

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4
5 TRANSCRIPT OF PROCEEDINGS

6 Hearing

7 February 7, 2003
8 Jefferson City, Missouri
9 Volume 2

10 In the Matter of BPS)
11 Telephone Company's Election)
12 to be Regulated under Price)
13 Cap Regulation as Provided) Case No.: IO-2003-0012
14 in Section 392.245, RSMo 2000)

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

17
18 CONNIE MURRAY,
19 STEVE GAW,
20 COMMISSIONERS.

21 REPORTED BY:

22
23 STEPHANIE L. KURTZ MORGAN, RPR, CCR
24 ASSOCIATED COURT REPORTERS
25 714 West High Street
P. O. Box 1308
Jefferson City, Missouri 65101
(573) 636-7551

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TOLL FREE 1-800-636-7551

1 APPEARANCES:

2

3 W. R. ENGLAND, III, Attorney at Law
4 SONDRA B. MORGAN, Attorney at Law
5 Brydon, Swearngen & England, P.C.
6 312 East Capitol Avenue
7 P. O. Box 456
8 Jefferson City, Missouri 65102-0456
9 (573) 635-7166

6

FOR: BPS Telephone Company.

7

8 MICHAEL F. DANDINO, Senior Public Counsel
9 P. O. Box 7800
Jefferson City, Missouri 65102
(573) 751-4857

10 FOR: Office of the Public Counsel
and the Public.

11

12 CLIFF E. SNODGRASS, Senior Counsel
13 P. O. Box 360
Jefferson City, Missouri 65102
(573) 751-6434

14 FOR: Staff of the Missouri Public Service
Commission.

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

2 (Written Entries of Appearance filed.)

3 (EXHIBIT NOS. 1 THROUGH 5 WERE MARKED FOR
4 IDENTIFICATION.)

5 JUDGE DIPPELL: Okay. This is Case
6 No. IO-2003-0012, In the Matter of BPS Telephone
7 Company's Election to be Regulated under Price Cap
8 Regulation as Provided in Section 392.245, Revised
9 Statutes of Missouri 2000.

10 My name is Nancy Dippell. I'm the Regulatory
11 Law Judge assigned to this matter. And we've come
12 today for an evidentiary hearing.

13 I'd like to begin by taking entries of
14 appearance. And I assume all the attorneys have all
15 given written entries, and they may -- just introduce
16 yourself and state who you represent if you'd like.

17 You don't -- don't need to give your full
18 address, unless it's a habit you can't break.

19 Okay. We can start with Staff.

20 MR. SNODGRASS: Good morning -- good morning.
21 Thank you, Judge. My name is Cliff Snodgrass. I
22 represent the Staff of the Public Service Commission
23 today.

24 JUDGE DIPPELL: Office of Public Counsel?

25 MR. DANDINO: My name is Michael Dandino,

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1 Office of the Public Counsel, representing the Office
2 of the Public Counsel and the Public.

3 JUDGE DIPPELL: And BPS Telephone Company?

4 MR. ENGLAND: Thank you, Your Honor. Let the
5 record reflect the appearance of W. R. England and
6 Sondra Morgan of the law firm of Brydon, Swearngen &
7 England on behalf of BPS Telephone Company.

8 JUDGE DIPPELL: Thank you.

9 And I will remind you all to try to speak into
10 the microphones and to remember to turn them on. I --
11 I was having a little bit of trouble hearing you,
12 Mr. England, so -- but especially so that our internet
13 webcast can pick up voices.

14 We pre-marked exhibits before we went on the
15 record, so those having been ready to go, we'll adopt
16 the proposed order of witnesses and order of
17 cross-examination that the parties made.

18 There was an -- a Motion for Protective Order
19 filed in this case, and it had -- it has not been ruled
20 on. It's been indicated that there might be a need for
21 that.

22 So I will goahead and rule on that right now
23 and -- and grant that Motion for Protective Order. And
24 that's basically our -- the -- what's been called the
25 standard Protective Order from the Commission.

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1 I will just remind everybody to turn off your

2 cellphones and your pagers or at least put them to
3 silent, and to try to remember when you come in after
4 the break to do the same.

5 And for the people who are in the gallery that
6 need to come and go, that's fine. Please try to use
7 the back door and try not to let it slam as you go out.
8 It's kind of distracting.

9 Also, drinks are fine in here, but I would ask
10 that you not bring any food in. And I would also ask
11 that you remember to clean up after yourself when you
12 leave.

13 And I think that's all my housekeeping
14 matters.

15 Is there any other preliminary motions or
16 anything that needs to be taken up before we go to
17 opening statements?

18 (No response.)

19 JUDGE DIPPELL: All right. Then I will go
20 inform the Commissioners that we're ready for opening
21 statements, and we'll reconvene in about five minutes.

22 Thank you. And we can go off the record.

23 (A RECESS WAS TAKEN.)

24 JUDGE DIPPELL: Okay. We're ready to begin
25 with opening statements. And our first is the Company,

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2 Mr. England?

3 MR. ENGLAND: Thank you, Your Honor.

4 Good morning. May it please the Commission,
5 my name is Trip England, and I represent the
6 BPS Telephone Company. BPS serves the southeast
7 Missouri communities of Bernie, Parma and Steele,
8 Missouri, hence the name BPS.

9 The issue, as I understand it before the
10 Commission, is whether BPS's election to be regulated
11 under a price cap form of regulation as permitted by
12 Section 392.245 of the Missouri statutes is valid.

13 Believe it or not, despite the efforts of the
14 witnesses and the amount of prepared testimony that's
15 been filed, I submit to you that the real dispute is
16 rather narrow and can be easily decided.

17 First I'd like to review the relevant
18 provisions of Section 392.245.2, which I believe
19 governs the issue to be decided in this case. And I've
20 had that relevant language blown up on the board to my
21 right (indicating).

22 And it states, again in relevant part, that a
23 small incumbent local exchange telecommunications
24 company may elect to be regulated under this section
25 upon providing written notice to the Commission if an

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1 alternative local exchange telecommunications company
2 has been certified to provide basic local

3 telecommunications service and is providing such
4 service in any part of the small incumbent company's
5 service area.

6 I think the record will clearly reflect that
7 there is no dispute with respect to certain elements of
8 this test. The first is that BPS is a small incumbent
9 local exchange carrier.

10 I believe that there is no dispute as to the
11 fact that BPS has provided written notice to this
12 Commission of its election to be regulated under price
13 cap regulation.

14 And I believe that there is no dispute that an
15 alternative local exchange carrier, in this case
16 Missouri State Discount Telephone, or as may be
17 referred sometimes as MSDT, has been certified by this
18 Commission to provide basic local telecommunications
19 service in BPS's service area.

20 I submit to you that the only issue to be
21 decided is whether MSDT is providing basic local
22 telecommunications service in BPS's service area.

23 And that issue can be further narrowed to
24 whether or not the definition of basic local
25 telecommunications service is as set forth in Missouri

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1 statute, Section 386.020(4) or if basic local
2 telecommunications service is defined for purposes of

3 the price cap statute as Commission
4 Rule 4 CSR 240-32.100.

5 If, as BPS contends, basic local
6 telecommunications service is defined by statute, then
7 there is no question that MSDT is providing basic local
8 telecommunications service in BPS's service area.

9 If however, as Staff contends that basic local
10 telecommunications service is defined by the Commission
11 rule, then it is equally clear that Missouri State
12 Discount Telephone is not providing basic local
13 telecommunications service.

14 Now, OPC, Public Counsel, and to some degree
15 Staff have also injected arguments into this discussion
16 that, I guess for lack of a better term, raised the
17 issue of effective competition.

18 They contend that MSDT as a re-seller of
19 prepaid local services does not present any or any
20 effective competition to BPS.

21 I suggest to you that this is a red herring --
22 that this issue is irrelevant, it is not germane to
23 your task.

24 This Commission has previously found that the
25 price cap statute language is clear and unambiguous,

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1 that nowhere in Section 392.245.2 is there a
2 requirement that effective competition precede price
3 cap regulation.

4 And that finding is in the Commission's report
5 and order in the price cap case involving Southwestern
6 Bell Telephone Company, TO-97-397 issued
7 September 16th, 1997.

8 As the Commission noted in that case, nowhere
9 in the statute does the word "competitive" or the word
10 "competition" appear.

11 In fact, if you'll look at 392.245.2, it
12 refers to an alternative local exchange carrier, not a
13 competitive local exchange carrier.

14 The only mention of effective competition in
15 Section 392.245 is in Subsection 5. And this involves
16 an investigation no later than five years after a
17 company has been determined to be subject to price cap
18 regulation.

19 Does the Commission need to investigate the
20 effectiveness of that competition?

21 If you find that that price-cap-regulated
22 company is subject to effective competition at that
23 time, they come out from under price cap regulation and
24 become regulated as a competitive company.

25 Significantly, if you find that that carrier

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1 or that price cap company is not subject to effective
2 competition, it does not revert to traditional rate of
3 return regulation, but goes back or stays under, if you

4 will, price cap regulation.

5 So I would submit that your earlier finding
6 regarding the plain and unambiguous language of the
7 statute -- or Section 392.245.2 is appropriate, and
8 that the nature, extent and scope of competition is
9 irrelevant to your inquiry today.

10 Just as a plain reading of 392.245.2 makes it
11 clear that competition is not a prerequisite to price
12 cap regulation, a plain reading of Section 386.020(4)
13 defining basic local telecommunications service is also
14 clear and ambiguous (sic).

15 Staff's argument that the definition of basic
16 local telecommunications service as found in the
17 Commission rule effectively trumps or supersedes the
18 definition contained in the statute. Not only defies
19 commonly accepted legal principles, it is also
20 inconsistent with prior positions taken in other price
21 cap cases and in other certificate cases.

22 And we will demonstrate that through the
23 testimony that has either been filed or the
24 cross-examination that you hear today.

25 As I said, I think the issue is relatively

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1 simple. And as long as the Commission follows the
2 precedent it has set in previous cases and follows the
3 plain language of the statutes, this issue can be
4 easily decided. And you will find that BPS has made a

5 valid election to become subject to price cap
6 regulation.

7 Thank you.

8 JUDGE DIPPELL: Thank you, Mr. England.

9 Staff?

10 MR. SNODGRASS: Thank you, Judge. Good
11 morning, everyone.

12 My name is Cliff Snodgrass. I represent Staff
13 here today.

14 You know, there's a story that illustrates
15 what Staff's case is about today. And bear with me
16 just for a minute.

17 It seems there was a medium conducting a
18 seance sometime back. And while she was bringing
19 people back from the spirit world to speak with their
20 relatives attending the seance, a little boy or --
21 around 9 or so happened to be there with his family
22 while the seance was going on.

23 As the medium began to cajole the spirits to
24 make themselves available, the little boy said, I want
25 to talk to grandpa.

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1 Now, the medium told the little boy to hush,
2 because quiet was needed so she could concentrate on
3 her great task. The little boy persisted. I want to
4 talk to grandpa, he said.

5 Well, eventually the medium, very frustrated
6 by the little boy's out-- outbursts said, very well.
7 If it'll keep you quiet, I'll bring grandpa back from
8 the great beyond for you to speak with.

9 So after a few hocus-pocus words, the medium
10 said, here's grandpa for you, son. Go ahead and speak
11 to him.

12 The little boy smiled for a minute and said,
13 grandpa, what are you doing up there? You ain't dead.
14 So that's what this case is about. It's about what's
15 legitimate and what's not legitimate.

16 Staff expects its evidence to show today that
17 the price cap election by BPS Telephone Company was not
18 legitimate or valid.

19 Mr. England's correct. The basic issue in
20 this case is whether Missouri State Discount Telephone
21 is actually providing basic local telecommunications
22 service in BPS's service area.

23 That's the question for this Commission to
24 answer. Staff expects its evidence to show several
25 things. Let's start with the statute.

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1 Missouri Statute 386.020.4 defines what basic
2 local telecommunications service looks like. But
3 that's not the end of the story from the Staff's
4 perspective.

5 Staff expects to show that this statute

6 provides a general outline of what basic local
7 telecommunications is, but that it leaves for the
8 Commission to fill in the details such as local calling
9 scope, whether or not touchtone access to operator
10 services, as well as other services, are included as
11 part of basic local telecommunications service.

12 Staff expects to show that Commission
13 Rule 4 CSR 240-32.100 sets out the minimum standards
14 for providing basic local service, and that State
15 discount is not, in fact, living up to those standards.

16 Staff contends that State Discount is not
17 providing equal access to interexchange carriers.

18 And, in fact, State Discount does not provide
19 one plus equal access dialing for long distance that's
20 required by this statute.

21 Staff expects its evidence to show today that
22 in -- in reality -- in the real world in practice each
23 local carrier's tariff sets forth the local calling
24 scope and other features, which are approved by this
25 Commission in determining what constitutes basic local

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1 service in any individual local carrier's exchange.

2 Staff expects its evidence to show today that
3 other features the Commission approves on a daily basis
4 is in the tariff approval process relating to basic
5 service is mileage charges and touchtone charges.

6 Another contention that Staff's going to argue
7 in front of you today is that if you look at
8 Statute 392.451, which describes the certification
9 process that a small ALEC must go through to -- to get
10 a certificate to provide basic service is that that
11 statute mandates that that particular applicant provide
12 essential local telecommunications services if it's
13 going to get that certificate to provide basic service.

14 Staff's argument is that because that's so,
15 these essential local services, as have been defined by
16 the Commission in another rule, make up basic local
17 service.

18 In fact, Staff expects the evidence to show
19 that State Discount is not providing several of these
20 required services and, therefore, is not providing
21 basic local service.

22 I guess in a nutshell -- in a nutshell I just
23 close in this manner and try to summarize Staff's
24 position as best I can.

25 Staff expects its evidence to show that in

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1 reality the Commission determines what constitutes
2 basic local service through the tariff approval
3 process, the use of various statutes and the use of the
4 Commission rules.

5 Staff expects to show State Discount's not
6 providing basic local service, is providing something

7 less than that and that something less than that is
8 local exchange service.

9 If that's the case and the Commission agrees,
10 the price cap election by BPS is not legitimate, it's
11 not valid.

12 Thank you.

13 JUDGE DIPPELL: Thank you, Mr. Snodgrass.

14 Mr. Dandino?

15 MR. DANDINO: Thank you, Your Honor. May it
16 please the Commission, Mr. England was correct when he
17 said that this is a -- a simple issue to decide this.
18 The three issues presented to you are -- are
19 essentially simple issues.

20 But I have to disagree with Mr. England when
21 he asked you to take a narrow view -- a narrow look at
22 just the language that he has posted up here in -- in
23 Section 392.245.2.

24 Overall this is a -- this is a question of
25 construction and interpretation of the price cap

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1 statute. And when you're doing that, you have
2 to -- I -- I want to discuss with you on that point. I
3 think Mr. Snodgrass has talked to you about the issue
4 of the basic local service, and I agree with his
5 position there.

6 I think the issue under the basic local

7 service -- the key is whether the Missouri Discount
8 Telephone is providing the -- such services in the
9 statute as the company was certified to provide.

10 Basically we're saying that they are certified
11 to provide all of these services, but they are only
12 providing less than what those basic services are.

13 But to go back to the point that Public
14 Counsel has -- has been emphasizing is on the
15 competition.

16 And I think to look at it you have to look at
17 a -- at the total framework of -- of the regulatory
18 section.

19 It's a principle of statutory construction
20 that the statutes must deal with the same subject
21 matter and are to be read impairing material as part of
22 the whole. They are to be read together and reconciled
23 so that the intent and the purpose of the General
24 Assembly is -- is carried out.

25 In doing that, you can't look at a single part

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1 of the statute. You can't look at this part of the
2 subsection of the statute or a single line of a -- of
3 a -- of a statute without considering it in the entire
4 context of the statute chapters and the regulatory
5 system for telecommunications.

6 It's like when you go into an art museum in
7 St. Louis and you walk up to the canvas and you look at

8 it and you see pink and blue and green and white
9 dashes -- brushstrokes on a painting.

10 If you look carefully at it, you're getting a
11 very narrow view of it. But step back and walk to the
12 center of the room and turn around and you'll see
13 Monet's Water Lillies. A large -- almost filling the
14 wall so you get an overall view. You see the entire
15 canvas of what the intent and the purpose of the artist
16 is.

17 Now, I'm not gonna suggest that Section -- or
18 Chapter 392 is a work of art by the Legislature, but I
19 think you have to step back and give this overall
20 perspective and capture the essence of what the General
21 Assembly was trying to accomplish with Chapter 392, and
22 as part of that Section 392.245.

23 And it's clear that -- and -- and Mr. England
24 is correct. The word "competition" -- it is not a
25 competitive local exchange telecommunications company.

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1 It doesn't say that. It says alternative.

2 However, step back to the center of the room.
3 Look at the entire canvas. And I think you'll come to
4 the conclusion that you can't have an alternative local
5 exchange company that's gonna serve as the basis for a
6 change of the regulatory system that is not a
7 competitor.

8 What is the entire purpose of this -- of this
9 regulatory system? If -- if when you -- you look at
10 the canvas of Section 392, the theme -- the thread of
11 competition runs through it all.

12 We're always talking about regulation as being
13 a substitute for competition. We're always talking
14 about in the transition from rate-of-return regulation
15 to competition.

16 There is a trans-- there is -- things are
17 transitionally competitive or that price cap
18 competition when there's another provider in that
19 ar-- in that exchange that triggers -- can trigger a
20 change of -- of method of regulation.

21 And then price cap regulation evolved --
22 is -- is supposed to evolve, looking at this canvas
23 again -- in 392.245 it's supposed to evolve into
24 effective competition where then you have a
25 competitive -- competitive services provided by a

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1 formally regulated company under rate of return.

2 It's a natural transition to that. And -- and
3 that thread goes through the whole chapter of 392. So
4 finally we end up with competition serving as a
5 substitute for regulation.

6 I think when you consider the -- the whole
7 picture and the -- the canvas of Chapter 392 telecom
8 regulation that you -- that you have specific -- also

9 have specific directions on how to construe and
10 interpret the General Assembly's intent and purpose.

11 Section 392.185, it talks about this -- how
12 the principles you should use to construe this chapter.

13 And one of them is 6 -- Subsection 6, full --
14 to promote full and fair competition, to function when
15 consistent with the -- excuse me -- protection of rate
16 payers and otherwise consistent with the public
17 interest.

18 That's what I think you have to look at. You
19 have to look at it in that context.

20 Now, Public Counsel is not saying that there
21 has to be effective competition provided by Missouri
22 Discount Telephone Company. Far from it. We're not
23 saying that at all.

24 All we're saying is it has to be more than
25 just a presence of another telephone company. I think

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1 that the -- the -- the scheme -- the legislative scheme
2 is that if there's a -- there has to be another
3 telephone company that's going to trigger some
4 action -- something in the statutes that -- that
5 justify the change in regulation.

6 We think it has to at least be competition.
7 We're not saying that it has to be effective
8 competition. We realize that that does not occur until

9 a later part of examination of the price cap analysis
10 five years down the road.

11 So at this point I'd urge the Commission to
12 look at these whole parts of the statute and come to
13 the conclusion that you cannot really read 392.245.2 in
14 isolation.

15 Don't stand that close to the can-- to the
16 canvas. Take the broad view and give intent and
17 purpose to -- what the General Assembly tried to do is
18 make this about competition -- what happens when
19 competition occurs, not when there's just another
20 telephone company.

21 Thank you.

22 JUDGE DIPPELL: Thank you, Mr. Dandino.

23 Okay. Then we're ready for our first witness
24 and that's going to be Mr. Carson of BPS.

25 Mr. England?

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1 MR. ENGLAND: Thank you.

2 Your Honor, if I may call to the witness stand
3 Mr. David Carson, who I believe has not been sworn.

4 JUDGE DIPPELL: Mr. Carson, will you please
5 raise your right hand?

6 (Witness sworn.)

7 JUDGE DIPPELL: Thank you.

8 Proceed, Mr. England.

9 MR. ENGLAND: Thank you.

10 DAVID CARSON testified as follows:

11 DIRECT EXAMINATION BY MR. ENGLAND:

12 Q. Would you please state your full name and
13 business address for the record, please.

14 A. David Owen Carson is my full name. My
15 business address is at 120 Stewart Street, Bernie,
16 Missouri.

17 Q. Mr. Carson, by whom are you employed and in
18 what capacity?

19 A. I'm the assistant manager of BPS Telephone
20 Company.

21 Q. All right. And in that capacity, did you
22 cause to be prepared and filed in this proceeding in a
23 document that's been entitled the direct testimony of
24 David Carson and has been marked for purposes of
25 identification for this proceeding as Exhibit No. 1?

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1 A. Yes, I did.

2 Q. And if I can turn your attention to that
3 exhibit, are there any changes or corrections that need
4 to be made to that testimony at this time?

5 A. No, there are not.

6 Q. If I were to ask you the same questions that
7 appear in that testimony here today under oath, would
8 your answers be substantially the same as those
9 occurring in that prepared direct testimony?

10 A. Yes, they would be.

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

13 A. Yes, they are.

14 MR. ENGLAND: Thank you, Your -- thank you,
15 Mr. Carson.

16 And, Your Honor, I would offer Exhibit No. 1
17 into evidence and tender the witness for
18 cross-examination.

19 JUDGE DIPPELL: Are there any objections to
20 Exhibit No. 1?

21 (No response.)

22 JUDGE DIPPELL: Seeing none, I will admit
23 Exhibit No. 1 into the record.

24 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE DIPPELL: Is there any cross-examination

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1 from Staff?

2 MR. SNODGRASS: Yes, there is, Judge.

3 JUDGE DIPPELL: Okay.

4 CROSS-EXAMINATION BY MR. SNODGRASS:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. My name is Cliff Snodgrass. I represent the
8 Staff here today.

9 Mr. Carson, before you filed your testimony,
10 you read the price cap election statutes, I'm sure,

11 correct?

12 A. Yes, I have read the statute.

13 Q. And that statute is 392.245.2?

14 A. Yes.

15 Q. All right. Now, your reading of that statute
16 indicated that several things must be in place to be
17 able to elect to be price cap regulated, correct?

18 A. Yes, there are some elements that must be
19 there.

20 Q. Okay. And one of those things that has to be
21 in place, that there must be an alternative exchange
22 company certified to provide basic service; is that
23 correct?

24 A. Yes, that's correct.

25 Q. And another one of those things is that this

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1 alternative company must be providing basic service in
2 that small incumbent service area; is that correct?

3 A. Yes, that is.

4 Q. So it's a fair statement that if that
5 alternative company is not actually providing basic
6 service -- basic local service, then one of the things
7 necessary to get price cap status is missing; is that
8 true?

9 A. Yes.

10 Q. I would ask you, sir, do you have your

11 testimony there with you?

12 A. Yes, I do.

13 Q. Would you direct your attention to page 6 of
14 that testimony, please?

15 A. (Witness complied.)

16 Q. Okay. Going down to lines 13 and 14, if you
17 would.

18 You state that BPS provides basic local
19 service because it provides all the services listed in
20 386.020(4). Then you go on to conclude that because
21 Missouri State Discount re-sells BPS service, you
22 assume that State Discount is capable of providing all
23 these basic local services as well.

24 Is that a fair summary of your testimony?

25 A. Yes.

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1 Q. All right. When you use the word "capable of
2 providing," do you mean to say that what could be
3 provided by a carrier versus what's actually being
4 provided determines whether that carrier is -- is
5 providing basic local service -- is capability or
6 actually what's being provided a factor that determines
7 price cap status?

8 A. It would be what the carrier was providing.

9 Q. Okay. Now, Mr. Carson, you've mentioned a
10 resale agreement between BPS and State Discount in your
11 testimony; is that true?

12 A. Yes.

13 Q. And you indicated that the Commission approved
14 that agreement in Case No. TO-2002-62; is that right?

15 A. I believe that is correct.

16 Q. I know you're not an attorney, sir, but would
17 you agree that a resale agreement is a contract?

18 A. Well, as you state, I am not an attorney but,
19 yes, I would consider it as a contract.

20 Q. And you've entered into written contracts
21 during the course of your life; is that true?

22 A. Yes, sir.

23 Q. And when you bought a new car, you -- you
24 entered into a written contract?

25 A. Yes, sir.

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1 Q. When you bought a house, you entered into a
2 contract?

3 A. That's correct.

4 Q. And when you signed those contracts, your
5 understanding was that it -- that those documents
6 contain certain promises or commitments between the
7 parties; is that right?

8 A. That's correct.

9 Q. All right. Now, based on your life experience
10 if the party to that contract didn't honor or keep
11 those contractual commitments, the other party had

12 certain rights under that agreement, right?

13 A. That is correct.

14 Q. For example, if you miss your car payment,
15 your car might disappear; is that true?

16 A. That's very possible.

17 Q. If you miss your house payment a few times,
18 the -- you might be evicted; is that true?

19 A. That's true.

20 Q. All right. So it's a fair statement, sir,
21 that contracts contain enforceable promises; is that
22 right?

23 A. That is correct.

24 Q. All right. Now, you indicate in your
25 testimony, sir, at the bottom of page 7, line 13 -- if

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1 you'd go there, I'd appreciate it.

2 Line start -- line 13 starts with a question:
3 Is Missouri State Discount Company's service limited to
4 customers who do not qualify to receive service from
5 BPS Telephone Com-- BPS Telephone Company -- pardon me.

6 Your short answer to that question is no; is
7 that right?

8 A. That's correct.

9 Q. Then you discuss the resale agreement and
10 tariff of State Discount; is that right?

11 A. Yes.

12 Q. You say on lines 16 and 17 of page 7 that the

13 resale agreement does not preclude State Discount from
14 providing service to any BPS customer that requested
15 service. You say that, do you not?

16 A. Yes, I do.

17 Q. And you say at page 8, lines 1 through 2, that
18 Section 6.1.1 of the resale agreement only states that
19 Missouri State Discount will not target BPS customers;
20 is that right?

21 A. That is correct.

22 MR. SNODGRASS: All right. I'd like to show
23 you what's -- what's going to be marked as an exhibit
24 for identification. Just a moment, please.

25 I'd ask that the court reporter mark this for

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1 identification purposes, please.

2 JUDGE DIPPELL: It'll be Exhibit No. 6.

3 MR. SNODGRASS: No. 6.

4 (EXHIBIT NO. 6 WAS MARKED FOR IDENTIFICATION.)

5 BY MR. SNODGRASS:

6 Q. Mr. Carson --

7 JUDGE DIPPELL: Please show that to
8 Mr. England.

9 MR. SNODGRASS: I will. I have some copies
10 here.

11 What was that exhibit number, Judge?

12 JUDGE DIPPELL: 6.

13 BY MR. SNODGRASS:

14 Q. Mr. Carson, I've shown you what's been marked
15 as Exhibit 6 for identification. Would you look at
16 that document for me, please?

17 A. Uh-huh.

18 Q. Do you recognize that exhibit, sir?

19 A. Yes, I recognize the document.

20 Q. And would you tell the Commission what it is?

21 A. This is the resale agreement between BPS and
22 MSDT.

23 Q. All right. Would you please go to the para--
24 page 6. I think it's 606 (sic) of that document. Are
25 you there -- are you there, Mr. Carson?

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1 A. You identified it as what number?

2 Q. No. 6 -- page 6.

3 A. Yes, I'm on page 6.

4 Q. Starting about the eighth line down where it
5 says, Missouri Discount shall, would you read down
6 about five or six lines there, please, into the record
7 what that says?

8 A. I'm afraid I'm not --

9 Q. I'm sorry. I probably didn't explain it to
10 very well. One, two, three, four, five, six, seven --
11 about the eighth line down over to the right side where
12 it starts, Missouri State Discount shall not.

13 If you'd read that into the record, I'd

14 appreciate it. Read about six lines there, if you
15 would.

16 A. I'm on page 6. I'm still not --

17 Q. Okay. Let me just point it out to you.

18 A. Oh, I -- I see. Okay. It's the eighth line
19 after 6.1.1; is that correct?

20 Q. Exactly.

21 A. Not from the top of the page.

22 Q. Excuse me. Thank you.

23 A. Okay. It says, Missouri State Discount shall
24 not target telephone company's current customers or new
25 customers to telephone company service area for

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1 services to be re-sold by Missouri State Discount.

2 Missouri State Discount's target market shall
3 be individuals and entities which are not current
4 customers of telephone company and have been
5 disconnected for non-payment of telephone company's
6 telecommunications charges s.

7 Q. I think that's sufficient. Thank you, sir.

8 Now, when the word tele-- "telephone company"
9 is used in that document, it's your understanding that
10 means BPS?

11 A. Yes, sir.

12 Q. Okay. Now that section says in part,
13 Mr. Carson, that State Discount shall not target BPS's

14 current customers; is that correct?

15 A. That is correct.

16 Q. And shall not target any new customers to
17 BPS's service area, does it not say that?

18 A. That is correct.

19 Q. It also says that State -- that State
20 Discount's target market shall be customers that's
21 been -- that have been disconnected by BPS; isn't that
22 right?

23 A. Yes, sir.

24 Q. So in summary it's true that Section 6.1.1 of
25 the resale agreement provides that State Discount's

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1 target market excludes current customers of BPS,
2 correct?

3 A. For this agreement their target -- their
4 target market, yes, sir.

5 Q. And that target market excludes new customers
6 to BPS's service area; is that right?

7 A. Yes.

8 Q. And, however, it includes those persons or
9 businesses who've been disconnected by BPS for
10 non-payment; is that right?

11 A. Yes, it does.

12 Q. Now, the word "target" is an interesting word
13 to me. Would you agree with me that when you say you
14 target something, you aim for it? Would that be a fair

15 characterization?

16 A. I would think so.

17 Q. All right. So Section 6.1 of the resale
18 agreement says that State Discount shall not aim for
19 any current BPS customers, right?

20 A. Per your definition and my agreement to that,
21 yes.

22 Q. Would this -- would you go so far as to agree
23 with me that aim for might include seek out?

24 A. Possibly.

25 Q. But at least you'd agree that the resale

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1 agreement pro-- provides that State Discount cannot
2 target or aim for new customers to BPS's service
3 area -- BPS's current customers -- they can't aim for
4 or perhaps seek out those customers pursuant to that
5 agreement; is that -- that fair?

6 A. I would say that they cannot target those
7 customers.

8 Q. And, however, the agreement does say that
9 State Discount's target market can include those
10 customers that were disconnected by BPS for
11 non-payment?

12 A. Yes.

13 Q. Now, when that agreement uses the word
14 "shall," in your understanding, that means that it's

15 mandatory; would you agree with that -- shall not
16 target?
17 A. Yes.
18 Q. So it's not discretionary, would that be fair?
19 A. As far as the target, that's correct.
20 Q. Now, let's kind of change direction here a
21 little bit, Mr. Carson.
22 You've read Mr. Voight's rebuttal testimony?
23 A. Yes, I have.
24 Q. And his testimony was directed towards your
25 testimony, was it not?

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1 A. Yes, it was.
2 Q. Now, Mr. Voight stated in his rebuttal that
3 BPS provided residential service to its customers in
4 the Steele exchange for \$7 a month; is that accurate?
5 A. That's the local service charge.
6 Q. All right. Local residential service?
7 A. It's only the R1 rate, that's correct.
8 Q. All right. And Mr. Voight indicated in his
9 testimony, sir, that State Discount offers this service
10 for \$50 a month; is that right?
11 A. He did state that, yes.
12 Q. Do you agree with that?
13 A. I -- I agree with the \$50.
14 Q. All right. So it's a fact that State Discount
15 offers service in BPS's service area for about

16 seven times what BPS offers that same service for; is
17 that right?

18 A. No, sir.

19 Q. How is that different? How do you disagree
20 with it?

21 A. Well, there are other charges that are
22 included in the charge that BPS would put a line in for
23 a customer. There are slick charges, which are \$6 that
24 are not included in the \$50. But yet a customer would
25 have to pay those other charges to acquire a line from

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1 BPS.

2 So the 7 to 1 is not accurate, no.

3 Q. Well, what is the basic charge after a line is
4 installed for the service provided by State Discount?
5 If you eliminate that charge, what would the charge be?

6 A. For the basic line it would be in the
7 neighborhood of \$15 to \$20.

8 Q. Now, BPS doesn't normally ask its customers to
9 pay its monthly charges in advance, does it?

10 A. Local service is paid in advance, I believe.

11 Q. By BPS; is that correct --

12 A. Yes.

13 Q. -- BPS's customers?

14 A. The -- the ser-- local service charges are
15 paid in advance.

16 Q. However, State Discount requires all of its
17 customers to pay their charges in advance, does it
18 not -- pre-pay?

19 A. That's correct.

20 Q. Now, State Discount requests in the
21 interconnection agreement that BPS block all collect
22 calls to State Discount's customers; is that right?

23 A. Yes.

24 Q. That it block all directory assistance calls?

25 A. That's correct.

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1 Q. That it block all operator-completed calls?

2 A. That is correct.

3 Q. That it block all 900 calls?

4 A. That is correct.

5 Q. That it block all direct-dial calls?

6 A. Yes, sir.

7 Q. That it block all third-party calls?

8 A. Yes, sir.

9 Q. All right. When BPS provides its local
10 service to its customers, it doesn't lock any of these
11 services normally, does it?

