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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Hearing  
September 27, 2005  
Jefferson City, Missouri  
Volume 1

In the Matter of CenturyTel of )  
Missouri, LLC's Request for )  
Competitive Classification ) Case No. IO-2006-0109  
Pursuant to Section 392.245.5, )  
RSMo (2005) )

MORRIS L. WOODRUFF, Presiding,  
SENIOR REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,  
ROBERT M. CLAYTON,  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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

2 JUDGE WOODRUFF: All right. Good morning,  
3 everyone, and I want to thank you all very much for coming  
4 here, and some of you on very, very short notice. I  
5 appreciate your efforts in being here. I'm sure the  
6 Commissioners do as well.

7 We're here for a hearing in Case No.  
8 IO-2006-0109, which concerns CenturyTel of Missouri, LLC's  
9 competitive request for classification in certain  
10 exchanges. We're going to begin today by taking entries  
11 of appearance. The Commissioners are in a bit of a bind  
12 today in that they have agenda at 9:30, so they would like  
13 to try and get their questions out of the way as soon as  
14 possible.

15 And so what I'm going to do is, I know we  
16 have at least three witnesses. I'm going to swear them  
17 all in at the start, ask them to all come forward and ask  
18 the Commissioners -- give the Commissioners an opportunity  
19 to ask questions of those witnesses even before  
20 cross-examination. After that, we'll go through the  
21 regular process of the direct examination,  
22 cross-examination.

23 If anybody has any objection to this, let  
24 me know now. This is just kind of coming from the top of  
25 my head at the moment. It's been a very stressful week

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1 here at the Commission, but we'll try and avoid pushing  
2 all that stress onto you as best as we can.

3 All right. So let's go ahead and begin  
4 with entries of appearance, beginning with Staff.

5 MR. MEYER: Good morning. David Meyer on  
6 behalf of the Staff of the Public Service Commission. Our  
7 address is P.O. Box 360, Jefferson City, Missouri 65102.

8 JUDGE WOODRUFF: All right. And for  
9 CenturyTel?

10 MR. DORITY: Good morning, Judge. Larry  
11 DORITY and James Fischer, Fischer & DORITY, PC. Our  
12 address is 101 Madison, Suite 400, Jefferson City,  
13 Missouri 65101, appearing on behalf of applicant  
14 CenturyTel of Missouri, LLC.

15 JUDGE WOODRUFF: Thank you. And for Public  
16 Counsel?

17 MR. DANDINO: Michael Dandino, Office of  
18 the Public Counsel, Post Office Box 2230, Jefferson City,  
19 Missouri 65102, representing the Office of the Public  
20 Counsel and the public.

21 JUDGE WOODRUFF: All right. And for  
22 Fidelity Communications Services?

23 MR. ROSS: Good morning, Judge. Jason Ross  
24 with the law firm of Greensfelder, Hemker & Gale, PC,  
25 10 South Broadway, Suite 2000, St. Louis, Missouri 63102,

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1 appearing on behalf of Fidelity Communications  
2 Services II, Incorporated. Thanks.

3 JUDGE WOODRUFF: All right. Thank you. I  
4 know there are several other attorneys here for the  
5 various wireless and wireline companies that we asked to  
6 appear. Let me just -- I'm not sure who all's here, so  
7 I'm just going to ask whoever wants to go first.

8 MR. STEINMEIER: Thank you, your Honor.  
9 Let the record reflect the appearance of William D.  
10 Steinmeier and MaryAnn Garr Young, William D. Steinmeier,  
11 PC, Post Office Box 104595 in Jefferson City, Missouri  
12 65110-4595, appearing today on behalf of Alltel  
13 Telecommunications, Incorporated.

14 JUDGE WOODRUFF: Thank you.

15 MR. CURTIS: Your Honor, Leland B. Curtis  
16 and Carl J. Lumley, the firm of Curtis, Heinz, Garrett &  
17 O'Keefe, 130 South Bemiston, Suite 200, St. Louis,  
18 Missouri 63105, appearing on behalf of Socket Telecom,  
19 LLC.

20 JUDGE WOODRUFF: Anyone else? All right.  
21 That appears to take in everybody, then.

22 Mr. Steinmeier and Mr. Curtis, did you  
23 bring along anyone as a witness?

24 MR. STEINMEIER: Your Honor, on behalf of  
25 Alltel, no, we have no witnesses available. The only

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1 place in the instant application in which Alltel  
2 Communications is involved is the Branson exchange, and  
3 since CenturyTel has withdrawn its request for competitive  
4 classification as to Branson, we would renew our motion to  
5 withdraw from the proceeding and would respectfully  
6 request to be excused from the remainder of the hearing.

7 JUDGE WOODRUFF: I'll rule on that in a  
8 bit. Mr. Curtis, did you have any witnesses?

9 MR. CURTIS: We have filed a similar  
10 pleading, as you're aware, but yes, we do have Matt Kohly  
11 available as a witness.

12 MR. MEYER: Your Honor, I'll note, I just  
13 spoke about ten minutes ago with counsel for Sprint who  
14 indicated that they had just received notice of the  
15 proceeding about ten minutes before that. They will be  
16 filing something, I think, along the lines of what other  
17 carriers have filed, including the information as soon as  
18 they can obtain that was requested. But since he was in  
19 Kansas City, he was unable to appear at this time.

20 JUDGE WOODRUFF: I understand. This was  
21 obviously very short notice on everyone's part.

22 All right. What I'd like to do is bring  
23 the three witnesses that the other parties have -- that  
24 have been identified before, if you'd all come forward.  
25 This is a little unusual. I'm not going to have you come

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1 up to the witness chair. First of all, if you'd each  
2 identify yourselves for the court reporter.

3 MR. MARTINEZ: Yes. My name is Arthur P.  
4 Martinez. I'm the director of government relations for  
5 CenturyTel of Missouri, LLC.

6 MR. VAN ESCHEN: I'm John Van Eschen. I'm  
7 with the Missouri Public Service Commission Staff.

8 MR. KOHLY: Matt Kohly with Socket Telecom,  
9 LLC.

10 MR. BEIER: David N. Beier, vice president  
11 of regulatory for Fidelity Communication Services II.

12 JUDGE WOODRUFF: Thank you all. If you'd  
13 all raise your hand, I'm going to swear you in.

14 (Witnesses sworn.)

15 JUDGE WOODRUFF: All right. Well, they're  
16 all sworn at this point, and they've all been identified.  
17 Commissioner Clayton, if you'd like to ask questions.

18 COMMISSIONER CLAYTON: Go at them?

19 JUDGE WOODRUFF: Go at them.

20 COMMISSIONER CLAYTON: I don't know if we  
21 need to have everybody standing up here, as amusing as it  
22 is. I suppose there isn't a need for all of you to be  
23 standing up here. I think what I'd like to do is start  
24 with -- I'm not sure how I'd like to start. You're giving  
25 me these wide-open choices. I'd like to start with Staff



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1 and then quickly go through them. I've just got a short  
2 list of questions I'd like to ask.

3 JUDGE WOODRUFF: Mr. Van Eschen, why don't  
4 you come over to the witness stand.

5 JOHN VAN ESCHEN testified as follows:

6 QUESTIONS BY COMMISSIONER CLAYTON:

7 Q. Good morning.

8 COMMISSIONER CLAYTON: May it please the  
9 Commission?

10 JUDGE WOODRUFF: Yes.

11 BY COMMISSIONER CLAYTON:

12 Q. Mr. Van Eschen, good morning.

13 A. Good morning.

14 Q. Nice to see you again. How many more of  
15 these do we have?

16 A. At least two more.

17 Q. At least two more. Good. Good. We're  
18 going to get this figured out here pretty soon. I'm going  
19 to ask you a couple of questions about Staff's position,  
20 and if I make a mistake interexchanging one of these cases  
21 with another, I apologize for that. Feel free to correct  
22 me. You've never shown an unwillingness to correct me in  
23 the past.

24 Right now, Staff's position is that you are  
25 in agreement with CenturyTel on all exchanges; is that

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1 correct?

2 A. That's correct.

3 Q. Okay. And those exchanges in the  
4 residential market include Dardenne, O'Fallon, St. Peters  
5 and Wentzville?

6 A. Correct.

7 Q. In the business market, those exchanges  
8 include Bourbon, Columbia, Cuba, O'Fallon, St. James,  
9 St. Peters and Wentzville; is that correct?

10 A. Correct.

11 Q. Okay. In your analysis of whether or not  
12 the statutory criteria for competitive status was met, did  
13 you perform the same analysis that you performed in the  
14 two previous cases where we've had hearings before the  
15 Commission?

16 A. Yes.

17 Q. You are using the same provision of 392.245  
18 on establishing two nonaffiliated alternative carriers in  
19 each exchange; is that correct?

20 A. That is correct.

21 Q. Now, in -- are you using in your analysis  
22 in each of these exchanges the presence of a wireless  
23 carrier, a wireless carrier, a CMRS?

24 A. Yes.

25 Q. Are there any exchanges where you use two

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1 wireline carriers as the existence of two nonaffiliated  
2 alternative carriers?  
3 A. I believe there can be, yes.  
4 Q. Oh, there can be. So there are some  
5 exchanges where there's an existence of more than one  
6 wireline CLEC?  
7 A. Yes.  
8 Q. Okay. Could you identify whether you're  
9 talking residential or business and which exchange, where  
10 there is more than one wireline CLEC serving customers?  
11 A. In Columbia.  
12 Q. Are you talking residential or business?  
13 A. Business.  
14 Q. So Columbia has the presence of more than  
15 one wireline CLEC?  
16 A. Yes.  
17 Q. Okay.  
18 A. And O'Fallon, business. Wait. I take that  
19 back. No.  
20 Q. Did you just take that back?  
21 A. Yes, I did. That was -- there are two  
22 providers in O'Fallon, but one's res, one's bus. And  
23 Wentzville, we have two providers for business, based on  
24 our records.  
25 Q. Okay. So two exchanges, Columbia and

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1     Wentzville, have the presence of two wireline competitors,  
2     according to your research?

3             A.       Yes.

4             Q.       Okay. In Columbia, I think you listed in  
5     your testimony that Socket is one of those providers?

6             A.       Yes.

7             Q.       And what is the second provider?

8             A.       Our records show AT&T has lines within the  
9     exchange.

10            Q.       And in each of those instances --

11            A.       On a facility basis.

12            Q.       So each of those meets your criteria for a  
13     minimum threshold?

14            A.       Yes.

15            Q.       And were you able to identify how many  
16     lines or how many -- excuse me -- how many customers were  
17     being served by each of those entities, Socket and AT&T?

18            A.       Not customers. Just lines.

19            Q.       Okay. So can you tell us for certain  
20     whether there is more than one customer being served by  
21     each of those wireline CLECs?

22            A.       I do not know.

23            Q.       Focusing on residential service, in your  
24     chart you've listed the presence of Charter Communications  
25     as a wireline CLEC company providing service in each of

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1 the four residential exchanges, correct?

2 A. Correct.

3 Q. In each of those exchanges, did you verify  
4 that there was more than one customer being served by  
5 Charter in each of those exchanges?

6 A. We did not verify as to whether they served  
7 more than one customer.

8 Q. What did you verify?

9 A. That they had at least one line within the  
10 exchange.

11 Q. Did you determine the number of lines that  
12 were being served in each?

13 A. Yes. We had quantities for that, yes.

14 Q. I assume that's an HC figure.

15 A. To be honest, I'm not sure if it is highly  
16 confidential or not.

17 COMMISSIONER CLAYTON: Is anyone from  
18 Charter here? Is that HC, Judge? If they're not here to  
19 object, is that HC?

20 MR. DORITY: If I may, we did attach  
21 Charter's 2004 annual report to our application. It was  
22 not listed as HC.

23 COMMISSIONER CLAYTON: It was not listed as  
24 HC?

25 MR. DORITY: No.

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1 BY COMMISSIONER CLAYTON:

2 Q. Mr. Van Eschen, I guess that means you can  
3 tell me if you have that information.

4 A. Dardenne, 1,687 lines; O'Fallon, 13,307  
5 lines; St. Peters, 2,977 lines; and Wentzville, 1,208  
6 lines.

7 Q. Well, those are either some pretty large  
8 customers or they're more than one customer in each of  
9 those exchanges, would you say?

10 A. I would agree.

11 Q. Good. We've got an agreement on something.  
12 Now, in the Bourbon exchange, I believe you listed  
13 Fidelity as the CLEC; is that correct?

14 A. Correct.

15 Q. And I'm looking off your Schedule 1. I'm  
16 following your chart in your, I guess the original Staff  
17 recommendation. So if any of the information has changed,  
18 feel free to correct me.

