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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

July 15, 2003

Jefferson City, Missouri

Volume 5

In the Matter of the Investigation) Case No.
of the State of Competition in the) IO-2003-0281
Exchanges of Sprint Missouri, Inc.)

BEFORE:

MORRIS L. WOODRUFF, Presiding
 SENIOR REGULATORY LAW JUDGE.
KELVIN SIMMONS, Chair
CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
ROBERT CLAYTON,
 COMMISSIONERS.

REPORTED BY:
TRACY L. CAVE, CSR, CCR
ASSOCIATED COURT REPORTERS

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1 JUDGE WOODRUFF: We're back for the second day
2 of the hearing in IO-2003-0281. And I believe the next item
3 of business will be Mr. Harper for Sprint.
4 MS. CREIGHTON HENDRICKS: Sprint calls witness
5 Mark Harper to the stand.
6 (Witness sworn.)
7 JUDGE WOODRUFF: You may be seated.
8 And you may inquire.
9 MARK D. HARPER testified as follows:
10 DIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:
11 Q. Mr. Harper, would you state your full name for
12 the record?
13 A. My name is Mark D. Harper.
14 Q. On whose behalf are you testifying today?
15 A. On behalf of Sprint.
16 Q. Are you the same Mark D. Harper that pre-filed
17 Direct and Surrebuttal Testimony in this case?
18 A. Yes, I am.
19 Q. If I would direct you to your Direct
20 Testimony, it's been marked Exhibit 3, are there any edits
21 or corrections you would like to make to that testimony?
22 A. No.
23 Q. If I were to ask you the same questions that
24 appear in your Direct Testimony, would you provide the same
25 responses today?

1 A. Yes.

2 Q. Now, I'd like to direct you to your
3 Surrebuttal Testimony.

4 A. Okay.

5 Q. Are there any edits or corrections you'd like
6 to make to your Surrebuttal Testimony?

7 A. No, there's not.

8 Q. Your Surrebuttal Testimony is marked
9 Exhibit 4 for the record, and if I were to ask you the same
10 questions that appear in your Surrebuttal, would you provide
11 the same questions -- or same answers today?

12 A. Yes, I would.

13 MS. CREIGHTON HENDRICKS: Your Honor, I move
14 for the admission of Exhibit 3, which is the Direct
15 Testimony of Mark Harper; and Exhibit 4, which is the
16 Surrebuttal Testimony of Mark Harper into the record.

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

20 Hearing none, they will be received into
21 evidence.

22 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
23 EVIDENCE.)

24 MS. CREIGHTON HENDRICKS: I tender the witness
25 for cross-examination.

1 JUDGE WOODRUFF: Thank you.

2 And for cross-examination we'll begin with

3 Staff.

4 CROSS-EXAMINATION BY MR. HAAS:

5 Q. Good morning, Mr. Harper.

6 A. Good morning.

7 Q. Would you please turn to your Direct Testimony

8 at page 11?

9 A. Page 11?

10 Q. Yes.

11 A. I'm there.

12 Q. At line 10 you state that Sprint is seeking

13 statewide competitive classification for all directory

14 assistance and certain local operator assistance related

15 services. And then at page 13, line 19 you acknowledge that

16 in the Southwestern Bell case, the Commission ruled

17 directory assistance is so closely related to basic local

18 service that it cannot be subject to effective competition

19 where basic local is not subject to effective competition.

20 How is Sprint's directory assistance different from

21 Southwestern Bell's directory assistance?

22 A. The service itself is not different, no. I

23 believe we were trying to put forth a case to demonstrate

24 the effectiveness and the Commission is not bound by its

25 previous decision. It can look at the evidence again.

1 Q. At page 17 of your Direct you reference a
2 decrease in directory assistance calls -- in directory
3 assistance call volumes. Is it your opinion that Sprint's
4 decrease in directory assistance volumes is due to
5 competition?

6 A. Yes, it is.

7 Q. Has Sprint lowered its directory assistance
8 rates to meet that competition?

9 A. No. Directory assistance rates have not been
10 lowered.

11 Q. And why haven't they been lowered?

12 A. The general rates for directory assistance in
13 the marketplace have not been declining in spite of the fact
14 of competition at this point.

15 Q. But if you were wanting to meet competition or
16 to recapture that market, wouldn't you lower your rates?

17 A. That's one potential reaction. It may include
18 promotion, it may include adding new features and
19 functionality.

20 Q. Has Sprint done those items, added new
21 functionality, added new features to regain that market?

22 A. I believe in the time frame that we're talking
23 about here, we have added directory assistance call
24 completion as part of the directory assistance product line.

25 Q. On page 18 of your Direct at the bottom line,

1 you say that an end-user may utilize local operator services
2 by dialing a 0 or 0 plus. Would you just explain how a
3 0 call works? What happens when a customer dials 0?
4 A. They go to the operator.
5 Q. Which operator?
6 A. It would go to the Sprint operator.
7 Q. And how does a 0-plus call work?
8 A. It depends on the jurisdiction of the call,
9 but in general, I mean, 0 plus the number you're calling.
10 It would go based upon the PIC of the carrier -- I mean, of
11 the customer's choice depending on the jurisdiction of the
12 call.
13 Q. And what is a PIC?
14 A. PIC is the customer's presubscribed
15 interexchange carrier.
16 Q. Please turn to page 5 of your Surrebuttal
17 Testimony. At line 13 you say that savvy Missouri consumers
18 learn of alternatives to local operator services. Is
19 Chapter 392, the Missouri telecommunications law, only
20 concerned with those savvy customers?
21 A. No. I mean, obviously Chapter 392 addresses
22 all customers. I'm not certain -- when I -- when I talk
23 about savvy customers, I'm not certain how we're segregating
24 those groups or how many fall in each group. Customers do
25 tend to find out about competitive alternatives and

1 alternative ways of using services to benefit them.

2 Q. In your opinion, are services available if
3 they are known to the savvy customers but the non-savvy
4 customers don't know about those services?

5 A. No. The services are available to all
6 customers.

7 Q. For which local operator services is Sprint
8 seeking a statewide competitive classification?

9 A. That would include the customer-dialed
10 operator service, which is essentially a calling card. That
11 would also include operator assisted calls, station to
12 station, person to person.

13 Q. Has Sprint lowered its rates statewide for
14 those services to meet competition?

15 A. Some rates have remained unchanged and some
16 rates have increased.

17 Q. Again, why hasn't Sprint lowered those rates
18 to meet competition?

19 A. I guess in this case I'd have to answer that I
20 don't set the prices for those, our marketing department
21 does. And I'm not sure why.

22 MR. HAAS: Thank you. That's all my
23 questions.

24 JUDGE WOODRUFF: Public Counsel?

25 MR. DANDINO: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. DANDINO:
2 Q. Morning, Mr. Harper.
3 A. Good morning.
4 Q. The Telecommunications Act required a dialing
5 parity, 1-plus dialing. Could you describe what that is?
6 A. 1-plus dialing parity?
7 Q. Yes.
8 A. Essentially it's the ability for a customer to
9 reach -- using the same number of digits, 1-plus the area
10 code and the number they're calling to utilize the
11 interexchange carrier of their choice.
12 Q. And for intraLATA -- now, I just want to talk
13 to intraLATA. Prior to the Telecommunications Act, how
14 would -- if someone was making a phone call from -- a 1-plus
15 call from a Sprint local exchange, they would dial 1-plus.
16 What company would they reach?
17 A. From a Sprint local exchange -- we'll just go
18 for the time after the dissolution of the primary toll
19 carrier plan, which was previous to that. It would have
20 been a Sprint -- Sprint LTD, local.
21 Q. Okay. What was the purpose behind dialing
22 parity?
23 A. To further promote competition in the
24 intraLATA dialing -- or the intraLATA toll marketplace.
25 Q. And to give local customers the ability to

1 reach the toll carrier of their choice just dialing 1-plus.

2 Right?

3 A. Specifically using 1-plus. Prior to that,
4 they did have the ability to reach the carrier of their
5 choice and many did using other dialing patterns.

6 Q. And how was that accomplished?

7 A. Through either 1-XXX or 1-800 calling.

8 Q. Okay. Describe how the 1-XXX calling works.
9 If I was a customer trying to make a call and reach a toll
10 carrier, how would I be able to avoid getting Sprint's
11 long-distance service?

12 A. Well, prior to the implementation of intraLATA
13 presubscription, it would have been a dialing pattern that
14 you would have dialed 1, 0 a three-letter code, which would
15 designate the carrier and -- you know, for example, AT&T's
16 was 288, and then the remaining dialing scheme would remain
17 the same.

18 Q. And with an 800 number, how would you go about
19 doing that?

20 A. Generally, you'd dial a 800 number and get a
21 dial tone or a bong tone from the carrier and then dial the
22 number that you wanted to call. And then there would
23 generally be an account number or a calling card number
24 you'd have to dial after that.

25 Q. Okay. Now, if a customer has Sprint local

1 service and they want to reach let's say AT&T's directory
2 assistance, how would they go about dialing that? And
3 they're presubscribed to Sprint.

4 A. AT&T publicizes a number -- I believe I have
5 it listed in here, you know, 800 info. You could dial that.
6 You can also dial their general AT&T number and receive a
7 menu of operator services which include directory
8 assistance.

9 Q. When you say dial 1-800 info, you dial that
10 number then plus some other number? How does that work?

11 A. No. You'd dial that number and you would be
12 placed in an IVR which would provide options for you.

13 Q. What's an IVR?

14 A. Integrated voice response unit. Basically one
15 of those things you get into and it says, Here are your
16 options. Press one if you want directory assistance, press
17 two if you want to make a calling card call, press three if
18 you want -- you know, various options, including operator
19 services, DA.

20 Q. One of those things you can't get out of
21 sometimes.

22 And for operator services, if they wanted to
23 reach, let's say, AT&T's operator services from the Sprint
24 local exchange, how would they reach that?

25 A. There would be -- I'm not sure of all the

1 methods, but generally there would be two. If you're
2 presubscribed to an interexchange carrier like we talked
3 about earlier, you can simply dial 00 and be taken to the --
4 to the presubscribed interexchange carrier operator services
5 or you could dial the number we talked about earlier, which
6 is an operator or a generalized 800 number that AT&T
7 promotes to their customers that gives you the menu of
8 operator services available.

9 Q. Now, if you were at a pay phone that is
10 connected to the Sprint local network or owned by Sprint,
11 how would you reach the AT&T operator from there?

12 A. The dialing patterns for a pay phone is
13 determined by the pay phone owner. I mean, they maintain an
14 access line from Sprint, but regarding how -- what operator
15 service provider that pay phone utilizes and how you need to
16 get to your chosen operator service provider is based upon
17 pay phone regulations, not based on anything that Sprint
18 does.

19 Q. But Sprint could be -- I guess could you say
20 presubscribed to that pay phone --

21 A. Certainly.

22 Q. -- for operator services?

23 A. Certainly. We could be the presubscribed
24 carrier for that. And if the customer dials 0 -- it's
25 probably labeled on the phone who the operator service

1 provider is if you don't use your dialing pattern to select
2 your own operator service provider.

3 Q. And would that be the same for DA, directory
4 assistance?

5 A. I'm not certain on DA for pay phones. I
6 believe the pay phone provider does choose the DA provider.

7 Q. Now, what's an aggregator?

8 A. What's an aggregator?

9 Q. Yes.

10 A. I mean, in general, would be places like the
11 hotel I'm staying in, Capitol Plaza, hospitals, places that
12 provide stations for peoples' use.

13 Q. And do they presubscribe their lines to a
14 specific carrier for operator services?

15 A. Generally they have a contract with an
16 operator provider as well as someone to provide long
17 distance. May or may not be the same company.

18 Q. And do the same for directory assistance?

19 A. Yes.

20 Q. Okay. And Sprint has such traffic aggregators
21 under contract; is that right?

22 A. Sprint provides -- provides the local
23 interconnection, I mean the local dial tone for those
24 companies, but generally the products they're looking for
25 would have interLATA as well as international calling

1 capabilities and it's not a product set that Sprint local
2 offers.

3 Q. So if a hotel has Sprint local service, when
4 the person makes the -- would make an operator assistance
5 call or directory assistance call or long distance call,
6 that doesn't involve Sprint Missouri, Inc.?

7 A. It may not. I mean, they could use us for
8 those products and services that we can't offer, but what
9 I'm saying in general is our -- our menu of services we have
10 available to that type of customer is not broad enough. But
11 certainly they could have a contract with us for operator
12 services or for DA provision.

13 Q. So that is a possibility? It happens? You
14 have a motel that would have a contract with Sprint to
15 provide at least local operator assistance and local DA?

16 A. I guess I don't know of a specific contract,
17 but I would imagine it could happen.

18 Q. Okay. And is there a certain Commission
19 involved to the aggregator for calls made using those
20 services?

21 A. I've never seen or been involved in one of
22 those contracts.

23 Q. Okay. Now, there's local operator assistance
24 and is there a national operator assistance or is it all
25 handled by the same group? Is it two separate services?

1 A. The services are tarified in two different
2 places in the general exchange tariff addressing when it's a
3 local jurisdiction and our toll tariff when it's a toll
4 jurisdiction, but they utilize the same operators.

5 Q. And so when you're requesting operator
6 services to be classified as competitive, you're doing it
7 for both the toll and operator and local service?

8 A. Correct.

9 Q. Now, with AT&T, some of the services, or MCI
10 that they advertise on television, is that a -- is that a
11 national -- or is there such a thing as a national operator
12 service?

13 A. Yes. We offer -- we offer a national -- or
14 directory service. In terms of operator service, you know,
15 we're kind of mixing categories, but I mean, it depends on
16 the destination of the call. Sprint local cannot complete a
17 call that's interstate or international. We don't have
18 tariffs or offer services for doing that. But we can
19 certainly supply you information from a national directory
20 database on directory assistance. We can give you the phone
21 number.

22 Q. Now, you weren't here yesterday when
23 Mr. Conroy of Southwestern Bell, SBC, made his opening
24 statement. He talked about how he used a computer to reach
25 directory assistance to get a number in another state. What

1 would be the general process -- or let me describe it and
2 you tell me.

3 To find a number on the Internet, you'd have
4 to go to the computer, in my case you'd probably have to
5 take all the newspaper off the chair, then turn on the
6 computer, access the Internet through a modem. That would
7 be a standard procedure to reach the Internet?

8 A. I mean you use the word "modem." Even in a
9 broadband environment with DSL or cable modem, there's still
10 some type of modem, yes. You need to connect.

11 Q. At least if I have a dial-up -- or a dial-up
12 to an MSS line?

13 A. In a business environment often, you know, on
14 your desktop you can have an icon you can simply click on to
15 be connected onto the network as well.

16 Q. Sure. That's another option. And then when
17 you get the information, can you make a call directly once
18 you get the information, complete the call through the
19 Internet?

20 A. Well, there's certainly Internet long-distance
21 services available, but generally people would pick up the
22 phone device, whether wireless or wireline, and make the
23 call.

24 Q. You mentioned to Mr. Haas that for directory
25 assistance that Sprint introduced a service called call

1 completion for directory assistance. What was that?

2 A. It's a service where you can -- once the
3 number's been given to you, you can choose to have the call
4 completed.

5 Q. And is there a separate charge for that?

6 A. It's -- without looking at the tariff, we tend
7 to bundle it with a total charge of a directory assistance
8 plus call completion. So the customer's asked, Do you want
9 us to complete the call? And if they do, then there's a
10 rate for that.

11 Q. Okay. Do you inform them how much that's
12 going to be?

13 A. I don't know what the script is for that
14 service.

15 Q. Do you have any idea how much it is to
16 complete that call?

17 A. I've got the tariff -- or the rate here.

18 Q. Sure.

19 A. Do you want me to look it up?

20 Q. Yes, please.

21 A. Mike, I saw it this morning. I'm looking.
22 Let's see. Looks like it's 95 cents.

23 Q. So in addition to -- if it was not bundled
24 with directory assistance -- or I'm sorry -- with some type
25 of a package, then it would be -- in addition to your

1 directory assistance rate, you would also have to pay the
2 95 cents for that service?

3 A. I'm sorry. I was looking at the page. Try it
4 again.

5 Q. Okay. That's gives me another chance at it.

6 A. Sorry.

7 Q. Now, directory assistance -- if they call
8 directory assistance, it's a certain rate?

9 A. Yes, it is.

10 Q. How much is that?

11 A. Fifty-five cents, now that I've got it in
12 front of me.

13 Q. Good. I thought maybe you would.
14 Then if the customer wants it completed, then
15 it's an additional 95 cents; is that correct?

16 A. No. It's either 55 or 95. It's 55 for the DA
17 call, 95 if you have it completed.

18 Q. So there's no separate charge, it's just one
19 charge, 95. Right?

20 A. Right.

21 Q. Okay.

22 A. Now, Mike, just to make sure, I mean, you
23 would still pay -- if it's a toll call, you're going to have
24 to pay the toll rate on top of that.

25 Q. That's correct. Now, with Sprint local

1 service, do you still get two free directory assistance
2 calls or inquiries?

3 A. That hasn't changed.

4 Q. Okay. In your testimony you speak about using
5 speed dial and that there's some customer premises
6 equipment, phone that is competitive with your speed dial
7 service or your speed dial service is competitive with those
8 type of phones?

9 A. Sure. We talk about CP that has the
10 ability -- you could load in various telephone numbers to be
11 dialed on a --

12 Q. Right.

13 A. -- on a single-code activation.

14 Q. Right. Now, consumer premises equipment, is
15 that defined under Missouri law as a telecommunications
16 service?

17 A. No.

18 Q. There was testimony yesterday that Sprint did
19 not have a flat-rated toll plan, didn't offer a flat-rated
20 toll plan, unlimited calling?

21 A. Yeah. There's no unlimited flat rated toll
22 calling plan in the Sprint MTS tariff.

23 Q. So you have nothing similar to what MCI's
24 Neighborhood is where you --

25 A. Not at this point.

1 Q. Okay. At one time did -- or does Sprint offer
2 a flat-rated access to the Internet service for that?

3 A. No.

4 Q. Does Sprint Missouri charge a surcharge for
5 taxes and license, property taxes on their bill?

6 A. Does Sprint Missouri?

7 Q. Yes.

8 A. I mean, we certainly charge taxes on the bill.
9 We don't have a line item on our bill that's related to
10 property tax, no.

11 Q. Okay. Is that the Sprint long distance that
12 provides the surcharge?

13 A. I believe they have a surcharge that's related
14 to property taxes, yes.

15 Q. If Sprint was granted competitive status for
16 any of their services, is it Sprint's position that the
17 Commission would no longer have jurisdiction to examine
18 those competitive rates for those competitive services for
19 just and reasonableness?

20 A. The Commission would retain the authority to
21 look at the rates regarding -- from an aspect of are they
22 discriminatory, do they unfairly benefit one class of
23 customers over another.

24 MR. DANDINO: I think that's all, your Honor.
25 Thank you, Mr. Harper.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: Then for Unite?

3 MS. LIPMAN REIBER: No questions of this

4 witness.

5 JUDGE WOODRUFF: All right. Thank you.

6 Fidelity?

7 CROSS-EXAMINATION BY MR. ROSS:

8 Q. Hello, Mr. Harper.

9 A. Good morning.

10 Q. On page 5, lines 26 through 28 of your Direct

11 Testimony, you state that with a few limited exceptions, the

12 list of services for which Sprint is seeking statewide

13 competitive classification is consistent with the order in

14 the Southwestern Bell competition case. Correct?

15 A. Yes, I do.

16 Q. What are those exceptions that you're

17 referring to?

18 A. I think we point out that the exceptions are

19 directory assistance, local operator services and Centrex.

20 Q. In the directory assistance and Centrex

21 exceptions Sprint is requested are what Fidelity is taking

22 issue with in your testimony, correct? If you recall?

23 A. You term it exceptions, but, you know, yeah,

24 those are definitely the issues. I don't know -- you know,

25 we're simply trying to put forth a positive case again for

1 the Commission to look at to see if they can reach a
2 different conclusion on those two services than they had
3 previously.

4 Q. Sure. Let's talk about the Centrex services
5 for a minute. Is Sprint Centrex service provided via
6 tariff?

7 A. Yes.

8 Q. And where would we find that tariff?

9 A. The general exchange services tariff.

10 Q. Okay. How many of the 80 CLECs certificated
11 in Sprint's Missouri exchanges have filed tariffs offering a
12 Centrex-like service in any exchange?

13 A. I don't know that number.

14 Q. Do you know of any exchanges or any CLECs at
15 all?

16 A. Well, it's my understanding that Fidelity
17 offers a Centrex-like service as well as ExOp.

18 Q. Okay. But any others that you're aware of?

19 A. Not specifically, no.

20 Q. Is there a minimum size Centrex system in
21 terms of lines or stations that Sprint offers via tariff?

22 A. I think the last time I looked at the tariff,
23 the minimum lines were two.

24 Q. What about the maximum lines? Is there any
25 maximum Centrex size system that Sprint offers via tariff?

1 A. There is a line limit that -- whereas above
2 that, it becomes customer-specific pricing.

3 Q. Do you have any idea what that line limit is?

4 A. Off the top of my head, no, but I've got it
5 here.

6 Q. Sure. Do you mind taking a look?

7 A. Yeah. It's 200.

8 Q. So 200 is the maximum that you offer via
9 tariff?

10 A. Right.

11 Q. And above that number of lines or stations the
12 customer would have to request customer-specific pricing?

13 A. Yes.

14 Q. Do you have any idea how many customers Sprint
15 currently has in service today in Missouri using Centrex?

16 A. I know the number of lines. I do not have a
17 customer count.

18 Q. What's the number of lines?

19 A. The number of lines is approximately 30,000.

20 Q. And do you know how many of those lines are
21 offered via your tariff offerings or offered through
22 customer-specific pricing?

