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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

In the Matter of the Master )  
Interconnection and Resale )  
Agreement by and between )  
Sprint Missouri, Inc., and ) Case No. TK-2003-0540  
Comm South Companies, Inc., )  
D/b/a Missouri Comm South )  
Pursuant to Sections 251 and )  
252 of the Telecommunications )  
Act of 1996. )

PREHEARING CONFERENCE

TRANSCRIPT OF PROCEEDINGS

Friday, July 11, 2003

10:00 a.m.

Volume 1

VICKY RUTH, Presiding,  
SENIOR REGULATORY LAW JUDGE

and

KENNARD JONES, Presiding,  
REGULATORY LAW JUDGE

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR  
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A P P E A R A N C E S

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Hills, Holway, Iamo, Kingdom, KLM, Latrop, Le-Ru,  
McDonald County, Mark Twain Rural, Miller, New  
Florence, New London, Orchard Farm, Oregon Farmers  
Mutual, Ozark Peace Valley, Rock Port, Seneca,  
Steelville and Stoutland Telephone Companies:

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E X H I B I T S

EXHIBIT

NO.	DESCRIPTION	PAGE
1	Drawing	148

(Original exhibits were retained by Mr.  
England.)

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TRANSCRIPT OF PROCEEDINGS

JUDGE RUTH: Good morning. We are here for a prehearing conference in two cases, Case No. TK-2003-0535, which involves an interconnection agreement between Sprint and ICG Telecom, and Case No. TK-2003-0540 in the matter of an interconnection agreement between Sprint and Comm South.

My name is Vicky Ruth, and I'm the regulatory law judge assigned to the ICG case.

And to my left is Judge Jones. He is assigned to the Comm South case, which is 2003-0540.

Today's date is July 11th. That clock is wrong. It is 10:00, not 7:45. And I'd like to begin by taking entries of appearance. Sprint?

MS. CREIGHTON HENDRICKS: Appearing on behalf of Sprint, Missouri, Inc., Lisa Creighton Hendricks. My address is 6450 Sprint Parkway, Overland Park, Kansas, 66251. And I'm appearing in both cases.

JUDGE RUTH: Thank you. You reminded me that I meant to clarify that -- on the record that the two cases are not

1 consolidated. We are just holding the  
2 prehearing conference jointly. And ICG?

3 MR. LUMLEY: Good morning. Carl  
4 Lumley with Curtis Edding (ph.) law firm  
5 Representing ICG Telecom Group, Inc. My address  
6 is 130 South Bemiston, Suite 200, Clayton,  
7 Missouri, 63105.

8 JUDGE RUTH: Thank you. Comm South?  
9 We do not have someone here? Okay. That one's  
10 not my case. Do you remember who the attorney  
11 is?

12 MS. CREIGHTON HENDRICKS: I'm not so  
13 sure that someone has entered an appearance for  
14 Comm South.

15 JUDGE RUTH: Okay. Then we'll let  
16 the record reflect that Comm South does not have  
17 counsel present, and I assume no one in the  
18 audience is from Comm South. I don't see  
19 anyone. MITG?

20 MR. JOHNSON: Thank you, your Honor.  
21 Craig John and and Lisa Chase, Andereck, Evans,  
22 Milne, Peace & Johnson, 700 East Capitol, Post  
23 Office Box 1438, Jefferson City, Missouri,  
24 65102. We're entering an appearance today in  
25 both cases for the Missouri Independent

1 Telephone Group companies. I think they're  
2 separately listed in our pleadings that we filed  
3 to date.

4 JUDGE RUTH: Your pleadings that you  
5 filed today?

6 MR. JOHNSON: To date. I'm sorry.

7 JUDGE RUTH: Oh, to date. Okay.

8 MR. JOHNSON: I'm sorry.

9 JUDGE RUTH: I wondered if there was  
10 something I'd missed this morning.

11 MR. JOHNSON: I wouldn't do that to  
12 you, Judge.

13 JUDGE RUTH: It happens. small  
14 Telephone Company Group?

15 MR. ENGLAND: Thank you, Judge. Let  
16 the record reflect the appearance of W.R.  
17 England and Brian McCartney on behalf of the  
18 Small Telephone Company group whose members are  
19 also individually listed I believe in the  
20 application and intervened as well as in the  
21 written entry of appearance. Our address is  
22 Brydon, Swearingin & England, Post Office Box  
23 456, Jefferson City, Missouri, 65102.

24 JUDGE RUTH: Thank you. Staff?

25 MR. HAAS: Good morning. William K.

1 Haas, appearing on behalf of the State of  
2 Missouri Public Service Commission in both  
3 cases. My address is Post Office Box 360,  
4 Jefferson City, Missouri, 65102.

5 JUDGE RUTH: Thank you.

6 JUDGE JONES: That we are having  
7 this prehearing conference presupposes that we  
8 will have a hearing. However, it is the  
9 Commission's intention to use this conference as  
10 an opportunity to further explore the legal and  
11 factual issues surrounding this matter and to  
12 determine if a hearing will, in fact, be  
13 necessary. Intervention has been granted,  
14 bringing the intervenors to the table to  
15 facilitate exploration and to create an  
16 environment conducive to a resolution. If it  
17 becomes necessary to have a hearing in this  
18 matter, then we must determine what purpose the  
19 hearing would serve, bearing in mind that the  
20 Commission will either reject or approve the  
21 interconnection agreements within the time frame  
22 allowed by federal law. Judge Ruth and I will  
23 -- will have questions for you, both factual and  
24 legal, to move towards some type of resolution.

25 JUDGE RUTH: And my first question

1           actually deals with intervention.  And the  
2           Commissioners have requested that I get some  
3           additional information from the intervenors,  
4           specifically, clarifying whether each member of  
5           your group has an interest in this matter that's  
6           different from the public and the general public  
7           interest and which could be harmed by the  
8           outcome or if it is really just a few members  
9           that have that interest, but yet collectively,  
10          the group has an interest maybe in the general  
11          principles at stake or what have you.  And I'll  
12          let MITG -- Mr. Johnson, could you address that  
13          first, please?

14                                 MR. JOHNSON:  Thank you, your Honor.  
15          Let me try it this way.  In talking about the  
16          transit traffic which is the provision of the  
17          interconnection agreement that we have applied  
18          to oppose, the transit traffic is traffic that  
19          comes from either Comm South or ICG through  
20          Sprint and to any other company.  First -- both  
21          my clients, MO-KAN Dial of the MITG,  
22          specifically subtends the Sprint Missouri,  
23          Inc.'s Warrensburg tandem.  So if traffic comes  
24          directly from ICG or Comm South and is delivered  
25          by those two CLECs to Sprint at its Warrensburg



1 tandem, the traffic that does go to Freeman,  
2 which is the MO-KAN dial exchange would be  
3 transit traffic. Clearly, MO-KAN dial is  
4 directly impacted by the transit provisions in  
5 these interconnection agreements.

6 With respect to my other clients, some of  
7 them have their own access tandems. Some of  
8 them subtend other larger ILEC access tandems.  
9 But when you -- and in order to understand why  
10 they have the same potential direct interest,  
11 you have to understand that transit traffic can  
12 also go between tandems. It can go from Bell to  
13 Sprint to us, or it can go from ICG or Comm  
14 South to Sprint and Sprint can take it to  
15 Southwestern Bell and Southwestern Bell can  
16 deliver it to my other clients. One of the  
17 problems with the term transit traffic is in its  
18 simplest form, it's just ICG to Sprint to  
19 MO-KAN. But in a more complex form, it can be  
20 inter-tandem transited between Century Tel,  
21 Southwestern Bell, or Sprint before it comes to  
22 our clients. So from that standpoint, they have  
23 the same interests that MO-KAN dial would with  
24 respect to inter tandem transitted traffic.

25 JUDGE RUTH: I hate to interrupt

1           you. And I know that there are some pleadings  
2           that discuss the subtending and the tandems.

3                         MR. JOHNSON: Yes, ma'am.

4                         JUDGE RUTH: But could you back up  
5           and clarify that a little bit?

6                         MR. JOHNSON: Could I go in the next  
7           room and perhaps get the MTI map?

8                         JUDGE RUTH: That would be good.

9                         MR. JOHNSON: Is that room is  
10          unlocked?

11                        JUDGE RUTH: I can get to it if it  
12          is. We're going to go off the record for two  
13          minutes while I --

14                        (Break in proceedings.)

15                        JUDGE RUTH: We were off the record  
16          just briefly while we grabbed a map.  
17          Mr. Johnson, do you want to try and answer my  
18          question now?

19                        MR. JOHNSON: Yes. First of all,  
20          let me sort of tell you who my clients are and  
21          where they -- they serve. MO-KAN Dial is the  
22          company I first mentioned, and they serve the  
23          Freeman exchange, which is right here.

24                        JUDGE JONES: When you say here,  
25          where are you pointing?

1                   MR. JOHNSON: I'm pointing to south  
2 of Kansas City about 30, 35 miles. They  
3 directly connect to Sprint's tandem. And I'm  
4 assuming you understand the difference between a  
5 central office switch that serves as an exchange  
6 as opposed to a tandem where interexchange  
7 traffic can be accumulated and disbursed to all  
8 of the end offices, the central offices or  
9 exchanges that subtend that tandem.  
10 Warrensburg is Sprint's tandem. And I don't  
11 know where Warrensburg is. Let's see. Right  
12 here. It's in purple below Higginsville.  
13 That's where the tandem is located that MO-KAN  
14 dial subtends. My other clients include  
15 Chocktaw Telephone Company, which has a single  
16 exchange down here at nearby Springfield. It's  
17 Halltown. And they subtend Southwestern Bell's  
18 tandem in Springfield, Missouri. Okay? Alma  
19 Telephone Company is another small single  
20 exchange company. They're right here north  
21 of --

22                   MR. MCCARTNEY: Concordia.

23                   MR. JOHNSON: -- Concordia, a little  
24 bit to the east of Higginsville in white. They  
25 -- their central office is actively connected to

1 Citizens access tandem, and Citizens in turn  
2 gets traffic destined to Alma from Southwestern  
3 Bell through Southwestern Bell's McGee tandem in  
4 Kansas City. My larger clients include Mid  
5 Missouri Telephone Company, which has about 13  
6 exchanges that are in orange. Some of them are  
7 around High Point and Latham west of Jefferson  
8 City. The rest of them are around between  
9 Boonville and Sedalia and Marsahll, in that  
10 area. Mid Missouri Telephone Company has its  
11 own access tandem in Pilot Grove. But for  
12 purposes of our discussion today, Southwestern  
13 Bell has a trunk in its McGee tandem in Kansas  
14 City that they still send traffic that's  
15 destined to Mid Missouri Telephone Company's  
16 access tandem at Pilot Grove.

17 Mid Missouri Telephone Company's access  
18 tandem only serves Mid Missouri Telephone  
19 Company exchanges. So it's not a situation  
20 where you have Mid Missouri serving other  
21 companies and offices as opposed to the Sprint  
22 MO-KAN dial relationship or as opposed to the  
23 Alma relationship or the Chocktaw/Southwestern  
24 Bell relationship. Chariton Valley Telephone  
25 Corporation has 16 exchanges. They're in green.

1 I would say they're between Brookfield,  
2 Missouri, Macon, Missouri, down around Moberly.  
3 Got a few exchanges over in the river bottoms  
4 around Forest Green. They have their own access  
5 tandem, I believe it's in Huntsville, which is  
6 just to the east of -- or west of Moberly. And  
7 they do get traffic sent to them from  
8 Southwestern Bell's McGee tandem all the way  
9 over here in Kansas City as well.  
10 Northeast Missouri Rural is in yellow up here.  
11 Actually, this -- well, they're in yellow up  
12 here. They have their own access tandem in  
13 Green City. And they also are connected by  
14 trunks that Southwestern Bell has ordered from  
15 them whereby Southwestern Bell delivers traffic  
16 all the way from the McGee tandem of  
17 Southwestern Bell in Kansas City.

18 So first of all, what I was -- getting  
19 back to what I was saying, it's clear that  
20 MO-KAN Dial has the most direct interest in the  
21 simplest form of transit traffic because if ICG  
22 or Comm South are going to connect with Sprint  
23 and send traffic to Sprint, any traffic that  
24 they send to Sprint that's destined for Freeman  
25 is going to go through Sprint's Warrensburg

1 tandem. And under the industry's local exchange  
2 routing guides, silly (ph.) codes and stuff, the  
3 -- the world of carriers knows that if they want  
4 to send traffic that's destined for Freeman,  
5 Missouri's NPANXSS, they have to route that so  
6 it's going to get to the Warrensburg tandem.

7 Now, they can deliver that traffic to  
8 Sprint directly through a connection in  
9 Warrensburg, or they would perhaps deliver it up  
10 here at Maryville where Sprint has other  
11 tandems. It's also possible -- and here I'm  
12 going to talk about the notion of inter-tandem  
13 transport.

14 If -- and I'm not sure if Comm South or  
15 ICG has any interconnection agreements with  
16 Southwestern Bell. But they can deliver traffic  
17 that's destined for MO-KAN Dial in Freeman to  
18 Southwestern Bell at McGee. Southwestern Bell  
19 will then route it from their McGee tandem to  
20 the Sprint access tandem in Warrensburg, and  
21 then it will in turn be routed back to Freeman,  
22 the end office company. In that situation,  
23 Southwestern Bell would charge transit fee. And  
24 I think the testimony in priors cases has  
25 established that because Sprint did not

1           previously have agreements with some of these  
2           CLECS that would do this, they would charge  
3           access on that traffic because they had no  
4           interconnection agreements to charge a  
5           reciprocal compensation rate with. And then the  
6           traffic would end up coming to Freeman.

7                         JUDGE RUTH: You said something I  
8           want to pick up on a little bit. It was listed  
9           as a question later -- for later. But you said  
10          that they don't -- the parties don't have  
11          interconnection agreements now so sometimes they  
12          were routing -- a company might route through  
13          whom? And then there would be access charges  
14          paid by whom?

15                        MS. CREIGHTON HENDRICKS: Your  
16          Honor, if I can -- I think the allegation was  
17          that Sprint charged access, and I was going to  
18          try to clear the record. I'm unaware of a  
19          situation where we charged access. I know there  
20          was an issue relating to wireless traffic pre  
21          Act, pre Federal Act. But there was access  
22          charge in a part of this traffic -- for the  
23          record, I would like it to reflect that I cannot  
24          accept that Sprint charged access as a fact  
25          because I do not believe it to be true.

1 JUDGE RUTH: Okay. We may pick back  
2 up on that later, but I wasn't sure if I  
3 understood what Mr. Johnson was saying.  
4 Basically, I think I understood it. But you are  
5 not sure you agree with it?

6 MS. CREIGHTON HENDRICKS: Correct.  
7 Correct.

8 JUDGE RUTH: All right.  
9 I'm sorry. Go ahead.

10 MR. JOHNSON: We're getting a little  
11 bit offline. But to clarify what was  
12 established last summer in some complaint  
13 proceedings that did involve wireless traffic,  
14 which have a different local calling scope,  
15 otherwise it's still subject to local or  
16 reciprocal compensation, Mr. Igel (ph.) from  
17 Sprint testified if they did not have an  
18 interconnection agreement with a wireless  
19 carrier who delivered traffic to Bell that went  
20 from Kansas City to Warrensburg to Freeman.  
21 Sprint was getting records on that from Bell and  
22 they were charging. But since the only tariff  
23 they had in the absence of their own agreement  
24 was the originating wireless carrier was the  
25 access tariff. We were charging access on that.



1 MS. CREIGHTON HENDRICKS: If I can  
2 clear the record on that, Mr. Igel's testimony  
3 was we were not charging anything for that  
4 traffic, not that we were charging access.

5 MR. JOHNSON: All right. I'd have  
6 to go back and check to be sure. I thought it  
7 was the other way.

8 JUDGE RUTH: Okay. I want to ask a  
9 question about -- I think I understand. I  
10 appreciate some of the explanation on the  
11 tandems. And I see the relationship that MO-KAN  
12 would have of this case. I'm still not as sure  
13 of the relationship some of the other companies  
14 would have their interest in this  
15 interconnection agreement.

16 MR. JOHNSON: Okay. Let me see if I  
17 can explain that. Let's say ICG or Comm South  
18 that an interconnection agreement with  
19 Southwestern Bell. They give -- or let's say  
20 they have -- they give the traffic to Sprint  
21 pursuant to the agreements we're talking about  
22 today and they're destined to go to Mid Missouri  
23 Telephone Company. Sprint's tandem would get  
24 that and route it to McGee, and then it would  
25 come from McGee on Southwestern Bell's trunks to

1 Mid Missouri Telephone Company.

2

3 JUDGE RUTH: Did you want to add  
4 something?

5 MR. ENGLAND: We're similarly  
6 situated. And -- and while access tandems and  
7 end offices have some significance, for purposes  
8 of the narrow question of what interests we  
9 have, our clients, individuals have in it. I've  
10 done a real rough and dirty diagram to show you  
11 how every small company is impacted by the  
12 transit provisions of these interconnection  
13 agreements. These interconnection agreements  
14 say that essentially Sprint will transit both  
15 local and non-local traffic to third parties.  
16 And they can do it several ways. ICG who  
17 connects with the Sprint office or Sprint tandem  
18 can send traffic through Sprint and connect with  
19 a third party end office that connects to that  
20 tandem. And that would be the -- let's say ICG  
21 wants to compete in Warrensburg. They connect  
22 in Warrensburg with Sprint. They send this  
23 through the Warrensburg tandem and they can  
24 deliver a call to a MO-KAN customer in MO-KAN  
25 dial's exchange. But let's say that same

1 customer of ICG's in Warrensburg wants to call a  
2 customer of Citizens Telephone Company, who I  
3 represent, in Higginsville, Missouri. They can  
4 -- they can dial that customer, and that call is  
5 routed, again, through Sprint's Warrensburg  
6 tandem. Then it goes to Southwestern Bell's  
7 tandem. And then it goes to Higginsville.  
8 Higginsville is not directly connected to  
9 Warrensburg. Higginsville is direct connected  
10 to the Southwestern Bell tandem in Kansas City.

11 When you read the interconnection  
12 agreement, there are absolutely no restrictions  
13 on ICG's ability to terminate traffic throughout  
14 the LATA to any third party. So you don't have  
15 to be directly connected to a Sprint tandem.

16 JUDGE RUTH: Okay. So if that were  
17 to happen, your example of ICG and Warrensburg  
18 calling one of your clients goes through Sprint,  
19 goes through Southwestern Bell --

20 MR. ENGLAND: Right.

21 JUDGE RUTH: -- Down to the third  
22 party, this interconnection agreement is between  
23 ICG and Sprint, the first part.

24 MR. ENGLAND: Right.

25 JUDGE RUTH: Are there any other

1 agreements that cover between Sprint and  
2 Southwestern Bell and then Southwestern Bell to  
3 the third party?

4 MR. ENGLAND: Not -- well, I can  
5 only speak on behalf of our clients. And one of  
6 the reasons we've intervened in this case is  
7 we're impacted by these transit provisions  
8 whether it's with Sprint, Southwestern Bell,  
9 Century Tel, any of the large ILECs. But  
10 virtually all of the transit provisions have a  
11 -- have a provision within them that says ICG,  
12 the competing local exchange company, is not to  
13 send traffic to these third parties without an  
14 agreement to do so.

15 I am unaware of any third -- or excuse me  
16 -- any CLEC such as ICG that today has an  
17 agreement with any of my clients, whether  
18 they're connected to Sprint, whether they're  
19 connected to Southwestern Bell, whether they're  
20 connected to Century Tel. Yet, they are sending  
21 traffic to us.