19 Fidelity, were you able to verify that  
20 there are more than one customer in that exchange?

21 A. Are we talking residential or business?

22 Q. Excuse me. We're talking about business  
23 now. Thank you.

24 A. I believe, based on the record, I think  
25 Fidelity indicated that they serve two customers, I

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1 believe, in that exchange.  
2 Q. And do you know how many lines?  
3 A. Our records show --  
4 Q. Is that HC?  
5 MR. ROSS: No.  
6 COMMISSIONER CLAYTON: Okay.  
7 THE WITNESS: Our records, at least based  
8 in the Bourbon exchange for business, we have 32.  
9 BY COMMISSIONER CLAYTON:  
10 Q. Okay. Columbia for Socket, did you have  
11 that number of lines?  
12 A. Yes.  
13 Q. Somebody speak up if I go somewhere I  
14 shouldn't go. Is that -- what was your number of --  
15 MR. CURTIS: We believe that is HC for  
16 Socket.  
17 COMMISSIONER CLAYTON: For Socket.  
18 BY COMMISSIONER CLAYTON:  
19 Q. Okay. And I think your answer,  
20 Mr. Van Eschen, was that you didn't know how many  
21 customers were being served by Socket?  
22 A. That's correct.  
23 Q. And you didn't know how many customers for  
24 AT&T. How about lines for AT&T?  
25 A. For Columbia?

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1 Q. Yes.

2 COMMISSIONER CLAYTON: Is that HC? Is  
3 there anyone for AT&T?

4 MR. MEYER: We're trying to check to verify  
5 if that's not HC.

6 COMMISSIONER CLAYTON: Well, why don't we  
7 just -- we'll include that, we'll come back to it and do a  
8 short HC afterwards.

9 BY COMMISSIONER CLAYTON:

10 Q. Cuba, Fidelity, how many customers?

11 A. Again, I -- for all of the CLECs, I do not  
12 know how many --

13 Q. That's okay. That's okay.

14 A. -- how many customers.

15 Q. How many lines?

16 A. Fidelity, we have listed on our records  
17 eight lines that are provisioned on a UNE-L basis and 82  
18 lines on a facility-based basis.

19 Q. Okay. O'Fallon, AT&T, customers and lines,  
20 tell me what you know.

21 A. I do not know how many customers. We  
22 have --

23 (The HC portion of the answer was struck  
24 per discussion on page 66 of the transcript.)

25 MR. MEYER: Mr. Van Eschen, we're verifying



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1 again that that's HC.  
2 THE WITNESS: I'm sorry.  
3 COMMISSIONER CLAYTON: Motion to strike.  
4 JUDGE WOODRUFF: Sustained.  
5 COMMISSIONER CLAYTON: Wait a minute.  
6 JUDGE WOODRUFF: If that number is HC, we  
7 will strike it from the transcript.  
8 COMMISSIONER CLAYTON: We'll strike it, and  
9 we'll go into that.  
10 BY COMMISSIONER CLAYTON:  
11 Q. St. James, Fidelity?  
12 A. I do not know how many customers. Our  
13 records show 48 UNE-L lines and 46 facility-based lines,  
14 and these are business.  
15 Q. Okay. Business, yes. St. Peters, be AT&T?  
16 A. That may be confidential.  
17 MR. MEYER: Again, as I just said, we're  
18 checking to verify all AT&T information.  
19 BY COMMISSIONER CLAYTON:  
20 Q. In Wentzville, AT&T is listed as one CLEC,  
21 and I think you had a second CLEC. Did you tell me who  
22 that was?  
23 A. We have Socket.  
24 Q. Socket. Okay. And do we have customers or  
25 lines or is that a no-no, AT&T customers or lines?

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1 Well, maybe we can cover the rest of that  
2 in HC, just to move this along. I want to talk about also  
3 your research and review of wireless coverage in each of  
4 these areas.

5 A. Sure.

6 Q. And we've had conversations before in other  
7 cases, very similar analysis. What type of analysis did  
8 you and your staff do in determining whether or not a  
9 wireless company was serving an exchange?

10 A. We did look at a report from the Federal  
11 Communications Commission that indicated the presence of  
12 wireless providers throughout the United States. A map  
13 that was attached to this FCC report indicated that all  
14 areas of Missouri have at least one wireless provider.  
15 Based on that information, as well as the company's  
16 information submitted in their petition, we had no reason  
17 to dispute the presence of one wireless provider.

18 Q. So you relied on the FCC report?

19 A. That's correct.

20 Q. What was the name of that report?

21 A. It's the ninth report. It was released  
22 September 28, 2004, FCC 04-216.

23 Q. Did that state whether or not any companies  
24 hold themselves out to an exchange to do business?

25 A. I am not sure.

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1           Q.       Did it indicate whether or not local  
2 telephone numbers were available for particular wireless  
3 providers in an exchange?

4           A.       I do not believe that it did.

5           Q.       Did it identify areas where a company did  
6 not hold itself out to do business?

7           A.       I'd have to say no.

8           Q.       The map that you reviewed, was it simply  
9 where a wireless signal could be acquired by a cellular  
10 telephone or a wireless telephone?

11          A.       I'd have to pull the report again. It was  
12 a map that showed the presence of -- based on the number  
13 of wireless providers the FCC had identified for  
14 particular areas of the state and country, and I don't  
15 know.

16          Q.       In your analysis of a wireless provider in  
17 those exchanges where you need to have an additional  
18 alternative provider, did you do any determination of EAS  
19 routes or any other type of calling routes that would be  
20 available?

21          A.       We did -- we did take an initial look at  
22 whether these exchanges in question in CenturyTel's  
23 petition, whether the wireless providers did have local  
24 numbers in them, based on the Commission's requests in  
25 other cases. And from what we have found, we found that

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1 at least one of the wireless providers did have a local  
2 number in, let's see, the Branson exchange, Columbia,  
3 Cuba, O'Fallon, St. James.

4 Q. Wait. Columbia --- let me get these.  
5 Columbia?

6 A. Cuba, O'Fallon, St. James, St. Peters, and  
7 Wentzville.

8 Q. Okay.

9 A. We could not find that at least one  
10 wireless provider had local numbers assigned to them  
11 in the Bourbon exchange, I believe in the Dardenne  
12 exchange, and I'm not sure if that --

13 Q. Did you say St. Peters and Wentzville?

14 A. Yeah.

15 Q. Okay.

16 A. Dardenne exchange, I think that's where  
17 some EAS routes came into play, where a wireless provider  
18 may not have a local number in the Dardenne exchange, but  
19 does have a local number in an EAS.

20 Q. So there may be an EAS route at Dardenne?

21 A. Yes.

22 Q. Okay. Is that something that you could  
23 supplement with an additional one-paragraph filing or  
24 something?

25 A. Sure.

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1 Q. And how about Bourbon?

2 A. We could not find any -- the presence of at  
3 least one wireless provider having a local number assigned  
4 within the Bourbon exchange.

5 Q. Do you know the name of the wireless  
6 carrier that's relied upon by CenturyTel?

7 A. In Bourbon, Cingular, Sprint, T-Mobile and  
8 Verizon.

9 Q. Not one of those? Did you look at each one  
10 or you just haven't found it yet?

11 A. We looked at different information. We  
12 looked at the North American Numbering Plan  
13 Administration's Central Office Code List. We also looked  
14 at the Local Exchange Routing Guide information, and we  
15 just didn't see it.

16 Q. You haven't seen it yet. Do you think  
17 there's more research that you can do to find the answer  
18 definitively?

19 A. I guess potentially there are arrangements  
20 where a wireless provider could perhaps get a local number  
21 through the incumbent local telephone company. It would  
22 show up as looking as though the local telephone company  
23 has the -- is assigned the number, but it's being used by  
24 the wireless provider.

25 Q. Okay. So can we assume that you'll be able

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1 to supplement your testimony with that information, just  
2 on those two exchanges with regard to wireless?

3 A. Yeah, we can provide --

4 COMMISSIONER CLAYTON: Okay. Great.  
5 Judge, the only questions are those HC questions that I'll  
6 quickly go through and I'll be finished.

7 JUDGE WOODRUFF: At this point we'll go  
8 in-camera for HC portion.

9 (REPORTER'S NOTE: At this point, an  
10 in-camera session was held, which is contained in  
11 Volume 2, pages 23 through 26 of the transcript.)  
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1 JUDGE WOODRUFF: Chairman Davis, do you  
2 have any questions?

3 CHAIRMAN DAVIS: Not at this time.

4 JUDGE WOODRUFF: Commissioner Appling?

5 COMMISSIONER APPLING: No questions.

6 JUDGE WOODRUFF: Did you wish to question  
7 any other witnesses, either of the Commissioners?

8 COMMISSIONER CLAYTON: I'm trying to  
9 remember who we had up here.

10 JUDGE WOODRUFF: We had Mr. Martinez and  
11 Mr. Beier and Mr. Kohly are here.

12 JUDGE WOODRUFF: There's no one from AT&T.  
13 There's no one here from AT&T.

14 COMMISSIONER CLAYTON: I know I'm going to  
15 have just a few questions for the Fidelity man, who just  
16 got a fresh cup of coffee.

17 JUDGE WOODRUFF: You can bring your coffee  
18 with you, if you'd like.

19 You were sworn previously, so you're under  
20 oath and you can go ahead.

21 DAVID N. BEIER testified as follows:

22 QUESTIONS BY COMMISSIONER CLAYTON:

23 Q. I just have a few questions on the  
24 exchanges in which Fidelity has an interest, and if at any  
25 point I get to an HC matter, I'm leaving it up to you to

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1 say stop.  
2 A. Okay.  
3 Q. First of all, Fidelity provides business  
4 service in the Cuba exchange --  
5 A. Yes.  
6 Q. -- is that correct?  
7 And previously we heard testimony from  
8 Mr. Van Eschen regarding the number of lines. Can you  
9 tell me the number of customers that are currently being  
10 served? And if you can't say it in open session, then we  
11 can go to closed.  
12 A. I do not know the exact number. It's not  
13 highly confidential. I just don't have the exact number.  
14 Q. Is that something that you could submit as  
15 a supplemental filing --  
16 A. Yes.  
17 Q. -- on the number of customers?  
18 I'm going to have the same questions for  
19 the St. James exchange.  
20 A. Same for St. James.  
21 Q. Same there. Do you know how many customers  
22 in the Bourbon exchange?  
23 A. Yes, there are two customers in the Bourbon  
24 exchange, two unaffiliated customers.  
25 Q. Two unaffiliated customers. Okay. I don't



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1 know if I can say the number of lines. Is that public?

2 A. You can say it.

3 Q. 32 lines?

4 A. That's -- that was correct at the end of  
5 2004, yes.

6 Q. In the Bourbon exchange, does Fidelity hold  
7 itself out to offer services to all business customers in  
8 the Fidelity exchange?

9 A. No, we do not. We do not advertise. We do  
10 not have our own facilities in the entire Bourbon  
11 exchange, at least not our own loop facilities. Those two  
12 customers that we serve, they are served through a  
13 third-party fiber network, an unaffiliated third party.

14 Q. Fiber network, is that a --

15 A. Well, it's a broadband provider who has  
16 fiber in the area that happens to go to the two customers  
17 that we serve.

18 Q. And they have the loop; is that correct?

19 A. Yes.

20 Q. So you use their loop. And whose  
21 facilities do you use otherwise? Do you use Fidelity's  
22 facilities for switching the calls or --

23 A. Yes. The switch is not in the Bourbon  
24 exchange, though.

25 Q. Can you describe the type of customers that

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1 are served in the Bourbon exchange? I don't want their  
2 names, but I mean, are they -- how large of customers are  
3 they?

4 A. Oh, they each have approximately nine  
5 lines.

6 Q. Okay. Is the -- how extensive is the  
7 fiber-network network?

8 A. To the best of my knowledge, that fiber  
9 network doesn't go to any other businesses in Bourbon, at  
10 least right now.

11 Q. So do other businesses within the Bourbon  
12 exchange, even though you don't advertise, could they call  
13 Fidelity and hire you to provide service?

14 A. No.

15 Q. No other businesses?

16 A. Not at this time.

17 Q. Is there something that -- is that a -- I  
18 don't want to ask confidential information, so stop me  
19 if -- is that because of technical reasons or just  
20 business reasons? I mean, are there barriers that prevent  
21 you from providing service or is that just a business  
22 decision that we don't want to get into any more?

23 A. Well, there's a couple reasons. Yes, there  
24 are some issues with the City of Bourbon, but there's also  
25 just issues that it's not -- it hasn't been economical for

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1 us to go into Bourbon. Bourbon is a very small town.