23 A. Well, the -- there's one unique -- I won't say
24 unique, but basically because of the State of Missouri
25 account here in Jefferson City --

1 MS. CREIGHTON HENDRICKS: Why don't we stop
2 you and make sure as we get into customer-specific
3 information, if it needs to be proprietary, I would request
4 that you flag that so I can make the request -- if you have
5 any details on the customer --

6 THE WITNESS: I won't use precise numbers, but
7 suffice it to say more than two-thirds of the line count is
8 in a single customer, the State. And obviously that is
9 above 200. Beyond that, I do not know how many of the
10 accounts fall in or out of, you know, below or above 200.

11 BY MR. ROSS:

12 Q. Okay. In what exchange is that customer
13 located, the big customer that represents two-thirds of your
14 Centrex business?

15 A. Actually, it's in multiple exchanges. The
16 majority of the lines are obviously here. It's intuitive.

17 Q. They're not in the Rolla or St. Robert
18 exchanges?

19 A. That's -- now, there are lines in the Rolla
20 exchanges, yes. I do not know about St. Roberts
21 specifically, but that contract's available to State
22 agencies in general wherever they have locations.

23 Q. Is that contract available to the public? If
24 I, as a person of the public, want to see that document, I
25 mean, can I see that?

1 A. The contract has to be filed or have -- was
2 reviewed by -- you know, sent to and reviewed by the Staff
3 when it was signed several years ago, so I'm assuming it's
4 in the records. I don't know the exact status.

5 Q. Let's talk about this customer-specific
6 pricing for a minute. What does that mean exactly? If you
7 could generally just describe what customer-specific pricing
8 means. What's involved in the process? If I, as a
9 customer -- my law firm, for example, if I call you today
10 and I say, Mr. Harper, my law firm has 300 stations, we
11 would like to request specific pricing for Centrex services,
12 what's going to happen? What's the process?

13 A. We would identify the location and identify
14 the cost of serving that specific location.

15 Q. And then you would give me a price?

16 A. Yeah.

17 Q. Does Sprint have to get Commission approval
18 for customer-specific prices?

19 A. No. We -- we file a contracts with the
20 Commission after they're -- they're negotiated and reached.

21 Q. So you're not required to submit cost studies
22 or any other cost information to the Commission relating to
23 the cost of providing these customer-specific arrangements?

24 A. For approval, I mean, when -- it's been a
25 while since I was involved in the process of sending these

1 in. The last one I was involved with when we sent the
2 contract too, we had general high level cost information
3 included in the information we sent to Staff.

4 Q. But, to your knowledge, do these
5 customer-specific prices need to be cost justified?

6 A. Well, certainly from a company perspective we
7 want to offer services that cover our cost and provide a
8 contribution.

9 Q. But from a regulatory perspective, would you
10 be free to price these services below cost?

11 A. Well, I would certainly say that, you know,
12 like we spoke earlier with I think it was Mr. Dandino, the
13 Commission still has, even in a competitive environment, the
14 ability to review contracts and determine if they're
15 discriminatory. And I would say a contract that's below
16 cost is discriminatory.

17 Q. I'm struggling with this. What is it that you
18 get from competitive classification for Centrex that you
19 don't get from customer-specific pricing currently?

20 A. The main -- I don't know if I want to use the
21 word "benefit," but essentially the tariff portion --
22 changes to the tariff portion of the service could be made
23 on shorter notice and without cost support.

24 Q. For those customers who want less than
25 2,000 -- I'm sorry, less than 200 lines or stations, you

1 would have a benefit by getting competitive classification?

2 A. It would -- it would put us in the same
3 position as our competitors regarding price changes to
4 services.

5 Q. But in terms of those over 200 lines, you
6 can't say for sure what competitive classification gives you
7 that you don't already have with customer-specific pricing?

8 A. In a way through customer-specific pricing, we
9 have the ability to set the price as long as it's above cost
10 today. And I don't necessarily see that changing under the
11 statute or under a designation as competitive.

12 Q. You mentioned that Fidelity is providing
13 Centrex-type services over its own facilities. Do you know
14 in what exchanges?

15 A. I -- you know, in looking at the tariff that I
16 reviewed, it was for the Rolla exchange. I don't know what
17 the -- what they've done regarding St. Roberts.

18 Q. I want to make a distinction here. I want to
19 make sure we're getting this right. When you say providing
20 services, do you mean you have evidence that they're
21 actually providing the service or only that they have a
22 tariff on file and are offering the service?

23 A. I don't have specific evidence of demand units
24 for that product.

25 Q. Okay. So all you really know is that they

1 have a tariff on file and they may not even be providing
2 service under that tariff. Correct? I mean, you have no
3 evidence of customers who are actually utilizing that
4 service?

5 A. Not at this time.

6 Q. Let's talk about your Warrensburg customer
7 example in your Direct Testimony. When did you -- when did
8 you lose the Centrex customer in Warrensburg that you
9 discuss in your Direct Testimony?

10 A. I'm trying to remember the specific date. My
11 recollection would be it was either late 2001 early 2002.

12 Q. Did that customer contact Sprint before
13 disconnecting?

14 A. What do you mean? I mean, certainly they had
15 to contact us to --

16 Q. Well, did you have any --

17 A. -- disconnect their circuits.

18 Q. Did you have any indication that they were
19 going to drop your service in favor of a premise PVX?

20 A. Certainly. They issued a request for proposal
21 for PVX and we were one of the parties that responded as
22 well as -- you know, we responded with a Centrex offering.

23 Q. So you had a chance to get that customer, but
24 couldn't get them?

25 A. Yeah. That's what competition is.

1 Q. Aside from that one Warrensburg customer, can
2 you cite any examples of other customers that you've lost to
3 customer premise equipment?

4 A. In the time period -- I don't have a specific
5 case, but in the time period since, for example, June 2001,
6 we've lost over 7,000 Centrex lines, 20 percent of the
7 business. And that single customer does not account for
8 that.

9 Q. Okay. And you have evidence that those
10 customers were lost to customer premise equipment? You know
11 you've lost those lines, but do you know you've lost them to
12 customer premise equipment?

13 A. Not specifically, but in general, that's the
14 two products that customers are choosing between. One that
15 provides the features and the switching from a premise
16 inside of a piece of equipment and one that provides it with
17 a central office of the telephone company.

18 Q. Do you know -- let me ask it this way. Were
19 any of those lines lost in the Rolla or St. Robert
20 exchanges?

21 A. I don't know specifically.

22 Q. Does Sprint have an affiliate that sells
23 customer premise equipment like PVX systems and T-systems?

24 A. I believe through the Sprint Comm LP, the
25 long-distance affiliate, they also sell premise equipment.

1 Q. I just negotiated an agreement with Sprint
2 North Supply. Are they an affiliate of Sprint Missouri?
3 A. Yes, they are, generally. I mean, they're a
4 wholesaler that provides equipment to vendors.
5 Q. Do they market their equipment in Missouri?
6 A. Now, my understanding is Sprint North Supply
7 is it's completely a wholesaler. In other words, they're
8 marketing equipment to people that sell it to end-users
9 directly, but Sprint North Supply is not in the business of
10 selling CP directly to customers.
11 Q. And who's the other affiliate that you
12 mentioned that provides CP?
13 A. Sprint Long Distance, Sprint Comm LP.
14 Q. Do they market to customers located in Sprint
15 exchanges in Missouri?
16 A. I don't know specifically if they do or they
17 don't.
18 Q. Have they taken any customers away from the
19 Sprint ILEC?
20 A. I don't believe so.
21 Q. Let's shift gears here. Let's go to directory
22 assistance. You're seeking competitive classification of
23 directory assistance services statewide and not just in
24 those exchanges where basic local services are held to be
25 competitive. Correct?

1 A. Right.

2 Q. And that's where you diverge from the

3 Southwestern Bell case. Correct?

4 A. Yes.

5 Q. Has Sprint presented any specific evidence

6 relating to competition and directory assistance services in

7 the Rolla and St. Robert exchanges?

8 A. The evidence I presented regarding competitive

9 alternatives for directory assistance are just as available

10 in those exchanges as any exchange.

11 Q. At pages 15 to 16 you've provided some

12 specific examples of what you believe are alternatives

13 available to Sprint's basic local customers in Missouri

14 including 555-1212, wireless carriers and Internet look-up

15 services. Right?

16 A. Right.

17 Q. Have you conducted any studies to determine

18 the number or percentage of Sprint basic local customers

19 that use these alternatives as opposed to Sprint's directory

20 assistance services?

21 A. I've identified and provided a number in my

22 testimony regarding a decline in the usage of our services,

23 but I've not conducted a study to identify the frequency of

24 use of these other product sets.

25 Q. So is it fair to say that you can't determine

1 with any reasonable certainty that all or any of the
2 36 percent decline that Sprint has experienced in directory
3 assistance caused since 1998 is attributable to any one or
4 more of these specified alternatives?

5 A. Well, to assume it hasn't gone to competition
6 is to assume that the market itself has declined. And I
7 have no evidence that people have lessened the need,
8 particularly in today's mobile society, to have numbers.

9 Q. Do you consider directory assistance services
10 to be price elastic, meaning that as price goes down, usage
11 goes up, but as price goes up, usage goes down?

12 A. Probably should ask my economist that exact
13 question. I mean, from my reading -- and I talk about a
14 study that was put out recently by Frost and Sullivan, it's
15 a complicated marketplace out there and customers are
16 responding not just to price, but to different ways and
17 where they are, if they're traveling or, you know, what they
18 have accessible to them to gain access to directory.

19 Q. But price is certainly a consideration?
20 You're not denying that customers are taking price into
21 account?

22 A. It's hard to imagine price would not be a
23 consideration to a customer, yes.

24 Q. What changes did Sprint make in its price for
25 directory assistance services during the period that your

1 volume decreased by 36 percent?

2 A. I think we covered that earlier. The calling
3 card surcharges have remained unchanged -- I'm sorry. Did
4 you ask directory assistance?

5 Q. Yeah. Directory assistance. Do you happen
6 to -- maybe this will help. Do you happen to have the
7 Sprint Missouri price cap rate chain summary chart that I
8 believe was admitted into evidence as Exhibit 16? It was
9 given in response to a question by Mr. Gaw or Commissioner
10 Gaw.

11 MS. CREIGHTON HENDRICKS: I have a copy. I do
12 not believe Mr. Harper has that.

13 THE WITNESS: I've got something, but it may
14 not be the precise ones.

15 MS. CREIGHTON HENDRICKS: Let me just give you
16 exactly what's marked to make sure we're working on the same
17 thing, if I may.

18 JUDGE WOODRUFF: You may.

19 BY MR. ROSS:

20 Q. Would you mind turning to page 3?

21 A. All right.

22 Q. It's lines 40.II.C.1.

23 A. Right.

24 Q. Sprint's rates for directory assistance per
25 non-coin call increased by 14.6 percent since 1999.

1 Correct?

2 A. Per call -- I see that line, yes.

3 Q. Is it possible given that you have no studies
4 on the alternatives used and have no studies with regard to
5 whether price is a consideration, that the 14.6 increase in
6 price contributed to the decrease in volume?

7 A. I don't think that that -- that price could
8 explain the kind of decline. I mean, the study that I
9 referenced in my testimony -- in Surrebuttal Testimony talk
10 about a growing marketplace in directory assistance.

11 Q. It could have contributed to the decline
12 though, could it not have?

13 A. I do not have any evidence that it did or did
14 not.

15 MR. ROSS: All right. Thank you. That's all
16 I have.

17 JUDGE WOODRUFF: And I have no questions from
18 the Bench, so there's no need for recross.

19 Any redirect?

20 MS. CREIGHTON HENDRICKS: I wouldn't get a
21 chance to be granted the opportunity to talk to my witness,
22 would I, prior to redirect?

23 JUDGE WOODRUFF: You wish to do what?

24 MS. CREIGHTON HENDRICKS: To speak to my
25 witness briefly. Is that --

1 MR. ROSS: I would object to that.

2 MS. CREIGHTON HENDRICKS: I think customarily,
3 even yesterday, there was a break before my witness was put
4 on redirect. I don't think this is unheard of.

5 JUDGE WOODRUFF: Since there's an objection,
6 I'm not going to permit it.

7 REDIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:

8 Q. Mr. Harper, you were asked several questions
9 pertaining to whether or not competitors had tariffed
10 Centrex services. Do you recall that?

11 A. Yes.

12 Q. And just for the record, Centrex is a Sprint
13 name for its service; is that correct?

14 A. It's a generic name utilized by a lot of
15 different carriers, but obviously you can use different
16 product names.

17 Q. Okay. Now, do equipment manufacturers compete
18 with Sprint for offering Centrex? Manufacturers of customer
19 premise equipment.

20 A. The -- the -- like I've said in my testimony,
21 the customer premise equipment competes with the service,
22 yes. It provides functionality that Centrex provides.

23 Q. And would you have to tariff that offering if
24 you were an equipment offerer?

25 A. No.

1 Q. There were some questions about the cost of
2 Sprint's directory assistance. Do you know how much the
3 cost is to use directory assistance on the Internet?
4 A. Generally, it's free.
5 Q. Okay. Do you know how much it is for the
6 wireless directory assistance?
7 A. I'm trying to remember my last bill. I think
8 the last time I looked at it, it was around 1.25.
9 Q. You also were asked some questions about
10 operator service by OPC's counsel. And there was some
11 discussion of what is offered by IXCs versus what is offered
12 by Sprint.
13 A. Uh-huh.
14 Q. If I was in Jefferson City and I was a
15 customer PIC'd to AT&T and I dialed 00, whose operator
16 service would I receive?
17 A. AT&T.
18 Q. And if I asked AT&T for the number of my
19 next-door neighbor, would they provide it to me?
20 A. Yes, they would.
21 Q. Okay. One other just inquiry, and I may have
22 to bring this up with another witness. Are you aware of any
23 Fidelity entity that offers a Centrex-like service in
24 St. Robert?
25 A. I'm aware of a contract that Fidelity has with

1 the city. I cannot specifically tell from that contract if
2 it's a Centrex-like service. It appears like it.

3 Q. Okay. And I think -- does that contract cover
4 about 70 lines?

5 A. Yes, it does.

6 Q. Okay. Do you know whether or not Sprint
7 served those 70 lines in St. Robert prior to Fidelity
8 securing that contract?

9 A. I know we -- we served the City of
10 St. Roberts, which is the customer, yes.

11 Q. And in connection with that contract, are you
12 aware of where the dial tone is coming from to serve the
13 City of St. Robert?

14 A. According to the contract, the dial tone will
15 come from Fidelity's Rolla switch via a T1 circuit provided
16 by Show-Me Technologies.

17 Q. So the dial tone is not being provided by
18 Sprint; is that correct?

19 A. No.

20 MS. CREIGHTON HENDRICKS: No further
21 questions.

22 JUDGE WOODRUFF: All right. Then you may step
23 down.

24 I believe that's the last witness for Sprint.
25 Yesterday Exhibit 15 was offered, which was the Circuit

1 Court decision in the SBC case. Do you have copies of that
2 now?

3 MS. CREIGHTON HENDRICKS: Your Honor, we're
4 checking right now. The copies were not of good quality so
5 we had to make other copies.

6 JUDGE WOODRUFF: While we're on that general
7 subject, I had a request from one of the Commissioners that
8 the Commission's Report and Order in that case also be put
9 into evidence. And either you can do that from Sprint or if
10 it would be more convenient, I'll ask Staff to do so that.

11 Mr. Haas, can you do that?

12 MR. HAAS: Yes, your Honor.

13 JUDGE WOODRUFF: All right. We'll just hold
14 off on 15 then and when you get the copies of good quality,
15 just let us know.

16 MS. CREIGHTON HENDRICKS: Yes, your Honor.

17 JUDGE WOODRUFF: Thank you.

18 All right then. I believe the next witness is
19 for Staff.

20 MR. HAAS: Staff calls Adam McKinnie.

21 JUDGE WOODRUFF: I think you need to get a
22 conveyer belt or something to transport the documents to the
23 witness stand.

24 THE WITNESS: That wouldn't hurt.

25 JUDGE WOODRUFF: We have technology for

1 everything else today.

2 (Witness sworn.)

3 JUDGE WOODRUFF: You may be seated.

4 You may inquire.

5 ADAM MCKINNIE testified as follows:

6 DIRECT EXAMINATION BY MR. HAAS:

7 Q. Please state your name.

8 A. Adam McKinnie.

9 Q. Where are you employed?

10 A. I'm employed at the Staff of the Missouri

11 Public Service Commission.

12 Q. Are you the Adam McKinnie who prepared the

13 Rebuttal Testimony that has been marked as Exhibit 6 in this

14 case?

15 A. Yes.

16 Q. And you also then prepared the Surrebuttal

17 Testimony of Adam McKinnie that's been marked as Exhibit 7

18 in this case?

19 A. Yes.

20 Q. Do you have any changes to make to your

21 Rebuttal Testimony?

22 A. Yes. I have two changes to make.

23 Q. What are those?

24 A. My first change is on page 5 of my Rebuttal

25 Testimony on line 11. The full sentence should now read,

1 Staff's notes no Missouri-specific information was presented
2 in Sprint's testimony.

3 So we're inserting the phrase "was presented"
4 between "information" and "in."

5 Q. What's the reason for inserting those words?

6 A. We are clarifying the fact that no
7 Missouri-specific information was in any of Sprint's
8 testimony related to this matter.

9 Q. What's your next change?

10 MS. CREIGHTON HENDRICKS: Can I get the page
11 number on that last page?

12 THE WITNESS: It was page 5, line 11 of my
13 Rebuttal Testimony.

14 MS. CREIGHTON HENDRICKS: Thank you.

15 BY MR. HAAS:

16 Q. What's your next change?

17 A. My next change is on page 28 of my Rebuttal
18 Testimony, line 11. We would like to strike "directory
19 assistance" and insert the term on page 27 of my Rebuttal
20 Testimony, line 23.

21 Q. So you're deleting "directory assistance" from
22 page 28, line 11 and inserting the words "directory
23 assistance" on line 23 of page 27?

24 A. Yes.

25 Q. And what's the reason for that change?

1 A. The analysis in the Rebuttal Testimony
2 beginning on line 11, page 11 supports the conclusion that
3 DA services should be competitive where basic local is
4 competitive. This change is to have the summary reflect the
5 same position as the analysis.

6 Q. So you're not changing your position, you're
7 correcting what might be an editorial or typing problem in
8 your testimony?

9 A. Yes.

10 Q. Do you have any changes to make to your
11 Surrebuttal Testimony?

12 A. No, I do not.

13 Q. If I were to ask you the questions that are
14 posed to you in your Rebuttal and Surrebuttal Testimony,
15 would your answers with the corrections you've given today
16 be the same?

17 A. Yes. With one exception.

18 Q. And what is that exception?

19 A. Regarding the pay phone issue.

20 Q. And how would your testimony change?

21 A. After reviewing Mr. Idoux's Surrebuttal
22 Testimony and consulting with our technical staff, Staff has
23 come to the conclusion that the pay phone is so closely tied
24 to business basic local service, that where business basic
25 local should be deemed competitive that pay phone services

1 should also be deemed competitive, which in our
2 recommendation would be in Norborne, Kearney and Rolla
3 exchanges.

4 Q. With the corrections to the testimony -- with
5 this change to your testimony of pay phone testimony, is
6 your testimony true, to the best of your knowledge and
7 belief?

8 A. Yes, it is.

9 MR. HAAS: Your Honor, at this time I would
10 move for the admission of McKinnie's Rebuttal Exhibit 6 and
11 McKinnie Surrebuttal Exhibit 7.

12 JUDGE WOODRUFF: I believe 6 was both
13 proprietary and nonproprietary version?

14 MR. HAAS: Yes, your Honor.

15 JUDGE WOODRUFF: Exhibit 6NP and P and Exhibit
16 7 have been offered into evidence. Any objection to their
17 receipt?

18 Hearing none, they will be received into
19 evidence.

20 (EXHIBIT NOS. 6NP, 6P AND 7 WERE RECEIVED INTO
21 EVIDENCE.)

22 MR. HAAS: At this point I tender the witness
23 for cross-examination.

24 JUDGE WOODRUFF: Thank you.

25 And for Staff witness we'll begin with Public

1 Counsel.

2 CROSS-EXAMINATION BY MR. DANDINO:

3 Q. There's just too many trees dying.

4 Morning, Mr. McKinnie.

5 A. Good morning.

6 Q. First, I wanted to ask you about the pay

7 phone. By linking the pay phone to the business -- I guess

8 business related services -- is that what your testimony

9 was?

10 A. You mean where it was originally in my

11 testimony or --

12 Q. Well, right now. I want to know the position

13 of the Staff is because pay phone is related to the business

14 core services, is that why it's competitive?

15 A. Yes.

16 Q. Is that consistent with the Staff's position

17 in the Southwestern Bell case?

18 A. I believe so, but I would have to review to be

19 absolutely sure.

20 Q. Is there any -- strike that. Excuse me.

21 I'd like you to turn to your Surrebuttal

22 Testimony, please. And let's see. We're at page 3. And in

23 page 3 and the following pages, page 4, I believe, you

24 indicate that the HHI -- the use of the HHI is not

25 appropriate in this case; is that correct?

