving Southwestern Bell and Dial U.S.

5 The purpose of this hearing is for
6 Commissioner questions regarding the language in
7 Section 6.0 of the resale appendix to the
8 interconnection agreement. Vice Chair Drainer.

9 COMMISSIONER DRAINER: Good morning. I
10 guess I need to have a clarification of who the
11 parties are representing so I know who I'm asking my
12 questions of. Would you identify yourself, please?

13 MR. CONROY: I'm Tony Conroy. This is
14 actually Leo Bub's case from Southwestern Bell. Leo's
15 out of town today. I'm another lawyer at Southwestern
16 Bell new to the regulatory arena, but I'm representing
17 Southwestern Bell in this case today.

18 COMMISSIONER DRAINER: Mr. Conroy?

19 MR. CONROY: Mr. Conroy, yes.

20 COMMISSIONER DRAINER: Thank you.

21 MR. STEWART: My name is Charles Brent
22 Stewart. I'm an attorney in Columbia. I'm the local
23 counsel for American Communication Services, Inc. I
24 unfortunately was not personally involved in the
25 discussions involving the negotiating interconnection

1 agreement, but my client did want to have someone
2 here. I'm not sure I'll be very helpful, but I'll
3 try.

4 COMMISSIONER DRAINER: I appreciate that.
5 And I believe I know the other parties.

6 The question is with respect to the
7 procedures for non-payment and disconnect. And the
8 concern is, we want clarification if you could go to
9 that section on the appendix on resale and go to
10 page 11 of 11. It appears that the way this is
11 written -- and I know in the original case with
12 Southwestern Bell and Dial U.S. I had some questions
13 on this and maybe the clarification is there and I
14 just need to revisit it.

15 If the LSP does not make payment, their
16 service then to the end-users will be provided by
17 Southwestern Bell and Southwestern Bell will notify
18 the customers that they have taken back the end-users
19 according to 6.7. That -- and that the customers are
20 going to have 30 days to select another local service
21 provider. Now, in 6.9 it states that if the end-user
22 fails to select another local provider, they would
23 terminate the end-user's service.

24 I would like to know, does that mean that
25 should the LSP fail to make payment to Southwestern

1 Bell and the short run takes back the end-user, that
2 after 30 days they would just turn off the customer's
3 service and they would have the right to turn off any
4 customer's service and strand that end-user?

5 MR. CONROY: I'll assume that's directed to
6 me.

7 COMMISSIONER DRAINER: Yes. Mr. Conroy,
8 yes. We'll start with you.

9 MR. CONROY: Thank you. I think that's, in
10 effect, an accurate statement. The 30-day period --
11 and by the way, I should also mention that I did bring
12 a client representative with me who's an expert on the
13 resale provisions, and if I need to turn around and
14 talk, that's who I'm talking to. It's Mr. Tom Hughes.
15 And he may be able to answer questions that I can't.

16 But I think the answer to that question is
17 the 30-day period in which these end-users revert back
18 to Southwestern Bell is a sort of safety net where
19 they aren't getting service provided by the LSP any
20 more, because we're no longer supplying service for
21 them to resell. And it's only in the resale
22 environment.

23 But in the negotiations and from our policy
24 perspective, we didn't think it would be appropriate
25 for those customers to be stranded by the LSP. And so

1 from a policy perspective we made the decision to
2 agree in these -- in all of the interconnection
3 agreements in all of our states to provide the service
4 directly to the end-user for a very short period of
5 time of 30 days to allow the end-user to make a
6 selection as to who they want their local phone
7 service to be provided by.

8 We didn't think it would be appropriate to
9 simply default the customer back to us and then just
10 keep them, because that has the connotation of a
11 negative option, the customer coming directly back to
12 us. And frankly, I'm not sure that the other LSPs
13 would appreciate that arrangement. On the other hand,
14 we thought from a policy perspective it wouldn't be
15 appropriate to just cut off -- for the end-user
16 customer to lose service because the LSP has lost the
17 ability to provide service.

18 Long answer to your question, which I think
19 is -- I think you accurately summarized what would
20 happen in the event --

21 COMMISSIONER DRAINER: Well, as we're moving
22 to a competitive environment and until we're there, if
23 Southwestern Bell is the provider of last resort, is
24 the provider of service to these end-users, does
25 Southwestern Bell believe then it has the right to

1 just strand customers?

2 MR. CONROY: Well --

3 COMMISSIONER DRAINER: If this is the only
4 LSP in the exchange that Southwestern Bell services
5 and because a customer maybe made the poor choice of
6 going with a company that then doesn't pay its bills,
7 then is it possible for that customer -- if it was a
8 customer of Bell's, they went to another -- they went
9 to an LSP, the LSP goes under, then this end-user
10 is -- after 30 days they just don't notify you they
11 want to stay with you, you just cut them off the
12 network, they're now stranded. And it states there's
13 nothing herein shall be interpreted to obligate
14 Southwestern Bell to continue to provide service to
15 any such end-users.

16 And I guess I'm wondering does that mean
17 that just because I now have labeled myself someone
18 that went with an LSP, that I am now one of those such
19 end-users Southwestern Bell can say I don't care how
20 good your credit is, I don't care you were my customer
21 before and paid your bills on time, I have no
22 obligation to ever serve you again?

23 MR. CONROY: That is not our position.

24 COMMISSIONER DRAINER: But that's what this
25 says.

1 MR. CONROY: Well, it may be poorly crafted
2 words, but what our concern is, is that if we're the
3 only other provider, we're more than willing and
4 obligated to provide service to those end-users, but
5 we want to protect our rights for those -- for the
6 same things we have for our new customer leaving all
7 the LSP arrangements out of it.

8 That end-user would come to us and apply for
9 service and we'd evaluate their credit and evaluate
10 their application, and there's no problem from that
11 perspective. The problem is we're getting -- these
12 customers never applied for service from us. They
13 didn't ask us to be their telephone company. This is
14 only a short -- the reason this is here is so that
15 they aren't stranded when the LSP goes under. It's
16 not intended to strand them after 30 days.

17 COMMISSIONER DRAINER: Would your regular
18 tariff and the rules of the Commission in disconnect
19 apply that before you cut these customers off, you
20 would have to give them a 24-hour notice that you were
21 disconnecting them?

22 MR. CONROY: It has been our position, I
23 believe, that the regular tariff provisions and rules
24 would not specifically apply to these customers
25 because they aren't -- they didn't apply for service

1 with us. And so they are by default, I guess, or
2 defecto customers since we would be providing service
3 for the safety net period of the 30 days, but they're
4 not -- we didn't have the protection that the tariffs
5 and the Commission's rules give us when they applied
6 for service and so it doesn't seem like they ought to
7 apply when they don't make an affirmative selection as
8 to who they want their telephone company to be.

9 COMMISSIONER DRAINER: Mr. Stewart has a
10 comment.

11 MR. STEWART: I'm going to go out on a limb
12 here.

13 COMMISSIONER DRAINER: Sure.

14 MR. STEWART: But it seems to me inherent in
15 your question is the key to the problem we're having.
16 There's one scenario where -- and I think what you
17 said was where the defaulting LSP is the only other
18 alternative for the customer?

19 COMMISSIONER DRAINER: Right.

20 MR. STEWART: That's one set of facts, where
21 it would be Southwestern Bell and LSP 1. LSP 1
22 defaults, then what happens? That's one set of
23 circumstances. I think the presumption behind most of
24 these interconnection agreements has been there will
25 be more than one LSP available, and then in that

1 circumstance does it make sense to have Southwestern
2 Bell --

3 COMMISSIONER DRAINER: And they'd have an
4 unfair advantage.

5 MR. STEWART: Exactly. And I think that's
6 where maybe a lot of this language has come from with
7 the initial assumption that there would be more than
8 one LSP. There would be -- the customer would have a
9 choice. And that may be where the rub is here.

10 MR. CONROY: Yeah.

11 COMMISSIONER DRAINER: Well, would it -- to
12 continue with that line then, if we go back to --
13 well, whether it's an LSP 1 or an LSP et al, that what
14 Southwestern Bell would do is have to follow its
15 regular tariffs and if in the 30 days they're going to
16 be disconnecting them for a day and the customer had
17 to call up and say, I really do want to be your
18 end-user again, Southwestern Bell would comply with --
19 at that point what would rule are our rules and your
20 tariffs that are filed with us, and you would at that
21 moment in time treat the end-user as you would any new
22 customer that requested service?

23 MR. CONROY: I believe that to be the case,
24 yes.

25 COMMISSIONER DRAINER: You would not because

1 of this be able to brand an end-user as one of those
2 such end-users -- I mean, I'm not going to be branded
3 forever as someone who went out and ventured forward
4 to encourage competition, and you said oh, no, we have
5 that in our interconnection agreement that was
6 approved by the PSC that we have no obligation to
7 continue to provide you service ever again. Gotcha.

8 MR. CONROY: It's certainly not -- I'll
9 speak from our perspective. It's certainly not a
10 gotcha-type situation. It's certainly not our intent
11 to brand these customers. The problem is they're not
12 like -- at this point in this very unfortunate
13 circumstance --

14 COMMISSIONER DRAINER: I guess my point is,
15 at the day they're cut off whether there's one LSP out
16 there or ten and they make the -- they initiate a call
17 to Southwestern Bell as any new customer would to have
18 service, Southwestern Bell understands that that
19 customer then is treated as any current new customer
20 would be treated because at that point in a
21 competitive environment, the customer has truly made a
22 choice to call you and ask for service back and that's
23 assuming, as Mr. Stewart said, that there are numerous
24 LSPs out there?

25 MR. CONROY: Yes. I think the answer to

1 that question is yes. We will treat them as any new
2 customer who's asking us to serve them.

3 COMMISSIONER DRAINER: I think I'm going to
4 let your expert witness say yes too, because he keeps
5 shaking his head so we might as well get it on the
6 record.

7 MR. CONROY: Is he shaking his head yes or
8 no?

9 COMMISSIONER DRAINER: He was agreeing with
10 you, so you're okay. Would you please stand up and
11 state your name for the record?

12 MR. HUGHES: My name is Tom Hughes.

13 COMMISSIONER DRAINER: And would you please
14 confirm, since you worked on this resale agreement,
15 your understanding and what is Southwestern Bell's
16 position?

17 MR. HUGHES: Okay. Within that 30-day
18 period once we send the letter, we attach a list of
19 all the providers that are certified at that time.
20 Southwestern Bell when the end-user calls us during
21 that 30-day period or any time thereafter we will
22 qualify this customer as we would any new customer.

23 So to answer your question specifically,
24 yes, we will go through the same process as if they
25 were a new customer at the time they give us a call.

1 But it won't be just at the one instance at the end.
2 It would be if they call us the day after they receive
3 the letter, we'll go through the same process.

4 COMMISSIONER DRAINER: And if you receive no
5 call and so that you're not doing negative balloting,
6 you would -- at that point they would have been
7 notified through the letter that you were just
8 providing for the 30 days, and you don't hear anything
9 so you'd shut it off and then they would have to
10 initiate a choice. Mr. Micheel --

11 MR. MICHEEL: Yes.

12 COMMISSIONER DRAINER: -- with the Office of
13 the Public Counsel.

14 MR. MICHEEL: Yes.

15 COMMISSIONER DRAINER: Are you comfortable
16 that this will protect the end-users as best as we can
17 as we go into this competitive environment?

18 MR. MICHEEL: Well, I think -- first of all,
19 I'm not a big phone attorney and I'm here on somewhat
20 short notice, but I would think assuming that we're
21 going into this competitive environment and we have
22 competition, that Southwestern Bell is going to want
23 to try to attempt to get all of the business or its
24 portion of the business, so they wouldn't have any
25 reason to turn down customers assuming they met, you

1 know, the requirements for service.

2 And so to the extent that the notice that
3 the customer who's been terminated by the LSP
4 provides, as Mr. Hughes said, the list of all the LS--
5 other LSPs and how they can contact them and things
6 like that and how they can get qualified and keep
7 service and clearly states that listen, unless you do
8 something within 30 days to get service, you're going
9 to be disconnected, I think -- I think it gives enough
10 protections.

11 COMMISSIONER DRAINER: Okay. Would
12 Southwestern Bell work with the Commission -- the
13 Commission Staff and give to the Commission such
14 notifications before they went out should this
15 unfortunate episode ever happen with any of the LSPs?
16 Because it seems to me that the critical piece of
17 paper here to the customer is going to be that
18 notification.

19 MR. CONROY: Yes. I would also point out I
20 think there's at least two notifications to the
21 customer, one prior to the LSP not getting service
22 supplied by Southwestern Bell and one after that
23 service to the LSP is terminated by Southwestern Bell.
24 Is that right, Tom?

25 COMMISSIONER DRAINER: So would there be one

1 notice that basically states that because of the
2 failure to pay, the service is going to be provided by
3 Southwestern Bell and that would be one notice, and
4 then second notice would be that the end-user had
5 30 days to select their local provider?

