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BEFORE THE PUBLIC SERVICE COMMISSION

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STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

5

HEARING

6

September 15, 2005

7

Jefferson City, Missouri

8

Volume 1

9

10

In the Matter of the Application of )

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Sprint Missouri, Inc., for Competitive ) Case No.

Classification under Section 392.245.5, ) IO-2006-0092

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RSMo 2005 )

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NANCY M. DIPPELL, Presiding,

SENIOR REGULATORY LAW JUDGE.

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JEFF DAVIS, Chairman

CONNIE MURRAY,

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STEVE GAW

ROBERT M. CLAYTON, III,

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LINWARD "LIN" APPLING,

COMMISSIONERS.

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REPORTED BY:

TRACY L. THORPE, CSR, CCR

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

2 JUDGE DIPPELL: Okay. This is Case

3 No. IO-2006-0092 in the matter of the application of Sprint  
4 Missouri, Inc. for competitive classification under Section  
5 392.245.5 Revised Statutes of Missouri 2005.

6 My name is Nancy Dippell. And we've come here  
7 today for the hearing regarding Sprint's application and  
8 stipulation that was filed in this matter. I'll go ahead and  
9 let counsel make their entries of appearance beginning with  
10 Staff.

11 MR. HAAS: William K. Haas appearing on behalf  
12 of the Staff of the Public Service Commission. My address is  
13 Post Office Box 360, Jefferson City, Missouri.

14 JUDGE DIPPELL: Counsel?

15 MR. LEOPOLD: This is Brett D. Leopold  
16 appearing for Sprint Missouri, Inc. My address is 6450 Sprint  
17 Parkway, Overland Park, Kansas 66251.

18 COMMISSIONER APPLING: Sir, repeat your name  
19 again, please. I didn't catch that.

20 MR. LEOPOLD: Brett Leopold.

21 COMMISSIONER APPLING: Thank you.

22 JUDGE DIPPELL: If we can get you all to try to  
23 speak into the microphone, that would be helpful.

24 Is there anyone else here to make an entry for  
25 appearance? I see no one from Public Counsel or Fidelity this

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1 morning.

2 Would Staff like to make any opening remarks?

3 MR. HAAS: May it please the Commission.

4 Sprint Missouri filed this petition under the 30-day track of  
5 Section 392.245.5 Revised Statutes of Missouri as amended by  
6 Senate Bill 237. Under that statute, business services or  
7 residential services of a price cap regulated incumbent local  
8 exchange company may be classified as competitive in an  
9 exchange where two non-affiliated entities are providing basic  
10 local telecommunications services to business customers or to  
11 residential customers respectively.

12 Only one of the entities may be a wireless  
13 company. The other entity shall be a wireline company  
14 providing local voice service in whole or in part over  
15 telecommunications facilities or other facilities in which it  
16 or an affiliate have an ownership interest.

17 Sprint's amended application requests the  
18 competitive classification for residential services in the  
19 Ferrelview, Platte City and Weston exchanges. Also, Sprint  
20 requests a competitive classification for business services in  
21 the Ferrelview, Platte City, St. Robert and Waynesville  
22 exchanges. Sprint has substituted -- pardon me, Sprint has  
23 submitted substituted tariff sheets to comport with its  
24 amended application.

25 The Staff agrees that these exchanges each have

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1 a non-affiliated wireless company and a non-affiliated  
2 wireline company providing local voice service to the customer  
3 class for which Sprint seeks competitive classification. The  
4 Staff confirmed that a wireline company was providing service  
5 on a full facility basis in each instance.

6 The Staff's review is discussed in its  
7 memorandum. Telecommunications department manager John Van  
8 Eschen is available to answer questions about that review.

9 In conclusion, the Staff recommends that the  
10 Commission grant Sprint's petition as amended and approve the  
11 substituted tariff sheets. Thank you.

12 JUDGE DIPPELL: Thank you.

13 Would Sprint like to make any opening remarks?

14 MR. LEOPOLD: Yes, please. Good morning, Judge  
15 and Commissioners. We're here to talk about Sprint's amended  
16 application for competitive classification. We hope that this  
17 presents to you a relatively limited and straightforward  
18 application for competitive classification under the new  
19 provisions that have been put forth this year by the  
20 legislature and by the Governor.

21 As Staff has indicated, the application seeks  
22 relief in a total of five exchanges. We seek competitive  
23 classification for both residential and business services in  
24 Platte City and Ferrelview. We seek business only competitive  
25 classification in St. Robert and Waynesville. And we seek

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1 competitive classification for residential only in the Weston  
2 exchange.

3                   Again, as indicated by Staff, we think that the  
4 application presents verified evidence of the presence of two  
5 non-affiliated entities providing basic local  
6 telecommunications service in each of the exchanges in the  
7 residential and/or business space and that we meet all the  
8 criteria set forth in the statute for having relief granted.

9                   I have with me here today as a potential  
10 witness John Idoux from Sprint. And both John and I are  
11 certainly open to taking any questions on our application and  
12 the relief that we request.

13                   JUDGE DIPPELL: Thank you.

14                   Okay. I'm going to pause for just a moment and  
15 confer with the Commissioners on the procedure. Since they  
16 have to go to agenda at 9:30, it may be that we want to just  
17 directly go to Commission questions of whichever witnesses it  
18 is that they're wanting to ask. So let me pause for just one  
19 moment.

20                   (Off the record.)

21                   JUDGE DIPPELL: Okay. Let's go back on the  
22 record then. I think what we're going to do is begin with  
23 Sprint and have you bring your witness up and we'll begin with  
24 Commission questions, if that's --

25                   (Witness sworn.)

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1 JUDGE DIPPELL: Thank you.

2 Could you go ahead and maybe go through the  
3 preliminary?

4 JOHN IDOUX testified as follows:

5 DIRECT EXAMINATION BY MR. LEOPOLD:

6 Q. Mr. Idoux, could you please state your name for  
7 the record?

8 A. My name's John Idoux, I-d-o-u-x.

9 Q. And by whom are you employed?

10 A. I'm employed by Sprint Missouri, Inc.

11 Q. And could you summarize some of your basic  
12 responsibilities for Sprint Missouri, Inc.?

13 A. I am the regulatory affairs manager for  
14 Missouri and Kansas. Overall responsibilities include  
15 regulatory duties in both of those states, including all  
16 Commission proceedings.

17 Q. Are you familiar with Sprint's amended  
18 application for competitive classification that's pending  
19 before the Commission this morning?

20 A. Yes, I am. I was very involved in the  
21 development of that application.

22 Q. And you're familiar with the evidence that  
23 Sprint has put forward in support of that application?

24 A. Yes, I am.

25 MR. LEOPOLD: Mr. Idoux, could at this time

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1 take questions from Commissioners or I could walk him through  
2 the application, whatever you would prefer.

3 JUDGE DIPPELL: I think we'll just go ahead and  
4 go straight to Commission questions and then if we need  
5 further assistance -- thank you.

6 MR. LEOPOLD: Thank you.

7 JUDGE DIPPELL: Commissioner Murray, you had  
8 questions for Mr. Idoux.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Mr. Idoux, good morning.

11 A. Good morning, Commissioner.

12 Q. In the exchanges that Sprint applied for  
13 competitive status, were there any exchanges where Staff's  
14 minimum threshold concept created a dispute?

15 A. No.

16 Q. So really that concept is beyond the scope of  
17 this -- what we're looking at in this case, is it not?

18 A. It absolutely is. In all exchanges where  
19 Sprint is seeking relief, I mean, there's clearly more than  
20 one wireless provider. And as far as a wireline provider is  
21 concerned, in all cases there is, you know, ownership of the  
22 loop and of the switch by the wireline competitor.

23 Q. Okay. And I wanted to ask you if a CLEC owns  
24 its own switch and uses the shared facilities of an IXC, for  
25 example, to reach the customers that is a possible network

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1 configuration, is it not?

2 A. Oh, clearly it is and --

3 Q. And is that not a CLEC who owns -- or who  
4 provides service in whole or in part over its own facilities?

5 A. In your example, it would be because the CLEC  
6 does own the switch.

7 Q. Okay. And a CLEC could also own a switch and  
8 provide service over the shared facilities of another CLEC,  
9 could it not?

10 A. Absolutely.

11 Q. And would that also be an entity providing  
12 service in whole or in part over facilities in which it or one  
13 of its affiliates have an ownership interest?

14 A. Again, I believe it would since they do own the  
15 switch, which is a major component of the telecommunications  
16 facilities.

17 Q. And, in your opinion, would that meet Staff's  
18 definition of a minimum threshold?

19 A. I believe it would, yes.

20 Q. So how do you interpret Staff's definition of  
21 needing to provide service over either full facilities basis  
22 or UNE-L? Because is that a UNE-L, if it's not using an IXC's  
23 facilities?

24 A. A UNE-L traditionally refers to a situation  
25 where the CLEC is leasing the local loop from the incumbent.

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1 Q. And didn't Staff say that --

2 A. Staff's -- I mean --

3 Q. -- it had to either be UNE-L or facilities  
4 based?

5 A. I believe Staff was saying that, as I  
6 understood their position, that UNE-L, as is traditionally  
7 used by the industry, to include -- to mean where the ILEC is  
8 providing the loop, but the CLEC is providing the switching  
9 and other functions to be compliant with the 30-day process.  
10 But -- but like I said, our application doesn't go that far.  
11 We don't need to. We're providing full -- or we have --

12 Q. Mr. Idoux, let me just get right to the point  
13 here.

14 A. Okay.

15 Q. I understand your application does not go  
16 there. My concern is that the parties were more or less  
17 forced into a Stipulation and Agreement rather than verified  
18 pleadings.

19 Now, the Stipulation and Agreement states that,  
20 The parties stipulate that no party opposes the  
21 recommendation, supporting memo and schedules filed by the  
22 Staff on September 9, 2005. Accordingly, they should be  
23 endorsed and adopted by the Commission in its final order.

