

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing

February 25, 2009

Jefferson City, Missouri
Volume 1

In The Matter Of The Verified)
Petition of Sprint)
Communications Company, L.P.,) Case No.
Sprint Spectrum L.P., And) CO-2009-0239
Nextel West Corp. For)
Arbitration Of Interconnection)
Agreements with Southwestern)
Bell Telephone Company)
d/b/a as AT&T Missouri)

NANCY M. DIPPELL, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE

WILLIAM VOIGHT, ADVISORY STAFF

REPORTED BY:

Pamela Fick, RMR, RPR, MO CCR #447
Midwest Litigation Services

1 APPEARANCES:

2
3 LEO J. BUB, Senior Counsel
4 SBC Missouri
5 One SBC Center, Room 3520
6 St. Louis, MO 63101
7 (314)235-4300
8 leo.bub@att.com

9 FOR: AT&T Missouri.

10
11 KENNETH SCHIFMAN, Attorney at Law
12 Sprint Communications Company
13 6450 Sprint Parkway
14 Overland Park, KS 66251
15 (913) 315-9783
16 kenneth.schifman@sprint.com

17
18 JEFF PFAFF, Attorney at Law
19 Sprint Communications Company
20 6450 Sprint Parkway
21 Overland Park, KS 66251
22 (913) 315-9294
23 jeff .m.pfaff@sprint.com

24
25 FOR: Sprint Communications Company.
Nextel West
Sprint Spectrum, L.P.

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

2 (EXHIBIT NOS. 1, 2, 3 P, 3 NP, 4 AND 5
3 WERE MARKED FOR IDENTIFICATION BY THE COURT
4 REPORTER.)

5 JUDGE DIPPELL: Good morning. This is
6 Case No. CO-2009-0239, the Verified Petition of
7 Sprint Communications Company, L.P., Sprint Spectrum,
8 L.P. and Nextel West Corporation for Arbitration of
9 Interconnection Agreements with Southwestern Bell
10 Telephone Company, doing business as AT&T Missouri.

11 My name is Nancy Dippell. I'm the
12 regulatory law judge and the arbitrator that has been
13 assigned to this case. I also have sitting on the
14 bench with me my advisory staff, Bill Voight, who's a
15 member of the Commission's telecommunications staff.

16 We are going to -- we come here today
17 for an arbitration here and we're going to begin.
18 We've premarked exhibits. We're going to begin with
19 entries of appearance, and then we'll start with
20 opening statements. So we can start with Sprint.

21 MR. SCHIFMAN: Thank you, Judge. My
22 name is Ken Schifman representing the Sprint
23 companies that are named in the petition here today.

24 MR. PFAFF: Good morning. My name is
25 Jeff Pfaff also representing the Sprint companies

1 named in the petition.

2 JUDGE DIPPELL: All right. And AT&T.

3 MR. BUB: Good morning, your Honor. Leo
4 Bub for AT&T Missouri.

5 JUDGE DIPPELL: Thank you. We can begin
6 with Sprint. You can either come up here or you can
7 stay seated there, whichever you prefer.

8 MR. PFAFF: Thank you, Judge Dippell,
9 Mr. Voight, may it please the Commission. Despite
10 its tortured history, this should be a relatively
11 straightforward case.

12 Since the Commission has ruled it has
13 jurisdiction to consider this arbitration, the
14 Commission must now determine if the merger
15 commitments require AT&T to extend Sprint's
16 interconnection agreement in Missouri for three years
17 or should AT&T be allowed to place arbitrary
18 deadlines not contained in the merger commitments
19 that limit carriers like Sprint's ability to extend
20 their existing interconnection agreements.

21 The language and the intent of the
22 merger commitments is clear. The Commission should
23 order AT&T to extend Sprint's ICAs for three years
24 from Sprint's extension request.

25 In 2006 AT&T merged with Bell South. As

1 part of that merger, AT&T made certain promises,
2 including promises that it would allow requesting
3 carriers ease in obtaining interconnection
4 agreements. The FCC granted the merger subject to
5 those conditions governing AT&T's behavior through
6 June 2010.

7 One of the merger conditions was that
8 AT&T agree that any carrier could extend its current
9 ICA for three years. Under the heading "Reducing
10 Transaction Costs Associated with Interconnection
11 Agreements," Merger Commitment 4 states: "The AT&T
12 Bell South ILECs shall permit a requesting
13 telecommunications carrier to extend its current
14 interconnection agreement regardless of whether its
15 initial term has expired for a period up to three
16 years subject to amendment to reflect prior and
17 future changes of law. During this period the
18 interconnection agreement may be terminated only via
19 the carrier's request unless terminated pursuant to
20 the agreement's default provisions."

21 Sprint has three current interconnection
22 agreements with AT&T, one for our CLEC, one for
23 Sprint PCS and one for Nextel West. I will generally
24 refer to, and Mr. Schiffman will generally refer to
25 Sprint to encompass all three entities.

1 The interconnection agreement with
2 Sprint CLEC was approved by the Missouri Commission
3 in August 2005. The Sprint PCS ICA was approved by
4 the Missouri Commission in 2003 and the Nextel West
5 ICA has been in operation since 1999. These ICAs
6 have been subsequently amended but never replaced.
7 All parties agree that the parties have continued to
8 operate under the terms and conditions of those ICAs.

9 Now, in direct contradiction of the
10 merger commitment, AT&T believes that these
11 agreements are no longer appropriate to do business
12 under even though they have been in effect for many
13 years.

14 As this Commission knows, in November
15 2007, Sprint notified AT&T of its election to port
16 the Kentucky ICA into Missouri under a different
17 merger condition. AT&T objected to this election and
18 filed this Motion to Dismiss. The Commission granted
19 AT&T's Motion to Dismiss, holding that the Commission
20 only had jurisdiction if Sprint filed the petition
21 for arbitration. While Sprint disagreed with that
22 decision, it followed the Commission's direction and
23 filed this arbitration.

24 Meanwhile, in the Bell South states,
25 AT&T had opposed Sprint's request to extend those

1 ICAs. First, AT&T claimed that the state commissions
2 did not have jurisdiction to interpret and enforce
3 merger commitments. Then, despite the clear language
4 of the extension commitment, AT&T claimed that ICAs
5 could only be extended for three years beyond the
6 original term of the ICA.

7 In September 2007 the Kentucky
8 Commission rejected AT&T's interpretation, finding no
9 such limitation in the language of the commitment and
10 ruled that Sprint's ICAs could be extended.

11 On July 1st Sprint filed a Section 252
12 request with AT&T. The parties negotiated through
13 the rest of the summer and throughout the negotiation
14 period. Then, during several conversations during
15 this period and then by letter dated November 21st,
16 2008, Sprint informed AT&T of its election to extend
17 its current ICA under the fourth merger commitment.

18 On December 5th, AT&T informed Sprint
19 that its request was denied because the request was
20 received after the arbitrary deadline set by AT&T for
21 extension requests for ICAs whose initial term had
22 expired. Then in Mr. McPhee's rebuttal testimony, he
23 offers another reason why the ICAs cannot be
24 extended. Those agreements, in his view, are not
25 current, even though the parties have continued to

1 operate under those agreements and the parties have
2 not replaced those ICAs with any other ICA.

3 It's clear to Sprint that AT&T doesn't
4 plan to allow Sprint to utilize any of the merger
5 commitments through one reason or another. Then when
6 Sprint opened this arbitration window and while the
7 parties continued to discuss the porting of the
8 Kentucky ICA, it became clear to Sprint that the
9 parties continued to be far apart on some fundamental
10 issues. Further action would be necessary to resolve
11 those differences.

12 And given that the Kentucky ICA's term
13 would expire at the end of the year, further
14 agreements on that -- further efforts on that
15 agreement didn't make sense. So in an effort to
16 obtain replacement ICAs under some form of
17 streamlined approach, Sprint sought to extend its
18 current ICAs, but AT&T continues to oppose this
19 effort.

20 First, it filed its Motion to Dismiss.
21 Then it indicated that the ICAs -- ICAs had expired
22 and that any extension would only be added to the
23 original term. This was the approach taken by AT&T
24 in the Bell South states and rejected by the Kentucky
25 Commission. Then AT&T relied on a self-serving

1 accessible letter that it prepared that establishes
2 an arbitrary deadline for carriers seeking
3 extensions, an arbitrary deadline that is not
4 included anywhere in the merger commitments and a
5 deadline that, to Sprint's knowledge, was never
6 submitted to nor approved by the FCC.

7 Now AT&T comes up with a new argument
8 that the ICAs are not current. This, despite the
9 fact that Sprint and AT&T continue to operate under
10 the terms and conditions of those ICAs. AT&T has
11 already extended other carriers' interconnection
12 agreements, even those whose initial terms have
13 expired. They have refused to grant Sprint's request
14 simply because Sprint didn't feel bound by AT&T's
15 unilateral declarations of when such a request needed
16 to be made.

17 It's time for the Commission to end
18 endless objections and obstacles erected by AT&T
19 preventing Sprint from utilizing the merger
20 commitments to reduce its transaction costs related
21 to obtaining interconnection agreements with AT&T.

22 Sprint respectfully requests that this
23 Commission grant Sprint's relief, extend the current
24 ICAs in accordance with Merger Commitment 4
25 commencing with our request date of November 21st,

1 2008. Thank you.

2 JUDGE DIPPELL: Thank you. AT&T?

3 MR. BUB: Good morning, Judge. Good
4 morning, Mr. Voight. With the experience you have,
5 I'm confident that you know that when two large,
6 sophisticated companies like AT&T and Sprint bring a
7 matter here for resolution that there's always two
8 sides to that story, and we're here to explain ours
9 and there's more to it than you've been told.

10 But before I get too far into our case,
11 I'd like to introduce our two AT&T witnesses that are
12 here with me today. Our first witness is going to be
13 Lynn Allen-Flood. She's our lead negotiator with
14 Sprint. She's the one that actually conducted the
15 face-to-face interconnection negotiations with
16 Sprint.

17 Now, she's never testified at a public
18 utility commission before and it's not a regular part
19 of her job to testify, but we thought it was
20 important for her and for you to appear today so that
21 you could -- so that she could recount firsthand to
22 you what actually happened.

23 Our second witness is Scott McPhee.
24 He's one of our associate directors in our group that
25 handles wholesale policy matters. You may remember

1 him from his testimony in other cases because he's
2 appeared here before. Now he's testifying on our
3 company's position on the merger commitments before
4 us today.

5 Now let's turn to our case. Sprint has
6 complained here about its inter -- inability to reach
7 a new interconnection agreement with AT&T. I need to
8 tell you that we too had hoped to have new agreements
9 by now, and it's no secret that we've reached
10 agreements with thousands of other carriers all
11 across the country. We just can't seem to do that
12 here with Sprint.

13 Here, our folks have spent an inordinate
14 amount of time and resources working with Sprint to
15 reach agreement, but we've been unsuccessful in doing
16 that. While Sprint's frustration is clear, you need
17 to know that such -- such frustration is
18 self-inflicted by Sprint and that AT&T too is
19 frustrated.

20 After all, it was AT&T that terminated
21 the parties' interconnection agreements as those
22 agreements contemplated by their own terms in order
23 to try and get the parties into new current
24 agreements, and that AT&T has spent thousands of
25 person hours on that effort, and so far to no avail.

1 Now, let me tell you why Sprint's
2 frustration is self-inflicted. The negotiations that
3 were conducted for Missouri actually grew out of
4 seeds from negotiations at the national level. These
5 negotiations preceded the merger commitments. For
6 over a year prior to the commitments, the parties
7 conducted extensive negotiations for new agreements
8 for our nine states' southeast region. Although
9 difficult, they were successful and a tentative
10 agreement was reached.

11 But while AT&T was preparing final
12 contracts for signature, along came the merger
13 commitments. We were very surprised when Sprint told
14 us that they were no longer interested in going
15 forward with the agreements that we had reached and
16 instead wanted to port its agreement from Kentucky
17 pursuant to Merger Commitment 7.1.

18 Now, you have to remember, the purpose
19 of those commitments was to reduce transaction costs
20 associated with interconnection agreements, and since
21 we were nearly done with new nine state agreements
22 for Sprint, we really didn't understand how it could
23 be a reduction in transaction costs to scrap all that
24 work and completely change direction, especially
25 because of all the work that would be required to

1 modify that Kentucky agreement so it could be ported
2 to other states.

3 As you know, Merger Commitment 7.1
4 doesn't allow an agreement to be ported from one
5 state to another as is. Rather, the commitment
6 specifically conditions that porting on conforming
7 the agreement to state-specific pricing, performance
8 plans, technical feasibility and state law and
9 regulatory requirements.

10 So when a carrier wants to port an
11 agreement from one state to another under that
12 commitment, we need to scour through the agreement
13 for such state-specific technical, legal or
14 regulatory requirements and make the necessary
15 adjustments. It's a very tedious and time-consuming
16 task.

17 So when Sprint changed course and sought
18 to adopt the Kentucky agreement under Merger
19 Commitment 7.1, we had asked ourselves why. Why
20 would they do this when we were nearly finished with
21 the new nine-state agreements? When -- when we got
22 further into that Kentucky agreement with Sprint, we
23 realized what they were up to. You see, the Kentucky
24 agreement was unique.

25 For starters, it was a combined wireless

1 wireline agreement all rolled into one, and it
2 provided for local traffic to be exchanged between
3 the parties on a bill-and-keep basis. That means
4 that neither party pays anything to the other to
5 terminate a local call. Usually a carrier that
6 terminates another carrier's local call gets paid the
7 local reciprocal compensation rate to cover its cost
8 to terminate that call.

9 Many state commissions like ours here in
10 Missouri rule that bill-and-keep is only appropriate
11 when the traffic being exchanged is roughly balanced
12 between the parties, but there were no qualifiers
13 like that in the Kentucky agreement for the
14 bill-and-keep provision.

15 So in seeking to port the Kentucky
16 agreement to Missouri and other states, Sprint's goal
17 was to impose bill-and-keep on AT&T even when the
18 traffic wasn't balanced. With this proposal, Sprint
19 potentially sought to avoid millions of dollars in
20 reciprocal compensation payments to AT&T. And
21 essentially, that would have resulted in a shift of a
22 major portion of Sprint's cost of doing business to
23 AT&T and its customers. And not surprisingly, we
24 resisted.

25 And when we told Sprint that their

1 proposal went against state law and regulatory
2 commission requirements that said that bill-and-keep
3 was only appropriate when the traffic was relatively
4 balanced, they had different reactions in different
5 states.

6 Our refusal to allow them to have that
7 and other similar provisions led to proceedings in
8 states like Missouri and complaints and other
9 arbitration proceedings. And in Missouri, that
10 complaint that Sprint filed was dismissed by the
11 Commission here on jurisdictional grounds.

12 And frankly, it is that bill-and-keep
13 provision and some other issues that we had with the
14 Kentucky agreement that we expected Sprint to present
15 here for arbitration. That's because all the
16 substantive negotiations the parties had for Missouri
17 focused on that Kentucky document.

18 If you go back into the testimony, and
19 you'll see it as an attachment to Sprint's
20 arbitration petition here, we sent a July 16 letter
21 to Sprint telling them that we preferred negotiating
22 from our generic agreement and we didn't want to
23 negotiate from the Kentucky document. And in that
24 letter, there was a footnote that also indicated our
25 willingness to start with our existing agreements as

1 we were required to do under Merger Commitment 7.3,
2 but Sprint rejected both of those options.

3 Sprint's August 18 letter makes clear
4 that it insisted on using the Kentucky red-line
5 agreement. Our September 2nd letter also makes clear
6 that we finally relented, and those letters you can
7 find as Exhibits 4, 5 and 6 to Sprint's arbitration
8 petition.

9 As Mr. Pfaff indicated, for months the
10 parties worked off the Kentucky red-line agreement to
11 conform it for use in Missouri. If you wanted to
12 look in Scott McPhee's direct testimony, it's
13 Schedule I P. That's just one of the many sections
14 from the Kentucky red-line draft that's the general
15 terms and conditions portion of the agreement.

16 There, you'll see reflected the parties'
17 substantive positions on the issues in that section.
18 You'll also see noted on the face of that section in
19 red-line, discussion about where the parties were on
20 that bill-and-keep issue that I discussed earlier.
21 We had issues, they had issues, and they were all
22 reflected in the various sections of the red-line
23 draft that were exchanged between the parties.

24 So when you look at Schedule I in the
25 testimony of both parties, it should be clear that to

1 the extent the parties were negotiating under 252 of
2 the act, we had many remaining open issues from those
3 discussions. And it should also be clear that
4 neither party has presented those issues here for
5 arbitration.

6 Apparently, the Commission believes that
7 the parties were negotiating under 252 using the
8 current agreements as a starting point for
9 negotiations and had a disagreement about the term of
10 the agreements that they were negotiating. Well --
11 well, if that was the case, you know, certainly that
12 term, that duration issue would be an arbitrable
13 issue, but that's not what happened and that's not
14 what the parties are negotiating about.

15 Remember we were told by Sprint that it
16 was again changing course for the second time just
17 weeks before the arbitration filing deadline. From a
18 practical standpoint, when Sprint formally notified
19 us on the Friday before the Thanksgiving holidays
20 that it wanted to extend the terminated -- terminated
21 agreements, it left us insufficient time to analyze
22 those agreements and make any type of
23 counterproposal.

24 But if the Commission believes that the
25 Section 252 negotiations occurred using existing

1 agreements as a starting point, it needs to
2 understand that there were many other unresolved
3 issues, issues that we had and the issues that
4 neither party presented for arbitration because of
5 the 11th-hour timing of Sprint's extension requests.
6 Consequently, the Commission's resolution of this one
7 issue's duration really won't yield an
8 interconnection agreement.

9 Now, Sprint's answer to that, of course,
10 is that the only thing that needs to be cited here is
11 a duration question because the merger commitment
12 entitles it to an extension of an existing agreement
13 as-is, no room for negotiations. That exposes what
14 we believe is a fundamental error in the Commission's
15 decision denying a Motion to Dismiss.

16 What we have here is not an arbitrable
17 disagreement about the term of interconnection
18 agreement that's being negotiated under the act, but
19 a nonarbitrable disagreement about Sprint's
20 entitlement to extend under the merger commitment.

21 Now, we recognize that the Commission
22 denied our motion on this point and that we're
23 required to move forward with arbitration, and we're
24 going to do that, but we wanted to make our
25 disagreement with the ruling clear and preserve our

1 objection which we will set out in more detail in an
2 application for rehearing at the appropriate time.

3 Now I'd like to focus on why the
4 Commission should deny Sprint's request to extend its
5 expired agreement under Merger Commitment 7.4. That
6 commitment requires AT&T to permit a requesting
7 telecommunications carrier to extend its current
8 interconnection agreement regardless of whether its
9 initial term has expired for a period of up to three
10 years.

11 This language on its face allows the
12 addition of three years to a carrier's current
13 agreement. Its reference to the initial term makes
14 it even more clear that the extension is to be keyed
15 off of the end of the initial term.

16 Sprint, on the other hand, wishes to add
17 language to the -- to the commitment that just isn't
18 there. It wishes the Commission that that -- it
19 wishes the Commission to read the commitment as
20 requiring AT&T to extend the agreement an additional
21 three years, not from the end of the initial term as
22 the merger commitment indicates, but from the date of
23 Sprint's request.

24 In the case of the Sprint Spectrum
25 agreement, that would not be a three-year extension

1 of the agreement, but a seven-year extension, and for
2 its Nextel agreement, an eight-year extension.
3 That's not what the language of the commitment
4 allows; moreover, when those two agreements had
5 already terminated under their own provisions when
6 Sprint made its extension request and they couldn't
7 be extended because they're not current.

8 We do acknowledge that the plain
9 language of the commitment would have permitted the
10 extension of Sprint's landline agreement to April 29,
11 2011, and that's three years from the extension date.
12 However, Mr. Pfaff indicated we indicate -- we denied
13 the extension of that agreement under our
14 November 16, 2007 accessible letter we issued, not
15 under the merger commitment.

16 As indicated in Mr. McPhee's direct
17 testimony, Sprint and other carriers took issue with
18 our application of Merger Commitment 7.4 complaining
19 that it provided no benefit to their old agreements.
20 While AT&T continued to believe its reading was
21 correct, it modified its application of that
22 commitment in order to resolve the differences.

23 Under our accessible letter, we in
24 effect provided a grace period for agreements that
25 expired prior to January 15, 2008. As long as the

1 carrier submitted a request by that date, we were
2 willing to extend the agreement three years from the
3 date of that request.

4 And for agreements expiring after its
5 January 15, 2008, we were willing to extend the
6 agreement for three years as long as the request was
7 made prior to the agreement's expiration and the
8 initial term was to expire prior to the merger
9 commitment's sunset date.

10 As Mr. McPhee testified, Sprint took
11 advantage of the accessible letter's grace period to
12 extend many of its agreements with us. In fairness,
13 we believe that having done so, Sprint should not be
14 allowed to ignore the deadline for making a request
15 under the accessible letter.

16 Now, I need to be clear. We're not
17 claiming that the merger commitment contemplated the
18 deadlines set forth in the accessible letter --
19 letter. Rather, we issued the accessible letter in
20 order to resolve disputes with carriers, first and
21 foremost, Sprint, about our implementation of the
22 merger commitments.