6 MR. CONROY: I'll ask Tom to address that
7 directly.

8 MR. HUGHES: I think you raised two points
9 in your question. The first point regarding the
10 Commission, we will notify the Commission prior to any
11 termination to the LSP or to the end-user. At that
12 time what we would like to do is work cooperatively
13 with the Commission to get a complete and accurate
14 list of all the providers that are certified in the
15 state so that we could attach that to our letter.

16 What Tony was referring to is under the
17 terms of the agreement, the local service provider who
18 the agreement is with should be providing notification
19 to the end-user that their service, in fact, will be
20 provided by Southwestern Bell within five days. After
21 they come on to our network, then we will in turn send
22 them a letter and attached to that letter is a list of
23 all the providers that are certified in the state. So
24 they, in fact, should receive two notifications that
25 they have been transferred to Southwestern Bell.

1 COMMISSIONER DRAINER: And it would be your
2 intent to work with the Commission on what that
3 notification would be should this happen?

4 MR. HUGHES: Absolutely.

5 COMMISSIONER DRAINER: I mean, this is a new
6 environment and the notification is going to be
7 significant.

8 MR. HUGHES: We have worked on a draft
9 letter that we would propose to send to the end-user.
10 We certainly hope we never have to send the letter,
11 but we would be happy to share that with you. We'd be
12 happy to work with you on the content within that
13 letter to make sure it met your needs.

14 COMMISSIONER DRAINER: You'd also share it
15 with the representative for the public, the Office of
16 Public Counsel?

17 MR. HUGHES: Absolutely.

18 COMMISSIONER DRAINER: Mr. Brown with the
19 Staff --

20 MR. BROWN: Yes.

21 COMMISSIONER DRAINER: Is this also your
22 understanding of how this is going to have to be dealt
23 with should an LSP not be able to pay Southwestern
24 Bell --

25 MR. BROWN: Yes

1 COMMISSIONER DRAINER: -- or any --
2 MR. BROWN: My understanding was like they
3 indicated, that there would be more than one provider
4 especially in the Bell territory. So to basically
5 just abscond the end-user should this happen, all of
6 them, and not give a fair shake to the rest of them
7 wouldn't be appropriate. So the notification would
8 work. I think their plan would work.
9 COMMISSIONER DRAINER: And Staff would work
10 with the company, any incumbent, that had this type of
11 language in the interconnection agreement?
12 MR. BROWN: Yes.
13 COMMISSIONER DRAINER: Thank you. I
14 appreciate your answers today to my questions and
15 coming down for them. Did you have something else,
16 Mr. Stewart?
17 MR. STEWART: When you were talking about
18 this letter, I think in and of itself, the notice that
19 is provided where we make sure that we're notifying
20 the customer of all of the other alternative providers
21 that are certificated -- I think that's a very
22 important safeguard to help this competitive
23 marketplace move forward, and I think that's a great
24 idea.
25 COMMISSIONER DRAINER: Is that what's it's

1 going to have to be is the notification would give a
2 list of the -- their other choices, all the choices?

3 MR. STEWART: It's my understanding there
4 would -- of those certified to provide service would
5 be in that notice.

6 MR. CONROY: That's right. At that time.

7 MR. STEWART: So the customer has the menu
8 in front of them.

9 COMMISSIONER DRAINER: I just think of the
10 significant numbers of ISCs we have now. That could
11 be an extensive notice to send out in the future.

12 MR. STEWART: That may be why the procedure
13 you're talking about, about having that notice
14 reviewed and worked with through the Public Counsel
15 and Staff may make a lot of sense for a lot of
16 reasons.

17 COMMISSIONER DRAINER: Is there any way of
18 putting in the record as we move forward with these
19 interconnection agreements what the company -- I mean,
20 like it would have been 6.12, what the company notice
21 would have in it, the significant pieces that any
22 notice would have to have in it, such as it is
23 perceived that this notice would let them know that
24 they had 30 days to select an end-user or a new local
25 service provider and that that is -- that you intend

1 for that notice to have a list of the current other
2 LSPs at that time?

3 MR. CONROY: I'll check with my client, but
4 I don't see any reason why we couldn't agree to that.
5 It's not happened yet, so we don't have any final
6 version of letters or anything like that. So it's
7 hard to say right now exactly what that letter -- even
8 what we propose it to say, but what you -- the point
9 that you've just outlined I think we agree, should be
10 in the letter. Yes.

11 COMMISSIONER DRAINER: So should this
12 commission approve the interconnection agreement but
13 ask that there be a modification to that type,
14 something could be filed with that kind of a
15 clarification possibly?

16 MR. CONROY: You mean within the agreement
17 itself?

18 COMMISSIONER DRAINER: Uh-huh.

19 MR. CONROY: I don't think I see a problem
20 with that. My concern is the 20 or 30 other
21 agreements that have -- that have already been
22 approved by the Commission that has this exact same
23 scheme or frame work.

24 COMMISSIONER DRAINER: But I'm concerned
25 about the next 150 agreements.

1 MR. CONROY: I understand

2 COMMISSIONER DRAINER: So we can't be
3 perfect, but we'd sure like to do good. And I -- you
4 know, we need to think about this more too, but it
5 just seems like there should be a basic nature of
6 points that -- that there's an understanding that --
7 as Tom said, that you hope you never have to send one
8 of these notices out, but should you, it would be nice
9 to have it in writing that somebody could go back and
10 say well, we know that at a minimum our notice will
11 not only state that our company's providing your
12 service for the next 30 days, but that this would be a
13 list of other providers and it would be who the
14 current LSPs are at that time in that exchange.

15 MR. CONROY: Could I have a moment to check
16 with my client?

17 COMMISSIONER DRAINER: Sure.

18 MR. CONROY: I think it looks to me like we
19 could do that very simply by modifying Section 6.7 of
20 the agreement, but let me check.

21 I don't see any problem with modifying
22 Section 6.7 to that effect.

23 COMMISSIONER DRAINER: Okay. Thank you.
24 And Tom mentioned, just so we have a clarification,
25 that in 6.7 as it is now -- are there two notices in

1 6.7? Does Southwestern Bell notify the end-users that
2 the LSP because of failure to pay, that the service is
3 now going to be provided by Bell, is that one notice?

4 MR. CONROY: That is one. I'm sorry. Yes.
5 That was my misunderstanding.

6 COMMISSIONER DRAINER: And then there's a
7 second notice that Southwestern Bell would further
8 notify them of the selection?

9 MR. CONROY: I think there's only one
10 notice.

11 COMMISSIONER DRAINER: That's the one
12 notice.

13 MR. CONROY: The first notice is actually
14 provided -- obligated to be provided by the LSP --

15 COMMISSIONER DRAINER: All right.

16 MR. CONROY: -- that their customer is in
17 danger of losing service because they're in danger of
18 losing service.

19 COMMISSIONER DRAINER: And that's at
20 another --

21 MR. STEWART: 6.5.

22 COMMISSIONER DRAINER: I have no other
23 questions at this time.

24 ALJ BENSavage: Commission Crumpton?

25 COMMISSIONER CRUMPTON: Yes. I'm looking at

1 Section 6.4. And it states, Southwestern Bell shall
2 notify, and it lists the people who are going to be
3 notified and it includes in it end-users. Oh, I'm
4 sorry. Shall be defaulted. So maybe if you could
5 just add an earlier notice there, Section 6.4, to the
6 end-users, they would get an early warning that
7 something is getting ready to happen

8 MR. CONROY: Just a minute.

9 COMMISSIONER CRUMPTON: Okay.

10 MR. CONROY: Our concern with that,
11 Commissioner, is that if Southwestern Bell provides
12 some sort of notice to the customer before that
13 customer actually loses service from the LSP, that in
14 these negotiated agreements the LSPs are not going to
15 be interested in us contacting their customers before
16 they resolve -- if there's this bill that they haven't
17 paid.

18 So I think that was a negotiated point that
19 I think both sides are comfortable with. We don't
20 interfere with the customer relationship prior to this
21 triggering event happening.

22 COMMISSIONER CRUMPTON: I have several other
23 questions. In Section 6.7 I'd like to compliment my
24 colleague, Commissioner Drainer, for covering all the
25 concerns that I had in 6.7.

1 Is this sort of begin a mini-balloting type
2 of operation where the customer's notified that here
3 are a group of providers that provide the same
4 services and their telephone number so that the
5 customer can make a choice?

6 MR. CONROY: I'll answer that by saying that
7 I think it's not really a ballot in the sense that
8 somebody has to fill something out and send it back,
9 but it is a notification procedure that we've agreed
10 to with the LSP.

11 COMMISSIONER CRUMPTON: In Section 6.9
12 you're notifying the Commission and the end-user's IXC
13 of this issue. Is it possible that the PSC could be
14 notified in Section 6.7?

15 MR. STEWART: Commissioner, I think 6.4 is
16 the first triggering event that notifies the
17 Commission that there's a problem.

18 COMMISSIONER CRUMPTON: Well, that's an
19 early notice. But here we're getting down to where we
20 have to fish or cut bait. And I think the Commission
21 needs to know, you know, as this problem develops, as
22 it worsens.

23 MR. CONROY: Well, under --

24 MS. MCGOWAN: I don't know that will address
25 your concerns, but in 6.6. when they actually do the

1 transfer of the customers to Southwestern Bell upon
2 termination, they provide the Commission with notice.
3 My copy's difficult to read because --

4 MR. CONROY: That's right. That's what I
5 was going to point out. There's two other provisions
6 that I think are also applicable, 6.5, which requires
7 the LSP to notify the end-user and the Commission five
8 days before service would be terminated that their
9 service is -- that this is going to happen, that this
10 triggering event may happen. And then in 6.6 when
11 that transfer takes place, we're required to inform --
12 Southwestern Bell would be required under 6.6 to
13 inform the Commission and the IXC of the transfer
14 happening.

15 COMMISSIONER CRUMPTON: So, Staff, you think
16 this is adequate?

17 MS. MCGOWAN: Well, in 6.7 within five days
18 of the transfer they notify the customer. Since the
19 Commission is notified prior to that, we actually get
20 notice before the customers even -- even given notice.
21 So I think that we will actually know before the
22 customer does that this -- that the transfer's taking
23 place, so we'll know that at least that LSP has been
24 disconnected.

25 COMMISSIONER CRUMPTON: And after the

1 Commission is notified, at that particular moment how
2 many days will the customer have before the service
3 can be actually terminated?

4 MR. CONROY: I'll answer that. I believe it
5 would be 30 days, Commissioner.

6 COMMISSIONER CRUMPTON: Thirty days. Okay.

7 MR. CONROY: From the date the service is
8 transferred, but under the terms of this agreement,
9 they should have known -- the customer should have
10 known about it before, because the LSP is obligated to
11 provide that notice to the customer.

12 COMMISSIONER CRUMPTON: So they're proving
13 that. I've had occasions to reconnect service to a
14 customer who was in Europe. And the customer had no
15 way of knowing that their service was going to be
16 discontinued because the messages were going to the
17 customer's office and the secretary had passed.

18 Now, I understand that this is probably like
19 being struck by a meteor, but what happens if a
20 customer is out of town and unreachable while all this
21 is going on? Let's say that he even before he left
22 sent an extra payment to the LSP to make sure that his
23 service would be continued until he returned.

24 MR. CONROY: Let me check with my client.

25 COMMISSIONER CRUMPTON: Okay.

1 MR. CONROY: I think the answer to that
2 question is that as a policy matter, various lengths
3 of time were discussed and 30 days was agreed to
4 internally and it was agreed to with the LSP in this
5 agreement, because it's not a real long period of
6 time, but it's not typical vacation-type period of
7 time either in the sense that most vacation-type trips
8 are one or two, maybe three weeks. This process
9 really takes at least four, but really more than that.

10 COMMISSIONER CRUMPTON: At least four weeks?

11 MR. CONROY: Yes.

12 COMMISSIONER CRUMPTON: The customer gets
13 notice four weeks prior to his service actually being
14 disconnected?

15 MR. CONROY: Yes.

16 COMMISSIONER CRUMPTON: Would Southwestern
17 Bell disconnect its own customer under these
18 circumstances, if the customer had gone out of town
19 and did not respond?

20 MR. CONROY: If the customer was our
21 customer --

22 COMMISSIONER CRUMPTON: Uh-huh.

23 MR. CONROY: -- and they didn't pay, then I
24 would agree that the regular tariff provisions and
25 Commission rules with respect to suspension of service

1 would apply. And it would just depend on -- I mean,
2 it could happen, sure. I think if somebody didn't pay
3 for that length of time --

4 COMMISSIONER CRUMPTON: The customer's
5 already mailed his check to the LSP and he does not
6 know that this is getting ready to happen to him.
7 He's out of town unreachable.

8 MR. CONROY: Okay. I was addressing the
9 situation where it was our customer.

10 COMMISSIONER CRUMPTON: Yeah.

11 MR. CONROY: Because in this situation the
12 customer would be the customer of the LSP. But if it
13 were our customer, the regular tariff rules,
14 Commission's rules and our tariff would apply, but in
15 this situation the fact that the customer, the LSP's
16 customer sent a payment to the LSP wouldn't really
17 impact that customer's service eventually if they
18 didn't select some other provider.