24 Now, it appears to me if we endorse and adopt  
25 Staff's recommendation, we are endorsing and adopting that

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1 concept that in order to meet a minimum threshold under the  
2 statute, that Staff's interpretation is correct, that it has  
3 to be either full facilities based or it has to be UNE-L. And  
4 I don't read the statute that way. Do you read the statute  
5 that way?

6 A. Well, and I'm going to assume we're limiting  
7 our discussions here to the 30-day process.

8 Q. That's correct.

9 A. And, I mean, the statute clearly says that any  
10 ownership by the CLEC in whole or in part would qualify for  
11 the 30-day process.

12 Q. And you and I just went through --

13 A. Facilities based --

14 Q. Let me interrupt you a second.

15 A. Okay.

16 Q. You and I just went through an example of that  
17 where it was neither a -- we went through two examples of that  
18 where it was neither full facilities based nor a UNE-L, did we  
19 not?

20 A. The examples we walked through were not what we  
21 would constitute a definition of full facilities based. But  
22 that term, as it's been used in the industry for the last nine  
23 years, since, you know, TA '96 really is not applicable here.  
24 So the --

25 Q. Which term is not applicable?

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1           A.       Full facilities based or partial facilities  
2 based. It's facility ownership.

3           Q.       But Staff is using that term.

4           A.       I mean, Staff did use that term in its  
5 recommendation. I mean, it's not completely clear how they  
6 are -- are using that term to the point that they're, you  
7 know, defining that term -- and I have to go back to the  
8 recommendation or go back to the --

9           Q.       You may want to turn to page 5.

10          A.       Yeah. I mean, as I read Staff's memorandum,  
11 and I read it multiple times, I mean, I made the distinction  
12 that they were using the definition of full facilities based  
13 to mean nothing is being provided by the ILEC. I mean, full  
14 facilities basis has not really been defined.

15                   The examples that you gave were -- were clear  
16 examples -- two examples of where there is, you know, no  
17 involvement by the ILEC. That in itself -- I believe many in  
18 the industry generically throw on the tag line full facilities  
19 based regardless of whether or not the CLEC owns all of the  
20 network.

21          Q.       Let me get you to repeat that, how you are  
22 interpreting that definition in this document of full  
23 facilities based.

24          A.       I mean, full facilities based is -- like I  
25 said, generically refers to a situation, and they draw a

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1 distinction between UNE-L, but where there is no involvement  
2 by the ILEC through unbundled network elements.

3 And that's how I view the term as Staff was  
4 using it in this memo because they say full facility basis or  
5 UNE-L. And the examples that you provided where the CLEC is  
6 using facilities of, you know, a third party or a different  
7 IXC or a different CLEC, from the ILEC's perspective, that is  
8 a full facility based competitor because it's not using any  
9 component of the ILEC.

10 Q. So to clarify, when Sprint is stipulating that  
11 no party opposes the recommendation, supporting memo and  
12 schedules filed by the Staff on September 9, 2005;  
13 accordingly, they should be endorsed and adopted by the  
14 Commission in its final order, Sprint is saying that --  
15 Sprint's interpretation of what is being recommended by Staff  
16 as the minimum threshold includes your definition of full  
17 facilities based?

18 A. For -- yes.

19 Q. Which includes the two examples that I gave to  
20 you earlier where there is no facility of the ILEC's being  
21 used; is that correct?

22 A. Correct.

23 Q. Okay. Now, there was also some language in  
24 Staff's recommendation that the definition of  
25 telecommunications facilities really was different than the

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1 original definition of telecommunications facilities for  
2 purposes of 392.245.5 in that -- where 386.020, subsection 52  
3 defines telecommunications facilities includes lines,  
4 conduits, ducts, poles, wires, cables, crossarms, receivers,  
5 transmitters, instruments, machines, appliances and all  
6 devices, real estate, easements, apparatus, property and  
7 routes used, operated or controlled or owned by any  
8 telecommunications company to facilitate the provision of  
9 telecommunications service.

10 Now, it's my understanding in the Staff rec  
11 that they're not applying that definition of  
12 telecommunications facilities. Is that your understanding?

13 A. Well, they throw out some possible discussion  
14 points that -- you know, regarding customer call centers, if  
15 they own the particular property. And, you know, as I read  
16 it, you know, they threw out the argument that -- but didn't  
17 necessarily take a position as to what their view is. And,  
18 you know, I mean, I understand it's in their memorandum, but  
19 once again, you know --

20 Q. Does it relate to your specific application at  
21 all?

22 A. It does not.

23 Q. Okay. Do you understand why Staff addressed  
24 those issues that don't relate to your application in their  
25 recommendation here?

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1           A.       I don't have a understanding as to why they  
2   went this far.

3           Q.       Was there a discussion about those issues?

4           A.       No, there was not.

5           Q.       So there was no negotiation or any kind of  
6   agreement as to those meanings that Staff has adopted --

7           A.       No.

8           Q.       -- in its recommendation?

9           A.       That is correct.

10          Q.       Okay. I want to go back to that hypothetical a  
11   minute of a CLEC with its own switch providing services over  
12   the shared facilities of an IXC or another CLEC.

13          A.       Okay.

14          Q.       Is it your position that under Staff's minimum  
15   threshold, that CLEC would be full facilities based because  
16   there's no involvement of the ILEC?

17          A.       Correct.

18          Q.       Okay. Now, on -- okay. Can you tell me, while  
19   I'm looking for something else, the exchange that was for  
20   which the request was withdrawn, what was the reason that  
21   request was withdrawn?

22          A.       Sprint initially requested in its original  
23   application competitive classification for business services  
24   in Fort Leonard Wood. Upon, you know, further investigation  
25   and discussion with Fidelity, who we were citing as a

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1 competitor, they confirmed that the -- the lines that they  
2 have going into that exchange were for internal use -- were  
3 minimal, there were two lines, they were for its own company  
4 use.

5 And so there was a debate as to whether or not  
6 they were business customers. And the fact that there was  
7 only two lines, we opted not to make this a controversial  
8 filing and just withdrew the request.

9 Q. Okay. Mr. Idoux, do you think that there's any  
10 reason to address in this particular application any issues  
11 concerning any potential issues that might concern other  
12 exchanges if none of those issues concern the exchanges for  
13 which you're applying?

14 A. I don't believe so. I mean, Sprint's  
15 application, as Mr. Leopold said at the beginning, it's  
16 straightforward, it's pretty simple. The exchanges we're  
17 seeking competitive relief for are very narrow.

18 Each particular application must be evaluated  
19 on a case-by-case basis with the evidence that is part of that  
20 application. And there's nothing that we can discuss as part  
21 of this application that -- that would impact future potential  
22 applications.

23 Q. And it would not be your position to -- I'm  
24 assuming, and correct me if I'm wrong, but is it correct that  
25 it wouldn't be your position that you would be making any kind

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1 of a policy statement that would have an effect on any future  
2 application?

3 A. That is correct, would not be my position. I  
4 mean, the Commission evaluates each particular case stand  
5 alone, they're not bound by its -- its, you know, prior  
6 positions. The evidence that Sprint will put in additional  
7 applications may differ from the evidence it puts forward in  
8 this application. So --

9 Q. Is it possible that the evidence that Sprint  
10 puts forward in future applications may differ in  
11 interpretation from Staff's interpretation presented in this  
12 case?

13 A. I believe that you will see Sprint's future  
14 applications to be very similar in that the evidence Sprint  
15 puts forward will be very straightforward and there won't be a  
16 need for substantial interpretation. I don't anticipate  
17 Sprint filing any applications in the future that have any  
18 type of controversial interpretations that will be required.

19 Q. All right. Let me pursue that just a bit  
20 further. If there is a controversy, if Staff's interpretation  
21 of a full facilities based entity is not in line with what you  
22 stated here today, are you saying that Sprint has no exchanges  
23 in which a CLEC may be providing services over part of its own  
24 facilities and part of the facilities of either an IXC or a  
25 CLEC but none of the ILECs?

1           A.       We anticipate filing applications probably  
2 later this year in which the CLEC is using the facilities of  
3 an IXC or CLEC partner that it chooses to be associated with,  
4 in which case there is still no UNE-LEEP scenarios. But we  
5 anticipate making those filings later this year based upon  
6 public statements made by certain CLECs. So --

7           Q.       Okay. Well, in Staff's recommendation how do  
8 you get around the fact -- you just said there's no UNE-L.  
9 Okay.

10          A.       But that would be go back --

11          Q.       Okay. So you're still saying it would be full  
12 facilities based under Staff's interpretation?

13          A.       Correct. As I read Staff's definition of full  
14 facilities basis, on page 5 I think you pointed out, that  
15 would qualify under a full facility basis. In that particular  
16 example, Sprint would be providing none of the facilities.

17                   COMMISSIONER MURRAY: Okay. Thank you.

18                   Thank you, Judge.

19                   JUDGE DIPPELL: Thank you.

20                   Mr. Dandino, would you like to make an entry of  
21 appearance?

22                   MR. DANDINO: Yes. I apologize for being late.  
23 The weather kind of delayed me.

24                   Michael Dandino, Office of the Public Counsel,  
25 Post Office Box 2230, Jefferson City, Missouri 65102,

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1 representing the Office of Public Counsel and the public.

2 JUDGE DIPPELL: Thank you. And I will state  
3 that Mr. Mills was present during much of the questioning, but  
4 I didn't want to interrupt, so -- Commissioner Gaw, did you  
5 have questions for Mr. Idoux?

6 COMMISSIONER GAW: Well, I may have a couple.

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. I do want to ask a few questions on Schedule 1  
9 on the -- I think it's Schedule 1 dealing with the exchanges.  
10 And, unfortunately, what I have in front of me is the -- is  
11 the version that doesn't have the highly confidential figures  
12 on it.

13 A. Schedule 1 of Staff's report or of Sprint's?

14 Q. Staff's schedule. Isn't it or is it Sprint's?

15 JUDGE DIPPELL: I believe that's Staff's  
16 Schedule 1 that you're looking at, Commissioner.

17 BY COMMISSIONER GAW:

18 Q. It's the one that has the exchanges listed and  
19 then the numbers --

20 A. Yes.

21 Q. -- of quote, unquote competitors.

22 JUDGE DIPPELL: And we are -- I will just say  
23 the numbers are confidential, and just keep that in mind.

24 COMMISSIONER GAW: I'm not sure why they're  
25 confidential, but I understand that.

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1                   The Weston exchange, those numbers are not  
2 designated as confidential?