23 Now, the accessible letter, it included
24 some gives and takes. It gave Sprint the benefit of
25 an extension to which the merger commitment didn't

1 actually entitle Sprint, but it required Sprint to
2 avail itself of those rights by a specific date in
3 order to enjoy that benefit.

4 Sprint did not avail itself of that
5 right -- it did avail itself of that right throughout
6 AT&T's southeast region. And having done so, Sprint
7 should not now in all fairness be allowed to disavow
8 the deadline that we associated with that extension.

9 But if the Commission decides not to
10 enforce our accessible letter, it should nevertheless
11 focus on the plain language of Merger Commitment 7.4,
12 and in doing so, only Sprint's wireline agreement
13 would be eligible for extension. The extension
14 request for Sprint's Spectrum and Nextel agreements,
15 the wireless agreements, those should be denied.
16 Thank you.

17 JUDGE DIPPELL: Thank you very much.
18 Okay. And I didn't exactly go over the procedure
19 here today, and since we do have some witnesses that
20 don't usually testify before us, I will just kind of
21 run through what happens when you come up here.

22 We have -- since we've had prefiled
23 written direct and rebuttal testimony, what we
24 usually do is have the party call the witness, you're
25 sworn in, they usually ask you some preliminary

1 questions about your testimony in order to admit that
2 testimony as a whole as is written as direct
3 testimony, and then we allow the opposite side to ask
4 cross-examination questions.

5 And then after that, I may have some
6 questions for the witnesses, and I allow the
7 cross-examiner to ask questions following up on the
8 questions I asked, and then at the very end we allow
9 a redirect time for the witness's attorney to ask
10 some -- some clarifying questions about all of the
11 testimony before it.

12 And that's pretty much how that goes.
13 If you have any questions about the procedure, you
14 can let me know. Did you have some, Mr. Schiffman?

15 MR. SCHIFMAN: No. I was --

16 JUDGE DIPPELL: You were getting ready
17 to go, okay.

18 MR. SCHIFMAN: -- just getting ready to
19 call my witness, Judge.

20 JUDGE DIPPELL: Then we'll have Sprint
21 call its first witness.

22 MR. SCHIFMAN: Thank you, Judge. We'd
23 like to call our first witness and only witness,
24 Mark G. Felton.

25 (The witness was sworn.)

1 JUDGE DIPPELL: If you could spell your
2 name for the court reporter.

3 THE WITNESS: My name is Mark, M-a-r-k,
4 Felton, F as in Frank, e-l-t-o-n.

5 JUDGE DIPPELL: Thank you.
6 Mr. Schiffman, you may continue.

7 MR. SCHIFMAN: Thank you, Judge.

8 DIRECT EXAMINATION BY MR. SCHIFMAN:

9 Q. Mr. Felton, whom do you work for?

10 A. I work for Sprint.

11 Q. Okay. And what is your position at
12 Sprint?

13 A. I am a contract negotiator.

14 Q. Okay. And are you here representing
15 the -- the three Sprint companies that are named in
16 Sprint's verified petition for arbitration?

17 A. Yes.

18 Q. And Mr. Felton, did you prepare your
19 direct testimony which has been marked as Exhibit 1,
20 consisting of 16 pages in question-and-answer format
21 and including Exhibits MGF-1, MGF-2 and MGF-3?

22 A. Yes, I did.

23 Q. Do you have any changes in your direct
24 testimony, Exhibit 1?

25 A. I have one minor nonsubstantive change.

1 It's on page 7, line 3. Delete the first occurrence
2 of the word "is." And that's the only change I have
3 to my direct testimony.

4 Q. And Mr. Felton, if I asked you those
5 questions today that are contained in your direct
6 testimony, Exhibit 1, would your answers be the same
7 with the change that you just indicated?

8 A. Yes.

9 Q. And are -- is the testimony and the
10 exhibits attached thereto true and accurate to the
11 best of your knowledge and -- and belief?

12 A. Yes, it is.

13 Q. Okay. Mr. Felton, we'll turn now to
14 your rebuttal testimony that's been marked as
15 Exhibit 2. It consists of ten pages in
16 question-and-answer format; is that right?

17 A. Correct.

18 Q. And do you have any changes to that
19 testimony?

20 A. I do. On page 8, footnote 6, insert the
21 words "page 4" before the words "line 14" -- "lines
22 14 through 16."

23 Q. So that footnote would read "McPhee
24 testimony, page 4, lines 14-16"; is that right?

25 A. Correct.

1 Q. Okay. Do you have any other changes to
2 Sprint Exhibit 2?

3 A. I do not.

4 Q. Okay. And if I asked you those
5 questions today that are contained in Exhibit 2,
6 would your answers be the same with that one change
7 that you indicated?

8 A. Yes, they would.

9 Q. And is that rebuttal testimony,
10 Exhibit 2, true and accurate to the best of your
11 knowledge and belief?

12 A. Yes, it is.

13 MR. SCHIFMAN: Okay. Judge, I would
14 like to move Exhibits 1 with its -- with their
15 accompanying schedules, MGF-1, MGF-2 and MGF-3 and
16 Exhibit 2 into the record and make Mr. Felton
17 available for cross-examination.

18 JUDGE DIPPELL: Would there be any
19 objections to Exhibits 1 or 2?

20 MR. BUB: No, your Honor.

21 JUDGE DIPPELL: Then I will receive them
22 into the record.

23 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 JUDGE DIPPELL: And Mr. Bub, you may

1 cross-examine.

2 MR. BUB: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. BUB:

4 Q. Good morning, Mr. Felton.

5 A. Good morning, Mr. Bub.

6 Q. I'd like to first focus on Sprint's
7 June 30, 2008 letter from Fred Broughton to Lynn
8 Allen-Flood, AT&T, that was Exhibit 5 to Sprint's
9 arbitration petition. Do you have that letter with
10 you?

11 A. I do not. If you have a copy, I'd
12 appreciate that.

13 MR. BUB: May I approach the witness,
14 your Honor?

15 JUDGE DIPPELL: Yes. And tell me again
16 which letter that is, Mr. Bub.

17 MR. BUB: Could we have Mr. Felton
18 describe it? Because he has it right now.

19 JUDGE DIPPELL: Oh, go ahead.

20 THE WITNESS: Okay. I -- I believe you
21 stated it was Exhibit 5 to Sprint's arbitration
22 petition. It is a letter from a Sprint negotiator,
23 Fred Broughton to Ms. Lynn Allen-Flood, I believe in
24 response to AT&T's notice --

25 BY MR. BUB:

1 Q. Well, why don't we -- I'll ask some
2 specific questions maybe to get us on track here.

3 That's actually Sprint's letter
4 requesting negotiations that led to today's
5 arbitration proceeding, isn't it?

6 A. If I -- if I could, could I have a
7 moment to read --

8 Q. Sure, absolutely.

9 A. -- read the entire letter, please?

10 Q. Absolutely. I just thought you were
11 familiar with it. I apologize.

12 MR. SCHIFMAN: Can we go off the record
13 for a second?

14 (DISCUSSION HELD OFF THE RECORD.)

15 JUDGE DIPPELL: We had a little
16 interruption there. We -- we were trying to get the
17 witness some documents. And let me just pause for
18 just a second and ask counsel if there's a plan to
19 offer the entire petition and its exhibits as an --
20 as an exhibit?

21 MR. SCHIFMAN: Yes, there is, Judge.
22 And we have copies for everybody here, so we would
23 just offer the petition and all of its accompanying
24 exhibits as one exhibit here in this matter.

25 JUDGE DIPPELL: And would there be any

1 objection from AT&T?

2 MR. BUB: No, your Honor.

3 JUDGE DIPPELL: Okay. Let's go ahead,
4 then, and mark that petition and its exhibits as
5 Exhibit No. 6.

6 (EXHIBIT NO. 6 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 MR. SCHIFMAN: Would there be any
9 problem if I hand these out?

10 (DISCUSSION HELD OFF THE RECORD.)

11 JUDGE DIPPELL: Go ahead and proceed,
12 Mr. Bub.

13 MR. BUB: Thank you, your Honor.

14 BY MR. BUB:

15 Q. Let's -- let's go back to that June 30
16 letter, and I think I made a mistake by calling it
17 Exhibit 5. It's actually Exhibit 3 to your petition.

18 A. Okay.

19 Q. Okay. Have you had a chance to take a
20 look at that letter?

21 A. I have.

22 Q. Okay. And that's Sprint's letter
23 requesting the negotiations that led to today's
24 arbitration proceedings?

25 A. Yes, it is. This was a -- I believe --

1 to put it in context, immediately following the
2 Commission's ruling in our complaint proceeding
3 determining that they did not have jurisdiction --

4 Q. Okay.

5 A. -- to rule on Sprint's complaint.

6 Q. And it specifies Sprint's preference for
7 using the Kentucky red-line interconnection agreement
8 as a starting point for negotiations in Missouri; is
9 that correct?

10 A. Yes.

11 Q. It's correct that it does not seek to
12 use the parties' existing Missouri agreement as a
13 target point?

14 A. That is correct.

15 Q. Sprint could have made such a request at
16 that time, right?

17 A. Certainly could have.

18 Q. Had a right to do so under Merger
19 Commitment 7.3?

20 A. Sure. Our preference clearly was to
21 port the Kentucky agreement, and we believe that
22 using the Kentucky agreement as our starting point
23 for negotiations would get us as near to that result
24 as -- as possible.

25 Q. And you chose not to use the existing

1 agreement as a starting point; is that correct?

2 A. That is correct.

3 Q. Okay. Do you have AT&T's response?

4 Now, that's our July 16th letter which should be
5 Exhibit 4.

6 A. Yes, I do.

7 Q. Okay. Would you read for me that
8 footnote 1 of that letter, AT&T offered the existing
9 agreement as a starting point?

10 A. I'm sorry. Did you ask me if I would
11 agree with you or --

12 Q. Yes.

13 A. The footnote says that Sprint would like
14 to commence negotiations pursuant to its existing
15 Missouri interconnection agreement. "AT&T Missouri
16 is willing to do so in accordance with Merger
17 Commitment 7.3." And I would presume that means they
18 were willing to start from the existing agreement.

19 Q. We also offered to begin negotiations
20 from the generic CLEC wireless service provider
21 template agreements; is that right, defined in the
22 third paragraph?

23 A. Sure -- yes.

24 Q. Okay. But Sprint rejected both of
25 those, right?

1 A. Well, I -- clearly, as I've stated, our
2 preference was to begin with our Kentucky -- with the
3 Kentucky agreement as a starting point. So if you
4 want to characterize that as rejecting, then sure, we
5 rejected that.

6 Q. Okay. And that's reflected in your
7 August 18 letter which is Exhibit 5 to Sprint's
8 petition?

9 A. Yes.

10 Q. Okay. And it's correct that AT&T
11 finally agreed to go ahead and use the Kentucky
12 red-line document as it stood at that point for a
13 starting point in Missouri?

14 A. I believe that's true, yes.

15 Q. And that's reflected in Exhibit 6 which
16 is an AT&T letter?

17 A. Yes.

18 Q. Okay.

19 A. It did say that.

20 Q. And you agree that the parties did
21 indeed use the Kentucky document as a starting point
22 for Missouri negotiations?

23 A. Yes, the parties did conduct -- conduct
24 negotiations using that document.

25 Q. Okay. Did you personally participate in

1 the Missouri negotiations?

2 A. Well, I participated in some of the
3 negotiations. I don't know that they were specific
4 to Missouri because we were negotiating a -- an
5 agreement that would have covered the 13 Legacy AT&T
6 states. I participated in discussions regarding a
7 unbundled network elements. I was not involved in
8 the majority of the negotiations, but I did
9 participate in some.

10 Q. Okay. So you have some familiarity with
11 what transpired during the Missouri negotiations?

12 A. Yes, I have general familiarity with
13 that.

14 Q. Okay. What's the basis of that
15 knowledge?

16 A. Conversations with my colleague, Fred
17 Broughton. I was aware that what was going on with
18 our complaint and subsequent starting of the window
19 and filing of the arbitration petition and kind of
20 generally aware of where we were in the process.

21 Q. Okay. I'd like to go back now to the
22 series of letters between the parties that we just
23 discussed earlier. You agree that each of those
24 letters is a very formal letter?

25 A. I -- I don't know what constitutes "very

1 formal," but I agree that it is on company letterhead
2 and it's from a representative of one party to a
3 representative of the other party.

4 Q. Would you agree that all letters from
5 both parties are pretty carefully worded?

6 A. I'm sure there was attorney involvement
7 in the drafting of these letters.

8 Q. And there's good reasons to be careful,
9 right?

10 A. Sure.

11 Q. Okay. So in those letters, the parties
12 are articulating their various positions?

13 A. Absolutely, yes.

14 Q. And you know, if you look at the
15 letters, the parties provide citations to the various
16 laws and regulations that they believe apply?

17 A. Yes.

18 Q. And the parties where they think it
19 appropriate, include statements preserving various
20 rights so they aren't to be perceived to be like --
21 to be waiving anything; is that correct?

22 A. Sure.

23 Q. And then -- so you'd agree that in an --
24 in an important matter like this, the parties each
25 want to make sure that there's no misunderstanding of

1 what actions they're taking or what's being proposed?

2 A. I would agree with that, yes.

3 Q. So to document that through the letters?

4 A. Yes.

5 Q. Okay. An example in Sprint's June 30
6 letter, it sets out Sprint's view of the negotiation
7 timeline and the arbitration window, right?

8 A. Yes, it does.

9 Q. Okay. So if AT&T disagreed with that
10 timeline, would you have expected AT&T to express
11 that disagreement in writing and set out its own view
12 of the appropriate timeline?

13 A. If the roles were reversed, I would have
14 expected Sprint to set it out in a letter. I'm not
15 sure what AT&T would have done, but --

16 Q. That's an important matter the parties
17 typically try and document?

18 A. Yeah, I think generally so, yes.

19 Q. Would you -- you'd agree that the
20 parties take similar care with the red-line draft
21 agreements that they exchange?

22 A. Yes.

23 Q. Okay.

24 A. Well, I'm not sure -- are you saying
25 that a formal letter accompanies those red-line

1 drafts?

2 Q. That they're careful?

3 A. Oh, absolutely.

4 Q. That they set out their positions
5 carefully in those documents, right?

6 A. Yes.

7 Q. Put in specific language that they want
8 for a particular term or condition?

9 A. Sure, sure.

10 Q. Okay. And you're aware that the parties
11 did, in fact, negotiate using that Kentucky red-line
12 agreement?

13 A. Yes, they did.

14 Q. And they exchanged several versions?

15 A. Yes.

16 Q. Okay. For example, the general terms
17 and conditions portion that Mr. McPhee attached to
18 his direct testimony as Schedule 1 P, you've seen
19 that, haven't you?

20 A. I have, yes.

21 Q. Okay. And that's an example of red
22 lines being exchanged back and forth, right?

23 A. It's -- it's an example. It's probably
24 fairly indicative of red lines. Obviously, some
25 attachments are going to have considerably more red

1 lines than others, and attachment 3 would have been
2 probably the reddest of them all.

3 Q. And that's just how the parties worked?

4 A. Which -- yes, which attachment 3 is the
5 interconnection section which is generally where most
6 of the disagreements between the parties arise.

7 Q. It reflects what's closed and what's
8 still open in -- with -- with respect to that
9 attachment?

10 A. Yes. Different parties do it different
11 ways. My recollection is AT&T does denote what has
12 been resolved between the parties.

13 Q. Okay. If the parties had gone forward
14 with an arbitration here over that Kentucky
15 agreement, they would have used that red-line to
16 populate their decision point list that corrects all
17 the issues for the Commission to decide, right?

18 A. Yes.

19 Q. Okay. And the parties would have worked
20 on that together?

21 A. I think so, yes.

22 Q. We talked earlier about Sprint's request
23 to negotiate using the Kentucky document as a
24 starting point, and that was Exhibit 3, that letter.
25 Would you agree that Sprint never requested to use

1 the parties' existing agreements as a starting point
2 for negotiations in Missouri?

3 A. In this negotiation, yes, I would agree
4 with that.

5 Q. Okay. Had you chosen that option using
6 the existing agreements as a starting point for
7 negotiations, is it your understanding that AT&T
8 would have had a right to propose changes to that
9 existing Missouri agreement?

10 A. If Sprint had elected to negotiate from
11 the parties' current interconnection agreement, AT&T
12 would have had the right?

13 Q. Yes, sir. Well --

14 MR. SCHIFMAN: Let me object first
15 because he's asking for a legal conclusion about what
16 AT&T's rights are. I think it's calling for
17 speculation and legal conclusion.

18 MR. BUB: Your Honor, he's the lead
19 negotiator and I think he's -- and I think in his
20 testimony he's also testified that he's, you know,
21 familiar with the act and how the negotiations work.
22 I'm asking for his understanding and if I didn't, you
23 know, I'd be happy to have the question read, is it
24 his understanding.

25 JUDGE DIPPELL: Can the court reporter

1 read me back the question?

2 (THE COURT REPORTER READ BACK THE
3 PREVIOUS QUESTION.)

4 MR. BUB: I have no trouble modifying
5 that question, would it be your understanding that
6 AT&T would have had the right.

7 JUDGE DIPPELL: I'll let him answer your
8 modified question.

9 THE WITNESS: Well, my response to that
10 would be if Sprint had elected to negotiate an
11 agreement pursuant to Merger Commitment 7.3 and begin
12 with the current agreement as the starting point for
13 negotiations, then, yes, AT&T would have had the
14 right to propose modifications for that.

15 However, we didn't elect to negotiate an
16 agreement pursuant to Merger Commitment 7.3. We
17 elected to extend our current agreement pursuant to
18 Merger Commitment 7.4, and under that Merger
19 Commitment, I would not agree that AT&T has the right
20 to propose modifications to that agreement. We have
21 the right under Merger Commitment 7.4 to extend our
22 current interconnection agreement without
23 modification.

24 BY MR. BUB:

25 Q. You'd agree that the parties never

1 conducted any substantive negotiations using their
2 existing agreements, right?

3 A. Well, I -- again, I don't know what
4 you -- exactly what you mean by "substantive," but I
5 do -- as I've stated in my prefiled testimony, the
6 parties did discuss the extension of the current
7 agreement in the context of negotiations that they
8 conducted, and I guess that's pretty substantive.

9 Q. Do you agree that the parties never
10 exchanged red-line drafts of their existing reserve
11 agreements?

12 A. I'll go back to the answer of -- to the
13 question two questions ago and there was no reason to
14 exchange red-line drafts. All we elected to do at
15 that point was to extend our current agreement.

16 Q. So you -- so you -- so they weren't
17 exchanged?

18 A. Correct, they were not exchanged.

19 Q. And those red lines presently don't
20 exist?

21 A. That is true.

22 Q. Now, I'd like to point you to Exhibit 12
23 to Sprint's arbitration petition, and I'm afraid
24 that's not something that we may have highlighted for
25 you before. What it is --

1 A. I might be able --

2 Q. -- it's the proposed amendments to
3 extend the Missouri agreements.

4 A. About how far back is it in the petition
5 just roughly?

6 Q. It's right after the very large CLEC
7 agreement, maybe two after that, maybe about 20 pages
8 from the end.

9 A. Okay. I'm -- I'm getting there. Hang
10 on. I'm at the CLEC agreement right now. Okay. I'm
11 there.

12 Q. Great. Would you agree that the parties
13 did not exchange drafts of those proposed amendments?

14 A. Well, I believe -- I believe that this
15 would be our proposed amendment to extend the current
16 agreement, so in -- well, against that backdrop, I
17 would say yes, I would agree that we did not exchange
18 drafts.

19 Q. Okay. And there are no red lines that
20 went back and forth on that -- those amendments?

21 A. Correct.

22 Q. No negotiations on them?

23 A. Well, I don't know that I would say
24 that. I mean, just because a red-line was not
25 exchanged doesn't mean that negotiations didn't take

1 place.

2 Q. How about negotiations on the document?

3 A. Okay. No -- no negotiations on this
4 particular document, but I -- I want to be careful
5 not to characterize that as the lack of negotiations
6 on the extension at issue.

7 Q. My question was just limited to that
8 document.

9 A. Okay. Then -- then, yes, there were no
10 negotiations on this document.

11 Q. Would you agree that the first time AT&T
12 would have seen those amendments was as an attachment
13 to Sprint's arbitration proceeding -- arbitration
14 petition for this proceeding?

15 A. I -- I think that's entirely possible.

16 Q. Okay. Would you agree that the parties
17 did not jointly prepare a decision point list of
18 issues concerning the existing Missouri agreements?

19 A. You mean modifications that --

20 Q. A decision point list.

21 A. -- AT&T would want to --

22 Q. That both parties would want.

23 A. Well, Sprint didn't want any
24 modifications to the Missouri agreement, so we
25 wouldn't have had a decision point list of -- of open

1 issues. Now, I -- I don't believe AT&T prepared one
2 of -- modifications that it would want to --

3 Q. What I was trying to get at was did the
4 parties work together to prepare --

5 A. No, they did not.

6 Q. Okay. I'd like to point you to
7 Exhibit 13 to Sprint's arbitration petition. It
8 should be after those amendments. That's your
9 decision point list.