19 If all these things happened, if the LSP
20 didn't pay their bill to Southwestern Bell and the
21 notice provisions kicked in, the initial notices and
22 then the service was transferred to Southwestern Bell
23 and then the 30 days happened and we didn't receive a
24 notice, that customer's service would be terminated.

25 COMMISSIONER CRUMPTON: Will Southwestern

1 Bell provide billing and collection services for some
2 of these LSPs?

3 MR. CONROY: I'm sure the answer to that
4 question is yes. I'm not sure if -- in this --

5 COMMISSIONER CRUMPTON: Well, check.

6 MR. CONROY: I'm sure the answer to that
7 question is no after discussing it with my client.

8 COMMISSIONER CRUMPTON: I feel much more
9 secure now that he's here.

10 MR. CONROY: Yeah. I do too.

11 COMMISSIONER CRUMPTON: Okay. Commissioner
12 Drainer was asking questions about modifying one of
13 these sections or maybe even adding Section 6.12 to
14 cover some type of a letter. Could the letter be a
15 part of the agreement, a general outline of the
16 letter?

17 MR. CONROY: I think our position, the
18 company's position, is that we would prefer to list
19 what needs to -- the basics that need to be in that
20 notification letter in the agreement, but would prefer
21 to not include it as part of the agreement.

22 COMMISSIONER CRUMPTON: If it's a drop dead
23 issue with me, you don't mind me voting no on that
24 issue?

25 MR. CONROY: Okay.

1 COMMISSIONER CRUMPTON: I think that the
2 letter could be a part of it, and I'm surprised that,
3 you know, you're saying that it could show the
4 contents. It also could show a basic letter. What a
5 basic letter -- the minimum contents would be, so I --
6 MR. CONROY: I'm not sure -- Commissioner,
7 I'm not sure if it's a drop dead issue with us.
8 COMMISSIONER CRUMPTON: I didn't think it
9 was.
10 MR. CONROY: Let me --
11 COMMISSIONER CRUMPTON: Will you, please?
12 MR. CONROY: Yes. I'll check.
13 COMMISSIONER CRUMPTON: Also, can we use a
14 rule-making or a modification of our current rules to
15 address the earlier contracts? I'd like to ask all
16 the parties to respond to that.
17 MR. STEWART: My response is yes.
18 COMMISSIONER CRUMPTON: Mr. Micheel?
19 MR. MICHEEL: Yes.
20 MS. MCGOWAN: Yes.
21 COMMISSIONER CRUMPTON: I would also like to
22 ask the other parties what they think of having a
23 minimum letter as a part of this contract so that we
24 know the minimum notification that the customers are
25 going to get.

1 MS. MCGOWAN: I don't see why a list of the
2 minimum requirements that would be contained in the
3 letter such as a list saying we will list all of the
4 LSPs available in the area, even, you know, discuss
5 the procedures and whatever.

6 COMMISSIONER CRUMPTON: What is your answer
7 to my question?

8 MS. MCGOWAN: Yes, that we could. I mean,
9 as a minimum letter or a list of the minimum
10 requirements to be contained.

11 COMMISSIONER CRUMPTON: Mr. Micheel?

12 MR. MICHEEL: The answer's yes. Certainly a
13 form letter could be attached. I don't -- I wasn't
14 involved in negotiating this agreement, so I don't --
15 I don't want to step into what the parties agreed to,
16 but I for the Office of Public Counsel see no problem
17 putting together the skeleton paragraphs and attaching
18 it. Now, I don't know, you know, if that was a
19 negotiated portion of the agreement, but yes,
20 certainly I don't see it as a huge hurdle or something
21 rough to do.

22 COMMISSIONER CRUMPTON: Okay. Let's see.
23 Since we haven't resolved to my satisfaction what
24 happens to the customer who is out of town, Staff,
25 would you like to respond?

1 MS. MCGOWAN: Yes. I was going to try to
2 figure out how it -- one thing -- this could raise
3 concern for Staff. The one thing, I think, is to
4 figure out what's the actual harm the customer would
5 experience. And since part of the purpose of this is
6 to prevent bias towards selecting Southwestern Bell as
7 your local service provider in this situation, I would
8 not assume if the customer contacts Southwestern Bell
9 and requests to have them as their local service
10 provider, that they would still be subject to all of
11 the new customer charges. So no matter what happens,
12 whether they're actually disconnected or they keep
13 going with Southwestern Bell, they're going to be
14 subject to the same fees from whatever company. So
15 the only harm would be maybe if they're gone to Europe
16 for two months and somehow they have a week or two
17 period where they don't have phone service, the real
18 harm would just be that period of time where they're
19 actually out -- out the phone, you know. There's not
20 going to be any monetary problems.

21 COMMISSIONER CRUMPTON: Then let's look at
22 the real harm to Southwestern Bell. First of all, the
23 customer is already on the network. Southwestern Bell
24 knows who the customer is, has the customer's address
25 and is providing the service really. Why is it in the

1 public interest to disconnect a customer if it's a
2 small number of customers who for some reason can't be
3 reached?

4 Now, I understand that there's a great deal
5 of public humiliation involved in having your number
6 turned off. And so if the number's going to be turned
7 off, I would like to know what kind of intercept
8 messaging we're going to attach to this. This is a
9 very unique situation. This is a situation where a
10 citizen of Missouri has done everything in his or her
11 power to ensure that they avoid humiliation and they
12 continue to receive services.

13 They could be picking up their messages over
14 the phone. I mean, is there an opportunity here to
15 call the customer and leave a message in the event
16 that the customer has not responded? I'm concerned
17 about those kind of things.

18 And while we haven't -- we have not, to my
19 knowledge had one incident to occur in reality, it's
20 our responsibility to prepare for the eventualities,
21 because we can't even anticipate what kind of call it
22 would be. It could be a very important call that is
23 lost simply because Southwestern Bell who is incurring
24 very minimal cost of keeping this customer on the
25 network if the customer's not making calls -- in fact,

1 is saving Southwestern Bell some trouble of having to
2 turn the customer back on.

3 I would -- I feel very insecure with the way
4 this is shaping up, and I would encourage you all to
5 look at this a little closer. The fact is -- these
6 are facts in this case. The customer is already on
7 the network. The customer is a third-party customer
8 of Southwestern Bell's. And we just want to make sure
9 that the citizens of Missouri are not punished because
10 they decide to take the LSP's service.

11 Now, there is a fairness issue here for the
12 customers who are paying their bills and who are
13 experiencing no problems who are the incumbent
14 telephone company's customers. They have an
15 obligation -- I mean, they have an expectation that
16 everyone who's using the services is paying. So I
17 would just like for you to just look at this a little
18 closer.

19 MS. MCGOWAN: Would it address the
20 Commission's concerns if in 6.7 -- I'm not sure if
21 this would be agreeable to the company -- if the
22 letter of notice that they sent out to the customer
23 that had the 30 days was, say, certified? We're
24 assuming it's not going to happen all the time.

25 MR. CONROY: See, that doesn't really

1 address your -- I think your real concern

2 MR. BROWN: If it's return--

3 COMMISSIONER CRUMPTON: If it's returned,
4 Staff, what information will I have?

5 MS. MCGOWAN: Then you'll know that someone
6 at that residence had to be there to get the letter,
7 presumably they would at least know that they
8 contacted them. It's just a judgment call on how much
9 of a burden is going to be on Southwestern Bell to get
10 ahold of these customers. It would be tragic to have
11 someone miss an important call when they did
12 everything they're legally obligated to and never
13 intended not to pay their bill. It's just a
14 balancing. And I know Staff will do everything we can
15 to try to come up with some way we can sure assure
16 that doesn't happen, if at all possible.

17 COMMISSIONER CRUMPTON: In other words,
18 we're talking about a small sample. We know the
19 majority of the customers are going to play along and
20 do what's required in order to maintain service. So
21 here we're down to a very small number of customers
22 who for some reason have not been reached.

23 I would think -- in the old days when I was
24 familiar with Southwestern Bell, Southwestern Bell
25 actually called to find out what was going on. And on

1 occasion would even send people to the house to knock
2 on the door and see if anybody was there. And the
3 example that I used earlier, the person out of town in
4 Europe whose secretary was passed was a very wealthy
5 citizen of the City of St. Louis, and would have been
6 very irate had that telephone service been
7 disconnected.

8 And, of course, the telephone company --
9 because it was the telephone company's customer, it
10 was a valued customer, the telephone company let the
11 service stay on until that customer returned from
12 Europe and started paying the bills. So I think that
13 somewhere in this ought to be a call just for those
14 customers that we haven't been able to reach.

15 MR. CONROY: I understand -- I really do --
16 those concerns. I guess without going back and
17 getting some more guidance from policy people, it
18 seems to me because of the -- I mean, the different
19 environment that we're going into -- not to say that
20 these customers have been branded, because certainly
21 they haven't, but what we're agreeing to do in this
22 interconnection agreement is really act as a safety
23 net, because of a problem between -- not with the
24 customer really. It's between the LSP and us. But if
25 they're not paying their bills -- and this only has to

1 do with an undisputed bill between the LSP.

2 And so that customer -- let's take the
3 unfortunate customer who went to Europe and lost
4 service. He lost service -- in this case he would be
5 losing service from an LSP and would certainly have a
6 gripe, I would say, with that LSP. Now, as a
7 practical matter, that LSP if they didn't pay an
8 undisputed bill, is probably out of business.

9 So I do understand your concerns, but we're
10 acting during that 30-day period as a safety net to
11 make sure that -- and we've tried to use a
12 reasonableness approach in terms of not too short a
13 period of time, not too long a period of time in an
14 effort to make sure that nearly all customers would
15 have a reasonable amount of time to make that
16 selection as opposed to just maybe the previous
17 environment where they would just -- they all would be
18 our customers. And they're just not any more.

19 COMMISSIONER CRUMPTON: But a customer on
20 the resale is still a customer of the telephone
21 network, of the owner of the network. He may be an
22 extended customer, a customer as a third-party with a
23 third-party relationship, but anyone who's using that
24 telephone network is ultimately a customer of the
25 owner of the network.

1 MR. CONROY: I'm not sure if I --

2 COMMISSIONER CRUMPTON: We don't have to
3 debate.

4 MR. CONROY: -- agree with your statement.

5 COMMISSIONER CRUMPTON: Trust me. Because
6 that person who's a third-party user has no other
7 network to go to. And anyone that uses the network is
8 a customer of the owner, whether it's through some PBX
9 operation or what have you.

10 Anyway, I'm sorry. I think I'm finished.
11 Thank you very much. I appreciate an opportunity to
12 ask these questions.

13 ALJ BENSavage: Commissioner Murray.

14 COMMISSIONER MURRAY: Thank you. I did -- I
15 have a concern that if we get too involved in
16 micro-managing, that we inhibit competition. And I
17 have a question about the modification that
18 Commissioner Drainer suggested and that the company
19 agreed to in the notification.

20 In that, the number of LSPs that are
21 certified to provide service changes sometimes on a
22 daily basis. Would that not create a burden for the
23 company at each point in which they had to send a
24 notification to go back to the Commission and
25 determine that they had a full list at that moment in

1 time of all the LSPs that were certified?

2 MR. CONROY: In answer to your question, it
3 clearly does impose a burden, but wholly apart from
4 the modification that we agreed to, that was already
5 in the agreement. We're agreeing to send the letter.
6 It may not be specific in the agreement, but we've
7 agreed -- we are going to send the letter and attach a
8 list of all other LSPs who can provide the service at
9 that point. In other words, who are certificated and
10 effective tariffs interconnection agreement. We had
11 already agreed to provide that.

12 COMMISSIONER MURRAY: So how is the company
13 going to ensure that they have the entire list and
14 don't get an action filed against them for omitting
15 someone and thereby --

16 MR. CONROY: I understand your question.

17 COMMISSIONER MURRAY: -- jeopardizing
18 another provider?

19 MR. CONROY: There clearly is a risk that we
20 might not -- we're going to do that the same way. I
21 mean, we keep records, of course, of who is permitted
22 to offer service and try and keep those as updated as
23 accurately as possible. And so that's how we're going
24 to do it.

25 MR. STEWART: I may be -- let me jump in

1 here a second. I think there's a provision for any of
2 the -- any of the new competitors before they can do
3 business, before they can get any numbers assigned to
4 them, before they can actually start providing
5 service, they have to go to Southwestern Bell. Bell
6 will ask them, Do you have your certificate? Do you
7 have your tariffs?