2 Q. How big is Bourbon? It's a great name.

3 A. A couple thousand people, I believe. Maybe  
4 not even that many. I'm really not sure.

5 Q. Does Fidelity intend to continue serving  
6 those two customers over those lines for the foreseeable  
7 future?

8 A. Yes.

9 COMMISSIONER CLAYTON: Okay. I don't think  
10 I have any other questions for this witness. Thank you.

11 JUDGE WOODRUFF: Chairman Davis, do you  
12 have any questions?

13 CHAIRMAN DAVIS: No questions.

14 JUDGE WOODRUFF: Commissioner Appling?

15 COMMISSIONER APPLING: No questions.

16 JUDGE WOODRUFF: All right. Then you may  
17 step down for the moment. And let's bring Mr. Martinez  
18 up.

19 Mr. Martinez, you were sworn earlier also.

20 THE WITNESS: Yes.

21 JUDGE WOODRUFF: Go ahead and ask your  
22 questions.

23 ARTHUR P. MARTINEZ testified as follows:

24 QUESTIONS BY COMMISSIONER CLAYTON:

25 Q. Mr. Martinez, I only want to ask you about

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1 a couple of things quickly here. First -- and if it's in  
2 your testimony, I apologize. Please feel free to refer to  
3 it, and I can go back and look at your testimony or other  
4 filings. Has CenturyTel identified one or more wireless  
5 carriers providing service in each of the subject  
6 exchanges?

7 A. Yes, we have.

8 Q. And in addition to that, did you provide  
9 any evidence or testimony indicating whether those named  
10 wireless companies held themselves out as providing  
11 wireless service to a particular exchange? And when I say  
12 that, I can clarify the question saying, do they offer a  
13 local phone number, do they have offices in each exchange,  
14 do they -- do they make their services available to those  
15 customers living in that exchange?

16 A. No, I did not. However, CenturyTel does  
17 not believe it's a requirement of the law.

18 Q. I understand. I understand. So there is  
19 nothing in the evidence submitted by CenturyTel indicating  
20 whether or not the cellular or wireless carrier in the  
21 Bourbon exchange is offering a local phone number or  
22 offers service to residents living in that exchange?

23 A. No. But I do believe we did provide a  
24 coverage area map for the specific exchanges in question.

25 COMMISSIONER CLAYTON: Okay. I don't think

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1 I have any other questions. Thank you.  
2 JUDGE WOODRUFF: Commissioner Davis?  
3 COMMISSIONER DAVIS: No questions.  
4 JUDGE WOODRUFF: Commissioner Appling?  
5 COMMISSIONER APPLING: No questions.  
6 JUDGE WOODRUFF: All right. Commissioner  
7 Clayton, do you have any other questions for any of the  
8 other witnesses? Mr. Kohly is here.  
9 COMMISSIONER CLAYTON: I don't think so.  
10 JUDGE WOODRUFF: All right. Well, then,  
11 let's go back and start with actually direct testimony on  
12 each of these witnesses, beginning with Mr. Martinez.  
13 MR. DORITY: Judge, were we going to have  
14 opening statements this morning?  
15 JUDGE WOODRUFF: Let's go ahead and do  
16 opening statements before we get to witnesses, then. If  
17 you wish to go first, go ahead.  
18 MR. DORITY: Thank you. Good morning. May  
19 it please the Commission?  
20 This is the third case in the lineup of  
21 competitive classification requests that this Commission  
22 must decide under the 30-day track of  
23 Section 392.245.5 under the statutes as amended by Senate  
24 Bill 237. This proceeding involves CenturyTel of Missouri  
25 LLC. Tomorrow you will hear the final case now pending on

1 a 30-day track, that involving Spectra Communications  
2 Group.

3 Believe me, we are aware of the tremendous  
4 efforts expended by all concerned in these matters, and we  
5 did our best to fashion two proceedings that would be very  
6 straightforward. As the Joint Recommendation filed Friday  
7 afternoon by the Staff, the Office of the Public Counsel  
8 and CenturyTel reflects, we feel that we have succeeded in  
9 that goal. Approval of the requested classification set  
10 forth in the Joint Recommendation will result in the fair  
11 and consistent treatment of this applicant.

12 Speaking of the Joint Recommendation, your  
13 Honor, I wanted to point out that it appears that one of  
14 the business exchanges listed in our original application  
15 was inadvertently left off in paragraph 1 of the Joint  
16 Recommendation, and that being the Wentzville exchange.  
17 All of the exchanges covered by the Joint Recommendation  
18 were included in the original request as filed by  
19 CenturyTel.

20 Out of CenturyTel's 96 exchanges, our  
21 petition filed on September 9th, 2005 sought competitive  
22 classification for 7 exchanges for residential services  
23 and 8 exchanges for business services. As our petition  
24 and supporting exhibits portrayed, we based our request on  
25 both readily available public information found on company

1 and industry websites, as well as the PSC's verified  
2 annual reports.

3 In addition, we cited Commission cases,  
4 where applicable, and our own business records in support  
5 of our requests. Concurrent with our application, we  
6 filed tariffs with 30-day effective dates to implement  
7 our request, and copies of those tariffs were filed as  
8 Exhibit H to our petition.

9 The Commission Staff submitted its  
10 recommendation and objection with supporting memorandum  
11 and schedules on September 20th where it recommended that  
12 the Commission grant CenturyTel's request for competitive  
13 classification for residential services in the Dardenne,  
14 O'Fallon, St. Peters and Wentzville exchanges, and for  
15 business services in the Bourbon, Columbia, Cuba,  
16 O'Fallon, St. James, St. Peters and Wentzville exchanges.

17 Let me take a moment and comment on the  
18 Staff's investigation in our proceeding, because I believe  
19 it reflects the new statutory regime at work. While the  
20 Commission's own annual reports depicted prima facie  
21 evidence of residential customers being served on a  
22 facilities basis in the exchanges of Bourbon, Branson and  
23 Columbia, the Staff's further investigation, as envisioned  
24 by the statute, determined that entries in one of the  
25 reports had been made in error, and two specific instances

1 of residential customers involved employees of the company  
2 or test cases where the companies confirmed that they were  
3 not holding themselves out to the public for residential  
4 services.

5           At this time, CenturyTel has made the  
6 decision to not contest the Staff's objections, and thus  
7 we have agreement on the four residential exchanges.

8           Another subsection of the new statute  
9 requires the Commission to maintain and consider its own  
10 records concerning the methods carriers whom it regulates  
11 use to provide local voice services in an exchange, and  
12 also to make inquiries as are necessary and appropriate  
13 from regulated provider of local voice service to  
14 determine the extent and presence of regulated local voice  
15 providers in an exchange.

16           The Staff took this proactive action in  
17 this proceeding, and the result was the identification of  
18 a different carrier providing business services in three  
19 identified exchanges. As a result, agreement was reached  
20 on 7 of the 8 business exchanges for which competitive  
21 classification was sought. Based on alleged uncertainty  
22 regarding some of the supporting information for the  
23 Dardenne business classification, CenturyTel has decided  
24 to withdraw its request for business services in that  
25 exchange at this time.



1           The only carrier to intervene and file an  
2 objection to CenturyTel's requested classifications is  
3 Fidelity Communications Services II, Inc, who objects to  
4 the requested classifications in the Bourbon exchange. As  
5 noted above, CenturyTel has withdrawn its request for  
6 residential services in the Bourbon exchange. However, as  
7 supported by the Staff and the Office of the Public  
8 Counsel, CenturyTel clearly meets the criteria set forth  
9 in the statute for business services in the Bourbon  
10 exchange.

11           Fidelity would have the Commission abandon  
12 the criteria of the statute and impose an unlawful and  
13 nebulous de minimis test to thwart CenturyTel's ability to  
14 achieve on par with that of Fidelity. The evidence  
15 clearly shows that Fidelity is serving business customers  
16 in the Bourbon exchange over facilities it owns in whole  
17 or in part, in this instance, completely bypassing  
18 CenturyTel's facilities.

19           The supporting information provided by  
20 CenturyTel and the Staff for wireless carriers is  
21 virtually identical to that relied upon by the Commission  
22 in the Sprint and SBC cases. In the short amount of time  
23 that I have had to review information submitted by the  
24 wireless carriers in response to the Commission's recent  
25 order, it appears to confirm the information as reflected

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1 on Exhibit A to our verified petition and Mr. Martinez's  
2 direct testimony.

3 And, Commissioner Clayton, I would point  
4 out that our verified petition and Mr. Martinez's  
5 testimony actually does, in fact, reference specific  
6 instances where the wireless carriers are indeed holding  
7 themselves out to those specific exchanges for service.  
8 And two of the responses of wireless carriers to date  
9 confirm that.

10 Again, as the evidence in our verified  
11 petition, exhibits, direct testimony of Mr. Martinez,  
12 Staff direct testimony of Mr. Van Eschen and staff  
13 memoranda and schedules all support, the Staff, the Office  
14 of the Public Counsel and the company constituting the  
15 signatory parties to the Joint Recommendation, based upon  
16 the competent and substantial evidence in this proceeding,  
17 jointly recommend that the Commission classify  
18 CenturyTel's residential services other than exchange  
19 access service as competitive in the exchanges of  
20 Dardenne, O'Fallon, St. Peters and Wentzville.

21 In addition, the signatory parties  
22 recommend that the Commission classify CenturyTel's  
23 business services, other than exchange access service, as  
24 competitive services in the exchanges of Bourbon,  
25 Columbia, Cuba, O'Fallon, St. James, St. Peters and

1 Wentzville.

2 As Mr. Martinez's testimony, our pretrial  
3 brief and the Joint Recommendation specifically state,  
4 CenturyTel is withdrawing its request at this time for  
5 competitive classification for residential service in the  
6 Bourbon, Branson and Columbia exchanges, and for business  
7 services in the Dardenne exchange. We will be filing  
8 substitute tariff sheets in the next couple of days to  
9 effectuate that action.

10 Thank you for your attention.

11 JUDGE WOODRUFF: Thank you, Mr. Dority.  
12 Mr. Meyer, do you have an opening for Staff?

13 MR. MEYER: Good morning. As you are  
14 aware, this case involves CenturyTel's petition for  
15 competitive classification under the 30-day track of  
16 Section 392.245 of the Revised Statutes of Missouri as  
17 amended by Senate Bill 237. Under that statute, business  
18 services or residential services or both of a  
19 price-cap-regulated incumbent local exchange company,  
20 telecommunications company, can be classified as  
21 competitive in an exchange where two nonaffiliated  
22 entities are providing basic local telecommunications  
23 service to the respective customer class.

24 Only one of the entities may be a wireless  
25 company. The other entity shall be a wireline company

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1 providing local voice service in whole or in part over  
2 telecommunications facilities or other facilities in which  
3 it or an affiliate have an ownership interest.

4 CenturyTel's application requests  
5 competitive classification for residential services in  
6 7 listed exchanges and for business service in 8 listed  
7 exchanges. In the testimony filed last Thursday, as  
8 Mr. Dority noted, CenturyTel removed three exchanges from  
9 its request for competitive classification for residential  
10 service, and in their pretrial brief, CenturyTel withdrew  
11 request for one exchange related to business services.

12 As was explained in Mr. Van Eschen's  
13 testimony, the Staff has confirmed the presence of  
14 qualifying competitors in requested exchanges -- in the  
15 remaining requested exchanges. Apparently the only point  
16 of dispute between any of the parties before you involves  
17 the Bourbon exchange for business services.

18 Although the Staff, OPC and CenturyTel have  
19 agreed that there are requisite number of entities  
20 providing basic local telecommunications services to  
21 business customers within the exchange, it expressed this  
22 view both through individual filing and through a Joint  
23 Recommendation Fidelity Communications Services II, one of  
24 the providers that serves in that exchange, disputes that  
25 that entity is providing service to a sufficient number of

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1 customers to fulfill the statutory requirements.

2 As noted in Staff's testimony and brief,  
3 the Staff confirmed the existence of customers or lines, I  
4 should say, in the relevant exchanges. The statute does  
5 not set forth any minimum number of customers or lines.  
6 The statute merely says that if services are, quote,  
7 provided, the requirement is fulfilled. If the  
8 Legislature intended to place qualifications to set a  
9 minimum standard, it certainly could have done so, and it  
10 did not.

11 It could have said, are provided by a  
12 non-ILEC to 5 percent of existing lines or to a reasonable  
13 number of lines to constitute sufficient competition and  
14 left that to your discretion to determine or used a myriad  
15 of different phraseology. They did not. Thus, if the  
16 Commission finds that services are provided by two  
17 nonaffiliated entities in addition to the ILEC,  
18 competitive status should be granted.

19 I note that Staff, OPC and the company  
20 filed a Joint Recommendation on the issues in this case,  
21 as Mr. Dority has also referred to. Other than the  
22 exchange involving Fidelity, there is no dispute involving  
23 these exchanges among the parties or any other entity that  
24 we are aware of.

25 As the Commission brought in parties at a

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1 fairly late date in the process, the three initial parties  
2 were unable to create a unanimous stipulation on those  
3 exchanges.