22 JUDGE RUTH: And there's been no  
23 payment of any kind?

24 MR. ENGLAND: Well, that's -- that's  
25 correct.

1 JUDGE RUTH: For your --

2 MR. ENGLAND: In a lot of instances,

3 we don't -- particularly, the Sprint problem,

4 they're not even creating a record to tell us

5 that traffic's coming to us. So we're -- we see

6 the minutes, if you will, collectively at the

7 terminating end so many minutes being

8 terminated. When you add up all the records

9 that you're supposed to get from the various

10 carriers from sending you that traffic, the sum

11 doesn't equal the total. So we know that that's

12 -- that's a gap there. And in some instances,

13 when we do get a record, we bill these folks.

14 We bill an ICG, and they concoct all different

15 types of excuses not to pay the bill. They say,

16 Well, we dispute the accuracy of your record.

17 Let's say Sprint created -- although Sprint's

18 not creating records. Southwestern Bell creates

19 it. They dispute the accuracy of the bill.

20 They tell us, Well, we want to sign a toll

21 termination agreement with you. And until we

22 have that, we're not going to pay you. Well,

23 that's baloney. They're supposed to pay us in

24 accordance with our access tariffs. And as this

25 Commission has previously found, access applies

1 to all of this non-local traffic. They'll --  
2 they just flat won't respond to us when we call.  
3 They won't answer -- I mean, they won't return  
4 phone calls.

5 So there are a few that are paying. I  
6 don't want to leave the impression that there  
7 are some that aren't -- that none are paying.  
8 But it's a minority of CLECs that are paying for  
9 this traffic. And, usually, you have to go  
10 through a great deal of effort to track them  
11 down, to -- to convince them that they are  
12 sending traffic to you, to convince that them  
13 that the amount of traffic that you identified  
14 they are sending to you and then finally get  
15 paid for it, all in violation of every  
16 interconnection agreement I've ever seen that  
17 that's says they're supposed to have an  
18 agreement before they do all this stuff.

19 JUDGE RUTH: And it -- but you  
20 indicated that sometimes these parties have said  
21 -- when one of your companies has tried to bill  
22 them has said, Well, we want to make what kind  
23 of agreement with you?

24 MR. ENGLAND: A toll termination  
25 agreement.

1 JUDGE RUTH: And your clients are  
2 not willing to do that?

3 MR. ENGLAND: No. It's access. We  
4 don't have to have an -- our access tariff  
5 applies. The Commission has said that in some  
6 of the early interconnection agreement  
7 approvals.

8 JUDGE RUTH: I just didn't get what  
9 kind it was.

10 MR. ENGLAND: In my opinion, it's a  
11 subterfuge to continue not to pay. We've had  
12 others that have said -- another excuse is,  
13 Well, we can't be sending you traffic because  
14 we're sending our traffic to an inter --  
15 interexchange traffic to an interexchange  
16 carrier, and, therefore, it can't be coming  
17 through the Sprint tandem or it can't be coming  
18 through the Southwestern Bell tandem. Yet  
19 records that we get indicate that it is. There  
20 is a variety of excuses that these CLECs are  
21 using, in my opinion, to game the system and not  
22 pay for the traffic they're terminating to us  
23 all set up because of this transitting  
24 arrangement.

25 Now, if I can go one step further, if you

1           didn't have the transitting arrangement and ICG  
2           wants to send a call down here, they've got to  
3           go up to this IXC. That's the only -- or  
4           establish some sort of direct connection. But  
5           essentially, they've got to go to IXC who sends  
6           it back where a record is created. A record is  
7           passed and we bill for it. No problem.

8                         JUDGE RUTH: And that's what's  
9           happening today? No?

10                        MR. JOHNSON: No.

11                        MR. ENGLAND: In lieu of  
12           interconnection, yes. Today if ICG is in  
13           Warrensburg but it doesn't have a connection  
14           with Sprint and it wants to somehow get a call  
15           down to the MO-KAN folks, it's got to go through  
16           an IXC.

17                        JUDGE JONES: Ms. Hendricks,  
18           obviously there's something you need to say?

19                        MS. CREIGHTON HENDRICKS: Thank you,  
20           your Honor. First of all, if I can go back to  
21           this explanation and to Judge Ruth's questions  
22           about other agreements, I think one thing in  
23           trying to tie every member of their  
24           association's interest to this interconnection  
25           agreement, one thing that was evident is in



1 order to do that, some of this traffic is going  
2 to have to go over SBC's facilities. So there's  
3 going to be to have to be an agreement with SBC,  
4 not solely our agreement allows this traffic to  
5 reach those members of the associations who are  
6 not connected to us. So there's another party  
7 here. And that demonstrates, I think, the  
8 fallacy of trying to address this issue in the  
9 context of this interconnection agreement  
10 between these two parties because the remedy  
11 cannot be achieved in the absence of other  
12 players participating in this proceeding. And  
13 that's why Sprint believes -- and I believe ICG  
14 joins us that this issue should be addressed in  
15 other forums. And we have cited the Commission  
16 in our pleading to the rule proceeding that is  
17 underway, and there has been some complaints in  
18 the context of the wireless to address these  
19 issues. Because this issue is not just limited  
20 to ICG and Sprint and to this agreement. What  
21 they are asking you to do impacts every provider  
22 in the State of Missouri. But I'd like to also  
23 address some specific allegations and make the  
24 Commission -- or make you aware that some of  
25 this traffic that they claim there are no

1 records for is MCA traffic. And the Commission  
2 has ruled that that is bill and keep. So there  
3 are no records that come with that.

4 And as a matter of fact, as we cited,  
5 MO-KAN, themselves, has an indirect connection  
6 to SBC through Sprint. So we transit traffic  
7 without charge to MO-KAN that is non-local  
8 because it goes across exchanges. We do the  
9 same thing for the CLECs. And they achieve that  
10 ability under the interconnection agreements.  
11 To our knowledge, ICG is sending nothing that is  
12 inter-exchange toll traffic through our  
13 facilities. And ICG can speak to that.  
14 Furthermore --

15 JUDGE RUTH: Do you have good  
16 records on your part that would indicate that?  
17 Or are you just relying on ICG's --

18 MS. CREIGHTON HENDRICKS: We are  
19 relying on ICG's at this point in time. But we  
20 were unable ourselves to identify a scenario, a  
21 traffic transit scenario that would allow the  
22 occurrence of what they claim happening, to  
23 allow it to happen. And that is in large part  
24 based on the fact that ICG is representing that  
25 they're sending their interexchange traffic out

1 to an interexchange carrier. With that  
2 condition in place, we do not see how they are  
3 harmed.

4 And with respect to the allegation about  
5 Sprint not producing records, to the extent that  
6 a CLEC is directly connected to Sprint, we do  
7 produce records. Now, there may be occasions  
8 where something has happened, but it's been a  
9 little blip on the system. The situation where  
10 we can't produce records is when the CLEC is not  
11 connected to us and comes through the SBC  
12 tandem. That is well aware -- I mean, the  
13 Commission's well aware of that. The rule that  
14 is under consideration is addressing that  
15 factor.

16 Furthermore, one thing I do want to  
17 mention, even if a CLEC was to use the  
18 transitting provisions and somehow send the toll  
19 traffic, nothing about that would override the  
20 application of an access tariff. And I don't  
21 understand in that respect how it would. So I  
22 don't see the harm that they're claiming to have  
23 occurred that somehow we've deprived them of the  
24 right of applying the access tariff. I do not  
25 understand that claim because, legally, they

1 still have that right to do that.

2 JUDGE RUTH: So you would say -- you  
3 know, the provision I think in this case, it was  
4 an appendix, the sentence that said the ICG has  
5 the obligation to make arrangements with the --  
6 like the intervenors --

7 MS. CREIGHTON HENDRICKS: Correct.

8 JUDGE RUTH: The access tariffs that  
9 are in place, you think that would -- that would  
10 fulfill that requirement?

11 MS. CREIGHTON HENDRICKS: Well, I  
12 think we even heard that from Mr. -- from  
13 Mr. England when he said that we're not going to  
14 enter into agreements with them. We have our  
15 access tariffs. To the extent it's toll traffic  
16 and that tariff applies, that would fulfill that  
17 requirement.

18 JUDGE RUTH: And you feel that the  
19 records that you provide to those intervenors  
20 are accurate and they would be able to use those  
21 records to bill for those calls?

22 MS. CREIGHTON HENDRICKS: The  
23 records that we produce -- I'm unaware of any  
24 systematic problem in our records that would  
25 cause them to be inaccurate.

1 JUDGE JONES: Ms. Hendricks, it  
2 seems that Sprint is just passing traffic  
3 through and that the problem lies between both  
4 ends.

5 MS. CREIGHTON HENDRICKS: We pass  
6 traffic for both parts, for MO-KAN and for ICG.  
7 That is correct. But we have a federal  
8 obligation to do that, too.

9 JUDGE JONES: Well, it seems like  
10 you'd be a passive player in all this, then.

11 MS. CREIGHTON HENDRICKS: Well,  
12 Sprint also -- Sprint is a local exchange  
13 carrier in the context of this case. But Sprint  
14 -- because we have operations that go across the  
15 board in the telecommunications field, we tend  
16 to strike the balanced position and not just  
17 solely focus on the ILEC interests here. We  
18 have kind of a -- a balanced position on  
19 transitting traffic. We realize the need the  
20 CLEC has for it. We realize the need the  
21 wireless carrier has for it.

22 JUDGE JONES: So you just -- you  
23 supply the records to the end offices that give  
24 them the information they need in order to bill  
25 the originating CLECs?

1 MS. CREIGHTON HENDRICKS: Correct.

2 JUDGE JONES: Is that true, though?

3 MS. CREIGHTON HENDRICKS: To my  
4 knowledge, that is true. Now, there may be  
5 isolated cases where we've had problems. But I  
6 think they've been remedied. We have never had  
7 a complaint filed against us for failure to  
8 produce records in the scenario where we are the  
9 carrier with whom the CLEC is directly  
10 connected. Now, the MCA traffic, I am not so  
11 sure that we provide records on the MCA traffic.

12 JUDGE RUTH: But your argument would  
13 be that those -- that traffic, there wouldn't be  
14 -- that's bill and keep anyway?

15 MS. CREIGHTON HENDRICKS: Correct.  
16 So there's no billing occurring in connection  
17 with that traffic.

18 MR. ENGLAND: Now, may I?

19 JUDGE RUTH: You may respond.

20 MR. ENGLAND: We're not trying to  
21 hold Sprint responsible for creating records  
22 that come to them from a party that's not  
23 directly connected to them. I -- I freely state  
24 that. We are trying to hold them responsible  
25 for what I'm basically saying is for the -- at

1 the time, at the present time, they are not  
2 creating records for parties that are directly  
3 connected to them and sending traffic to third  
4 parties. That's why I brought Mr. Randy Boyd  
5 with the Kingdom Telephone Company, who has two  
6 end offices, MO-KAN and Tebbetts just outside of  
7 the Jefferson City area, that subtend Sprint's  
8 Jefferson City tandem. And for months now, he  
9 has not been getting records of traffic. Of  
10 --if there are any CLECs but there are wireless  
11 carriers that connect in its Sprint's office  
12 here in Jefferson City and terminate at MO-KAN  
13 and Tebbetts. And he's been working with people  
14 at Sprint to try to get those records. And to  
15 date, they have been unable to produce them  
16 despite the -- I mean, and I'm prepared and  
17 that's why we may need a hearing because it may  
18 be a factual issue you have to decide. But  
19 despite Ms. Creighton Hendricks' references to  
20 the contrary, they are not creating those  
21 records today, and that's a big problem. Now,  
22 if she wants me to file a complaint, I suppose  
23 we can do that. We've always tried to work  
24 through that without having to file a complaint.

25 JUDGE RUTH: Okay. But you just

1           said that your -- the person you brought with  
2           you would -- would be able to testify that with  
3           some wireless carriers they're not getting the  
4           records.

5                         MR. ENGLAND: Right.

6                         JUDGE RUTH: Is that the same for  
7           some -- for carriers that aren't wireless?

8                         MR. ENGLAND: We don't know. We  
9           don't know if there are any CLECs. We're not  
10          getting any records. We don't know if there's a  
11          CLEC that's connected in Jefferson City that's  
12          sending traffic to MO-KAN and Tebbetts. We do  
13          know that there are wireless carriers connected  
14          in Jefferson City sending calls to MO-KAN and  
15          Tebbetts. Because we can -- we can capture that  
16          -- that caller based on sort of Caller I.D.  
17          information that we get at MO-KAN and Tebbetts.  
18          And we're not getting any records from Sprint  
19          for that.

20                         Now, let me -- let me -- let me go one  
21          step further. And it's right here in black and  
22          white in this interconnection agreement. If  
23          this traffic goes the other way, Ms. Creighton  
24          Hendricks says they have an obligation to  
25          transit. If this goes the other way, this



1 agreement provides that Sprint will create a  
2 record and pass it to the party, to ICG.  
3 It -- it -- it says that they will create --  
4 they will do -- exchange appropriate access  
5 records, exchange access records. So ICG will  
6 get a record of that call coming from the the  
7 third party under the agreement. But if they  
8 don't, if Sprint fails to do that, ICG gets to  
9 default bill Sprint for all the traffic Sprint  
10 can't identify the originating party. Do we  
11 have that -- do we have that arrangement with  
12 Sprint now? No. Is Sprint willing to do that  
13 with us? No. Because there's another provision  
14 under the transitting section that says they are  
15 not responsible for paying us third parties for  
16 ICG traffic. That's the discrimination. That's  
17 the prejudice. That's the public interest that  
18 you all need to address. Is that fair?

19 MS. CREIGHTON HENDRICKS: Well, your  
20 Honor, I'd like to respond to that.

21 MR. ENGLAND: I sure as heck don't  
22 think so.

23 MS. CREIGHTON HENDRICKS: To the  
24 extent there are issues with Kingdom and Sprint,  
25 I think he indicated that we were working on it.

1           Those are one of those isolated issues that I  
2           identified. We have many multiple other  
3           carriers that sit behind us which I am unaware  
4           of any issues that we have. And if they would  
5           like to bring a complaint, they can. We can  
6           handle that. I just don't think this is the  
7           forum -- if it's a records issue, then I think  
8           there's a place to bring that issue and to  
9           address it.

10                         JUDGE RUTH: Okay. I want to ask  
11           you a question. And we'll allow some overall  
12           general comments also at the end from the  
13           parties. But Ms. Creighton Hendrics, when --  
14           according to the agreement, when ICG -- let's  
15           say the call comes from the third party there at  
16           the bottom, goes up through Sprint and then to  
17           ICG. The agreement provides that Sprint must  
18           provide the records to ICG and that if they  
19           don't, then there was this default billing  
20           provision with Sprint, I take it would have to  
21           pay?

22                         MS. CREIGHTON HENDRICKS: Well,  
23           I'm --

24                         JUDGE RUTH: Is that correct?

25                         MS. CREIGHTON HENDRICKS: Mr.

1 England can cite me to the provision. I  
2 generally believe that -- with --

3 MR. ENGLAND: Well, 79 -- Section  
4 79.9 of the ICG agreement provides for the  
5 creation and exchange of appropriate records to  
6 bill exchange access charges. The transiting  
7 provision is Section 66.

8 MS. CREIGHTON HENDRICKS: Well,  
9 my --

10 MR. ENGLAND: And to be more  
11 specific, 66.4.2 provides that the transiting  
12 party in this case, Sprint, will provide to the  
13 terminating party in this case, ICG, information  
14 on traffic originated by a third party ILEC.  
15 Section 66.3.1.2 says that if Sprint doesn't  
16 give them the identity of the originating  
17 carrier that third party, the terminating party,  
18 again, ICG, can default bill Sprint for that  
19 traffic.

20 JUDGE RUTH: Okay. My question to  
21 you, Ms. Creighton Hendricks, is how would it  
22 not be discrimination, then, if -- if this is  
23 what the agreement says that it doesn't work the  
24 other way, that if ICG transits the -- the call  
25 through Sprint to the third party but Sprint --

1 let's just say Sprint doesn't provide the  
2 adequate record, then they're not treating them  
3 similarly as if the call went the other way.  
4 And wouldn't that be discrimination as has been  
5 alleged?

6 MS. CREIGHTON HENDRICKS: Well, one  
7 thing important about discrimination is you have  
8 to be treated differently than people similarly  
9 situated to you. Mr. England's clients are  
10 non-parties to this agreement. We have gotten  
11 with ICG and made these arrangements.

12 JUDGE RUTH: But the law says that  
13 discrimination against third parties not a party  
14 to the agreement. So that --

15 MS. CREIGHTON HENDRICKS: And --  
16 right. To the extent that the none parties are  
17 similarly situated, we cannot discriminate among  
18 them.

19 JUDGE RUTH: And you're saying that  
20 ICG is not similarly situated?

21 MS. CREIGHTON HENDRICKS: Well, no.  
22 ICG is the party with whom we have the  
23 interconnection agreement, with whom we have  
24 fulfilled our federal obligation. Who comes to  
25 us and we have no choice to say no or bring --

1 JUDGE RUTH: I see what you're  
2 saying. You're saying that's not where the  
3 discrimination comes in but that it would be in  
4 other third party; in other words, if they treat  
5 the MITG people differently from the small  
6 telephone company group people, then then that  
7 would be discrimination against one of the other  
8 parties?

9 MS. CREIGHTON HENDRICKS: Correct.  
10 And I think if you look into that provision of  
11 the Act which addresses discrimination and  
12 allows the Commission to reject an agreement,  
13 it's really intended to capture the anti-trust  
14 or and anti-competitive discrimination that may  
15 arise from these agreements.

16 JUDGE RUTH: Are you saying that  
17 you, Sprint, treats all third parties the same  
18 in this case? In other words, down there at the  
19 box that's the third party end office, that  
20 every single third party end office is treated  
21 the same as what the others --

22 MS. CREIGHTON HENDRICKS: Of every  
23 -- yes, your Honor. Every agreement states that  
24 the parties acknowledge that it's the  
25 originating party -- party's responsibility to

1 secure compensation arrangements for traffic  
2 they send to third parties. That's a standard  
3 provision that's been approved multiple times by  
4 this Commission.

5 JUDGE RUTH: I understand that. But  
6 are you treating all those end offices the same?  
7 Or do you --

8 MS. CREIGHTON HENDRICKS: Correct.

9 JUDGE RUTH: Do you have some type  
10 an agreement with some of them, therefore,  
11 you're treating them differently, or it's just a  
12 practice you're treating them differently?

13 MS. CREIGHTON HENDRICKS: Well, I'm  
14 unaware of any agreement we would have with the  
15 subtending companies. Now, since Mr. Johnson's  
16 -- one of his clients, MO-KAN, is a subtending  
17 company. You're free to ask him. He may know.  
18 But to my knowledge, we do not have an agreement  
19 and nor do we have an agreement in which we  
20 transit traffic for MO-KAN.

21 MR. JOHNSON: That's correct, your  
22 Honor. To my knowledge, there's no -- I don't  
23 know what call this agreement between MO-KAN  
24 Dial and Sprint that pertain to that Warrensburg  
25 tandem to Freeman end office relationship. I

1 also will tell you that, to my knowledge, Sprint  
2 if they are connected with other CLECs and they  
3 send CLEC traffic to Freeman to MO-KAN dial,  
4 they have never in five, six, seven years, have  
5 ever reported a minute of such CLEC traffic.

