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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

May 18, 2000
Jefferson City, Missouri
Volume 12

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

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

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

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

2 JUDGE DIPPELL: We can go ahead and go on
3 the record.

4 MR. ENGLAND: Thank you, Judge.

5 JUDGE DIPPELL: You can proceed,
6 Mr. England.

7 MR. ENGLAND: Thank you.

8 EDWARD CADIEUX testified as follows:

9 CROSS-EXAMINATION (RESUMED) BY MR. ENGLAND:

10 Q. Mr. Cadieux, I'm not sure I remember where I
11 left off, but I'll do the best I can.

12 A. Okay.

13 Q. I want to visit with you about the example
14 of a call from a Gabriel customer in the mandatory
15 zone of the St. Louis MCA to an Orchard Farm non-MCA
16 subscriber.

17 A. Okay.

18 Q. And I think we could agree yesterday that
19 that call should be -- for intercompany compensation
20 purposes should be handled under the intrastate access
21 charges, correct?

22 A. We agree, yes.

23 Q. Okay. And we also talked about the records
24 that you were in the process of developing but had not
25 yet developed from an originating recording

1 perspective, correct?

2 A. Correct.

3 Q. Would you -- I guess are any records being
4 passed today, that you're aware of, to Orchard Farm
5 such that originating -- terminating access can be
6 billed by Orchard Farm on that call to the non-MCA
7 subscriber?

8 A. I'm not sure. My understanding is that it's
9 a different record. I think it's referred to in the
10 industry as a Report 11 or an 011. My understanding
11 is the traffic that's -- that's the billing that's
12 used for access, and what I don't know is whether in
13 terms of our process of developing the record
14 reporting, whether the 92-99 and the 011 processes are
15 interlinked. So I don't know.

16 My understanding would be, is that we would
17 send those records, the access records to Southwestern
18 Bell, and that those records then would be passed
19 through to the terminating independent, but I don't
20 know if those records are being sent at this point.

21 Q. From your customer's perspective, when he
22 dials that call to Orchard Farm, whether it's to a
23 non-MCA subscriber or to an MCA subscriber, it's going
24 to appear the same to him, isn't it, it's going to be
25 seven or ten-digit dialed?

1 A. Well, that's certainly our intent. This
2 gets into what I was talking about with Mr. Lane
3 yesterday. The tariff, at least the tariff that we
4 were looking at yesterday did not include Orchard Farm
5 in the identification of a local calling area.

6 Generally speaking, our switch translations
7 draw from the tariff. So if it's not listed in the
8 local calling portion of the tariff, then my belief
9 would be is that the switch is not processing it on a
10 seven or ten-digit dialed basis. It's processing it
11 on a 1+ basis.

12 Q. Let's take a GTE exchange which is clearly
13 within your calling scope.

14 A. Yes.

15 Q. I mean, the same situation arises. You've
16 got a GTE MCA subscriber and a GTE non-MCA subscriber.

17 A. Yes.

18 Q. And from your customer's perspective, that
19 call is going to be dialed on a seven or ten-digit
20 basis, either one of those subscribers?

21 A. A local dialed basis.

22 Q. And are you telling me -- I want to get back
23 to this recordkeeping -- that you create two different
24 records depending on whether that call goes to an MCA
25 subscriber or a non-MCA subscriber?

1 A. No, I don't believe so in that situation. I
2 think the question of the records is tied to how the
3 call is dialed. So if we have programmed the switch,
4 as we have with GTE, that on an outbound basis those
5 calls are dialed locally, the records that would be
6 necessary in order to extract the billing or do the
7 billing at the terminating end my understanding is the
8 92-99 records, because the 92-99 records cover all of
9 the locally dialed traffic.

10 Q. What records are being exchanged today in
11 order for you and Southwestern Bell to exchange
12 reciprocal compensation pursuant to your
13 Interconnection Agreement?

14 A. We're not yet. I mean, the 92-99 record,
15 the fact that the 92-99 process -- the 92-99 records
16 are the basis for reciprocal compensation between us
17 and Southwestern Bell. Until we get the 92-99 record
18 process completed, there isn't intra -- intercompany
19 compensation flowing between us and Southwestern Bell.

20 Q. Are you receiving records from Southwestern
21 Bell so that you can bill your terminating piece?

22 A. I believe we are. I believe we had a couple
23 of months where -- a couple months delay on their end,
24 but they were in position to send us the records much
25 sooner than we were.

1 And actually what's happened in the last
2 month or two is, my understanding, we had sent bills
3 to Southwestern Bell, and when I discovered that, we
4 just instructed our billing folks to cease and desist
5 from sending bills to Southwestern Bell until we get
6 our 92-99 process so they're in a position to bill us.

7 Q. Will this -- will this billing be
8 retroactive once you get your system up and running?

9 A. Yes.

10 Q. Will you have the records or will you just
11 have to extrapolate what the exchange of traffic was
12 for the pre-development of the 92 records?

13 A. My understanding is that the data is there,
14 is in the records. I guess the question might occur,
15 you know, in a particular situation, if you would
16 expect that the traffic flow was pretty limited. What
17 I don't know is, is it going to take some extra effort
18 that -- I mean, we'll send a 92-99 to an independent
19 company, both for past traffic and for future traffic.

20 I'm not sure whether it's going to take some
21 extra effort on our part or the independent company's
22 part to take that 92-99 record and, you know, it's
23 going to have the originating NPA NXX and it's going
24 to have the terminating NPA NXX, and obviously which
25 terminating NPA NXXs are MCA and which are non-MCA are

1 identifiable. So it's a matter of just extracting
2 that out of the 92-99.

3 I would think there certainly would be a
4 preference that no extrapolations be done, that you
5 just take it straight out of the 92-99. I just don't
6 know if there's -- I don't know if there's going to be
7 any issues about, well, is it more, you know,
8 expensive or burdensome than what it's worth for
9 traffic, particularly going forward.

10 I would think retroactively, to make sure
11 everybody is completely comfortable, that it would be
12 based purely on the data, no extrapolations. If the
13 parties, Gabriel and a particular independent wanted
14 to agree prospectively that it just was
15 administratively burdensome to do that on an ongoing
16 basis and there was some reasonable extrapolation that
17 could be done, we would be open to discussing it.

18 Q. Let's fast forward to a point in time after
19 this case is concluded and the Commission has
20 determined that CLECs are participants in the MCA plan
21 but that their participation will be on the same terms
22 and conditions and particularly intercompany
23 compensation arrangements as exist today between
24 ILECs, in other words bill and keep.

25 A. Okay. But I need to know for which traffic.

1 Q. Okay.

2 A. I mean, are you talking now about traffic
3 between Gabriel and Southwestern Bell or are you
4 talking about where we're competing within the same
5 area, or are you talking about traffic between the
6 CLEC and an independent company?

7 Q. I think I'm talking about the latter. I'm
8 talking about all calling within the MCA, which would
9 include traffic between you and the carrier you're
10 directly connected with as well as between you and
11 other carriers with whom you're not directly
12 interconnected.

13 A. I think I answered this. It sounds like the
14 same question I answered with Mr. Lane.

15 Q. I don't know that I asked a question. I was
16 just assuming that fact situation, if you will,
17 please.

18 A. Okay. I'll assume.

19 Q. I want to explore your understanding of a
20 bill and keep relationship. Let's go back to the
21 Orchard Farm CLEC or Orchard Farm/Gabriel example
22 where Gabriel now in this future period where it's
23 bill and keep, Gabriel sends a call from its customer
24 locally dialed to an Orchard Farm MCA subscriber.

25 A. An MCA subscriber?

1 Q. Right.

2 A. Okay.

3 Q. Clearly then within the MCA calling scope,
4 if you will.

5 A. Yes.

6 Q. Under a bill and keep arrangement, would you
7 agree with me that there would be no compensation
8 flowing between you, the originating carrier, and
9 Orchard Farm, the terminating carrier?

10 A. Yes.

11 Q. Would you also agree with me that to the
12 extent Southwestern Bell was involved in transiting
13 that call, there would be no compensation paid by you
14 to Southwestern Bell?

15 A. I think that's right. I mean, that's the
16 issue, I think, that was discussed some yesterday. I
17 mean, the anomaly, if you want to call it that, is
18 right now we have an existing Interconnection
19 Agreement with Southwestern Bell that says if we send
20 a call of that nature, if we send a call to a
21 third-party carrier within the local calling area, we
22 pay Southwestern Bell what I believe is referred to as
23 a transit rate in the Interconnection Agreement, which
24 is intended to compensate Southwestern Bell for
25 basically the tandem switching function and the

1 partial transport function that they're providing.

2 Q. Right. But I'm talking about a bill and
3 keep environment.

4 A. Right. I would agree that, I mean, if
5 you're going to -- if you're really going to stick to
6 that, if you're going to say it's going to be a pure
7 bill and keep as per the '92 Order, then I don't see
8 how you can maintain that transit rate on Gabriel when
9 it originates that call.

10 Q. Similarly, when we reverse the call from the
11 Orchard Farm MCA subscriber to your customer there in
12 the mandatory zone under a bill and keep arrangement,
13 Orchard Farm would owe no terminating compensation to
14 you as the terminating carrier, correct?

15 A. That's correct.

16 Q. And would owe no compensation to
17 Southwestern Bell as the transiting carrier?

18 A. That's my understanding.

19 Q. Do you understand that that's essentially
20 how it works today between the ILECs?

21 A. Yes.

22 Q. For example, if someone in Orchard Farm, an
23 MCA subscriber calls an MCA subscriber in GTE's
24 exchange, even though Southwestern Bell may transit
25 that call, there's no compensation to the transiting

1 carrier?

2 A. That's my understanding.

3 Q. Or to the terminating carrier?

4 A. That's my understanding.

5 MR. ENGLAND: Thank you, sir. No other
6 questions.

7 JUDGE DIPPELL: MITG?

8 MR. JOHNSON: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. JOHNSON:

10 Q. Mr. Cadieux, does Gabriel Communications
11 have a carrier identification code?

12 A. I believe we do, but we have not activated
13 it.

14 Q. And did you get that from the North American
15 Numbering Plan Administrator?

16 A. I believe so. Wherever everybody gets their
17 CIC code?

18 Q. What's your understanding of the purpose of
19 a carrier identification code?

20 A. It allows -- this is a little bit out of my
21 area of expertise, but my understanding is it
22 allows -- when a call gets passed through, it allows
23 parties to identify who the carrier is that's
24 originating that or carrying that traffic.

25 Q. In your 92-99 record exchange system with

1 Southwestern Bell, is that carrier identification code
2 being exchanged between the two companies?

3 A. Well, as I said, we're not exchanging the
4 92-99 records at this point.

5 Q. Do you know whether or not the system's set
6 up to identify the originating or carrying carrier?

7 A. I do not know. I don't have that specific
8 knowledge. You know, in effect what we're doing is --
9 what I do understand is that the 92-99 is not an
10 industry standard. It's a Southwestern Bell format,
11 and we're trying to conform to that.

12 So I don't know whether it -- I don't have
13 the specific knowledge to know whether it has the
14 carrier identification code. You would think that it
15 would, but I can't confirm that.

16 Q. Yesterday you were suggesting that the
17 Commission might possibly want to consider a
18 rebuttable presumption that bill and keep should be
19 used unless there was a traffic imbalance?

20 A. I want to be careful. I'm not saying that I
21 recommended that they do that. I think what I was
22 saying was, I think that's probably -- my opinion
23 legally is, from an authority standpoint, that may be
24 the maximum that they could do in this case.

25 Q. I just -- whether you're recommending it or

1 not, I'd just like to pursue the concept a little
2 further.

3 A. Sure.

4 Q. In order to determine that there's a traffic
5 imbalance, you're going to -- Gabriel would have to
6 look at the traffic that it originates and sends to
7 Bell and what Bell originates and sends to you?

8 A. Yes, and other carriers also.

9 Q. Right. And in order to look at the traffic
10 terminating to you, you're going to be totally relying
11 upon the 92-99 records that Southwestern Bell is
12 originating?

13 A. No, that's not -- not for that purpose, that
14 would not be correct.

15 Q. So are you telling me that Gabriel has
16 another system whereby you can identify the amount of
17 traffic that Bell is delivering to you regardless of
18 whether you get a billing record for it?

19 A. We don't have a system in place. What I'm
20 saying is, the Interconnection Agreement dictates that
21 the 92-99 process is used for billing. What I was
22 implying in my answer is, if you're in a case, some
23 kind of generic docket or something where it's a
24 question of should be bill and keep or not bill and
25 keep and is the traffic roughly in balance or not, all

1 I'm saying is the 92-99 report is not the only
2 possible source of information.

3 I mean, a carrier just information off of
4 its own switch may be able to pull information. It
5 wouldn't be in the 92-99 format, but might be able to
6 pull information that both identifies what its
7 outbound local traffic is and what the reciprocal
8 inbound traffic is.

9 Q. And do you know what that capability of
10 Gabriel's switch is?

11 A. No, I don't. Well, from past -- my
12 understanding is that anybody -- I mean, we have
13 DMS100 switches, and this is not from Gabriel. This
14 is from a past carrier that I was with.

15 My understanding is, if there's an ability
16 to pull, get some numbers, how precisely accurate they
17 are, I don't know. But I think carriers can use that
18 potentially as kind of a check, a sanity check on the
19 92-99, just to raise a red flag if the traffic
20 looks -- something looks completely out of balance.

21 Q. Just a real small question. Did you say
22 pull, p-u-l-l or poll, p-o-l-l?

23 A. I said pull. I meant pull, p-u-l-l.

24 Q. Do you know whether or not Southwestern Bell
25 has that same ability to pull information off their

1 switch regardless of what kind of billing records
2 you're sending them?

3 A. I do not know.

4 Q. So even under your -- not your. Under that
5 rebuttal, rebuttable presumption scenario, you're not
6 recommending that a carrier have to trust the
7 originating records from another carrier in order to
8 determine if there's a traffic imbalance?

9 A. No, not for that purpose.

10 Q. Mr. Cadieux, I was looking at Exhibit 56HC
11 which was introduced yesterday. I was wanting to
12 refer you to what I believe is a nonconfidential page,
13 original page 50 of your tariff, KCMO No. 1, original
14 page 50. Do you have that?

15 A. Yes.

16 Q. In the Section 4.3 Local Calling Service,
17 you use the phrase company provided access line?

18 A. Yes.

19 Q. That would be an access -- that would
20 typically be the local loop that you purchase from
21 Southwestern Bell in order to serve your customer?

22 A. That's correct.

23 Q. Then it talks about to all stations on the,
24 quote, public switched telephone network. What is the
25 public switched telephone network?

1 A. Well, it says more than that. I mean,
2 that's not all that the tariff says there. But the
3 public switch telephone network is the entire network
4 of switched -- all the carriers in the country that
5 have switched and provide switched traffic,
6 connections of switched traffic.

7 Q. Does it include CLECs' facility as well as
8 ILECs' facilities?

9 A. Yes.

10 Q. Do you have a way to require another CLEC to
11 give you access to its facilities?

12 A. Do we have a way?

13 Q. I mean, under the act you can compel, if you
14 will, an incumbent to interconnect with you and either
15 negotiate or arbitrate an Interconnection Agreement.
16 Do you have a similar vehicle available to you with
17 respect to competing CLECs?

18 A. I haven't really thought about it because we
19 haven't had an issue. CLECs, my experience has been
20 in every market, even when we come in and there's
21 another facility-based CLEC in the same market, we
22 exchange traffic indirectly through the tandem, and
23 it's done on a de facto bill and keep basis. I
24 haven't really thought about that.

25 Q. So you're not exchanging records with any

1 other CLECs?

2 A. No. And they're not exchanging any with us.

3 Q. I would assume that some day Gabriel hopes
4 to be big enough for that traffic to be significant?

5 A. Sure.

6 Q. Today are you separately identifying through
7 your switch any traffic that's coming to you from
8 other CLECs as opposed to coming to you from
9 Southwestern Bell?

10 A. Not in the switch, but my understanding of
11 the 92-99 process is, when we get the 92-99 from
12 Southwestern, we will only bill on traffic -- bill
13 them on traffic -- here's what I don't know. I don't
14 know if the -- if the 92-99 report scrubs out before
15 it's sent the calls from a third party so that all you
16 get in the 92-99 is just the traffic between the two
17 carriers that are -- for which reciprocal compensation
18 the 92-99s are being sent. That is one possibility.

19 The other possibility is the 92-99s have all
20 of the locally dialed traffic and then you match up.
21 You know what your NPA NXXs are and you can identify
22 traffic you originated versus what a third party
23 originated.

24 Q. Do the 92-99 records that you -- of course,
25 you don't know yet. You haven't started receiving

1 them.

2 Do you know whether or not they are designed
3 to originate traffic by the originating NXX? I'm
4 sorry. Designed to identify the traffic terminating
5 to you by the originating NXX?

6 A. That's my understanding.

7 Q. So while Bell may be transiting other CLECs'
8 traffic to terminate to Gabriel, Bell is not paying
9 any reciprocal compensation for that traffic; is that
10 right?

11 A. That's correct, they're not. They're not
12 obligated to under the Interconnection Agreement.
13 What they're doing presumably is charging the
14 originating third-party CLEC the transiting charge.

15 Q. These agreements that you have with the
16 other CLECs to do bill and keep, is that a verbal
17 agreement or is that --

18 A. There really is no agreement. What there is
19 is an absence of an agreement and an absence of any
20 applicable tariff. I mean, the practical -- I mean,
21 as a practical matter, what's happened here, I mean,
22 it's been everything that the CLECs could do to get
23 their Interconnection Agreements with the incumbent
24 LEC they're going to be competing with in a particular
25 market.

1 You may walk into a market that already has
2 eight facility-based CLECs operating. As a practical
3 matter, there's just no -- it's not feasible that
4 before you turn up the market you, instead of
5 negotiating one Interconnection Agreement with the
6 carrier you're directly interconnecting with, that you
7 not only do that but you also potentially negotiate
8 eight separate traffic termination agreements with the
9 CLECs.

10 And I think all of the CLECs have recognized
11 that, and so as a practical matter what you have is
12 this de facto bill and keep. I think -- I think the
13 CLECs understand generally that there is a need to
14 have -- because they are exchanging traffic with each
15 other, albeit indirectly, that preferably there would
16 be good to have some kind of just at least short
17 agreement with some kind of baseline obligations, but
18 it's just not feasible in the near term as you turn up
19 these markets.

20 Q. Would that CLEC-to-CLEC agreement if it's
21 ever reduced to writing, would that be an
22 interconnection agreement that has to be approved by
23 the Missouri Commission?

24 A. Well, that's a good question, and we've
25 looked at that. Well, I don't know that Gabriel has.

1 I've looked at that with a previous carrier that I was
2 at, and I can't tell you that I recall the analysis,
3 but our view was that it is not.

4 We looked at that -- what we were doing is
5 we were looking at that type of agreement and then we
6 were looking at the language of Section 252 of the
7 Act, and we didn't think it matched up. Now, it might
8 nevertheless be subject to some state law requirements
9 about intercarrier contracts if there is any.

10 Q. Gabriel has a tariffed terminating access
11 rate, is that right, switched access?

12 A. Yes.

13 Q. And are you familiar with the Local Plus
14 service?

15 A. Very generally. I was involved in that at a
16 very early stage, and I've not been involved in any of
17 its recent activity.

18 Q. Do you know whether or not the 92-99 record
19 system that Southwestern Bell is preparing is going to
20 include Local Plus traffic as 92-99 reported traffic?

21 A. I do not know, and that's because, as I
22 said, I don't know if the 92-99 report scrubs out
23 traffic before it gets sent or gets sent in kind of a
24 gross form and then the terminating carrier has to
25 scrub it.

1 Q. If Local Plus can be dialed by the caller on
2 the non-1+ basis, do you know whether or not that call
3 is going to come in to you on a 92-99?

4 A. For the same reason, I don't know, because
5 it might get scrubbed before it gets to us.

6 Q. If Bell is supposed to pay terminating
7 access for that call, do you know whether or not
8 they're going to create an 1101 record for you?

9 A. I don't know.

10 Q. From yesterday's testimony, it's my
11 understanding that Gabriel does not offer any service
12 that is specifically denominated as MCA service?

13 A. That's correct.

14 Q. But your position in the case is that you're
15 entitled to use bill and keep as long as the traffic
16 originates and terminates within the MCA calling
17 scope?

18 A. Well, let me be precise. Our position is
19 that we're entitled to use bill and keep if the call
20 is from Gabriel to an incumbent LEC with what I'll
21 call an adjoining exchange, an incumbent LEC that
22 we're not directly competing with, and the call -- so
23 a call to Orchard Farm or to GTE where we're not
24 competing in their territory, that we're entitled to
25 bill and keep for calls that we send to that

1 independent LEC's MCA subscribers and vice versa, that
2 the incumbent LEC that would send us calls from their
3 MCA subscribers to us would be entitled to bill and
4 keep.

5 Q. Now, do you understand that between the
6 ILECs today there is -- there can be MCA calls for
7 which -- MCA calls originated and terminated within
8 the MTA for which we use bill and keep, but there also
9 can be toll and there also can be Local Plus?

10 A. Well, I'm certainly familiar with the toll.
11 I mean, I know calls going to, for example, a
12 Southwestern Bell -- my understanding is a call
13 originating in the mandatory zone in St. Louis by a
14 Southwestern Bell customer to a GTE customer in
15 Wentzville that's a non-MCA subscriber, that that
16 would be a toll call. But Local Plus, I'm just not
17 familiar with --

18 Q. Let me ask it this way. If the Gabriel
19 customer dials another customer within the MCA on a 1+
20 basis, are you entitled to use bill and keep for that?

21 A. No, because the only calls we would send on
22 a 1+ basis would -- well, the answer is we're not
23 entitled to bill and keep for a 1+ call.

24 Q. So your position is not then that you're
25 entitled to use bill and keep for any service that has

1 a call originating and terminating within the MCA, but
2 only for locally dialed calls?

3 A. Well, it's locally dialed -- well, and
4 that's not even precise. It's for -- let me see if I
5 can state this globally.

6 We would say that we're entitled -- what
7 we're saying is we're entitled to bill and keep as the
8 reciprocal compensation mechanism between us -- or the
9 intercompany compensation mechanism between us and an
10 independent company in the same way that Southwestern
11 Bell is. And all of that traffic is traffic between
12 companies who have exchanges within the MCA but don't
13 compete directly in the same exchange.

14 Q. Don't compete for customers?

15 A. Yes, don't compete for customers.

16 Q. Might compete for access?

17 A. I'd have to think about that. But there's
18 one other qualification. It's -- as I said, with
19 Southwestern Bell, they're only entitled to -- my
20 understanding is they're only entitled to bill and
21 keep from an independent when their customer calls an
22 MCA subscriber of the independent.

23 So it's got to be a call from Gabriel to an
24 independent, and the call has to be to an MCA
25 subscriber. I mean, we might choose -- the reason I

1 make this qualification, we might choose to make calls
2 even to an independent company's non-MCA subscribers
3 to be locally dialed. We might choose that as our
4 local calling scope. But I would agree that the fact
5 that we've made that call locally dialed does not mean
6 it's subject to bill and keep.

7 So what I think I said yesterday, we would
8 agree that how we define our local calling scope and
9 what we treat off of our switch outbound as locally
10 dialed versus 1+ is not determinative, does not affect
11 what the intercompany compensation is.

12 Q. As the market matures and the CLECs grow, at
13 some point in time you may be competing with one
14 another for the same customers. Is that possible?

15 A. Between CLECs?

16 Q. Yes, sir.

17 A. We're doing it today to some extent.

18 Q. If you win another CLEC's customer, do you
19 serve that customer out of your Interconnection
20 Agreement or do you serve it out of the
21 Interconnection Agreement of the CLEC whose customer
22 you won?

23 A. Well, when you say do we serve them out of
24 the Interconnection Agreement, the Interconnection
25 Agreement establishes obligations between Gabriel and

1 Southwestern Bell. So any traffic we send to the
2 Southwestern Bell network is covered under our
3 Interconnection Agreement.

4 So when we win that customer, yes, that's
5 covered under our Interconnection Agreement with
6 Southwestern Bell, assuming that we're sending the
7 traffic out through the Bell network, which we would
8 be.

9 Q. And if your Interconnection Agreement was
10 different from that of the CLEC from whom you won the
11 customer, that might have impacts on third-party
12 carriers if the terms of the agreements are different.
13 Does that make sense?

14 A. I'm not sure.

15 Q. Let's --

16 A. I certainly understand it could have
17 different -- it could have a different impact on
18 Southwestern Bell. I mean, the other CLEC might have
19 a different reciprocal compensation arrangement than
20 we do.

21 If you -- if you adopt my recommendation, if
22 the Commission adopts my recommendations in the case,
23 I don't think it would have an effect on the
24 third-party carrier because -- well, it could have an
25 effect on the third-party carrier if and to the extent

1 you allow individual CLECs and individual independent
2 companies to between themselves vary from an
3 arrangement.

4 For example, if the Commission just said
5 that going forward the compensation arrangement
6 between a CLEC and an independent company that's in an
7 adjoining area within the MCA is bill and keep, that's
8 what it is and there's no ability to vary that unless
9 you come back to us and get an order to do that, then
10 I would say in your example when the customer moves
11 from CLEC A to CLEC B it should have no effect.

12 On the other hand, if you allow an exception
13 and say, Well, that traffic between the CLEC and the
14 independent LEC is bill and keep unless a particular
15 CLEC and an independent mutually agree to do something
16 else, well, then you could have some differing impacts
17 when a customer moves from one CLEC to another.

18 Q. So if a customer moves from a CLEC that's
19 got a reciprocal compensation arrangement because the
20 balance of traffic may justify it, moves from that
21 type of a -- from that CLEC to one that just uses bill
22 and keep, there could be an impact upon the small ILEC
23 that doesn't directly connect to either CLEC?

24 A. It could be.

25 Q. Okay. Did I understand you yesterday to say

1 that you have some sort of a bill and keep agreement
2 with GTE?

3 A. No. I believe that was Mr. Kohly's
4 testimony regarding AT&T local.

5 Q. I'm sorry.

6 As I understood yesterday, you indicated
7 that Gabriel has adopted AT&T's Interconnection
8 Agreement with Southwestern Bell?

9 A. That's correct.

10 Q. And was that memorialized somehow in
11 writing?

12 A. Yes. Gabriel has its own document, an
13 approved Interconnection Agreement with Southwestern
14 Bell which is substantively identical to the AT&T
15 agreement.

16 Q. Now, when the AT&T agreement was approved,
17 it was approved by this Commission with some
18 limitations with respect to sending traffic to third
19 parties and paying access until there was another
20 arrangement in place?

21 A. When you say with a limitation, there was --

22 Q. A direction?

23 A. -- a direction, and I guess the question is
24 what the legal effect of that was. That direction is
25 not embodied in the AT&T/Southwestern Bell

1 Interconnection Agreement, and it's not embodied in
2 Gabriel/Southwestern Bell.

3 It's in the arbitration decision, but then
4 the arbitration decision gets converted to an
5 Interconnection Agreement and gets approved. It's
6 not -- and it's the Interconnection Agreement that we
7 adopted.

8 Q. Well, is Gabriel or is Gabriel not subject
9 to that limitation or that direction in the PSC's
10 arbitration order in the AT&T/Southwestern Bell
11 Interconnection Agreement?

12 A. Well, our opinion is that we're not for the
13 reasons I discussed yesterday. On the other hand, you
14 know, just for a matter of completeness, what I
15 think -- I'd like to separate it because in large part
16 what I'm trying to do is make recommendations going
17 forward.

18 All right. Now, in terms of what the
19 compensation should be for past traffic, I understand
20 there may be a dispute as to -- well, let me separate
21 it. I don't think there's any dispute for calls going
22 to independent company non-MCA subscribers. We agree
23 access charges are due there. There might be a
24 dispute as to whether for traffic passed between an
25 independent company's MCA subscribers and the CLEC,

1 whether that's a bill and keep because that's what the
2 MCA plan calls for, or is it access because that's
3 what the Commission said in the AT&T arbitration
4 decision even though the independents weren't parties
5 to that arbitration decision.

6 The only thing I'd say is, if the Commission
7 decides that for past traffic that access applies not
8 only to the non-MCA calls but also to the MCA calls,
9 then that works in both -- it's got to work in both
10 directions.

11 So what I would say is any -- if the
12 decision is that Gabriel is required for past traffic
13 to pay access for calls that its customers may have
14 sent to independent company MCA subscribers, then to
15 the extent any independent companies have sent -- any
16 independent company MCA subscribers have sent calls to
17 Gabriel, then Gabriel should be able to charge its
18 access charges on those calls.

19 Q. I'm just trying to figure out what different
20 parties' views of the rules are. On the one hand I
21 sense some desire for uniformity. Then on the other
22 hand I sense some disagreement as to what terms of
23 whose interconnection agreements or arbitration orders
24 applies to whom.

25 So I'm just wondering, you don't feel like

1 that direction in the AT&T arbitration order is
2 binding upon Gabriel just because you adopted the AT&T
3 Interconnection Agreement?

4 A. No, I don't, and for the reasons I discussed
5 yesterday.

6 Q. Does Gabriel have an interexchange authority
7 certificate?

8 A. Yes.

9 Q. Do you have a separate IXC affiliate?

10 A. No.

11 Q. Are you handling interexchange traffic?

12 A. We offer our customers outbound toll. When
13 you say handle, do we provide our retail customers --

14 Q. Yes.

15 A. -- interexchange? Yes, on a resale basis.
16 We don't have our own toll facilities.

17 Q. You have an underlying carrier?

18 A. Yes.

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

20 JUDGE DIPPELL: Mr. Cadieux, I have just a
21 few questions for you.

22 QUESTIONS BY JUDGE DIPPELL:

23 Q. In your testimony you list your basic five
24 recommendation areas. Do you have any deletions or
25 additions to those recommendations or are those still

1 your recommendations? I believe your list is on page
2 33 of your direct.

3 A. Thank you. I think I would have a couple of
4 minor -- based on what I've heard at the hearing, I'd
5 have a couple of minor, you might call supplements to
6 this list.

7 With respect to point A, treatment of CLEC
8 telephone numbers within the MCAs, I mean, I agree
9 with that. I'd make one addition, additional point,
10 and that is, all the discussion here has been focusing
11 really on treatment of CLEC NXXs. It's also possible,
12 very possible that a customer that is an MCA
13 subscriber with an incumbent LEC converts over to a
14 CLEC and does it using a ported number. It keeps its
15 number that it had with Southwestern Bell rather than
16 taking a number from a CLEC.

17 And I understand today that Southwestern
18 Bell is not screening those numbers, but I'm not sure
19 whether it's clear that that's an ongoing, permanent
20 commitment from Southwestern Bell.

21 So I would recommend that item A be expanded
22 to also say that, to the extent a CLEC offers MCA
23 service to a customer using a Southwestern -- or using
24 an incumbent LEC ported number, that the same -- that
25 the requirements of A and B, that it not be screened

1 and that there be no surcharge, that that also apply
2 to that situation.

3 The only other addition I think I would make
4 is kind of on the point of administering the
5 conversion process of getting the CLEC NXXs loaded in,
6 identified and loaded in as MCA NXXs. I think it
7 probably can be less burdensome than some of the
8 discussions about third-party administrators and that
9 sort of thing might lead you to believe.

10 I think my recommendation what should happen
11 is that the parties -- the first thing that has to
12 happen is a notification list, a list that has every
13 CLEC and incumbent LEC that has one or more exchanges
14 within the MCA and get a list of who those folks are
15 and get a contact name, and I would think the industry
16 can do that.

17 And then or in conjunction with that, then
18 have every CLEC identify in writing to each of those
19 parties that's on that list and to the Commission
20 which of their NXXs they wish to have treated as MCA,
21 which of their NXXs they do not wish to have treated
22 as MCA.

23 And I think it would make sense that that
24 letter, and you might want to have an affidavit
25 attached to that letter, and that is that the CLEC

1 would have to attest -- in identifying certain NXXs as
2 MCAs, the CLEC would have to attest, A, that their
3 outbound local calling scope is at least as large as
4 the MCA plan local calling scope from the 1992 order,
5 and attest that every NXX on the list that they are
6 designating as an MCA NXX is associated with a rate
7 center that's located within the bounds of the MCA.

8 That way you have an attestation that no one
9 is attempting to, I guess the term has been used to
10 expand the footprint of the MCA. And so -- and it
11 would make sense to me that that would all -- that
12 letter or affidavit could go to all the notification
13 lists.

14 And also it would seem to me to make sense
15 to have a depository, whether it's just a file that's
16 specially made down here at the Commission where those
17 notifications would go so that the public or anybody
18 else that wanted to see at any point in time, you
19 know, what NXXs were designated as MCA, there would be
20 a public available record to do that.

21 I don't know that you really need an
22 administrator. If you ever had an issue about whether
23 it's appropriate for a particular NXX to be designated
24 as an MCA NXX, you've given notice to every carrier
25 that has switches and every carrier that you're asking

1 to load that particular NXX as an MCA NXX.

2 If they believe that the CLEC is incorrect
3 about whether that NXX is associated with it, whether
4 it meets the qualifications or not, they obviously
5 have the opportunity then to bring that matter to the
6 Commission.

7 I would think with those two qualifications,
8 just the qualification about local calling scope and
9 that the NXX be associated with a rate center within
10 the MCA, that those are pretty easily identifiable.
11 There really shouldn't be many, if any, disputes on
12 that. But if there were any, the industry could bring
13 that attention to the Commission on a case-by-case
14 basis. I don't know that you really need a
15 third-party administrator.

16 Q. Okay. There was also a lot of discussion
17 about your Millennium tariff.

18 A. Yes.

19 Q. And you had even stated when the
20 Exhibit 56HC was first brought out that you should
21 have -- you should have updated these data responses.

