

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ACCESS SOLUTIONS, LTD., (CAUSE NO. 2:23-CV-158-JRG
)
Plaintiff, ()
vs. ()
T-MOBILE, USA, et al., (MARSHALL, TEXAS
) JULY 16, 2024
Defendants. (1:00 P.M.

MARKMAN HEARING

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

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1 THE COURT: Be seated, please.

2 All right. This is the time set for claim construction
3 in a matter pending before the Court. The case before the
4 Court is General Access Solutions versus T-Mobile. This is
5 Case No. 2:23-CV-158.

6 The Court will ask for announcements at this time.

7 What says the Plaintiff?

8 MR. EVERINGHAM: Good afternoon, Your Honor. May it
9 please the Court. Chad Everingham, Glen Summers, Nosson
10 Knobloch, and Taylor Kelson are here for the Plaintiff. And
11 we're ready to proceed.

12 THE COURT: All right. Thank you, Mr. Everingham.
13 What's the announcement from the Defendant?

14 MS. SMITH: Good afternoon, Your Honor. Melissa
15 Smith for the Defendant. I'm joined by Mary Riolo, Tom
16 Davison, Scott Stevens, and Mr. Michael Deane. And Your
17 Honor, we're ready to proceed.

18 THE COURT: All right. Thank you, Ms. Smith.

19 Counsel, I'll note for the record that yesterday
20 Plaintiff filed an unopposed motion for leave the supplement
21 the claim construction record in this matter. The Court has
22 signed and filed an order granting that unopposed motion, so
23 you can consider the record for claim construction purposes
24 supplemented as requested in the motion.

25 Also I'm aware that the parties have requested that the

1 Court take up any disputed claim construction issues regarding
2 the '931 Patent on the papers, and that the Court focus the
3 time allocated today to argument on the disputed claim
4 construction matters as relate to the other two patents in the
5 case, the '477 and the '383 Patent. And I'm agreeable to
6 handling the disputes regarding the '391 Patent on the papers,
7 so we'll turn our attention to the disputes regarding the
8 other two remaining patents.

9 And we'll start with the '477 Patent and the disputed
10 language 'receiving station' from various claims, including 1,
11 2, 5, 6, 14, and 16 through 18.

12 There are several points in the claim construction
13 process here where the parties are arguing whether something
14 should be a fixed network or not fixed. This is one of those.
15 And I understand that's the gravamen of the dispute here.

16 Given the Defendants have proposed the language 'fixed
17 wireless network' as a part of their proposed construction,
18 let me hear from Defendants first, and then I'll hear from
19 Plaintiff in response.

20 MR. STEVENS: Thank you, Your Honor. Scott Stevens
21 for the Defendants.

22 Would you like for me to confine my comments to
23 'receiving station' or talk about all the different terms
24 where this is the primary dispute together?

25 THE COURT: Well, that's an interesting proposition,

1 Mr. Stevens. I mean, I'm prepared to hear any argument that's
2 unique to each of these disputed terms, but as I noted and as
3 you've confirmed, there are several where 'fixed' really is
4 the only dispute.

5 Why don't you give me your argument here, and then I'll
6 hear from Plaintiff in response. And if this argument's broad
7 enough to cover more than this particular term, I have no
8 great desire to draw the process out, but I do want to make
9 sure both sides are heard fully on that.

10 MR. STEVENS: Thank you, Your Honor. I do think
11 there's some nuance to the others, so I don't think they
12 necessarily all rise and fall together, but certainly part of
13 the discussion and part of the evidence that goes to this is
14 applicable across those different terms.

15 THE COURT: All right. Proceed with your argument.

16 MR. STEVENS: Thank you, Your Honor.

17 So I'll start with 'receiving station', which we found in
18 the claims that Your Honor just read.

19 And if we the could start on slide 7.

20 So I'd like to go through a little bit of the patent and
21 where we see this and what we don't see in the patent.

22 Here on the left we see -- the top we see column 3 and
23 column 6 where we have the introduction of what's the present
24 invention, where it is talking about it being a at receiving
25 station. You do see the language here 'such as', but you see

1 in both places "such as a base station of a fixed wireless
2 access communication system." So we see it introduced right
3 up at the beginning as what we're going to be talking about in
4 this patent.

5 And if you go through the patent and you count up the
6 different discussions of 'fixed access', you'll find over 30
7 references to a fixed access system or network. You'll find
8 no references to talking about garden variety mobile systems.
9 That -- you won't find that in the patent. And because of
10 this, and for reasons additional to what's in the '931
11 Patent--there's some additional reasons for this patent--we do
12 think that there's a disclaimer here and the invention is
13 limited to a fixed wireless access network.

14 IF we could go to the next one.

15 And here are just four different examples that we have on
16 the screen. Your Honor, I won't read them all to you, but the
17 '383 Patent there's a reference to column 6 and column 12, of
18 the '477 Patent at column 5, and you can see all these
19 different examples of it being talked about only in the
20 context of a fixed wireless access communication system. All
21 these citations are in our brief.

22 I won't bore Your Honor and go through all 30-plus
23 references in the specification where we see this, but again,
24 every time it comes up, that's what we see in the spec.

25 THE COURT: I'm happy for you to point out the

1 result of your counting process of how many times it's
2 actually used, but there's really no authority that if it's
3 used this many times it's one way and if it's used that many
4 times the other; that's just a datapoint that's not
5 controlling in any way.

6 MR. STEVENS: I agree with Your Honor entirely, but
7 I think if -- I think, frankly, the more salient fact is you
8 compare that 30-plus references to how many times do we see a
9 garden variety non-fixed network, and to me the answer is
10 zero. And I think that's the more apt comparison here. I
11 completely agree the number is irrelevant whether it's 30 or
12 40 or 50, but we compare that to zero.

13 THE COURT: Does that rise to the level of an actual
14 disavowal, the zero versus 30 or 40 times, in your view?

15 MR. STEVENS: In in context, absolutely I think it
16 does. If I were to tell you nothing but there's 30 references
17 to one thing, I'm not a hundred percent that would get me
18 there in a vacuum, but in the context of this patent and some
19 additional statements, we absolutely believe, Your Honor, that
20 this does rise to the level of a disclaimer.

21 And if we could go on to the next slide.

22 Again, when we see the description of the figures, we see
23 it again only in the context of a fixed system. So here from
24 the '383 Patent, we show figure 1 in column 8. And I just
25 want to go through a little bit of column 8 where we actually

1 see -- I'm sorry. We're talking about the '477 Patent here,
2 so it's column 7.

3 When we have the description of the drawings--and I'm
4 making reference to column 7--we see figure 1, "exemplary
5 fixed wireless access network;" figure 2, "fixed wireless
6 access network;" figure 3, "a block diagram of a portion of an
7 embodiment of the invention;" figure 4, "base station of
8 figure 2; and figure 2, "fixed wireless access network."
9 Still in column 7, figure 5 ends with "during operation of a
10 fixed wireless access communication system."

11 So again, when we see in the figures, that's all we find.
12 And shown here on figure 1, Your Honor can see there are three
13 different examples of sort of the remote end of a connection,
14 and you can see each of these is a house. These are not cell
15 phones, these are not watches with cellular functionality;
16 these are fixed things.

17 If we can go forward to the next slide.

18 And the spec talks about that. All right? So now, Your
19 Honor, you asked me, Mr. Stevens, if it's 30 to zero, is that
20 the end of the road. I said no. Well, there's other parts in
21 the spec that make this disclaimer more clear.

22 One of them is this paragraph about the correspondence
23 between other fixed access networks--for example, DSL or fiber
24 optic or cable modem. And there's a suggestion here that one
25 of the problems with those systems that this invention fixes

1 is that in those types of -- I shouldn't have said 'those
2 inventions'. In thoses of access systems what you find is
3 that the device at the user side, in the house, for example,
4 is inside the house and could be anywhere inside the house,
5 and so it's difficult for an operator to help control that
6 device or to do maintenance on that device.

7 THE COURT: Let me ask you this, Mr. Stevens. I'm
8 familiar with figure 1 from the patent, and then if you go
9 over to column 7 and you look at the related text that ties
10 back to figure 1 beginning about line 58 or so of column 7,
11 figure 1 illustrates "exemplary fixed wireless access network
12 according to one embodiment of the present invention."

13 I mean, how does that leave the Court with this is a
14 disavowal when the language in the text of the patent in
15 column 7 makes it clear that this is merely exemplary and it's
16 one embodiment, which is clearly not the only way it can be
17 done? How do you square your argument with this language in
18 column 7 that, yes, it's talking about a fixed wireless access
19 network, but it's clear that it's exemplary and only one
20 embodiment?

21 MR. STEVENS: So I think specifically in what Your
22 Honor has pointed to it's talking about what we see in figure
23 1 as an exemplary embodiment. It's not the only way that one
24 can lay out a fixed network. I don't think what it's
25 suggesting in this particular paragraph is that it's exemplary

1 among other non-fixed networks. But in fairness, in other
2 parts of the patent, including that which I've shown you
3 already, it says "such as fixed wireless."

4 THE COURT: Correct.

5 MR. STEVENS: And so Your Honor's question is
6 honestly a very valid one.

7 THE COURT: But if you're going to argue disavowal,
8 then there needs to be an indication that it's a clear and a
9 permanent disavowal, not a 'such as this is exemplary, just
10 one embodiment'. All that language pushes back against your
11 disavowal language, and that's what I'm trying to get you to
12 respond to.

13 MR. STEVENS: I understand that, and I don't
14 disagree that that pushes against it, but I think what you
15 have to weigh that against are certain statements of the
16 patent, the fact that there is no other -- that there is no
17 description anywhere in the patent of a non-fixed situation.

18 There are descriptions in the patent--and we don't
19 dispute that they're within the claim--of other fixed access
20 solutions that are not wireless. For example, there's a
21 paragraph that Plaintiffs are going to point to that say this
22 is just an example, but then it says the other examples are
23 things like DSL and fiber optics and cable modems, which are
24 all wireline fixed networks.