6 MR. ENGLAND: I can -- I can -- I  
7 can tell you that as far as I know, my clients,  
8 to the extent we're third parties in this  
9 arrangement have been -- have been treated  
10 similarly. I think that was your question. Or  
11 I would like to say we've been mistreated  
12 similarly.

13 JUDGE RUTH: Can you respond to -- I  
14 see what Sprint is arguing, that the  
15 discrimination is not between how MITG and STCG  
16 are treated versus ICG. It's how they're  
17 treated versus each other and any other end  
18 party; is that correct?

19 MS. CREIGHTON HENDRICKS: Correct.  
20 Correct.

21 JUDGE RUTH: Because one of the  
22 questions we want to hear some more from the  
23 parties on is this issue of discrimination. I  
24 think the public interest allegation is perhaps  
25 a little easier for me to understand and for

1           some of the Commissioners. But there is still  
2           some confusion as to how this is discrimination,  
3           even if it is as you say. If what those  
4           companies are saying is true, how is that  
5           discrimination?

6                         MR. ENGLAND: Okay. Carl has --

7                         MR. LUMLEY: But before we go on to  
8           the next question, could I speak to your first  
9           question? We've kind of ranged around the  
10          issues. But the question that was presented was  
11          the -- the distinct interest of the members of  
12          these associations as intervenors versus the  
13          associations themselves. And from our  
14          perspective, it doesn't matter whether you look  
15          at it -- you know, in terms of MO-KAN's direct  
16          connections with Sprint or the more indirect  
17          connections that they've described that their  
18          clients have. I mean, clearly, these  
19          connections exist, you know, in the  
20          telecommunications network in the state. And so  
21          we're not in any way suggesting that it matters  
22          whether these companies intervened, you know, on  
23          an individual base or an association basis. But  
24          what we're saying is that either way, they don't  
25          have a direct interest in this because what



1 we're talking about is a bilateral contract.  
2 The -- all the other pieces of the network are  
3 either subject to the provisions of a tariff  
4 that gets filed and approved here or they would  
5 be subject to an agreement. And then in the  
6 absence of either, the companies are free to not  
7 have the connection. And they're free to set up  
8 their network in a way to limit whatever  
9 connections they do want to make such that those  
10 connections only allow traffic that are covered  
11 by tariff or agreements.

12 So this -- the section that Mr. England  
13 points to 66.2 -- 66.2.2, by this bilateral  
14 contract, these two companies cannot in any way  
15 override a tariff that his clients have on file,  
16 cannot in any way override a contract that these  
17 companies have with Sprint or any other carrier.  
18 This is strictly a bilateral contract. And  
19 regardless of what we say as between our two  
20 companies where we agree that it's going to be  
21 the originator's responsibility to get an  
22 agreement and to pay whatever has to be paid  
23 with third parties, nonetheless, if they have a  
24 tariff that says otherwise and makes Sprint  
25 responsible when ICG originates this

1 hypothetical traffic, Sprint's going to have to  
2 abide by the tariff and vice versa. So -- and  
3 they've even gone so far as to acknowledge that  
4 they don't even really want the agreement that  
5 they've talked about in their pleadings, but  
6 they want to rely on their tariffs.

7           And so our point is not that it matters  
8 whether this is MO-KAN intervening individually  
9 or as a member of an association. We certainly  
10 recognize the value of associations in our  
11 industry and the need for them to speak for  
12 their members. But that either way, there is no  
13 direct interest in this relationship because  
14 they're free to protect themselves through  
15 tariffs, through agreements, through network  
16 structuring and through the legal process to  
17 enforce those things such as filing complaints.

18           JUDGE RUTH: Okay. Let me ask you,  
19 though, under your reasoning, would there ever  
20 be a party that would have an interest besides  
21 the two that are parties to the agreement?

22           MR. LUMLEY: Certainly. I think  
23 there could be. You could have a provision, for  
24 example, that purports to establish an exclusive  
25 arrangement as an extreme example. Sprint says,

1 We will only interconnect with you. We will  
2 never interconnect with another CLEC. Clearly,  
3 that's discriminatory against other companies  
4 and illegal and contrary to public interest as  
5 well. So you can fashion provisions of a  
6 contract where the parties agree in some binding  
7 way not to deal with other parties. But there  
8 is no such provision here. There's no provision  
9 in here that says we're going to thumb our noses  
10 at applicable tariffs, even if that could have  
11 some effect. And there's no provision in here  
12 that says, We will not deal with other parties.

13 JUDGE RUTH: Okay. Backing up just  
14 a little bit. The inter -- or the -- the Teleco  
15 Act says that the Commission shall approve the  
16 interconnection agreement unless it, one,  
17 discriminates against third parties not a party  
18 to the agreement, or, two, is against the public  
19 interest. How would the Commission determine  
20 that in some cases without hearing from a third  
21 party who claims that it discriminates against  
22 them? If a third party claims it discriminates  
23 against them such as we have here, how could the  
24 Commission determine that without letting them  
25 in and hearing them?

1 MR. LUMLEY: Well --

2 JUDGE RUTH: Because you seem to  
3 have indicated you didn't think there -- well  
4 and your pleading certainly indicated you did  
5 not think these parties had standing to  
6 intervene.

7 MR. LUMLEY: Not -- not because --  
8 well, I'm sorry.

9 JUDGE RUTH: Well, they made an  
10 allegation that it's discriminatory against  
11 third parties and that it's against the public  
12 interest. Which, if that's true, the Commission  
13 has to reject it.

14 MR. JOHNSON: Or those portions of  
15 the agreement that are.

16 MR. LUMLEY: But my point is not  
17 that third parties generically don't have the  
18 right to intervene in such a proceeding but that  
19 you have to go beyond the fact that they're a  
20 third party and they've cited the statute,  
21 actually look at their factual allegations --  
22 which I also want to emphasize, everything today  
23 is strictly lawyer argument. We don't have  
24 people who are under sworn testimony to any of  
25 these purported facts. So it's basically akin

1 to some kind of opening statement. But --

2 JUDGE RUTH: But it's helpful to the  
3 Commission to understand where we're at.

4 MR. LUMLEY: I'm not disrupting that.  
5 I just want to highlight that. But you have you  
6 to look at the factual allegations they've made  
7 in their pleadings. What they've done is  
8 they've specifically attacked these specific  
9 provisions, I believe, on their face have failed  
10 to show an issue that rises to the level of  
11 these statutory requirements. I'm not saying  
12 it's not theoretically possible for somebody to  
13 present an agreement that violates the statute  
14 and a third party to come forward and say, Look  
15 at provision, you know, No. 7. You know, it's  
16 bad and we have a right to attack it. I mean,  
17 it's essentially an analysis. They've failed to  
18 stake a claim upon which relief can be granted.  
19 Because you look at their pleadings and the  
20 issues they've raised on their face are not  
21 discriminatory and not against the public  
22 interest. They -- I mean, it's really akin to  
23 saying -- the only way you could have transit  
24 provisions in any contract is if the entire  
25 industry was a signatory to the contract that

1           you're not allowed to do this on a piece part  
2           basis. And we maintain that we are allowed to  
3           get provisions in place, No. 1, importantly, to  
4           allow for the -- the transit of MCA traffic,  
5           which clearly needs to flow. But also to set  
6           the stage for the possibility of other traffic,  
7           which we don't even believe exists in our case.  
8           And I'm not here to speak about every other CLEC  
9           and every other wireless carrier. But as far as  
10          I've been able to identify so far with ICG,  
11          we're not aware of anything else today that  
12          would go. But we still believe we're free to  
13          establish this piece part of the arrangement and  
14          then negotiate with the next carrier and the  
15          next carrier to put all these pieces together.  
16          We don't believe the Act sets up a process where  
17          we have to get every singler carrier in the  
18          State of Missouri in a room and say, Okay,  
19          everybody sign here. That's just not how it  
20          works.

21                                 JUDGE RUTH: Okay. I want to make  
22          sure of something from your party's position.  
23          If what the intervenors allege were true about  
24          the traffic that is being transitted and that  
25          there is no payment being made for them, when

1           they talk to Bell they get no money, and  
2           sometimes they can't bill.  If that were true,  
3           would it be against the public interest for that  
4           to be happening?

5                         MR. LUMLEY:  No.  Not -- not in the  
6           context of this agreement because this agreement  
7           does not affect the -- their undisputed right to  
8           be paid for that traffic, to enforce -- they say  
9           their access tariffs apply to that traffic, so  
10          they've already got an enforceable provision in  
11          place.  They don't have any intermediate steps  
12          to pursue.  Okay?  We're not changing anything  
13          by being the -- you know, 200th CLEC to have a  
14          transiting provision in their interconnection  
15          agreement in the state.  If, in fact, this  
16          traffic exists, they have the right to enforce  
17          their tariff and collect the money.

18                        JUDGE RUTH:  But let's just say for  
19          the sake of argument that the traffic's being  
20          transmitted.  There's not payment made.  And we  
21          know that this proposed interconnection  
22          agreement has a provision that allows for the  
23          reversed billing.  Is that what it was called?

24                        MR. ENGLAND:  Default billing.

25                        JUDGE RUTH:  Default billing.

1           Sorry.  If Sprint were not able to provide the  
2           records for the traffic going to ICG and if the  
3           Commission were to find that traffic is going,  
4           there is not the payment, we know of a way to  
5           correct it for traffic going the other way,  
6           wouldn't a provision in the interconnection  
7           agreement that held -- that found that Sprint  
8           has to pay these third parties if they're not  
9           able to provide the records, that would  
10          alleviate the public interest concern from that  
11          point of view?

12                         MR. LUMLEY:  But -- but we're not  
13          allowed to impose any provisions on third  
14          parties by this contract because they're not  
15          signing the contract.

16                         JUDGE RUTH:  But this would be be on  
17          -- it would be on Sprint.  It they don't provide  
18          adquate records, then you'll have to pay third  
19          parties.

20                         MR. LUMLEY:  But that's not the way  
21          the parties have agreed to structure it.  But  
22          that doesn't change the --

23                         JUDGE RUTH:  I understand it's not  
24          this agreement.  And the Commission's not going  
25          to order that something be put in there.  I'm



1           just wondering if that would take care of this  
2           problem.

3                         MR. LUMLEY:  I'm saying you don't  
4           need it because the problem's already taken care  
5           of.

6                         JUDGE RUTH:  By these access  
7           tariffs?

8                         MR. LUMLEY:  They file a complaint  
9           against the person that gives them the traffic.  
10          If that person has a contractual right to  
11          subrogate that claim to somebody else and say,  
12          You agreed contractually to indemnify me against  
13          any such claim, you agreed that you would be  
14          responsible for this traffic, they're free to  
15          bring that person into the complaint  
16          proceedings.  But they're not allowed to impose  
17          on the third party any terms that they haven't  
18          negotiated and signed a contract or established  
19          by an approved tariff.  It's the only other way  
20          to impose terms in this state is to have the  
21          Commission say, These will be the terms because  
22          you don't have a contract.

23                         JUDGE RUTH:  So you're suggesting  
24          that if the third party intervenors, third party  
25          meaning on the diagram the end -- the end office

1 third party --

2 MR. LUMLEY: Right.

3 JUDGE RUTH: -- if they believe  
4 they're receiving traffic that they're not  
5 getting paid for, you think they should file --  
6 and they think that traffic originates with ICG  
7 or Comm South, they should file the complaint  
8 against Sprint. And then if Sprint wants to  
9 bring ICG into it, they should do that?

10 MR. LUMLEY: That's what I would do  
11 if I was them. I would sue the person that  
12 handed me the traffic and say, Where did it come  
13 from?

14 JUDGE RUTH: Do you want to respond,  
15 Mr. Johnson?

16 MR. JOHNSON: Well, your Honor,  
17 between ICG and Sprint, they suggested this is  
18 as a bilateral agreement, that this is an  
19 appropriate issue here, that this should be  
20 taken to some generic form. If this were truly  
21 a bilateral agreement, it would not address  
22 traffic as destined for parties that aren't a  
23 party to the agreement. I disagree with Sprint  
24 and ICG that says they've got the right or the  
25 obligation to transit traffic to these other

1 carriers. And I can cite you FCC decisions and  
2 Kansas Corporation decisions that would suggest  
3 otherwise.

4 We have been experiencing this transit  
5 traffic unreported uncompensated with the --  
6 with the collection disabilities or problems  
7 that Mr. England mentioned for over six years.  
8 Let me just give you one hypothetical. Let's  
9 suppose that the Commission approves both the  
10 Comm South agreement and approves the ICG  
11 agreement as they are today and both of those  
12 carriers send traffic to Sprint that Sprint  
13 sends to MO-KAN Dial. But MO-KAN Dial gets no  
14 reports from Sprint. How does MO-KAN Dial know  
15 who is sending it traffic that's not being  
16 reported and it can't get -- be paid for?  
17 How does MO-KAN Dial know who he's going to  
18 present a claim against? Is Sprint going to be  
19 responsible for the unidentified traffic? No.  
20 No. They've refused that responsibility a  
21 multitude of times and a multitude of dockets  
22 that this Commission has already handled. Why  
23 should MO-KAN Dial even have to try to find out  
24 who is sending it traffic on unidentified basis?  
25 Why should that be their obligation that's

1 created by an agreement that they're not even a  
2 party to? That is discriminatory. And another  
3 thing that I think is discriminatory is  
4 comparing MO-KAN Dial to ICG for traffic that  
5 Sprint transits to ICG and terminates to ICG.  
6 They've worked out a record system and a default  
7 billing system. But for traffic coming from ICG  
8 to MO-KAN Dial, they have no such arrangements.  
9 We are discriminated against by that virtue  
10 alone.

11 JUDGE JONES: Are you and ICG  
12 similarly --

13 MR. JOHNSON: We're both LECs that  
14 hang off Sprint's tandem. We're connected to  
15 Sprint. And according to this agreement,  
16 Sprint's going to take the traffic both ways.

17 JUDGE RUTH: Ms. Creighton Hendricks  
18 says the discrimination issue isn't to compare  
19 you to ICG. And we all, I think, seem to see  
20 the difference there.

21 MR. JOHNSON: Why isn't -- why can't  
22 we compare -- make that comparison?

23 JUDGE RUTH: Well, I wanted you to  
24 counter her argument that -- that you shouldn't  
25 -- you know, she says that -- that the

1 comparison is not with ICG. Why do you think it  
2 is? I mean, how do you --

3 MR. JOHNSON: Because the standard  
4 of the Federal Act is it discriminates against a  
5 carrier that's not part of the agreement. Under  
6 this agreement, ICG gets a better relationship  
7 for traffic that's terminating to it than does  
8 MO-KAN Dial who is not a party to the agreement.

9 MR. LUMLEY: But the agreement does  
10 not say that they won't make the same  
11 arrangement with them in a bilateral  
12 negotiation. It doesn't in any way --

13 MR. JOHNSON: Why weren't we brought  
14 into these negotiations so we could be a party  
15 to this contract? It shouldn't address  
16 contracts that are destined to a non-party to  
17 the agreement.

18 MS. CREIGHTON HENDRICKS: Your  
19 Honor, if I could say one thing and bring you us  
20 back to what we're dealing with. This is an  
21 interconnection agreement between two parties.  
22 A party some to me, Sprint, I have a federal  
23 obligation to respond, and I have a federal  
24 obligation to allow them access to my network.  
25 And my federal obligation is not dependent on

1           upon these groups coming to the table and  
2           agreeing to the provisions of my contract. It  
3           is affirmative and I must do it. And I must do  
4           it as the terms exist between Sprint and ICG.  
5           And we -- that is something that we cannot  
6           effect. I have that obligation. And if this is  
7           -- what I think it's boiling down to be is a  
8           records issue. If there is a records issue with  
9           Sprint, then come to me. We will address that.  
10          We can do it informally as we currently are or  
11          we can do it in a complaint. But this is not  
12          the -- the case in which we resolve that issue.

13                         MR. JOHNSON: If MO-KAN Dial  
14          measures traffic coming down it's trunk that  
15          exceeds the billing records they get, is Sprint  
16          going to be responsible for the entire  
17          difference?

18                         MS. CREIGHTON HENDRICKS: No. That  
19          could be MCA traffic. Until we sit down and we  
20          look at it, which either we can do in the  
21          informal setting or if you want to bring a  
22          complaint, you may. but this is not the forum  
23          for it. Or this is not the case for it.

24                         JUDGE RUTH: I understand that's  
25          your position that it's not the case for it.

1 But at this time, the Commission hasn't decided  
2 if that's the case. And I want to ask you, the  
3 records that you would provide to the third  
4 party, would they distinguish between its MCA  
5 traffic, which then would fall under the bill  
6 and keep provisions or whether it's another type  
7 of traffic, which -- such as the ICG to the  
8 third party in which case there might be payment  
9 that needs to be made?

10 MS. CREIGHTON HENDRICKS: Well, your  
11 Honor, I cannot sit here and tell you that level  
12 of detail in our billing. I can represent to  
13 you that I can get a summary in to the Court to  
14 indicate what our records reflect based on what  
15 type of traffic is passed to us. And I think it  
16 exists in the 593 case. We have developed some  
17 of those matrixes, so I should be able to  
18 transport it over here.

19 JUDGE RUTH: It --

20 MR. JOHNSON: You will provide an  
21 actual record of an actual CLEC that you've  
22 actually reported?

23 MS. CREIGHTON HENDRICKS: To the  
24 extent we've a none MCA CLEC traffic transit or  
25 network.

1                   JUDGE JONES: I see a problem  
2                   brewing between Sprint and the terminating  
3                   companies, but the -- interconnection agreement  
4                   has a clause that makes it ICG's responsibility  
5                   to make arrangements with the end companies for  
6                   payment. Have those arrangements been made?  
7                   Have the -- has ICG made arrangements with  
8                   MO-KAN Dial for compensation?

9                   MR. LUMLEY: To my knowledge, there  
10                  is no such traffic yet. And so there is no such  
11                  agreement yet. But the -- the point remains --  
12                  I mean, if you flip -- if you flip it around --  
13                  if -- if we negotiated first with MO-KAN Dial  
14                  and -- and had the agreement for what happens on  
15                  this piece of the network but we don't have an  
16                  agreement with Sprint to get it there, we're  
17                  still left in the same situation of having to do  
18                  it one step at a time.

19                  JUDGE RUTH: Okay.

20                  MR. LUMLEY: So our position is  
21                  we're -- you know, the contract -- we're  
22                  contractually acknowledging the obligation to do  
23                  it. And I understand that they've got  
24                  complaints that parties aren't doing that. But  
25                  you also have to take with a grain of salt that



1           it's been six years and they've done nothing  
2           about it. So I have some questions about it.  
3           Now -- and I'm overstating when I say done  
4           nothing about it. What I mean to say is that  
5           they've not filed and pursued to completion a  
6           complaint. They have done plenty about it, and  
7           I've misstated that. I understand that.

8                         JUDGE JONES: Mr. Edding, it seems  
9           as though before traffic is routed to the end  
10          companies, arrangements for compensation would  
11          be made.

12                        MR. LUMLEY: Correct.

13                        JUDGE RUTH: But you said at this  
14          point you have not been transitting any traffic  
15          this way, ICG, Sprint to third party; is that  
16          correct?