10 A. Okay.

11 Q. Would you agree that the first time AT&T
12 would have seen it was as an attachment to Sprint's
13 arbitration petition for this proceeding?

14 A. Once again, I think that's very
15 possible.

16 Q. Okay.

17 A. I think the parties understood clearly
18 what the -- what the issue was. I don't think there
19 was -- I don't think you were surprised -- I -- and
20 my personal opinion was AT&T was not surprised by
21 Sprint's arbitration filing and the issue that we
22 raised.

23 Q. We'd never seen that before it was filed
24 with the arbitration; is that right?

25 A. You may not have seen this actual

1 document, yes.

2 Q. I'd like to go to your rebuttal
3 testimony just real briefly.

4 A. Okay.

5 Q. Now we're at your rebuttal, page 3. You
6 have a footnote at the bottom where you reference
7 page 6, lines 7 through 9 of Ms. Flood's testimony.
8 Do you see that?

9 A. Yes, sir.

10 Q. Okay. Do you have her testimony with
11 you --

12 A. I do.

13 Q. -- that you -- that you referenced?

14 A. Yes.

15 Q. Could you go to that and take a look at
16 the Q and A for that section that you cite?

17 A. Okay. I'm there.

18 Q. Could you take a look at the -- the Q
19 and A?

20 A. Yeah.

21 Q. It begins page -- on page 6, line 4
22 maybe through line -- say, line 12.

23 A. Yes, I'm there.

24 Q. Okay. That question and answer
25 references Sprint's negotiator, Mr. Broughton, and

1 think they have except for a few that I'm going to
2 ask your attorney to explained in his brief --

3 THE WITNESS: Okay.

4 JUDGE DIPPELL: -- so I don't actually
5 have any additional questions for you. Do you have
6 anything else?

7 MR. VOIGHT: Just one.

8 JUDGE DIPPELL: Mr. Voight has a
9 question for you. I'm going to let him ask something
10 to clarify.

11 MR. VOIGHT: I have just one question.
12 It has to do with the very first question from
13 Mr. Bub to Mr. Felton. We were handed this stack,
14 and if I'm -- if I understand it right, there's a
15 letter in here that more or less kicked off -- from
16 Sprint that more or less kicked off this proceeding,
17 and I wasn't able to locate that in here. Can
18 you-all direct me to that?

19 THE WITNESS: This one --

20 MR. VOIGHT: I was able to follow
21 everything --

22 THE WITNESS: This one is tagged if you
23 want...

24 MR. SCHIFMAN: It's Exhibit 3, I
25 believe, to Sprint's petition --

1 MR. VOIGHT: Can I -- can you just find
2 it for me? Because I've gone through there, and for
3 some reason I'm -- I'm --

4 THE WITNESS: Yeah.

5 MR. SCHIFMAN: The June 30th letter.

6 MR. PFAFF: I think I can find it.

7 MR. VOIGHT: Okay. I was able to
8 follow everything else, all the other exhibits and so
9 forth.

10 MR. PFAFF: Okay. Yeah, it's Exhibit 3.
11 I believe that's what he -- and it's our
12 correspondence of June 30th.

13 MR. VOIGHT: Thank you very much.

14 MR. PFAFF: You're welcome.

15 MR. VOIGHT: And that's all I have, your
16 Honor.

17 JUDGE DIPPELL: Okay. Thank you. Since
18 there were no questions for the witness from the
19 bench, I will ask, then, if there's any redirect from
20 Sprint?

21 MR. SCHIFMAN: There is, your Honor.

22 MR. BUB: Your Honor, we don't have --
23 we don't have any cross either -- or recross.

24 JUDGE DIPPELL: There weren't any
25 questions. Go ahead.

1 REDIRECT EXAMINATION BY MR. SCHIFMAN:

2 Q. Mr. Felton, Mr. Bub asked you some
3 questions about Sprint's initial preference to port
4 the Kentucky ICA. Do you remember those questions?

5 A. Yes.

6 Q. And you indicated that originally it was
7 Sprint's preference to port the Kentucky ICA; is that
8 correct?

9 A. Actually, it was originally our
10 preference. It would still be our preference.

11 Q. Okay. Why, then, did Sprint elect to
12 simply extend its interconnection agreements in this
13 case rather than electing to port the Kentucky ICA?

14 A. Because it became obvious in the process
15 of negotiating the changes that would be required to
16 the Kentucky -- or -- or the changes that AT&T
17 believed would be required to the Kentucky ICA that
18 they were so numerous and -- and complicated and
19 overreaching that we just basically gave up on that
20 process and decided that a simpler, more
21 straightforward process would be to extend our
22 current interconnection agreement and maintain what
23 we considered to be status quo between Sprint and
24 AT&T.

25 Q. And what's the expiration date in the

1 Kentucky ICA?

2 A. It -- the extended Kentucky ICA, I
3 believe the expiration date is December 2009. I
4 don't know the exact date, but just a few months from
5 now.

6 Q. Okay. And so had Sprint and AT&T in
7 this process come to an agreement using the Kentucky
8 ICA, is it your understanding that that agreement
9 would have expired under its terms in December of
10 2009?

11 A. Yes, and I guess the -- our analysis, if
12 you will, of that is that much of the benefit was --
13 was lost because of this short duration of that
14 ported agreement or the duration that that ported
15 agreement would have -- we would have operated under.

16 Q. You mentioned that extending Sprint's
17 current agreements would be kind of keeping the
18 status quo. Can you elaborate on that?

19 A. Well, as I stated earlier in response to
20 a question to Mr. Bub, extending an agreement under
21 Merger Commitment 7.4 maintains that agreement as-is
22 for three additional years and that my layperson's
23 opinion is maintaining the status quo.

24 Q. Okay. Mr. Bub took you through some
25 questions regarding the exhibits to Sprint's

1 petition, Exhibit 3, Exhibit 4 and Exhibit 5. That
2 was the exchange of correspondence between Sprint and
3 AT&T. Do you remember some of those questions?

4 A. Yes.

5 Q. Okay. And it talked about the letters
6 being the formal positions of the parties. Do you
7 recall that?

8 A. Yes.

9 Q. In your experience as an interconnection
10 agreement negotiator, do the parties only negotiate
11 through written correspondence?

12 A. Absolutely not. I -- I would say
13 probably more of the negotiation takes place in oral
14 conversations, either on the phone or in a
15 face-to-face setting. Many times the positions of
16 the parties will be reduced to writing in a -- in a
17 formal letter or in a red-line document that is
18 exchanged between the parties.

19 Q. But in this case, negotiations -- oral
20 negotiations did occur between Sprint and AT&T,
21 right?

22 A. Yes, many times. And as I pointed out
23 in my prefiled testimony, on at least two occasions
24 oral negotiations -- or oral discussions took place
25 on the extension issue.

1 Q. Okay. Mr. Bub asked you some questions
2 about AT&T then basically presenting the red-line
3 agreement and then Sprint electing, rather than to
4 utilize that, to simply extend its existing
5 interconnection agreements, right?

6 A. Yes.

7 Q. Okay. And in the correspondence that
8 AT&T -- that we looked through from AT&T, did AT&T
9 change positions at any time during this process as
10 far as what interconnection agreements could be
11 utilized as, quote, a starting point for
12 negotiations?

13 A. Yeah, I guess you could characterize it
14 that way. They certainly started with their current
15 template as the starting point for negotiations and
16 then agreed to start from the Kentucky agreement as
17 the starting point for negotiations.

18 And you know, just as a general matter,
19 negotiations -- and -- and -- and I stated this in my
20 prefiled testimony, negotiations are -- it's a fluid
21 environment and people change positions, they change
22 tactics, you know, they sometimes change strategies
23 all in an effort to get to a resulting agreement
24 which was the objective at least of Sprint and we
25 hope of AT&T.

1 Q. Mr. Bub also asked you some questions
2 about whether or not Sprint, AT&T had exchanged
3 red-line drafts of the amendments to the
4 interconnection -- to the existing interconnection
5 agreements. I believe it was Exhibit 12 to Sprint's
6 petition. Do you recall that?

7 A. Yes.

8 Q. In your view -- and -- and did you
9 respond that -- that there were -- that there was no
10 exchange of red lines regarding those amendments?

11 A. I did respond that there was no
12 exchange. I wouldn't have expected there to be an
13 exchange because AT&T clearly stated they would not
14 agree to extend the current agreement. So if there
15 was a red-line that came back, I would expect that it
16 would have stricken all of Sprint's proposed language
17 to -- that would have extended that agreement.

18 Q. And in your view, Mr. Felton, as part of
19 this arbitration process, could AT&T have provided
20 changes to those proposed amendments that would
21 extend the interconnection agreements?

22 A. Sure, absolutely.

23 Q. And they did not do so?

24 A. To my knowledge, they did not.

25 MR. SCHIFMAN: Okay. No further

1 questions.

2 JUDGE DIPPELL: Thank you. I believe
3 that's all the questions for you, then, Mr. Felton,
4 and you may be excused.

5 THE WITNESS: Thank you.

6 JUDGE DIPPELL: I think at this time
7 we'll go ahead and take a short break, and then when
8 we come back, we'll go until noon which is when the
9 Commission's agenda session is going to start and
10 they'll -- we'll probably hear the announcement and
11 that will be our cue to take another break if we're
12 not concluded by then. So let's go ahead and go off
13 the record and come back in about -- 25 after by that
14 clock.

15 (A RECESS WAS TAKEN.)

16 JUDGE DIPPELL: And we are ready, then,
17 for AT&T's first witness.

18 MR. BUB: And we'll call Lynn
19 Allen-Flood to the stand, please.

20 (The witness was sworn.)

21 JUDGE DIPPELL: Thank you. If you could
22 spell your name for the court reporter.

23 THE WITNESS: First name Lynn, L-y-n-n,
24 last name Allen-Flood, A-l-l-e-n, dash, F as in
25 Frank, l-o-o-d.

1 JUDGE DIPPELL: Thank you. Go ahead,
2 Mr. Bub.

3 MR. BUB: Thank you, your Honor.

4 DIRECT EXAMINATION BY MR. BUB:

5 Q. Ms. Flood, you're employed by AT&T, are
6 you not?

7 A. That's correct.

8 Q. And you're the lead interconnection
9 agreements manager for AT&T with respect to Sprint?

10 A. Yes.

11 Q. And you caused to be filed in this
12 proceeding Exhibit 5 which is your direct testimony?

13 A. Yes.

14 Q. Do you need to make any changes to your
15 testimony?

16 A. No.

17 Q. If I asked you the same questions in
18 Exhibit 5 today, would your answers be the same?

19 A. Yes.

20 Q. Are those answers true and correct to
21 the best of your knowledge, information --

22 A. Yes.

23 Q. -- and belief?

24 A. Yes.

25 MR. BUB: Thank you, your Honor. Those

1 are all the questions that we have. We'd like to
2 offer Exhibit 5 into evidence.

3 JUDGE DIPPELL: Would there be any
4 objection to Exhibit No. 5?

5 MR. SCHIFMAN: No.

6 JUDGE DIPPELL: Then we will receive it
7 into the record.

8 (EXHIBIT NO. 5 WAS RECEIVED INTO
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 JUDGE DIPPELL: And you may --

11 MR. BUB: We'll tender Ms. Flood --
12 Allen-Flood for cross-examination. Thank you, your
13 Honor.

14 JUDGE DIPPELL: All right. Sprint may
15 proceed with cross-examination.

16 CROSS-EXAMINATION BY MR. SCHIFMAN:

17 Q. Hi, Ms. Allen-Flood.

18 A. Good morning.

19 Q. My name is Ken Schiffman. I'm here
20 representing Sprint and I'm going to ask you some
21 questions about your testimony today.

22 A. (Nodded head.)

23 Q. Ms. Allen-Flood, you say on page 1 of
24 your testimony, lines 7 through 10, that you're
25 responsible for negotiating interconnection

1 agreements with CLECs; is that right?

2 A. That's correct.

3 Q. Okay. Do you negotiate interconnection
4 statements with wireless carriers also?

5 A. No. We have a separate negotiator for
6 wireless.

7 Q. In -- in the negotiations with Sprint,
8 you dealt with the wireless interconnection
9 agreements, though, as part of this process?

10 A. Initially I was the point person for all
11 of it, yes.

12 Q. Okay.

13 JUDGE DIPPELL: Ms. Allen-Flood, since
14 your voice is a little soft, if I could get you to
15 sit a little closer to the microphone or pull it a
16 little closer to you.

17 THE WITNESS: Oh, okay.

18 JUDGE DIPPELL: Thank you. Sorry. Go
19 ahead, Mr. Schiffman.

20 BY MR. SCHIFMAN:

21 Q. How many CLECs do you negotiate with on
22 a typical basis?

23 A. Annually or?

24 Q. Sure.

25 A. I might have six or eight in any period

1 during the year.

2 Q. Okay. And if AT&T presents a position
3 in an interconnection agreement and the CLEC objects
4 to it, what's the typical process that you're
5 familiar -- familiar with as far as how those
6 objections are resolved?

7 A. And you're speaking as to the
8 negotiations themselves --

9 Q. Yes.

10 A. -- of sessions? I would document that
11 objection and I would socialize that with the
12 appropriate SMEs within my company.

13 Q. And ultimately, if the objection or the
14 dispute would not be resolved, what happens in your
15 experience?

16 A. We would document that as a disagreed-
17 upon issue.

18 Q. And does it get resolved in a state
19 commission arbitration?

20 A. If either party does file, and that is
21 one of the issues that's brought before in the
22 petition, yes.

23 Q. Okay. And -- and here we're involved in
24 a process where the parties disagreed about
25 interconnection agreement terms; is that right?

1 A. In some cases, yes.

2 Q. Okay. "In some cases" meaning -- let me
3 rephrase. Sprint has presented extensions of its
4 interconnection agreements in this process that we're
5 going through here today; is that right?

6 A. I believe that's in your petition, yes.

7 Q. Okay. And you've read those extensions
8 that Sprint has proposed?

9 A. Yes.

10 Q. Okay.

11 A. Let me clarify. You're talking about
12 the petition. Yes, I have read that.

13 Q. I'm talking about the extensions that
14 Sprint proposed as the Exhibit 12 in its petition for
15 arbitration.

16 A. Is it marked?

17 Q. Unfortunately there's not tabs on those
18 copies. It's towards the end of that big stack of
19 paper. So Ms. Allen-Flood, I've referred to --
20 referred you to Exhibit 6 which is the Sprint
21 petition for arbitration, and it has a number of
22 exhibits attached to it, and you're looking at
23 Exhibit 12; is that right?

24 A. Yes.

25 Q. And that Exhibit 12 is Amendment to

1 Interconnection Agreements, the first one between
2 Spring Communications Company, L.P. and Southwestern
3 Bell Telephone Company?

4 A. That's how it reads.

5 Q. Okay. And is there a subsequent one
6 that's dealing with an amendment between Sprint
7 Spectrum, L.P. and Southwestern Bell Telephone
8 Company?

9 A. Yes.

10 Q. And the last one is an amendment between
11 Nextel West Corp. and Southwestern Bell Telephone
12 Company?

13 A. Yes.

14 Q. And you've reviewed these amendments as
15 part of the process that we're going through here
16 today?

17 A. I did read the petition, yes.

18 Q. Okay. Do -- does AT&T have any proposed
19 changes to these amendments?

20 A. Well, they haven't been reviewed to that
21 length to give you an answer as to if we would have
22 changes or not.

23 Q. So you don't know right now if AT&T has
24 any proposed changes?

25 A. No, I can't answer that without further

1 review.

2 Q. Okay. Do you know how long -- Sprint
3 filed its arbitration petition December 5th of 2008.
4 Does that ring a bell for you?

5 A. Yes.

6 Q. Okay. And AT&T hasn't reviewed these
7 amendments from that time until now?

8 A. Well, this -- this petition has been
9 read, but as far as evaluating this amendment for
10 potential execution, no.

11 Q. Okay. And why not?

12 A. Because -- because of our position that
13 we filed in testimony.

14 Q. Okay. Your position that the
15 interconnection agreement should not be extended
16 under Merger Commitment 7.4?

17 A. Well, that's a policy issue and I'll
18 defer that question to Mr. McPhee.

19 Q. You -- you -- you testified in your
20 testimony, did you not, that that's what AT&T's
21 position is?

22 A. I testified -- and would you please cite
23 me where you're pointing to in my testimony?

24 Q. Page 7 of your testimony.

25 A. And this would be lines?

1 Q. Well, generally is it AT&T's position
2 that you seem to be testifying that AT&T did not want
3 to sign the amendments that Sprint proposed, is that
4 right, to extend the interconnection agreements?

5 A. My testimony -- my testimony stated that
6 we did not negotiate Sprint's extension.

7 Q. Okay. And you say on lines 9 through 11
8 that the amendments were never exchanged or
9 discussed. Do you see that?

10 A. That's correct.

11 Q. Do you agree now that those amendments
12 have been exchanged?

13 A. Not in the context of our negotiation
14 sessions.

15 Q. But they were exchanged in the context
16 of Sprint's arbitration petition?

17 A. In your petition, yes.

18 Q. And since Sprint provided those
19 amendments in its arbitration petition, AT&T has not
20 made any proposals or offers or suggested any changes
21 to those amendments; is that correct?

22 A. No.

23 Q. Is that correct?

24 A. Yes, that's correct.

25 Q. In your experience as an interconnection

1 agreement negotiator, Ms. Allen-Flood, outside of the
2 merger commitments that we're talking about here
3 today, have parties -- has AT&T agreed to simply
4 extend its existing interconnection agreements with
5 CLECs or wireless carriers?

6 A. I can't state that we've done that
7 without really further looking at my records in -- in
8 my office, frankly. I can't recall any at this
9 point.

10 Q. Okay. Would you agree that -- well,
11 let's make it a hypothetical since you can't recall
12 directly. If AT&T and a requesting party had agreed
13 to a -- an extension of their existing
14 interconnection agreements, is it your understanding
15 that the process would be that AT&T and the
16 requesting carrier would simply provide that
17 interconnection agreement to a state commission for
18 approval?

19 A. With the extension amendment, yes.

20 Q. Okay. And that's part of the
21 Section 251, 252 process as you understand it?

22 A. Well, that's a legal question. I'm not
23 sure I can answer that question.

24 Q. As you understand it?

25 A. We have executed amendments to extend.

1 That's not what I consider part of 251, 252
2 negotiations.

3 Q. And why do you submit those to state
4 commissions for approval, do you know?

5 A. As -- as formal as our process dictates
6 and they request those amendments to be presented
7 before them.

8 Q. The state commissions, right?

9 A. Yes.

10 Q. Mr. McPhee -- well, strike that. AT&T
11 provided a discovery response that Mr. Felton
12 attached to his testimony about the interconnection
13 agreements that were extended under the merger
14 commitment. Did you read that discovery response?

15 A. Would you ask me that again, please?

16 Q. Okay. Mr. Felton attached to his
17 testimony the discovery response from AT&T that
18 described in list form a number of interconnection
19 agreements that AT&T had extended according to Merger
20 Commitment 7.4. Did you review that discovery that
21 AT&T provided?

22 A. I have not reviewed his list.

23 Q. Okay. Okay. Going to page 5 of your
24 testimony, Ms. Allen-Flood, lines 13 through 15, you
25 state that the parties resolved a great number of

1 issues up to the point on December 5th, 2008. Do you
2 see that?

3 A. Yes.

4 Q. And do you agree that Sprint and AT&T
5 still had significant disagreements over various
6 issues regarding the Kentucky ICA?

7 A. Yes.

8 Q. Okay. And those issues included
9 bill-and-keep, right?

10 A. Yes.

11 Q. And whether or not there would be a
12 facility sharing provision in the Kentucky ICA; is
13 that right?

14 A. Yes.

15 Q. And whether or not there would be some
16 type of escrow provision in the Kentucky ICA; is that
17 right?

18 A. Yes.

19 Q. And AT&T and Sprint also had
20 disagreements about the definition of wireless local
21 traffic in the Kentucky ICA; is that right?

22 A. Yes.

23 Q. Did anybody at Sprint ever indicate to
24 you that -- that we believed that those agreement --
25 those disputes could be resolved short of

1 arbitration?

2 A. Could you repeat that again, please?

3 Q. Okay. Did anybody at Sprint ever
4 represent to you that those agreements -- or that
5 those disputes that we just covered, facilities
6 sharing, bill-and-keep, escrow, definition of
7 wireless local traffic, were ever going to be
8 resolved short of Sprint filing an arbitration
9 petition on those issues?

10 A. It seemed likely that that was the
11 direction we would have to go in, in order to resolve
12 those issues.

13 Q. And are you aware that Sprint and AT&T
14 had litigated those issues in various other states
15 according to complaints that Sprint had filed against
16 AT&T?

17 A. Yes.

18 Q. Okay. Examples being Wisconsin,
19 Illinois, Oklahoma, Indiana; is that right?

20 A. Yes.

21 Q. On those issues that I just discussed,
22 would you agree that Sprint and AT&T had
23 negotiations?

24 A. Yes.

25 Q. Do you now understand as part of the

1 process that we're going through right now where
2 Sprint is attempting to extend its existing
3 interconnection agreements that Sprint takes one
4 position and AT&T takes another position on that
5 issue?