22 A. Yes.

23 Q. Can we -- can I get you to submit as a
24 late-filed exhibit those portions of your tariff, the
25 Millennium tariff that have been updated that would

1 have been updated for this Data Request?

2 A. Certainly.

3 JUDGE DIPPELL: Okay. I will reserve an
4 exhibit number for that. I believe it will be Exhibit
5 No. 57, and that will be the portions of Gabriel's
6 tariff that are their Millennium service, and those
7 should be submitted by next Friday with the other
8 late-filed exhibits, the 26th, and I'll give
9 opportunity at that time for party objections.

10 BY JUDGE DIPPELL:

11 Q. Also, just a couple of clarifiers. There's
12 been a lot of talk today and throughout this hearing
13 about 92-99 records. Can you explain those to me?

14 A. I can only explain them to this extent.
15 It's a format, as I understand it. It's a billing
16 record, computerized billing record and format that is
17 really a Southwestern Bell format.

18 All right. What it -- I'm not saying this
19 is all that it contains because I'm not sure I know
20 all the information that it contains, but at the
21 minimum what it contains is the originating -- for all
22 calls exchanged between Southwestern Bell and a CLEC,
23 it contains the originating NPA NXX, the terminating
24 NPA NXX, I believe the minutes, the minutes of use and
25 other information, although I don't know exactly what,

1 about the traffic, and it comes in an electronic
2 format, and it is used for billing purposes.

3 So what would happen, what's supposed to
4 happen is on a monthly basis we would send those 92-99
5 reports to Southwestern Bell. They would use those
6 92-99 reports as a basis for billing us, billing
7 Gabriel reciprocal compensation for local calls that
8 we -- that Gabriel customers sent to Southwestern
9 Bell.

10 And the reverse is also true. Southwestern
11 Bell would send us the 92-99 reports that we would use
12 as a basis for billing them for traffic, their local
13 traffic that Southwestern Bell customers sent to us
14 and we terminated for Southwestern Bell, terminated to
15 our customers.

16 Q. And then the 1101 record is similar?

17 A. My understanding is that the 1101 record is
18 the record -- it's also a billing record, but instead
19 of being for the purposes of billing local traffic,
20 it's for purposes of billing 1+ interexchange traffic.
21 It's really an access rather than a local traffic
22 billing record.

23 JUDGE DIPPELL: Thank you.

24 Are there any recross questions based on
25 questions from the Bench, AT&T?

1 MR. DeFORD: No, thank you.
2 JUDGE DIPPELL: Intermedia?
3 MR. STEWART: None.
4 JUDGE DIPPELL: Birch?
5 MR. MIRAKIAN: No questions.
6 JUDGE DIPPELL: McLeod?
7 MR. KRUSE: No questions, your Honor.
8 JUDGE DIPPELL: Nextlink?
9 MR. COMLEY: No questions.
10 JUDGE DIPPELL: Staff?
11 MR. POSTON: No questions.
12 JUDGE DIPPELL: Public Counsel?
13 MR. DANDINO: No questions.
14 JUDGE DIPPELL: Sprint?
15 MS. GARDNER: No questions.
16 JUDGE DIPPELL: GTE?
17 MR. DORITY: No, thank you.
18 JUDGE DIPPELL: Southwestern Bell?
19 MR. LANE: Yes. Thank you, your Honor.
20 RECROSS-EXAMINATION BY MR. LANE:
21 Q. Just a couple of follow-ups to questions
22 from the Bench concerning the administering the
23 conversion process of loading NXXs as you phrased it.
24 You had indicated that companies should identify which
25 NXXs are MCA and which are not?

1 A. Yes.

2 Q. And would you agree with me that in the
3 optional zones of the MCA, that company identifying an
4 NXX as being MCA has to be using that NXX exclusively
5 for offering MCA service, however the Commission
6 ultimately defines that?

7 A. I would agree with that. The reason I would
8 agree with it is my understanding is the way
9 everyone's switches are set up right now, it really --
10 it's based on an NXX basis so that the switch, it
11 would cause problems with the translation and if
12 the -- if some numbers within an NXX are used for MCA
13 service and some are not. That's -- that's my
14 understanding from reading the testimony.

15 Q. And in the optional zone, you would agree
16 that if an NXX is identified as being one for MCA
17 service, then the CLEC cannot and should not use that
18 NXX to offer non-MCA service and avoid otherwise
19 applicable charges?

20 A. Well, I'm trying to think what other -- how
21 there would be avoidance of charges. I don't know
22 that I agree with that purpose, but I agree with
23 the -- my understanding is that when Southwestern Bell
24 sends a call, the way the switches are set up right
25 now, whether it will treat it on a local dialed basis

1 or a 1+ basis is done on an NXX level. That's my
2 understanding.

3 Whether it's possible to go below that
4 level, I don't know. But to the extent -- I don't
5 want to recommend anything that's going to cause
6 additional disruption with the switches and cause more
7 issues.

8 Q. Okay. I'm trying to get to a different
9 issue. Part of what the CLECs are seeking here is
10 toll-free return calling from the mandatory zone,
11 right?

12 A. Well, I don't -- I call it dialing parity,
13 so -- and I'm going to keep calling it dialing parity.

14 Q. All right. And I'm going to keep calling it
15 toll-free return calling. For my purposes you
16 understand what I'm talking about.

17 Would you agree with me that in the
18 designation of NXXs as MCA, that the CLEC has to be
19 using that NXX exclusively for MCA service and not be
20 using it to offer non-MCA services and still demanding
21 toll-free return calling from the principal zone?

22 A. Again, I think my answer is the same. My
23 understanding is, and just from reading the testimony,
24 that the answer is yes because Southwestern Bell can
25 only -- makes its differentiation as to whether to

1 process a call on a local dialed basis outbound to the
2 outer zone or do it on a 1+ basis by looking at the
3 NXX.

4 Q. We may not be communicating. You would
5 agree with me that a CLEC in the optional zone can
6 choose to offer an MCA-type service or not, right?

7 A. Yes.

8 Q. If the CLEC chooses for some group of
9 customers not to give them MCA-type service, you'd
10 agree that they shouldn't use an MCA NXX to do that?

11 A. My answer is yes, based on the explanation I
12 just gave.

13 Q. Okay. I guess I have to say I'm confused.
14 What does the ability of the Southwestern Bell switch
15 have to do with whether you offer -- whether you use
16 an NXX in the MCA to offer non-MCA service?

17 A. My understanding -- my understanding of the
18 whole underlying rationale of why to designate, I
19 mean, you might say why designate NXXs as MCA? Why
20 not just designate telephone numbers as MCA? Here are
21 my list of telephone numbers. Go all the way down to
22 the ten-digit level, but that's not what has been the
23 discussion here. The discussion has all been
24 designate NXXs as MCAs or not.

25 My understanding is the reason why that's

1 the case is because that's how the calls are processed
2 from Southwestern Bell outbound is that it identifies
3 whether to process the call on a local dialed basis or
4 on a 1+ toll basis based on the NXX.

5 Q. Isn't that how Gabriel does it with its
6 switch?

7 A. I believe it is.

8 Q. Isn't that how the whole industry does it?

9 A. I believe it is. And that's why I say, I
10 don't want -- that's my understanding. I don't want
11 to propose something that would cause, you know, a
12 whole separate investigation of, you know, the
13 implications of expanding that going down beyond the
14 NXX level.

15 Q. Let me ask it this way, then. So long as
16 the industry is utilizing NXXs to distinguish the
17 provision of MCA service, you would agree that CLECs
18 in the optional zone that have designated the NXX as
19 MCA have to be using that NXX, the numbers in it,
20 exclusively for the provision of MCA service?

21 A. Under current circumstances, yes. That
22 means -- the reason I say that is that assumes that
23 the MCA-2 plan is not in place, because the MCA-2 plan
24 basically, as I understand it, eliminates the need for
25 that and also assumes the current situation where its

1 numbers are assigned on an NXX basis, a 10,000 number
2 basis.

3 I make that qualification because obviously
4 there's lots of activity in the number conservation
5 area. I don't know what's going to happen going
6 forward. But today, yes, under current circumstances,
7 I agree.

8 Q. And within the mandatory zones of the MCA,
9 then those -- all of the NXXs utilized by CLECs in
10 that area would be designated and treated as MCA NXXs,
11 correct?

12 A. Yes.

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

14 JUDGE DIPPELL: Cass County?

15 MR. ENGLAND: No questions, thank you.

16 JUDGE DIPPELL: MITG?

17 MR. JOHNSON: No, thank you.

18 JUDGE DIPPELL: Redirect?

19 MR. LUMLEY: Thank you, your Honor.

20 REDIRECT EXAMINATION BY MR. LUMLEY:

21 Q. Mr. Cadieux, yesterday you went through some
22 questions from Southwestern Bell regarding Gabriel's
23 authority to provide MCA service.

24 Whether or not Gabriel in the past or today
25 is authorized to provide MCA service, do you think it

1 would be appropriate for the Commission to, on a
2 going-forward basis, exclude CLECs participating in
3 the MCA?

4 A. No. It's my position it would not be
5 proper, and it's my position that that would, because
6 of the requirements of the Telecom Act opening up all
7 services to -- telecommunications service to
8 competition, that that would be illegal.

9 Q. What impact would it have on a CLEC or on
10 the CLEC industry as a whole with, as we've seen in
11 the record, 3 percent of the access lines being
12 excluded from providing a service that Southwestern
13 Bell with 97 percent of the access lines is allowed to
14 provide? What kind of impact is that?

15 A. I think the impact, you're seeing that in
16 part with the testimony of some of the CLECs in the
17 case here, that what it does is it creates an extreme
18 disincentive for a facility-based CLEC to offer
19 service in any of the outer zones of the MCA.

20 I mean, the ironic thing is it basically
21 gives an incentive for the CLEC to restrict its
22 serving area to the core metropolitan areas and
23 prevent them from going out into the broader
24 metropolitan area on a facilities basis.

25 Q. And you're asking the Commission to end

1 Southwestern Bell's MCA screening practice, and you
2 identified the steps in your conversation this morning
3 with the Judge?

4 A. Yes.

5 MR. LANE: I'm going to object to the
6 question as leading, your Honor.

7 JUDGE DIPPELL: It was a leading question.
8 Would you like to rephrase it?

9 MR. LUMLEY: That's all right.

10 BY MR. LUMLEY:

11 Q. You were discussing with the Judge the
12 process of MCA participants advising each other of
13 their NXX codes that are in the plan.

14 Do you think it's possible that the parties
15 could develop or utilize the Internet to facilitate
16 that process?

17 A. Yeah. I mean, one -- and I can't speak for
18 the Commission on their -- expand their website for
19 them, but one option would be is to have a listing on
20 the website of which CLECs have -- how they've
21 designated their NXXs.

22 Even better than a paper file -- and you may
23 want to keep a paper file just for an official record,
24 but even better than a paper file it would give easy
25 access to the public to see how everyone is treating

1 their NXXs.

2 Q. You discussed the possibility that the
3 parties might question whether or not a particular
4 company had made an appropriate designation of an NXX
5 code as an MCA NXX.

6 Do you think it would be appropriate for any
7 party to take unilateral action based on having
8 concerns about whether someone else has made an
9 appropriate designation?

10 A. No. I think that should come to the
11 Commission immediately.

12 Q. You had discussions with Southwestern Bell
13 about calling scopes. Do you continue to believe, as
14 you assert in your testimony, that CLECs should be
15 allowed to offer, and ILECs should be allowed to offer
16 additional outbound calling in conjunction with MCA
17 service?

18 MR. LANE: Object to that as leading, your
19 Honor.

20 JUDGE DIPPELL: Mr. Lumley?

21 MR. LUMLEY: I'll restate the question.

22 BY MR. LUMLEY:

23 Q. What are your thoughts about calling scope
24 flexibility for CLECs and ILECs after hearing the
25 testimony in the case?

1 A. It hasn't changed. I believe both CLECs and
2 ILECs should be allowed to, if they choose, to offer
3 additional calling scope. By that I mean calling
4 scope beyond what is required in the MCA-2. That
5 benefits customers. It allows the competitive market
6 to operate to the benefit of customers.

7 Q. Mr. Lane was asking you questions about the
8 utilization of NXX codes, and he was using the term
9 exclusively for MCA service. Do you recall those
10 questions?

11 A. Yes.

12 Q. Is it your understanding that -- or did you
13 mean to imply by your answer that somehow the CLEC
14 would be restricted from offering additional outbound
15 calling in conjunction with MCA service?

16 A. No. What I'm referring to is, when I say
17 designation of an NXX code as MCA, what that means is
18 that's a code that other carriers have to send traffic
19 to on a locally dialed basis.

20 Q. Do you still have Exhibit 56HC?

21 A. Yes.

22 Q. There were some questions from Southwestern
23 Bell regarding whether or not Gabriel's tariff made
24 mention of MCA. Have you had a chance to review that
25 tariff further and would you like to change your

1 answer?

2 A. Yes. I have had a chance to review it
3 further, and I would amend my answer by saying there
4 are references to MCA in the tariff in the -- in the
5 context of the local calling areas in Section 4.2.2.
6 In part, it describes the local calling areas by
7 reference to the MCA zones.

8 Q. Southwestern Bell asked you questions
9 regarding Gabriel's utilization of foreign exchange
10 service. Do you recall that?

11 A. Yes.

12 Q. To your knowledge, has the Commission issued
13 any decision regarding the utilization of foreign
14 exchange service in conjunction with MCA service?

15 A. Yes, they did. I want to say it's 1993 they
16 issued the Order. The issue there was whether foreign
17 exchange service could be used from a location outside
18 of the MCA into the MCA, and the Commission ruled that
19 that was not something that should be prohibited, that
20 that was -- that was all right to do.

21 I want to make it clear that that's not how
22 we're -- we're not even using MCA in that what I would
23 call an extensive manner. We're using FX. We're not
24 using FX in that extensive a manner. We're using it
25 wholly within the MCA.

1 But the Commission has addressed the FX
2 service in the context that I think is -- and approved
3 its use in connection with the MCA in a manner that's
4 more expansive than the use that we're using.

5 Q. And by FX you mean?

6 A. Foreign exchange service.

7 Q. Are you familiar with whether or not
8 Southwestern Bell's tariff addresses the use of
9 foreign exchange service in conjunction with MCA
10 service?

11 A. I don't recall. They certainly have had
12 foreign exchange service tariffed for a very long
13 time, but I do not recall whether it makes specific
14 reference to MCA service.

15 Q. Southwestern Bell asked you some questions
16 regarding their position in the case that the additive
17 for optional MCA service at that rate recovers toll
18 losses. Do you recall those questions?

19 A. Yes.

20 Q. And I believe you answered affirmatively to
21 their question of whether or not that additive
22 recovered -- was designed to recover toll losses. Was
23 that your prior answer?

24 A. I said that was my understanding, yes.

25 Q. And what was the basis of that

1 understanding?

2 A. The basis of that understanding were the
3 characterizations that Southwestern Bell had made in
4 their testimony, and I accepted that for purposes of
5 my testimony.

6 Q. Since yesterday, have you conducted any
7 further research on that issue?

8 A. I've gone back and looked at the MCA, the
9 1992 MCA decision specifically focusing on that issue,
10 and in the Order itself I can't find any support for
11 the notion that the rates were set on revenue
12 neutrality.

13 As I read the Order, the rates were set in a
14 manner to have the same additive apply to all carriers
15 within a particular -- in a particular zone and for
16 the additive to increase as you went out into outer
17 zones. And as I read the Order, there was explicit
18 acknowledgement of an expectation that there would be
19 revenue winners and losers out of that process and not
20 a revenue neutral basis.

21 Q. In your cross-examination testimony, on
22 several occasions you referred to dialing parity. Can
23 you explain what you're referring to there, the
24 concern you're speaking of?

25 A. Yes. And if I could, I think the best thing

1 to do is to -- if I can find the reference to the FCC
2 rule.

3 Well, there is a dialing parity requirement,
4 a dialing parity obligation under the Federal
5 Telecommunications Act. I won't read it into the
6 record, but it's set out at page 24 of my direct
7 testimony, and it's Section 251(1)(3) of the
8 Telecommunications Act, and that dialing parity
9 obligation applies to all LECs, both incumbent LECs
10 and CLECs.

11 In addition, the FCC in implementing that
12 portion of the Telecommunications Act has issued
13 specific dialing parity rules, and the rule that I
14 believe is most applicable to this situation is
15 47 CFR 51.207, and it's short. With your permission
16 I'll read it.

17 A LEC shall permit telephone exchange
18 service customers within a local calling area to dial
19 the same number of digits to make a local telephone
20 call notwithstanding the identity of the customers or
21 the called party's telecommunications service
22 provider.

23 And what the MCA screening is doing is
24 making a distinction and creating different dialing
25 patterns, toll versus local, based on the identity of

1 the called party's service provider.

2 Q. And would it be appropriate under any
3 circumstance for a CLEC to have to pay to obtain
4 dialing parity?

5 A. No. It's a federal law obligation, and
6 imposing a surcharge on a federal law obligation would
7 be illegal on its face.

8 Q. In your -- in the questions and answers from
9 Mr. England and Mr. Johnson, you were discussing the
10 potential application of access charges at least on a
11 retroactive basis and I guess potentially on a
12 going-forward basis on traffic exchanged -- MCA
13 traffic exchanged between what we all have referred to
14 as the independent LECs and CLECs.

15 Would that necessarily be a -- have a
16 negative financial impact on CLECs?

17 A. No. I mean, we haven't done the studies,
18 but it's not inevitable that it would have a negative
19 impact. In fact, I think there may be a pretty good
20 chance that it would have a positive effect, and that
21 in part may depend on how one would implement that
22 kind of access charge compensation in light of the
23 FCC's rules and whether or not you make a judgment
24 that that sort of compensation must meet the FCC's
25 requirement that the rate be reciprocal.

1 If it is, it is almost inevitable that the
2 financial impact of applying access charges would
3 benefit the CLECs, because I would fully expect that
4 the inbound traffic is going to exceed -- the inbound
5 traffic from the independent to the CLEC generally
6 speaking is going to exceed the outbound traffic from
7 the CLEC to the independent.

8 Q. If that's the case, why does Gabriel
9 continue to recommend bill and keep arrangements
10 between such adjoining carriers?

11 A. Well, that's the arrangement made under the
12 1992 MCA decision. We believe treating CLECs as
13 participants in the MCA, as MCA participants, that
14 applying the same compensation mechanism for adjoining
15 not competing LECs as was established in 1992 is most
16 consistent. That's the most consistent way to fit the
17 advent of CLECs into the MCA with the existing system.

18 MR. LUMLEY: I don't have any further
19 questions.

20 JUDGE DIPPELL: Thank you. Mr. Cadieux, you
21 may be excused.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 JUDGE DIPPELL: Let's go ahead and take a
25 15-minute break, a few minutes after ten o'clock.

1 Off the record.

2 (A recess was taken.)

3 JUDGE DIPPELL: Let's go back on the record.

4 That was the only Gabriel witness; is that
5 correct, Mr. Lumley?

6 MR. LUMLEY: I'm sorry?

7 JUDGE DIPPELL: That was the only Gabriel
8 witness?

9 MR. LUMLEY: Yes, your Honor.

10 JUDGE DIPPELL: So then we're ready for
11 Nextlink's first witness.

12 MR. COMLEY: Nextlink would call Carol
13 Pomponio. And with apologies to the Commission and
14 the parties, I noticed that there were no line numbers
15 on Ms. Pomponio's testimony. We have, however,
16 corrected that, and with leave of the Commission I'd
17 like to hand the court reporter -- I've already handed
18 the court reporter three copies of her numbered
19 version, her line numbered version, and I have copies
20 for you and the Commission.

21 JUDGE DIPPELL: All right. And did you make
22 copies for the other parties?

23 MR. COMLEY: I certainly did.

24 JUDGE DIPPELL: So that's Exhibit No. 26
25 that we marked here -- or 27. Exhibit No. 27. So

1 we'll just substitute that in the record for the
2 previously submitted one.

3 MR. COMLEY: Thank you. That will work
4 splendidly.

5 (EXHIBIT NO. 27 WAS REMARKED FOR
6 IDENTIFICATION.)

7 (Witness sworn.)

8 JUDGE DIPPELL: You may proceed, Mr. Comley.

9 MR. COMLEY: Thank you, Judge.

10 CAROL POMPONIO testified as follows:

11 DIRECT EXAMINATION BY MR. COMLEY:

12 Q. Ms. Pomponio, would you state your full name
13 for the record, please.

14 A. Carol Pomponio.

15 Q. And by whom are you employed?

16 A. Nextlink Missouri, Inc.

17 Q. In what capacity do you serve with Nextlink
18 Missouri?

19 A. Regulatory Manager.

20 Q. And what is your business address?

21 A. My business address is 810 Jordan Boulevard,
22 Suite 200, Oakbrook, Illinois, 60523.

23 Q. Ms. Pomponio, are you the same Carol
24 Pomponio who caused to be filed in this matter written
25 testimony which has been marked previously by the

1 court reporter as Exhibit 27?

2 A. Yes.

3 Q. And do you have any corrections at this time
4 to your testimony?

5 A. Yes, I do. I would like to correct my
6 business address on the first page at line 2 to the
7 address I just stated on the record.

8 On page 2, line 8, I would like to insert
9 the word "is" after the word "testimony".

10 On the fourth page, at line 13 and line 15,
11 I would like to strike the word "loses" and insert the
12 word "loss".

13 JUDGE DIPPELL: I'm sorry. Would you state
14 what page that was again?

15 THE WITNESS: It's the fourth page, line 13.
16 It reads "for its competitive loses" instead of
17 "competitive loss". And then the same correction on
18 line 15.

19 On the fifth page at line 3, I would like to
20 correct the phrase so -- that reads now "for both
21 CLECs and CLECs" so that it reads "for both ILECs and
22 CLECs."

23 BY MR. COMLEY:

24 Q. Are there any more corrections or
25 modifications to Exhibit 27?

1 A. No, there aren't.

2 Q. Ms. Pomponio, if I were to ask you as you
3 are under oath the same questions that are contained
4 in your rebuttal testimony, would your answers today
5 be the same?

6 A. Yes, they would.

7 MR. COMLEY: Your Honor, based upon her
8 testimony, I would offer Exhibit 27 into evidence in
9 this case and also tender her for cross-examination.

10 JUDGE DIPPELL: Are there any objections to
11 Exhibit No. 27 with those corrections coming into the
12 record?

13 (No response.)

14 Then I will receive it into the record.

15 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE DIPPELL: Is there cross-examination
17 by AT&T?

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

19 JUDGE DIPPELL: Intermedia?

20 MR. SAPPERSTEIN: No, thank you, your Honor.

21 JUDGE DIPPELL: Birch?

22 MR. MIRAKIAN: No questions.

23 JUDGE DIPPELL: McLeod?

24 MR. KRUSE: No, questions, your Honor.

25 JUDGE DIPPELL: Gabriel?

1 MR. LUMLEY: No, your Honor.

2 JUDGE DIPPELL: Staff?

3 MR. POSTON: No questions.

4 JUDGE DIPPELL: Public Counsel?

5 MR. DANDINO: No questions, your Honor.

6 JUDGE DIPPELL: Sprint?

7 MS. GARDNER: No questions.

8 JUDGE DIPPELL: GTE?

9 MR. DORITY: Yes, just one. Thank you.

10 CROSS-EXAMINATION BY MR. DORITY:

11 Q. Good morning, Ms. Pomponio.

12 A. Good morning.

13 Q. At page 2 of your rebuttal testimony, I

14 believe it's lines 21 and 22, you indicate that

15 Nextlink concurs with Mr. Cadieux's testimony in this

16 case; is that correct?

17 A. That's correct.

18 Q. Were you in the hearing room when

19 Mr. Cadieux was responding to questions posed by Judge

20 Dippell regarding any additions that he might wish to

21 make to the recommendations he was proposing to this

22 Commission concerning the MCA plan?

23 A. Yes, I was.

24 Q. And do you recall his testimony regarding

25 the use of NXXs and the fact that he would recommend

1 that CLECs be required to identify which NXXs are MCA
2 and also attest that the rate centers for those NXXs
3 would be within the current boundaries of the current
4 MCA plan?

5 A. Yes.

6 Q. Would you also agree with that and adopt
7 that as a recommendation?

8 A. Yes, I would.

9 MR. DORITY: Thank you. That's all I have.

10 JUDGE DIPPELL: Southwestern Bell?

11 MS. McDONALD: Thank you.

12 CROSS-EXAMINATION BY MS. McDONALD:

13 Q. Good morning.

14 A. Good morning.

15 Q. Is my understanding correct that Nextlink is
16 a facilities-based provider currently operating in the
17 St. Louis MCA?

18 A. Yes.

19 Q. And would you say that that's the only
20 metropolitan calling area that Nextlink is currently
21 operating in?

22 A. That's correct.

23 Q. Okay. Is my understanding correct that it's
24 Nextlink's position that it defines its local calling
25 scope to include all tiers of the St. Louis

1 metropolitan calling area?

2 A. Its calling scope, yes. That's correct.

3 Q. Okay. Is it Nexlink's position that this
4 Commission approved CLEC tariffs which allow CLECs to
5 offer MCA service?

6 A. Would you say that again?

7 Q. Sure. Is it Nextlink's position that this
8 Commission approved CLEC tariffs which allow CLECs to
9 offer MCA service?

10 A. Yes.

11 Q. Is it Nextlink's position that its tariff
12 indicates that it is offering its St. Louis customers
13 MCA service?

14 A. Yes.

15 Q. Okay. Does Section 3.1.1 of Nextlink's
16 tariff define the exchanges that Nextlink is serving
17 in St. Louis?

18 A. I don't have the tariff pages in front of
19 me. Section 3.1.1 identifies those exchanges in which
20 we are offering service.

21 Q. Okay. And does Section 3.1.2 of Nextlink's
22 tariff define the exchanges that Nextlink's customers
23 may call?

24 A. Yes, on a -- as a local call, yes.

25 Q. And is this an alphabetical listing of the

1 exchanges they may call?

2 A. It does not appear to be alphabetical to me,
3 or maybe it is. I'm not sure. It speaks for itself,
4 though.

5 Q. Okay. Would it be fair to say that neither
6 Section 3.1.1 or 3.1.2 mentions MCA service?

7 A. That's fair to say.

8 Q. Okay. Would you agree with me that Portage
9 Des Sioux is in Tier 3 of the metropolitan calling
10 area in St. Louis?

11 A. Based on this map, yes.

12 Q. Okay. Can Nextlink's customers call Portage
13 Des Sioux?

14 A. Yes, they can certainly call customers in
15 Portage Des Sioux. Our intent in filing this tariff
16 was to include all exchanges in the current MCA
17 footprint, and it looks like we may have inadvertently
18 omitted that particular exchange.

19 Q. Okay. So you would agree with me that
20 currently Section 3.1.2 does not indicate that
21 Nextlink's customers can call Portage Des Sioux on a
22 local basis?

23 A. I would agree.

24 Q. Will you agree with me that St. Charles is
25 also in Tier 3 of the metropolitan calling area?

1 A. Yes.

2 Q. Can Nextlink's customers call St. Charles on
3 a local basis?

4 A. Again, that was -- our intent was to include
5 all the exchanges identified in the MCA footprint, and
6 it looks like we may have not captured all those
7 exchanges accurately in this tariff filing.

8 Q. So you would agree with me that with regard
9 to Section 3.1.2 of Nextlink's tariff, it doesn't
10 indicate that Nextlink's customers can call
11 St. Charles on a locally dialed basis?

12 A. Right.

13 Q. Okay. Do you agree with me that Valley Park
14 is in Tier 3 of the St. Louis metropolitan calling
15 area?

16 A. Yes.

17 Q. And can Nextlink's customers call Valley
18 Park?

19 A. Again, my answer is the same, and if there's
20 other exchanges that we have inadvertently left off,
21 then we will need to amend our tariff. But it was our
22 intent to include all the exchanges currently
23 identified as within the MCA.

24 Q. Well, just to speed things along here, let's
25 talk about the ones that aren't included on this list,

1 and I'll just give you a list and you can tell me
2 whether or not you see it on that page.

3 Would you agree that St. Peters is not
4 listed in Section 3.1.2?

5 A. Yes.

6 Q. Would you agree with me that O'Fallon is not
7 listed in Section 3.1.2?

8 A. Yes.

9 Q. Would you agree with me that Pond, Missouri
10 is not listed in Section 3.1.2.

11 Q. Yes. I think that the document speaks for
12 itself.

13 Q. Okay. Will you agree that Moscow Mills is
14 not listed in Section 3.1.2?

15 A. Yes.

16 Q. Would you agree with me that Old Monroe is
17 not listed in Section 3.1.2?

18 A. Yes.

19 Q. Would you agree with me that Winfield is not
20 listed in Section 3.1.2?

21 A. Yes.

22 Q. Would you agree with me that Troy is not
23 mentioned in Section 3.1.2? That's in Section 5 of
24 the metropolitan calling area, top left corner.

25 A. Yes.

1 Q. Would you agree with me that Wentzville is
2 not listed in Section 3.1.2?

3 A. Yes.

4 Q. Would you agree with me that Ware is not
5 listed in Section 3.1.2?

6 A. Yes.

7 MR. COMLEY: Ms. McDonald, how many are
8 there?

9 MS. McDONALD: Just one more.

10 MR. COMLEY: Just one more?

11 MS. McDONALD: Now you'll know what to put
12 in your tariff.

13 MR. COMLEY: Well, I was thinking, if you
14 wanted to we'll stipulate that those are not in the
15 tariff to save some time.

16 BY MS. McDONALD:

17 Q. Okay. Well, you would agree with me, then,
18 that Pacific is not listed in Section 3.1.2 either?

19 A. Yes.

20 Q. Okay. So based on Section 3.1.2, it would
21 appear that what Nextlink is considering its MCA
22 geographic footprint does not include all the tiers
23 that are in the metropolitan calling area in
24 St. Louis?

25 A. I would agree that this tariff, yes, does

1 not accurately reflect all the exchanges in the MCA
2 footprint.

3 Q. That can be called on a locally dialed
4 basis?

5 A. Right.

6 Q. Okay. And would it be fair to say that
7 Nextlink within the metropolitan calling area in
8 St. Louis only serves business customers?

9 A. Yes, that's correct.

10 Q. Okay. And based on Section 4.1.1.5.2 of
11 Nextlink's tariff, would it be fair to say that all
12 business customers pay \$39 for a basic business line?

13 A. Yes, that's correct.

14 Q. Is it your position that this basic business
15 line includes MCA service?

16 A. Yes.

17 Q. Would it be fair to say that Nextlink's
18 tariff does not delineate the charge that would be
19 applicable for MCA service?

20 A. MCA service is included in the price of the
21 basic line.

22 Q. Okay. And you don't know what separately
23 the additive, for example, would be for tiers 3 and 4
24 if there was an additive, correct?

25 A. That's correct. We're not offering service

1 in Tiers 4 or 5, though.

2 Q. Okay. What about Tier 3?

3 A. Yes.

4 Q. Okay. So if I'm a Tier 3 Nextlink customer,
5 would it be fair to say that I don't know specifically
6 what I'm paying for the MCA portion of my basic local
7 service, I just know I'm paying \$39 in total?

8 A. There is no additional additive for those
9 customers in Tier 3.

10 Q. Okay. And is it fair to say that Nextlink
11 has an Interconnection Agreement with Southwestern
12 Bell?

13 A. Yes, we do.

14 Q. Other than with Southwestern Bell, does
15 Nextlink have any other Interconnection Agreements
16 with any LEC in the state of Missouri?

17 A. No.

18 Q. Okay. If a Nextlink MCA-3 subscriber in
19 St. Charles calls a Birch MCA-5 subscriber in
20 Wentzville, what form of intercompany compensation
21 applies to that call?

22 A. Would you repeat the question?

23 Q. Sure. If a Nextlink MCA-3 subscriber in
24 St. Charles calls a Birch MCA-5 subscriber in
25 Wentzville, assuming that they have an MCA subscriber,

1 what form of intercompany compensation would apply to
2 that call?

3 A. It would be de facto bill and keep.

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

6 JUDGE DIPPELL: Cass County?

7 MR. MCCARTNEY: Yes, thank you.

8 CROSS-EXAMINATION BY MR. MCCARTNEY:

9 Q. Good morning.

10 A. Good morning.

11 Q. Is Nextlink originating any traffic from its
12 CLEC customers that terminates in the Orchard Farm
13 exchange in St. Louis?

14 A. Well, in response to your Data Request, we
15 were able to identify one call in a three-month period
16 that terminated to Orchard Farms.

17 Q. So yes, your traffic is terminating to
18 Orchard Farm?

19 A. Yes, de minimus.

20 Q. At the top of page 3 of your rebuttal
21 testimony, you state that Nextlink has defined its
22 local calling scope to include all tiers of the MCA?

23 A. Yes, that's correct.

24 Q. And this includes the Orchard Farm exchange?

25 A. Yes, it does.

1 Q. Does this include Orchard Farm's MCA
2 customers and Orchard Farm's non-MCA customers?

3 A. Yes, it does.

4 Q. And that would be consistent with your
5 tariff that we looked at just a minute ago, it has
6 Orchard Farm there listed?

7 A. It does have Orchard Farm listed.

8 Q. Orchard Farm is on it. All right. And you
9 say that you have terminated -- your Data Request says
10 that you have terminated traffic to Orchard Farm's MCA
11 NXX. Do you know if you've terminated any traffic to
12 Orchard Farm's non-MCA NXX?