12 A. Only if it was requested by the customer.

13 Q. But if it's not requested they don't; would
14 that be a fair statement?

15 A. Yes, sir.

16 Q. Would you agree with me that the customers at

17 State Discount get -- get fewer services than
18 BPS customers in the service offering?

19 A. Yes -- yes, as we just pointed out. If the
20 customer wanted those services, they would have them
21 from BPS.

22 Q. So the customers of State Discount get a
23 smaller service offering at a higher price; would you
24 agree with that?

25 A. Yes.

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1 Q. Now, when Mr. Voight says in his rebuttal
2 testimony, page 3, lines 12 through 15, that the
3 limited nature and much high-- much higher costs of
4 service offered by State -- State Discount is
5 self-limiting as to the type of customer that State
6 Discount will actually acquire.

7 Do you see that testimony?

8 A. I'm looking at it now. I'm looking for
9 the -- what -- what line was that?

10 Q. Would be at page 3.

11 A. Uh-huh. And what line are -- are you reading?

12 Q. Lines 12 through 15.

13 A. Okay. I see it.

14 Q. Do you see that statement that he makes?

15 A. Yes, I do.

16 Q. Do you disagree with that?

17 A. I -- I think it's opinion, and I -- I
18 don't -- I wouldn't say if I agreed or disagreed with
19 this. I think it's -- it's an opinion.

20 Q. Well, in your life's experience, do people
21 normally pay more for something and they get less of
22 it? Do they normally pay more for something that they
23 get less of?

24 A. No.

25 Q. Now, Mr. Carson, I'm gonna go into some

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1 responses to data requests that BPS furnished to the
2 Staff and that you signed. And I will show those to
3 you if -- if it's necessary.

4 But I'm gonna ask you just some summary
5 questions about them and then we'll go in camera when
6 the highly confidential information is approached.

7 And, Mr. Carson, along the lines of what kind
8 of customer State Discount is actually going to
9 attract, let's talk about that for a minute. Is that
10 okay with you?

11 A. Yes.

12 Q. You remember answering some data requests from
13 the Staff, did you not?

14 A. Yes, I did.

15 Q. And some of those data requests sought
16 information about State Discount's cus-- customers, did
17 they not?

18 A. Yes.

19 MR. SNODGRASS: All right. Now, Your Honor, I
20 think we need to go in camera along this line of
21 questioning.

22 JUDGE DIPPELL: All right. Do you have other
23 questions that could -- that aren't for in camera or do
24 you ask these before?

25 MR. SNODGRASS: I prefer to go in this order

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1 if that would be okay, Judge.

2 JUDGE DIPPELL: All right.

3 MR. SNODGRASS: It's a very short line of
4 questioning.

5 JUDGE DIPPELL: All right.

6 The standard Protective Order has been granted
7 in this case. And so I would ask those that are not
8 eligible to hear highly confidential information -- if
9 they could leave the room.

10 And I'll ask the attorneys if they'd help me
11 police who -- who should be here and who shouldn't.

12 All right. I will go ahead and we can go in
13 camera then.

14 (REPORTER'S NOTE: At this point, an in-camera
15 session was held, which is contained in Volume 3,
16 pages 48 through 55 of the transcript.)

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1 (In-camera proceedings were concluded.)
2 JUDGE DIPPELL: Mr. Dandino, do you have
3 cross-examination?
4 MR. DANDINO: Yes, Your Honor.
5 CROSS-EXAMINATION BY MR. DANDINO:
6 Q. Good morning, Mr. Carson.
7 A. Good morning.
8 Q. Did you have any role in negotiating the
9 interconnection agreement between BPS and Missouri
10 Discount?
11 A. My only role was in reading and offering my
12 opinion to our -- other members of our management team.
13 Q. And would you look at -- at the resale
14 agreement that's Exhibit No. 6, please? And if you
15 would look at page 3 --
16 A. Yes.
17 Q. -- that's in paragraph 2. --
18 JUDGE DIPPELL: Mr. Snodgrass?

19 MR. SNODGRASS: Could I approach the Bench and
20 give the Commissioners --
21 JUDGE DIPPELL: Yes. Thank you.
22 MR. SNODGRASS: -- a copy of that exhibit --
23 JUDGE DIPPELL: Thank you.
24 MR. SNODGRASS: -- that was filed?
25 Excuse me, Mike.

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1 MR. DANDINO: Oh, no problem. Thank you. I
2 appreciate it.
3 JUDGE DIPPELL: Thank you, Mr. Snodgrass.
4 Continue, Mr. Dandino.
5 MR. DANDINO: Thank you, Your Honor.
6 BY MR. DANDINO:
7 Q. Mr. Carson, if you look at paragraph 2.3,
8 conditions, and I'd like to direct your attention to
9 the second paragraph of that 2.3.
10 And in particular, I'd like you to look at
11 that last sentence of that paragraph. Could you read
12 that, please?
13 A. Where it starts "telephone company"?
14 Q. Yes. Uh-huh.
15 A. Telephone company may continue to market
16 directly its own telecommunications products and
17 services. And in doing so, may establish independent
18 relationship with Missouri State Discount's customers.

19 Q. But under this resale agreement, Missouri
20 Discount could not maintain those type of relationships
21 with BPS customers; is that correct?
22 A. I'm not sure.
23 Q. Could -- BPS could not offer services to any
24 of your customers; is that correct?
25 A. MSDT could not?

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1 Q. Yes. Uh-huh.
2 A. I guess it would not be impossible.
3 Q. Are they prohibited under this agreement where
4 it says targeted?
5 A. No.
6 Q. So how does -- how does Missouri State
7 Discount solicit their customers?
8 A. I have no idea. I do not know.
9 Q. And you have no idea of -- do you -- do you
10 know how a customer could obtain Missouri State
11 Discount service?
12 A. No, sir, I do not know how they -- how they do
13 that. I know we receive a service order from Missouri
14 State Discount. That's as far as I would know.
15 Q. Uh-huh. And -- and that -- that's part of the
16 requirements under here; they're supposed to send you a
17 service order to switch over service; is that correct?
18 A. That is correct.
19 Q. And you wouldn't do anything to -- you -- I

20 believe you testified you wouldn't do anything to
21 prevent that --
22 A. That's --
23 Q. -- service order?
24 A. That's true.
25 Q. In fact, you would be prohibited under this

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1 agreement and probably under federal law from doing
2 that; isn't that correct?
3 A. Probably so.
4 Q. How does Missouri State Discount place their
5 customers' telephone numbers in the directory? Do they
6 put it in BPS's directory?
7 A. Yes.
8 Q. Has that happened?
9 A. I don't think we've had a directory come out
10 since MSDT has won the customers.
11 Q. Have they requested the -- their customers --
12 A. I'm not sure.
13 Q. -- requested it?
14 A. I'm not sure.
15 Q. What -- what specific services -- or strike
16 that.
17 Does a Missouri State Discount Telephone order
18 all the services that BPS has available for its
19 customers?

20 A. Well, as -- as stated earlier, the -- there
21 are blocks that they require when we put a customer
22 into service.

23 And --

24 Q. Okay. But do they specifically -- let's see.
25 How does -- does a Missouri State Discount

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1 customer have access to basic local operating services?

2 A. They -- as far as I know, they -- they do not
3 have per the -- the operator-completed calls are
4 blocked.

5 Q. So that's something they don't order from you,
6 right?

7 A. No. In fact, they order us to block that.

8 Q. Sure.

9 And the same with access to basic local
10 directory assistance, that's blocked?

11 A. That's correct.

12 Q. What is standard intercept service?

13 A. It would be a recording that you would here on
14 the line. If a customer was called and then something
15 was amiss with their line, you may get a recording that
16 would state -- I don't know -- it could be a
17 different -- there are different recordings that you
18 would get before -- instead of dialing or getting the
19 customer, you would get a recording.

20 Q. Does Missouri State Discount request that

21 service for their customers?

22 A. They don't specifically request it, but that
23 would be a part of -- as far as I know, I should say,
24 they don't specifically request that, but it would be a
25 part of what they would get.

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1 Q. But you have never seen a specific order for
2 it?

3 A. Not a specific order, no. But as -- they do
4 not block that. And I think that would be a service
5 that they would get.

6 Q. Well, I'm trying to get clear in my mind
7 exactly -- when maybe a -- a service order comes into
8 your office --

9 A. Uh-huh.

10 Q. -- through Missouri State Discount, what does
11 it say, just hook this customer up?

12 A. Well, it's a fact -- it's a fact sheet and
13 they just tell us the -- they -- they have a pon (sic)
14 number, a service address. They give -- they tell us
15 what kind of line it is. If it says touch-tone, yes,
16 then it tells us to block the items that we've already
17 discussed.

18 MR. DANDINO: Okay. That's all I have, Your
19 Honor. Thank you.

20 Thank you, Mr. Carson.

21 JUDGE DIPPELL: Thank you.
22 Are there further questions from the Bench for
23 Mr. Carson?
24 Commissioner Murray?
25 COMMISSIONER MURRAY: Yes, thank you.

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1 QUESTIONS BY COMMISSIONER MURRAY:
2 Q. Good morning again.
3 In that State Discount has agreed not to
4 target any current or new customers of BPS, but it
5 may -- its target market may be -- may include those
6 that have been disconnected by BPS.
7 Can you tell me what other markets, other than
8 those three, in BPS's territory would it be possible
9 for State Discount to target?
10 A. Well, as far as target, that's -- that's all
11 they could target per the agreement.
12 Q. Source target. Would you define that?
13 A. Well, that's -- that's hard to define, but
14 that would be where they would aggressively possibly go
15 after a customer that -- in -- in my opinion, that's --
16 Q. A current customer or a customer that would be
17 coming in new to BPS territory?
18 A. Those are specifically omitted as their target
19 market per the resale agreement.
20 Q. Okay. And -- and the ones that are
21 specifically included in the target market are those

22 that have been disconnected for non-payment by BPS; is
23 that correct?

24 A. That is correct.

25 Q. And is there any other market that State

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1 Discount could possibly target?

2 A. Not target per the -- per the agreement.

3 Q. So they are limited, in fact, to those that
4 have been disconnected for non-payment?

5 A. They are limited to targeting those. That
6 would not preclude that another customer could request
7 service. And if they did, we certainly would not deny
8 them MSDT. We would switch that customer.

9 Q. All right. On page 3 of the agreement that
10 Mr. Dandino was asking you about, Exhibit 6, you
11 indicated there in relation to -- or in response to the
12 statement in that agreement that says, telephone
13 company may continue to market -- market directly to
14 its own telecommunications products -- market directly
15 its own telecommunications products and services. And
16 in doing so, may establish independent relationships
17 with Missouri State Discount's customers.

18 You indicated there that it would not be
19 impossible for Missouri State Discount to establish
20 independent relationships with BPS's customers -- kind
21 of the reverse of that statement; is that correct?

22 A. Yes, I did say that.

23 Q. Okay. I'd like to pursue that with you a
24 little bit.

25 If Missouri State Discount were to establish

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1 an independent relationship with a BPS customer by
2 calling that customer and soliciting that customer's
3 business, would that violate the terms of the
4 interconnection agreement?

5 A. It possibly would violate the terms, but I
6 don't think we -- we would -- we would not police that
7 action.

8 It possibly does violate it, but I -- that's
9 all I could say is I -- I don't know that we could
10 police it or do anything about it, but we would switch
11 the customer should they request it.

12 Q. Could MSD initiate contact with any BPS
13 customer without violating the terms? And I'm saying
14 initiate contract with the customer without violating
15 the terms of the agreement.

16 A. I would say no.

17 Q. And can Missouri State Discount advertise its
18 services as generally available in your territory
19 without violating the agreement?

20 A. That's a little harder for me to say. I -- I
21 mean, they could generally advertise and maybe not
22 specifically target customers, but --

23 Q. I'm saying advertise as generally available in
24 your --

25 A. I guess that hinges on what we define as

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1 target and -- prob-- probably not.

2 Q. And then does Missouri State Discount have a
3 physical presence in BPS territory?

4 A. By physical presence?

5 Q. Is there any office? Is there any --

6 A. Not to my knowledge.

7 Q. How would a customer of yours -- a current
8 customer of yours or a new customer coming into your
9 service area be aware that Missouri State Discount
10 exists?

11 A. I -- I don't know. I don't know.

12 COMMISSIONER MURRAY: All right. I -- I think
13 that's all my questions.

14 Thank you.

15 JUDGE DIPPELL: Thank you.

16 Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Good morning, Mr. Carson.

19 A. Good morning, sir.

20 Q. I -- I would -- if -- if you could, could you
21 explain a little bit more about the pricing of -- of
22 this service from Discount?

23 I'm -- I was not clear about what you were
24 saying earlier about the amount it costs per month for
25 the service.

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1 A. For Missouri State Discount?

2 Q. Yes.

3 A. It is a \$50 charge per customer.

4 Q. Per month?

5 A. Yes, sir.

6 Q. All right. And -- and then you said something
7 about \$15 to \$20 after that, and it -- and I wasn't
8 clear about what you were referring to.

9 A. What I was referring to there was the
10 testimony of Mr. Voight, and the question that was
11 presented to me by Staff's attorney.

12 He had asked if it was a good comparison to
13 say that State Discount's charge was seven times more
14 than what a customer would have to pay with BPS, and
15 that's not totally accurate.

16 Because a BPS customer would, to get the same
17 service, have to pay -- I don't know the exact number,
18 but it's in the \$15 to \$20 range. Cuz there are
19 other -- there are other charges involved besides just
20 the basic R1 -- Residential 1 rate, which is \$7.

21 Q. Uh-huh.

22 A. But there are other charges that would be on
23 top of that.

24 Q. And -- and can you give me an apples to apples
25 comparison of what the charges would be with

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1 BPS to -- to get the equivalent service of -- of the
2 \$50-a-month charge from Discount?

3 A. Well, I don't have that in front of me, sir.
4 But it would be in the \$20 range from BPS versus the
5 \$50 range from MSDT.

6 Q. And that's -- so somewhere around \$20, you
7 believe?

8 A. Yes. That -- to -- my be-- the best of my
9 knowledge, yes.

10 Q. And -- and what would that include?

11 A. Well, there are --

12 Q. What would I get for that?

13 A. That -- well, you would get a basic telephone
14 line with all the services that BPS offers, which would
15 be the operator services, the single-party line, touch
16 tone, the -- you would have access to 800, 911, a
17 directory listing.

18 Q. Would there be things that I would get for
19 that price that I could not get from Discount?

20 A. There are services you would get for that
21 price that you would not get from MSDT.

22 Q. What would those be?

23 A. That -- that would be the items that are

24 blocked -- that they force us to block, which
25 are -- they block all direct-dial toll calls, collect

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1 calls, DA calls, operator-completed calls, 900 calls,
2 third-party calls.

3 Q. Anything else?

4 A. There's an item on the -- their service
5 request that says user sensitive, but BPS does not have
6 user-sensitive charges, so that does not apply.

7 Q. All right. The -- do you -- do you believe
8 that -- I mean, it -- that the customers at Discount
9 is -- is contemplated to -- to attract under the resale
10 agreement are customers who have had difficulty paying
11 bills in the past -- telephone bills?

12 A. That -- that appears to be the history
13 and -- of the ones that they have now, yes, sir.

14 Q. And -- and it -- isn't it -- wouldn't it be
15 accurate to say that -- that at least that -- that's
16 contemplated by the -- in the language of the
17 agreement?

18 A. Yes, sir.

19 Q. And so it -- it also is -- makes sense that
20 that might be some of the reason that the blocks are
21 placed on -- on those lines for a particular call, such
22 as 900 calls and -- and other things that -- that would
23 incur -- could incur charges beyond a basic amount --

24 A. Yes.

25 Q. -- or a flat amount?

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1 A. That's very possible.

2 Q. And if I were looking at -- at a phone service
3 in your area and I were making a decision about a
4 ba-- basic local provider, if I could not get service
5 from BPS for -- because I had problems historically in
6 paying my bill with you -- with BPS, is Discount a
7 provider that -- that I could seek to see whether at
8 least I could get a -- a local call made in that area?

9 A. Yes, sir.

10 Q. And -- and isn't that -- and -- and that is
11 really -- it appears that's what it's designed to do,
12 isn't it -- is to provide that -- that service for
13 those who -- who cannot get it from BPS?

14 A. It appears so, yes.

15 Q. And if I were a customer on -- on the other
16 hand that didn't -- didn't have any problems
17 in -- historically in paying the bill and I were
18 looking at service in your area, can -- can you ex--
19 explain to me a reason why I would choose Discount over
20 BPS as -- as my provider with the difference in cost
21 being what it is -- as significant as it is?

22 A. No, sir, I can't.

23 COMMISSIONER GAW: Okay. I think that's all I
24 have.

25 Thank you.

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1 JUDGE DIPPELL: Thank you.

2 Mr. Carson, I just have a couple of -- of
3 questions for you.

4 QUESTIONS BY JUDGE DIPPELL:

5 Q. In your testimony, which we marked Exhibit 1,
6 at -- at page 6 on line 18 -- and Mr. Snodgrass
7 questioned you a little bit about this area.

8 You -- you state there, I assume, then, that
9 MSDT is still providing single-line, touch-tone dialing
10 service; access to local emergency or 911 services, and
11 one standard white pages directory listing.

12 Do you -- do you know -- or is -- is that just
13 an assumption or do you know for a fact that they are
14 providing any of these services?

15 A. They -- they are, in fact, providing many of
16 these services, yes.

17 Q. When did you first learn that BPS -- or I'm
18 sorry -- that MSDT was going to want to provide service
19 in BPS's territory?

20 A. When?

21 Q. Yes.

22 A. I'm afraid I don't remember when. I don't
23 even --

24 Q. Do you remember the context of --

25 A. I -- I seem to remember that they were

1 offering it in other parts of the state, and we just
2 were caught up in -- as an ILEC in the state, we were
3 just included in the -- in the group.

4 Q. At some point, though, someone contacted
5 BPS about negotiating an interconnection agreement?

6 A. That's correct. We have a resale agreement,
7 yes.

8 Q. And -- and I'm sorry. You were asked earlier,
9 but I've -- I've forgotten what your answer was.

10 Were you involved directly in negotiating the
11 resale agreement or --

12 A. I read the agreement and offered my opinions
13 to the marketing -- or to the management team.

14 Q. And did you offer opinions specifically about
15 the -- the targeting provision?

16 A. I don't remember.

17 JUDGE DIPPELL: Okay. I -- I think that's all
18 the questions I have for you.

19 Thank you.

20 Is there recross-examination based on the
21 questions from the Bench? And I realize I didn't give
22 you an opportunity for the in-camera questions, so
23 if -- if you have further recross on the in-camera
24 that's also -- Mr. Snodgrass?

25 MR. SNODGRASS: Yes.

1 RECROSS-EXAMINATION BY MR. SNODGRASS:

2 Q. Mr. Carson, just a brief question in terms of
3 the costs of State Discount service. It's true, isn't
4 it, that State Discount also adds taxes to its \$50
5 charge in addition to its \$50 charge?

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

7 MR. SNODGRASS: All right. That's all I have.

8 JUDGE DIPPELL: Thank you.

9 Mr. Dandino?

10 MR. DANDINO: Yes, Your Honor.

11 RECROSS-EXAMINATION BY MR. DANDINO:

12 Q. Mr. Carson, Judge Dippell asked you about a
13 statement you made on page 6 of your testimony. I
14 believe it was line 18 about your assumptions that
15 MSD is still providing certain services.

16 She asked you -- I believe your comment on her
17 question was that you, in fact, know that. How did you
18 become -- go from an assumption to, in fact, know?

19 A. Well, in -- in looking into it further and
20 reading the service request and the items when they
21 offered -- when they request service from BPS, we know
22 what we provide and we know what they tell us to block.

23 The items that don't tell us to block
24 are -- would remain in place.

25 Q. Okay. And I believe you said -- you said

1 that -- that, in fact, they provided many of those
2 services that are listed there. Which ones don't they
3 provide or don't you provide -- BPS provide to --

4 A. If -- if you're talking about the sentence
5 that starts, I assume then?

6 Q. Yes. Uh-huh.

7 A. They would -- they would provide all of those.

8 Q. Okay. I -- I was confused.

9 A. Yes. I'm sorry.

10 MR. DANDINO: That's all I have, Your Honor.

11 Thank you.

12 JUDGE DIPPELL: Thank you.

13 Is there redirect?

14 MR. ENGLAND: Yes, there is, Your Honor.

15 REDIRECT EXAMINATION BY MR. ENGLAND:

16 Q. Mr. Carson, you were asked a number of
17 questions about the resale agreement. Where did that
18 resale agreement come from, do you recall?

19 A. To my knowledge, that was one that has been
20 used elsewhere throughout the State with other
21 companies between MSDT and other Missouri companies.

22 Q. Was that agreement presented to you by MSDT or
23 was it --

24 A. Yes, it was.

25 Q. As far as you know, was the provision

1 regarding the targeting of customers that you've taken
2 a number of questions on -- was that in the agreement
3 presented to you by MSDT?

4 A. Yes, it was.

5 Q. That was not something that B-- BPS insisted
6 upon or required for purposes of this agreement?

7 A. No, it is not.

8 Q. Do you know if any other resale agreements
9 have been approved by the Commission which are similar
10 to, if not identical to this agreement?

11 A. I believe there are others throughout the
12 State or in the State of Missouri, yes. I -- fairly
13 I -- may be identical to this, but I haven't read them.

14 Q. Customers who have been disconnected from
15 BPS for we'll say failure to pay charges when due, are
16 they still able to be reconnected to BPS?

17 A. Would -- would you ask me again --

18 Q. Sure.

19 A. -- Mr. England?

20 Q. If a customer has been disconnected by
21 BPS because of its failure to pay tariff charges, is
22 that customer forever precluded from reconnecting with
23 BPS or can it get service again from BPS?

24 A. No, it is not forever precluded. It could
25 receive service from BPS again.

1 Q. I believe you indicated that BPS would block
2 some of the services that MSD asks you to block if the
3 BPS customer requests it?

4 A. That is correct.

5 Q. Is it also true that BPS might block that
6 service if the customer fails -- if the BPS customer,
7 that is, fails to pay for it?

8 A. That is correct.

9 Q. And I believe then finally in response to a
10 question from Judge Dippell regarding when MSD first
11 contacted BPS, I believe in your response to some data
12 requests from Staff you indicated when the
13 interconnection agreement was approved.

14 Do you recall that date?

15 A. The approval date, I believe, was
16 October 16th, 2001.

17 Q. Is it fair, then, to assume that MSD would
18 have contacted BPS sometime prior to that date,
19 regarding its desire to serve customers --

20 A. Yes.

21 Q. -- in the BPS area?

22 Any idea how -- how much time may have
23 preceded that date of the resale agreement approval?

24 A. No, sir, I don't remember.

25 MR. ENGLAND: That's all the questions I have.

1 Thank you.

2 JUDGE DIPPELL: Okay. I have one more
3 question for you, Mr. Carson.

4 FURTHER QUESTIONS BY JUDGE DIPPELL:

5 Q. Does BPS have any procedure for verifying
6 when -- if it's contacted by an IXC or someone wanting
7 to interconnect with it, does it have any procedure for
8 verifying that that telephone company is certificated,
9 has a tariff or anything like that or do you negotiate
10 with anyone?

11 A. Are you saying if they wanted to interconnect
12 with people?

13 Q. Well, if -- if someone wanted to -- like
14 MSDT wanted to negotiate a resale agreement with BPS,
15 does BPS ask them -- have any procedure set out where
16 they would verify that they're certified or anything
17 like that or do you just -- do you leave that up to the
18 other company?

19 A. We do not have a procedure in place. But
20 before we could proceed by using our attorneys and
21 other legal advice, we would -- we would get to that
22 I'm certain before that resale agreement was approved.

23 JUDGE DIPPELL: All right. Is there any
24 recross based on my questions?

25 (No response.)

1 JUDGE DIPPELL: Any redirect?

2 MR. ENGLAND: No, Your Honor.

3 JUDGE DIPPELL: Okay. Then I believe you're

4 finished, Mr. Carson. Thank you very much. You can

5 step down.

6 (Witness excused.)

7 JUDGE DIPPELL: I'm gonna go ahead and take

8 about a 20-minute break. It's 10 after 10 by the clock

9 in the back of the room, and we'll come back at about

10 10:30.

11 Thank you. We'll go off the record.

12 (A RECESS WAS TAKEN.)

13 JUDGE DIPPELL: Okay. Let's go ahead and go

14 back on the record.

15 All right. I apologize for the delay.

16 We're, as seems to be usual, having some technical

17 difficulties.

18 Let's go ahead then with -- Mr. Schoonmaker

19 has taken the stand.

20 Would you please raise your right hand?

21 (Witness sworn.)

22 JUDGE DIPPELL: Thank you.

23 Go ahead, Mr. England.

24 MR. ENGLAND: Thank you, Your Honor.

25 ROBERT C. SCHOONMAKER testified as follows:

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1 DIRECT EXAMINATION BY MR. ENGLAND:

2 Q. Could you please state your full name and
3 business address for the record, please.

4 A. My name is Robert C. Schoonmaker. My business
5 address is 2270 La Montana Way, Colorado Springs,
6 Colorado 80918.

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

8 A. I'm employed by GVNW Consulting, Inc. and
9 am -- and a vice president of that company.

10 Q. Have you been retained by the BPS Telephone
11 Company to appear on their behalf?

12 A. I have.

13 Q. And in that capacity, have you also caused to
14 be prepared a document entitled rebuttal testimony of
15 Robert C. Schoonmaker, and which I believe has been
16 marked for purposes of identification in this
17 proceeding as Exhibit No. 2?

18 A. Yes, I did prepare that.

19 Q. Turning your attention to that exhibit, are
20 there any changes or corrections that need to be made
21 at this time?

22 A. No.

23 Q. If I were ask you the questions that appear in
24 that testimony, would your answers here today under
25 oath be the same as those appearing in the testimony?

1 A. Yes.

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

4 A. Yes.

5 MR. ENGLAND: Thank you, sir. I have no other
6 questions of the witness. Would offer Exhibit No. 2
7 into evidence and tender the witness for
8 cross-examination.

9 JUDGE DIPPELL: Thank you.

10 Are there any objections to Exhibit No. 2?

11 MR. SNODGRASS: No objections from Staff,
12 Judge.

13 JUDGE DIPPELL: Thank you.

14 MR. DANDINO: No objections.

15 JUDGE DIPPELL: All right. Then I will enter
16 Exhibit No. 2 into the record.

17 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE DIPPELL: Is there cross-examination
19 from Staff?

20 MR. SNODGRASS: Yes, Judge.

21 CROSS-EXAMINATION BY MR. SNODGRASS:

22 Q. Good morning, Mr. Schoonmaker.

23 A. Good morning, Mr. Snodgrass.

24 Q. My name is Cliff Snodgrass. I represent the
25 Staff here today as you've probably heard. Let's go

1 ahead and get started.

2 A. That --

3 Q. I did --

4 A. -- sounds fine.

5 Q. I direct you to your testimony at page 3,
6 lines 17 through 20.

7 A. All right.

8 Q. And you -- you indicate at that section of
9 your testimony that much of Mr. Voight's and
10 Ms. Meisenheimer's testimony centers around the
11 question of whether there is effective competition from
12 State Discount in BPS's operating area; is that a fair
13 statement?

14 A. That's what my testimony says, yes.

15 Q. Okay. Now, Mr. Voight uses the word
16 "competition" in his testimony, Mr. Schoonmaker, but
17 I'd ask you to point out where he uses the word
18 "effective competition."

19 A. He -- he may have. And -- and when I wrote
20 that testimony, I was using that in a generic term,
21 rather than -- than as a -- a legal or economic term.

22 Q. Be fair that's your characterization of what
23 Mr. Voight said?

24 A. He -- he very well has -- may have not used
25 the word "effective" in his testimony.

1 Q. All right. Well, let me just ask you to a
2 common sense example the difference between competition
3 and effective competition.

4 If I were to play a one-on-one basketball game
5 with Michael Jordan, I might be said to be competing
6 with him; is that true?

7 A. Might be.

8 Q. Whether -- whether -- whether or not that was
9 effective competition is a horse of a different color;
10 isn't that right?

11 A. Probably.

12 Q. As a matter of fact, effective competition is
13 defined in 386.020.13, is it not -- the statute?

14 A. There is in -- in that section -- it says it
15 will be determined by the Commission, based on a number
16 of factors. So it at least gives the Commission
17 guidance as to how to determine whether there's
18 effective compe-- competition.

19 Q. All right. Let's -- I'd like to go to a
20 different area, Mr. Schoonmaker. I direct your
21 attention, if you'd be kind enough to look at your
22 testimony, page 14, lines 6 through 11.

23 A. All right.

24 Q. You -- you indicate in that testimony that you
25 think the statute, referring to 386.020.4 is quite

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1 clear in its definition of basic local

2 telecommunications service?

3 A. That's on line 11, yes.

4 Q. And that's your position here today that the
5 statute's definition of basic local service is quite
6 clear; is that correct?

7 A. Yes.

8 Q. All right. Well, let's talk about that
9 position a little bit further.

10 Now, on 386.020.4 defines basic local
11 telecommunications service in part as two-way switched
12 voice service within a local calling scope as
13 determined by the Commission.

14 In part would you agree with that?

15 A. Yes, that's part of the definition.

16 Q. What does two-way mean in that statute?

17 A. Would mean that the communication could go
18 both from the calling party to the called party and
19 back the other way.

20 Q. Well, let me ask you this: Is two-way defined
21 anywhere in Missouri telecommunications statutes?

22 A. I don't know.

23 Q. Does two-way mean the ability to both
24 originate and terminate a telephone call, in your mind?

25 A. Yes.

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1 Q. All right. What does switched mean in the

2 context of that statute, in your understanding?

3 A. It would mean that the call -- in order to be
4 completed, it goes into a switching entity and is
5 switched, as opposed to having a direct physical
6 facility connection between the two ends of the
7 communication.

8 Q. Now, is the word "switched" defined anywhere
9 in Missouri telecommunications statutes,
10 Mr. Schoonmaker?

11 A. I don't know.

12 Q. Would special access be a switched service,
13 sir?

14 A. No.

15 Q. And let's go on to the word "voice service"
16 in -- as it's used in the statute.

17 What does voice service mean to you?

18 A. Service that generally involves communicating
19 a -- a person's voice.

20 Q. All right. Is that -- is that term, as simple
21 as it -- it may seem to you, defined anywhere in
22 Missouri statutes?

23 A. I don't know.

24 Q. Is T1 line a voice service, sir?

25 A. A T1 line is generally provisioned not as a

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1 voice service, but as a -- a special access service or
2 a dedicated service between two points and is generally

3 not switched.

4 Q. If I were to use the internet to make a
5 telephone call such as Mid-Missouri Star One service,
6 is that a voice service?

7 A. If you're talking, I would think that it's a
8 voice service, yes.

9 Q. Is a fax line a voice service, sir?

10 A. The service that a fax line uses is a voice
11 service, because it can communicate voice service.
12 Generally when one attaches a fax to the end of that
13 line, there's a modem and -- and it's used for a data
14 transmission.

15 But the service can be used as a voice service
16 and is -- is considered a voice service.

17 Q. Well, also the statute talks about within a
18 local calling scope. What does that mean to you?

19 A. A local calling scope is an area defined in
20 the company's tariffs that are approved by the
21 Commission that indicates the area within which a --
22 calls will be completed without toll charges and
23 without being subject to the Commission's and the FCC's
24 dialing parity -- or toll dialing parity and
25 presubscription rules.

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1 Q. Well, is within a local calling scope defined
2 anywhere in Missouri statutes, sir?

3 A. Doesn't appear that it is. At least not in
4 Section 386.020.

5 Q. Is an extended area of service a part of local
6 calling scope?

7 A. Yes.

8 Q. Let's go generally to the statute once again.
9 If I'm repetitive, please forgive me.

10 386.020.4 defines basic local service as a
11 two-way switched voice service within a local calling
12 scope as determined by the Commission comprised of any
13 of the following services and are recurring and
14 non-recurring charges.

15 Would you say I've stated that properly?

16 A. That was the quote, yes.

17 Q. You don't interpret that phrase "as determined
18 by the Commission" in the context of this definitional
19 statute to give the Commission the ability to say that
20 two-way switched voice service must consist of certain
21 service features, such as directory assistance, do you,
22 Mr. Schoonmaker?

23 A. No. I interpret that phrase to be dil--
24 directly app-- applicable to the phrase before it
25 "within a local calling scope." And the Commission

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1 determines what the local calling scope is.

2 Q. So based on that, your position here today is
3 that the Commission can take no part in determining

4 basic local telecommunications service, other than
5 determining a local calling scope; is that your
6 position?

7 A. In -- in terms of the statutory def--
8 definition, I believe that that's what that phrase is
9 referring to -- that it's referring to the Commission
10 determines a local calling scope.

11 And the Commission obviously has authority to
12 establish rules, for example, for intraLATA
13 presubscription and how it's going to be done and so
14 forth.

15 And -- and has the authority to approve
16 tariffs and so forth. And -- and that doesn't take
17 away from the Commission's authority that are granted
18 in other parts of the statute.

19 But in terms of defining basic local
20 telecommunications service, that's the definition in
21 the statute.

22 Q. All right. Mr. Schoonmaker, do you happen to
23 have Mr. Voight's testimony with you?

24 A. I do.

25 Q. I'd ask you to -- to take a look at

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1 that -- his direct testimony, please, page 13.