17                        MR. LUMLEY: Other than potentially  
18          MCA traffic.

19                        JUDGE RUTH: Okay. So you've been  
20          going like ICG, Sprint, IXC?

21                        MR. LUMLEY: That's my  
22          understanding.

23                        JUDGE RUTH: Okay.

24                        MR. LUMLEY: And that -- and, again,  
25          I'm not speaking on behalf of the entire CLEC

1 and wireless industries. I'm talking about my  
2 understanding of what ICG's evidence would be if  
3 we had to put on evidence. And just for the  
4 record, I understand the confusion, but my last  
5 name is Lumley, and my firm name is Edding. I  
6 just don't want the transcript to reflect that  
7 my partner was here or something. But -- but I  
8 maintain we're free to negotiate each of those  
9 pieces. I'm not suggesting in any way that ICG  
10 has the right to deliver traffic to these  
11 companies and not pay for it. And the contract  
12 specifically says to the contrary.

13 JUDGE RUTH: So it's your  
14 understanding that ICG intends -- it hopes to  
15 make this interconnection agreement between ICG  
16 and Sprint, but then before the company transmits  
17 any traffic, you know, through Sprint on down to  
18 the third party, ICG intends to make  
19 arrangements with the third party to pay for  
20 those?

21 MR. LUMLEY: If there's to be any  
22 such traffic other than MCA, which is already  
23 covered by Commission order and no further  
24 agreements is required.

25 JUDGE JONES: Well, you have until

1 -- I believe in your case, September 2nd before  
2 this interconnection agreement needs to either  
3 be approved or rejected.

4 MR. LUMLEY: Right.

5 JUDGE JONES: Do you intend to make  
6 arrangements for compensation before that day?

7 MR. LUMLEY: Well, again, today,  
8 we're not aware of any such traffic that we  
9 intend deliver.

10 MR. JOHNSON: Then why does the  
11 contract cover it?

12 MR. LUMLEY: Because it -- first of  
13 all, because every other CLEC in the state  
14 already has this provision. And Sprint proposed  
15 the language to us, and we took it. But,  
16 secondly, because the occasion may result where  
17 we do need this provision and we come to you and  
18 negotiate with you and now we've got both  
19 pieces. There's no reason for us to have to  
20 come back to Sprint some day to get contract  
21 language that every other CLEC in the state  
22 already has.

23 MR. ENGLAND: May I -- may I speak?

24 JUDGE JONES: Yes.

25 MR. ENGLAND: We're getting to a

1 really important issue and that is do we -- the  
2 remedy is not appropriate records. That's  
3 secondary. The remedy is eliminating transit  
4 provisions from the interconnection agreement.  
5 And if we have to start with this one and work  
6 our way through every other one that gets filed,  
7 that's what we intend to do. If they don't need  
8 the transit provision, then don't include it in  
9 the agreement.

10 Secondly, I don't believe there's a  
11 federal obligation to transit toll traffic. I  
12 would -- I even dispute the argument that they  
13 have an obligation to transit local but not toll  
14 traffic, and that's essentially -- this MCA is a  
15 very small part of what we're talking about.  
16 Essentially, we're talking about toll traffic to  
17 all of these third parties. And Mr. Lumley has  
18 now told you that they don't need this  
19 interconnection to get us toll traffic because  
20 they can go to an IXC. And that's -- that's  
21 exactly the way it happens today before this  
22 interconnection happens. That's the way we want  
23 it to stay. Because when it goes through an  
24 IXC, we get a record from Sprint under the  
25 exchange access billing arrangements. And we're

1           able to bill the interexchange carrier for that  
2           traffic. And it works slick, and we don't  
3           really have any problems there. What this --  
4           another level of discrimination, what this  
5           agreement does is take traditional toll traffic  
6           off the traditional IXC network, route it  
7           through Sprint down to the third party bypassing  
8           the interexchange network, bypassing the  
9           established record creation and passing  
10          processes that have been in place for years.  
11          And that's where the problem is. Mr. Lumley on  
12          the one hand says we've got our exchange access  
13          tariffs to apply. That's -- he's right. We  
14          want to apply them. But by bypassing the  
15          interexchange network through this  
16          interconnection, they have prohibited us from  
17          applying our access tariff,  
18          Or at the very least, made it very, very  
19          difficult, if not impossible.

20                         JUDGE RUTH: And it's only difficult  
21          because of the records issue?

22                         MR. ENGLAND: Yes. Now, let me give  
23          you a very simple -- very simple analogy. Judge  
24          Ruth, Judge Jones, you are customers of mine and  
25          I have a grocery store. And you come in

1           separately on occasion and you buy your  
2           groceries. And as you check out, we -- we  
3           identify what you've bought and you pay for  
4           exactly what you -- what you've taken out of the  
5           store. Now, the two of you get together and  
6           say, for whatever reason, Judge Jones doesn't  
7           want to drive to the grocery store. And says  
8           Judge Ruth, if you don't mind, would you pick up  
9           my groceries for me since you're going? And you  
10          for -- have no problem with doing that. In  
11          fact, you may get compensated by Judge Jones for  
12          doing that. Now you leave the grocery store and  
13          you have a quantity of groceries that are not  
14          only yours but also Judge Jones. And as you  
15          leave, you said, Now, these are mine, Trip, and  
16          I'll pay you for them. But these are Judge  
17          Jones', and he's going to pay you for them.  
18          Now, it's -- it gets worse than that because  
19          sometimes I don't even know which is which until  
20          later. And sometimes nobody ever even tells me  
21          -- for example, Judge Jones doesn't tell me and  
22          you don't tell me which groceries are his.  
23          That's the business relationship, if you will,  
24          that's now being created. That's the bypass of  
25          the old arrangement that I had with you, Judge

1 Ruth, that I had with you, Judge Jones. By your  
2 bilateral agreement, you've bypassed that and  
3 put me at a disadvantage.

4 Discrimination? Absolutely. Prejudice?  
5 You bet. Against the public interest? I  
6 certainly submit that it is. That's what's  
7 going on here. We're taking IXC traffic off the  
8 IXC network, routing it differently, not getting  
9 any records for it. Even when we get the  
10 records, we're getting a bunch of bogus  
11 disputes. And it's just not working. And I  
12 agree it's -- I don't want to be picking on  
13 Sprint. And I don't want to be picking on ICG  
14 because it's -- it's state wide. But darn it,  
15 it -- at some point -- and despite -- well, I  
16 think Mr. Lumley did acknowledge, we've been  
17 fighting this in a variety of forums for over  
18 six years. And I think it's an appropriate  
19 issue to raise with respect to the -- to the  
20 limited jurisdiction you have over  
21 interconnection agreements.

22 JUDGE RUTH: Just just a moment.  
23 Just a moment. You'll get your turn. But  
24 backing up even before the analogy, right now,  
25 traffic goes from ICG to Sprint to the IXC down

1 to the third party. And it's my understanding  
2 that in that case, the third party, the two  
3 intervenor groups, get good records.

4 MR. ENGLAND: That's correct.

5 JUDGE RUTH: Is there any reason why  
6 when you skip the IXC, Sprint, why you couldn't  
7 give them the same good records? If it just  
8 goes ICG, Sprint to the third party? You laugh.  
9 Is -- my --

10 MS. CREIGHTON HENDRICKS: I'm not  
11 laughing. I'm not laughing.

12 MS. JOHNSON: You're talking about  
13 an issue that's been pending for years.

14 JUDGE RUTH: I just wondered is  
15 there something different when it comes through  
16 the IXC that makes it easier for Sprint to give  
17 the good records? Or is there really no  
18 difference and you should be able to give the  
19 exact same records?

20 MS. CREIGHTON HENDRICKS: First of  
21 all, let me clear the air here. With respect --  
22 I guess first let me answer your question. My  
23 understanding -- and I can check -- I can have  
24 this checked and we can submit something to the  
25 Commission after this hearing --- is that we



1 provide something that's similar to the modified  
2 1101 record when we would pass this traffic.  
3 Now, as I stand here, I don't even know if  
4 there's been an instance that we have passed  
5 CLEC traffic over a transitting network,  
6 transitting traffic -- or providing that  
7 function. So I believe that the records are  
8 similar when it goes through this network. Now,  
9 I will have to have that checked. And like I --  
10 I indicated, I can submit something.

11 JUDGE RUTH: And I -- I'd like you  
12 to check that. But I'm a little concerned about  
13 the word similar. If you decide they're  
14 similar, I would like you to clarify how they're  
15 different.

16 MS. CREIGHTON HENDRICKS: Well,  
17 correct. As I understand they have an 1101  
18 record that comes in the context of the IXC  
19 passing the traffic, and we issue a modified  
20 1101 in the context of the transitting traffic.  
21 So I just have to see --

22 JUDGE RUTH: They would be otherwise  
23 identical except --

24 MS. CREIGHTON HENDRICKS: Well, if  
25 it's a modified 1101, there must be something

1 different. And that is something I would have  
2 to check on.

3 JUDGE RUTH: And look at.

4 MS. CREIGHTON HENDRICKS: And,  
5 furthermore, I would want to indicate that even  
6 though Mr. Johnson has indicated this is  
7 something that has gone on for years, with  
8 respect to CLECs that are directly connected to  
9 Sprint, I'm unaware of this going on for years.  
10 There is an issue that has been pursued  
11 repeatedly by both MITCG and the Small Telephone  
12 Group relating to traffic that comes from  
13 Southwestern Bell's network and transits our --  
14 our tandem-- or transits our tandem as the  
15 second tandem provider where we don't have the  
16 CLEC passing traffic directly to us. That's a  
17 whole separate issue.

18 JUDGE RUTH: Okay. But there you're  
19 talking about traffic that would start at  
20 Southwestern Bell, go to Sprint and then go to  
21 the third party?

22 MS. CREIGHTON HENDRICKS: Correct.

23 JUDGE RUTH: And you're saying  
24 there's been an issue about the records being --  
25 and payment being provided in that case?

1 MS. CREIGHTON HENDRICKS: Well, I  
2 think that both the CLEC complaint, the one that  
3 was filed by MITCG as well as the wireless  
4 complaint, related solely to that -- that type  
5 of traffic. It did not relate to traffic that  
6 came from a CLEC that was connected to Sprint's  
7 network. So I want to make sure that this issue  
8 -- is defined.

9 JUDGE RUTH: And I don't want to get  
10 too far away. But in that situation, one of the  
11 allegations was the records weren't adequate?  
12 Is that --

13 MS. CREIGHTON HENDRICKS: I believe  
14 that there were --

15 JUDGE RUTH: The records from Sprint  
16 to the third party weren't accurate?

17 MS. CREIGHTON HENDRICKS: I believe  
18 there is a record called a CTUSR in the wireless  
19 case, in the wireless traffic that SBC sends to  
20 the small companies. And that is not something  
21 that Sprint generates. And I believe their --

22 JUDGE RUTH: Okay. More basic. Was  
23 an issue in that situation that the records  
24 weren't adequate that the third parties were  
25 getting from Sprint?

1 MS. CREIGHTON HENDRICKS: I --  
2 Sprint was not providing -- because Sprint is a  
3 second tandem provider, it does not provide  
4 records.

5 JUDGE RUTH: Okay.

6 MS. CREIGHTON HENDRICKS: It's SBC  
7 that provides records. And they're -- there's  
8 been disputes and I -- I believe it's not so  
9 much to the records, but whether or not the  
10 records tell the type of traffic going over.

11 JUDGE RUTH: Okay. I was just  
12 trying to see how similar that was to the  
13 situation or not.

14 MS. CREIGHTON HENDRICKS: Correct.  
15 And I'm indicating as far as how Sprint is  
16 situated, it is different from this situation.

17 JUDGE RUTH: And you're saying  
18 you're not aware of any traffic that has gone  
19 from ICG or a similar company through Sprint to  
20 these third parties without records being  
21 provided?

22 MS. CREIGHTON HENDRICKS: As far as  
23 a CLEC provider, I'm unaware of a situation.  
24 But I must admit, I must check. I am -- there  
25 has never been a complaint that has been brought

1 to my attention regarding --

2 JUDGE RUTH: Let me ask the  
3 intervenors just that question. Are you aware  
4 of the traffic that's gone from ICG or a CLEC  
5 through Sprint to the third party intervenors  
6 where the billing was not -- the records weren't  
7 provided and the bill wasn't paid?

8 MR. JOHNSON: Well --

9 JUDGE RUTH: In other words, is this  
10 prospective only? You see that there could be a  
11 problem or that you know for a fact that in very  
12 similar cases there has been?

13 MR. JOHNSON: Let me ask you -- cut  
14 it in two halves. First of all, are we aware of  
15 any ICG traffic that went to the Sprint tandem  
16 and transited that we were aware of a records  
17 issue? No. We've never received any records so  
18 we would have no ability to be aware that that's  
19 the case. I will tell you that my clients a  
20 year, year and a half ago, brought a complaint  
21 against Southwestern Bell, against Sprint and  
22 against a -- five or ten or 15 CLECs including I  
23 believe, ICG. Because Southwestern Bell in  
24 contrast to Sprint, had reported CLEC traffic  
25 terminating to us. We filed that complaint

1           because we were getting records and nobody would  
2           pay.  It wasn't on our access tariffs.  Bell  
3           said it's not our responsibility to pay.  And  
4           ICG said it's not our responsibility to pay.  So  
5           we sued them.  And in the first -- the case was  
6           on file for about six months.  And the first  
7           part of it was devoted to trying to get an  
8           agreement between the parties as to what  
9           agreement -- what interconnection agreement this  
10          traffic was being handed off to Bell pursuant  
11          to.  Then trying to identify how it got to our  
12          clients.  Who is responsible to pay and who we  
13          should bill with the record.  Well, right off  
14          the bat, the IT -- ICGs and the AT&T said, No,  
15          this traffic should have been popped out.  The  
16          traffic should never -- this traffic should have  
17          gone from here to here to here, back down so  
18          that you would have gotten your record and you  
19          would have billed the IXC.  You wouldn't have  
20          billed us.  And Bell said, No, because of the  
21          nature of our agreement, we're supposed to be  
22          sending that to you or sending it to Sprint who  
23          in turn sends it to MO-KAN Dial.  Therefore, you  
24          should be billing them.  Well, since we couldn't  
25          get that very first part of the case

1           straightened out, we ended up dismissing it  
2           without prejudice because we couldn't prove --  
3           due to the inadequacies of the interconnection  
4           agreement in addressing and identifying and  
5           reporting transit traffic, we couldn't prove the  
6           case. And we decided to wait and oppose the  
7           next interconnection agreement that had transit  
8           provisions in it. And I can --

9                         JUDGE RUTH: Wait. Wait a minute.  
10           Okay. So --

11                        MR. JOHNSON: And I can provide you  
12           a cite --

13                        JUDGE RUTH: Would it be in the  
14           public interest, then, to have interconnection  
15           agreements that have the reciprocal type of  
16           agreements that say, where Sprint agrees we'll  
17           provide ICG with great records from calls that  
18           come from the third parties up through Sprint to  
19           ICG mand we'll do vice versa, for calls that ICG  
20           sends through Sprint to MO-KAN, we'll provide  
21           these great records? In other words, then you  
22           would -- then all parties would know what  
23           traffic is being transitted?

24                        MR. JOHNSON: We need to get a  
25           record to know the traffic's been terminated.

1 We need the record to identify the responsible  
2 carrier who is going to pay the bill.

3 JUDGE RUTH: Correct.

4 MR. ENGLAND: And I would like the  
5 same deal ICG has that if they fail in making  
6 that adequate record that Sprint has to basically  
7 pay for that -- that call.

8 MR. JOHNSON: See, one of the  
9 differences is, Judge Ruth, for that call that  
10 comes from ICG to Sprint tandem up to the IXC  
11 and goes up to IXC and comes down in the IXC  
12 network, Sprint tandem creates an 1101 from  
13 MO-KAN Dial, the third party office, and that  
14 thing says you bill the interexchange carrier,  
15 you bill the IXC. When the call comes through  
16 the Sprint tandem and then doesn't go up to the  
17 IXC, we don't get an 1101 and the 1101 is  
18 trying to identify ICG. But that hasn't been  
19 completed yet. There's no -- there's no 1101  
20 record available yet.

21 JUDGE RUTH: I'm trying to look at  
22 this maybe a little bit differently from the  
23 remedy you -- your parties are seeking. If the  
24 Commission had a different agreement between ICG  
25 and Sprint on the table and it looked just like



1 the one that we have now, but it had similar  
2 language for this default billing to -- that  
3 went the other way that said -- you know, right  
4 now it says if the third party, MO-KAN, transits  
5 through Sprint to ICG and Sprint's not able to  
6 give good records to ICG, then Sprint will pay.  
7 Is that correct? On a very basic level, that's  
8 what it says?

9 MR. ENGLAND: Correct.

10 JUDGE RUTH: What if the agreement  
11 and interconnection agreement had the same  
12 language for the calls that go the other way?  
13 ICG to Sprint to third party that said, ICG has  
14 arrangement -- or has the obligation to make  
15 arrangement with other parties like the third  
16 MO-KAN, et cetera, for the transit of traffic.  
17 And to facilitate this, Sprint will provide the  
18 same type records to the third party as are  
19 going to ICG when the call goes the other way?

20 MR. ENGLAND: If you believe --

21 JUDGE RUTH: Wouldn't that be in the  
22 public interest and take care of most of the  
23 public interest argument?

24 MR. ENGLAND: Excuse me. If you --  
25 if you believe the transit -- transit traffic --

1 or the transiting of toll traffic is even  
2 necessary or appropriate for these local  
3 interconnection agreements. Now, if you think  
4 that they have to do it or you think it's  
5 appropriate for them to be able to take this  
6 traffic off the interexchange network, route it  
7 through Sprint's tandem and directly to these  
8 third party end offices, then, yes, what you've  
9 proposed, I can't disagree. At least now I'm  
10 being treated similarly as ICG.

11 JUDGE RUTH: It would be similarly  
12 and it would be in the public interest in that  
13 there's no third party getting harmed by not  
14 getting paid. Wait. Wait. Wait. Is that  
15 true, Mr. Swearngen (sic)? I mean, it would be  
16 in the public -- we wouldn't have the against  
17 the public interest argument and we wouldn't  
18 have the discrimination argument if -- if it  
19 worked the same both ways.

20 MR. ENGLAND: Right.

21 MR. JOHNSON: And all the the  
22 parties agreed to the type of record.

23 JUDGE RUTH: Well --

24 MR. JOHNSON: What you -- if you're  
25 talking about now making an amended agreement to

1 get the same --

2 JUDGE RUTH: No. I'm talking -- I'm  
3 pretending we're looking at a different  
4 agreement.

5 MR. JOHNSON: Different agreement.

6 JUDGE RUTH: I am not proposing that  
7 the Commission order the parties to alter this  
8 one. You say this one's bad. For me to  
9 understand what's bad about it, I am trying to  
10 understand what would be a good one, what would  
11 work, how this one falls short.

12 MR. JOHNSON: What I was trying to  
13 suggest is the symmetry you suggest, yes, that  
14 would remove the prejudice and remove the  
15 discrimination arguments. The only thing I was  
16 trying to tell you was ICG got to negotiate  
17 that. We didn't get to. And I was suggesting  
18 that if you tried to unilaterally impose what  
19 they've negotiated on us, we still might have  
20 some quibbling with it because we didn't get a  
21 chance to talk about the records, record format  
22 and set up the billing arrangements and all that  
23 stuff that they've already undertaken.

24 JUDGE RUTH: I understand it might  
25 not still be the agreement you want. But from

1 the Commission's point of view, it would  
2 probably -- or it might at least remove the  
3 public interest concern.

4 MR. ENGLAND: I think I see what  
5 you're saying. As long as Sprint treats us the  
6 same way that it treats ICG under the terms of  
7 the agreement, then that -- the alleged  
8 discrimination or the disparity in treatment  
9 goes away.