3                   JUDGE DIPPELL: That's correct.

4 BY COMMISSIONER GAW:

5           Q.       So in the Weston exchange, Mr. Idoux, the  
6 competitor's listed as Time Warner; is that correct?

7           A.       Weston has -- this, of course, is from the  
8 Annual Report --

9           Q.       Okay.

10          A.       -- which was 12/3/04.

11          Q.       I see.

12          A.       So if there's any CLEC activity that started  
13 this year --

14          Q.       It's not shown here?

15          A.       -- it wouldn't be reflective. So --

16          Q.       So anyway, right now off the Annual Report from  
17 '04 it shows 0 on the Time Warner --

18          A.       On the Time Warner it does.

19          Q.       -- number of access lines?

20          A.       Correct.

21          Q.       Do you have any updated numbers?

22          A.       We don't have Time Warner's access line  
23 information.

24          Q.       Does anyone that you -- that's here have that,  
25 do you know?

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1 A. I don't know if Staff has that or not.

2 Q. Okay. So the evidence that we -- that we've  
3 got, at least the stip contemplates that Time Warner is  
4 available there. Correct?

5 A. Correct. But I think also the evidence before  
6 you in the application, if you'll recall back to the beginning  
7 of the year, Sprint filed for what we call geographic price  
8 de-averaging, where we can go in and lower rates in certain  
9 exchanges because a competitor is actually providing service  
10 under the old law.

11 The Commission granted Sprint's request and  
12 that included Platte City and Weston. So the Commission has  
13 already dealt with the issue of whether or not Time Warner is  
14 actually providing service in that exchange.

15 Q. Was there evidence presented in that case  
16 that --

17 A. Oh, absolutely.

18 Q. -- that they had some access line counts, if  
19 you recall?

20 A. I don't -- to be honest, I don't recall. I  
21 know, you know, Time Warner has footprints throughout Kansas  
22 City.

23 Q. Yes.

24 A. They offer their digital service. And it is  
25 highly advertised wherever you have Time Warner cable in

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1 Kansas City area, you can receive the digital phone service.

2 Q. Okay. But you just don't know the answer about  
3 those numbers being other than 0?

4 A. Correct. Their Annual Report didn't reflect  
5 anything specific to Weston.

6 Q. Okay. And on the Ferrelview Time Warner line,  
7 would that be the same answer on those questions, same  
8 answers?

9 A. Same answer for Time Warner. But ExOp of  
10 Missouri shows -- their Annual Report shows both business and  
11 residential lines in service as of the end of 2004.

12 Q. But those numbers that are cited, which I won't  
13 say right now, they didn't come out of the Annual Report, did  
14 they?

15 A. Yes, they did. I have a copy that I took off  
16 of EFIS right here. I don't know what's in -- I don't know  
17 what Staff's numbers are.

18 Q. You do not?

19 A. I wasn't --

20 Q. Were there numbers in the Annual Report?

21 A. Yes, there were.

22 Q. Were they confidential?

23 A. I took them off the EFIS website, so I -- my  
24 guess is no. Not all carriers file them under seal.

25 Q. I see.

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1           A.       I have a --

2           Q.       Do you have a copy of them and could you tell  
3 me what they are in the Annual Report?

4           A.       I do have a copy of the Annual Report.

5                   JUDGE DIPPELL: Is this included in your  
6 original application?

7                   THE WITNESS: Yes, it is. It's part of  
8 Exhibit D and in the original application does include the  
9 entire ExOp Annual Report.

10                  COMMISSIONER GAW: Okay. Do you want to  
11 just -- would it be easier just to mark this, Judge, this  
12 document?

13                  JUDGE DIPPELL: I was going to say, it's  
14 Exhibit D of their amended application, if you want to just  
15 refer to it as that.

16 BY COMMISSIONER GAW:

17           Q.       So Exhibit D is the Annual Report for ExOp, a  
18 page out of that, is that correct, from December 31st, 2004 --

19           A.       Correct.

20           Q.       -- year ending?

21                   Okay. What does it show for Ferrelview?

22           A.       It shows two different entries, 23 for the 270  
23 exchange, 23 residential lines; 26 residential lines for the  
24 464 exchange. And then there's also some business lines  
25 associated with the 270 exchange, 6 is the count there.

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1 Q. Okay. Now, you've requested Ferrelview, Platte  
2 City, St. Roberts Waynesville and Weston. Correct?

3 A. Correct.

4 Q. Now, on this list there are some others that  
5 are listed. Can you tell me the status of those other  
6 entries, Platte City and Kearney?

7 A. Well, Platte City is part of our request.

8 Q. That's right, I'm sorry.

9 A. And Kearney was previously deemed competitive  
10 by the Commission in Sprint's last competitive case.

11 Q. Okay. And you don't know why the numbers that  
12 are in Staff's report on ExOp are designated as highly  
13 confidential, do you?

14 A. I do not. Everybody that Sprint -- all the  
15 other reports that Sprint included in its application were  
16 from EFIS, they were not marked as highly confidential. They  
17 were public. So I don't know what numbers are in there. I've  
18 not signed a protective order so I've not even seen what's in  
19 Staff's numbers.

20 Q. Sure. I'm just asking --

21 A. So I don't know why.

22 Q. -- if you know. I can ask them more directly,  
23 but --

24 A. I don't even know if a protective order's been  
25 issued for this case.

1 JUDGE DIPPELL: The protective order was issued  
2 in the beginning.

3 THE WITNESS: Okay. I'm sorry.

4 COMMISSIONER GAW: Okay. I think that's all I  
5 have. Thank you, Judge.

6 JUDGE DIPPELL: Thank you.

7 Commissioner Clayton, did you have questions?

8 COMMISSIONER CLAYTON: Yes, but very briefly.

9 QUESTIONS BY COMMISSIONER CLAYTON:

10 Q. I only have one general area. And I was  
11 wondering if you can explain, in general -- and if it varies  
12 by exchange, you can elaborate. The CLEC offering is  
13 available to each of the customers that are currently served  
14 by Sprint right now. Is the service widely available  
15 throughout the exchange or is it only available in different  
16 pockets? And I know that's a broad question.

17 A. It's -- it is generally available in the area.  
18 However, especially when you're dealing with cable operators,  
19 when they are the competitor, their footprint is going to  
20 differ significantly than the -- than the ILEC's serving area.

21 City boundaries, exchange boundaries, the cable  
22 company footprint, they have no relationship to -- to one  
23 another. But to say Time Warner serves, you know, 100 percent  
24 of those exchanges, I don't think it's -- I mean, it's not a  
25 true statement. They serve a substantial portion of that, but

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1 I don't know -- I'm not seeing a footprint overlay on an  
2 exchange basis.

3 Q. Is it your experience that with cable  
4 operators, that they offer this telephone service throughout  
5 their footprint?

6 A. Yes.

7 Q. Okay. So they don't exclude certain parts of  
8 their customers because of technological problems or --

9 A. No. They usually have to have the digital  
10 upgrade, but Time Warner has said publicly that it is  
11 available throughout its Kansas City metropolitan area.

12 Q. Okay. Where the footprint differs, where  
13 Sprint's footprint differs from the footprint of the cable  
14 company around -- probably around the periphery, what  
15 percentage of the customers in that periphery would you say  
16 are part of Sprint's territory, but not part of the  
17 competitor's territory?

18 A. That's definitely going to be a case-by-case,  
19 exchange-by-exchange number.

20 Q. Would you say it's -- could you say less than  
21 20 percent, less than 15 percent, in general? I don't want to  
22 know exact figures.

23 A. As far as I'm concerned -- as far as I'm aware,  
24 the -- and the only place that we're using a cable operator in  
25 this particular application is for Time Warner by the KCI

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1 Airport for western Ferrelview, Platte City.

2 It is my understanding that the footprint does  
3 encompass a substantial portion of Sprint exchanges. But for  
4 Ferrelview and Platte City, there's also that second  
5 competitor, being ExOp.

6 Q. Okay. Are you aware of any customers that are  
7 customers of Sprint that would not be able to receive service  
8 from one of the competing CLECs?

9 A. I don't have direct knowledge, but I would be  
10 willing to say there's a safe bet that there's at least one  
11 customer that would not be able to receive Time Warner.

12 Q. Okay. So there's going to be somebody out  
13 there, but you're not sure what the number is?

14 A. Correct.

15 Q. Okay. In St. Roberts and Waynesville, in those  
16 exchanges, do you know if all of Sprint's customers or  
17 customers that live in the Sprint footprint have access to --  
18 and I guess this is just for business lines, would they have  
19 access to the services offered by Fidelity?

20 A. I don't know for a fact if all businesses in  
21 those exchanges, if they would call up Fidelity -- I don't see  
22 them here -- if they would be able to get business service. I  
23 don't know their business strategy.

24 COMMISSIONER CLAYTON: Okay. Okay. I don't  
25 think I have any other questions. I want to say thank you for

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1 coming down today. I know that there are many people who  
2 weren't excited about this hearing and I kind of suggested  
3 this yesterday and I appreciate you putting in the time and  
4 coming down today.

5 THE WITNESS: Sure.

6 JUDGE DIPPELL: Thank you.

7 Commissioner Appling, did you have any  
8 questions?

9 COMMISSIONER APPLING: One quick question,  
10 please.

11 QUESTIONS BY COMMISSIONER APPLING:

12 Q. Good morning. How are you doing?

13 A. Fine. Thank you, sir.

14 Q. When I looked at and read last night the  
15 memorandum and stipulation which you all agreed to, my only  
16 question is, is Sprint prepared to go forward now in agreement  
17 with the -- what the Staff has put together in the memorandum  
18 and what you have all agreed in the stipulation? Do you see  
19 anything in there at this point that you disagree with that  
20 should be brought to our attention this morning? Are you in  
21 agreement with it? Is Sprint ready to go forward with this?