13 A. The analysis that we did indicated we had
14 not terminated any calls to non-MCA Orchard Farm NXXs.

15 Q. Would you explain a little bit about the
16 analysis that you did, how that -- how you figured
17 that out.

18 Q. I did not do the analysis. The analysis was
19 done by our billing department, our internal systems
20 support department. So I don't know how they
21 performed it.

22 Q. Also in your Data Requests that we received
23 you say that Nextlink does create 92-99 records for
24 local traffic, and it does create Category 11 records
25 for toll. I think it's in answer to question 1-6.

1 A. Right. We create 92-99 records for local
2 traffic and Category 11 for interLATA toll traffic.

3 Q. And do you exchange that with other
4 companies in the MCA, or who gets these records I
5 guess is my question?

6 A. We exchange -- we will exchange 92-99
7 records with Southwestern Bell.

8 Q. Say there's a call to an Orchard Farm
9 non-MCA customer. Is Orchard Farm going to get a
10 Category 11 record for toll, or how would that work?

11 A. If there's a call --

12 Q. To one of your customers in St. Louis, a
13 Nextlink CLEC customer in St. Louis makes a call to
14 the Orchard Farm exchange but it's to a non-MCA
15 customer.

16 A. Uh-huh.

17 Q. Which you're calling local in your tariff.

18 A. Uh-huh.

19 Q. Are you calling that local to us, too, or
20 are we going to get a Category 11 record for that
21 call?

22 A. I'm not sure what record would record that.

23 Q. Would the customer -- I'm sorry.

24 A. It's my understanding -- and then again, I'm
25 not -- I'm not a billing expert. This is just from my

1 conversations in completing this Data Request.

2 My understanding is that we will produce
3 92-99 records for local traffic, and so I would assume
4 that those would be 92-99 records.

5 Q. You would define a call from your CLEC
6 customer in St. Louis to a non-MCA customer in Orchard
7 Farm as a local call that would get a 92-99 record?

8 A. I believe that's correct.

9 Q. You said that you're going to exchange the
10 92-99s with Southwestern Bell. Are you currently
11 doing that?

12 A. My understanding is that we have received
13 records from Southwestern Bell. We have had, I guess,
14 some discrepancies with our records, but we are
15 working to fix that, and it's my understanding that we
16 will soon be exchanging records.

17 Q. Is compensation flowing back and forth
18 between you and Southwestern Bell -- I'm sorry --
19 between Nextlink and Southwestern Bell?

20 A. I don't know if compensation is flowing back
21 and forth between Nextlink and Southwestern Bell. I
22 do know the Interconnection Agreement calls for the
23 payment of reciprocal compensation.

24 Q. But no records whatsoever are being passed
25 between Orchard Farm and Nextlink, is that accurate,

1 at this time?

2 A. Yes, I believe that's accurate.

3 Q. So it would also be accurate to say that no
4 compensation is flowing back and forth between Orchard
5 Farm and Nextlink?

6 A. Well, we've had one call that has terminated
7 to Orchard Farm, and it was an 80-second call to an
8 MCA NXX, and that's correct, there was no compensation
9 for that call. And now I don't know whether there
10 have been calls from Orchard Farms to Nextlink
11 customers or not.

12 Q. Okay. Would a call from a Nextlink CLEC
13 customer in St. Louis to a non-MCA Orchard Farm, would
14 that be a seven or ten dialed or would they have to
15 dial one first?

16 A. It would be seven or ten-digit dialing.

17 Q. I guess my last question is, if the
18 Commission does decide that bill and keep should be
19 used, that CLECs can be in on the same terms and
20 conditions, would you be willing to segregate the
21 noncompensable traffic out onto a separate trunk in
22 order to resolve the billing and compensation
23 problems?

24 A. Would you explain that a little bit more?

25 Q. Sure. Let's say that the Commission decides

1 they want to keep this same area, they want to keep
2 bill and keep compensation, and in order for Orchard
3 Farm, which will have trouble figuring out what
4 traffic is MCA and what's not right now, sending all
5 the MCA traffic on a different trunk, so therefore
6 Orchard Farm does not have that difficulty of trying
7 to parcel out, for example, wireless traffic and other
8 types of traffic that are not MCA.

9 A. And conversely Orchard Farm would send
10 Nextlink MCA traffic on a separate trunk?

11 Q. Yeah.

12 A. And this is something that would be
13 recommended when the calls are as de minimus as one
14 call in the equivalent of a calendar quarter? I mean,
15 is that -- I guess we would have -- we would be
16 concerned about putting separate trunk groups in, and
17 I think if I understand you correctly you want a
18 separate trunk group for MCA traffic as well as for
19 non-MCA traffic, and then you would then supply a
20 trunk group for Orchard Farm's MCA traffic and one for
21 non-MCA traffic.

22 That would be problematic to Nextlink at
23 least at this point with this type of data that's been
24 collected. It seems like a highly inefficient use of
25 our switches. I would think that there would be great

1 costs involved with direct trunking.

2 I think there are other ways the parties can
3 work together to resolve what traffic is MCA traffic
4 and what traffic is non-MCA traffic short of requiring
5 segregated trunk groups, you know, when we're faced
6 with a situation like we are in response to Cass
7 County, et al's Data Request.

8 MR. McCARTNEY: Thank you. Those are all my
9 questions.

10 JUDGE DIPPELL: MITG?

11 MR. JOHNSON: Thank you.

12 CROSS-EXAMINATION BY MR. JOHNSON:

13 Q. Ms. Pomponio, this 80-second call that went
14 to Orchard Farms, when did that -- what was the date
15 of that call? Do you know that from your information?

16 A. It was sometime between February 2000 and
17 April 2000.

18 Q. How long has Nextel been operating in the
19 St. Louis area?

20 A. I can't answer for Nextel.

21 Q. I'm sorry. At least I got your name right.
22 I missed that yesterday.

23 A. I appreciate that. Nextlink has been
24 operational since December 1st of 1999 in the
25 St. Louis area.

1 Q. Okay. During the period between December of
2 '99 and today, is your 1101 record creation system
3 working?

4 A. I would assume that it is, but I don't have
5 independent knowledge of that.

6 Q. Okay. To your knowledge, has the creation
7 of a 92 record generating system created some
8 administrative problems for Nextlink personnel?

9 A. I understand that the 92-99s are not the
10 industry standard between CLECs and RBOCs or other
11 ILECs. I understand that 92-99 records are a more
12 granular record than other CLEC incumbents exchange in
13 other regions of the country. So the 92-99 process I
14 understand is more difficult to administer and to
15 create.

16 Q. What is the standard process? Does it have
17 a name? Is it 1101 or is it something different, the
18 Category 11 records?

19 A. I don't know. I don't know what the
20 industry standard is.

21 Q. With respect to the issue of placing MCA
22 traffic on separate trunk groups, if Nextel could
23 accomplish that by just having a separate MCA trunk
24 between it and your point of interconnection with
25 Southwestern Bell, would that be acceptable?

1 A. Again, I can't answer for Nextel.

2 Q. Did I do that again? Nextlink. Same
3 question, substitute the word Nextlink, or do I need
4 to ask it again?

5 A. You need to ask it again.

6 Q. With respect to creating separate trunks for
7 MCA traffic, would Nextlink be willing to do that if
8 it only required Nextlink to establish a separate
9 trunk between your switch and your interconnection
10 point with Southwestern Bell as opposed to all the way
11 out to Orchard Farms?

12 A. I think conceptually we would have a problem
13 with that. I think practically we are only offering
14 MCA service. Well, I guess actually maybe I
15 misunderstood your question. You're asking calls that
16 go to MCA customers as opposed to calls that go to
17 non-MCA customers.

18 Q. How many trunks does Nextlink have between
19 its switch and Southwestern Bell's -- your
20 interconnection point with Southwestern Bell?

21 A. I don't know.

22 Q. Do you know if it's more than one?

23 A. I don't know.

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

25 JUDGE DIPPELL: I'm just going to clarify

1 that when the witness stated earlier she -- I think it
2 was when Southwestern Bell was questioning, she
3 mentioned this map, she was discussing or pointing to
4 the map in the hearing room that is a map of the
5 St. Louis metropolitan calling area that everyone has
6 been referring to and can be found in Mr. Voight's
7 testimony.

8 I don't believe there are any questions from
9 the Bench for Ms. Pomponio. Is there any redirect?

10 MR. COMLEY: Yes. Thank you, Judge.

11 REDIRECT EXAMINATION BY MR. COMLEY:

12 Q. Ms. Pomponio, let's talk a little bit about
13 the omitted exchanges. Even though the exchanges from
14 the metropolitan calling area footprint may be omitted
15 from Nextlink's tariff, do you know whether or not
16 customers in the principal zone or the other tiers in
17 there and throughout that are denied access to those
18 other exchanges when they dial locally under your
19 tariff?

20 A. No, they are not denied access.

21 Q. So they're getting service?

22 A. That's correct.

23 Q. Were the omissions intentional?

24 A. No.

25 Q. Mr. McCartney was asking you questions about

1 record exchanged between Nextlink and Orchard Farm.
2 Do you know whether Orchard Farm has sent any records
3 to Nextlink concerning traffic it may terminate on
4 your facilities?

5 A. I believe they have not sent us any records.

6 MR. COMLEY: I have no other questions.

7 JUDGE DIPPELL: Thank you. Ms. Pomponio,
8 you may be excused.

9 THE WITNESS: Thank you.

10 JUDGE DIPPELL: Were there any other
11 Nextlink witnesses?

12 MR. COMLEY: No, there are not.

13 JUDGE DIPPELL: Then I believe we're ready
14 for Broadspan. We've been calling you Gabriel this
15 whole time. Now we'll call you Broadspan.

16 MR. LUMLEY: That's the closest I've ever
17 come to being called an angel, so I have enjoyed it.

18 (Laughter.)

19 (Witness sworn.)

20 JUDGE DIPPELL: You may proceed, Mr. Lumley.

21 MR. LUMLEY: Thank you.

22 COLLEEN DALE testified as follows:

23 DIRECT EXAMINATION BY MR. LUMLEY:

24 Q. Would you state your name and business
25 address for the record, please.

1 A. My name is Colleen M. Dale. My business
2 address is 409 Cedar Lane, Columbia, Missouri.

3 Q. By whom are you employed and in what
4 capacity?

5 A. I'm employed by Primary Network Holdings.
6 I'm a Senior Counsel assigned to the subsidiary
7 Primary Network Communications.

8 Q. Can you describe the responsibilities of
9 your position with Primary?

10 A. Generally speaking, I'm responsible for all
11 regulatory matters in the states in which we are
12 certificated. I would estimate that would be about 20
13 states at this point.

14 Q. Obviously including the state of Missouri?

15 A. Yes.

16 Q. Can you briefly describe your previous
17 professional experience?

18 A. Beginning in 1981, after I became admitted
19 to the Bar, I worked for the Missouri Securities
20 Division for approximately ten years, nine of which I
21 was the Chief of Enforcement. After that time, in
22 1992 I became employed by the Missouri Public Service
23 Commission. Worked here for about five years in the
24 capacity of Senior Counsel and then Deputy General
25 Counsel for telecom matters.

1 In 1997 I left the Commission, became
2 employed by Brooks Fiber as a regulatory manager. Was
3 there for two years and left in December of 1999. Was
4 hired by Broadspan in January of 2000. Wait. I've
5 got the years wrong. '98, came in '99.

6 Q. Have you previously testified before this
7 Commission?

8 A. No, I have not.

9 Q. Are you familiar with Exhibits 28 and 29 in
10 this case which are the rebuttal and surrebuttal
11 testimony of Richard Phillips?

12 A. Yes, I am.

13 Q. Is it your intention to adopt that testimony
14 today?

15 A. Yes, it is.

16 Q. If I were to ask you the questions set forth
17 in the rebuttal and surrebuttal testimony, Exhibits 28
18 and 29, would your answers be the same as the answers
19 provided by Mr. Phillips?

20 A. Yes, they would be.

21 Q. Obviously with the exception of the personal
22 background that we've just gone over?

23 A. Right.

24 Q. And those answers are true and correct to
25 the best of your knowledge, information and belief?

1 A. Yes, they are.

2 MR. LUMLEY: Your Honor, at this point I
3 would offer Exhibits 28 and 29 into the record and
4 tender the witness for cross-examination.

5 JUDGE DIPPELL: Would there be any objection
6 to Exhibit 28 and 29 coming into the record?

7 (No response.)

8 Then I'll receive those into the record.

9 (EXHIBIT NOS. 28 AND 29 WERE RECEIVED INTO
10 EVIDENCE.)

11 MR. LUMLEY: Your Honor, one oversight.
12 Just for the record, we have submitted a Withdrawal of
13 Counsel on behalf of the witness and would ask that
14 you make a ruling just so that's clear that that's
15 been accomplished.

16 JUDGE DIPPELL: That's correct. I
17 apologize. I meant to rule on that earlier this
18 morning, and I will allow the withdrawal of Ms. Dale
19 as counsel for Broadspan.

20 MR. LUMLEY: Thank you, your Honor.

21 JUDGE DIPPELL: Is there cross-examination
22 by AT&T?

23 MR. DeFORD: No questions, thank you.

24 JUDGE DIPPELL: Intermedia?

25 MR. SAPPERSTEIN: No questions.

1 JUDGE DIPPELL: Birch?
2 MR. MIRAKIAN: No questions.
3 JUDGE DIPPELL: McLeod?
4 MR. KRUSE: No questions, your Honor.
5 JUDGE DIPPELL: Nextlink?
6 MS. POMPONIO: On behalf of my counsel, no
7 questions.
8 JUDGE DIPPELL: Staff?
9 MR. POSTON: No questions.
10 JUDGE DIPPELL: Public Counsel?
11 MR. DANDINO: Unfortunately, no questions.
12 JUDGE DIPPELL: Sprint?
13 MS. GARDNER: No questions.
14 JUDGE DIPPELL: GTE?
15 MR. DORITY: Just a couple, please.
16 CROSS-EXAMINATION BY MR. DORITY:
17 Q. Good morning, Ms. Dale.
18 A. Good morning.
19 Q. Were you in the hearing room this morning
20 when Mr. Cadieux testified?
21 A. Yes, I was.
22 Q. Actually, it may have been either this
23 morning or yesterday afternoon. It all runs together.
24 But he was discussing the opportunity that CLECs
25 operating in the St. Louis market currently have in

1 regard to competing with each other.

2 A. Yes.

3 Q. Do you recall that testimony?

4 A. Uh-huh.

5 Q. And do you recall him testifying that when a
6 CLEC is competing with another CLEC, let's use the
7 St. Louis metropolitan calling area geographic scope,
8 that they utilize bill and keep as the intercompany
9 compensation for that?

10 A. Yes, I heard him say that.

11 Q. Okay. Would you refer to page 3 of your
12 rebuttal testimony, lines 21 and 22. The statement's
13 made, It is not true that MCA traffic exchanged
14 between competing companies is currently handled on a
15 bill and keep basis.

16 A. Yes. I see that statement, yes.

17 Q. Would you still agree with that statement or
18 do you think that needs to be amended?

19 A. I would say that it is overly broad. Not
20 all compensation between competing companies is on
21 a -- is governed by -- I'm sorry. I'm having a little
22 trouble with my glasses and not glasses. I can't see
23 without my glasses and I can't see this with my
24 glasses.

25 It is not necessarily true that competing --

1 it is not true -- I'm going to come up with a double
2 negative here, but this is overly broad, because some
3 traffic exchanged between competing companies that is
4 MCA traffic would be handled on a bill and keep basis.

5 MR. DORITY: Okay. Thank you. That's all I
6 have.

7 JUDGE DIPPELL: Southwestern Bell?

8 MR. LANE: No questions, your Honor.

9 JUDGE DIPPELL: Cass County?

10 MR. LANE: It surprised me, too.

11 (Laughter.)

12 JUDGE DIPPELL: Cass County?

13 MR. MCCARTNEY: Yes, please, just a couple
14 questions.

15 CROSS-EXAMINATION BY MR. MCCARTNEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. Where does Broadspan operate as a CLEC in
19 the state of Missouri?

20 A. Generally speaking, in the metropolitan
21 areas Kansas City, St. Louis and Springfield.

22 Q. Is Broadspan currently terminating or
23 currently sending any traffic that terminates to the
24 exchanges in St. Louis of Orchard Farm?

25 A. No. I think we responded that way in the

1 Data Request.

2 Q. So you're doing it on a resale basis?

3 A. Generally speaking, all of our MCA traffic
4 is on a resale basis.

5 Q. Do you intend to become a facilities-based
6 provider?

7 A. At this point, I have to tell you that our
8 plans are nebulous at best. We are in the process of
9 being acquired. I don't have -- I'm not privy to the
10 information about what our business plans will be
11 after we're acquired or how our business plans will
12 change.

13 MR. MCCARTNEY: That's all my questions.

14 Thank you.

15 JUDGE DIPPELL: MITG?

16 MR. JOHNSON: No questions.

17 JUDGE DIPPELL: I just have one question on
18 behalf of the Commission.

19 QUESTIONS BY JUDGE DIPPELL:

20 Q. Both Gabriel and AT&T in their testimony
21 sort of listed a laundry list of recommendations to
22 the Commission. Are those recommendations
23 recommendations that Broadspan can live with or do you
24 have --

25 A. Yes. And I believe as Mr. Cadieux amended

1 them this morning, we would very much endorse those.

2 JUDGE DIPPELL: Are there any recross
3 questions based on my question?

4 (No response.)

5 Is there redirect?

6 MR. LUMLEY: Yes. With all that scathing
7 cross-examination, I have a very large amount of
8 redirect.

9 No questions.

10 JUDGE DIPPELL: Then I believe you may be
11 excused, Ms. Dale.

12 THE WITNESS: Thank you. Thank you all.

13 (Witness excused.)

14 JUDGE DIPPELL: Are there any other
15 Broadspan witnesses?

16 MR. LUMLEY: No, your Honor.

17 JUDGE DIPPELL: Then I think we're ready for
18 Sprint's first witness.

19 MS. GARDNER: Robert Cowdrey.

20 (Witness sworn.)

21 JUDGE DIPPELL: You may proceed.

22 ROBERT COWDREY testified as follows:

23 DIRECT EXAMINATION BY MS. GARDNER:

24 Q. Would you please state your name for the
25 record.

1 A. William Robert Cowdrey.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. I'm employed by Sprint as Director of
5 Regulatory Affairs.

6 Q. And are you the same Robert Cowdrey who has
7 filed what has previously been marked as Exhibit 30,
8 direct testimony, and Exhibit 31, rebuttal testimony?

9 A. Yes.

10 Q. And do you have any corrections to
11 Exhibit 30?

12 A. Yes, I do. I'd like to start on page 2 of
13 my direct testimony, line 13, the word Sprint, I'd
14 like to change that to Sprint apostrophe s space ILEC.

15 Q. Next?

16 A. On page 3, line 8, between "and" and
17 "support" there should be "a", "and a support payment
18 proposal."

19 On page 5, line 11, at the end of the
20 sentence it says "as well as some customers." It
21 should say "as well as MCA customers in Tiers 3, 4 and
22 5."

23 JUDGE DIPPELL: I'm sorry. Would you state
24 that one again?

25 THE WITNESS: Yes. On line 11 of page 5, it

1 should say -- at the end it should say, the
2 parenthetical you should say "as well as MCA customers
3 in tiers 3, 4 and 5."

4 BY MS. GARDNER:

5 Q. Any other corrections to Exhibit 30, the
6 direct?

7 A. Yes. On page 6, line 20, Sprint should be
8 changed to Sprint apostrophe s space ILEC. And that's
9 the last change to my direct testimony.

10 Q. What about Exhibit 31, your rebuttal
11 testimony?

12 A. On page 3, line 2, testimony is misspelled.
13 It should be corrected.

14 Then on page 5 of my rebuttal testimony, on
15 line 8, the last -- the "the" should be stricken.
16 Appears to make competitively neutral MCA changes.

17 And that's my last change to my rebuttal
18 testimony.

19 Q. And with those corrections, if I were to ask
20 you the questions contained in Exhibits 30 and 31,
21 would your answers be the same here today?

22 A. Yes.

23 Q. And are they true and correct to the best of
24 your knowledge, information and belief?

25 A. Yes.

1 MS. GARDNER: At this point, I would offer
2 into evidence Exhibits 30 and 31 and tender
3 Mr. Cowdrey for cross-examination.

4 JUDGE DIPPELL: Okay. Before I get to that,
5 could you go back to your corrections, the second one
6 that you stated? I thought you said it was on page 8
7 of your direct.

8 THE WITNESS: The second one I stated was on
9 page 3, line 8.

10 JUDGE DIPPELL: Okay.

11 MR. LUMLEY: Your Honor, could he go over
12 his final correction one more time?

13 JUDGE DIPPELL: I'm getting to that one.
14 And then your final one was?

15 THE WITNESS: My final one was on page 5 of
16 my rebuttal testimony. I believe that was line 8, and
17 I just struck through the "the" towards the end of the
18 sentence. So it should just say "appears to make
19 competitively neutral MCA changes."

20 JUDGE DIPPELL: Okay. Are there any
21 objections to Exhibits 30 and 31 with those
22 corrections coming into the record?

23 (No response.)

24 Then I will receive those into the record.

25 (EXHIBIT NOS. 30 AND 31 WERE RECEIVED INTO

1 EVIDENCE.)

2 JUDGE DIPPELL: Is there cross-examination
3 by GTE?

4 MR. DORITY: No, thank you.

5 JUDGE DIPPELL: AT&T?

6 MR. DeFORD: No, thank you.

7 JUDGE DIPPELL: Intermedia?

8 MR. STEWART: No questions, your Honor.

9 JUDGE DIPPELL: Birch?

10 MR. MIRAKIAN: No questions.

11 JUDGE DIPPELL: McLeod?

12 MR. KRUSE: No questions.

13 JUDGE DIPPELL: Gabriel?

14 MR. LUMLEY: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. LUMLEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. In your rebuttal testimony, as I understand
19 your position, you're indicating that CLECs should
20 have to offer the same calling scope as is currently
21 described in the MCA plan in order to participate in
22 the plan. Is that your position?

23 A. No, that's not my position. I think that
24 CLECs are open to expanding something greater than the
25 MCA plan and still able to participate from an

1 outbound perspective. They cannot change the inbound
2 parts of the MCA plan.

3 MR. LUMLEY: Okay. Thank you. That's all I
4 have.

5 JUDGE DIPPELL: Nextlink?

6 MR. COMLEY: No questions, thank you.

7 JUDGE DIPPELL: Staff?

8 MR. POSTON: No questions.

9 JUDGE DIPPELL: Public Counsel?

10 MR. DANDINO: No questions, your Honor.

11 JUDGE DIPPELL: Southwestern Bell?

12 MR. LANE: Yes, thank you, your Honor. I'm
13 going to ask the ones I forgot to ask Ms. Dale.

14 CROSS-EXAMINATION BY MR. LANE:

15 Q. If you would, Mr. Cowdrey, would you turn to
16 your direct, page 4, lines 12 through 16.

17 A. Okay.

18 Q. And in that testimony you propose that a
19 CLEC should have the right to choose whether to use
20 bill and keep or reciprocal local compensation as the
21 method of intercompany compensation, right?

22 A. Yeah. Actually, line 14 probably should be
23 expanded to say CLEC, wireless and ILECs. The people
24 ought to have all options available to them that are
25 available to other competitors.

1 Q. Okay. Let me explore that. Is it your
2 testimony, then, that ILECs should have the equal
3 right to choose the form of intercompany compensation
4 as you propose that CLECs and wireless carriers should
5 have?

6 A. To the extent that the ILEC doesn't use its
7 monopoly power to keep the wireless or the CLEC from
8 being able to do a reciprocal compensation agreement,
9 for example, if they would want to attempt to enter
10 into one. I think possibly it would have to come
11 before the Commission, but yeah, both CLECs, ILECs and
12 wireless should have that ability.

13 Q. Would you agree that if parties are unable
14 to reach agreement, that they have the right to bring
15 intercompany compensation disputes to the Commission
16 for resolution?

17 A. Yes.

18 Q. Okay. And given that, is it your testimony
19 that CLECs, ILECs and wireless carriers should have
20 equal rights to choose between reciprocal compensation
21 and bill and keep for calls within the MCA?

22 A. I think it's still back to they should have
23 whatever options are available to other competitors,
24 they should have that same option. That is, if bill
25 and keep is available to ILECs only, CLECs should have

1 access to that option also, and vice versa.

2 Q. All right. I had read this the first time
3 as indicating that the CLEC gets to choose whether
4 they want to have reciprocal compensation or bill and
5 keep, and they can choose that on a company by company
6 basis with the ILECs with whom they interact. Is that
7 not your --

8 A. I think they'd have the -- I think they
9 should have the opportunity to enter that negotiation.
10 They could choose bill and keep, I guess, if that's
11 available to ILECs today, and they could choose
12 reciprocal compensation if that's available to some
13 other CLECs.

14 Q. I'm concerned about a situation in which a
15 CLEC says I choose reciprocal compensation when the
16 flow of the traffic is incoming to the CLEC and the
17 CLEC choosing bill and keep when the flow of traffic
18 is outbound from that CLEC.

19 Is it your testimony that the CLEC on a
20 company-by-company choice gets to decide how to handle
21 that and that the ILEC with whom they're interacting
22 has to accept that decision?

23 A. I think it still comes back, as we said,
24 before the Commission in there's disagreement on how
25 that negotiation should work.

1 Q. So your proposal is that the parties
2 involved negotiate and not that the CLECs have the
3 upper hand and get to choose the method of
4 compensation that's better for them; is that a fair
5 statement?

6 A. Would you repeat that?

7 Q. Yeah. It's your proposal to the Commission
8 that the parties negotiate that rather than the CLEC
9 having the option to choose whichever form of
10 compensation is better for the CLEC and imposing that
11 on the ILEC?

12 A. I think I still get back to the CLEC should
13 have whatever options are available to other
14 companies. If there's -- if the ILECs have a bill and
15 keep, then the CLEC should be able to have that
16 option. If there's some other proposal between the
17 ILECs, then the CLEC should have that option also.

18 Q. Within the MCA, are you proposing -- and
19 maybe I'm misreading that. On line 14 it says it's up
20 to the ILEC -- excuse me. It would be up to the CLEC
21 or the wireless carrier to determine whether bill and
22 keep or reciprocal compensation is best for that
23 company. Is that still your proposal?

24 A. Yeah, I think it is. If the ILECs are still
25 doing bill and keep, they should have that option to

1 do either bill and keep or the reciprocal compensation
2 agreements they have today.

3 Q. And the ILEC has to accept the choice or the
4 designation of the CLEC?

5 A. I guess I still get back to the -- yeah, I
6 think so. It's an either/or. Right now the CLECs
7 don't have the choice to get into bill and keep. They
8 should have that choice just as the ILECs do today.

9 Q. A new CLEC coming into the market in the
10 St. Louis area, do they have the option to negotiate
11 with each of the ILECs in that area the type of
12 compensation that would apply?

13 A. Yes.

14 Q. And does the ILEC have to accept that
15 designation as a CLEC or is that a matter of
16 negotiation between the parties?

17 A. It's probably a matter of negotiation.

18 Q. And are you recommending a change to that?

19 A. No, I don't believe so.

20 Q. Both parties have the right to negotiate,
21 and if they're unable to reach agreement then the
22 matter can be brought to the Commission for
23 resolution; is that right?

24 A. Yes.

25 Q. And that's what you're proposing?

1 A. Yes. As long as all options are available,
2 yes. Yes.

3 Q. On page 5 of your direct testimony, you
4 discuss an incoming call when an ILEC MCA subscriber
5 moves to a CLEC. Do you see that and recall that?

6 A. Uh-huh.

7 Q. I want to do the reverse of that situation.
8 Let's assume that there's an ILEC customer in the
9 St. Louis area.

10 A. Can we talk about Kansas City? I'm quite a
11 bit more familiar about it.

12 Q. Sure. Would it help if we put the map up
13 there for you to look it?

14 A. Yeah, that would help.

15 Q. Let's assume a call from a Southwestern Bell
16 customer in Kansas City downtown principal zone
17 calling out to Smithville, Southwestern Bell exchange.

18 A. Okay.

19 Q. If the customer today is calling a non-MCA
20 subscriber in Smithville, would you agree that the
21 downtown Kansas City Southwestern Bell customer is
22 assessed a toll charge?

23 A. Yes.

24 Q. And if that customer in Smithville shifts
25 over to a CLEC, would you agree that if we move to

1 include CLECs in the MCA plan, that the CLEC would
2 designate whether or not the call was toll by virtue
3 of whether the CLEC's customer was a subscriber or
4 nonsubscriber?

5 A. I can't follow that much. Let's try to
6 break it down a little bit.

7 Q. If the Southwestern Bell customer who's a
8 nonsubscriber to MCA in Smithville shifts over to a
9 CLEC, what would happen in terms of the call from the
10 Kansas City customer? Is it locally dialed or is
11 it --

12 A. At this point, the call from the Kansas City
13 customer, as I understand it, to a CLEC in
14 Southwestern Bell Smithville would be a toll call.
15 That CLEC customer in Smithville would be treated as a
16 non-MCA subscriber.

17 Q. And if we say that CLECs are to be treated
18 as participants in the plan, then it depends upon the
19 designation by the CLEC as to whether that customer is
20 to be considered in the MCA or not, right?

21 A. That's correct.

22 Q. And if the CLEC designates that NXX and that
23 customer as being within the MCA, then Southwestern
24 Bell would lose toll revenues on that call because it
25 would now be dialed locally, right?

1 A. That's correct.

2 Q. And isn't, then, that the reverse of the
3 situation that you describe on lines 18 through 20 on
4 page 5 of your direct testimony, that in that case
5 simply because the subscriber moved between
6 competitors his incoming calling scope was changed?

7 A. I think this pertains to the Smithville
8 customer that's an MCA subscriber for Southwestern
9 Bell and then goes to a CLEC and loses that inbound
10 calling ability simply because he went to a CLEC
11 versus having Southwestern Bell.

12 Q. And the reverse of that is what we just went
13 through. If a non-MCA subscriber in Smithville shifts
14 over to a CLEC and nothing else changes, then he's
15 gained something in terms of inbound calling scope?

16 A. If the CLEC is recognized by Bell as an MCA
17 NXX, I mean, if that's CLEC's NXX is recognized as
18 MCA.

19 Q. Right.

20 A. Yes.

21 Q. Okay. On page 6 of your direct testimony,
22 you describe or discuss price cap companies' right to
23 maintain revenue neutrality on Commission ordered
24 changes, and you note that the Commission could insure
25 this by treating changes in existing service as

1 creating a new service.

2 Would you agree that the Staff's MCA-2
3 proposal would qualify as a new service?

4 A. Yes.

5 Q. And as a new service, then prices would
6 initially be set and then from that point forward
7 would be subject to price cap treatment; is that
8 right?

9 A. That's correct. That's my understanding.

10 Q. In your rebuttal, on page 2, lines 14
11 through 16, would you turn to that, please. You state
12 that the Commission should refrain from requiring some
13 carriers to offer non-basic services when competitors
14 are free not to offer those same non-basic services.

15 Just to clarify, when you use carriers in
16 that sentence, you're including ILECs within that
17 group?

18 A. Yes.

19 Q. In your rebuttal testimony again, page 3,
20 lines 14 through 19, take a look at that. If CLECs
21 are permitted to be participants in the MCA, does
22 Sprint support mandatory bill and keep on all calls
23 within the geographic scope of the MCA as a method to
24 keep MCA rates affordable?

25 A. We think in the short term that's probably a

1 good solution. Long-term, they may have to look at
2 traffic studies or something to see if traffic is
3 significantly imbalanced and reciprocal compensation
4 needs to be put into place.

5 Now, that decision on whether reciprocal
6 compensation should be put into place should be based
7 somewhat on what the end user impacts of such a
8 decision would have.

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

10 JUDGE DIPPELL: Cass County?

11 MR. ENGLAND: Thank you.

12 CROSS-EXAMINATION BY MR. ENGLAND:

13 Q. And following up on Mr. Lane's last question
14 or two, I too was, I think, somewhat concerned about
15 your proposal initially to allow carriers to pick and
16 choose intercompany compensation arrangements, but
17 your statement here that he just referred you to in
18 your rebuttal testimony which seems to say if you get
19 away from bill and keep, something in the nature of
20 reciprocal compensation, you're running a greater risk
21 of undoing the MCA plan, aren't you?

22 A. Yes, I think that's true.

23 Q. Is Sprint currently operating as a CLEC in
24 the state of Missouri?

25 A. Yes.

1 Q. Does it operate as a separate entity, a
2 separate fictitious name, or how does it operate?

3 A. It operates as Sprint Communications LP.
4 That is a CLEC.

5 Q. Is that the same company that also offers
6 long distance service?

7 A. Yes.

8 Q. And what markets is it currently operating
9 in?

10 A. I believe it's just in the Kansas City,
11 Missouri, or the Kansas City market.

12 Q. Okay. Does it provide CLEC service on a
13 resold or facilities-based or combination?

14 A. I believe it's a combination.

15 Q. But it does do some facility-based CLEC
16 operations?

17 A. That's my understanding, yes.

18 Q. Is it fair to say that if it's only in the
19 Kansas City area, that the only incumbent LEC with
20 which it currently interconnects and has an
21 Interconnection Agreement is Southwestern Bell?

22 A. Yes.

23 Q. It doesn't have any other Interconnection
24 Agreements at this time?

25 A. Not that I'm aware of.

1 Q. Or at least none that it's exercising as far
2 as operating?

3 A. Not that I'm aware of.

4 Q. In your Position Statement, I think Sprint
5 took the position that CLECs should be allowed to
6 define their own geographic calling scope, including a
7 larger outbound low cost calling area than the current
8 MCA; is that correct?