25 So you see in this patent where it says 'such as', we

1 don't disagree for the '477 Patent, the term we're talking
2 about here, that it is not -- we're not suggesting that it's
3 limited only to fixed access wireless networks. There are
4 other examples given in the patent of fixed access networks
5 that are not wireless, and those are within the scope of the
6 claims, and the patent tells us. So when we see this language
7 that says 'such as', there's other indications in the patent
8 as to what is the super set that we're talking about here, but
9 each one of those is a fixed network. It might not be a fixed
10 wireless network, but it is a fixed network.

11 And this patent introduces the concept that's different
12 than the '931.

13 If we could go to the next slide. One more.

14 So here we see in the abstract. And I do think this
15 again goes to the disavowal side. We see the '477 and the
16 '383. I'll focus now on the '477.

17 So right here in the abstract where we're telling the
18 word in the shortest most concise terms what the invention is,
19 it says, quote, "Apparatus and an associated method for
20 creating a profile associated with burst data signals
21 communicated to a base station of a fixed wireless access
22 communication system." It's not telling us 'such as', it's
23 not telling us 'an exemplary'; it's telling us that's what
24 this invention is about. And I do think this rises to that
25 level of disclaimer where the world can rely upon this as a

1 statement as to what the metes and the bounds of the invention
2 are here.

3 So with that, the terms of the '383, as I mentioned to
4 Your Honor, are a little bit different. I can either address
5 them now or I can sit down and come back up and address those
6 in a bit.

7 THE COURT: Why don't you go ahead.

8 MR. STEVENS: Go ahead now?

9 THE COURT: Yeah.

10 MR. STEVENS: Okay. So if we go back one.

11 So the '383 Patent goes even a step further than the '477
12 Patent. Here they changed the title. If we want to talk
13 about the one thing that someone can take away what this
14 patent is really talking about--right?--I've never been an
15 inventor on a patent, but if I did I'm sure I would take some
16 time to come up with my title that really tells the world what
17 my invention is all about. And for the '383, unlike the other
18 two patents, the title says "Apparatus and associated method
19 for operating upon data signals received at a receiving
20 station of a fixed wireless access communication system."

21 If we go forward one slide here, we look at the abstract
22 again for the '383 at the bottom right of the page, and we see
23 there "Apparatus and associated method for acting upon data
24 signals received at a base station of a fixed wireless access
25 communication communication system." So again, in the title

1 and in the abstract, we have a clear delineation of the scope
2 of the invention in this patent, and that is a fixed access
3 system, not a movable, non-fixed access system.

4 Now, the terms of this one are also a little bit
5 different. So the last one we had a receiving station, which
6 the patent -- the specification of the patent clearly equates
7 with the basis station of a fixed network, but here we have
8 two different terms. One is 'communication station'. All
9 right? Hypothetically that's a much broader thing. I'm
10 standing here talking to Your Honor. I'm a communication
11 station behind this podium. And so we have to look at, all
12 right, what does this mean in the context of the invention.

13 So beyond disclaimer, when we get to looking at what a
14 communication station is, you know, one is left to ask is that
15 really anything on Earth that communicates, and so we're left
16 to look at the specification and that provides us guidance.
17 And like I mentioned earlier, the only ways of seeing it in
18 the spec are fixed networks. All the examples are about
19 wireless fixed networks, but there's two paragraphs in the
20 specification that talk about wireline fixed networks.

21 Finally, let me move to what I think personally is the
22 absolute most clear portion of this having to be 'fixed', and
23 that's the reference to 'subscriber' and 'subscriber
24 stations'. So everything that I've just been talking about so
25 far, Your Honor, related to the base station side of the

1 equation. Obviously the subscriber and the subscriber
2 stations relate to the user end of what we're talking about
3 here. And for this, the only time we see this is back in
4 figure 1 where we see the houses being the subscriber station.
5 There's never a suggestion or a disclosure in this patent
6 about other things.

7 And if we look to the claim --

8 If you don't mind pulling it up for me.

9 So we've put now on the screen claim 1 of the '383
10 Patent, and I think it's important to see how this is used in
11 the claim.

12 So in the preamble at the top of claim 1 we see the
13 introduction of the first subscriber station and the second
14 subscriber station. Okay. Fair enough. But then when we
15 come down to the 'wherein' clause, the last clause of claim 1
16 of the patent, we see "wherein the at" --I'm sorry; I misread
17 it--"wherein the at least"--trying to get here--"wherein the
18 at least the second subscriber station comprises a plurality
19 of subscriber stations." So now we're in a world where a
20 subscriber station has to itself comprise multiple subscriber
21 stations. One subscriber station has to comprise multiple
22 subscriber stations.

23 And where does that make sense? It makes sense in a
24 house. It doesn't make sense with my cell phone. It doesn't
25 make sense with my watch. That's just a single subscriber

1 station. The only disclosure in the patent or the only thing
2 that makes sense at the time of this invention is figure 1.
3 It's a house that has an antenna on it that would then
4 communicate with all the different devices in the house over
5 whatever--WiFi, for example. So that's a situation where I
6 might have my box and my antenna on the outside of the
7 house--that's my I subscriber station; then within that I have
8 three or four other connected devices that are also subscriber
9 stations.

10 So the only way that the subscriber station in the '383
11 Patent makes sense and the only way it's described, and you
12 won't find other 'such as' language when it comes to the
13 subscriber station like Your Honor and I spoke about with
14 respect to the base station side, the only examples we see
15 here are actually a fixed network on the subscriber side.

16 So I do think each of these three terms has their
17 nuances, but when you get to the '383 Patent we have the title
18 that's now been switched to make it very clear it's fixed
19 access, we have the abstract that's been changed to make it
20 very clear it's fixed access, we have new claim terms about
21 the subscriber where there has to be multiple subscribers
22 within one subscriber station. And again, the only thing --
23 the only support we find for that in the patent is this notion
24 of a house or a fixed access point as the subscriber with
25 subscribers in it, and all the different 'such as' or

1 exemplary language, that might have been used with respect to
2 the base station but not the subscriber stations.

3 THE COURT: Let me ask you this, Mr. Stevens. These
4 two patents, the '383 and the '477, clearly they have the same
5 two inventors. And we've talked about receiving station,
6 communication station, subscriber station. Is it your view
7 that these rise and fall together, or is it your view that one
8 might be fixed but the other might not necessarily be fixed?
9 Are you making a composite argument for all of them, you're
10 putting all your money on red 6 here, or are you telling me
11 that you might have a stronger argument for one than you have
12 for another?

13 MR. STEVENS: Because the words of each are
14 different, I don't think it would be fair to say that they all
15 necessarily rise or fall together. Now, obviously our
16 position is that there are very strong disclaimers in each of
17 these two patents regarding the entire network, and if Your
18 Honor agrees with that, then it does -- everything falls under
19 the rubric of that and it would be limited to a fixed
20 environment. But of the three terms that we just talked
21 about, they're introduced and they're used in different ways.

22 For example, Your Honor read certain terms where there is
23 'such as' language or explicitly says it's exemplary. That
24 applies to certain terms but not other terms.

25 So while our argument is that there's a clear disavowal,

1 a clear disclaimer with respect to the entire -- everything
2 that's claimed in both patents, I don't necessarily think that
3 they all rise and fall together because the description of
4 patent is slightly different. Moreover, two of the terms are
5 on the base station side and the subscriber/subscriber station
6 terms are on the subscriber side. And, you know, frankly, I
7 think that's even more clear to me that that has to be fixed.
8 There's no -- as I mentioned, there's no sort of language that
9 pushes back to the notion of a disclaimer there or that pushes
10 back on the notion that the only thing that makes sense in the
11 context of a subscriber station -- of a number of subscriber
12 stations within one subscriber station is a house.

13 So we believe they all should be under the rubric of
14 disclaimer, but in fairness, each of these three terms are
15 used slightly differently in the specification, and so, you
16 know, there is a world where Your Honor sees certain terms
17 differently than other terms.

18 THE COURT: All right. Anything further?

19 MR. STEVENS: Not on these terms, Your Honor.

20 THE COURT: All right. Let me hear from Plaintiff
21 in response.

22 Mr. Knobloch, these look like all three of these are
23 assigned to you, so why don't you give me your argument on all
24 three of these terms.

25 MR. KNOBLOCH: Thank you, Your Honor. Nosson

1 Knobloch from Bartlet Beck.

2 And for starters, just to kind of set the stage for a
3 moment, Your Honor, the Court is very familiar obviously with
4 the '931 Patent which was the subject of the recent trial, and
5 these patents are also owned by General Access. They share
6 one of the same inventors. These patents have two
7 inventors--Paul Struhsaker, who the Court has met, and a
8 Dr. Russ McKown as well. And in the context of the '931
9 Patent, that patent focused on downlink transmissions. Right?
10 Transmissions from a base station down -- downstream to users,
11 to wireless access devices. These patents focus on the uplink
12 communications, to the base station, for example, or in the
13 context of the '477 Patent, to a receiving station.

14 And the term 'receiving station' is in all of the
15 independent claims of the '477 Patent, so if it was limited to
16 'fixed', that would limit the full scope of the '477 Patent.

17 Now, everyone agrees that the term 'receiving station' on
18 its own, the plain and ordinary meaning of the term, was not
19 limited to fixed. If it was, then there would be no reason
20 for T-Mobile to be adding a 'fixed network' limitation on top
21 of the words that the -- the words themselves. So everyone
22 agrees the plain and ordinary meaning is not limited that way.

23 And starting with what T-Mobile pointed to, again, Your
24 Honor, I think Your Honor noted this, this -- when the '477
25 Patent describes the receiving station, it says "such as a

1 base station of a fixed wireless access communication system."
2 It doesn't say 'a receiving station which is a base station of
3 a fixed wireless access communication system'. It uses that
4 as just one example; not a limitation.