22 A. Sprint is absolutely ready to go forward.

23 Q. What do you see -- do you see anything in here  
24 that's causing you to pause?

25 A. In Sprint's interpretation of Senate Bill 237

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1 and the new statute is not inconsistent with how we are  
2 reading Staff's memorandum.

3 Q. So Sprint's on the ship?

4 A. Absolutely.

5 COMMISSIONER APPLING: Okay. Thank you, sir.

6 JUDGE DIPPELL: Chairman Davis, did you have  
7 any questions?

8 CHAIRMAN DAVIS: Not for this witness.

9 JUDGE DIPPELL: Thank you.

10 Were there any follow-up questions from  
11 counsel?

12 MR. LEOPOLD: Just one moment, please.

13 JUDGE DIPPELL: You can remain there at your  
14 seat, if you'd like as long as you speak in your microphone,  
15 come to the podium, whichever.

16 REDIRECT EXAMINATION BY MR. LEOPOLD:

17 Q. Mr. Idoux, do you have a copy of 392.245.5  
18 before you?

19 A. Yes, I do.

20 Q. Could you turn to that, 392.245.5.2?

21 A. Yes.

22 Q. Okay. Could you just review that? You've seen  
23 this before and you're familiar with this statutory provision,  
24 aren't you?

25 A. I am.

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1           Q.       Okay. Just for the sake of clarity, could you  
2 summarize Sprint's position regarding telecommunications  
3 facility ownership and how this -- how this statute applies to  
4 these competitive applications?

5           A.       Sure. And this is going back to the fact that  
6 these be two non-affiliated carriers providing local voice  
7 service, one of which could be a wireless carrier, the other  
8 one, as described in subpart 2, that second carrier needs to  
9 have some ownership in the network, whether it's a switch,  
10 whether it's the switch and loop, but just some ownership of  
11 the telecommunications facilities used to place calls.

12                   Doesn't have to be the whole ownership. It  
13 does not include items like UNE-P where there's no ownership,  
14 but as long as there's an ownership interest by the CLEC or an  
15 affiliate of the CLEC, it constitutes as an eligible carrier  
16 for the 30-day track that's outlined in the statute.

17          Q.       And to the extent that someone would argue that  
18 that definition contradicts with definitions from other  
19 proceedings or statutes defining facilities based on full  
20 facilities based, in the context of these competitive  
21 applications under this statute, the definition that applies  
22 is the one that you've just described in the view of Sprint;  
23 is that correct?

24          A.       That is correct.

25          Q.       And there are definitions of telecommunications

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1 facilities in the Missouri statute as well. Is that your  
2 understanding?

3 A. Yes.

4 Q. And specifically I think 386.020, 52 contains a  
5 definition of telecommunications facilities?

6 A. Correct.

7 Q. That definition hasn't been amended by the  
8 recent legislative activity, has it?

9 A. No.

10 Q. And that definition is relevant to these  
11 competitive applications. Is that your understanding?

12 A. Without being an attorney, yes, it's my --

13 Q. Okay. And, again, Sprint's proceeding with  
14 these applications on case-by-case, fact-specific analysis; is  
15 that correct?

16 A. That is correct.

17 Q. With regard to the withdrawal of the claim for  
18 relief in the Fort Leonard Wood exchange, Sprint is not, by  
19 that withdrawal, admitting that it -- that relief is  
20 appropriate in that exchange; is that correct?

21 A. That is correct. We just felt that since this  
22 is on a very tight time frame, a 30-day track, we wanted to  
23 pull that and do additional investigation working with Staff,  
24 working with Fidelity to make sure that there's no objections  
25 or controversial issues. We very well may file -- refile that

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1 in the very near future based upon what our investigation  
2 leads to.

3 But, you know, as we have said several times,  
4 Sprint's application, as we put forward, we intend for them to  
5 be very straightforward, non-controversial, with the evidence  
6 pretty much being able to speak for itself and without having  
7 to draw any broad interpretations of what statute may or may  
8 not mean

9 MR. LEOPOLD: Thank you.

10 JUDGE DIPPELL: Thank you.

11 Were there any other questions from other  
12 counsel? I should have probably asked you in order, but  
13 Staff?

14 MR. HAAS: No, your Honor.

15 JUDGE DIPPELL: Office of Public Counsel?

16 MR. DANDINO: No questions, your Honor. Thank  
17 you.

18 JUDGE DIPPELL: Thank you.

19 Commissioner Murray, would you like to ask  
20 another question?

21 COMMISSIONER MURRAY: I'm sorry. I've got to  
22 ask another question here because of what was just  
23 established, that this witness said that there were no changes  
24 in the previous definitions of telecommunications facilities  
25 by the legislation and yet Sprint has signed a stipulation

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1    which says, Has no objections to anything in Staff's  
2    memorandum.

3    FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4           Q.       And I've just got to ask you about a specific  
5    statement in Staff's memorandum on page 5, recommendation.  
6    It's in the middle, the large paragraph in the middle, down  
7    toward the bottom about three -- six lines up from the bottom  
8    of that paragraph.

9                    After discussing the statutory definition of  
10   facilities -- telecommunications facilities as defined in  
11   386.02.52, Staff makes the statement, A strict application of  
12   this definition may lead to questionable results from the  
13   perspective that a company may not own a switch or lines but  
14   rather simply some real estate that may be used to facilitate  
15   the provision of telecommunications service.

16                   Now, it appears to me that Staff is saying we  
17   should not be reading the statute literally anymore.

18           A.       And -- I'm sorry.

19           Q.       Do you disagree with that?

20           A.       I don't read Staff's memorandum as saying that.  
21   I read Staff's memorandum to say that, you know, a strict  
22   application of the definition may lead to questionable  
23   results. I mean, they're throwing out a discussion point. I  
24   don't believe they made a statement that they view the def--  
25   statutory definition of telecommunications facilities to

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1 include, you know, an office where the management works out  
2 of, for example, a UNE-P situation.

3 We don't interpret statute that way and we  
4 don't interpret Staff's position to say that, you know, real  
5 estate not associated with the completion of a call could  
6 qualify as telecommunications facilities. So we didn't --

7 Q. I'm sorry. Repeat that last sentence, would  
8 you? I'm not sure I followed you.

9 A. I mean, the hypothetical that Staff throws up  
10 for discussion on page 5 of, you know, a real estate office or  
11 an office or some other real estate that's not really used in  
12 the conjunction of placing a phone call would qualify a -- you  
13 know a carrier under the 30-day track, we don't read either --  
14 we don't interpret statute that way nor do we interpret  
15 Staff's memo to suggest that that's how they're interpreting  
16 statute.

17 Q. I'm not sure that's real clear, but we do have  
18 agenda.

19 COMMISSIONER MURRAY: Thank you.

20 THE WITNESS: Saved by agenda.

21 JUDGE DIPPELL: Were there any other Commission  
22 questions?

23 All right. Mr. Idoux, you can be excused.

24 Thank you.

25 Oh, I'm sorry, were there any further questions

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1 from counsel?

2 MR. LEOPOLD: I don't believe so.

3 MR. HAAS: No, your Honor.

4 MR. DANDINO: No, your Honor.

5 JUDGE DIPPELL: Thank you. Mr. Idoux, you may  
6 be excused.

7 THE WITNESS: Thank you.

8 JUDGE DIPPELL: All right. Let's go ahead and  
9 then and -- Mr. Chairman, are we delaying agenda a bit?

10 CHAIRMAN DAVIS: How many more witnesses do we  
11 have, Judge?

12 JUDGE DIPPELL: Just Staff's witness. And I  
13 believe Commissioner Clayton has questions for Public Counsel.

14 CHAIRMAN DAVIS: Let's get them up and get them  
15 going.

16 JUDGE DIPPELL: Let's bring up Staff's witness.  
17 (Witness sworn.)

18 JUDGE DIPPELL: Thank you.

19 JOHN VAN ESCHEN testified as follows:

20 DIRECT EXAMINATION BY MR. HAAS:

21 Q. Mr. Van Eschen, please state your name for the  
22 record.

23 A. My name is John Van Eschen.

24 Q. And where are you employed?

25 A. I'm employed in the telecommunications

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1 department of the Missouri Public Service Commission. I'm the  
2 manager of that department.

3 Q. Very briefly, what are your duties?

4 A. I'm responsible for Staff in terms of making  
5 recommendations to the Commission on a variety of matters  
6 ranging from tariff filing, certificate applications and  
7 pending cases such as this.

8 Q. Did you prepare the Staff memorandum in this  
9 case?

10 A. Yes, I did.

11 MR. HAAS: I tender the witness for  
12 cross-examination -- or for questions from the Bench.

13 JUDGE DIPPELL: Thank you.

14 Commissioner Murray, did you have questions?

15 COMMISSIONER MURRAY: Chair Davis?

16 JUDGE DIPPELL: The Chairman has indicated  
17 he'll wait until the questions are asked.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Mr. Van Eschen, yes, can you please tell me  
20 what is the Staff's interpretation in Staff's recommendation  
21 memorandum -- Staff memorandum that was filed with the  
22 stipulation, what is Staff's interpretation of a full facility  
23 basis? Does it comply with --

24 A. I think in -- I think in this instance we -- we  
25 applied the definition that was contained in -- in the

1 Commission's Annual Reports that companies submit each year.  
2 And in that definition it basically asks companies -- local  
3 telephone companies to identify the number of lines that they  
4 serve and place them in certain categories, full facilities  
5 based lines, UNE-L lines, UNE-P lines, pure resale.

6 And that particular definition -- in terms of  
7 full facilities based, we used the definition full facilities  
8 based lines are those lines owned or controlled exclusively by  
9 the local exchange carrier, meaning in this case the CLEC and  
10 used to connect to an end-user's premises.

11 Q. So if that is how you interpreted full  
12 facilities based, then you're not interpreting it as Mr. Idoux  
13 just suggested, are you?