6 A. Yes.

7 Q. Do you consider that to be negotiations?

8 A. No, that's not what we discussed in our
9 sessions between Mr. Broughton and myself.

10 Q. Did Mr. Broughton raise the issue of
11 extending Sprint's --

12 A. He did on two occasions, yes.

13 Q. Okay. Let's take away all the legal
14 stuff. Section 252, let's pretend we're in a
15 universe where Section 252 does not exist, okay?
16 It's a tough one, isn't it?

17 A. Yes.

18 Q. If one party takes one position on a
19 contract and another party disputes that position,
20 would you agree that the parties are negotiating
21 about the term of their contract?

22 MR. BUB: Now I need to object. I think
23 this hypothetical really isn't apt here because I
24 don't think you can wish away laws that apply, and
25 it's not talking about an ordinary business contract

1 here. We're talking about an interconnection
2 agreement that's governed by, you know, the act of
3 the whole host of FCC rules. So I -- those rules
4 don't apply, the act doesn't apply to regular
5 business contracts, so I don't think this type of an
6 analogy is appropriate.

7 MR. SCHIFMAN: And I'm -- I'm stating a
8 hypothetical. I think -- I'm trying to get at the
9 witness's understanding of what negotiations are.
10 She asserts in her testimony that Sprint and AT&T did
11 not negotiate about the term of the agreement and I
12 want to probe that.

13 JUDGE DIPPELL: I'm going to overrule
14 the objection and allow her to answer.

15 BY MR. SCHIFMAN:

16 Q. Okay. Do you recall the question?

17 A. Would you repeat it, please?

18 Q. Okay. This is a hypo -- this is a
19 hypothetical. We're pretending we're in a world
20 where Section 252 does not exist and the FCC rules
21 that implement Section 252 and 251 do not exist.
22 We're pretending that Sprint and AT&T are negotiating
23 about a contract in a purely commercial sense. Those
24 rules and statutes don't apply.

25 Would you agree with me that if AT&T

1 took one position on how long a contract should be
2 and Sprint took another position disputing AT&T's
3 position that the parties would be negotiating about
4 how long the contract could be?

5 A. Without any rules associated with that
6 negotiation, I guess I would have to say yes.

7 Q. You mentioned, Ms. Allen-Flood, that
8 Mr. Broughton brought up Sprint's interest in
9 extending the interconnection agreement on two
10 occasions; is that right?

11 A. Yes.

12 Q. You spoke about it verbally twice; is
13 that right?

14 A. Yes.

15 Q. Okay. And then Sprint sent a letter to
16 AT&T dated November 21st that memorialized Sprint's
17 position about extending the existing ICAs; is that
18 right?

19 A. Yes.

20 Q. Okay. What was AT&T's position on
21 Sprint's request to extend its existing
22 interconnection agreements? And I'm talking in the
23 context of your discussions with Mr. Broughton.

24 A. Would you repeat that again? I'm sorry.

25 Q. Yes. In the context of your discussions

1 with Mr. Broughton --

2 A. Uh-huh.

3 Q. -- what was your response to Sprint's
4 request to extend the existing ICAs?

5 A. He expressed interest in extending. My
6 response was that my understanding of the policy was
7 that these three agreements had all expired and
8 therefore would not be eligible for extension.

9 Q. Okay. You understand that Sprint has
10 now brought this arbitration petition before the
11 Missouri Commission seeking to extend its existing
12 interconnection agreements, right?

13 A. Yes.

14 Q. And you agree with me that AT&T thinks
15 that Sprint should not be able to extend those
16 agreements, right?

17 A. Yes.

18 Q. What else should Sprint have done to
19 bring its disagreement before this Missouri
20 Commission on whether or not we can extend our
21 existing interconnection agreements in your view?

22 MR. BUB: Your Honor, I think he's
23 calling for a legal conclusion about what the
24 different remedies, the legal remedies that would
25 exist under the act and under, you know, state and

1 federal law. I don't think this witness is qualified
2 to answer that.

3 We offered her just to recount the
4 sequence of events, what happened in the face-to-face
5 negotiations. We didn't offer her and she did not
6 testify to any policy matters, certainly not to any
7 legal issues like remedies a person would have under
8 the act. You know, we do have a policy witness. If
9 they want to probe him, that's fine. But we just
10 offered her to come here and tell the Commission what
11 happened and to recount it firsthand. She's not our
12 policy witness.

13 MR. SCHIFMAN: And I guess my response,
14 your Honor, is Ms. Allen-Flood has testified that she
15 presented AT&T's policy position that Sprint would
16 not be able to extend its existing interconnection
17 agreements, and I'm wondering in the context of the
18 negotiations and the discussions that were going on,
19 you know, what else could Sprint have done other than
20 bring this dispute before the Missouri Commission.

21 JUDGE DIPPELL: I'm -- I'm going to
22 overrule the objection and allow her to answer, but I
23 will just state when she does talk a lot in her
24 testimony about how she interprets Section 252,
25 and -- but I will say that obviously the fact that

1 she's not a lawyer will go toward the weight of
2 her -- her answer.

3 MR. SCHIFMAN: Understood.

4 JUDGE DIPPELL: You may answer.

5 THE WITNESS: I guess I'll have to ask
6 him to repeat the question.

7 BY MR. SCHIFMAN:

8 Q. Well, okay. We'll -- maybe we'll build
9 back up to it. I could ask the court reporter to do
10 it again, but I want to go a little bit different
11 direction.

12 Ms. Allen-Flood, you say like, for
13 example, on page 2 of your testimony towards the
14 bottom, lines 20 and 21, you talk about successor ICA
15 under Section 252 in Missouri. Do you see that?

16 A. Yes.

17 Q. And on page 3 of your testimony, line 6,
18 you say "Sprint requested Section 252 negotiations."
19 Do you see that?

20 A. Yes.

21 Q. What do you mean by "Section 252
22 negotiations" when you use that in your testimony?

23 A. I -- that Section 252 negotiations is a
24 very structured and formal process that we follow.
25 Either party can request negotiations. We confirm

1 that via correspondence that's exchanged between the
2 parties. We agree on a negotiations start date and
3 end date in identifying the arbitration window and
4 confirm that via correspondence between the parties.

5 We also decide on a starting point of
6 those negotiations, what document do we begin and
7 negotiate from, and that's also documented via
8 correspondence. And throughout the process, the
9 parties meet to discuss the issues, come to an
10 agreement on some, understand that there's others
11 that we may not able to agree upon, document that
12 exchange via red lines or listings of the open
13 issues. And that's the sequence of events that we
14 follow and that was followed here.

15 Q. Okay. And do you agree,
16 Ms. Allen-Flood, that there is a timeline associated
17 with Section 252 negotiations?

18 A. Yes.

19 Q. And -- and that timeline to your
20 understanding is that a party must file a petition
21 for arbitration before the 160th day after the
22 negotiations started?

23 A. Yes.

24 Q. Do you agree with me that Sprint,
25 specifically Mr. Broughton, raised with you during

1 that timeline, the issue of whether or not Sprint
2 could extend its existing interconnection agreements?

3 A. Yes, he raised the question on two
4 occasions. It was probably a two-minute
5 conversation.

6 Q. It was within the time frame associated
7 with Section 252 negotiations, right?

8 A. It was while we were meeting to discuss
9 the Kentucky red-lined agreement.

10 Q. It was within that time frame; is that
11 correct?

12 A. It was during the time we were
13 discussing the red-lined Kentucky agreement that he
14 asked the question.

15 Q. And that was before day 160; is that
16 correct?

17 A. Yes.

18 Q. Let's go to page 7 of your testimony,
19 lines 17 through 22. Have you had a chance look at
20 that?

21 A. Yes.

22 Q. On line -- beginning on line 18, you
23 state, "I certainly did not understand that subject
24 to be part of the actual negotiations." What subject
25 are you talking about?

1 A. The extension.

2 Q. Did you tell Mr. Broughton that
3 specifically, that you did not understand the
4 extensions to be part of the actual negotiations?

5 A. No.

6 Q. Okay. We're moving around here. Going
7 back to page 2, please, of your testimony. Now I'm
8 looking at lines 20 and 21 where you discuss that
9 you're the point person and lead negotiator. Do you
10 see that?

11 A. Yes.

12 Q. Okay. And you're the point person and
13 lead -- lead negotiator for discussions with Sprint,
14 right?

15 A. Yes.

16 MR. SCHIFMAN: Okay. I just want to
17 raise to you, Leo, I'm not asking for legal advice
18 here or trying to get into legal discussions. I'm
19 just asking for kind of names here, okay? So I'm not
20 wanting to get into the content of any legal
21 discussions that she may have had with attorneys.

22 BY MR. SCHIFMAN:

23 Q. Ms. Allen-Flood, how did you know to
24 reject Sprint's request for extensions under Merger
25 Commitment 7.4?

1 A. When you say how did I know to reject
2 it --

3 Q. Yeah, what -- what informed --

4 A. -- are you stating from my testimony?

5 Q. Yeah, what informed you? Was that a
6 position that you knew or did you have discussions
7 with other folks at AT&T to come up with that
8 position?

9 A. That was my understanding of our
10 position.

11 Q. Okay. And did you have discussions with
12 other people from AT&T regarding Sprint's request for
13 extensions?

14 A. I may have shared that information with
15 my supervisor.

16 Q. So was it your decision to reject
17 Sprint's request for extensions under Merger
18 Commitment 7.4?

19 A. Was it my decision?

20 Q. Yes.

21 A. No.

22 Q. Whose was it?

23 A. It was my understanding of our company
24 policy.

25 Q. And did you discuss that company policy

1 with others at AT&T?

2 A. I just related our conversation and that
3 at that time was our policy.

4 Q. Is it still your policy?

5 A. Yes.

6 Q. Are you aware that the Nextel agreement
7 that Sprint has with AT&T has been in effect since
8 1999?

9 A. Yes. That rings a bell.

10 Q. Okay. So Sprint and AT&T -- or Nextel
11 and AT&T have been happily -- well, I'll strike
12 "happily," but have been operating under that
13 agreement since 1999; is that correct?

14 A. Yes.

15 Q. Okay. And before the merger with Bell
16 South, AT&T never terminated that agreement; is that
17 correct?

18 A. Not to my knowledge.

19 Q. Okay. And so the parties were operating
20 under that agreement before the merger with Bell
21 South, right?

22 A. That's my understanding.

23 Q. Okay. And after the merger with Bell
24 South, Sprint -- or Nextel and AT&T continued to
25 operate under that agreement; is that right?

1 A. Yes.

2 Q. And now Nextel has asked to extend the
3 agreement for three more years; is that right?

4 A. Yes.

5 Q. And it's been operating under it for --
6 since 1999, right?

7 A. Yes.

8 Q. What's changed that AT&T is no longer
9 happy with the Nextel agreement?

10 A. That we refused to extend, is that your
11 question?

12 Q. Yes.

13 A. It -- it really goes back to our policy
14 on extensions, and Mr. McPhee can address that
15 further.

16 Q. Okay. Your policy. And who developed
17 that policy to your understanding?

18 A. Our upper management and our legal.

19 Q. Okay. Do you have any names that you
20 can provide me?

21 A. No. It's quite a group of people.

22 Q. Okay. Was this policy developed after
23 the merger with Bell South?

24 A. Yes.

25 Q. If Sprint is not permitted to extend its

1 existing ICAs under the process that we're going
2 under right now, what does AT&T intend to do as far
3 as getting agreements with Sprint?

4 A. Well, the -- the agreements are still in
5 place today --

6 Q. Okay.

7 A. -- and are still operating under those
8 agreements.

9 Q. Okay. And it's okay with AT&T for the
10 Sprint entities to continue operating under those
11 agreements?

12 A. I can only address what is happening
13 today. I can't address what we -- we do in the
14 future.

15 Q. Okay. Okay. Not that much longer.
16 We're going to go to Exhibit 4 from the petition, so
17 we're looking at Exhibit 6, the petition, and there's
18 a list of exhibits that are attached to it and
19 Exhibit 4 is one of those. And it's the July 16
20 letter from Ms. Allen-Flood to Fred Broughton.

21 A. Yes.

22 Q. And you wrote that letter,
23 Ms. Allen-Flood?

24 A. With the help of others, yes.

25 Q. Okay. That's your signature at the

1 bottom, right?

2 A. Yes.

3 Q. Okay. And we're looking at the July 16
4 letter from you to Mr. Broughton. I want to direct
5 you to the second paragraph and the sentence that
6 begins with "Moreover." Can you read that sentence,
7 please?

8 A. "Moreover, given that the parties will
9 be negotiating under Section 252 of the act, each
10 party is free to offer any language and take any
11 position it sees fit subject to its statutory duty to
12 negotiate in good faith."

13 Q. Okay. Do you believe that according to
14 this statement in your letter, that Sprint was free
15 to offer language such as extending its existing
16 interconnection agreements?

17 A. No.

18 Q. So extending its existing
19 interconnection agreements is somehow different than
20 each party being free to offer any language they
21 want?

22 A. Well, the parties agree on the base
23 document from which to negotiate, and a negotiation
24 was not about the existing agreement. The
25 negotiation was solely about the Kentucky red-lined

1 agreement.

2 Q. We discussed earlier, though, that you
3 and Mr. Broughton discussed extensions within the
4 time frame of Section 252, right?

5 A. He raised the question, yes.

6 Q. Okay. And you responded, right?

7 A. And I responded, yes.

8 MR. SCHIFMAN: I don't have any further
9 questions. Thanks, Ms. Allen-Flood.

10 JUDGE DIPPELL: Thank you, Mr. Schifman.
11 I have just a few things for you.

12 QUESTIONS BY JUDGE DIPPELL:

13 Q. I want to go back to your direct
14 testimony on page 7. Are you there?

15 A. Yes.

16 Q. All right. On -- at line 19 -- you and
17 Mr. Schifman talked about this earlier, but you say,
18 "I certainly did not understand this -- that subject
19 to be part of the actual negotiations"?

20 A. Yes.

21 Q. Can you tell me what you mean there by
22 "actual negotiations"?

23 A. Well, the parties' focus in every
24 session that we met -- and this was starting in July
25 through November, the focus of every session was the

1 Kentucky red-lined agreement as the parties had
2 agreed was the basis of the negotiations at the
3 starting point.

4 So every session was about that
5 agreement and those red lines. He asked this
6 question, I responded, but I really thought it was a
7 digression from what our focus was on. We had not
8 agreed to negotiate from the existing agreement. We
9 had agreed to negotiate from the red-lined port
10 agreement, and that's what we were doing.

11 Q. And was Mr. Broughton the -- he was the
12 main person from Sprint that you were negotiating
13 with; is that correct?

14 A. Yes.

15 Q. Just a clarifying question. You
16 mentioned a -- a SME earlier --

17 A. Yes.

18 Q. -- which we refer to around here a lot
19 as subject matter experts. Is that what you were?

20 A. Yes, I'm sorry. I --

21 Q. That's fine. Sometimes the -- the
22 record is a little odd if there's a bunch of acronyms
23 in there.

24 A. I understand.

25 Q. And I think Mr. Schiffman asked you in

1 the beginning, and I think I missed it, so I
2 apologize. But you negotiate with CLECs, correct?

3 A. Correct.

4 Q. And do you also negotiate with wireless
5 carriers?

6 A. Not ordinarily. And any issue with the
7 wireless agreements and the wireless language, I took
8 the issue and would socialize that with the wireless
9 negotiator.

10 JUDGE DIPPELL: Okay. And I think you
11 answered that before, and I -- I'm sorry I missed
12 part of it. I'm going to let Mr. Voight ask you a
13 question that he has so we have everything clear.

14 QUESTIONS BY MR. VOIGHT:

15 Q. Hi, Ms. Allen-Flood. My name is Bill
16 Voight. Mr. Schiffman, I believe, asked you some
17 questions about -- on page 2 of your direct
18 testimony, and I would note on page 2, line 20 and
19 page 3, lines 8 and 13 you refer to the term "a port
20 request." And I suppose my understanding of that
21 term would be that a carrier wants to take an
22 agreement that was applicable to one state and take
23 it to another state. Is that what's meant by the
24 term "port request" in your testimony?

25 A. Yes, that's correct.

1 Q. And in response to Judge Dippell, I
2 heard the term, a "red-lined port agreement."

3 A. Yes.

4 Q. Could you help me understand the
5 difference in a port request and a red-lined port
6 agreement?

7 A. Well, in essence, they're probably about
8 the same.

9 Q. Okay.

10 A. In this instance, Sprint had requested a
11 port back in November '07 and AT&T red-lined the
12 Kentucky agreement which was -- the request that
13 Sprint made was to use the Kentucky interconnection
14 agreement which was a combination CLEC and wireless
15 agreement and to make that consistent with the merger
16 commitment as far as applying pricing, technical
17 specifications, et cetera, in the port-to states.

18 MR. VOIGHT: Okay. Thank you. I just
19 wanted to be sure of my understanding. Thank you.
20 That's all the questions, Judge.

21 JUDGE DIPPELL: Thank you. Are there
22 any further cross-examination questions based on
23 those questions from me and Mr. Voight?

24 MR. SCHIFMAN: No.

25 JUDGE DIPPELL: Is there any redirect?

1 MR. BUB: Just a couple, your Honor.

2 REDIRECT EXAMINATION BY MR. BUB:

3 Q. My questions are following up to some
4 questions that Mr. Schiffman had asked you. At one
5 point he asked about the negotiations that were
6 conducted on the Kentucky agreement to conform it to
7 Missouri, and -- I think in other states, and he
8 asked about it being a significant number. Do you
9 recall that line of questions?

10 A. Significant number of issues?

11 Q. Issues, yes.

12 A. Okay. Yes.

13 Q. He listed bill-and-keep, shared facility
14 factor, escrow, wireless local traffic are examples
15 of some of the issues that existed between the
16 parties, right?

17 A. Yes.

18 Q. Do you recall how many issues existed in
19 the beginning with the negotiations?

20 A. Oh, there were hundreds of issues. I
21 mean, there probably were well over 100 issues in the
22 agreement.

23 Q. Okay. How many were left at the point
24 Sprint changed its mind here in Missouri and
25 abandoned negotiations on the Sprint Kentucky

1 agreement?

2 A. And I have to qualify my answer that
3 it's based on my recollection because I don't have
4 those notes here with me, but I recall that we had
5 resolved over 80 percent of the issues.

6 Q. Okay. Mr. Schiffman also asked you some
7 questions about when Mr. Broughton expressed interest
8 in extending Sprint's existing interconnection
9 agreements from Missouri. Do you recall that line of
10 questions?

11 A. Yes.

12 Q. Okay. When Mr. Broughton raised this
13 interest, what documents did each of you have in
14 front of you for those meetings?

15 A. The red-lined -- the Kentucky red-lined
16 port agreement.

17 Q. What was the purpose of those meetings?

18 A. To discuss the Kentucky red-lined port
19 agreement.

20 Q. Approximately how long did those
21 meetings last?

22 A. Usually an hour to two hours.

23 Q. Okay. Did you ever exchange red-lined
24 drafts of the existing Missouri agreements?

25 A. No.

1 Q. Did they exist?

2 A. No.

3 Q. Did you exchange drafts of any
4 amendments to extend the existing Missouri
5 agreements?

6 A. No.

7 Q. When was the first time that you saw
8 Sprint's proposed amendments?

9 A. In their petition.

10 Q. Okay. Did you work with Sprint to
11 prepare a decision point list, or as we call it a
12 DPL, concerning an extension of the Missouri
13 agreement?

14 A. No.

15 Q. Is it customary between the parties to
16 work together in putting together a DPL prior to an
17 arbitration?

18 A. Yes.

19 Q. I think at the end of his -- his
20 cross-examination Mr. Schiffman pointed you to a
21 July 16th letter, and he had you read a piece about
22 parties being able to raise any issues as he deemed
23 fit. Do you remember that?

24 A. Yes.

25 Q. Okay. Now, at that time, July 16th, in

1 that time frame that Sprint raised and asked to
2 extend the existing Missouri agreements, what process
3 would AT&T have gone through to prepare for that type
4 of a negotiation?

5 A. We would have red-lined the Missouri
6 agreement, as would Sprint, with the issues that each
7 party would have for changes to that agreement.

8 Q. How many AT&T employees would be
9 involved in that type of a process?

10 A. Oh, well, with CLEC and wireless, it's
11 probably close to 20 people.

12 Q. Okay. Would those have been subject
13 matter experts like we just talked about?

14 A. Yes.

15 Q. Okay. Do you know how long that process
16 would have taken to review those three
17 interconnection agreements to prepare for
18 negotiations?

19 A. I would estimate three to four weeks,
20 maybe longer.

21 MR. BUB: Those are all the questions I
22 have, your Honor. Thank you. Thank you.

23 JUDGE DIPPELL: Thank you.

24 Ms. Allen-Flood, I believe you survived, hopefully
25 unscathed, and you may be excused.

1 THE WITNESS: Thank you.

2 JUDGE DIPPELL: Thank you. Does anybody
3 need to take a break at this point or are we ready to
4 go ahead with the next witness?

5 (NO RESPONSE.)

6 JUDGE DIPPELL: I don't see anyone
7 jumping up and down, so let's go ahead with the next
8 witness, then.

9 MR. BUB: So we would call Scott McPhee
10 to the stand, please.

11 (The witness was sworn.)