9 A. That's correct.

10 Q. And I think you've been in the hearing room
11 at least the last couple of days where we've discussed
12 some of these larger calling scopes and what types of
13 intercompany compensation would apply, have you not?

14 A. Yes.

15 Q. Would you agree with me, I guess, using the
16 Kansas City example, that if a CLEC wanted to add
17 Higginsville to its larger local calling area, which
18 is outside the current MCA, that calls from that CLEC
19 to Higginsville for purposes of intercompany
20 compensation would be treated as under intrastate
21 access charges?

22 A. Yes.

23 Q. Similarly, if the CLEC wanted to expand the
24 calling scope within the MCA to non-MCA subscribers in
25 the outer tiers or optional tiers, would you agree

1 that calls to those non-MCA subscribers of ILECs would
2 be subject to intrastate access charges?

3 A. Yes.

4 Q. Is Sprint the CLEC currently creating 92
5 records for traffic it originates, local traffic that
6 it originates?

7 A. No, I don't believe that they are.

8 Q. It's not?

9 A. It's not.

10 Q. Why not?

11 A. I don't -- I'm not absolutely sure. I just
12 don't -- it's my understanding that they're not
13 creating 92-99s at this point.

14 Q. Would you agree with me that that's the
15 basis upon which you exchange local reciprocal
16 compensation with Southwestern Bell?

17 A. Yes.

18 Q. So how is local reciprocal compensation
19 currently being handled if you're not passing 92
20 records to Southwestern Bell?

21 A. I don't know for sure.

22 Q. Is there some problem with the 92
23 recordkeeping system?

24 A. I think there's some -- they're in the
25 process of looking at creating the 92-99s. I don't

1 believe the systems are up, but I believe they are
2 looking at them.

3 Q. You would agree with me that your affiliate,
4 the ILEC, creates 92 records, does it not?

5 A. Yes.

6 Q. It certainly doesn't seem that there should
7 be any technological or other impediments to Sprint
8 the CLEC creating 92 records, does it?

9 A. Yeah. There certainly isn't, except for the
10 fact they've got separate systems and everything.
11 They're just rolling out service in Kansas City like
12 now. I mean, barely have any customers. I think
13 there's some time, and it's going to take a little
14 time to get the 92-99s created and sent to Bell, and I
15 don't know what that time line will be.

16 Q. In your direct testimony, page 3, you made a
17 couple of changes -- or I think you made a change at
18 about the area I'm focusing on. I think it's lines 7
19 through 11 where you talk about the Commission
20 creating a bill and keep intercompany compensation
21 arrangement for MCA originally --

22 A. Uh-huh.

23 Q. -- and also permitting the companies to
24 remain revenue neutral at that time.

25 A. Yes.

1 Q. You acknowledge that there were support
2 payments between ILECs?

3 A. Yes.

4 Q. And my understanding is those were temporary
5 support payments?

6 A. Yes.

7 Q. Those have now, according to your testimony,
8 been terminated?

9 A. To my understanding, the support payments to
10 Sprint have been terminated. I'm not sure about the
11 other companies.

12 Q. I guess that gets to my next question. Do
13 you know if any other company in the MCAs or Kansas
14 City MCA if that's the one you're familiar with
15 originally received any support payments besides
16 Sprint?

17 A. Yes. It's my understanding there were some
18 other companies that received support payments.

19 Q. Do you know if they've terminated or not?

20 A. No, I don't.

21 Q. Do you know if, generally speaking, that
22 they were supposed to terminate?

23 A. No, I don't.

24 Q. Okay. But at least as far as Sprint is
25 concerned, the support payments have terminated and

1 there's no further adjustments to maintain revenue
2 neutrality other than the bill and keep mechanism and
3 the establishment of the rates to begin with?

4 A. That's correct.

5 Q. For purposes of maintaining revenue
6 neutrality on a go-forward basis if MCA-2 is created,
7 is Sprint advocating any kind of temporary support,
8 temporary or permanent support payments to incumbents?

9 A. Not at this point. We would probably
10 advocate more end user charges and adjusting those
11 appropriately.

12 Q. I'd like to just briefly explore your notion
13 or concept of bill and keep.

14 A. All right.

15 Q. Would you agree with me that today a call
16 from a Cass County exchange of Peculiar to one of your
17 exchanges in the northern tiers of Kansas City -- I,
18 like Mr. Lane, am having trouble reading the map from
19 this angle. Pick one, if you would please.

20 A. Kearney.

21 Q. Kearney. Thank you. A call from Peculiar
22 to Kearney originates in Cass County Telephone
23 Company's exchange, transits Southwestern Bell's
24 facilities to some degree, and then is ultimately
25 terminated to your facilities in Kearney?

1 A. Yes.

2 Q. And under the bill and keep arrangement
3 there is no compensation that flows from Cass County
4 to either you as the terminating carrier or to
5 Southwestern Bell as the transiting carrier?

6 A. Correct.

7 Q. And that would also work in reverse with a
8 call from Kearney to Cass County --

9 A. Yes.

10 Q. -- or to Peculiar?

11 With the introduction of the CLECs into the
12 MCA, and I do believe you've got a CLEC in Kearney, do
13 you not?

14 A. Yes.

15 Q. Is that ExOp?

16 A. Yes.

17 Q. Under a mandatory bill and keep for
18 everybody, would you understand that again a call from
19 a Peculiar to an ExOp customer in Kearney would
20 involve no terminating payments to ExOp by Cass
21 County?

22 A. That's correct.

23 Q. And no transiting payments by Cass County to
24 Southwestern Bell?

25 A. That's correct.

1 Q. Conversely, if the customer in ExOp wanted
2 to call somebody in Peculiar, ExOp would owe Cass
3 County no terminating compensation?

4 A. Correct.

5 Q. And would owe Southwestern Bell or whatever
6 intermediate carrier no transiting compensation?

7 A. Correct.

8 Q. That's your understanding of bill and keep,
9 correct?

10 A. Of bill and keep as ordered by the
11 Commission, yes.

12 MR. ENGLAND: Thank you, sir. No other
13 questions.

14 JUDGE DIPPELL: MITG?

15 MR. JOHNSON: Thank you.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q. Good morning.

18 A. Good morning.

19 Q. Sprint Communications LP, that's both a CLEC
20 and an IXC?

21 A. That's correct.

22 Q. Sprint Missouri, Inc. is the ILEC?

23 A. That's correct.

24 Q. And Sprint PCS is the wireless?

25 A. Correct.

1 Q. Let's pretend I'm your psychoanalyst and I
2 just want to talk to one of these multiple
3 personalities at a time. Okay?

4 A. Okay.

5 Q. First I want to talk to Sprint Missouri,
6 Inc., the ILEC. How many CLECs does Sprint Missouri,
7 Inc. have interconnection agreements with?

8 A. I don't know.

9 Q. Now, Sprint doesn't have any exchanges in
10 either the St. Louis or the Springfield metropolitan
11 calling area; is that right?

12 A. That's correct.

13 Q. But you don't know if you have any
14 Interconnection Agreements with CLECs that are
15 operating in the Kansas City area?

16 A. I know we've got one with ExOp. I believe
17 we've got one with Green Hills. We've got one with
18 Mark Twain, and there's several other companies that
19 we have interconnection. I just don't know the full
20 number of them.

21 Q. Were you involved in the negotiation of any
22 of those agreements?

23 A. No.

24 Q. Do those agreements -- well, maybe I
25 shouldn't ask this en masse. Which one are you most

1 familiar with, the ExOp?

2 A. I'm somewhat familiar with the ExOp. The
3 other ones I don't believe I've looked at.

4 Q. In the ExOp agreement, does that provide for
5 reciprocal compensation between Sprint and ExOp?

6 A. Yes, for the exchange of local traffic.

7 Q. Do you provide a transiting function to ExOp
8 whereby you hand off traffic that's destined for
9 terminating to LECs that aren't parties to that
10 agreement?

11 A. I don't believe we do. I believe that
12 ExOp's traffic goes from ExOp to Southwestern Bell,
13 and then the only connection we have with ExOp is for
14 the exchange of Kearney specific traffic.

15 Q. Kearney is a Sprint exchange?

16 A. Yes.

17 Q. And is served by your tandem, not
18 Southwestern Bell's; is that right?

19 A. Yes.

20 Q. And as I recall, ExOp tariffed an MCA --
21 what they called an MCA plan; is that right?

22 A. I believe so, yes.

23 Q. But they didn't offer the entire MCA calling
24 area, they just offered Sprint and Bell exchanges?

25 A. I don't know that for sure.

1 Q. Do you know whether or not Sprint or
2 Southwestern Bell and ExOp negotiated a termination
3 agreement?

4 A. You'd have to ask them.

5 Q. Are you handing off any ExOp originated
6 traffic to Lathrop?

7 A. No. The only connection we have, as I said
8 previously, for ExOp is for Kearney originated and
9 terminated traffic.

10 Q. So we don't have a situation where you have
11 one transiting rate you charge ExOp and a transiting
12 and termination rate?

13 A. I think that the agreement may allow for
14 that. I don't think that the way the network was set
15 up fits the requirements of a transiting charge.

16 Q. Let's forget about your Interconnection
17 Agreements.

18 A. Okay.

19 Q. Would you agree with me that there are
20 several CLECs that have Interconnection Agreements
21 with Southwestern Bell in the Kansas City area that
22 don't have Interconnection Agreements with Sprint?

23 A. Yes.

24 Q. And do you have an agreement with those
25 CLECs as to how you're going to exchange compensation

1 with them for traffic that they deliver originally to
2 Southwestern Bell?

3 A. At this time, it's a de facto bill and keep
4 as has been mentioned before.

5 Q. Have there been discussions, negotiations,
6 conversations or has it just happened?

7 A. I don't know the specifics of how that
8 happened.

9 Q. Well, has Sprint agreed to that de facto
10 bill and keep? I'm talking again to Sprint, Sprint
11 Missouri, Inc.

12 A. You're asking me -- wait a minute. You're
13 asking me on Sprint Missouri, Inc. now?

14 Q. Did they agree to that de facto bill and
15 keep with those nonconnected CLECs?

16 A. I'm losing the example here. I'm sorry.
17 I'm getting a little schizophrenic here.

18 Q. That figures.

19 (Laughter.)

20 A. The ILEC --

21 Q. Let me start over.

22 A. Please.

23 Q. We'll start again together. I'm talking
24 about a situation where a CLEC has an Interconnection
25 Agreement with Southwestern Bell but not an approved

1 Interconnection Agreement with Sprint.

2 A. Like a traffic termination agreement to
3 Sprint ILEC?

4 Q. Yes.

5 A. Okay.

6 Q. They don't have that with you?

7 A. That's correct.

8 Q. Is there anybody in the Kansas City area
9 that does have a written traffic termination agreement
10 with Sprint?

11 A. Not that I'm aware of.

12 Q. Now, since I went back, I forgot where I was
13 going with this.

14 The traffic that Bell handles for those
15 CLECs that transits Bell's network and they hand off
16 to Sprint, they're going to -- Bell's going to hand
17 that off to you at your tandem?

18 A. Possibly. I think we still have some
19 exchanges that sit behind Bell's tandem. So it could
20 just go to one of your end offices.

21 Q. I thought you had reconfigured all of your
22 exchanges to home on your own tandem.

23 A. I'm questioning some of the exchanges around
24 Ferrelview. I'm just not sure if those have all been
25 rehomed.

1 Q. For the traffic that does come from Bell
2 through your tandem, are you recording anything at
3 your tandem?

4 A. A CLEC originated call through Bell's tandem
5 through our tandem.

6 Q. That terminates to one of Sprint's
7 exchanges.

8 A. Carried over LEC-to-LEC Feature Group C
9 facilities. No, we are not.

10 Q. Are you getting any records from
11 Southwestern Bell or the CLEC as to the amount of that
12 traffic?

13 A. I don't believe so at this point.

14 Q. Now, when you -- did Sprint agree to this
15 type of de facto bill and keep without getting these
16 kind of records, without getting any records?

17 A. I think at this point we think the traffic's
18 somewhat -- somewhat balanced and somewhat de minimus,
19 and yes, we agree by the fact that we haven't pursued
20 an Interconnection Agreement that that is an
21 appropriate mechanism at this time.

22 Q. Do you really believe it's balanced or are
23 you afraid it's balanced the wrong way?

24 A. I don't know that answer. I don't negotiate
25 those contracts.

1 Q. Without getting records that show how much
2 CLEC traffic is terminating to you, you wouldn't be in
3 a position to balance that against whatever
4 originating traffic goes to the CLEC; is that fair?

5 A. Yeah. And I think there was two issues
6 working for a decision on bill and keep. One is the
7 traffic's still de minimus; and two, that it may --
8 that it's appropriately balanced.

9 MR. JOHNSON: That's all the questions that
10 I have.

11 QUESTIONS BY JUDGE DIPPELL:

12 Q. Mr. Cowdrey, are you familiar with the
13 testimony of Gabriel and AT&T's witnesses where they
14 list certain recommendations to the Commission?

15 A. I reviewed Mr. Kohly's testimony last night
16 on the six points.

17 Q. Are those six points things that Sprint can
18 live with or what specifically does Sprint disagree
19 with on those?

20 A. I think at this time we can live with those
21 points of Mr. Kohly's testimony.

22 JUDGE DIPPELL: Are there any recross
23 questions based on my question?

24 MR. ENGLAND: Yes.

25 JUDGE DIPPELL: Mr. England?

1 REXCROSS-EXAMINATION BY MR. ENGLAND:

2 Q. It's also my understanding that you can live
3 with Public Counsel's proposal, can you not, except
4 with I think you had a --

5 A. What is Public Counsel's proposal?

6 Q. It's your rebuttal, page 4, lines 11 through
7 21.

8 A. If the CLEC is to market it as MCA service,
9 yes, I think that's a key statement in there.

10 Q. Well, then maybe I need to understand what
11 it is you're saying here. I got the impression that
12 you'd be willing to participate in the MCA as a CLEC
13 under the same rates, terms and conditions as the
14 ILECs with one exception, and I think it was pricing
15 flexibility, you wanted to have the ability to price
16 it to your end users differently than was mandated by
17 the Commission.

18 A. And I guess I'd have to ask what terms and
19 conditions specifically?

20 Q. Same calling scope as --

21 A. As a CLEC, I would want to be able to expand
22 something greater than the calling scope of the
23 current MCA without affecting the calling scope from
24 the ILEC back to me.

25 Q. Or affecting the nature of intercompany

1 compensation arrangements?

2 A. That's correct.

3 Q. I guess would you be willing for that
4 portion of the calling scope that only mirrors the
5 existing MCA calling scope to call that MCA and then
6 call something beyond that something different?

7 A. I don't know that I can say that at this
8 point because there is -- I don't know that I can
9 answer that.

10 Q. So you'd want to be able to expand the
11 calling scope and perhaps call it MCA even though it's
12 beyond MCA?

13 A. I would not have a problem, if we expand it,
14 calling it something different than MCA.

15 Q. And you'd have no problem with a mandatory
16 bill and keep for all participants?

17 A. That's correct.

18 Q. But you would want the ability to price to
19 the end user differently than what's currently
20 mandated?

21 A. Yes.

22 Q. Anything else that you'd like?

23 A. You're being very agreeable.

24 MR. ENGLAND: Thank you, sir. No other
25 questions.

1 JUDGE DIPPELL: Was there any other recross
2 based on my question?

3 (No response.)

4 Is there redirect?

5 MS. GARDNER: Just one question.

6 REDIRECT EXAMINATION BY MS. GARDNER:

7 Q. In talking about mandatory bill and keep and
8 in the short term bill and keep might be the best
9 solution, what about existing Interconnection
10 Agreements?

11 A. Well, we certainly think that -- it's my
12 opinion that maybe the existing Interconnection
13 Agreements should run their course, and then at that
14 time bill and keep, the Commission may be able to
15 order bill and keep.

16 Q. Should other options still be available to
17 the parties to negotiate?

18 A. Certainly. Certainly at this time if
19 there's reciprocal compensation agreements, they
20 should -- and the Commission decides to let CLECs in,
21 they should give them the opportunity to do bill and
22 keep instead of the reciprocal compensation agreements
23 that are in place.

24 Q. Does that get back to your all available
25 options?

1 A. Yes. The CLEC should have whatever options
2 are available to ILECs today.

3 Q. Meaning that an ILEC couldn't unilaterally
4 refuse to do bill and keep?

5 A. That's correct. That's what I was talking
6 about the exercise of monopoly power, yes.

7 MS. GARDNER: Thank you. That's all I have.

8 JUDGE DIPPELL: Thank you, Mr. Cowdrey. You
9 may be excused.

10 (Witness excused.)

11 JUDGE DIPPELL: Are there any other Sprint
12 witnesses?

13 MS. GARDNER: No, there are not.

14 JUDGE DIPPELL: Then I believe we're ready
15 to begin with Southwestern Bell's first witness. Do
16 we need to take a break before bringing him up? Let's
17 take just a short break, a ten-minute break, or I'll
18 give you 12 minutes, make it 20 'til.

19 Off the record.

20 (A recess was taken.)

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

23 Mr. Lane, you've handed me a new Exhibit 45;
24 is that correct?

25 MR. LANE: It's a substitute Exhibit 45,

1 your Honor. It contains the attachment to the
2 technical committee report, and I distributed it to
3 the party. And I think Exhibit 45 was admitted, as I
4 recall, but I'd ask that this be substituted as
5 Exhibit 45.

6 JUDGE DIPPELL: Now, is this a straight
7 substitution for it is or this just the attachment?

8 MR. LANE: It's a straight substitution,
9 your Honor. I thought that would be easier.

10 JUDGE DIPPELL: Okay. Is there --
11 Exhibit 45, we took judicial notice of that. Is there
12 any objection to the Commission taking notice of the
13 substituted Exhibit No. 45?

14 MR. JOHNSON: May I ask a question?

15 JUDGE DIPPELL: Yes.

16 MR. JOHNSON: If recollection serves me
17 right, this is the third Exhibit 45 that we've gotten.
18 There was a first amended. Did AT&T give one?

19 MR. DeFORD: No. I just had some pages that
20 were the appendices, and I think Mr. Lane has --

21 MR. JOHNSON: He has added those. Okay. No
22 objection.

23 JUDGE DIPPELL: Then I will substitute this
24 Exhibit 45 for the previous one on the record.

25 Thank you, Mr. Lane. And we're ready for

1 Southwestern Bell's first witness. We are just going
2 to go until noon, and then I'll cut you off and we can
3 break for lunch and take up the remainder of the
4 testimony after lunch.

5 (Witness sworn.)

6 JUDGE DIPPELL: Thank you. Southwestern
7 Bell, you may proceed.

8 MR. LANE: Thank you, your Honor.

9 TOM HUGHES testified as follows:

10 DIRECT EXAMINATION BY MR. LANE:

11 Q. Would you state your name for the record,
12 please.

13 A. Tom Hughes, H-u-g-h-e-s.

14 Q. And by whom are you employed?

15 A. I'm employed by Southwestern Bell Telephone
16 Company.

17 Q. And what is your position with Southwestern
18 Bell?

19 A. My position is Vice President - Regulatory
20 for the state of Missouri.

21 Q. And Mr. Hughes, did you prepare direct
22 testimony that has been marked as Exhibit 32, rebuttal
23 testimony that's been marked as Exhibit 33 and
24 surrebuttal testimony that's been marked as
25 Exhibit 34?

1 A. Yes, I did.

2 Q. Do you have any changes to that testimony?

3 A. No, I do not.

4 Q. If I were to ask you the same questions
5 today as are contained in Exhibits 32, 33 and 34,
6 would your answers be the same?

7 A. Yes, they would.

8 Q. And are those answers true and correct to
9 the best of your knowledge and belief?

10 A. Yes, they are.

11 MR. LANE: At this time, your Honor, I'd
12 offer Exhibits 32, 33 and 34 and tender Mr. Hughes for
13 cross-examination.

14 JUDGE DIPPELL: Is there any objection to
15 Exhibits 32, 33 or 34 coming into the record?

16 (No response.)

17 Then I will receive those into the report.

18 (EXHIBIT NOS. 32, 33 AND 34 WERE RECEIVED
19 INTO EVIDENCE.)

20 JUDGE DIPPELL: Is there cross-examination
21 for Mr. Hughes by MITG?

22 MR. JOHNSON: I get to go first.

23 CROSS-EXAMINATION BY MR. JOHNSON:

24 Q. Mr. Hughes, is a Southwestern Bell Local
25 Plus call dialed on a seven-digit basis?

1 A. It is dialed on a seven or on a ten-digit
2 basis.

3 Q. But it's a non-1+ dialed call?

4 A. Yes, that's correct.

5 Q. As I understand it, you have priced --
6 within the MCA Southwestern Bell has priced Local Plus
7 as more an additive as opposed to a stand-alone
8 service?

9 A. Local Plus is priced no matter where,
10 whether it's within the MCA or anywhere that we offer
11 it in the state, as a separate service.

12 Q. I thought that somebody who already
13 subscribed to -- let's use Kansas City -- who already
14 subscribed to the MCA service didn't have to pay the
15 full Local Plus rate if they wanted to buy Local Plus?

16 A. That is correct. If a subscriber purchases
17 MCA and Local Plus, then the rate is different than if
18 the subscriber only purchased Local Plus.

19 Q. It's possible for a Local Plus call to go
20 from, let's say, Southwestern Bell's Smithville
21 exchange to MoKan Dial's Freeman exchange?

22 A. Your question was it is possible for a call,
23 a Local Plus call?

24 Q. Yes.

25 A. Yes, sir.

1 Q. It's also possible for an MCA call to go
2 from Smithville to Freeman if the called customer in
3 Freeman is an MCA subscriber; is that right?

4 A. It is possible for an MCA call to be placed
5 from Smithville to Freeman, yes.

6 Q. The MCA call today is bill and keep between
7 the company, the incumbents, right?

8 A. That's correct.

9 Q. On the Local Plus call, Southwestern Bell is
10 to pay terminating access to MoKan Dial?

11 A. Assuming the call is placed as a Local Plus
12 call and not an MCA call, yes.

13 Q. But would you agree with me that that call
14 between Smithville and Freeman can only be an MCA call
15 if the Freeman subscriber -- Freeman customer has
16 subscribed to MCA service?

17 A. Yes.

18 Q. What has South--

19 A. Let me qualify that. I believe that the
20 Southwestern Bell Smithville customer would also have
21 to be an MCA subscriber.

22 Q. Okay. What has Southwestern Bell done to
23 its recording of that traffic since it's not a 1+
24 dialed call, I'm talking about the Local Plus call, to
25 make sure that you're creating an 1101 record for

1 MoKan Dial?

2 A. Are you using the scenario with the
3 Smithville customer being a non-MCA subscriber?

4 Q. Does it make a difference?

5 A. I believe it does. If the Smithville -- the
6 Southwestern Bell Smithville customer is an MCA
7 subscriber and the Freeman customer is an MCA
8 subscriber, then that call would be an MCA call.

9 Q. Okay. I'm talking about a situation where
10 it's a Local Plus call, where the Smithville
11 subscriber purchases Local Plus, whether or not they
12 bought MCA, and the -- let's just assume for purposes
13 of this question that the Freeman customer has not
14 purchased MCA service.

15 A. Okay.

16 Q. How does Southwestern Bell's switch and
17 recording system take that non-1+ call and create an
18 access billing record, if you will?

19 A. Based upon the originating number, and the
20 Smithville customer in your example is an MCA
21 customer, so based upon the originating NPA NXX, and
22 the terminating number, in this case a Freeman
23 exchange customer who is a non-MCA customer, that NPA
24 NXX, our billing system would create an 11 record to
25 send to MoKan so they could in turn charge us access

1 for that Local Plus call because it was a Local Plus
2 call, not an MCA call, even though the same dialing
3 pattern would have been used.

4 Q. And that system that you developed, if you
5 will, is the same for that Local Plus call whether the
6 call terminates in an independent company's exchange,
7 a GTE exchange or a Sprint exchange?

8 A. That's correct.

9 Q. Do you have today any facility-based
10 resellers of Local Plus that are operating?

11 A. The only example that I'm aware of -- well,
12 we do not have, to my knowledge, any facility-based
13 CLECs that are offering Local Plus.

14 Q. What about facility-based IXC's?

15 A. My understanding is AT&T submitted one order
16 for one customer to resell our Local Plus service.

17 Q. Okay. I don't know how far that's gone yet,
18 but assume -- is it operational?

19 A. Is that customer operational?

20 Q. Yes.

21 A. Yes, they are.

22 Q. And are records being created?

23 A. Records from Southwestern Bell are being
24 created.

25 Q. Who's responsible if that -- if that

1 customer makes a Local Plus call that terminates to an
2 independent company's exchange, who's responsible for
3 generating the access record, Southwestern Bell or
4 AT&T?

5 A. In a resold situation, Southwestern Bell
6 would be the responsible party for generation of the
7 record.

8 Q. So this isn't a facility-based?

9 A. They are reselling our service. They're
10 reselling Southwestern Bell's Local Plus.

11 Q. So Bell's going to be responsible for the
12 access record and the access payment regardless of
13 whether AT&T is facility-based or a, quote, pure
14 reseller of Local Plus?

15 A. Well, we have to draw a distinction because
16 when they are reselling our services, it's going over
17 our network. If they want to offer a Local Plus type
18 of service over their own facilities, they can do that
19 and it would be their record at that point.

20 But in your example, I believe you're
21 talking about when they're reselling our service and
22 the call's going over the Southwestern Bell network.

23 Q. Today is Southwestern Bell recording CLEC
24 traffic that's being originated by the CLEC and handed
25 off to you pursuant to your Interconnection

1 Agreements?

2 A. When a call -- a facility-based CLEC?

3 Q. Yes, sir.

4 A. When a call originates by a facility-based
5 CLEC and is handed off to Southwestern Bell for
6 termination, the originating CLEC should generate a
7 record and pass it to Southwestern Bell.

8 Q. I understand that, but are you -- is
9 Southwestern Bell recording the traffic independently
10 of whether they are recording and sending you a
11 record?

12 A. To my knowledge, we are not recording. I
13 mean, the switch makes a record of the call for
14 purposes of the network, for routing purposes, but not
15 for billing purposes. We do not create a billing
16 record associated with that call.

17 Q. I understand that. What do you call that
18 billing record when -- I'm sorry.

19 The recording record, the switch recording,
20 is there a name for that? Because you didn't
21 originate the call, but you're recording some
22 information when the CLEC call hits your network.
23 What do you call that?

24 A. I don't know the name of that record, and I
25 hesitate to even use the term record because it's

1 really just for routing purposes so our switch knows
2 where to send the call or where to terminate the call
3 it's supposed to terminate at that switch.

4 Q. So it may -- obviously it has routing
5 information?

6 A. That's correct.

7 Q. But what you're telling me is it doesn't
8 provide you with the ability to quantify the amount of
9 traffic that the CLEC has handed off to Southwestern
10 Bell?

11 A. Absent the record from the CLEC, yes.

12 Q. Would it be fair to say, then, that
13 Southwestern Bell has chosen to trust the originating
14 records of the CLEC for purposes of reciprocal
15 compensation?

16 A. I would say that's fair.

17 Q. I think there's some evidence already in the
18 case that either your interconnection agreement format
19 and/or the Commission's Orders have said that the
20 CLECs are not supposed to give you traffic destined
21 for the independent LECs' exchanges until they have
22 either authorization or an arrangement. Do you
23 understand the concept?

24 A. Yes.

25 Q. Has Southwestern Bell done anything to

1 enforce that?

2 A. I believe we have. We have sent letters to
3 the various CLECs who we have not been receiving
4 records from as the testimony has been presented by
5 several of the CLECs. I think they indicated that
6 they are beginning to generate records and they are
7 beginning to work with our company to pass those
8 records. I believe some of them even mentioned that
9 they have hired a vendor to assist in that process.

10 So I believe that Southwestern Bell has
11 worked cooperatively with the CLECs in an effort to
12 begin receiving those records.

13 Q. I think we've agreed in this docket that MCA
14 calls are routed and even billing determinations are
15 based upon NXXs?

16 A. I would agree.

17 Q. As I understood your description of how you
18 determine Local Plus compensation is based on NXXs in
19 your system as well?

20 A. That's true.

21 Q. Did you originally set up the translations
22 in your switch to preclude or to give the CLEC
23 customer who tries to call an independent company's
24 NXX a message that the call can't be completed until
25 your company's made those arrangements?

1 A. I do not believe so. We operate under the
2 Interconnection Agreement that we will abide by the
3 terms and conditions that are specified for
4 Southwestern Bell, and we believe the CLECs will abide
5 by the terms and conditions that are meant for that.

6 Q. When did you send the letters to the CLECs?

7 A. I don't have a specific example of one that
8 was sent in a recent time frame.

9 Q. Do you know when the first letter was sent?

10 A. I do not. I do know that some have been
11 sent. I personally know that I sent some letters as
12 well.

13 Q. When did you send yours?

14 A. I sent letters in, I believe it was February
15 of '99.

16 Q. So you really don't have any specific
17 information as to how much or when any such traffic
18 has been transiting your network coming from the small
19 companies?

20 A. That is not true across the board. We do
21 receive records from some CLECs today, and that would
22 contain that information.

23 However, it's our position that the CLEC
24 when they send a record to us also send the same
25 record to the independent company where the call is

1 terminating or the CLEC that they're terminating a
2 call to.

3 Q. Of the CLECs that have sent you a record
4 indicating some traffic was sent to the independent
5 companies, is that sent in an electronic format?

6 A. Yes. They send 92-99 records, 92-01 and
7 92-99 records.

8 Q. Does Southwestern Bell still have that
9 information? Do you still have that information?

10 A. I'm not sure. I personally have never seen
11 those records. I'm just -- I was made aware that we
12 have been receiving records from several of the
13 companies.

14 Q. When you -- when Southwestern Bell, as I
15 understand the Intermedia story, retranslated its
16 switches so that that return call could not be made,
17 was that done on an NXX basis?

18 A. It was done on an NX-- on the Intermedia on
19 an NXX basis, yes.

20 Q. So at that point in time, you did program
21 your switches to not allow an Intermedia NXX call to
22 go through?

23 A. No. Intermedia translates their switch to
24 allow their calls to go through. In the specific
25 instance I believe you're referring to, we set up our

1 translations so a call had to be dialed on a 1+ basis
2 to Intermedia. So I don't know how they've translated
3 their switch.

4 Q. As I understand that system, once you've
5 done that translation, if you're -- if the customer
6 tried to dial an Intermedia NXX on a seven or
7 ten-digit basis, your switch would have told them it's
8 necessary to dial one in order to make that call?

9 A. It depends on which customer was attempting
10 to originate the call.

11 Q. The ones that were blocked, that's the
12 message they got; is that right?

13 A. I don't know the specific message they got,
14 but it would probably be something similar to that.

15 Q. Something to that effect told them you have
16 to dial a one?

17 A. I can go along with that.

18 Q. But you didn't do any type of programming
19 like that for the CLEC traffic going to independent
20 exchanges?

21 A. Not to my knowledge.

22 JUDGE DIPPELL: Let me go ahead and
23 interrupt you there. Let's go ahead and break for
24 lunch now and return at 1:15.

25 Let's go off the record.

1 (A recess was taken.)

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

4 Welcome back. Welcome, Mr. Fischer. While
5 we were off the record at lunch, Mr. DeFord asked if
6 he could be excused for the remainder of the hearing
7 as he had to leave. That's fine. I see some of our
8 counselors have gotten to move up to the counsel
9 tables.

10 We were in the middle of cross-examination
11 by MITG. Would you like to continue?

12 MR. JOHNSON: Thank you, your Honor.

13 BY MR. JOHNSON:

14 Q. Mr. Hughes, do any of the CLECs with whom
15 Southwestern Bell has Interconnection Agreements, do
16 they carry traffic for other carriers?

17 A. I do not know.

18 Q. Some of the CLECs either have interexchange
19 authority or have IXC affiliates. Do you know whether
20 or not they're putting -- any of that interexchange
21 traffic crosses interconnection with Southwestern
22 Bell?

23 A. Under our interconnection arrangements,
24 traffic can be carried intraLATA as well as local on
25 the same trunk group. So by virtue of that fact -- I

1 don't know for sure, but by virtue of that fact, it
2 would be reasonable that they may be passing some
3 intraLATA as well as some local traffic over the same
4 trunk group.

5 Q. If that is, in fact, happening under your
6 Interconnection Agreement, who does Bell look to to
7 pay for the traffic, the CLEC you interconnect with or
8 the other carrier of originating traffic?

9 A. When a call is terminated to Southwestern
10 Bell, we look to the originator of the call to
11 compensate us for that termination. If it's a local
12 call, we look to the CLEC. If it's a toll call, we
13 look to the originator, presumably in this example an
14 IXC.

15 Q. If that IXC is leasing facilities, if you
16 will, from a CLEC, how would you know to look to the
17 IXC for that payment?

18 A. The way it is supposed to work is in the
19 record exchange process. The 92 records would come
20 across for local calls and 11 records would come
21 across for toll calls.

22 Q. If that intraLATA traffic is going to the
23 end office or the exchange of the terminating LEC that
24 also has a tandem, is it appropriate for that traffic
25 to bypass that LEC's tandem?

1 A. I'm not sure I know the answer to your
2 question. I think it would depend upon the
3 interconnection arrangement we have with that carrier.
4 If we're direct office interconnected or if we're
5 tandem interconnected I think would determine the
6 ultimate routing of that call.

7 Q. Would you agree that if the intraLATA
8 interexchange traffic was terminated over that common
9 trunk between you and that LEC that does have a
10 tandem, that it would bypass that LEC's tandem?