4 A non-unanimous stipulation, as I'm sure  
5 the Commission is aware, takes seven days to be deemed  
6 unanimous, and we didn't have that time. But we have  
7 provided a recommendation for you that does not appear to  
8 be disputed on the majority of exchanges. Accordingly,  
9 Staff recommends and requests the Commission to grant  
10 competitive classification to the requested exchanges.

11 Thank you.

12 JUDGE WOODRUFF: Thank you. Mr. Dandino,  
13 do you have an opening?

14 MR. DANDINO: Public Counsel has no opening  
15 statement. We just concur with Mr. Meyer and Mr. Dority.  
16 Thank you.

17 JUDGE WOODRUFF: Mr. Ross, do you have an  
18 opening?

19 MR. ROSS: Yes. May it please the  
20 Commission?

21 I have to confess, this isn't the first  
22 time that I've been up here as the lone voice in the wind.  
23 We're here today because this is an important issue and we  
24 think it needs to be addressed by the Commission.

25 As Mr. Dority indicated in his opening

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1 remarks, this matter comes before the Commission on an  
2 application by CenturyTel, pursuant to recently enacted  
3 Senate Bill 237, to classify as competitive on a very  
4 expedited basis certain services in certain of  
5 CenturyTel's exchanges. My client, Fidelity  
6 Communications Services II, objects to CenturyTel's  
7 request in the Bourbon exchange on the basis that we  
8 provide service to a very minimal number of customers over  
9 very limited facilities that are provided by an  
10 unaffiliated third party.

11 Specifically, Fidelity provides service to  
12 only one residential customer in the Bourbon exchange, who  
13 happens to be an employee of an affiliate, and also to two  
14 unaffiliated business customers. And as we just heard  
15 from Mr. Van Eschen and Mr. Martinez, CenturyTel has no  
16 evidence, aside from some so-called coverage maps, that  
17 any wireless service providers are even providing service  
18 in the Cen-- I'm sorry -- in the Bourbon exchange.

19 So in this case, these facts are not in  
20 dispute. The dispute centers on the parties'  
21 interpretation of the law to the facts. CenturyTel  
22 advocates an almost mathematical formula for determining  
23 whether competition exists. What they say is, one  
24 wireline competitor plus one wireless competitor equals  
25 competitive classification.

1           In the rush for judgment, however,  
2 CenturyTel asks the Commission to defy logic in favor of a  
3 mechanical application of the law. Although CenturyTel  
4 has dropped its request with respect to residential  
5 services, asking the Commission to find that one customer  
6 is enough, they still ask the Commission to find that two  
7 customers is enough to satisfy the requirement for a  
8 wireline competitor under SB 237.

9           Even though CenturyTel admittedly is no  
10 longer required to show that effective competition exists,  
11 the Commission doesn't have to abandon common sense in  
12 favor of keeping it simple. In fact, in the  
13 interpretation and application of the law, the Commission  
14 has the obligation to ensure that the public interest is  
15 being served.

16           Section 392.185 of the Missouri Revised  
17 Statutes specifically provides that the Commission has to  
18 construe every provision of Chapter 392. That includes  
19 those provisions of Senate Bill 237 that are an issue in  
20 this case, whether ambiguous or not, with certain  
21 principles in mind. Those principles include, No. 1, to,  
22 quote, ensure that customers pay only reasonable charges  
23 for telecommunications service, quote, and 2, to, quote,  
24 allow full and fair competition to function as substitute  
25 for regulation when consistent with the protection of



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1 ratepayers and otherwise consistent with the public  
2 interest, end quote.

3         The Commission should not give the  
4 construction to SB 237 that results in an absurd or  
5 unreasonable result. Instead, the Commission should  
6 take the approach that it took with respect to BPS  
7 Telephone Company's request for price cap status in Case  
8 No. IO-2003-0012. In that case, the Commission held that  
9 in light of the interpretive guidelines set forth in  
10 Section 392.185, a prepaid reseller does not provide in  
11 competition with the incumbent the basic local  
12 telecommunications necessary for the incumbent to elect  
13 price cap status.

14         CenturyTel claims that we're trying to  
15 rewrite SB 237 to contain an exception that doesn't exist.  
16 That's not the case. We're simply asking the Commission  
17 to look at Senate Bill 237 and the rest of Chapter 392 and  
18 to find that its entirety, Chapter 392 requires a  
19 threshold showing that a wireline company is providing  
20 services and more than -- to more than a de minimis number  
21 of customers over more than de minimis facilities before  
22 that wireline company can be considered as meeting the  
23 new -- could be considered as being a basic local  
24 telecommunications service provider under new  
25 Section 392.245.5.

1           There's nothing in SB 237 suggesting that  
2 two customers is enough. If anything, the General  
3 Assembly recognized in at least two ways that de minimis  
4 competition is not competition at all.

5           The first way is that SB 237 specifically  
6 exempts VOIP providers, resellers and prepaid service  
7 providers from those classes of companies that can be  
8 considered a wireline competitor under the 30-day track.  
9 If anything, when you get down to it, Fidelity has about  
10 as much impact on CenturyTel in the Bourbon exchanges as a  
11 reseller would.

12           Secondly, Senate Bill 237 allows for  
13 customer-specific pricing with respect to business  
14 services that are held to be competitive. Given the  
15 potential negative effects that this pricing could have on  
16 consumers, particularly where there's no available choice  
17 in terms of wireline providers, surely the General  
18 Assembly intended for SB 237 to require service to be  
19 provided to more than a few customers before competitive  
20 classification was appropriate.

21           For all these reasons and the reasons more  
22 specifically set forth in David N. Beier's direct  
23 testimony and our pretrial brief, we respectfully request  
24 that the Commission deny CenturyTel's request for  
25 competitive classification of its residential and business

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1 services in the Bourbon exchange.

2 Thank you.

3 JUDGE WOODRUFF: Thank you, Mr. Ross.

4 Mr. Steinmeier, did you wish to make an opening for

5 Alltel?

6 MR. STEINMEIER: No, thank you, your Honor.

7 JUDGE WOODRUFF: And you made a motion

8 earlier to be excused from further proceedings today. It

9 does not appear there's going to be any questions for

10 Alltel, so at this point you are excused.

11 MR. STEINMEIER: Thank you very much, your

12 Honor.

13 JUDGE WOODRUFF: Mr. Curtis, did you wish

14 to make an opening?

15 MR. CURTIS: Yes, briefly.

16 If it please the Commission, Leland Curtis

17 on behalf of Socket Telecom. Socket had previously filed

18 a response to the Commission's Order of September 22nd,

19 and in its response it said that Socket does not currently

20 serve at least two residential basic local service

21 customers whose addresses are located within any of the

22 7 exchanges for which CenturyTel originally sought

23 residential competitive classification.

24 Socket concurs with the testimony filed by

25 Staff Witness John Van Eschen at page 12, line 23, to

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1 page 13 at line 4 regarding the two test lines that Socket  
2 uses for residential service in the Columbia exchange.

3 With regard to the business side, Socket  
4 states that it does not currently serve at least two  
5 business basic local service customers whose addresses are  
6 located within the Columbia exchange. It does currently  
7 serve at least two in the Columbia exchange, but not in  
8 any of the other 7 exchanges for which CenturyTel sought  
9 competitive business classification.

10 And Mr. Kohly is here, and I point out with  
11 regard to Wentzville that Socket -- Socket's position is  
12 that it does not provide any business voice service to any  
13 business customer. There are ISP customers there, but  
14 there is no basic business voice service in Wentzville.  
15 So I wanted to at least point out what we had filed, and  
16 Mr. Kohly is available for questions.

17 JUDGE WOODRUFF: Thank you, Mr. Curtis.

18 Commissioner Clayton, do you want to take  
19 time to have Mr. Kohly come up now or you're on a short  
20 time here?

21 COMMISSIONER CLAYTON: I can ask him. He's  
22 already sworn. Maybe he could just come up here to the  
23 podium. We need to go upstairs for agenda.

24 MATTHEW KOHLY testifies as follows:

25 QUESTIONS BY COMMISSIONER CLAYTON:

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1 Q. In light of Mr. Curtis' comments regarding  
2 the customers in a number of these noted exchanges, is  
3 it -- and if this is HC, of course, it's your  
4 responsibility to --

5 A. Okay.

6 Q. In Columbia, can you tell me how many  
7 customers Socket is serving in the business market?

8 A. The number would be highly confidential. I  
9 didn't pull a customer count recently. It is more than  
10 two.

11 Q. More than two for voice?

12 A. Yes.

13 Q. And on the Wentzville exchange, I think  
14 Mr. Curtis has said that you have zero?

15 A. It was zero.

16 Q. Zero, and that the lines that were noted  
17 earlier are entirely ISP?

18 A. Right. It is multiple ISPs.

19 Q. Okay.

20 A. But you cannot complete a voice call. You  
21 can call those numbers over your regular phone, but you  
22 will hear a screeching modem on the other end.

23 COMMISSIONER CLAYTON: I don't think I have  
24 any other questions. Thank you, Mr. Kohly.

25 JUDGE WOODRUFF: Mr. Curtis, I know that

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1 you had asked to be excused earlier as well. If you'd  
2 like, we'll bring Mr. Kohly up here for cross-examination,  
3 and then you can be excused as well.

4 MR. CURTIS: I'd appreciate that.

5 JUDGE WOODRUFF: All right. Mr. Kohly, why  
6 don't you come up to the witness chair.

7 All right. Actually, we swore you in and  
8 we've been asking you questions but we've not actually  
9 established who you are. So we know your name, we know  
10 that much, but what is your position with Socket?

11 THE WITNESS: Director of carrier relations  
12 with Socket Telecom, LLC.

13 JUDGE WOODRUFF: And how long have you been  
14 with Socket?

15 THE WITNESS: I've been with Socket a  
16 little over a year.

17 JUDGE WOODRUFF: All right. Mr. Curtis, do  
18 you wish to ask any other direct questions of your  
19 witness?

20 MR. CURTIS: No, your Honor, I do not.

21 JUDGE WOODRUFF: Well, for  
22 cross-examination, does anyone wish to ask any questions  
23 of Mr. Kohly?

24 MR. DORITY: We have no questions, Judge.

25 MR. MEYER: Staff has no questions. Thank

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1     you.

2                     MR. DANDINO: No questions, your Honor.

3                     MR. ROSS: Fidelity has no questions.

4                     JUDGE WOODRUFF: With that, then,

5     Mr. Kohly, you can step down, and you're both excused.

6                     MR. CURTIS: Thank you, your Honor.

7                     JUDGE WOODRUFF: All right. Well, at this  
8     point, let's try and get back on a little bit more of a  
9     normal track here, and we will begin by calling Arthur  
10    Martinez as witness for CenturyTel.

11                    MR. DORITY: Judge, can we perhaps go off  
12    the record to mark some exhibits? Would that be  
13    appropriate?

14                    JUDGE WOODRUFF: That will be fine.

15                    (EXHIBIT NOS. 1 THROUGH 5 WERE MARKED FOR  
16    IDENTIFICATION BY THE REPORTER.)

17                    JUDGE WOODRUFF: Let's go back on the  
18    record, then.

19                    MR. DORITY: Thank you. Your Honor, at  
20    this time, pursuant to Commission Rule 4 CSR 240-2.130.2,  
21    I would request that the Commission take official notice  
22    of the following documents on file as public records with  
23    the Commission: First would be Socket's response to Order  
24    Directing Filing, which was filed yesterday, September 26,  
25    2005, which was referenced here this morning by both

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1 Mr. Curtis and Mr. Kohly, reflecting that Socket serves at  
2 least two business customers in the Columbia exchange.

3 Second, we would request that the  
4 Commission take official notice of the HC version of  
5 Socket's 2004 Missouri PSC annual report, which is on file  
6 with the Commission. We would ask official notice be  
7 taken of the Report and Order in Case No. TA-2001-346  
8 dated April 5th, 2001, which grants basic local  
9 certificate of service authority to Charter Fiberlink.

10 We would also ask official notice of the  
11 Report and Order in Case No. TA-2000-229, dated  
12 November 30th, 1999, which granted basic local certificate  
13 to Fidelity Communications Services II, Inc. Also, the  
14 Report and Order in Case No. TA-2001-671, which is basic  
15 local certificate to Socket Telecom, LLC.

16 And finally, the transcript, pages 266 to  
17 267, in Case No. CO-2005-0066 regarding Socket Telecom's  
18 operations as a facilities-based carrier in Missouri.

19 JUDGE WOODRUFF: Does anyone object to the  
20 Commission taking administrative notice to any of those  
21 documents?

22 (No response.)

23 JUDGE WOODRUFF: Hearing no objection, we  
24 will take notice.

25 MR. DORITY: And after a few preliminary



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1 questions, I'll offer the other exhibits of Mr. Martinez.