10 JUDGE RUTH: It totally goes away.  
11 Some of the public interest concerns would go  
12 away in that one of the -- the concerns I saw  
13 with the public interest is perhaps really the  
14 fairness of having a third party not getting  
15 paid for traffic. And that would largely go  
16 away. At least the records would be there and  
17 it would make a better opportunity for those  
18 third parties, MO-KAN, et cetera, to -- to bill  
19 and get paid. But you said that -- my argument  
20 assumes that Sprint has to transit this toll  
21 traffic. So part of your party's argument is  
22 that the interconnection agreement should not  
23 require the transit of toll traffic?

24 MR. ENGLAND: Well --

25 JUDGE RUTH: You want that toll

1 traffic to just always go ICG, Sprint, IXC,  
2 Sprint, back down?

3 MR. ENGLAND: Right.

4 JUDGE RUTH: And why?

5 MR. ENGLAND: And that's the other  
6 level of what I call discrimination because what  
7 we have, as Mr. Lumley indicated to you today,  
8 if ICG wants to send a call to us, they have to  
9 send it through the IXC. We get the records.  
10 We bill the IXC. Everything works fine today.  
11 Under this new arrangement, they're going to  
12 send it through Sprint directly to a third  
13 party. We've got the problem with records.  
14 We've got the problem with billing that we  
15 talked about.

16 JUDGE RUTH: But what if it weren't  
17 this agreement, it was an agreement the same --  
18 with this reversed billing on both ends?

19 MR. ENGLAND: Well, okay. The  
20 second layer of discrimination that I think  
21 still exists even with your equalizing the  
22 rights and benefits of these two parties is that  
23 you've now -- you've taken that call off the IXC  
24 network. And you've routed it -- you've  
25 bypassed the IXC network and there's still going

1 to be some problems as Craig said that the types  
2 of records you get, the payment. It's going to  
3 be different. And I -- and I --

4 JUDGE RUTH: I don't see how it's  
5 the problem, though. That's what I was hoping  
6 you would explain. Because as I see it, you  
7 don't want any toll traffic, then, to go through  
8 this interconnection agreement even if it had  
9 the reverse billing provisions, I talked about?

10 MR. ENGLAND: Yes. My first  
11 preference is they don't transit toll traffic.  
12 My second preference would be what you have  
13 recommended and that is if you believe it's  
14 appropriate in the public interest, whatever, to  
15 transit toll traffic to take it over this IXC  
16 network, then at the very least we need the same  
17 safeguards that Sprint has given ICG.

18 JUDGE RUTH: Just for clarification,  
19 I wasn't recommending that that be the  
20 interconnection agreement. It was just a  
21 hypothetical.

22 MR. ENGLAND: I understand.

23 JUDGE RUTH: But why do you think  
24 that Sprint does not have an obligation to  
25 transit this toll traffic under the Act when

1           they seem to believe they do have the  
2           obligation?

3                         MR. ENGLAND: I think the Act deals  
4           more with the exchange of local traffic, first  
5           of all. And the inter -- interconnection -- and  
6           there are specific provisions in the Act that --  
7           that maintain the access or toll regime as it  
8           existed prior to the Act. So I think when we're  
9           talking interconnection, we're talking local  
10          interconnection. And when we're talking  
11          reciprocal compensation, we're talking  
12          reciprocal compensation for local traffic.

13                        JUDGE RUTH: So you're saying the  
14          Commission has looked at these interconnection  
15          agreements from the wrong perspective as long as  
16          we've been approving interconnection agreements?

17                        MR. JOHNSON: I don't think they've  
18          ever focused on this, your Honor. Until someone  
19          has been burned by it, somebody is going to come  
20          up and say, This prejudices us, which is what  
21          we're doing now in this case.

22                        JUDGE RUTH: So both the two  
23          intervenor groups believe that toll traffic is  
24          not required to be transitted?

25                        MR. ENGLAND: Correct.

1 JUDGE ENGLAND: Okay. And, Sprint,  
2 you believe it is?

3 MS. CREIGHTON HENDRICKS: Well,  
4 first of all, my clarification, I understand the  
5 intervenors to believe that in traffic should be  
6 transitted, including toll, that that is the  
7 position of the intervenors.

8 JUDGE RUTH: So local?

9 MR. ENGLAND: We -- I think we've  
10 got a legal argument as to whether or not  
11 they're obligated to transit local traffic. But  
12 I agree -- I'd like to hear the answer to your  
13 question is does Sprint believe they have an  
14 obligation to transit toll traffic? We can work  
15 our way back to local.

16 MS. CREIGHTON HENDRICKS: Well, I  
17 put them both together because they were --

18 JUDGE RUTH: Well, I'd like it  
19 separated for my benefit. Does Sprint, in your  
20 opinion, have an obligation to transit --  
21 transit the toll traffic? Must you?

22 MS. CREIGHTON HENDRICKS: Well, the  
23 obligation that we believe we have arises under  
24 the Federal Act, and it's 251, the base of it,  
25 which says we have to interconnect directly or



1 indirectly. And that one of the points of  
2 interconnection, which they are entitled to  
3 request, is our tandem. Therefore, they have  
4 the ability to send traffic to people who  
5 subtend our tandem. That is arising out of the  
6 Federal Act and the interconnection  
7 requirements.

8 JUDGE RUTH: So your answer would be  
9 yes?

10 MS. CREIGHTON HENDRICKS: Well, I'm  
11 not in a position now and we could subsequently  
12 address it with respect solely to the toll  
13 traffic. I'd have to look at it closer to see  
14 how they impact toll versus local since the  
15 argument, as I understood it to date, was across  
16 the board, I have addressed it with respect to  
17 both local and toll together. So I'd have to do  
18 a little more research to specifically respond  
19 to the toll.

20 JUDGE RUTH: I think that is going  
21 to be an issue, then, though, assuming that the  
22 case proceeds in that the intervenors are  
23 alleging that you do not have an obligation to  
24 transit the toll.

25 MS. CREIGHTON HENDRICKS: Correct.

1 JUDGE RUTH: Put it into pieces.

2 MS. CREIGHTON HENDRICKS: I was  
3 unaware that we were going to have this  
4 extensive discussion today at the prehearing, so  
5 I did not come forward specifically having  
6 researched that issue. I can. But I do know  
7 that our arguments with respect to the indirect  
8 connections arise out of the Federal Act and  
9 specifically 251.

10 JUDGE JONES: Mr. Lumley?

11 MR. LUMLEY: Several points to make  
12 on this subject. First of all, we believe that  
13 they are required to transit our traffic, not  
14 only under the direct provisions of the Act  
15 where if you assume that we were the very first  
16 CLEC to ever come to them, but more importantly,  
17 today, because they have afforded this to every  
18 other CLEC that's come to them, that clearly  
19 requires them to offer it to us as well. They  
20 are not allowed to deny us interconnection  
21 methods that they are affording to others. More  
22 over, I strongly suspect and not -- not aware of  
23 it because it's never come up. And we can check  
24 very quickly. I strongly suspect that there's  
25 already an interconnection agreement between ICG

1 and Sprint and that this is a replacement  
2 agreement and that the original agreement  
3 already has -- if not the same, you know, very  
4 similar provisions in it. But even -- even if  
5 it's not in place with us, it's clear in place  
6 with numerous other CLECs.

7 JUDGE RUTH: But I -- I thought I  
8 asked how the traffic's going today. Does --

9 MR. LUMLEY: But we're not making  
10 use of it in the way that they're describing.  
11 I'm just saying that the contractual language, I  
12 believe, is probably there. But we have the  
13 right to it because others have gotten it. But  
14 the whole fallacy to their argument that there's  
15 this nefarious plan to -- to bypass the network,  
16 the contract on its face says that we won't do  
17 that. The contract on its face says we  
18 acknowledge we have a responsibility to make an  
19 agreement with them before we do it.

20 I also would point out in this  
21 transitting issue that it's a lot more difficult  
22 to analyze than the parties are suggesting so  
23 far. Because how do you distinguish traffic  
24 that's local from traffic that's toll? I can  
25 make that very complicated if ICG some day

1 expands its territory to include MO-KAN Dial's  
2 exchange and has approved a single exchange that  
3 covers the entire foot print. The statutes say  
4 that our areas can't be smaller. But it's  
5 possible to get relief that would allow that to  
6 be local traffic from our perspective from how  
7 we bill our customers. That doesn't mean that  
8 they don't have the right to insist on access  
9 being paid. And that has to be worked out  
10 either through tariff or agreement. But it's  
11 not -- you can't just -- once you have multiple  
12 carriers with different regimes in place, trying  
13 to figure out what's local and toll becomes very  
14 complicated, and it's complicated further by the  
15 fact that MCA is characterized as hybrid of  
16 both. Where all that breaks down is the point  
17 that Mr. Johnson made. Even if you were to  
18 require us to change our contract, it doesn't  
19 prevent them from wanting something different  
20 because they're not a party to the contract.  
21 And the conflict it creates to us is if Sprint  
22 and ICG contract with each other to do it one  
23 way and then MO-KAN Dial requires a tariff or an  
24 agreement that does it another way, now we're in  
25 breach of our contract to comply with their

1 tariff or their contract. And that's why we  
2 maintain we negotiate our interconnection in  
3 this document and when and if we need the other  
4 piece, we negotiate with them. If they refuse  
5 as they say they probably will to negotiate with  
6 us, they have a tariff and we have to abide by  
7 the tariff. If the tariff's insufficient today,  
8 then they should propose changes to that tariff  
9 that allow them to protect the rights that  
10 they're worried about. But you can't -- you  
11 can't solve it in this document because whatever  
12 you do, the end result is you're -- you're not  
13 issuing an order that says the parties will do  
14 things in a certain way. You're issuing an  
15 order that says this contract is approved and  
16 the contract then governs and it only governs  
17 the two of us.

18 JUDGE RUTH: And you're saying this  
19 is not the appropriate venue to address --

20 MR. LUMLEY: Correct.

21 JUDGE RUTH: -- their concern? So  
22 would the appropriate venue be a complaint case?

23 MR. LUMLEY: You have the right to  
24 file a complaint. You have the right to file  
25 new tariffs if you need to. You have the right

1 to seek to negotiate a contract if you choose  
2 to. And, finally, the staff is being in the  
3 process of proposing a rule that will be an  
4 industry-wide solution which you can't craft in  
5 this case. Even if you could somehow come up  
6 with provisions that resolve for these  
7 companies, we've still got Century Tel and  
8 Southwestern Bell and every single CLEC and  
9 every single wireless provider that's not a  
10 party to this case and won't be affected by the  
11 result.

12 JUDGE RUTH: This is a short answer  
13 question. If -- I think the intervenors have  
14 indicated that in an inter -- or a wireless  
15 case, they tried to do a complaint case, but the  
16 records were inadequate.

17 MR. JOHNSON: That is a CLEC case,  
18 your Honor.

19 JUDGE RUTH: That was a CLEC?

20 MR. JOHNSON: Yes.

21 JUDGE RUTH: Okay. Do you think you  
22 would have adequate records to bring a complaint  
23 case in this type of situation if -- or do you  
24 -- you don't have adequate records because you  
25 wouldn't even be able to tell if traffic is

1 terminated?

2 MR. JOHNSON: MO-KAN Dial would  
3 never be in a position to know it was missing  
4 records to even have the first idea that they've  
5 got an uncompensated traffic problem, and they  
6 wouldn't have the first step to know to try to  
7 find out who to -- to go collect from.

8 JUDGE RUTH: Okay.

9 MR. LUMLEY: Could I ask for a  
10 clarification there? Because they've  
11 represented that the reason they're upset is  
12 that the minutes don't match up. And,  
13 therefore, they do at least have some  
14 information that tells them there's a problem.  
15 Now, here's -- I'm hearing something different  
16 and I don't think he means to contradict, but I  
17 think we need to be clear. My understanding  
18 is --

19 JUDGE RUTH: I thought he was  
20 saying, you know, minutes are coming through but  
21 you don't know exactly who they're coming from  
22 so you can't bill and you can't prove who the  
23 complaint goes against.

24 MR. JOHNSON: Yes, that's correct.  
25 And the MO-KAN Dial situation, it's a little bit

1 more complicated for me to be as aggressive in  
2 my statement because everybody knows the MCA  
3 bill and keep traffic is coming down that same  
4 network and nobody's creating records for it.

5 JUDGE RUTH: So you don't know --

6 MR. JOHNSON: MO-KAN Dial is always  
7 going to know that even if it was measuring the  
8 total minutes and comparing that to the minutes  
9 they got records for, they should never be a  
10 hundred percent because they're not supposed to  
11 get records for MCA traffic. The problem I was  
12 identifying and speaking to with respect to the  
13 other members of my client group that did bring  
14 this complaint case, they don't have MCA traffic  
15 and they should never have a situation where the  
16 records don't equal the total. But they do.  
17 They sued. And they couldn't get anywhere  
18 because of the inability to pierce these  
19 interconnection agreements and have the parties  
20 to that interconnection agreement tell them  
21 enough about the traffic so that we could figure  
22 out even who to sue. They couldn't do it.

23 MR. ENGLAND: If I may give you a  
24 few war stories from my complaint case, if you  
25 will, against the wireless --



1 JUDGE RUTH: Only briefly.

2 MR. ENGLAND: -- against the  
3 wireless carriers that has now been on file for  
4 well over a year now. We were able to stipulate  
5 to facts, brief the case, but the Commission  
6 felt it was important to reopen the record  
7 recently to determine the jurisdiction of the  
8 traffic.

9 JUDGE RUTH: That was Judge  
10 Thompson's?

11 MR. ENGLAND: Correct. Local versus  
12 toll. I understand their desire to get it right  
13 as to which tariff to apply. But the fact of  
14 the matter is the records we're getting don't  
15 jurisdictionalize the traffic so now we're in  
16 this process of trying to negotiate a factor, if  
17 you will, as to what's local, what's toll so the  
18 Commission can eventually render a decision that  
19 says, yes, your toll tariff applies or your  
20 access tariff applies to this traffic and your  
21 wireless termination tariff applies to this  
22 traffic. Once you're done telling me that,  
23 hopefully you're giving me the right answer I  
24 want. And the -- this wireless carrier, these  
25 wireless carriers continue to refuse to pay.

1 I've got to go to Circuit Court and sue all over  
2 again. The -- the Why don't we file a complaint  
3 defense. When you consider the realities and  
4 the economics of doing so, it's just not readily  
5 or easily available. And this is -- and so you  
6 have to understand the practicalities, too, of  
7 this whole situation. If we can prohibit this  
8 stuff from coming to us now, we avoid all of  
9 these problems down the road.

10 JUDGE RUTH: But you're wanting to  
11 avoid any calls ever coming to you through an  
12 interconnection agreement between these parties?  
13 My records idea or reciprocal type of billing  
14 and records, that's not good enough. Your --  
15 the only remedy you really want is to reject the  
16 interconnection agreement and never have an  
17 interconnection agreement between those two  
18 parties. You want traffic to keep going ICG,  
19 Sprint, ICG, back down?

20 MR. JOHNSON: I don't have any  
21 problem with Sprint and ICG having their  
22 interconnection agreement as long as it only  
23 addresses traffic that both of them originate  
24 and terminate to each other. When they start  
25 having that agreement that's terminating my

1 clients without having me -- inviting me to  
2 negotiation so I can have input into all this,  
3 then I have a problem.

4 JUDGE RUTH: And it's my  
5 understanding that most, if not all the  
6 interconnection agreements that have been  
7 approved by the Commission so far have similar  
8 language. So in your opinion, all of those  
9 agreements violate the public interest or are  
10 against the public interest or somehow  
11 discriminate against third parties?

12 MR. ENGLAND: Correct.

13 MR. JOHNSON: Yes.

14 JUDGE RUTH: All of them.

15 MS. CREIGHTON HENDRICKS: Your  
16 Honor, if I could briefly make some comments?

17 JUDGE RUTH: Yes. And I'm going to  
18 allow parties to make a few more comments. And  
19 depending on how many questions Judge Jones has,  
20 we may -- we may need to take a break and come  
21 back.

22 MS. CREIGHTON HENDRICKS: One thing  
23 and I kind of indicated when I first made  
24 comments is this is an interconnection agreement  
25 between Sprint and ICG. And to the extent that

1 the remedy that they are requesting, you desire  
2 to respond to it, in the context of this case, I  
3 don't think that that would be possible. And  
4 we, as I mentioned, have a federal obligation to  
5 respond to CLECs that come to us. That federal  
6 obligation also allows CLECs to go into opt  
7 agreements. We can't say yes or no. And for  
8 that matter, I'm not so sure the Commission can  
9 say yes or no. We have many agreements out  
10 there that have these similar provisions in  
11 them. CLECs are free to adopt them. This puts  
12 ICG in a position where, unlike every other  
13 CLEC, they don't get the advantage of this  
14 provision. But the problem is there's -- every  
15 -- any CLEC can come to us and adopt an  
16 agreement that's already out there and it's  
17 going to this very provision. So their issues  
18 are not addressed nor can they be in the context  
19 of this case.

20 JUDGE RUTH: Okay. I understand  
21 what you're saying. But if I were arguing  
22 intervenors' position, they would say that the  
23 Commission's made a mistake all along and they  
24 shouldn't compound their mistake by approving  
25 another faulty agreement.

1 MS. CREIGHTON HENDRICKS: Well,  
2 given the fact that ICG could just go adopt the  
3 Sprint Sprint agreement that was recently  
4 approved and has similar provisions, this is not  
5 the case in which that issue is addressed. If  
6 they have a bigger issue --

7 JUDGE RUTH: Okay. But if the  
8 Commission were to agree with the intervenors  
9 that this is either an agreement against the  
10 public interest or that it discriminates against  
11 third parties, the Commission would have an  
12 obligation to reject it even if it doesn't give  
13 the remedy those parties want because the  
14 Commission can -- it's not to approve an  
15 agreement if it does one of those two  
16 problematic things.

17 MS. CREIGHTON HENDRICKS: And what  
18 I'm talking about is the impact of rejecting the  
19 agreement. So the Commission rejects the  
20 agreement. Tomorrow, ICG would go adopt the  
21 Sprint Sprint agreement. They've got it.

22 JUDGE RUTH: I understand that. But  
23 are you a saying that if the Commission would  
24 decide that this violates public interest or  
25 discriminates against third parties the

1 Commission should go ahead and approve it  
2 because even if we don't, ICG is going to adopt  
3 the same agreement and the same thing is going  
4 to happen?

5 MS. CREIGHTON HENDRICKS: That's a  
6 very good question. And I think one thing I  
7 have failed to communicate is in the context of  
8 the ICG Sprint agreement, as we have maintained,  
9 we do not believe it discriminates nor is it  
10 against the public interest.

11 JUDGE RUTH: I understand that. But  
12 if the Commission were to find that it does  
13 discriminate or does violate the public  
14 interest, the Commission is supposed to -- or,  
15 you know -- the Commission is supposed to  
16 reject.

17 MS. CREIGHTON HENDRICKS: Correct.  
18 Correct.

19 JUDGE RUTH: And it doesn't matter  
20 to the Commission's decision that ICG might just  
21 go adopt another agreement that discriminates  
22 that the Commission might have accidentally  
23 approved.

24 MS. CREIGHTON HENDRICKS: Well,  
25 there are a multitude of agreements. And

1 similar provisions in SBC. I maintain there's  
2 probably several hundred out there.

3 JUDGE RUTH: And it's my  
4 understanding this is probably the first time in  
5 Missouri that this issue has been raised that  
6 these -- in an interconnection agreement case.  
7 No?