5 And in case there was any doubt at all about whether the
6 specification intended to limit the scope of the claims just
7 to this fixed example, it's absolutely explicit -- this is
8 from column 9 in the '477 Patent, and this same exact language
9 also shows up in the '383 Patent. And what the patentee said
10 was that "The choice of a fixed wireless network"--in other
11 words, the choice to use that as the example in the
12 figures--"should not be construed in any manner that limits
13 the scope of the present invention in any way."

14 So the patentee himself, or themselves, made very clear
15 that their intention in providing these fixed examples in the
16 figures and in the discussion in the specification are not
17 intended to be limiting.

18 THE COURT: Can you find a similar absolutist-type
19 statement in the '383?

20 MR. KNOBLOCH: Yes, Your Honor. If you will give me
21 a moment, I can pull it up and tell you where exactly it is.

22 It is from column 9, lines 48 to 54. And I pulled up the
23 slide showing that exact language from the '383 as well.

24 And this is in addition, of course, to the language the
25 Court already called T-Mobile's counsel's attention to where

1 the discussion of the various figures and the examples in the
2 specification are described as providing an exemplary
3 embodiment or one embodiment; not, again, limiting language.

4 It's also notable, Your Honor, that the '477 Patent does
5 actually make some reference to mobility. For example,
6 T-Mobile's counsel repeatedly said this wasn't true, but what
7 I have on the screen, Your Honor, is from column 5 and column
8 7 in the '477 Patent, and what it says in column 5, lines 21
9 to 24, is that the fixed wireless broadband systems, the ones
10 that are described, you know, in detail in the specification
11 and the figures, "use a group of transceiver base stations to
12 cover a region in the same manner as the base stations of a
13 cellular phone system," and so very clearly suggesting that
14 mobility is being contemplated here. Everyone agrees that a
15 cellular phone system is a mobile system.

16 The patent also in column 7, lines 54 to 57, stresses
17 that that "The principles of the present invention may be
18 implemented in any suitably-arranged subscriber-integrated
19 access device." And there is, again, I think no dispute a
20 subscriber-integrated access device, the plain and ordinary
21 meaning of that term, would include a mobile term.

22 And in the context of the '931 Patent, this exact same
23 language that I just pointed to from the '477, which again, is
24 repeated verbatim in the '383, was also verbatim in the '931
25 Patent specification.

1 And in the context of the '931, and the Court will
2 remember Verizon sought to limit it to 'fixed', T-Mobile has
3 sought to limit the '931 Patent to 'fixed' as well, and there
4 was an earlier case against Sprint where Judge Schroeder
5 presided and also rejected the notion that it should be
6 limited to 'fixed' and relied -- and this is on my slide 5.
7 It's from Exhibit B, page 20. In that -- in the decision
8 rejecting the idea that the '931 Patent is limited to 'fixed',
9 Judge Schroeder relied in part on the exact same language that
10 we also find here in both the '477 and the '383 Patents, this
11 language about "any suitably arranged wireless access system,
12 the fact that it's in the same manner as the base stations of
13 a cellular phone system," et cetera, those -- that exact same
14 language appears in all three of these patents.

15 THE COURT: Does it cause you any angst that on at
16 least the '383 the concept of "a fixed wireless access system"
17 is actually in the title to the patent? I mean, that's not
18 usually where you find an example. That's not usually where
19 you find an illustration. When you see the title, that
20 usually is what the patent's about.

21 MR. KNOBLOCH: I understand that, Your Honor, and
22 actually in preparing for today's hearing, that was one of the
23 issues I thought of as well, and I actually did some
24 additional research and found a case that may be relevant, if
25 I may hand it up.

1 THE COURT: You may approach.

2 MR. KNOBLOCH: Thank you, Your Honor.

3 This is the *Moore versus Standard Register* decision from
4 the Federal Circuit, and I put a tab and highlighted some
5 language by that tab on page 16 of the decision. And this was
6 another situation where there was a patent with a -- with
7 something described in the title where the defendant--I'm
8 sorry. I don't remember if it was the plaintiff or the
9 defendant--one of the parties wanted to limit the scope of the
10 claims to what was described in the title of the patent. And
11 what the Federal Circuit in rejecting that said that "The bar
12 on importing limitations from the written description into the
13 claims applies no less forcefully to a title."

14 And so, Your Honor, I think -- while it did give me some
15 initial consternation seeing the way the Federal Circuit has
16 handled this, I think it's clear that the fact that the title
17 includes the word that's sought to be added in as a limitation
18 to the scope of the claim is not at all determinative and the
19 entirety of the patent has to be considered.

20 And Your Honor, if we look at the '383, I think there's
21 another reason that the -- that T-Mobile's counsel did not
22 addresses that particularly important for the '383, which is
23 the issue of claim differentiation.

24 So I've put up on this slide claim 1 and claim 2 of the
25 '383 Patent, and what this I think makes crystal clear is that

1 the communication station and the wireless -- and the
2 subscriber stations described in claim 1 are not necessarily
3 fixed, because if they were, there'd be no reason to have the
4 fixed limitation added in claim 2. Claim 2 -- the first part
5 of claim 2 refers back to claim 1, and simply says, "wherein
6 the wireless communication system comprises a fixed wireless
7 access system." That entire phrase, that entire--you know, I
8 don't know how many words that is, maybe a dozen words--would
9 be meaningless if T-Mobile was correct that 'communication
10 station' and 'subscriber station' were already necessarily
11 limited to the 'fixed' examples in the specification or in the
12 title. Again, this comes from the '383 Patent, the one that
13 has the title -- the word 'fixed' in the title.

14 THE COURT: What else?

15 MR. KNOBLOCH: There is another issue that I think
16 -- specifically on both the 'communication station' and
17 'receiving station' terms that I wanted to flag. And Your
18 Honor, this -- the issue is that the claims, as I mentioned at
19 the beginning, are focused on uplink transmissions. Right?
20 Transmissions to a receiving station, transmissions to a
21 communication station.

22 And if you look, for example, at claim 1 of the '477
23 Patent, the claim is agnostic about what it is that's doing
24 the transmitting. It doesn't care what is doing the
25 transmitting; what it cares about and what it focuses on is

1 how the receiving station processes the information or the
2 data that's transmitted to it. And because of that, there's
3 actually no natural linguistic hook in which to -- for -- to
4 -- that T-Mobile can actually attach this fixed limitation to.
5 Right? It can't say 'fixed wireless device' like they've
6 tried to do in the '931 Patent. And so instead what they've
7 proposed is that 'receiving station' -- and again, even with
8 'receiving station', they're not saying 'fixed receiving
9 station' because that doesn't help them at all. Right? If
10 the receiving station is a base station, that is fixed, and so
11 adding the word -- the 'fixed' modifier to the words
12 'receiving station' wouldn't get T-Mobile what they want,
13 which is to exclude from the scope of the claims mobile phones
14 that transmit up to -- or base stations that communicate with
15 mobile phones. Right? That's what they're trying to get at.
16 So they can't just say 'fixed receiving station' or 'fixed
17 communication station'; instead what they've proposed is 'a
18 receiving station of a fixed network'. That's the
19 construction they're proposing.

20 But I think that the focus of claim 1, because it isn't
21 focused on what's doing the transmitting but, instead, what's
22 doing the receiving, like the base station, makes this
23 construction both very forced--right?--because it's 'of a
24 fixed wireless network', it's not 'a fixed receiving station',
25 but also very confusing because, for example, if their

1 construction were adopted, what about a base station, like
2 every base station in T-Mobile's network, that can receive
3 communications from both fixed and mobile devices? So if
4 it's a receiving station of a fixed wireless network, like
5 they've proposed, it's actually not entirely clear what that
6 even means. Right?

7 THE COURT: Do you consider this slide an accurate
8 representation of what's in claim 1 of the patent?

9 MR. KNOBLOCH: I certainly hope it is, Your Honor.
10 That was my intention to make it accurate. Is there something
11 missing?

12 THE COURT: Well, no. You're just correcting the
13 misspelled words that are in the patent.

14 MR. KNOBLOCH: Oh, gosh. My apologies, Your Honor.
15 It was not intentional.

16 THE COURT: Three lines up from the bottom on the
17 right margin, "one channel related parameter determined," the
18 patentee spells 'determined' D-E-T-E-R-M-N-I-N-E-D in the
19 patent, and you've corrected his spelling here. There's
20 multiple other misspelled words, at least in the '477. I
21 haven't given the '383 the same level of scrutiny, but --

22 MR. KNOBLOCH: Your Honor may recall that
23 Mr. Struhsaker has dyslexia. I think maybe that played a role
24 in the claims here having some misspellings. I don't know.

25 THE COURT: Maybe his co-inventor did and maybe the

1 examiner did and maybe everybody did.

2 MR. KNOBLOCH: It is a common learning disability; I
3 think the most common one, actually.

4 THE COURT: That's really neither here nor there,
5 but --

6 MR. KNOBLOCH: Okay. My apologies, Your Honor. I
7 should have been clearer about and been more careful in
8 copying the claim. But I think -- I do believe it is
9 otherwise accurate.

10 And I know that it's accurate to say that the claim 1 of
11 the '477 Patent is not focused, like I said, on the -- on what
12 it is that's doing the transmitting to the receiving station.
13 And that's I think what T-Mobile wants their construction to
14 limit, but I actually don't know that it does is what I'm
15 pointing out.

16 THE COURT: All right.

17 MR. KNOBLOCH: Unless Your Honor has -- oh, there
18 was one other issue I wanted to note with regards to the '383
19 Patent, and that has to do with the 'subscriber station'
20 limitation.

21 And one of the things I was looking at in preparation for
22 the hearing today was actually looking at the '383 Patent and
23 the term 'fixed subscriber station', which is what T-Mobile
24 wants to limit the '383 Patent to, does not show up anywhere
25 in the '383 Patent. So I just -- I was -- I was doing

1 this -- I OCRed the patent to see if it would show up and it
2 didn't. That term doesn't show up in the patent anywhere.