2 ARTHUR P. MARTINEZ testified as follows:

3 DIRECT EXAMINATION BY MR. DORITY:

4 Q. Mr. Martinez, do you have a copy of your  
5 prefiled direct testimony?

6 A. Yes, I do.

7 Q. Would you please state your name and  
8 address for the record.

9 A. Yes. My name is Arthur P. Martinez, and  
10 I'm at 220 Madison Street, Jefferson City, Missouri 65101.

11 Q. Thank you. Mr. Martinez, on whose behalf  
12 are you appearing this morning and in what capacity?

13 A. I'm appearing on behalf of CenturyTel of  
14 Missouri, LLC, as director of government relations.

15 Q. Mr. Martinez, you have before you what has  
16 been marked as Exhibit 1 in this proceeding. I would ask  
17 you if that is your prefiled direct testimony filed in  
18 this matter on September 22nd, 2005?

19 A. Yes, it is.

20 Q. And if I were to ask you the questions  
21 contained therein today, would your answers be the same?

22 A. Yes, they would.

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

25 A. Yes, they are.

1           Q.       Mr. Martinez, we've also had marked as  
2 Exhibit 2 this morning the document titled Exhibit A to  
3 your verified application concerning wireless carriers  
4 operating in CenturyTel exchanges, Exhibit 3, which was  
5 the Charter Fiberlink 2004 Missouri PSC annual report,  
6 Exhibit 4, the Fidelity Communications Services II, Inc.  
7 2004 Missouri PSC annual report, and Exhibit 5, the  
8 redacted copy of Socket Telecom's 2004 Missouri PSC annual  
9 report and a news item reflected therein.

10           Mr. Martinez, those exhibits were attached  
11 to and included in both the verified application of  
12 CenturyTel of Missouri and referenced in your direct  
13 testimony; is that correct?

14           A.       That's correct.

15           MR. DORITY: Your Honor, I would offer into  
16 evidence Exhibits 1, 2, 3, 4 and 5 at this time.

17           JUDGE WOODRUFF: Exhibits 1, 2, 3, 4 and 5  
18 have been offered into evidence. Are there any objections  
19 to their receipt?

20           (No response.)

21           JUDGE WOODRUFF: Hearing none, they will be  
22 received in evidence.

23           (EXHIBIT NOS. 1 THROUGH 5 WERE RECEIVED  
24 INTO EVIDENCE.)

25           MR. DORITY: Your Honor, since your

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1 procedural order issued in this case indicated that we  
2 would be allowed to offer rebuttal testimony, I didn't  
3 know if you would like for that to take place now or if it  
4 would take place after the other witness had already  
5 testified.

6 JUDGE WOODRUFF: This would probably be the  
7 appropriate time to do that, since that will be rebuttal  
8 to the prefiled testimony.

9 MR. DORITY: That's correct.

10 JUDGE WOODRUFF: Go ahead.

11 BY MR. DORITY:

12 Q. Mr. Martinez, have you had the opportunity  
13 to review the direct testimony of David N. Beier filed on  
14 behalf of Fidelity Communications Services II, Inc.,  
15 addressing the issue of competitive classification for the  
16 Bourbon exchange?

17 A. Yes, I have.

18 Q. And do you have specific comments to offer  
19 in response to Mr. Beier's testimony?

20 A. Yes. There are three areas of Mr. Beier's  
21 direct testimony I wish to address.

22 Q. Would you please proceed?

23 A. Certainly. First, Mr. Beier admits that  
24 Fidelity is providing local voice service to business  
25 customers in CenturyTel's Bourbon exchange, utilizing a

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1 combination of its own facilities and that of another  
2 provider.

3           The second area deals with the law itself.  
4 Mr. Beier suggests that this Commission look at criteria  
5 that were specifically eliminated by the Legislature upon  
6 the passage of Senate Bill 237. Senate Bill 237  
7 significantly changed the way competitive classification  
8 is to be granted by this Commission. Competitive  
9 classification is no longer focused on the extent to which  
10 competition exists in an exchange, but rather focuses on  
11 whether customers have a choice or a competitive  
12 alternative for their communications needs.

13           CenturyTel has clearly demonstrated that it  
14 meets the specific provisions required under 392.245.5 and  
15 the law's 30-day criteria. Fidelity has not contested  
16 this fact.

17           Finally, there are practical considerations  
18 regarding rural markets in general and the Bourbon  
19 exchange in particular that Mr. Beier fails to mention in  
20 his direct testimony but did touch on this morning.

21           Although CenturyTel is the second largest  
22 incumbent wireline provider of local service in the state,  
23 the company's average exchange size is just over 3,000  
24 access lines. The Bourbon exchange is but a fraction of  
25 CenturyTel's average exchange size. Moreover, business

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1 customers represent a small segment of the total access  
2 lines in a given rural exchange.

3 Therefore, given the limited number of  
4 business customers in the Bourbon exchange, Fidelity is  
5 financially motivated to limit CenturyTel's ability to  
6 compete. This is clearly not in the public interest and  
7 does not afford consumers the choices envisioned by Senate  
8 Bill 237.

9 Q. Finally, Mr. Martinez, in response to a  
10 question from Commissioner Clayton this morning, I believe  
11 you were asked regarding the identification of one or more  
12 wireless carriers in the various exchanges to which  
13 CenturyTel is requesting competitive classification,  
14 whether they had held themselves out to be providing  
15 business in a particular exchange. Do you recall that  
16 question?

17 A. Yes, I do.

18 Q. Exhibit A to our verified application,  
19 which has been marked and received into evidence as  
20 Exhibit 2, lists specific exchanges and also a table that  
21 represents various wireless carriers operating in those  
22 various exchanges; is that correct?

23 A. That's correct.

24 Q. And upon what basis was that table  
25 formulated or put together? Was that done under your

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1 direction and control?

2 A. Yes, it was.

3 Q. And can you briefly explain what Exhibit 2  
4 depicts?

5 A. Yes. Exhibit 2 identifies the exchange and  
6 then identifies one or more wireless providers that are,  
7 in fact, providing service in those exchanges.

8 Q. And what was your conclusion that they were  
9 providing service in those exchanges based upon?

10 A. We went to the websites of the various  
11 providers and identified the Bourbon exchange, however the  
12 website asked for the area to be identified. And then we  
13 brought up that information and we had two providers in  
14 particular with regard to the Bourbon exchange that listed  
15 themselves as holding -- as providing service in those  
16 areas.

17 Q. And that would be the same process for all  
18 of the exchanges that are involved in our application?

19 A. That's correct, yes.

20 MR. DORITY: Thank you. I have no other  
21 questions at this time.

22 JUDGE WOODRUFF: All right. For  
23 cross-examination, then, Public Counsel?

24 MR. DANDINO: No questions, your Honor.

25 JUDGE WOODRUFF: Staff?

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1 MR. MEYER: Very briefly.

2 CROSS-EXAMINATION BY MR. MEYER:

3 Q. Whenever you're ready.

4 A. I'm ready.

5 Q. Very briefly, Mr. Martinez, do you know if  
6 wireless providers can offer customers a local number in  
7 the Bourbon exchange? I think that goes with some  
8 questions from Commissioner Clayton earlier on, but maybe  
9 a slightly different variation of that. I know you  
10 indicated just before this that to your awareness they  
11 were providing service. Do you know if they actually are?

12 A. I am not aware whether or not they have a  
13 local number in the Bourbon exchange.

14 Q. And similarly, to your knowledge, are you  
15 aware if a wireless provider can offer a customer a local  
16 number in the Dardenne exchange?

17 A. No, I'm not. However, I understand, based  
18 on testimony given today, that the Dardenne exchange  
19 shares an EAS route with exchanges that do have local  
20 providers. But I would like to add that today a customer  
21 of CenturyTel can port their number to a wireless  
22 provider, and that call or the calls to that customer will  
23 be rated on a local basis.

24 MR. MEYER: I have no further questions.

25 Thank you.

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1 JUDGE WOODRUFF: Fidelity, do you have any  
2 questions?

3 CROSS-EXAMINATION BY MR. ROSS:

4 Q. Hello, Mr. Martinez.

5 A. Good morning.

6 Q. I'd like to talk a little bit about your  
7 testimony as to the wireless providers providing service  
8 in the Bourbon exchange. I believe it's Exhibit No. 2,  
9 Exhibit A to your application. This is the evidence that  
10 you guys are putting forward to support your claim that  
11 there's actual customers being served in Bourbon by  
12 wireless carriers; is that correct?

13 A. That's correct.

14 Q. And in that exhibit you've identified with  
15 an X that Cingular is providing -- or Cingular -- I guess  
16 my question is, what do these Xs indicate in this exhibit?

17 A. Those Xs indicate that the wireless  
18 provider is licensed and operating in that exchange.

19 Q. Okay. For example, where it says map under  
20 Cingular, there's an X in that column. What does that  
21 mean?

22 A. Means that we went out to the Cingular  
23 company website, called up the particular exchange in  
24 question and looked for the coverage for that exchange.

25 Q. Okay. And under rates, there's an X there.



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1 What does that mean?

2 A. That means that in our search and in the  
3 Bourbon exchange in particular, when we identified the  
4 Bourbon exchange utilizing their website, their various  
5 plans that are available in that exchange were brought  
6 forth.

7 Q. Okay. You mentioned pulling up the  
8 websites. Have you introduced any of this information  
9 underlying these Xs into evidence?

10 A. Yes, we have, I understand, in the verified  
11 application, Exhibit A.

12 Q. Do you have any evidence to suggest that  
13 actual customers with billing addresses in the Bourbon  
14 exchange are receiving wireless service?

15 A. No.

16 Q. Have any CenturyTel numbers been ported to  
17 a wireless customer in the Bourbon exchange?

18 A. I can't address that for the Bourbon  
19 exchange in particular, but yes, we have -- we have  
20 instances where we ported numbers to wireless carriers.

21 Q. Okay. So you're not aware of any wireless  
22 numbers -- I'm sorry. You're not aware of any CenturyTel  
23 numbers being ported to a wireless customer located in the  
24 Bourbon exchange?

25 A. Not specifically in the Bourbon exchange.

1 Q. In your testimony at page 15, lines 13  
2 through 15, you indicate that Fidelity intends to serve  
3 business customers in the Bourbon exchange in the future.  
4 What's the basis for that statement?

5 A. Well, they obviously have two customers in  
6 the exchange today, and they had to hold themselves out to  
7 acquire those customers, so we have reason to believe that  
8 they will continue that to the extent that they choose to  
9 operate in the Bourbon exchange.

10 Q. Do you have any evidence to suggest that  
11 they intend to serve any customers in addition to those  
12 two customers that they're currently serving?

13 A. I believe it was Mr. Beier's testimony here  
14 today that if they find it economically feasible, they  
15 will.

16 Q. We'll let his testimony speak for itself.  
17 Isn't it true that he stated in his testimony that  
18 Fidelity cannot currently serve any additional customers  
19 in the Fidelity exchange, given the limited third-party  
20 facilities that are currently in place?

21 A. I guess we'll let his testimony speak for  
22 itself.

23 Q. Do you have any evidence of any facilities  
24 of Fidelity located in the Bourbon exchange, in addition  
25 to those third-party facilities that Mr. Beier testified

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1 about?

2 A. No, I am not.

3 Q. And you understand that as the applicant in  
4 this proceeding, you bear the burden of proof, correct?

5 A. Yes.

6 MR. ROSS: Thank you. No further  
7 questions.

8 JUDGE WOODRUFF: Thank you. I have no  
9 questions, so there's no need for recross. Is there any  
10 redirect?

11 MR. DORITY: Yes, thank you.

12 Your Honor, if you'd bear with me just a  
13 moment, please.

14 JUDGE WOODRUFF: Sure.

15 MR. DORITY: Your Honor, I do not have an  
16 extra copy, since I literally pulled this document off the  
17 website last night. And, in fact, it was a copy, an  
18 electronic service copy of the document that was filed in  
19 this case yesterday afternoon or evening by Thomas Pulliam  
20 on behalf of Verizon Wireless, and it is the response of  
21 Verizon Wireless to the Commission's Order. So it would  
22 be a part of the Commission's case files via the EFIS  
23 filing that was made, and I would like to provide this to  
24 Mr. Martinez and ask him a couple of questions regarding  
25 that.

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1 JUDGE WOODRUFF: You certainly may.

2 MR. DORITY: Would you like to have it  
3 marked as an exhibit or how would you like to handle it?

4 JUDGE WOODRUFF: I think it would probably  
5 be helpful to have that marked. I did actually have  
6 copies of that made. You're talking about that  
7 September 26 letter from Thomas Pulliam?

8 MR. DORITY: That is correct.

9 JUDGE WOODRUFF: I had ten copies made  
10 before the hearing, so you can go ahead and use these.

11 (EXHIBIT NO. 6 WAS MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13 MR. DORITY: May I approach the witness,  
14 Judge?