8 MS. CREIGHTON HENDRICKS: No. I  
9 believe that is incorrect. I think it was  
10 raised in connection with some CLEC or some  
11 wireless carriers.

12 JUDGE RUTH: Wireless?

13 MS. CREIGHTON HENDRICKS: With SBC  
14 and the wireless agreements were still approved.

15 JUDGE RUTH: I thought that they  
16 ended up settling those and the intervenors  
17 withdrew their objections. No?

18 MS. CREIGHTON HENDRICKS: I am --  
19 I'm sure that the intervenors could speak more  
20 to it. But I do believe there was an issue  
21 after SBC put up a wireless termination tariff  
22 and got into interconnection agreements that the  
23 intervenors intervene at that time making  
24 similar argument.

25 JUDGE RUTH: But I though those

1 parties settled that case. No?

2 MS. CREIGHTON HENDRICKS: No.

3 MR. ENGLAND: No. If I may, the --

4 if you're talking about Southwestern Bell's

5 wireless interconnection tariff, I believe

6 that's what Mrs. Creighton Hendricks is

7 addressing, I think she is correct.

8 Southwestern Bell came and attempted through

9 their tariff to offer a transit service of

10 wireless traffic. Our group intervened and

11 opposed that. The Commission ultimately

12 approved Southwestern Bell's tariff. And as far

13 as wireless traffic is concerned, Bell is a

14 transit carrier under that interconnection

15 tariff that they have. Significantly, however,

16 was an -- in approving that tariff, the

17 Commission imposed upon Southwestern Bell the

18 obligation to create and pass records of that

19 transit traffic to all of the end office

20 companies that receive that traffic. So at

21 least the Commission recognized in that case the

22 need -- or, one, Southwestern Bell's better

23 situated to -- to record that traffic and

24 obligation therefore to do so and pass that

25 information on to the parties that actually



1 terminate.

2 JUDGE RUTH: What case number was  
3 that?

4 MR. ENGLAND: Oh, boy.

5 JUDGE JONES: It sounds like the  
6 technical aspects of the case is different with  
7 wireless than with in case.

8 MR. ENGLAND: Found -- to some  
9 degree, they're very similar. But what makes it  
10 more difficult in the wireless environment is  
11 the FCC has said their local calling scope is an  
12 MTA, Major Trading Area, which in the state of  
13 Missouri, there are roughly two, one on the  
14 eastern half of the state and the other on the  
15 western half of the state. So they've expanded  
16 local calling far beyond what we've  
17 traditionally known in the landline business and  
18 what is local for purposes of CLEC, ILEC, ICG,  
19 Sprint interconnections.

20 THE COURT REPORTER: Excuse me. I  
21 need to change paper real quick.

22 JUDGE RUTH: Okay.

23 (Break in proceedings.)

24 JUDGE RUTH: We'll go back on the  
25 record. And before we took a break, I had asked

1 the question specifically as to whether or not  
2 someone could give me the case number for the  
3 example that was used. I think the answer was  
4 no one knew the case number off the top of their  
5 head, but perhaps someone can supply it after  
6 the hearing? I really didn't intend to get into  
7 a debate of that case on how it applies. I just  
8 wondered if somebody could give me the case  
9 number. I'll go look at it myself.

10 MR. ENGLAND: I was referring to  
11 what I call the Southwestern Bell  
12 interconnection tariff case. If that's the one  
13 you're thinking of, we can certainly provide  
14 that.

15 MR. HAAS: You might check  
16 TO-99-254.

17 JUDGE RUTH: I'll look at that one.  
18 And if you find that's not the -- the case you  
19 were referring to, you'll file something to  
20 correct that.

21 MS. CREIGHTON HENDRICKS: Your  
22 Honor?

23 JUDGE RUTH: Yes.

24 MS. CREIGHTON HENDRICKS: There is  
25 one other -- I'm sorry -- case that I wanted to

1 bring to your attention that was similar.

2 JUDGE RUTH: Okay.

3 MS. CREIGHTON HENDRICKS: That --  
4 the similar issue as far as the business  
5 relationship between Sprint and the members of  
6 MITCG and Small Telephone Group is 99-593, I  
7 believe it's T O. And in that case, they did  
8 request for the business relationship to be  
9 changed in manner they're requesting now and the  
10 commission rejected that request.

11 MR. ENGLAND: And to be clear, we're  
12 not asking the business relationship be changed.  
13 In fact, we're asking that the existing business  
14 relationship be maintained.

15 JUDGE RUTH: Okay. And I have a  
16 question on that. You want the calls to keep  
17 going the way they are?

18 MR. ENGLAND: Correct.

19 JUDGE RUTH: I'm just curious why?  
20 Is it financially better for your clients to  
21 have the calls go through the IXC and down to  
22 them than it would be for any type of access  
23 tariff or other payment that you would get if  
24 the interconnection agreement went through?

25 MR. ENGLAND: I think I understand

1 your question. Let me make sure. Would we get  
2 paid more per minute if it went through the IXC  
3 versus whether it came through Sprint? No.

4 JUDGE RUTH: Well, they both kind of  
5 come through Sprint. They use Sprint's tandem,  
6 right?

7 MR. ENGLAND: Right. I meant they  
8 come directly through Sprint rather than going  
9 through IXC. We don't get any more per minute.  
10 It's just financially it's better because we get  
11 better records and we get better payment history  
12 when we deal with IXC as opposed to CLEC.

13 JUDGE RUTH: But at the Commission,  
14 they have a rule that they've started on record  
15 and if this were actually an interconnection  
16 agreement that had the kind of reciprocal  
17 reverse billing issue that -- then it might not  
18 matter so much to your clients which way it  
19 went. In other words, the Commission is -- has  
20 started a rule that would require better records  
21 in many situations and I think in situations  
22 like the interconnection agreement type and it  
23 -- once the rule's in place and if this were an  
24 interconnection agreement that provided the  
25 third party to get the same kind of records from

1 Sprint as, you know, going the other way and  
2 perhaps have that -- the reverse billing so that  
3 Sprint would pay if they're unable to get the  
4 bills or the records, then financially, it would  
5 be -- would it be a wash?

6 MR. ENGLAND: Right. I mean, like I  
7 said, the price per minute for the service we  
8 render is going to be the same.

9 JUDGE RUTH: Okay.

10 MR. ENGLAND: And -- and if I could  
11 be a little more prejudicial, we might have not  
12 have this problem if all of the CLECs to date,  
13 and I'll exclude ICG and Comm South who are  
14 sending traffic to us, had played by the same  
15 rules that the IXCs have and the PTCs have for  
16 years. But they are not living up to the  
17 obligations that they actually commit themselves  
18 to in these interconnection agreements. They  
19 don't establish agreements with us before they  
20 send traffic to us. They don't send records to  
21 us of the traffic they send to us. And then  
22 they dispute the bills on what I believe to be  
23 are trumped up excuses.

24 JUDGE JONES: Mr. Lumley? Is that  
25 true?

1                   MR. LUMLEY:  It's never been proven.  
2                   They've been making these allegations for years  
3                   that the CLECs are the source of this traffic  
4                   that's -- that it's not MCA, you know, bill and  
5                   keep traffic.  They make the allegations.  I've  
6                   never seen evidence that it's accurate.  I'm not  
7                   saying that they're wrong.  But, you know, at  
8                   some point, you have to stop talking about it  
9                   and -- and bring your case.  And if the fact of  
10                  the matter is that they can't prove their case  
11                  because of the way -- of the current records  
12                  system that is in place between them and SBC and  
13                  Sprint and Century Tel, then they should either  
14                  block the traffic or they should change the  
15                  requirements in their tariffs to get records  
16                  they need from these companies.  But, you know,  
17                  I understand their concerns.  But there's been  
18                  examples where it turned out that huge volumes  
19                  of traffic were because Southwestern Bell  
20                  misprogrammed its switches and was sending local  
21                  plus traffic without reporting it.  I mean, all  
22                  of this traffic could turn out to be the  
23                  responsibility of -- of the major, you know,  
24                  incumbent LECs and none of it be CLEC traffic.  
25                  I understand their concerns that the numbers

1 don't match up. And I understand that in  
2 certain instances Southwestern Bell in  
3 particular has pointed fingers at CLECs. But  
4 we've never as an industry got to the bottom of  
5 this situation. And so I can't accept their  
6 allegations as true.

7 JUDGE JONES: Well, there will be  
8 traffic going from ICG to MO-KAN through Sprint?

9 MR. LUMLEY: There should be MCA  
10 traffic going from ICG through Sprint to MO-KAN  
11 because MO-KAN participates in the MCA.

12 JUDGE JONES: In light of this  
13 current interconnection agreement, if it were  
14 approved there will be traffic going from ICG to  
15 MO-KAN through Sprint?

16 MR. LUMLEY: My understanding is  
17 that it would only be MCA traffic unless and  
18 until we came up with some other arrangement  
19 with them. And that all other traffic -- right  
20 now, there's -- other than MCA traffic, I'm not  
21 aware of any traffic that would be considered  
22 local traffic that would go from ICG on that  
23 route to MO-KAN Dial. And it's my understanding  
24 that any toll traffic would continue to go from  
25 ICG through an IXC to MO-KAN Dial.

1 JUDGE JONES: Is that what you all  
2 understand, Mr. England? Mr. --

3 MR. JOHNSON: I understand that's  
4 the way Mr. Lumley is representing the ICG  
5 traffic goes today. But he's also saying they  
6 have negotiated the right to take that toll  
7 traffic off the IXC network and put it on the  
8 Sprint network.

9 MR. LUMLEY: But it's a right  
10 subject to also having a companion agreement  
11 with these companies. It's not a right that  
12 says question do whatever we want. It says you  
13 will carry our transit traffic, but if we need  
14 an agreement with somebody else, we're going to  
15 get it.

16 JUDGE RUTH: But you've already said  
17 that the access tariff that is already in place  
18 would be adequate. So, actually, under that  
19 argument, couldn't you -- as soon as the  
20 interconnection agreements's in place say, Oh,  
21 there's an access tariff, that's adequate, and  
22 start putting the traffic through?

23 MR. LUMLEY: Not if that tariff  
24 requires the information they're saying they're  
25 entitled to and I'm not giving it to them. Then



1 I'm not complying with that tariff. I also  
2 think it's important for you to understand that  
3 these transitting provisions apply to a lot of  
4 other things that don't involve these companies  
5 at all. I mean, there's multiple CLECs  
6 operating in Sprint's area, and the only way  
7 that traffic gets from one CLEC cusmoter to  
8 another CLEC's customer is through Sprint. And  
9 that's transit and traffic. All of the wireless  
10 carriers that operate on the western side of the  
11 state, the only way their customers would be  
12 able to call ICG is through Sprint, and that's  
13 transiting traffic. So, you know, I acknowledge  
14 that it mentions their -- that companies as a  
15 potential sort of traffic subject to agreements  
16 being made with them, but that's not the sole  
17 feature of this transitting provision.

18 There's tons of traffic that flows that I  
19 don't believe they have any basis to complain  
20 about whatsoever. And so there has to be some  
21 kind of transiting function. Or CLEC A would  
22 never be able to call CLEC B, and the wireless  
23 carriers wouldn't be able to reach the CLECs and  
24 the CLECs wouldn't be able to reach the wireless  
25 carriers. I mean, there's huge volumes of

1 traffic. So it's not the like the transiting  
2 function has been put in here for some nefarious  
3 reason of some surreptitious relationship to get  
4 to these third parties. It's standard language  
5 to cover huge volumes of traffic. And it  
6 preserves the opportunity for a different route  
7 to MO-KAN Dial, but it expressly acknowledges  
8 that we're not supposed to do it without an  
9 agreement with them. And if my clients violate  
10 that, I don't see how they have a defense. I  
11 mean, no lawyer will tell you that their clients  
12 won't do something stupid because clients do it  
13 every day. But if the agreement says we can't  
14 do it without permission, then I -- you know,  
15 I'll be coming in front of you saying, Well, I  
16 don't know how to explain this. I -- I don't  
17 have a defense. They agreed not to do it.

18 JUDGE JONES: Mr. Johnson?

19 MR. JOHNSON: I was just going to  
20 make a few simple points. For over six years,  
21 these agreements have been submitted containing  
22 language that says we'll create agreements with  
23 these third party carriers before we deliver  
24 traffic to the transitting carriers. For six  
25 years we have gotten that traffic. For six

1 years, we don't have any of those agreements.  
2 Of those six years, we haven't gotten paid.  
3 We've tried everything Mr. Lumley suggests. We  
4 brought complaints. They have been  
5 unsuccessful. We tried to block the traffic.  
6 We've been prohibited from blocking the traffic.  
7 We're unpaid. It's uncompensated. We have been  
8 prejudiced. He says it's time for them to prove  
9 what they're saying. This is the case. We're  
10 going to prove it in this case. This is the one  
11 that needs to go forward so we can demonstrate  
12 that that needs to be -- transit provisions need  
13 to be gotten out of these interconnection  
14 agreements.

15 JUDGE RUTH: You say agreements have  
16 never been made for payment, but Mr. Lumley, I  
17 think, has said that your access tariffs are a  
18 form of agreement. And you have access tariffs,  
19 right? So there have been those. You just  
20 haven't been paid under them.

21 MR. JOHNSON: Judge Ruth, that's  
22 correct. And what has to happen, it's a tariff  
23 that's been approved by the Commission. It's  
24 got the force and effect of the law. What has  
25 to happen is when somebody goes to the tandem

1 company that serves our end office and they say,  
2 We want to order access from you and when they  
3 order being access and they bring a trunk to  
4 Sprint tandem, they are automatically required  
5 to set up a business relationship with every end  
6 office that that's served by that tandem. So  
7 they come to MO-KAN Dial, they send an access  
8 order request. We set up a business  
9 relationship with them. All these things that  
10 constitute the business relationships are  
11 determined. We get paid. We know they're going  
12 to be delivering traffic to Sprint at the  
13 tandem. We know Sprint's going to send us a  
14 record and we know we're going to get paid.  
15 None of that happens when it gets snuck through  
16 an interconnection agreement that we haven't  
17 agreed to. And when we try to bill under our  
18 access tariffs, which the Commission has said  
19 we're entitled do for this traffic, they refuse  
20 to pay because they haven't done that, they  
21 haven't set up a business relationship with us.  
22 And Sprint and Southwestern Bell and Century Tel  
23 haven't tried to protect us from that happening.  
24 They just let the traffic come. They don't even  
25 police their own agreement to make sure they get

1 an agreement with us before they send the  
2 traffic to them. So I think the prejudice and  
3 discrimination is demonstrable. We just need an  
4 opportunity to prove it.

5 JUDGE JONES: Mr. Haas?

6 MR. HAAS: Yes. Thank you. I'd  
7 like to address a couple of points. It's the  
8 staff's position that generic records issues are  
9 not appropriate in this case. Those issues are  
10 being addressed in the signalling protocols case  
11 and in a rule making case. Second, earlier, I  
12 believe the question was posed how can the  
13 Commission or can the Commission decide this  
14 case without a hearing. It's the staff's  
15 position that the answer is yes, they could.  
16 The agreement provides that is the -- it is the  
17 originating party's responsibility to enter into  
18 arrangements with the third party where the  
19 traffic's been terminated. Speculation as to  
20 whether MO -- Comm South and ICG will meet that  
21 obligation is not sufficient grounds to reject  
22 the document. Thank you.

23 JUDGE RUTH: But if the third party  
24 is never going to get adequate records so they  
25 could ever say for sure whether or not they're

1 getting traffic for which they should get paid,  
2 if they don't have those, we know they don't  
3 have those records or suspect that they don't  
4 have those records, how could they ever get  
5 compensated? It's -- I don't want -- I mean,  
6 the Commission can't say the interconnection  
7 agreement looks fine. We know these third  
8 parties may get traffic for which they should  
9 get paid and we know that there are no records  
10 that would show them what they should get paid  
11 so they won't get paid, but oh, well. You're  
12 not -- I'm not sure I follow you.

13 MR. HAAS: You're leading -- there's  
14 speculation that these two companies won't enter  
15 into those agreements and won't get the  
16 necessary records to the terminating companies.

17 JUDGE RUTH: Would access tariffs be  
18 adequate, the access tariffs they already have  
19 -- do they have to make an additional agreement  
20 or are the access tariffs that they have in  
21 place adequate to meet that requirement? In  
22 other words, it -- it says that the parties, ICG  
23 will enter into agreements. The fact that the  
24 access tariffs exist, does that meet that  
25 requirement?

1                               MR. HAAS: May I defer to Mr. Voight  
2                               on that?

3                               JUDGE RUTH: Yes. I will swear you  
4                               in. However, this is not an evidentiary  
5                               hearing. I just want your answer to this  
6                               question. And if this comes up again at  
7                               hearing, you would have to testify again to the  
8                               same thing. Do you understand?

9                               MR. VOIGHT: Yes.

10                              JUDGE RUTH: Okay.

11                              WILLIAM VOIGHT,  
12                              being first duly sworn to testify the truth, the whole  
13                              truth, and nothing but the truth, testified as follows:

14                              JUDGE RUTH: Mr Voight, do you  
15                              understand the question?

16                              MR. VOIGHT: The question, as I  
17                              understand it, Judge, is would the access  
18                              tariffs be sufficient for the traffic in  
19                              discussion?

20                              JUDGE RUTH: Would it be sufficient  
21                              to meet the requirements of the interconnection  
22                              agreement, which say the parties shall have an  
23                              agreement in place? We already know that there  
24                              are these tariffs. Does that meet the  
25                              requirement to have an agreement in place?

1                   MR. VOIGHT: There's been a lot of  
2                   discussion about the need for the originating  
3                   carrier and the terminating carrier to have  
4                   agreements in place. And I believe on page 94  
5                   of this interconnection agreement, what that is  
6                   referring to is what is defined in the agreement  
7                   as local traffic. Okay? The need -- the need  
8                   for an interconnection agreement for the  
9                   exchange of switched access traffic, in my view,  
10                  is not contemplated in this agreement. We have  
11                  access tariffs that cover that. The only need  
12                  for an agreement between the originating carrier  
13                  and the terminating carrier is where the  
14                  exchange of what is defined in the agreement as  
15                  to local traffic. And this has been pointed  
16                  out. That is governed by the Commission's  
17                  decisions in the MCA plan, where they are  
18                  allowed full participation by the CLECs. And it  
19                  is bill and keep. Therefore, I'm not aware that  
20                  any interconnection agreement would be necessary  
21                  for Mr. Johnson's client here, which is, I  
22                  believe, MO-KAN Dial. In other words, it's  
23                  either local governed by the MCA or it's  
24                  intra-LATA toll governed by the access tariffs.  
25                  I mean, this notion of signing agreements to the



1 exchange of long distance traffic, I don't  
2 understand that concept at ll. It -- that never  
3 occurred.

4 JUDGE RUTH: But is that something  
5 that Sprint was implying is affected by the  
6 interconnection agreement?

7 MS. CREIGHTON HENDRICKS: No, your  
8 Honor. Sprint has not taken the position that  
9 the access tariffs would be impacted by the  
10 interconnection agreement.

11 JUDGE RUTH: Okay.

12 MS. CREIGHTON HENDRICKS: And we  
13 would agree with Mr. Voight.

14 MR. ENGLAND: And I'll make it easy.  
15 I agree whole-heartedly with what Mr. Voight's  
16 saying. The application of the tariffs versus  
17 the need for an interconnection agreement for  
18 local exchange of local traffic only. What  
19 we're saying is that by the terms of this  
20 interconnection agreement between Sprint and ICG  
21 and Sprint and Comm South, they are prohibiting,  
22 if you will, or at the very least making it much  
23 more difficult for us to apply our access  
24 tariffs to this traffic.