2 Do you see that?

3 A. I have page 13 here, yes.

4 Q. Looking at page 13, Mr. Voight mentions
5 Section 392.451 in the context of whether State
6 Discount is providing basic local service, does he not?

7 A. He does.

8 Q. Now, Mr. Schoonmaker, you've read 392.451,
9 have you not, sir?

10 A. I have read -- yeah, I think I've read all of
11 it recently.

12 MR. SNODGRASS: I'd like to approach the
13 witness, Judge.

14 JUDGE DIPPELL: If you would give the
15 witness's attorney a copy of whatever it is --

16 MR. SNODGRASS: I will.

17 JUDGE DIPPELL: -- that you're gonna --

18 MR. SNODGRASS: Yes, I plan to.

19 JUDGE DIPPELL: Thank you.

20 MR. SNODGRASS: I'd like this document marked
21 for the record, Judge, for identification.

22 JUDGE DIPPELL: Exhibit No. 7 is the exhibit
23 number.

24 THE WITNESS: Can I have one --

25 MR. SNODGRASS: Sure. No.

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1 THE WITNESS: -- since you're probably gonna
2 ask me about it.

3 (EXHIBIT NO. 7 WAS MARKED FOR IDENTIFICATION.)

4 BY MR. SNODGRASS:

5 Q. Now, Mr. Schoonmaker, I've -- I've shown you
6 what's previously been marked as Exhibit No. 7. I
7 direct your attention to the right side of that
8 exhibit.

9 Does that exhibit appear to show
10 Statute 392.451?

11 A. It does.

12 Q. I would ask you to look at 392.451.1,
13 paragraph 1.

14 A. All right.

15 Q. Would you be kind enough to read into the
16 record 392.451.1, paragraph 1, sir? I'd appreciate
17 that.

18 A. The applicant shall, throughout the service
19 area of the incumbent local exchange telecommunications
20 Company, offer all telecommunications services which
21 the Commission has determined are essential for
22 purposes of qualifying for state Universal Service Fund
23 support; and.

24 Q. Thank you.

25 Would you read the paragraph just above that,

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1 please, also?

2 A. Starting with "notwithstanding"?

3 Q. Yes, sir.

4 A. Notwithstanding any provisions of this act to

5 the contrary, and consistent with Section 253(f) of the
6 Federal Telecommunications Act of 1996, the Commission
7 shall approve an application for a certificate of local
8 exchange service authority to provide basic local
9 telecommunications service or for the resale of basic
10 local telecommunications service in an area that is
11 served by a small incumbent local exchange
12 telecommunications company only upon a showing by the
13 applicant, and a finding by the Commission after notice
14 and hearing, that.

15 Q. Thank you, sir. I appreciate you taking time
16 to read that for me.

17 In terms of the language you just read and
18 your experience, Mr. Schoon-- Schoonmaker, do you
19 understand this language to mean -- this is gonna be
20 kind of a long question -- that the applicant to obtain
21 a certificate to provide basic service in a small
22 incumbent service area shall offer all
23 telecommunications services which the Commission has
24 determined are essential for purposes of qualifying for
25 state Universal Service Fund support?

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1 A. Yes. And -- and the Commission -- I mean,
2 the -- the statute basically says that the Commission
3 shall determine that before issuing a certificate to
4 them for basic local telecommunications service.

5 MR. SNODGRASS: I'd like this exhibit marked,

6 Judge.

7 JUDGE DIPPELL: It's Exhibit No. 8.

8 (EXHIBIT NO. 8 WAS MARKED FOR IDENTIFICATION.)

9 BY MR. SNODGRASS:

10 Q. Mr. Schoonmaker, I'm showing you an exhibit
11 that's been marked Exhibit No. 8. I direct you to the
12 left side top of that exhibit.

13 Would you acknowledge that that's Commission
14 Rule 4 CSR 240-31.010?

15 A. Yes.

16 Q. And you're familiar generally with Commission
17 rules here in Missouri, aren't you, sir?

18 A. Yes.

19 Q. Now, is it a true statement that this rule
20 defines what the Commission has determined are
21 essential local telecommunications services?

22 A. It does.

23 Q. And this rule does not say that these
24 essential services comprise any of these services, does
25 it?

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1 A. No. It says comprised of the following
2 services.

3 Q. So you'd read that to mean that all those
4 services are required?

5 A. Yes.

6 Q. Now, does State Discount -- you're familiar
7 with State Discount's offering?

8 A. Generally familiar with it.

9 Q. Does State count -- State Discount provide
10 operator assistance?

11 A. No. And -- and they don't provide access to
12 basic local operator services.

13 Q. They don't provide access to directory
14 assistance either; that's a fair statement, isn't it?

15 A. Well, that's my understanding, yes.

16 Q. I'd like to go to a different area of
17 questioning, Mr. Schoonmaker.

18 Now, you've indicated in your testimony that
19 competition is not relevant to the statutory
20 requirements for election to price cap status; is that
21 a fair statement?

22 A. Yes.

23 Q. Let's examine that proposition. Now, you've
24 analyzed statutes before as a regulatory consultant
25 many times, have you not?

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1 A. Yes.

2 Q. And you've testified about your understanding
3 of those statutes and what you think they mean; is that
4 right?

5 A. Yes.

6 Q. You've given your construction of those

7 statutes -- your opinion?

8 A. Yes.

9 Q. Now, your testimony talks about the price cap
10 election statute 392.245.2; is that correct?

11 A. I've got to make sure I keep the numbers
12 straight. Yes, it does address that.

13 Q. Now, Chapter 392 has many other sections or
14 parts to it than just 245.2, does it not?

15 A. I'm sure that it does.

16 Q. Now, 392.242 -- 245.2 does not use the word
17 "competition." I'm sure you agree with that.

18 A. That's correct.

19 Q. However, if you go to Section 392.185 of
20 Chapter 392, that section discusses the purpose of
21 Chapter 392, does it not?

22 A. I don't know. I didn't examine that -- that
23 section.

24 MR. SNODGRASS: Okay. Judge, I -- I might
25 need a moment to make some copies of the statute. I do

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1 not have them for distribution, unless no one objects
2 to me using the singular copy that I have.

3 MR. ENGLAND: If -- if counsel wants to
4 inquire of the witness based on the Revised Statutes of
5 the State of Missouri, I don't think I need to see
6 them.

7 JUDGE DIPPELL: Okay.

8 MR. ENGLAND: Not that I know them my heart.

9 Far from it. I -- I -- I -- I expect that

10 Mr. Snodgrass will be giving him a correct copy.

11 JUDGE DIPPELL: Very well.

12 MR. SNODGRASS: I'd -- I'd like to have this
13 exhibit marked and approach the witness with it, Judge.

14 JUDGE DIPPELL: Okay. Go ahead. And we can
15 mark it as Exhibit 8 -- or I'm sorry -- Exhibit 9.

16 (EXHIBIT NO. 9 WAS MARKED FOR IDENTIFICATION.)

17 JUDGE DIPPELL: I also don't necessarily
18 believe that it's necessary to mark the statutes as an
19 exhibit. But if that helps keep track of the paper
20 that's moving around the hearing room, we'll -- we'll
21 go ahead. It's not too terribly cumbersome to the
22 record.

23 BY MR. SNODGRASS:

24 Q. Mr. Schoonmaker, looking this exhibit over,
25 would you look at 392.185?

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1 A. Yes.

2 Q. That describes the purpose of Chapter 392,
3 does it not?

4 A. That's the heading of the section, yes.

5 Q. Would you just -- would you -- would you read
6 what the purpose of that -- what that purpose of the
7 chapter says, please?

8 MR. ENGLAND: Your Honor, I guess it's an
9 objection. But if -- if it's already an exhibit or
10 about to be an exhibit, it seems to me that it speaks
11 for itself. I don't think we need to read it into the
12 record.

13 My objection would be redundancy.

14 JUDGE DIPPELL: I think to clarify what the
15 questions that Mr. Snodgrass are getting ready to ask,
16 I presume, I'll allow the witness to go ahead.

17 It's -- again, it's not too terribly
18 burdensome on the record at this point.

19 You may go ahead and answer the question,
20 Mr. Carson (sic).

21 BY MR. SNODGRASS:

22 Q. Let me rephrase the question.

23 Mr. Schoonmaker, 392.185 discusses the purpose
24 of Chapter 392, does it not?

25 A. Yes.

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1 Q. And in that wording of this section it says
2 that this chapter shall be construed to promote certain
3 things; is that fair?

4 A. Yes.

5 Q. Paragraph 6 of this section says that
6 Chapter 392 shall be construed to allow full and fair
7 competition to function as a substitute for regulation

8 when consistent with the protection of rate payers
9 otherwise consistent with public interest, does it not?

10 A. It says that, yes.

11 Q. And paragraph 5 of this section says that
12 Chapter 392 shall be construed to permit flexible
13 regulation -- regulation of competitive
14 telecommunications companies and competitive
15 telecommunications services, does it not?

16 A. That's correct.

17 Q. Now, by discussing 392.245.2 in your
18 testimony, are you suggesting that the Commission
19 cannot look to other parts of Chapter 392 to determine
20 the appropriate meaning to be given to 392.245.2?

21 A. Now, let me make comment again that I'm --
22 that I'm not a lawyer and we may be getting into issues
23 of statutory construction.

24 But, you know, my understanding would be the
25 Commission can look to those, but they also need to

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1 look at the specific language of the statute.

2 And I suspect -- which takes precedent over
3 the other does get very much into a legal issue and
4 I'll leave that to the -- the briefs and the lawyers to
5 decide.

6 Q. All right. Well, let me discuss your
7 knowledge of what courts have done with certain
8 statutes, if I may. And if you don't under--

9 understand it or want to answer the question, that's
10 fine.
11 A. Okay.
12 Q. In your many years of experience as a
13 regulatory consultant, you've read various court
14 opinions --
15 A. I have.
16 Q. -- talking about the meaning of statutes, have
17 you not?
18 A. I have.
19 Q. And do you agree or disagree that courts are
20 allowed to look at the entire statute -- statute --
21 entire statute before interpreting one of its parts?
22 A. I would think that's probably generally true.
23 Q. I would direct your attention to --
24 Mr. Schoonmaker, to page 5 of your testimony.
25 A. Excuse me just a second. Let me make a note.

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1 Q. Did you find it, sir?
2 A. Okay. No. What -- what was the reference
3 again?
4 Q. Page 5.
5 A. Of my -- of my testimony?
6 Q. Yes, sir. Thank you.
7 A. All right.
8 Q. You say at page 5 -- and I apologize for not

9 having the lines here available in my question of your
10 testimony -- that the Commission can rightfully make an
11 inquiry into whether the conditions to elect price cap
12 status have been met. Do you agree with that?

13 A. That's -- that's a basic paraphrase of my
14 testimony, yes.

15 Q. Okay. Well, are you saying the Commission can
16 examine whether or not pri-- whether or not a price cap
17 election is valid?

18 A. Yeah. Yes.

19 Q. And it's your opinion at page 5 that BPS's
20 election would remain in place until such time as the
21 Commission has determined that BPS's election is
22 invalid?

23 A. That's what I stated, yes.

24 Q. Now, hypothetically, Mr. Schoonmaker, let's
25 assume for a minute that a small incumbent LEC made a

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1 price cap election and that it was invalid for some
2 reason at the moment it was made.

3 And subsequently in this hypothetical this
4 election is challenged and ultimately declared invalid
5 by the Commission.

6 Are you following me?

7 A. Yes.

8 Q. Under this hypothetical scenario, would it be
9 your position that something void from the beginning

10 would remain valid until declared valid by the
11 Commission?

12 A. I guess my -- my belief would be that the way
13 the statute is written it would be valid until such
14 time as the Commission finds that it's void.

15 And at that point in time, if -- in finding
16 that it was void, they find that it was never valid,
17 you know, that would go back to the beginning.

18 And they -- and -- and the ultimate end -- end
19 result would be that it were -- was void from the
20 beginning.

21 Q. All right. Directing your -- your attention,
22 if I may, sir, to pages 7 and 8 of your testimony. I
23 just want to paraphrase for a minute. I'm sure if I
24 misstate it, you'll let me know, or your counsel will.

25 It appears to me that you're saying that the

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1 Commission has already determined in another case that
2 it doesn't need to consider competitive issues in
3 connection with the price cap statute?

4 A. Yes, I say that.

5 Q. And the case you're talking about is the SWBT
6 price cap case, right?

7 A. Yes.

8 Q. T0-97-397?

9 A. That's correct.

10 Q. Now, factually there's a -- there's a
11 difference here, is there not, SWBT was, in fact, a
12 large ILEC?

13 A. That's correct.

14 Q. And in this case BPS is a small ILEC; is that
15 right?

16 A. That's true.

17 Q. And TO-97-397 was decided by the Commission
18 fi-- over five years ago; is that fair?

19 A. That sounds about right.

20 Q. Now, by con-- by referring to the Commission's
21 previous decision in the SWBT case, are you suggesting
22 that this Commission can't change its mind on issues
23 over time?

24 A. Well, there -- there are certainly many issues
25 that the Commission can change its mind over time

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1 and -- and make a different ruling on.

2 That's probably a little more difficult in
3 regards to the construction of statutes, but I suppose
4 it may even be possible then.

5 Q. Thank you, sir.

6 Let's go to your testimony talking about the
7 competition, in fact, that BPS is facing in its
8 everyday life.

9 You discuss the level of competition BPS faces
10 from wireless carriers in your testimony at page 9,

11 lines 4 through 5; is that right?

12 A. Yes, and subsequent to that.

13 Q. Now, you say at lines 6 through 8 of page 9
14 that competition from these carriers, while very real,
15 is not a valid consideration in conjunction with the
16 statutory provisions that focus on carriers that have
17 been issued a certificate by the Commission?

18 A. That's correct.

19 Q. Now, by this statement, do you mean that the
20 price cap statutes, as currently written, contemplate
21 competition from certifica-- certificated carriers; is
22 that what you're saying?

23 A. In --

24 Q. That the statutes as written contemplate
25 competition from certificated carriers?

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1 A. In terms of making the price gap determination
2 that the tests include whether that carrier has a
3 certificate from the Commission or not, and the
4 wireless carriers don't get certificates from the
5 Commission, so they would not be included in that.

6 Q. Thank you, sir.

7 Now, going to page 16 at the end of your
8 testimony, Mr. Schoonmaker, I'd -- I'd ask you to look
9 at lines 3 and 4.

10 And you say in that area of your testimony

11 that there are certain advantages to being subject to
12 price cap regulation. There are also potential
13 significant disadvantages?

14 A. Yes, I do.

15 Q. Now, you also indicate in your testimony that
16 one of the disadvantages of price cap regulation at
17 lines 5 through 6 is the limit on increasing rates that
18 are included in a price cap statute.

19 Do you say that?

20 A. Yes.

21 Q. By that, do you mean that losing the ability
22 to increase rates over the price cap maximum limit is a
23 disadvantage to being price cap regulated?

24 A. Yes. And then depending on the particular
25 economic circumstances, it could be a significant one.

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1 Q. Well, would you explain to me, sir, how the
2 ability to increase rates above the price cap maximum
3 would make a small ILEC more competitive to wireless
4 carriers?

5 A. Well, that really wasn't the context that I
6 was referring to in regards to that. What I -- the
7 situation that I had in mind when I wrote -- wrote that
8 was, for example, a situation where the cost of
9 providing telecommunications service increased
10 substantially for some reason -- the change in
11 technology or some other reason, particularly that was

12 significantly different than the general of inflation
13 that's included in the adjustment factors that are
14 included in the price cap statute.

15 And -- and that a company could in certain
16 circumstances find its financial viability
17 significantly challenged by being under price cap
18 regulation.

19 Q. Which would amount to an increase in rates; is
20 that what you're saying, cuz of these extra problems?

21 A. If the cost increased substantially, there
22 might be a need for increase in rates. And -- and
23 beyond that, which is generally allowed in the price
24 cap statute, that's one of the potential disadvantages
25 of -- of being subject to this kind of regulation.

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1 MR. SNODGRASS: Thank you, sir. I don't have
2 any further questions for you.

3 JUDGE DIPPELL: Thank you.

4 So cross-examination from Public Counsel?

5 MR. DANDINO: No questions, Your Honor.

6 Thank you.

7 JUDGE DIPPELL: Commissioner Gaw, do you have
8 questions for this witness?

9 COMMISSIONER GAW: Just a second. I'll tell
10 you.

11 I -- I don't believe so.

12 THE WITNESS: Okay.

13 JUDGE DIPPELL: All right. I have just a few
14 questions that -- Commissioner Lumpe wasn't able to be
15 here this afternoon, so she -- or this morning, so she
16 asked me to ask you a couple of things.

17 THE WITNESS: All right.

18 QUESTIONS BY JUDGE DIPPELL:

19 Q. Are you -- are you aware of an overearnings
20 investigation related to BPS Telephone Company that is
21 also pending before the Commission?

22 A. I -- yes, I'm aware that the -- the Commission
23 Staff filed a complaint and wanted to conduct such an
24 investigation.

25 Q. What -- what, if any, that you know is the

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1 relationship of the overearnings case to this case for
2 BPS?

3 A. Well, if BPS is found to be subject to price
4 cap reg-- regulation in their -- their election
5 is -- is valid, under that statute their rates -- their
6 maximum rates would be set at the rates that were in
7 effect on December 31st, 2001.

8 And the Commission would not be able to
9 conduct an earnings investigation similar to the
10 situation with Southwestern Bell. And there were
11 parties that suggested the Commission should conduct an
12 earnings investigation of them before they went under

13 price cap regulation.

14 The Commission determined that not
15 appropriate.

16 Q. And would you consider the -- the Commission
17 not being able to conduct an earnings investigation of
18 benefit of coming under price cap status?

19 A. It's -- it's one factor among several that
20 would be of some benefit to the company.

21 Q. Do you -- in your testimony at page 16
22 you -- you state at the very -- very end on line 12
23 that it's your opinion -- lines 11 through 13,
24 actually -- that it's your opinion that very few
25 companies would elect price cap status.

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1 Even in light of the potential benefit of not
2 having an earn-- overearnings case, is that still your
3 opinion?

4 A. Well, that's certainly one factor that
5 companies would take into consideration if they had
6 that opportunity. And -- and there are a number of
7 companies in the state that are, in fact, are not only
8 not overearning that are -- they're underearning. And
9 it certainly would be disadvantageous to them to be put
10 under price cap regulation.

11 And there are others that -- my general
12 presumption would be that are reasonably close to where

13 their -- their rate of return is. And -- and in view
14 of the increasing competition that they're facing
15 and -- and so forth, for those companies there's not a
16 lot of attractiveness to price cap regulation.

17 And that's part of the reason why -- why I
18 offer that opinion. In the meetings that I have with
19 those clients, there are very few of them that are
20 following this case with bated breath waiting --
21 waiting to file, as Mr. Voight's testimony suggests.

22 I -- you know, I won't say that there won't be
23 any that ultimately would file for price cap regulation
24 if they had the opportunity. But many of them, even
25 faced with competition -- probably most of them

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1 wouldn't.

2 Q. And -- and how many small incumbent telephone
3 companies do you -- are you familiar with, as far as
4 their -- how many do you consult with and --

5 A. I -- there are generally around 30 in the
6 group that -- that I -- I offer consulting services
7 for. Not all of those have I looked specifically at
8 their earnings levels. I mean, I -- I do consult in
9 various types in those companies.

10 But we meet with all of them and in -- and
11 with many of the other 10 companies that I don't
12 generally represent on a monthly basis.

13 And I talk to the people in those meetings

14 informally and so forth. I -- I just don't see a lot
15 of interest in -- in pursuing this.

16 Q. And so when you say very few, you mean 1 or 2
17 or 10 to 12? What -- what --

18 A. I -- I would be surprised if it was more than
19 1 or 2, if -- if any.

20 Q. You're generally familiar with the prices of
21 basic local for many of these small telephone
22 companies?

23 A. Generally familiar, yes.

24 Q. Why -- why do you believe that a customer
25 would pay \$50 for basic local service when they could

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1 subscribe to it for \$7 or \$20 as Mr. Carson said?

2 A. Well, I -- I -- I think there would be few
3 that would. I think Mr. Carson is correct that --
4 that -- and I think from what I understand of MSDT's
5 business plan, their primary target is customers who
6 have been disconnected for non-payment.

7 I mean, another person that might do that is
8 if they had some personal animosity towards the company
9 or its manager or its owner or something. You know,
10 out of spite to themselves they might take
11 MSDT service.

12 But I -- I think those occasions would
13 certainly be rare.

14 Q. And, in your opinion, do you think for there
15 to be competition in the local market that there needs
16 to be access to interexchange carriers?

17 A. Well, I -- I think -- I think one thing that
18 needs to -- well, let -- let me start this way.

19 I think companies who subscribe to MSDT,
20 although they do not have one plus and operator handled
21 access to interexchange carriers, have been -- as has
22 been described still can make long distance calls.

23 And their primary needs of being able to do
24 that is to go to the 7/11 or the grocery store or Sam's
25 and -- or any of a hundred other places, buy a prepaid

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1 long distance card -- and they're readily available.

2 And those cards involve dialing an 800 number
3 or an 888 number, and then being able to divide -- dial
4 toll calls. And it takes a few more digits to dial,
5 but they can -- they can, in fact, make long distance
6 calls if they want to not just on a direct dial basis.

7 They have to go out and get a prepaid calling
8 card.

9 JUDGE DIPPELL: Okay. That's all the
10 questions I have.

11 And -- oh, Commissioner Gaw has another
12 question, I believe.

13 COMMISSIONER GAW: Thank you.

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. When you were looking at this case --
16 or -- in -- in your knowledge under -- under
17 Section 392.245.4, which is the section that --
18 that deals with the in-- the increases under
19 price cap, I think. You -- are you familiar with it?

20 A. Generally. I was just quickly reviewing it
21 once I found it here in front of me.

22 Q. I was wondering if -- I'm trying to understand
23 if -- if BPS were to prevail on this case what the
24 ramifications of that would be to what -- to what rates
25 potentially.

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1 And I notice that -- that in that section it
2 talks about basic local telecommunications services and
3 exchange access.

4 Is it -- is it your understanding that -- that
5 the access rates charged by BPS, if -- if BPS prevailed
6 on this, would then be converted to price cap status,
7 as well as -- as the -- the basic telecommunications
8 charges of the company?

9 A. Yes. As I read that, they would fall under
10 the maximum provision as well. And -- and I -- I -- I
11 think, although I'm not certain -- I was looking for
12 the section that talks about how rates can be
13 increased. And I -- but I think access rates are under
14 the same provisions as basic local service rates.

15 And the maximum prices are capped. And, in
16 fact, if the -- the changes in the inflation factors,
17 if you will, go down, the company would have to reduce
18 both their local exchange rates and their access rates
19 by that -- that percentage.

20 Q. Uh-huh. And -- or -- or they could -- that
21 the -- they also would go up if they -- if the -- the
22 formula and provisions under the -- under 245 would go
23 up?

24 A. That's correct.

25 Q. And how are acc-- how are access rates set

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1 currently for BPS?

2 A. Well, BPS's access rates were primarily set at
3 the time that -- that the company came into existence
4 from a purchase of -- of assets from GTE Corporation at
5 that point in time. And they were set at their access
6 levels at that time.

7 There may have been one or two minor
8 adjustments to those rates, based on various Commission
9 activities that had taken place since that time, such
10 as intraLATA presubscription implementation.

11 And I don't -- I don't specifically recall
12 whether they've changed since that time or not.
13 They've basically been in place for a number of years.

14 Q. Do you know approximately when they acquired
15 the assets from GTE?

16 A. I think it was in the early 1990s. But I'm
17 not -- I'm not real comfortable with that time -- time
18 tense to fly these days.

19 Q. All right. Do you know what the access rates
20 are in the BPS?

21 A. Not -- not specifically, no. I don't have
22 those with me.

23 COMMISSIONER GAW: All right. That's all I
24 have. Thank you.

25 FURTHER QUESTIONS BY JUDGE DIPPELL:

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1 Q. Those access rates would be in BPS's tariff;
2 is that correct?

3 A. That's correct.

4 JUDGE DIPPELL: Okay. Thank you.

5 That's all the questions we have for you,
6 then, Mr. Schoonmaker. You may -- oh, I'm sorry.

7 We haven't -- we haven't done all the good
8 stuff. Recross based on questions from the Bench.

9 Staff?

10 MR. SNODGRASS: Nothing.

11 JUDGE DIPPELL: Public Counsel.

12 MR. DANDINO: No questions, Your Honor.

13 Thank you.

14 JUDGE DIPPELL: Is there redirect?

15 MR. ENGLAND: There is. And I hope it's

16 brief. Depends on how cooperative my witness is.

17 MR. DANDINO: Know that feeling.

18 REDIRECT EXAMINATION BY MR. ENGLAND:

19 Q. I believe Mr. Snodgrass had some questions
20 regarding the Commission rule defining essential local
21 telecommunications services.

22 Do you recall that?

23 A. Yes.

24 Q. With that in mind and turning your attention
25 to Section 392.245.2, does the price cap criteria, if

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1 you will, contained in that statute require an
2 alternative local exchange carrier to provide basic
3 local telecommunications service or essential local
4 telecommunications service?

5 A. It -- it requires basic local
6 telecommunications services and that they be certified.

7 Q. And do you in your experience draw a
8 distinction between those two terms?

9 A. Yes.

10 Q. I believe Mr. Snodgrass also had a question
11 regarding the differences between a large ILEC,
12 incumbent local exchange carrier, like Southwestern
13 Bell and a small incumbent local exchange carrier like
14 BPS.

15 Do you recall that question --

16 A. Yeah.

17 Q. -- or questions?

18 A. Yes.

19 Q. For purposes of applying the price cap
20 statute, 392.245.2, is there, in your opinion, any
21 distinction in the criteria to be applied to a
22 large -- or for a large ILEC seeking to be price cap
23 regulated or a small ILEC seeking to be price cap
24 regulated?

25 A. There is no difference in the criteria in the

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1 statute. In fact, the only difference that I can
2 recall is that a large carrier has to have the
3 Commission make a determination be-- before they become
4 subject to the price cap statute, whereas the small
5 company can elect and notify the Commission that
6 they're doing that.

7 MR. ENGLAND: Thank you, sir.

8 No other questions.

9 JUDGE DIPPELL: Thank you.

10 FURTHER QUESTIONS BY JUDGE DIPPELL:

11 Q. Mr. Schoonmaker, I did -- I forgot to ask you
12 one little thing. And that was --

13 A. Okay.

14 Q. -- you -- you mentioned special access. And I
15 just wondered if you could define that term for us.

16 A. Yes. Special access refers to services that

17 are purchased by a variety of customers, but that
18 involve a dedicated circuit or a dedicated facility
19 between two points on the network.

20 They do not go -- they are not switched by the
21 telephone company's switching service, and -- and
22 a -- the company that purchased that -- purchases that
23 pays for the complete use of the facility from one
24 place to another.

25 Q. And I think you gave one example was T1?

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1 A. There was a discussion about T1.

2 JUDGE DIPPELL: Okay. That was just a -- a --
3 to clarify the record in case somebody like me doesn't
4 know what special access might entail.

5 I believe that's all the questions then.

6 You may be excused.

7 (Witness excused.)

8 JUDGE DIPPELL: I did want to clarify one
9 other thing on the record, and that was Mr. Snodgrass
10 referred to our Southwestern Bell Telephone Company as
11 SWBT, which is the way that we affectionately refer to
12 it around here, the acronym S-W-B-T. I just wanted to
13 clarify that on the record.

14 All right. Then I believe we can proceed with
15 the next witness, which is Staff's witness.

16 MR. SNODGRASS: Yes. We'd call -- Staff would
17 call William L. Voight to the stand, please.

18 JUDGE DIPPELL: Thank you.
19 Please raise your right hand.
20 (Witness sworn.)
21 JUDGE DIPPELL: Thank you.
22 Proceed, Mr. Snodgrass.
23 MR. SNODGRASS: Thank you, Judge.
24 WILLIAM L. VOIGHT testified as follows:
25 DIRECT EXAMINATION BY MR. SNODGRASS:

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1 Q. Good morning, Mr. Voight.
2 A. Good morning, Counsel.
3 Q. I don't think I need to introduce myself to
4 you, do I?
5 A. No.
6 Q. All right. Then would you please state your
7 name and business address for the record.
8 A. William L. Voight, Post Office
9 Box 360, Jefferson City, Missouri 65102.
10 Q. Mr. Voight, by whom are you employed and in
11 what capacity, sir?
12 A. The Missouri Public Service Commission. I am
13 an assistant manager in the telecommunications
14 department.
15 Q. And how long have you held that position,
16 Mr. Voight?
17 A. Since February -- how long have I held that

18 position?

19 Q. Yes, sir.

20 A. Approximately seven or eight years.

21 Q. And how long have you been with the
22 Commission?

23 A. Approximately nine years.

24 Q. Now, did you prepare the pre-filed testimony
25 in this case, which has previously been marked as

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1 Exhibit No. 3, direct rebuttal -- direct testimony,
2 rather, of William L. Voight and Exhibit No. 4,
3 rebuttal testimony of William L. Voight?

4 A. Yes, I did.

5 Q. Do you have any corrections or additions to
6 make to that testimony at this time, sir?

7 A. Yes, I have one minor correction.

8 Q. Would you please let us know what that is?

9 A. On my direct testimony at page 3, line No. 9
10 there's a -- the Steele Missouri exchange is the 695
11 exchange, not the 395 exchange.

12 Q. All right. With that correction in mind,
13 Mr. Voight, are the answers and schedules you provided
14 in your testimony true and accurate, to the best of
15 your knowledge and belief?

16 A. Yes, they are.

17 Q. If I would ask you the same questions today
18 that are contained in your testimony, would your

19 answers be the same?

20 A. Yes, they would be.

21 Q. Would your schedules attached to your
22 testimony be the same today as when you attached them
23 to your pre-filed testimony?

24 A. Yes.

25 MR. SNODGRASS: Judge, at this time I would

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1 offer Staff Exhibits 3 and 4 into the record and tender
2 this witness for cross-examination.

3 JUDGE DIPPELL: Thank you.

4 Are there any objections to Exhibit No. 3?

5 MR. ENGLAND: No objection.

6 JUDGE DIPPELL: Then I will enter Exhibit
7 No. 3 into the record.

8 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE DIPPELL: Are there any objections to
10 Exhibit No. 4?

11 MR. ENGLAND: No objection, Your Honor.

12 MR. DANDINO: No objection.

13 JUDGE DIPPELL: Then I will enter Exhibit
14 No. 4.

15 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE DIPPELL: Cross-examination by Public
17 Counsel?

18 MR. DANDINO: No questions, Your Honor.

19 Thank you.

20 JUDGE DIPPELL: BPS cross-examination?

21 MR. ENGLAND: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. ENGLAND:

23 Q. Good morning, Mr. Voight.

24 A. Good morning, Mr. England.

25 Q. I'm gonna try to begin my cross-examination by

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1 finding some common ground, if possible, between the

2 Staff and BPS.

3 A. That'd be nice.

4 Q. It won't be the bulk of my cross-examination,

5 but -- but hopefully it will be a small part.

6 I -- I think you agree that BPS is a small

7 ILEC; is that correct?

8 A. Yes.

9 Q. And I think you agree that MSDT is an

10 alternate -- alternative -- excuse me -- local exchange

11 carrier?

12 A. Yes.

13 Q. Would you also agree that MSDT has been

14 certificated by this Commission to provide basic local

15 telecommunications service?

16 A. Yes.

17 Q. And would you agree with me that BPS has

18 provided written notice to the Commission of its

19 election to become subject to price cap regulation?

20 A. Yes.

21 Q. Do you have Ms. Meisenheimer's testimony
22 readily available to you?

23 A. Yes, if you'll bear with me a moment.

24 Q. Certainly.

25 A. I have at -- I'm not certain, Counsel, if --

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1 if my electronic version will track exactly with yours.

2 Q. Okay. I'm interested in her testimony at
3 pages -- at least from my copy -- 12 and 13. The
4 question begins, is MSDT providing basic local service.

5 A. Yes, at line 1.

6 Q. Okay. My question, sir, is in -- in reviewing
7 that testimony, do you generally agree with her
8 assessment of the services that MSDT offers and does
9 not offer? It continues for about a page and a half
10 there in her testimony.

11 A. Counsel, I don't recall stating that I've read
12 this testimony. I -- it's been some time ago and
13 I -- I -- I have reviewed it, but I -- I don't know
14 that I've really analyzed it word for word.

15 Q. Okay.

16 A. So I don't -- I mean, it's -- this
17 question -- this answer here is rather lengthy.

18 Q. All right. Well, let me -- I'll take you
19 through it specifically then.

20 A. Okay.

21 Q. And -- and frankly, I'm just more interested
22 in -- in the services that she indicates MSD does
23 provide. So I -- I'll look at sub-- Item A there.

24 Do you see it?

25 A. Yes.

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1 Q. Would you agree that MSDT is providing
2 multi-party or single-line, including installation;
3 touch-tone dialing and any applicable mileage or zone
4 charges?

5 A. Yes. I'm -- that's -- State Discount is
6 providing something along those lines, yeah.

7 Q. Okay. Item C below that, would you agree that
8 MSDT is providing access to local emergency services,
9 including but not limited to, 911 service established
10 by local authorities?