14 A. I'm -- I'm not sure. I guess when we look at  
15 these sort of cases and -- where the companies are asking for  
16 competitive status, we look first to see what sort of  
17 facilities are owned by that CLEC or an affiliate of that  
18 CLEC. And if that CLEC does own, say, switching facilities  
19 or the local loop, then we would consider that to qualify for  
20 competitive status.

21 There are some -- I'd say some somewhat unique  
22 situations as you get into the nitty-gritty of how companies  
23 are providing services that may raise some questions, but for  
24 the most part, most of the companies are providing service  
25 either on a UNE-L basis or a full facilities basis.

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1                   In the case -- the CLECs are -- that Sprint has  
2 identified in these exchanges, yes, we'd consider those to be  
3 full facilities based providers.

4           Q.       And why did you go into establishing a minimum  
5 threshold? It didn't apply here, did it?

6           A.       I -- perhaps not. And we had some discussions  
7 about perhaps we're -- we're putting too much information into  
8 the memorandum. But I guess from my perspective, I decided  
9 we -- we'd go ahead and basically lay out our whole case in  
10 terms of how we're approaching these applications primarily to  
11 help us in terms of address the pending case, but also it can  
12 be easier for us to address other pending cases if we, you  
13 know, apply the same standard to -- to the word frame.

14          Q.       So do you --

15          A.       So basically we established a -- I don't want  
16 to say a standardized memo, but here's some things that -- as  
17 we talk about it as a group internally, here's where we fall  
18 out.

19          Q.       Now, would you agree that this doesn't  
20 affect -- doesn't seem to affect Sprint?

21          A.       I would agree that at least I think in Sprint's  
22 case it -- it seemed fairly straightforward that their only  
23 competition was from full facility based providers.

24          Q.       So --

25          A.       So any other discussion really perhaps is

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1 beyond the scope of the Sprint application.

2 Q. And you can understand why Sprint wouldn't  
3 really have a problem if you made those statements --

4 A. Sure.

5 Q. -- because it doesn't affect them. Right?

6 A. Sure.

7 Q. Okay. In the end of the Staff rec, toward the  
8 end it says, Staff recommends that the Commission grant  
9 competitive status to the five Sprint exchanges and the Report  
10 and Order should attempt to explain the conditions for  
11 granting competitive status within each exchange.

12 Okay. But that would be within those five  
13 exchanges the reasons we granted competitive status within  
14 those five. Correct?

15 A. (Witness nodded head.)

16 Q. The Commission should also state that the  
17 Commission will only consider revoking competitive status for  
18 those exchanges if competition to entities providing basic  
19 local telecommunications on either a UNE-L basis or a full  
20 facilities basis fails to exist in the exchange.

21 Okay. That still, again, is no different for  
22 Sprint. That's what -- we'd be approving them on that basis,  
23 they have full facilities based competition and if that ceases  
24 to exist, then that would be a reason to change that  
25 competitive status; is that correct?

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1           A.       Right. And really that's looking down the  
2 road. If circumstances change and -- and say, for example,  
3 the Commission wants to revoke competitive status in that  
4 exchange, well, our reading of the statute is that the  
5 condition that the Commission cites in granting competitive  
6 status must no longer exist in order for the Commission to  
7 revoke competitive status.

8                   And so that's why we feel it's important for  
9 the Commission to identify the condition for granting  
10 competitive status, whatever that condition is. We -- we had  
11 suggested UNE-L or full facilities basis would be an adequate  
12 condition in the event that, let's say, one of these full  
13 facilities based providers decides to no longer provide  
14 service, yet another carrier has decided to -- has entered  
15 that market. I -- I think in that situation we would still  
16 say that that exchange ought to qualify for competitive  
17 status.

18           Q.       So long as that competitor were a UNE-L or a  
19 full facilities based?

20           A.       Yes.

21           Q.       Okay. Now, I've got to ask you, if a CLEC  
22 comes in with its own switch providing service over an IXC's  
23 facilities or another CLEC's facilities, does that meet your  
24 definition under this statute of an entity providing service  
25 either in whole or in part over its own facilities?

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1           A.       In that particular situation, we would  
2 recommend that competitive status be granted.

3           Q.       You would recommend?

4           A.       Yes, we would.

5           Q.       So it does --

6           A.       And --

7           Q.       What does it meet --

8           A.       -- there may be -- there may be some issues and  
9 I have to admit we -- we've internally fully haven't discussed  
10 all these issues.

11                    But there are some situations that -- where,  
12 say, for example, a CLEC has their own switch, they're using  
13 the facilities of, say, the local loop of, say, another  
14 provider, a cable TV company or what have you and we -- we  
15 think that that would qualify for competitive status. There  
16 may be some issues of whether that would qualify under the  
17 30-day or 60-day track, but we haven't resolved that yet.

18           Q.       Okay. Your last sentence in paragraph -- the  
19 large paragraph on page 5 in the center, and I will read it to  
20 you, if you don't have it there. It says, Regardless, Staff  
21 is considering the provisioning of service on a full  
22 facilities -- full facility basis or UNE-L basis as the  
23 minimum threshold to meet for competitive status in a 30-day  
24 proceeding.

25                    What do you mean by that?

1           A.       I think in -- what we're looking for is that  
2     the competing local company have some ownership or an  
3     affiliate of that CLEC have some ownership in, say, a switch  
4     or the local loop in providing basic local voice service  
5     within that exchange.

6           Q.       And if they don't have any facility -- they're  
7     not using any of the ILEC's facilities, are you considering  
8     that entity to be full facilities based or UNE-L based?

9           A.       I have to be honest with you, I don't know how  
10    we would classify that. Those are some issues that we're  
11    still internally discussing.

12          Q.       Why did you make the statement? What is --

13          A.       Why --

14          Q.       What is the purpose of establishing this  
15    threshold?

16          A.       Well --

17          Q.       What does it eliminate?

18          A.       I -- I think we used the terms "full facilities  
19    basis" and "UNE-L basis" because those were the terms that I  
20    think describe 95 percent of the competitive situations that  
21    we're going to address. It's not going to address all of  
22    them, but I think for the most part, it's going to allow a  
23    company to classify its lines in those categories.

24                 Those are the categories that we have in our  
25    Annual Reports. And admittedly, there's some things in the

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1 Annual Report that I think we'll be seeking to have the  
2 Commission change in the -- in the next Annual Report that the  
3 companies fill out that would maybe help this process. And  
4 I -- I don't know. It -- classifying lines within these  
5 categories based on the situation that you just described, I'm  
6 not sure if it immediately falls into a full facility basis  
7 category or not.

8 Q. I'm trying to understand why it is -- it seems  
9 as if Staff is attempting to establish a policy in terms of  
10 what is a minimum threshold requirement for a 30-day  
11 application.

12 And I'm confused as to why Staff would be  
13 attempting to establish anything other than the statutory  
14 provision of what qualifies, which is any entity -- I mean,  
15 first it could be a commercial radio -- commercial served  
16 mobile service provider, one of them could be, but other than  
17 that, any entity providing local voice service in whole or in  
18 part over telecommunications facilities or other facilities in  
19 which it or one or more of its affiliates have an ownership  
20 interest shall be considered as the basic local  
21 telecommunications provider regardless of whether such entity  
22 is subject to regulation by the Commission.

23 And that's relating to purposes of this  
24 subsection, which is subsection 5. Why is there a need to say  
25 anything other than what the statute says?

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1           A.       I think there's some interpretations of the  
2 statutes that some people may or may not take issue with.

3           Q.       Such as?

4           A.       As an example, simply the definition of  
5 telecommunications facilities. In my view, that definition is  
6 fairly broad. It uses terms in there that perhaps might seem  
7 outdated by some people. And, therefore, when one reads that  
8 particular definition, it -- it -- at least for myself, it  
9 raises a question, well, what is meant by a telecommunications  
10 facility? And all we were attempting to do is try and give  
11 our view, our explanation of how we intended to apply the  
12 statute, you know, recommendation to the Commission.

13          Q.       Okay. And let me be clear. I believe that you  
14 said that a CLEC who has an ownership interest in either the  
15 switch or the local loop and is providing service over the  
16 facilities of a third party, not the ILEC, that you would  
17 consider that --

18          A.       Yes, we would.

19          Q.       -- to meet the definition?

20          A.       Yes, we would. And just to be -- just to be  
21 clear, there may be some issues that -- as to whether that  
22 would qualify under the 30-day track or the 60-day track. And  
23 I don't know if you want to -- we don't necessarily need to  
24 get into those, but I have to admit we haven't fully worked  
25 out those situations internally as to what our recommendation

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1 is -- is going to be --

2 Q. Well, they -- I would assume --

3 A. -- when they come up. And they will come up.

4 Q. And I would assume they would revolve around  
5 the way that the third party is provisioning service?

6 A. That would be one issue, yes.

7 Q. And if they don't meet the 30-day track, your  
8 position would be that they don't qualify if -- well, never  
9 mind. That's not the correct way to state that.

10 Your position would be that they don't have the  
11 right to competitive status based on --

12 A. My -- my position is that the exchange ought to  
13 receive competitive classification. There may be an issue of  
14 whether it would qualify under the 30-day track or the 60-day  
15 track, but when it's all said and done, the exchange ought to  
16 be classified as competitive.

17 Q. Okay. When you get into the 60-day track, you  
18 get into more discretion by the Commission in determining  
19 whether something is against the public interest, do you not?

20 A. Yes.

21 Q. But you don't think that that's the kind of  
22 issue you're talking about here, whether it's in the public  
23 interest or not? You're just talking about whether it fits  
24 the strict statutory definition?

25 A. Yes. And there's some specific exemptions that

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1 are cited in the statute that the statute says, you know, we  
2 don't consider these to qualify. And those are situations  
3 that we need to internally discuss some more to -- to more  
4 fully develop Staff's position in those unique and somewhat  
5 rare situations.

6 Q. And those are specifically set out in the  
7 statute --

8 A. Yes.

9 Q. -- also?

10 Okay. I'm just going to ask you again. You  
11 indicated the reason for going into this material that is not  
12 related to the current application was to lay out -- for Staff  
13 to lay out its whole case, I think you said, something to that  
14 effect?