25 MR. VOIGHT: Judge, I have one more

1 point that I -- in my answer. As far as these  
2 two specific agreements, Missouri Comm South, I  
3 believe, is a prepaid reseller who has never  
4 provided a long distance call in its entire  
5 existence in the state of Missouri, which spans  
6 several years. So to -- to this notion that  
7 there's something existing going on, the passage  
8 of long distance traffic over the interexchange  
9 network by Missouri Comm South and that somehow  
10 or another these agreements would change that,  
11 I'm not aware that that has even occurred, that  
12 Comm South is even a long distance provider.  
13 And for the other carrier, ICG, staff just  
14 checked on break and their -- their most recent  
15 annual report, which they didn't even file,  
16 we're not aware that they even have any  
17 customers as of yet. So we're not aware --  
18 there's certainly nothing been established in  
19 this record that either one of these companies  
20 even have any customers currently.

21 JUDGE RUTH: You're saying that ICG  
22 did not file the 2002 report that was due April  
23 15th?

24 MR. VOIGHT: That's correct. Which,  
25 to us, would indicate they may not even be

1                   currently in business. We --

2                   JUDGE RUTH: If they have no  
3 customers but they're certificated, are they  
4 still required to file an annual report?

5                   MR. VOIGHT: I believe they're only  
6 required to file an annual report if they had  
7 revenue.

8                   JUDGE RUTH: Okay.

9                   MR. LUMLEY: And the staff alerted  
10 us in this situation in their recommendation,  
11 and the client is looking into what's happened.  
12 We weren't aware of it until we got the staff  
13 recommendation.

14                   MR. VOIGHT: So all I'm saying,  
15 Judge, is that having listened to this, these  
16 technical facts being presented to you, it is  
17 not a factual matter established in this record  
18 that either one of these two companies have ever  
19 sent any intra-LATA -- or local traffic, or MCA  
20 traffic to either the Small Telephone Company  
21 Group or MITG. But yet that has been  
22 represented to you today that somehow or  
23 another, these agreements change the current  
24 situation.

25                   JUDGE RUTH: So, Mr. Voight, are you

1 saying if the Commission were to approve the  
2 interconnection agreement that toll traffic from  
3 ICG would still have to go to Sprint to IXC back  
4 to Sprint and down to the third party?

5 MR. VOIGHT: No, Judge, I'm not  
6 saying that.

7 JUDGE RUTH: Okay.

8 MR. VOIGHT: To the extent that  
9 these two -- Comm South and ICG -- what they're  
10 getting in these agreements is something called  
11 unique P that they currently don't have? Okay?  
12 So they're already authorized to do business,  
13 but I think what the -- these agreements do,  
14 they offer them to do business in a new --  
15 through the use of unbundled network elements.  
16 In any regard, the -- if you will, resellers of  
17 Sprint's service, those companies would  
18 maintain, I'm convinced, that they have the same  
19 rights to transport traffic in exactly the same  
20 manner as Sprint, the underlying carrier, which  
21 is through the LEC to LEC network and not  
22 through the IXC network.

23 JUDGE RUTH: So it would be IXC,  
24 Sprint to end office of their party?

25 MR. VOIGHT: It would be originating

1 carrier, ICG to the Sprint tandem to the end  
2 office and not through the IXC.

3 JUDGE RUTH: Okay. And so under the  
4 interconnection agreement, they would perhaps do  
5 that, but you're saying that the payment would  
6 be in the access tariffs which hasn't been  
7 changed by the interconnection agreements?

8 MR. VOIGHT: That's correct. And  
9 not only that, but it -- I -- it is a -- I  
10 believe it has been established in other cases  
11 in working dockets and so forth, that Sprint --  
12 I acknowledge that there's a problem going to  
13 MO-KAN from Jefferson City that counsel  
14 referenced, but other than that, I believe that  
15 Sprint creates these category 11 records and  
16 gives them to the terminating carrier, to  
17 Mr. Johnson and Mr. England's clients so that  
18 they can bill the originating carrier, which is  
19 the exact same relationship as occurs in the IXC  
20 network that they -- that they advocate.

21 JUDGE RUTH: Okay. I believe one of  
22 the intervenors stated just a few minutes ago,  
23 though, that if the interconnection agreement  
24 were approved, it would make it more difficult  
25 for their clients to apply their access tariffs.

1           And I assume that was because the records  
2           wouldn't be as good as the records that they're  
3           getting when the call goes through the IXC  
4           company; is that correct?

5                         MR. ENGLAND:  Correct.

6                         JUDGE RUTH:  Do you agree with that  
7           statement?

8                         MR. VOIGHT:  No, Judge, I -- I  
9           cannot accept that statement.  As a matter of  
10          what I believe to be the facts are, it is the  
11          exact same record with the exception of it  
12          contains what is called an OCN number, which is  
13          an originating carrier number and not a CIC  
14          number, which is a Carrier Identification  
15          number.  Other than that fact, which is about  
16          four bits out of the entire record, those  
17          records are identical.  In other words, the CIC  
18          identifies the IXC carrier, be it AT&T or MCI.  
19          The OCN identifies the CLEC, which in this case  
20          would be ICG or Comm South.  And that is the  
21          only difference in the records.

22                         JUDGE RUTH:  So they would not be in  
23          any different position than if the call had gone  
24          through the IXC?

25                         MR. VOIGHT:  That is my testimony.

1 And it is my further testimony to the extent  
2 that there are new players in this industry who  
3 are not always paying their bills when they get  
4 them, there's nothing different about that  
5 situation than what has occurred in the IXC  
6 network for years.

7 JUDGE RUTH: Okay. Do you have a  
8 question for Mr. Voight?

9 JUDGE JONES: I don't. I have a  
10 question for Mr. Haas.

11 JUDGE RUTH: Okay. Let me say, Mr.  
12 Voight, then, you're down from the stand. And I  
13 want to clarify. I allowed him to testify not  
14 to decide the truth of that matter but so that I  
15 can try and understand what the issue or the  
16 allegation was there. Do you understand the  
17 difference, parties?

18 MR. LUMLEY: Yes.

19 MS. CREIGHTON HENDRICKS: (Witness  
20 nods head.)

21 JUDGE RUTH: Most of you do.

22 JUDGE JONES: With regard to the  
23 issue of discrimination, Mr. Haas, earlier it  
24 was said that between the ICG and the  
25 terminating companies, there is discrimination

1           because they are -- they aren't on -- they don't  
2           have equal bargaining power, I suppose, with  
3           Sprint. Is that a correct restatement of your  
4           argument?

5                         MR. ENGLAND: I'd say we don't have  
6           the benefit of the default billing arrangement  
7           where if we don't get records, Sprint's liable  
8           for it.

9                         JUDGE JONES: Mr. Haas, what's  
10          staff's position on that issue of discrimination  
11          or looking at discrimination from that aspect?

12                        MR. HAAS: We would agree with Mr.  
13          Lumley's statement on that.

14                        JUDGE RUTH: Which was?

15                        MR. HAAS: I believe he had said  
16          that this bilateral agreement cannot affect the  
17          intervenors' tariffs and agreements so that they  
18          are not being discriminated against.

19                        JUDGE JONES: Okay. I don't have  
20          any other questions. I do want to point out,  
21          though, that we've talked about a lot of  
22          technical things that in a larger sense I  
23          believe are relevant, but specific to our cases,  
24          the Commission just simply needs to decide  
25          whether or not the agreement is discriminatory



1 or against public interest. Earlier,  
2 Mr. Johnson, you said that the Commission can  
3 reject certain aspects of the agreement. I  
4 don't know that that's true.

5 MR. JOHNSON: I don't have the  
6 statute in front of me, your Honor, but I -- it  
7 was my recollection of 47 USC 252 E something  
8 said discrimination claim could be -- the  
9 agreement or portions thereof discriminate  
10 against carriers not party to the agreement.  
11 And I don't think there's any case law on this  
12 that I'm aware of, but it was just my  
13 interpretation that the Commission is not  
14 limited to rejecting the entire agreement, but  
15 the Commission is empowered to reject those  
16 portions of agreement, in this case, the transit  
17 provisions of the agreement that they do believe  
18 discriminate against carriers that aren't  
19 parties to the agreement.

20 JUDGE JONES: Okay. Would you agree  
21 then that if the agreement or portions of the  
22 agreement is discriminatory, then the Commission  
23 can reject the agreement, but not portions of  
24 it? It's just because portions are  
25 discriminatory, the Commission can then reject

1 the whole agreement but not just a part of it?  
2 How do we do -- what effect would the agreement  
3 have if we reject a portion of it?

4 MR. JOHNSON: Then it --

5 JUDGE RUTH: In other words, is that  
6 feasible to reject certain pieces and not the  
7 whole thing?

8 MR. JOHNSON: In my opinion, it is  
9 because then the agreement's only limited to  
10 reciprocal traffic that they exchange between  
11 the two of us them, which is my understanding of  
12 what the Telecom Act of 1996 was intended to do.  
13 Open up local competition and creates a new  
14 animal in the interconnection agreements that's  
15 designed to be between two local competitors  
16 that are going to compete and the incumbent has  
17 got an obligation to connect with that local  
18 competitor and they're going to negotiate a  
19 reciprocal compensation agreement for traffic  
20 they originate, transport and terminate to each  
21 other. It's the extension of that concept to  
22 transit traffic that's not going to those two  
23 companies that's creating this entire problem.  
24 And, in my opinion, if you just reject the  
25 transit provisions of this agreement, and by

1 virtue of doing that you eliminate just the  
2 traffic that the two of them exchange, no  
3 problem.

4 JUDGE JONES: I agree that that  
5 would be the practical effect of it. The  
6 problem, though, is now the Commission is into  
7 shaping those contracts. I don't believe we can  
8 do that. I think we can only accept the  
9 contract or reject it.

10 MR. JOHNSON: I have not done  
11 research or really much thought. I just assumed  
12 from the language in the Act that said or  
13 portions thereof that that somehow gave the  
14 Commission the authority just to reject the  
15 portions thereof that discriminate against a  
16 carrier that's not a party to that. I have no  
17 authority for that. You might be right, your  
18 Honor.

19 MS. CREIGHTON HENDRICKS: Judge  
20 Jones, can I respond to that or --

21 JUDGE JONES: Go right ahead.

22 MS. CREIGHTON HENDRICKS: I think  
23 the language of the agreement is set up so the  
24 action on the agreement is to either reject it  
25 or approve it. When it goes to the grounds upon

1           when you can reject or approve, that's when it  
2           references or portions thereof, if you found  
3           portions thereof discriminatory. So the only  
4           action the Commission can make is either to  
5           reject or approve it. I did spend some time  
6           researching it, and I have cited one case in my  
7           pleading, though I must admit that was stated --  
8           it was not the holding of the case. And it was  
9           stated in the dissenting portion of the Supreme  
10          Court case, I think it was, but it was just kind  
11          of written not the holding of the case, just the  
12          Judge happened to write -- say based on the  
13          language, that's all the Court can do.

14                       MR. LUMLEY: If I may follow-up on  
15          that as well? The -- I guess first I'd point  
16          you to the -- the proposed rule that I believe  
17          has been formally filed with the Commission by  
18          the staff. But I don't know that the Commission  
19          has taken the next step of ordering publication.  
20          I don't -- I don't think that's occurred yet in  
21          terms of interconnection agreements. But it has  
22          been filed, I believe. And that contemplates  
23          the Commission rejecting the entire agreement  
24          but stating this is what we had a problem with  
25          and if you did X, Y and Z, we wouldn't have a

1           problem anymore.  So that -- I know the  
2           Commission hasn't endorsed that, but that's one  
3           position that's been put forward.  I would agree  
4           with Mr. Johnson that the statute talks about  
5           rejection of an agreement or portions thereof.  
6           But I would also agree that the contract itself  
7           and the rights of the parties, it -- to the  
8           extent the Commission strikes out a sentence, I  
9           think the parties have to have the right to try  
10          and sort out between themselves whether that has  
11          other ramifications on the four corners of the  
12          agreement.

13                         JUDGE RUTH:  So if it did, you could  
14          choose not to have that interconnection  
15          agreement between you two?

16                         MR. LUMLEY:  Or there might be other  
17          provisions that we need to voluntarily, mutually  
18          revise to take into account that something's  
19          been stricken.  And so I think from an  
20          implementation point of view, there has to be  
21          some opportunity to say, Here's the areas that  
22          are a problem.  And if -- and we're not going to  
23          approve the agreement, but if you fix those and  
24          then the parties have the right to not only fix  
25          those but check for collateral impacts.  I mean,

1 I know the contract does have a severability  
2 clause that says once it's in effect if some  
3 provision is held invalid, the rest of the  
4 contract stays in place. I haven't found the  
5 section yet that talks about Commission's  
6 approval process which I believe Ms.  
7 Creighton Hendricks was referring to. But there  
8 would be a contract provision that says this has  
9 to be approved, you know, all or nothing. And  
10 that -- if the parties agree to that, that would  
11 supplement the statute. But we can point that  
12 out if -- if we need to. And -- and in that  
13 vein, in terms of portions of the agreement, it  
14 causes me great concern to -- and I -- I this  
15 Mr. Johnson is unintentionally overstating what  
16 his objections are. Because when he suggests  
17 that the agreement be solely limited to traffic  
18 exchanged between those two companies, that's  
19 just not the way the industry works. There are  
20 all the other CLECs that have traffic that have  
21 to be exchanged. There's all the other wireless  
22 carriers. I believe what he means to say is  
23 that he doesn't want to see provisions about  
24 traffic being transitted to third party ILECs  
25 that operate outside of the Sprint territory.

1           So I'm very concerned about his statements being  
2           potentially misconstrued in terms of the relief  
3           they're seeking. I oppose their request for  
4           relief. But, I mean, it would be devastateing  
5           for this company not to be able to exchange  
6           traffic with all the other CLEC that's are in  
7           business and the wireless carriers that are in  
8           business. What they're specifically objectig to  
9           is traffic that we don't even believe is going  
10          to occur unless and until there is some new plan  
11          and we reach an agreement with them or comply  
12          with their access tariffs. Not assert that  
13          their access tariffs there are there, but comply  
14          with their access tariffs. And compliance means  
15          telling them the traffic's there. I mean, he --  
16          and as Mr. Voight's indicated, you know,  
17          establishing the relationships.

18                         JUDGE JONES: Well, without  
19          rehashing everything that we've talked about  
20          today, and I know that's probably difficult for  
21          some attorneys, we would like to hear from each  
22          of you. I would especially like to hear your  
23          arguments concerning discrimination and public  
24          interest. And I -- with changing provisions in  
25          the agreement or IXC's and tandems and Sprint

1 and ICG going back and forth, just how this  
2 agreement is discriminatory or against public  
3 interest. Just those two issues. Mr. England?

4 MR. ENGLAND: Thank you, your Honor.  
5 And I will try to be brief, although I'm  
6 probably not that good at it. As I said, I  
7 think the -- there's discrimination on several  
8 levels. The first is the fact that by taking  
9 what I consider to be traditional toll traffic  
10 over the IXC network, via the transit of toll  
11 traffic, that is discriminatory. That delivers  
12 traffic to us or facilitates the delivery of  
13 toll traffic to us in a manner that's not the  
14 same as all of the other interexchange carriers  
15 do today. And so I think that's discriminatory.  
16 It sets up a special arrangement for ICG if and  
17 when it takes advantage of it to send toll  
18 traffic down to this third party LEC. And while  
19 they say they'd be subject to the exchange  
20 access tariff of this third party LEC makes it  
21 very difficult, if not impossible to actually  
22 apply that in practice. The second level of  
23 discrimination is if you believe it's  
24 appropriate for these agreements to take toll  
25 traffic, to address toll traffic of the transit



1 of toll traffic, take it off the IXC network and  
2 send it to the third parties, then at the very  
3 least, these third parties should have the same  
4 rights and benefits that ICG has when Sprint  
5 transits that toll traffic back to ICG. We  
6 should get the same records and we have should  
7 have the default billing arrangement that ICG  
8 has. And the disparity in the treatment of ICG  
9 and the third party in my opinion, is a second  
10 level of discrimination.

11 JUDGE JONES: Thank you,  
12 Mr. England. Mr. Johnson?

13 MR. JOHNSON: Your Honor, he -- the  
14 only thing I can think to add to that that would  
15 require me to explain the difference that in my  
16 clients between somebody has only owns its own  
17 end office and somebody that has its on access  
18 tandem and I really don't think we would need to  
19 go there today because it would just open us up  
20 to some more wailing and knashing of teeth.

21 JUDGE JONES: That's fine. Ms.  
22 Hendricks?

23 MS. CREIGHTON HENDRICKS: Thank you.  
24 You have saved me from wailing and knashing my  
25 teeth.

1 MR. JOHNSON: Maybe it's not  
2 working.

3 MS. CREIGHTON HENDRICKS: With  
4 regard to discrimination, as we had maintained  
5 in our pleading, the MTI -- or MITCG and STG are  
6 similarly situated to the CLECs and to the  
7 wireless carriers that are directed to our  
8 network and they are treated in the same manner.  
9 With respect to all those carriers, there is an  
10 acknowledgment in our agreement that it is the  
11 responsibility responsibility of the party  
12 originating the traffic to ensure that  
13 agreements or arrangement are made with those  
14 third parties who receive their traffic.  
15 Therefore, there is no discrimination.

16 Furthermore, to the extent I understand  
17 the majority of the argument being made by the  
18 intervenors for discrimination, it is truly a  
19 records issue. It's an issue of whether or not  
20 they get sufficient records to bill the traffic.  
21 Because they have admitted that with the same  
22 record, they're similarly situated. They get  
23 the same record and they're entitled to bill the  
24 party that originated the call. So I do not  
25 believe that it is a discrimination issue that

1 needs to be addressed in the context of  
2 approving or rejecting this interconnection  
3 agreement. And with respect to the broader  
4 public interest issue, which is really the  
5 transitting traffic, should these  
6 interconnection agreements have provisions that  
7 transit traffic? The answer is yes. And the --  
8 it -- it does not violate the public interest.  
9 As a matter of fact, it promotes the public  
10 interest. First of all, there's a federal  
11 obligation to indirectly connect and to offer  
12 that and to offer it at the tandem, through  
13 which traffic can be transitted.

14 Second of all, as Mr. Lumley has brought  
15 up a couple of times, it is the manner in which  
16 the public network works. A CLEC customer who  
17 wants to call a customer of another CLEC has to  
18 have the ability to transit that traffic. A  
19 wireless customer who wants to call a customer  
20 of ICG has to have the ability to transit  
21 traffic because it is not feasible nor I think  
22 demonstrates a lack of the feasibility has it  
23 been suggested here that a company should have  
24 to have direct connections with each one of  
25 Craig and Tripp's clients. Transiting traffic

1 is the method through which the public network  
2 operates. And that is why it's a part of the  
3 interconnection agreement. So I would request  
4 that it remain in the agreement and the  
5 agreement be approved as is.