11 A. If those are available there, I -- I have no
12 reason to doubt that State Discount is not providing
13 them.

14 Q. Okay. Item F, standard intercept service?

15 A. I have no reason to believe that State
16 Discount would not route calls to a recording.

17 Q. And then finally H, the standard white page
18 directory listing?

19 A. I -- I would expect that State Discount
20 if -- if they're -- whatever customers they may have

21 could very well get their listing published in that
22 directory.

23 Q. And I guess at the very least you have no
24 information that would dispute Ms. Meisenheimer's
25 testimony with respect to those four services, right?

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1 A. No. Not with respect to the four that you've
2 just mentioned, no.

3 Q. Now, let me try to summarize, if I can, the
4 nature of the dispute, if you will, between Staff and
5 BPS.

6 Would you agree with me that the sole issue
7 between the two parties is whether MSD is providing
8 basic local telecommunications service in BPS service
9 area?

10 A. Well, I certainly agree that that is the crux
11 of the issue. I seem also to recall there may have
12 been two or three items on an issues list. I've --
13 I've forgotten what that is.

14 Q. But beyond what -- what we've just discussed
15 and what's on the issue list, you're not aware of any
16 other differences of opinion as they relate to the
17 primary issue in this case, right?

18 A. Not as they relate to the primary iss-- issue.
19 I've made some -- filed some testimony in rebuttal
20 about -- basically I guess raise an allegation that

21 BPS Telephone Company may be in violation of the
22 Commission rule.

23 But beyond some things like that, no, I -- I
24 agree with you. The crux of the issue is whether or
25 not State Discount is providing basic local telephone

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1 service.

2 Q. And let me just digress for a second upon that
3 issue that you raised, I believe, in your rebuttal
4 testimony regarding provision in the resale agreement
5 that may be contrary to Commission rules.

6 Have you had a chance to visit with BPS about
7 that and whether or not they'd be willing to at least
8 seek to amend that with MSDT to bring them into
9 conformance if it's not in conformance with the
10 Commission rules?

11 A. No, sir, I have not had discussions with B--
12 BPS about that. We would -- Staff would be more than
13 happy to entertain such discussions.

14 Q. Are you also aware that BPS's resale agreement
15 is very similar, if not identical, to the resale
16 agreement MSDT has with Mid-Missouri Telephone Company,
17 which was previously approved by this Commission before
18 the BPS resale agreement?

19 A. I review an awfully lot of interconnection
20 agreements. I have -- I don't specifically recall any
21 that State Discount may have with other incumbent

22 carriers, including Mid-Missouri Telephone Company.

23 But as Mr. -- I believe it was -- Carson said,
24 I -- I have no reason to doubt that State Discount may
25 very well indeed have entertained other interconnection

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1 that -- or, if you will, resale agreements with other
2 ILECs in Missouri. I have no reason to doubt that.

3 Q. So if there is a provision -- excuse me. If
4 that provision that you raise in your rebuttal
5 testimony that your concern may be contrary to
6 Commission rule exists in the BPS agreement, that may
7 also exist in some other approved resale agreements
8 with other small telephone companies, correct?

9 A. Yes, indeed.

10 Q. Okay. Would you agree with me that whether
11 MSD is providing basic local telecommunications service
12 depends upon whether Section 386.020(4) of the Missouri
13 statutes is the governing definition of basic local
14 telecommunications service or if you -- or Commission
15 Rule 4 CSR 240-32.100 is the governing definition?

16 A. I don't believe I've stated that in my
17 testimonies, Mr. England. And -- and I'm not
18 quite -- I don't know that I could agree fully with --
19 with your statement.

20 If I may elaborate, I believe my testimony
21 indicates that it takes a -- the -- the statutes, the

22 Commission rules and the tariff approval process must
23 be -- must work together.

24 Q. I -- I appreciate that.

25 You understand our position is that

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1 386.020(4) standing alone is the sole source or
2 defining term, if you will, of basic local
3 telecommunications service, do you not?

4 A. I believe I understand your position, yes.

5 Q. Okay. Now, then I'll ask you a hypothetical.
6 Assuming we're right, would you agree with me that
7 MSDT is providing basic local telecommunications
8 service as strictly defined by that statute?

9 A. Yes.

10 Q. Thank you.

11 To your knowledge, has the Commission ever
12 addressed this issue before -- and that is whether or
13 not 386.020(4) or 4 CSR 240-32.100 governs the
14 definition of basic local telecommunications service
15 for purposes of applying the price cap statute?

16 A. Not for the purposes of applying the price cap
17 statute.

18 Q. You do in your testimony reference an
19 AT&T case, do you not?

20 A. Yes.

21 Q. I believe you begin to reference that at
22 page 8 of your direct testimony, and I think you

23 discuss it for several pages after that?

24 A. Yes.

25 Q. Would you agree with me that the case you're

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1 referencing here was a case involving a tariff filing
2 by AT&T?

3 A. The case that I -- certainly the case number
4 that I have referenced references a tariff filing by
5 AT&T. The particular service we're talking about is
6 Digital Link Service, and there was more than one case
7 and more than one tariff filing by AT&T associated with
8 Digital Link.

9 So I -- I don't want to leave the Commission
10 with the impression that the final report and order, if
11 you will, that I've attached in my schedule
12 is -- represents that entire digi-- the events that
13 occurred with that entire Digital filing.

14 There -- there was a -- a lot of other things
15 that happened with it, other than the particular case
16 number that I reference in my tariff -- or excuse me --
17 in my testimony.

18 Q. And limiting my questions, then, to the
19 specific case and case number that you reference here
20 in your testimony, Case No. TT-99-237, I -- I think you
21 did agree that that -- that involved a tariff filing?

22 A. Yes.

23 Q. Okay. And then I think you would agree with
24 me that it was not a certificate case, if you will,
25 correct?

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1 A. What I have referenced is not a certificate
2 case. The other part of Digital Link did involve the
3 certificate case.

4 Q. It is not a price cap case either?

5 A. No, sir, not at all.

6 Q. Would you agree with me that there is no
7 discussion by the Commission in its order, which is
8 attached to your testimony as Schedule 5, of either
9 Section 386.020(4) or PS-- PSC Rule 4 CSR 240-32.100?

10 A. There's very little discussion at all. I
11 don't believe there's any discussion about the rule or
12 what was the other one, the --

13 Q. The rule or the statute.

14 A. Or the statute. No, there's no discussion
15 about that.

16 Q. In fact, I couldn't find them mentioned once.
17 Would you agree with me?

18 A. I would -- I would -- I would agree with
19 that -- I -- I would agree with that.

20 Q. Now, at page 9 of your testimony lines 14
21 through 18?

22 A. Of my -- I'm sorry. Direct?

23 Q. Yes, sir.

24 A. 14 -- page 9 -- page -- I'm sorry.

25 Page 9, line 14?

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1 Q. Correct.

2 A. Yes.

3 Q. And -- and I'm gonna read to you what I
4 believe your testimony says. And -- and you state,
5 "Just as the Staff argued in Case No. TT-99-237 that
6 the statute must be relied upon as the sole source for
7 the definition of basic local telecommunications
8 service, BPS now argues that the Commission must only
9 rely on that very same statute. Just as the Staff
10 failed to prevail in Case No. TT-99-237, BPS must not
11 be allowed to prevail in the instant case."

12 Do you see that?

13 A. Yes.

14 Q. I've reviewed Staff's Motion to Suspend Tariff
15 Filing in Case TT-99-237. And would you agree with me
16 that in that motion there is no reference to either
17 Section 386.020(4), statutory definition of basic
18 local telecommunication service, or Commission
19 Rule 4 CSR 240-32.100?

20 A. That would be Staff's Motion to Suspend this
21 tariff filing?

22 Q. Correct.

23 A. And just so I'm tracking with you, the --

24 your -- your -- your question is that in Staff's Motion
25 to Suspend the Tariff Filing there is no reference to

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1 the statute or the rule that we're talk -- rules that
2 we're talking about, I -- I have no immediate knowledge
3 if there is or is not.

4 MR. ENGLAND: May I have an exhibit marked,
5 please?

6 JUDGE DIPPELL: Yes.

7 We're up to Exhibit No. 10.

8 (EXHIBIT NO. 10 WAS MARKED FOR
9 IDENTIFICATION.)

10 MR. ENGLAND: Thank you.

11 BY MR. ENGLAND:

12 Q. Mr. Voight, I've handed you what I believe has
13 been marked for purposes of identification as
14 Exhibit No. 10, which I believe and hope is an accurate
15 copy of Staff's Motion to Suspend Tariff Filing in
16 Case TT-99-237.

17 Have you had a chance to review that?

18 A. I'm about to paragraph 4.

19 Q. Okay.

20 A. I'm sorry. Mr. England, would you repeat your
21 question?

22 Q. I just --

23 A. I'm -- I'm through reading it.

24 Q. Okay. No -- and my next question is: Does

25 this appear to you to be an accurate copy of Staff's

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1 Motion to Suspend Tariff Filing in that case?

2 A. Yes, it does.

3 Q. Okay. Can you find within the four corners of
4 that document any reference to the statute that defines
5 basic local telecommunications service or the
6 Commission rule that defines that term at least as
7 we've been discussing in this case?

8 A. Yes, I can. That would be the second sentence
9 of paragraph 4 where there is a description about basic
10 local telecommunications service throughout that
11 paragraph. And that is certainly referring to
12 386.020(4).

13 Q. Okay. But you agree with me that there's no
14 reference to the statute or the rule -- no citation, at
15 least, correct?

16 A. There's -- there's lots of -- I think this is
17 a reference to the rule. Whether or not the specific
18 citation is there -- I will agree with you it is not.

19 As I said, a plain reading of this document
20 details Case TA-96-332, which -- that may be a
21 typographical error. I believe it might be 96-322.

22 And that was -- it -- I mean, it's obvious
23 from reading from this Staff Motion to Suspend that
24 there's a lot more to this AT&T's Digital Link than --

25 this at that time instant tariff filing.

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1 This had been an ongoing issue with
2 Southwestern Bell and Staff objecting to the Digital
3 Link Service. So there's no doubt that this entire
4 episode of Digital Link Service was referring to
5 386.020(4).

6 Q. Well, I appreciate that. But can I at least
7 get you to agree that the statutory number, if you
8 will, Section No. 386.020(4) does not exist anywhere in
9 this docket --

10 A. The citation --

11 Q. -- or document?

12 A. The citation is not there, that's correct.

13 Q. Nor is -- is the Commission rule referenced?

14 A. That's correct.

15 Q. Okay. Would you also agree with me that
16 nowhere in this document does the argument appear that
17 386.020(4) or the statutory definition of basic local
18 telecommunications service is the sole source for the
19 definition of basic local telecommunications service?

20 A. Just to be clear, the docu-- we're -- the
21 document we're talking about is Staff's Motion to
22 Suspend that you've handed me?

23 Q. Correct.

24 A. I would agree with that.

25 Q. Regardless of what's in or what's not in that

1 document, do I still understand it to be your testimony
2 that at the point in time prior to AT&-- the decision
3 in the AT&T case, which I understand to be
4 December 10th, 1998, the Staff position was that basic
5 local telecommunications service was defined solely by
6 the statute and not by the rule?

7 A. That's -- that's a position we were taking at
8 that time early on in the development of local exchange
9 competition in Missouri, yes.

10 Q. Okay. So prior to December 10th of 1998, it's
11 fair to say that Staff's position was that basic local
12 telecommunications service was solely defined by
13 Section 386.020(4)?

14 A. Well, first of all, Mr. England, I'm not
15 certain that the issue ever came up prior to this date
16 in 1998. So I can't testify that that's what the Staff
17 position was prior to that. If it -- if it -- frankly,
18 it never had been an issue.

19 When we looked at it in the AT&T case, we were
20 frankly very concerned that AT&T would not be providing
21 access to 911 for its customers. And that was a major
22 concern to us. And we looked upon the statute as the
23 governing -- the governing definition at that time,
24 yes.

25 Q. Well, then, at least for purposes of the AT&T

1 case that you reference in your testimony, it was the
2 Staff's position that the statute, 386.020(4), was the
3 sole source or depth of defining, if you will, basic
4 local telecommunications service?

5 A. Yes, that's correct. If I may add, it was
6 AT&T's position that the -- the rule was a governing
7 factor, and AT&T prevailed in its argument in that
8 case.

9 Q. I'm not sure I get that from the Commission's
10 order, but nevertheless --

11 A. Well, if I could --

12 Q. I -- let me -- let me --

13 A. Okay.

14 Q. -- pursue through this other line of
15 questioning.

16 I assume you took your position, that is the
17 Staff position, with advice of counsel, correct?

18 A. Yes.

19 Q. So the position that Staff espoused in the
20 AT&T case presumably was well thought out, well
21 researched and appeared to be the right one at that
22 point in time?

23 A. Without any prior guidance on the matter, yes.

24 Q. Okay. And then, if I understand your
25 testimony correctly, it was the Commission's decision,

1 which I think you attach to your testimony here in this
2 case, that caused you to change your mind and change
3 your position, correct?

4 A. That was certainly a significant factor.
5 It -- it was not -- I cannot testify that that has been
6 the sole -- sole precarium that -- that has brought
7 about our position in this case.

8 Q. Is it possible that the filing of the -- of
9 this case, if you will, was the other determining
10 factor in changing positions?

11 A. No, that is not possible. The advent of
12 competition into the local exchange markets,
13 Mr. England -- the other price cap cases that the
14 Commission has had, I -- I think if -- if -- probably
15 just the passage of time and gaining more knowledge
16 about how these competitive local exchange markets
17 begin to develop and function in -- there are any
18 number of things that could have caused the Staff to
19 change its position, if you will to use your words,
20 since the AT&T case.

21 Q. Would you agree with me that since December of
22 1998 the statute hasn't changed nor has the Commission
23 rule?

24 A. Certainly the statute we're talking about has
25 not changed. I believe that also is the case with that

1 very particular rule that we're talking about.

2 Q. Are you aware of any substantial change in the
3 rule since December of 1998?

4 A. No, not in -- not in what I've referred to as
5 the modernization rule. I -- I don't believe there's
6 been any change.

7 Q. Matter of fact, that modernization rule came
8 into being -- do you know when, early 1900s?

9 A. 1900s?

10 Q. Or I'm sorry. I'm afraid I'm giving away my
11 age.

12 Early 1990s?

13 A. Yes. I would certainly accept that.

14 Q. Do you recall if that rule was in place when
15 you came to the Commission or whether it -- whether it
16 was adopted after you began your employment with the
17 Commission?

18 A. I feel certain it was in place when I came
19 here in February of '94.

20 Q. So it would have been in place prior to the
21 Senate Bill 507 here in Missouri, which gave rise to
22 the price cap statute and price cap type of regulation?

23 A. Yes, it would have.

24 Q. I'm gonna switch gears on you a little bit.
25 Still in your direct testimony, though, page 18 -- oh,

1 I'm sorry.

2 A. Sure.

3 Q. Let me back up. I did have one follow-up
4 question.

5 Since December of 1998, and putting this case
6 aside, can you tell me where else Staff has argued that
7 the controlling definition of basic local
8 telecommunications service is the Commission's rule?

9 A. I don't believe there's been any occasion,
10 to -- to use your word, argue that.

11 Q. Okay. Now, if we can, let's go to page 18 of
12 your testimony.

13 A. I'm -- I'm there.

14 Q. I'm -- think I'm referencing lines 15 through
15 17, and I'm gonna paraphrase. But, I believe, you
16 state there that a PSC decision to reject BPS's
17 election of price cap regulation would not conflict
18 with prior Commission orders granting price cap status
19 to other companies.

20 Is that a fair characterization?

21 A. Yes, that is my testimony.

22 Q. Okay. And then on the next page or two you
23 discuss the type of competition faced by Southwestern
24 Bell Telephone Company, GTE, Verizon and Sprint at the
25 time they became price cap regulated, correct?

1 A. Yes, Counsel. The purpose of this question
2 and answer is to point out that in this instant case it
3 involves a prepaid reseller. These other cases
4 that -- that was not even an issue.

5 Q. Okay. Well, let's talk some about these
6 individual cases, if we can. And I want to take the
7 Southwestern Bell case first.

8 You note that Southwestern Bell was determined
9 to be subject to price cap regulation because it faced
10 competition from only one alternative local exchange
11 carrier, correct?

12 A. Can you direct me to my testimony where I say
13 only one?

14 Q. I don't believe you say only one. I've
15 characterized it as only one. If I'm wrong, tell me
16 otherwise, please.

17 A. With that in mind, may I ask you to restate
18 the question?

19 Q. Sure.

20 Would the fact -- or -- or excuse me. I'll
21 just try to completely restate it.

22 Was not Southwestern Bell Telephone Company
23 awarded, granted, whatever you want to call it, price
24 cap status based on the existence of only one
25 alternative local exchange carrier?

1 A. I don't wish to -- to quibble with -- with the
2 only one, but I -- I -- there -- they were awarded or
3 granted price cap status, based on the testimony that
4 they put forward when the Commission conducted a
5 hearing, and -- and that was based on Dial US. And
6 certainly that is only one.

7 But I don't wish to give the impression that
8 they may have been the only competitor Southwestern
9 Bell was faced with at that time, although they may
10 very well have been. I just don't recall.

11 Q. Would you agree with me that at least that one
12 alternative local exchange carrier, Dial US that is,
13 would serving in the Springfield exchange?

14 A. Yes.

15 Q. And no other exchanges of Southwestern Bell
16 Telephone Company?

17 A. At -- at the time of that hearing, it may very
18 well have been. And I acknowledge I was a witness, but
19 my -- my memory is a little fu-- little fuzzy on that.

20 They were certainly providing service in the
21 Springfield exchange. That's what the case really was
22 about.

23 Dial US later went on and began providing
24 service in many other exchanges. So I don't know
25 chronologically at the time of that hearing if

1 Springfield was the only exchange where they were
2 holding themselves out to be providers of service.

3 Q. Do you know how many exchanges Southwestern
4 Bell serves in the State of Missouri roughly?

5 A. I've heard the number, but I -- I honestly
6 don't recall.

7 Q. Does the number 160 ring a bell?

8 A. I would accept that.

9 Q. And at the time Southwestern Bell became
10 subject to price cap regulation -- I believe you do
11 testify to this -- that Dial US was providing basic
12 local telecommunications service only through resale,
13 correct?

14 A. At the precise point in time that the --
15 Southwestern Bell became a -- under price cap status,
16 it was only via resale, yes.

17 Q. Now, for purposes of preparing for this case,
18 we directed a series of data requests to Staff. And I
19 believe you were responsible for -- if not answering
20 them, certainly had a --

21 A. Sure.

22 Q. -- involvement in that; is that correct?

23 A. Yes.

24 Q. What I'd like to do is turn your attention
25 first to your Data Request No. 1.3, which in general

1 asked about the investigation performed by Staff to
2 determine if competitors of Southwestern Bell, Verizon
3 and Sprint were providing basic local
4 telecommunications service, as defined by the rule.

5 MR. ENGLAND: And I've got copies that I would
6 like to have marked for purposes of identification,
7 please.

8 JUDGE DIPPELL: That would be Exhibit 11 and
9 that's Data Request 1.3 from --

10 MR. ENGLAND: BPS --

11 JUDGE DIPPELL: -- BPS --

12 MR. ENGLAND: -- to Staff.

13 JUDGE DIPPELL: -- to Staff.

14 (EXHIBIT NO. 11 WAS MARKED FOR
15 IDENTIFICATION.)

16 BY MR. ENGLAND:

17 Q. Do you have what's been marked for purposes of
18 identification as Exhibit 11 in front of you,
19 Mr. Vot-- Voight?

20 A. Yes.

21 Q. And can you confirm for me that that's an
22 accurate copy of not only the data request we sent to
23 you, but Staff's response?

24 A. I don't believe so, Mr. England. I -- it
25 appears there's -- there's some attachments that may

1 not be there.

2 I mean, I -- what I thought we were -- we had
3 responded to you with in -- included, for example, a
4 letter from myself to Mr. Harry Dealpathe (phonetic
5 sp.) and the letter from Mr. William Meyer to the same
6 company.

7 I -- I'm not certain this is complete of what
8 I gave you.

9 Q. I believe that those were provided in response
10 to a different data request.

11 A. Forgive me then. I'm sorry.

12 Okay. I'm with you then.

13 Q. But you did remind me of something. I think
14 there was -- there was an additional attachment, which
15 was a page out of Mark Twain CLEC's annual report that
16 was attached.

17 And now I'm not sure if that was attached in
18 response to this or another data request.

19 A. I'm very confused. I -- I guess off the top
20 of my head I didn't re-- I didn't remember that there
21 was more than one series of data requests.

22 MR. ENGLAND: Perhaps if your counsel has a
23 complete set, maybe that would be easier to work from.

24 MR. SNODGRASS: I do.

25 THE WITNESS: Well, I think I have the

1 complete set.

2 BY MR. ENGLAND:

3 Q. Okay.

4 A. For example, what -- Mr. England, you've given
5 me 1.3. Okay. I -- I think I see what you're doing.
6 I can follow with you.

7 I would disagree that that is everything
8 contained and what I've responded to.

9 Q. Well, I -- okay. But for purposes of 1.3 --

10 A. Okay.

11 Q. -- am I missing anything?

12 A. I would think not.

13 Q. And -- and I -- and I'm -- I will ask some
14 questions, and if you feel like there is additional
15 information that you've provided that I haven't put
16 here, let me know, and we can certainly --

17 A. Okay. I -- I'm sorry. I'm with you now.

18 Q. Okay. In your response you indicate that
19 Staff's investigation in the Southwestern Bell case is
20 a matter of public record in that case, which I believe
21 is Case No. TO-97-397; is that correct?

22 A. Yes.

23 Q. In addition to the -- the narrative that
24 you've -- that you've provided here?

25 A. Right.

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1 Q. So would you agree with me that the record, if

2 you will, of Staff's investigation would include your
3 prepared rebuttal testimony that was submitted in that
4 case and your cross-examination that you suffered in
5 that case?

6 A. Yes, I -- I would agree with that.

7 Q. Okay. Now, I've reviewed your testimony and
8 your cross-examination, and I have a copy here if you'd
9 like to take a chance to refresh your memory.

10 A. Well, I -- I guess that depends on what the
11 question is going to be.

12 Q. Okay. Here's my question: Would you agree
13 with me that at no time or place in your testimony,
14 whether it was prepared or through cross-examination,
15 did you testify that Dial US was providing basic local
16 telecommunications service in accordance with the
17 minimum standards set forth in Commission
18 Rule 4 CSR 32.100?

19 A. I think I would -- perhaps I should see my
20 testimony. I -- I'm not aware that that was even --
21 I'm -- I'm not aware that that was called into question
22 in that case. I -- I don't think I would expect it to
23 be there.

24 Mr. England, just so that I'm clear, may I ask
25 you to repeat the question?

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1 MR. ENGLAND: To make sure I get it right, may

2 I have the court reporter read it back, please?

3 JUDGE DIPPELL: Yes. That'd be fine.

4 Can you read back Mr. England's last question?

5 (THE COURT REPORTER READ BACK THE REQUESTED
6 PORTION.)

7 MR. SNODGRASS: I guess I'm gonna interject an
8 objection to the question at this time. It's not clear
9 to me whether he's asking whether he specifically
10 mentioned the rule or if he didn't mention the meaning
11 of the rule, which are two different things in my mind.

12 MR. ENGLAND: My --

13 JUDGE DIPPELL: Can you clarify?

14 MR. ENGLAND: Well, I tried to at the end of
15 the question -- I wanted to -- and -- and tried to be
16 very specific.

17 I want to find out if he testified whether
18 Dial US was providing basic local telecommunications
19 service in accordance with the minimum standards set
20 forth in Commission Rule 4 CSR 32.100.

21 I think it's a fairly specific question and
22 one that the witness hopefully can answer.

23 MR. SNODGRASS: I'm gonna with-- withdraw my
24 objection at this time.

25 JUDGE DIPPELL: All right. Thank you.

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1 THE WITNESS: If you can bear with me just one
2 moment --

3 BY MR. ENGLAND:

4 Q. Sure.

5 A. -- Counsel, I think I can answer that
6 question.

7 JUDGE DIPPELL: Take -- take your time,
8 Mr. Voight.

9 THE WITNESS: I believe the answer to that
10 question is yes, Mr. England. It's certainly inferred.

11 BY MR. ENGLAND:

12 Q. Would you --

13 A. I'm sorry.

14 Q. I'm sorry. If you were gonna give me a
15 reference, I'd appreciate it.

16 A. On page 4 -- there are numerous references.
17 The best one I can find or point to just from scanning
18 this is on page 4, beginning at line 3.

19 Do you have empirical knowledge that
20 Dial US is providing basic local telephone service?
21 The answer is yes. I go on to describe that.

22 Mr. England, there was never any doubt. It
23 was not even an issue that Dial US was complying with
24 the Commission's modernization rule.

25 I -- when I wrote that testimony, it was with

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1 the full knowledge that they were provide -- or
2 conforming to the Commission's modernization rule.

3 Q. Well, as you will, I think, agree in response
4 to my data request, you basically told me to go fish
5 and find in the record the investigation that you
6 performed.

7 I have reviewed that prepared direct
8 testimony. I have reviewed your cross-examination, and
9 I cannot find reference to the Commission rule, which
10 establishes minimum standards for the provision of
11 basic local telecommunications service and an
12 investigation, summary, recommendation, whatever you
13 want to call it by you that says Dial US meets each and
14 every one of these minimum essential services.

15 Have I missed something?

16 MR. SNODGRASS: Judge, I'm gonna object to the
17 characterization of go fish. I think the --

18 MR. ENGLAND: I with-- I'll withdraw the
19 characterization.

20 MR. SNODGRASS: And I think that this question
21 is unduly long -- hard for me to follow. I object that
22 it's a compound question on that basis.

23 MR. ENGLAND: Well, with all due respect,
24 Mr. Snodgrass is not the witness. If he can't follow
25 the question, that's not his problem.

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1 MR. SNODGRASS: I'm -- I'm objecting on behalf
2 of my witness.

3 JUDGE DIPPELL: I don't believe it was a

4 compound question. I believe instead Mr. England
5 perhaps was doing a little testifying at the beginning
6 there about his analysis.

7 But his question is: Did he miss a reference
8 to those specific provisions of the rule with regard to
9 this?

10 And, Mr. Voight, do you know the answer to
11 that?

12 THE WITNESS: Yes, I know the answer.

13 JUDGE DIPPELL: Then please go ahead and
14 answer it.

15 I'll -- I'll overrule the objection.

16 THE WITNESS: The exact citation is not cited
17 in my testimony. I would not expect it to be cited in
18 the transcript, Mr. England.

19 And it may -- the reason it is not cited is
20 because it was never an issue. There was never any
21 doubt as to the question.

22 BY MR. ENGLAND:

23 Q. Now, if I understand your earlier testimony,
24 prior to December of 1998 the Staff was not utilizing
25 the rule as the definition for basic local

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1 telecommunications, but the statute?

2 A. I'm not aware that it -- as I testified, I'm
3 not aware that it was an issue prior to '98. There was

4 nothing to use.

5 Q. Is it fair to say that in the sum total of
6 your testimony, whether it was prepared or via
7 cross-examination, Commission Rule 4 CSR 240-32.100 was
8 not used or mentioned by the Staff as a measuring stick
9 of whether Dial US was providing basic local
10 telecommunications service?

11 A. No, that is not fair to say. I believe we
12 were fully aware that Dial US was in compliance with
13 the modernization rule.

14 Q. But it's not mentioned anywhere in your
15 testimony, is it, sir?

16 A. It was not an issue. That's why it's not
17 mentioned.

18 They were -- I mean, they were providing basic
19 local service pursuant to -- and they were conform--
20 unlike State Discount in this case, they were in
21 conformance with the rule.

22 I mean, there's no -- there's no reason to
23 cite rules if there's -- if there's no -- no dispute
24 about them.

25 Q. Well, apparently there was a dispute in that

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1 case by other parties whether or not Dial US was
2 providing basic local telecommunications service, was
3 there not?

4 A. I don't know. That certainly wasn't

5 Southwestern Bell's contention or Dial US's.

6 Q. Did I understand you to agree with me that the
7 rule was not mentioned in your testimony in that case?

8 MR. SNODGRASS: Judge, I'm gonna object. This
9 has been asked and answered several times here. It's
10 cumulative.

11 JUDGE DIPPELL: It has been asked and
12 answered.

13 MR. ENGLAND: Well, it--

14 JUDGE DIPPELL: He answered that it was not
15 in --

16 MR. ENGLAND: Okay.

17 JUDGE DIPPELL: -- his testimony.

18 MR. ENGLAND: With all due respect, I think
19 I've gotten a lot of different answers. And I wasn't
20 sure that I got the answer to the question I asked, so
21 I apologize if I'm being repetitive.

22 BY MR. ENGLAND:

23 Q. Let me digress for a second. In testimony
24 that you filed in Case TC-2002-1076, which is Staff's
25 complaint regarding the earnings of BPS, you stated in

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1 Staff's position that the existence of a competitive
2 local exchange carrier solely providing resold basic
3 local telecommunications service, i.e., a "pure" resale
4 grant does not qualify an incumbent for price cap

5 status.

6 Do you recall that?

7 A. I would ask to see the -- the testimony.

8 MR. ENGLAND: May I approach the witness?

9 JUDGE DIPPELL: Yes. And, Mr. England, I'm --
10 I'm sorry. We're still talking about the testimony in
11 TO-97-397?

12 MR. ENGLAND: No. I'm sorry.

13 JUDGE DIPPELL: Oh.

14 MR. ENGLAND: This is testimony he filed with
15 the Commission --

16 JUDGE DIPPELL: Oh.

17 MR. ENGLAND: -- in a companion document.

18 THE WITNESS: Thank you.

19 BY MR. ENGLAND:

20 Q. You're welcome.

21 Let the record reflect the fact that I've
22 handed the witness his testimony or at least, what I
23 believe to be his testimony that was filed in that
24 Docket TC-2002-1076.

25 Mr. Voight, I believe I'm referring to

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1 testimony at page 11, lines 1, 2, 3.

2 A. Just so I'm clear, this is a complaint case?

3 Q. Correct.

4 But much of the testimony you put in that
5 complaint case or in that testimony in that complaint

6 case -- excuse me -- is very similar, if not identical
7 to what you've put in this case, correct?

8 A. This part certainly is not.

9 Q. Okay. And that's why I want to inquire.

10 A. Well, I thought you might want to try the
11 complaint case, Mr. England.

12 Okay.

13 Q. First of all, is that your testimony --

14 A. Yes.

15 Q. -- in that case?

16 A. Yes.

17 Q. And at page 11, lines 1 through 3 did I
18 accurately quote or paraphrase your testimony?

19 A. Yes.

20 Q. And my question is: Is it still Staff's
21 opinion, in light of your testimony in this case and
22 the fact that Southwestern Bell Telephone Company's
23 only competitor, Dial US, was engaged only in resale,
24 has Staff's position changed?

25 A. I don't recall my testimony being that

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1 Dial US was the only competitor of Bell. I don't
2 understand your question. It's too compound.
3 You -- you've assumed things, I believe, that I have
4 not testified to.

5 Q. I believe you testified that in the

6 Southwestern Bell case when it was determined to be
7 subject to price cap regulation that Dial US was the
8 alternative local exchange carrier, and that the
9 precise moment in time it was providing basic local
10 telecommunications service purely through resale; is
11 that correct?

12 A. Yes, that's my testimony.

13 Q. Okay. That appears that -- excuse me. If
14 that is the case, then I'm asking, is it still Staff's
15 opinion or position, as reflected in your testimony in
16 TC-2002-1076, that an -- an alternative local exchange
17 carrier solely providing resold basic local
18 telecommunications services, i.e., a pure reseller does
19 not qualify an incumbent for price cap status?

20 MR. SNODGRASS: I'm gonna object to the
21 relevance of this line of inquiry. I don't believe the
22 reseller issue as such has been raised in this case
23 specifically.

24 MR. ENGLAND: Well, the -- the issue of the
25 extent, whether you call it effective or not,

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1 competition existing with MSDT -- the type of
2 competition, resale versus facilities based, prepaid
3 versus something else, certainly has been raised.

4 MR. SNODGRASS: I -- I would agree to that,
5 but the issue of reseller's qualifications of pure
6 resellers haven't been raised in this testimony

7 anywhere.

8 JUDGE DIPPELL: I'm gonna allow the question.

9 I -- I think Mr. England's correct that the general
10 issue of competition that, I believe, Mr. England is
11 getting to -- those points.

12 I'm gonna overrule the objection.

13 Go ahead, Mr. England.

14 THE WITNESS: I understand the question,
15 Mr. England. And my answer is as follows: I have not
16 filed any testimony about the resell -- resale issue in
17 this case.

18 It is not Case TC-2003-0012. It is not on our
19 issues list. I do not know the answer to your
20 question.

21 BY MR. ENGLAND:

22 Q. Let me try it this way, Mr. Voight. Did I
23 correctly quote your testimony in TC-2002-1076?

24 A. Yes.

25 Q. Is that still your test-- would that still be

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1 your opinion or Staff's position today?