15 A. Basically, yes.

16 Q. And I haven't heard you say anything today that  
17 clarifies what Staff's whole case is. You know, in any  
18 application for competitive status --

19 A. There admittedly are some areas that we're  
20 still discussing. And I guess when I say lay out our whole  
21 case, it's -- you know, as we sit around and discuss a  
22 particular pending application under the 30-day track, here  
23 are some things that we have done in order to prepare for  
24 these applications here, some follow-up things that we have --  
25 we have done to try and ensure the accuracy of what's

1 submitted in the Annual Reports.

2 We've tried to lay out, as -- as best as we can  
3 at that particular -- at this particular time, how is Staff  
4 planning to apply the statute in developing its  
5 recommendation.

6 And admittedly there are some things in the  
7 memorandum that perhaps go beyond the Sprint application, but  
8 from my point of view, until we have additional experience and  
9 time dealing with these matters -- yeah, our -- our  
10 recommendations will get more refined as we go along, but I  
11 just felt that the more information that we provided in terms  
12 of the case and our position in these types of cases, the  
13 better it might be for -- for all concerned.

14 Q. Now, you may not know the answer to this  
15 question, but in the drafting of the Stipulation and  
16 Agreement, do you know whose language subsection 5A is which  
17 states that, The parties stipulate that no party opposes the  
18 recommendations, supporting memo and schedules filed by the  
19 Staff on September 9, 2005. Accordingly, they should be  
20 endorsed and adopted by the Commission in its final order. Do  
21 you know whose --

22 A. I -- I do not know. I do know there was a lot  
23 of give and take in the development of that stipulation. A  
24 lot of the parties all had recommendations as to what they  
25 wanted to see in it. And I don't -- I can't say that we had

00048

1 insisted that that particular wording be in the stip. I don't  
2 know.

3 Q. Okay. And, Mr. Van Eschen, initially there was  
4 not a Stipulation and Agreement filed; is that correct?

5 A. That's correct.

6 Q. Staff did file a recommendation that we approve  
7 Sprint's application; is that correct?

8 A. Yes.

9 Q. And was it Staff's position that the record was  
10 complete and that we could go ahead and approve that  
11 stipulation?

12 A. Yes.

13 Q. Okay. Now, if we were to determine that we  
14 were going to reject the Stipulation and Agreement but approve  
15 the application, do you think -- well, that's more of a legal  
16 question. I shouldn't ask you that question. I apologize.

17 COMMISSIONER MURRAY: Thank you.

18 JUDGE DIPPELL: Commissioner Gaw, do you have  
19 questions?

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Back to the exhibit on Schedule 1 and that was  
22 attached I think to Staff's documents regarding the Weston  
23 exchange.

24 A. Yes.

25 Q. Do you have -- and without telling me what the

00049

1 numbers are, do you have knowledge of whether or not the --  
2 whether or not Time Warner has actually provided service to a  
3 customer or customers in Weston?

4 A. I don't have any specific numbers in terms of,  
5 you know, how many lines they might be serving.

6 Q. So you don't know?

7 A. I don't know. I think from our --

8 Q. I'm asking whether you know?

9 A. From our discussions with them --

10 Q. I'm asking whether you know, not what you  
11 gained from hearsay.

12 A. The number of lines? No, I don't have any  
13 lines.

14 Q. So those are the only numbers that you have  
15 right now?

16 A. That is correct.

17 COMMISSIONER GAW: Okay. Regarding the other  
18 communities, Judge, I may have to be in HC to discuss this.  
19 I'm sorry, but I don't know where the line is. Let me ask  
20 this question first.

21 BY COMMISSIONER GAW:

22 Q. Why are these numbers highly confidential,  
23 Mr. Van Eschen, in regard to the number of lines that are  
24 shown there?

25 A. I -- I tend to think that at least one of them

00050

1 had -- one of these companies had classified those numbers as  
2 highly confidential. And we may have marked, you know, one  
3 company's lines as confidential that perhaps they didn't ask  
4 for highly confidential status. I'd have to double check what  
5 we have.

6 Q. Earlier Mr. Idoux testified that he got numbers  
7 for ExOp off of our website and they're not highly  
8 confidential numbers from the Annual Report. And so I  
9 understand these numbers may not have come from there, so I'm  
10 trying to understand whether or not these numbers should be  
11 highly confidential. Since I believe that we should try to  
12 make things as public as possible, I'd like to know what the  
13 justification is for not being public.

14 A. I -- it was my understanding that these numbers  
15 were highly confidential. I may be mistaken on that.

16 Q. I'd rather be mistaken the other direction,  
17 quite frankly, Mr. Van Eschen. Is there a way that we can  
18 make that determination?

19 A. I'd have to --

20 Q. You'd have to confer with someone?

21 A. Yeah.

22 Q. Maybe you could do that in a little bit, if  
23 that's -- if your counsel is aware.

24 A. Yeah. We could do that within five minutes.

25 Q. Okay. I'm trying to not take any more time

00051

1     than necessary here.

2                   COMMISSIONER GAW:  If I just -- why don't I  
3     just pass for the time being and see if some others have  
4     questions and maybe in the meantime someone can make that  
5     determination and come back to me, Judge.

6                   JUDGE DIPPELL:  Okay.  Commissioner Clayton,  
7     did you have questions?

8     QUESTIONS BY COMMISSIONER CLAYTON:

9           Q.       Mr. Van Eschen, in your review, in Staff's  
10    review of whether voice grade service was being offered in an  
11    exchange, did you look at the percentage of customers in the  
12    ILEC's footprint that would be eligible to choose between  
13    competitors and what percentage would not have the option of  
14    choosing from a competitor?

15          A.       No, we did not.  We don't have that information  
16    readily available.

17          Q.       So you don't have it readily available today or  
18    it's not available out there somewhere?

19          A.       Well, I know we've got different maps in terms  
20    of, like, where companies like Time Warner operate and things  
21    of that nature.  Beyond that, I -- we have not attempted to  
22    take a look at those maps and overlay them on the exchanges  
23    and see exactly what percentage of customers might have  
24    service from that competing company versus those who may not.

25          Q.       In an exchange where Staff recommends

00052

1 competitive status for the ILEC, you're saying that Staff does  
2 not look at what percentage of customers, even though the  
3 exchange is declared competitive, will not actually be  
4 enjoying the benefits of competition or will not be able to  
5 choose among carriers? You all don't look at that?

6 A. That is correct.

7 Q. Have you looked at that in the past, in past  
8 competitive classification cases?

9 A. I'd say, yes. In particular, we -- we looked  
10 at the number of lines that the competitors are currently  
11 serving. That was one of our primary items that we looked at.  
12 I will say it's somewhat difficult to get, you know, those --  
13 those sort of numbers simply because the -- knowing exactly  
14 where all the customers are located can be a difficult  
15 undertaking.

16 Q. Let me take another example from the St. Robert  
17 exchange where Staff has recommended competitive  
18 classification for Sprint because of competition from  
19 Fidelity, I guess, Communication Services is the company.  
20 When you say that, does that mean that all business customers  
21 can choose Fidelity as its telecommunications provider?

22 A. No. It means that Fidelity is providing local  
23 voice service to business customers in that exchange. Not all  
24 business customers may necessarily have access to Fidelity's  
25 services.

00053

1           Q.       Would Staff recommend competitive  
2   classification in an exchange where a single CLEC is offering  
3   business services to one business but no other in an exchange?

4           A.       I'm hesitating --

5           Q.       We know you're hesitating.

6           A.       I think in general, yes. The concept -- there  
7   is perhaps an issue of, you know, whether the statutes refer  
8   to, you know -- or whether the cus-- the company needs to  
9   serve more than one customer if they meet -- if they're  
10   serving two customers, they clearly qualify. And maybe we're  
11   splitting hairs on that aspect, but I think, in general --

12          Q.       You're saying serving 2 out of, say, 100 is  
13   enough, but 1 would not be enough for Staff to recommend  
14   competitive classification?

15          A.       I think going -- in our internal discussions we  
16   talked about it as one would qualify, but an issue has been  
17   raised as to whether it ought to be two. And, frankly, we  
18   haven't discussed that at any great length beyond that.

19          Q.       Is it relevant to ask the question how many  
20   customers would be able to choose among a CLEC and the ILEC?  
21   Is it even a relevant question to ask?

22          A.       In my opinion, no, based on our reading of the  
23   statute.

24          Q.       So in Staff's position, if a CLEC is offering  
25   voice grade services to one residential customer in an

00054

1 exchange, that is sufficient to declare the entire exchange  
2 competitive?

3 A. Yes. And I say that again with the caveat that  
4 there may be an issue of whether the -- the criteria is --  
5 ought to be two. And I just say that just because the statute  
6 talks about providing service to customers within the  
7 exchange.

8 Q. Okay. You mentioned in your discussion with  
9 Commissioner Murray that Staff believes that its definition or  
10 its analysis of the type of competitive telecommunications  
11 provider in an exchange would cover 95 percent of the  
12 competitive providers out there. Was that what you said?

13 A. I used that number and perhaps I -- you know,  
14 the basis for that number is just simply our experience  
15 dealing with these companies and getting an understanding of  
16 how they operate. I don't know.

17 I -- 95 -- most -- most of the situations will  
18 be covered under either a UNE-L or a full facilities basis.  
19 There may be some particular companies that one might want to  
20 discuss further, they may have some unique serving  
21 arrangements that the Commission may or may not be interested  
22 in in its deliberations.

23 Q. So as we look at these cases as they've just  
24 started, and this is our case -- really the first case that  
25 we've had dealing with this new statute. Is it correct to

00055

1 state that Staff has -- I don't want to say concede, but will  
2 agree to the classification of competitive providers roughly  
3 95 percent of the providers that are out there, leaving only  
4 5 percent even in question of whether they meet the statutory  
5 definition?

6 A. Well, I don't know if there's some confusion  
7 over -- the 95 percent that I was referring to was just, you  
8 know, referring to the serving arrangements of CLECs generally  
9 fall into the UNE-L or full facility basis categories  
10 95 percent of the time. And I really have no basis for that  
11 number. It might be something else, but I think it covers --

12 Q. Well, could it be 20 percent?

13 A. Well, I mean, for the -- for the companies that  
14 we feel would qualify for competitive status, let me just  
15 phrase it that way.