1 A. Yes.

2 Q. Okay. And I'm going to ask you a few things
3 about your opinion now. Now, I did want to make sure about
4 a few things. Do you think that the HHI is a useful tool to
5 evaluate the concentration of a market?

6 A. It depends on the type of market.

7 Q. What would make the market such that it would
8 not be a useful tool?

9 A. I believe that -- I mean, there are
10 circumstances that do exist, such as the amount of time
11 perhaps that one firm has been in the market, for example.

12 Q. That's one of those reasons -- you listed I
13 believe it's about four different reasons on page 3 and 4 of
14 your Rebuttal Testimony -- Surrebuttal Testimony?

15 A. Yes. That is one of the reasons I give.

16 Q. Okay. And what was your source for those
17 reasons?

18 A. It's my analysis of the HHI.

19 Q. Okay. Did you consult any authoritative text
20 to determine that?

21 A. No. I used my training as an economist and my
22 experience working for Staff in order to analyze the issue.

23 Q. Okay. And how often have you used the HHI in
24 any work for the Staff of the Public Service Commission?

25 A. You mean how many times have I created the HHI

1 or how many times have I used the HHI?

2 Q. Have you created the HHI?

3 A. No, I have not.

4 Q. Have you used the HHI at all?

5 A. I have reviewed documents that use the HHI.

6 Q. Okay. Such as Ms. Meisenheimer's testimony?

7 A. That would be one example.

8 Q. In any of the coursework that you took, did

9 any of the -- did any of those indicate that the

10 telecommunications market was not an appropriate use of the

11 HHI?

12 A. I do not believe any of my coursework

13 addressed the HHI in the telecommunications market

14 specifically.

15 Q. So you haven't used the HHI and you haven't

16 studied it as to telecommunications; is that correct?

17 A. Not in coursework, no.

18 Q. Well, on the job here at the Public Service

19 Commission in relation to telecommunications?

20 A. On the job I have -- I have learned about the

21 telecommunications market.

22 Q. Well, what about the use of the HHI as it

23 relates to the telecommunications market?

24 A. I mean, in forming this conclusion I have --

25 I -- I have analyzed the issue in great depth, I believe.

1 Q. What resources did you consult to analyze this
2 in great depth?

3 A. Well, I reviewed the merger guidelines, for
4 example, that were presented in Ms. Meisenheimer's testimony
5 and I also had many discussions with -- with Staff in order
6 to help formulate my opinion. But my opinion -- my opinion
7 is my opinion on the HHI.

8 Q. Who did you discuss it with with Staff?

9 A. I discussed with other members of the
10 telecommunications department staff.

11 Q. And specifically who?

12 A. I discussed it with my supervisor, Natelle
13 Dietrich, I discussed it with the head of the department,
14 John Van Eschen.

15 Q. Anyone else?

16 A. I believe I discussed it with Walter Cecil.

17 Q. Do you know their experience with HHI as it
18 relates to any telecommunications markets?

19 A. With the telecommunications market as a whole
20 or with the local exchange market?

21 Q. With telecommunication markets, plural.

22 A. I believe that Mr. Cecil has looked at the HHI
23 in the past.

24 Q. The same way as you looked at
25 Ms. Meisenheimer's HHI work?

1 A. I cannot say for sure.

2 Q. You don't know what work he did on it; is that
3 correct?

4 A. I don't know the specifics of his work.

5 Q. Have you ever seen the FCC use the HHI in
6 connection with telecommunications?

7 A. You mean in the ruling or something that they
8 have put out or something of that nature?

9 Q. Sure. In a report, a decision, a pleading
10 that they've filed in another case, anything that the FCC --
11 from the FCC that could indicate the use of that?

12 A. I don't believe I have seen anything.

13 Q. Okay. And how much investigation did you do
14 into the FCC orders and documents in telecommunications did
15 you do to research to see if they ever used the HHI measure?

16 A. Combined with my experience and my text work
17 about the history of the HHI, I reviewed the guidelines
18 Ms. Meisenheimer put together in her testimony which she was
19 using as her basis for the analysis of her HHI.

20 Q. So those guidelines, they're jointly published
21 by the FCC and FTC, Federal Trade Commission and Federal
22 Communications Commission?

23 A. I would have to look specifically at them to
24 answer that question.

25 Q. You don't know the source of those guidelines?

1 A. I know that they are from the FCC. I do not
2 know the exact name of the order or the -- or the name of
3 the paper that they're presented in.

4 Q. They're guidelines; is that right? What are
5 those guidelines used for?

6 A. Guidelines are mainly used for merger
7 analysis.

8 Q. And in those it discusses the use of the HHI,
9 doesn't it?

10 A. Yes. And those guidelines do discuss the use
11 of the HHI in merger analysis.

12 Q. Isn't the FCC involved with merger analysis?

13 A. Are you asking me if they preside over merger
14 analysis or if they're ever involved in merger analysis?

15 Q. Are they involved in merger analysis? Do they
16 conduct a merger analysis?

17 A. I do not believe that they do. I believe that
18 is more the bailiwick of the FTC.

19 Q. You said you believe. You don't know for sure
20 though, do you?

21 A. I do not have the document in front of me and
22 I did not -- as there were no mergers involved in this case,
23 I did not review the rules of law of mergers in the United
24 States.

25 Q. No. That wasn't the question, sir. The

1 question is, do you know if the FCC does analysis for
2 mergers?

3 A. I am not 100 percent certain.

4 Q. In other words, you do not know?

5 A. I am not certain.

6 Q. Fair enough.

7 You said you hadn't seen any other -- anything
8 from the FCC document using the HHI as some measure to --
9 well, I guess to measure the market in telecommunications;
10 is that right?

11 A. Correct. That was my response.

12 Q. Okay. Would you like to see one? I have one
13 right here?

14 MR. DANDINO: May I approach the witness?

15 MS. CREIGHTON HENDRICKS: Your Honor, I'm
16 going to raise an objection to this line of questioning. I
17 think this witness has established that he's not familiar
18 with the handling of the HHI.

19 There was a witness here yesterday who was
20 very familiar with that and was not questioned on these
21 topics. And I think this is an opportunity just to get
22 evidence that they should have put in their Surrebuttal in
23 through this witness, who's not qualified to testify one way
24 or the other about the FCC's work with the HHI.

25 JUDGE WOODRUFF: I'm going to overrule the

1 objection. You can go ahead and inquire, Mr. Dandino. And
2 if the witness doesn't know, he can explain he doesn't know.
3 (EXHIBIT NO. 17 WAS MARKED FOR
4 IDENTIFICATION.)
5 JUDGE WOODRUFF: Do you have copies for the
6 Bench?
7 MR. DANDINO: I'm sorry. Do we have copies
8 for the Bench?
9 BY MR. DANDINO:
10 Q. Mr. McKinnie, would you look at what has been
11 marked for identification purposes as Exhibit 17? And could
12 you describe what this purports to be?
13 A. The cover page says that it's a -- that it's
14 news from the FCC.
15 Q. Okay. If you would look on -- I guess two
16 pages over behind the press release, what is the title of
17 that document?
18 A. It says it is Statistics of the Long-Distance
19 Telecommunications Industry.
20 Q. Okay. And is that from the Wireline
21 Competition Bureau?
22 A. That is what it says further on down the page,
23 yes.
24 Q. May of 2003?
25 A. Correct.

1 Q. If you would turn to page 17 -- or 19, please.
2 A. I am there.
3 Q. Look at Table 9. Do you see that?
4 A. Yes, I do.
5 Q. And what is the title of that table?
6 A. The title is Herfindahl-Hirschman Indices or
7 HHIs for Toll Services.
8 Q. Okay. Turn to page 20, Table 10. What is
9 that -- what is the title of that --
10 A. The title --
11 Q. -- table?
12 A. I'm sorry.
13 Q. Yes. The title of that.
14 A. The title is Herfindahl-Hirschman Indices or
15 HHI for International Toll Service.
16 MR. DANDINO: Okay. And, your Honor, I have
17 another document I'd like to be marked
18 JUDGE WOODRUFF: All right. This will be 18.
19 (EXHIBIT NO. 18 WAS MARKED FOR
20 IDENTIFICATION.)
21 BY MR. DANDINO:
22 Q. Mr. McKinnie, would you please look at
23 Exhibit 18? And I'll ask you what does this document
24 purport to be?
25 A. It appears to be more news from the Federal

1 Communications Commission.

2 Q. And if you'd look beyond the first page there,

3 the title of the document, what is the title of that

4 document?

5 A. On the second page?

6 Q. Yes.

7 A. The title appears to be Long-Distance Market

8 Shares, Fourth Quarter, 1998.

9 Q. And is that by the Common Carrier Bureau of

10 the Federal Communications Commission?

11 A. Yes. Those words are further down on the

12 page.

13 Q. Okay. And ask you to turn to page 16, please.

14 A. I am there.

15 Q. And Table 3.2, what's the title of that table?

16 A. Revenues: Market Share Based on Operating

17 Revenues of Long Distance Carriers Only.

18 Q. And there's various categories and a chart

19 there. Could you read off across the data that's contained

20 in each one of those categories?

21 A. Certainly.

22 MR. HAAS: Your Honor, I object at this point.

23 There's been no foundation laid for the use of this exhibit.

24 The witness has not said that he prepared it, that he's

25 reviewed it, that he accepts the study. So I object to any

1 use of Exhibit 17 and 18.

2 MR. DANDINO: Your Honor, I haven't offered
3 the exhibit yet. I think I have a right to lay the
4 foundation by asking the witness questions about what this
5 is; otherwise, I couldn't determine what the relevance of
6 this document is.

7 JUDGE WOODRUFF: I'm going to overrule the
8 objection. He's still at this point laying foundation and
9 has not offered the document.

10 BY MR. DANDINO:

11 Q. So, sir, could you, once again, read the
12 labels on the top of the column all the way across, please?

13 A. Starting from the left, we have Year, AT&T,
14 MCI, Sprint, WorldCom, All Other Long Distance Carriers, and
15 Herfindahl-Hirschman Index, or HHI.

16 Q. Okay. If you'd turn the page to page 17,
17 Table 3.3, would you please read the name of that -- the
18 name of that table?

19 A. Revenues: Market Share Based on Total
20 Operating Revenues of Long Distance Carriers and Total Toll
21 Revenues for Local Exchange Carriers.

22 Q. And, sir, could you read the -- from the left,
23 could you read the titles of each one of those labels on
24 each one of those columns?

25 A. Again, starting from the left, Year, AT&T,

1 MCI, Sprint, WorldCom, All Other Long Distance Carriers,
2 Bell Operating Companies, Other Local Telephone Companies,
3 and the Herfindahl-Hirschman Index, or HHI.

4 MR. DANDINO: Your Honor, I have another
5 document I'd like to have identified.

6 JUDGE WOODRUFF: All right.

7 MR. DANDINO: Be Exhibit 19.

8 (EXHIBIT NO. 19 WAS MARKED FOR
9 IDENTIFICATION.)

10 BY MR. DANDINO:

11 Q. Mr. McKinnie, I've handed you what's been
12 marked for identification purposes as Exhibit 19. What does
13 this document purport to be?

14 A. In the upper left-hand portion of the page it
15 says, In the matter of a generic proceeding to establish
16 filing requirements and guidelines applicable to market
17 power analysis.

18 Q. And is this before the Arkansas Public Service
19 Commission?

20 A. That is the header on the top of the page.

21 Q. And what is the docket number?

22 A. Docket No. 00-048-R.

23 Q. And what is the caption of the document?

24 A. Comment of the Staff of the Bureaus of
25 Economics and Competition and of Policy Planning of the

1 Federal Trade Commission.

2 Q. And if you'd be kind enough to turn to -- it
3 should be page 4. Unfortunately, the pages aren't numbered.
4 I apologize for that. What I'm looking at is -- the
5 paragraph begins, The HHI is an indicator. Do you see that?

6 A. Yes, I do.

7 Q. Okay. Could you read that paragraph, please?

8 A. The whole paragraph?

9 Q. Yes.

10 A. The HHI is an indicator --

11 MR. HAAS: Your Honor, I'm going to object
12 again at this point. We're beyond just trying to identify a
13 document. We're now trying to introduce substance from that
14 document. There's been no foundation laid for the use of
15 this document. The witness hasn't said that he prepared it,
16 reviewed it in preparation for this case, has reviewed it
17 and agrees with the substance of what the document says.

18 MR. DANDINO: Your Honor, this is still in the
19 nature of laying the foundation for the document. And also
20 it's still in the nature of cross-examination of the
21 witness. I'm cross-examining him about the use of the HHI,
22 and I think any public record -- and that's what this
23 purports to be at least -- is --

24 JUDGE WOODRUFF: What is the purpose of the
25 testimony you're trying to elicit?

1 MR. DANDINO: Is to rebut his Surrebuttal
2 Testimony as to the use of the HHI.

3 JUDGE WOODRUFF: I'm going to overrule the
4 objection in light of answer to the question.

5 BY MR. DANDINO:

6 Q. Sir, please read that paragraph.

7 A. The HHI is an indicator of potential market
8 power associated with coordinated interaction. Various HHI
9 thresholds are presented in the DOJ/FTC merger guidelines.
10 Although the numerical divisions suggest greater precision
11 than is possible with the available economic tools and
12 information, HHIs below 1,000 are classified as
13 unconcentrated markets, HHI above 1,800 are classified as
14 highly concentrated markets.

15 Moreover, the market share of the merged firm
16 is an indicator of potential market dominance by a single
17 firm. According to the DOJ/FTC guidelines, a merged firm
18 with a high market share may exercise market power.

19 Given that vertically integrated regulated
20 monopolies have controlled the generation, transmission and
21 distribution of electric power in state-authorized
22 geographic territories, a threshold that combines these
23 measures as one way for the APSC to determine whether
24 additional information is necessary to determine whether an
25 electric utility possesses existing market power.

1 Q. So in that paragraph it does speak about the
2 use of the HHI as an indicator of potential market dominance
3 by a single firm; is that correct?

4 A. I do not see the word -- okay. I will --
5 sorry. Yes, it does. It does talk about potential market
6 dominance by a single firm.

7 Q. Okay. And let's see. I'm going to go back to
8 your Surrebuttal Testimony at page 3, I guess it's line 13.
9 And you say that the telecommunications market is a unique
10 entity and this is one of your reasons why the HHI is not
11 appropriate in this case; is that correct?

12 A. That is correct.

13 Q. Okay. What is so unique about the
14 telecommunications industry -- well, strike that.

15 The reason you say it's a unique entity is
16 because the cost of entry is capital intensive and it is not
17 likely that a large number of companies will be providing
18 full facilities-based telephone service in any one exchange.

19 Is that your reason why it's unique?

20 A. That is one of the reasons.

21 Q. Is that a key reason?

22 A. I would say that's one of the key reasons.

23 Q. Is it a very significant reason?

24 A. Yes. I would say it's -- it is an important
25 reason.

1 Q. Okay. A controlling reason?

2 A. You would have to further explain what you

3 mean by controlling reason.

4 Q. Without that -- without that attribute of

5 capital intensive high cost of entry, telephone -- if you

6 had a number of industries that had the same amount, there

7 would be no difference between that and the

8 telecommunications market?

9 A. I do not agree with that statement.

10 Q. And why not?

11 A. Because there are also other things that are

12 unique about the telecommunications industry besides the

13 high cost of entry.

14 Q. Okay. So that's only one of the elements?

15 A. That -- that is definitely one of the reasons.

16 Q. It's not the make or break on determining

17 whether it would be appropriate to use the HHI or not; is

18 that correct?

19 A. I'm not sure there's a make or break issue.

20 You have to kind of consider all the factors together.

21 Q. Sure. Certainly. How is the telephone

22 communications industry, especially the local exchange

23 market or local exchange industry, different from any other

24 industry with a capital intensive cost of entry such as --

25 I'll give you examples, steel mill, quite heavily capital

1 investment, pharmaceutical industry, radio, television,
2 newspaper industry, cable television, railroads, oil
3 refineries, aircraft manufacturer McDonnell-Douglas and
4 Boeing, those type of -- how is telecommunications at the
5 local level different than any of those industries?

6 A. Well, it is unique in several ways. First of
7 all, there's been a government protected monopoly provider
8 in -- in -- I mean, in all of the exchanges for a period of
9 time. Secondly, there is a limited number of entry points
10 into the home, so there is some difficulty delivering the
11 product to the customer. Those are two ways that it is
12 unique.

13 Q. Okay. Weren't at one time railroads
14 considered a monopoly?

15 A. Yes.

16 Q. Okay. And regulated by the government?

17 A. Railroads have been regulated by the
18 government.

19 Q. And radio, television and -- well, let's say
20 radio and television at least, they've been regulated by the
21 federal government?

22 A. Radio and television have been regulated by
23 the government.

24 Q. And issued licenses -- monopoly licenses?

25 A. I don't know if I would necessarily call them

1 monopoly licenses, but radio and television stations have
2 been licensed by federal agencies.

3 Q. No one else could use the frequency they're
4 broadcasted on.

5 A. Within the frequency.

6 Q. Certainly. Cable television, wasn't cable
7 television at one time regulated?

8 A. Yes.

9 Q. Now, do you know if the Department of Justice
10 or -- Department of Justice, FCC, Federal Trade Commission
11 has utilized the HHI measure of market concentration in
12 those industries such as mergers in the steel,
13 pharmaceutical, media, cable television, railroads, oil
14 refinery?

15 A. I believe the HHI is used in some mergers in
16 some of those industries.

17 Q. Let's go to your second point, which I believe
18 is on page 4. You say that it would be inappropriate to use
19 the HHI measure, and I guess the reason is the customer base
20 is too -- is such a size it would be unlikely that a large
21 number of facilities-based carriers would invest the large
22 amount of capital needed to compete over them; is that
23 correct?

24 A. That is what my testimony reads, yes.

25 Q. Okay. Well, yeah, I got it right.

1 Wouldn't the concept that the customer base
2 was too small for a competitive market, wouldn't that be --
3 maybe it wouldn't relate to the HHI, but doesn't it relate
4 to this issue involving existence of economic or regulatory
5 barriers to entry?

6 A. I'm not sure I could speak as to the intention
7 of the statute. Are you asking me to interpret the statute?

8 Q. No, sir. I'm asking you to tell me whether
9 the size of the customer base and the size in these
10 exchanges that are at issue today, do they pose an economic
11 barrier to entry?

12 A. I would hesitate to use the term "barrier."

13 Q. What word would you use?

14 A. I would say it makes it less likely.

15 Q. Less likely. If you combine that with the
16 large capital investment cost, would it then be considered a
17 barrier to entry?

18 A. Not necessarily. I mean, there are lots of
19 factors at play.

20 Q. Well, what would I have to add to it for
21 you -- if it's capital intensive and few companies can make
22 that investment; is that correct?

23 A. You mean in the current situation or overall?

24 Q. Well, I mean in the local exchanges, in these
25 exchanges that are at issue here today.

1 A. I would hesitate to say that few companies
2 could make that investment. I mean, there are a lot of
3 companies -- a lot of companies in existence.

4 Q. How many CLECs have made the investment?

5 A. In any one exchange or -- I mean, what type of
6 investment are you speaking of?

7 Q. Well, in the investment in the facilities in
8 these local exchange companies that are at issue here today.

9 A. I would say that three of them have.

10 Q. Three companies. One in each exchange, is
11 that correct -- or Green Hills in the Norborne exchange; is
12 that correct?

13 A. Green Hills has invested in the Norborne
14 exchange.

15 Q. Okay. And ExOp in the Kearney and Platte
16 exchanges. Right?

17 A. Yes. I believe that's -- that's an accurate
18 assessment.

19 Q. Well, you believe or is it right?

20 A. I have not personally visited the plant, but
21 yes, I mean, they have invested -- they have invested money,
22 they have reported themselves as a facilities-based carrier.

23 Q. Well, you didn't do any independent
24 verification whether they were?

25 A. I did not drive to the Kansas City

1 metropolitan area to physically see if the plant was laid in
2 the ground, no.

3 Q. That isn't what I asked. Did you do any other
4 independent verification that they're a facilities-based
5 provider?

6 A. I have checked their annual reports, I have
7 issued data requests to their company, I have --

8 Q. That's fine.

9 A. -- spoken with them.

10 Q. That's fine. You sounded like you were
11 unsure. That's why --

12 A. My apologies.

13 Q. And then in the Rolla and the St. Roberts
14 exchange we have Fidelity I; is that correct?

15 A. I know that Fidelity I has facilities in the
16 Rolla exchange. I believe they're starting to expand into
17 the St. Robert exchange. So they may have some beginning of
18 some facilities in that exchange.

19 Q. Each one of those -- well, let's take first
20 Green Hills. Is Green Hills -- are they a -- or are they
21 a -- I guess I'm trying to think of the word -- related to
22 or a subsidiary -- affiliate, that's the word.

23 Are they an affiliate of a local exchange
24 company, adjoining exchanges?

25 A. Yes.

1 Q. And that would make it easier for them to
2 extend their facilities into those -- the Norborne exchange?
3 A. I would say that it would give them some
4 definite -- I mean, it would definitely aid them in their
5 explanation.
6 Q. It would be -- that would be something that
7 other companies couldn't do; is that correct?
8 A. You mean within that exchange or in any one
9 exchange?
10 Q. Well, in that exchange.
11 A. In that exchange, Green Hills is specifically
12 aided by their proximity -- by the proximity of an
13 affiliated ILEC. Other affiliated ILECs could take
14 advantage of resources similarly -- or I mean other ILECs
15 with other CLEC affiliates could take advantage similarly.
16 Q. Okay. Let's go on to your third reason on
17 page 4. Okay. I guess can that be summarized in saying
18 that you think the HHI is not appropriate because it does
19 not take into account the difference between an incumbent
20 firm and a competitive firm?
21 A. I'm making sure it's that point and not the
22 next point that I make.
23 Q. Sure. Sure. Take your time.
24 A. Can you repeat for me just so I'm -- make sure
25 I'm answering the right question.