2 A. I do not know. It is not an issue in the
3 current case.

4 Q. Would you agree with me that if that is your
5 position today, it is in conflict with the Commission's
6 decision in the Southwestern Bell case finding that

7 Dial US was suff-- sufficient alternative local
8 exchange carrier providing basic local
9 telecommunications service to justify price cap
10 regulation?

11 A. Well, hypothetically speaking if that was our
12 position then, yes, it would be hypothetically in con--
13 in conflict.

14 Q. And you don't know what your position is today
15 with respect to a pure reseller today?

16 A. It's not an issue in the instant case. No, I
17 do not.

18 MR. ENGLAND: Well, with all due respect, I
19 think the Judge will tell us what is an issue in the
20 case.

21 BY MR. ENGLAND:

22 Q. My question is: Is that your position today?

23 A. And I'll again answer I don't know. And when
24 I speak of issues, I'm talking about the issues list.
25 We left it off of there.

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1 JUDGE DIPPELL: Do you have substantial
2 questions still to go, Mr. England?

3 MR. ENGLAND: Yes, I do.

4 JUDGE DIPPELL: I think I'd like to go ahead
5 and take a break then.

6 MR. ENGLAND: Okay.

7 JUDGE DIPPELL: Break for lunch.

8 MR. ENGLAND: This is probably about as -- as
9 good as any place.

10 JUDGE DIPPELL: We'll go ahead and -- and
11 break for lunch. And we will come back at 1:30. It's
12 about 20 after now.

13 Thank you. We can go off the record.

14 (A RECESS WAS TAKEN.)

15 JUDGE DIPPELL: Let's go ahead and get started
16 again. Let me get us back on the record here.

17 Okay. You can proceed, Mr. England.

18 MR. ENGLAND: Thank you.

19 BY MR. ENGLAND:

20 Q. Mr. Voight, we were discussing the Staff's
21 investigation into some prior price cap cases. I think
22 we talked about the Southwestern Bell case and
23 referencing your response today Data Request No. 1.3.
24 And I wanted to move now to the Sprint price cap case.

25 A. I -- I'm with you.

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1 Q. And again, in your -- in your response you
2 indicate your -- you respond as to the Staff
3 investigation and -- and make specific reference to a
4 one-page report that was prepared by a Mr. -- is it
5 Gruenewald?

6 A. Yes.

7 Q. On behalf of Staff. And I think I did get

8 that attached to the data request response.

9 And again, my question is: After reviewing
10 the response and the attached one-page report of
11 Mr. Gruenewald, I do not find a Staff finding or
12 recommendation that ExOp was providing basic local
13 telecommunications services in accordance with the
14 minimum standards as enumerated in 4 CSR 240-32.100.

15 Did I miss that?

16 A. No, you did not miss that. There's no
17 specific reference to the modernization rule. That was
18 never in question.

19 Q. Okay. And then in the Verizon case Staff
20 basically made no recommendation, if I understand the
21 response correctly?

22 A. Staff was not asked to make a recommendation,
23 and frankly there wasn't even time to do so.

24 Q. I'm gonna shift gears a little bit on you.

25 In Staff data request -- excuse me -- BPS Data

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1 Request 1.4 we asked generally for Staff to describe
2 the nature and extent of competition facing
3 Southwestern Bell, Sprint and Verizon at the time they
4 sought and received determination of price cap
5 regulation.

6 Do you recall that DR?

7 A. Yes, Counsel. If you could bear with me a
8 moment. It is not in what you handed it to me,

9 however, I do have 1.4.

10 Q. I've got -- no, I've got a separate --

11 A. Oh, okay. I'm sorry. Yeah, all right then.

12 MR. ENGLAND: If I may.

13 JUDGE DIPPELL: Yes.

14 MR. ENGLAND: And I guess we might as well

15 mark that as an exhibit, too, please.

16 JUDGE DIPPELL: We're up to Exhibit 12.

17 (EXHIBIT NO. 12 WAS MARKED FOR

18 IDENTIFICATION.)

19 JUDGE DIPPELL: And this is also a data

20 request from BPS to Staff; is that correct?

21 MR. ENGLAND: That is correct.

22 JUDGE DIPPELL: And the answers from Staff?

23 MR. ENGLAND: Correct. Both Data Request and

24 Response 1.4.

25 BY MR. ENGLAND:

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1 Q. Mr. Voight, have you had a chance to look at

2 that?

3 A. Yes.

4 Q. Does that appear to be an accurate copy of the

5 request, as well as Staff's response?

6 A. Yes.

7 Q. Okay. Is it fair to say that Staff performed

8 no comparative analysis between the ILEC and the CLEC

9 in these cases to determine or compare the number of
10 customers served, revenues generated, respective market
11 shares?

12 A. Well, we're talking about three different
13 cases, I believe. And there was no standard process
14 among the three cases.

15 Q. I -- I guess -- I'm sorry.

16 A. I mean, certainly they were all ILECs. We
17 know that -- I mean, large ILECs.

18 Q. I guess I'm -- I was focused more on the
19 response in the third paragraph of the answer, the last
20 couple of sentences. Where it says, Staff does not
21 analyze such information in regards to price cap
22 election of large ILECs and, therefore, it is not
23 possessed by the Staff.

24 Likewise Staff did not investigate annual
25 revenues for the same reason, therefore, it does not

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1 possess such information.

2 And similarly at the end of the last paragraph
3 in the answer, as with access lines and revenues of
4 large ILECs, the Staff considers such information
5 irrelevant to the granting of price cap --

6 A. Access -- I'm sorry.

7 Q. Cap regulation. Consequently, it has never
8 been analyzed in that context.

9 And I was -- I guess my characterization was

10 that, therefore, there was no -- in each case there was
11 no comparative analysis, whether it was based on access
12 lines, based on revenues generated, based on percents
13 of market share between the ILEC and the ALEC, if you
14 will, at the time of the price cap election?

15 A. That's a fair statement.

16 MR. ENGLAND: Okay. And then in Data Request
17 1.5 we asked essentially for the same information
18 updated to the time of the filing of your testimony and
19 Staff's testimony in this case.

20 And if I can have that marked as an exhibit,
21 I'd appreciate it.

22 JUDGE DIPPELL: Exhibit 13.

23 THE WITNESS: Yes. Thank you.

24 (EXHIBIT NO. 13 WAS MARKED FOR
25 IDENTIFICATION.)

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1 BY MR. ENGLAND:

2 Q. Again, does that appear to be an accurate copy
3 of the Data Request 1.5 and the Staff's response in
4 this case?

5 A. Yes.

6 Q. And insofar as the nature and extent of
7 competition faced by these three large ILECs -- excuse
8 me -- well, I -- I want to focus on the original three,
9 if you will: SWBT, Sprint and Verizon, I guess, or

10 GTE, however you want to characterize that.

11 A. I like to call them GTE.

12 Q. That's fine with me.

13 It -- it appears that no -- that the nature
14 and extent is unknown at this time and no such specific
15 analysis has been conducted?

16 A. That was certainly true in December of last
17 year and remains to be true.

18 Q. So it's then fair to say that Staff has
19 performed no empirical or analytical analysis that
20 would compare the nature and extent of competition then
21 when these companies obtained price cap status and now
22 or relatively close to now when your testimony was
23 filed in this case?

24 A. I don't believe that's entirely accurate,
25 Mr. England. The question confuses me. The -- the

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1 Data Request 1.5 says the date of filing and testimony
2 in this case, which would have been December of 2002.

3 And your question just now goes all the way
4 back to the granting of price cap status.

5 Q. I was -- I was -- I was con-- taking what I
6 thought was the -- your response in Data Request 1.4,
7 which talked about the nature and extent of competition
8 at the time of price cap election or determination.

9 A. Oh.

10 Q. And then looking at the response in 1.5, which

11 is the nature and extent of competition at this point
12 in time or relatively close to this point in time.

13 And my -- my question said that there was no
14 empirical or analytical analysis performed by Staff
15 which would make a comparison between the two as to
16 what existed back then and what exists now.

17 A. And I certainly want to adequately respond to
18 that question once I fully understand it, Mr. England.

19 I -- where I'm getting confused is Data
20 Request 1.4 talks about access line, revenue, percent
21 of market share.

22 Data Request 1.5 talks about the nature and
23 extent of competition. And, I guess, I didn't really
24 associate the two.

25 If by nature and extent of competition you do

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1 mean things like percent of market share, revenue and
2 access lines, that's fine. I think I could maybe
3 answer the question if you restate it.

4 However, I would submit that there was more to
5 the nature and extent of competition than merely the
6 number of access lines, revenues and percent of market
7 share.

8 Q. Okay. Well, then maybe my data requests were
9 inartfully (sic) phrased or -- or posed.

10 What empirical or analytical analysis has

11 Staff done, if any, to compare on an apples-to-apples
12 basis the nature and extent of competition at the time
13 these three companies became subject to price cap
14 versus now, or more accurately at the time you prepared
15 your testimony in this case?

16 A. Well, the first thing that comes to mind is
17 the Southwestern Bell Section 271 investigation, which
18 has occurred since their granting of the price cap
19 regulation.

20 There's a -- a very thorough record on things
21 like nature and extent, facilities based, even
22 references to wireless carriers and so forth. It's a
23 very extensive investigation.

24 So that would be one that comes immediately to
25 mind.

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1 Q. May I stop you there --

2 A. Sure.

3 Q. -- and ask a question?

4 Was that a comparison of what existed at the
5 time they became subject to price cap regulation or
6 simply an analysis of what existed at the time you were
7 doing your investiga-- investigation to determine
8 whether or not they were subject to effective
9 competition?

10 A. If I understand the question correctly, it's
11 neither one.

12 Q. Okay.

13 A. I mean, the Section 271 investigation I'm
14 referring to had nothing to do with effective
15 competition nor did it have anything to do with price
16 caps.

17 I mean, I thought your question was --

18 Q. Okay.

19 A. -- since the price cap election, and that is
20 one investigation that we've done.

21 Q. Okay. Well, I guess my -- and my question is:
22 Was it a -- was it a look back at that point in time
23 comparing the growth, if you will, and the
24 competitors -- the growth in access lines captured by
25 competitors, the growth in revenues generated by

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1 competitors, the growth in market share captured by
2 competitors?

3 A. I'm not certain about the revenue aspects of
4 it, but I think generally all of -- all of the others
5 were analyzed in that time frame of the Section 271
6 application. Forgive me. I forget the dates on that.

7 Q. Okay. And what -- what type of growth had
8 occurred --

9 A. Yes.

10 Q. -- if -- I'm sorry.

11 What -- what was the amount, if you will, if

12 that's not a proprietary figure?

13 A. No, I don't think that's a proprietary figure.

14 At that time CLEC market share was estimated to be --

15 certainly Southwestern Bell proclaimed it to be

16 somewhere in the neighborhood of -- actually if I

17 recall correctly, I think the Staff's investigation

18 in-- indicated it was somewhere in the neighborhood of

19 15, perhaps upwards of 20 percent.

20 I remember making statements that if it --

21 that's the percent of access lines, I would expect it

22 to be more than that and -- as a percent of revenue due

23 to the fact that the competitors by and large tend to

24 concentrate on the higher volume business customers.

25 I hope that answers your question.

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1 Q. Okay. And I -- and I interrupted you. You
2 were gonna talk about, then, an -- an analysis, if any,
3 of GTE or Sprint, whichever?

4 A. Well, with regards to the former
5 GTE territories, I believe I answered another data
6 request about the, if you will, nature and extent of
7 maybe even percent of market share occurring in the
8 Ewing, LeBelle -- and LeBelle areas of northeast
9 Missouri that was done for -- I can't remember if it
10 was Spectra or CenturyTel. That would have been since
11 GTE's election of price cap status.

12 Those are the only two that come immediately

13 to mind.

14 Q. Okay. At page 21 of your direct, lines 1
15 through 3 you have a statement there that's -- that
16 goes as follows: Since the original Commission grant
17 of price cap status for Sprint, Verizon and SWBT,
18 facility-based competition continues to not only exist
19 but also expand significantly in those areas.

20 And that was the -- well, first of all that's
21 a correct reading of your testimony, correct?

22 A. Yes.

23 Q. And the reason we had asked the data request
24 was to get some sort of empirical data as to what you
25 meant by expand significantly. So let me maybe perhaps

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1 be more direct.

2 Do you know in terms of lines captured,
3 revenues generated, market share captured, what have
4 you, the expansion -- the -- the extent of the
5 expansion in these three companies of competition?

6 A. The only knowledge that I could testify to
7 would be number of access lines by competitors, the
8 service areas; for example, we -- and if I could take
9 those three carriers one by one.

10 Southwestern Bell certainly is faced with --
11 as shown in the -- the Section 271 investigation
12 certainly faced with a lot more facilities-based

13 competition than they were at the time of their
14 election or their granting of price cap status.

15 I mean, there -- there's a very extensive
16 record. There was also Southwestern Bell's effective
17 competition case where the Commission granted if
18 Southwestern Bell of St. Louis and Kansas City exchange
19 declared those to be effectively competitive for
20 business service.

21 They had a couple of exchanges where that was
22 declared for residential service. And that -- there
23 was a lot of testimony about the extent of competition.
24 And most of that centered around the number of access
25 lines.

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1 In the case of the Verizon areas, I would
2 point to the what -- what I think to be continued
3 success of the facilities-based provider Mark Twain
4 Communications and those three previously mentioned
5 exchanges.

6 In addition, I don't believe this is
7 confidential information, but there is Verizon's --
8 former GTE's territory is faced with rather extensive
9 facilities-based competition in, for example,
10 the -- some of the St. Louis area and specifically I
11 think St. Peters and the Wentzville areas.

12 And that competition -- that facilities-based
13 competition has developed since GTE was originally

14 granted its price cap status.

15 With regards to Sprint, just yesterday
16 Fidelity, the CLEC, filed tariffs -- this is public
17 knowledge. Filed tariffs to expand their facilities
18 based -- cable TV based competition to Fort Leonard
19 Wood, Waynesville and St. Robert areas of Sprint's ar--
20 of Sprint's territory.

21 So that was -- those were the type of examples
22 I was thinking of when I wrote this testimony.

23 Q. Can you -- can you if -- if you can, tell me
24 in terms of percent and -- and use whatever criteria,
25 whether that's access lines, revenues, market share,

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1 competition has increased in these three companies'
2 territories since they were first declared to be
3 subject to price cap regulation?

4 A. I'm sorry. Mr. England, we simply have not
5 done that analysis.

6 Q. Okay. Would you agree with me that we don't
7 know today the extent of competition BPS will be facing
8 in the next two, three or six years?

9 A. I -- I would agree that none of us have that
10 sort of a crystal ball.

11 Q. Fair enough.

12 Direct testimony still, page 18, lines 9
13 through 11. And I'm gonna reference this and then I'm

14 gonna reference something in your rebuttal testimony
15 and ask you a question, if I can.

16 Here on page 18 of your direct at lines 9
17 through 11 you state, previous elections for price cap
18 status by other LECs were based on actual competition
19 for basic local telecommunications service regardless
20 of the mode of competition, correct?

21 A. Yes.

22 Q. And then similarly -- or I think similarly you
23 state at page 2 of your rebuttal, lines 10 through 12
24 that in your opinion -- I'm sorry.

25 Are you there?

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1 A. Rebuttal page 2, line 10?

2 Q. Correct.

3 A. Okay.

4 Q. You state there that, in your opinion, because
5 BPS does not have any competition for basic local
6 telephone service, the Commission should deny BPS's
7 petition for price cap regulatory status.

8 Do you see that?

9 A. Yes.

10 Q. Reading those two together, it seems to me
11 that you're saying that not only is it enough that an
12 alternative local exchange carrier be providing basic
13 local telecommunications service in the ILEC's
14 territory, it must also be providing competition to

15 that ILEC.

16 Is that a fair understanding of your testimony
17 there?

18 A. I -- I'm -- I don't know how to answer that.
19 I -- I guess I'm not sure how these -- you know,
20 page 18, line 9 of direct and page 2, line 10 of
21 rebuttal, I'm -- I'm not drawing the connection.

22 Q. Well, what I -- what I glean from this and
23 I'll -- I'll characterize it is that you were
24 attempting to distinguish the three previous ILEC price
25 cap cases and determinations, if you will, on the

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1 notion that they were facing actual competition, but
2 that BPS was not facing actual competition.

3 And -- and that's my question, is that in
4 addition to providing basic local telecommunication
5 service, the I-- or alternative local exchange carrier
6 must also be providing competition to the incumbent?

7 A. Well, I'll try to answer that. What I meant
8 in the direct testimony is that it was actual
9 competition for basic local telephone service and had
10 nothing to do with prepaid resellers -- nothing
11 whatsoever.

12 And in the rebuttal testimony I -- I'm simply
13 stating that BPS -- my belief that BPS does not have
14 any competition whatsoever, because BPS is not even in

15 the prepaid business.

16 I mean, they're not even -- the two services
17 are not even the same. And -- and I'm -- I -- I would
18 agree with you that there was competition occurring in
19 the large LEC areas.

20 And to the extent one wishes to accept the
21 proposition that price cap status can be granted on
22 just one end user receiving basic local telephone
23 service -- to the extent one views that as competition
24 for that one customer, then I -- I guess I would have
25 to say that competition would be taking place.

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1 Q. In some questions from your counsel I -- I --
2 I understood that Staff's position is that it's not
3 necessary that there be effective competition; is that
4 right?

5 A. That's absolutely correct.

6 Q. Okay. But it is essential -- if I can use
7 that word without confusing it with other terms -- or
8 it is necessary maybe that there be some competition;
9 is that right?

10 A. Yes. I think that's a fair -- fair statement.

11 Q. And, I guess, what I'm trying to get at is how
12 much is some versus effective competition?

13 A. I --

14 Q. At what point on the spectrum does it go from
15 some to effective or something in between?

16 A. I really don't -- I don't have an answer for
17 you. I -- I mean, all we can do is look at the record,
18 Mr. England, where in the big three that you have
19 mentioned, contrast that with the Southwestern Bell,
20 and soon to be Sprint, effective competition cases.
21 And those two are -- are very mutually exclusive.

22 Effective competition has nothing to do with
23 why we are here today.

24 Q. At least in Staff's view, correct?

25 A. Certainly.

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1 Q. Because, I believe, Ms. Meisenheimer in her
2 testimony uses terms such as effective competition and
3 trivial competition, correct?

4 A. I seem to recall her saying that, yes.

5 MR. ENGLAND: Okay. May I have another
6 exhibit marked, please?

7 JUDGE DIPPELL: Yes.

8 We're up to Exhibit 14.

9 (EXHIBIT NO. 14 WAS MARKED FOR
10 IDENTIFICATION.)

11 MR. ENGLAND: Judge, if I may, what has been
12 marked for purposes of identification as Exhibit No. 14
13 is a copy of the initial brief of the Staff of the
14 Missouri Public Service Commission in Commission Case
15 No. TO-97-397, the Southwester Bell price cap case.

16 And, I guess -- I've provided a copy for the
17 benefit of the parties here. But I would simply ask
18 the Commission to take official notice of this brief,
19 which is on file with the Commission in another matter
20 with the case number reference.

21 JUDGE DIPPELL: Is there any objection to the
22 Commission taking notice of the brief?

23 (No response.)

24 JUDGE DIPPELL: Then the Commission will take
25 official notice of what's been marked now as

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1 Exhibit 14.

2 BY MR. ENGLAND:

3 Q. Do you have the exhibit in front of you,
4 Mr. Voight?

5 A. Yes, sir.

6 Q. I'd like for you to turn to page 4 at the
7 bottom. There is a Subsection B, as in boy, and ask
8 that you read the heading and the paragraph, which is
9 approximately six lines long that follows out loud,
10 please.

11 A. Reading from page 4, Item B, Determination
12 That Certified Alternative Provider is Providing
13 Service.

14 The second requirement of 392.245.2 is a
15 determination that the certified ALEC is -- is -- "is
16 providing such service in any part of the large

17 incumbent company's service area."

18 This, too, is a simple and straightforward
19 determination. The statute does not require a
20 percentage of market share for the alternate provider
21 nor does it require that the alternative provider
22 be -- oh, creating -- I think that word is creating
23 real, substantial or effective competition.

24 Q. Thank you, sir.

25 Now, I'd like to focus for purposes of my

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1 question on that very last sentence insofar as it
2 indicates that the statute does not require that the
3 alternative provider be creating real competition, as
4 opposed to substantial and effective.

5 That tells me that the ALEC doesn't have to be
6 providing any competition. Am I misreading that?

7 A. I don't know what those words mean that
8 Ms. Baker wrote, Mr. England. You just said that -- I
9 mean, I'm -- I'm reading the words "real, substantial
10 or effective." I thought you just tried to contrast
11 those words. To me I -- I read them together.

12 Q. Okay.

13 A. In any regard, I don't know what that means.

14 Q. All right. But you nevertheless understand
15 this was Staff's opinion at least or position as stated
16 in its brief in that case, correct?

17 A. This is certainly Staff's brief, yes.

18 Q. And to the extent it attempts to offer an
19 interpretation of the statutory language, you would
20 certainly defer to Staff counsel and their
21 interpretation, correct?

22 A. The -- the short answer is yes. I mean,
23 that -- that entire sentence stating that the statute
24 does not require a percentage of market share, I mean,
25 I -- I think that's entirely consistent with what I've

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1 just said previously.

2 And the fact that the statute does not require
3 the alternative provider to be providing effective
4 competition, I think that's consistent with what I just
5 said and I would agree with the word "substantial."

6 I'm troubled by the word "real." I real-- I
7 honestly don't know what that means.

8 Q. Well, and you and I may not agree on what that
9 means. But to me it seems to mean any competition.

10 MR. SNODGRASS: Judge, I'm gonna object. I
11 think this is counsel testifying here. He's not asking
12 a question.

13 BY MR. ENGLAND:

14 Q. Would you agree with me?

15 JUDGE DIPPELL: I -- I will sustain your
16 objection. That question can be stricken and you
17 can --

18 MR. ENGLAND: Try again?

19 JUDGE DIPPELL: Try again, Mr. England.

20 MR. ENGLAND: I'll try again.

21 BY MR. ENGLAND:

22 Q. Would you agree with me that the phrase "real
23 competition" may be synonymous with any competition?

24 A. Well, if that's the case, then my -- my
25 counsel simply misspoke. There's no way that the

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1 statutes would allow, in my view, the -- BPS in this
2 case to get price cap status if, for example, State
3 Discount were merely providing pay telephone service or
4 special access service or long distance service.

5 So much less -- I mean, there's got to -- they
6 have to be providing basic local telephone service as a
7 standard.

8 Q. To the extent Staff counsel's phrase is at
9 odds with your testimony, then, there is an
10 inconsistency, correct?

11 A. I don't know, Mr. England. As I've testified,
12 I don't know what she meant by the term "real."

13 MR. ENGLAND: Okay. Fair enough.

14 I want to turn your attention now to our Data
15 Request 1.8. I've got copies here that you can look
16 at, and, I guess, mark as an exhibit, if I may, please.

17 JUDGE DIPPELL: Yes. Exhibit 15.

18 MR. ENGLAND: Thank you.

19 (EXHIBIT NO. 15 WAS MARKED FOR
20 IDENTIFICATION.)

21 BY MR. ENGLAND:

22 Q. Do you have a copy of Exhibit 15 in front of
23 you, Mr. Voight?

24 A. Yes.

25 Q. And does that appear to be a correct copy of

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1 the Data Request 1.8 and Staff's response?

2 A. Yes.

3 Q. Essentially we were asking questions regarding
4 the certification of prepaid resellers, and some
5 specific types of certificates and what have you.

6 And as part of the answer you directed us to a
7 Commission website, correct?

8 A. Yes.

9 Q. Okay.

10 A. I -- I hope that wasn't fishing too deep.

11 Q. Mr. Voight, for me any -- any fishing is too
12 deep.

13 We went to the websi-- well, in all fairness
14 and honesty for the record, someone in my office went
15 to the website.

16 A. In all fairness, someone in my office creates
17 it, not me.

18 MR. ENGLAND: Okay. And we pulled down what

19 we believe is a listing of certificated CLECs and
20 indica-- with an indication of the type.

21 And -- and in here are prepaid. And if I may,
22 I'd like to have that marked as an exhibit. And more
23 importantly I'd like to have you indicate that it
24 appears to be a correct copy of what's on the website.

25 JUDGE DIPPELL: We're up to Exhibit 16.

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1 (EXHIBIT NO. 16 WAS MARKED FOR
2 IDENTIFICATION.)

3 BY MR. ENGLAND:

4 Q. Do you have 15 in front of you?

5 JUDGE DIPPELL: The last one was 16.

6 MR. ENGLAND: I'm sorry. Well, my question
7 was do you have 15 in front of you. I'm sorry.

8 BY MR. ENGLAND:

9 Q. Do you have 16 in front of you?

10 A. Yes. I'm sorry.

11 Q. Thank you.

12 And -- and more importantly does it appear to
13 be a -- an accurate copy of what's on the Commission's
14 website?

15 A. Yes, it does.

16 Q. Okay. Now, I've gone through and -- and under
17 type of CLEC right kind of in the middle of the
18 columns, if you will -- I have counted those that have

19 a prepaid by them.

20 And I'm assuming I'm counting the number of
21 prepaid resellers, including Missouri State Discount
22 Telephone; is that a good assumption?

23 A. Yes, that's what the word "prepaid" means,
24 yes.

25 Q. Okay. And my tabulation comes up with 33.

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1 Would you agree with that number or something close?

2 A. Prepaid resellers, yeah, I would have no
3 reason not to believe that.

4 Q. And is it also correct to assume that all of
5 these that are listed here approximately 33 prepaid
6 resellers have basic local telecommunications service
7 certifi-- certificates?

8 A. Among others, I would expect that -- among
9 other type certificates, yes, I would expect that to be
10 the case.

11 Q. And I believe you would agree with me that
12 MSDT is no different -- at least not substantially
13 different than any other prepaid reseller in this
14 state; is that correct?

15 A. I certainly would agree with that. I -- the
16 company may say that they're better than others, but I
17 would agree with that.

18 Q. But at least as far as the -- the type of
19 service they provide, the services they do or don't

20 provide, they all generally are the same, as I
21 understand it, MSDT is not unique in that regard?

22 A. Yes, that's correct.

23 Q. Okay. At page 17 of your direct testimony,
24 lines 8 through 10 -- do you have that?

25 A. Yes.

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1 Q. You state "it is abundantly clear that prepaid
2 resellers, including State Discount, do not provide
3 access to operator services and directory-assistance
4 service and do not provide equal access to
5 interexchange carriers."

6 Do you see that?

7 A. Yes.

8 Q. Okay. And that's because of the nature of
9 their business, right?

10 A. Well, that's certainly in the nature of their
11 business. By definition -- it's prepaid by definition
12 and in most instances, I guess, the services that
13 you -- that you quote me on are postpaid.

14 So it's abundantly clear I guess because
15 that's the nature of the business. I think it's also
16 abundantly clear to me as a tariff supervisor that the
17 tariffs exclude those type services.

18 Q. Okay. Can I -- because they don't provide
19 access to operator services, directory assistance and

20 don't provide equal access, it's fair to say that they
21 do not provide basic local telecommunications services
22 as by the Commission Rule 4 CSR 240-32.100?

23 A. I don't know if I can agree with all of that
24 statement. I perhaps need to look at the modernization
25 rule before I answer, but --

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1 Q. I'm sorry. I didn't mean to confu-- I'm just
2 talking about the same rule that we've been talking
3 about all along, 240-32.100.

4 A. I understand what rule you're talking about.
5 It's a different question than been asked me before.

6 Can you direct me to what schedule in my
7 direct testimony I've attached the modernization rule?

8 Q. I don't know that you have.

9 A. I mean, I would just like to see a copy of the
10 modernization rule at this point --

11 Q. I can --

12 A. -- before I -- before I answer the question.

13 Q. Let me get to it this way. Isn't the crux of
14 the Staff's case in this case is that MSDT because they
15 can't provide these services, they aren't providing
16 basic local telecommunications service as specified in
17 that rule?

18 A. No. I don't think the rule is the crux of the
19 Staff's case. I think, as I've testified, that you
20 need to use the statute, the rule and the tariffs in

21 order to determine what basic local telephone service
22 is.

23 And I -- I believe operator services and
24 directory assistance services are not a part of the
25 modernization rule --

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1 Q. Okay.

2 A. -- and acc-- equal access to interexchange
3 carriers is.

4 Q. Okay. I -- I do have a copy of the rule and I
5 will have you --

6 A. Sure.

7 Q. You can certainly take a look at it.

8 A. Well, the answer to your question is State
9 Discount is not providing basic local service in part
10 because it is not complying with the Commission's
11 modernization rule.

12 Specifically of the three items you just
13 mentioned, they do not provide equal access to
14 interexchange carriers.

15 Q. Okay. And I guess my follow-up question is
16 that none of the other prepaid resellers are either,
17 because they deny access to the interex-- or equal
18 access -- excuse me -- to interexchange carriers?

19 A. That would be the Staff position that it --
20 prepaid resellers do not provide basic local telephone

21 service.

22 Q. In what other respect is MSDT not providing
23 basic local telecommunications service that other
24 prepaid resellers are?

25 A. I -- if I understand your question, the answer

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1 would be none. They're -- they're all the same --

2 Q. Okay.

3 A. -- as we've established.

4 Q. Okay. But at least for the narrow question of
5 whether or not they're -- they -- whether or not
6 prepaid resellers are providing basic local
7 telecommunications service in accordance with the
8 Commission's modernization rule -- and just to be
9 clear, that's 4 CSR 240-32.100 -- and I've lost my
10 train of thought.

11 They are not, in Staff's opinion, providing
12 basic local telecommunications service for purposes of
13 the price cap statute; is that right?

14 A. No, that's not right. For any purpose they're
15 not providing basic local service.

16 Q. Which would then include price cap?

17 A. Yes. Yes.

18 Q. Okay. Yet as I understand every one of these
19 prepaid resellers has received a certificate from the
20 Commission to provide basic local telecommunications
21 service; is that right?

22 A. I don't know if that's exactly right. I -- I
23 answered earlier that they all had, among others,
24 certificates to provide basic local service.

25 But to be technically precise, some of them

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1 have certificates to -- to provide for the resale of
2 basic local. There's a wide variety of -- at least in
3 terms of how they're captioned and you read the
4 specific words of the Commission's report and order
5 granting certificates, I don't want to give anyone the
6 impression that all prepaid resellers say exactly the
7 same thing, which is a certificate to provide basic
8 local service.

9 Q. Do you draw a distinction between a resale
10 certificate to provide basic local and a straight
11 certificate to provide basic local?

12 A. Well, certainly for the purposes of granting
13 the certificate, I -- I would not.

14 Q. What about -- I'm sorry.

15 A. Well, it's been my experience that when the
16 companies file their applications, they -- they caption
17 them different ways and they ask for different -- the
18 terminology that they use to -- to be granted a
19 certificate varies greatly.

20 And so they -- I just don't want to give the
21 impression that they all say exactly the same thing.

22 Q. Do you --

23 A. I -- I would to concede to you that they all
24 have certificates to provide basic local service.

25 Q. Whether they're resale or --

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1 A. Yeah, regardless of how it's worded.

2 Q. Okay. And do you draw a distinction between a
3 resale certificate for basic local and a plain
4 certificate for basic local, if you will, for purposes
5 of the price statute?

6 A. I don't know. I'm not drawing a distinction
7 in this case. I mean, I've not testified about that.
8 I see no reason in the -- BPS's election to -- we
9 haven't formed a position. I -- I don't know. But I
10 see no reason to draw a distinction.

11 Q. In your direct testimony, page 7, I believe,
12 at the very bottom you ask yourself a question
13 beginning at line 21 and answer it on the following
14 page. And I'm gonna paraphra-- paraphrase what I
15 believe you're saying here.

16 You're stating that it is not possible to
17 provide basic local telecommunications service without
18 complying with the Commission's minimum standards as
19 expressed in 4 CSR 240-32.100, correct?

20 A. Yes, that's correct.

21 Q. Would you agree with me that the corollary
22 would also be true, and that is if you can't comply

23 with the Commission's minimum standards as expressed in
24 4 CSR 240-32.100, it is not possible to provide basic
25 local telecommunications service?

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1 A. Yes, I think I would agree with that,
2 especially now that all of the ILECs are now in
3 compliance with that rule.

4 Q. Now, let me ask you this: Why would -- well,
5 let me -- maybe I'm -- I'm making an assumption that
6 I'm not sure I -- I -- it's fair for me to make yet.

7 Would you agree with me that insofar as these
8 prepaid resellers have received certificates to provide
9 basic local telecommunications service from the
10 Commission that Staff issued a recommendation
11 supporting that -- those applications?

12 A. Yes. They met the minimum statutory
13 requirements for getting a certificate.

14 Q. But they didn't meet the minimum rule
15 requirements for providing basic local
16 telecommunications service, did they?

17 A. We didn't know at the time the applications
18 were granted.

19 Q. I thought we knew because of the general
20 nature of the business that they couldn't provide
21 access to -- equal access to interexchange carriers?

22 A. Well, we do. That's certainly a fact.

23 I -- my experience has been a lot of companies say a
24 lot of things in their application that really don't
25 always come to fruition.

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1 Q. And --

2 A. I --

3 Q. And perhaps I can understand that for the
4 first several applications, but after the 30th, I think
5 we've got a pretty good idea of what these guys do and
6 what they don't do, wouldn't you agree with me?