16 Now, your questions seem to focus on what  
17 percent of the exchange or customers does this particular CLEC  
18 serve in that exchange. We did not look at that, we do not  
19 have readily available information that would give us that  
20 information. And I think from our point of view, it's  
21 questionable whether it's relevant.

22 COMMISSIONER CLAYTON: Okay. Thank you,  
23 Mr. Van Eschen.

24 JUDGE DIPPELL: Thank you.

25 Commissioner Appling, did you have any

00056

1 questions?

2 COMMISSIONER APPLING: No questions.

3 JUDGE DIPPELL: Commissioner Davis?

4 CHAIRMAN DAVIS: No questions.

5 JUDGE DIPPELL: Commissioner Gaw, did you have  
6 additional questions? I'm sorry.

7 COMMISSIONER GAW: Did you have a question?

8 I'm hoping they get the information that I  
9 requested before.

10 JUDGE DIPPELL: My question was answered.

11 COMMISSIONER GAW: Do we have any --

12 MR. HAAS: Yes, Commissioner. The numbers  
13 which appear in Staff's highly confidential exhibit may be  
14 declassified. They are from public sources.

15 COMMISSIONER GAW: Is that true of all of them?

16 MR. HAAS: Yes, sir.

17 COMMISSIONER GAW: Oh, good. Judge, is that --

18 JUDGE DIPPELL: Certainly we will declassify  
19 those numbers.

20 COMMISSIONER GAW: Great. Then I've just got a  
21 few questions, if I could.

22 JUDGE DIPPELL: Yeah. We're going to need to  
23 at least break in about 10 minutes so that Commissioners can  
24 get to their agenda.

25 BY COMMISSIONER GAW:

00057

1           Q.       Okay. With that in mind then, on the  
2   Ferrelview exchange you're showing 49 residential customers of  
3   ExOp; is that correct?

4           A.       That's correct.

5           Q.       Do you know if those are 49 different  
6   households?

7           A.       No, I do not.

8           Q.       Is it possible that some of them could be  
9   second lines --

10          A.       It's possible, yes.

11          Q.       -- but to the same household?

12          A.       Yes.

13          Q.       Okay. And there are six business customers --

14          A.       That is correct.

15          Q.       -- is that correct?

16                    And do we know anything about the  
17   characteristics of those business customers at all?

18          A.       No, we do not.

19          Q.       Do we know whether or not that could be one  
20   business with six lines?

21          A.       I do not know that.

22          Q.       Is it possible?

23          A.       It's possible, yes.

24          Q.       So it may not be six different customers, it  
25   may be one?

00058

1           A.       That is correct.

2           Q.       All right. And that would be true of the rest  
3 of the numbers that are down through there as well?

4           A.       That is correct.

5           Q.       Just try to save time.

6                    COMMISSIONER GAW: Okay. I could have other  
7 questions, but I don't see any need to do that in this case.  
8 We can -- there will be another case coming up I think that we  
9 could probably ask questions in just as well on those topics.  
10 So if those are -- if those numbers are declassified, Judge,  
11 that's all I have.

12                   JUDGE DIPPELL: Are there any other Commission  
13 questions?

14                   All right. Is there any question from counsel?

15                   MR. HAAS: Yes, your Honor.

16                   JUDGE DIPPELL: Sorry. Did Sprint have a  
17 question? Maybe I'll let the other parties go first and let  
18 you go last, Mr. Haas.

19 CROSS-EXAMINATION BY MR. LEOPOLD:

20           Q.       Good morning, Mr. Van Eschen.

21           A.       Good morning.

22           Q.       Regarding Sprint's pending application for  
23 competitive classification, should Sprint, for instance, have  
24 the Platte City exchange deemed as competitive in this  
25 proceeding, and let's assume hypothetically that Time Warner,

00059

1 the competitor cited in our application, serves a substantial  
2 number, but not all of the customers within Sprint's footprint  
3 in that Platte City exchange. Can you assume that with me?

4 A. Yes.

5 Q. With regards to anything Sprint might do with  
6 offering or pricing within that exchange, Sprint would not be  
7 allowed, for instance, to identify customers within the  
8 exchange that do not have the availability of Time Warner  
9 service and charge them a higher rate while only offering a  
10 lower rate to those served by Time Warner, would they?

11 A. I think Sprint could. And the reason why I say  
12 that is because under competitive classification, at least for  
13 business customers, you could price it out on a  
14 customer-specific basis.

15 MR. LEOPOLD: All right. Well, I don't think I  
16 have any other questions. I would say that that would not be  
17 Sprint's intention with regard to seeking approval of this  
18 competitive application.

19 JUDGE DIPPELL: Mr. Dandino, did you have any  
20 questions?

21 MR. DANDINO: No questions, your Honor, thank  
22 you.

23 JUDGE DIPPELL: Mr. Haas?

24 REDIRECT EXAMINATION BY MR. HAAS:

25 Q. Mr. Van Eschen, as the Staff does its review in

00060

1 a 30-day track proceeding, does Staff count a CLEC that uses  
2 UNE-P as having an ownership interest in the facilities?

3 A. No

4 MR. HAAS: And I was wondering if I could  
5 answer Commissioner Murray's question as to who drafted  
6 paragraph 5 in the stipulation?

7 JUDGE DIPPELL: I don't guess that's -- I think  
8 you can answer that.

9 MR. HAAS: Mr. Leopold drafted that.

10 JUDGE DIPPELL: All right. I don't believe  
11 there's anything further for Mr. Van Eschen. Then you may be  
12 excused. Thank you.

13 I think Commissioner Clayton had some questions  
14 he wanted to ask Mr. Dandino. Were there any other questions  
15 of Public Counsel? Then I'll let Commissioner Clayton.

16 COMMISSIONER CLAYTON: Thank you.

17 Mr. Dandino --

18 MR. DANDINO: Yes, sir.

19 COMMISSIONER CLAYTON: -- I appreciate you  
20 being here and I'm sorry you had difficulties getting here  
21 this morning. When I came down to the hearing and there was  
22 no one at the table, I didn't know if Public Counsel was going  
23 to be participating in the hearing this morning or not or  
24 whether you were planning on coming down, regardless of  
25 getting here late.

1 MR. DANDINO: No. We had agreed to the  
2 stipulation and, you know, we had nothing further to add to  
3 it. This is for the purpose of this case and this case only.

4 COMMISSIONER CLAYTON: Okay. Office of Public  
5 Counsel filed a very limited number of documents -- and it may  
6 not even be documents. It may be limited to one. In fact, I  
7 think it was just one pleading relating to a request for  
8 notice to customers; is that correct?

9 MR. DANDINO: That's correct, your Honor.

10 COMMISSIONER CLAYTON: Did Office of Public  
11 Counsel do any type of analysis under this new statute in  
12 reviewing the application filed by Sprint?

13 MR. DANDINO: Other than we just -- we just  
14 reviewed what Sprint had filed and the recommendation of the  
15 Staff, reviewed the Staff -- reviewed the statute and that was  
16 the extent of our --

17 COMMISSIONER CLAYTON: Okay. Did Office of  
18 Public Counsel do any investigation on its own outside of just  
19 reviewing the Staff recommendation?

20 MR. DANDINO: No, sir.

21 COMMISSIONER CLAYTON: Does Office of Public  
22 Counsel -- do you all agree with the position as filed by  
23 Staff in their analysis or are you just limiting your  
24 non-opposition -- it's not even support, it's non-opposition  
25 simply in this case?

1                   MR. DANDINO: It is our non-opposition in this  
2 case and we have no objection to the recommendation. We're  
3 looking more at the effect rather than stipulating as to the  
4 underlying facts.

5                   COMMISSIONER CLAYTON: Okay. So your  
6 non-opposition, that means -- does that mean, in your opinion,  
7 that Office of Public Counsel agrees that Sprint should be  
8 allowed competitive status in each of these exchanges?

9                   MR. DANDINO: What we're saying is we do not  
10 object to that classification being made.

11                  COMMISSIONER CLAYTON: Is that the same as  
12 meaning that you agree that they meet the statutory  
13 guidelines?

14                  MR. DANDINO: Well, it would because that's the  
15 recommendation of the Staff. But we're not -- you know, we  
16 didn't want to stipulate as to all their evidence.

17                  COMMISSIONER CLAYTON: Okay. Does Office of  
18 Public Counsel consider it even a relevant question to ask  
19 whether there is -- for example, in my questioning with  
20 Mr. Van Eschen, if only one business customer is offered voice  
21 grade services in a particular exchange, is it a relevant  
22 question to even consider other business customers that would  
23 not be able to access a choice in service?

24                  MR. DANDINO: We consider it a very relevant  
25 question because we think it goes to the body of knowledge

00063

1     that the Commission has about what's going on in this.

2                     Whether it's a factor that the Commission can  
3     use to determine whether to grant the application or not, that  
4     may be another question. But we certainly feel it is relevant  
5     because we think it -- that type of information should be  
6     available to the public and the Commission ought to know the  
7     real extent and -- extent of competition in an area.

8                     COMMISSIONER CLAYTON: Did Office of Public  
9     Counsel do an analysis of how many customers throughout these  
10    five exchanges will not have access to competitive choice  
11    after this?

12                    MR. DANDINO: No, we did not.

13                    COMMISSIONER CLAYTON: You did not.

14                    MR. DANDINO: We were limited on the amount of  
15    time --

16                    COMMISSIONER CLAYTON: I want to ask why, but I  
17    don't think I'm going to ask the question. Thank you.

18                    JUDGE DIPPELL: Commissioner Murray, you had a  
19    question for Mr. Dandino?

20                    COMMISSIONER MURRAY: Yes, I do. Thank you.

21                    Mr. Dandino, you indicated that you didn't have  
22    opposition to the granting of the competitive status, but that  
23    you were not -- and I can't remember the wording you used, but  
24    you were not actually adopting the evidence that went into it  
25    or necessarily agreeing with that; is that correct?