11 A. If I understood your question, I don't think
12 I agree, because again it would depend on where the
13 trunks -- it may go through the tandem. So in all
14 cases I wouldn't say that it will bypass the tandem,
15 no.

16 Q. If it did bypass the tandem, would that be
17 appropriate?

18 A. Are you defining appropriate from a network
19 perspective or from a billing records perspective?

20 Q. Network perspective.

21 A. From a network perspective, I don't -- I'm
22 not familiar with the arrangements that we have, but I
23 would assume that with some carriers we have different
24 arrangements regarding whether or not they use our
25 tandem.

1 Q. That's an assumption on your part?

2 A. That would be an assumption.

3 Q. For that intraLATA traffic that Bell's
4 putting on that LEC-to-LEC network, if Bell does have
5 the terminating tandem, are you creating an 1101
6 record there?

7 A. For a call that we originate?

8 Q. Doesn't matter who originates the call. If
9 it terminates to a LEC, the last tandem it goes
10 through is Bell's?

11 A. I don't believe so. The record should be
12 created by the originating carrier, not by the tandem
13 company.

14 Q. Would you agree with me that today, if
15 that's IXC traffic, it's creating 1101 -- an 1101
16 record at the terminating tandem?

17 A. The IXC that handles that call should create
18 the record and should pass it to the terminating
19 company. That's my understanding. And I don't
20 believe the tandem and the company that provides the
21 tandem or owns the tandem is creating that 1101
22 record, no. That's my belief.

23 Q. Not just an 1101 but Category 11 record?

24 A. Yeah, Category 11. But I'm not a billing
25 record expert.

1 Q. Let me change directions a little bit with
2 you. If a small ILEC that's in the MCA has been
3 mandated to offer MCA service, if for calls that they
4 originate and terminate to a non-Southwestern Bell
5 customer they're required to pay Southwestern Bell a
6 transiting charge, would you agree that that would
7 cause that company's MCA costs to go up?

8 A. I would agree that if there was a cost
9 associated with that transiting, then the cost to that
10 company, yes, it would go up, whether it's on the MCA
11 service or not. You didn't define if the customer was
12 an MCA customer, so I couldn't necessarily put it on
13 the MCA service.

14 Q. Is it Bell's position in this docket that
15 for an MCA call that originates with an ILEC,
16 terminates to a CLEC and Bell was in the middle
17 transiting that call, that you want to be paid for
18 that?

19 A. It's our position that the transiting
20 company, whoever it is, whether it's Southwestern Bell
21 or someone else, should be compensated for transiting
22 that traffic. And if the originating company does not
23 want whoever the transiting company is to perform that
24 function for them, they can direct interconnect with
25 the terminating party.

1 Q. So in that situation it would be the
2 originating ILEC's responsibility to request a direct
3 connection with the CLEC?

4 A. Or choose to use some company for
5 transiting, yes.

6 Q. Do you know whether a CLEC has a duty to
7 interconnect with an ILEC at the ILEC's request?

8 A. This will not be a legal interpretation of
9 the Act, but I believe under the Act either party can
10 request negotiations, a CLEC to an ILEC or an ILEC to
11 a CLEC for purpose of interconnection.

12 Q. Anybody can ask. My question is, does the
13 CLEC have the same obligations under the Act to
14 interconnect as does the ILEC under the Act?

15 A. Again, I would say that the parties can
16 request negotiations under the Act, and if those
17 negotiations were not fruitful, they could bring it
18 for an arbitration before the Commission.

19 Q. Do you believe that an ILEC can request
20 interconnection and if there's no satisfaction in
21 negotiations then the ILEC can force arbitration
22 before the Missouri Commission?

23 A. Yes, I do.

24 Q. In your interconnection agreement
25 negotiations with the CLECs, was -- are you familiar

1 with those negotiations?

2 A. With Southwestern Bell's negotiations?

3 Q. Yes, sir.

4 A. Yes, I am.

5 Q. Was there ever any discussion of putting
6 that interexchange traffic on the Feature Group D or
7 the IXC network?

8 A. I believe the way our arrangement is in the
9 AT&T agreement is the traffic is routing over the
10 Feature Group D that is in existence between AT&T, the
11 IXC, and the calls from AT&T on a local basis are
12 going over the same trunk groups.

13 And during Mr. Kohly's testimony we got into
14 a little bit of discussion about the PLU, the percent
15 local usage factor, and that's where that would apply.

16 Q. If the AT&T traffic is going over the D
17 network, wouldn't that result in the generation of a
18 Category 11 record at the terminating tandem?

19 A. As I stated earlier, I don't know if the
20 tandem would create an 11 record. I don't believe
21 that to be the case, but I'm not an expert on that
22 area.

23 Q. You don't know whether the terminating
24 tandem aggregates that traffic and sends a summary
25 Category 11 access report to the terminating end

1 office for billing purposes?

2 A. It's my understanding that the originating
3 office and the originating provider would be the one
4 who would create those records and send it to the
5 terminating party.

6 Q. Can a small ILEC renegotiate its
7 interconnection with Southwestern Bell?

8 A. I guess I would answer that to the extent
9 that we have agreement or your clients would like to
10 enter into an agreement with Southwestern Bell for
11 purposes of interconnection, I believe that is
12 something that we'd be more than willing to talk to
13 you about. I mean, I don't know that any of those
14 such discussions have taken place.

15 Q. Since the termination of the PTC plan, has
16 there been any such agreement in place?

17 A. I do know that there are some traffic
18 termination type agreements that we have reached with
19 some of the independent companies. I know that we
20 have reached them with at least three of the
21 independent companies.

22 Q. That would be the TDS companies?

23 A. I'm not familiar with TDS. I'm sorry.

24 Q. Orchard Farm?

25 A. No. I believe it's ExOp, terminating

1 agreements with ExOp. We also have one with -- I'm
2 sorry -- two independent companies, Mark Twain, and I
3 apologize, I don't remember the other one.

4 Q. Could that be Mark Twain CLEC as opposed to
5 Mark Twain the ILEC?

6 A. I believe you're correct.

7 Q. I was meaning to be referencing the small
8 companies in the ILEC capacities. Do you have any of
9 those terminating agreements?

10 A. Not that I'm aware of.

11 Q. I don't know how long you've been with
12 Southwestern Bell, but are you familiar with the
13 revenue or the revenue neutrality mechanisms that were
14 used in 1992 and 1993 when MCA, OCA and COS-2 were
15 ordered or directed?

16 A. I'm familiar from the perspective of I've
17 reviewed the filings and some of the pleadings and
18 briefs in that case, as well as the Commission Order.

19 Q. Is it correct that through the
20 implementation of those three services, Southwestern
21 Bell experienced a savings, a revenue savings, money
22 savings?

23 A. I do not have, I believe it's been marked as
24 Exhibit 45 in this proceeding in front of me, but I
25 believe the attachment to that would outline that. I

1 believe it was on page 2, and if my memory is correct,
2 no, we did not have a savings.

3 Q. Doesn't that exhibit just outline revenue
4 impacts on the small companies?

5 A. I don't believe so.

6 Q. Do you know whether or not Bell paid support
7 to companies after those services were created?

8 A. Yes, we did pay support to several
9 independent companies and, in fact, are still paying
10 support to one.

11 Q. And is it true that some of the support you
12 paid was even to independent companies that did not
13 have on Bell's tandem?

14 A. I don't -- I don't honestly know who all the
15 independent companies that we paid to and what the
16 network arrangements are with those companies.

17 Q. Isn't it true that Southwestern Bell paid
18 Sprint an annual payment for five years?

19 A. That's my understanding, Yes.

20 Q. Wasn't that payment about \$1 million per
21 year?

22 A. I do not know the amount.

23 MR. JOHNSON: That's all I have.

24 JUDGE DIPPELL: Sprint?

25 COMMISSIONER DRAINER: Cass County.

1 JUDGE DIPPELL: I'm sorry. You're right.

2 Cass County? Got ahead of myself.

3 CROSS-EXAMINATION BY MR. ENGLAND:

4 Q. Good afternoon, Mr. Hughes.

5 A. Good afternoon.

6 Q. Let me follow up on a couple of questions
7 that Mr. Johnson just asked you.

8 I understand you're still paying support to
9 one company as a result of the revenue neutral
10 adjustments, whatever you want to call it, from the
11 '92 case?

12 A. That's my understanding, yes.

13 Q. Do you know which company that is?

14 A. I believe that's Orchard Farm.

15 Q. And is that set to terminate or is that a
16 permanent support payment?

17 A. I don't believe when they were originally
18 created they were permanent. I believe that it can be
19 terminated. I'm not aware of any discussions amongst
20 the parties. There may be some about when that will
21 terminate.

22 Q. Do you have any idea how much that payment
23 is, the magnitude of that payment on an annual basis?

24 A. My recollection is it is 9,000 a month,
25 which would be about 108, \$110,000.

1 Q. Okay. And as far as you know, there's no
2 end in sight?

3 A. Not that I'm aware of, but I personally have
4 had no discussions with Orchard Farm regarding that.

5 Q. Let's get back to the records.

6 A. Okay.

7 Q. Does Southwestern Bell create any records
8 for MCA traffic originating on its network by its
9 local customers?

10 A. I do not believe so.

11 Q. Okay. And I think you discussed with
12 Mr. Johnson the fact that you could have an MCA
13 customer that also subscribes to Local Plus?

14 A. That is true, and in that case we would
15 create a record for the -- if there was a Local Plus
16 call.

17 Q. Okay. The dialing pattern for a Local Plus
18 call would be the same for an MCA call insofar as it
19 is seven or ten-digit dialed, correct?

20 A. That's correct.

21 Q. And to the extent you are interconnected
22 with CLECs, and let's take the Kansas City area, you
23 would also have to record calls from your local
24 customers on a seven and ten-digit dialed basis that
25 terminate to CLECs, correct?

1 A. That is correct.

2 Q. So I guess where I'm confused or you need to
3 tell me, how do you create records for Local Plus
4 calls that are seven and ten-digit dialed and for
5 local reciprocal compensable calls that are seven and
6 ten-digit dialed but you don't for purposes of MCA?

7 A. Are you speaking technically?

8 Q. Yeah.

9 A. Technically, from a billing perspective, I'm
10 not aware of a difference in those records, in those
11 92 records that we would pass to a CLEC or the 11
12 records that we create for a Local Plus call that we
13 would pass to whoever we were terminating the call to
14 for purposes of access.

15 So I don't know that there's a technical
16 limitation to it. I've never explored that, and I
17 haven't talked with anyone regarding that.

18 Q. And maybe my questioning is imprecise in
19 that I'm referring to records and it should be reports
20 or reportings. But it seems to me that in order to
21 prepare accurate originating records for Local Plus
22 and for compensable local reciprocal calling, that you
23 would have to capture all of the local calling of the
24 customer and then sort it out as to which goes into
25 which category. Does that make sense to you?

1 A. Yes. I believe -- I've never investigated
2 this or talked to anyone, but the way that the record
3 is developed is based upon the originating and the
4 terminating NPA, and I do know that.

5 To your question about do we create a,
6 quote, unquote, record for every call and then do some
7 sort of, to use the term, screening of the calls that
8 would go to an independent company versus a CLEC, I
9 don't believe those records are generated and then
10 screened out, if that's your question. I don't
11 believe the records are ever created.

12 I believe the switch is able to look at the
13 originating NPA NXX, the terminating NPA NXX, and then
14 make the decision whether or not a 92 record should be
15 created, or Category 11 record.

16 Q. So there's not one large database, if you
17 will, of all calls emanating from that particular
18 customer and from that your screening process or
19 whatever you want to call it pulls out the calls that
20 are Local Plus, pulls out the calls that are to CLECs,
21 and then ignores the calls to ILECs pursuant to bill
22 and keep MCA rules?

23 A. This gets back a little bit to an area that
24 I touched on with Mr. Johnson this morning about
25 records at the switch, and I probably inappropriately

1 used the term records and I tried to clarify earlier.

2 We should probably call it data, because I
3 don't want there to be confusion that records are
4 created. I believe that there's data collected, and
5 then from that data records are, in fact, created.

6 Q. Okay. And, for example, perhaps another
7 example or situation where you might want to review
8 that data is if in the future the Commission wants the
9 companies to investigate the feasibility of Staff's
10 proposed MCA-2 plan, in order to come up with samples
11 or more accurate data of revenue and expense impacts,
12 you'd want to be able to capture calls that were
13 otherwise bill and keep MCA calls to determine the
14 impact that Staff's plan would have on your revenue
15 and expense stream, correct?

16 A. I would agree that that is something that we
17 may want to explore if we decide to explore further
18 MCA-2 or a different -- or other modifications to the
19 MCA.

20 However, I don't believe that that is
21 necessarily the way the pricing should be set for,
22 quote, unquote, a new MCA service. For Southwestern
23 Bell to undertake something as you have described
24 would be extremely time-consuming and extremely
25 expensive if for no other reason than by the nature of

1 the number of end offices that we would have to
2 capture that traffic for.

3 Q. Do you know if it would be more expensive
4 than establishing separate trunk groups for
5 noncompensable MCA traffic?

6 A. I don't know that we've ever looked at that.
7 I do know in a prior case before the Commission here
8 they determined that there was not enough evidence in
9 that record to make the determination that that
10 traffic should be routed, in fact, over a different
11 trunk group.

12 So I don't believe we've ever done what you're
13 asking, that type of study to determine how much it
14 would cost us to do that trunk.

15 Q. So I guess the answer is that you don't know
16 whether it would cost you more to do separate
17 trunking --

18 A. That's correct, I did not.

19 Q. -- or extract the data from your database,
20 if you will?

21 A. I would agree, I do not know. Nor do I know
22 if we've ever investigated either one of those.

23 Q. When you -- when you've captured a Local
24 Plus call, you create a Category 11 record for
25 transiting to the small ILECs; is that correct?

1 A. Yes. We would send a Category 11 record to
2 the terminating party, in your example a small LEC.

3 Q. My understanding is, however, when that
4 Local Plus call terminates to what was a former PTC,
5 you're transmitting -- you're still transmitting the
6 92 records; is that right?

7 A. If I understand correctly what came out of
8 the PTC case, I believe it was April 1st of this year
9 by a Commission Order we were to create 11 records
10 associated with that traffic. And it's my
11 understanding, and it's based upon the Commission's
12 Order, that we are now sending 11 records and not 92
13 records, but -- I'm sorry. I was just going to say,
14 but I do know that the signaling docket 99-593, I
15 believe, is further investigating those type of items.

16 Q. You think you're sending 92 -- excuse me --
17 Category 11 records to the former PTCs for 1+
18 intraLATA toll?

19 A. That would be my understanding based upon
20 the Commission Order.

21 Q. For purposes of your interconnection with
22 CLECs, though, you're creating 92 records for the
23 exchange of local traffic?

24 A. That is correct.

25 Q. Now, we've heard testimony in this

1 proceeding from a half a dozen or so CLECs, and the
2 record will correct me or not, but my recollection is
3 none of them or very few, if any, have been able to
4 state with certainty whether they are currently
5 creating 92 records for traffic originated on their
6 exchange or their network. In fact, three have
7 specifically said they are still in the process of
8 developing that. Did you hear that testimony here?

9 A. I did hear that testimony.

10 Q. Now, are you aware of the fact that
11 Southwestern Bell's witness in the PTC case, I think
12 that was TO-99-254, specifically testified last year
13 that Southwestern Bell was receiving the 92 records
14 from all the CLECs that are supposed to be sending
15 those to them?

16 A. I did not know that.

17 MR. ENGLAND: I'd like to have an exhibit
18 marked and have official notice taken of the
19 transcript pages from that proceeding, please.

20 JUDGE DIPPELL: It'll be Exhibit No. 58.
21 And that's TO-99-254?

22 MR. ENGLAND: Yes, ma'am, et al.

23 JUDGE DIPPELL: And do you have specific
24 pages of the transcript?

25 MR. ENGLAND: Yes, ma'am. What I have is

1 the cover sheet for the volume, pages 1455, 1456, and
2 then the index that sort of brackets those pages to
3 show that this was cross-examination of Southwestern
4 Bell witness Stanley Brower.

5 JUDGE DIPPELL: Okay.

6 (EXHIBIT NO. 58 WAS MARKED FOR
7 IDENTIFICATION.)

8 JUDGE DIPPELL: Is there any objection to
9 the Commission taking official notice of this portion
10 of the transcript in TO-99-254?

11 (No response.)

12 JUDGE DIPPELL: The Commission will take
13 notice of that.

14 BY MR. ENGLAND:

15 Q. Mr. Hughes, I'm specifically referencing
16 testimony at the bottom of page 1455 of that
17 transcript and the top of page 1456.

18 To the extent -- assume for purposes of my
19 question if you would, please, that this is
20 Mr. Brower's testimony in that case. If he is
21 correct, it would appear that Mr. Brower did not have
22 all the facts available to him when he made this
23 testimony, would it?

24 A. No, I would disagree with that. I think the
25 facts -- this is dated May 21st, 1999. We sit here

1 almost a year later, and several of the CLECs
2 indicated in their testimony -- and I apologize, I
3 don't know if it's the same three you're referring
4 to -- indicated they did not do business in the state
5 of Missouri at that time. In some cases they
6 indicated they had just started to do business in the
7 state of Missouri.

8 So it is very possible, and I would say it's
9 probably factual that what Mr. Brower testified to at
10 that time was accurate.

11 Q. So what Mr. Brower failed to tell the
12 Commission was the fact that there were no CLECs
13 interconnected with you and no 92 records being
14 transmitted?

15 A. That's not true. I mean, this is going to
16 be an evolutionary process, and I would say at any
17 point in time as new facility-based CLECs come on line
18 in the state of Missouri, we could discuss whether or
19 not we were receiving 92 records from all those CLECs.
20 It truly could be a case of timing.

21 Q. With respect to AT&T who willingly admitted
22 that they have not perfected their 92 recordkeeping
23 system, would you agree with me that their
24 Interconnection Agreement was entered into, the one
25 that requires them to create 92 records, in March of

1 '98?

2 A. I would agree.

3 Q. And here we are at least two years later
4 that they knew they had an obligation to create 92
5 records and they still haven't done it and have not
6 passed you any; is that right?

7 A. I don't recall Mr. Kohly's testimony
8 exactly, but I think it's important that we draw a
9 distinction between passing records for purposes of
10 billing and is there traffic that is being passed
11 between the companies that would require billing
12 records.

13 Just because an Interconnection Agreement is
14 in place doesn't necessarily mean that there's traffic
15 going back and forth amongst the network. Several
16 companies have testified that they're still in the
17 process of using resale to enter the market with the
18 thought process that they will ultimately be an
19 facility-based provider.

20 Q. We have at least three CLECs in this
21 proceeding who are doing business to one extent or
22 another in the state as CLECs, yet they are not
23 passing the necessary 92 records that they're required
24 to under their Interconnection Agreement with you,
25 correct?

1 A. I won't dispute that all the CLECs as we sit
2 here today are passing us 92 records. What I will
3 take exception with is that Mr. Brower's testimony is
4 necessarily inaccurate because of the testimony that's
5 been presented here this week.

6 Q. Well, is it your position, then, that when
7 Mr. Brower testified that there was no CLEC doing
8 business at that point in time and that's why no 92
9 records were being passed?

10 A. That's not my position.

11 Q. Do you recall that Southwestern Bell, and it
12 may have been witness Brower as well, told this
13 Commission in that -- in the context of that PTC case
14 TO-99-254 that Category 92 records were industry
15 standard records?

16 MR. LANE: Your Honor, I'm going to object.
17 We have some facts that aren't in evidence. If
18 Mr. England wants to show them to him, then we can do
19 that, but he's assuming facts not in evidence.

20 MR. ENGLAND: I'll rephrase the question.

21 BY MR. ENGLAND:

22 Q. Is it Bell's position that Category 92
23 records are industry standard records?

24 A. I believe it's our position that Category 92
25 records are based upon industry standard EMR records,

1 which are electronic message records, and they're
2 defined by the OBF, the ordering and billing form.

3 Q. So they're not industry standard records; is
4 that correct?

5 A. My knowledge of 92 records are that they're
6 based upon industry standards. If you want to debate
7 whether or not they are industry standard records or
8 just developed off of industry standard records, I
9 don't believe I'm qualified to answer that.

10 Q. Do you disagree with the -- several CLEC
11 witnesses that have testified here today that
12 Category 92 records, at least in their experience, are
13 not records that they're familiar with on a nationwide
14 basis but only in Southwestern Bell operating areas?

15 A. I disagree with that. I believe there was
16 an exhibit filed in the PTC case by GTE that outlined
17 all the areas where they are, in fact, using 92
18 records.

19 I won't dispute the testimony of the
20 witnesses of the CLEC about their opinions, but I
21 don't think it's factual to say they're only being
22 used in Missouri, no.

23 Q. Is Southwestern Bell at all concerned with
24 the fact that you're not getting 92 records for these
25 CLECs that are currently interconnected with you and

1 passing traffic?

2 A. Yes.

3 Q. What are you doing about it?

4 A. As I mentioned to Mr. Johnson, I personally
5 have sent letters to some of the CLECs. And as has
6 been indicated by several of the CLEC witnesses here,
7 and I have no reason to believe -- in good faith they
8 are trying to get their systems up to pass us the
9 records. And I believe that the department within our
10 company that works with the department in their
11 company are working jointly to try to rectify that
12 situation.

13 Q. Let me switch gears on you and talk about
14 bill and keep for a second.

15 A. Okay.

16 Q. And this also follows up on a question and
17 answer that I think you had with Mr. Johnson. I
18 believe you said to Mr. Johnson that the transiting
19 company should be compensated for the transiting
20 function. Do you recall that testimony?

21 A. Yes, I do.

22 Q. I need to explore with you, as I did with
23 several witnesses before you, your notion of bill and
24 keep, because as I understand it your proposal is to
25 implement -- if we allow CLECs into the MCA, to

1 implement a bill and keep system for all; is that
2 right?

3 A. That is our recommendation, that the -- for
4 purposes of terminating compensation, it should be on
5 a bill and keep basis, yes.

6 Q. Let's take my -- let's again use the Kansas
7 City MCA as an example. Let's take a call from a CLEC
8 customer in your mandatory zone to an MCA subscriber
9 in Cass County's Peculiar exchange, an MCA call in the
10 future, correct?

11 A. Okay.

12 Q. Under your bill and keep proposal, would
13 there be any compensation by the CLEC to Cass County
14 to terminate that call?

15 A. Under our proposal, no, not for terminating
16 compensation.

17 Q. To the extent that call transited your
18 network before it terminated in the Peculiar exchange,
19 would there be any compensation from the CLEC to you
20 for that transiting function?

21 A. We believe that there should be. A point
22 that needs to be brought out I think at this time is,
23 in your example, and I'll assume that Southwestern
24 Bell is the transiting company, we do not originate
25 the call nor do we terminate the call.

1 If you want to talk about bill and keep, one
2 of the parts of bill and keep is that you're billing
3 someone in order to keep it. If we're solely
4 transiting, we're not billing anyone. So there is
5 nothing to keep.

6 So we think there needs to be a very clear
7 distinction made there about the service that in this
8 case we would be providing on behalf of the
9 originating company.

10 Q. Let's take the example of the MCA customer
11 in Peculiar calling the MCA customer in Lathrop.

12 A. Can I ask you a question?

13 Q. Certainly.

14 A. I don't know that it matters, but I don't
15 see Peculiar.

16 Q. It's down in the south. It's Tier 3 -- or
17 Tier 4. Excuse me.

18 A. Okay. Thank you.

19 Q. Peculiar MCA customer calling an MCA
20 customer in Lathrop. That happens today as we speak,
21 correct?

22 A. An MCA customer in Peculiar calling an MCA
23 customer in Lathrop, yes.

24 Q. Or certainly can happen today?

25 A. It could.

1 Q. And that call would transit Southwestern
2 Bell's facilities today, be terminated by Lathrop in
3 its exchange, correct?

4 A. I agree.

5 Q. And under the bill and keep arrangement
6 today there is no compensation paid by Cass County to
7 either Lathrop to terminate that call or to
8 Southwestern Bell to transit that call, correct?

9 A. I would also agree with that.

10 Q. If I understand your proposal in the future,
11 however, that same call, after we've let CLECs into
12 the metropolitan calling area plan, Cass Tel would now
13 be required to pay Southwestern Bell some sort of
14 transiting charge or find a way to get that call to
15 Lathrop; is that right?

16 A. In your example, yes. It's our belief that
17 any transiting company should be compensated, and in
18 some instances Southwestern Bell uses other LECs to
19 transit calls on our behalf.

20 Q. Even though today you're not being
21 compensated for that transiting function?

22 A. That's correct. It gets back to a
23 discussion that has taken place this week about the
24 original development and the rate setting and the
25 structure and everything regarding the MCA case in the

1 92 docket.

2 Q. By the way, the bill and keep arrangement
3 that we have today where there is no compensation for
4 transiting carriers such as yourself, that was your
5 proposal to the Commission in 92 that they adopted,
6 was it not?

7 A. I have no reason to dispute that what you're
8 saying is true. I don't know, though.

9 Q. And your proposal on a go-forward basis for
10 bill and keep really isn't the same bill and keep that
11 we have today because it involves the payment of
12 transiting compensation?

13 A. I would agree with that.

14 Q. Where in your testimony, by the way, yours
15 or Mr. Unruh's for that matter, is that distinction or
16 that difference highlighted for purposes of this case?

17 A. I believe it is in the testimony that I'm
18 giving now. I do not believe it is in either my
19 direct, rebuttal or surrebuttal.

20 Q. And did you hear the testimony of
21 Mr. Cowdrey before you regarding his notion or
22 understanding of bill and keep?

23 A. Yes, I did.

24 Q. And would you agree with me that his
25 understanding is different than yours?

1 A. I would agree with that.

2 Q. And the same with Mr. Cadieux, who testified
3 before him?

4 A. I would agree with that also. I think it's
5 important that we understand one of the --

6 MR. LUMLEY: Your Honor, I'm going to
7 object. There's not a question proposed.

8 JUDGE DIPPELL: That's true. The witness
9 has already answered the question. Mr. England, do
10 you have another question for the witness?

11 MR. ENGLAND: I'm sure I do. I'm just
12 deciding whether I wanted to hear it or not.

13 BY MR. ENGLAND:

14 Q. Do you share Mr. Cowdrey's opinion or
15 testimony that if the Commission changes the
16 intercompany compensation arrangement from what we
17 have today, that that will in all likelihood, at least
18 on some carriers, put upward cost pressure on the
19 prices they have to charge for MCA service?

20 A. I would agree that if bill and keep is no
21 longer the compensation mechanism within the MCA, that
22 is very possible.

23 Q. To the extent carriers such as Cass County
24 Telephone Company who do not have the facilities
25 necessary to move traffic around the MCA rely on

1 companies such as Southwestern Bell to transit that
2 traffic, that's going to create additional cost to
3 them than they have today if they have to pay that
4 transiting charge, correct?

5 A. I would agree.

6 Q. Okay.

7 A. And I believe they're entitled to recover
8 that.

9 Q. Now, today -- let me ask another question.
10 If that Kansas City CLEC customer in the mandatory
11 zone was actually a Southwestern Bell customer a month
12 ago, we would -- I say we. Excuse me. Cass Tel would
13 be paying you a transiting charge to get that call
14 from Peculiar to the CLEC customer today, correct,
15 under your proposal?

16 A. Under my proposal?

17 Q. Yeah.

18 A. A call from Peculiar to --

19 Q. A CLEC customer in Kansas City proper.

20 A. Assuming we were the transiting company,
21 yes.

22 Q. That transits your facilities?

23 A. Yes.

24 Q. Cass would pay you a transiting charge?

25 A. Yes.

1 Q. But would not pay the CLEC any terminating
2 compensation?

3 A. Assuming that MCA-4 customer was an MCA
4 subscriber.

5 Q. Correct.

6 A. Yes.

7 Q. That's my assumption. However, a month ago
8 when that CLEC customer was a Southwestern Bell
9 customer, Cass County's MCA customer was able to call
10 them and Cass County didn't incur any expense for
11 either transiting or termination to your former
12 customer, right?

13 A. Correct.

14 Q. So in that instance Southwestern Bell is
15 going to be getting additional compensation for a
16 function it has always performed but for which it has
17 not been paid in the past?

18 A. And likewise we will pay the expense
19 associated with transiting when someone transits a
20 call for us.

21 Q. In all likelihood, who's going to be doing
22 much transiting for you?

23 A. I don't know how you want to define much,
24 but I do know that other companies transit traffic for
25 us.

1 Q. In the MCAs?

2 A. I believe it was Mr. Stowell's testimony
3 that his transiting company is out of the Warrensburg
4 exchange, and I believe in his example it was an MCA-5
5 exchange, so yes.

6 Q. You're still going to be involved in
7 transiting that call yourself, aren't you?

8 A. Well, we will transit it to whoever
9 ultimately transits the call to MoKan. I apologize.
10 I think it's Sprint in that case. And we would then
11 pay Sprint when we originate the call for them
12 performing a transiting function on our behalf, or we
13 could set up an arrangement with MoKan to have a
14 direct connection.

15 Q. I think I understand what you're saying. If
16 one of your MCA customers originated a call to Freeman
17 that went through your facilities to Sprint's to
18 Freeman, you would be responsible for paying Sprint a
19 transiting charge; is that correct?

20 A. We think it should apply equally.

21 Q. If a Lathrop MCA customer places a call to
22 Freeman MCA customer, Lathrop's now going to have to
23 pay Southwestern Bell and Sprint under your proposal
24 because those are -- there are two companies now
25 involved in transiting that call?

1 A. I will trust that there are two companies,
2 and if there are, then yes, they both should be
3 compensated for that transiting function.

4 Q. And today there's no compensation flowing to
5 any of the transiting companies under the current MCA?

6 A. I would agree with that. Yes, I would agree
7 with that.

8 Q. So you're creating a situation where in the
9 future you're going to be paid for a function, again
10 transiting function, you and now Sprint, that you
11 don't get paid for today under the current bill and
12 keep arrangement?

13 A. I would agree that that is a function that
14 we're not being paid for today, yes.

15 Q. And that's the way you proposed it to be
16 back in 1992, was it not, sir?

17 A. Well, again, I will trust that we made that
18 proposal. I wasn't involved in that case. I believe
19 the circumstances around this case are different than
20 they were in '92 and what we're here and what the
21 Commission's here to determine for us is whether or
22 not the CLECs should be allowed to participate in the
23 MCA.

24 And what we're saying is, under this new
25 MCA, assuming the CLECs are allowed to participate,

1 that is something that the Commission should consider.

2 Q. And your proposal is that they participate
3 under a bill and keep arrangement that, in fact, is
4 different than the bill and keep arrangement that
5 exists today?

6 A. I would agree.

7 Q. And the first time we heard of that is today
8 on the witness stand from you?

9 A. I believe that's true.

10 MR. ENGLAND: Thank you. No other
11 questions.

12 JUDGE DIPPELL: Now we're ready for Sprint.

13 MS. GARDNER: No questions.

14 JUDGE DIPPELL: GTE?

15 MR. FISCHER: No questions.

16 JUDGE DIPPELL: Staff?

17 MR. POSTON: No questions.

18 JUDGE DIPPELL: Public Counsel?

19 MR. DANDINO: Yes, your Honor.

20 CROSS-EXAMINATION BY MR. DANDINO:

21 Q. Mr. Hughes, if the Commission no longer
22 required Southwestern Bell to offer MCA under the same
23 terms and conditions, intercompany compensation and
24 the same footprint as exists today, would Southwestern
25 Bell continue to offer that to the customers in the

1 metropolitan areas?

2 A. I believe it is something that we would have
3 to look at. I cannot tell you that we would not offer
4 it. What I would tell you is that we would have to
5 make a business decision on whether or not that
6 product was one that we still wanted to offer and,
7 depending upon the arrangement, one that the customers
8 still wanted to receive.

9 Q. You can't tell me whether you won't offer it
10 and you can't tell me whether you would?

11 A. I don't know the terms and conditions under
12 which I would be allowed to offer it, and that would
13 make -- that would go a long way towards helping us
14 make that decision.

15 Q. If it is existing exactly as it was today, I
16 want you to assume that.

17 A. Okay.

18 Q. Your answer is still the same?

19 A. If it exists going forward as it is today?

20 Q. Yes.

21 A. Under all the current terms and conditions
22 would we continue to offer?

23 Q. Right.

24 A. Yes, I believe we would.

25 MR. DANDINO: That's all I have, your Honor.

1 Thank you.

2 JUDGE DIPPELL: And there was no other
3 attorney for AT&T; is that correct?

4 MR. LUMLEY: Right.

5 JUDGE DIPPELL: Intermedia?

6 MR. SAPPERSTEIN: No questions, your Honor.

7 JUDGE DIPPELL: Birch?

8 MR. MIRAKIAN: No questions.

9 JUDGE DIPPELL: McLeod?

10 MR. KRUSE: I've got a few, your Honor.

11 CROSS-EXAMINATION BY MR. KRUSE:

12 Q. Mr. Hughes, you indicated in your testimony
13 that Southwestern Bell's not seeking compensation for
14 competitive losses with respect to the 2.6 cent charge
15 called for in Southwestern Bell's MOU, but that seems
16 to be precisely what Southwestern Bell is really
17 attempting to do, isn't it?

18 A. Could you please give me a cite?

19 Q. Sure. Go to your surrebuttal testimony,
20 page 11 to 12. I'll give you a specific line here.

21 A. Page 11?

22 Q. Yeah. And that would be line 23, then
23 again on page 12, lines 10 and 11.

24 A. Could you repeat the question? I'm sorry.

25 Q. I guess my question is, how can you -- how

1 can you categorize that 2.6 charge called for in the
2 MOU as anything really other than a competitive loss?