3 Now, the term -- the word 'subscriber' and -- does show
4 up quite a bit in the patent. In fact, almost a hundred times
5 the word 'subscriber' shows up in the patent; not 'fixed
6 subscriber', but 'subscriber'.

7 And there is a different term besides -- 'subscriber
8 station' also shows up quite a bit. There's another term that
9 the patent uses in a -- in describing the embodiments and the
10 figures when it's trying to describe something that's fixed,
11 and that is 'subscriber premises'. And if you look at -- this
12 is column 8. The discussion of figure 1, there is an
13 extensive discussion here of an exemplary fixed wireless
14 access network according to one embodiment, and then it
15 explains how does the fixed wireless access network according
16 to this embodiment work. There are subscriber premises, and
17 there is downlink signals to the subscriber premises and
18 uplink signals from the subscriber premises, et cetera. But
19 that's not what the patentee claimed. The patent patentee did
20 not claim 'subscriber premises'; the patentee claimed
21 'subscriber stations'. And the 'subscriber stations' are
22 broader than the 'subscriber premises'. They're used --
23 'subscriber station' is used throughout the specification, and
24 in multiple situations it's used without any suggestion that
25 it's limited to a fixed subscriber station.

1 THE COURT: All right.

2 MR. KNOBLOCH: Unless the Court has other questions,
3 I think that's where I'll end.

4 THE COURT: All right. Thank you, counsel.

5 MR. KNOBLOCH: Thank you, Your Honor.

6 THE COURT: Brief rebuttal, Mr. Stevens?

7 MR. STEVENS: Thank you, Your Honor.

8 I'd like to start with our slide 13.

9 Counsel brought up in the '477 Patent column 9, '383
10 Patent also column 9; read the first half of a paragraph, and
11 I think for completeness we need to look at what the rest of
12 the paragraph that wasn't shown on that slide says.

13 So after the language, which I concede is obviously
14 there, where it says "the choice of a fixed wireless network
15 should not be construed in any manner that limits the scope of
16 the present invention in any way." Sure. But if we read the
17 rest of the paragraph, it says, "As will be explained below in
18 greater detail, an alternate embodiment of the present
19 invention, a subscriber integrated access device, according to
20 the principles of the present invention, may be implemented in
21 other types of broadband access systems, including wireline
22 systems (i.e., DSL, cable modem, fiber optic, and the like),
23 in which a wireline connected to the subscriber integrated
24 access device carries forward and reverse channel signals."

25 So again, it's saying this is not limited to a fixed

1 wireless system--I concede that the spec is telling us
2 that--but what it is saying is it could also be applied to
3 other fixed access solutions, fixed wireline access solutions
4 such as DSL. Of course DSL, you got to be fixed. If you have
5 fiber optic --

6 THE COURT: But isn't this language contrasting the
7 difference between a wireline and a wireless system as opposed
8 to a fixed or a mobile?

9 MR. STEVENS: And I think that is the absolute
10 distinction. I think in the first half of the paragraph where
11 it's saying you can't strictly limit this to fixed wireless
12 networks, it is saying, for example, there are fixed not
13 wireless networks, there are fixed wireline networks that
14 these principles may be applied to as well. What it does not,
15 in either the first part or second part of this paragraph, is
16 or you could just use it in a regular old cell network where
17 people are moving around all the time. That's not what's
18 being drawn here. The distinction being drawn is -- we say,
19 you know, over 30 times in this patent that it's about a fixed
20 wireless network. You can't construe it to be strictly
21 limited to that. In fact, it's applied to other fixed
22 wireline systems.

23 THE COURT: I see your point.

24 MR. STEVENS: Okay.

25 Counsel directed you in the '477 Patent to the sentence

1 that says fixed -- it's just -- if I could have the elmo for a
2 moment.

3 THE COURT: Just give me the column and line. I
4 have the patent here.

5 MR. STEVENS: Yes, sir. Column 5, beginning at line
6 21.

7 THE COURT: Okay.

8 MR. STEVENS: Counsel pointed you to the sentence
9 that says, "Fixed wireless broadband systems use a group of
10 transceiver base stations to cover a region in the same manner
11 as the base stations of a cellular phone system."

12 In the same manner, sure, but this is a contrast between
13 the two things. Yes, there are principles that are used
14 similarly in a base station of a fixed access versus a
15 regular, you know, roaming, moving access. This is not
16 equating those two things. This is not saying this invention
17 covers a base station of a cellular phone system; it's drawing
18 a distinction between what we have here and the cellular base
19 station. It's saying there might be some functionality that's
20 the same, but I think this sentence is clearly drawing the
21 distinction that these are two different ideas as far as this
22 invention goes. It's not equating the two; it's actually
23 drawing a distinction of between the two.

24 And then to respond to the last point that was made on
25 the subscriber side, the spec does use the term 'subscriber

1 station' and 'subscriber premises', but a 'subscriber
2 premises' -- and that's the house. Right? That's -- a
3 premises in which the subscriber lives. The claim uses
4 'subscriber station'. But what I didn't hear response to is
5 where the claim says "a subscriber station must comprise a
6 plurality of subscriber stations where one station must
7 comprise a plurality of others." Again, the only sort of
8 intuitive way that that works, especially if we put our head
9 back in 2001, 2002 at the turn of the century, which is the
10 claimed priority date of these patents, the only way that
11 works is a fixed access network at a house or a small business
12 with all the other subscriber devices within that house.

13 It doesn't work with my cell phone or my watch or some
14 other cellular device. There -- you know, my watch does not
15 comprise many different subscribers. The only thing that
16 makes sense in that rubric--and this applies only to the '383
17 Patent--is a house, fixed antenna, and a fixed wireless
18 network, or in a fixed DSL network or a fixed fiber optic
19 network where you have multiple subscribers connecting through
20 that device. That's the only situation that works for that
21 particular claim.

22 THE COURT: All right.

23 MR. STEVENS: Thank you, Your Honor.

24 THE COURT: Thank you, counsel.

25 All right. Let's pick back up where we left off and --

1 MR. KNOBLOCH: Your Honor, may I just very briefly
2 respond to that final point?

3 THE COURT: Can you do it in a couple of sentences?

4 MR. KNOBLOCH: I believe I can, Your Honor.

5 THE COURT: Then go ahead.

6 MR. KNOBLOCH: The subscriber premises that -- the
7 subscriber station comprising a plurality of subscriber
8 stations, just on that point, Your Honor, I just want to
9 remind the Court about the '794 Patent that was the subject of
10 our recent trial in the Verizon case, and this inventor, this
11 company, General Access, or Raze at the time, had also
12 invented this idea of having a mobile device that in -- that
13 communicates with that -- that has two transceivers in it and
14 that -- and those -- the second transceiver communicates with
15 multiple mobile devices. And so what counsel is saying--this
16 is just attorney argument; there's no evidence--that a person
17 would think that a subscriber station comprising more than one
18 subscriber station would have to be fixed in a home or
19 something like that is simply not true because you could also
20 have, for example, a mobile phone that has connections to
21 multiple downstream devices, in which case I think, even
22 according to the way counsel has described the claim, you
23 would have a subscriber station that comprises multiple
24 subscriber stations.

25 THE COURT: Thank you for those two sentences.

1 MR. KNOBLOCH: I'm sorry, Your Honor. Thank you.

2 THE COURT: That's all right.

3 Let's go on to 'coupled to' in the '477 Patent.

4 And before I hear argument, let me ask you, counsel, this
5 seems to be a dwindling dispute that may have dwindled down to
6 no dispute at all. As you get to the end of the briefing, the
7 Defendant's construction of 'joined' or connected to' seems to
8 be agreeable to the Plaintiff as long as it's joined or
9 connected to in any way, and I don't see the Defendant pushing
10 back on that.

11 Do we have a real dispute here worth the time and effort
12 we're going to take this afternoon, or is 'joined or connected
13 to' in any way satisfactory to both sides?

14 MR. KELSON: Your Honor, Taylor Kelson for General
15 Access. I can speak for the Plaintiff.

16 I believe 'joined or connected to in any way' would be
17 satisfactory to the Plaintiff.

18 THE COURT: All right. What's the Defendant's view
19 on this.

20 MR. DAVISON: Your Honor, Thomas Davison. We would
21 agree to that.

22 THE COURT: Okay. Then that will be the
23 construction and that will resolve this term.

24 And that will take us next to 'the at least one
25 parameter' language in claims 2, 13, and 14 of the '477

1 Patent.

2 Plaintiff tells me there's no construction necessary and
3 the Defendant tells me it's indefinite.

4 Let me hear from the Defendant first and then I'll hear
5 from the Plaintiff.

6 MR. DAVISON: Good afternoon, Your Honor. Thomas
7 Davison on behalf of Defendants.

8 May I proceed?

9 THE COURT: You may.

10 MR. DAVISON: Great.

11 So as Your Honor just said, the next term that we're
12 going to discuss is 'the at least one parameter', and I'm
13 showing it to you on the screen. It relates to claims 2, 13,
14 and 14. And we contend that this term is indefinite as it
15 lacks proper antecedent basis.

16 THE COURT: You're basically going back to the
17 language in claim 1 where it says "the at least one
18 signal-related parameter and the at least one channel-related
19 parameter," and then in claim 2 where it says "the at least
20 one parameter." I assume your argument is you don't know
21 which of those two from claim 1 they're talking about.

22 MR. DAVISON: That's exactly right, Your Honor.

23 So I'm now on slide 26, and as you've just recognized,
24 claim 1 requires two different types of parameters. I need to
25 have a single-related parameter that I have here in orange,

1 and I need a channel-related parameter that I have here in
2 green. But once I get to claims 2, 13, and 14, it just
3 references "the at least one parameter," and it's not clear
4 to a person of skill in the art whether we're discussing the
5 signal-related parameter in orange, the channel-related
6 parameter in green, or some combination of the two.