6 JUDGE JONES: Thank you.  
7 Mr. Lumley?

8 MR. LUMLEY: I support the comments  
9 that Ms. Creighton Hendricks just made, and I  
10 would just, again, point out that the analysis  
11 of the the two questions that you've raised,  
12 which is the statutory standards and the  
13 question of whether a hearing is required can  
14 both be answered by the fact that you can't  
15 achieve the relief that these companies want  
16 in this proceeding. Whatever comes in our  
17 contract is not going to affect their rights  
18 Because there's nothing in here where we agree  
19 not to do something with them. We don't agree  
20 to prohibit each other from negotiating deals  
21 with them. Instead, we affirmatively recognize  
22 an obligation to make arrangements with them.  
23 Because we are not affecting their rights, they  
24 can't be discriminated against and there is not  
25 a public interest question raised by this

1 agreement. Now, there are public interest  
2 questions that surround the generalized concern  
3 that these companies have that are being  
4 addressed in other proceedings on an industry  
5 wide base, I -- which is the only way that  
6 effective relief can be granted. I would point  
7 out that it's discriminatory against ICG to be  
8 denied the same agreement that's been allowed  
9 for numerous other carriers against which it  
10 must compete.

11 I was able to find -- Section 3.1 of the  
12 contract talks about regulatory approvals and  
13 does acknowledge that if there's a problem with  
14 the specific section, the parties will negotiate  
15 in good faith such substitute provisions are  
16 needed to achieve approval. And I think that's  
17 consistent with what I was saying, that if  
18 there's a -- a limited portion of this language  
19 that causes concern, rather than striking the  
20 whole agreement, the Commission should alert us  
21 to that and let the parties sort that out in a  
22 brief period of time.

23 And I also wanted to -- to correct one  
24 thing that's stated in the pleadings, and I  
25 forget which of the intervenors stated it. But

1           just to be clear, the federal statute does not  
2           require a hearing before this Commission on  
3           these issues. And, in fact, whatever decision  
4           the Commission makes on these issues will not be  
5           reviewed by anyone. Instead, the federal court  
6           will review the ultimate agreement, holds its on  
7           evidentiary proceedings in accordance with the  
8           rules of federal court and make a determination  
9           as to whether there's a problem. So the  
10          Commission is not -- and I'm not saying you're  
11          prohibited from holding a hearing. I think  
12          that's probably within your discretion. But the  
13          statute does not mandate it, nor will any facts  
14          that you take be considered, you know, a record  
15          on review, such as we're used to in the  
16          traditional sense of a Commission decision that  
17          goes to our state courts. Instead the statute's  
18          very clear that it's the agreement itself that  
19          will be reviewed by a federal court.

20                        And so with that on top of the fact that  
21          they've not asked for any relief that can be  
22          granted here, that's why we maintain that no  
23          hearing is required and the Commission should  
24          proceed with approval of the agreement.

25                                JUDGE JONES: Thank you. Mr. Haas?

1                   MR. HAAS: Yes, your Honor. This  
2 agreement does not purport to -- to limit the  
3 arrangements between the third party terminating  
4 company and the originating parties, so it --  
5 they are still free to negotiate between  
6 themselves to work out the arrangements so the  
7 third party, terminating party, does not  
8 discriminate against.

9                   JUDGE RUTH: I just want to comment  
10 that there have been a few questions that were  
11 raised and unanswered. And the one I'm thinking  
12 off the top of my head had to do with something  
13 that Sprint --

14                   MS. CREIGHTON HENDRICKS: The  
15 records, was it?

16                   JUDGE RUTH: I believe so. You  
17 indicated you didn't have the information.

18                   MS. CREIGHTON HENDRICKS: Correct.  
19 I, currently, as I sit here, do not possess the  
20 ability to tell you the details of our records.  
21 I could provide summaries -- as I understand it,  
22 you want the records that would be generated in  
23 connection with a CLEC transitted call and  
24 compare it to the records that are generated in  
25 connection with the IXC delivered call? Is

1           that --

2                         JUDGE RUTH:  Yes.  A lot of issues  
3           -- other issues have also been raised here.  So  
4           I want to ask the parties if you feel the need  
5           to brief any of this to further explain?  I'm  
6           not ordering it.  I'm asking.

7                         MR. ENGLAND:  I think before I can  
8           answer that, I need to know what type of  
9           procedure we are going to follow for the  
10          remainder of the period within which you have as  
11          to fish or cut bait on this interconnection  
12          agreement.  If you're going to agree with  
13          Mr. Lumley, I believe, who suggested you don't  
14          have to hold a hearing, then at the very least,  
15          yes, I'd like it brief this for you.

16                        JUDGE RUTH:  Well, let me tell you  
17          that I still have a question as to whether or  
18          not a hearing is necessary.  And I've read  
19          what's been provided and I don't think it  
20          answers that question.  And I have a -- you  
21          know, particularly, for staff, I -- I don't  
22          think it's been explained to my satisfaction,  
23          once the issue of discrimination has been raised  
24          or that an agreement is against the public  
25          interest, how can that be decided without having



1 a hearing, particularly, when we have parties  
2 here that have some factual issues that affect  
3 that question? And I would to some extent like  
4 to hear from staff on that question and any  
5 other party. But, actually, I wasn't going to  
6 force you to get into that. But that's the  
7 first question the Commission has to make. And  
8 they've not made that decision. If you wanted  
9 to weigh in on that, you would need to tell me  
10 and you could include any other information  
11 that's been raised. But we would have to do  
12 this fairly quickly because previously I'd  
13 asked, you know, just before the hearing,  
14 prehearing conference started the court reporter  
15 asked if she could expedite this transcript.  
16 And we had talked about perhaps Tuesday or  
17 Wednesday. I realize this has probably gone  
18 longer than she anticipated, and it may be  
19 Wednesday, and I would assume you might want the  
20 transcript before you file your brief. On the  
21 other hand, the Commission can't wait too long  
22 if we're going to get briefs. It would have to  
23 be, I would think, by next Friday.

24 MR. LUMLEY: My observation would be  
25 that since nothing that's been said today that

1 constitutes factual evidence, including because  
2 of the way you described how you were taking  
3 Mr. Voight's testimony that we shouldn't need  
4 the transcript because it's not facts to rely  
5 on. We're strictly going to be making legal  
6 arguments to you. You know, we should be  
7 generally aware of what we said today.

8 JUDGE RUTH: That's true. It would  
9 be helpful.

10 MR. LUMLEY: I don't personally view  
11 that as a limitation on being able to get a  
12 brief to you. I would be comfortable briefing  
13 without the transcript.

14 JUDGE RUTH: Keeping in mind that I  
15 think several questions were raised that not  
16 every party perhaps felt they got an adequate  
17 time to respond, that's why I thought it would  
18 be helpful is -- but if you're willing to brief  
19 it without --

20 MR. LUMLEY: Well, I was talking  
21 about the question of whether a hearing is  
22 required or necessary.

23 JUDGE RUTH: You're right on where a  
24 hearing is necessary. If you wanted to  
25 follow-up on anything else, though, I would

1 think the transcript would be helpful.

2 MR. LUMLEY: I don't personally have  
3 a desire to do that unless the bench indicates  
4 that they need more information on a specific  
5 point.

6 JUDGE RUTH: I was hoping to get a  
7 little bit much information but not argument  
8 from Sprint as to the record.

9 MR. LUMLEY: Right.

10 JUDGE RUTH: There was -- there were  
11 a couple of cases mentioned. I think we know  
12 the case numbers. If it's any different, I was  
13 expecting someone to tell me in a pleading that  
14 the case numbers were not the ones we mentioned.  
15 But I don't have to have any brief on the other  
16 points. Did you want to add --

17 MR. JOHNSON: I was just going to  
18 suggest that it seems to me the Commission has  
19 got an initial decision they need to make fairly  
20 quickly about whether or not they're going to  
21 conduct a hearing before they make a decision in  
22 this case. If that is the option they select,  
23 maybe we would be advised to pick a procedural  
24 schedule today. I'm a little nervous with just  
25 saying let's brief all these issues including

1 the issue of whether we want a hearing. If the  
2 Commission has to act by September 3rd, we  
3 barely have a month and a half. And if they do  
4 decide we want a hearing, then there's not a  
5 whole lot of time to schedule that hearing. And  
6 it would just seem to me -- and I'm just sitting  
7 here without having the benefit of reviewing the  
8 precedent. But I know that the review of this  
9 decision the Commission makes in this case is  
10 going to go to the federal courts. But I have a  
11 difficult time believing the federal court is  
12 going to do a de novo trial to create a record  
13 upon which it's going to make a decision. I  
14 think if this Commission is going to enter an  
15 order, this Commission has to base that  
16 order on a record of some sort in order to that  
17 to be reviewed by the federal court. We're  
18 making some new law here. And the statute's --  
19 the federal statute's not clear in that regard.  
20 But the suggestion that we're going to go make a  
21 record for the first time in front of the  
22 federal court I think is -- is -- I'm not sure  
23 I'm convinced that that's the way the federal  
24 court's going to handle it.

25 JUDGE RUTH: For the parties that

1 are interested in giving more input on the  
2 question of whether a hearing is necessary,  
3 would you be able to provide briefs on that  
4 topic by Tuesday or Wednesday?

5 MS. CREIGHTON HENDRICKS: Your  
6 Honor, I have a hearing that is scheduled to go  
7 all next week. I'm hoping it will be done by  
8 Wednesday. So I would not be able to brief that  
9 issue by Tuesday. I could roll the dice and  
10 hope it would be done by Wednesday.

11 JUDGE RUTH: Judge Jones is kind.  
12 He thinks that Friday would be adequate. I will  
13 say that earlier in the day on Friday would be  
14 better than later.

15 JUDGE JONES: I think Friday would  
16 be adequate because it -- if the question of the  
17 hearing was addressed and a proposed procedural  
18 schedule is also filed, then at least that will  
19 -- I mean, that assumes, of course, that we have  
20 a hearing. But in the event that we do, it  
21 would be nice to be able to go from there.

22 MR. JOHNSON: Are there any hearing  
23 dates available in August?

24 JUDGE JONES: Well, Judge Ruth has  
25 just pointed out to me that in our order, we

1 ordered that the proposed procedural schedules  
2 be filed by July 16th.

3 JUDGE RUTH: But based on what we've  
4 talked about today, I would suggest that that  
5 requirement be suspended. Briefs be filed by  
6 next Friday, which is the 18th.

7 MS. CREIGHTON HENDRICKS: The 11th,  
8 isn't that next Friday? Today's the 11th.  
9 Yeah. Yeah. 18th. Yeah.

10 JUDGE RUTH: That briefs be filed by  
11 the 18th only on the issue of whether a hearing  
12 is necessary. And that would allow the  
13 commissioners to discuss this topic on the  
14 following Tuesday. If they want a hearing, they  
15 would probably order that a hearing be filed or  
16 a proposed procedural schedule be filed that  
17 week. So the parties might want to among  
18 yourselves be talking about that eventuality.  
19 But we would suspend the -- the actual  
20 requirement that a procedural schedule be filed  
21 at this time. And that would limit briefing to  
22 only the question of a hearing. And if the  
23 Commission decides that a hearing is necessary,  
24 if any party felt like they wanted to follow-up  
25 from -- with briefs on today's prehearing

1 conference, you could raise that issue.  
2 Or you could just wait until -- and hash it out  
3 through the hearing process. Is that  
4 acceptable?

5 MR. LUMLEY: (Mr. Lumley nods head.)

6 MS. CREIGHTON HENDRICKS: (Ms.  
7 Creighton Hendricks nods head.)

8 MR. JOHNSON: (Mr. Johnson nods  
9 head.)

10 JUDGE RUTH: I see no one's  
11 disagreeing, so that's what we'll do. Both  
12 cases suspend the proposed procedural  
13 scheduling. Briefs are suggested but not  
14 required on the question of whether a hearing is  
15 necessary. I'm expecting just a little bit of  
16 information from Sprint on records, not  
17 argument, just how similar are the documents.

18 MR. JOHNSON: We're talking about  
19 looking at existing records as opposed to  
20 hypothetical records.

21 JUDGE RUTH: To some extent they'll  
22 have to be hypothetical if such traffic has  
23 never been transitted. And if --

24 MR. JOHNSON: Can you -- can you  
25 order those to be served upon all parties in

1 case there needs to be a response? I know that  
2 it's possible we're not being served because --  
3 we have been granted intervention now.

4 JUDGE RUTH: You were only granted  
5 intervention Thursday -- Tuesday, just recently,  
6 and you should be being served since then.

7 MS. CREIGHTON HENDRICKS: I was  
8 going to serve you with those documents.

9 JUDGE RUTH: And once you're a  
10 party, you are supposed to get a copy of  
11 everything. Now, once Sprint gets back to it,  
12 you may find that the records don't exist to  
13 answer my question, in which case, file  
14 something so that I won't be waiting. Okay?

15 MS. CREIGHTON HENDRICKS: Yes,  
16 ma'am.

17 JUDGE RUTH: Does anyone have  
18 anything else you need to follow up with?

19 MR. ENGLAND: Mr. McCartney has  
20 reminded me depending on where we go from here,  
21 depending on what type of information Sprint has  
22 to provide you, do we need a protective order?  
23 And if so, would it be wise to go ahead and  
24 issue one at this point?

25 JUDGE RUTH: I would actually need



1 the motion filed, I think, before we would grant  
2 the protective order.

3 MS. CREIGHTON HENDRICKS: Your  
4 Honor --

5 JUDGE RUTH: I mean, I don't think  
6 that you would need a protective order for the  
7 brief on whether a hearing is necessary.

8 MR. ENGLAND: No. No. I'm --

9 JUDGE RUTH: If you're wanting to  
10 start doing something else in preparation for  
11 perhaps having a hearing --

12 MR. ENGLAND: I'm not sure what  
13 Sprint's going to provide in response to your  
14 immediate request, whether that needs to be --

15 MS. CREIGHTON HENDRICKS: I do not  
16 anticipate it will. I imagine that I'm going to  
17 describe what's probably contained in a typical  
18 1101 that you receive from an IXC and compare  
19 that to what we would generate. And after  
20 hearing Mr. Voight, I anticipate it -- it would  
21 not be a -- a document that would contain  
22 proprietary information.

23 JUDGE RUTH: That's what I'm  
24 expecting.

25 MS. CREIGHTON HENDRICKS: Right.

1 JUDGE RUTH: Mr. Voight has  
2 suggested the type of records would be  
3 identical, except one has an I.D. number of an  
4 IXC and the other has an I.D. number of an ICG  
5 or whomever. I wouldn't want -- I would like  
6 for Sprint to either confirm or further explain  
7 if they think there's something else that should  
8 be added, something else that's different  
9 besides what staff has indicated. And -- Mr.  
10 Lumley?

11 MR. LUMLEY: For purposes of our  
12 discussion about a potential schedule, how far  
13 in advance of September 3rd does the matter have  
14 to be heard and submitted?

15 JUDGE RUTH: Very early August.

16 MR. LUMLEY: What does that mean?  
17 Before the 22nd, he says hopefully?

18 JUDGE RUTH: Before the 22nd of  
19 August?

20 MR. LUMLEY: Is that early August?

21 JUDGE RUTH: Way before the 22nd.

22 JUDGE JONES: Within the first  
23 couple weeks.

24 JUDGE RUTH: I think the second week  
25 would be adequate, but the third week would be

1 really pushing it.

2 MR. LUMLEY: The problem I face is  
3 that I'll be in the Michigan from the 7th  
4 through the 17th, so that would limit me to the  
5 4th through the 6th, and I don't know if those  
6 are available dates on the Commission's  
7 calendar.

8 JUDGE RUTH: When we conclude the on  
9 the record portions, you're welcome to come up  
10 with any -- anyone who wants to and look at the  
11 calendar and get some ideas. If you as parties  
12 agree on some tentative dates if this should go  
13 to hearing you can tell Judge Jones or myself  
14 and we can actually reserve those, any of them,  
15 just in case because they may disappear in the  
16 next week.

17 MS. CREIGHTON HENDRICKS: May we  
18 consolidate the cases for the purpose of the  
19 hearing?

20 JUDGE RUTH: You can request that.

21 MS. CREIGHTON HENDRICKS: Okay.

22 JUDGE RUTH: I would prefer that you  
23 do it in writing and explain your reasons why.  
24 I don't know for sure that it's going to be  
25 granted. We also have the issue that Comm South

1 didn't appear today and I'm not sure whether  
2 anything will be done about that. But it's  
3 something I think we'll discuss.

4 MR. ENGLAND: Would it be  
5 appropriate, then, to take a default judgment on  
6 that one at this time?

7 JUDGE RUTH: Somebody might want to  
8 raise a default judgment issue. That would be  
9 interesting, wouldn't it? But I would require  
10 that to be in writing.

11 MR. ENGLAND: One other item. Would  
12 you like to have this made an exhibit for  
13 purposes of the oral discussion we've had today  
14 in case if someone wants to follow it?

15 JUDGE RUTH: I think that would be  
16 helpful if you want to offer it.

17 MR. ENGLAND: I'll do so.

18 JUDGE RUTH: Okay. We would mark  
19 this diagram as Exhibit 1 for the prehearing  
20 conference. I understand it's only being  
21 offered so that someone following the testimony  
22 would have a document then to refer to to  
23 understand the discussion. I didn't mean to say  
24 testimony. The discussion. Are there any  
25 objections to this document being admitted into

1 the record? Okay. Seeing none, it is admitted  
2 as Exhibit 1. Since we only have the one copy,  
3 I will see about getting -- they're going to  
4 have to, you know, somehow, shrink that and put  
5 it into EFIS.

6 MR. ENGLAND: We can take it out to  
7 Kinko's, I believe, and make copies. Would you  
8 prefer 8 and a half by 11 size?

9 JUDGE JONES: Yes.

10 JUDGE RUTH: Yes. I think so.

11 MR. LUMLEY: Given the nature of the  
12 document, I personally wouldn't have an  
13 objection to someone recreating it.

14 JUDGE RUTH: Typing and recreating  
15 it?

16 MR. LUMLEY: As opposed to going to  
17 the expense of recreating -- I mean, it's not  
18 complicated for somebody to recreate it.

19 JUDGE RUTH: Why don't -- are you  
20 willing to do that?

21 MR. ENGLAND: Wait a minute I spent  
22 a long time on that.

23 MR. JOHNSON: England's Museum of  
24 Fine Art.

25 JUDGE RUTH: I think it would

1                   probably reproduce better and show up on the  
2                   electronic filing system and all the copies  
3                   perhaps perhaps if you just typed it and  
4                   submitted that.

5                   MR. ENGLAND:   Okay.  We can do that.

6                   JUDGE RUTH:   By next Tuesday,  
7                   perhaps.

8                   MR. ENGLAND:   No problem.

9                   JUDGE RUTH:   Okay.  Anything  
10                  further?  Then the prehearing conference is  
11                  adjourned.  You can stay in this room as long as  
12                  you like so long as you tell Joann when you're  
13                  finished.  If anyone wants to go upstairs, we'll  
14                  look at the calendar and see if there are dates  
15                  you want to reserve just in case.

16                  (The proceedings were concluded at 12:45  
17                  p.m. on July 11, 2003.)

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REPORTER'S CERTIFICATE

STATE OF MISSOURI    )  
                                      )ss.  
COUNTY OF OSAGE     )

I, Monnie S. VanZant, Certified Shorthand  
Reporter, Certified Court Reporter #0538, and  
Registered Professional Reporter, and Notary Public,  
within and for the State of Missouri, do hereby certify  
that I was personally present at the proceedings as set  
forth in the caption sheet hereof; that I then and  
there took down in stenotype the proceedings had at  
said time and was thereafter transcribed by me, and is  
fully and accurately set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal on July 14, 2003.

\_\_\_\_\_  
Monnie S. VanZant, CSR, CCR #0539  
Registered Professional Reporter