1 Q. Sure. Your third reason -- and I was just
2 trying to pick out the sentence that seems to best reflect
3 what your third objection to the use of the HHI is. And I
4 would look at line 21 that says, Furthermore, the HHI does
5 not take into account the difference between an incumbent
6 firm and a competitive firm.

7 A. I would not say that that is the -- I mean, if
8 you would like me to, I could summarize the third point for
9 you.

10 Q. Sure. I wish you would. Thank you.

11 A. I would say that in looking at the local
12 exchange telecommunications market in a standard of
13 requiring an HHI of 1,800 to be moderately concentrated is
14 an unreasonable standard in that small exchange.

15 Q. On what basis?

16 A. On the basis of the line count and the
17 exchange, how the lines would have to be split up in order
18 to achieve, I mean, even five carriers in that exchange.
19 That would be, you know, an incumbent and four full
20 facilities-based competitors. I find it difficult that four
21 different companies could justify the investment for only
22 115 lines each, much less a fifth, dividing the pie even
23 further.

24 Q. It doesn't sound like many CLECs would come
25 into that. They couldn't survive on that exchange; is that

1 right?

2 A. On a full facilities-based basis, I would say,
3 yes, it would be difficult for a large number of carriers to
4 survive in that exchange.

5 Q. Yeah. Probably pose a barrier to entry,
6 wouldn't it, the number of customers?

7 A. I would say it would be difficult for them to
8 survive.

9 Q. Might not be very profitable given the number
10 of customers?

11 A. They would have difficulty.

12 Q. Okay. Let's move on here. On line 22 you say
13 that one of the problems you consider with the HHI is that
14 all competitors are equal and do not take into account the
15 historic advantages of the ILEC. And it goes on further
16 where you say the CLECs will be swimming upstream. So you
17 think that the incumbent has a significant advantage in
18 these exchanges?

19 A. Depending on the situations within the
20 exchange, yes, I believe the incumbent -- in many of the
21 exchanges the incumbent definitely enjoys a significant
22 advantage.

23 Q. So much so that you think that is one reason
24 why the HHI would not apply in these exchanges that are at
25 issue today?

1 A. I believe that is one of the -- one of the
2 reasons why the HHI as it stands is not applicable.

3 Q. Wish you'd talked to Southwestern Bell. They
4 consider them that they needed a level playing field.

5 Okay. On page 5, that last paragraph -- or
6 the paragraph starting at line 3, could you read that,
7 please?

8 A. Certainly. Considering the high cost of entry
9 borne by competitive facilities-based carriers, the manner
10 in which the HHI treats the incumbent and competitive
11 companies as the same and the unrealistic expectations the
12 standard has for the telecommunications market within any
13 exchange, Staff does not find the HHI a valuable tool to use
14 in determining effective competition.

15 Q. Okay. What are those unrealistic expectations
16 that this HHI I guess you're talking about --

17 A. It's --

18 Q. -- has for the --

19 A. I'm sorry. Go ahead.

20 Q. I'm sorry. What are the unrealistic
21 expectations that the HHI has for the telecommunications
22 market?

23 A. For the -- now I want to be clear. We're
24 talking about the local telecommunications market, not the
25 telecommunications market as a whole. Correct?

1 Q. Well, what do you say?

2 A. I say that in regarding the local
3 telecommunications market, especially in exchanges that have
4 a very small line count, it is unreasonable to expect there
5 to be an incumbent and five full facilities-based
6 competitors in some of those exchanges.

7 Q. The HHI did not demand that there be five
8 facilities-based competitors. Doesn't it just measure what
9 is there?

10 A. In order to meet Ms. Meisenheimer's standard
11 that she advocates from the Justice Department talking about
12 an HHI of 1,800, a -- you need at least six companies in
13 order to achieve her standard. Therefore, the standard is
14 unreasonable.

15 Q. Well, are those companies supposed to hit
16 1,800 or is that just a measure of what exists?

17 A. I mean, it's just a measure of what it exists.
18 It's a statistic that is created to describe the exchange.

19 Q. It's not a target we're trying to shoot for,
20 is it?

21 A. I don't know who the "we" in your sentence is.

22 Q. Well, I mean, the Department of Justice or any
23 statistician trying to measure the -- measure concentration,
24 they're not trying to say, I have to hit 1,800 with this
25 measurement in order for it to be valid? They wouldn't do

1 that, would they?

2 A. Are you asking me whether or not they would

3 cook the books in order to achieve an HHI of a certain

4 number?

5 Q. No. I'm asking you --

6 A. I'm just confused about your question. I'm

7 sorry.

8 Q. Sure. Sure. And I want to be clear about it.

9 Is the 1,800 -- okay. Wait a minute. Let me approach it

10 this way.

11 Ms. Meisenheimer's testimony, page 18 and 19,

12 she sets out her calculation of the HHI values. Do you see

13 those?

14 A. Are you referring to her Rebuttal?

15 Q. Yes. I'm sorry.

16 A. There are numbers that Ms. Meisenheimer

17 indicates are highly confidential which discuss the HHI of

18 the residence and business market of the five exchanges in

19 discussion today.

20 Q. And she calculated those?

21 A. I believe so.

22 Q. Okay. Do you have any objection or find

23 anything wrong with the mathematical calculation, how she

24 achieved those numbers? Seem accurate mathematically?

25 A. Mathematically? The only concern I would have

1 concerning her calculations is that we're making sure that
2 we're discussing the full facilities-based carriers in the
3 exchange, because there's been some discussion over what
4 that term means.

5 Q. Well, if she based it off the reported line
6 shares on page 16 and 17, would those be appropriate
7 calculations?

8 A. Again, I mean, you need to talk about what
9 kind of lines we're talking about. Are we talking about
10 facilities-based lines? Are we talking about lines provided
11 by resellers? What kinds of lines are we discussing?

12 Q. Okay. You didn't do any independent
13 calculation of the HHI to see if Ms. Meisenheimer's
14 calculations were correct?

15 A. I -- no, because I did not believe the HHI was
16 applicable.

17 Q. As you sit here today, you couldn't tell me
18 one way or the other whether they're mathematically correct;
19 is that right?

20 A. I mean, I believe Ms. Meisenheimer is able to
21 calculate an HHI, but I did not calculate the HHI myself.

22 Q. Now, those numbers, those are results of
23 calculating the HHI. And none of them are at 1,800; is that
24 correct?

25 A. I believe I can say that, yes.

1 Q. Okay. In fact, they're significantly above
2 that 1,800. Right?

3 A. I don't know how you wish to define
4 significantly, but I would say that they're definitely
5 greater than 1,800.

6 Q. Multiple of 1,800?

7 A. Yes.

8 Q. And even though they're not 1,800, they,
9 according to the use of an HHI, whether you accept that or
10 not, give an indication of a measure of concentration; isn't
11 that correct?

12 A. Again, we have to make sure we're talking
13 about the right market, but --

14 Q. Well --

15 A. -- I mean, if we're talking about the full
16 facilities-based market --

17 Q. Yes.

18 A. -- I would say that if you accepted the HHI as
19 accurate in describing the telecommunications market, that
20 you could use this to describe a market that is concentrated
21 in terms of the number of firms and their specific market
22 share.

23 Q. And you wouldn't necessarily need to have --
24 in order for -- need to have the reports and those
25 percentages come in at 1,800 for you to make any type of

1 analysis of the concentration in those markets, would you?

2 A. I'm sorry. What do you mean by report -- I
3 mean, could you please restate your question because I'm a
4 little --

5 Q. Sure. I'm glad you asked me that because I
6 lost that question too. Okay. I'm going to move on. I
7 think I've established the point.

8 Sir, did you examine the list of -- I believe
9 it's Exhibit 16, which is the list of rate changes by
10 Sprint? Did you happen to have an opportunity to examine
11 that since yesterday?

12 A. I mean, I have glanced at the document. I --
13 I mean, I have looked at it.

14 Q. Can you make an observation one way or the
15 other of whether those -- whether most of the prices have
16 increased or decreased since price cap regulation -- since
17 Sprint underwent a price cap regulation?

18 A. I'd be better off addressing specific services
19 or a specific basket of services than the services as a
20 whole.

21 Q. We'll just go ahead and let the percentages in
22 Exhibit 16 speak for itself.

23 And I believe on page 8 of your Direct
24 Testimony -- well, excuse me. It's page 8 of your
25 Surrebuttal Testimony. I believe that you state that if the

1 Commission decides to find that services in an exchange are
2 effectively -- have effective competition and reclassify
3 them as competitive, the Commission can remove that
4 declaration in the future?

5 A. Yes. You're describing the first two lines on
6 page 8 of my Surrebuttal Testimony.

7 Q. Sure. Now, could you describe what that
8 process is?

9 A. You mean can I describe how the process would
10 work?

11 Q. Yes.

12 A. I assume that somebody would have to file a
13 complaint or Sprint would come in and request to have the --
14 request to have their classification changed. But I am -- I
15 mean, I'm an economist. I --

16 Q. You didn't inquire into how that process
17 works?

18 A. The process has never occurred. I -- I'm not
19 sure anybody knows exactly how it would work.

20 Q. Does anyone know how long it would take?

21 A. Exactly, no.

22 Q. And all during that time Sprint would --
23 Sprint will retain the competitive classification; isn't
24 that correct?

25 A. That's my understanding, yes.

1 Q. Okay. On page 5 of your Rebuttal Testimony,
2 Mr. McKinnie, I believe it is your testimony that the Staff
3 does not consider wireless telephone and the other
4 non-traditional forms of communication, the voice over the
5 Internet as a substitute for wireline services; isn't that
6 correct?

7 A. That's not exactly what my testimony says.

8 Q. Okay. You tell me --

9 A. Okay.

10 Q. -- what your position is.

11 A. Okay. My testimony says that when we've
12 examined the wireless industry, we do not consider wireless
13 phones to be substitutes for wireless lines -- or for
14 wireline phones. Further on down we say that we have not
15 made an in depth examination of Internet telephony and voice
16 and things of that nature but we think that if we did, we'd
17 come to pretty much the same conclusion.

18 Q. Sprint hasn't provided you with any evidence
19 on that, have they?

20 A. No, they have not.

21 Q. On page 9 of your Rebuttal Testimony -- are
22 you there?

23 A. Yes. I'm sorry.

24 Q. Okay. You talk about the customer premise
25 equipment I believe in terms of the vertical services, Speed

1 Call 8 and Speed Call 30 and that you examined I guess --
2 what was it -- a telephone that -- you priced one at Target
3 to determine whether it was a suitable substitutable or
4 functional equivalent?

5 A. Yes. I did go to Target to examine a -- to
6 examine a telephone in order to make a recommendation.

7 Q. Okay. You understand that under Missouri law
8 a customer premise equipment is not considered a
9 telecommunication device or service?

10 A. You would have to point me towards the --
11 towards a particular law or statute that says that.

12 Q. Did you inquire into what the definition of
13 telecommunication services were before you undertook this
14 assignment?

15 A. I know that I have -- I have previously read
16 over the statute that defines telecommunications service.

17 Q. But you don't know, as you sit here today,
18 whether it is -- CPE is a telecommunications service or not?

19 A. I would have to -- I would have to re-examine,
20 but I mean, we're talking about a service versus a piece of
21 equipment. I mean, I can understand that -- I mean, from
22 that point of view, I can understand how they're not
23 100 percent the same thing.

24 Q. Does the Staff consider MCA service as a
25 competitive service -- optional MCA service?

1 A. Can you define exactly what you mean by
2 competitive services for the terms of the question?

3 Q. Well, page 20 of your testimony, line 1, it
4 says, Staff only supports competitive classification for
5 MCA 3 in the Kearney exchange. And that's the only one
6 where Staff supports competitive classification?

7 A. Yes.

8 Q. Okay. How does your -- how does the
9 reclassification of MCA service effect the MCA price cap
10 that was established by the Commission in -- I believe it
11 was TO-2000-391 decided in 19-- in 2000?

12 A. I would have to look particularly at the part
13 of the -- at the part of the case you're referring to. I
14 mean, I am generally -- I mean, I am --

15 Q. Did you review that case?

16 A. Before this -- before this proceeding?

17 Q. Yes.

18 A. No, I did not.

19 Q. Did you review it before you prepared your
20 testimony?

21 A. I believe I have -- I have read -- I have read
22 the Report and Order at some point in time.

23 Q. In specific preparation of this testimony you
24 did not look at it though?

25 A. No.

1 Q. So you have no opinion one way or the other
2 how your recommendation to this Commission would affect the
3 price cap that this Commission established for MCA service?

4 A. I would have to look at the 397 -- the
5 applicable portions of 397 again before I could make that
6 recommendation. I mean, I would like to make a fully formed
7 recommendation to the Commission.

8 Q. Certainly. Certainly. We certainly want you
9 to. But you didn't look at it before you made this -- filed
10 this testimony, did you?

11 A. No. Because, I mean, that was not -- no, we
12 did not -- no, I did not.

13 Q. Let's see here. Page 20 of your Rebuttal
14 Testimony, you discussed the Norborne exchange. And it's
15 your opinion that Sprint faces effective competition in that
16 exchange; is that correct?

17 A. Yes.

18 Q. At page 20 -- at page 20, line 18 you mention,
19 My four-point checklist necessitates. Your four-point
20 checklist, what's that?

21 A. It is a checklist I developed in order to
22 determine whether or not certain services were substitutable
23 for each other.

24 Q. Is it set out in this testimony?

25 A. Yes, it is.

1 Q. And where?

2 A. My four-point checklist is on page 3 of my
3 Rebuttal Testimony.

4 Q. Okay. What was the source of that checklist?

5 A. I developed the checklist by looking at
6 TO-93-116 which was the case -- let me make sure -- the case
7 to determine if certain Southwestern Bell services could be
8 deemed transitionally competitive. And in that case the
9 parties involved submitted criteria to the Commission for
10 review to consider when reviewing substitutability.

11 Now, in the Report and Order for that case the
12 Commission determined that some of the suggestions that were
13 given create too high of a standard and the Commission also
14 noted that it might be appropriate to give different
15 criteria different weighting.

16 In taking that -- taking the Commission's
17 finding into account, I used my education and my training
18 and my background as an economist to develop a checklist
19 that I could use when making my recommendations for what
20 were substitutable services. And I also -- I also
21 considered that I wished to make this criteria available to
22 a wide variety of services, not just to a narrow band of
23 services.

24 Q. Well, didn't the Commission in that case
25 determine that you have to decide what is functionally

1 equivalent or substitutable on a case-by-case basis?

2 A. I would have to -- I mean, I had reviewed
3 that, but I would have to look specifically at the order to
4 make sure.

5 Q. So you have no recollection what that case
6 held?

7 A. I can look at the Report and Order and double
8 check if you wish to repeat your question.

9 Q. Well, no, no. I don't believe I do. I
10 would --

11 JUDGE WOODRUFF: I'll interrupt now. We are
12 due for a break. Are you coming to the end or should we go
13 ahead and take a break?

14 MR. DANDINO: We better take a break, your
15 Honor.

16 JUDGE WOODRUFF: We'll take a break now.
17 We'll come at 10 minutes to 11:00.

18 (A RECESS WAS TAKEN.)

19 JUDGE WOODRUFF: Mr. Dandino?

20 MR. DANDINO: Thank you, your Honor.

21 BY MR. DANDINO:

22 Q. Mr. McKinnie, I've been kind of reviewing my
23 notes and I probably have significantly shortened the
24 remaining part of my cross-examination.

25 But right now I wanted to ask, Mr. Haas, in

1 his opening statement indicated that in the Southwestern
2 Bell competition case, there was only one facilities-based
3 carrier for residential service in Harvester and
4 St. Charles. Did you advise him of that information?
5 A. No. I did not advise Mr. Haas of that
6 information.
7 Q. Did you make any inquiry into whether or not
8 there were more than one facilities-based carriers in the
9 Harvester or St. Charles exchanges?
10 A. Yes, I did.
11 Q. And what did you discover?
12 A. I discovered that there was only one at the
13 time of the 467 case.
14 Q. Did you read the -- review the testimony
15 submitted by Public Counsel in the Southwestern Bell
16 competitive case?
17 A. No, I did not.
18 Q. So you'd be unaware that seven CLECs had
19 received numbering resources for the Harvester exchange?
20 You wouldn't be aware of that, would you?
21 A. I didn't -- I guess not, no.
22 Q. Does that have any significance to you?
23 A. It still does not say that they're a
24 facilities-based carrier, that there are a multitude of
25 facilities-based carriers.

1 Q. Do only facilities-based carriers request and
2 obtain numbering resources from the number administrator?
3 A. Before I answer this question, how are you
4 defining facilities-based carriers? Because it's -- it's --
5 Q. Well --
6 A. -- been an issue throughout the testimony.
7 Q. What's your understanding of facilities-based
8 carrier?
9 A. My understanding of a full facilities-based
10 carrier is a carrier who owns every portion of the network
11 they use to provision telephone services.
12 Q. How about a facilities-based carrier as used
13 in the Telecommunications Act of 1996?
14 A. As used in the Act itself?
15 Q. Yes.
16 A. I believe -- I believe the Act itself refers
17 to facilities-based carriers -- I know that facilities-based
18 carriers definitely includes full facilities-based carriers,
19 but I also believe that it includes telecommunications
20 carriers that use portions of unbundled network elements to
21 deliver their service to -- to the end-user.
22 Q. Okay. So with that understanding, with that
23 definition of a facilities-based carriers, if seven CLECs
24 had received numbering resources in the Harvester area,
25 wouldn't more than one facilities-based carrier exist in

1 that exchange?

2 A. I am not fully aware of when a company may
3 request numbering resources, so I don't believe I have the
4 knowledge to exactly answer your question.

5 Q. Okay. So you didn't review the testimony that
6 was the basis of -- or excuse me.

7 You didn't advise Mr. Haas on that point and
8 you didn't review the testimony of Public Counsel in that
9 case?

10 A. I would answer no to both questions.

11 Q. Okay. So you just don't know one way or the
12 other whether there was more than one facilities-based
13 carrier?

14 A. I didn't -- I have never stated that.

15 Q. You have never stated that there was only one?

16 A. Can you please restate your question to make
17 sure that we are discussing the exact same issue?

18 Q. Sure. You said there was only one full
19 facilities-based carrier in the Harvester and St. Charles
20 exchanges. Right?

21 A. Yes.

22 Q. But as to facilities-based carrier, meaning
23 both their own facilities and UNEs, UNE-Ps, there could be
24 more than one, but you have no knowledge of that?

25 A. I would not state that. From the review that

1 I have made of the case, which includes the Report and Order
2 and Staff Witness Voight's testimony in the case, I did not
3 find any mention of additional facilities-based carriers.

4 Q. In your testimony -- let's see. I'm sorry.
5 See if I get this right here.

6 I understand that your opinion is that the
7 rates charged by the three CLECs at issue here as compared
8 to Sprint are comparable priced, their services?

9 A. That is the position that I'm taking.

10 Q. Yes. And by comparably priced, if -- and you
11 discuss how Sprint's local exchange rate has increased; is
12 that correct?

13 A. I discussed how their rate has -- how the rate
14 has changed and I discussed the various things that were
15 involved in that rate changing.

16 Q. Sure. I think Mr. Devoy's testimony spoke
17 about that also; is that correct?

18 A. Mr. Devoy's testimony -- I mean, he came up
19 with the number and in -- my Surrebuttal Testimony addressed
20 that number.

21 Q. Okay. Now, let me ask you, if Sprint has
22 raised its local basic service rates and the CLEC's prices
23 are comparable with them, where is the consumer's
24 competitive advantage from price cap regulation, let alone
25 the proposed competitive reclassification?

1 A. When you discuss Sprint's basic local rates --
2 before I answer your question, I just want to make sure that
3 we're on the same page. Are you taking into account the
4 changes that were made to Sprint's overall basic rate
5 structure or are you just discussing the -- the pure numeric
6 increases that occurred without taking into account, for
7 example, the rolling in of the touch tone charge?

8 Q. I'm talking about how much the consumer writes
9 out his check for.

10 A. So you're discussing end of the month bill?

11 Q. Right.

12 A. Then can you please restate your question --

13 Q. Sure.

14 A. -- with that qualification?

15 Q. Sure. Sprint's rates for local basic service
16 have increased since they went under price cap; is that
17 correct?

18 A. In referring to the end of the month check,
19 yes, I would say that their rates have gone up.

20 Q. They're higher than they were in 1999?

21 A. Taking into account the other factors that
22 we've discussed earlier, yes, such as the touch tone charge
23 and some of the other rebalancing concerns.

24 Q. Okay. Well, I'm talking about rebalancing.
25 That's money out of the consumer's pocket, isn't it, for

1 local service?

2 A. For local service, yes, that is money out of
3 the consumer's pocket.

4 Q. Went up \$1.50 a month in 2000, 2001?

5 A. I would have to check, but I believe it went
6 up in -- \$1.50 or within a few --

7 Q. Sure.

8 A. -- pennies either way.

9 Q. Now, CLECs' prices -- the CLECs at issue here,
10 their prices you testified and have in your testimony are
11 comparable to Sprint's prices, is that correct, competitive
12 with them -- competitive with those prices?