15 JUDGE WOODRUFF: You may.

16 REDIRECT EXAMINATION BY MR. DORITY:

17 Q. Mr. Martinez, I'm going to hand you what  
18 has been marked as Exhibit No. 6, which is the response --  
19 which is the response of Verizon Wireless to the  
20 Commission's Order issued and effective September 22nd,  
21 2005 in the case IO-2006-0509. Do you have that in front  
22 of you, sir?

23 A. Yes, I do.

24 Q. And do you see an Exhibit A attached  
25 thereto, which is the affidavit of Scott E. Young?

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1 A. Yes.

2 Q. And, Mr. Martinez, would you read  
3 paragraph 2 of that affidavit regarding locations where  
4 Verizon Wireless presently has both coverage and network  
5 facilities?

6 A. Yes, I will. Verizon Wireless, paren,  
7 through its operating entities, Verizon Wireless, LLC,  
8 Cellco Partnership and/or CyberTel Cellular Telephone  
9 Company, close paren, presently has both coverage and  
10 network facilities in each of the following exchanges:  
11 Bourbon, Cuba, Dardenne, O'Fallon, St. James, St. Peters,  
12 Savannah and Wentzville.

13 MR. DORITY: Thank you, Mr. Martinez.  
14 That's all I have, Judge. And thank you for making copies  
15 for us.

16 JUDGE WOODRUFF: You're welcome.

17 MR. DORITY: I'm sorry. I would offer  
18 Exhibit 6 into evidence.

19 JUDGE WOODRUFF: Exhibit 6 has been offered  
20 into evidence. Are there any objections to its receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, it will be  
23 received into evidence.

24 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE WOODRUFF: And then I believe,

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1 Mr. Martinez, you can step down.  
2 I believe the next witness will be  
3 Mr. Van Eschen.  
4 MR. MEYER: Mr. Van Eschen seems to have  
5 stepped out of the room.  
6 JUDGE WOODRUFF: It is a good time for a  
7 break anyway. Let's take a break now and come back at  
8 10:15.  
9 (A BREAK WAS TAKEN.)  
10 (EXHIBIT NOS. 7 AND 8 WERE MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)  
12 JUDGE WOODRUFF: Before we go to  
13 Mr. Van Eschen, there was one more matter I wanted to  
14 bring up, and that was I believe it was during Mr. Van  
15 Eschen's testimony earlier, there was apparently a highly  
16 confidential number slipped out as far as number of lines  
17 for AT&T, I believe.  
18 MR. MEYER: That's correct.  
19 JUDGE WOODRUFF: And at that time, I  
20 believe we made -- I made mention that there was -- if  
21 that was, in fact, highly confidential we would need to  
22 strike it from the record. It turns out that apparently  
23 that was highly confidential, and at this point I'll  
24 direct the court reporter to go ahead and strike that when  
25 she finds it in the transcript. Mark it as highly

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1 confidential, I should say.  
2 MR. MEYER: Thank you very much.  
3 JUDGE WOODRUFF: Actually, why don't we  
4 just go ahead and strike it rather than mark it highly  
5 confidential? I think we dealt with it otherwise in --  
6 MR. MEYER: I think it was mentioned in the  
7 confidential section, so it's in the record.  
8 JUDGE WOODRUFF: Okay.  
9 All right. Then if you'd call  
10 Mr. Van Eschen.  
11 MR. MEYER: Staff calls John Van Eschen.  
12 JUDGE WOODRUFF: And you were previously  
13 sworn.  
14 JOHN VAN ESCHEN testified as follows:  
15 DIRECT EXAMINATION BY MR. MEYER:  
16 Q. Mr. Van Eschen, could you state and spell  
17 your name for the record, please?  
18 A. My name is John Van Eschen.  
19 Q. By whom --  
20 A. It's V-a-n, capital E-s-c-h-e-n.  
21 Q. And by whom are you employed and in what  
22 capacity?  
23 A. I'm on the Staff of the Missouri Public  
24 Service Commission. I'm the manager of the  
25 telecommunications department.

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1 Q. And did you prepare the prefiled testimony  
2 in this case which was previously marked for  
3 identification as Exhibit 7, the direct testimony of John  
4 Van Eschen?

5 A. Yes.

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

8 A. No, I do not.

9 Q. And are the answers that you provided in  
10 that true and accurate to the best of your knowledge and  
11 belief?

12 A. Yes.

13 Q. If I asked you those same questions today,  
14 would your answers still be the same?

15 A. Yes.

16 MR. MEYER: I'd offer Exhibit 7 into the  
17 record.

18 JUDGE WOODRUFF: Exhibit 7 has been offered  
19 into evidence. Are there any objections to its receipt?

20 (No response.)

21 JUDGE WOODRUFF: Hearing none, it will be  
22 received into evidence.

23 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

24 MR. MEYER: At this time in response to  
25 questions from the Bench, would it be appropriate for me



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1 to ask some additional questions? They aren't necessarily  
2 direct. Or would you just prefer that I wait and do  
3 everything at the end?

4 JUDGE WOODRUFF: Go ahead and do it now.

5 BY MR. MEYER:

6 Q. Mr. Van Eschen, you heard earlier some  
7 discussion from Mr. Curtis and some testimony from  
8 Mr. Kohly regarding Socket and some traffic that it had in  
9 some exchanges that was ISP; is that correct?

10 A. Yes.

11 Q. Had you already been aware of that  
12 information that they indicated?

13 A. Yes, and I concur with what Mr. Curtis had  
14 said about the Wentzville exchange. Socket's lines that I  
15 had previously indicated for Wentzville are serving an  
16 Internet service provider only.

17 Q. And had Staff relied on that information in  
18 drawing the conclusions it drew in this case?

19 A. No, we did not.

20 MR. MEYER: Commissioner Clayton had asked  
21 you some questions regarding the availability of wireless  
22 providers -- wireless providers to provide local exchange  
23 for some of their customers. And if I may, I would like  
24 to provide that supplemental filing at this time. We have  
25 prepared if I could. I have had that previously marked as

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1 Exhibit 8.

2 JUDGE WOODRUFF: This concerns local  
3 wireless availability?

4 MR. MEYER: Yes.

5 BY MR. MEYER:

6 Q. And Commissioner Clayton had asked you some  
7 questions about the Dardenne exchange, and I think you had  
8 mentioned that there might be a possibility of an EAS  
9 route in that exchange. Do you have any qualifications or  
10 clarifications you'd like to make regarding that?

11 A. Yes. It's not specifically an EAS route  
12 that I was thinking of. More precisely, the Dardenne  
13 exchange is a part of the St. Louis metropolitan calling  
14 area plan. They are in the Tier 4. They're a Tier 4  
15 exchange in the MCA plan, which is an optional area of the  
16 MCA plan.

17 Most of the, if not all, of the wireless  
18 providers that have been cited by CenturyTel do have  
19 telephone numbers predominantly in the downtown St. Louis  
20 exchange. And so if you're a Dardenne MCA subscriber, you  
21 can call these -- you can call a wireless subscriber on a  
22 toll-free local basis, but if you do not, if you are not a  
23 subscriber to MCA, then it could be a toll call.

24 Q. And is what you just discussed the reason  
25 why the Dardenne exchange is marked as other on the chart

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1 you just provided?

2 A. That's correct.

3 Q. Did you prepare this chart or was it  
4 prepared by somebody who you supervise?

5 A. Yes, it was prepared by staff that I do  
6 supervise.

7 Q. And do you agree with the contents of this?

8 A. Yes.

9 MR. MEYER: At this time I'd offer  
10 Exhibit 8 into the record in lieu of the supplemental  
11 filing that Commissioner Clayton had previously discussed.

12 JUDGE WOODRUFF: Exhibit 8 has been offered  
13 into evidence. Are there any objections to its receipt?

14 MR. DORITY: I suppose, your Honor, we  
15 would object just on the basis of relevancy to the  
16 language of the statute.

17 MR. ROSS: Your Honor, it's no different  
18 than the exhibit they've offered into evidence. I believe  
19 it's Exhibit A to their application.

20 JUDGE WOODRUFF: All right. I'll overrule  
21 the objection, and Exhibit 8 will be admitted into  
22 evidence.

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

24 MR. MEYER: At this time that's all I have.

25 Thank you.

1 JUDGE WOODRUFF: All right. Thank you.  
2 All right. For cross-examination, then, let's begin with  
3 Public Counsel.

4 MR. DANDINO: No questions, your Honor.

5 JUDGE WOODRUFF: CenturyTel?

6 CROSS-EXAMINATION BY MR. DORITY:

7 Q. Good morning, Mr. Van Eschen.

8 A. Good morning.

9 Q. I just had a couple of clarifying questions  
10 regarding responses that you provided to, I believe it was  
11 Commissioner Clayton earlier this morning.

12 I just wanted to confirm, I believe I  
13 understood you to testify that the analysis that the Staff  
14 provided relative to wireless carriers in this proceeding  
15 was essentially the same as the two previous cases  
16 involving Sprint and SBC, and I believe your answer was  
17 yes. Was that correct?

18 A. Yes. I might expand on that a little bit.  
19 We did specifically cite in this proceeding the reference  
20 to the Federal Communications Commission report.

21 Q. Okay. Also, you just testified regarding  
22 representations that Mr. Curtis had made this morning, and  
23 I believe it also touched upon the brief testimony by  
24 Mr. Kohly on behalf of Socket Telecom. You were asked a  
25 question as to whether or not you knew if there was more

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1     than one customer in Columbia.

2                     I believe earlier this morning you  
3 testified you did not know, but you've been in the hearing  
4 room this morning when they referenced Socket's response  
5 to order directing filing where, in fact, they have  
6 indicated that more than two customers are being  
7 provided -- business customers are being provided service  
8 in Columbia?

9             A.       I did hear something to that effect.

10                    MR. DORITY: Okay. Thank you. That's all  
11 I have.

12                    JUDGE WOODRUFF: All right. Fidelity?

13 CROSS-EXAMINATION BY MR. ROSS:

14             Q.       Hello, Mr. Van Eschen.

15             A.       Good morning.

16             Q.       Would you explain for me, please -- I'm  
17 referring to Exhibit 8 that was just introduced into  
18 evidence and admitted into evidence. What does the check  
19 mark in the "no" box for the Bourbon exchange signify?

20             A.       That indicates that we could find no  
21 evidence from either the North American Numbering Plan  
22 Administration Central Office Code List or the Local  
23 Exchange Routing Guide that the wireless providers  
24 identified in the second column for the Bourbon exchange,  
25 none of those wireless providers have telephone numbers

1 assigned to them, at least on a local basis in the Bourbon  
2 exchange.

3 Q. And could you in your review find any  
4 evidence of any wireless customers with billing addresses  
5 located in the Bourbon exchange?

6 A. I do not have that information, no.

7 Q. So why has Staff recommended competitive  
8 classification with respect to business services in the  
9 Bourbon exchange?

10 A. We felt that there were two entities  
11 providing local voice service in the Bourbon exchange, and  
12 we felt that evidence was sufficient to suggest that  
13 wireless providers did offer service in the Bourbon  
14 exchange, as well as Fidelity offered service in the  
15 Bourbon exchange for business customers.

16 Q. But you've just testified that you have no  
17 evidence that any customers located in the Bourbon  
18 exchange are actually receiving wireless service, correct?

19 A. That is true.

20 Q. Which two entities do you feel provide  
21 local service in the Bourbon exchange?

22 A. We had no reason to dispute any of the  
23 wireless providers, Cingular, Sprint, T-Mobile and  
24 Verizon, that were cited by CenturyTel as providing  
25 wireless service in the Bourbon exchange area.

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1           Q.       You say you have no reason to dispute, but  
2 you're also not offering any evidence to assist CenturyTel  
3 in that regard either, correct?

4           A.       I would say that is generally true. I  
5 mean, we did look at the FCC's Report and Order that I  
6 described earlier that indicated that at least one  
7 wireless provider appeared to be operating in all areas of  
8 Missouri.

9           Q.       And does that FCC report that you  
10 previously referenced identify that any wireless provider  
11 was providing service to customers located in the Bourbon  
12 exchange?

13          A.       Not specifically, no.

14          Q.       Is there any other evidence that you're  
15 offering to suggest that customers are actually receiving  
16 wireless services in the Bourbon exchange, aside from the  
17 FCC report?

18          A.       No, we haven't offered any additional  
19 evidence.

20          Q.       I'd like for you to turn to your testimony  
21 at page 8, lines 3 through 5. You indicate there that  
22 Staff considers providing service on a full facility basis  
23 or UNE-L basis, quote, as the minimum threshold to meet  
24 for competitive status in a 30-day proceeding, end quote;  
25 is that correct?

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1           A.       Essentially. I do qualify what I mean by  
2 UNE-L.