8 There is an ongoing updating as a practical
9 matter just in the engineering of this that allows
10 Southwestern Bell at any moment in time to know who's
11 out there, simply because -- I mean, it's not like
12 they have to come down to the Commission, for example,
13 and check those records. The LSPs -- as soon as they
14 have their Commission approvals in hand, that starts a
15 process with the incumbent local exchange company. So
16 they have that information

17 COMMISSIONER MURRAY: Their records are
18 updated --

19 MR. STEWART: Should be

20 COMMISSIONER MURRAY: -- at each moment in
21 time then? There wouldn't be a problem?

22 MR. CONROY: I believe that's -- I'm sorry.
23 I believe that to be correct. And it's just a burden
24 that I think we've agreed to live with all LSPs.

25 COMMISSIONER MURRAY: Does the Staff agree

1 with that, that Southwestern Bell would have knowledge
2 of every LSP on each particular day?

3 MS. MCGOWAN: Before they do the resale
4 service, they have to make sure the LSP has Commission
5 approval to offer this local service before they
6 resell to them.

7 MR. CONROY: And I would also add after
8 discussing this with my client, that we'll work with
9 Staff to make sure we do have a complete list updated.
10 I think we'll have a good list.

11 COMMISSIONER MURRAY: All right. This would
12 be a question for Mr. Brown. In the unlikely event
13 that there was only one LSP and that LSP defaults,
14 then wouldn't Southwestern Bell's tariffs govern the
15 method by which Southwestern Bell could terminate
16 service to the end-user?

17 MR. BROWN: Only when they become a customer
18 of Southwestern Bell.

19 COMMISSIONER MURRAY: If there were only one
20 LSP though, only one competitor in the area, is there
21 not something that provides that Southwestern Bell is
22 the carrier of last resort?

23 MR. BROWN: Yes, there is. And that was one
24 of my questions really was, according to this
25 agreement they would terminate them at a period of

1 time being the only LSP provider. Then the customer
2 has to determine what they're going to do, and they
3 would apply for service again and then it all goes --
4 credit checks and everything else from Southwestern
5 Bell would have to apply. The carrier of last
6 resort -- I'm not sure to be honest with you where
7 that falls in local service.

8 COMMISSIONER MURRAY: So there is no
9 safeguard that you know of that would prevent
10 Southwestern Bell from terminating without any further
11 notice after the 30 days?

12 MR. BROWN: Right. I would say they would
13 live by this agreement and terminate that service.

14 COMMISSIONER MURRAY: Okay.

15 MS. MCGOWAN: Commissioner, may I make a
16 comment? With that it would be just like anywhere.
17 They would be subject to the connection fees of
18 Southwestern Bell, I would assume, in that
19 jurisdiction, which had not been paid and the credit
20 checks just like any other customer.

21 COMMISSIONER MURRAY: So there --

22 MS. MCGOWAN: Whether they were disconnected
23 or not, so you know, if their service continued, I
24 think --

25 COMMISSIONER MURRAY: To your knowledge, is

1 there any language about a carrier of last resort in
2 terms of local providers?

3 MR. BROWN: Not to my knowledge, no, ma'am.

4 COMMISSIONER MURRAY: Okay. Then --

5 MR. BROWN: One other aspect in that though
6 comes to play is in that provision of service at the
7 very end there is language in Bell's tariff that
8 indicates that they don't provide service to someone
9 who owes them money. So there could be a conflict in
10 that -- that scenario.

11 COMMISSIONER MURRAY: I'm sorry. Would you
12 repeat that?

13 MR. BROWN: If they kept all these customers
14 and they didn't terminate them, there's language in
15 their tariff that says they can't provide -- they
16 don't provide local service to somebody who owes them
17 money. So if one of these end-users switched over and
18 owed them \$5,000, then we've got a conflict in the
19 tariff language immediately.

20 COMMISSIONER MURRAY: The conflict being
21 that they would have to provide them service for
22 30 days?

23 MR. BROWN: Well, that and if they didn't
24 come off at the end of 30 days, if they continued to
25 carry them, they would be providing service to a

1 customer now of Bell's which the tariff says they
2 don't because they owe them money.

3 COMMISSIONER MURRAY: That's a conflict in
4 the first 30 days?

5 MR. BROWN: True. True.

6 MR. STEWART: I'm a little bit confused now
7 here. If we have the situation where there is one
8 certified competitive LSP in an area and Southwestern
9 Bell, for example, is the incumbent provider and is
10 there by virtue of its charter from 1913 and its
11 tariffs here at the Commission, and that LSP goes
12 belly-up and is gone and that customer has one choice
13 if it wants basic local service, and it's Southwestern
14 Bell.

15 Southwestern Bell at that time under those
16 facts, I think, is obligated to provide as the carrier
17 service to that customer pursuant to their existing
18 tariffs. And those tariffs may specify that we don't
19 have to hook you up if you have owed us money and all
20 of these other things, but I think they do have an
21 obligation to provide the service if they're the only
22 game in town.

23 COMMISSIONER MURRAY: Under their tariff?

24 MR. STEWART: Under their certificate if you
25 want to call it that from this Commission.

1 COMMISSIONER MURRAY: Would Staff respond to
2 that?

3 MS. MCGOWAN: Well, I think every company
4 has an obligation to operate under its tariffs. And
5 if the tariff says we will provide service unless,
6 then any LSP with a similar tariff would have the same
7 obligation and they can't say, we won't offer these
8 services because we don't like you. I would assume if
9 their tariff says we will offer you service at this
10 rate unless you have X, Y, or Z, then unless they have
11 X, Y, or Z, then they should offer them the service.

12 COMMISSIONER MURRAY: I don't want to
13 belabor this, but I would like to understand. If you
14 have a customer, an end-user, who does not owe
15 Southwestern Bell any money, this end-user has
16 defaulted back to Bell of the failure of the LSP, is
17 there anything in Bell's existing certification or
18 tariff where Bell would be the only remaining provider
19 that requires Bell to continue to provide service to
20 that end-user?

21 MR. BROWN: In today -- in today's
22 competitive environment I'm not aware of anything that
23 would allow them -- or force them to continue. They
24 would have to provide service such as a new applicant.
25 So at the end of the 30 days termination, they could

1 come back and Bell would have to provide them service.

2 MS. MCGOWAN: For example, if they have bad
3 credit, they could require a deposit because that's
4 called for under their tariff. We will not provide a
5 person with this credit history service unless they
6 provide us a deposit. And if the customer wouldn't
7 provide a deposit, then Southwestern Bell might not
8 offer the service until they did.

9 COMMISSIONER MURRAY: But they would have to
10 offer them service --

11 MS. MCGOWAN: Subject to the --

12 COMMISSIONER MURRAY: -- subject to the
13 application process, subject to their meeting of the
14 qualifications?

15 MS. MCGOWAN: Uh-huh.

16 COMMISSIONER MURRAY: That's all my
17 questions. Thank you.

18 ALJ BENSavage: Commissioner Crumpton, did
19 you have additional questions?

20 COMMISSIONER CRUMPTON: I'll defer to the
21 Vice Chair or Commissioner Lumpe first.

22 COMMISSIONER LUMPE: May I follow-up with
23 your permission? Trying to again using -- using the
24 words so that I understand and have some comfort level
25 here, the LSP no longer is providing service, the

1 default end -- or the end-user does not default
2 automatically as a customer, they default to some
3 safety net status. So they only become a customer of
4 Southwestern Bell when they apply to be?

5 In other words, there's sort of an interim
6 status of this individual, the customer here and the
7 customer there, but there's sort of a safety net
8 status whether they're not really customer but they're
9 being provided service as a safety net. Is that
10 somewhat correct?

11 MR. STEWART: That's my understanding.

12 MR. CONROY: I think I would agree with
13 that.

14 COMMISSIONER LUMPE: So this notion of the
15 customer and how you have to treat a customer may
16 be -- because you have a new status now, safety net
17 status, which is not a customer status.

18 The only thing I'd like again for some
19 comfort to walk through, starting 6.4, the bill is
20 unpaid, undisputed, 29 days late. Correct? And the
21 Commission and the end-user are notified at that point
22 at the 29-day late period?

23 MR. CONROY: Yes.

24 COMMISSIONER LUMPE: Then it remains unpaid
25 up to a 40-day past due. Again, that's where the LSP

1 notifies again end-user and Commission. So the
2 end-user is starting to get some message that
3 something's going on here over this period of time?

4 MR. CONROY: Yes.

5 COMMISSIONER LUMPE: Then at 45 days it
6 still remains unpaid and undisputed, and that's where
7 the disconnect and the transfer to safety net occurs
8 and the Commission is informed again?

9 MR. CONROY: Yes.

10 COMMISSIONER LUMPE: Okay. At the 50-day
11 level, this is a point at which Southwestern Bell then
12 informs the end-users so the end-user has a notice at
13 50-day status?

14 MR. CONROY: Actually, between 45 and 50.

15 COMMISSIONER LUMPE: Between 45 and 50.
16 Still unpaid, still undisputed. The last is about the
17 80th day. So -- and in that period of between 50 and
18 80 the end-user has a choice that can be made. So
19 there's 30 more days for that person to make some
20 decision?

21 MR. CONROY: Yes.

22 COMMISSIONER LUMPE: So technically from
23 beginning to day they've had 80 days, almost three
24 months, which to know something is going on, to start
25 thinking about it. The Commission has been informed a

1 number of times, the end-user has been informed a
2 number of times. And at that point if they have not
3 made a decision, you can terminate them from the
4 safety net and they can still then make a decision
5 after that?

6 MR. CONROY: Yes.

7 COMMISSIONER LUMPE: I guess I just wanted
8 that comfort of how many times people were informed
9 and the total length of time that was there. If it
10 was just you found out, 30 days later you're gone, I
11 would very uncomfortable. But I've been receiving
12 warnings and warnings and warnings --

13 MR. CONROY: Yes

14 COMMISSIONER LUMPE: -- is that correct?

15 MR. CONROY: That's correct.

16 MS. MCGOWAN: I would point out that the
17 first customer notice occurs sometime within that
18 first 40 days. If it occurs toward the end of that
19 time, the customer may only have 40 days from their
20 first notification until their drop deadline.

21 COMMISSIONER LUMPE: In 6.4 29 days after
22 the bill is undisputed and unpaid, it's -- okay. I
23 see. Southwestern Bell notifies the local Commission
24 and the end-user's IXC, not the end-user. Okay.
25 Okay.

1 MS. MCGOWAN: They should have a minimum of
2 40 days and two or three notices.

3 COMMISSIONER LUMPE: Okay. Thank you.

4 ALJ BENSavage: Commission Crumpton?

5 COMMISSIONER CRUMPTON: I have just one
6 question to get on the record so that the
7 Commissioners can consider this issue.

8 I'd like to ask the parties to the case if
9 they think -- whether or not they think the Commission
10 needs to revisit its billing rules to add a section
11 for LSPs and their customers?

12 MR. STEWART: Commissioner, I think the
13 Commission should be engaging in several rule-making
14 proceedings. And I think billing and collection in
15 light of the new issues presented in the competitive
16 marketplace is ripe for that type of a proceeding.
17 And other -- other --

18 COMMISSIONER CRUMPTON: And quality of
19 service?

20 MR. STEWART: -- quality of service, all of
21 these other things.

22 MR. CONROY: I believe I agree with that. I
23 guess I'd have to check with -- to give you a
24 definitive answer -- with my clients back in
25 St. Louis, but I wouldn't disagree.

1 COMMISSIONER CRUMPTON: Because we're not
2 doing this just for Southwestern Bell. We have other
3 very important competitive -- I'm sorry -- incumbent
4 local exchange companies. Staff?

5 MS. MCGOWAN: I believe that we should, yes.
6 Both for consistency and to cover those cases that
7 occurred before it was thought to be an issue.

8 COMMISSIONER CRUMPTON: And Office of Public
9 Counsel?

10 MR. MICHEEL: Yes, sir.

11 COMMISSIONER CRUMPTON: That's my last
12 question.

13 COMMISSIONER DRAINER: My only final
14 question's really just a clarification that I agree
15 with Commissioner Murray emphatically. I agree that
16 we do not need to be micro-managing. We felt this
17 hearing was important today to go over these issues.

18 As you've stated, these agreements are out
19 there. We're looking for clarification. I appreciate
20 very much all of your answers and the clarification we
21 walked through with Commissioner Lumpe that went
22 through the clarification of whether or not the
23 end-user was with Southwestern Bell or other
24 incumbents in putting these agreements together and
25 deciding that they must be a safety net in the short

1 run, but yet not get in the position of taking away
2 from the numerous LSPs we expect to be out there that
3 they can by default just take customers, and new
4 customers that have come in and picked an LSP, and
5 then it immediately becomes theirs.

6 So I appreciate the time you've given us. I
7 also very much appreciate Commissioner Crumpton's
8 insights into many of these issues so that we're not
9 micro-managing our interconnection agreement only.
10 Must be rule-makings that then give us maybe a
11 proactive approach to dealing with these things before
12 they become a potential problem. Thank you very much.

13 ALJ BENS AVAGE: Off the record.

14 (Discussion off the record.)