13 A. I believe I testified that they are comparably
14 priced.

15 Q. Comparably priced, that's right. Now, if
16 competition is supposed to bring lower prices to consumers
17 and better services, more options, what can you -- what can
18 you describe that -- strike that.

19 If consumers are supposed to pay lower prices
20 with the competitive classification, where has been -- where
21 is the benefit that the consumers in the Norborne and Platte
22 City and Kearney and Rolla and St. Roberts exchanges --
23 where's the benefit to them?

24 A. Okay. So I understand your question, you
25 stated that when competitive classification occurs? That

1 was the first part of your question? And I would say that
2 competitive classification has not occurred yet.

3 Q. Okay. Let's put it this way. They have
4 comparable -- those CLECs have comparable prices. Right?

5 A. That is what I testified, yes.

6 Q. And under price cap regulation, Sprint has
7 increased their rates; is that correct? Local basic rates.

8 A. With the qualifiers I've stated before, yes.

9 Q. Sure. Sure.

10 Now, if the customers' rates did not go down,
11 then how did they benefit from price cap regulation?

12 A. How have the customers benefited from price
13 cap regulation?

14 Q. Yes.

15 A. I believe -- I believe you don't just look at
16 the price cap regulation. I think you look at the entirety
17 of the statutes. And I think proceedings such as these is
18 one way in which Sprint is trying to address the
19 competitiveness of the issue.

20 Q. Well, I'm asking what the benefit is to my
21 client, the customers. If their rates have gone up if
22 they're a Sprint customer and if their alternative is to go
23 to a CLEC whose rates are just about the same or comparable,
24 where has been the advantage to my customers --

25 A. Are you asking --

1 Q. -- my clients?

2 A. So you're saying before this proceeding, what

3 is the value to your customers?

4 Q. Kind of I guess you could say -- say what's in

5 it for them based on whatever competition has occurred to

6 date in those exchanges? What has that competition brought?

7 How has it benefited them?

8 A. I would say that the situation so far has been

9 beneficial to the customers in some of these exchanges -- I

10 don't want to say all of these exchanges, but in some of the

11 exchanges because it has allowed the CLEC to maintain a

12 customer base and to offer an alternative to the ILEC.

13 MR. DANDINO: That's all I have, your Honor.

14 JUDGE WOODRUFF: All right.

15 MR. DANDINO: Thank you, Mr. McKinnie.

16 Appreciate it.

17 JUDGE WOODRUFF: You had Exhibits 17, 18 and

18 19. Did you wish to offer them?

19 MR. DANDINO: I do not wish to offer them at

20 this time, but I will later.

21 JUDGE WOODRUFF: All right then. For Unite?

22 MS. LIPMAN REIBER: No questions.

23 JUDGE WOODRUFF: Fidelity?

24 CROSS-EXAMINATION BY MR. ROSS:

25 Q. Hello, Mr. McKinnie.

1 A. I believe it's still morning, so good morning.

2 Q. I promise I'll make it brief -- or attempt to
3 do so.

4 The Commission hasn't adopted and the
5 checklist that you mentioned in your testimony doesn't
6 provide for a quantitative or bright line test for
7 determining when market share loss is substantial. Correct?

8 A. Are you first asking me if the Commission has
9 adopted my checklist? There seemed to be multiple parts to
10 your question.

11 Q. Yeah. That's the first question. Has the
12 Commission adopted your checklist as an appropriate measure?

13 A. No. The checklist was something I created in
14 order that I could make my recommendations. And I presented
15 the criteria so the Commission would understand the basis
16 for my recommendations.

17 Q. And the Commission itself hasn't set forth a
18 bright line or quantitative test for determining when a
19 market share loss is substantial. Correct?

20 A. The Commission has not set forth any test,
21 that is correct.

22 Q. And isn't it true that in the Southwestern
23 Bell decision, that the Commission stated that neither
24 Section 392.245.5 nor Section 386.020.13 require any
25 quantitative market share lost test to determine whether

1 effective competition exists?

2 A. I believe that's familiar, but I -- if you can
3 point me towards the specific line of the order, I can give
4 you a better answer.

5 Q. Sure. I don't think the order has been
6 actually introduced into evidence yet, but do you have a
7 copy of the order?

8 A. Yes. But my pages may be numbered slightly
9 different than yours.

10 Q. Mine probably are too. I printed mine off the
11 Internet, so my pagination may differ from yours, but what I
12 have here is page 11, paragraph 2.

13 A. You're better off describing to me what's
14 around that page.

15 Q. Certainly. I'll find it. There's a section
16 titled Extent Services are Available from Alternative
17 Providers. And about two paragraphs up from that would you
18 read that first sentence for me, please?

19 A. Sure. Neither Section 392.245.5 nor Section
20 386.020.13 require any quantitative market share loss test
21 to determine whether effective competition exists for
22 Southwestern Bell's services in Missouri.

23 I would add that -- that it does go on to
24 address the issue further.

25 Q. Sure. Would you agree with that statement,

1 generally speaking?

2 A. The first statement?

3 Q. Yes. Sure.

4 A. Yes. But I would note that -- I mean, in our
5 analysis, you can't just look at any one issue itself. You
6 have to look at all the issues in combination with each
7 other.

8 Q. Sure. But doesn't the Commission also state
9 that market share loss is particularly determinative of the
10 extent to which alternative providers are available on the
11 market?

12 A. I don't believe that's exactly what that
13 sentence says. That is within a sentence, but I don't think
14 that that qual-- that that describes the sentence perfectly.
15 I believe the whole sentence is important. You can't just
16 look at that one clause.

17 Q. Sure. When you say that Fidelity has acquired
18 a substantial share of the market in Rolla, that's your
19 subjective opinion. Right?

20 A. It is my opinion when taking the other factors
21 into account.

22 Q. And because the term "substantial" is open to
23 interpretation, reasonable persons could disagree on what
24 constitutes a substantial share of the market. Correct?

25 A. When taking the other factors into account or

1 just by itself?

2 Q. Let's take it by itself first.

3 A. I don't wish to take it by itself. I don't

4 think that's the proper way to analyze the exchange.

5 Q. Well, my question is, looking at the term

6 "substantial" and what constitutes substantial market share

7 loss, reasonable persons could disagree on what that number

8 may be?

9 A. When looking at the other factors?

10 Q. By itself in isolation.

11 A. I -- I don't -- again, as I stated, I don't

12 believe that that is the proper way to look at it.

13 Q. Okay.

14 A. If you -- if you were to incorrectly analyze

15 the market, are you asking me that question?

16 Q. Sure. Let's start off with my incorrect

17 analysis of the market. Looking at it -- we'll get to your

18 side, trust me.

19 A. Sure.

20 Q. We'll get to your side. If we were looking at

21 it in isolation, reasonable persons could disagree on what

22 constitutes a substantial share of the market?

23 A. If you were to take that position, I

24 understand how certain people could disagree about what the

25 term "substantial" means in describing market share. If you

1 were to take that position, which I would not.

2 Q. And it's your position that you look at market
3 share in combination with all these other factors?

4 A. That is true.

5 Q. And would you agree that, in your view, when
6 you look at market share in combination with all these other
7 factors, that reasonable persons could disagree on what
8 constitutes a substantial loss in the market?

9 A. When taking the other factors into account?

10 Q. Sure.

11 A. I mean, people can disagree about just about
12 anything, I mean, depending on all sorts of other criteria
13 and depending on how they interpret other criteria,
14 depending on what criteria they're knowledgeable of and what
15 they consider to be important.

16 Q. And I understand your recommendation in this
17 case, Mr. McKinnie, but would it be reasonable for the
18 Commission to say 25 percent of the market share in Rolla is
19 not substantial, we're going to require 30, 35 or 40
20 percent?

21 A. I do not recommend the Commission look at
22 market share in and of itself.

23 Q. Would it be reasonable for the Commission to
24 say that looking at all the other factors? Could they
25 arrive at that decision and it still be a reasonable

1 decision in this case?

2 A. I don't believe it's wise for the Commission
3 to create a bright line such as -- such as you have
4 described. I would not recommend that to the Commission.

5 Q. I'm not suggesting that they create a bright
6 line. I guess what I'm suggesting is that could the
7 Commission, looking at the evidence in the Rolla exchange,
8 conclude reasonably that 25 percent of the market share when
9 taken in account with the other factors is not substantial?

10 A. I would not recommend that they come to that
11 conclusion, therefore, by that definition -- I mean, it --
12 it really turns on what you mean by reasonable. I would not
13 recommend the Commission come to that conclusion and that's
14 really all I can tell you. I can't speak for the
15 Commission.

16 Q. Were you privy to the confidential market
17 share loss data in the Southwestern Bell case?

18 A. You mean was it accessible to me?

19 Q. Yeah. Was it accessible to you?

20 A. I mean, as a Staff member, I do have the
21 ability to look at that information.

22 Q. Do you know sitting here today if Fidelity's
23 market share in Rolla is lower than the market share of any
24 of the CLECs in any of the Southwestern Bell exchanges found
25 by the Commission not to be subject to effective

1 competition?

2 MS. CREIGHTON HENDRICKS: Your Honor, on this
3 point I do make an objection. My understanding is that the
4 precise information out of that proceeding, there were
5 protective orders signed that limit the use of that
6 information to that proceeding and my witnesses did not have
7 that specific information available to them because of the
8 limitations on the use of the market share information from
9 SBC.

10 MR. ROSS: No. But Staff's witnesses
11 certainly have that information available and I'm just
12 asking if he's aware.

13 MS. CREIGHTON HENDRICKS: I think he's asking
14 more. He's asking his awareness and to take his knowledge
15 of those opinions and make an opinion in this case. And I
16 do not think you can take highly confidential information
17 from another docket and just transport it through asking a
18 question of a Staff witness into another case. There's
19 limitations on what you can do with highly confidential
20 information developed in one case.

21 MR. ROSS: I'm not asking he make an opinion
22 on the information. I'm just asking if he reviewed that
23 information.

24 MS. CREIGHTON HENDRICKS: I think it's whether
25 or not the information available to him in that case, taking

1 his knowledge and measuring it against the market share that
2 is currently being evaluated in this case as I understood
3 the question.

4 JUDGE WOODRUFF: I believe it is calling for
5 his knowledge of highly confidential information from
6 another case. On that basis, I'm going to sustain the
7 objection.

8 BY MR. ROSS:

9 Q. Okay. In your Surrebuttal Testimony, you
10 state that Fidelity is providing telephone in Rolla using
11 some of the same facilities its facility uses to provide
12 cable television service, thus, mitigating some of the
13 initial cost of building out a network. Correct? That's
14 your Surrebuttal Testimony, page 3, lines 20 through 22.

15 A. Yes. I just wanted to make sure that was
16 exactly what I said. Yes.

17 Q. But you acknowledge that Fidelity is not --
18 cannot currently reach all customers in the Rolla exchange
19 using its own facilities. Right?

20 A. Yes. I acknowledge that.

21 Q. Do you have any idea of the approximate number
22 of percentage of customers that Fidelity can reach using its
23 own facilities?

24 A. I can look at your -- I can look at your
25 market share and come up with a baseline -- a baseline

1 estimate. But in and of itself, no, I do not know the exact
2 count.

3 Q. Fidelity Cable Vision, Fidelity cable
4 television services affiliate that you're referencing or
5 alluding to in your testimony has a franchise to operate
6 only within the City of Rolla, correct, and not within the
7 entire Rolla exchange, if you know?

8 A. I am not -- I am not certain.

9 Q. Okay.

10 A. With that -- I mean, if you want to bring that
11 to my attention, that's one thing.

12 Q. Do you think it's in your testimony?

13 A. Do I think it's in my testimony?

14 Q. Right.

15 A. Allow me to re-examine my Rolla testimony
16 before I --

17 Q. Sure.

18 A. I wrote a lot of things. I do not see any
19 mention of the Rolla license in my Rebuttal Testimony.

20 Q. But you don't know if -- do you know if
21 Fidelity has a cable franchise outside the City of Rolla?

22 A. I don't believe it's overly -- overly
23 pertinent, so no, I don't. I did not make that
24 investigation.

25 Q. To the best of your knowledge, does any

1 Fidelity affiliate provide cable services in the St. Robert
2 exchange?

3 A. It is my understanding that they do not.

4 MR. ROSS: Thank you. That's all I have.

5 JUDGE WOODRUFF: All right. For Sprint?

6 MS. CREIGHTON HENDRICKS: Your Honor, I have
7 the Exhibit 15, which I believe 15 is the Findings of Facts
8 and Conclusions of Law -- excuse me.

9 JUDGE WOODRUFF: The Circuit Court decision, I
10 believe.

11 MS. CREIGHTON HENDRICKS: Is that 17?

12 JUDGE WOODRUFF: That would be 15.

13 (EXHIBIT NO. 15 WAS MARKED FOR
14 IDENTIFICATION.)

15 JUDGE WOODRUFF: All right. I believe you
16 offered 15 yesterday, so at this time is there any objection
17 to receiving of Exhibit 15 into evidence?

18 Hearing none, it will be received into
19 evidence.

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

21 JUDGE WOODRUFF: Mr. Haas, you wish to be
22 heard?

23 MR. HAAS: Your Honor, would you like to mark
24 the Report and Order in Case No. TO-2001-467 at this time?

25 JUDGE WOODRUFF: Yes. Let's do that now.

1 That's Exhibit 20.

2 (EXHIBIT NO. 20 WAS MARKED FOR
3 IDENTIFICATION.)

4 JUDGE WOODRUFF: Okay. Exhibit 20 has been
5 offered by Staff. Are there any objections to its receipt?
6 Hearing none, it will be received into
7 evidence.

8 (EXHIBIT NO. 20 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE WOODRUFF: All right. You can proceed
10 with your cross-examination.

11 CROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

12 Q. Good morning.

13 A. Good morning. Yeah, it's still morning. Good
14 morning.

15 Q. Just for the record, Fidelity is an ETC or
16 certified Eligible Telecommunications Carrier in Rolla; is
17 that correct?

18 A. Yes. That is correct.

19 Q. I'd like to talk to you a little bit about
20 your recommendation for operator service. And, as I
21 understand it, with the exception of the local exchanges
22 where you're recommending that effective competition be
23 found, Staff is not recommending that Sprint's operator
24 service be found subject to effective competition; is that
25 correct?

1 A. That's a correct characterization of my
2 recommendation.

3 Q. Now, you, in your testimony, have cited an
4 earlier case by the Commission which looked at Southwestern
5 Bell's operator service in connection with the request to
6 find it transitionally competitive; is that correct?

7 A. I looked at that case in order to determine
8 guidelines for substitutability. I did not look at that
9 case, I mean, to talk about the transitionally competitive
10 nature of operator services.

11 Q. And the question that the Commission answered
12 in that case was whether or not Southwestern Bell's operator
13 service offered as an incumbent provider was substitutable
14 for the operator services offered by interexchange
15 companies; is that correct?

16 A. I believe that was at issue in that case.

17 Q. And the Commission found in the affirmative
18 that Southwestern Bell's operator service was substitutable
19 for the operator services offered by interexchange
20 companies; is that correct?

21 A. I know the issue was examined. If you can
22 point to me exactly where the conclusion was reached -- I
23 mean, I had read through the order, but I would like to be
24 absolutely sure before I make a response.

25 Q. Before I direct you to pages in the order, I

1 would like to reserve an exhibit number, I believe it's 21.

2 MS. CREIGHTON HENDRICKS: And I'll either move

3 for administrative notice of the Commission's decision or

4 secure a copy. Unfortunately, my copy is all written upon,

5 but I would like to -- I will be moving for introducing into

6 the record a copy of the Commission decision.

7 BY MS. CREIGHTON HENDRICKS:

8 Q. Now, once again, I have a copy that was

9 printed off the Internet and it has 18 pages. And I'd like

10 to reference you to page 14. And it's a conclusion that

11 appears in a paragraph right above a section called

12 Rate-making Treatment.

13 A. I believe our -- I believe our pages are

14 numbered differently again. I have -- just make sure we're

15 talking about the same order, we're talking about TO-93-116?

16 Q. Yes.

17 A. Okay. What did the heading say again?

18 Q. There's -- it's the paragraph right above the

19 heading Rate-making Treatment.

20 A. Okay. I see a heading marked Operator

21 Services. Do you know where it is in reference to that?

22 Q. Right at the end of that section.

23 A. Okay. I do see Rate-making Treatment.

24 Q. And the paragraph right above that?

25 A. Yeah. I mean, I see the paragraph.

1 Q. Okay. Does that paragraph refresh your
2 recollection or communicate to you that the Commission found
3 the operator services of Southwestern Bell to be
4 substitutable for those of interexchange carriers?

5 A. Yes. It does say that based on the criterion
6 discussed above, which demonstrates that IXC operator
7 services in SWBT or S-W-B-T operator services are
8 substitutable, the Commission will classify these services
9 as TC, which mean transitionally competitive.

10 Q. Okay. And in that case the Commission made
11 that designation without designating local service in a
12 similar fashion; is that correct?

13 A. It is my understanding that local service was
14 not a plan in that order, in that case.

15 Q. And, furthermore, in reaching the conclusion
16 that the operator service of the incumbent, Southwestern
17 Bell, was substitutable for that of the IXCs, didn't the
18 Commission indicate that the manner in which you dialed to
19 reach the operator service did not preclude a finding of
20 substitutability?

21 A. I do know that the dialing disparities were
22 discussed. And I think I do see -- I think I do see what
23 you're referring to. I mean, it says, This additional
24 element -- this additional element in operator service calls
25 provides additional support for the Commission's finding

1 that dialing disparities between the IXC and SWB services
2 are not determinative of whether the services are
3 substitutable.

4 It does talk about that.

5 MS. CREIGHTON HENDRICKS: And, your Honor, for
6 the record, Exhibit 21 is the Commission's decision in Case
7 TO-93-116 on the date -- date of December 21st, 1992 in the
8 case captioned in the matter of Southwestern Bell Telephone
9 Company's application for classification of certain services
10 as transitionally competitive.

11 And at this time I would move for
12 administrative notice of the decision.

13 JUDGE WOODRUFF: Okay. I'm going to ask you
14 to offer it as an exhibit just so it's clear in the record,
15 so that it's available to everybody to look at it. I'll
16 give you an opportunity to provide a copy of it later just
17 like we did with the earlier Report and Order.

18 MS. CREIGHTON HENDRICKS: I do want to move --
19 because there's a possibility I may not get it copied before
20 the conclusion of the hearing today. Can I move for its
21 admission into the record at this point in time?

22 JUDGE WOODRUFF: Okay. Exhibit 21 has been
23 offered into evidence. Is there any objection to its
24 receipt or -- all right.

25 Hearing no objections, it will be received

1 into evidence.

2 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

3 JUDGE WOODRUFF: And you'll provide copies

4 later?

5 MS. CREIGHTON HENDRICKS: Yes, your Honor.

6 BY MS. CREIGHTON HENDRICKS:

7 Q. Now, Mr. McKinnie, you've also testified that

8 Sprint did not provide any Missouri-specific wireless

9 information; is that correct?

10 A. Yes. That's in my testimony.

11 Q. Okay. If I could direct your attention -- and

12 let me step back.

13 Do you have available to you, as you sit

14 there, the testimony provided by Mr. Harper and Mr. Idoux?

15 A. It -- yes, I do.

16 Q. Could I direct your attention to Schedule 3 of

17 Mr. Harper? And schedule --

18 A. Which round of testimony?

19 Q. The Direct Testimony.

20 A. I just have them, you know, in separate

21 bundles, so --

22 Q. Correct.

23 A. I have Harper's Direct Testimony. Is there

24 any other schedules you want me to get while I'm --

25 Q. While you're fishing? Fifteen of Mr. Idoux's,

1 which is on his Direct Testimony.

2 A. Mr. Idoux's schedules are rather lengthy, but

3 I do believe I have them.

4 Q. On Schedule 3 of Mr. Harper's testimony, if

5 you turn to the first page, I believe you find a description

6 of a wireless calling plan that is available; is that

7 correct?

8 A. I mean, it's a page from a Nextel website that

9 does discuss several plans.

10 Q. And does it indicate that it's available in

11 zip code 65109?

12 A. Yes, it does.

13 Q. Okay. Do you recognize that as a Jefferson

14 City zip code?

15 A. Yes, I do.

16 Q. Now, if you turn to Mr. Idoux's Exhibit 15, do

17 you see where it indicates the wireless plans are available

18 in Rolla, Kearney and other locations?

19 A. Upon which page of his schedule?

20 Q. I think on the first page you should be able

21 to flip through it as the pages go through. Usually it's

22 listed at the top.

23 A. I mean, I do -- the first page talks about a

24 Kansas City regional rate plan. The third page discusses a

25 Mid-Missouri Cellular -- I guess a series of plans where

1 they list the area code of the company belonging in Sedalia,
2 Missouri.

3 Q. So you recognize those as plans available in
4 Missouri?

5 A. This plan doesn't -- this plan doesn't say
6 specifically, but I mean, it is Mid-Missouri Cellular. I
7 mean, I can understand why -- you know, I mean, they would
8 probably want to offer that plan within Missouri.

9 Q. Now, I would like to just have a brief
10 conversation with you about your recommendation as far as a
11 finding of effective competition in the local exchanges.
12 Now, I am correct that Staff agrees that there is effective
13 competition in the Norborne, Kearney and Rolla exchanges; is
14 that correct?