7 THE COURT: You know, in the typical antecedent
8 basis context, counsel, the first reference would be 'a at
9 least one', and then the second reference would be 'the at
10 least one', but we don't have that here; we have 'the at least
11 one' in claim 1 and 'the at least one' in claim 2.

12 Is it really an antecedent basis-type construct here, or
13 is that difference in language indicative that that's really
14 not what we're talking about?

15 MR. DAVISON: So I think it is an antecedent basis
16 problem, but the real problem is it's unclear in claims 2, 13,
17 and 14 what we're referring to when we get to 'the at least
18 one parameter'.

19 Now, what Plaintiff's position will be, and you'll hear
20 more from them later, is that it doesn't matter; it can be the
21 channel-related parameter, the signal-related parameter --

22 THE COURT: Either one. I understand.

23 MR. DAVISON: -- or a combination. But when we look
24 at the rest of the claims, that really doesn't make sense.
25 When we look here at slide 28, the applicants knew how to

1 claim channel-related parameters in the dependent claims. And
2 you see that, for example, in claims 3 and 4. The applicants
3 knew how to point to signal-related parameters. But most
4 importantly, in claim 17 the applicants show you they knew how
5 to claim either/or or the combination of the two.

6 So in claim 17 what they write is, "The previously
7 determined value(s)"--with the 's' in parentheses--"of one or
8 both of the at least one signal-related parameter and the at
9 least one channel-related parameter." So in claim 17 they're
10 explicit--it can be a single channel-related parameter, it can
11 be a single signal-related parameter, it could be the
12 combination or any number in between. But that's not what we
13 see in the other claims.

14 And what General Access is trying to do is essentially
15 rewrite claims 2, 13, and 14 to capture what we have in claim
16 17. We think that's improper.

17 THE COURT: Well, I'm not sure some rewriting
18 wouldn't be in order. If you look at claim 14, column 14,
19 line 13, "determines the at least on parameter." Apparently
20 they spell the word 'one'. I assume that means 'the at least
21 one parameter' there in line 13 of column 14.

22 MR. DAVISON: I think you're probably right. That's
23 probably another typo like we saw earlier today.

24 THE COURT: Well, as they say, hindsight is 20/20
25 except in claim construction.

1 MR. DAVISON: That's right, Your Honor.

2 THE COURT: Let me ask you this. From a
3 functionality standpoint, does it -- does it obstruct the
4 function of the device to use either 'the at least one
5 channel-related parameter' or 'the at least one signal-related
6 parameter', or does it work with either one, notwithstanding
7 the fact that it may not be clear which one is being talked
8 about here?

9 MR. DAVISON: Yeah. I understand, Your Honor.

10 I believe the claim does work with either one, but our
11 position is that it's still unclear to a person of skill in
12 the art based on the way it is written.

13 THE COURT: Well, I understand for indefiniteness
14 it's not whether it really works or not; it's whether there's
15 fair notice given.

16 MR. DAVISON: Correct, Your Honor. That's our
17 position. We're not arguing that the claim as written would
18 be impossible.

19 THE COURT: What else do we have on this?

20 MR. DAVISON: Just very briefly, I'll just touch on
21 these.

22 We recited these cases in our brief, so I won't go into
23 great detail with them, but the *CardWare* case and the *Bushnell*
24 case from the Federal Circuit, I think both support that
25 claims like this can be found indefinite. So in each of these

1 cases you have similar facts. You have -- for example, in the
2 *Bushnell* case 'one or more IP addresses', a second IP address,
3 and a third IP address. When you get down to -- later in the
4 claim it said 'different IP address'. The Federal Circuit
5 found it indefinite because it was unclear which of the IP
6 addresses that referred to.

7 And so I think there is significant case law that would
8 allow you to find a claim written in this fashion to be
9 indefinite.

10 THE COURT: All right. Thank you.

11 Let he hear Plaintiff's response.

12 MR. KNOBLOCH: Thank you, Your Honor.

13 So I think that Your Honor's question about whether this
14 would work with either one is probably a good place to start.
15 And I agree with T-Mobile's counsel that when you have these
16 multiple parameters, that claim 13 would absolutely work
17 whether you're talking about a signal-related parameter or a
18 channel-related parameter being updated based on a subsequent
19 burst. Right?

20 All -- the basic structure of these claims is very
21 simple. You've got a receiving station, the receiving station
22 receives a first burst, and based on that determines both
23 signal- and channel-related parameters, and then based on a
24 subsequent burst updates as necessary one of those parameters.
25 And that is further described in figure 5 and the associated

1 language in the specification in column 11 where --

2 THE COURT: If we were talking about a functionality
3 test, I would say you're in pretty solid ground, but, you
4 know, indefiniteness is all about does it give fair notice to
5 a person of ordinary skill in the art--would a person of
6 ordinary skill in the art know from the language in claim 2
7 and claim 13 and claim 14 which of these options in claim 1 is
8 really being selected and chosen. So it's not a functionality
9 test.

10 I think it's interesting that it still works either way,
11 but I don't know that that's really the proper perspective
12 here. And from a notice standpoint, from an informational
13 standpoint so that the person of ordinary skill knows which of
14 these single [sic] -- at least one single-related parameters
15 we're talking about, Defendant does not have a bad argument.
16 I mean, I don't know how you tell if you have to know which
17 one is which, I don't know how 'the at least one parameter' in
18 claims 2, 13, and 14 tells you which of these two from claim 1
19 is really being identified.

20 MR. KNOBLOCH: Well, I think it's very important
21 that it uses the word 'at least one' because it's -- what that
22 suggests, Your Honor, and I think what a person of ordinary
23 skill reading this would understand, is it's at least one
24 parameter. And we've talked about two different kinds of
25 parameters in claim 1--right?--signal-related parameters and

1 channel-related parameters, and as long as at least one
2 parameter, whether it's signal-related or channel-related, as
3 long as there's at least one that's getting updated -- you've
4 got, for example, claim 13. That's what claim 13
5 requires--right?--a subsequent burst of -- subsequent burst
6 signal, and then based on that subsequent burst signal, the
7 profile parameter determiner updating the value of the at
8 least one parameter. So I think that use of 'at least one' is
9 what a person of ordinary skill would look at and say, Oh,
10 okay, I get it; it could be either or both signal- or
11 channel-related parameter. As long as one parameter is
12 getting updated, I have a problem if I'm doing it with claim
13 13.

14 THE COURT: Well, it would be a lot simpler if the
15 drafter here had said 'at least one parameter, either
16 single-related or channel-related'. They didn't say that.

17 MR. KNOBLOCH: I understand that, Your Honor. And I
18 do think that claim 17, which T-Mobile pointed to, actually
19 does help provide context for the meaning of claims 2, 13, and
20 14 where it's made in claim 17 very explicit, exactly like
21 Your Honor suggested, that it's either one. And I think a
22 person reading the patent in context would understand that
23 from the language of claim 17 as well, as from the language of
24 the specification which describes this process of -- that is
25 described in the claims.

1 And in figure 5 what it says is that the -- early -- the
2 -- that -- you know, on the first highlighted box on the left
3 here, "determine parameters associated with burst." And what
4 the specification explains and the language that's excerpted
5 on the right here is that those parameters are associated both
6 with signal characteristics and channel characteristics.

7 And then figure 5 further explains that you provide
8 updated profile to the RF modem as additional transmissions
9 are received by the receiving station. Once again, there
10 is -- when the specification is talking about this, it's
11 talking about this in the context of any update. As long as
12 there's a parameter that's being updated, you've got what's
13 described here, and I think --

14 THE COURT: How much difference does it make that
15 it doesn't say 'at least one', it says 'the at least one', and
16 the article 'the' tends to indicate it's got to be a specific
17 one, not just any one off the list?

18 MR. KNOBLOCH: Well, I think that it -- what it's
19 trying to convey there, Your Honor, is that it has to be one
20 of the parameters that has been talked about in claim 1. It
21 can't just be some other -- it can't be some parameter that's
22 not signal-related or channel-related; it has to be one of
23 those. And that's why it uses the article -- you know, the
24 article 'the' to refer back to claim 1; not to limit it to one
25 specific parameter or to suggest that it has to be only a

1 signal-related or only a channel-related parameter, but
2 instead, to convey that it has to be a -- one of the
3 parameters that we've spoke about earlier.

4 THE COURT: I think the article 'the' is more
5 problematic in the dependent claims than it is in claim 1,
6 because when you get to claim 2, 13, and 14, when it says 'the
7 at least one parameter', it would support your argument if the
8 language in those dependent claims, in my view, said 'updated
9 value of at least one parameter' so it leaves it open as to
10 which parameter it might be. But you've got that bothersome
11 article 'the' there which is not just any one off the list; it
12 is specific, it is the one.

13 MR. KNOBLOCH: Right. But it's at 'the at least
14 one'. Not 'the one parameter'; it's 'the at least one', which
15 I think really helps here to clarify --

16 THE COURT: I don't think anybody is saying it could
17 be two, three, four, or 10 parameters. I think it's one
18 parameter, but it's 'the at least one parameter'.

19 MR. KNOBLOCH: Right. Right. And it can be at
20 least one in the sense that it could be one signal-related and
21 one channel-related parameter, it could be two signal-related
22 parameters or two channel-related parameters; as long as at
23 least one of the parameters described in claim 1 is being
24 updated then you're practicing claim 13.

25 THE COURT: And where in the claim language do we

1 have some guidance that either or both is sufficient? I mean,
2 I understand the argument; I just don't see anything in the
3 claim language that makes it clear that it can be one or the
4 other or both.

5 MR. KNOBLOCH: I think really the key phrase is 'at
6 least'--Right?--that it's saying at least a parameter, of the
7 parameters we've talked about earlier, is being updated, and
8 that's where you really get the clarity to a person of
9 ordinary skill that you're not dealing with just one or the
10 other; you're dealing with at least one parameter of the ones
11 we've talked about earlier, which are signal- and
12 channel-related parameters.