15 ALJ BENS AVAGE: Back on the record.

16 Mr. Micheel?

17 MR. MICHEEL: Yes, your Honor.

18 ALJ BENS AVAGE: Could you tell me what in
19 your view is the purpose of competition?

20 MR. MICHEEL: The purpose of competition.
21 Well, I would -- my personal view?

22 ALJ BENS AVAGE: You can give me that if you
23 want.

24 MR. MICHEEL: That's what I'm going to have
25 to give you. The purpose of competition, I guess, in

1 the economic frame work is when you have a competitive
2 environment or true competition, you are seeking
3 lowest prices, the most efficient uses of a company's
4 resources and the most choices for consumers.

5 ALJ BENSAVAGE: Would you think that
6 competition would benefit customers?

7 MR. MICHEEL: In theory, competition should
8 benefit customers, yes. Customers should be better
9 off, because they should have more choice options and
10 in theory if -- if you -- if it's true competitive
11 environment, prices should come down as opposed to
12 up. So I would imagine that most consumers would
13 appreciate lower as opposed to higher prices, your
14 Honor.

15 ALJ BENSAVAGE: Okay. How familiar are you
16 with the Telecommunications Act of 1992 -- I explain
17 me 1996?

18 MR. MICHEEL: I know that it was passed into
19 law in 1996 and that it was a great overhaul of the
20 telecommunications industry and that it required local
21 exchange carriers to open their networks to possible
22 other competitors. Beyond that, I am not intimately
23 familiar with the Telecommunications Act, and I
24 apologize, but I'm not a phone attorney.

25 ALJ BENSAVAGE: That's perfectly all right.

1 There's no apology necessary.

2 Mr. Micheel --

3 MR. MICHEEL: Yes.

4 ALJ BENSAVAGE: -- would you say that there
5 has been a concern within the telecommunications
6 industry and also among both federal and state
7 legislatures about the penetration rate for telephone
8 service?

9 MR. MICHEEL: Yes. And I think -- on that
10 issue I'm a little bit more familiar in terms of -- at
11 least I've watched many hearings and read some
12 transcripts. And quite frankly, I think especially
13 under the new sections of 392, I guess which is Senate
14 bill --

15 MR. STEWART: 507.

16 ALJ BENSAVAGE: 507.

17 MR. MICHEEL: -- 507, 506 -- I know it's in
18 the 500 series, that we were talking and I can only
19 come to the conclusion that they meant effective
20 competition, not there's one local provider offering
21 one line to one customer and that equals competition.
22 I think from my basic understanding of the two
23 economics courses I had as an undergraduate, that
24 wouldn't meet the definition of competition.

25 And it's my understanding that in terms of

1 competition at the local exchange carrier level, we
2 currently just have Dial U.S. here in the -- I guess
3 it's the Springfield/Joplin exchanges. And I read in
4 the Popular Press they have about perhaps 40 -- 40
5 lines -- local service lines.

6 And where I went to school, that wouldn't be
7 defined competition and I think I'd fail a test if I
8 said that word competition at least in an academic
9 standpoint. I don't know about what it would mean in
10 terms of Senate Bill 507 or the new law. I don't
11 think that's competition, my view.

12 ALJ BENSavage: Actually, I guess my
13 question was about phone penetration rates, but let me
14 just move on.

15 MR. MICHEEL: Sorry if I didn't answer it.
16 I thought -- in terms of the lines, I thought that's
17 what you were talking about.

18 ALJ BENSavage: Mr. Conroy, you had
19 indicated earlier that the 30-day period -- part of
20 the reason for the selection of that period of time
21 was that it was more than the typical vacation time
22 that people would take. I'd like to ask about the
23 five-day period in which the customer would have their
24 initial opportunity to select another provider before
25 being defaulted back to Southwestern Bell. Is it your

1 opinion that five days also is more than the usual
2 vacation time?

3 MR. CONROY: I don't -- I guess I'm not
4 certain what the usual vacation time is, but most
5 people I know a week or two is -- in a row is more
6 than -- is about what you can take for vacation.

7 But in answer to your question, I don't
8 think five -- within five days is -- it could or could
9 not be within a usual vacation time I guess is my
10 answer to that. It probably is within a usual
11 vacation time.

12 ALJ BENS AVAGE: So it would be more likely
13 that a customer would miss that five-day period than
14 they would miss the 30-day period?

15 MR. CONROY: That's true, except it wouldn't
16 just be five days, because they'd been notified before
17 the five days.

18 ALJ BENS AVAGE: When is that?

19 MR. CONROY: Let me find it.

20 ALJ BENS AVAGE: Okay.

21 MR. STEWART: I believe that five-day period
22 that we're speaking of in 6.5 is the notice the
23 customer receives that Southwestern Bell is about to
24 take over the account for 30 days --

25 ALJ BENS AVAGE: Correct.

1 MR. STEWART: -- but if they don't like Bell
2 for some reason, you better tell us now because --

3 ALJ BENS AVAGE: Right.

4 MR. STEWART: -- is that what we're talking
5 about?

6 ALJ BENS AVAGE: Yeah. I believe if I'm
7 reading this language correctly, I understand that the
8 customer would have a five-day period in which to
9 select an alternate provider in lieu of being
10 defaulted to Bell.

11 MR. STEWART: Right.

12 ALJ BENS AVAGE: Or at least if they made
13 that choice in that five-day period and assuming that
14 the choice wasn't Bell, they would never get defaulted
15 to Bell?

16 MR. CONROY: That is true.

17 ALJ BENS AVAGE: I guess I'm going to jump
18 around a little bit. Turning to 6.10, there's two
19 sentences in that section. The second sentence says,
20 Nothing herein shall be interpreted to limit any and
21 all of its cash-in rates SWBT may have with regard to
22 such end-users.

23 I would interpret that sentence as being a
24 protection for Southwestern Bell in terms of if the
25 end-user either had an outstanding balance with Bell

1 previously or hadn't paid their bill to the local
2 service provider or for whatever other reason would be
3 a customer that under ordinary circumstances Bell
4 would not have to provide service to that customer,
5 that that provision would indicate that those
6 protections are still available to the company; is
7 that correct?

8 MR. CONROY: I'll answer that in just a
9 moment.

10 ALJ BENSavage: Sure.

11 MR. CONROY: I think your understanding --
12 or your interpretation is correct

13 ALJ BENSavage: Okay. If that's correct,
14 then why do you need the first sentence that says,
15 Nothing herein shall be interpreted to obligate SWBT
16 to continue to provide services to such end-users?

17 MR. CONROY: My understanding is that the
18 first sentence applies to the period after the 30
19 days. That nothing herein is going to obligate
20 Southwestern Bell to continue to provide service.

21 ALJ BENSavage: So it would really apply to
22 6.9? I guess what I'm saying is, you're talking about
23 two different things in 6.10?

24 MR. CONROY: Yes. In a sense.

25 MS. MCGOWAN: I think 6.7 might -- is

1 helpful in the first sentence to clarify, Any such
2 end-users after the 30-day period. In that first
3 sentence, after the initial 30 days.

4 MR. CONROY: It could, but I think the
5 agreement is -- seems to me to be --

6 ALJ BENSavage: I'd also like to ask -- I
7 think we can look at the context of competition in the
8 interexchange industry and conclude from that that it
9 is likely that a competitor will go belly-up and
10 perhaps not pay -- and I'm speaking specifically of
11 IXC's who resell service from underlying carriers that
12 an IXC that is a reseller may not pay the underlying
13 carrier such as AT&T, MCI, Sprint. Given that it's
14 almost certain to happen, how frequently do you think
15 it would happen that a competitive LEC would go
16 belly-up?

17 MR. CONROY: I don't know if I can answer
18 that.

19 MR. STEWART: I wouldn't know how to answer
20 that question.

21 ALJ BENSavage: Okay. Would you think it
22 would be a frequent occurrence?

23 MR. CONROY: I personally would hate to
24 speculate, but I think it could happen, but I don't
25 think it's going to be frequent, but --

1 ALJ BENSAVAGE: Okay. Well, what I'm trying
2 to get at is, I'm trying to weigh the impact on
3 competition versus the impact on the individual
4 customers who would be affected by a termination.

5 My understanding is that the rational for
6 these provisions are to protect competition and to
7 make sure that there is not, in effect, a situation
8 where negative balloting takes place; is that correct?

9 MR. CONROY: I think that's one of the
10 fundamental purposes of these provisions, yes.

11 ALJ BENSAVAGE: Is there another purpose?

12 MR. CONROY: Well, I think the purpose
13 overall is to develop a reasonable and fair procedure
14 for all parties involved.

15 ALJ BENSAVAGE: Including the end-users?

16 MR. CONROY: Absolutely.

17 ALJ BENSAVAGE: Okay.

18 MR. CONROY: Absolutely. Given --
19 absolutely. I mean, that's the purpose of the 30-day
20 safety net of service is that under this agreement we
21 would provide so that the end-user is protected for
22 that period of time so that they can make a decision.

23 Now, my guess is that because we're
24 notifying -- or the notification process also includes
25 the end-users IXC, who in many situations will

1 probably also be an LSP, that there's going to be --
2 that those people are going to be marketed too during
3 that 30-day period.

4 So the competitive marketplace, I think, in
5 many situations -- it is speculation because it hasn't
6 happened yet and we don't know how this is going to
7 work, but it's my expectation that the competitive
8 marketplace will result in those customers who we have
9 the safety net for 30 days. There's going to be
10 competition for those customers, I think, in the long
11 run.

12 ALJ BENSavage: Okay. Let's say -- oh, go
13 ahead.

14 MS. MCGOWAN: One thing is, you're also
15 getting at the dual purposes which kind of got
16 skipped. There's two purposes for this. The first
17 purpose is to add the safety net to the customer to
18 provide them with every notice and the Commission with
19 every notice possible to avoid them being stranded
20 without service.

21 The second purpose is to preserve for
22 Southwestern Bell and other LECs their tariff rights
23 which say they have the right to do the initial credit
24 check of their customers, get a deposit if necessary,
25 disconnect customers if they haven't paid their bills.

1 The second purpose is, okay, we take them
2 for 30 days, but they're not really our customer until
3 they come and select us, in which case they will be
4 subject -- not us, but Bell -- they'll be subject to
5 Bell's standard tariff protections, you know, in
6 signing up new customers. So that's -- there's like
7 two purposes.

8 ALJ BENSavage: Yes. And with regard to the
9 second purpose that you mentioned, it is my belief
10 that that is taken care of by the second sentence in
11 Section 6.10 which as far as I know, nobody has
12 questioned or has any problems with.

13 MS. MCGOWAN: Well, the thing is, there's
14 the connection. They don't have the credit history on
15 those people yet. Before they hook someone up, it's
16 my understanding that you do a credit history check.
17 They would already have these people hooked up. If
18 you've already hooked them up, I would assume -- I
19 don't know. Absent credit history checks do you
20 automatically disconnect? Do you give them warning?
21 I'm not sure of your procedure.

22 MR. CONROY: I think the second sentence of
23 6.10 covers the disconnection rights that we have
24 under tariff and Commission rules, but it doesn't
25 really address customers applying to us for service as

1 they would have to as any new customer would have to.
2 The application process and what we're permitted to do
3 under tariff in terms of evaluating applications of
4 customers for purposes of credit worthiness or whether
5 they have a past due balance with respect to our
6 account, those types of issues. So I would agree
7 partially with you that that second sentence -- with
8 respect to disconnection, but not with respect to the
9 new applications.

10 ALJ BENSavage: Yes. And I understand what
11 you're saying, but I guess my problem is that Bell's
12 going to know upfront that this is coming down. It's
13 not like this is going to be a big shock.

14 If it's a question of, you know, doing a
15 credit check, you have the opportunity to do that.
16 You may be able to do that in the 5-day period, you
17 may be able to do that in the 30-day period, if, in
18 fact, you're going to have a true 30-day safety net
19 whether you ordinarily would take these customers or
20 not if they actually apply. You're still going to
21 serve them for that 30-day period. Therefore, if
22 these are customers that you, but for the safety net
23 wouldn't be serving, you would terminate them at the
24 end of that 30-day period, as you would have a right
25 to do under your tariffs.

1 MR. CONROY: Actually, but for the safety
2 net we wouldn't be serving them at all.

3 ALJ BENS AVAGE: Exactly.

4 MR. STEWART: That's right.

5 ALJ BENS AVAGE: Exactly. If, in fact, this
6 is a true safety net, that 30-day period -- the fact
7 that you wouldn't have accepted that customer under
8 ordinary circumstances is irrelevant if the 30-day
9 period is to function as a safety net.

10 MR. CONROY: It is to function as a safety
11 net. We just don't know whether or not we would have
12 provided service to any of those customers.

13 ALJ BENS AVAGE: I'm aware of that.

14 MS. MCGOWAN: I guess Staff sees it as those
15 customers are not really Southwestern Bell's.

16 ALJ BENS AVAGE: I'm aware of that.

17 MS. MCGOWAN: So that was my interpretation
18 of what the first sentence --

19 ALJ BENS AVAGE: Yes. I mean, that came
20 clear through earlier discussions. I understand they
21 are not your customer at this point in time. They
22 were the customer of the competitive LEC which has
23 apparently now gone belly-up, and there's this 30-day
24 period where Bell is serving them essentially in the
25 function of something along the lines of a safety net?