3           Q.       Okay. What do you mean by the phrase  
4 minimum threshold to meet competitive status?

5           A.       We feel that, at least on the wireline  
6 portion of the test, that if a competitor is providing  
7 local voice service and that competitor either owns a  
8 switch or outside plant facilities used to connect  
9 customers within the exchange, that that would qualify  
10 that exchange for competitive status.

11          Q.       Could there be a situation where a UNE-L or  
12 full facilities-based wireline company would not count as  
13 one of the required entities under the 30-day track?

14          A.       It's possible if that company is only  
15 serving, say, an Internet service provider.

16          Q.       Any other instances in your mind?

17          A.       We're on record in this proceeding where we  
18 opposed the competitive request based on the company was  
19 only providing service essentially to its own employees.

20          Q.       In your mind, would it be reasonable or  
21 appropriate for the Commission to determine in the context  
22 of this proceeding that two business customers in Bourbon  
23 is not enough?

24          A.       Would it be appropriate? In my opinion,  
25 no.



1 Q. In your testimony at page 8, lines 7  
2 through 8, you state that a switch can, quote, probably,  
3 quote, be included as qualifying as telecommunications  
4 facilities; is that correct?

5 A. Yes.

6 Q. Is it fair to say that there's some  
7 question in your mind as to whether a switch qualifies as  
8 facilities under the 30-day track?

9 A. I worded it that particular way because the  
10 definition contained in the statute for telecommunications  
11 facilities is a relatively old definition. It's very  
12 broad, and if -- I guess some of the terms that are used  
13 in the definition I felt could be construed to suggest  
14 that a switch would be considered a telecommunications  
15 facility.

16 Having said that, there are aspects of that  
17 definition that could perhaps potentially be applied to  
18 other types of facilities as indicating that they would  
19 allow an exchange to qualify for competitive status. At  
20 least at this point, I'm -- I wanted to just simply  
21 indicate that what we considered to qualify are if the  
22 competitor either has a switch and/or outside plant  
23 facilities that connect to the customer's premise.

24 Q. Isn't one reasonable read of  
25 Section 392.245.5 that it requires facilities to be

0078

1 located within the exchange?

2 A. No, I did not read that in the statute.

3 Q. But you acknowledge that services have to  
4 be provided in the exchange, correct?

5 A. Correct.

6 Q. I think there might be a typographical  
7 error in Schedule 1 of your testimony. Would you turn to  
8 Schedule 1, I believe it's Footnote No. 2. There you  
9 state that the identified wireline companies are providing  
10 local voice service in the exchange on either a full  
11 facilities basis. Should that also say or UNE-L basis?

12 A. Yes, that should.

13 Q. Okay. And just to clarify, when you say  
14 UNE-L basis here --

15 A. But I guess that would cover all the bases.  
16 I'd have -- I don't know if it necessarily changes things  
17 if it remains unchanged.

18 Q. Okay. Maybe this will help. In your  
19 testimony at page 10, lines 15 -- I'm sorry -- lines 18  
20 through 20 --

21 A. Okay.

22 Q. -- would you read that full sentence there?

23 A. The column titled "Local Voice Competitors"  
24 identifies the specific wireline companies providing local  
25 voice service on either a full facility basis or a UNE-L

0079

1 basis.

2 Q. Okay. And when you say UNE-L basis here,  
3 you mean that the loop is provided by either the incumbent  
4 or a third party, correct?

5 A. Yes. The competitor is providing local  
6 voice service and they do have their own switch.

7 Q. What effect would a designation of business  
8 services as competitive in the Bourbon exchange have?

9 A. What effect?

10 Q. Yeah, what effect?

11 A. You're asking if the Commission grants  
12 competitive status?

13 Q. Right.

14 A. The effect is that CenturyTel would be able  
15 to raise rates, at least I believe in this case you  
16 mentioned. You're talking about Bourbon?

17 Q. That's correct.

18 A. Would be able to raise rates to any rate it  
19 sees fit for business services within the Bourbon  
20 exchange. In addition, CenturyTel would be able to price  
21 its business services on a customer-specific basis in the  
22 Bourbon exchange.

23 Q. And what does that mean to be able to price  
24 services on a customer-specific basis?

25 A. They do not necessarily have to offer the

0080

1 same rate to two business customers within the exchange.

2 Q. So they can charge different rates to  
3 similarly situated customers?

4 A. Potentially, yes.

5 Q. Could they price services above their  
6 existing tariffed rates based on customer-specific  
7 pricing?

8 A. Yes.

9 Q. And could they price services below their  
10 existing tariffed rates?

11 A. Yes.

12 Q. Would CenturyTel have to file any further  
13 tariffs to get that pricing flexibility?

14 A. We would not expect them to file the  
15 customer-specific rates in their tariff, if that's what  
16 you're asking.

17 Q. So if the Commission finds that there is --  
18 that the business services in Bourbon are competitive,  
19 CenturyTel would be able to immediately begin pricing  
20 business services there on a customer-specific basis  
21 without filing any further tariff or other document with  
22 the Commission?

23 A. That's correct.

24 Q. What happens to the competitive  
25 classification if Fidelity loses one or two customers,

0081

1 business customers in Bourbon?

2 A. I believe there's a provision in the  
3 statute that allows the Commission to reevaluate whether  
4 conditions continue to exist that allow that particular  
5 exchange to be granted competitive status. And if the  
6 Commission determines that those conditions no longer  
7 exist, they could, I guess, revoke competitive status for  
8 that particular exchange.

9 Q. And when is that analysis conducted?

10 A. When?

11 Q. Correct. Does it happen immediately if  
12 Fidelity loses its two customers in Bourbon or not?

13 A. I don't know if I could answer that. We  
14 have not ran into that situation yet, so I don't know.

15 Q. Do you know how the Commission would know  
16 if Fidelity loses its two customers in Bourbon?

17 A. I would suspect that it would probably show  
18 up in the next annual report that they file with the  
19 Commission.

20 Q. Are you familiar with Section 392.185 of  
21 the Revised Statutes of Missouri?

22 A. Yes.

23 Q. Pursuant to that section, the Commission  
24 has the obligation to construe every provision of  
25 Chapter 392, and I'm paraphrasing, in the public interest,

0082

1 correct?

2 A. Well, I think 392.185 attempts to identify  
3 the purposes of Chapter 392. It generally tries to  
4 provide some general guidance for the Commission in  
5 applying the regulations spelled out in Chapter 392.

6 Q. Do you believe it's within the -- it's in  
7 the public interest for the Commission to classify  
8 business services as competitive in Bourbon, given that  
9 Fidelity has only two unaffiliated customers there?

10 MR. DORITY: Your Honor, I'm going to  
11 object to this question because the statute under which we  
12 are operating clearly does not require a public interest.

13 JUDGE WOODRUFF: I'm going to overrule the  
14 objection. You can go ahead and answer.

15 THE WITNESS: I would -- I would tend to  
16 say that there does not appear to be a public interest  
17 standard under the 30-day track. There is a public  
18 interest standard under the 60-day track.

19 BY MR. ROSS:

20 Q. Would you answer my question, please?

21 A. And just so I'm clear, would it be in the  
22 public interest to grant competitive status?

23 Q. That's correct.

24 A. I would tend to say yes, under the  
25 guidelines specified by the statute under the 30-day

0083

1 track, they assume that if certain conditions are present,  
2 then competitive status should be granted.

3 Q. Do you think there's adequate protection  
4 for ratepayers given the limited competition and the  
5 customer-specific pricing that would be available to  
6 CenturyTel in the Bourbon exchange if there is a finding  
7 of competitive classification?

8 A. I guess that remains to be seen. I don't  
9 know.

10 MR. ROSS: No further questions. Thank  
11 you.

12 JUDGE WOODRUFF: Thank you. We'll come up  
13 to questions from the Bench, then.

14 QUESTIONS BY JUDGE WOODRUFF:

15 Q. Commissioner Clayton left me a few notes,  
16 and I believe this is something that he had covered with  
17 you earlier, Mr. Van Eschen, concerning the number of  
18 customers served by CLECs, specifically by AT&T in  
19 Columbia, O'Fallon, St. Peters and Wentzville. Was Staff  
20 going to file something for on that as well?

21 A. We can if the Commission would like us to.  
22 We weren't planning on it.

23 Q. Okay. Well, apparently at least one  
24 Commissioner would like you to.

25 A. All right.

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1           Q.       Is that information that you would have  
2 available from some other source that you don't have  
3 today?

4           A.       We have a list of these exchanges and who  
5 we believe are other CLECs that operate in those exchanges  
6 and the number of lines as reported in their annual  
7 reports.

8           Q.       Okay. Would that be number of lines or  
9 number of customers?

10          A.       Number of lines.

11          Q.       Is there any way of finding out the number  
12 of customers?

13          A.       Not easily, no. We'd have to, I believe,  
14 contact the CLEC in question and specifically ask them on  
15 an exchange-specific basis the number of customers  
16 associated with the lines that they have listed for that  
17 particular exchange.

18          Q.       And is that something that you can do  
19 fairly quickly, particularly with AT&T?

20          A.       We can certainly try and get that  
21 information today. I'm a little bit hesitant to say we  
22 can easily get the information, because sometimes it takes  
23 us a little while to get to the right person that has  
24 access to that information, but we can certainly try.

25          Q.       All right.



0085

1           A.       Is that something you want us to do?

2           Q.       Yes, it is something that specifically  
3 Commissioner Clayton requests that you do. So I'm going  
4 to go ahead and reserve a number, exhibit number for that  
5 as Exhibit No. 9, and if you could file it by Thursday.  
6 If you can't, if you don't have the information by  
7 Thursday, file a pleading indicating the attempts that  
8 you've made and that you're not been able to complete it  
9 by then.

10          A.       Okay.

11                 MR. MEYER: Just to clarify, that's just  
12 regarding AT&T information?

13                 JUDGE WOODRUFF: Yes. The AT&T lines in  
14 Columbia, O'Fallon, St. Peters and Wentzville. And once  
15 that's filed, I'll give the other parties an opportunity  
16 to file motions if they wish to.

17                 All right. That's all the questions I have  
18 from the Bench. Anyone wish to recross?

19                 (No response.)

20                 JUDGE WOODRUFF: Any redirect?

21 REDIRECT EXAMINATION BY MR. MEYER:

22           Q.       Mr. Van Eschen, you were asked some  
23 questions regarding your knowledge of evidence to verify  
24 that a wireless carrier actually has local numbers in an  
25 exchange. Do you recall that line of questioning?

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1 A. Yes.

2 Q. Do you have any awareness about whether or  
3 not wireless carriers are providing service in those  
4 exchanges that were previously addressed?

5 A. I do not have any additional information  
6 other than what CenturyTel provided in their application.

7 Q. Do you agree, though, that at least one  
8 wireless carrier does provide service throughout the  
9 state, for example?

10 A. According to the FCC's report, at least one  
11 wireless provider appears to serve in all areas of the  
12 state. It may not be the same wireless provider, but  
13 there's one wireless provider is providing service  
14 somewhere in the entire state.

15 Q. You indicated in response to Mr. Ross that,  
16 if I heard you correctly, that UNE-L meant ownership of  
17 the loop. Did you intend to limit your definition to that  
18 extent, or perhaps I just misunderstood what you had said?

19 A. My reference to UNE-L, typically it  
20 pertains to a situation where the CLEC owns its own switch  
21 and leases the loop from the incumbent. I think that's  
22 the common definition for UNE-L.

23 For purposes of determining competitive  
24 classification, I did consider full facility-based  
25 arrangements where the company owns both the switch and

0087

1 the loops. There may be situations where the CLEC may  
2 have its own loop facilities but use the switch of another  
3 provider. In that latter instance, I would classify that  
4 for ease of discussion as a UNE-L arrangement.

5 Q. Do you believe that the Legislature enacts  
6 statutes that are in the public interest?

7 A. I'd say in general, yes, that's the general  
8 intent.

9 Q. So if the Public Service Commission follows  
10 the statute, would you agree that it would also act in the  
11 public interest?

12 A. Yes.

13 MR. MEYER: Thank you. No further  
14 questions.

15 JUDGE WOODRUFF: All right. You can step  
16 down. Next witness I believe is Mr. Beier.

17 MR. ROSS: Fidelity calls David N. Beier to  
18 the stand.

19 (EXHIBIT NO. 10 WAS MARKED FOR  
20 IDENTIFICATION.)