12 JUDGE DIPPELL: Thank you. If you could
13 spell your name for the court reporter, please.

14 THE WITNESS: My name is Scott McPhee,
15 S-c-o-t-t, M-c-P as in Paul, h-e-e.

16 JUDGE DIPPELL: Go ahead, Mr. Bub.

17 MR. BUB: Thank you, your Honor.

18 DIRECT EXAMINATION BY MR. BUB:

19 Q. Mr. McPhee, you're employed by AT&T; is
20 that correct?

21 A. That's correct.

22 Q. And you're an associate director of
23 wholesale regulatory policy?

24 A. Yes.

25 Q. And you work in AT&T's wholesale

1 organizations to support our ILEC operation through
2 the 22-state area?

3 A. That's correct.

4 Q. And that would include Missouri?

5 A. Yes.

6 Q. Okay. And you're responsible for
7 developing support and communicating AT&T's wholesale
8 product policy; is that right?

9 A. Yes.

10 Q. And you are a policy witness today?

11 A. Yes, I am.

12 Q. Did you cause to be filed in this
13 proceeding Exhibits 3 P for proprietary and 3 NP
14 which is your direct testimony?

15 A. Yes.

16 Q. Do you have any changes or corrections
17 that you need to make to that piece of testimony?

18 A. I do not.

19 Q. Okay. Did you also cause to be filed
20 Exhibit 4 which is your rebuttal testimony?

21 A. Yes.

22 Q. Okay. Are there any changes that you
23 need to make in that?

24 A. No.

25 Q. Okay. If I were to ask you the same

1 questions contained in Exhibit 3 and 4, would your
2 answers be the same today?

3 A. Yes, they would.

4 Q. And are those answers true and correct
5 to the best of your knowledge, information and
6 belief?

7 A. Yes, they are.

8 MR. BUB: Thank you. Your Honor, with
9 that, I'd like to offer Exhibits 3 P and 3 NP and 4
10 into evidence.

11 JUDGE DIPPELL: All right. And clarify
12 for me again, Mr. Bub, which schedule was it that was
13 proprietary?

14 MR. BUB: It was schedule 1.

15 JUDGE DIPPELL: Okay.

16 MR. BUB: And with that is -- it's the
17 general terms and conditions red-lined from the
18 Kentucky agreement that was exchanged between the
19 parties. And probably at this point would be a good
20 idea for me to tell you that this is proprietary to
21 both parties because it reflects their confidential
22 business negotiations, so the document actually
23 belongs to both of us.

24 JUDGE DIPPELL: Right.

25 MR. BUB: So everyone in the room from

1 Sprint as well as AT&T is permitted to see it.

2 JUDGE DIPPELL: So it's acceptable to
3 talk in general terms about it but not specific --

4 MR. BUB: Yeah, and --

5 JUDGE DIPPELL: -- terms that are in it?

6 MR. BUB: Yes. And if we want to talk
7 about --

8 JUDGE DIPPELL: Okay.

9 MR. BUB: -- specifically what the
10 parties discussed, we may want to go in-camera just
11 because of the web.

12 JUDGE DIPPELL: Okay. Just remind the
13 attorneys to help me keep check on that and make sure
14 we don't accidentally get something on the public
15 session that shouldn't be.

16 MR. BUB: I don't have any trouble with,
17 you know, generalities like we've been discussing.

18 MR. PFAFF: And no objection.

19 JUDGE DIPPELL: All right. Okay. Thank
20 you. Then I will admit Exhibits 3 P and NP and
21 Exhibit 4. Thank you.

22 (EXHIBIT NOS. 3 P, 3 NP AND 4 WERE
23 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
24 RECORD.)

25 MR. BUB: Thank you, your Honor. And

1 we'll tender Mr. McPhee for cross-examination.

2 JUDGE DIPPELL: All right. Is there
3 cross-examination?

4 CROSS-EXAMINATION BY MR. PFAFF:

5 Q. Good morning Mr. McPhee.

6 A. Good morning.

7 Q. You probably remember my name is Jeff
8 Pfaff. Nice to see you again. I hope you had a
9 pleasant trip in.

10 A. Likewise.

11 MR. PFAFF: Thanks. And to the court
12 reporter, if I start speaking too fast, please just
13 let me know. And nobody has ever accused me of
14 speaking too softly, so I don't think that will be a
15 problem today. I will also -- and I'm sure
16 Mr. McPhee will probably fall into the acronym trap
17 as well, so if -- you know, we'll try to catch
18 ourselves, but we all have the -- the shorthand.

19 BY MR. PFAFF:

20 Q. Mr. McPhee, do you have your testimony
21 in front of you?

22 A. I do.

23 Q. And both your written and direct? I'm
24 sorry. Your direct and your rebuttal?

25 A. Yes, I do.

1 Q. Thank you. And I see that you have a
2 copy of the petition there on the corner?

3 A. Yeah.

4 Q. I will hand out various other documents
5 I think that -- that we might discuss during your
6 cross-examination. Are you ready to begin?

7 A. Yes.

8 Q. Okay. In your direct testimony on
9 page 10, you discuss the -- the merger commitments;
10 is that correct?

11 A. Yes.

12 Q. Okay. And were you employed by AT&T
13 during that time when the merger was approved?

14 A. With Bell South, yes.

15 Q. Okay. And do you remember the date when
16 the merger was approved?

17 A. I believe it was December 29th, 2006.

18 Q. Okay. And you've indicated there were
19 conditions imposed upon AT&T as part of that merger;
20 is that right?

21 A. There were conditions that AT&T agreed
22 upon within that merger.

23 Q. And you would agree that the -- the
24 merger order was effective upon AT&T's agreement to
25 those conditions; is that right?

1 A. That's my understanding.

2 Q. And effectively, the -- the FCC has
3 created those requirements upon AT&T as part of the
4 merger order. Do you understand that?

5 A. Yes.

6 Q. Okay. Do you recall how the -- the
7 merger commitments were offered to the FCC?

8 A. I believe they were, if not all of them,
9 some of them were via a letter from AT&T to the FCC.

10 Q. Okay. And a letter from Mr. Quinn; is
11 that right?

12 A. I believe so.

13 Q. Mr. Robert Quinn? And is Mr. Quinn
14 your -- your current boss, one of your current
15 bosses?

16 A. No.

17 Q. Okay. You don't -- is he still with
18 AT&T?

19 A. I don't know. It's a very large
20 company.

21 Q. Okay. Fair enough. And if I -- if I
22 told you these conditions were presented in a letter
23 on December 28th, would you -- would that surprise
24 you?

25 A. That sounds correct.

1 Q. Okay. And the FCC had not approved the
2 merger prior to that date; is that right?

3 A. That's right.

4 Q. Okay. And then the merger -- the FCC
5 approved the -- the merger the next day?

6 A. December 29th.

7 Q. Okay. Today we're only discussing the
8 interconnection-related merger commitments; is that
9 right?

10 A. Yes.

11 Q. Okay. But there are -- there are a
12 number of other merger commitments; is that right?

13 A. Yes.

14 Q. That require AT&T and -- and the Legacy
15 Bell South, I mean all of AT&T, to take certain
16 actions; is that right?

17 A. That's a fair characterization, yes.

18 Q. And I will delve into them, but some of
19 them deal with special access, for example?

20 A. Yes.

21 Q. And some of them deal with the
22 obligation to offer customers certain broadband
23 access; is that right?

24 A. Yes.

25 Q. Okay. Now, in your testimony on page 5,

1 you indicate that Merger Commitment 7.4 is an
2 alternative to Section 252; is that right?

3 A. Yes, it is.

4 Q. And that's part of your argument as to
5 why the merger commitments cannot be enforced in an
6 arbitration proceeding; is that right?

7 A. Yes.

8 Q. Okay. Would you agree with me that it
9 is AT&T's position that a state commission cannot
10 enforce the merger commitments in any proceeding?

11 A. I don't know about in any proceeding. I
12 guess it would depend upon the individual situation.

13 Q. Okay. Well, Sprint last year filed a
14 complaint to enforce a different merger commitment;
15 is that correct?

16 A. I believe so.

17 Q. Okay. And AT&T filed a Motion to
18 Dismiss. Are you familiar with that?

19 A. Which merger condition are we talking
20 about?

21 Q. Well, this was the Merger Commitment
22 No. 1 to port the Kentucky ICA.

23 A. 7.1.

24 Q. 7.1.

25 A. Okay.

1 Q. And did AT&T file a Motion to Dismiss?

2 A. Which state?

3 Q. In Missouri.

4 A. Yes.

5 Q. Okay. And the Motion to Dismiss was
6 based upon jurisdictional grounds; is that right?

7 A. That's my understanding.

8 Q. Okay. And the Missouri Commission
9 agreed with AT&T under those circumstances, didn't
10 they?

11 A. Yes.

12 Q. Okay. Then Sprint filed its petition
13 for arbitration in this proceeding; is that correct?

14 A. Yes.

15 Q. And AT&T again filed a Motion to
16 Dismiss; is that correct?

17 A. Yes.

18 Q. And again, AT&T's position was that the
19 state commission didn't have jurisdiction to enforce
20 the merger commitments in the arbitration proceeding;
21 is that right?

22 A. That's correct.

23 Q. Okay. So I'm going to ask you as a
24 policy expert and somebody knowledgeable about both
25 the merger commitments and interconnection in

1 general, what avenue is open at a state commission
2 for a company like Sprint that has a disagreement
3 with AT&T about the merger commitments?

4 A. Again, I guess it would depend upon
5 which merger condition Sprint were seeking to apply.
6 I'm not sure that there is any avenue at the state
7 commission for some of the merger conditions such as
8 7.4 here today. If Sprint were to avail itself of
9 7.3 to start negotiating from its old expired
10 Missouri agreements and if there were disagreements
11 on the content of that language, then that language
12 would be subject to arbitration at the Commission.

13 So that would be -- that would be an
14 example where an application of the merger condition
15 would ultimately end up under arbitration and review
16 at the Commission.

17 Q. Okay. You would agree with me that
18 generally speaking, state commissions have
19 jurisdiction over interconnection agreements; is that
20 right?

21 A. Generally speaking, yes.

22 Q. And that the four commitments that we're
23 talking about, and specifically 7.1 through 7.4, all
24 deal with interconnection agreements; wouldn't you
25 agree?

1 A. Yes.

2 Q. Okay. Mr. McPhee, as part of your
3 experience, you're aware that Sprint filed
4 arbitrations in the nine Bell South states?

5 A. Yes, I am.

6 Q. And isn't it true that AT&T filed
7 motions to dismiss in those proceedings as well; is
8 that correct?

9 A. Yes.

10 Q. And in the 13 states, AT&T has filed
11 motions to dismiss Sprint's efforts to utilize the
12 merger commitments when we attempted to port the
13 Kentucky ICA; is that right?

14 A. That's correct.

15 Q. So in the 22 states that AT&T now
16 operates, AT&T has filed a Motion to Dismiss when
17 Sprint has elected to enforce a merger commitment; is
18 that right?

19 A. Via the state commission, I believe
20 that's correct.

21 Q. Okay. AT&T filed a declaratory motion
22 with the FCC, and I'm -- I can't recall the exact
23 date, but sought a -- a declaration from the FCC
24 about whether or not bill-and-keep is a
25 state-specific price, are you familiar with that

1 proceeding?

2 A. Generally I'm aware of it.

3 Q. Okay. And -- and if as part of the
4 disputes that Sprint and AT&T had in the 13 states
5 was whether or not the bill-and-keep provision in the
6 Kentucky ICA was -- needed to be modified as a
7 state-specific price; is that right?

8 A. Under Merger Condition 7.1, there was a
9 dispute as to whether or not it was a pricing
10 consideration or not, that's correct.

11 Q. And Sprint's view was that it was not a
12 state-specific price; is that right?

13 A. Yes.

14 Q. And AT&T's view was that it was a
15 state-specific price; is that right?

16 A. Yes, it is.

17 Q. And AT&T submitted that question to the
18 FCC; is that right?

19 A. I believe so, yes.

20 Q. Okay. Has the FCC ever ruled on that
21 question?

22 A. Not to my knowledge.

23 Q. Okay. Well -- and in fact, has AT&T
24 withdrawn its position?

25 A. That's my understanding.

1 Q. Okay. So AT&T didn't wait for the FCC
2 to provide an answer; is that right?

3 A. I guess -- I don't know if -- didn't
4 wait for the answer is the right way to characterize
5 it. FCC did withdraw it prior to the FCC issuing an
6 answer to it.

7 Q. Okay.

8 JUDGE DIPPELL: Let me just interrupt
9 for a second. Did you just say that the FCC withdrew
10 it or that AT&T withdrew it?

11 THE WITNESS: AT&T withdrew it.

12 JUDGE DIPPELL: Okay.

13 MR. PFAFF: In your testimony on
14 page 7 -- and first of all -- and this is for Mr. Bub
15 too, I am going to try to avoid getting into
16 Schedule 1 P, and I'm -- it's not my plan to talk
17 about confidential or proprietary. If I -- if I
18 stray or stumble, please let me know, okay?

19 MR. BUB: Thank you, Jeff.

20 BY MR. PFAFF:

21 Q. You indicate that there were a number of
22 open issues between the parties on the changes
23 necessary to the Kentucky ICA; is that right?

24 A. Yes.

25 Q. Okay. And in your testimony, you've

1 included as your Schedule 1 P some example of part of
2 the disputes; is that right?

3 A. Yes.

4 Q. Okay. But you would agree with me that
5 there are other disputes other than those that you
6 have included in your schedule?

7 A. That's my understanding that there were
8 other sections of the contract that were still being
9 negotiated.

10 Q. Okay. So it's not your testimony that
11 only the disputes reflected on Schedule 1 P are those
12 that remain between the parties; is that right?

13 A. No. It was just to provide a sampling.

14 Q. All right. And -- and you acknowledge
15 in your rebuttal -- if you go to your rebuttal
16 testimony on page 4, line 23 -- you indicate that the
17 parties have continued working and have resolved most
18 issues but remain at impasse on others. Do you see
19 that?

20 A. I -- I see that, yes.

21 Q. Okay. And in fact, in -- in at least
22 four other states, the parties have submitted those
23 issues where we're at the impasse to the state
24 commissions, wouldn't you agree?

25 A. I believe that's correct, yes.

1 Q. And you have provided -- personally, you
2 have provided testimony in Indiana, Illinois,
3 Wisconsin and I believe Oklahoma; is that right?

4 A. I believe that's correct. I get foggy
5 on what's actually been filed, what we're continuing
6 to work on, but --

7 Q. All right. And I -- and I won't hold
8 you to -- to what states you've actually testified
9 in. But certainly, we were present in both Illinois
10 and Indiana --

11 A. Yes, that's true.

12 Q. -- for your testimony? And at least in
13 most of the states, there are some common issues that
14 remain at impasse; is that right?

15 A. Well, it seems that the -- the
16 arbitrations have somewhat changed over time, but
17 it's -- if what you're characterizing as the issues
18 that were brought before the Commission by Sprint
19 with regard to application of Merger Condition 7.1
20 and what should or should not be changed in that,
21 then -- then, yes, there was commonality between the
22 states on those issues.

23 Q. Okay. Thank you. And one of the common
24 issues -- one of the common issues where the parties
25 continued to be at impasse was whether or not the

1 bill-and-keep arrangement was a state-specific price,
2 would you agree?

3 A. Yes.

4 Q. Okay. To your knowledge, have the
5 parties reached agreement on that issue even in
6 Missouri in -- in our discussions?

7 A. No, I'm not aware of any agreement.

8 Q. Okay. You're not aware of any -- any
9 place where AT&T has agreed in any state that
10 bill-and-keep was not a state-specific price; is that
11 right?

12 A. That's true.

13 Q. Okay. The other common issue, the --
14 one of the issues that Ms. Allen-Flood discussed was
15 the issue -- the definition of wireless local
16 traffic. Are you familiar with that issue?

17 A. Somewhat, yes.

18 Q. Okay. And you testified about that
19 issue in Illinois and Indiana; is that right?

20 A. Yes.

21 Q. Okay. And that is another issue who --
22 that seems to be common throughout the 13 states,
23 wouldn't you agree?

24 A. Yes.

25 Q. And to your knowledge, that issue hasn't

1 been resolved in Missouri either, has it?

2 A. That's true.

3 Q. Okay. And -- and I'd like to discuss
4 with you a little bit about the definition of
5 wireless local traffic that -- that Ms. Flood
6 indicated in her testimony or at least in her cross
7 that was still an open issue between the parties,
8 okay?

9 First of all, the -- and, of course,
10 we've spent some time and I -- I'm -- well, let me
11 just ask you, would you please characterize AT&T's
12 position on the definition of wireless local traffic
13 or what the issue is there?

14 A. Well, I'd have to be going off memory
15 because, first off -- of all, I'm not involved in the
16 actual negotiations so I don't know what has evolved
17 over the past year. When I last really looked at the
18 issue, I think was in preparation for the Illinois
19 and Indiana arbitrations approximately a year ago.
20 And it's my understanding that there's a difference
21 in the parties' beliefs as to what type of traffic
22 should be subject to reciprocal compensation for
23 wireless local traffic.

24 AT&T believes that that wireless local
25 traffic should be only traffic that's exchanged

1 directly between the parties with -- that -- when the
2 call originates and terminates within the same
3 metropolitan -- major -- major trading area, MTA.

4 Sprint believes that any traffic that
5 starts with one party and ends with another party
6 regardless if it's carried by a third-party
7 interexchange carrier. So long as that call is
8 contained within the MTA, it's subject to reciprocal
9 compensation.

10 Q. Okay. I think you -- I think you
11 have -- and let me just -- let me just build on this
12 a little bit. The -- the issue is that there is
13 certain traffic that originates with AT&T as a local
14 carrier, okay, that is then -- that is then handed
15 off to an interexchange carrier or what I'll call as
16 an IXC; is that correct?

17 A. Yes.

18 Q. And I'll -- I'm going to call that
19 one-plus as a shorthand, okay?

20 A. Yes.

21 Q. And then that call terminates to a
22 wireless carrier, but this all occurs within the same
23 MTA; is that right?

24 A. At the beginning of the call, that's
25 correct.

1 Q. Okay. And AT&T's position is that
2 traffic that is handed off, one-plus, even if it's --
3 even if it terminates within the -- the same MTA, is
4 not subject to reciprocal compensation; is that
5 correct?

6 A. That's correct. It's -- AT&T does not
7 consider that an AT&T call. That's, at that point in
8 time, an IXC call.

9 Q. Okay. And Sprint takes the opposite
10 position, that traffic that we -- that originates
11 with an AT&T local exchange customer and that is
12 terminated intra-MTA regardless of whether or not
13 there's an intervening carrier, is subject to
14 reciprocal compensation. Do you -- is that how you
15 understand Sprint's position?

16 A. Generally, yes.

17 Q. Okay. And -- and that's an issue that
18 the parties -- that is still -- that was still under
19 dispute in the negotiations of the Kentucky ICA in
20 Missouri; is that right?

21 A. I don't know for a fact, but I wouldn't
22 be surprised.

23 Q. Okay. Well, Ms. Flood testified that
24 the definition of wireless local traffic was still a
25 disputed issue.

1 A. (Nodded head.) Okay.

2 Q. Okay. So you would agree that it was

3 probably still an issue --

4 A. Yes.

5 Q. -- again, because to your knowledge,

6 AT&T has never agreed to Sprint's position on that

7 issue; is that right?

8 A. Yes.

9 Q. Okay. And -- and again, you're a --

10 you're a policy expert for AT&T, right?

11 A. Yes.

12 Q. And you're a policy expert on

13 interconnection-related matters?

14 A. Certain matters, that's correct.

15 Q. Okay. And are -- do you know if the

16 Missouri Commission has ruled on this issue?

17 A. I believe it has.

18 Q. Okay. And do you know how it ruled?

19 A. I believe it -- my general understanding

20 is that it deemed -- it ruled contrary to AT&T's

21 position.

22 Q. It ruled in favor of Sprint's position;

23 is that right?

24 A. That's my understanding.

25 Q. Okay. And this is from several years

1 back?

2 A. I believe so.

3 Q. Okay. You don't disagree that Sprint
4 has requested a three-year extension of its existing
5 agreements, do you?

6 A. I don't disagree that Sprint is seeking
7 that. I believe they requested it via their -- their
8 petition for arbitration.

9 Q. Well, but -- are you aware of the
10 correspondence that predated that? There, let me --
11 let me turn you to our petition. And it's our
12 letter dated, I think it was in November. And you'd
13 think I would have had all this committed to memory
14 by now.

15 A. November 25th?

16 MR. SCHIFMAN: Exhibit 7.

17 BY MR. PFAFF:

18 Q. Okay. So yeah, Exhibit 7 to our
19 petition. You -- can you find that?

20 A. Okay. I think these are mixed up.

21 MR. BUB: Jeff, if it would help, we're
22 not disavowing the letter.

23 MR. PFAFF: Okay, yeah.

24 THE WITNESS: Yeah, okay. I know what
25 you're talking about now.

1 BY MR. PFAFF:

2 Q. Okay. That's fine. And you would also
3 agree that that letter was sent during the time the
4 arbitration window was opened?

5 A. That's my understanding, it was sent
6 during the time the arbitration window for the
7 negotiations of the Kentucky agreement was still
8 open.