3 A. There are two components to the call that
4 need to be considered. The first is the origination
5 of the call, and I'm assuming in this example,
6 Mr. Kruse, we would have lost the customer to McLeod,
7 and it is our view that the competitive loss is
8 associated with losing that customer.

9 However, the second part of the call is the
10 return calling aspect of it, which is not a
11 competitive loss. In fact, we believe that the rates
12 that were established in the MCA case in '92 were
13 developed based upon revenue neutrality and the toll
14 that we lost providing that return calling feature.

15 Q. Well, then what exactly is the 2.6 cents
16 for?

17 A. The 2.6 cents is the call -- we would have
18 received toll from that customer when they make a call
19 to a nonsubscriber. We charge toll to our customer.
20 The 2.6 cents is to recover that lost revenue
21 associated with that toll charge.

22 The 2.6 cents is the originating access
23 charge that we would provide -- or excuse me -- that
24 we would charge to an interexchange carrier if they
25 carried the call versus Southwestern Bell carrying the

1 call.

2 Q. But isn't that just revenue replacement?

3 A. I would agree that's replacement of the toll
4 revenue that we would have received from our end user
5 for calling a nonsubscriber, yes.

6 Q. Well, what is -- what does the CLEC get in
7 return for paying the 2.6 cents per minute?

8 A. What they get is --

9 Q. I realize that you stopped --

10 MR. LANE: I'd appreciate if we could get
11 the answer to the question.

12 JUDGE DIPPELL: Let the witness answer the
13 question before you ask another.

14 MR. KRUSE: I'm sorry.

15 THE WITNESS: What the CLEC would receive is
16 the return calling portion. You're asking us to allow
17 our customers to call your customers on a toll-free
18 basis when otherwise that call would have been dialed
19 on a 1+ basis and we would have received intraLATA
20 toll or originating access from an IXC.

21 BY MR. KRUSE:

22 Q. And is it your testimony, then, that this
23 providing the return calling aspect is a service that
24 you're providing?

25 A. I don't know that I'd classify it as a

1 service. I believe what you would ask us in that case
2 is to allow our customers to call -- I guess if you
3 want to call it a service in that you're asking us to
4 provide a service where we allow our customers to call
5 your customers on a toll-free basis when it otherwise
6 would have been a toll call, I'd agree we can call it
7 a service.

8 Q. Just so there's no doubt, take a look at
9 lines 10 and 11 on page 12 of your surrebuttal
10 testimony.

11 A. Okay.

12 Q. It says right there, This is not
13 compensation for competitive loss. It is compensation
14 for providing a service.

15 A. Return calling service, yes.

16 Q. Does Southwestern Bell have any cost
17 associated with this service?

18 A. It's not a matter of cost. It's a matter of
19 providing the return calling feature on a toll-free
20 basis when we otherwise would have received toll
21 charges from our end user.

22 Q. But there's -- isn't it fair to say that
23 Southwestern Bell doesn't have any additional cost as
24 a result of providing this return calling service? I
25 mean, nothing changes, does it, once a -- once a

1 customer leaves, you lose revenue, but it doesn't
2 change your costs at all, does it?

3 A. I would agree that there's no additional
4 cost.

5 Q. On page 2 of your surrebuttal, you
6 discuss -- you're discussing the calling scope at
7 about line 20. You state that CLECs want to establish
8 calling scopes broader than the MCA plan and require
9 Southwestern Bell and other incumbent local exchange
10 carriers to provide toll-free return calling to the
11 new calling scope and avoid payment of access charges
12 on calls in the expanded calling scope.

13 What is your basis for that? I didn't see
14 much to support it in the rest of the testimony.

15 A. If you'd like, I could look through all my
16 testimony and probably find you some cites, but in
17 general I would say that is based upon my
18 interpretation of other witnesses' written testimony
19 in the case.

20 I would say that, based upon the testimony
21 that I've heard this week thus far, that either I
22 misunderstood the written testimony or they have
23 clarified their written testimony, and I no longer
24 believe that any party is advocating that they can
25 change the calling scope and require that access be

1 avoided.

2 Q. That's really where I was going. I think
3 there was some misunderstanding maybe in Mr. --
4 resulting from a round of Mr. Cadieux's testimony
5 which I think he corrected in subsequent written
6 testimony.

7 A. I would agree.

8 Q. You indicate that CLECs should not be
9 permitted competitive advantage in offering MCA
10 service. Is that a fair characterization of your
11 testimony?

12 A. If you have a cite, I'd go to it.

13 Q. Sure. Surrebuttal, page 2, lines 10 to 12.

14 A. Yes. I would say that my testimony is
15 indicating that we do not believe the CLECs should be
16 allowed to obtain a competitive advantage in a
17 Commission mandated plan, yes.

18 Q. What do you mean by the term competitive
19 advantage? Aren't you really just talking about
20 competitive differentiation?

21 A. No. As I've outlined in my testimony, I
22 believe that CLECs were seeking to participate or have
23 the Commission grant their participation in the MCA
24 without abiding by the terms and conditions that the
25 ILECs are required to follow.

1 Q. Right. But what it really boils down to is,
2 is you're saying that, I believe, if I'm
3 characterizing your testimony correctly, that in order
4 for CLECs to participate in the MCA plan, they have to
5 abide by the exact same terms and conditions as the
6 ILECs currently do and thus are not to be allowed to
7 have any differentiation in terms of price, calling
8 scope, intercompany compensation's got to be the same
9 and the like?

10 A. I believe my testimony would indicate that
11 what we believe is appropriate is that there's equal
12 opportunity for all of those.

13 Q. And by equal opportunity, that means no
14 competitive differentiation amongst the type of MCA
15 service -- the terms of the MCA service that a CLEC
16 could offer?

17 A. We believe that if the Commission chooses or
18 orders, whatever terminology you want to use, that
19 CLECs can become participants in the plan, we believe
20 that all participants should be able to compete on an
21 equal basis.

22 So there are certain flexibilities that you
23 have asked for or believe that you're entitled to that
24 we believe we should also be entitled to.

25 Q. Well, are you saying, then, if the CLECs are

1 allowed to differentiate their service with respect to
2 pricing and/or geographic scope and/or intercompany
3 compensation, that that necessarily means they have a
4 competitive advantage over Southwestern Bell?

5 A. I'd like to break that apart because I think
6 we need to be careful when we talk calling scope.
7 There's been a lot of discussion this week about
8 what's been meant by that.

9 And we're not indicating that McLeod cannot
10 offer a different calling scope other than what
11 Southwestern Bell offers. What we're indicating is
12 that, for purposes of the MCA, the calling scopes need
13 to be considered like. And if you want to offer
14 something above that, so be it. Is that fair, to
15 break it apart, your question?

16 Q. It's fine if you want to answer it that way.

17 A. Okay. In regards to the other items, we
18 believe that if the Commission determines that CLECs
19 may participate in this plan, that there are terms and
20 conditions that should apply to all, such as pricing,
21 such as NPA NXX segregation, such as bill and keep.

22 Q. So you believe if McLeod USA and the other
23 CLECs were allowed to differentiate their services
24 with respect to those terms and conditions of MCA plan
25 participation, that that's going to put Southwestern

1 Bell at a competitive disadvantage?

2 A. I believe -- and I don't want to take
3 liberties of speaking for the other ILECs, but as I
4 just discussed with Mr. England, I believe there is
5 the potential, if some of those terms and conditions
6 are not followed, there's the possibility that the MCA
7 plan as we know it today could not be a viable
8 alternative for some of the companies.

9 Q. Well, what about the differentiation that's
10 allowed under the Federal Telecommunications Act?
11 CLECs are certainly treated differently than incumbent
12 carriers in a variety of things there. Why wouldn't
13 it be appropriate for CLECs to be treated differently
14 than ILECs with respect to offering MCA service?

15 A. I believe the difference is we're operating
16 under a plan that the Commission mandated, and you're
17 asking for freedoms and opportunities above and beyond
18 what we would be able to offer and, therefore, you
19 could gain a competitive advantage.

20 And I understand in competitive marketplaces
21 you're going to have some competitive advantages, but
22 we want to be able to compete on equal terms and make
23 the same pricing decisions, make the same decisions
24 regarding our calling scope, et cetera.

25 Q. Doesn't Southwestern Bell enjoy a pretty

1 huge competitive advantage over CLECs who wish to
2 provide facilities-based MCA service right now as a
3 result of the screening procedures that Southwestern
4 Bell has imposed?

5 A. I believe that the heart of this case is
6 that determination of whether or not the Commission
7 will allow CLECs to participate in the MCA. So today,
8 in our view, they're not a participant in the MCA.

9 Q. Fine, but that really doesn't answer my
10 question.

11 A. Well, restate your question, please.

12 Q. Doesn't Southwestern Bell enjoy a huge
13 competitive advantage right now over CLECs who wish to
14 provide facilities-based MCA services as a result of
15 Southwestern Bell's imposition of CLEC NXX screening
16 procedures?

17 A. I can't agree that we have MCA screening.
18 So no, I can't agree with your statement. I mean, I
19 can't agree with your belief that we're screening
20 calls when we believe we're abiding by the original
21 Commission Order as far as the plan is concerned in
22 treating your customers as nonsubscribers.

23 Q. Okay. Well, you characterized it as just
24 abiding by the Commission's Order. We can call it
25 screening procedures. I don't want to get in a big

1 semantic battle with you on that.

2 Whatever you want to call it, let's just
3 take a snapshot right now in the state of Missouri
4 with respect to competition and MCA plan markets.
5 Doesn't Southwestern Bell have a huge competitive
6 advantage right now, today, in competing with CLECs
7 who are trying to provide facilities-based services?

8 A. I think I need to answer your question with
9 a question of, Why is that the case? Why haven't some
10 CLECs chosen to compete in the state of Missouri? I
11 can't answer that question.

12 Q. Well, let me help you out a little bit,
13 then.

14 A. Please do.

15 Q. Why would somebody that's currently a
16 Southwestern Bell customer switch over to CLEC
17 facility-based MCA service and risk losing the ability
18 for all that person's friends, family, business
19 contacts, what have you, who formerly enjoyed the
20 advantages of calling them toll-free, why would
21 somebody switch to McLeod USA or another CLEC?

22 A. I don't want to characterize the testimony
23 of Ms. Meisenheimer, but she offered quite a bit of
24 reasons that customers may go with CLECs, price,
25 service. You have other ways to differentiate

1 yourself in the marketplace.

2 I don't know the answer to that question. I
3 think there are a multitude of reasons that customers
4 switch, and it's not solely dependent on price.

5 Q. Okay. Well, at least with respect to MCA
6 service, though, let's look at that one little
7 component, which is a pretty big component here in
8 Missouri in MCA plan markets.

9 With respect to that, the offering of that
10 service, doesn't Southwestern Bell enjoy a huge
11 competitive advantage right now over CLECs?

12 MR. LANE: Judge, I think it's been asked
13 and answered about four times.

14 MR. KRUSE: I think I've asked it about four
15 times, and I don't think I've gotten an answer to it
16 yet.

17 MR. LANE: It's been asked and answered. He
18 may not like the answer, but it's been asked and
19 answered.

20 MR. KRUSE: I think he's given me as many
21 nonresponsive answers as I've asked him questions, and
22 I don't know -- even though I don't like the answer, I
23 still don't think it's an answer to my question.

24 JUDGE DIPPELL: I don't think the witness
25 has directly answered the question. Perhaps the

1 witness can't answer the question. Then he needs to
2 say.

3 THE WITNESS: I do not believe Southwestern
4 Bell has a competitive advantage in the MCA.

5 BY MR. KRUSE:

6 Q. Let me go to the MOU for a little bit. I
7 think that you indicated in your testimony that
8 negotiations began with Intermedia regarding the MOU
9 in about May of 1999?

10 A. I believe I recall that from my testimony,
11 yes.

12 Q. Isn't it true that Southwestern Bell was
13 unwilling to include other CLECs in these negotiations
14 or purported negotiations even though at this time
15 various other CLECs were requesting that Southwestern
16 Bell negotiate a solution to Southwestern Bell's
17 failure to recognize CLECs as MCA participants?

18 A. Are you asking if we would let another party
19 join the discussions that we were having with
20 Intermedia or separate discussions?

21 Q. Either way.

22 A. Okay.

23 Q. Either those discussions or separate
24 discussions.

25 A. Typically, we do not have negotiations with

1 multiple CLECs. We would have a negotiation with
2 McLeod and there would be no other party involved. So
3 from that perspective, I don't believe when we were
4 having negotiations with Intermedia we would have
5 allowed another party into it.

6 If your question is going to would we have
7 had or held negotiations with other companies
8 regarding a similar outcome, I am not familiar with
9 our relationship with other companies prior to signing
10 the MOU. I do know that after we signed it we made it
11 available to everyone.

12 Q. Well, that's a little confusing. You said
13 you don't make available these negotiations to more
14 than one company sort of at a time, but yet as soon as
15 the MOU was negotiated with Intermedia or signed with
16 Intermedia, then immediately it got routed out to all
17 the CLECs.

18 Why not include all the CLECs back in May of
19 '99 in those discussions as to how CLECs could get
20 access to the MCA?

21 A. I don't know for sure with respect to
22 McLeod, but I know that generally we sign
23 nondisclosure agreements with all CLECs. And when
24 we're negotiating with a CLEC, those negotiations are
25 between Southwestern Bell and that particular CLEC,

1 and we do not inform other CLECs of what we're
2 negotiating with with a particular company.

3 Q. Okay. Then why wouldn't you engage in
4 separate negotiations with other CLECs who were
5 requesting at that same time to get access to the MCA
6 plan?

7 A. As I mentioned, I said I wasn't aware of if
8 we had any of those discussions or if we were
9 unwilling. I'm not familiar with any other
10 discussions with any other party other than Intermedia
11 in May of 1999. I'm not personally familiar.

12 Q. So you're saying you're not aware of AT&T's
13 request or McLeod USA's request or the request of
14 anybody else to negotiate a solution back in May or
15 June of '99?

16 A. I can tell you I'm not familiar with McLeod,
17 but I can tell you that I am familiar with AT&T, and I
18 can tell you that we made a proposal to AT&T, and I
19 personally made the proposal.

20 Q. When did you make that proposal?

21 A. I don't recall timing, but if it wasn't May
22 it was right around that time frame, maybe June of
23 '99.

24 Q. Were you ever informed by anyone else at
25 Southwestern Bell that McLeod USA was interested in

1 trying to get access into the MCA?

2 A. I was not informed of that prior to taking
3 over my current position in October.

4 Q. October of what year?

5 A. Of '99. I'm sorry. And I do not believe,
6 to the best of my knowledge, I was aware of that until
7 I want to say around the first part of December when
8 you and I had a brief conversation about it. I don't
9 believe I was aware of it prior to that.

10 Q. Okay. Well, just for future reference, who
11 is McLeod USA supposed to negotiate with at
12 Southwestern Bell on matters such as the MCA plan?

13 A. Well, our -- we have an account team that
14 handles our interaction with McLeod on issues
15 pertaining to the Interconnection Agreement.

16 Q. I'm aware of that, and they routed out
17 several times, I think, requests for our ILEC
18 relations group through their contacts at Southwestern
19 Bell and were repeatedly told that nothing was
20 available, and this occurred all the way up until
21 November when the accessible letter with the MOU was
22 finally sent out, and I'm just wondering --

23 MR. LANE: Your Honor --

24 MR. KRUSE: I'm getting there.

25 BY MR. KRUSE:

1 Q. I'm just wondering who we should contact,
2 because obviously it didn't get routed up to the right
3 channels.

4 MR. LANE: Let me object to the question on
5 the grounds that it assumes facts that are not in
6 evidence in this case.

7 JUDGE DIPPELL: Sustained.

8 MR. KRUSE: Your Honor, I think it is in
9 evidence. I think we -- in our direct testimony we
10 indicated that we had attempted several times to
11 contact Southwestern Bell in the spring and summer of
12 '99 regarding the solution and were repeatedly told
13 that --

14 JUDGE DIPPELL: I think there was a little
15 more information in your statement just a moment ago
16 than was actually in your witness' testimony.
17 However, if you'd like to ask the simple question who
18 is it that you want to contact, that's certainly fine.

19 MR. KRUSE: That's really all I was trying
20 to get. The rest of it was just for background.

21 MR. LANE: Well, it was for something. I'm
22 not sure.

23 THE WITNESS: Let me answer your question
24 this way and see if it gets to an answer that will
25 answer your question.

1 Your point of contact for matters regarding
2 the Interconnection Agreement should be through your
3 account team. I believe the appropriate people at
4 McLeod know who the appropriate people are at SWBT.
5 When a matter such as this would come up, more than
6 likely the account team would contact someone in my
7 office.

8 What I'm suggesting to you or what I'm
9 stating to you is, I wasn't on the job then. I have
10 no knowledge of whether or not McLeod came to us or
11 not. My personal knowledge would have to be after
12 October of '99.

13 BY MR. KRUSE:

14 Q. To wrap up this area, one final question.
15 Southwestern Bell did not, in fact, offer anything to
16 any CLECs by way of a solution to the CLEC access to
17 the MCA issue other than to Intermedia until after
18 Intermedia signed the MOU, did it?

19 A. That's not true. As I just testified, I was
20 working with AT&T. We made a proposal to them. I
21 don't have the exact date, but I would estimate it was
22 in May or June of '99.

23 Q. Was that proposal the same proposal as the
24 MOU, that was contained in the MOU or very similar to
25 it?

1 A. It was not the same proposal that was
2 ultimately agreed to between Southwestern Bell and
3 Intermedia, no.

4 Q. How come the proposal that was made to AT&T
5 wasn't mentioned to any of the CLECs?

6 A. Again, Mr. Kruse, I can only speak for the
7 capacity in which I was in with the company at that
8 time, and I do not have knowledge of how our
9 relationships were with other CLECs.

10 Q. Let me talk to you a little bit about the
11 issue of pricing.

12 JUDGE DIPPELL: Let me interject just a
13 moment. I'm going to ask you to hold those questions.
14 I'm going to go ahead and let Commissioner Drainer ask
15 the questions that she has for this witness because
16 there are public hearings elsewhere this afternoon
17 that she has to attend. So I'm going to go ahead and
18 let Commissioner Drainer ask her questions.

19 COMMISSIONER DRAINER: Thank you. First I
20 do appreciate the courtesy of the attorneys letting me
21 go forward so I can catch the plane for the public
22 hearing that might have something to do with a utility
23 other than telecom.

24 QUESTIONS BY COMMISSIONER DRAINER:

25 Q. Mr. Hughes, first of all, good afternoon.

1 A. Good afternoon.

2 Q. I see it's Thomas F. Hughes. What's the F.
3 stand for?

4 A. Francis.

5 Q. All right. Good name. I really had far
6 fewer questions to ask you until Mr. England's
7 questions to you, and now I need some clarification on
8 some areas.

9 First, Southwestern Bell does have the
10 ability to block or screen calls in general, correct?

11 A. Are you --

12 Q. Technological ability, that you have the
13 ability in software packages to do different types of
14 blocking or screening of calls?

15 A. Yes. In our -- generally speaking, in our
16 translations we can determine how calls are routed,
17 yes.

18 Q. Sure. So first, with respect to your
19 Interconnection Agreements where there is language in
20 there that when you do the Interconnection Agreements
21 the CLECs are to make arrangements with other local
22 exchange companies for the termination of traffic to
23 their exchanges?

24 A. Yes.

25 Q. If this Commission orders Southwestern Bell

1 to block calls to those other local exchange companies
2 until the time that the CLECs provide a proof of
3 agreement with those small ILECs, Southwestern Bell
4 has the technological capabilities to do that?

5 A. I believe that's true, yes.

6 Q. And as I'm talking about calls across the
7 network that are only in line in which this Commission
8 has jurisdiction, Southwestern Bell could indeed in
9 honoring its Interconnection Agreement and it would
10 not be in violation of its Interconnection Agreement
11 to just be asking for that proof, because the ILECs --
12 or the CLECs have agreed in your Interconnection
13 Agreements that they're aware that they have to have
14 those arrangements, correct?

15 A. Yes, they have agreed.

16 Q. And you have agreed when you did those
17 Interconnection Agreements that you recognize that
18 they needed to have those agreements with the CLECs,
19 correct?

20 A. I would agree with that.

21 Q. All right. So you could technologically do
22 it?

23 A. Yes.

24 Q. And if we ordered it, Southwestern Bell
25 would comply with that?

1 A. We would comply with that Order, yes.

2 Q. Now, if you had to do that and you did that,
3 would that help resolve, do you think, some of the
4 concerns with the small telephone companies and having
5 calls dropped at their switches that were not
6 identifiable?

7 A. I believe it would. The area that I'm not
8 sure of is based upon the testimony of some of the
9 CLECs this week, I'm not sure the quantity of traffic.

10 Q. Okay. Well, that -- we're not talking
11 quantities.

12 A. Okay.

13 Q. Because, as you've said, you're worried
14 about these competitive advantages that companies can
15 have over you. So those quantities could be going up?

16 A. That's true, and they are.

17 Q. They are?

18 A. Dramatically, each month.

19 Q. As we speak, right?

20 A. Probably so.

21 Q. Okay. Well, seriously, though, then we get
22 to some things with compensation because that's the
23 next piece. So the CLECs have to have agreement on
24 how they're going to work out the passing of traffic
25 to all local exchange companies.

1 Now we're talking about MCA. Currently bill
2 and keep is just that. I bill it to my customer, I
3 keep it. You bill it to your customer, you keep it,
4 and we let them call each other if they're both MCA
5 customers.

6 A. Correct.

7 Q. Today if I am calling Mr. England and you as
8 Southwestern Bell are doing the transit function and
9 I'm MCA and he's MCA and you're part of the transit,
10 you're not charging me or Mr. England's company
11 because it's all bill and keep, period? There's no
12 transit charges at this time?

13 A. That is a true statement.

14 Q. If the Commission reaffirms that the CLECs
15 also should be players in the MCA arena and that
16 everyone is bill and keep and there are no transit
17 charges for anyone, then you would contend that you're
18 losing revenues, especially from the CLECs, because
19 you're having to pass traffic and you get nothing,
20 correct?

21 A. Associated with transiting?

22 Q. Uh-huh.

23 A. Wouldn't be necessarily revenues at that
24 point. It would be expense.

25 Q. Expense. Okay. That sounds like an

1 accounting answer. Thank you. So that would be an
2 expense.

3 Okay. But when this was originally done in
4 '92, there was true-up on figuring out the charges,
5 and Southwestern Bell would have been making -- been
6 assuring and coming to some final charges that they
7 were made whole and that their expenses were covered,
8 right?

9 A. That was part of the revenue neutrality as I
10 understand it, yes.

11 Q. Well, then I've got two things. One, if
12 this Commission were now to allow you to recoup with
13 everyone these transit charges unless you had a
14 customer in that phone call, it seems to me that you
15 would be actually increasing your revenues because
16 you'd be charging folks that before you weren't able
17 to charge them, and that would increase your revenues?

18 A. I would agree with that.

19 Q. And isn't Southwestern Bell a rather large
20 company in the metropolitan areas?

21 A. I would agree with that.

22 Q. And if there was some type of an original
23 task force settlement that came up with the charges of
24 how everybody was revenue neutral in the beginning,
25 aren't you now kind of hitting a jackpot of additional

1 revenues even though that was originally settled?

2 A. I don't believe we're hitting a jackpot. I
3 believe what we're indicating is --

4 Q. Let's not use jackpot. Let's just use real
5 terms. You're going to get more revenue?

6 A. Than we receive today?

7 Q. Yes.

8 A. We will get revenue for the transiting
9 function, yes.

10 Q. Okay. So that now what if -- so let me take
11 you then to the next step. Today you're supposedly
12 made whole. Tomorrow we allow the CLECs and we
13 reaffirm that they indeed should be able to offer MCA.
14 We also say that it's bill and keep, the real bill and
15 keep, not your bill and keep. Bill and keep, okay,
16 period.

17 A. Bill and keep as it is today.

18 Q. Yeah, period. Couldn't the Commission do
19 that and ask for Bell and all parties' cooperation on
20 an interim basis to do that so we move forward -- oh,
21 and we're also asking you to block calls 'til you see
22 there's agreements with the CLECs with the other small
23 companies. Okay?

24 A. Okay.

25 Q. So that's how we're going to start off.

1 Couldn't Southwestern Bell and the other parties do
2 just as they did in '92 where you do a true-up?

3 A. I would agree, and that would be part of
4 what we have classified in this as revenue neutrality
5 associated with your decision. All that could be done
6 in association with that task force or the
7 calculations of those revenue neutrality elements.

8 Q. And if it was just based on your expenses,
9 instant projection of now you don't even have an MCA
10 customer, the CLEC has them and so there's some
11 expenses that you don't begin to recover anyway, and
12 although today that does happen, too, because you're
13 probably doing some transiting for GTE and Sprint and
14 Cass and everyone else?

15 A. Yes.

16 Q. So you do have to be real honest here, not
17 that you wouldn't be, but you've got to be real honest
18 of what the traffic is today, what the traffic would
19 be tomorrow, so what is the increased transit
20 function. There could be a true-up that could take
21 that into place when we look at whether or not there
22 had to be a change in the charge, correct?

23 A. I agree that could occur.

24 Q. Now, what am I missing? What's the down
25 side of doing that?

1 A. The down side of -- let me make sure I have
2 it.

3 Q. We're all asked not to ask compound
4 questions, but none of you have been a good role model
5 for me today.

6 A. Your order would state, if I may indicate
7 what I think I heard you say, that the CLECs are
8 participants in the MCA?

9 Q. Uh-huh.

10 A. The compensation would be bill and keep for
11 all locally dialed traffic within the MCA?

12 Q. Uh-huh. And you're not allowed to charge
13 anybody a transit charge.

14 A. We're not allowed to charge anybody transit.
15 Did you -- I don't think you talked about calling
16 scope.

17 Q. But it's MCA. It's what MCA is today.

18 A. So what the MCA is today.

19 Q. I do believe MCA is MCA.

20 A. Okay. The other two components that we
21 think need to be taken into consideration besides
22 revenue neutrality would be NXX segregation issue
23 associated with NXXs, and the other one would be
24 pricing, what the pricing would be for the
25 participants of the new MCA as ordered by the

1 Commission.

2 Q. Well, that would be based on this is a
3 true-up and that would be what would come out of it.
4 Obviously today, too, everybody would have NXXs that
5 are designated for MCA, and the CLECs would have to
6 have NXXs that are designated.

7 And so what you're saying, I mean, that
8 could be something else that's studied so that we
9 don't keep that as a number hog, I think
10 Ms. Meisenheimer's testimony was.

11 A. Correct.

12 Q. So that's something else we should look
13 into --

14 A. Correct.

15 Q. -- as a final solution?

16 A. Correct.

17 Q. And the price would be a final outcome?

18 A. It would be an outcome of what's called a
19 task force, yes.

20 Q. How long would that take place? Could that
21 be done in six months?

22 A. I'm not as optimistic as Mr. Voight.

23 Q. Six months?

24 A. I believe that Ms. Meisenheimer, I think,
25 testified that 12 months. I would say that it would

1 take no less than six months.

2 Q. So we could do one of those in six months
3 and then we could ask for an extension?

4 A. My suggestion would be 9 to 12 months
5 realistically.

6 Q. If that were done -- and I'm asking just
7 your perception because I know you can't speak for
8 others -- what am I missing? What's the problem
9 still?

10 A. I think Mr. Cadieux had -- I'm looking to
11 Mr. Lumley -- I think five things outlined and
12 Mr. Kohly had six, if I remember right, and we believe
13 there are five. So if the Commission looked at those,
14 and some of those overlap, we just have different
15 opinions on them.

16 Q. I guess what I'm asking, is there a problem?
17 Do you see -- is this an acceptable solution or do you
18 see a --

19 A. Problem associated with that?

20 Q. Yes, something that just is not resolved.

21 A. Not that I thought of. None that I've
22 thought of as far as getting the CLECs into the MCA
23 and the terms and conditions. There may be issues
24 associated with the development of what's called MCA-2
25 for the time being that we haven't thought of yet.

1 Q. I'm not talking about MCA-2. I'm talking
2 about --

3 A. No.

4 Q. -- MCA as it is today and how we resolve the
5 issues that were brought to us with MCA.

6 A. I am not aware of any other issues that we
7 would need to take into consideration, no.

8 Q. Because I don't believe the Commission
9 asked. I mean, at this time I'm sure wanting to know
10 about MCA, the concerns that were brought to us about
11 CLECs not being able to offer the service, the
12 concerns about small companies not being able to have
13 the traffic measured that's being dropped at their
14 door. Those are the major issues.

15 If I give the parties time, I'm sure they
16 could come up with all types of calling plans. Do you
17 believe that even MCA as it is today can survive in a
18 competitive world of telecommunications tomorrow?

19 A. I think it can. I think that there needs to
20 be that and all the parties need to be able to compete
21 equally to survive.

22 Q. If you were doing this true-up, would you be
23 happy to do some traffic studies? Would you be able
24 to measure traffic to do some analysis on the final
25 rates?

1 A. We believe the true-up should be based upon
2 revenue neutrality. Now, we may have to do some
3 traffic studies, and I don't know if we have these
4 today, but on a transiting function. I'm not familiar
5 with what we have today versus what we would need to
6 capture to accurately reflect that.

7 Q. Okay. Well, and with the transient
8 function, as I say, I guess originally there was a
9 study that gave you your prices and you felt you were
10 being made whole to start out. So I guess the
11 transient function is important only because now with
12 CLECs it could increase the number of customers that
13 are calling other MCA customers in which you have a
14 smaller customer base?

15 A. The amount of time that we perform
16 transiting function would increase.

17 Q. And finally, you talked about sending
18 letters to the CLECs and telling them they need to be
19 having agreements with the other small ILECs?

20 A. No.

21 Q. Correct me.

22 A. What we have sent letters on is regarding
23 the 92-99s --

24 Q. Okay.

25 A. -- and the need for them to begin sending

1 them to us.

2 Q. Did you ever send them letters telling them
3 they need to be having --

4 A. To my knowledge, we have never sent a letter
5 to a CLEC indicating that they need to establish a
6 relationship with an independent company.

7 Q. Okay. Well, I guess if we ordered you to
8 have proof before you passed their traffic, you could
9 send them a letter, couldn't you?

10 A. Yes, we could.

11 Q. And then with respect to the 90-- is it
12 99-92?

13 A. 92-99.

14 Q. Sorry. 92-99 records, and you've sent them
15 letters that they're to pass that to you?

16 A. In some instances, yes. And in those CLECs
17 that we have sent letters to, some have testified
18 today and letters that I know have gone out, we've
19 come a long way towards resolving those issues, and
20 we're working to get some of those from them today.

21 Q. Did you send those letters under your own
22 signature?

23 A. I'm trying to remember if I -- I drafted the
24 one letter in particular. I honestly don't remember
25 if I signed it with my name or if my boss at that time

1 would have signed the letter.

2 Q. Maybe you should have your attorney sign it.

3 A. I would love for my attorney to sign it.

4 COMMISSIONER DRAINER: I have no other
5 questions. Thank you very much. I'm sorry I can't be
6 here for the remainder of the testimony. Thank you.

7 JUDGE DIPPELL: Mr. Kruse, would you like to
8 continue? I apologize for interrupting you.

9 MR. KRUSE: That's quite all right.

10 JUDGE DIPPELL: You may ask cross questions
11 also based on Commissioner Drainer's questions or you
12 can wait. I have a few more questions from the Bench
13 and I'll do a second round.

14 MR. KRUSE: I think I'll reserve any
15 questions on cross.

16 JUDGE DIPPELL: That's fine.

17 CROSS-EXAMINATION (RESUMED) BY MR. KRUSE:

18 Q. Mr. Hughes, just a few questions on pricing.
19 Let's assume that the Commission were to enter an
20 Order that gave CLECs flexibility with respect to
21 pricing of MCA service. You're not saying, are you,
22 that if the Commission did this, that this would cause
23 the MCA to terminate or would otherwise affect its
24 ongoing viability, are you?

25 A. As a stand-alone component, no.

1 Q. Did Southwestern Bell ever indicate to
2 anyone that it would attempt to terminates its
3 provision of MCA service or that the MCA plan wouldn't
4 be viable under any -- under any set of particular
5 circumstances?

6 A. I do not believe any of our testimony
7 indicates that, no. I don't believe we've ever
8 indicated that the plan as we know it could go away.

9 However, in context of some meetings that
10 were held with Staff and OPC and the ILECs, I think
11 it's fair to say that there was some discussion, at
12 least among some of the parties if not in whole, that
13 that could occur.

14 Q. And under what circumstances could it occur?

15 A. I think the biggest concern would be in the
16 terminating traffic and the ability of a CLEC to pick
17 and choose, if you will, when they wanted compensation
18 versus bill and keep, and the costs associated with
19 that could rise such that it's not an economically
20 viable service to offer for an ILEC.

21 Q. Were you present for the testimony provided
22 by Office of the Public Counsel witness Meisenheimer?

23 A. I was.

24 Q. Okay. Do you have any idea why witness
25 Meisenheimer seemed so concerned about the viability

1 of the MCA plan if CLECs were given any kind of
2 pricing flexibility?

3 MR. LANE: I'm going to -- never mind.

4 THE WITNESS: I believe it was
5 Ms. Meisenheimer's concern was relative to cost
6 associated with providing the service and the
7 potential for CLECs to provide services under cost,
8 and her concern with pricing flexibility is that if
9 everyone did not have the same price, then that
10 concern existed at least in her mind or in her
11 opinion.

12 BY MR. KRUSE:

13 Q. Do you agree with her? Do you agree with
14 her comments regarding pricing, not intercompany
15 compensation but pricing?