1                   MR. DANDINO: We're not exactly stipulating to  
2 the -- you know, to the numbers, to the facts. All we're  
3 saying is as -- you know, based on the recommendation and  
4 everything, we have no opposition to it. It appears  
5 reasonable. And we think that the Commission can adopt this.

6                   COMMISSIONER MURRAY: And then the clause that  
7 I've been referring to in the Stip and Agreement that says  
8 that, These parties stipulate that no party opposes the  
9 recommendation, supporting memo and schedules filed by the  
10 Staff; accordingly, they should be endorsed and adopted by the  
11 Commission in its final order.

12                   And I want to ask you and I want to ask the  
13 other two attorneys if you would be comfortable amending the  
14 Stipulation and Agreement and leaving that out?

15                   MR. DANDINO: Well, let's put it this way. Not  
16 really because I think -- we agree to that and I think all the  
17 parties agreed to that as a condition. Because what we're  
18 saying is that we all -- we're recognizing that we're not --  
19 that there is no objection to it, but the Commission is going  
20 to have to base their decision on something. And what we're  
21 saying is you can base it on this recommendation, and to that  
22 extent, that would substitute for a record.

23                   COMMISSIONER MURRAY: Okay. Let me ask you a  
24 little bit more about that than because you indicated also  
25 that your agreement is for the purposes of this case only. So

00065

1 is what you are saying there that the recommendations of the  
2 Staff in terms of what applies to these exchanges for this  
3 company in this particular case are those that the Commission  
4 should endorse and adopt?

5 MR. DANDINO: That's correct. I'm only --

6 COMMISSIONER MURRAY: And no more. Nothing for  
7 precedential value for the future or how to interpret another  
8 carrier's application or anything of that nature?

9 MR. DANDINO: That's correct. Tomorrow's  
10 another day.

11 COMMISSIONER MURRAY: Okay. Thank you.

12 Mr. Leopold?

13 MR. LEOPOLD: Commissioner Murray, in light  
14 of -- am I on? There.

15 Commissioner Murray, in light of some of the  
16 discussion that has gone on here this morning and some of the  
17 caveats and explanations that have been provided regarding the  
18 stipulation and the Staff report that was attached to it, we  
19 would not be opposed to revising or withdrawing the  
20 stipulation.

21 To the extent that the stipulation were to be  
22 approved as filed, there is -- I think we've identified some  
23 surplusage dicta, discussion of issues that are not presented  
24 directly to the Commission by the pending Sprint application.  
25 And I think the stipulation does express an intent to have the

1 findings of the Commission narrowly limited to the factual  
2 situation set forth with regard to the exchanges identified in  
3 Sprint's amended application. So if in the end the  
4 stipulation appears to be more expensive than needed and  
5 overbroad, we would be willing to amend that appropriately.

6 I would also note that at the time of the  
7 deadline for objections, we had no objection from OPC, no  
8 objection from Staff. In fact, we did have an endorsement.  
9 And the only objection we did have was from Fidelity and the  
10 basis of that objection has been eliminated by the amendment  
11 to the application that took out the request for relief in the  
12 Fort Leonard Wood exchange.

13 So the Commission probably has the basis in the  
14 record to approve it by order independent of the stipulation  
15 that was filed. I think the purpose of the stipulation was  
16 seeing no objection and a hearing coming up and we thought it  
17 might eliminate the need for everybody to have the hearing  
18 that we're having here today and so we tried to put that  
19 together yesterday.

20 COMMISSIONER MURRAY: I understand that. And I  
21 appreciate the position that you all were put in and I  
22 appreciate everybody coming together quickly.

23 But I would like to follow up with a question  
24 to you regarding Mr. Dandino's interpretation of the language  
25 in the stip. If we were to approve the Stip and Agreement, is

00067

1 it your understanding then that it is for purposes of this  
2 case only, this factual situation only and that the language  
3 regarding adoption of Staff's -- endorsement and adoption of  
4 Staff's recommendation, supporting memos and schedules is for  
5 the purpose of only those things that relate to the Sprint  
6 application?

7 MR. LEOPOLD: I would agree with that  
8 understanding, yes.

9 COMMISSIONER MURRAY: All right. Thank you.  
10 And I guess, Mr. Haas, you're the last one.

11 MR. HAAS: Yes. It's Staff's understanding  
12 that the findings in this case and the use of the Staff memo  
13 in this case would be for the findings of this case and would  
14 be limited to this case.

15 COMMISSIONER MURRAY: So that any non-relevant  
16 references to these exchanges -- when we say we endorse and  
17 adopt the recommendation, we're not endorsing and adopting  
18 thereby those recommendations that have nothing to do with  
19 these exchanges; is that correct?

20 MR. HAAS: That's correct. Commissioner  
21 Murray, I'm not looking for that language "endorses Staff  
22 memo" in the -- in the order. What I think we're looking for  
23 is a Staff -- pardon me, a Commission order that says, We find  
24 that the following exchanges should be classified as  
25 competitive.

00068

1 COMMISSIONER MURRAY: Okay. Thank you.

2 JUDGE DIPPELL: Are there any further

3 Commission questions?

4 COMMISSIONER GAW: I'm sorry. Real quickly,

5 Mr. Dandino, just so I'm clear. Mr. Dandino,

6 in regard to this qualification on this stip that you're

7 saying -- I'm not clear on what you're telling me in regard to

8 the facts that are being stipulated to or not. Can you try

9 that one more time for me?

10 MR. DANDINO: Basically, I -- we don't have any

11 objection to what was said in the -- for purposes of this case

12 and Staff's memorandum and in their exhibits. Probably I'm

13 being hyper-technical, but I just don't want to be in a

14 position, since we don't support the statute, and -- as saying

15 that these -- this is -- you know, that the underlying facts

16 show that it's competitive. It's --

17 COMMISSIONER GAW: Let me see if I can ask it

18 in a different way.

19 MR. DANDINO: Okay.

20 COMMISSIONER GAW: Are you telling me -- does

21 the Public Counsel stipulate that the facts that you are aware

22 of meet the requirements of the statute that has been -- that

23 has just gone into law on August the 28th?

24 MR. DANDINO: Yes, sir. That's exactly what

25 we're saying. We're saying to the best of our information and

00069

1 according to what's in the record, we agree that it meets the  
2 qualifications to it and we think that the Commission can  
3 issue an order declaring them competitive.

4 COMMISSIONER GAW: I don't want to put words in  
5 your mouth, but is it your concern that the terms of the  
6 statute are problematic in regard to whether there's  
7 sufficient competition to control prices?

8 MR. DANDINO: That's correct.

9 COMMISSIONER GAW: Okay. That's all I have.  
10 Thank you.

11 MR. DANDINO: I don't mean to overly complicate  
12 the situation, but I -- lawyers make their money drawing fine  
13 lines.

14 COMMISSIONER GAW: I understand. That helps.  
15 I understand your position better.

16 Thank you, Judge.

17 JUDGE DIPPELL: Okay. Are there any further  
18 Commission questions?

19 All right. I have a couple of housekeeping  
20 matters and we were going to maybe enter some exhibits, but  
21 the Commissioners can feel free to go on to agenda.

22 I thought we'd go ahead and I would like to  
23 perhaps have the application and the stipulation entered into  
24 the record as exhibits. Would there be an -- and I'll just  
25 offer them from the Commission, if that's all right.

00070

1 Application we'll mark as Exhibit 1 and all of its  
2 attachments. Would there be any objection to entering that  
3 into the record?

4 MR. LEOPOLD: Judge, with the clarification  
5 that it's the amended application.

6 JUDGE DIPPELL: Yes, thank you.

7 MR. LEOPOLD: That drops the reference to Fort  
8 Leonard Wood.

9 JUDGE DIPPELL: That's right. Amended  
10 application. Would there be any objection to entering that?

11 MR. DANDINO: No objection.

12 MR. HAAS: No objection.

13 JUDGE DIPPELL: Thank you. We'll enter that  
14 into the record as Exhibit No. 1.

15 (Exhibit No. 1 was received into evidence.)

16 JUDGE DIPPELL: And the stipulation and its  
17 attachments, would there be any objection?

18 MR. DANDINO: No objection.

19 MR. HAAS: No objection.

20 MR. LEOPOLD: No, your Honor.

21 JUDGE DIPPELL: All right. I'll admit that as  
22 Exhibit 2.

23 (Exhibit No. 2 was received into evidence.)

24 JUDGE DIPPELL: Thank you. Would anyone like  
25 to make any closing remarks? They will be on the record and

00071

1     could be read.

2                     MR. DANDINO:  None from Public Counsel, your  
3     Honor.

4                     JUDGE DIPPELL:  Staff?

5                     MR. HAAS:  No, your Honor.

6                     JUDGE DIPPELL:  Mr. Leopold?

7                     MR. LEOPOLD:  No.  Thank you.

8                     JUDGE DIPPELL:  Since this is your chance, by  
9     the way, closing statements in lieu of briefs.

10                    All right.  I see no further remarks.  I  
11     appreciate you all participation.  Thank you very much.  We  
12     can conclude the hearing.

13                    WHEREUPON, the hearing was concluded.

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JOHN IDOUX

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Direct Examination by Mr. Leopold

7

4

Questions by Commissioner Murray

8

5

Questions by Commissioner Gaw

19

6

Questions by Commissioner Clayton

25

7

Questions by Commissioner Appling

28

8

Redirect Examination by Mr. Leopold

29

9

Further Questions by Commissioner Murray

33

10

11

JOHN VAN ESCHEN

12

Direct Examination by Mr. Haas

35

13

Questions by Commissioner Murray

36

14

Questions by Commissioner Gaw

48

15

Questions by Commissioner Clayton

51

16

Cross-Examination by Mr. Leopold

58

17

Redirect Examination by Mr. Haas

59

18

19

20

21

22

23

24

25

00073

1	EXHIBITS INDEX	
2		REC'D
3	Exhibit No. 1	
4	Amended application	70
5	Exhibit No. 2	
6	Stipulation and attachments	70
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		