7 A. Fair enough, yes.

8 Q. And I guess what I'm getting down to is why
9 would Staff recommend issuance of a basic local
10 telecommunications cert-- service certificate to
11 prepaid resellers if you knew at the outset that
12 because of the restrictive nature of their service
13 offering prepaid resellers could not provide that
14 service in accordance with the Commission's rule?

15 A. I believe we should have -- competitors should
16 be minimally regulated. I would personally not be in
17 favor of denying an application under such
18 circumstances.

19 I -- I -- they met the standard and they
20 should be granted the certificate. If it turns out
21 that what they wanted -- when it comes time to file
22 tariffs and interconnection agreements, if they don't
23 want to provide that service, even after having met

24 that higher standard, then as I've testified, I think
25 there -- should be allowed to provide something of a

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1 lesser standard.

2 Q. Would you agree with me that if you define
3 basic local telecommunications service solely through
4 the application of 386.020(4), then these prepaid
5 resellers would, in fact, be providing basic local
6 telecommunications service?

7 A. Yes, I suppose I would agree with that.

8 Q. Is it possible that that's the standard Staff
9 applies when it issues its recommendation regarding
10 their applications for basic local telecommunications
11 service certificates?

12 A. I don't know. There's never been any
13 discussion about such standards at the time of
14 application.

15 As I've testified and answered, we look at the
16 statutory requirements for technical, managerial and
17 financial criteria and other minimum filing-type
18 requirements.

19 And if they meet those requirements, we
20 recommend that they be granted the certificate.

21 Q. Regardless of whether or not they're capable
22 of providing the service they seek a certificate for?

23 A. Well, I think the Legislature has determined

24 what the capabilities are for granting certificates,
25 Mr. England. We follow those.

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1 Q. Let's talk about the Legislature's definition
2 of basic local telecommunications service as it's
3 contained in 386.020. At pages, I believe, 5 and 6 of
4 your testimony, beginning down there on line 19?

5 A. I'm with you.

6 Q. You state that the statute -- and I assume
7 we're talking about 386.020(4), right?

8 A. Yes.

9 Q. Does not define basic local telecommunications
10 service with sufficient clarity to determine what
11 constitutes basic local telecommunications service.

12 Rather Section 386.020(4) RSMo 2000 only
13 provides a general outline and defers to the Commission
14 to determine such things as a local calling scope and
15 whether or not access to operator services, as well as
16 other features are included as part of basic local
17 telecommunications service.

18 Do you see that?

19 A. Yes, I do.

20 Q. Okay. Would -- and when you say that the
21 section as a general outline defers to the Commission
22 to determine these things, is it then your testimony
23 that Commission Rule 4 CSR 240-32.100 is the rule that
24 the Commission has implemented to further define basic

25 local telecommunications service?

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1 A. Yes.

2 Q. Even though that rule was enacted before the
3 Legislature enacted 386.020(4) -- or excuse me --
4 392.245, the price cap statute?

5 A. Yes -- the answer to your question is yes.
6 I'm unsure of what it has to do with the price cap
7 statute. The definition of basic local service was put
8 in there in House Bill 360 in 1987.

9 Q. Okay. Well, the price --

10 A. Prior to the modernization.

11 Q. Right. But the price cap statute, which came
12 subsequent, talked about basic local telecommunications
13 service as a criteria, correct?

14 A. Oh, yes. For the granting of price cap
15 statute, yes.

16 Q. Would you agree with me that the price cap
17 statute does not require that an alternative local
18 exchange carrier be providing basic local
19 telecommunications service "as defined by the PSC rule
20 or a PSC rule?"

21 A. Yes -- excuse me. Yes. The Public Service
22 Commission is not mentioned on the board there behind
23 you.

24 Q. Nor is the -- nor are any rules that they may

25 implement or mention, correct?

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1 A. It just says basic local -- you have to
2 provide basic local service.

3 Q. Would you agree with me that
4 Section 386.020(4) does not specifically direct the
5 PSC to adopt rules to further define or clarify that
6 statutory def-- definition?

7 A. Yes, I agree with that.

8 Q. Are you aware of any other statutes that
9 direct the PSC to adopt rules to further define or
10 clarify the definition of basic local
11 telecommunications service?

12 A. I'm not aware of any other than its general
13 rulemaking authority. I'm -- I'm not aware that
14 there's a -- a need for what you're describing, but the
15 answer is no.

16 Q. And would you agree with me that
17 Rule 4 CSR 240-32.100 is titled "provision of basic
18 local and interexchange telecommunications service"?

19 A. Yes.

20 Q. And further, that that rule does not
21 specifically state that it's definition or its minimum
22 standards are to be used in determining whether an
23 alternative local exchange carrier is providing basic
24 local telecommunication service for price cap
25 determinations?

1 A. Yes.

2 Q. You would agree that it does not specifically
3 state that?

4 A. Yes, sir.

5 Q. Okay. Thank you.

6 You have that rule before you?

7 A. (Witness nodding.)

8 Q. Look to the -- to the end of the rule where it
9 discusses authority or lists the authority for that
10 rule.

11 Do you see that?

12 A. Yes.

13 Q. Would you agree with me the rule does not
14 refer to Section 386.020(4) as the statutory authority
15 for that rule?

16 A. Yes.

17 MR. ENGLAND: Your Honor, I'd like for the
18 witness to read specific rules into the record. And
19 I'm not sure that he has copies of that.

20 So I'd like permission to approach or --

21 BY MR. ENGLAND:

22 Q. I'll ask him, first of all, do you happen to
23 have Commission Rule 4 CSR 240-33.020 in front of you,
24 Mr. Voight?

25 A. I have them in that white book right down

1 there (indicating).

2 I'm sorry. Mr. England, where -- where in
3 Chapter 33 are we going?

4 Q. 33.020, definitions.

5 A. I'm there.

6 Q. Would you read Subsection 3 in parentheses,
7 please?

8 A. Basic local telecommunications service is
9 basic local telecommunications service as defined in
10 Section 386.020(4), revised supplement 1988.

11 Q. Okay. Would you turn now to Chapter 34,
12 please?

13 A. I'm there.

14 Q. And specifically Rule 34.020(4) and read that
15 into the record, please?

16 A. Basic local exchange telecommunications
17 service. This definition shall have the same meaning
18 as Section 386.020(4), revised supplement 1997.

19 Q. Thank you.

20 And now let's go back to 32 again --
21 Chapter 32. The definition section 020.

22 A. Okay. I'm there.

23 Q. And Subsection 4. Would you read that,
24 please?

25 A. Basic local telecommunications company. Any

1 incumbent or competitive local exchange company which
2 provides basic local telecommunications service as
3 defined in Section 386.020(4), revised Missouri
4 supplement 1997.

5 Q. And the next -- very next section, Section 5,
6 please?

7 A. Basic local telecommunications service. Basic
8 local telecommunications service as defined in
9 Section 386.020(4), revised supplement 1997.

10 Q. Would you agree with me that in all four of
11 these instances that I've just had you read into the
12 record that the Commission in its rulemaking has chosen
13 to defer to the statutory definition of basic local
14 telecommunications service?

15 A. They certainly do reference the statute for
16 the definition.

17 Q. Wouldn't that seem to suggest to you that the
18 Commission believes, at least in these four instances,
19 the statutory definition of basic local
20 telecommunications service is sufficiently clear and
21 requires no further explanation or clarification?

22 MR. SNODGRASS: Judge, I'm gonna object to
23 that. I think it's requires speculation on this
24 witness's part as to what the Commission may or may not
25 believe. How -- how would he know?

1 MR. ENGLAND: Well, he's certainly speculated
2 as to what he thought the Legislature believed when it
3 enacted the definition.

4 And I'm simply asking in these instances where
5 the Commission has referred back to the legislative
6 definition. It appears to me that it's sufficiently
7 clear, and I'm asking if he'd agree with me.

8 JUDGE DIPPELL: I'll let the witness answer
9 the question.

10 The objection is overruled.

11 THE WITNESS: I don't believe I've speculated
12 on anything, Mr. England. And I don't know the answer
13 to your question.

14 BY MR. ENGLAND:

15 Q. Certainly in these four instances the
16 Commission has not qualified their reference back to
17 the statute by referring to the rule that you've
18 referred to, 32.100, correct?

19 A. That seems apparent, yes.

20 MR. ENGLAND: Okay. Thank you, sir.

21 I have no other questions.

22 JUDGE DIPPELL: Thank you.

23 Commissioner Gaw, do you have questions for
24 Mr. Voight?

25 COMMISSIONER GAW: Do you have some?

1 JUDGE DIPPELL: I have a few questions that
2 Commissioner Lumpe asked me to --

3 COMMISSIONER GAW: Why don't you go ahead.

4 JUDGE DIPPELL: -- ask.

5 QUESTIONS BY JUDGE DIPPELL:

6 Q. Mr. Voight, have you re-- reviewed
7 Mr. Schoonmaker's testimony?

8 A. Yes, Judge, I have.

9 Q. He states in there that the election to become
10 a price cap company takes effect immediately upon the
11 election. I -- I'm definitely paraphrasing what --
12 what was said in there. And then the Commission can
13 determine if that's a valid choice.

14 Do you -- what -- what is your response to how
15 that election to Mr. Schoonmaker's testimony on that
16 part?

17 A. Well, I know his testimony on that part has
18 generated some concern among other Staff members and
19 my -- and my counsel.

20 It's almost like if it takes effect whenever
21 they write the letter and the Commission later
22 determines that it was an invalid election, it -- but
23 yet it -- it just seems unclear. I'm -- I'm -- I'm
24 confused by -- by what Mr. Schoonmaker is saying.

25 Q. Let me ask you this: If the Commission should

1 determine that BPS is validly -- that their election
2 was valid, do you -- in -- in your opinion in
3 interpreting the statutes, do you think that means that
4 they were a price cap company from the day that the
5 notice came into the Commission or from the day that
6 the order is effective?

7 What is Staff's view on that?

8 A. Judge, I honestly have not discussed that
9 with -- with anyone.

10 Q. That's fine. I'm not trying to create any
11 issues where there aren't any. And I think
12 Mr. Schoonmaker may have clarified his position on that
13 when he was testifying.

14 But along those -- along those lines, and
15 again, I'm not trying to create an issue if there's not
16 one there.

17 But in the beginning of this case there were
18 some pleadings filed which alleged that Missouri State
19 Discount Telephone Company didn't have a valid tariff
20 in effect with BPS's exchanges on it.

21 Later a tariff was approved and BPS filed the
22 second notice just to be certain that their notice was
23 good.

24 If -- if the Commission were to decide that
25 BPS's election is valid, does Staff have an opinion as

1 to which time the not-- was the notice valid if
2 MSDT didn't have a valid tariff with BPS exchanges
3 listed on it?

4 A. I -- I do not know. I'm very sorry. With --

5 Q. That's fine.

6 A. -- respect perhaps counsel would -- could
7 brief that. I don't know.

8 Q. All right. With the issue of the services
9 that are provided and -- and I'm just trying to clarify
10 this for Commissioner Lumpe.

11 There was some -- some issue as to whether the
12 eight services provided in the -- if there's
13 eight services in the rule; is that correct?

14 A. Yes.

15 Q. And is it Staff's position that all eight of
16 those are required to be providing basic local?

17 A. Well, yes, but it's -- as Mr. England pointed
18 out, it's a -- it's a modernization rule, I think, for
19 both basic local and interchange.

20 So to the extent, you know, they -- they apply
21 to basic local service, yeah, they must all be complied
22 with.

23 Q. Okay. And then there was also some mention, I
24 believe, in Mr. Schoonmaker's testimony about
25 competition provided by wireless companies.

1 In -- in your opinion, does that -- does
2 competition from wireless companies constrain prices or
3 affect prices for basic local service?

4 A. Well, my apologies to Commissioner Lumpe. I
5 didn't -- I saw that in Mr. Schoonmaker's testimony and
6 frankly didn't even hardly deem it worthy to respond
7 to.

8 I mean, the -- the issue of wireless carriers,
9 effective competition -- where Mr. Schoonmaker was
10 going with that is not even relevant to this case. And
11 I -- I really haven't given it -- it a whole lot of
12 thought.

13 With regards to Commissioner Lumpe's question,
14 does -- dit -- does wireless service tend to constrain
15 the prices of -- of landline services, as I understand
16 that question, I would have to say the answer is no.

17 You look at what's happened since we've
18 granted price cap status to Southwestern Bell, the
19 former GTE territories, and Sprint, they -- in -- in my
20 view, they raised prices the maximum allowable every
21 year and there seems to be no constraint on that.

22 Q. Okay.

23 A. In -- in fairness to Southwestern Bell, there
24 are a few services -- a very few where they have
25 actually decreased the price.

1 But certainly with the eight-percent annual
2 for non-basic services and the consumer price index
3 increases for the basic and exchange access services,
4 wireless cer-- certainly does not seem to constrain
5 that -- those increases at all.

6 Q. Okay. On page 8 of your -- I believe it's
7 your direct testimony. Let me take a look. Just one
8 moment.

9 No. I'm sorry. It's -- it's page 8 of your
10 rebuttal testimony.

11 You state that, in your opinion, Commission
12 rules should supercede the interconnection agreement.
13 And this is in -- after a discussion of the -- the rule
14 violation.

15 And -- and you previously testified that you
16 hadn't discussed amending -- a possible amendment of
17 that interconnection agreement with the company.

18 But can you explain there a little further why
19 you think that the rules supersedes the interconnection
20 agreement?

21 A. Well, first of all, unlike perhaps others, I
22 don't really view the Commission's rules as
23 particularly constraining or -- or onerous to the
24 companies.

25 And I don't think it's that hard to get a

1 waiver of a rule if the -- if the request for waiver is
2 reasonable.

3 The reason I put this in the testimony is
4 simply my belief that once the Commission has rules,
5 companies should not be able to contract their way
6 around them.

7 Q. Let me make sure I've asked everything.

8 If -- if Missouri State Discount Telephone
9 Company is not providing basic local service, what kind
10 of service are they providing?

11 A. They are providing local exchange service as
12 defined in Section 386.020.31 defined as
13 telecommunications service between points within an
14 exchange.

15 Q. On page 5 of your direct testimony at line 11,
16 you say that State Discount's sole customer and Steele
17 has apparently chosen State Discount because of an
18 outstanding and overdue credit balance with BPS.

19 Did you have -- what did you base that opinion
20 on?

21 A. Well, we now have certain empirical knowledge
22 as the results of data requests and so forth. So we do
23 have the exact data. It would be highly confidential,
24 if Commissioner Lumpe desires to see that.

25 But in December -- actually I probably wrote

1 this testimony in -- in November of last year. And
2 it's certainly based on the Staff's by now quite
3 extensive knowledge of the prepaid reseller business as
4 we have -- as I believe has been borne out here today,
5 prepaid resellers target aim for people who have
6 frankly been kicked off the network by the incumbent
7 for overdue bills.

8 Q. So you base this both on the nature of the
9 business and on information you received from the
10 company from data requests?

11 A. Well, and that -- at the time I wrote the
12 testimony, we did not have benefit of the data
13 requests.

14 So the answer would be I base it on the --
15 the -- the -- our knowledge of the nature of the
16 prepaid industry and also on State Discount's tariffs.

17 Q. Okay.

18 A. And our -- our belief, as I've testified to,
19 it's just not rational behavior for someone to pay \$50
20 for something they could get for \$7. There has to be a
21 reason, and the reason is the -- the credit worthiness.

22 Q. And if the tariffs similarly say that those
23 are the only customers State Discount can acquire on 14
24 or am I reading too much into the word "can" there?

25 Are you -- are you suggesting that that's what

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1 they're legally bound to or --

2 A. The answer to that is no.

3 Q. Oh, okay.

4 A. No, they are not. And I'm thinking
5 here -- the reason I'm hesitating, I'm thinking back to
6 the non-compete clause of the interconnection
7 agreement.

8 But I believe Mr. Carson even testified in
9 spite of that, if someone for some reason are willing
10 to pay \$50 to State Discount for what they could get
11 for \$7 from BPS, there's no le-- there's nothing legal
12 preventing that from happening.

13 Q. There's nothing legal in their certificate or
14 their tariff?

15 A. Correct. Or -- or -- or any law that I'm
16 aware of.

17 Q. And just this -- you may have already answered
18 this. I apologize if you did.

19 On page 18 you talk about currently there's
20 only been three companies, Southwestern Bell, Verizon
21 and Sprint, which have addressed the price cap -- or
22 filed price cap petitions.

23 Have there been others -- have -- have any
24 others been granted since then or --

25 A. In the former GTE territory -- and forgive me

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1 I always -- I get Spectra and CenturyTel -- I haven't

2 personally been involved with the cases.

3 But I believe we recently had one granted to
4 some of the old GTE territory, either Spectra or
5 CenturyTel. In addition, ALTELL has one pending, but
6 that's all that I'm aware of.

7 JUDGE DIPPELL: Okay. That's all the
8 questions I have.

9 Commissioner Gaw, did you have questions?

10 COMMISSIONER GAW: Yeah.

11 Thank you.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Just following up on the -- on your comments
14 about the amount it -- that it costs, because
15 I -- there's -- have been a little bit of testimony
16 about \$20 instead of \$7 on what it costs to provide
17 the -- for them to get the service that's equivalent or
18 somewhat similar to the service provided by Discount
19 for \$50.

20 Can you -- can you give me your take on that,
21 Mr. Voight?

22 A. Yes, Commissioner. Thank you for asking.
23 I -- I, too, felt that needed some clarification.

24 The \$7/\$50 comparison that I put forth in my
25 testimony is the only valid comparison. Any notion

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1 about adding fees and charges and taxes and surcharges
2 and excise taxes and 911 and relay fees and all the

3 things that get itemized on a bill -- any notion that
4 occurs only for BPS's customers and it bumps it up to
5 \$15 or \$20 and the same thing doesn't happen to
6 Discount, I -- I can't accept that.

7 We have rules, for example, that require an
8 itemization of all of those items, irrespective
9 of -- and what kind of service it is pre-- prepaid or
10 basic local. State Discount has not asked for a waiver
11 of that rule.

12 And when I look at State Discount's tariff, I
13 would note -- and as a matter of fact, it's in my
14 testimony, in one of the schedules of my direct
15 testimony that State Discount's tariff states that the
16 rate for basic local service is \$50.

17 And the rates do not include applicable taxes,
18 surcharges, including 911, Relay Missouri and any
19 Missouri USF charges.

20 So I believe the \$7/\$50 was not only a valid
21 comparison, it is the only valid comparison. Because
22 when you talk about things such as sales taxes, for
23 example, 6 percent of \$7 is far less than 6 percent of
24 \$50, so --

25 Q. All right. Thank -- thank you.

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1 The -- the question on providing or the -- the
2 certification to provide basic local telecommunications

3 service, do you have companies who request
4 certification who do not then provide the service after
5 getting the certificate?

6 A. Yes.

7 Q. Okay. And -- and -- and, in fact, sometimes
8 their applications for certificate is issued, are there
9 not, where -- where the -- the company at some point in
10 time after -- after time has passed abandons or
11 withdraws that -- that certificate?

12 A. Yes, that -- that happens.

13 Q. If -- if you would, please, give me your
14 interpretation of -- of the -- of -- of the meaning of
15 two-way switched voice service as its -- as it's used
16 in 386.020(4). What is that?

17 A. It's -- I -- I have my definitions of it all,
18 based on years of experience. Mr. Schoonmaker gave
19 some of his.

20 As was pointed out, nowhere is that defined.
21 But just breaking it down, the words "two-way," some
22 people attribute that to the direction of the traffic,
23 either out going only or incoming only or
24 two-way -- both ways.

25 Other people might attribute that to the

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1 communications that is occurring. Such as you and I
2 are having now when I speak, you hear me; and when you
3 speak, I hear you. So I don't think it's clearly

4 defined exactly what it is meant by two-way.

5 Q. Uh-huh.

6 A. The term "switched" -- in my view, it -- it
7 talks -- it means access to the public switched network
8 as contrasted with the private lines that Staff
9 attorney asked Mr. Schoonmaker about.

10 The problem with that is something like
11 special access, which Mr. Schoonmaker said was not a
12 switched service. It is a switched service. It is the
13 private line combined with the switched services.

14 The switching occurs not in a local exchange
15 office, but in the long distance office. So my view
16 would be that there's not full agreement among experts
17 on what that might mean.

18 Q. All right.

19 A. The term "voice communication" -- and we could
20 go down the line and it's -- it's not always clear
21 would be our point.

22 Q. All right. But it -- is it your belief that
23 as you're going down through that subdivision 4 on
24 386.010 that -- that the language, as determined by the
25 Commission, is -- is a modification of more than just

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1 what the local calling scope is?

2 A. Well, the -- the first time in a long time I'm
3 gonna have to qualify that I'm not an attorney.

4 I -- I've consulted different attorneys all of
5 whom I -- I respect about that very question. And it
6 is the -- the opinion of the telecommunications
7 department Staff that the words "as determined by the
8 Commission" modify the entire paragraph.

9 Q. All right. Let me -- let me ask you if I --
10 if I were to look at two-way switched voice service,
11 is -- is that -- and -- and then look at
12 Subdivision A, multi-party single, line including
13 installation, touch-tone dialing and anything dealing
14 with mileage and zone charges.

15 How -- how does that -- how does that modify
16 the two-way switched voice service, if at all? How
17 does that -- how does that -- how do those two things
18 fit together?

19 A. Well, the multi-party service, how does that
20 fit together with -- with the preceding paragraph?

21 Q. Yes. Uh-huh.

22 A. Well, in my view it -- it fits together hand
23 and glove if the Commission can make the determination
24 that -- such as they've done in their modernization
25 rule that multi-per-- party service is no longer

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1 acceptable and they must modernize the single-party
2 service.

3 Therefore, the Commission does have the
4 discretion to determine which serv-- beit single-party

5 or -- or multi-party and they've done so through their
6 rules. So that's how I think those fit together.

7 Q. Okay. So it -- it's -- it's your belief that
8 the Commission has authority to -- to delineate
9 something within Subdivision A as no longer being
10 acceptable for local basic telecommunications
11 service -- or basic local telecommunications service?

12 A. Yes, that is our view. They do have the
13 authority to delineate that.

14 Q. I -- I'm -- this -- this -- let me ask you
15 this: If I were to provide two-way switched voice
16 service within a local calling scope and only provide
17 underneath that one standard white pages directory
18 listing and that's all, what would that service be?

19 A. It would not be basic local service, in -- in
20 my view. I don't know what you would call that
21 service.

22 It -- the example we were using, if they
23 provided two-way switched voice service, of all of
24 those items the only one they provided was intercept
25 announcements, I guess that would be -- mean they

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1 provided telephone service, but routed everything to a
2 recording and the -- the call wouldn't go through.

3 So it -- it just doesn't fit that basic local
4 service could constitute any of those items.

5 Q. If you -- so is it -- is it your belief
6 that -- that if you separate out some of these
7 sub-- Subprovisions A through H that what you get if
8 you -- if -- with -- in some cases is something that is
9 not workable service from the standpoint of
10 telecommunications?

11 A. In my view, yes.

12 Q. Okay. And do you want to go into -- back into
13 your -- your scenario with the standard intercept
14 service and explain what you're referring to in more
15 detail?

16 A. Okay. Standard intercept service to me means
17 when -- it is a recording that occurs in a telephone
18 com-- company's central office.

19 It -- the most common example is when someone
20 disconnects their telephone and maybe moves to another
21 community.

22 The intercept, when you dial that number,
23 would say, I'm sorry, the number you've dialed is no
24 longer a working number.

25 Q. Uh-huh.

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1 A. To use BPS's line of reasoning, in my view,
2 they construct the first part of this definition as
3 two-way switched voice within a local calling scope and
4 so forth comprised of any of the following.

5 And as I understand BPS's testimony, that

6 could mean only one of the following.

7 Q. Uh-huh.

8 A. So you do provide a two-way -- it gives --
9 basically you would end up giving someone a dial tone
10 and presumably a local calling scope, but the only one
11 of these you provide is standard intercept service and
12 it doesn't even make sense to me.

13 And that's --

14 Q. Because what would you be able to get -- I'm
15 just trying to follow through here. What would you be
16 able to get if you had that service in your house?

17 What would you be able -- be able to get if you
18 picked up your phone and that was the only service that
19 you had was standard intercept service under --
20 under 4?

21 A. Well, the -- the two are really in conflict.
22 It's almost like an impossible situation to have.

23 But to try to answer your question, I think
24 you would pick up your phone and get nothing. And when
25 people called you, they would get a recording.

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1 Q. Yeah. So it'd be difficult for you to imagine
2 that being two-way switched voice service; is that what
3 you're saying?

4 A. Yeah. Yes.

5 Q. So do you believe that that interpretation --

6 is it Staff's position that that interpretation
7 produces a result that is -- is mea-- is meaningless?

8 A. Yes.

9 Q. In other words, that it's -- it's not workable
10 under that interpretation?

11 A. Yes.

12 Q. What -- and I -- I'm gonna take that in a
13 different -- in a different place. What happens if I
14 remove A -- Sub A from -- from the list there?

15 Does that -- what does that do, if anything,
16 if that's not available?

17 A. Well, I don't know how you could have basic
18 local telephone service without it being either a
19 single-party service or multi-party service. It -- it
20 just becomes meaningless.

21 Q. Are you aware of any other kind of service
22 that's technically feasible -- two-way switched voice
23 service without Sub A?

24 A. Well, some people might answer that by saying,
25 like, get -- get into the various business

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1 telephone-type services.

2 But in my view they're all single-par-- those
3 are -- are also all single-party services. So the
4 answer to your question would be no, I'm not aware of
5 any other type service.

6 Q. Now, if -- if we -- and I -- and I think

7 we -- I've heard some discussion on this. But if -- if
8 the -- if there were equal access to interexchange
9 carriers consistent with the rules and regulations of
10 the Federal Communications Commission available under
11 the Discount service, based upon what you know about
12 what's being provided by the Discount Service,
13 would -- would Staff then say that they were -- based
14 upon what they were offering, if it included
15 subdivision G, that would be basic local
16 telecommunication services -- that they would be
17 providing that?

18 A. I really don't -- I don't know for sure, but I
19 don't think we would say that satisfies the minimum
20 requirements.

21 I think we would -- as with all carriers other
22 than prepaid carriers, when you call, dial 0, you get
23 an operator; when you call 411, you get information,
24 and so on and so forth.

25 So I -- the answer to your question, I just

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1 don't see how it would be doable to call the service
2 that State Discount is offering to call that basic
3 local if they merely added access to interexchange
4 carriers.

5 And that was my viewpoint with Mr. England.
6 I -- it's more than just the modernization rule. The

7 Commission approves tariffs, they have the rule and
8 they have the statute, and it's really the three
9 together that makes up basic local service.

10 Q. And -- and -- but to get to -- to -- I'm
11 trying to see where Staff believes a line to be,
12 although I -- I realize that's not significant to your
13 opinion in this case because you've hung your hat
14 on -- on that one provision in particular at least it
15 seems to me.

16 But if -- if -- if there is -- it -- are you
17 saying that it is not possible to get access -- the
18 kind of access that's being referred to in Sub G to
19 interexchange carriers if you're a prepaid service?

20 A. By definition that is not possible.

21 Q. So if they -- but if they were -- if it was
22 not a prepaid service, but they were charging the same
23 amount that they're charging today, does Staff have an
24 opinion about whether or not that would qualify
25 if -- if you have a -- if -- if you've looked at that.

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1 And I -- I don't want to -- if you haven't,
2 it's okay too. I'm just curious.

3 A. We honestly have not examined that. What our
4 opinion would be if they -- if State Discount
5 provided -- if -- if they provided access to
6 interexchange carriers, would that suffice for BPS's
7 petition, I honestly don't know.

8 We -- we would want to look at the operator
9 services and other things.

10 COMMISSIONER GAW: Okay. I -- I think I'm
11 gonna stop.

12 JUDGE DIPPELL: Okay. I think it's about time
13 for us to take a break. That's all of the questions
14 from the Bench for Mr. Voight. We'll go ahead and take
15 a break and then we'll come back and do recross.

16 MR. SNODGRASS: I have a short matter, Judge,
17 just briefly. I seem to have lost my exhibits to some
18 extent.

19 I cannot find No. 6, No. 8 and No. 9. I'd
20 like a leave from the Bench, if there's no objection,
21 to make copies of these exhibits and attach my own
22 number to it, if that'd be all right in accordance with
23 whatever number we used --

24 JUDGE DIPPELL: That's -- that's fine.

25 MR. SNODGRASS: -- on the record. Would that

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1 be okay? Anybody have any problems with that?

2 JUDGE DIPPELL: All right. I guess -- what --
3 what --

4 MR. SNODGRASS: Well --

5 JUDGE DIPPELL: -- are you asking me again,
6 Mr. Snodgrass.

7 MR. SNODGRASS: I have one Exhibit No. 7 from

8 the court reporter. I cannot find the original marked
9 6, 8 and 9.

10 6 was the resale agreement between BPS and
11 State Discount. I'd like to put a No. 6 on that --
12 Exhibit 6, make a copy and put it in the record if no
13 one objects to that.

14 JUDGE DIPPELL: That's -- that's fine.

15 MR. SNODGRASS: No. 8 is a copy of the statute
16 4 CSR 2-- of the rule, rather, 4 CSR 240-31.010. I'd
17 like to do the same form. Put a number on it, copy it,
18 give it to the court reporter and have it put in the
19 record.

20 JUDGE DIPPELL: That's fine.

21 MR. SNODGRASS: And also No. 9, 392.185. And
22 I guess at the end of the case I'll move that those be
23 introduced into the record.

24 JUDGE DIPPELL: Thank you.

25 All right. Then we can go ahead and take a

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1 break. We'll come back at 20 after.

2 We can go off the record.

3 (A RECESS WAS TAKEN.)

4 JUDGE DIPPELL: Okay. Let's go ahead and go
5 back on the record.

6 Let's see. Okay. I think that finished the
7 questions from the Bench, and then we were ready for
8 recross examination.

9 Public Counsel?

10 MR. DANDINO: Thank you, Your Honor.

11 RECROSS-EXAMINATION BY MR. DANDINO:

12 Q. Good afternoon, Mr. Voight.

13 A. Good afternoon.

14 Q. Commissioner Gaw was asking you about
15 what -- what do you call the service if you had the
16 switched voice -- two-way switched voice service and
17 intercept service or any one of those.

18 What type of certificate would you need for --
19 for, like, the switched service plus the intercept
20 service?

21 A. Well, if intercept service was the only
22 service being provided by the company, as I explained
23 to Mr. -- or excuse me -- Commissioner Gaw, I just
24 don't know.

25 It -- it -- that would be confusing if that

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1 was the only type of service that they were providing.
2 I honestly don't know what kind of certificate you
3 would get for that.

4 Q. I see in the statutes Section 392.440 it talks
5 about a certificate for -- let's see. What's it say?
6 Certificate of service authority.

7 And then it talks about -- it lists in
8 Section 392.450, certificate of local exchange service

9 authority to provide basic local telecommunications
10 service or for the resale of basic telecommunications
11 service.

12 And is that -- it's still a certificate of
13 local service authority. Is that something different
14 than local service authority for basic local service?

15 A. I -- I don't know. Forgive me. Perhaps I'm
16 just not following -- I'm not tracking.

17 MR. DANDINO: Okay. That's all I have, Your
18 Honor.

19 Thank you.

20 JUDGE DIPPELL: Is there any recross based on
21 the questions from the Bench from BPS?

22 MR. ENGLAND: Yes, please.

23 RECROSS-EXAMINATION BY MR. ENGLAND:

24 Q. Mr. Voight, I believe in response to some
25 questions from Commissioner Gaw you were talking about

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1 the \$50 rate for MSDT versus the \$7 for BPS, and
2 talking about what the MSD -- excuse me -- the MSDT end
3 user bill would look like.

4 Have you ever seen one, sir?

5 A. No.

6 Q. So you don't know what's on that bill, do you?

7 A. I know what's legal to be on that bill,
8 Mr. England but, no, I don't know what's on it.

9 Q. I think you had indicated earlier that

10 sometimes people say one thing and do others?

11 A. When they apply for certificate, yes.

12 Q. How about for purposes of billing?

13 A. Staff quite frequently investigates billing
14 disputes.

15 Q. And there's --

16 A. They can happen.

17 Q. It seems to me to be a very right barrier
18 where a particular customer complains where there's not
19 enough information on the bill, not enough line
20 itemization, if you will, correct?

21 A. Whether or not it's right, I -- I don't know.
22 We -- Staff would certainly investigate any -- any of
23 those problems.

24 Q. Also I think in response to some questions
25 from Commissioner Gaw you indicated that the terms in

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1 the statute, such as two-way switched voice
2 communication were, in your opinion, undefined or
3 certainly not well defined; is that right?

4 A. I would -- yes, that's right. I would -- it's
5 not just my opinion. I would ask anyone to show me
6 where those terms are defined in the statutes.

7 Q. Well, and -- and that's my charge to you. I'd
8 like to ask you where I could find a definition of that
9 in the Commission rules.