9 Q. Okay. And Ms. Flood talked about
10 several conversations about Sprint's extension
11 request, and she indicated that it was contrary to
12 Sprint's policy? Do you take that as a -- a denial
13 of Sprint's request? I -- I didn't ask Ms. Flood
14 that, but...

15 A. I don't -- I don't know. I wasn't there
16 to characterize whether it was a request or if it's
17 just a discussion and it was just simply a difference
18 of views or positions. I don't -- Ms. Allen-Flood
19 has characterized that it wasn't a negotiation. It
20 sounds like it was asked and she responded to it.

21 Q. Okay. It was asked and she responded --
22 well, all right. Let me just -- let me move on.

23 AT&T did provide a letter -- actually,
24 you can keep that because the next exhibit, I think,
25 is the letter dated December 5. I'm sorry. That's

1 your testimony. That's Schedule 4. I'm sorry,
2 Scott.

3 A. I have it.

4 Q. Okay. And that is AT&T's response to
5 Sprint's request; is that right?

6 A. That's correct.

7 Q. Okay. And in essence, AT&T denied
8 Sprint's request because we didn't meet the deadline
9 under the accessible letter; is that right?

10 A. That's correct.

11 Q. Okay. Any other reason provided?

12 A. I believe that's the reason provided in
13 this letter.

14 Q. Okay. And not to put too fine a point
15 on it, but basically, we're just too late; is that
16 right?

17 A. With the request, that's correct.

18 Q. Okay. Now, this is the accessible
19 letter that is dated November 16th, 2007 and that's
20 attached to your direct testimony as Schedule 5. Is
21 that the accessible letter that's being discussed?

22 A. Yes, it is.

23 Q. Okay. Have there been any other
24 accessible letters distributed by AT&T with respect
25 to the merger commitments?

1 A. I -- I don't know. There's a lot of
2 merger commitments that we're not talking about here
3 today.

4 Q. Any secret accessible letters that we
5 should know about or...

6 A. They'd be news to me as well.

7 Q. Okay. Do you know, has this accessible
8 letter ever been submitted to the FCC?

9 A. It's my understanding that the -- this
10 accessible letter was submitted to the FCC staff and
11 there was no objection to the letter.

12 Q. Do you know when that took place?

13 A. I don't have a specific date, but I -- I
14 believe it would be around November 2007.

15 Q. And was it submitted in the docket in
16 the proceeding?

17 A. I believe it was. I -- I do know that
18 we've been trying to pull it up in our records on the
19 docket and there's been some trouble in finding it.

20 Q. Okay.

21 A. But that's my understanding that it was.

22 Q. Do you know if there's ever been an
23 order issued by the FCC officially adopting the
24 accessible letter?

25 A. No.

1 Q. Okay. Now, under the accessible letter,
2 if a carrier wanted to extend its current ICA and one
3 whose initial term had already expired, it needed to
4 submit its request prior to January 15th, is that
5 right?

6 A. 2008, that's correct.

7 Q. Yeah, I'm sorry. Yes, January 15th
8 2008. And since Sprint didn't make its request at
9 least formally until the November 21, 2008
10 correspondence, it didn't conform to the accessible
11 letter according to AT&T?

12 A. With respect to Missouri, and yet Sprint
13 conformed to it with respect to eight other states.

14 Q. Okay. Those are the states in the Bell
15 South territory, right?

16 A. That's correct.

17 Q. Okay. And the reason cited was -- and
18 that was the reason cited in December 5th
19 correspondence that we didn't meet the terms of the
20 accessible letter. Do you -- could you pull out from
21 the petition the actual merger commitments? And I
22 think that is Exhibit 1.

23 A. I think they were attached to my
24 testimony as well.

25 Q. You know what, I think you're right. I

1 think it is attached to your testimony.

2 MR. SCHIFMAN: Schedule 3.

3 BY MR. PFAFF:

4 Q. Yeah, Schedule 3, page 150.

5 A. Okay.

6 Q. That's the Merger Commitment 4?

7 A. Yes.

8 Q. Okay. Can you tell me in that merger
9 commitment where it requires a carrier to make its
10 request by the January 15th deadline?

11 A. Those words aren't there.

12 Q. Okay. That date doesn't exist there,
13 does it?

14 A. It does not.

15 Q. Okay. And it's somewhat of an arbitrary
16 date chosen by AT&T, wouldn't you agree?

17 A. It was a grace period provided by AT&T
18 to clarify the merger commitment in an effort to
19 reduce conflicts with other carriers including
20 Sprint.

21 Q. And so Sprint had disagreed with AT&T's
22 interpretation of the Merger Commitment 4; is that
23 right?

24 A. That's correct.

25 Q. Okay. And we weren't the only ones; is

1 that right?

2 A. That's true.

3 Q. Okay. Other carriers had disagreed as
4 well?

5 A. Yes.

6 Q. Okay. And AT&T selected January 15th
7 as -- as an arbitrary deadline -- strike that.
8 Wouldn't you agree that AT&T could have selected
9 another date? Couldn't AT&T have selected
10 February 15th?

11 A. I suppose AT&T could have, but it
12 provided for a 60-day grace period which is a
13 sufficient amount of time for carriers to take
14 advantage of extending their contracts.

15 Q. Do you know if AT&T ever filed this
16 accessible letter with the Missouri Commission?

17 A. I don't know.

18 Q. Now, you would also agree -- I'm going
19 to ask you to turn to Exhibit MGF-1, that's to
20 Mr. Felton's testimony. You probably don't have that
21 in front of you, do you?

22 A. No.

23 Q. Here, I've got another copy. Okay. Do
24 you recognize -- I've handed you what is really MGF-1
25 is which is the -- an exhibit to Mr. Felton's

1 testimony. Do you see that?

2 A. Yes.

3 Q. Okay. And you recognize that as a

4 discovery response to Sprint from AT&T?

5 A. Yes, I do.

6 Q. Okay. Now, you would agree that AT&T

7 did process and grant extension requests even if they

8 received them after the January 15th deadline; is

9 that right?

10 A. Yes, and we would continue to do so.

11 Q. Okay. Well -- and actually, let me --

12 let me point out something. In your accessible

13 letter, the language actually says that you have to

14 send in -- if you look to your accessible letter,

15 Schedule 5. Are you there?

16 A. Yes.

17 Q. And the very last page.

18 A. Okay.

19 Q. And this is -- this Schedule 5 to his

20 testimony. It says "ICAs expiring prior to

21 January 15th, 2008, option 1." Do you see that?

22 A. The first bullet point on that page?

23 Q. Yeah, I wouldn't call it a bullet point.

24 I'd -- it's an underlined section heading, I guess.

25 The -- the -- the page is extending ICAs' terms.

1 A. Okay. The second-to-last page. I was
2 on the last page.

3 Q. Second page? Oh, I'm sorry. They were
4 out of order, yeah.

5 A. Okay. I see it.

6 Q. Okay. So -- so the page has a section,
7 the heading "Extending ICAs' Terms," right?

8 A. Yes.

9 Q. Okay. And then the first section under
10 that is "ICAs expiring prior to January 15th,
11 2008" --

12 A. Yeah.

13 Q. -- do you see that? It said that "AT&T
14 would extend ICAs whose terms have already expired or
15 will expire prior to January 15th provided that AT&T
16 receives the carrier's request prior to January
17 15th." Do you see that? That's the first sentence.

18 A. Yes.

19 Q. Okay. Which would mean A -- have to --
20 AT&T would actually have to receive the request by
21 January 14th, right?

22 A. I guess so, yes.

23 Q. Okay. And yet, when you look at --
24 turning back now to MGF-1, the discovery responses,
25 and if you would turn to page 19 of 23, and I know

1 this is very small print. This is the way it was
2 produced to us.

3 A. Okay.

4 Q. All right. If you'll look, do you see
5 the -- the listing of ComPartners, LLC?

6 A. I do.

7 Q. Okay. And if you look towards the
8 bottom, you see the states of Arkansas, Nevada and
9 Texas?

10 A. Yes.

11 Q. Okay. When did those three agreements
12 expire?

13 A. This says 12/31/2006.

14 Q. Okay. And when did AT&T receive the
15 request?

16 A. This says January 15th, 2008.

17 Q. So under the -- the explicit language of
18 the accessible letter, ComPartners was late, wasn't
19 it?

20 A. If you're saying because the accessible
21 letter says prior to January 15th?

22 Q. Yes.

23 A. I guess they might be a day late --

24 Q. Okay.

25 A. -- or perhaps there's a day for

1 processing, I don't know.

2 Q. All right. And if you look above, do
3 you see where there is a -- a Shelcom? It's like the
4 sixth line down, a California --

5 A. Yes.

6 Q. -- company? When did that agreement
7 expire?

8 A. November 6th, 2002.

9 Q. And -- and the request was received?

10 A. January 15th, 2008.

11 Q. And then the -- the carrier right below
12 that, FBN Indiana, when did that agreement expire?

13 A. 2004.

14 Q. Okay. And yet, when was the request
15 received?

16 A. January 15th, 2008.

17 Q. And yet, AT&T extended their agreements,
18 isn't that right?

19 A. That's correct.

20 Q. Okay. Now, if you'll turn to the next
21 page, and it's page 20 of 23.

22 A. Okay.

23 Q. And if you go about halfway down, you
24 see the company identified as Michigan Access?

25 A. I do.

1 Q. Okay. And could you tell me when that
2 agreement expired?

3 A. It says January 1st, 2007.

4 Q. And when was the request received?

5 A. On here it says May 9th, 2008.

6 Q. Okay. This wasn't a day late, was it?

7 A. According to this, no.

8 Q. Okay. And yet, the agreement was still
9 extended; is that right?

10 A. According to this, that's correct.

11 Q. And I want to -- and again, I'm sorry
12 for jumping around. But would you go back to your --
13 the accessible letter?

14 A. Okay.

15 Q. And back to the same page that we were
16 looking at, the -- and again, the paragraph entitled
17 "ICAs Expiring Prior to January 15th."

18 A. Yes.

19 Q. Would you read the last sentence,
20 please?

21 A. "If no requests to extend the ICAs term
22 has been received by AT&T prior to January 15th,
23 2008, the ICA's term may not be extended pursuant to
24 the merger commitment."

25 Q. That seems pretty definite to me,

1 wouldn't you agree?

2 A. It -- it's a pretty firm statement.

3 Q. Okay. And AT&T made exceptions to that
4 statement, didn't they?

5 A. I don't know the circumstances behind
6 that extension. I know that Mr. Felton pointed out
7 another extension that we did do some research on and
8 were able to show that it -- it conformed to AT&T's
9 consistent application of the merger -- or of the
10 accessible letter.

11 Q. Yeah, A -- AT&T made an exception for
12 the -- for the Hunt Company; is that right?

13 A. I don't know that I would call it an
14 exception inasmuch as there seemed to have been some
15 miscommunication about the request date, the initial
16 request date.

17 Q. Okay. Didn't seem to follow the
18 accessible letter's terms, yet AT&T still granted the
19 extension request; is that right?

20 A. I think at the end of the day, it did
21 follow the accessible letter's terms.

22 Q. Are there any other exceptions to the
23 accessible letter that you're aware of?

24 A. I'm not aware of any.

25 Q. Okay. Well, you're not aware of any

1 except the ones that we've talked about today?

2 A. Again, I don't know the circumstances,
3 if there are any behind that. Like I said,
4 Mr. Felton pointed out the Hunt, quote, unquote,
5 exception, and we were able to justify its
6 application consistent with the accessible letter.

7 Q. AT&T's not willing to make an exception
8 to Sprint's request?

9 A. If AT&T were to, it would be the only
10 exception consciously granted, to my knowledge.

11 Q. Isn't it true that AT&T originally
12 denied -- I'm sorry. Let me back up for a second.
13 Verizon Wireless sought to extend its ICA last year;
14 is that right?

15 A. That's my understanding.

16 Q. Okay. And AT&T originally denied
17 Verizon Wireless' request; is that right?

18 A. I'm not overly familiar, but I -- I have
19 no reason to disagree with the characterization.

20 Q. Well, you did attach the amendment to
21 the Verizon Wireless agreement; is that right?

22 A. Yes.

23 Q. Okay. And the language -- and I'm
24 sorry. This is Schedule 2 to your direct testimony.

25 Are you there?

1 A. Yes, I am.

2 Q. And do you see where it starts off,
3 where the amendment says, "The interconnection
4 agreement dated April 2nd, 1997"? Do you see that --
5 did I read that wrong? I'm sorry. It says, "The
6 interconnection agreement dated April 2nd, 1997."

7 A. I see that.

8 Q. Okay. That means that AT&T and Verizon
9 Wireless had had an agreement that had been in effect
10 since 1997; is that right?

11 A. Yes.

12 Q. And I --

13 A. Well, wait. I'm sorry. Let me clarify.
14 They'd been operating under those terms. I don't
15 know if it was effective or if it had expired. I
16 don't know the -- the situation behind it, but it
17 appears that these same terms and conditions were
18 being used for the exchange of traffic between the
19 parties since 1997.

20 Q. Well, you understood that AT&T -- I'm
21 sorry -- that Verizon Wireless initially filed a
22 complaint against AT&T in Missouri; do you understand
23 that?

24 A. That's my understanding.

25 Q. And that formal -- well -- and so AT&T

1 ended up extending this agreement that it was
2 originally effective in 1997; is that right, by the
3 terms of this amendment?

4 A. Yes.

5 Q. You're familiar with the Bell South
6 proceedings; is that right?

7 A. The Bell South, Sprint proceedings?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. And...

11 A. I'm familiar with some of them. I
12 understand that there have been some others that have
13 gone on, but the initial ones under Merger
14 Commitment -- the extension, the initial extensions,
15 yes.

16 Q. Well -- and again, Sprint sought to
17 extend its current ICAs in the Bell South territory
18 and AT&T opposed that; is that correct?

19 A. Yes.

20 Q. Okay. And Sprint filed arbitrations in
21 those nine states; is that right?

22 A. Yes.

23 Q. Okay. Now, the -- the reason that AT&T
24 had denied Sprint's request in the nine states was
25 because the original term had expired; is that right?

1 A. That's correct.

2 Q. And AT&T's position at that time was
3 that -- that if the original term had expired, the
4 ICA could not be extended; is that right?

5 A. Consistent with the plain reading of the
6 merger commitment, that's correct.

7 Q. And this is the issue that was submitted
8 to the Kentucky Public Service Commission, right?

9 A. Yes.

10 Q. Okay. And that's one of the nine states
11 that happened to be the first state that ruled on
12 this issue; is that right?

13 A. That's correct.

14 Q. Okay. And the Kentucky --

15 (OVERHEAD ANNOUNCEMENT.)

16 JUDGE DIPPELL: Apologize for the
17 interruption. Mr. Pfaff, do you have quite a bit
18 more cross-examination?

19 MR. PFAFF: Well, I am -- let me see
20 here. I would say I am two-thirds of the way
21 through, but I do have -- it's more than -- I'm sure
22 it's more than just ten or 15 minutes.

23 JUDGE DIPPELL: All right. And --

24 MR. BUB: And I don't have any redirect
25 at this point.

1 JUDGE DIPPELL: Okay. Well, I do have a
2 few questions myself, and Mr. Voight does need to be
3 at the Commission's agenda at least for some of the
4 first part, so do you have maybe a convenient break
5 in your cross or --

6 MR. PFAFF: We can break here if you
7 would like.

8 JUDGE DIPPELL: Okay.

9 MR. PFAFF: This would be fine.

10 JUDGE DIPPELL: Okay. Well, why don't
11 we go ahead, then, and go ahead and break for lunch
12 and then we can return back even if the agenda isn't
13 completed, but I think that we can take an hour and
14 five minutes if that -- if everyone thinks that would
15 be sufficient to grab some lunch.

16 MR. PFAFF: Okay.

17 JUDGE DIPPELL: Okay. Let's go ahead
18 and take a one-hour lunch break or an hour and five
19 minutes and come back at one o'clock. Let's go ahead
20 and go off the record.

21 (THE LUNCH RECESS WAS TAKEN.)

22 JUDGE DIPPELL: Okay. We're back on the
23 record returning after our lunch break, and we're
24 going to resume with questions from Mr. Pfaff.

25 MR. PFAFF: Thank you, Judge Dippell.

1 BY MR. PFAFF:

2 Q. Mr. McPhee, I want to start off with
3 some questions with respect to the -- the nine Bell
4 South states. And again, you participated in the
5 activities in those states; is that correct?

6 A. In some of the activities, that's
7 correct.

8 Q. And my understanding is that only one
9 state, and that is the Kentucky Public Service
10 Commission, ever ultimately ruled on the substantive
11 issue of whether or not the agreements could be
12 extended, would you agree with that?

13 A. Yes.

14 Q. Okay. And it ruled in favor of Sprint.
15 Would you agree, then, that no state commission has
16 ever adopted AT&T's position on whether or not an ICA
17 whose term had expired could be extended under the
18 merger commitments?

19 A. I believe that that -- Kentucky was the
20 only state that ever issued an order, so that would
21 be true.

22 Q. Okay. AT&T has argued in its Motion to
23 Dismiss that the Missouri Public Service Commission
24 does not have jurisdiction over merger commitments;
25 is that correct?

1 A. Yes.

2 Q. And you -- you do agree, however, that
3 state commissions continue to exercise jurisdiction
4 over interconnection agreements?

5 A. Yes.

6 Q. And for those carriers whose ICAs have
7 been extended, AT&T and the requesting carrier have
8 filed amendments to their current ICAs; is that
9 right?

10 A. That's my understanding, yes.

11 Q. And Verizon Wireless and AT&T filed an
12 amendment extending the Verizon Wireless ICA until
13 April 10th, 2007; is that right, in your Schedule 2
14 to your direct testimony?

15 A. It looks like the expiration date is
16 May 10, 2010; is that correct?

17 Q. That's correct.

18 A. Yeah.

19 Q. Now, has AT&T filed that amendment with
20 the Missouri Public Service Commission?

21 A. I believe so.

22 Q. Okay. And has the -- has the Public
23 Service Commission approved that amendment?

24 A. I would believe so.

25 Q. Okay. So it's -- it's correct that AT&T

1 doesn't object to a state commission's exercising
2 jurisdiction over interconnection agreements extended
3 under the merger commitments; is that right?

4 A. I'm sorry. Could you please restate
5 that?

6 Q. Well, AT&T doesn't have an objection to
7 submitting amended ICAs to the state commission for
8 approval?

9 A. True.

10 Q. Okay. Because they submitted the
11 Verizon wireless amendment to the Commission for
12 approval?

13 A. Yes.

14 Q. So when the -- so when a requesting
15 carrier and AT&T agree on a merger extension or
16 merger commitment extension, the -- the extension
17 amendment is normally submitted to state commissions;
18 is that right?

19 A. That's my understanding, yes.

20 Q. Okay.

21 A. Just like any other contract provision
22 that the two parties may decide to agree upon.

23 Q. So AT&T is okay with the state
24 exercising its jurisdiction in approving those
25 amendments?

1 A. I believe at that point in time, once
2 it's agreed upon, it becomes part of the contract
3 subject to state review.

4 Q. Would you turn to your direct testimony,
5 please? You understand that Sprint requested an
6 extension of the existing agreements; is that right?

7 A. In November 2008, yes.

8 Q. Okay. Would you turn to page 4,
9 line 14?

10 A. Okay.

11 Q. Would you read that sentence, please?

12 A. "The term of an existing interconnection
13 agreement between the parties could not possibly be
14 an open issue with respect to the negotiation and
15 subsequent arbitration of a new interconnection
16 agreement."

17 Q. Would you turn to page 3, line 7, that
18 sentence that starts "In addition"?

19 A. I see it.

20 Q. Could you read that sentence?

21 A. "In addition, in case the Commission
22 nonetheless decides to arbitrate Sprint's complaint,
23 I will show that Sprint is not entitled to extend its
24 current ICAs under Merger Commitment 7.4 because
25 Sprint requested the extension too late."

1 Q. So in -- in this sentence you're
2 discussing Sprint's current ICAs; is that right?

3 A. I'm discussing what it is the parties
4 are operating under today, the terms of those ICAs
5 that -- that are expired and terminated.

6 Q. Well, you'll say that -- you said that
7 Sprint is not entitled to extend its current ICAs; is
8 that right?

9 A. It -- it does say that.

10 Q. Okay.

11 A. But I'm clarifying that it's an expired
12 and terminated contract.

13 Q. And on page 4 when you were talking
14 about the term of an existing interconnection
15 agreement, you were talking about the interconnection
16 agreements that the parties operate under now by your
17 own testimony; is that right?

18 A. The terms of those expired and
19 terminated agreements, that's correct, which is
20 different and apart from what was negotiated in the
21 Kentucky red lines as a new agreement going forward.

22 Q. And on page 19 -- I'm sorry. I'm sorry.
23 Page 13 of your direct testimony, line 19.

24 A. Okay.

25 Q. Could you read the sentence that starts

1 "In order"?

2 A. "In order to benefit from the expanded
3 application of the merger commitment, Sprint would
4 have had to request extension of the wireless
5 agreements prior to January 15th, 2008, which it did
6 not do."