21 JUDGE WOODRUFF: Mr. Beier, you were  
22 previously sworn.

23 DAVID N. BEIER testified as follows:

24 DIRECT EXAMINATION BY MR. ROSS:

25 Q. Mr. Beier, would you please state your full

0088

1 name for the record.  
2 A. David N. Beier.  
3 Q. And would you spell your last name.  
4 A. B-e-i-e-r.  
5 Q. And what's your address?  
6 A. 64 North Clark, Sullivan, Missouri 63080.  
7 Q. For whom are you testifying today?  
8 A. Fidelity Communications Services II.  
9 Q. Are you the same Mr. Beier that prefiled  
10 nonproprietary direct testimony in this case which has  
11 been labeled as Exhibit No. 10?  
12 A. Yes, I am.  
13 Q. Do you have any changes to this testimony?  
14 A. No, I do not.  
15 Q. If I asked the same questions today, would  
16 you give the same answers?  
17 A. Yes, I would.  
18 Q. And are those answers true and correct to  
19 the best of your knowledge, information and belief?  
20 A. Yes, they are.  
21 MR. ROSS: Your Honor, I'd move for  
22 admission into the record of Exhibit 10, the  
23 nonproprietary direct testimony of David N. Beier.  
24 JUDGE WOODRUFF: All right. Exhibit 10 has  
25 been offered into evidence. Are there any objections to

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1 its receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, it will be  
4 received into evidence.

5 (EXHIBIT NO. 10 WAS RECEIVED INTO  
6 EVIDENCE.)

7 MR. ROSS: I tender the witness for  
8 cross-examination.

9 JUDGE WOODRUFF: Okay. For cross, then,  
10 let's begin with Staff.

11 MR. MEYER: We have no questions. Thank  
12 you.

13 JUDGE WOODRUFF: Public Counsel?

14 MR. DANDINO: No questions, your Honor.

15 JUDGE WOODRUFF: CenturyTel?

16 MR. DORITY: Just a couple.

17 CROSS-EXAMINATION BY MR. DORITY:

18 Q. Good morning, Mr. Beier.

19 A. Good morning.

20 Q. I had a couple of questions regarding what  
21 has been marked as Exhibit No. 4, which is Fidelity  
22 Communications Services II, Inc.'s Missouri PSC annual  
23 report for the year ending December 31, 2004. I have an  
24 extra copy if you'd like to have one in front of you.

25 A. I'll take it.

0090

1 MR. DORITY: May I approach the witness?

2 JUDGE WOODRUFF: You may.

3 BY MR. DORITY:

4 Q. Mr. Beier, if we could turn to page 5, the  
5 table that is titled Competitive Local Exchange Carrier  
6 Access Line Report, I just wanted to go over these numbers  
7 with you very briefly just to make sure I understand what  
8 they reflect.

9 A. Sure.

10 Q. We've talked this morning about the  
11 business voice grade equivalent lines reflected for the  
12 Bourbon exchange, and the annual report shows full  
13 facilities-based at 32 lines; is that correct?

14 A. That is correct. That's what the report  
15 shows.

16 Q. And did I understand your testimony this  
17 morning that that is still accurate today?

18 A. It is approximately correct, yes.

19 Q. Okay. If we go down the column to Cuba,  
20 that reflects 82 full facility-based lines and 8 UNE-L  
21 lines and 2 pure resale; is that correct?

22 A. Correct.

23 Q. Could you explain to me what the UNE-L,  
24 those eight lines, how those are being provisioned?

25 A. Those are lines leased from CenturyTel.

0091

1 Q. Okay.

2 A. Loops leased from CenturyTel.

3 Q. And provisioned with your own switch; is  
4 that correct?

5 A. Yes.

6 Q. And if we drop down to St. James, we're  
7 showing 46 full facility-based lines and 48 UNE-L lines;  
8 is that correct?

9 A. Correct.

10 Q. And again, for the UNE-L lines for the  
11 St. James exchange, would you let me know what -- how that  
12 is being provisioned?

13 A. The same as Cuba. Those are loops leased  
14 from CenturyTel using our own switch.

15 Q. Okay. Thank you.

16 Mr. Beier, in response to questions from  
17 Commissioner Clayton this morning regarding Fidelity II's  
18 current presence in the Bourbon exchange and the  
19 provisioning of services to businesses, you made the  
20 statement that fiber doesn't go to any other businesses,  
21 and I think you used the term right now. And I believe  
22 you also testified that whether or not someone could call  
23 Fidelity and hire you to provide lines to a business, you  
24 testified not at this time.

25 Am I to infer that Fidelity Services II

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1 intends to provide services to businesses in the future?  
2 Is that correct?

3 A. We could. I mean, we could. There's a  
4 number of ways, as I mentioned in my testimony, that we  
5 could get facilities to gain more business customers, yes.

6 Q. You're not testifying to this Commission  
7 that Fidelity Services II would not serve business  
8 customers in the future, are you?

9 A. No, I can't say that.

10 MR. DORITY: Okay. Thank you. That's all  
11 the questions I have. Thank you. Thank you, Mr. Beier.

12 JUDGE WOODRUFF: Thank you, sir. Okay.  
13 Coming up for questions from the Bench, then.

14 QUESTIONS BY JUDGE WOODRUFF:

15 Q. Again, I had a note from Commissioner  
16 Clayton. I believe this was also covered with you when  
17 you were up here previously, about the number of customers  
18 Fidelity serves in Cuba and St. James exchanges. Do you  
19 recall that?

20 A. Yes.

21 Q. And I believe he indicated he wanted you to  
22 file something later on that.

23 A. Yeah. I could probably come up with a  
24 number of customers in those two exchanges.

25 Q. Okay. How long would it take you to find



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1 that out?

2 A. I can probably do that this afternoon.

3 Q. Can you file something tomorrow, then?

4 A. Yes.

5 Q. All right. I'll go ahead and reserve  
6 No. 11 for that filing, and if you can file it tomorrow,  
7 then.

8 A. Okay.

9 JUDGE WOODRUFF: And I didn't have any  
10 other questions. Any recross? Redirect?

11 REDIRECT EXAMINATION BY MR. ROSS:

12 Q. Just a few questions to clarify your  
13 testimony perhaps. I'm looking at the exhibit that  
14 Mr. Dority was talking about, and would you explain for me  
15 in Bourbon where it indicates that there are 32 full  
16 facilities-based lines, would you explain to me how those  
17 services are being provided?

18 A. Yes. The lines provided to the  
19 unaffiliated customers, the loops are actually provided by  
20 an unaffiliated third party. We have listed them under  
21 facilities-based because I didn't know where else to put  
22 them. I consider UNE-L lines to be lines obtained from  
23 the incumbent and not necessarily from another third  
24 party. Others may share a different opinion of how to  
25 classify those, but at the time that I completed the

0094

1 report, that's -- that was my view.

2 Q. So even though it says full  
3 facilities-based, they're not really full facilities from  
4 the standpoint of Fidelity, correct?

5 A. Correct.

6 Q. Of those 32 access lines, you've mentioned  
7 that two -- some of those lines go to two unaffiliated  
8 customers. How many lines go to those two unaffiliated  
9 customers?

10 A. There's approximately 18. I believe I said  
11 that earlier.

12 Q. And where do the remaining lines --

13 A. The remaining lines are to affiliated  
14 customers, mainly for ISP, for data customers.

15 Q. So it's data traffic and not voice  
16 traffic --

17 A. Correct.

18 Q. -- that's being transmitted over those  
19 lines?

20 Another thing. You mentioned in your  
21 testimony, I believe, that -- and this was in reference to  
22 the UNE-L lines designated for Cuba and St. James. You  
23 mentioned that services are being provided on your own  
24 switch. What do you mean when you say your own switch?  
25 Is that a Fidelity Communications Services II switch?

1           A.       No.  It's actually an affiliate of Fidelity  
2   Communications II, and it's located outside of St. James  
3   and Cuba.

4           Q.       And in terms of your testimony about your  
5   intent to serve business customers in the future in  
6   Bourbon, do you consider Fidelity's future intent to be  
7   relevant to this proceeding?

8           A.       No, I do not.  I believe that this  
9   proceeding should look at a snapshot in time as of the  
10  filing and not as to the future plans.

11           MR. ROSS:  Thank you.  No further  
12  questions.

13           JUDGE WOODRUFF:  All right.  Mr. Dority?

14           MR. DORITY:  I didn't know if I was going  
15  to be offered the opportunity for recross.

16           MR. ROSS:  I don't think that opportunity  
17  has been presented to anyone else.

18           MR. DORITY:  Just thought I would ask.

19           JUDGE WOODRUFF:  Is there something  
20  particular that was raised during this redirect that you  
21  feel you need to respond to?

22           MR. DORITY:  Yes, just only for  
23  clarification.

24           JUDGE WOODRUFF:  It is a little bit out of  
25  our usual practice, but we've done a lot of things out of

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1 our usual practice today, so I'm going to give you a  
2 chance to ask your question. I'll give you a chance to do  
3 further redirect if you need to.

4 MR. DORITY: Thank you, Judge.

5 RECROSS-EXAMINATION BY MR. DORITY:

6 Q. Mr. Beier, in response to the question from  
7 your counsel on the -- describing the full facility-based  
8 lines for the exchange of Bourbon, I want to be sure I  
9 understand correctly for the record. There are no  
10 facilities of CenturyTel of Missouri, LLC being utilized  
11 in the provisioning of services to business customers in  
12 the Bourbon exchange; is that correct?

13 A. That is correct.

14 MR. DORITY: Thank you. That's all I have.

15 Thanks.

16 JUDGE WOODRUFF: Anything else you wanted  
17 to add or ask a question about?

18 MR. ROSS: No, not at this time. Thank  
19 you.

20 JUDGE WOODRUFF: All right. Thank you.  
21 Then you can step down.

22 Is there any other evidence anyone wanted  
23 to present? There were a couple other things I wanted to  
24 bring up. The Commission had requested verified pleadings  
25 from various companies, and several of them were filed.

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1 At least one of them has already been entered into  
2 evidence as Exhibit 6. There was also a response from  
3 Alltel Communications and one from U.S. Cellular. I would  
4 propose that the Commission consider -- take  
5 administrative notice of those two filings. Does anyone  
6 have any objection to the Commission doing that?

7 (No response.)

8 JUDGE WOODRUFF: Hearing nothing, the  
9 Commission will take administrative notice of those two  
10 filings.

11 I believe that concludes the evidence  
12 portion of the hearing. I'm going to give you a chance to  
13 give me closing statements if you wish to do so. Begin  
14 with CenturyTel.

15 MR. DORITY: Thank you. Judge, I did not  
16 have any prepared closing statement. I would just simply  
17 request that the Commission grant the relief requested as  
18 contained in the Joint Recommendation filed by CenturyTel,  
19 the Staff and the Office of Public Counsel.

20 As I indicated, CenturyTel will be filing  
21 substitute tariff sheets within the next day or two to  
22 reflect the withdrawal of certain requested exchanges from  
23 our application and adequate -- accurately reflect the  
24 specific exchanges for which we are now seeking  
25 competitive classification.

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1 Thank you.

2 JUDGE WOODRUFF: All right. Thank you. I  
3 might add that, based on the short amount of time we have  
4 to decide this case, I'm not anticipating any post-hearing  
5 briefs. So you might want to take that into account when  
6 I'm asking you for closing arguments.

7 With that in mind, Mr. Dority, do you have  
8 anything else you wanted to add?

9 MR. DORITY: No, thank you.

10 JUDGE WOODRUFF: Staff?

11 MR. MEYER: I have nothing to add that  
12 hasn't already been said and would probably just direct  
13 attention to the opening statement that I made and put it  
14 all in the past tense.

15 JUDGE WOODRUFF: Thank you. And for Public  
16 Counsel?

17 MR. DANDINO: I have no closing, your  
18 Honor. Thank you.

19 JUDGE WOODRUFF: Fidelity?

20 MR. ROSS: Just a couple minor points, your  
21 Honor.

22 From our perspective, one thing that was  
23 very clear from the testimony today is that CenturyTel has  
24 failed to carry its burden of demonstrating that there's  
25 an actual wireless provider serving business customers in

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1 the Bourbon exchange. There's been no evidence offered at  
2 all that any customer in the Bourbon exchange is receiving  
3 wireless services. So from our perspective, even by their  
4 own interpretation of the statute, they cannot meet that  
5 burden.

6 Additionally, I would -- and I had  
7 mentioned this in my opening statement, that the  
8 Commission needs to be guided by Section 392.185. That  
9 section does require the Commission to take into account  
10 in interpreting this statute whether or not the individual  
11 application of that statute in the Bourbon exchange would  
12 serve the public interest.

13 And again, it's our position that two  
14 business customers is not sufficient, and it's so  
15 de minimis that there's no way that the Commission should  
16 take the position that that's in the public interest.

17 Thank you very much.

18 JUDGE WOODRUFF: Thank you. All right. I  
19 believe that is pretty much the end of the proceedings  
20 today.

21 One other matter we need to take care of,  
22 and that's the transcript. I'm going to ask the court  
23 reporter to have the transcript ready by Thursday.  
24 Anything else anyone wants to bring up while we're on the  
25 record?

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MR. DORITY: No, thank you, Judge.

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JUDGE WOODRUFF: With that, then, we are

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adjourned.

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WHEREUPON, the hearing of this case was

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concluded.

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