1 MR. CONROY: Yes. To afford them the
2 opportunity to choose their local service provider and
3 not have a break in their service.

4 MS. MCGOWAN: I guess what I'm thinking is
5 that they have disconnection rights -- you have
6 disconnection rights against customers.

7 MR. CONROY: Right.

8 MS. MCGOWAN: And if they're not really your
9 customer, it wouldn't to me be a disconnection issue,
10 but I may not be understanding that correctly.

11 ALJ BENSavage: Okay. Let me approach this
12 from a different angle. We are, I would say, in a
13 transition phase as we're moving towards competition.
14 I think customers, in general, are used to utility
15 service essentially just being there without their
16 having to make a whole lot of effort on their part.
17 And I believe there probably needs to be a learning
18 curve for customers.

19 If we look at the IXC context, for example,
20 we can see that customers become very irate when
21 they're slammed, but I have to note that when you're
22 slammed, at least you still have long distance
23 service, you just have it with a different company
24 that may charge more.

25 Given that we're in this transition phase as

1 we're moving towards competition, that there is this
2 learning curve that customers are going to have to
3 learn, that it's not going to be the same any more.
4 They're going to have to be sort of buyer beware.
5 They're going to have more active -- proactive in
6 making choices and stuff.

7 My concern is that the provision -- the last
8 sentence of Section 6.7, the first sentence of
9 Section 6.9 and the first sentence of Section 6.10 is
10 likely to disproportionately effect the elderly and
11 the less highly educated, people who get inserts,
12 fliers in their utility bills and either don't read
13 them or don't understand them. These customers are
14 also the customers who are most likely to end up
15 getting terminated because they haven't taken action.

16 In the case of the elderly people -- and
17 again, I'm trying to weigh the harm to the development
18 of competition -- no, please. Let me finish. I'm
19 trying to weigh the harm to the development of
20 competition against the harm to the individual
21 end-user.

22 Let's say that person is elderly and sick
23 and the phone service has now been terminated, and
24 they have a heart attack and they can't dial 911 so
25 they die. Now, I understand that's incredibly

1 unlikely to happen, but it's not impossible. I
2 don't -- well, okay. Let me see if I can move on.

3 Okay. We don't have a copy of the
4 notification that would be sent to the customers, and
5 quite frankly, I'm not sure -- let me back up a little
6 bit. Since we don't have a copy of the letter that
7 would be sent to the customer, I'm reading the one
8 sentence that says, SWBT shall also notify the
9 end-user that they have 30 days to select a local
10 service provider.

11 Now, I understand that there may be more
12 language in the notice that's actually sent to the
13 customer, but let's take that sentence. I see that
14 sentence as being highly deceptive without more,
15 because, in fact, a customer can change their local
16 service provider at any point in time. Maybe they
17 couldn't -- and I guess this is another question and
18 maybe you answered this previously, but if the
19 customer was terminated, they would have to pay a
20 reconnection charge to whichever provider was going to
21 be providing that service; is that correct?

22 MR. CONROY: I'm sorry. I'm not sure. If
23 the customer were terminated --

24 ALJ BENSAVAGE: If the customer -- the
25 customer didn't make an affirmative choice and the

1 customer got terminated at the end of that 30-day
2 period, so they have no phone service, so they now
3 have to apply to phone service with somebody, it could
4 be Bell, could be another competitor --

5 MR. CONROY: Yes.

6 ALJ BENSavage: -- would that customer then
7 have to pay the reconnection charge?

8 MR. CONROY: It's my understanding they
9 would pay -- they would be treated as any other
10 customer applying for service under the tariffs. And
11 if your tariffs permit a charge for reconnection or an
12 application or a credit review -- I mean, they would
13 be treated -- under our tariffs and hopefully under
14 the tariffs of other LSPs, they would be treated as a
15 new customer applying for service.

16 MS. MCGOWAN: And it's our understanding
17 that that would happen whether they were terminated or
18 not to level the playing field and not make favoritism
19 toward Bell, because if Bell has them on now and Bell
20 says, We'll waive the new customer fee if you stay
21 with us -- I don't think that would happen. They
22 would have to pay it either way.

23 ALJ BENSavage: I understand the competitive
24 implications of these provisions. You're essentially
25 repeating what I already know.

1 MS. MCGOWAN: I mean, they pretty much pay
2 that same money whether they get terminated or not.

3 ALJ BENSavage: My point is, a customer
4 through no fault of their own other than inaction has
5 now been harmed because their service has been
6 disconnected and they have to pay a reconnection fee
7 because they were unwise in their choice of local
8 service provider, that service provider has gone
9 belly-up. I understand warnings are given. I
10 understand letters are sent to the customers. Okay.
11 I understand that.

12 MS. MCGOWAN: It's not a reconnection fee.
13 It's a new service fee.

14 ALJ BENSavage: I'm sorry. New service fee.
15 Whatever you want to call it, there is a fee now that
16 that customer has to pay to get service. And the
17 reason they have to pay that charge is simply because
18 for whatever reason, either lack of education or they
19 were off in Europe or whatever the reason is, they
20 didn't make an affirmative choice in that 30-day
21 period.

22 MS. MCGOWAN: Whether they confirm the
23 choice or not, they have to pay a new customer service
24 charge for whatever LSP they take, be it Bell or
25 anyone else, because for whoever they transfer to,

1 they are effectively a new customer.

2 MR. CONROY: Because the LSP -- I'm sorry.

3 MS. MCGOWAN: Go ahead.

4 MR. CONROY: I thought you were finished.

5 Because the service provider they previously chose is

6 no longer in business or no longer can provide

7 service. So she's right --

8 ALJ BENSavage: So that -- what about the

9 30-day period then? The 30 --

10 MR. CONROY: The 30-day period is the

11 time -- I mean, whether they wait until the end of the

12 30 days, don't make an affirmative choice and then

13 lose service and then have to reapply or during the

14 30 days, hopefully they choose a new provider, they're

15 going to have to pay that charge, I think, in both

16 situations, because they're going to be a new customer

17 for whoever they choose then.

18 ALJ BENSavage: Let's go to Section 6.6, the

19 very last sentence which says that applicable service

20 establishment charge -- charges for switching

21 end-users from LSP to SWBT shall be assessed to LSP.

22 So as far as this 30-day safety net is concerned, Bell

23 would be assessing the charges to the local service

24 provider who has defaulted?

25 MR. CONROY: Yes. As opposed -- this is

1 another, I think, consumer or customer protection
2 aspect of this, is that that initial switch is not
3 going to cost the customer, it's going to cost the
4 LSP, assuming that they pay it.

5 ALJ BENS AVAGE: So the only way it's not
6 going to cost a customer is if the customer gets
7 defaulted to Bell and then affirmatively chooses Bell?

8 MS. MCGOWAN: No. They're still going to
9 pay it anyway.

10 MR. CONROY: They're still going to be
11 subject -- at that point we're providing service as
12 the default provider, if you -- and I don't really --

13 ALJ BENS AVAGE: Well, they're already hooked
14 to the network at that point.

15 MR. CONROY: They are hooked to the network
16 because we chose in our negotiations to not just cut
17 those -- the service wouldn't just be cut off at this
18 time when the LSP didn't pay their bill after so many
19 days. We are agreeing to that extra 30 days to allow
20 the customer to choose a new provider. And during
21 that 30 days we will continue to supply the service to
22 them, yes.

23 ALJ BENS AVAGE: So what are the applicable
24 service establishment charges that Bell would be
25 assessing to the local service provider? What's that

1 for?

2 MR. CONROY: It would be the charge and
3 you can help me -- correct me if I'm wrong. I believe
4 it would be the charge to switch the service from LSI
5 over on a temporary basis to Southwestern Bell.

6 ALJ BENS AVAGE: So essentially Southwestern
7 Bell is going to get two fees, one for switching for
8 the 30-day period and then if they decide that they
9 want you as their permanent provider, you would get
10 another fee except they're already on the network at
11 that point?

12 MR. CONROY: I don't know how much these
13 fees are, first of all. I'll admit that upfront. But
14 the reason -- I mean, there is a fee involved that we
15 will attempt to collect. Odds are if they're not
16 paying their bill --

17 ALJ BENS AVAGE: Right. I'm aware of that.
18 I thought of that.

19 MR. CONROY: But there will be a fee. I'm
20 not sure its tariff. It may be tariff.

21 MR. STEWART: It is tariff, I think.

22 MR. CONROY: So there's not a choice of not
23 collecting that fee.

24 MR. STEWART: It's similar to when you
25 change your long distance provider. There's a six

1 eight or ten dollar charge. I'm assuming this is
2 similar to that.

3 MS. MCGOWAN: I was under the understanding
4 it was generally around five.

5 MR. STEWART: We have GTE up where I'm from.
6 But no, I'm assuming something similar to that. And
7 mechanically it would be tariff, it would be whatever
8 the charge is.

9 MR. CONROY: I wanted to add if I could,
10 there is a certain amount of administrative expense
11 that's going to go along with -- from our perspective
12 of switching and sending the list out and sending the
13 letter out, so there is --

14 ALJ BENSavage: I would think there would be
15 quite a bit of administrative expense in this whole
16 process in terms of the number of notifications to the
17 customers and to the Commission. Yes. I mean, I'm
18 aware of that.

19 What I want to know is, specifically
20 mechanically what is Bell doing? What is the
21 charge -- the service establishment charge that you
22 would be assessing to the local -- or to the
23 competitive LEC, which I'll take as a given if they
24 haven't paid their bills previously, it's not likely
25 that they're going to pay this assessed fee. But what

1 is that for?

2 MR. CONROY: It's my understanding -- and
3 anybody here can correct me if I'm wrong. But it's my
4 understanding that fee is for -- is for the
5 administrative processing of switching the service
6 from an entity that no longer can provide service,
7 because of their own default, over to us. And it's my
8 understanding that may be -- and I don't -- I
9 shouldn't say this, it's my understanding that's a
10 tariff charge, but I'm subject to correction on that
11 if anybody knows. Let me check. Let me talk to my
12 client.

13 ALJ BENSavage: Sure.

14 MR. CONROY: Judge, my client advised me
15 that that fee will most likely be covered under
16 Section 1.11 of the agreement. And it has -- it's
17 intended to cover all of the administrative expense
18 that goes along with switching services.

19 ALJ BENSavage: Okay. So that's 1.11 of the
20 resale appendix?

21 MR. CONROY: Yes.

22 ALJ BENSavage: Okay. Let's assume that the
23 very, very unlikely happens and that the LSP actually
24 pays the applicable service establishment charges, and
25 let's assume that during that 30-day period the

1 customer affirmatively makes the choice to stay with
2 Bell, they want Bell to be their provider. Would that
3 customer then be charged another fee?

4 MR. CONROY: They would be charged a tariff
5 fee, yes, for service initiation.

6 ALJ BENSavage: So essentially Bell would be
7 collecting -- in that admittedly unlikely scenario,
8 Bell would be collecting two fees for the same thing?

9 MR. CONROY: No. We'd be collecting two
10 fees for two different things.

11 ALJ BENSavage: What's the different thing
12 then?

13 MR. CONROY: The first fee is to establish
14 the transfer of service from the LSP to the 30-day
15 safety net frame work. The second fee would be for
16 the -- now, I understand your point, that that
17 customer is now on our network, but they're on our
18 network not by our choice or by the customer's choice
19 really. They're just there so they don't lose service
20 during that 30 days. The next fee would be a tariff
21 fee which would be whether they chose us or anybody
22 else, they'd still be paying that fee. That's the fee
23 to establish new service for that customer from us.

24 ALJ BENSavage: What is comprised as part of
25 that service? What does the fee cover?

1 MR. BROWN: Record keeping would be part.

2 MS. MCGOWAN: Billing information. They'd
3 have to do the credit checks and --

4 MR. CONROY: It covers the same thing it
5 covers in any new customer application situation.

6 ALJ BENSavage: So that's different than
7 just connecting them to your network?

8 MR. CONROY: Yes.

9 ALJ BENSavage: Okay. Could you elaborate?

10 MR. CONROY: It's the -- it's those things
11 like -- that was just discussed by Staff. It's the
12 evaluation of the client's credit worthiness. It's
13 the establishment of -- establishment of service.
14 Now, they are already on the network so that may be
15 less of an impact, but it's creating a new bill
16 mechanism for that customer. I mean, there's a
17 whole -- and I'm not really probably qualified to talk
18 about everything that's involved from when a customer
19 applies for service to -- and what's involved in the
20 administrative side of that to get that customer to be
21 a regular customer again.

22 ALJ BENSavage: So that second fee involves
23 more than one thing, but it also includes -- if you
24 didn't have this prior switch because of the safety
25 net, it would include actually establishing the

1 service?