10 A. They're not there.
11 Q. I'm sorry?
12 A. Two -- the -- the word "two-way" is not
13 defined. I cannot find it.
14 Q. Switched?
15 A. In the statutes or rules I -- I'm not aware.
16 Q. And voice communication?
17 A. That's precisely our point. They're not
18 nearly as clear as Mr. Schoonmaker would have it made.
19 Q. Well, I thought your point was that your rule
20 was supposed to make it clear?
21 A. No, that was not my point.
22 Q. So those terms remain undefined, whether you
23 look to the statute or to the rule, as far as you're
24 concerned?
25 A. Yes.

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1 Q. And then you went through an exercise with
2 Commissioner Gaw about the provision of a two-way
3 switched voice service with standard intercept?
4 A. Yes.
5 Q. And you weren't sure what that meant or what
6 type of service that would be?
7 A. Right.
8 Q. Let's bring it back to what exactly MSDT is
9 providing. And what they are providing is some form of
10 telecommun-- local telecommunications service, would

11 you agree?

12 A. Yes.

13 Q. Such that customers within the local calling
14 area of BPS can call and be called, correct?

15 A. Yes.

16 Q. And then further, if I understood your
17 testimony, you indicated that basic local
18 telecommunications service is not just defined by the
19 statute -- it's not just defined by the statute and the
20 rule, but it's defined by statute, rule and tariff.

21 Did I understand that correctly?

22 A. Well, I think my testimony -- what I meant to
23 say if I didn't, was the only way to determine what
24 constitutes basic local service is to reference all
25 three.

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1 Q. In the -- in your testimony you indicate that
2 you thought, though, you le-- you thought that the
3 Legislature left it up to the Commission to determine
4 by rule basic local telecommunications service,
5 correct?

6 A. I don't know. I -- I -- certainly the
7 Commission has the authority to promulgate rules.

8 Q. But, I guess, to distinguish rules from
9 tariffs -- my understanding is that companies propose
10 tariffs and, of course, the Commission can approve or

11 not approve them, correct?

12 A. Yes.

13 Q. Is it also your testimony that the Legislature
14 intended for companies to propose basic local
15 telecommunications standards in their tariffs?

16 A. I have never --

17 Q. So --

18 A. -- testified what the Legislature's intent
19 was, Mr. England. The plain reading of the -- the
20 words and my testimony indicate that the Commission has
21 tariff approval authority.

22 And you -- you need all -- all three inputs to
23 determine what constitutes any given company's basic
24 local telephone service.

25 Q. Well, then, let's get it back to the

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1 spe-- company, specific in this case, MSDT.

2 And I think you agreed with me that if you
3 look at the statute only, MSDT is providing basic local
4 telecommunications service?

5 A. Yes -- yes, I recall agreeing with that.

6 Q. Okay. If you look at MSDT's approved tariff,
7 are they providing service, to your knowledge, contrary
8 to their tariff or inconsistent with their tariff?

9 A. No, they're not providing service contrary to
10 their tariff, to my knowledge.

11 Q. So the only way they can fail to provide basic

12 local telecommunications service is by not complying
13 with the rule that we've been talking about, 32.100,
14 right?

15 A. I'm sorry. The question somewhat confuses me.
16 I -- I -- no, I -- I don't think I can -- can agree
17 with that.

18 Q. I thought we said that the -- that basic local
19 telecommunications service is defined by the statute,
20 by the rule and by the company's tariff.

21 And if they're not in violation, if you will,
22 or inconsistent with the statute, they're not in
23 violation of the tariff, the only thing left to be
24 unsatisfied, if you will, or -- or where they're
25 operating inconsistently with the requirements of basic

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1 local telecommunications service is the Commission
2 rule?

3 MR. SNODGRASS: Judge, I'd respectfully like
4 to object. I'm not sure this line of questioning is in
5 response to questions from the Bench or the
6 Commissioners.

7 MR. ENGLAND: Oh, it absolutely is, Your
8 Honor. This -- I mean, this witness testified in
9 response to Commissioner Gaw's questioning that you've
10 got to look at the statute, you've got to look at the
11 rule and you've got to look at the tariff.

12 JUDGE DIPPELL: I agree with that.

13 The objection is overruled.

14 THE WITNESS: Mr. England, nowhere in any of
15 my testimony that I recall have I given any definitions
16 of basic local telephone service.

17 What -- what I have done and said that you
18 need those three items that you have mentioned in order
19 to determine what constitutes any given carrier's
20 service offering.

21 BY MR. ENGLAND:

22 Q. But you've testified that MSDT is not
23 providing basic local telecommunications service -- and
24 forgive me, but I still don't know what the target is
25 here.

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1 What -- what's -- what is the definition of
2 basic local telecommunications service so that BPS can
3 qualify for the price cap statute?

4 A. At a minimum they would have to conform with
5 the modernization rule.

6 Q. And that's where they fall short, right?

7 A. That's certainly one area that we've
8 identified where they have fallen short. We haven't
9 taken it to the extent, I believe, that your inquiry
10 is -- is asking me.

11 We've -- all we have said is that they're not
12 providing basic local telephone service. I'll confess

13 to you or -- or admit to you we have not said what all
14 would they have to do in order to satisfy that
15 requirement -- that this inquiry we just simply haven't
16 gotten into that in our testimony.

17 Q. Okay. It appears to be a very amorphous
18 standard --

19 MR. SNODGRASS: Judge, I'm gonna object to
20 that --

21 MR. ENGLAND: Yeah, you're right.

22 MR. SNODGRASS: -- characterization.

23 MR. ENGLAND: You're right.

24 I'll withdraw it. But I -- I'm trying to get
25 an understanding.

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1 BY MR. ENGLAND:

2 Q. It -- it -- it -- would you agree with me that
3 the Legislature intended for there to be some uniform
4 standard that an ILEC must meet in order to become
5 subject to price cap regulation?

6 A. Yes, even -- even given how the Legislature
7 has defined basic local telephone service, as evolving
8 as that may be, yes, I'm -- the answer to your question
9 is I'm sure they would like to have some standard.

10 Q. And -- and wouldn't it make sense for the
11 standard to be the same for everybody?

12 Let me make it -- I'll make it a little more

13 clear or specific.

14 Wouldn't it make more se-- make more sense for
15 the standard of basic local telecommunications service
16 to be standard for everybody?

17 A. Certainly. I'm not aware that -- I'm not
18 aware that we're applying -- if we are applying a
19 different standard to State Discount and BPS, it is
20 only because the -- the evidence that you've presented
21 has never been presented to the Commission before.
22 This is a prepaid reseller and it's something that's
23 never happened before.

24 I would -- I would submit to you, Mr. England,
25 that we are applying the same standard, that is basic

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1 local telephone service.

2 Q. Okay. And itemize for me, if you would --
3 or -- or -- or direct me, if you would, to something in
4 writing that I can say we either measure up or we don't
5 measure up. What is the criteria?

6 A. I've not given any testimony on that. I don't
7 know. At a minimum it would certainly be conform as to
8 the modernization rule, which -- which as
9 Commissioner Gaw pointed out, I believe, or perhaps it
10 was you, I don't think there's anything in there that
11 says access to operator services and so on and so
12 forth.

13 Q. Is it possible that if we meet the standards

14 of the modernization rule -- I say we -- excuse me.

15 Is it -- is it -- is it possible that if
16 MSDT meets the standards of the modernization rule that
17 it still may not be providing basic local
18 telecommunications service?

19 A. Yes, that is possible. In -- in particular
20 State Discount and BPS because of the essential
21 services provisions in the Missouri statute that have
22 been talked about today.

23 I think there's also a question that you could
24 meet the modernization standard, but State Discount
25 would also need to -- to meet the essential services

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1 standard.

2 Q. That would be reading into this
3 statute, 392.245.2, a requirement that plainly doesn't
4 exist, does it?

5 A. We can talk about it all day, Mr. England.
6 But as it's been clearly pointed out, it's our position
7 that you cannot simply look at that without looking at
8 the -- the statute in its entirety. There are other
9 things that -- that need to be taken into
10 consideration.

11 The Commission, in my view, cannot look at
12 that in isolation without looking also at the -- the
13 purposes of the chapter.

14 Q. And so you would tell me, then, that the
15 Commission when they granted price cap statute to
16 Southwestern Bell, to GTE and to Sprint, didn't simply
17 look at that statute, they looked at certification
18 statutes and other statutes as well?

19 A. Well, they -- the evidence --

20 Q. I'm not -- I'm sorry. Now, I don't -- I'm not
21 interested in what the evidence may have been, I'm
22 interested in what the Commission found.

23 A. Well, that would be contained in -- that would
24 be derived by virtue of the evidence.

25 Yes, we certainly looked at the -- whether or

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1 not in -- in the Bell case whether or not we looked at
2 the purposes of the chapter and -- and analyzed the
3 competition that was occurring with Dial US.

4 And we just simply can't get away from that
5 word "competition" I don't think.

6 Q. When you say "we," are you talking Staff or
7 are you talking the Commission?

8 A. I'm sorry. The -- the case. Everyone
9 involved in the case. That -- that's what the case was
10 about. Both the Staff and the Commission and
11 Southwestern Bell put on the evidence.

12 Q. I guess I'm limiting my question to what the
13 Commission found to be appropriate.

14 A. The order would speak for itself.

15 Q. Okay.

16 A. I mean, I think I have it.

17 MR. ENGLAND: Fair enough. No further
18 questions.

19 JUDGE DIPPELL: Thank you.

20 Is there redirect?

21 MR. SNODGRASS: Yes, just briefly, Judge.

22 REDIRECT EXAMINATION BY MR. SNODGRASS:

23 Q. Mr. Voight, Mr. England's talked about the
24 lack of reference between 386.020(4) and the rule
25 4 CSR 240-32.100.

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1 Do you recall that?

2 A. Yes, i do.

3 Q. Now, it's true, isn't it, if you look at that
4 rule and you look at the authority section -- the
5 authority section is listed -- one of the authorities
6 is 386.250; is that right?

7 A. Yes, I believe so.

8 MR. ENGLAND: Your Honor, I'm a little late
9 with my objection, but I believe Counsel is leading the
10 witness which is not appropriate for purposes of
11 redirect.

12 MR. SNODGRASS: Judge, I can make them more
13 open ended. This is just to expedite the hearing
14 somewhat.

15 JUDGE DIPPELL: Well, if you'd rephrase the
16 question, Mr. Snodgrass.

17 MR. SNODGRASS: All right.

18 BY MR. SNODGRASS:

19 Q. Mr. Voight, would you look at
20 4 CSR 240-32.100?

21 A. 240 -- I'm sorry?

22 Q. 240-32.100.

23 A. I'm there.

24 Q. Would you look over on the right side of that
25 rule where it says authority?

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1 A. At the end of that, I believe I'm there.

2 Q. Do you see any mention of 386.250?

3 A. Yes, I do.

4 Q. Do you have any knowledge about 386.250?

5 A. I believe that's the ru-- the portion of the
6 statute that gives the Commission general rulemaking
7 authority.

8 Q. Now, do you know, Mr. Voight -- and lord knows
9 I'm no rule expert -- if you cited 386.020(4), you'd be
10 citing a definitional statute, would you not?

11 A. Yes.

12 Q. You would not be citing a rulemaking authority
13 statute; isn't that correct?

14 A. That is correct.

15 Q. All right. Mr. Voight, would you look at your

16 testimony at Schedule 5?

17 A. I'm there.

18 Q. That refers to the order denying Motion to
19 Suspend Tariff in Case No. TT-99-237; is that a fair
20 statement?

21 A. Yes.

22 Q. And direct you to page 2.

23 A. I'm there.

24 Q. Going down about five lines it says, in that
25 order -- I'm gonna read it. See if you agree with my

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1 reading. Staff stated the current proposal contained
2 in Tariff File 9900352 proposes to add the inward dial
3 capabilities to the Digital Link Service; therefore,
4 providing AT&T a two-way switched voice service within
5 a local calling scope?

6 A. Yes.

7 Q. Is that what that says?

8 A. Yes, that's what that says.

9 Q. 386.020(4) refers to two-way switched voice
10 service within a local calling scope; is that accurate?

11 A. Yes.

12 Q. On page 2, reading further from that order
13 going down to the second paragraph, Staff further
14 stated that it was concerned that AT&T's proposal would
15 not conform to these and other standards previously

16 established by the Commission or other LECs who offer
17 two-way switched voice service within a local calling
18 scope.

19 Does it say that?

20 A. Yes, that's what it says.

21 Q. And again, that order refers again to two-way
22 switched voice service within a local calling scope?

23 A. Yes, that's right.

24 Q. So was it your belief that even though you
25 didn't necessarily refer to 386.020(4) you had that in

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1 mind in that case?

2 A. Oh, that was the center piece of the whole
3 case what -- just exactly what constitutes basic local
4 telephone service.

5 Mr. Schoonmaker's testimony said he did not
6 read that into this case and -- and that -- that was
7 exactly what was being cited there, even though the
8 Commission approved the tariffs and we did not have a
9 hearing.

10 As part of the Digital Link Service, as I've
11 testified, the first part of it involved Case TA-96,
12 and I believe it's, 322 which -- in which the
13 Commission determined on page 3 of that order approving
14 that tariff at that time.

15 The first part of that service it says -- the
16 Commission's order says, basic local service is defined

17 as -- in 386.020 as two-way switched voice service
18 within the local calling scope.

19 The Commission concludes that AT&T's Digital
20 Link Service does not fit this description.

21 Q. All right. If I remember your testimony
22 correctly, Mr. Voight, you mentioned in your response
23 to Mr. England's questioning that the Digital Link
24 Service case was filed under two separate cases; is
25 that correct?

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1 A. Yes.

2 Q. And would you explain to us how those cases
3 were tied together?

4 A. Well, the first part -- the first case the
5 Staff -- Southwestern Bell objected to, and basically
6 Southwestern Bell was asking for a hearing. The second
7 part Staff was asking for a hearing and ended up there
8 was not a hearing.

9 The -- the point would be, Mr. Snodgrass, is a
10 plain reading of what the Commission has said in its
11 orders in those cases and a plain reading of what the
12 conclusion would have had to have been is that, even
13 though AT&T by its own admission was providing a
14 two-way switched voice service within a local calling
15 scope, that was not basic local telephone service. In
16 particular, because it did not comply with the

17 Commission's modernization rule, and particularly the
18 part about access to 911.

19 MR. SNODGRASS: Thank you. I have nothing
20 further.

21 JUDGE DIPPELL: Thank you very much.

22 Now, before you leave the Bench -- or the
23 witness stand, Mr. Voight, we had a ton of exhibits
24 that came up during your testimony and I don't think
25 any of them got entered into evidence, except maybe

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1 one.

2 THE WITNESS: Okay.

3 JUDGE DIPPELL: So I want to -- to go back and
4 make sure that what needed to get entered got entered.

5 Let me start with Exhibit 10, which was BPS's
6 Motion to Suspend in TT-99-237.

7 MR. ENGLAND: Actually --

8 JUDGE DIPPELL: Or I'm sorry. It wasn't
9 BP-- it was offered -- or it was -- it was -- it was
10 brought into the hearing room by BPS. It was the
11 Motion to Suspend in TT-99-237.

12 Mr. England, were you going to request the
13 Commission to take notice of that?

14 MR. ENGLAND: Either notice or offer it as an
15 exhibit, whatever is easier.

16 JUDGE DIPPELL: It's part of the Commission's
17 record, so I believe it's appropriate to take notice.

18 But is there any objection to the Commission
19 taking official notice of Exhibit 10?

20 MR. SNODGRASS: No, not from Staff.

21 JUDGE DIPPELL: Then the Commission will do
22 so.

23 And then there was Exhibit 11, which was the
24 DR 1.3. Did you intend to offer that into evidence,
25 Mr. England?

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1 MR. ENGLAND: I did, Your Honor. Thank you.

2 JUDGE DIPPELL: Is there any objection to
3 Exhibit 11?

4 (No response.)

5 JUDGE DIPPELL: Then I will enter that into
6 the record.

7 (EXHIBIT NO. 11 WAS RECEIVED INTO EVIDENCE.)

8 JUDGE DIPPELL: Exhibit 12 was Data
9 Request 1.4.

10 Did you intend to enter that, Mr. England?

11 MR. ENGLAND: I did, Your Honor. Thank you.

12 JUDGE DIPPELL: Would there be any objections
13 to Exhibit 12 coming into the record?

14 (No response.)

15 JUDGE DIPPELL: Then I will enter that into
16 the record.

17 (EXHIBIT NO. 12 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE DIPPELL: Exhibit 13 was Data
19 Request 1.5.
20 Did you intend to offer that, Mr. England?
21 MR. ENGLAND: Yes, Your Honor.
22 JUDGE DIPPELL: Is there any objection to
23 Exhibit 13?
24 (No response.)
25 JUDGE DIPPELL: Then I will enter that into

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1 the record.
2 (EXHIBIT NO. 13 WAS RECEIVED INTO EVIDENCE.)
3 JUDGE DIPPELL: Exhibit 15 was Data
4 Request 1.8.
5 Did you intend to offer that, Mr. England?
6 MR. ENGLAND: I'm sorry. Exhibit 15; was
7 that --
8 JUDGE DIPPELL: Yes.
9 MR. ENGLAND: -- your question?
10 Yes, I did. I'm sorry.
11 JUDGE DIPPELL: I -- I took notice of
12 Exhibit 14 earlier if you're wondering.
13 Is there any objection to Exhibit 15?
14 (No response.)
15 JUDGE DIPPELL: Then I will enter that into
16 the record.
17 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)
18 JUDGE DIPPELL: And Exhibit 16 was a -- a list

19 of CLECs from the PSC's internet site.

20 Did you intend to offer that?

21 MR. ENGLAND: Offer it or take official
22 notice, whatever is appropriate.

23 JUDGE DIPPELL: Since that's not in an
24 official case or rule, I'd prefer you offer that as --

25 MR. ENGLAND: I'll offer that as an exhibit.

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1 JUDGE DIPPELL: Would there be any objection
2 to that?

3 MR. SNODGRASS: What is the exhibit again,
4 Judge?

5 JUDGE DIPPELL: That -- that was the list of
6 CLEC's which was printed from the internet, which
7 Mr. Voight was able to identify.

8 MR. SNODGRASS: I don't think we have an
9 objection to that.

10 JUDGE DIPPELL: Then I will enter that into
11 the record as well.

12 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

13 MR. SNODGRASS: Well, since we're doing this,
14 Judge, it seems as if my -- my missing exhibits have
15 resurfaced. And --

16 JUDGE DIPPELL: All right.

17 MR. SNODGRASS: -- they have shown themselves
18 to be where they should have been in the first place

19 with the court reporter.

20 At this time I'd seek to introduce into the
21 record if I did not, Exhibit No. 7, which was the
22 resale agreement between BPS and State Discount.
23 Exhibit -- excuse me. Exhibit --

24 JUDGE DIPPELL: That was 6.

25 MR. SNODGRASS: -- No. 6 was the resale

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1 agreement between BPS and State Discount; No. 7 was
2 392.451, a copy of that statute; No. 8 was
3 4 CSR 240-31.010, a company of that rule; and
4 Exhibit No. 9 was a copy of 392.185 of the Missouri
5 Statutes.

6 I'd seek to introduce those at this time.

7 JUDGE DIPPELL: Okay. Exhibit 6 you've
8 already offered --

9 MR. SNODGRASS: Was that already admitted?

10 JUDGE DIPPELL: -- and that -- that was --

11 MR. SNODGRASS: Thank you, Judge.

12 JUDGE DIPPELL: -- entered in.

13 The others, I believe, the Commission could
14 take official notice of also, since they're all
15 statutes.

16 Is that sufficient?

17 MR. SNODGRASS: That would be sufficient to
18 Staff, yes.

19 JUDGE DIPPELL: And is there any objection to

20 the Commission taking official notice of Exhibits 7, 8
21 and 9?

22 MR. ENGLAND: No objection, Your Honor.

23 JUDGE DIPPELL: Then I will take official
24 notice of those exhibits as well.

25 Very good. I think we're caught up on our

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1 housekeeping.

2 Mr. Voight, you may step down. Thank you.

3 (Witness excused.)

4 JUDGE DIPPELL: And we're ready of Office of
5 Public Counsel witness. Ms. Meisenheimer is very
6 speedily taking the stand. She's ready to end this
7 day.

8 MS. MEISENHEIMER: A little over an hour to
9 talk, I don't think that will probably be enough for
10 me.

11 JUDGE DIPPELL: Please raise your right hand.

12 (Witness sworn.)

13 JUDGE DIPPELL: Thank you.

14 You may proceed, Mr. Dandino.

15 MR. DANDINO: Thank you, Your Honor.

16 BARBARA MEISENHEIMER testified as follows:

17 DIRECT EXAMINATION BY MR. DANDINO:

18 Q. Please state your name.

19 A. Barbara Meisenheimer.

20 Q. And what is your position?

21 A. Chief economist in telecommunications with the
22 Missouri Office of the Public Counsel.

23 Q. Did you cause to be filed in this case the
24 direct testimony of Barbara A. Meisenheimer, which has
25 been marked for identification purposes as Exhibit 5?

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1 A. Yes, I did.

2 Q. And do you have any corrections to that?

3 A. No, I don't.

4 Q. And is that testimony contained in Exhibit
5 No. 5 true and correct to the best of your information,
6 knowledge and belief?

7 A. Yes, it is.

8 Q. If I would ask you the questions that are
9 contained in that Exhibit 5, would your answers today
10 be the same?

11 A. Yes.

12 MR. DANDINO: Your Honor, at this time we'd
13 like to offer Exhibit No. 5 and tender Ms. Meisenheimer
14 for cross-examination.

15 JUDGE DIPPELL: Thank you.

16 Is there any objection to Exhibit No. 5?

17 MR. ENGLAND: No objection.

18 MR. SNODGRASS: No objection.

19 JUDGE DIPPELL: Then I will enter Exhibit
20 No. 5 into the record.

21 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)
22 JUDGE DIPPELL: Is there cross-examination by
23 Staff?
24 MR. SNODGRASS: No cross from Staff.
25 Thank you.

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1 JUDGE DIPPELL: BPS?
2 MR. ENGLAND: Yes, please.
3 CROSS-EXAMINATION BY MR. ENGLAND:
4 Q. Good afternoon, Ms. Meisenheimer.
5 A. Good afternoon, Mr. England.
6 Q. I'd like to start off trying to see if I can
7 reach some common ground with you as I did with
8 Mr. Voight.
9 Am I gonna have any success?
10 A. I don't know.
11 Q. Fair enough. Let's see.
12 Does Public Counsel dispute the fact that
13 BPS is a small incumbent local exchange company?
14 A. No, we do not.
15 Q. All right. Do you dispute the fact that
16 MSDT has been certificated by the Commission to provide
17 basic local telecommunications service in BPS's service
18 area?
19 A. I do not dispute that, although I do not
20 believe that they are providing what they are certified

21 to provide.

22 Q. Okay. But as far as holding the certificate,
23 they do hold that, correct?

24 A. Yes.

25 Q. And do you agree --

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1 A. I -- I should clarify that with respect to the
2 price cap. I don't think they're providing what
3 they're certified to provide.

4 Q. Okay. Would you also agree that Missouri
5 State Discount Telephone service is an alternative
6 local exchange carrier as that term is defined in
7 Section 386.020?

8 A. I'm trying to find it. Do you have it close?

9 MR. ENGLAND: I -- I have a copy.

10 May I approach?

11 JUDGE DIPPELL: Yes.

12 THE WITNESS: I agree that they are an
13 alternative local exchange telecommunications company.

14 BY MR. ENGLAND:

15 Q. Okay. Thank you.

16 And I may be pushing my luck, but I'll try one
17 more.

18 Do you agree that BPS has provided written
19 notice to the Commission of its election to become
20 subject to price cap regulation?

21 A. I agree that it has prov-- provided written

22 notice that it seeks election under the price cap
23 statute, yes.

24 Q. I guess that's as close as I'm gonna get,
25 right, Mrs. Meisenheimer?

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1 A. Ms. And yes.

2 Q. So much for friendly thoughts.

3 A. Just wait 'til redirect.

4 Q. At page 6 of your direct testimony, lines 11
5 through 16 -- well, actually it's lines 13 through
6 16 -- excuse me. I'm focusing on the answer.

7 And I'm paraphrasing, but you discussed the
8 regulatory purposes of the price cap regulatory scheme,
9 correct?

10 A. In comparison to rate of return regulation,
11 which is mentioned in the question.

12 Q. Okay.

13 A. So did you want --

14 Q. That --

15 A. -- me to talk about it absent that it's a
16 comparison?

17 Q. No. Just wanted to kind of characterize what
18 you were getting at there.

19 And you make the assertion that the goal is
20 pricing flexibility without substantial loss of
21 benefits produced through traditional rate regulation,

22 correct?

23 A. Yes, as it relates to being a comparison to
24 rate of return regulation.

25 Q. Okay. Is it fair to say that that's your view

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1 or your opinion, rather than that ex-- rather than the
2 express statement in the legislation?

3 A. I believe that -- well, first of all, it is my
4 opinion. And second of all, I believe that that
5 is -- that the legislation is saturated with the idea
6 that there are benefits from competition that were
7 intended to be achieved to the benefit of Missouri rate
8 payers.

9 Q. Can you provide me with reference to that -- a
10 cite or several cites if it's saturated?

11 A. I would be happy to. In Section 245, in fact,
12 I believe the very beginning.

13 Q. I'm sorry. Before I -- before you go into
14 that now, this is -- these are places where the
15 Legislature has expressly stated that price cap
16 regulation -- or that the goal -- excuse me -- is
17 pricing flexibility without substantial loss of
18 benefits produced through traditional rate regulation?

19 A. No. They would not be cites to explicit
20 statements of that.

21 Q. Like -- I -- I -- I'm focusing on your goal as
22 you've said here. And I guess what I'm trying to get

23 at is that -- that's your opinion of the goal, not
24 necessarily -- and when I say express, I mean expressed
25 statement of intent of the legislation.

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1 A. Within the context of the question that you
2 chose to focus on the answer for, I describe it as
3 being a comparison between price cap regulation and
4 rate of return regulation.

5 And I believe that, yes, expressly in portions
6 of the statutory language -- for example, one would be
7 that competition should be allowed to operate as a
8 substitute for regulation.

9 I mean, we can go through and I can try and
10 find the exact cite for you if you'd like. But I -- I
11 think it's fairly characterized as being contained in
12 the language of the statute.

13 MR. ENGLAND: Let me go at it this way, if I
14 may approach the witness.

15 JUDGE DIPPELL: Yes.

16 BY MR. ENGLAND:

17 Q. What -- what I'd like to do is,
18 Ms. Meisenheimer, is hand you a copy of the transcript
19 from the Commission proceeding To-97-397, the
20 Southwestern Bell price cap case?

21 A. Okay. I haven't seen it in a while.

22 JUDGE DIPPELL: Do you want to just briefly

23 show that to Mr. Snodgrass?

24 MR. ENGLAND: Or Mr. Dandino?

25 JUDGE DIPPELL: Oh, I'm sorry. Mr. Dandino.

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1 I'm switching witnesses on you.

2 MR. ENGLAND: I'd be happy to show it to
3 Mr. Snodgrass, too.

4 JUDGE DIPPELL: You can show it to
5 Mr. Snodgrass, too.

6 BY MR. ENGLAND:

7 Q. Would you turn to page 189 in that transcript?

8 JUDGE DIPPELL: Now I've lost track.

9 Mr. England, which -- which transcript is
10 this?

11 MR. ENGLAND: It's the transcript from the
12 Southwestern Bell price cap case, TO-97-397.

13 JUDGE DIPPELL: Thank you.

14 MR. ENGLAND: I believe it's the public
15 version -- or public portion.

16 BY MR. ENGLAND:

17 Q. Do you have that page 190 -- 189 -- excuse
18 me -- in front of you?

19 A. Yes.

20 Q. Now, what I'd like to do is read to you a
21 couple of question and answers that were posed to you
22 in that case -- and your responses and then find out if
23 that's different than the answer you just gave me.

24 Beginning at line 7, Question: Okay. And you
25 make the assertion that the goal is pricing flexibility

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1 without substantial loss of benefits produced through
2 traditional regulation, correct?

3 Answer: Yes. Question: It's fair to say
4 that that's your view -- that that's your view or your
5 opinion, rather than express statement in Senate
6 Bill 507; isn't that correct. Answer: Yes, that's
7 correct.

8 Is that your testimony in the Southwestern
9 Bell price cap case?

10 A. Yes, it was.

11 Q. And is that testimony different than the
12 testimony you just gave me to essentially the same
13 questions?

14 A. I would say that, yes, there is a difference
15 between my testimony at that time and my testimony now.
16 I would also add that I've had much more experience in
17 working with Senate Bill 507 and the language of the
18 statute since the time that I testified in that case.

19 So that's the best explanation I have for why
20 there might be some difference in my response.

21 Q. Well, Senate Bill 507 hasn't changed in this
22 period of time, has it -- the -- the language?

23 A. No, but we learn as we gain experience.

24 Q. I'll grant you that.

25 I'm just trying to have a hard -- I'm having a

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1 hard time imagining how an express statement that
2 didn't exist at this point in time exists now, or maybe
3 I misunderstood your answer.

4 A. Based on my -- the knowledge that I had at
5 that time, my experience and to the best of my belief
6 that was at the time the answer that I gave.

7 I now have different experience -- hopefully
8 additional experience and -- of -- a better
9 understanding of what might be contained in Senate
10 Bill 507.

11 Q. Okay. Then direct me, if you would please, to
12 the expressed statement in Senate Bill 507 that makes
13 the assertion that the goal is pricing flexibility
14 without substantial loss of benefits produced through
15 traditional regulation.

16 A. Okay. Well, do you have a copy of Senate
17 Bill 507?

18 Q. No, I don't. I operate best without those
19 kinds of hindrances.

20 A. I can understand that. I do too.

21 Q. No. I'm sorry. I -- I didn't bring one with
22 me.

23 MR. DANDINO: Your Honor, if the witness
24 doesn't -- doesn't have a copy of Senate Bill 507, it

25 would be very difficult for her to specifically

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1 identify it.

2 I think all she has in front of her is a -- is
3 a copy of the statutes and what parts may be part of
4 507 and which parts are not might be difficult for --
5 for her to determine.

6 MR. ENGLAND: In order to short circuit this,
7 I would accept maybe a late-filed exhibit or citation
8 to it in a brief.

9 THE WITNESS: I think that the --

10 MR. DANDINO: That -- that would -- we mark
11 what parts?

12 MR. ENGLAND: I mean, provide a late-filed
13 exhibit, identify the statutory section or language
14 that -- where this expressed intent or assertion is,
15 and that's sufficient for me.

16 JUDGE DIPPELL: That's fine.

17 MR. DANDINO: That's fine.

18 JUDGE DIPPELL: If you'd like to handle it
19 that way, we can mark that Exhibit 17. And I'll just
20 call that the portion of Senate Bill 507 in answer to
21 Mr. England's question.

22 THE WITNESS: I would be prepared to answer
23 now.

24 MR. ENGLAND: Oh.

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1 language that I was referring to and since
2 Section 240 -- or 392.245 was introduced in Senate
3 Bill 507, I think that would be at least one part of my
4 answer that will definitely come from Senate Bill 507.

5 BY MR. ENGLAND:

6 Q. I'm sorry. I didn't -- I didn't follow that
7 answer. Could you repeat that, please?

8 A. I'm saying that in response to your question,
9 I have two parts to my answer. One part I'm not sure
10 whether it was expressly introduced in Senate Bill 507
11 or whether it -- part of it might have been there
12 previously.

13 The other part having to do with 392.245, I
14 think, actually was, because that introduced price cap
15 regulations. So, in fact, that is specific to what was
16 in Senate Bill 507, I believe.

17 So I'd be happy to go ahead and answer if
18 that's acceptable.

19 Q. Well, go ahead and answer to the best of your
20 ability. If we need more, I'll -- I'll ask for it.

21 A. Okay. In Section 392.185 regarding the
22 purpose of the chapter, the pro-- provisions of this
23 chapter shall be construed to, I would point to
24 part 5, 6, part 3, part 2.

25 I would also specifically point to the first

1 statement in 392.245, which says the Commission shall
2 have the authority to ensure that rates, charges, tolls
3 and rentals for telecommunications services are just,
4 reasonable and lawful by employing price cap
5 regulation.

6 Q. And I -- I keep coming back to a very narrow
7 statement that you made in your testimony, and I'm not
8 sure what you've cited supports that assertion.

9 And that is one of the goals is pricing
10 flexibility without substantial loss of benefits
11 produced through traditional regulation.

12 Any of those cites have that phrase in there
13 or that goal?

14 A. I believe that they do have that goal. They
15 may not have that phrase in there. But, yes, I believe
16 they have that goal.

17 Q. Okay. Let's move on to the bottom of that
18 page from the transcript you have in front of you. Go
19 at it this way.

20 Down on line 21 you were asked a question. On
21 page 8 of your testimony, lines 3 and 4, you make the
22 assertion that the most significant attribute of the
23 price cap regulation is pricing flexibility afforded to
24 the incumbent telephone company; is that a correct
25 statement? Your answer is yes.

1 Question: And would you agree that as before
2 that this is a statement of your opinion, rather than
3 the precise words of the legislation? The answer is
4 yes, I do.

5 Do you see that?

6 A. Yes, I do see that.

7 Q. And I believe you have very similar, if not
8 identical testimony in this case at page 10, line 7 --
9 or excuse me -- 8 and 9?