7 Q. And these statements are all out of your
8 direct testimony; is that correct?

9 A. Yes.

10 Q. Okay. Could you point to me anywhere in
11 your direct testimony where you indicate that the
12 agreements between Sprint and AT&T are not current?

13 A. I don't know if I made that distinction
14 until it came up in my rebuttal testimony.

15 Q. Okay. Do you know -- in Schedule 4 on
16 your direct testimony, do you see that?

17 A. I do.

18 Q. Okay. Does it indicate there that the
19 ICAs could not be extended because they were not
20 current?

21 A. It didn't delve into that, no.

22 Q. Okay. And this was AT&T's response to
23 Sprint when it sought to extend the existing ICAs?

24 A. That's correct, and AT&T's response that
25 Sprint was too late in its submission.

1 Q. Right. Are you aware of any other time
2 prior to your rebuttal testimony that AT&T has
3 informed Sprint that the ICAs cannot be extended
4 because they are not current?

5 A. I -- again, I wasn't a party to the
6 negotiations, so I don't know what was or was not
7 said. I personally was not aware of any such
8 communication.

9 Q. And no -- nothing in -- again, nothing
10 in your initial response of December 5th indicated
11 that the agreements are not current?

12 A. Well, yeah. I think that there was
13 reason enough with the accessible letter that we
14 didn't need to list out the various reasons behind
15 the decision.

16 Q. Well, if the agreements were not
17 current, why did it matter if our request was late?

18 A. I think, first and foremost, the -- the
19 request didn't conform to the accessible letter.
20 That's what Mr. Reed's organization looked at.

21 Q. Well, let me ask it again. When Sprint
22 made its request, the response was you're not
23 entitled to extend because you didn't follow the
24 accessible letter, your request was late; is that
25 right?

1 A. Essentially, yes.

2 Q. Okay. Now, in addition, you've
3 raised -- in your rebuttal testimony you've raised a
4 new argument and a new reason why we can't extend
5 those ICAs; is that right?

6 A. Well, I guess it's the first time maybe
7 perhaps you've seen it communicated in a formal
8 manner, but I wouldn't call it a new reason. I would
9 just say that it -- they terminated in, I believe,
10 August 2007 from -- from the letters from AT&T, so it
11 shouldn't have been a big surprise that those
12 contracts had been terminated.

13 Q. Well, it's new to the extent it wasn't
14 communicated on December 5th; is that right, that
15 the --

16 A. It's not -- it's not in the letter.

17 Q. Okay. And -- and -- all right. Now,
18 you have agreed that the parties have not entered
19 into replacement agreements; is that right?

20 A. That's right.

21 Q. Okay. You also have agreed in your
22 testimony, and I believe Ms. Allen-Flood stated the
23 same thing, that the parties continue to operate
24 under those agreements; is that right?

25 A. Under the terms -- the same terms of

1 those agreements, that's correct.

2 Q. All right. And I'm sorry because when
3 we talk about "those agreements," we're talking about
4 the three agreements that Sprint has requested to
5 extend, you understand that?

6 A. The Missouri agreements that have been
7 expired and terminated, that's correct.

8 Q. Well, I guess we can dispute on whether
9 or not they've been terminated, but the agreements
10 that were -- that the parties agreed to and filed
11 with the Missouri Commission, correct, those three
12 agreements?

13 A. Yes.

14 Q. Okay.

15 A. The status quo has remained --

16 Q. Okay.

17 A. -- with -- with regard to the operations
18 of the parties.

19 Q. Do you know if AT&T continues to send
20 Sprint PCS and Nextel bills for traffic under those
21 ICAs?

22 A. I would assume so. I don't know for a
23 fact.

24 Q. And we agree that there's been no other
25 ICAs filed with the Missouri Public Service

1 Commission replacing those ICAs; is that right?

2 A. Right. Just because we say that the
3 contracts are expired and terminated doesn't mean
4 that AT&T is going to turn off the taps and quit
5 exchanging traffic. Common sense and reason would
6 apply that the parties would just continue to operate
7 in a similar manner until successor agreements are in
8 place.

9 It's the same as, you know, a striking a
10 union worker if they decide to continue to work
11 through negotiations. They don't have a contract,
12 but they're still going to get paid their wages.

13 Q. Okay. Do you have any reason to believe
14 that Sprint is not interested in some sort of
15 successor agreement?

16 A. I believe Sprint is interested in a
17 success or agreement.

18 Q. Okay. In Mr. Bub's opening statement
19 and in your testimony, you discuss the fact that
20 the -- the Missouri -- the Sprint CLEC agreement
21 actually doesn't -- its term doesn't expire until, I
22 believe, is it August 2008?

23 A. I believe it's April 2008.

24 Q. April -- thank you. Okay. And -- and
25 that was because that agreement was a -- was a

1 three-year term; is that right?

2 A. That's my understanding yes.

3 Q. Okay. And I'm sorry. Your -- this is
4 your testimony on page 7, the initial term -- I'm
5 sorry -- starting on line 9, you say the initial term
6 of Sprint's CLEC agreement expired on April 29, 2008,
7 it wouldn't be eligible for an extension until April
8 29th, 2011. Is that your testimony?

9 A. That's on page 14, yes.

10 Q. 7 in your rebuttal.

11 A. Okay. I see it.

12 Q. I'm sorry?

13 A. I see that statement.

14 Q. All right. Now, is it your testimony
15 today that Sprint's CLEC agreement can be extended?

16 A. No.

17 Q. And why not?

18 A. Because it doesn't abide by the terms of
19 the accessible letter where AT&T offered additional
20 advantages for CLECs to take, and one of those was
21 the ability to extend their long expired agreements
22 for a period of three years from the request date.

23 In exchange for that expanded scope of
24 the merger condition, AT&T sought on a going-forward
25 basis that all requests be received prior to

1 expiration of an ICA, and that did not happen with
2 the Sprint CLEC agreement.

3 Q. In other words, Sprint was too late in
4 submitting its requests?

5 A. Yes.

6 Q. Okay. And you testified earlier that
7 the accessible letter was developed as a way to
8 resolve disputes between AT&T and requesting
9 carriers; is that right?

10 A. Yes, largely Sprint. There -- there was
11 a lot of miscommunication or disagreement about the
12 application of the plain terms of the merger
13 commitment --

14 Q. Oh.

15 A. -- so AT&T sought to clear up as much
16 controversy as possible by issuing that accessible
17 letter and allowing carriers a grace period to extend
18 their agreements even if they had been expired for
19 three years. So --

20 Q. Well --

21 A. And there have been no disputes since
22 that point in time with carriers other than Sprint.

23 Q. The -- AT&T's original interpretation in
24 the Bell South states was that the extension request
25 or the extension years were to be added to the term

1 of the original contract; is that right?

2 A. That's what the merger commitment says
3 and that's -- that's the way AT&T applies it, yes.

4 Q. Well, if -- if that's what the merger
5 commitment says, why isn't Sprint's request in
6 conformity with the merger commitment? Because all
7 we are asking for our CLEC is for our agreement whose
8 original term expires April -- or did expire
9 April 29th, 2008, okay, to extend that for three
10 years which was the position that AT&T took in the
11 Bell South states.

12 A. I guess that I'd respond by saying I
13 think Sprint's asking for it both ways. Sprint asked
14 initially to have the merger commitment interpreted
15 in a manner to allow long expired agreements to be
16 extended. AT&T provided a grace period for all
17 carriers in order to treat them on a consistent basis
18 to do just that.

19 And in exchange, that letter clarified
20 going forward that this would be the way that
21 extensions would be handled, and now Sprint is coming
22 back again and asking for an extension that's too
23 late per the terms of that accessible letter.

24 Q. Well, I'm going -- I'm going to ask
25 again, then. Is your testimony today that -- that

1 AT&T is unwilling to extend Sprint's CLEC
2 interconnection agreement?

3 A. Yes.

4 Q. Had --

5 A. I think --

6 Q. Well, there's no question on the table,
7 so I -- I'll let your attorney redirect you if he's
8 so inclined.

9 You heard your -- your attorney ask
10 Mr. Felton about whether negotiations took place over
11 the extension. Do you recall those questions?

12 A. Pertaining to the Kentucky agreement,
13 yes.

14 Q. Well -- and actually, I'm sorry. My --
15 my question was slightly different, and that is he
16 asked Mr. Felton whether or not the parties
17 negotiated the terms of an extension. Do you recall
18 that?

19 A. Not specifically. I know that the
20 conversation revolved around a lot of that
21 discussion.

22 Q. Well, you understand from Ms. Felton --
23 I'm sorry -- from Ms. Lynn Allen-Flood's testimony
24 that Sprint had requested a three-year extension,
25 that she had responded, and that on December 5th,

1 AT&T provided its formal response. Do you agree with
2 all that?

3 A. Generally, yes.

4 Q. Okay. So you agree that there's no
5 question that -- that Sprint asked for the extension?

6 A. Well, I think that's formalized in
7 Sprint's letter.

8 Q. Okay. Thank you. And you'd also agree
9 that AT&T denied Sprint's request; is that right?

10 A. Yes.

11 Q. If Sprint would have asked again
12 following the denial, would AT&T's answer be any
13 different?

14 A. No.

15 Q. Okay. And so would it done -- have done
16 any good for Sprint to continue to ask for the
17 extension?

18 A. Of those agreements, Sprint could have
19 asked. The answer would have been the same because
20 AT&T would have continued to apply the merger
21 commitment in a consistent manner.

22 Q. Okay. So we -- we would have continued
23 to ask and AT&T would have continued to say no; is
24 that right, is that your testimony?

25 A. Yes.

1 Q. Okay. So in other words, it would be
2 futile for us to continue to ask, wouldn't you agree?

3 A. The question they were asking, yes.

4 Q. Okay. You've indicated that you
5 disagree that Sprint should be entitled to submit
6 this issue in the arbitration; is that right?

7 A. The issue of extending under the merger
8 commitment?

9 Q. That's correct.

10 A. That's -- that's true.

11 Q. Have you as part of your preparation
12 reviewed Sprint's petition?

13 A. I believe I read through it.

14 Q. Okay. Did you review the DPL that was
15 included with the petition? And that's Exhibit 13.

16 A. Not very closely. I saw it. I looked
17 at it.

18 Q. Okay. And Sprint indicated that the
19 issue was whether or not we could extend for three
20 years under the merger commitment; is that right?

21 A. My understanding, that was Sprint's sole
22 issue.

23 Q. Okay. And did AT&T -- I mean, sorry --
24 did Sprint misstate AT&T's position anywhere?

25 A. Where? In the DPL?

1 Q. In the DPL.

2 A. Is AT&T's position just on that first
3 page?

4 Q. Yes.

5 A. It looks to be an accurate
6 representation of our position.

7 Q. Okay. And I'm sorry. Just for purposes
8 of -- you said it's -- it is "an accurate"?

9 A. It appears to be. I don't know that
10 it's -- I don't know that it's necessarily a position
11 inasmuch as it says, "AT&T has provided no written
12 response, but it's verbally claimed that Sprint's
13 extension request is out of time and cites a CLEC
14 accessible letter that it issued on November 16th,
15 2007." So there's not really a position there,
16 but -- but I don't disagree with what's written
17 there.

18 MR. PFAFF: Could I have just a quick
19 minute?

20 JUDGE DIPPELL: Certainly.

21 MR. PFAFF: Thank you.

22 BY MR. PFAFF:

23 Q. Just a couple further questions. Sprint
24 requested to extend its current ICAs for three years;
25 is that right? I mean, that's what you understand

1 our request to be?

2 A. Yes.

3 Q. Okay. And we -- we asked for that and
4 AT&T said no, okay? In your view, could Sprint have
5 done anything else to obtain the three-year
6 extensions?

7 A. Sure. They could have abided by the
8 terms of the accessible letter like Sprint did for
9 eight other states.

10 Q. Well -- but given the fact that the time
11 had already passed, I mean, that's where you stepped
12 into the -- the time machine.

13 A. Well, Sprint could have invoked Merger
14 Condition 7.3 which allows for negotiation from I
15 believe the Missouri agreements as a baseline.

16 Q. Okay. But specifically with respect to
17 Merger Commitment 7.4, okay, could Sprint have taken
18 any other action with the Missouri Public Service
19 Commission? Could we have filed a different type of
20 proceeding?

21 A. No, not to -- not to my knowledge.

22 MR. PFAFF: Okay. I think that's all I
23 have. Thank you, Mr. McPhee.

24 QUESTIONS BY JUDGE DIPPELL:

25 Q. All right. I think I might just have a

1 question or two for you. I'm going to ask you to
2 look at your direct testimony on page 15.

3 A. Okay.

4 Q. At line 7 -- and I'll start actually
5 back on 6. That very last sentence says, "Having
6 availed itself of the benefits it and other CLECs
7 received from the resolution of the dispute over
8 AT&T's original interpretation of Merger Commitment
9 7.4, Sprint should now be permitted to -- should not
10 now be permitted to disavow the terms of that
11 resolution." Can you explain to me exactly what the
12 resolution was?

13 A. The resolution was essentially the term
14 spelled out in the accessible letter that was issued
15 by AT&T in November 2007. Through the plain language
16 of the merger commitment, contracts are eligible for
17 extension from its initial expiration date, and
18 Sprint was contesting that with contracts that had
19 been expired for over a period of three years and
20 seeking an additional three-year extension above and
21 beyond the term, that the contract was already in
22 place as well as the time after.

23 For example, if the contract incepted in
24 2001 and expired in 2004, they were seeking to have
25 it extend from 2007 going forward for another three

1 years on top of the initial terms.

2 The accessible letter clarified and gave
3 additional rights to carriers to have a grace period
4 to be able to do just that. If they were to exercise
5 their request within 60 days' time, AT&T would extend
6 those contracts for three years from the date of
7 request. So in exchange for that on a going-forward
8 basis, AT&T stated that all future extension requests
9 needed to be submitted prior to the expiration date
10 of a contract. So that was the -- that was the
11 resolution.

12 Q. And -- and so it was basically an
13 informal resolution, and by that I mean it wasn't a
14 resolution that the FCC or that any other state
15 commission imposed on AT&T?

16 A. That's correct. It was -- it was
17 designed to try to alleviate some of the tension
18 between AT&T and other carriers that had different
19 interpretations, and it was successful in doing just
20 that in that in the last year there haven't been any
21 other formal complaints with regard to merger
22 commitment extensions.

23 Q. Okay. And in your rebuttal testimony,
24 page 6, you state that AT&T has handled over 650
25 extension requests under Merger Commitment 7.4. Do

1 you know if there have been others that AT&T has
2 denied for the same reason that it denied Sprint's
3 extension?

4 A. I'm unaware of any. I'm certainly not
5 aware of any that were denied and then contested on a
6 formal basis.

7 Q. Are you familiar with the three
8 agreements that have been approved here at the
9 Commission and -- and which Sprint is seeking to
10 extend?

11 A. I'm a little familiar with them. I -- I
12 believe I helped work on the CLEC agreement in
13 2004/2005 time period if it was part of the M2A
14 proceeding. The wireless agreement, though, I'm less
15 familiar with it. I have looked at them a little
16 bit.

17 Q. In -- let's see. I think it's in your
18 testimony, there's mention of -- yeah, in your
19 testimony there's mention of the Sprint Spectrum
20 agreement and the Nextel agreement each having a
21 clause -- this is in your rebuttal testimony, pages 9
22 and 10 -- each having a clause about the termination
23 of the contract. Do you know if the Sprint
24 communications interconnection agreement also has a
25 termination clause?

1 A. I don't know.

2 Q. You don't know? Okay.

3 A. No, I'd have to look at it.

4 JUDGE DIPPELL: Okay. I think that's
5 all I had for you. Mr. Voight, did you have any?

6 MR. VOIGHT: Just one or two.

7 QUESTIONS BY MR. VOIGHT:

8 Q. Mr. McPhee, my name is Bill Voight. I
9 wanted to follow up on Judge Dippell's question about
10 recurrent agreements. I just want to be clear what
11 your understanding is of the parties' current
12 arrangement. What I wrote down from opening
13 statements is there's a 1999 Nextel agreement, a 2003
14 Sprint PCS agreement, and a 2005 Sprint CLEC
15 agreement. Is that your understanding in -- I mean,
16 I don't know if it was negotiated in August or April
17 of '05, but is that your general understanding --

18 A. That's my general understanding, yes.

19 Q. -- of what the parties are operating
20 under? Is it all -- and I want to be clear, too, is
21 it AT&T's position that those agreements -- and I
22 don't know what word to use to characterize them, but
23 they're not current or they've been terminated? Is
24 that -- am I understanding that correctly?

25 A. I believe that I do discuss the -- not

1 only are they expired, but they're terminated with
2 respect at least to the wireless agreements, that's
3 true. It doesn't mean -- we continue to abide by, I
4 guess, the terms of those agreements for lack of
5 anything else, because obviously the carriers are
6 still going to exchange traffic between them. But
7 from a legal perspective, they're -- they're
8 terminated and expired.

9 Q. There was some questions about the --
10 and I believe it was of -- of you, correct me if I'm
11 wrong about that, but I think -- there was some
12 questions about intra-MTA wireless traffic?

13 A. Yes.

14 Q. Do you recall that line of --

15 A. Yes.

16 Q. -- generally that line of questioning?
17 Could you tell me how the parties, that being the
18 AT&T -- AT&T Missouri and Sprint family of companies,
19 how -- or the -- I guess Sprint's a CLEC, how that
20 traffic -- excuse me, Sprint the wireless carrier,
21 the PCS contract, how that traffic is being exchanged
22 today and if it is intra-MTA, that travels --
23 traverses through an ICA, can you tell me the
24 compensation arrangement currently being abided by
25 today?

1 A. I have to apologize. I -- I hadn't
2 testified on that subject matter for this proceeding
3 and so I was going off of memory and I don't know
4 what the language in these agreements says in
5 Missouri today.

6 Q. Okay. And as a practical matter, you
7 don't know -- I -- I take it you don't know, when it
8 comes to payment or for the exchange of that traffic,
9 if it's being exchanged pursuant to access charges or
10 as a practical matter you don't know?

11 A. I would be making assumptions if I
12 answered that.

13 Q. Okay. All right. You were asked early
14 on in your cross-examination by counsel about -- I
15 believe it was a petition filed by the AT&T, I'll
16 call it family of companies at the FCC. And I didn't
17 quite catch it, but I think it had something to do
18 with state-specific pricing, but that petition was
19 never acted upon. You did show it to the FCC staff
20 or something of that nature. Can you elaborate on
21 what that petition -- what the nature of that was?

22 A. I believe it was a petition for
23 clarification on interpretation of whether or not --
24 at least in part, whether or not bill-and-keep was a
25 state-specific pricing provision subject to Merger

1 Condition 7.1 where we went to the FCC and asked for
2 essentially a clarification is -- do you agree or do
3 you disagree that that is a -- a state-specific
4 pricing arrangement.

5 Q. Can you tell me why it might not be?

6 A. I -- I see no reason why it shouldn't
7 be. I believe it absolutely should be a
8 state-specific pricing arrangement. It's -- it's
9 addressing intercarrier compensation that --
10 state-specific prices and state-specific traffic
11 levels and balances of traffic. I believe it should
12 be state-specific pricing. I believe it is.

13 MR. VOIGHT: Thank you.

14 QUESTIONS BY JUDGE DIPPELL:

15 Q. And one last question for you,
16 Mr. McPhee, just so that I'm clear. You're not an
17 attorney, are you?

18 A. I am not.

19 Q. Okay. And you haven't had any law
20 school training or anything? I didn't see it in
21 your --

22 A. No.

23 JUDGE DIPPELL: -- testimony. I
24 just wanted to double-check and not make any
25 assumptions.

1 Okay. Are there further
2 cross-examination questions based on mine and
3 Mr. Voigt's questions?

4 MR. PFAFF: I did have a couple, if you
5 don't mind.

6 JUDGE DIPPELL: Go ahead.

7 RE-CROSS-EXAMINATION BY MR. PFAFF:

8 Q. Mr. McPhee, if you would -- you've still
9 got a copy of the petition in front of you, correct?

10 A. Yes.

11 Q. Okay. And -- and attached to that we
12 had attached the interconnection agreements that the
13 parties were operating under. And if you'll --
14 you'll -- if you can try to find it. It's fairly
15 early on, it's the Sprint Spectrum L.P. agreement.

16 A. Okay.

17 MR. PFAFF: And may I -- may I approach
18 and I can -- I can certainly show Mr. Bub the page?

19 JUDGE DIPPELL: Yes. It's page 8 of 66
20 in the wireless agreement. I can try to get him
21 close.

22 THE WITNESS: Is this it?

23 BY MR. PFAFF:

24 Q. Yeah.

25 A. Okay.

1 Q. And this is in response to a question by
2 Mr. Voight. And I'll preface this by saying that,
3 you know, we won't look farther into the agreement,
4 but we'll just look at the definition and you can
5 reserve your claims about what further on in the
6 agreement it means, but do you see item 1.35 there?

7 A. Yes, I do.

8 Q. Okay. And the definition of local
9 traffic?

10 A. Yes.

11 Q. And could you read that, please?

12 A. "Local traffic, for the application of
13 reciprocal compensation, means authorized services
14 telecommunications traffic between SBC 13-state and a
15 CMRS provider that at the beginning of the call
16 originates and terminates within the same major
17 trading area as defined in 47 C.F.R., Section
18 24.202(A)."