16 A. It's my opinion that if all companies have
17 the same pricing flexibility, the marketplace, a
18 competitive marketplace, I think appropriate rates
19 will be set and those rates will be determined based
20 upon competition.

21 I would have to say that her concern about
22 pricing below cost is an issue. However, you have to,
23 I think, weigh the merits of whether or not that's
24 going to happen.

25 Q. I didn't remember her saying anything

1 necessarily about pricing below cost. What I took her
2 to be saying was just any kind of pricing flexibility
3 whatsoever.

4 A. Maybe I --

5 MR. LANE: I'm going -- there's not a
6 question pending. He needs to ask a question instead
7 of making comments.

8 JUDGE DIPPELL: There was no question in
9 that statement. Did you have a question?

10 BY MR. KRUSE:

11 Q. You made reference in your last answer to
12 the fact that she -- to the fact that you believe she
13 referred to below-cost pricing, and I indicated that I
14 thought she really didn't emphasize that much, if at
15 all, at least in her testimony. I don't know about
16 these other discussions you had.

17 But does that change your answer if we just
18 focus on any pricing flexibility at all?

19 A. I would reiterate what I just said, that I
20 think as long as all participants have equal pricing
21 flexibility, then the marketplace will ultimately set
22 the price. And I'm -- I wouldn't be concerned as a
23 stand-alone basis that the future of MCA wouldn't
24 exist.

25 Q. Let me just give you a hypothetical to help

1 me understand a little bit more how the MCA works.
2 You have a principal zone Southwestern Bell customer
3 places a call to a CLEC Tier 3 MCA subscriber under a
4 resale service. That call doesn't get assessed a toll
5 charge, does it?

6 A. Your example, the Tier 3 resold customer was
7 an MCA subscriber?

8 Q. Yes.

9 A. No, there would be no toll.

10 Q. Let's say a principal zone Southwestern Bell
11 telephone customer places a call to a CLEC Tier 3 MCA
12 subscriber who's getting service through UNEP.
13 There's no toll associated with that call, is there,
14 or Southwestern Bell doesn't impose a toll?

15 A. That call could be dialed on a seven-digit
16 basis, or seven or ten-digit basis, yes.

17 Q. Now, if you have a principal zone
18 Southwestern Bell telephone customer who makes a call
19 to a CLEC Tier 3 MCA subscriber under a situation
20 where the CLEC has ported the MCA number from
21 Southwestern Bell, Southwestern Bell doesn't impose a
22 toll charge on that call, does it?

23 A. Again, that call could be dialed on a
24 locally dialed basis.

25 Q. Okay.

1 A. You did say that the number was ported from
2 Southwestern?

3 Q. Right.

4 A. And was an MCA number?

5 Q. Okay. Right.

6 A. Yes. It could be dialed on a seven or
7 ten-digit basis, yes.

8 Q. But in the -- in a situation where you've
9 got the same principal zone Southwestern Bell customer
10 who makes a call to the CLEC Tier 3 MCA subscriber who
11 has a separate NXX code because they're getting
12 facilities-based MCA service, then you impose a toll
13 charge on that call, correct?

14 A. That call would be dialed on a 1+ basis,
15 yes.

16 Q. So wouldn't you agree that Southwestern Bell
17 does recognize CLECs as participants in the MCA plan
18 as long as they're not competing with respect to
19 facilities-based service?

20 A. I believe the resold example in the original
21 Dial US order, the Commission affirmed that MCA should
22 be available for resale.

23 It was our position in other dockets that
24 calls to UNE customers, which would be a
25 facility-based call, those calls should not have been

1000

1 MCA local calls. That is why in the arbitration
2 proceeding with AT&T we proposed an EAS port additive.

3 Q. I'm still confused, I guess, why then the
4 tariff wouldn't apply in cases where the call is
5 terminated to a CLEC facilities-based provider when
6 the tariff seems to apply under resale UNEP and ported
7 number situations?

8 A. It is a matter of the called NPA NXX as to
9 whether or not the call is dialed on a locally dialed
10 basis or a 1+ basis.

11 MR. KRUSE: I don't have any further
12 questions, your Honor. Thank you, Mr. Hughes.

13 THE WITNESS: Thank you.

14 JUDGE DIPPELL: Mr. Lumley, are you going to
15 have quite a few questions? Let's go ahead and take a
16 ten-minute break and come back at a quarter after
17 three.

18 (A recess was taken.)

19 JUDGE DIPPELL: Back on the record, and we
20 were up to cross-examination by Gabriel.

21 MR. LUMLEY: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. LUMLEY:

23 Q. Mr. Hughes, do you have the substitute
24 Exhibit 45?

25 A. I do not.

1 Q. All right. Just to clarify a point you were
2 discussing with Mr. Johnson earlier, would you agree
3 that that exhibit reflects that with respect to the
4 institution of MCA service, Southwestern Bell was
5 projected to experience a revenue increase of \$897,017
6 a year?

7 A. I can agree that in the MCA column that
8 number is there, yes.

9 JUDGE DIPPELL: What page were you looking
10 on on that exhibit?

11 MR. LUMLEY: It's labeled as page A3 in
12 Appendix A.

13 JUDGE DIPPELL: That's fine. Thank you.

14 BY MR. LUMLEY:

15 Q. Isn't it true that Southwestern Bell
16 implemented the MCA plan in its service areas by
17 filing tariffs that were effective in January of 1995?

18 A. I don't know the date of the tariff. I will
19 accept that the date you have represented is true. I
20 would have thought it was in advance of '95.

21 Q. But at least by then?

22 A. Yes.

23 Q. Okay. And your company did implement the
24 service by filing tariff amendments?

25 A. We did file a tariff for MCA service, yes.

1 Q. And you also depended on the other
2 participating LECs to file tariff amendments as well,
3 correct?

4 A. I would assume that the other independent
5 companies did file a tariff to institute the service.

6 Q. To ask it another way, your tariff describes
7 toll-free calling that your customers can place,
8 correct?

9 A. That is correct.

10 Q. And for them to be able to receive the
11 toll-free calling described in the plan, you were
12 dependent on the other participating LECs to likewise
13 file tariff amendments offering their customers that
14 toll-free calling?

15 A. Our tariff governs the service that we offer
16 to our customers. Their tariff would govern the
17 service that they offer to their customers. So we
18 could provide calling on a toll-free basis under our
19 tariff to their customer I believe without them filing
20 a tariff that says that we can make that call.

21 Q. That's not what I was asking.

22 A. I'm sorry. I must have misunderstood your
23 question.

24 Q. Again, your tariff sets forth the toll-free
25 calling scope for your customers' outbound calling?

1 A. Associated with the MCA, yes.

2 Q. And the Commission's plan described not only
3 calls going out but calls being received, correct?

4 A. That is true.

5 Q. And you were depending on the other
6 participating companies to file their outbound calling
7 scopes so that your MCA customers would be able to
8 receive the toll-free calls from their customers?

9 A. I'm sorry. I misheard you last time. I
10 thought you said terminating. That would be a true
11 statement.

12 Q. Now, after the 1996 Telecommunications Act
13 and the state legislation, CLECs started applying for
14 certificates of service authority in the state of
15 Missouri, correct?

16 A. That's correct.

17 Q. And they obtained those certificates for
18 basic local and local services?

19 A. That is also correct.

20 Q. And Southwestern Bell typically intervened
21 in those proceedings, didn't they?

22 A. That is correct.

23 Q. And typically Southwestern Bell would have
24 signed Stipulations that led to the issuance of the
25 certificates?

1 A. That is correct.

2 Q. And those certificates authorize CLECs to
3 provide MCA service, don't they?

4 A. I believe -- and I have never reviewed a
5 CLEC certification, but I believe, based upon what you
6 just said, that the certification allows them to
7 provide basic local service. I don't know if it
8 delineates that they can provide, quote, MCA service.

9 Q. Let me ask it another way. Is it
10 Southwestern Bell's position that a CLEC holding
11 certificates of service authority for both basic
12 local, local and interexchange service would have to
13 obtain an additional certificate of authority before
14 it could provide MCA service?

15 A. I don't know that I want to characterize it
16 as certificate of authority, but I think our
17 position -- I don't think. Our position is the
18 Commission would need to affirm that you are a
19 participant in the MCA. If that's done --

20 Q. I'm not asking you whether there's other
21 steps that they would have to do. I'm asking you --

22 A. I don't know.

23 Q. Okay.

24 A. I don't know the answer to that.

25 Q. And as we've heard, AT&T and Southwestern

1 Bell have entered into an Interconnection Agreement
2 after arbitration proceedings under the
3 Telecommunications Act in Missouri, correct?

4 A. That is correct.

5 Q. And other CLECs have adopted that agreement,
6 including Gabriel?

7 A. That is also correct.

8 Q. And that agreement provides that as between
9 the two companies, the two parties to the contract,
10 competing within the same service area that all
11 traffic within the MCA is considered local and subject
12 to reciprocal compensation?

13 A. In Attachment 12, yes.

14 Q. And the Brooks agreement -- well, Brooks
15 Fiber likewise has an Interconnection Agreement with
16 Southwestern Bell?

17 A. That is correct.

18 Q. And the reciprocal compensation provisions
19 of that contract have been adopted by Primary
20 Network?

21 A. It's my understanding that they have, yes.

22 Q. And it likewise provides for reciprocal
23 compensation within the MCA although it has different
24 rates for optional areas, correct?

25 A. I don't know the specifics, but my

1 understanding is they do have different rates than the
2 AT&T agreement, yes.

3 Q. Now, in the MCA case, when the Commission
4 established the bill and keep mechanism for
5 intercompany compensation between the participating
6 LECs, all of those companies were in adjoining service
7 areas as opposed to overlapping service areas,
8 correct?

9 A. That is correct.

10 Q. And the Commission did not consider in that
11 case intercompany compensation between carriers
12 operating within the same service areas?

13 A. I don't know if the Commission considered it
14 or not. I do know that out of that bill and keep
15 came.

16 Q. Let me ask it a different way. There was no
17 party to that case who was an LEC that was operating
18 in the same service area as another LEC, correct?

19 A. That is correct.

20 Q. And, in fact, you comment on that in your
21 direct testimony, page 4, I believe?

22 A. Subject to check, I trust your cite.

23 Q. And in the AT&T/Southwestern Bell
24 arbitration proceeding, your company provided
25 testimony that it was not seeking to exclude CLECs

1 from the MCA, didn't it?

2 A. Could you give me a cite to that testimony?

3 Q. It was quoted in Mr. Kohly's direct
4 testimony at page 10, if you have that.

5 A. Are you referring -- I believe Mr. Kohly was
6 referring to Mr. Bailey's testimony. It was a
7 transcript from the proceeding.

8 Q. Right.

9 A. I am familiar with that transcript.

10 Q. All right. And in that proceeding
11 Southwestern Bell opposed the use of a bill and keep
12 intercompany compensation mechanism, including for MCA
13 traffic?

14 A. It was Southwestern Bell's position that
15 compensation should be in access for calls terminated
16 within the MCA.

17 Q. Do you know when it was that Southwestern
18 Bell first decided that CLECs are not MCA participants
19 in terms of actually making a policy decision?

20 A. To my knowledge, we have never considered
21 CLECs to be MCA participants.

22 Q. So you're not aware of a specific time when
23 the appropriate company officials said that that was
24 going to be the company's position?

25 A. I couldn't give you a date, no.

1 Q. Could you give me a year?

2 A. Since I indicated that we never thought you
3 were participants, I don't know that the decision was
4 ever formally made that you weren't.

5 Q. Okay. Now, very quickly to run through the
6 examples, a Southwestern Bell MCA-2 customer -- a
7 Southwestern Bell MCA-3 customer can call everyone
8 within the mandatory zone on a toll-free seven or
9 ten-digit dialed basis regardless of their provider --

10 A. That's correct.

11 Q. -- for local service?

12 A. That's correct.

13 Q. And as you were discussing with Mr. Kruse,
14 if that customer's calling outbound into the MCA
15 territory, they can call on a toll-free seven or
16 ten-digit basis Southwestern Bell MCA subscribers,
17 correct?

18 A. Yes.

19 Q. And they can call other ILEC MCA subscribers
20 on the same basis?

21 A. Yes.

22 Q. They can call subscribers of CLECs that are
23 reselling Southwestern Bell MCA service?

24 A. MCA subscribers, yes.

25 Q. They can call CLEC subscribers who have

1 ported a number as a prior Southwestern Bell customer
2 and they were an MCA subscriber at the time they
3 ported the number?

4 A. An outbound call from three, yes.

5 Q. And additionally, if the CLEC is using what
6 some folks have called the UNEP method of facility
7 service, likewise it would be a toll-free call?

8 A. That would be an locally dialed call, yes.

9 Q. And is that because part of the UNEP or UNE
10 platform methodology involves obtaining an NXX -- or
11 telephone number from Southwestern Bell's NXX codes?

12 A. That's correct. In your example, the UNEP
13 customer does have an MCA, Southwestern Bell MCA NPA
14 NXX.

15 Q. Now, the CLEC -- let's say we have a CLEC
16 customer that is being provided resold Southwestern
17 Bell MCA service. They would not be able to call on a
18 toll-free basis under the current circumstances
19 another customer of the same CLEC out further in the
20 MCA who is being served on a facilities basis without
21 a ported number and without UNEP?

22 A. So you have a tier -- let me make sure I
23 have it -- a Tier 3 resold CLEC customer who
24 subscribes to MCA making a call to, let's just say, a
25 Tier 5 pure facility-based CLEC customer. That is

1 correct.

2 Q. And similarly for -- your answer would be
3 the same if the calling customer had a ported number
4 and was being served by UNEP, correct?

5 A. The customer in Tier 3, whether he was
6 resold UNEP or ported number, yes.

7 MR. LUMLEY: I'd like to mark an exhibit,
8 your Honor.

9 JUDGE DIPPELL: We're up to Exhibit 59.

10 (EXHIBIT NO. 59 WAS MARKED FOR
11 IDENTIFICATION.)

12 BY MR. LUMLEY:

13 Q. Now, I understand, sir, from your testimony
14 that you're responsible for Southwestern Bell's
15 tariffs in the state of Missouri; is that correct?

16 A. That would be correct.

17 Q. And can you identify what's been marked as
18 Exhibit 9 as --

19 JUDGE DIPPELL: 59.

20 BY MR. LUMLEY:

21 Q. -- Exhibit 59 as Seventh Revised Sheet 31 of
22 your local exchange tariff, PSC Missouri No. 24?

23 A. That's what it appears to be, yes.

24 Q. Can you accept that that is your tariff
25 page?

1 A. I accept that.

2 Q. I've randomly selected the page relating to
3 Kirkwood, Missouri, just to get a little equal time
4 with Lexington.

5 In your tariff it describes the calling
6 scope for a customer in Kirkwood as all subscribers in
7 the St. Louis metropolitan exchange, correct? I'm not
8 reading the whole thing, but that's the first thing it
9 says?

10 A. Yes.

11 Q. And again, you've interpreted that -- your
12 company has interpreted that to mean subscribers to
13 the service of any local company?

14 A. For purposes of the St. Louis metropolitan
15 exchange, yes.

16 Q. And it goes on to say that they can call
17 optional metropolitan calling area service subscribers
18 in certain Southwestern Bell exchanges, in GTE
19 exchanges and Orchard Farm exchanges, correct?

20 A. Yes.

21 Q. In that case, your company is interpreting
22 subscribers as meaning subscribers of Southwestern
23 Bell and other ILEC services?

24 A. Yes.

25 Q. And it's also at some point decided to

1 interpret that as meaning subscribers of CLEC services
2 if those services are provided on a resale basis, on a
3 ported number basis or on a UNEP basis?

4 A. As a function of the NPA NXX associated with
5 those, yes.

6 Q. But you did not file a tariff change that
7 added those CLEC subscribers to the calling scope?

8 A. I would agree that we did not file such a
9 change.

10 Q. And then I guess at the end of 1999 or in
11 late 1999 you entered into the MOU with Intermedia; is
12 that correct?

13 A. That's correct.

14 Q. And Intermedia, I think as we've seen
15 earlier in the hearing, proceeded to file tariffs
16 setting forth terms and conditions of MCA service. I
17 guess that took effect in January of this year.

18 A. They did file tariffs, yes.

19 Q. And at that point your company recognized
20 Intermedia as a full participant in the MCA?

21 A. Yes.

22 Q. And your company issued an accessible letter
23 that said to other CLECs that they would also be able
24 to be recognized as full participants in the MCA if
25 they entered into a similar agreement with your

1 company?

2 A. We did send an accessible letter that
3 outlined similar to what you said. I don't remember
4 exactly what it said, but it was marked as, I believe,
5 a schedule to my rebuttal testimony.

6 Q. Right. And you did not require Intermedia
7 to sign any such agreement with any of the other
8 ILECs, correct, that were participants in the MCA?

9 A. No, we did not.

10 Q. And you did not file a tariff change that
11 added subscribers to CLEC service if the CLEC had
12 signed an MOU with Southwestern Bell, you didn't add
13 them to the calling scope explicitly by tariff change?

14 A. We did not make such a tariff change.

15 Q. And if a CLEC has a certificate of authority
16 identical to Intermedia's and a tariff identical to
17 Intermedia's but hasn't signed an MOU with
18 Southwestern Bell, you don't recognize them or
19 wouldn't recognize them today as an MCA participant?

20 A. That is correct.

21 Q. They'd need a Commission Order to
22 participate out of this case?

23 A. They'd need a Commission Order to be a
24 participant within the MCA or, in the case of
25 Intermedia, enter into an arrangement with

1 Southwestern Bell regarding the return calling feature
2 of the service.

3 Q. So without the Commission Order, it's the
4 MOU that's determinative, everything else being equal?

5 A. For Southwestern Bell, yes.

6 Q. Okay. And did any of the other ILECs
7 participating in the MCA authorize Intermedia to
8 become an MCA participant?

9 A. I do not know if Intermedia held discussions
10 with any of the other ILECs regarding MCA.

11 Q. Did Southwestern Bell obtain from any of the
12 ILECs their consent to Southwestern Bell's decision to
13 admit Intermedia to the MCA?

14 A. Had to do with Southwestern Bell's service
15 that we offer to our end users. So no, we did not
16 talk to any ILECs about it.

17 Q. Can you point me to a Commission Order
18 appointing Southwestern Bell as the MCA gatekeeper?

19 A. I do not believe there's ever been an order
20 issued by this Commission that indicates that
21 Southwestern Bell is the MCA gatekeeper.

22 Q. Can you point me to any agreement, vote or
23 other understanding between the ILECs participating in
24 the MCA appointing Southwestern Bell as the MCA
25 gatekeeper?

1 A. I would be surprised, Mr. Lumley, if you
2 found anywhere what Southwestern Bell is the MCA
3 gatekeeper.

4 However, we have interpreted our tariffs by
5 virtue of the agreement that we have reached with
6 Intermedia that we can allow our customers to make
7 that call.

8 Q. And in interpreting your tariff, on the
9 first line of the Kirkwood text you're interpreting
10 subscriber to mean subscriber of any company, and
11 three lines down you're interpreting subscriber to
12 mean subscriber to certain companies?

13 A. Yes.

14 Q. And that list of certain companies has
15 changed over time without any accompanying tariff
16 change?

17 A. I would agree we did not make a tariff
18 change.

19 Q. Now, if the Commission -- to use Vice Chair
20 Drainer's language, if the Commission reaffirms CLEC
21 participation in the MCA, on a going-forward basis
22 does Southwestern Bell plan to take it upon itself to
23 conduct independent audits of whether or not a CLEC is
24 properly designating its NXXs as MCA service NXXs
25 before Southwestern Bell will turn up those NXX codes?

1 Do you understand my question or should I
2 say it another way?

3 A. Can you try to say it? I think I do, but I
4 don't want to --

5 Q. You were here when Mr. Cadieux was
6 testifying?

7 A. Yes.

8 Q. And you heard him describe a process whereby
9 a CLEC would submit a sworn statement indicating that
10 here's a list of NXX codes that are MCA NXX codes.
11 Did you hear that testimony?

12 A. Yes, I did.

13 Q. Is it Southwestern Bell's plan that, if it
14 receives such a designation, to honor that designation
15 or does Southwestern Bell plan to conduct further
16 research and decide whether or not it's truthful?

17 A. I believe what we would do, we would honor
18 that request, and then if we had reason to believe
19 that what a particular company said at any point in
20 time wasn't true, then we would conduct such an
21 investigation.

22 Q. And would Southwestern Bell take unilateral
23 action based on those kind of concerns, or would
24 Southwestern Bell bring those kind of concerns to the
25 Commission for resolution?

1 A. I believe what we'd do initially is contact
2 the CLEC and make sure.

3 Q. But it's not resolved to your satisfaction?

4 A. If it wasn't resolved and we do not believe
5 the CLEC was abiding by the terms and conditions of
6 whatever the Commission ordered, we would bring it
7 before the Commission, yes, or I might add we have
8 dispute resolution under our Interconnection
9 Agreement. We could use that as an alternative.

10 Q. Does Southwestern Bell have any plans to
11 change the practice of recognizing a ported number
12 which was receiving MCA service prior to being ported,
13 continuing to honor that as an MCA NXX?

14 A. To my knowledge, we do not have any such
15 plans.

16 Q. And if a CLEC had provided you with a list
17 of NXX codes as being MCA NXX codes, and additionally
18 the CLEC was providing service to customers with
19 ported numbers from Southwestern Bell, providing MCA
20 service to them, would Southwestern Bell under any
21 circumstance unilaterally interfere with continued
22 provision of MCA service to that ported number?

23 A. Can I -- I believe we're still under the
24 scenario of in the future.

25 Q. Correct.

1 A. No. We do not as of now, that I'm aware of,
2 nor have I been involved in any discussions regarding
3 such an activity, and I believe that you're indicating
4 where we would look at ported numbers and view them as
5 not part of the MCA if they were an MCA NPA NXX.

6 Q. Would you agree with me that, based on the
7 evidence that Southwestern Bell has 97 percent of the
8 lines and CLECs have 3 percent of the lines, if
9 Southwestern Bell were allowed to have a calling scope
10 that provided toll-free calling for each of its
11 customers to the rest of its customers and CLECs were
12 offered the opportunity to match that service by
13 allowing their customers to call their other customers
14 toll-free and the prices were the same, that
15 Southwestern Bell's customers by definition would be
16 getting a lot more for their money?

17 A. I cannot agree with your statement, and I'll
18 break it down this way to avoid another question. We
19 do not believe that we have 97 percent of the market.
20 We have an issue with Mr. Voight's testimony. We
21 believe the CLECs have gained a significant greater
22 amount of market share.

23 Q. And what is that?

24 A. We believe it's between 9 and 10 percent at
25 this time.

1 Q. Okay.

2 A. Now, based upon that --

3 Q. Go ahead and substitute your numbers,
4 90 percent and 10 percent.

5 A. Based upon that, I'm trusting that you're
6 asking a hypothetical situation --

7 Q. Correct.

8 A. -- where we have a new service offering,
9 that the only people our customers can call are
10 Southwestern Bell only customers.

11 Q. Correct.

12 A. And can't call CLEC customers, and a CLEC's
13 going to offer a service that they can only call CLEC
14 customers.

15 Q. Right, for the same price.

16 A. Is that your example?

17 Q. Yes. By definition your customers are
18 getting more for their money, aren't they, just by the
19 numbers?

20 A. If I buy your example, which I don't, I
21 would agree.

22 Q. Fair enough. You agree that Southwestern
23 Bell is a price cap regulated company in the state of
24 Missouri?

25 A. I agree we are under price caps.

1 Q. And you agree that, as a result,
2 Southwestern Bell is free to file a proposed MCA rate
3 reduction tariff any time it wants to with a 30-day
4 effective date?

5 A. I agree we can file either a decrease or an
6 increase for that service.

7 Q. You haven't made such a filing since 1996,
8 have you?

9 A. No, we have not.

10 Q. Now, the price cap does set a maximum rate,
11 correct?

12 A. Currently it's at 8 percent, yes.

13 Q. What do you mean by that?

14 A. The statute has an 8 percent. We can raise
15 our rates for non-basic services by 8 percent every 12
16 months.

17 Q. Okay. And just so we're clear, then, on
18 your prior answer, you would regard the optional MCA
19 service as a non-basic service subject to that
20 increase?

21 A. Yes, we do.

22 Q. And you do not regard the mandatory MCA
23 service in the same way?

24 A. No. Since the mandatory, the local and the
25 MCA are together, it's a basic service offering.

1 Q. So in that circumstance you'd have downward
2 flexibility but not upward?

3 A. In that circumstance under price caps, we
4 are required to make an annual filing that may lead to
5 an increase. It may lead to a decrease in the prices.
6 It's based upon --

7 Q. In the cap you mean?

8 A. In the cap, correct. Well, let me be clear
9 because it's not in the cap on the basic. It actually
10 is what the new price will be for the basic services
11 for the following year. We have to make a filing each
12 year. We can go about it one of two ways under the
13 statute.

14 Q. But you're allowed to charge less than that,
15 aren't you, if you choose to?

16 A. For basic services? I don't know that I
17 know the answer to that. I don't know that I've
18 thought about that.

19 Q. Okay. And the price cap for your company
20 establishes the price ceiling that Commissioner
21 Drainer was talking about in her questions earlier in
22 the week, doesn't it?

23 A. I would agree.

24 Q. And would you further agree that, in all
25 likelihood, for at least the vast majority of market

1 participants that would serve as an effective cap on
2 prices for the immediate future?

3 A. The reason I'm hesitating is I've heard a
4 lot of discussion about bundling and packaging of
5 services, and I don't know how you would classify a
6 bundle or a package and would you call --

7 Q. I'm just talking about head to head.

8 A. If it was just straight MCA, everything else
9 aside, I could agree.

10 Q. Okay. Now, if Southwestern Bell proposed a
11 decrease in the rate for optional MCA service and it
12 was approved by the Commission, in your view, would
13 that disqualify Southwestern Bell as an MCA plan
14 participant?

15 A. If we filed the tariff to make a decrease in
16 the price?

17 Q. For the optional service.

18 A. I don't believe so, no.

19 Q. Do you agree that Southwestern Bell can
20 propose additional outbound toll-free calling for its
21 customers any time it wants to?

22 A. I would agree with that.

23 Q. And it has done so with the Local Plus plan,
24 hasn't it?

25 A. We have.

1 Q. And you have customers that subscribe to
2 both MCA and Local Plus, don't you?

3 A. I have not checked that, but I would believe
4 that we do, yes.

5 Q. Does the fact that such a customer has a
6 combined total calling scope with MCA and Local Plus
7 that's greater than the original MCA plan disqualify
8 them as an MCA customer?

9 A. I don't believe so because they're two
10 separate service offerings.

11 Q. Now, if Southwestern Bell chose to bundle
12 those two services together in terms of how it was
13 described to the customer and they just called it MCA
14 Local Plus Service and the price was just the two
15 prices combined, does that process disqualify the
16 customer as an MCA customer?

17 A. I don't believe so, no.

18 Q. So would you agree that if the Commission
19 allows or, as Commissioner Drainer says, reaffirms
20 CLEC participation in the MCA plan, that a CLEC could
21 propose a price reduction and remain a plan
22 participant?

23 A. Subject to whatever other terms and
24 conditions may or may not come out of that Order, yes.

25 Q. And they could propose additional outbound

1 toll calling to combine with the MCA calling scope and
2 remain a plan participant?

3 A. CLEC, yes. Again, let me qualify that I
4 don't know what the other terms and conditions are.

5 Q. I understand. I'm isolating on this.

6 A. Okay.

7 Q. Now, you've agreed in your testimony, your
8 prefiled testimony and your live testimony, that your
9 company is not entitled to be compensated for
10 competitive losses, correct?

11 A. I would agree with that.

12 Q. I want you to assume we're six months into
13 the future and the Commission has, in fact, reaffirmed
14 that CLECs can participate in the MCA plan, all
15 companies are participating and service is being
16 provided. Okay. We're looking into the future. And
17 Southwestern Bell has a non-MCA subscriber in Tier 3,
18 and that subscriber decides to switch to MCA service
19 from Southwestern Bell. That can happen, correct?

20 A. Could they switch their local service
21 provider?

22 Q. No.

23 A. Switch to and become an MCA subscriber?

24 Q. Right.

25 A. Yes.

1 Q. Just buying a different service from
2 Southwestern Bell.

3 A. Yes, they could.

4 Q. And that would reduce your company's toll
5 revenues with respect to calling to that customer,
6 wouldn't it?

7 A. It would reduce, be offset by the associated
8 MCA revenue.

9 Q. And if the Southwestern Bell MCI subscriber
10 later switches to Gabriel MCA service --

11 A. Can you -- you said, I think, MCI, but --

12 Q. MCA service. I do that all the time.

13 A. Just wanted to make sure.

14 Q. After 15 years, it's hard to break that.

15 A. So a Southwestern Bell MCA subscriber
16 switches to --

17 Q. The same customer.

18 A. Okay.

19 Q. Now they're changing local service provider.

20 A. Okay.

21 Q. But they're keeping their MCA service.

22 A. Okay.

23 Q. At that point Southwestern Bell is losing
24 those MCA revenues to the competitor, correct?

25 A. Six months in the future, subject to the

1 Commission Order, yes.

2 Q. Now, if that customer, same person, Gabriel
3 subscriber, decides to switch from MCA service back to
4 non-MCA service, then Southwestern Bell's customers
5 are going to start calling on a toll basis, correct?

6 A. Assuming they change their telephone number,
7 yes. Assuming we knew that they made a change.

8 Q. Certainly.

9 A. Yes.

10 Q. Now, does your company propose to give those
11 new toll revenues to Gabriel?

12 A. We're six months in the future. So I think
13 it's going to be dependent upon whatever revenue
14 neutrality comes out of this case.

15 Q. Can you foresee any circumstance under which
16 your company would give those new toll revenues to
17 Gabriel, honestly?

18 A. I could foresee if the Commission ordered
19 it. Short of that, no.

20 Q. Now, would you agree that CLEC participation
21 in the MCA plan does not change the demographics of
22 the metropolitan areas?

23 A. Reasonably speaking, I would agree with
24 that.

25 Q. The same number of people lived there the

1 day before as the day after, give or take ordinary
2 changes?

3 A. I would agree.

4 Q. And would you agree that Southwestern Bell
5 and the other ILECs experience day-to-day changes in
6 subscribership to non-MCA service and MCA service
7 independent of the existence of CLECs?

8 A. I would agree that that does occur.

9 Q. In your testimony in a number of spots,
10 including your direct testimony, page 5, you speak of
11 your opinion or your concern that CLECs can't require
12 Southwestern Bell to do certain things with respect to
13 toll services, correct, how it rates calls from its
14 customers?

15 A. A CLEC can't require Southwestern Bell?

16 Q. Right. For example, at page 5 you say,
17 CLECs cannot require Southwestern Bell to provide
18 Southwestern Bell's customers with toll-free calling.
19 That's a thought you express a number of times in your
20 testimony, correct?

21 A. Can you show me a line number? I'm sorry.

22 Q. Sure.

23 A. I'm having trouble finding it.

24 Q. In your direct testimony, page 5.

25 A. Okay.

1 Q. Starting at line 10 towards the left side --
2 the right side.

3 A. Okay. Correct.

4 Q. Correct?

5 A. I'm going to ask you to restate your
6 question. I'm sorry.

7 Q. I was actually setting up a question. I
8 wanted to make sure you were with me.

9 A. I'm on the page, and I see what you were
10 referring to.

11 Q. Do you agree that the Commission can require
12 your company to provide its customers with toll-free
13 calling?

14 A. I would agree with that.

15 Q. If you'd turn to your surrebuttal testimony,
16 page 19 where you're discussing Mr. Cadieux's concerns
17 about dialing parity.

18 A. Yes.

19 Q. Under the current situation that we find
20 ourselves, if the Southwestern Bell MCA subscriber
21 switches providers to a CLEC and the CLEC wanted to
22 provide MCA service and the subscriber wanted to buy
23 MCA service, the only reason that that customer is no
24 longer an MCA subscriber is because they changed
25 providers, correct?

1 A. Are you referring to optional?

2 Q. Yes.

3 A. We do not recognize them as a subscriber,
4 yes.

5 Q. Okay. Now, it's true, isn't it, that in the
6 MCA case, in the implementation orders following the
7 main Report and Order that set the parameters of the
8 plan, that the Commission expressly approved the use
9 of foreign exchange service in conjunction with MCA
10 service?

11 A. I remember that from Mr. Cadieux's
12 testimony. I remember some discussion about it.
13 While I did review the documentation that you're
14 referring to, I don't recall FX. I don't recall that.

15 Q. You would agree with me, wouldn't you, that
16 your tariff expressly permits the combined use of
17 foreign exchange service with MCA service?

18 A. I've not reviewed that, but I will trust
19 that you have and it does say that.

20 Q. Let me show that to you --

21 A. Okay.

22 Q. -- so we don't have any concerns. Looking
23 at Section 164A of your local exchange tariff, No. 24.

24 A. Okay.

25 Q. And it does permit that, doesn't it?

1 A. It does say that MCA is offered in
2 conjunction with foreign exchange service, yes.

3 Q. And show you --

4 MR. LUMLEY: Perhaps I'll handle this a
5 different way. I'll ask the Commission to take notice
6 of its Order dated October 6th, 1993 in Case
7 No. TO-92-306 and ask leave to supply copies tomorrow.

8 JUDGE DIPPELL: All right. I'll go ahead
9 and -- I'm going to go ahead and mark that with an
10 exhibit number, and you'll provide copies tomorrow?