10 A. Yes, that's true.

11 Q. And is your answer today, then, different than
12 what it was in the proceeding involving Southwestern
13 Bell Telephone Company?

14 A. I would agree that it is not the precise words
15 of the legislation as I did at that time. Once again,
16 I think it is -- in my opinion, it is the most
17 significant.

18 Q. And following up on that, I'm correct in
19 understanding that you did not participate in any of
20 the discussions with the parties or the legislators or
21 the negotiations that took place that eventually gave
22 rise to Senate Bill 507; is that correct?

23 A. I had some input through working in the Office
24 of the Public Counsel.

25 Q. But not with the other parties, not with the

1 legislators, did you, Ms. Meisenheimer?

2 A. Personally I did not.

3 Q. Okay. So your --

4 A. Did I have input on behalf of our office, yes.

5 Q. I understand.

6 But you didn't have the -- the value of
7 talking with the legislators who ult-- ultimately
8 adopted this bill such that it would give you any
9 particular insight into this legislation that other
10 people would not have, correct?

11 A. No. I believe there are clear indications of
12 the intent.

13 Q. To a certain extent your position is a little
14 different than Staff's regarding the effective
15 competition criteria, am I correct?

16 A. I'm not sure in what way you mean.

17 Q. Well, if I read your testimony correctly, I
18 think you're stating that not only does an alternative
19 local exchange carrier have to be providing basic local
20 telecommunications service, but that service must
21 provide some sort of effective competition to the
22 incumbent, correct?

23 A. No, that is not my testimony.

24 Q. Well, a -- on page 9 of your direct testimony,
25 lines beginning 8, 9, 10, 11, you say a hazard of

1 prematurely allowing price cap regulation is that
2 absent effective competition and absent the traditional
3 regulatory process, Missouri's captive rate payers have
4 only minimal protection against excessive overearnings
5 by an incumbent provider serving a monopolized market.

6 Seems to me that you're preconditioning price
7 cap regulation on effective competition there?

8 A. I don't believe that's correct.

9 Q. Okay.

10 A. Might I refer to you lines 1 and 2 and 3 on
11 page 10 of my testimony where I explain it would be
12 harmful to Missouri consumers for the PSC to revoke
13 this safeguard absent market conditions that ensure the
14 development of effective competition by prematurely
15 prescribing price cap regulation.

16 So, in fact, I'm not requiring that effective
17 competition exists at the time that a company might
18 receive price cap status, but instead conditions that
19 make it likely that, in fact, effective competition
20 will ultimately develop and exist.

21 Q. Well, you would agree with me that the statute
22 does not refer to the necessity for market conditions
23 that ensure development of effective competition as
24 part of the criteria for determining whether an ILEC
25 will become subject to price cap regulation, correct?

1 A. I disagree with you. Would you like me to
2 explain?

3 Q. Well, no, I'd like you to be more precise and
4 show me where in the statute. And if not in this
5 particular section, where in 392.245 that gives the
6 Commission direction or tells it to consider market
7 conditions that ensure the development of effective
8 competition.

9 A. With -- with respect to what you have on the
10 board, which I had an opportunity to review before I
11 came up here, I would point out that it says that an
12 alternative exchange -- with respect to small telephone
13 companies, that an alternative exchange
14 telecommunication company has been certified to provide
15 basic loc-- or basic telecommunications service and is
16 providing such service.

17 In my mind that means that they are providing
18 the service that they were certified to provide.
19 Missouri State Discount in entering a small company
20 territory took on a greater burden than other carriers
21 took on when they entered the large company
22 territories.

23 The standard is higher. It is essential local
24 service. It is not just simply some type of vanilla
25 basic local service.

1 And in Missouri State Discount's case I think
2 that there -- there are additional problems.

3 Q. But the -- the certification process is a done
4 deal, is it not, Ms. Meisenheimer? That -- that horse
5 is out of the barn?

6 A. The certification was received with the
7 Commission being led to believe by that company and in
8 a stipulated agreement with BPS that that company, when
9 it entered BPS's territory, would provide essential
10 local services not something less.

11 Q. So what you're asking this Commission to do is
12 to undo a certificate it issued in a separate case in a
13 proceeding that isn't even addressed to MSDT, correct?

14 A. That would be one --

15 Q. Excuse me. Could I have a yes or no to my
16 question, please?

17 A. The answer to your question is yes. May I
18 explain --

19 Q. Yes, go ahead.

20 A. -- my answer?

21 Q. Go ahead.

22 A. That would be one option that I do believe the
23 Commission has. Although I do not believe that that is
24 the only option the Commission has in this case.

25 If the Commission -- this case is about price

1 cap regulation. And I think that the Commission
2 ha-- what the Commission needs to consider is the
3 requirement that's before it on the board there that
4 talks about is that company providing such service as
5 it was -- as the basic local service it was certified
6 to provide.

7 So I don't think the Commission has to go back
8 and strip away every service offering that does not
9 rise to the level, especially since the Commission is
10 limited to reject on the interconnection agreements
11 that are negotiated based on very limited criteria.

12 So I -- I just don't think that -- I don't see
13 it as an all-or-nothing proposition.

14 Q. Would you agree with me that the phrase
15 "market conditions" appears nowhere in the price cap
16 statute?

17 A. Those exact words do not, to my knowledge,
18 appear.

19 Q. Thank you.

20 Would you agree with me that the word
21 "competition" does not appear in this particular
22 subsection of the statute, 392.245.2?

23 A. On the face of those words I do not see the
24 word "competition."

25 Q. Is it Public Counsel's position that basic

1 local telecommunications service as used in
2 Section 392.245.2 is defined by Section 386.020(4) or
3 the Commission rule that we've been discussing, 32.100?

4 A. I do not believe those are mutually exclusive.
5 And I would say that it is defined by both, as well as
6 something else including both the tariff and
7 Section 392.451 with respect to a company that wants to
8 provide in a small company's territory.

9 Q. Okay. Let's -- let's take it by -- take it
10 one step at a time then.

11 Would you agree with me that Section 392.245.2
12 does not require the alternative local exchange carrier
13 to be providing basic local telecommunications service
14 "consistent with PSC rules?"

15 A. The words are not on the face. I believe that
16 it does require that.

17 Q. Can you cite me to any place in the statute
18 that requires basic local telecommunications service to
19 be defined by a Commission rule?

20 A. I believe the Commission rule enhances
21 statutory definition, and that companies are required
22 to abide by Commission rules.

23 Q. That's not my question, Ms. Meisenheimer. I
24 said, can you cite me to any language?

25 A. I cannot cite you to the specific words.

1 Q. Okay. Now, let's talk about tariffs. Is that
2 another area we need to look to see if they're
3 providing basic local telecommunications service?

4 A. Yes, it is.

5 Q. And so you see that in the stature that
6 requires the Commission to determine whether they're
7 providing basic local telecommunications service
8 consistent with the ALEC's tariff?

9 A. I do not see those specific words included in
10 the wording of the statute; however, I believe that the
11 intent is there.

12 Q. And let's make it specific to MSDT.

13 Do you have any evidence that MSDT is
14 providing service inconsistent with this
15 approved -- Commission-approved tariffs?

16 A. Inconsistent with the Commission-approved
17 tariffs, that's not my contention. I'm saying that
18 they're not providing consistent with the certification
19 that would allow them to be providing such basic local
20 service as defined in the price cap statute.

21 Q. Okay. So if they're not inconsistent or
22 operating inconsistently with their approved tariffs at
23 least, you would agree with that, correct?

24 A. The con-- I -- I agree that -- that the
25 tariffs -- I believe that they were approved for that

1 service, and that similar services have been approved
2 for other companies.

3 Q. Now, the -- the last criteria you say to look
4 at to determine whether they're providing basic local
5 telecommunications service is the certificate statutes,
6 correct?

7 A. Yes.

8 Q. Would you agree with me that the
9 statute -- excuse me -- the price cap statute,
10 392.244 -- 245 -- pardon me -- .2 makes no mention and
11 does not refer to any of the certification statutes
12 in 392?

13 A. I've -- the numbers of the certification
14 statutes are not in that language; however, it does
15 refer to carriers that are -- or to alternative
16 providers that have been certified and are providing
17 such service.

18 Q. Right. And the ser--

19 A. But --

20 Q. And the part about certified, we agreed right
21 at the outset that MSDT has been certified to provide
22 basic local telecommunications service?

23 A. I agree --

24 Q. Okay.

25 A. -- that they -- they have been certified to

1 provide basic local service, yes.

2 Q. But your argument is when they provide basic
3 local telecommunications service, it has to be
4 consistent with the statutory definition, it has to be
5 consistent with the Commission's rule, it has to be
6 con-- consistent with their tariffs and it has to be
7 consistent with the certification process that's laid
8 out later in other subsections of the statute, right?

9 A. To satisfy the price cap statute, yes.

10 Q. But none of that's in that language that we
11 have on the board or in 392.245.2, is it?

12 It's all implied, in your opinion?

13 A. I -- I -- yes.

14 MR. ENGLAND: Okay. Thank you.

15 I have no other questions.

16 JUDGE DIPPELL: Thank you.

17 Commissioner Gaw, do you have any questions?

18 COMMISSIONER GAW: I'll try to be quick here.

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Ms. Meisenheimer, the -- is it -- is it your
21 belief that -- that the -- that 392.245.2 provides that
22 a company could be certified for basic local
23 telecommunications service -- well, let me ask you
24 this: Do you believe that -- that a -- an alternative
25 local exchange telecommunications company when it is

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1 certified to provide basic local telecommunications

2 service is certified to provide all of the things that
3 are noted under 386.020(4) A through H?

4 A. I -- I -- I'm at 386. I'm sorry. I --

5 Q. 386.020(4). I'm sorry.

6 A. Yes, I believe they are certified to provide
7 all of these things.

8 Q. All right. And -- and are you aware of
9 anything different in the certification of -- of the
10 Discount company that we're talking about in this -- in
11 this case that -- that would be different than -- than
12 that opinion of the statute that you just gave?

13 In other words, when they got their
14 certificate, are you aware of anything that said you're
15 not certified to do any of those things A through H?

16 A. No. In fact, I believe that when they
17 received certification, they committed through a
18 stipulation to provide all of these, plus.

19 Q. All right. And -- and plus some additional
20 things?

21 A. Yes.

22 Q. And -- and are you -- are you tell -- are --
23 are you suggesting that they are -- that in part
24 because they are not -- well, let me ask you this: Are
25 they providing all of those things?

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1 A. No.

2 Q. And are you suggesting that because they are
3 not providing such services in -- in total that -- that
4 that is part of the reason that the -- they -- that --
5 that we have not met the criteria of 392.245.2?

6 A. That's correct. They do not provide some of
7 these things and they do not provide the full list of
8 essential local services that their certification
9 relied on.

10 I don't think that that means that you haven't
11 auth-- authorized them to provide something less. In
12 fact, I think you have.

13 But that doesn't mean that providing less
14 rises to the challenge of the price cap statute
15 requirements that they have to satisfy before you
16 recognize that their election is valid.

17 Q. And you believe they have to provide all of
18 those services that they are certified to provide for
19 basic local telecommunications services before they
20 meet that criteria?

21 A. Yes, and anything additional that's included
22 in the list of essential local services. And I can
23 point you to that either in their certification of the
24 order approving their certification.

25 I can point you that -- to that in -- in terms

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1 of, I believe, the Commission's rules where they've
2 identified essential local services.

3 Q. I -- I --

4 A. Bill Boyd's testimony also refers to, I think,
5 the section.

6 COMMISSIONER GAW: And I -- I think that can
7 probably be done in briefing. I -- just as -- just as
8 well for the sake of time here. It's really
9 about -- and I'm gonna stop. Thank you.

10 JUDGE DIPPELL: Okay. I have just a couple
11 other questions from Commissioner Lumpe.

12 QUESTIONS BY JUDGE DIPPELL:

13 Q. I -- I asked these same things of Mr. Voight.
14 Mr. Schoonmaker mentioned the price cap election taking
15 effect immediately and then the verification occurring
16 later.

17 What -- what is your response to that?

18 A. I think it would be very unwise and
19 inappropriate for the Commission to say that the
20 company can operate under price caps while there is a
21 review of the validity of the election.

22 The Commission is requir-- or has the
23 authority to utilize price caps in order to ensure that
24 rates are just, reasonable and lawful.

25 If you allow that to be in effect during a

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1 period which it's being challenged and may eventually
2 be shown to be invalid, I don't know how you can say

3 that you have ensured that rates were just, reasonable
4 and lawful during that time when there's reason -- or
5 at least some, you know, concern that -- that they're
6 not.

7 I think that the Commission, as it has with
8 the rest of the section -- as it has with the large
9 companies, if there's a challenge to it, then the
10 Commission has the ability to make the determination
11 before it goes into effect, and should, in fact, do
12 that.

13 Q. Okay. And with regard to competition and your
14 experience in the regulatory field, what -- what
15 competitive forces do you think wireless carriers
16 offer?

17 Do -- will they be able to constrain prices?

18 A. Wireless in -- in -- in rural areas offer
19 unique hope in the future to become an alternative to
20 the landline network.

21 However, based on my general knowledge today,
22 it's my understanding that wireless is treated more as
23 a complementary service by consumers than a substitute
24 to landline service.

25 Also wireless service currently -- I mean, in

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1 the State of Missouri it's not even technically a
2 telecommunications service, I don't think under
3 statute.

4 But ignoring that for a minute, I -- I do not
5 believe that currently it has developed to the level of
6 service, quality or general acceptance that the --
7 to -- to the same degree as landline.

8 So currently I see it as something that does
9 not offer a price constraint to -- to local service.
10 And I -- for the large companies that are already price
11 capped, I -- I haven't seen that yet.

12 JUDGE DIPPELL: Okay. Thank you.

13 Is there recross based on questions from the
14 Bench?

15 Staff?

16 MR. SNODGRASS: None.

17 JUDGE DIPPELL: BPS?

18 MR. ENGLAND: Yes, Your Honor.

19 RE CROSS-EXAMINATION BY MR. ENGLAND:

20 Q. Ms. Meisenheimer, in response to a question
21 from Commissioner Gaw -- or following up on a question,
22 if MSD can't provide basic local telecommunications
23 services, however you divide it -- define it, is it
24 appropriate for it to receive a certificate from this
25 Commission offering it -- authorizing it to provide

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1 basic local telecommunications service?

2 A. I believe that it was appropriate for this
3 company to receive the certificate for a broader range

4 of services than, in fact, it is currently providing.

5 I believe that Public Counsel in response to
6 the service offering that the company currently does
7 provide -- you know, we view that as an inferior
8 service, because their components of standard basic
9 local service that really aren't -- aren't there yet.

10 That doesn't mean that we dispute that the
11 Commission can't approve interconnections or resale
12 agreements or tariffs for a service that does not
13 comply with each and every possible component of basic
14 local service.

15 Q. So you're saying it's okay for MSDT to have
16 and receive from this Commission a basic local
17 telecommunications service certificate, even though
18 it's not capable of providing basic local
19 telecommunications service; is that right?

20 A. Even though it's not currently providing the
21 full array of services that it was sup-- certified to
22 provide.

23 Q. Well, in this case, as we discussed with
24 Mr. Voight, no prepaid providers provide all of the
25 services that he believes are necessary for basic local

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1 telecommunications service.

2 I assume that would be your opinion as well?

3 A. That is my opinion as well; however, it's not
4 because they can't, it's because they choose not to

5 resell the full service.

6 Q. So it's okay to grant certificates to carriers
7 to go out and compete with the incumbent LECs, but --
8 but when the incumbent LECs want to take advantage, if
9 you will, of that certificate in order to become price
10 cap regulated, we're going to apply a higher standard
11 as to whether or not that ALEC is providing basic local
12 telecommunications service; is that right?

13 A. Yes, that would be right. And I'd like to
14 explain why.

15 Q. Well, I'll let you do that through the
16 redirect with your counsel.

17 You also talked about the fact that small
18 ILECs -- or you acknowledged that small LECs -- ILECs
19 may elect to be subject to price cap regulation, but
20 you, as I understand your testimony, claim that that
21 election is meaningless until the Commission okays it;
22 is that right?

23 A. You can notify the Commission that you're
24 electing to go that route. That doesn't mean that the
25 Commission can't verify that, in fact, you have met the

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1 criteria to -- to go that route.

2 Q. Well, I'm not sure that that's what I heard
3 you say earlier.

4 What if you notify the Commission that you

5 elect to go that route and they choose not to challenge
6 it?

7 When -- when did that election become
8 effective?

9 A. Well, I think it would be appropriate for the
10 Commission to issue an order that says that they
11 recognize your election and that you are price capped.

12 Q. And it does --

13 A. So I -- I guess then.

14 Q. So the election doesn't become effective until
15 the Commission, as I said earlier, okays it; is that
16 right?

17 A. I -- I think that makes sense, yes.

18 Q. Why have language in the statute that says a
19 carrier may elect to be regulated if it's subject to
20 Commission approval?

21 A. Well, I think that the section just before the
22 part that deals with -- specifically that small
23 companies may notify the Commission if they elect to go
24 that route does, in fact, describe the Commission
25 making some type of determination.

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1 I don't see them as mutually exclusive. I see
2 the -- I see the second part about small companies as
3 an adder that says this is what large companies will
4 do. Small companies, you have the opportunity to go
5 this route, too, if you notify the Commission you want

6 to.

7 Q. The first part of the statute, 392.245.2,
8 talks about a Commission determination for purposes of
9 large ILECs, correct?

10 A. Yes.

11 Q. And there is no similar language with respect
12 to small ILECs -- there is no requirement of a
13 Commission determin-- determination?

14 A. The discussion -- the small companies is in
15 the same paragraph. I see them as complementary;
16 however, I'm not an attorney.

17 Q. You would agree with me that the Commission
18 need not hold a hearing for purposes of determining
19 whether a large ILEC is subject to price cap
20 regulation, correct?

21 A. There may be a requirement upon notice and
22 hearing; however, hearings can be waived if they're --

23 Q. I believe the GTE appeal that your office took
24 answered that question.

25 A. It --

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1 Q. I mean, wasn't one of your complaints that
2 there was no hearing in the GTE case despite your
3 request for one?

4 A. Yes, despite our request for one. We can
5 certainly envision that it might make sense to have a

6 process where you didn't burden the Commission with
7 necessarily having to have a full-blown hearing for
8 each and every similar thing that comes along, given
9 that usually the majority of the issues are worked out
10 in the first few of similar-type cases.

11 So in the event ultimately that there is no
12 challenge to something, I don't -- I don't know that we
13 would have to go through a full-blown hearing process
14 or that a stipulation couldn't be developed.

15 Q. But in the GTE case you did request a hearing,
16 you were denied a hearing, and the Circuit Court, on
17 appeal, basically said that was okay -- that you were
18 not entitled to a hearing despite your request for one,
19 correct?

20 A. Well, I -- I did not participate in writing
21 those documents, so I don't know, having not reviewed
22 them recently, you know, that all -- the gory detail of
23 it.

24 Q. As an integral member of the Office of Public
25 Counsel, you don't recall reading the Court's order in

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1 that case and discussing it with other members in our
2 office and --

3 A. I --

4 Q. I won't go any further as to what you might
5 have said about the order in your office, but certainly
6 you all didn't read it and talk about it?

7 A. Our attorneys get many documents that don't
8 necessarily make it all the way to me. I -- at this
9 moment I -- I mean, it's very likely that I did at one
10 time read the docket -- document; however, I don't
11 remember the specifics of it.

12 If I did -- and I'm sure within our office,
13 even if I didn't read it, I had discussions with my
14 attorney.

15 But honestly I just can't -- I just can't
16 remember at this point. I deal with a number of
17 utilities and a number of issues.

18 Q. Well, let's just assume, then, for purposes of
19 my question that the Commission is not required to have
20 a hearing to make a determination for a large ILEc to
21 become price cap regulated despite a party's request
22 for one.

23 Are you proposing that the procedure be
24 more -- I don't know if the word involved, but are
25 you -- are you suggesting that for purposes of a small

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1 ILEC's election that they have to go through some
2 proceeding beyond what a large ILEC would to receive a
3 price cap regulation?

4 A. No, not necessarily; however, I -- I think
5 that verifying that the standards that apply have been
6 met is -- is something that should apply either in a

7 large or a small company case.

8 Q. Let me get back to my hypothetical. If the
9 small company files an election despite your preference
10 for the Commission issuing an order saying we've
11 received it and we accept it, what if the Commission
12 does nothing?

13 A. I would assume you would take them to court.

14 Q. Why would we have to if our -- if the opinion
15 of the small company is that their price cap election
16 became -- or price cap regulation became effective upon
17 the filing of the written notice?

18 A. Well, I would think that at some point you
19 would probably want to file tariffs that allow you to
20 change rates, and you would see whether they were
21 objected to.

22 I mean, I would assume that eventually that's
23 going to make it to court.

24 Q. Well, that's -- that's not quite my -- my
25 question is: What happens if the Commission doesn't do

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1 anything?

2 Is the price cap election invalid,
3 ineffective, held in abeyance?

4 A. Well, as I said, I think it's appropriate for
5 the Commission to make a determination.

6 Q. I under-- understand. But I -- my assumption
7 is that they're not gonna make a determination.

8 They're just gonna go about their business and not even
9 respond to it.

10 A. Well, I don't think that that is consistent
11 with the description of the process that I described as
12 being similar for small companies as for large
13 companies --

14 Q. I understand that.

15 A. -- once the election has been made. I mean,
16 if you want to give me a hypothetical and --

17 Q. That's what I'm trying to do.

18 A. It's -- it's a hypothetical that I haven't
19 thought about and do not know what your recourse would
20 be if the Commission did not act.

21 Q. Well, with all due respect, it goes to the
22 reasonableness of your interpretation of the statute.
23 I mean, it is a hypothetical that's not out of the
24 realm of the -- of a possibility, and I'd like to know
25 what happens to the election.

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1 Is it effective, is it not effective, is it in
2 limbo?

3 A. I -- I don't -- I don't understand how your
4 hypothetical is consistent with my belief that the
5 Commission would appropriately make a determination.

6 Q. Well, I know. Your -- your assumption is that
7 the Commission will or should make a determination

8 based on our election. My hypothetical is that they
9 don't.

10 Just like they don't necessarily make a
11 finding or issue an order when they allow a tariff to
12 go into effect on 30 days' notice.

13 What is -- what is the status of that election
14 in that situation?

15 A. For a large company it says, shall be subject
16 to regulation under this section upon a determination
17 by the Commission.

18 So if I'm saying that, in fact, once a small
19 company elects, they fall under the same type of
20 process as a large company, then, in fact, the
21 Commission would be making some type of determination.

22 And if they don't, I assume you have the same
23 kind of recourse that a large company would have.

24 Q. So you're saying the Commission can't ignore
25 it; they have to make a determination --

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1 A. I think that they --

2 Q. -- under your construction of the statute?

3 A. That would be -- that would be my opinion,
4 yes.

5 MR. ENGLAND: Okay. Thank you.

6 No other questions.

7 JUDGE DIPPELL: Thank you.

8 Is there redirect?

9 MR. DANDINO: Yes, Your Honor.

10 REDIRECT EXAMINATION BY MR. DANDINO:

11 Q. Ms. Meisenheimer, Mr. England pointed to the
12 statutory language here, 392.245.2, and was asking you
13 whether various language appeared in it, such as
14 "effective competition, market conditions," and
15 you -- and you -- you said that language does not
16 appear in that; is that correct?

17 A. I said that the words --

18 Q. Words?

19 A. The specific words are not there.

20 Q. The words are not there. That's right.

21 And you don't see the words in here that says
22 "consistent with public interest" -- those words aren't
23 in there either, are they?

24 A. No, they're not.

25 Q. And is "consistent with the law," that's --

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1 those words aren't in there either?

2 A. I don't see them there, no.

3 Q. And "consistent with the authority of the
4 Missouri Public Service Commission," those words aren't
5 in that --

6 A. I don't see those either.

7 Q. -- that phrase?

8 But wouldn't you say that the Commission when

9 they make a decision, it has to be consistent with
10 public interest, it has to be consistent with the law
11 and it has to be consistent with their authority?

12 A. Absolutely.

13 Q. And one of the things -- and I'm just
14 trying to -- trying to get the flow of this together.
15 Now, the -- there's -- we're talking about small
16 telephone companies, right?

17 A. Yes.

18 Q. Yes.

19 Okay. And under the price cap -- and there's
20 also a certification process for alternative local
21 exchange companies that want to compete with the small
22 companies; is that true -- correct?

23 A. That's correct.

24 Q. Okay. And does that -- and -- and what
25 does -- what do those statutes require as to the -- the

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1 type of service that the competing alternative local
2 exchange company has to provide?

3 A. Specifically those, I believe, are set out in
4 Section 392.451.

5 Q. Does it talk about essential local
6 telephone -- telecommunications services?

7 MR. SNODGRASS: I have a copy of that statute
8 if it would be of assistance.

9 MR. DANDINO: Yes, please.

10 MR. SNODGRASS: May I approach the witness
11 with this, Judge?

12 JUDGE DIPPELL: Yes.

13 MR. DANDINO: Barb.

14 THE WITNESS: I -- I found it. Thank you.

15 I'm sorry. Could you repeat the question?

16 MR. DANDINO: Sure.

17 Cliff?

18 BY MR. DANDINO:

19 Q. In the 392.4 -- 451 does it require the
20 applicant to provide local basic service or
21 essential -- or essential local telecommunications
22 services?

23 A. Well, it -- it requires that it provide basic
24 local service and, in fact, that that service be the
25 essential local service as determined by the

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1 Commission.

2 That -- that requirement occurs in 3-- in
3 Section 392.451 part 1.1. And part 2 it requires that
4 it advertise the availability generally.

5 Q. Okay. And now, when it says essential
6 telecommunications services -- well, I'm sorry. Let me
7 just read what it says.

8 It says all telecommunications services which
9 the Commission has determined are essential for

10 purposes for qualifying Universal Service Fund support.

11 Now, the Commission -- they define what those
12 essential telecommunications services are; is that
13 correct?

14 A. Yes, they do.

15 Q. And they have done that by -- by rule; isn't
16 that correct?

17 A. Yes, they did.

18 Q. And would you say that an alternative
19 local -- local exchange company who is to compete with
20 a small telephone company -- compete in their service
21 area has to provide those essential telecommunications
22 services?

23 A. To gain price cap status, yes, I believe that
24 they do. I don't -- I don't believe that they have to
25 provide that or provide nothing at all.

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1 Q. And why is that?

2 A. They might provide something that is not as
3 extensive. I believe that's consistent. It -- it
4 promotes competition as is the goal of the statute.

5 However, it does not eliminate the protections
6 that exist for Missouri consumers in the event that the
7 service that they offer is not as -- it's not a good
8 substitute for what the customer already has and,
9 therefore, to some degree can help contain the price of
10 the service that the customer has. So I see it as a

11 balance.

12 We want competition, we want companies to come
13 in and offer new services; however, we don't want to
14 erode the protections that exist for the most basic of
15 services, and in rural areas, in particular, where they
16 are less likely to be subject to competition.

17 As I described in my testimony, I -- I think
18 that it's appropriate that the standard be higher. Cuz
19 that area is probably going to be less attractive to
20 numerous carriers.

21 Q. All right. You're not asking the Commission
22 in this proceeding to revoke the certificate of
23 Missouri Discount Telephone Company?

24 A. No -- no, we're not.

25 Q. We're -- we're here about the price cap

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1 application of BPS; is that correct?

2 A. That is correct.

3 Q. And you're just as-- you're just asking the
4 Commission to rule on that issue?

5 A. That is correct. And we never -- we never
6 claimed any effective competition standard within the
7 context of this case.

8 MR. DANDINO: Thank you. That's all I have,
9 Your Honor.

10 JUDGE DIPPELL: Thank you.

11 Ms. Meisenheimer, I believe that's all for
12 you. You may be excused.
13 (Witness excused.)
14 MR. DANDINO: Your Honor, you want to have a
15 date for us to submit anything on that --
16 JUDGE DIPPELL: I was --
17 MR. DANDINO: -- Senate Bill 507?
18 JUDGE DIPPELL: I was just about to ask that.
19 Do we -- are we still in need, Mr. England, of a
20 late-filed exhibit?
21 MR. ENGLAND: Only if Ms. Meisenheimer feels
22 she needs to supplement her answer.
23 JUDGE DIPPELL: Okay.
24 MS. MEISENHEIMER: I'm --
25 JUDGE DIPPELL: Do you feel --

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1 MS. MEISENHEIMER: I'm --
2 JUDGE DIPPELL: -- that you've answered it
3 completely?
4 MS. MEISENHEIMER: I --
5 MR. DANDINO: It's all up to you.
6 MS. MEISENHEIMER: I felt -- I felt good with
7 the answer that I gave, so --
8 JUDGE DIPPELL: Okay. Well, then we will
9 cancel late-filed Exhibit No. 17.
10 And let me just clarify one thing for the
11 record. Ms. Meisenheimer referred a couple of times to

12 the board or the writing on the board, and that was in
13 reference to the easel, which has the
14 Section 392.245.2 -- a portion of that, which
15 Mr. England read in his opening statement, I believe.
16 So just to clarify that for the record.

17 I think we managed to get all of the exhibits
18 in, so we just need to talk about a briefing schedule.

19 I'm expecting the transcript to be back no
20 later than the 25th. There's a couple of holidays this
21 month, so I'm not sure it'll get here as quickly as it
22 usually does.

23 Is March 17th agreeable for briefs?

24 (No response.)

25 JUDGE DIPPELL: Do you need a moment to look

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1 at your calendars?

2 MR. SNODGRASS: Can we talk just for a second,
3 Judge.

4 JUDGE DIPPELL: Sure.

5 We'll go off the record while the attorneys
6 discuss the briefing schedule.

7 (A RECESS WAS TAKEN.)

8 JUDGE DIPPELL: Let's go back on the record.
9 I gave the attorneys a moment to discuss their
10 calendars -- look at their calendars.

11 And what -- what did you come up with? Do you

12 want a little more time to do briefs?

13 MR. SNODGRASS: From Staff's perspective since
14 we don't know exactly when we're gonna get the
15 transcript, we'd prefer a little later date for the
16 simultaneous initial brief than -- than suggested here.

17 JUDGE DIPPELL: So --

18 MR. SNODGRASS: Between now and --

19 JUDGE DIPPELL: -- March 25th?

20 MR. SNODGRASS: Yes. I think we're -- I think
21 we might -- could we go a few extra days, say,
22 March 28th or so maybe take in -- maybe a couple of
23 days -- would that be all right, March 28th?

24 MR. ENGLAND: I'm just checking to see if it's
25 a work day.

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1 MR. SNODGRASS: Okay.

2 MR. ENGLAND: That's a Friday.

3 MR. SNODGRASS: Friday?

4 MR. ENGLAND: That's fine.

5 MR. SNODGRASS: Okay. March 28th. That'd be
6 okay?

7 MR. ENGLAND: Yeah.

8 JUDGE DIPPELL: That's well over a month from
9 now.

10 MR. SNODGRASS: That'd be fine.

11 JUDGE DIPPELL: You think you're gonna need
12 that much time?

13 MR. SNODGRASS: One never knows. Judge, I
14 don't know.
15 JUDGE DIPPELL: I guess if the company is
16 agreeable, the Commission is agreeable.
17 MR. SNODGRASS: Okay.
18 MR. ENGLAND: We are agreeable.
19 JUDGE DIPPELL: All right. March 28th for
20 initial briefs. And then is there a necessity for
21 reply briefs, you believe?
22 MR. ENGLAND: I believe so.
23 MR. DANDINO: Yes.
24 JUDGE DIPPELL: All right. So reply briefs by
25 April 17th?

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1 MR. DANDINO: Yeah.
2 What day is that?
3 MR. ENGLAND: Thursday.
4 JUDGE DIPPELL: That's a Thursday.
5 All right. And I'll send out a notice
6 confirming those dates.
7 Is there anything else that needs to be taken
8 care of while we're on -- still on the record?
9 (No response.)
10 JUDGE DIPPELL: Seeing nothing else, I
11 appreciate your cooperation. We still managed to get
12 done by 5. Everybody's happy.

13 Thank you very much. We can go off the
14 record.

15 WHEREUPON, the hearing of this case was
16 concluded.

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3		MARKED	RECEIVED
4	Exhibit No. 1	12	31
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18	Barbara A. Meisenheimer		
19	Exhibit No. 6	37	51
20	Resale Agreement between		

15	BPS Telephone Company and Missouri State Discount Telephone		
16	Exhibit No. 7	88	
17	Revised Statutes of Missouri 392.451		
18	Exhibit No. 8	90	
19	4 CSR 240-31.010		
20	Exhibit No. 9	93	
21	Revised Statutes of Missouri 392.185		
22	Exhibit No. 10	128	
23	Motion to Suspend Tariff Filing, Case No. TT-99-237		
24	Exhibit No. 11	139	235
25	Data Request 1.3 from BPS to Staff		

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3	Exhibit No. 12	156	235
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8	Initial Brief of the Staff of the Missouri Public Service Commission, Case No. TO-97-397		
9	Exhibit No. 15	175	236
10	Data Request 1.8 from BPS to Staff		
11	Exhibit No. 16	177	237
12	Internet posting of Missouri Competitive Basic Local Exchange Telephone Service Carriers		

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