15 A. That is -- that is Staff's recommendation,
16 that the Commission find there to be effective competition
17 in those three exchanges.

18 Q. And then with respect to Platte City and
19 St. Roberts, Staff is not making that recommendation; is
20 that correct?

21 A. Staff is making the recommendation that there
22 is currently no effective competition in either Platte City
23 or St. Roberts exchanges.

24 Q. Is that based primarily on the fact of the
25 customer loss that has not been experienced to date by

1 Sprint?

2 A. It's based on a combination of factors, as I
3 was discussing earlier with the -- I forget the Fidelity
4 lawyer's last name, but when I was discussing it with him.
5 We were discussing the fact that you can't look at any one
6 service individually. You have to look at a combination of
7 services and a combination of factors.

8 Q. You wouldn't deny that there's an alternative
9 provider present in the exchange, is that correct, in Platte
10 City and St. Robert?

11 A. In the Platte City exchange there are some
12 customers that do have the option of choosing a non-Sprint
13 facilities-based carrier, yes. In the St. Robert exchange,
14 I do believe that there are some customers who did have
15 access to a facilities-based carrier.

16 Q. And you wouldn't deny in those exchanges that
17 the services are either functionally equivalent or
18 substitutable that are being offered by that alternative
19 provider?

20 A. I would not deny that for the -- for those
21 customers who are receiving the service.

22 Q. And do you deny that the rates are offered at
23 a lower rate?

24 A. I believe I testified that they are
25 comparable.

1 Q. Okay. And you would agree that there are no
2 barriers to entry in St. Robert and Platte City; is that
3 correct?
4 A. No. I do not believe that -- that there are
5 any economic or regulatory barriers to entry into those
6 areas.
7 MS. CREIGHTON HENDRICKS: No further
8 questions.
9 JUDGE WOODRUFF: All right. I have no
10 questions from the Bench so there's no need for recross.
11 Redirect?
12 REDIRECT EXAMINATION BY MR. HAAS:
13 Q. Good morning, Mr. McKinnie.
14 A. Good morning, Mr. Haas.
15 Q. Mr. Dandino asked you several questions about
16 the HHI index. Do you have Ms. Meisenheimer's testimony
17 with you today?
18 A. Yes, I do.
19 Q. And would you please turn to the HHI
20 guidelines that are attached to her testimony?
21 A. I'm there.
22 Q. And who prepared those guidelines?
23 A. I mean, the guidelines are prepared by the --
24 it says the US Department of Justice and the Federal Trade
25 Commission.

1 Q. Mr. Dandino also asked you about the Staff's
2 position on pay phone services. Were pay phone services a
3 line item in the Southwestern Bell case?
4 A. No, they were not.
5 Q. Were pay phone services addressed in the
6 Southwestern Bell case?
7 A. If they were addressed at all, they were
8 lumped into the business access line related services.
9 Q. And what was the Commission's decision in the
10 Bell case regarding the business access line related
11 services?
12 A. That the business access line related services
13 could be declared competitive where the business local
14 exchange was competitive -- basic local was competitive.
15 Q. Mr. Dandino had also asked you about customer
16 premise equipment. What, if anything, did the Commission
17 say about premise equipment in the Southwestern Bell case?
18 A. The Commission said that it could be
19 considered as an alternative -- as a substitutable service.
20 Q. Under which of the five factors?
21 A. It would -- I believe it was in the fifth
22 factor.
23 Q. Mr. Dandino also asked you about MCA. What
24 did the Commission find regarding optional MCA service in
25 the Southwestern Bell case?

1 A. The Commission found that in the St. Charles
2 and Harvester exchanges where the residential basic local
3 service had been declared competitive, that then the MCA
4 service could be declared competitive.

5 Q. Ms. Creighton Hendricks asked you about the
6 substitutability of operator services for those provided by
7 interexchange service -- interexchange carriers. Is
8 substitutability the only factor in determining whether
9 Sprint faces effective competition for its operator
10 services?

11 A. No, it is not.

12 Q. What are the other factors?

13 A. If you look at 386.020.13, it lists all of the
14 factors, of which substitutability is only one of them.

15 Q. And do you think that there are factors that
16 weigh against a finding of effective competition for
17 Sprint's operator services?

18 A. Certainly. There are definitely other factors
19 as noted in my testimony under the service -- under the
20 section marked Operator Services.

21 Q. And, in your opinion, what are those factors
22 that weigh against a finding of effective competition for
23 Sprint's operator services?

24 A. I would say that if -- if one of the reasons
25 that we're going to have effective competition -- let me

1 turn to it specifically so I can -- I can quote directly
2 from here.

3 We do -- we do talk about -- the Staff --
4 Staff, myself, I -- I do talk about the price disparity
5 between the IXC services and the service -- and the price of
6 the services for the operator services for the interexchange
7 carriers and the prices that Sprint does charge. And I also
8 mention how -- I mean, Sprint has not provided any
9 Missouri-specific information about customer usage patterns
10 for obtaining operator services.

11 Q. How do Sprint's operator service rates compare
12 to those of the interexchange carriers?

13 A. I would say that they are -- that they're much
14 lower, that the IXC rates are five or six times greater than
15 Sprint.

16 MR. HAAS: Thank you. That's all my
17 questions.

18 JUDGE WOODRUFF: All right. Mr. McKinnie, you
19 can step down.

20 And it's almost time for lunch so we'll go
21 ahead and break for lunch now.

22 Did you want to be recognized on something?

23 MS. CREIGHTON HENDRICKS: No.

24 JUDGE WOODRUFF: You looked like you were
25 anxious to pop up.

1 MS. CREIGHTON HENDRICKS: Always anxious to
2 pop up, but not to be recognized again.

3 JUDGE WOODRUFF: Well, with that then, we'll
4 break for lunch and come back at one o'clock.

5 (A RECESS WAS TAKEN.)

6 JUDGE WOODRUFF: We're back from lunch.
7 During lunch I had a conversation with a couple of the
8 Commissioners and they send their regrets that they're going
9 to be tied up in agenda for at least most of the afternoon.

10 They had a couple things they wanted me to
11 bring up. The first item involves Exhibit 16 that was
12 presented yesterday. And Commissioner Gaw wanted to have
13 some more information about that and specifically which ones
14 of these prices relate to the services that the company's
15 asking to have classified as competitive.

16 I'm not sure who can provide that information,
17 but some time before the end of the day we'll bring somebody
18 up to the stand to give us that information. Who's still
19 here for Sprint?

20 MS. CREIGHTON HENDRICKS: That would be
21 John -- Mr. Idoux is here, and he should be able to respond
22 that question.

23 JUDGE WOODRUFF: We'll bring him up later
24 than.

25 Then they had some other questions also for

1 Staff's witness, so we'll bring him up to the stand later
2 too. I'm sure he'll be sticking around anyway, so we'll
3 deal with that a little bit later. And it's possible that
4 the Commissioners may be able to get down here before the
5 end of the day.

6 All right. Then let's go ahead and get
7 started with Ms. Meisenheimer.

8 (Witness sworn.)

9 JUDGE WOODRUFF: All right. Mr. Dandino, you
10 can inquire.

11 MR. DANDINO: Thank you, your Honor.

12 BARBARA A. MEISENHEIMER testified as follows:

13 DIRECT EXAMINATION BY MR. DANDINO:

14 Q. Please state your name.

15 A. Barbara Ann Meisenheimer.

16 Q. And what is your position?

17 A. Chief economist with the Missouri Office of
18 the Public Counsel.

19 Q. Are you the same Barbara A. Meisenheimer that
20 prepared and caused to be filed Rebuttal Testimony in this
21 case which has been marked as Exhibit 8NP and HC?

22 A. Yes, I am.

23 Q. And are you also the same Barbara A.
24 Meisenheimer who prepared and caused to be filed Exhibit 9,
25 which is the Schedule BAM Rebuttal Schedule 4NP and 4HC?

1 A. Yes.

2 Q. And are you the same Barbara Meisenheimer that
3 prepared and caused to be filed Surrebuttal Testimony, which
4 has been marked Exhibit 10?

5 A. Yes, I am.

6 Q. Do you have any revisions to your Rebuttal
7 Testimony --

8 A. Yes, I do.

9 Q. -- involving reclassification of certain
10 confidential information as allowed by the Commission's
11 order?

12 A. On page No. 7, I do.

13 Q. Okay. Could you please go through each one of
14 those?

15 A. On lines 11, 12, 13 and 14 there are pieces of
16 information that have been identified as confidential.
17 Those can be treated as public information.

18 Q. Is there anything else?

19 A. I think that was it.

20 Q. Okay. Do you have any other corrections in
21 your Rebuttal Testimony?

22 A. Yes, I do. I have a correction on page 13, on
23 line 6. After the word "Kearney," I would like to add the
24 phrase "one in Rolla." Then on line 8 I would like to
25 replace the word "either" with the word "the." And then on

1 page 20, line 14 after the word "intra-exchange" I'd like to
2 add the word "basis."

3 JUDGE WOODRUFF: Now, I'm going to have to
4 interrupt here. I think we've -- I've run into this problem
5 before and I think I'm seeing it again in Ms. Meisenheimer's
6 testimony, is that the testimony as it appears in the
7 electronic system EFIS, the number pagination and line
8 numbers are not the same as what you're quoting, because
9 I've printed mine off of EFIS.

10 I'm not sure how we can correct that problem
11 at this point because I'm not seeing that on this line and
12 what I printed off of EFIS.

13 MR. DANDINO: Could she identify the sentence
14 and maybe read the sentence?

15 JUDGE WOODRUFF: Yes. I think that would be
16 advisable for all the changes you're making and make it
17 clear on the record.

18 MR. DANDINO: Should we just start over then?

19 JUDGE WOODRUFF: Please do that.

20 BY MR. DANDINO:

21 Q. Let's go back to the original.

22 A. On page 7 the question is, Do you believe the
23 Commission must decide this case by December 15th, 2003?

24 JUDGE WOODRUFF: Okay. I see that here.
25 Actually begins on line 22 of page 6 of what I printed off

1 here. Go ahead and explain what your correction is.

2 THE WITNESS: There are a number of pieces of
3 information that have been designated as confidential within
4 the context of the answer. Each one of those can be treated
5 as public information.

6 JUDGE WOODRUFF: Okay. That's lines 9 through
7 11 on page 6 my version.

8 THE WITNESS: Okay. I can't verify that.

9 MR. DANDINO: The last four lines of that
10 answer.

11 JUDGE WOODRUFF: I'm just saying that for the
12 record so if anybody's looking at the EFIS record.

13 BY MR. DANDINO:

14 Q. What was the next one?

15 A. It's on my version page 13, if that helps give
16 you an idea of the area. Then the question is, Please
17 summarize your conclusion on the status of competition in
18 Sprint exchanges in terms of the criteria for effective
19 competition listed in Section 386.020 part 13 RSMo.

20 JUDGE WOODRUFF: Yes. I see that.

21 THE WITNESS: Okay. In the first line of the
22 answer --

23 JUDGE WOODRUFF: Okay.

24 THE WITNESS: -- after the word "Kearney," I
25 would like to insert the phrase "one in Rolla."

1 JUDGE WOODRUFF: And again for the record,
2 that's line 4 on page 13 on my version.
3 THE WITNESS: Then two lines farther down --
4 BY MR. DANDINO:
5 Q. That would be the second sentence of that
6 answer?
7 A. Yes.
8 Q. Okay.
9 A. It begins with "however." I would not
10 consider -- I would like to replace the word "either" with
11 the word "the."
12 JUDGE WOODRUFF: Okay. Line 6 on page 13 of
13 my version.
14 THE WITNESS: And then the final one is on
15 page 20 of mine, however, I don't know what it will be on
16 yours. And it's a very -- it's a very long answer so I'm
17 looking for something that might help identify it.
18 As you go through my testimony, at one point
19 you will see a number of companies' names set off
20 individually including ExOp Fidelity, Green Hills --
21 JUDGE WOODRUFF: Yes.
22 THE WITNESS: -- if you go past that through
23 the next paragraph and then there is following that a
24 paragraph that begins, Extremely limited.
25 JUDGE WOODRUFF: Yes, I see it. It's page 20,

1 line 12 of mine.

2 THE WITNESS: Within that sentence after the
3 word "intra-exchange" I'd like to add the word "basis."

4 JUDGE WOODRUFF: That's line 13 on page 20.
5 Thank you.

6 BY MR. DANDINO:

7 Q. Is that all the corrections, revisions to your
8 Rebuttal Testimony, Exhibit 8?

9 A. Yes.

10 Q. And do you have any revisions to Exhibit 9?

11 A. No.

12 Q. Do you have any revisions to your Surrebuttal
13 Testimony?

14 A. No.

15 Q. Okay. As corrected and revised, is the
16 testimony contained in those exhibits and in the schedule
17 correct to the best of your information, knowledge and
18 belief?

19 A. Yes, it is.

20 Q. And if I were to ask you the questions that
21 are contained in that testimony here today, would your
22 answers be the same?

23 A. Yes, they would.

24 MR. DANDINO: At this time, your Honor, I'd
25 like to offer Exhibits 8NP and HC, Exhibit 10 and Exhibit 9,

1 which is Rebuttal Schedule No. 4NP and HC.

2 JUDGE WOODRUFF: Exhibits 8NP and HC, 9NP and

3 HC and Exhibit 10 have been offered into evidence. Are

4 there any objections to their receipt?

5 Hearing none, they will be received into

6 evidence.

7 (EXHIBIT NOS. 8NP, 8HC, 9NP, 9HC AND 10 WERE

8 RECEIVED INTO EVIDENCE.)

9 BY MR. DANDINO:

10 Q. Ms. Meisenheimer, do you have copies of

11 Exhibits 17, 18 and 19?

12 A. Yes, I do.

13 Q. Okay. Let's look at Exhibit No. 17 first.

14 Can you identify that document?

15 A. Yes, I can. This is an FCC report on the

16 long-distance telecommunications industry which I printed

17 down from the FCC website.

18 MS. CREIGHTON HENDRICKS: Your Honor, I'm

19 going to object to this. My understanding is Direct

20 Testimony had to be pre-filed and contained within the

21 pre-filed pleading. I'm not aware that the Commission

22 allows Direct Testimony to be elicited in the course of

23 submitting that Direct Testimony into the record.

24 JUDGE WOODRUFF: Response?

25 MR. DANDINO: Yes. Your Honor, I'm laying the

1 foundation under Section 536.070, subsection 9 for the
2 introduction of these documents. It is in direct -- these
3 documents, as shown in the testimony in cross-examination of
4 the Staff's witness, is in direct response to the
5 Surrebuttal of the testimony of Sprint's Witness Staihr and
6 the Surrebuttal Testimony of Staff Witness McKinnie.

7 Public Counsel did not have an opportunity in
8 its Direct or in its Rebuttal or even in its Surrebuttal to
9 respond to something -- to those statements. And I believe
10 the due process requires us to have an opportunity to rebut
11 that and to submit these documents at this time.

12 JUDGE WOODRUFF: Go ahead and respond.

13 MS. CREIGHTON HENDRICKS: As I understand the
14 Commission proceeding, it requires the pre-filing of Direct
15 Testimony in your affirmative case, it provides the
16 opportunity for Rebuttal Testimony, which was given to OPC,
17 to be pre-filed, contained within the pleading and then
18 it -- the Commission determined that any and every party
19 could surrebut the testimony, once again, pre-filed,
20 contained in your pleading.

21 The Commission rules don't afford for the
22 development of a direct testimony or additional testimony at
23 the time you present your witness. Mr. Dandino has the
24 opportunity to redirect based on cross-examinations and
25 Commission -- questions from the Commissioners, but the

1 rules do not afford him the opportunity to affirmatively put
2 in evidence through his witness that was not contained in
3 his pre-filed testimony.

4 MR. DANDINO: Your Honor, I don't think the
5 rule is that at all. The trial procedure is that you have
6 the opportunity to rebut evidence that has been adduced at
7 hearing. It was impossible for us to rebut evidence that
8 was not filed and was not presented until at this time.

9 When did we have an opportunity to file Direct
10 or Rebuttal Testimony or Surrebuttal Testimony that
11 responded to their Surrebuttal Testimony that was filed on
12 the same day ours would have been?

13 MS. CREIGHTON HENDRICKS: Your Honor, in
14 response to that, every party could have filed Rebuttal -- I
15 mean, Direct here. Ms. Meisenheimer was very familiar with
16 HHI at the point we filed Direct. She knew what the numbers
17 were, she could have done the analysis in her Direct if she
18 preferred, she could have done it in the Surrebuttal -- I
19 mean, in the Rebuttal if she preferred.

20 JUDGE WOODRUFF: My understanding,
21 Mr. Dandino, what you're responding to is what was in
22 Staff's Surrebuttal.

23 MR. DANDINO: Exactly. To Staff's and
24 Sprint's Surrebuttal and my cross-examination of this
25 witness -- you know, I cross-examined him on three different

1 documents. I could not lay a foundation with him because
2 I'm sure that witness could not say whether those documents
3 are true and correct originals, so I didn't bother to try to
4 do that. That would have been inappropriate.

5 Ms. Meisenheimer has first-hand evidence that
6 she produced these documents from the Internet and copied
7 them. And that's all we're trying to do is introduce these.
8 I don't intend to go on and on and ask her questions about
9 these documents.

10 I think I'm just trying to lay a basic
11 foundation to get those admitted into the record and give
12 counsel an opportunity to cross-examine her. If I wait for
13 redirect, they will have no opportunity to cross-examine her
14 on those documents.

15 JUDGE WOODRUFF: What you've brought up
16 certainly is a problem with the Commission's procedure. And
17 it's not limited to this case and I don't want to try and
18 make a ruling that's going to bind the Commission in all
19 future cases. Obviously I don't have the authority to do
20 that.

21 All right. I'm going to allow you to go ahead
22 and proceed in this case to make your -- to ask her
23 questions about these documents. I'm not going to make any
24 decisions until you've offered them as to whether or not
25 they're admissible obviously, but for the purposes of this

1 case and for purposes of due process -- because, as you
2 indicate, you do not have an opportunity to file written
3 testimony in response to Surrebuttal, I'm going to allow
4 this direct examination to take place in this case. Go
5 ahead.

6 BY MR. DANDINO:

7 Q. Let me reask the question. Exhibit 17, please
8 identify that document.

9 A. It is a report prepared and issued by the FCC
10 that reports on the long-distance telecommunications
11 industry --

12 Q. Would you --

13 A. -- both -- both domestic and international.

14 Q. Okay. Now, is that a publicly available
15 document?

16 A. Yes, it is. Anyone could go --

17 Q. Excuse me. Let me ask the question. Now, did
18 you cause this document to be downloaded and printed from
19 the Internet?

20 A. Yes, I did.

21 Q. And from what website?

22 A. The FCC website.

23 Q. And, to the best of your information,
24 knowledge and belief, is this a true and correct copy of the
25 document that was downloaded and printed from the FCC

1 website?

2 A. Yes.

3 Q. I'd like you to look at Exhibit 18. Please

4 identify that document.

5 A. This is another report by the FCC reporting on

6 the long-distance market.

7 Q. What's the title of that document?

8 A. The press release which is attached identifies

9 it, which is on the front, attach-- or identifies it as a

10 News Release and the FCC Releases Report on Long-distance

11 Market. And the next page identifies the name of the

12 report, which is Long-distance Market Shares, Fourth

13 Quarter, 1998.

14 Q. Okay. Is this a publicly available document?

15 A. Yes, it is.

16 Q. Is this a document that you caused to be

17 downloaded and printed from the Internet?

18 A. Yes.

19 Q. And what website did you discover this

20 document on?

21 A. The FCC website.

22 Q. And, to the best of your information,

23 knowledge and belief, is this a true and correct copy of the

24 document that you downloaded and printed off the Internet at

25 the FCC website?

1 A. Yes.

2 Q. I'd like you to look at Exhibit 19. Do you
3 have that?

4 A. Yes, I do.

5 Q. Okay. Can you please identify that document
6 by title?

7 A. The -- the title of this document is Comments
8 of the Staff of the Bureau of Economics and Competition and
9 of Policy Planning of the Federal Trade Commission.

10 Q. Is this a publicly available document?

11 A. Yes, it is.

12 Q. Is this a document that you caused to be
13 downloaded and printed from the Internet?

14 A. Yes, it is.

15 Q. And what website, if any, did you obtain that
16 from?

17 A. The Federal Trade Commission's website.

18 Q. To the best of your information, knowledge and
19 belief, is this a true and accurate copy of the document
20 that you downloaded and had printed from the Federal Trade
21 Commission website?

22 A. Yes.

23 MR. DANDINO: Your Honor, at this time I'd
24 like to offer Exhibits 17, 18 and 19.

25 JUDGE WOODRUFF: Exhibit 19, although it says

1 it's before the Arkansas Public Service Commission, is
2 actually a document that was prepared by the FCC; is that --
3 THE WITNESS: It's comments.
4 JUDGE WOODRUFF: Comments to the Arkansas
5 Commission?
6 THE WITNESS: Comments to the Arkansas
7 Commission by the Federal Trade Commission.
8 JUDGE WOODRUFF: Okay. Go ahead.
9 MS. CREIGHTON HENDRICKS: Your Honor, I just
10 raise the objection that you have previously overruled with
11 respect to all three documents.
12 JUDGE WOODRUFF: Well, the previous objection
13 was as to the procedure of whether or not to be hearing on
14 them. What's your specific objection as to the document?
15 MS. CREIGHTON HENDRICKS: Well, that's for
16 each one of them. I also question whether or not the
17 relevancy of these documents have been established.
18 Authentication may have occurred, but I did not hear the
19 relevance of the documents established.
20 And when we get to the relevance, I do believe
21 that that is where we get into an area that is unfair to
22 allow them to do at this juncture in the context of a
23 getting Direct pre-filed testimony into the record.
24 JUDGE WOODRUFF: Let me ask a couple of
25 questions about relevance as well. These indicate that

1 they're dealing with the long-distance market, I believe.
2 What is the relevance of these documents to this proceeding?