13 THE COURT: Okay.

14 MR. KNOBLOCH: Can I just make one more point, Your
15 Honor?

16 In the specification -- from the specification, column 7,
17 line 2 through 12, I have this pulled up here on the slide as
18 well, this is actually where the term 'the at least one
19 parameter' shows up in the specification--right?--outside the
20 context of the claims, this exact phrase 'the at least one
21 parameter'. And in this context I think that helps clarify to
22 a person of ordinary skill that we're talking about either one
23 of the signal- or channel-related parameters, because what it
24 describes here is "a profile parameter determiner that
25 determines a value of at least one parameter that is

1 representative of communication of the burst data signal to
2 the receiving station." And what other portions of the
3 specification, including what we were just looking at in the
4 column -- context of column 5--I'm sorry--figure 5, makes
5 clear is that there's two kinds of parameters that are
6 representative of communication of a burst signal to a
7 receiving station. There are signal-related parameters and
8 there are channel-related parameters. Those are the two kinds
9 of parameters that are representative of communication to a
10 receiving station.

11 And when the profile parameter storage device stores
12 values representative of 'the at least one parameter', that
13 phrase clearly in the specification refers to any parameter,
14 whether it's signal- or channel-related. And so here you have
15 the exact phrase showing up in the claims also showing up in
16 the specification with the exact meaning that we're proposing,
17 which is either one.

18 THE COURT: All right. Thank you.

19 MR. KNOBLOCH: Thank you, Your Honor.

20 THE COURT: Let's move on. We've heard argument on
21 'communication station'. We've heard argument on 'subscriber
22 station'.

23 Let's go to 'modulation ortogonalization'.

24 And again, Defendants are arguing it's indefinite.
25 Plaintiff proposes plain and ordinary meaning and offers a

1 plain and ordinary meaning.

2 I actually put this word in Google Search and, believe it
3 or not, 'ortogonalization' has its own Wikipedia page.

4 MR. STEVENS: Ortogonalizations I think is -- might
5 be the more common pronunciation.

6 THE COURT: I can spell it. I may not can say it,
7 but I can spell it.

8 MR. STEVENS: That word on its own, whether
9 something is orthogonal or not, I think would be fine, if the
10 word were just -- you know, if something is orthogonal. I
11 think the problem we have here is the phrase 'modulation
12 ortogonalizations' and the manner it's used really I think is
13 nonsensical in this particular context.

14 So if we look -- if we can go to slide 35.

15 This is how we see where it appears in the claim. And
16 we're just talking about claim 11 here for the '383 Patent.

17 So to set the stage, it recites the apparatus of claim 9
18 "wherein the first and at least second data signals are
19 characterized by modulation ortogonalizations"--All right?--so
20 we have signals characterized by modulation ortogonalizations.
21 And "wherein values of the modulation ortogonalizations form
22 portions of the profiles maintained," and it goes on from
23 there.

24 So we see that there's a data signal characterized by
25 this modulation ortogonalization, and then there's a value

1 associated with this -- with modulation ortogonalizations.
2 There's nowhere in the spec that describes what that means, we
3 haven't found any extrinsic evidence that would suggest what
4 that means, and, in fact, as we see both in the intrinsic
5 record and the record of this case, it's being used vastly
6 differently, and that's where the problem lies and why this
7 needs to end up with the finding of indefiniteness.

8 So if we could move forward two slides to 37.

9 THE COURT: Let me stop you there, Mr. Stevens. If
10 you look at column 12, lines 24 and following, "the modulation
11 index of the uplink data signal, the modulation
12 ortogonalization parameters associated with forward error
13 correction of the uplink data signal." You notice that after
14 the word "frequency domain" there's a semicolon, then after
15 the "modulation index of the uplink data signal" there's a
16 comma, then the modulation ortogonalization ends with another
17 semicolon. Now, my reading of grammar would tell me that that
18 indicates that the modulation ortogonalization is the
19 modulation index of the uplink data signal.

20 Do you -- what is your response that that is an
21 indication of the meaning of this language, given the way
22 that that's offset with semicolons and divided with a comma?

23 MR. STEVENS: So I would say first, it's
24 inconsistent with both how the examiner used it and it's
25 inconsistent with how the Plaintiff is using it --

1 THE COURT: Now, granted, this is my idea --

2 MR. STEVENS: Sure.

3 THE COURT: It's not --

4 MR. STEVENS: No, no.

5 THE COURT: -- in Plaintiff's brief.

6 MR. STEVENS: Fair enough.

7 THE COURT: But I was raised by a public school
8 teacher, and the rules of grammar were beaten into me from an
9 early age on, and there's a reason why this is offset with
10 semicolons and divided with a comma, or it's just happenstance
11 like how you spell 'determined' or how you spell 'one'.

12 MR. STEVENS: And we don't know. I can't stand here
13 and tell Your Honor that I think that's a typo or that I think
14 that's an intentional comma as opposed to a semicolon such
15 that those two things should be lumped together. I can't tell
16 you which is right. It doesn't strike me that a modulation
17 ortogonalization would be the same thing as a modulation
18 index, but I think we're left to wonder.

19 It is very odd grammar in what you've pointed out. And,
20 frankly, if we look at the only other point in time in the
21 patent specification where we see this, we have to go back to
22 column 6 and we'll find another grammatical oddity.

23 So if we look at '383, column 6, 61 through 73, the
24 bottom of column 6--and I put it on the screen just to make it
25 easier--this is where it's first introduced. And I'm going to

1 read it. I'm going to read it just how it's here. "The
2 profiles further selectibly include other parameters, such as
3 the modulation index"--that Your Honor pointed to--"of the
4 data signals communicated by the subscriber stations to the
5 base station," comma, "the modulation ortogonalizations of the
6 bursts of data signals of the bursts of data signals," comma,
7 and then it goes on from there.

8 So to Your Honor's question, I think the other point in
9 the spec somewhat distinguishes 'modulation index' from a
10 modulation ortogonalization, or whatever that may mean, but
11 it's -- where we first see it introduced, we have this other
12 grammar problem of "the burst of data signals of the burst of
13 data signals," and we really just don't have anywhere to look
14 to figure out what that means.

15 Okay. Well, how did we get here today? How have people
16 looked at this over time? If we go to slide 38, we see what
17 the examiner did. And this is what Your Honor granted leave
18 to supplement the record. And the examiner said in issuing a
19 rejection that QPSK --

20 Now, let me pause real quick. Your Honor probably is
21 well aware of this, but I'll state it for the record. QPSK
22 is a modulation scheme. It's a two-bit per symbol modulation
23 scheme, the manner in which you're going to encode data
24 regardless of what your carrier wave is. And the examiner
25 pointed out that this prior art reference mentioned QPSK.

1 Okay. The world does know what an orthogonal modulation
2 scheme is. QPSK is an example of that. OFDM would be another
3 example of an orthogonal modulation scheme. But that's not
4 what the spec said. The spec did not say a modulation scheme;
5 it said modulation ortogonalizations. That's a completely
6 different concept.

7 And so we see what the examiner did with it. Now,
8 Plaintiff doesn't embrace that. Plaintiff in this case does
9 not suggest, as best as I can understand, that what this
10 really means is a scheme.

11 So if we go to the next slide.

12 What they've -- what they've done here at the bottom is
13 they want to take out 'ortogonalization' altogether and
14 replace it with a completely different and much broader
15 concept--right?--'any modulation parameter used to minimize
16 interference between signals', regardless of if it has
17 anything to do with the orthogonality of carriers or signals.

18 So we have the examiner go one way. Now we have the
19 Plaintiff go another way which completely decouples this from
20 the concept of how orthogonal or whatever parameter a
21 modulation orthogonality would be. Now it's just any
22 parameter that's used to minimize interference between
23 signals.

24 This to me is a land grab. This is trying to take a term
25 that has no meaning and make it much, much, much more broad,

1 because in the real world it's difficult to point to anything
2 that's going to meet modulation orthogonality because nobody
3 knows what that parameter means. So this is one where I think
4 we are truly just left to wonder what on Earth this means.
5 It's not a term of art. I agree with you that 'orthogonal' or
6 'orthogonality' in and of itself is a term of art.

7 THE COURT: 'Orthogonalization' appears to be a term
8 of art in --

9 MR. STEVENS: I completely agree.

10 THE COURT: -- mathematics.

11 MR. STEVENS: And I think that's true. There are
12 certain -- your Honor's had a lot of cases about cellular
13 systems and other telecommunication systems. There are
14 certain modulation schemes that are orthogonal and certain
15 that are not. That we can figure out. But that doesn't
16 really make context [sic] in the context of this patent.
17 Right? In any network system, whether we're using 2G or 3G or
18 4G or 5G, the modulation scheme is known. Right? There are
19 certain standards that use OFDM. Okay. Well, you're going to
20 be using OFDM if you're in a particular generation of cellular
21 technology. That's not a modulation -- a modulation
22 orthogonalization or a parameter or a value about modulation
23 orthogonalizations; that's just simply not what this is.

24 And so when we get to the dependent claim and we see --
25 If we could go back to the claim. There we go.

1 -- that it's both -- the signal has to be characterized
2 by a modulation ortogonalization, and there has to be a value
3 of modulation ortogonalization. Those are two different
4 things. I don't know what either one is. There's nothing
5 that helps us in the intrinsic record the two times it's
6 introduced. There's -- it's grammatically incorrect. It's
7 unclear, as Your Honor pointed out, whether it's trying to
8 equate it to something else or whether it's trying to
9 distinguish it from something else. The examiner applied it
10 one way that's to me not what it says. The Plaintiff has
11 applied it a completely different way in order to try to
12 broaden the claim and erase this problem. But I think this is
13 one where this word is not known to a skilled artisan. Nobody
14 has come forward to Your Honor and said here is dictionaries
15 or here is another instances in the field where it's been used
16 and has a meaning. That doesn't exist here.