11 MR. LUMLEY: Yes.

12 JUDGE DIPPELL: We're up to Exhibit No. 60.
13 And did that Order have a title?

14 MR. LUMLEY: It's called Order Denying
15 Motion.

16 JUDGE DIPPELL: Is there any objection to
17 the Commission taking notice of its Order Denying
18 Motion on October 6th, 1993 in Case No. TO-92-306?

19 (No response.)

20 Commission will take notice of that Order.

21 MR. LUMLEY: That's all my questions, your
22 Honor.

23 JUDGE DIPPELL: Did you want to either offer
24 or ask the Commission to take notice of your
25 Exhibit 59?

1 MR. LUMLEY: Yes. I would offer the
2 admission of Exhibit 59. Thank you.

3 JUDGE DIPPELL: Is there any objection to
4 Exhibit 59, which was the Sheet 31 of Southwestern
5 Bell's PSC Missouri No. 24 local exchange tariff?

6 (No response.)

7 Then I'll receive that into the record.

8 (EXHIBIT NO. 59 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE DIPPELL: Was there any
10 cross-examination from Nextlink?

11 MR. COMLEY: Yes, your Honor, just briefly.

12 CROSS-EXAMINATION BY MR. COMLEY:

13 Q. Mr. Hughes, I have a few questions about the
14 Memorandum of Understanding that you entered with
15 Intermedia and a little bit about the basis for the
16 2.6 cents that's involved in it.

17 A. Okay.

18 Q. Can you tell me what calls made by your
19 customers or subscribers, I know those words are being
20 used quite often here, to Intermedia are susceptible
21 to the 2.6 cents charge? If you need a copy of the
22 agreement I'll give it to you, but I wanted to get a
23 little explanation from you if I could.

24 A. Okay. I believe I have a copy with me. As
25 outlined in the agreement, the 2.6 cents per minute

1 would apply for all calls from Southwestern Bell's MCA
2 subscribers in Tiers 3 through 5 and its customers in
3 principal zone and Tiers 1 and 2 to Intermedia's MCA
4 plan subscribers in principal zone and Tiers 1 through
5 5.

6 Q. So when it says all calls, it would mean
7 that if there is an Intermedia MCA plan subscriber in
8 the principal zone, a call between a Southwestern Bell
9 customer in the principal zone to the Intermedia
10 customer would be subject to that 26 cents, is that
11 what it means?

12 A. Did you mean 2.6 cents?

13 Q. Okay. What did I say, 26 cents? Excuse me.
14 2.6 cents. Are calls within the principal zone
15 between your customers and Intermedia subscribers
16 subject to that 2.6 cents?

17 A. The document as it is written does indicate
18 that calls from the principal zone, that charge would
19 apply, yes.

20 Q. All right. Now, my understanding was that
21 the 2.6 cents was a toll revenue substitute. Is that
22 the justification that you have for it?

23 A. That was the intent of what we were
24 negotiating was replacement of the lost toll, yes.

25 Q. All right. And let me maybe clear my own

1 mind. The lost toll that you're talking about
2 replacing is which toll?

3 A. There could be toll charges associated with
4 calls from the principal zone. There could be toll
5 loss associated with calls from MCA subscribers in
6 Tier 3, 4 and 5 all, principal and Tiers 1 through 5
7 for Southwestern Bell.

8 Q. And the 2.6 cents is based upon your
9 originating access charges?

10 A. That's correct.

11 Q. So what is your position -- you said that
12 you had gotten this toll revenue from some other
13 source. What was that source?

14 A. Well, what I -- I'm assuming you're
15 referring to my earlier testimony here today. The
16 revenue -- let me ask you to ask your question. I can
17 answer two ways, and I don't know which way that you
18 want me to answer.

19 Q. Well, I don't want you to do it that way.
20 Let me make sure my question's clear to you.

21 A. Okay.

22 Q. Your statement so far has been that the
23 2.6 cents is a replacement for revenue you have lost.
24 Where would you have otherwise received that revenue,
25 if you know what I mean?

1 A. I know what you mean now. Thank you for
2 clarifying. From the toll that we would normally have
3 charged our customer.

4 Q. Okay. Now, that would be the toll you would
5 charge a customer from, say, the principal zone to one
6 of the optional tiers for a subscriber who -- not a
7 subscriber, but a customer who was not an MCA
8 subscriber?

9 A. I would agree that would be a toll call,
10 yes.

11 Q. All right. Now, then are you saying then
12 that if there was an MCA subscriber in the optional
13 tier, the additive up there would have been the place
14 where you would have captured that toll charge?

15 A. In some instances, but that customer, our
16 subscriber, MCA subscriber -- let's pick Tier 3 --
17 could also have toll calls when they made additional
18 calls to an Intermedia customer.

19 Q. So the Tier 3 customer would have -- okay.
20 The Tier 3 customer with optional MCA, now, under the
21 agreement, if that customer calls an Intermedia
22 customer in the principal zone, Intermedia pays the
23 2.6 cents?

24 A. The way this document is written in this
25 paragraph, that's the way I read it, yes.

1 Q. I remember you talked with Mr. Kruse about
2 the way categorize or classify the service you
3 rendered in connection with the 2.6 cents. Did you
4 say that it was a service you rendered?

5 A. Yes, I would agree.

6 Q. Now, is it a tariffed service?

7 A. I would agree that we did not file a tariff
8 to indicate our relationship with Intermedia, no.

9 MR. COMLEY: Thank you.

10 QUESTIONS BY JUDGE DIPPELL:

11 Q. Mr. Hughes, I have just a few questions that
12 Chair Lumpe asked me to ask of you.

13 A. Okay.

14 Q. Would Southwestern Bell prefer that MCA was
15 a one-way program and did not have the return calling
16 feature?

17 A. I don't believe so. We believe customers
18 like the two-way nature of the plan. We believe the
19 two components, both the outbound and the inbound
20 calling, is something that customers perceive as
21 value, and they do like it.

22 And it may be perceived if we went to a
23 one-way plan that we took something away from
24 customers. So it's our preference that we keep it a
25 two-way plan.

1 Q. And can you explain again what authority
2 that Southwestern Bell would cite to to say that they
3 could refuse CLECs the right to be a part of the MCA?

4 A. We do not believe in the Commission's
5 original Order regarding MCA that the CLECs are able
6 to participate under that Order.

7 Q. And finally, I believe in your surrebuttal
8 testimony at page 10 you discuss why Southwestern Bell
9 does not believe that your Memorandum of Understanding
10 with Intermedia is subject to the Telecommunications
11 Act, but I'd like you to elaborate on that a little
12 bit.

13 A. Okay. We believe that that relationship is
14 a relationship that we entered into with Intermedia
15 where we provide toll-free return calling to their
16 customers. So it's the relationship that has been
17 established between us and them for purposes of the
18 offering that we make to our retail customers, and
19 that relationship with our retail customers is not
20 subject to the Federal Telecommunications Act.

21 Q. So you don't believe that the Memorandum of
22 Understanding is a modification of your
23 Interconnection Agreement with Intermedia?

24 A. No, we do not.

25 Q. And then just one final clarification. I've

1 been trying to keep everyone clear on the acronyms
2 that have been passing around, and you used the term
3 which is sort of a term of art around here, but you
4 said that someone had MFN'd into something. Could you
5 just define that so that the record is clear?

6 A. Most favored nations.

7 Q. And by that you mean?

8 A. The ability under the Federal
9 Telecommunications Act for one company, one CLEC to
10 adopt an Interconnection Agreement of another company.

11 Q. Thank you. Is there --

12 A. That's not a legal definition.

13 Q. I understand. It's possible that we'll have
14 new people reading these transcripts, and I want them
15 to be able to understand what some of these terms are.

16 JUDGE DIPPELL: Is there any recross based
17 on questions from the Bench, MITG?

18 MR. JOHNSON: No.

19 JUDGE DIPPELL: Cass County?

20 MR. ENGLAND: Yeah, just one on one of those
21 last questions you asked, Judge.

22 RE CROSS-EXAMINATION BY MR. ENGLAND:

23 Q. Mr. Hughes, doesn't Southwestern Bell offer
24 a toll-free calling plan, if you will, to its --
25 excuse me -- to wireless carriers that interconnect

1 with it so that Southwestern Bell land-line customers
2 can access those wireless companies on a toll-free
3 basis?

4 A. If I'm understanding right, I don't believe
5 we offer a service that says if you buy this plan you
6 can contact wireless companies as a local call. I'm
7 not sure if I got to your question. I got a little
8 confused.

9 Q. It's in your wireless interconnection tariff
10 and you offer it to the wireless carrier, for an
11 additional charge that the wireless carrier pays you,
12 you will insure that your land-line customers can
13 contact the wireless NXX on a toll-free basis.
14 Otherwise it would be a toll call. Are you familiar
15 with that service?

16 A. I have not reviewed that tariff. I have
17 heard some very limited discussion that there is
18 something in the wireless tariff, and I haven't
19 reviewed as of yet exactly what that is to be able to
20 respond to the specifics.

21 MR. ENGLAND: No further questions.

22 JUDGE DIPPELL: Sprint?

23 MS. GARDNER: No, thank you.

24 JUDGE DIPPELL: GTE?

25 MR. FISCHER: No questions.

1 JUDGE DIPPELL: Staff?
2 MR. POSTON: No questions.
3 JUDGE DIPPELL: Public Counsel?
4 MR. DANDINO: No questions.
5 JUDGE DIPPELL: Intermedia?
6 MR. STEWART: No questions.
7 JUDGE DIPPELL: Birch?
8 MR. MIRAKIAN: No questions.
9 JUDGE DIPPELL: McLeod?
10 MR. KRUSE: No questions, your Honor.
11 JUDGE DIPPELL: Gabriel?
12 RE-CROSS-EXAMINATION BY MR. LUMLEY:
13 Q. Just to follow up on questions by Vice Chair
14 Drainer regarding the blocking or screening of calls
15 to the independent LECs, does Southwestern Bell
16 believe that it needs any further authorization to
17 send traffic to the independents beyond the provisions
18 of the MCA plan and the access tariffs of those
19 companies?
20 A. Are you referring just to our traffic?
21 Q. Right.
22 A. Southwestern Bell traffic?
23 Q. Right.
24 A. I don't believe so, no.
25 Q. And if the Commission were to order that as

1 between CLECs and neighboring ILECs that bill and keep
2 would be the method of intercompany compensation for
3 MCA traffic and that other traffic would be subject to
4 the access tariff of those companies, wouldn't that be
5 sufficient arrangements between those companies for
6 the exchange of traffic?

7 A. Short of the Commission's Order saying
8 something contrary to that, I would agree that if the
9 Order states bill and keep for local and the access
10 tariffs associated with an access type call would have
11 been a 1+ call, I believe that would be okay, yes.

12 MR. LUMLEY: Thank you. That's all I have.

13 JUDGE DIPPELL: Nextlink?

14 MR. COMLEY: No, thanks.

15 JUDGE DIPPELL: Is there redirect?

16 MR. LANE: Yes. Thank you, your Honor.

17 REDIRECT EXAMINATION BY MR. LANE:

18 Q. This is the hardest part of all, Mr. Hughes.

19 A. You've been telling me that for weeks.

20 Q. I want to direct your attention to the
21 Memorandum of Understanding with Intermedia that
22 Mr. Comley asked you about, and in particular he asked
23 you about page 2 of that, paragraph 2B which outlines
24 the calls on which compensation would be paid by
25 Intermedia.

1 And in particular with reference to calls
2 that may originate and terminate within the principal
3 zone, is it Southwestern Bell's position in this
4 docket on a prospective basis that those calls be
5 subject to compensation or not be subject to
6 compensation?

7 A. Calls from?

8 Q. From a Southwestern Bell customer in the
9 principal zone to an Intermedia customer in the
10 principal zone.

11 A. In the principal zone, no.

12 Q. And I probably should make that a broader
13 question. Throughout the mandatory area of the MCA,
14 calls from a Southwestern Bell customer to an
15 Intermedia customer or any CLEC customer within the
16 MCA area, is it Southwestern Bell's position on a
17 prospective basis that those calls should be or should
18 not be subject to the 2.6 cents per minute
19 compensation?

20 A. They should not be. They should be locally
21 dialed calling and treated as such.

22 Q. What is Southwestern Bell's position with
23 regard to which calls should be subject to the 2.6
24 cents a minute charge on a going-forward basis?

25 A. What the 2.6 cents intended is to recover

1 the lost toll associated with a customer who would
2 have made a toll call previously that now is making a
3 local call to a CLEC subscriber by virtue of the plan
4 by virtue of the fact that they have been given
5 authority to be participants in the MCA.

6 Q. And what is your understanding with regard
7 to whether the Memorandum of Understanding with
8 Intermedia would be revised or changed or in any way
9 made to conform with whatever order is ultimately
10 issued by the Commission in this case?

11 A. The way the Memorandum was written is that
12 if the Commission reaches a decision, I believe it was
13 prior to November 5th, then this would be replaced
14 and, subject to true-up, any money that had exchanged
15 hands would be returned depending upon the outcome and
16 the ultimate outcome of the Commission's decision
17 would be put into the Interconnection Agreement
18 between the parties.

19 Q. What if the decision is rendered after
20 November 5th?

21 A. After November 5th, my understanding of the
22 way it's written is the -- this Memorandum of
23 Understanding would apply for traffic between, I think
24 it was July of '99 through November 5th, and then from
25 the time -- let's assume it was December 1st. Then

1 the Commission Order would take effect on
2 December 1st.

3 Q. With regard to Exhibit 45 which you were
4 shown before, do you still have a copy of that with
5 you?

6 A. I do not.

7 Q. What is your understanding with regard to
8 how the calculations of revenue neutrality were made
9 in the MCA case?

10 A. The case in totality was a case between or
11 amongst COS, OCA and MCA, and the revenue neutrality
12 of that was based upon intraLATA toll revenue loss
13 offset by access expense as well as reduction in
14 access revenue that would have been gained by all the
15 incumbent companies was used in part of the revenue
16 neutrality calculation.

17 Based upon this document as outlined as far
18 as what the revenue impacts were, that is then the
19 determination that the Commission used on who would
20 pay support payments to who amongst the independent --
21 the ILECs at that time, incumbent LECs at that time.

22 Q. Was lost toll from calls that had been made
23 from the principal zone in the Tiers 1 and 2 of the
24 MCA to what became the optional zones of the MCA
25 considered in the analysis of the revenue impacts of

1 implementation of the MCA plan?

2 A. Yes. Reviewing Southwestern Bell witness
3 Halpern's testimony in that case, there was a
4 worksheet that was attached that I believe was jointly
5 developed by the parties or at least recommended by
6 staff, and one of the components on that worksheet was
7 lost intraLATA toll.

8 Q. With regard to the EAS port additive charge
9 that Southwestern Bell had proposed in the AT&T
10 arbitration, could you explain what that would have
11 been applied to had it been accepted?

12 A. In --

13 MR. LUMLEY: I'm going to object to the
14 question as being beyond the scope of
15 cross-examination. I don't recall any questions about
16 that additive charge.

17 MR. LANE: Mr. Lumley asked about it.

18 MR. LUMLEY: No, I didn't.

19 MR. LANE: Yes, he did.

20 JUDGE DIPPELL: I don't recall who asked
21 him, but somebody did ask about the additive. I'll --

22 MR. LUMLEY: I asked about the optional MCA
23 additive charge.

24 MR. LANE: No. You asked about the EAS port
25 additive as it relates to UNEP.

1 MR. LUMLEY: No, I didn't.

2 MR. LANE: Well, I think the record will
3 reflect it, but I think I'm entitled to go into an
4 explanation of that in order to clarify what it does
5 apply to.

6 JUDGE DIPPELL: I'm going to allow him to
7 answer the question. To be honest, I don't remember
8 exactly what the question was asked. You may proceed.

9 BY MR. LANE:

10 Q. Do you recall the question?

11 A. I think, and I think I remember when it came
12 up in context if you want.

13 JUDGE DIPPELL: Just answer the question.

14 THE WITNESS: Okay. The EAS port additive
15 in our negotiations with AT&T, we offered it to apply
16 when a number was being ported from Southwestern Bell
17 to AT&T.

18 BY MR. LANE:

19 Q. And would it apply to a UNEP in Southwestern
20 Bell's proposal?

21 A. My understanding of those negotiations is we
22 did not intend for it to apply to UNEP, only to when a
23 number was ported.

24 Q. You were asked some questions both by
25 Commissioner Drainer and by Mr. Johnson concerning

1 notification to CLECs about the need to enter into
2 arrangements with ILECs to whom they would send calls
3 over Southwestern Bell's network.

4 Can you explain whether Southwestern Bell --
5 what steps Southwestern Bell took in that regard?

6 A. I indicated, and I still believe that it's
7 true, to my knowledge we have never sent a letter to a
8 CLEC indicating that they need to negotiate such an
9 arrangement with an independent company.

10 However, during the negotiation process we
11 do provide contact lists for the CLECs of some of the
12 various independent companies with whom they may want
13 to interact or at least talk to about such
14 compensation arrangements.

15 Q. And is that provided on a LATA basis to
16 CLECs?

17 A. I don't know if it's a LATA basis. I would
18 presume it's on a statewide basis.

19 Q. You were asked some questions by
20 Mr. England, I believe, concerning the 92 records
21 system and their relationship to PTC, former primary
22 toll carriers. What is your understanding with regard
23 to what type of records are sent to the former primary
24 toll carriers?

25 A. I believe as it was outlined in the

1 Commission's Order, the record exchange for the PTCs
2 remain 92 records and the records for the secondary
3 carriers went to 11 records.

4 Q. So today with regard to calls, intraLATA
5 toll calls between Southwestern Bell customers and GTE
6 and Sprint customers, what type of records are
7 exchanged between companies?

8 A. I believe they're 92 records.

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

10 JUDGE DIPPELL: Thank you. I believe that's
11 all of the questions for you, then, Mr. Hughes. You
12 may be excused.

13 (Witness excused.)

14 JUDGE DIPPELL: I think that we should go
15 ahead and begin with Mr. Unruh and go until about ten
16 'til five and quit for the day.

17 (Witness sworn.)

18 JUDGE DIPPELL: You may proceed.

19 CRAIG A. UNRUH testified as follows:

20 DIRECT EXAMINATION BY MS. McDONALD:

21 Q. Good afternoon. Would you please state your
22 name for the record.

23 A. My name is Craig A. Unruh.

24 Q. Mr. Unruh, by whom are you employed?

25 A. I'm employed by Southwestern Bell Telephone

1 Company.

2 Q. And what position do you hold at
3 Southwestern Bell Telephone Company?

4 A. I am a Director of Rate Administration.

5 Q. Are you the same Craig Unruh who prepared
6 and filed direct testimony which has been marked as
7 Exhibit 35, rebuttal testimony which has been marked
8 as Exhibit 36, supplemental rebuttal testimony that
9 has been marked as Exhibit 37, and surrebuttal
10 testimony which has been marked as Exhibit 38?

11 A. I am.

12 Q. Do you have any changes to make to
13 Exhibits 35, 36, 37 or 38?

14 A. I do not.

15 Q. If you were asked the same questions today
16 that appear in Exhibits 35, 36, 37 and 38, would you
17 give the same answers?

18 A. Yes.

19 Q. And are those -- are those answers true and
20 correct to the best of your knowledge and information?

21 A. Yes, they are.

22 MS. McDONALD: At this time we would tender
23 Mr. Unruh for cross-examination and offer the
24 Exhibits 35, 36, 37 and 38.

25 JUDGE DIPPELL: Is there any objection to

1 Exhibit 35, 36, 37 or 38?

2 (No response.)

3 Then I will receive those exhibits into the
4 record.

5 (EXHIBIT NOS. 35, 36, 37 AND 38 WERE
6 RECEIVED INTO EVIDENCE.)

7 JUDGE DIPPELL: Is there cross-examination
8 by MITG?

9 MR. JOHNSON: No, thank you.

10 JUDGE DIPPELL: Cass County?

11 MR. ENGLAND: No, thanks.

12 JUDGE DIPPELL: Sprint?

13 MS. GARDNER: No, thank you.

14 JUDGE DIPPELL: GTE?

15 MR. FISCHER: No questions.

16 JUDGE DIPPELL: Staff?

17 MR. POSTON: Yes, your Honor. Thank you.

18 CROSS-EXAMINATION BY MR. POSTON:

19 Q. Good afternoon, Mr. Unruh.

20 A. Good afternoon.

21 Q. Is it my understanding of your position that
22 the optional tier subscriber's rate includes
23 compensation that Southwestern Bell receives for the
24 return call feature?

25 A. Yes.

1 Q. And when such subscriber changes to a
2 competitor, that Southwestern Bell believes it should
3 be compensated for the loss of such revenue before
4 Southwestern Bell will allow its mandatory tier
5 customers to call toll-free to the competitor's
6 customers, correct?

7 A. Yes.

8 Q. So it's Southwestern Bell's position that
9 the optional tier subscriber's rates are set to
10 compensate Southwestern Bell for the return call
11 feature?

12 A. Yes.

13 Q. Are you able to cite any Commission
14 authority for this position?

15 A. Commission authority?

16 Q. Or any authority coming from this
17 Commission? Where do you receive that position? Can
18 you cite me to anything?

19 A. Oh, okay. Yeah. I mean, I think it was
20 based on the outcome of the Order in the case
21 TO-92-306 where the MCA plan was developed along with
22 OCA and revision to COS, and that was all conducted in
23 a revenue neutral manner. Part of the component that
24 went into the calculation of that revenue neutrality
25 was looking at toll that was lost from expanding from

1 the existing loss plan to what was then developed as
2 the MCA plan where we would have lost toll going from
3 customers in the mandatory area that would have been
4 toll calls prior to the creation of the MCA plan into
5 what became the optional area of the MCA plan.

6 That toll loss with the expansion of the
7 loss which turned into the MCA plan was a component of
8 the revenue neutrality calculations that went into the
9 development of the revenue neutrality prices. So a
10 portion of that toll loss from going from the lost
11 plan to the MCA plan is reflected in the optional MCA
12 additives that were then created to pay for optional
13 MCA service.

14 Q. And so is this set forth in the Commission's
15 Order in that case, TO-92-306?

16 A. Yeah. I think by the concept of that it's
17 clear that revenue neutrality was a component of that
18 case. I mean, it's laid out in the Order initiating
19 the case. It speaks to revenue neutrality for the
20 LECs and how the proposed prices that the Commission
21 proposed at the initiation of the case for MCA service
22 may need to go up or down depending on the ultimate
23 calculations of the revenue and expense impacts
24 associated with implementing the plan.

25 Q. Are you saying that the Order in that case

1 specifically says that the optional tier subscribers'
2 rates are set to compensate Southwestern Bell for the
3 return call feature?

4 A. I don't think you'll find that explicitly
5 stated, but I think it's clear throughout the case,
6 the Order initiating the case, the testimony
7 throughout the case, the worksheets that were part of
8 the case in terms of analyzing the revenue impacts and
9 the Order implementing the case where it set out the
10 technical committee to establish, to sort of work
11 through the revenue neutrality aspect of the case.

12 I think taking all that together, it's
13 pretty clear that a piece of -- a component of the
14 revenue neutrality was the new revenue that was going
15 to be generated by the optional MCA rate.

16 Q. Do you think if the Commission had intended
17 for that to -- for the optional tier subscribers'
18 rates to compensate Southwestern Bell for the return
19 call feature that it would have specifically set that
20 out in the Order, Report and Order in that case?

21 A. No. I think it was inherent in the design
22 of the plan. I mean, there was discussion about how
23 it was the customers located in what is now the
24 optional areas who were seeking toll-free calling into
25 the metro areas and how -- and they were also wanting

1 the customers in the metro area to be able to call
2 them back.

3 I think it's inherent in the design of the
4 plan that that was what was contemplated. So I don't
5 know that -- I guess I wouldn't have expected it to
6 specifically state that.

7 Q. So you can't cite anything specifically that
8 says that?

9 A. I don't believe you will find text in the
10 Commission's Order that says the optional MCA rate, \$6
11 out of the \$12.35 of the optional MCA rate is
12 designated to compensate LECs for the toll-free return
13 calling from the metro exchange, no.

14 Q. Has it always been the position of
15 Southwestern Bell, this position that you're citing
16 here that the MCA rates are set to compensate Bell for
17 the return call feature?

18 A. I guess I'm not sure that it's come up prior
19 to this case. So I'm not sure there would have been
20 an occasion to -- whether that was an issue or not.

21 Q. Since 1992, since the MCA was established,
22 has this been Southwestern Bell's position?

23 A. Well, again, I'm not sure there was -- I
24 don't know of an issue where that would have been
25 discussed.

1 MR. POSTON: May I approach the witness,
2 your Honor?

3 JUDGE DIPPELL: Yes.

4 MR. POSTON: I'd like to have an exhibit
5 marked.

6 JUDGE DIPPELL: Okay. Exhibit No. 61.

7 MR. POSTON: This is the Reply Brief of
8 Southwestern Bell Telephone Company, TO-92-306.

9 (EXHIBIT NO. 61 WAS MARKED FOR
10 IDENTIFICATION.)

11 BY MR. POSTON:

12 Q. Mr. Unruh, could you please identify the
13 document that I just handed you?

14 A. It's labeled as the Reply Brief of
15 Southwestern Bell Telephone Company in Case
16 No. TO-92-306.

17 Q. Okay. Would you please turn to page 22 of
18 this brief and --

19 MR. LANE: Your Honor, if I may, this hasn't
20 been properly qualified. I assume if he wants to take
21 official notice of it, then we can go through that
22 practice, but he shouldn't be questioning the witness
23 about the document until it's been identified or
24 admitted into evidence.

25 MR. POSTON: Your Honor, I'd like to move

1 that this Exhibit -- what number was it, 61?

2 JUDGE DIPPELL: 61.

3 MR. POSTON: 61, that the Commission take
4 administrative notice of this.

5 JUDGE DIPPELL: Is there any objection to
6 the Commission taking administrative notice?

7 MR. LANE: I don't have an objection to --
8 well, let me say this. We've got the Reply Brief. I
9 don't know what's in the Initial Brief. I'd ask that
10 the Commission also take official notice of whatever's
11 in the Initial Brief in that case as well, and if
12 you'd like to make it an exhibit I'll make copies of
13 it and mark it.

14 JUDGE DIPPELL: Is your fear, Mr. Lane, that
15 this is somehow going to be taken out of context?

16 MR. LANE: Yes.

17 JUDGE DIPPELL: Okay. Let me back up. Is
18 there any objection to Exhibit 61, to official notice?
19 And your objection is that, if this comes in, then you
20 would want it to be read in context with the Initial
21 Brief?

22 MR. LANE: Right. Yes.

23 JUDGE DIPPELL: Okay. Is there any other
24 objection?

25 (No response.)

1 I will take notice of the Reply Brief that
2 we've marked as Exhibit 61, and I would request
3 Mr. Lane to supply copies of what I will mark
4 Exhibit 62, which is the Initial Brief of the case.
5 And when you supply that, I will either take notice of
6 that or not.

7 You may continue, Mr. Poston.

8 MR. POSTON: Thank you.

9 BY MR. POSTON:

10 Q. Turning to page 22 of the Reply Brief of
11 Southwestern Bell that's been marked as Exhibit 61,
12 would you take a minute and read the paragraph, the
13 last paragraph beginning on page 22?

14 A. Okay.

15 Q. Would you agree that it was Southwestern
16 Bell's position in this Reply Brief that MCA service
17 is residually priced?

18 A. I'm not sure what the context of this
19 conversation is. I have not thoroughly read the Reply
20 Brief as it relates to what this paragraph may be
21 referencing. It appears to be talking about reasons
22 for classifying MCA as toll versus local. I guess
23 you'd have to understand it in the context of that.

24 But the fact that we state it's residually
25 priced I guess doesn't really mean anything to me

1 other than it suggests that the Commission was trying
2 to look at social policy, if you will, for how it
3 wanted to try to price the optional tiers.

4 For example, there was discussion in the
5 case about how -- you know, why it might make sense
6 for customers further out to pay more because it's
7 more distance and it also sort of created a threshold,
8 if you will, at the outer tiers to try to avoid the
9 looking over the fence so the sixth tier out, there
10 wasn't significant pressure because the price was too
11 cheap, to try to have constant pressure on the
12 Commission to keep adding tiers.

13 So I think there was a lot of, you know,
14 policy sorts of things taken into account in terms of
15 how to establish the pricing. Plus I think it also
16 sort of mirrored the concept that existed with the
17 WASP, which was the Tier 3 at that point in time was,
18 I believe, priced cheaper than the Tier 4. So it was
19 a continuation of that policy that had existed.

20 But the fact that the Commission tried to
21 establish some target pricing for some goal of
22 creating this case doesn't mean that the lost toll
23 revenue that was created by the creation of the MCA
24 plan from customers in the metro area calling out to
25 those new optional subscribers, it doesn't mean that

1 that revenue wasn't then recovered through those rates
2 that were established.

3 From the worksheets I've looked at, it
4 looked at sort of pre-plan revenue and post-plan
5 revenue. What went into the pre-plan revenue was
6 toll, for example. What went into the post-plan
7 revenue was revenue, projected revenue based on the
8 Commission's sort of initially prescribed rates that
9 were tiered.

10 So it looks to me like the revenue stream
11 went from toll to the optional MCA pricing. The fact
12 that we couch it here as residually priced in the
13 sense that that may have helped provide justification
14 for the Commission classifying it as local isn't
15 surprising.

16 Q. How would you define residual pricing?

17 A. I'm not -- I'm not sure. I didn't do a lot
18 of rate of return. In fact, I did no rate of return
19 regulatory environment work. So I kind of hate to
20 speculate what all that might have meant.

21 Q. So the answer you just gave you gave without
22 knowing what residual pricing means?

23 A. I mean, I have a concept that it is trying
24 to -- concept of trying to generate as much revenue as
25 you could and then residually pricing a service like

1 basic local service in an effort to try to keep it as
2 inexpensive as possible.

3 Q. Would you agree from what you read in this
4 brief that it was Southwestern Bell's position that
5 costs for MCA should be recovered elsewhere?

6 A. I'm sorry. Say that again.

7 Q. If you read the paragraph that you just
8 read, is it Southwestern Bell's position from that
9 paragraph that costs for the MCA should be recovered,
10 quote, elsewhere?

11 A. Without any of the costs being recovered
12 through the optional price? I mean, I guess I see a
13 phrase here that says and recover any difference in
14 revenue requirement.

15 I think I would interpret that as you're
16 going to lose revenue by creating this plan. So how
17 much -- and we've got some proposed rates for the
18 optional MCA subscriber in tiers. Look at how much
19 revenue that you're losing gets recovered by those new
20 rates, and if there's any left over, then an option is
21 to go find the remaining revenue difference somewhere
22 else, from some other service.

23 MR. POSTON: I have another exhibit. I
24 don't know if you want to do it now or you had said
25 ten 'til.

1 JUDGE DIPPELL: Do you still have --

2 MR. POSTON: I'll have some questions on it.

3 JUDGE DIPPELL: Why don't we go ahead and
4 we'll save that one for tomorrow morning bright and
5 early. Let's go ahead and conclude for the day.

6 Let me back up first and I'm going to
7 clarify the last ruling I made on Mr. Lane's
8 objection. I'm going to overrule your objection,
9 Mr. Lane, and take notice of Exhibit 61. If you still
10 want to ask the Commission to take notice of the
11 Initial Brief, you can make that motion and we'll deal
12 with that then.

13 MR. LANE: Okay.

14 MR. POSTON: Your Honor, I'd also like to
15 offer Exhibit 61. I don't think I did that before.

16 JUDGE DIPPELL: You requested that I take
17 notice of it.

18 MR. POSTON: Okay.

19 JUDGE DIPPELL: And I did. And let me just
20 say, too, there have been several pieces that I've
21 taken official notice of that we haven't had copies
22 of, and tomorrow when we get to the end I'm going to
23 go ahead and assign those an exhibit number and ask
24 the party that requested that to provide copies of
25 those items.

1 I can tell you what they are now so that
2 that may save some time tomorrow. We took official
3 notice of Southwestern Bell Telephone's Local Plus
4 tariff, specifically the portion that had the cost of
5 Local Plus, and I don't have written down who asked me
6 to take notice of that. The transcript will reflect
7 it.

8 Sprint requested that we take official
9 notice of the Report and Order in TT-99-428, and I
10 also took official notice of Section 37 of TO-2000-26,
11 which was a request made to me by Cass County. I
12 think Mr. McCartney made that request. And I still
13 need copies of Mr. Lumley's order --

14 MR. LUMLEY: Yes, ma'am.

15 JUDGE DIPPELL: -- tomorrow. Anyway, when
16 we get to the end I'll assign those things exhibit
17 numbers and ask again for those, but I just wanted to
18 give you a heads up on that.

19 Were there any other preliminary matters
20 before we adjourn today?

21 MR. LUMLEY: I guess the only question I
22 had, I don't know how to evaluate it, but we have this
23 round table tomorrow on the telecommunications rule
24 and we're all sitting in here. Is there any chance we
25 could start maybe at ten so we could all be there for

1 a little while to at least get the initial staff
2 presentation?

3 JUDGE DIPPELL: I believe actually the part
4 that you'll be most interested in will be beginning
5 about ten. So if you all go home and reduce the
6 amount of questions you're going to ask the rest of
7 the witnesses tonight, we might be done by ten.

8 MS. GARDNER: I believe it actually said
9 9:15 on the schedule for the arbitration rule. Could
10 we maybe start at eight?

11 MR. LANE: Earlier would be better.

12 JUDGE DIPPELL: Let's begin in the morning
13 then at eight o'clock.

14 We can go off the record.

15 WHEREUPON, the hearing of this case was
16 adjourned until 8:00 a.m., Friday, May 19, 2000.

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Reply Brief of Southwestern Bell
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*Late-Filed Exhibit.
**Judicial Notice Taken.