3 MR. DANDINO: Mr. McKinnie on
4 cross-examination had testified that he did not -- to the
5 extent that the FCC -- he didn't know of any FCC report that
6 used the HHI factor. And we specifically made it to
7 telecommunications, not specifically local.

8 Therefore, I'm showing him a copy in order to
9 impeach his testimony and his -- and further, your Honor, on
10 No. 18 on page 17, which is Table 3.3, it talks about market
11 share based on total operating revenues of long-distance
12 carriers and total toll revenues for local exchange
13 carriers. So I think at least it has some relevancy to it.

14 JUDGE WOODRUFF: So its purpose is the
15 impeachment of Staff's witness; is that --

16 MR. DANDINO: Impeachment of Staff's witness
17 certainly. I'm not introducing any of these -- never mind.
18 All I'm doing is I'm trying to impeach the witness in
19 showing that his answer was incorrect.

20 JUDGE WOODRUFF: That, in fact, there are
21 reports from the FCC that uses --

22 MR. DANDINO: Right. And, furthermore, on
23 Exhibit 19 it's relevant to the extent that it is the
24 guidelines that are used, the Department of Justice and
25 Federal Trade Commission's guidelines, which was part of

1 Ms. Meisenheimer's testimony.

2 One of the objections raised with the use of
3 the HHI by Dr. Staihr was that it doesn't reflect dominance
4 or doesn't measure dominance. In the comments of the Staff
5 of the Federal Trade Commission, it specifically talks about
6 potential market dominance by a single firm and Mr. McKinnie
7 affirmed that's exactly what it said.

8 So, your Honor, I think it's very relevant at
9 least for purposes of impeachment and I think that the
10 Commission can take whatever weight they want to, but I
11 certainly think it is admissible and material and relevant
12 to this proceeding.

13 JUDGE WOODRUFF: Mr. Haas was up first, then
14 I'll come back to you. All right, Mr. Haas?

15 MR. HAAS: Yes. I would join in with what
16 Ms. Creighton Hendricks said, that no other party in this
17 case gets a fourth round of testimony. I mean, we didn't
18 get the opportunity to present new live testimony to rebut
19 what other witnesses had said in their Surrebuttal.

20 I would join in the question -- or the
21 objection as to relevancy of these exhibits to the effective
22 competition in Sprint territories. These documents do not
23 impeach or attempt to impeach Staff Witness McKinnie. He
24 said he wasn't aware of any, he's not aware of any. That
25 Ms. Meisenheimer believes that she's aware of some documents

1 does not impeach my witness.

2 MS. CREIGHTON HENDRICKS: And I would agree on
3 the impeachment point. I think the testimony by
4 Mr. McKinnie was that he was not aware of, not that they
5 didn't exist, but that he simply was not aware. I do not
6 believe that we're establishing that statement has been
7 impeached.

8 Second, I do think there's a question about
9 relevancy. To the extent the HHI has been performed by
10 Mrs. Meisenheimer, it's solely been performed on the local
11 markets, not the toll market, not in the exchange market.
12 So I do not believe that the relevancy of the documents
13 marked Exhibits I think 17 through 19 have been established.

14 MR. DANDINO: Your Honor, impeachment is
15 always relevant. And whether or not counsel believes that
16 impeaches the witness, it certainly has a bearing on his
17 credibility and his expertise.

18 And I think it's up to the Commission to weigh
19 this evidence to determine whether or not they feel that
20 this impeaches the witness or has any effect on his
21 credibility. But impeachment and the credibility of the
22 witness is always relevant in a proceeding.

23 Secondly, I am not getting another round of
24 testimony. I have kept the questions to qualifying these
25 documents to the barest minimum required under Section

1 536.070, trying just to establish where the documents came
2 from and that they are true and accurate copies of the
3 original documents. I think at the minimum, I am -- I
4 probably am required to produce that type of testimony in
5 order to introduce this impeachment testimony.

6 JUDGE WOODRUFF: Okay. Well, this is
7 certainly a most unusual situation and I'm not sure how else
8 you could have got the documents in either. You could have
9 possibly offered them at the time that the Staff's witness
10 was on the stand, but that might have drawn objections at
11 that time as well.

12 I'm not convinced that the documents are
13 terribly relevant, certainly not relevant for the
14 information that are contained in them as to what the FCC's
15 policies are and there's not been any foundation laid for
16 that.

17 However, I think they are relevant to rebut
18 the testimony of Staff's witness and I will admit them for
19 that limited purpose. So for that limited purpose, 17, 18,
20 19 will be admitted into evidence.

21 (EXHIBIT NOS. 17, 18 AND 19 WERE RECEIVED INTO
22 EVIDENCE.)

23 MR. DANDINO: At this time I'd like to tender
24 the witness for cross-examination.

25 JUDGE WOODRUFF: All right. And for

1 cross-examination, we begin with Unite.

2 MS. LIPMAN REIBER: Unite has no questions of
3 this witness.

4 MR. DANDINO: Okay. Actually, we should have
5 started with Staff anyway, so for Staff then.

6 CROSS-EXAMINATION BY MR. HAAS:

7 Q. Good afternoon, Ms. Meisenheimer.

8 A. Good afternoon.

9 Q. Would you please turn to page 13 of your
10 Rebuttal? And if I could direct your attention to the
11 testimony beginning on line 6, that testimony that you
12 revised.

13 A. Yes.

14 Q. And it says, With respect to basic local
15 service, Sprint faces a single competitor in Kearney, one in
16 Rolla, and another single competitor in Norborne that have
17 been effective in winning customers by deploying alternative
18 facilities; however, I would not consider the market to be
19 effectively competitive because with only two firms
20 controlling the lion's share of the market, it is still
21 highly concentrated and does not provide sufficient
22 assurance against the exercise of market power.

23 In doing your analysis and in reaching your
24 conclusions, did you consider resellers in your analysis of
25 effective competition for basic local service?

1 A. I considered it -- I considered it, I used it
2 for some purposes and after considering it, feeling that it
3 was not significant, did not use it for other purposes in
4 developing my testimony.

5 Q. Did you consider CLECs which use unbundled
6 network elements in your analysis of effective competition
7 for basic local services?

8 A. When you -- I -- when you ask me if I used it
9 in my analysis, did I use it in calculating the HHI number?
10 No. Did I use it in my analysis at -- for some purpose?
11 Yes.

12 Q. And what weight did you give to any CLECs
13 using unbundled network elements?

14 A. Unbundled network elements, in theory, are a
15 way by which an alternative provider can put together either
16 end-to-end or put together in conjunction with the use of
17 partially their own facilities to provide service. That is
18 a more robust form of competition than pure resale would be
19 and significantly better than something like a prepaid
20 service where the customer's denied certain components of
21 the service.

22 So I -- I did give weight to the use of
23 unbundled network elements and the FCC's interpretation of
24 the use of either full or partially facilities-based. They
25 don't draw the distinction that I guess the Staff has.

1 Q. In your opinion, how many firms would need to
2 control the lion's share of the market in Rolla or Kearney
3 or Norborne for there to be effective competition? You say
4 that two are not enough.

5 A. That's correct. I do say that two is not
6 enough in this instance. My analysis did not hinge on a
7 specific number; however, generally more is preferable. My
8 analysis took into account based on my experience and my
9 knowledge a number of factors upon which I based my
10 recommendation that in this case two is not enough.

11 Q. Would three be enough in Kearney?

12 A. At this point, I do not think it would.

13 Q. Would four be enough in Kearney?

14 A. At some point I would need more information
15 regarding your assumptions regarding the share of the market
16 that they controlled, the method by which they provide, the
17 array of services with -- that they offer.

18 I don't think you can simply look at one
19 factor or another factor and say that you've -- you've met
20 the threshold. You have to look at all relevant factors.
21 And I don't think that a question of exactly how many there
22 are sufficiently addresses all the assumptions that should
23 go into that kind of a determination.

24 Q. In your opinion, is it financially feasible
25 for there to be three firms -- I'm going to say

1 facilities-based firms in the Kearney exchange?

2 A. It would depend on if you were limiting the
3 assumption to a wireline service. I mean, the question -- a
4 question that I could answer fully would not be as simple as
5 that.

6 Q. How about if we look at a smaller exchange?
7 In your opinion, is it financially feasible for there to be
8 three facilities-based CLECs in the Norborne exchange?

9 A. Once again, my -- my initial reaction would be
10 that, no, it probably would not at that point hit a level.
11 And considering market share is one relevant factor, but
12 then in considering other factors that might be relevant in
13 either supporting or countering the concept of just what the
14 market share distribution is, I -- I think you'd need to
15 have other assumptions for me to consider for me to be able
16 to pick an exact number.

17 If it would be helpful, I'm happy to tell you
18 that the more competitors and the more evenly distributed
19 the market share becomes, the more likely it's going to be
20 to be that I would, after reviewing all relevant or all
21 information that I had available or felt was relevant, to --
22 it would be more likely that I -- that I would support a
23 competitive classification.

24 Q. Do you have a copy of the Report and Order
25 from Case No. TO-2001-467?

1 A. I do.

2 Q. Would you please turn to page 33? And do you
3 see the heading Conclusions of Law?

4 A. Yes, I do.

5 Q. Would you read the sentence under that out
6 loud, please?

7 A. Yes.

8 MR. DANDINO: Your Honor, I'm going to object
9 to this line of cross-examination on this case. This case,
10 even though it's been decided by the Circuit Court, is not
11 final. And Southwestern Bell has filed a bond to appeal
12 this, so it should be subject to appeal.

13 I think until this is a final decision, that
14 it is irrelevant to this case. And I think it is very
15 inappropriate to cross-examine a witness who is -- about a
16 case that is not final, about a decision that is not final.

17 JUDGE WOODRUFF: Response?

18 MR. HAAS: Well, let me ask a different
19 question and see if it draws an objection.

20 BY MR. HAAS:

21 Q. How many cable, telephony facilities are there
22 in the St. Charles and Harvester exchanges?

23 A. To my knowledge, one. However, I do not
24 believe that is the full extent to which the Commission
25 based its decision in that case. And I would be happy to

1 provide you with other areas of the order where I think that
2 there is evidence that they did not simply rely on one.

3 Q. Would you turn to page 13 of your Rebuttal
4 Testimony?

5 A. I'm there.

6 Q. And in the final sentence on that page, part
7 of the sentence reads, Public Counsel agrees that allowing a
8 competitive classification is appropriate for toll services
9 other than those provided on a flat-rate unlimited usage
10 basis. What is the basis for your objection to flat-rated
11 unlimited toll services being classified as competitive?

12 A. The way in which flat-rated unlimited toll
13 services may be provided, may allow an incumbent to be able
14 to provide the service at a price with explicit costs below
15 what a competitor for that toll service could provide that
16 service for in terms of cost because of the issue of access.

17 And so that is one reason with respect to flat
18 rate -- flat-rate unlimited use plans. So it becomes an
19 issue of -- of costing or cost shifting potential or
20 under-cutting the prices that a competitor could reasonably
21 offer for. So those are some considerations.

22 In addition, with respect to flat-rate
23 unlimited use plans, Public Counsel has a number of cases
24 indicated that we believe that the Commission may need to
25 act to ensure the availability of a service where that

1 service is not otherwise provided by the market yet it is a
2 necessary service for consumers to have.

3 And so to that extent, we believe the
4 Commission needs to retain the authority to require certain
5 services to be offered to consumers in some areas.

6 Q. Was a part of your concern that a local
7 exchange company like Sprint would bundle an offering of
8 basic local service with its flat-rate unlimited toll
9 services?

10 A. That -- that was not a concern when I wrote
11 that sentence. Are you asking me if it might be a concern?

12 Q. Would it be a concern?

13 A. It could be a concern. Would you like me to
14 explain?

15 Q. Well, if it wasn't part of your original
16 concern, then no.

17 In your opinion, should Sprint be allowed to
18 bundle local -- or I should say a basic local exchange
19 carrier be allowed to bundle basic local and flat-rated toll
20 services in exchanges where basic local service is not
21 deemed competitive?

22 A. No.

23 Q. And I hope I got this correct, but I believe
24 that in his opening statement, Mr. Dandino said that Sprint
25 has the opportunity to lower rates under price cap

1 regulation. Is that your position?

2 A. Which rates are you asking me about? For what
3 service? There's a limit to the extent that the price
4 cap -- oh, to lower rates?

5 Q. Lower rates.

6 A. They can lower rates to a point. They still
7 have to cover incremental costs, I think, or their -- their
8 concerns.

9 Q. Would it be your position that Sprint could
10 lower its rates for basic local services in only the five
11 exchanges that they have sought competitive classification
12 for without also lowering the rates for those basic local
13 services in their other exchanges?

14 A. Now, certain-- certainly I'm not giving you a
15 legal opinion from the Office of the Public Counsel.

16 Q. Understood.

17 A. On page 3 of my testimony -- and I'm sorry
18 about the page issue.

19 JUDGE WOODRUFF: Go ahead.

20 THE WITNESS: It's within the context -- I had
21 just set out 392.245, so it's a part of that.

22 At one point it specifically says, If the
23 Commission determines that effective competition exists in
24 the exchange, the local exchange telecommunications company
25 may thereafter adjust its rates for such competitive

1 services. Only the ones in those exchanges will be such
2 competitive services if they get the approval they're
3 seeking, upward or downward.

4 So I guess the way I read it, they would have
5 the ability to lower the price for services where they had
6 received a competitive classification in a specific exchange
7 upward or downward as they see fit provided they don't get
8 into other trouble with respect to pricing below incremental
9 cost.

10 BY MR. HAAS:

11 Q. Is it your opinion that Sprint could, without
12 receiving classification as a competitive company, lower its
13 rates -- basic local rates in Norborne without lowering its
14 basic local rates in similarly situated exchanges?

15 A. I think that they could come in and request
16 authority to do so. To -- I think certainly parties
17 might -- might object and, in fact, we might object, but I
18 think they have the ability to come and ask to do so.

19 MR. HAAS: Thank you. That's all my
20 questions.

21 JUDGE WOODRUFF: And for Fidelity?

22 MR. ROSS: No questions, your Honor.

23 JUDGE WOODRUFF: And for Sprint?

24 MS. CREIGHTON HENDRICKS: No questions, your
25 Honor.

1 JUDGE WOODRUFF: I have a few questions.
2 QUESTIONS BY JUDGE WOODRUFF:
3 Q. When Mr. Haas was just asking you some
4 questions about whether or not Sprint could lower their
5 rates in the Norborne exchange only, I believe you testified
6 that they would have to come to the Commission to request
7 permission to do that. Did I understand that correctly?
8 A. Currently under the current price cap statute?
9 They would have to file tariffs that reduce their rate, I
10 would suppose --
11 Q. For now?
12 A. -- would be one option and then see whether
13 anyone filed a motion to have a hearing on the issue.
14 Q. Okay. Assume for a moment that the Commission
15 approves their request and declares Norborne to be a
16 competitive exchange. At that point would they have to come
17 back to the Commission to lower their rates?
18 A. I think that they might still have to have a
19 tariff that identified what the rate was --
20 Q. Okay.
21 A. -- as to the ability for parties to
22 effectively challenge or get the Commission to review those
23 tariffs before they go into effect to perhaps challenge them
24 on the basis of is the rate fair or something like that.
25 Also there may be a difference in the time for the tariffs

1 to go into effect.

2 Q. I guess competitive companies could make their
3 rates go into effect much faster; is that right?

4 A. I think that's -- I think that's true. I'm
5 not a tariff wizard.

6 Q. Okay. And the Norborne exchange brings up an
7 interesting situation too. There's been testimony that in
8 Green Hills the competitive CLEC in that area has taken a
9 large number of customers in that area. What happens if the
10 CLEC takes all of the customers and, in effect, is the only
11 competing -- only company that's competing in that exchange?
12 Does the Commission have the ability to regulate that CLEC?

13 A. I don't think the Commission has the same
14 ability to regulate a CLEC. In the event that, let's say,
15 the CLEC took over so much of the exchange that Sprint
16 simply decided, okay, we give on this one and, you know,
17 even potentially asked the Commission if they could leave
18 that exchange.

19 What happens then? I don't know. But we have
20 protection in the structure of requiring effective
21 competition to exist before you turn loose that I think
22 protects against that ever happening. And that's one reason
23 we think it's so important to make sure there is truly
24 effective competition before they're turned loose.

25 Q. And in that situation, would the CLEC have an

1 obligation to serve every customer in the exchange, assuming
2 they were the only one left and Sprint had withdrawn from
3 the exchange?

4 A. If they had assumed the responsibility for
5 providing essential local telecommunication services within
6 the state, they might. Currently, I don't know that CLECs
7 have the same responsibility to serve each and every
8 customer. They may be able to serve a more limited area if
9 they got authority to do so.

10 Q. Does that have anything to do with the
11 designation as a universal service provider? Does that
12 entail an obligation to --

13 A. A carrier of last resort.

14 Q. Carrier of last very sort. That's the term I
15 was thinking of.

16 A. Carrier of last resort obligation is a
17 requirement of being an essential local telecommunications
18 provider within the state.

19 Q. So in that Norborne exchange, Green Hills had
20 obtained that designation, then they would have the
21 essential local carrier designation responsibility; is that
22 right?

23 A. I think so, yes.

24 Q. Okay. All right. I know the Commission's
25 very concerned in this case about what sort of standard it

1 should use to decide this case. In your opinion, is there
2 any objective standard of when competition exists?

3 A. I -- I think that just as set forth in the
4 definition of effective competition, there are a number of
5 factors that need to be considered. And I think that simply
6 looking at one and saying, you know, is that enough is --
7 won't do the job.

8 Q. Okay.

9 A. All factors need to be looked at, especially
10 in this case. Certainly at some point -- if you have a
11 large number of firms that all have roughly equal market
12 share, if there are low barriers to entry and exit from the
13 market, then at that point I think you can have some
14 confidence that there's little likelihood that there's going
15 to be harm done by finding that effective competition
16 exists.

17 In fact, I think that's -- that would
18 demonstrate that effective competition existed so you
19 wouldn't have to worry as much about whether harm could
20 occur.

21 But when you have a few number of -- low
22 number of firms when there is unbalanced market share, I
23 think you have to look at it on a case-by-case basis. I
24 mean, there -- there are certain -- like I use the HHI. The
25 HHI is a measure of concentration that is used for many

1 purposes and it's used by authorities in a number of utility
2 areas. It's not just telecommunications, although it's used
3 there.

4 That gives you an indication of how many firms
5 are there and how is the market distributed. Do a few of
6 those firms have so much control over the market or are
7 customers, say, for some reason, so tied to the service
8 provided by one or more of those firms, that they wouldn't
9 be likely to switch and choose in their best interest if
10 there was a better alternative available? That happens
11 sometimes. Consumers don't have perfect information.

12 So the HHI number I know that -- I think
13 Mr. McKinnie had thrown in there, well, it's unlikely you're
14 going to get five or six firms that equally split the market
15 and so, therefore, for some reason it's unfair -- I'm not
16 sure exactly to who to make that the standard -- economic
17 analysis says we look at the market, there is not enough
18 competition there to ensure, in my opinion, that it will be
19 effective in controlling the price of the firms that are
20 there.

21 If we get to six or seven firms with an equal
22 market share and low barriers to entry and exit, I -- I
23 wouldn't have nearly the problem that I do in this instance.

24 Q. Now, as I understand Mr. McKinnie's concern,
25 it was that it's unlikely that there will ever be a

1 situation where there's six or seven competing
2 facility-based providers in the rural exchanges in Missouri.
3 And, therefore, there could never be a finding of
4 competition in those rural exchanges. Do you disagree with
5 that?

6 A. I -- I think I do disagree with that. Do I
7 disagree with it in the short run? Probably -- I would
8 probably actually agree with it in the short run.

9 But there's -- in my reading -- and once
10 again, I'm not an attorney -- there's no requirement that if
11 it does not serve the public interest, that an exchange area
12 be treated as open to competition. They included
13 protections to ensure that where competition didn't exist,
14 those protections for consumers, one of which being price
15 cap, would stay in place. That was -- I mean, that was the
16 deal between rural and urban.

17 Rural, if it was -- if the economies of scale
18 and technology barriers had been eroded to the point where
19 multiple providers could provide, then so be it. Let
20 them -- and competition will produce a better outcome.

21 But in the areas where that's not happening,
22 where there is low population density, where there is low
23 demand for services, there was no guarantee that every
24 telecommunications market would immediately be open to
25 competition.

1 So I think right now today it is unlikely,
2 given a host of different factors, that we're going to see a
3 lot of facilities-based carriers out in rural areas. Now,
4 over time will we? I think there is evidence that we might.

5 It depends on some things that the FCC does.
6 That is, are they going to make local carriers -- are they
7 going to make local carriers share numbers with -- this is
8 just one example -- share numbers with wireless carriers?
9 Are they going to make wireless carriers provide the same
10 functional services to the customers? Those things have
11 some substitutability, but they don't have substitutability
12 to the level I think that's required in this case.