17 So this is one that we'd respectfully ask Your Honor to
18 find indefinite.

19 THE COURT: All right. Thank you.

20 Let me hear from the Plaintiff in response.

21 MR. KNOBLOCH: Thank you, Your Honor.

22 THE COURT: Why don't you start off and just tell me
23 what this is.

24 MR. KNOBLOCH: So in my understanding --

25 THE COURT: Give me a simple, straight-forward

1 explanation of what 'modulation ortogonalization' is.

2 MR. KNOBLOCH: It is the use of different
3 modulations to make two different signals coming to a base
4 station not interfere with each other. So, for example, QPSK
5 was an example used in the -- in the -- by the examiner in
6 discussing the -- in that -- in the -- here in this office
7 action as an example of an orthogonal modulation scheme.

8 So -- and what that would be an example of, Your Honor,
9 is where -- for -- you could have, for example, one signal
10 coming towards the base station using QPSK modulation, which
11 means, like T-Mobile's counsel said, that you have two bits
12 per symbol in the way that you modulate the symbol. You could
13 have another device at the same time transmitting to the base
14 station using, for example, 64 QAM, which I believe the Jonas
15 reference that -- that the examiner mentions here also talks
16 about. And by having these two different devices use two
17 different modulation schemes, you could have them be
18 orthogonal to each other. So you could have -- you could
19 minimize the extent of the interference between signal one and
20 signal two.

21 And so fundamentally that's what I think -- everyone
22 agrees 'orthogonal'--right?--what does it mean to be
23 orthogonal, it means that you can -- that they're not
24 interfering with each other. And 'modulation' is just using
25 modulation as a lever to avoid that sort of signal-to-signal

1 interference.

2 THE COURT: Two things are somewhat surprising here
3 to the Court--one, that that same kind of explanation is not
4 in the intrinsic record somewhere; and two, that you really
5 don't bring the Court any extrinsic evidence of what this
6 means, especially in light of the brevity in the specification
7 and the intrinsic record. I mean, surely there are somebody's
8 technical dictionary out there that proffers a definition of
9 this, but I don't find it in the briefing and I don't find
10 that you've raised it.

11 MR. KNOBLOCH: Neither party has brought in
12 dictionary definitions on this term.

13 To be honest, Your Honor, the way this term got to be
14 teed up for the Court is actually Plaintiff proposed it for
15 construction, which is -- you know, so the Court may find it
16 somewhat unusual. Plaintiffs usually just say plain and
17 ordinary meaning. We proposed it for construction because we
18 reading the claim thought it would be useful to the jury to
19 have a definition.

20 And what we used was actually the definition we
21 understood the Defendants to agree to, and that's because in
22 their IPR petition--and that's Exhibit S and also excerpted on
23 the screen for Your Honor--what the Defendants themselves told
24 the Patent Office when they were challenging the validity of
25 this claim was to say that modulation ortogonalizations, what

1 do they do? They allow different users using different codes
2 to transmit on the same frequency channel without causing
3 undue interference.

4 And so we actually thought that might be useful for the
5 jury to hear as well, and so, you know, rather than trying to
6 introduce something from an IPR, we thought it would make
7 sense to introduce that as -- in the context of a claim
8 construction so that the jury could understand what we mean by
9 'modulation ortogonalization', which I do think is really, you
10 know exactly -- what we understand is really exactly what the
11 Defendants themselves told the Patent Office, and I think is
12 also what the examiner had in mind when the examiner had no
13 problem with the definiteness of this term. Right? The
14 examiner looking at this patent had no problem finding an
15 example of a modulation ortogonalization in the prior art. It
16 was in the context of the Jonas limitation. So I just thought
17 it would be useful to have that definition for the jury.

18 I would also note, Your Honor, that we would have no
19 objection to adopting a construction consistent with column 12
20 of the specification where there is a comma between "the
21 modulation index of the uplink data signal." I think
22 "modulation index of the uplink data signal" is a fine
23 construction from our perspective, and that was the issue the
24 Court pointed out with the Defendant.

25 THE COURT: Well, you didn't raise that in your

1 briefing, did you?

2 MR. KNOBLOCH: I did not, Your Honor. It was a -- I
3 -- my mother is an immigrant and she's not a schoolteacher,
4 and so she didn't teach me to be as exacting about grammar as
5 maybe I should have been. And so I do think that's a useful
6 point, though, and one that we would not object to that
7 construction.

8 THE COURT: Well, in that vein, how do you respond
9 to what Mr. Stevens pointed out that elsewhere in the
10 specification there's language that seems to run counter to
11 the notion that a 'modulation index of the uplink data signal'
12 could be a reasonable definition or construction of
13 'modulation ortogonalization'?

14 MR. KNOBLOCH: Well, I don't know that it runs
15 counter to it. I don't think it provides additional support
16 for it, but it just suggests that 'modulation index' and
17 'modulation ortogonalization' may both be things that you
18 might have.

19 I also think, you know, perhaps it gets at this idea that
20 the modulation index, that's the specific parameter for a
21 given device. Right? And the ortogonalization is the idea
22 that you have different of those parameters for different
23 devices in order to make them -- in order to make their
24 transmissions to the station orthogonal to each other.

25 So I think there is a relationship between these

1 concepts--right?--that the modulation index is probably the
2 value or the parameter for a given device; whereas,
3 ortogonalization is the idea that you would have different
4 parameters for different devices in order to minimize
5 interference, which is what we've proposed the Court have as
6 a construction there.

7 THE COURT: Well, I'm not sure, in light of
8 Mr. Struhsaker's prowess with spelling, that I ought to give
9 him undue credit for punctuation, but it was eye-catching to
10 me that in column 12, some of the language is offset by commas
11 and some is offset by semicolons, and it does seem to group
12 'modulation ortogonalization' with 'modulation index of the
13 uplink data signal'. That may be a fair distance away from
14 saying that's a fair and reasonable construction, and like I
15 say, I'm not sure he's entitled to undue credit for
16 intentional punctuation, but it was something I wanted to
17 raise with counsel and at least get your reaction to.

18 What else do you have for me?

19 MR. KNOBLOCH: Final point, Your Honor.

20 There is no requirement that the specification provide
21 definitions of technical terms, and there is also no dispute
22 that people of skill in the art would understand the word
23 'modulation', would understand the word 'ortogonalization',
24 and I think when you put those two words together, really all
25 they mean is what we've suggested the Court provide the

1 construction to the jury--that you change the modulation of
2 different devices in order to make the signals from those
3 devices orthogonal from each other, in order to make them not
4 interfere with each other.

5 THE COURT: Well, I'm not at all sure that you're
6 not right that modulation parameters used to minimize
7 interference between signals is the purpose of modulation
8 ortogonalization. I'm not sure it's the definition of it,
9 but it may well be the purpose of it, and I'm not sure the
10 purpose and the definition are the same thing here.

11 Anything else, Mr. Knobloch.

12 MR. KNOBLOCH: No, that's all, Your Honor. Thank
13 you.

14 THE COURT: All right. Thank you.

15 All right. Let's move on --

16 MR. STEVENS: Your Honor, may I briefly on one point
17 to --

18 THE COURT: I'll give you the same couple of
19 sentences I gave opposing counsel.

20 MR. STEVENS: I'll keep it to two, and I'll just
21 stand right here.

22 THE COURT: I'd prefer you go to the podium.

23 MR. STEVENS: I beg your pardon, Your Honor.

24 THE COURT: It's all right.

25 MR. STEVENS: I think -- I do think there is an

1 answer to this question about whether it's the same as
2 modulation indexes, and I think you'll find the answer by
3 comparing claims 10 to 11, claims 10 and 11 of the '383
4 Patent. They look to be almost identical except for one talks
5 about modulation indices or indexes and one talks about
6 modulation orthogonalizations. So clearly, if you look at
7 those two dependent claims, there's some difference between --
8 they're not being used as identical definitions or completely
9 synonymously.

10 THE COURT: Both depend from 9; 11 does not depend
11 from 10. Correct?

12 MR. STEVENS: Correct. That's correct, Your Honor.

13 THE COURT: Okay. Thank you.

14 All right. Let's go on to 'wherein the at least second
15 subscriber station comprises a plurality of subscriber
16 stations' from the '383 Patent, claims 1 and 4.

17 Defendants have argued for indefiniteness. Plaintiff
18 says there's no construction necessary.

19 It looks like to me the real question here, counsel, is
20 when you look at claim 1, the language in the preamble "within
21 a plurality of subscriber stations" then followed later in the
22 claim in the last element "wherein the at least" -- "wherein
23 the at least the second subscriber station comprises a
24 plurality of subscriber stations," and then in -- at the end
25 of that element or limitation where it talks about

1 "alternating ones of the plurality of subscriber stations," is
2 this last reference referring back to the reference at the
3 beginning of that element or limitation, or is it referring
4 back to the language in the preamble? That seems to be what
5 the argument is here.

6 And I'm sure Defendant's going to tell me you can't tell,
7 you can't know so it's got to be indefinite, and I'll see what
8 Plaintiff has to say in response.

9 MR. DAVISON: Thomas Davison, Your Honor.

10 And you've got the argument right.

11 THE COURT: That's because I read the briefs.

12 MR. DAVISON: I'm glad we explained it okay.

13 So, Your Honor, just stepping through this quickly, we
14 know we've got a first subscriber station, I've got it in
15 orange, and it sends a first data signal, on slide 43. I have
16 a second subscriber station in blue, and it's going to send
17 the second data signal.

18 Moving down to our next slide, we've got our first
19 plurality of subscriber stations. Right? I drew the yellow
20 box around it. That's going to have our first subscriber
21 station and our second subscriber station. Presumably it
22 could have more. It could have that house 123 in it.

23 When we get down to that final element, though, as you've
24 already recognized, and Mr. Stevens talked about it earlier,
25 our second subscriber station in blue itself comprises another

1 plurality of subscriber stations, and I tried to show that in
2 this green box, the concept being the blue house has other
3 subscriber stations within it.