2 MR. CONROY: It would include establishing
3 new service for the customer, yes.

4 ALJ BENSavage: No. I mean, it would
5 include hooking that customer up to the network?

6 MR. CONROY: I'm not sure I can answer that
7 question. I assume it does however.

8 MS. MCGOWAN: I think initially they
9 wouldn't -- I'm assuming when they get these
10 customers, they're going to go into a special
11 sub-category and establish a remote system where these
12 30-day people are held as a block. If they switch,
13 then all of their records would have to -- all of the
14 records would have to go into a standard billing form
15 where you'd have their addresses and phone numbers,
16 because under the current situation -- I guess you
17 would have their addresses because you'd have a
18 monthly bill for them, but you wouldn't have a
19 billing --

20 MR. CONROY: It really would be establishing
21 new customers if they affirmatively chose us. From a
22 customer's perspective, they're going to pay that fee
23 no matter who they choose as their new LSP.

24 ALJ BENSavage: I'd like to ask another
25 question, and I'm not sure I'm going to be able to

1 articulate this very well. There had been some
2 previous discussion about carrier of last resort
3 obligations. And this I'm not sure actually effects
4 Bell per se, but would it matter if the incumbent LEC
5 was a recipient of universal service funds or other
6 subsidy funds, Mr. Micheel? If you can't answer that,
7 that's fine.

8 MR. MICHEEL: I don't think it would, but
9 let me backtrack to that and just say that as I
10 remember the example from Commissioner Murray, it was
11 you have one local service provider and then Bell, the
12 LEC. And I just want to say for the record, that I
13 agree with Mr. Stewart's answer wholeheartedly, that
14 if you only had one local service provider and they
15 went belly-up and therefore you have no other
16 competitive LEC, Bell has to serve those customers,
17 because they're by definition a provider of last
18 resort.

19 MR. CONROY: And frankly, I mean, I think we
20 would welcome those customers.

21 MR. MICHEEL: Certainly. But in terms of
22 whether or not they receive the universal service
23 funds, I don't know if that makes a service.

24 MS. MCGOWAN: They can provide it with a
25 tariff. And if the tariff impacts the universal

1 service fund, I think -- I mean, if they came to you
2 as a new customer and that would fit into your tariff
3 obligation to serve --

4 MR. CONROY: At the risk of sounding a
5 little bit knowledgeable about the universal service
6 docket, I actually am parti-- I mean, I have that
7 assignment. And I think it would depend at what point
8 in time -- I mean, if from a high -- from a Missouri
9 universal service fund when it develops, at the point
10 that that customer was our customer and they had come
11 back to us and applied with us for service, if that
12 customer was in a high cost exchange and -- and the
13 triggering mechanisms under the Missouri universal
14 service fund, whatever they may end up being, applied
15 than we like any other provider would be entitled to
16 universal service fund support for that customer,
17 assuming the triggers in the frame work for the
18 Missouri universal service fund, whatever they are
19 called, apply. But I'm not sure if I answered your
20 question. I'm not sure when you're asking if the
21 universal fund would impact that customer.

22 ALJ BENSavage: I was just asking if it
23 would make a difference to the carrier of last resort
24 obligations if the incumbent LEC was a recipient of
25 the universal service funds or other funds.

1 MR. STEWART: Judge, I would cite you to the
2 universal service fund statute. There are provisions
3 in there, as I recall, that talk about the Commission
4 authorizing two providers of last resort which is --
5 I'm not sure how they get to that point, but the whole
6 issue of provider of last resort, universal service,
7 whether we should be tweaking billing, collection
8 requirements, tariff requirements for the new
9 competitors, all of that has yet to be determined,
10 quite frankly.

11 And I think there's a lot more discussion
12 that needs to take place. I'm not sure necessarily
13 this is the docket or any interconnection agreement
14 docket per se is where it can be fleshed out, although
15 I think, you know, this has helped provide some
16 information to the process.

17 But specifically on that universal service
18 thing, it's really up to the Commission, because --
19 based on what the statute says. The Commission has
20 that now in front of them and within the confines of
21 the statute, whatever the Commission decides to do,
22 it's up to the Commission would be my answer.

23 ALJ BENSavage: I'd like to turn now to the
24 actual interconnection agreement itself, Section 25.2.
25 Do you have a copy of the interconnection agreement?

1 MR. CONROY: I'm not sure if I do because of
2 the order. We came prepared to address the resale --

3 MR. STEWART: Is that the severability
4 agreement?

5 ALJ BENSAVAGE: Yes. 25.2 states as
6 follows: In the event the Commission, the FCC, or a
7 court rejects any portion or determines that any
8 provision of this agreement is contrary to law or is
9 invalid or unenforceable for any reason, the parties
10 shall continue to be bound by the terms of this
11 agreement insofar as possible except for the portion
12 rejected or determined to be unlawful, invalid or
13 unenforceable.

14 In such event, the parties shall negotiate
15 in good faith to replace the rejected, unlawful,
16 invalid or unenforceable provision and shall not
17 discontinue service to the other party during such
18 period if to do so would disrupt existing service
19 being provided to an end-user.

20 Let me ask, under this provision 25.2, would
21 the Commission be able to disapprove the language in
22 Section 6.0 and approve the remainder of the
23 interconnection agreement and still allow American
24 Communications Services to set up business,
25 Mr. Stewart?

1 MR. STEWART: Well, I think clearly the
2 Commission -- regardless of our severability clause,
3 the Commission may accept or reject the agreement in
4 total or a portion thereof for the reasons stated in
5 the federal act. If the Commission would do so by
6 rejecting a portion of this agreement, would we be
7 able to move forward? We still -- in American
8 Communications' situation it -- we still don't have
9 our tariffs approved, so I can't say that we would be
10 able to move forward until those are -- those are
11 approved. Would it be sufficient -- if I think I
12 understand your question, would -- and assuming
13 tariffs are in place, would we be able to move forward
14 and do business if that one provision has been taken
15 out of the agreement?

16 ALJ BENS AVAGE: Uh-huh.

17 MR. STEWART: My guess would be yes.

18 MR. CONROY: I assume you're going to ask
19 for my position. I think they could with respect --
20 I'm not sure they could with respect to resale, but I
21 mean, the --

22 ALJ BENS AVAGE: Why not?

23 MR. CONROY: Because --

24 MR. STEWART: We don't have a provision
25 regarding resale. I see your point.

1 MR. CONROY: I mean, that portion of that
2 resale agreement or appendix --

3 ALJ BENSavage: Well, let me back up and say
4 that language similar to this cropped up in another
5 agreement, a resale agreement, between Sprint
6 United --

7 MR. CONROY: And Dial U.S.

8 ALJ BENSavage: Yes. -- and Dial U.S. And
9 unfortunately, in that situation the operation of law
10 date was such that the Commission did not have a lot
11 of time to act, they did not have the luxury of
12 scheduling a hearing as we have done in this case.

13 In that situation it was a little bit
14 different because apparently the original resale
15 agreement did not even include a provision for what
16 happens if the -- if Dial U.S. didn't pay its bills.

17 Apparently at the behest of the Staff of the
18 Commission, the parties in that case filed an
19 amendment to the agreement. And what we did in that
20 case was we conditionally approved the interconnect --
21 or excuse me -- the resale agreement that was
22 originally filed by the parties. We disapproved the
23 amendment and we ordered the parties to within 30 days
24 file different language that would address the
25 situation of what happens if the competitive LEC

1 doesn't pay the incumbent LEC.

2 So that's pretty much the scenario that I'm
3 putting forth right now. If we were to do something
4 similar and conditionally approve the interconnection
5 agreement but reject only the language in 6.0 or
6 possibly only those particular sentences that I've
7 brought to your attention previously and then ordered
8 the parties to come up with new language and have that
9 language filed within 30 days, would that prevent
10 American Communications Services from getting into
11 business as a reseller? With the understanding that
12 American Communications Service has currently filed
13 tariffs, they have not been approved yet. I believe
14 that the operation of law date or at least the tariff
15 effective date is August 27.

16 MR. STEWART: Thirty days. Well, I'm not
17 sure how to answer that. I've read the order that
18 you're speaking of. I would have -- I have not had a
19 chance to nor has my client had a chance to take in
20 everything that's gone on at this hearing. So I'm not
21 really sure how to respond.

22 Clearly our first interest is to get into
23 business and start providing service as soon as
24 possible. We recognize to do so we need an approved
25 interconnection agreement. To the extent we offer

1 resell services, we need a resell appendix in place.
2 We also know we need the tariffs.

3 I would -- I'm a little confused when you
4 say the sentences that we've discussed. We've
5 discussed a lot of things over the course of the
6 morning. And I would just suggest this, that if, in
7 fact, the Commission is so inclined to follow the
8 procedure it followed with the United Telephone, that
9 the Commission be very clear as to what changes it
10 wants.

11 I think, for example, the United Telephone
12 order talked in terms of just general concerns. It
13 was not specified. And I think the federal act does
14 require if the Commission is going to reject a portion
15 of an interconnection agreement, that it specifies the
16 deficiencies.

17 And I -- for what it's worth, if that's some
18 free legal advice or something, I mean, I think that
19 would be a very important piece if that's, in fact,
20 the direction the Commission is going to go, just to
21 make sure that it's according to the act. What my
22 client will do with that I have no idea, other than
23 the fact that we want to be up and running as soon as
24 possible.

25 ALJ BENSavage: First of all, let me clarify

1 the record in two regards. As a practical matter,
2 American Communications Services would meet the
3 ability to be able to resell some of Bell's services
4 in order to start up initially. Is that correct or
5 not?

6 MR. STEWART: American does have facilities,
7 so it is a facilities based carrier. I'm not sure
8 from the engineering and technical perspective exactly
9 what in terms of the services they're proposing to
10 offer at this time, what would be required.

11 Generally speaking, I think most of the
12 LSPs -- and I think there are only, in fact, two now
13 that have been certified and are up and running.
14 Brooks Fiber is the one that I've referenced in the
15 tariff filing, which is in Kansas City. I think a lot
16 of them are taking the position we'll start with
17 resale and then transition into facilities based. I'm
18 not sure that necessarily applies in all respects to
19 what American Communications Services is planning to
20 do at this point.

21 ALJ BENSavage: Okay.

22 MR. BROWN: Judge --

23 ALJ BENSavage: I just want to clarify the
24 record if you could hold on for just one more moment.
25 What I would be suggesting -- you had indicated some

1 concern about vagueness in terms of any order that
2 came out that either conditionally approved and/or
3 rejected a portion. Just so the record is clear, at
4 least from my perspective, what I would be concerned
5 about would be the last sentence in Section 6.7, the
6 first sentence in Section 6.9 and the first sentence
7 in Section 6.10. If --

8 MR. STEWART: May I ask you to repeat that
9 again, please? I'm sorry.

10 ALJ BENSavage: Certainly. The last
11 sentence in Section 6.7 of the resale appendix, the
12 first sentence of 6 -- of Section 6.9, and the first
13 sentence of Section 6.10. And these are the
14 provisions that could be considered inconsistent with
15 the public interest, which would be presumably the
16 finding that the Commission would need to make if they
17 were going to reject this language. By "this
18 language," I mean those specific sentences that I've
19 just referenced.

20 Yes, Staff:

21 MR. BROWN: Yes. From Staff's perspective,
22 the question that you posed, would a temporary or a
23 conditional rejection have any bearing either in
24 starting? From the Staff perspective, we look at the
25 tariff as the end-user type of guide. Anything that

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1 would effect the end-user such as Section 6, we would
2 be greatly concerned as to how that would or would not
3 effect any type of tariff language. I would be -- as
4 a Staff rep, be very interested in seeing the
5 Section 6 language before I'd want to sign off on an
6 approved tariff for the same company.

7 MS. MCGOWAN: Staff would probably recommend
8 not approving the tariffs --

9 MR. BROWN: Or suspension --

10 MS. MCGOWAN: -- until the --

11 MR. BROWN: Or to extend the effective date.

12 ALJ BENSavage: Let me ask this: Is there
13 something currently in American Communications
14 Services' tariffs that addresses this matter? Because
15 I'm not familiar with the tariffs.

16 MR. STEWART: I am not -- I'm not familiar
17 if there is. It seems to me that this -- these
18 provisions are contractual provisions between American
19 and Southwestern Bell. And as such, it would not be
20 appropriate for them to be, as a general rule, in the
21 tariffs.

22 Now, the other -- and I don't know how to
23 phrase this correctly, but I'm going to give it a
24 shot. If the Commission, after holding this hearing
25 today and questioning this particular resale

1 agreement, which, as the Commission has already noted
2 at the outset of this proceeding, has been approved in
3 every other interconnection agreement that's come
4 before them thus far with Southwestern Bell, if the
5 Commission says in its order and goes through and
6 specifies that these are the things we want you to go
7 back and revise because in our view, they are
8 inconsistent with the public interest, I don't know
9 whether or not my client is going to have a problem
10 with the discriminatory treatment that that has
11 created, vis-a-vis, the other previous providers that
12 have come forward. That will definitely have to be
13 something that will be considered. And quite frankly,
14 I think they'll have to weigh their legal rights under
15 that -- under the federal law and under the Missouri
16 law, vis-a-vis, what could they do to try to take care
17 of the Commission's concerns as rapidly as possible to
18 get up and running.