19 Q. Okay. Thank you. And there's -- just
20 so we're clear, there's no language in that
21 definition that requires that the traffic be
22 exchanged directly, is there?

23 A. The word directly is not in there. I
24 would say that it's open to interpretation that it
25 talks about between two parties and that's what it

1 is.

2 Q. Okay. In response to another question
3 from Mr. Voight, and actually I think by Judge
4 Dippell as well as to the -- the current status of
5 the agreement, did I -- did I hear you to say that
6 they're -- they're not all in the same place, that
7 they've not all been terminated? You seem to have a
8 distinction with the Sprint CLEC agreement.

9 A. I said I don't know off the top of my
10 head. I know that the Sprint CLEC agreement is newer
11 than the Sprint wireless agreements and I know that I
12 had some language in my rebuttal testimony specific
13 to the wireless agreements.

14 Q. Okay. But the -- your testimony does
15 indicate that the -- that the term of the Sprint CLEC
16 agreement ended in August; is that right?

17 A. April.

18 Q. I'm sorry. April, April of 2005; is
19 that right?

20 A. April 2008.

21 Q. Okay. Let me step back. All right. So
22 April 2008. And you also agree that you -- you sent
23 the same notice for -- for all the agreements; is
24 that correct?

25 A. I believe that is correct.

1 MR. PFAFF: I would like to mark just
2 one item, then, as Sprint Exhibit 7.

3 (EXHIBIT NO. 7 WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)
5 BY MR. PFAFF:

6 Q. Mr. McPhee, have you seen this before,
7 this document?

8 A. It doesn't look familiar to me, no.

9 Q. Okay. Would you agree, though, it -- it
10 appears to be a notice to Sprint to amend its
11 interconnection agreement; would you agree with that?

12 MR. BUB: Your Honor, I don't know if
13 we've laid an adequate foundation. I think he
14 testified he's not familiar with this document.

15 MR. PFAFF: Well, it's from AT&T and it
16 has AT&T letterhead on it and Mr. McPhee has
17 testified that he is the policy expert for AT&T on
18 interconnection matters.

19 JUDGE DIPPELL: Perhaps you could get a
20 little more of that information about the letter out
21 of him in identifying it.

22 BY MR. PFAFF:

23 Q. All right. Mr. McPhee, could you read
24 to me what the upper right-hand corner says?

25 A. The return address is "AT&T Operations,

1 Inc., Four AT&T Plaza, 311 South Akard, Ninth Floor,
2 Dallas, Texas 75202."

3 Q. Okay. And who is this letter addressed
4 to?

5 A. Sprint, the manager of ICA solutions.

6 Q. Okay. And who is the -- who is the
7 letter from?

8 A. The Notices Manager.

9 Q. Okay. And do you understand that to be
10 the Notices Manager from AT&T?

11 A. That's what's represented here, yes.

12 Q. Okay. Does this look similar to the
13 form that AT&T would send out to carriers when they
14 were seeking amendment to interconnection agreements?

15 A. I'm not -- it looks like a letter from
16 AT&T.

17 Q. Okay.

18 A. I'm not aware of any --

19 Q. Well --

20 A. -- common form for letters for
21 amendments.

22 Q. Well, would you allow the language in
23 the letter to speak for itself?

24 MR. BUB: Your Honor, can I have a
25 chance to voir dire the witness before we go on and

1 cross-examine the substance of the letter?

2 JUDGE DIPPELL: Yes.

3 VOIR DIRE BY MR. BUB:

4 Q. Mr. McPhee, can you authenticate this
5 letter for us? Do you have enough knowledge to
6 authenticate it?

7 A. I've never seen it before. I -- I -- I
8 see that it has a letterhead on it, I see that it's
9 from Dallas. I can see the words on it, but I -- as
10 far as any background or what it does, I would have
11 to read through it to know -- I mean, this is all I
12 know about this letter.

13 Q. Did you send it?

14 A. No.

15 Q. Anybody that worked for you send it?

16 A. No.

17 Q. Can you testify today that it's actually
18 been sent?

19 A. No.

20 MR. BUB: I don't have any further
21 questions, your Honor.

22 JUDGE DIPPELL: All right.

23 RECROSS-EXAMINATION RESUMED BY MR. PFAFF:

24 Q. Mr. McPhee, is this a letter that is --
25 despite the fact that you didn't send it and you

1 don't know that it's sent, does this look -- does
2 this appear to be a letter that had been sent from
3 AT&T to Sprint?

4 A. Yes.

5 Q. Okay. And what is the date of the
6 letter?

7 A. September 15th, 2008.

8 Q. Okay. Excuse me just a second. Do you
9 see in the amendment in the letter that it's
10 discussing House Bill 1779? Do you see that at the
11 bottom of the first paragraph?

12 MR. BUB: Your Honor, I still need to
13 object. You know, there's no foundation for this
14 letter being used in cross-examination. Our witness
15 already testified that he's never seen it, doesn't
16 know whether it was sent, doesn't -- you know, has an
17 AT&T logo, has an AT&T address, but he can't
18 authenticate it. He didn't send it, he doesn't know
19 about it.

20 MR. PFAFF: Well --

21 MR. BUB: So I object for its use in
22 cross-examination. It would be one thing if they
23 wanted to put it in their testimony and -- but, you
24 know, this witness has no knowledge of this letter
25 whatsoever.

1 JUDGE DIPPELL: Your response?

2 MR. PFAFF: Yes. Mr. McPhee has
3 testified that he's responsible and he's the policy
4 expert for AT&T on interconnection matters. I don't
5 expect that he would be aware of every single letter
6 that goes out over -- or under AT&T's letterhead;
7 however, I would expect that he would be able to have
8 general knowledge about the way that AT&T's attempts
9 to amend its agreements. And I -- I don't think
10 that's too much to ask for a witness who has his
11 responsibility.

12 MR. BUB: I don't have any trouble with
13 him asking how -- generally how we attempt it, but my
14 problem is cross-examining him with a document that
15 he can't authenticate and he's not familiar with. So
16 if he wants to go that route and talk about how we
17 generally amended, I don't have any problem with that
18 generalizing, but I have problems with him
19 cross-examining him on a document that he can't
20 authenticate that has no foundation.

21 JUDGE DIPPELL: Do you have something?

22 MR. PFAFF: Plus, it appears to be a
23 business record.

24 JUDGE DIPPELL: Well, I believe even a
25 business record has to have some proper foundation

1 laid. I'm going to have to sustain the objection. I
2 believe you can question him about the processes.

3 BY MR. PFAFF:

4 Q. Okay. Mr. McPhee, what is AT&T's normal
5 process for amending interconnection agreements?

6 A. Actually, Ms. Allen-Flood might have
7 been a better person to ask. I'm not in the
8 day-to-day operations from the amendment procedures.
9 But my general understanding would be that the
10 parties, if they were to agree upon some provision
11 that needed to be updated in the contract, that they
12 would execute legal forms, legal -- legal documents
13 and an amendment containing contract language for the
14 purposes of amending a contract.

15 Q. And this would be the current contract
16 between the parties; is that right?

17 A. That would be my general understanding.

18 Q. Okay. There would be no need to amend
19 an -- an agreement that wasn't current, wouldn't you
20 agree?

21 A. Well, I don't know. I'm not an attorney
22 and I don't know if the nuance of a -- of a contract
23 where parties continue to operate under certain
24 terms. If -- if there are certain terms, whether the
25 contract has been expired or terminated, or is

1 current, if those can still be amended or not, I
2 don't know. I'd have to seek legal counsel to know
3 the nuances of how you might want to change a manner
4 in which you're operating on a going-forward basis
5 when you don't technically have a contract in place.

6 Q. Well, let me provide a hypothetical to
7 you, okay, that two carriers are operating under
8 contract one, okay? Subsequently, they enter into a
9 contract two that by its language supersedes and
10 replaces contract one. Do you understand me so far?

11 A. Yes.

12 Q. Okay. Would you feel in your experience
13 and knowledge that there would be any need to amend
14 contract one?

15 A. No, because they're not operating under
16 those terms and conditions whatsoever.

17 Q. So amendments are only necessary for
18 current and existing contracts, isn't that right?

19 A. I think amendments are possible for
20 changing the terms of how the parties are currently
21 operating.

22 MR. PFAFF: Nothing further.

23 JUDGE DIPPELL: Thank you. Is there any
24 redirect?

25 MR. BUB: Just a couple questions, your

1 Honor. Do you care if I do it from here?

2 JUDGE DIPPELL: No, go ahead, as long as
3 when you answer, you make sure you answer where I can
4 hear you. Thank you.

5 REDIRECT EXAMINATION BY MR. BUB:

6 Q. Mr. McPhee, with both Mr. Voight and I
7 believe Mr. Pfaff, they asked you about -- a series
8 of questions about a filing that AT&T had made at the
9 FCC. I think Mr. Pfaff referred to it as a
10 declaratory ruling and I think you may have discussed
11 with Mr. Voight as it being a request for
12 clarification. Is that the same filing that you
13 discussed with both?

14 A. Yes.

15 Q. Okay. And you indicated that that
16 filing was pulled down by AT&T?

17 A. That's correct.

18 Q. Okay. Can you tell us why AT&T pulled
19 it down?

20 A. I believe the -- the reason why AT&T
21 pulled down that request was AT&T felt that it
22 didn't -- it didn't need the answer from the FCC
23 anymore because state commissions had ruled that
24 bill-and-keep and other pricing provisions were
25 indeed state-specific pricing. So we had received

1 Commission orders in a couple of states.

2 Q. Okay. Before lunch, do you recall going
3 through an exhibit with Mr. Pfaff, it had all the
4 different CLECs it had requested, extension to those
5 interconnection agreements? Do you remember that
6 series of questions?

7 A. Yes, I do.

8 Q. And there was one identified I believe
9 as Michigan Access, Inc.?

10 A. Yes.

11 Q. Okay. And Mr. Pfaff had asked you about
12 the timing of that request to extend, and he
13 expressed a concern that -- that this request was
14 late but that somehow AT&T granted it anyway. Have
15 you had a chance over the lunch break to look into
16 that?

17 A. Yes, I did.

18 Q. What did you find?

19 A. I called my superior in Atlanta, and she
20 was able to pull up the database where this -- this
21 information came from for this data request. And she
22 said that Michigan Access, Inc. represented to AT&T
23 that they sent a letter dated November 30th, 2007.

24 Q. And that's -- that's reflected -- is
25 that reflected in the document there?

1 A. It's not reflected in this document.

2 And the way it was explained was that once AT&T sent
3 out this accessible letter with this 60-day grace
4 period, AT&T received hundreds of requests for
5 extension.

6 And instead of challenging Michigan
7 Access on -- when we couldn't find the paperwork for
8 their request, AT&T made the decision to take
9 Michigan Access at their word that they submitted
10 their request on November 30th, 2007, which would
11 have enabled them to take advantage of the three-year
12 extension.

13 Q. What was the date on -- on Michigan
14 Access, Inc.'s request?

15 A. The exhibit says it was May 9th, 2008,
16 but apparently it was November 30th, 2007.

17 Q. I do have one more question. I'm
18 looking for it. Okay. Mr. Pfaff also asked you a
19 question about what Sprint could have done or whether
20 Sprint could have done anything at the Missouri
21 Commission with respect to AT&T's denial of the
22 extension. Do you remember that question?

23 A. Yes.

24 Q. Okay. And you indicated that with
25 respect to the extension under 7.4, there was no

1 remedy here at the Commission; is that right?

2 A. Not -- that's true, yeah.

3 Q. Okay. Is there someplace else Sprint
4 could have gone if it had a complaint about how AT&T
5 applied the FCC merger commitments?

6 A. Sprint could go to the FCC.

7 MR. BUB: Thank you. No further
8 questions, your Honor.

9 JUDGE DIPPELL: Okay. Thank you. I
10 think, then, that that's all the questions for
11 Mr. McPhee, and you may be excused, sir. All right.
12 Are there any further witnesses?

13 (NO RESPONSE.)

14 JUDGE DIPPELL: All right. Seeing none,
15 then I want to just clarify those three agreements,
16 those three Missouri agreements that we've been
17 discussing here today, those are the same agreements
18 that are attached to the petition, correct?

19 MR. SCHIFMAN: That's correct.

20 JUDGE DIPPELL: Exhibits 8, 9 and 10 of
21 the -- of the petition?

22 MR. SCHIFMAN: Yes, one is a Sprint
23 Spectrum, L.P. agreement, one is a Nextel West
24 agreement and the other is a Spring Communications
25 Company, L.P. agreement.

1 JUDGE DIPPELL: Okay.

2 MR. SCHIFMAN: And the Spring
3 Communications Company, L.P. is what we've been
4 calling here Sprint CLEC.

5 JUDGE DIPPELL: Thank you for that
6 clarification too. I just wanted to ask the
7 attorneys to be sure and include a few things in
8 their briefs, which I'm sure you will. But one is
9 the -- the legalities surrounding the terminated
10 versus expired versus current versus operating under
11 versus terms and agreements of. If you could help me
12 out there with, like you say, the legal issues
13 surrounding all of those things.

14 Also -- and I think you've pretty much
15 already done this in your motions to dismiss and so
16 forth, but if you could hit it again in your briefs,
17 the Kentucky decision that has been referred to here
18 several times, if you could make it clear to me
19 the -- the facts of that situation and the exact
20 issue because I believe we all have a little bit of
21 different take on the issue that was decided there
22 and how that is or isn't similar to the Missouri
23 situation.

24 And if you can point me to the CLEC
25 agreement provision that talks about terminating --

1 I'm sure I can find it, but if you could point that
2 out, that would be good too, if there is one.

3 You might also want to discuss the legal
4 ramifications of your arguments around the -- if the
5 contract is extended, what date it's extended from.
6 You had different -- differing opinions there as
7 well, and I'm sure you're going to hit all this stuff
8 anyway, but...

9 And I think that's all the specific
10 things that -- that come to my mind that I wanted to
11 make sure you were -- helped me out with to make it
12 very clear to me where you stand on each of those and
13 what legal support you have for that.

14 MR. SCHIFMAN: Okay, Judge.

15 JUDGE DIPPELL: Do you have a question,
16 Mr. Schiffman?

17 MR. SCHIFMAN: Yes, I do have one
18 question. You know, the Commission has ruled on the
19 Motion to Dismiss.

20 JUDGE DIPPELL: Uh-huh.

21 MR. SCHIFMAN: A lot of the testimony
22 that the witnesses presented were -- was concerning
23 issues that were examined in the Motion to Dismiss.
24 For purposes of briefing now, I guess my question is
25 do we need to go over that stuff again or are we at

1 the point where the Commission has determined to, you
2 know, hold the arbitration and we're now just arguing
3 over, you know, the terms, the later terms?

4 JUDGE DIPPELL: Okay. Well, I think
5 that's a good question, but my answer is I think the
6 Commission's decision is that they have jurisdiction
7 to arbitrate the negotiated agreements. So as far as
8 whether or not the Commission has jurisdiction, I
9 don't think you need to argue that again. However,
10 because basically AT&T's argument is that whether --
11 I mean, they're arguing on one -- on the one hand
12 that it wasn't negotiated and they're still arguing
13 that. I think that you do need to hit that point --

14 MR. SCHIFMAN: Okay.

15 JUDGE DIPPELL: -- with regard to
16 exactly what was negotiated because I think in -- as
17 arbitrator, in making the arbitration decision, I
18 need to know exactly what was negotiated and what
19 wasn't negotiated.

20 So while I don't think that at this
21 point the Commission will come back unless it's in
22 response to a request for rehearing, I don't think
23 the Commission will come back with a we don't have
24 jurisdiction to hear this. It is possible that I,
25 the arbitrator, or the Commission, subsequent to my

1 report, could find that this was -- wasn't negotiated
2 or, you know, that term wasn't on the table or
3 whatever.

4 So I think it's still possible that that
5 could come back one way or the other, though I don't
6 think with regard to whether or not the Commission
7 itself has jurisdiction to hear it. I don't think
8 that issue could come back unless it's on rehearing.

9 MR. SCHIFMAN: That's helpful.

10 JUDGE DIPPELL: I probably made that
11 clear as mud.

12 MR. SCHIFMAN: No, I think that's
13 helpful. Thank you.

14 MR. BUB: I got it too, thank you.

15 JUDGE DIPPELL: Okay. Are there any
16 questions about the procedures from here on out?

17 MR. SCHIFMAN: The dates are still the
18 same as in your order?

19 JUDGE DIPPELL: Yeah, and I don't think
20 I specifically said anything official in the order
21 about the extension that you-all had agreed to with
22 regard to the Commission acting under the statutory
23 deadline.

24 MR. SCHIFMAN: You did, I believe, in
25 the first paragraph, Judge.

1 JUDGE DIPPELL: Oh, I did? Okay.

2 MR. SCHIFMAN: Yes.

3 JUDGE DIPPELL: Okay. But I'll just say
4 that again on the record that that date has
5 officially been waived and extended and the
6 subsequent dates and the Commission's rule to get
7 decisions out by that certain day or whatever the
8 deadline is, is waived and we will go with the dates
9 that were set out in the procedural order.

10 And so I have briefs due March 11th. Is
11 that going to still work out for everyone? I've
12 asked her to expedite the transcript, and she'll
13 probably have it to me tomorrow or the next day.

14 MR. BUB: If we have an issue, we can
15 discuss it with counsel. Otherwise, I think you can
16 assume it's okay.

17 JUDGE DIPPELL: Okay. All right. And
18 so if -- if I get briefs on March 11th, then you can
19 expect to see the draft arbitration order or report,
20 I forget which it's called, on March 25th, and then
21 there will be comments due about that order on
22 April 3rd and then I'll issue a final order by
23 April 10th. And then the Commission will have its
24 chance to decide whether to adopt my ruling or to
25 hold their own proceedings or -- or change the order

1 in some other fashion. And we've got their decision
2 coming out May 12th.

3 They will be in the throes of a major
4 rate case during that time period, but -- and
5 statutorily rate cases take priority here, but I'm --
6 I'm hoping that there won't be a problem with those
7 deadlines, so...

8 Any other questions or issues before we
9 go off the record? I didn't give you-all a chance to
10 make closing statements, but since you're making --
11 filing briefs, I didn't think that was necessary
12 unless someone wants to say -- add something.

13 MR. BUB: We're okay, your Honor.

14 JUDGE DIPPELL: All right. Okay, then.
15 Thank you all very much. I appreciate those that
16 came in from out of town which I guess was everybody,
17 and those that came from out of state. And I
18 appreciate your participation. Have a safe trip home
19 and we can conclude this hearing and go off the
20 record.

21 (PROCEEDINGS CONCLUDED.)

22

23

24

25

1 I N D E X

2	Opening Statement by Mr. Pfaff	4
3	Opening Statement by Mr. Bub	10

4

5 SPRINT'S EVIDENCE

6	MARK G. FELTON	
	Direct Examination by Mr. Schiffman	24
7	Cross-Examination by Mr. Bub	27
8	Redirect Examination by Mr. Schiffman	48

9

10 AT&T'S EVIDENCE

11	LYNN ALLEN-FLOOD	
	Direct Examination by Mr. Bub	54
12	Cross-Examination by Mr. Schiffman	55
	Questions by Judge Dippell	80
13	Questions by Mr. Voight	82
14	Redirect Examination by Mr. Bub	84

15	SCOTT MCPHEE	
	Direct Examination by Mr. Bub	88
16	Cross-Examination by Mr. Pfaff	92
	Questions by Judge Dippell	144
17	Questions by Mr. Voight	148
	Questions by Judge Dippell	151
18	Recross-Examination by Mr. Pfaff	152
	Voir Dire by Mr. Bub	157
19	Recross-Examination Resumed by Mr. Pfaff	157
20	Redirect Examination by Mr. Bub	162

21

22

23

24

25

1	EXHIBITS INDEX		
2		MARKED	RECEIVED
3	Exhibit No. 1		
4	Direct Testimony of		
5	Mark G. Felton	3	26
6	Exhibit No. 2		
7	Rebuttal Testimony		
8	of Mark G. Felton	3	26
9	Exhibit No. 3 P		
10	Direct Testimony of		
11	Scott McPhee		
12	(Proprietary)	3	91
13	Exhibit No. 3 NP		
14	Direct Testimony of		
15	Scott McPhee		
16	(Nonproprietary)	3	91
17	Exhibit No. 4		
18	Rebuttal Testimony		
19	of Scott McPhee	3	91
20	Exhibit No. 5		
21	Direct Testimony of		
22	Lynn Allen-Flood	3	55
23	Exhibit No. 6		
24	Petition and its		
25	exhibits	29	*
26	Exhibit No. 7		
27	Notice to Sprint to		
28	amend its		
29	interconnection		
30	agreement	155	*
31			
32			
33			
34	* Neither offerered nor received into evidence.		
35			

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3)ss.
4 COUNTY OF COLE)

5
6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
8 certify that the foregoing proceedings were taken by
9 me to the best of my ability and thereafter reduced
10 to typewriting under my direction; that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to the action to which this hearing was
13 conducted, and further that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties thereto, nor financially or otherwise
16 interested in the outcome of the action.

17
18
19
20 _____
21 PAMELA FICK, RMR, RPR, CSR, CCR #447
22
23
24
25