4 When we get down, though, to the very end of this final
5 element, what I have here in red is where the claim starts to
6 become ambiguous in terms of what it's claiming. We need our
7 first and second demodulator have to receive selectibly the
8 first and the at least second data signals that are
9 communicated by alternating ones of the plurality of
10 subscriber stations.

11 A couple of problems with this. So first there's two
12 different pluralities of subscriber stations. We talked about
13 that.

14 The second issue that we have is that the first and the
15 second at least data signals are supposed to be sent by the
16 first subscriber station and the second subscriber station,
17 not the pluralities.

18 Compounding the issue, when you look at the specification
19 here, column 6, lines 9 through 16, it tells us the data
20 signals are transmitted to the receiving stations by any of a
21 plurality of subscriber stations. I think the take-away from
22 this is both the plurality of subscriber stations we have in
23 yellow and the one in green, that plurality, they're all
24 sending data signals to our communication station, so it's
25 entirely unclear what this final element that we have in red

1 is actually referring to.

2 Now, the original claims and the way that this claim came
3 about just adds further unclarity in terms of what it's
4 actually claiming. So the way this came about, we had
5 original claim 1, it did not mention the word 'plurality of
6 subscriber stations'. Original claim 4 did, though, Your
7 Honor, and I have that highlighted here on the slide. So it
8 referenced the exact claim language that we were looking at.
9 And then the original claim 5 referenced 'the plurality of
10 subscriber stations'.

11 What ends up happening through prosecution is claim 1, 4,
12 and 5 are combined together. So in terms of the original
13 claims, that final element of 'the plurality of subscriber
14 stations' referenced the second plurality. But what happened
15 in December of 2004 is they added another plurality into the
16 preamble. That's that very first plurality that we were
17 talking about when we looked at the claim. They added that in
18 and they never updated the rest of claims 4 and 5.

19 But then in March -- two years later, March of 2006, they
20 then take claim 1, which they've now added a plurality into,
21 they add claims 4 and 5 to the end to it, and now you have the
22 claim at issue which references two different pluralities.

23 The take-away from the prosecution history is, at least
24 in context of the original claims, what General Access is
25 going to tell you that it's referencing the plurality that's

1 in the preamble, that's wrong. Original claim 4 and 5, when
2 -- those -- the original claims was referencing the second
3 plurality.

4 But the take-away for a person in skill in the art, you
5 don't know what they're referencing. Is it the first
6 plurality? The second plurality? It's just completely
7 unclear.

8 THE COURT: How is the prosecution history
9 informative in this context? I mean, I'm not doubting
10 factually what you've just walked through happened, but what
11 does it mean? I mean, why is it that the series of steps that
12 evolved here in the examination process read on and inform the
13 Court as to the ultimate conclusion here? Or is it not just a
14 process by which changes are made, adjustments are made,
15 additions are added, and then you look at the final product
16 and try to make sense out of what the final product is? How
17 is the process informative to me here?

18 MR. DAVISON: So I think the process is informative
19 in the sense that the original claims, when we go back to how
20 this was originally drafted, the first time we had any claim
21 that mentioned a plurality of subscriber stations, what we see
22 in claim 4, that ends up being the plurality that's of the
23 second subscriber station. That cuts against what General
24 Access is going to tell you how the claim has issued.

25 I think you're right that the claims changed over time

1 and ultimately you're just left with, We don't know what the
2 final claim is actually pointing to. But I think when I look
3 at the original claims and the way this was prosecuted, it
4 makes it very -- it's definitely not what General Access is
5 pointing to. Ultimately I just think you're left with, We
6 don't know which one it's referencing. Is it the first
7 plurality? The second plurality that's added in later? It's
8 entirely unclear.

9 THE COURT: Does it make a difference, in your view,
10 that the first reference to this 'plurality of subscriber
11 stations' in the preamble begins with 'a plurality', the
12 second reference is 'a plurality', but the last reference is
13 'the plurality'? Do those articles make a difference here?

14 MR. DAVISON: I think they do, because when you get
15 to the third 'the plurality', that is referencing one of the
16 two -- needs to reference one of the two prior ones. I think
17 now you're looking for the antecedent basis, but you don't
18 know which one it's pointing to, particularly in view of the
19 specification that we looked at that tells you that data
20 signals are transmitted to the receiving station by any of the
21 plurality of subscriber stations.

22 So the way this claim reads, I have to have a first and a
23 second, and then within the second I also have a plurality, so
24 we're talking about four subscriber stations at least. Right?
25 All of them are transmitting signals, but when we look at the

1 claim language in red at the end, it's very unclear what
2 they're pointing to in terms of it being one of the first and
3 the second -- at least second data signals.

4 THE COURT: All right. Thank you, Mr. Davison.

5 MR. DAVISON: Thank you.

6 Mr. Kelson, what's Plaintiff's response?

7 MR. KELSON: Thank you, Your Honor. Taylor Kelson
8 for the Plaintiff General Access.

9 THE COURT: Please proceed.

10 MR. KELSON: So I think Your Honor correctly framed
11 the scope of the dispute here, which is that we have these two
12 pluralities of subscriber stations, and as Your Honor just
13 highlighted, there is 'a plurality' and then another 'a
14 plurality'. There is two of them. And the dispute here is
15 which of those two pluralities, the subsequent term
16 highlighted in red, refers back to.

17 And I think we agree with T-Mobile regarding the general
18 framework of this dispute that it needs to be one of them and
19 it is one or the other of them, and the question is could a
20 person of skill in the art reasonably determine the scope of
21 the claim--in other words, reasonably determine which one of
22 those two it is. And the answer is yes. By following the
23 linguistic structure of the claim, we can follow that through
24 and conclusively determine which of the two pluralities that
25 final reference highlighted back in red is referring to.

1 So the yellow plurality is the broader one. It
2 encompasses all of the stations transmitting to the
3 communication station, all of the stations in the scope of
4 the claim. The green one is the smaller one. That's the
5 plurality that is subsumed within that second station that
6 is transmitting to the communication station.

7 So we have prepared a very similar slide to the
8 Defendants here to illustrate this. There is one key
9 difference that I'd like to highlight, but, first of all,
10 the yellow here is that is that broader plurality. Defendants
11 said in this and in other contexts that the subsequent
12 'plurality within the second subscriber station' only makes
13 sense if those are further stations within, for example, a
14 house, and that's simply not true. The claim language doesn't
15 contain a requirement, for example, that the 'plurality of
16 stations within the second subscriber station' is, for
17 example, co-located or communicating through some shared link
18 of some kind or anything like that. The claim is drawing
19 logical lines around these pluralities of subscriber stations,
20 and those logical lines can be drawn in any way that is
21 consistent with the language of the claim.

22 So turning back to the dispute about what the antecedent
23 basis is, the way to determine what the antecedent basis is is
24 by following through which subscriber stations are
25 transmitting which identified data signals within the language

1 of the claim. So in the preamble we have the first and second
2 data signals successively transmitted by a first subscriber
3 station and a second subscriber station, respectively, within
4 a plurality of subscriber stations, that broader plurality.

5 And we can tell that the highlighted language in red is a
6 reference back to that broader plurality, because in the
7 language leading up to that reference it says "the second
8 demodulator to receive selectively the first and at least
9 second data signals communicated by alternating ones of the
10 plurality of subscriber stations." The key there is "the
11 first and at least the second," "the first data signal
12 communicated by alternating ones of the plurality of
13 subscriber stations." The first data signal is an identified
14 data signal that comes from the preamble and that first data
15 signal is transmitted by the first subscriber station. The
16 first subscriber station is only inside one of these two
17 pluralities, the bigger one, and that means that the language
18 in red must have the antecedent basis of the larger "a
19 plurality of subscriber stations" from the preamble
20 highlighted here in yellow.

21 To address the point that T-Mobile's counsel made about
22 the prosecution history and to answer Your Honor's question
23 about whether it's informative, our position is that it is
24 not. The issued claim controls. Of course the process of,
25 you know, reworking and restructuring the language of the

1 claims through the prosecution history changes the linguistic
2 import of the language of the claims. Of course it does.
3 That's the point. The fact that this language was altered
4 and, as a consequence, in this particular case the antecedent
5 basis may have changed does not counsel in favor of
6 indefiniteness in this situation; it's just an artifact of
7 history of how the prosecution history happens to play out.

8 And the final point on the claim structure, Your Honor,
9 the notion that 'the plurality of subscriber stations', the
10 term in dispute here, refers back to the broader plurality is
11 further supported just by the overall structure of this final
12 term here. Specifically starting where it says "wherein" --
13 sort of the second piece of this final term, "wherein the
14 controller selectively applies the first and second data
15 signals," and so on into the portion I discussed previously,
16 the controller is the 'a controller' of that third limitation
17 of claim 1, and that controller is coupled to the first
18 demodulator and at least the second demodulator, and it's
19 receiving all of the data signals that are coming into the
20 communication station. And that controller is the reference
21 back of 'the controller' right after 'wherein' in that final
22 limitation. And where we ultimately get is that that
23 controller is receiving the signals transmitted by that final
24 plurality of data--excuse me--that final plurality of
25 subscriber stations, which confirms that that's the broader

1 plurality from the preamble.

2 THE COURT: All right.

3 MR. KELSON: Thank you, Your Honor.

4 THE COURT: Anything further from the Defendant?

5 MR. DAVISON: No, Your Honor.

6 THE COURT: All right. Well, that's the last
7 disputed term for consideration by the Court. Other than the
8 terms emanating from the '931 Patent, which as I've previously
9 noted on the record the Court will take those up on the
10 papers, these matters, counsel, are under submission.

11 Thank you for your arguments. And I will endeavor to get
12 you guidance by way of a written claim construction opinion as
13 soon as practical.

14 That completes today's claim construction hearing. Thank
15 you for your presence. You are excused.

16 And the Court stands in recess.

17 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

07/18/2024

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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