19 It strikes me, quite frankly, as a bit
20 unfair that -- I mean, I think a rule-making
21 proceeding would be wonderful. And if everybody wants
22 to come in and revise their agreement, I think that's
23 probably the preferable approach. If we're talking
24 about modifications to this with understandings made
25 on the record by Southwestern Bell pending a

1 rule-making proceeding, I think that's clear.

2 I think when we go down the other road
3 though, we're running a serious risk on the
4 Commission's treatment of ACSI, vis-a-vis, the
5 previous Southwestern Bell contractual -- whatever you
6 call it -- the applicants.

7 Now, having said that, my advice to my
8 client will be to try to work with the Staff and the
9 Commission to try to move this along as quickly as we
10 can, but I mean we've been -- you know, this agreement
11 is from what I can tell just lock, stock and barrel
12 what's been approved before. And I don't know why
13 ACSI, why it couldn't have been some other client or
14 some other attorney.

15 ALJ BENSavage: Bad luck.

16 MR. STEWART: And it's a serious concern of
17 my client that they're up and running now that Brooks
18 Fiber has, in fact -- with their interconnection
19 agreement they are, in fact, up and running. They
20 are, in fact, in our proposed service area in Kansas
21 City. They are, in fact, offering the same blasted
22 services that we're trying to provide here. They're
23 up and running. The Commission has allowed them to
24 actually operate. They've taken care of everything
25 they need to take care of with Southwestern Bell, but

1 we can't do that. And sum and substance, that's the
2 problem.

3 ALJ BENS AVAGE: Let me ask you a question.

4 MR. STEWART: I'll get off my soap box.

5 ALJ BENS AVAGE: Are you suggesting that if
6 the Commission finds a provision in an interconnection
7 agreement that they determine to be inconsistent with
8 the public interest, that they cannot at that point in
9 time reject that particular provision regardless of
10 whether they caught it in other agreements or not?

11 MR. STEWART: Whether they caught it in
12 other agreements or not?

13 ALJ BENS AVAGE: In other words, the fact
14 that agreement No. 1, okay, is approved and at a later
15 point in time it comes to the Commission's attention
16 that whoops, there's some language in here that we
17 have great concerns about, we think it's inconsistent
18 with the public interests, could they not at that
19 point make that determination?

20 MR. STEWART: All of the Commission's
21 rules -- or rulings cannot be arbitrary and
22 capricious. And you can get into what that means and
23 treating one carrier different than another, is that
24 arbitrary and capricious.

25 ALJ BENS AVAGE: Well, wait a minute. We're

1 talking about two separate things. There's nothing we
2 can do about the prior agreements at this point in
3 time short of the rule-making that you're talking
4 about.

5 MR. STEWART: Right.

6 ALJ BENSAVAGE: I guess what I'm saying is,
7 if we have the language here and if the Commission
8 would determine that it's inconsistent with the public
9 interest, would they not have an obligation to make
10 that finding regardless of the fact that they didn't
11 make it previously because for whatever reason it
12 didn't hit them?

13 MR. STEWART: The Commission can do whatever
14 it wants, I suppose, or attempt to do whatever it
15 wants. The problem is that by -- to the extent that
16 this creates a delay or has the effect of prohibiting
17 entry into a marketplace, you're going to have a
18 federal act problem --

19 ALJ BENSAVAGE: Right.

20 MR. STEWART: -- generically speaking. I'm
21 not saying we're going to file a 253. I'm not saying
22 we're going to do anything like that. I'm just saying
23 it creates a problem, and therefore, my suggestion
24 would be engage in a rule-making, call everyone back
25 in if we need to resolve this. And on the

1 going-forward basis, Southwestern Bell can know this.
2 But I mean, it just -- and I'm not saying we're not
3 going to try to work with the Commission to resolve
4 this. Please understand that. But I'm just saying as
5 the Commission is struggling to manage the transition
6 from the full-blown regulation process that it's used
7 to into these new areas -- I mean, I think I heard
8 Commissioner Drainer earlier mention -- I mean, are we
9 going to, with each one of these, go through and have
10 a fine tooth comb with each new agreement and find
11 something new?

12 I mean, you're going to find something in
13 each agreement down the road, but it -- the
14 Commission's going to have to be very careful in
15 making its decision as to the impact of its decision
16 on the timing. And I couldn't agree more with your
17 question about what will this do to get up and
18 running? I guess my thing is, my guess is, it's going
19 to slow it down if we have to make these changes.
20 Maybe not, but that would be my guess.

21 ALJ BENSavage: That is one of the questions
22 that I'm trying to ask and to make that determination,
23 is what the effect of that would be. We did not have
24 the luxury again in the Sprint United case, and maybe
25 that was a little bit different because we had the

1 agreement that was originally put forth by the parties
2 versus the amendment that was essentially required of
3 them by our Staff. So factually, there may be a
4 little bit of a difference there.

5 I understand your concerns about
6 discrimination. As I indicated earlier, it's not like
7 anybody's trying to, you know, specifically point the
8 finger at American Communications Services. The fact
9 that this problem is arising at this point in time
10 is -- it could have happened to any other competitive
11 LEC. It didn't have to be American Communications
12 Services.

13 MR. STEWART: I'm not so concerned about the
14 intent. I'm concerned about the effect. And the
15 effect -- and again, Tony can -- he was closer to the
16 negotiation process here. It was my understanding
17 that people from American Communications Services met
18 with Southwestern Bell probably in St. Louis, maybe
19 Texas, I'm not sure, and negotiated these on a
20 five-state Southwestern Bell region. I think the
21 Missouri -- Southwestern Bell may have had Missouri
22 specific language as opposed to something in Texas.
23 But to go back in now after these negotiations, after
24 these contracts have been -- have been negotiated and
25 will it create a problem to pull everybody back

1 together or at least open up the negotiations again
2 and reach agreement on a pending subcontract? I don't
3 know. It very easily could. And it's -- what I'm
4 saying is yes, it could -- just for the mechanics of
5 it, it could have the ability to further delay ACSI's
6 ability to provide service in Missouri.

7 Now, are -- would the changes necessarily be
8 impossible to get quickly? I don't know. Would we be
9 willing to do it? I don't know. It depends on what
10 specifically in your order you direct us to do. I'm
11 just saying -- and again, for the record, I really --
12 I'm not sure this method is appropriate at this point,
13 your hypothetical proposal in terms of the order is
14 appropriate -- is most appropriate at this point.

15 ALJ BENSAVAGE: I'm --

16 MR. CONROY: I'm sorry. Would it be
17 acceptable for me to -- I want to clarify something
18 that I think I may have heard that I'm not sure I
19 agree with. To the extent anybody believes that this
20 issue wasn't addressed or that it was quote, unquote
21 missed or anything like that in previous cases, I
22 think the record in the other cases is pretty clear.

23 ALJ BENSAVAGE: I've read it. I am aware of
24 the record.

25 MR. CONROY: I mean, the --

1 ALJ BENS AVAGE: No. I have read the
2 transcripts of the Southwestern Bell, Dial U.S. where
3 Commissioner Drainer asked a series of questions --
4 MR. CONROY: Yes
5 ALJ BENS AVAGE: Yes. I'm aware of that.
6 MR. CONROY: Okay. I just wanted to make
7 sure the record was clear on that point.
8 ALJ BENS AVAGE: I think the record's been
9 very clear about that.
10 MR. CONROY: It also, to my knowledge, came
11 up in both Dial U.S. and the MFS Communications
12 Company hearings on their interconnection agreements.
13 Again, both --
14 ALJ BENS AVAGE: Different Dial U.S.?
15 MR. STEWART: Sorry. A different --
16 ALJ BENS AVAGE: I'm aware of the very first
17 interconnection agreement between Southwestern Bell
18 and Dial U.S.
19 MR. CONROY: I can -- I'll just tell you
20 that it came up starting at page 105.
21 ALJ BENS AVAGE: It was Case No. TO-96-440?
22 MR. CONROY: That's Dial U.S.
23 ALJ BENS AVAGE: And it started on page 105.
24 MR. CONROY: Yes.
25 ALJ BENS AVAGE: And ended on page 112.

1 MR. CONROY: And then also in TO-97-27,
2 which was --

3 ALJ BENSavage: The MFS?

4 MR. CONROY: Yeah. It was approximately two
5 months later. It came up again by Commissioner
6 Drainer and it starts on page 73 of the transcript.

7 MR. STEWART: I appreciate the record
8 reflecting that. Thank you.

9 ALJ BENSavage: Staff, could you explain
10 what your problem would be with the tariffs if this
11 language is rejected?

12 MR. BROWN: Having not seen the tariff, it's
13 difficult to talk about. What we're interested in the
14 tariff is the end-user and how it applies to the
15 end-user. Off the top of my head, I would have to
16 assume there would be no conflict, no concern. But
17 because the Commission raises concerns on how you
18 treat the end-user, I would be concerned and want to
19 look carefully then at their tariff to make sure the
20 end-user is covered tariff-wise also

21 ALJ BENSavage: So in other words, to the
22 extent that the Commission wanted a modification of
23 the language addressing this issue, you would want to
24 see that also reflected in the tariff?

25 MR. BROWN: No. No. That's not what I'm

1 trying to convey. I'm trying to convey that if
2 there's a modification in the language effecting the
3 end-user, we want to make sure the tariff is
4 appropriate to the end-user also. It doesn't mean --

5 ALJ BENS AVAGE: Can you give me an example?

6 MR. BROWN: How are they going to handle the
7 disconnect for the end-user?

8 ALJ BENS AVAGE: Meaning?

9 MS. MCGOWAN: How it would read in the
10 tariff.

11 MR. BROWN: Yeah. How it reads in the
12 tariff.

13 MS. MCGOWAN: Six as finally approved by the
14 Commission -- they want to make sure that that actual
15 language in -- I assume you're going to put in
16 something like 6, maybe you want to change the way
17 section --

18 ALJ BENS AVAGE: In the interconnection
19 agreement?

20 MS. MCGOWAN: Yeah. You have to make sure
21 that the tariff mirrors that, but since you don't know
22 what it is yet, you can't look at the tariff and see
23 if the tariff covers Section 6.

24 ALJ BENS AVAGE: So you are anticipating that
25 there would be something specifically in the tariff

1 that would essentially mirror the provisions of 6.0
2 which is in the interconnection agreement?

3 MS. MCGOWAN: The end-user, in theory, can
4 go to the tariffs and see --

5 ALJ BENSAVAGE: Mr. Stewart, you said
6 earlier that you didn't think that --

7 MR. STEWART: I'm trying to -- I'm having
8 trouble now following what you're talking about,
9 because unless -- all the tariffs I've seen for an LSP
10 or anyone else will have a section on when they can
11 and cannot disconnect, what they can do for new
12 customers, etc., etc. Those will be and have to be
13 consistent with the Commission's rules.

14 I'm not sure that that is necessarily in and
15 of itself -- for purposes of LSP under this
16 interconnection agreement, I'm not sure that
17 procedures for payment and disconnection would be in
18 the LSP's tariff under these provisions. This only
19 governs the contractual arrangement between
20 Southwestern Bell and the LSP. I suppose maybe there
21 could be something in here about the notice
22 requirement.

23 MS. MCGOWAN: The effect of the end-user --

24 ALJ BENSAVAGE: Let me just --

25 MR. STEWART: It wouldn't be in the LSP

1 tariff.

2 ALJ BENS AVAGE: Let me just ask a couple
3 final questions. To the best of your knowledge,
4 Mr. Stewart, there is not currently any provision in
5 the tariff that has been filed that would mirror the
6 language of 6.0 in the resale appendix?

7 MR. STEWART: That would mirror the
8 language. The language in -- oh, gosh.

9 ALJ BENS AVAGE: If you don't know, that's
10 fine.

11 MR. STEWART: I'm going to say I don't know.
12 I think that would be the safest way to do that.

13 ALJ BENS AVAGE: That's fine. That's fine.
14 Mr. Micheel?

15 MR. MICHEEL: Yes, your Honor.

16 ALJ BENS AVAGE: Now that we're at the end
17 and having heard everything that's gone on before and
18 since, is Public Counsel still comfortable that the
19 language of Section 6.0 in the resale appendix is not
20 inconsistent with the public interest?

21 MR. MICHEEL: I would say we are comfortable
22 that it's not inconsistent with the public interest as
23 long -- I mean, with this caveat: I'm assuming that
24 Mr. Dandino participated in the Dial U.S. hearings and
25 the MFS hearings and that was consistent with his

1 position. I think the notice and perhaps getting the
2 letter together and attaching it is a good idea, but
3 no, we are not opposed and it's not inconsistent with
4 the public interest.

5 ALJ BENSavage: Thank you. I have no
6 further questions.

7 This hearing is adjourned.

8 (HEARING ADJOURNED.)
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