13 As technology develops and improves, as more
14 standards are imposed to make the services more comparable,
15 I believe that you could likely see in a rural area a couple
16 of facilities-based providers of land-line service, a cable
17 provider, a wireless -- at least one wireless provider and
18 perhaps satellite.

19 Q. Okay. So there might not be five or six
20 land-line competitors, but there could be other sources of
21 competition. Is that what you're saying?

22 A. Yes. And as their services become more like
23 land-line service as we know it for -- I'm talking about
24 basic local service, because that's what I wrote testimony
25 on. As their services become more like basic local service,

1 then -- then I'll be in here supporting a competitive
2 classification. But I don't think we're there yet.

3 Q. Okay. Thank you very much.

4 JUDGE WOODRUFF: Then we'll go to recross
5 based on questions from the Bench. Again, beginning with
6 Staff?

7 MR. HAAS: No questions.

8 JUDGE WOODRUFF: Unite?

9 MS. LIPMAN REIBER: No questions.

10 JUDGE WOODRUFF: Fidelity?

11 MR. ROSS: No questions.

12 JUDGE WOODRUFF: And Sprint?

13 MS. CREIGHTON HENDRICKS: I've got a few.

14 RE-CROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

15 Q. Ms. Meisenheimer, I just want to understand
16 your response to a couple questions posed by the Judge.

17 It is not your position in this case that
18 Sprint's rural exchanges are foreclosed from a finding of
19 effective competition, is it, ever? There are no -- unless
20 you provide -- unless -- well, let me restate this.

21 You have testified that in the short term you
22 do not believe you're going to find the presence of four to
23 five competitors in Sprint's exchanges; is that correct?

24 A. That provide something that is functionally
25 equivalent or substitutable for basic local service, no, I

1 don't think we'll find it. That doesn't mean if by chance
2 we found it, they should be precluded.

3 Q. Now, in the short term, is that five years,
4 for example, where we are now, or is it longer --

5 A. I don't --

6 Q. -- when you say short term?

7 A. I don't know the time line. That is up to --
8 I mean, that's something that will occur based on the
9 development of technology, the deployment of services and
10 technologies that are already available.

11 I live in Paris, Missouri, which is a very
12 rural area and we now have a satellite offering for Internet
13 service that's offered through our city of all --

14 Q. So satellite --

15 A. -- entities.

16 Q. -- would be a competitor in Paris, Missouri
17 for Internet services?

18 A. It -- it provides a channel, if you will, into
19 the home for that purpose. However, whenever we have a
20 thunderstorm, the service goes out because a big cloud
21 blocks your access to satellite.

22 Q. You know, Ms. Meisenheimer, I hate to stop you
23 and I appreciate your answers, but my question was, what is
24 your definition of short term? If you could just give me a
25 period, five years, ten years what you generally are

1 referencing when you say short term.

2 A. Well, in economics, short term actually

3 depends on the time for which the use of some variable is

4 fixed.

5 Q. Okay. And when you say short term, what

6 period are you referring to? Do you have some undefined

7 period? Just so I understand. There's no, say, 10-year

8 period you're thinking of or an 8-year period? You have no

9 set period when you say short term; is that correct?

10 A. I don't -- I'm not the decision maker at the

11 FCC about how long it's going to take them to require

12 wireless carriers to provide --

13 Q. That's fine.

14 A. -- number portability.

15 Q. Is the answer no? Is that correct? Is the

16 answer to my question no?

17 A. The answer is what the short run is will vary

18 based on occurrences that are out of my control.

19 Q. Okay. And then if we look at the statute

20 under which we're operating, would you agree with me that

21 the legislators have provided that five years following a

22 CLEC actually being in the service area, there's a

23 presumption of effective competition regardless of the size?

24 And this presumptions is based on the presence of one

25 provider in an exchange for five years; is that correct?

1 A. I need you to ask the question again. I'm
2 sorry.

3 Q. I apologize. It is long.

4 The statute under which we're operating,
5 Section 392.245.5, states that a service shall be
6 competitive after a five-year period -- with the presence of
7 one provider providing services for a five-year period, the
8 service shall be competitive unless the Commission finds
9 otherwise; is that correct?

10 A. Yes.

11 Q. Okay. That's -- that's what I --

12 A. Yes.

13 Q. -- need.

14 So it's a five-year period based on the
15 presence of one provider that gives you the presumption of
16 effective competition in the statute?

17 A. Providing that service.

18 MS. CREIGHTON HENDRICKS: That's all.

19 JUDGE WOODRUFF: Redirect?

20 MR. DANDINO: Yes, your Honor.

21 REDIRECT EXAMINATION BY MR. DANDINO:

22 Q. Ms. Meisenheimer, counsel for Sprint was
23 asking you about Section 392.245 about whether after five
24 years, there was a presumption of competition, that the
25 legislature had provided that. That isn't what this

1 proceeding is about, is it?

2 A. No, it's not. We're within the first five
3 years.

4 Q. Okay. And what's this proceeding supposed to
5 accomplish?

6 A. In this proceeding, the Commission has
7 identified investigating the competition within the --
8 within Sprint's exchanges as the purpose. In this case,
9 Sprint bears the burden of proof to demonstrate that
10 effective competition exists before receiving a competitive
11 classification for a service.

12 Q. Okay. So in this proceeding there's no
13 automatic switch to -- or reclassification?

14 A. That's correct. They have to affirmatively
15 demonstrate.

16 Q. Okay.

17 A. And I believe that that is supported in the
18 Commission's previous order with respect to Southwestern
19 Bell.

20 Q. Now, counsel also asked you about whether some
21 of the rural areas such as Sprint's rural exchanges, they're
22 not forever foreclosed from competitive reclassification.
23 What would they have to do -- would it depend on the
24 circumstances on those same elements for effective
25 competition that are in the statute, the presence of those?

1 A. Absolutely. And I think that the fact that we
2 see neighboring incumbents and other firms go out into these
3 rural areas and demonstrate that they can be successful in
4 terms of providing services over their own facilities in
5 whole or in part is encouraging.

6 It's not sufficient yet to ensure that there's
7 a difference between having a few competitors that are
8 effective in winning away your -- a few of your customers or
9 a lot of your customers and between customers having the
10 availability of effective competition within the exchange.
11 Which is how the statute is written, effective competition
12 in the exchange, not effective competition for the company.

13 Q. Isn't it just perhaps likely that some of the
14 rural exchanges will never develop effective competition and
15 they will remain a natural monopoly for those services,
16 telecommunication -- basic local telecommunication services?

17 A. Never is such a depressing thought for me. I
18 would prefer to say that for at least the short-run future,
19 I do not envision sufficient competitors being available to
20 satisfy a requirement that there is effective competition in
21 the exchange.

22 Q. Difference between short run and long run is
23 that in a short run we're here and in a long run we're all
24 dead; is that right?

25 A. According to Keynes.

1 Q. Now, the Commission was asking about an
2 objective standard. Section 386.020 --

3 MR. DANDINO: May I approach my blind witness?

4 JUDGE WOODRUFF: You may approach.

5 THE WITNESS: I'll just hold it real close.

6 MR. DANDINO: I guess I could represent to the
7 witness that it is accurate.

8 BY MR. DANDINO:

9 Q. Is that statute about as close as the
10 Commission can expect to have objective standards for which
11 to judge effective competition because of the variation in
12 the circumstances on an exchange-by-exchange basis and
13 service-by-service basis?

14 A. I view this as the primary set of standards.
15 I think that within the context of these, there are
16 objective measures that exist based on economic theory that
17 can be used to measure those things such as, you know,
18 utilizing something like a concentration ratio, the HHI, to
19 determine the extent to which, say, for example, services
20 from alternative providers are available within the relevant
21 market.

22 I mean, the HHI, for example, that process
23 that's used to define the relevant market, to define the
24 geographic market, to consider potential entry and things
25 like that if that is a fundamental component of what you're

1 trying to measure, I think there are some objective
2 measures, but in total, no, I don't think there is one
3 specific number or methodology that can be looked to to
4 satisfy all the things the Commission's required to
5 consider.

6 Q. It appears that the Commission's struggling to
7 try to find some type of really a checklist to assist them
8 with any type of checklist -- can you see developing any
9 type of a checklist with objective standards?

10 A. That is complete and would apply in every
11 case, no.

12 Q. Okay. The Judge also asked you about
13 circumstances if a CLEC ended up being the 100 percent
14 carrier in an exchange. Presently are the incumbent LECs
15 required to be the carriers of last resort for local
16 service?

17 A. I believe they are, yes.

18 Q. And does the Commission and is there -- or do
19 you know if there's a procedure -- statutory procedure for
20 an ILEC to come in and ask to be relieved of that carrier of
21 last resort, if you know?

22 A. A procedure? I'm not currently aware of a
23 procedure for incumbents to come in and seek relief from the
24 carrier of last resort obligation with respect to local.
25 There -- we have had proceedings where carriers came in and

1 asked for relief from the responsibility of being the
2 carrier of last resort for long distance. And that turned
3 out to take, if I remember correctly, years to work out and
4 there was a great deal of dispute over who ultimately had
5 the responsibility, if anyone.

6 Q. You think that the Commission's responsibility
7 to serve the public and to protect the public interest, that
8 they would make some type of requirement that an existing
9 telephone company serve as a carrier of last resort for
10 local basic service?

11 A. I -- I think there should -- in the -- in the
12 event that they -- what would be, in my opinion, prematurely
13 determine that effective competition exists, then there
14 should be some protection for consumers in the event that
15 carriers leave the market. So there needs to be some
16 assurance that until truly effective competition exists, to
17 ensure there will be a provider there.

18 MR. DANDINO: That's all I have. Thank you,
19 Ms. Meisenheimer.

20 Thank you, your Honor.

21 JUDGE WOODRUFF: You may step down.

22 THE WITNESS: Thank you.

23 JUDGE WOODRUFF: Next witness I believe is
24 Mr. Devoy for Unite.

25 MR. DANDINO: You can bring Sprint's exhibit

1 back.

2 (Witness sworn.)

3 JUDGE WOODRUFF: You may be seated.

4 You may inquire.

5 MS. LIPMAN REIBER: Thank you, Judge.

6 DENNIS DEVOY testified as follows:

7 DIRECT EXAMINATION BY MS. LIPMAN REIBER:

8 Q. Could you please state your full name for the

9 record, please?

10 A. Dennis Devoy.

11 Q. And, Mr. Devoy, on whose behalf do you appear

12 here today?

13 A. Unite, d/b/a -- or ExOp of Missouri, d/b/a

14 Unite.

15 Q. And, Mr. Devoy, did you prepare and cause to

16 be filed nine pages of Rebuttal Testimony in both

17 proprietary and nonproprietary form?

18 A. Yes.

19 Q. And if I asked you the same questions that

20 appear in that testimony, would your answers be the same?

21 A. No. I would make one change.

22 Q. And what change would that be?

23 A. On page 3, line 24 I reference the possible

24 sale of Unite. At this time I think it's appropriate to

25 advise the Commission that late last week a purchase

1 agreement was executed by Aquila and that that purchaser
2 will be applying for regulatory approval prior to the
3 closing of the transaction.

4 MS. CREIGHTON HENDRICKS: Your Honor, on that
5 note, if I could just for the record indicate that Sprint
6 was not informed of this change until last night.

7 So to the extent that ExOp's arguments here
8 suggest that the Commission would need to know something
9 about the purchaser in order to evaluate effective
10 competition, Sprint would request that ExOp be limited from
11 arguing or suggesting that the failure to know anything
12 about the purchaser would have any impact on this
13 proceeding.

14 And the reason I raise that, I think we are
15 prejudiced -- this happened last week. We did not find out
16 about it until last night. We have DRs out on this topic
17 and we have no information. And I just want to ensure that
18 ExOp does not intend to use this new development as an
19 advantage in their case.

20 JUDGE WOODRUFF: Let me ask Staff. Was Staff
21 aware of this development until now, the purchase of ExOp?

22 MR. HAAS: We knew that it was being
23 discussed. And we had -- also that ExOp and its, I believe,
24 attorney were going to come in next week to fill us in on
25 the details.

1 JUDGE WOODRUFF: Can you tell us who the
2 purchaser is at this point?

3 THE WITNESS: The purchaser is Mr. Ron
4 Reckrodt, former general manager of the company and a
5 long-time Aquila employee.

6 JUDGE WOODRUFF: Okay. All right.
7 Ms. Hendricks, your objection is noted. It doesn't really
8 call for the Commission to make a ruling at this point.
9 We'll deal with the issue again if it comes up.

10 So at this time we can go ahead and continue
11 with your direct examination.

12 MS. LIPMAN REIBER: Well, I believe that's all
13 I have. And I would request that Exhibit 11, the
14 proprietary and nonproprietary versions of the Rebuttal
15 Testimony of Mr. Dennis Devoy, be admitted into the record.

16 MS. CREIGHTON HENDRICKS: Your Honor, I want
17 to reiterate at this juncture in the form of an objection.
18 I object to the extent that the revision in the testimony
19 occurred today and it's of a substantive nature. So to the
20 extent I'm prejudiced in presenting my case based on
21 information I'm unable to discover or get additional facts,
22 I would object to it being admitted into the record.

23 JUDGE WOODRUFF: Your objection's noted and it
24 will be overruled. Exhibit 11NP and P will be admitted into
25 evidence.

1 (EXHIBIT NOS. 11NP AND 11P WERE RECEIVED INTO
2 EVIDENCE.)

3 MS. LIPMAN REIBER: I tender Mr. Devoy for
4 cross-examination.

5 JUDGE WOODRUFF: All right. Beginning with
6 Staff?

7 CROSS-EXAMINATION BY MR. HAAS:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Please turn to page 22 of your Rebuttal
11 Testimony -- page 2, I'm sorry.

12 A. Okay.

13 Q. And at line 22 you start a sentence that
14 reads, Hence, presuming that effective competition truly has
15 existed for five years in the Kearney exchange due to ExOp's
16 activities would not reflect reality.

17 Are you suggesting that the Commission must
18 find that effective competition has existed for five years
19 before it may classify a Sprint service as competitive?

20 A. I believe that's what the statute requires.

21 Q. Can you point me to the language that you're
22 referring to?

23 A. Well, it may not require it, but it suggests
24 that a five-year period is a benchmark for reviewing the
25 situation or the extent of competition.

1 Q. Concerning the proposed sale of ExOp, is that
2 to be a sale of stock or of the facilities?

3 A. I believe it is a stock sale.

4 Q. And do you know whether the buyer plans to
5 continue to operate the telephone facilities of ExOp?

6 A. I would assume so.

7 Q. At page 3 of your testimony, the final
8 sentence reads, It also is doubtful that ExOp, with its
9 current business plan as a facilities-based carrier, would
10 be willing to employ resale or UNEs to serve customers it
11 cannot reach with its own plant.

12 What percent of the customers in Sprint's
13 Kearney exchange do ExOp's facilities reach?

14 A. I have to preface my answer by the access line
15 counts that have been submitted in this case. And I have
16 calculated percentages based on those access line counts, so
17 I could reply to the question with that noted.

18 Q. I'm not sure that that's going to answer the
19 question. If your facilities don't reach all of --

20 A. I have --

21 Q. -- Sprint's customers --

22 A. I have no knowledge of what customers are out
23 there that -- I mean, I can't attest to what customers are
24 out there that I don't have facilities to currently.

25 Q. Do your facilities -- do ExOp's facilities

1 cover all of the City of Kearney?

2 A. For the most part. But I don't believe we
3 cover every customer within the city, no.

4 Q. Do you know whether the City of Kearney would
5 constitute most of the numbers of customers or potential
6 customers in the Kearney exchange?

7 A. I would think so, but I don't know that for
8 sure.

9 Q. Has ExOp asked the federal USF administrator
10 for support for the Kearney exchange?

11 A. Yes. We have petitioned for interstate access
12 support, but have not ever received any funding.

13 Q. Is it still correct today that ExOp does not
14 offer service throughout the entire Kearney exchange?

15 A. That is correct.

16 Q. On page 6 of your testimony you note that ExOp
17 has not received a cable franchise in Platte City nor is it
18 licensed to provide video services. Is it your opinion that
19 for effective competition to exist for basic local service,
20 that the CLEC or its affiliate must have the cable
21 franchise?

22 A. I would answer by saying that the mode of
23 operation that ExOp has used is to deploy three types of
24 products: voice, video and data in conducting its business
25 in these markets. So from that point of view, I think that

1 a cable franchise would be necessary for us to effectively
2 operate in the Platte City exchange on a residential basis.

3 Q. You qualified your answer with "on a
4 residential basis." What about on a business basis for the
5 business covers?

6 A. We are currently offering business services in
7 the City of Platte City.

8 Q. In your opinion, does Sprint face effective
9 competition for basic local service in the Kearney exchange?

10 MS. LIPMAN REIBER: Your Honor, I'm going to
11 object. That basically calls for a legal conclusion and I
12 think that's up for -- it's for the Commission to decide and
13 not for Mr. Devoy to decide.

14 JUDGE WOODRUFF: Response?

15 MR. HAAS: All of the witnesses -- or most of
16 the witnesses in this case have been providing their
17 opinion, their economics opinion as to whether effective
18 competition exists for service in various exchanges, and
19 that's the information I'm seeking from this witness.

20 MS. LIPMAN REIBER: Mr. Devoy is not an
21 economist. He's the comptroller. He -- his function --
22 he's not testifying based on his expertise in economics.

23 JUDGE WOODRUFF: I'm going to go ahead and
24 overrule the objection. You can go ahead and ask the
25 question -- or you can answer the question. If you need to

1 have the question asked again, we'll do that.

2 Could you read the question back, please?

3 THE COURT REPORTER: "Question: In your
4 opinion, does Sprint face effective competition for basic
5 local service in the Kearney exchange?"

6 THE WITNESS: I think that the requirements to
7 determine whether effective competition exists are not
8 clear, and I don't think that I'm qualified to speak on that
9 to that matter with regard to what ExOp has been able to do
10 in the exchange.

11 MR. HAAS: That's all my questions. Thank
12 you.

13 JUDGE WOODRUFF: All right. Public Counsel?

14 MR. DANDINO: No questions, your Honor. Thank
15 you.

16 JUDGE WOODRUFF: And Fidelity?

17 MR. ROSS: No questions, your Honor. Thanks.

18 JUDGE WOODRUFF: Sprint?

19 (EXHIBIT NOS. 22 AND 23 WERE MARKED FOR
20 IDENTIFICATION.)

21 CROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

22 Q. Good afternoon, Mr. Devoy.

23 A. Good afternoon.

24 Q. Mr. Devoy, I have placed in front of you a
25 document that I've requested be marked Exhibit 22. And it

1 is the document that is not handwritten and on the top of it
2 it says Sprint Missouri, Inc., Case No. IO-2003-0281. Do
3 you see that?

4 A. Yes, I do.

5 Q. Could you identify that document for me?

6 A. It's a data request submitted by Sprint.

7 Q. And the date of that data request?

8 A. June 19th.

9 Q. And the party to whom it was submitted?

10 A. Rachel Lipman Reiber.

11 Q. And she's the attorney for ExOp of Missouri;
12 is that correct?

13 A. That's correct.

14 Q. Okay. Could you look at the information
15 requested?

16 A. Yes.

17 Q. Okay. Would you agree with me that this data
18 request seeks information relating to any potential sale of
19 ExOp?

20 A. Yes.

21 Q. Okay. And if you could look at the response,
22 would you agree with me that Sprint was not provided any
23 documents in response to that request?

24 A. No documents were provided.

25 Q. Okay. Would you also agree with me that this

1 request was provided -- or this response was provided on
2 July 9th, 2003? And I realize that if you look at the date
3 responded, it's a little --

4 A. I'd have to take your word for the date. I
5 can't read it on my copy.

6 Q. I'll ask that question again when I go to
7 Exhibit 23, because I think that makes it clear.

8 MS. CREIGHTON HENDRICKS: Your Honor, at this
9 time I would move for the admission of Exhibit 22 into the
10 record.

11 JUDGE WOODRUFF: Exhibit 22 has been offered
12 into evidence. Are there any objections to its receipt?

13 Hearing none, it will be received into
14 evidence.

15 (EXHIBIT NO. 22 WAS RECEIVED INTO EVIDENCE.)

16 BY MS. CREIGHTON HENDRICKS:

17 Q. Now, Mr. Devoy, if I could direct you to the
18 other document I've placed in front of you. It's been
19 marked Exhibit 23. Could you identify this for me?

20 A. This is a revised response to the data request
21 we just discussed.

22 Q. If you go down to -- well, first, let me
23 establish, this is a response provided by ExOp to a data
24 request issued by Sprint in this case; is that correct?

25 A. Correct.

1 Q. And it revises the earlier response that we
2 discussed about Exhibit 22?
3 A. Yes.
4 Q. If you go down to B, C and D, you see the
5 notation that, Same answer as previously provided on 7/9/03?
6 A. Yes.
7 Q. Does that assist you in helping identify when
8 the response was issued?
9 A. Yes.
10 Q. So if we go back to Exhibit 22, you would
11 agree with me this response was issued on July 9th?
12 A. That's correct.
13 Q. If we go back to Exhibit 23, the response
14 indicates that on July 9th, there was a sale of ExOp; is
15 that correct?
16 A. Yes.
17 Q. And this document was given to Sprint last
18 night; is that correct?
19 A. That's correct.
20 MS. CREIGHTON HENDRICKS: At this time I move
21 for the admission of Exhibit 23 into the record.
22 JUDGE WOODRUFF: Exhibit 23 has been offered
23 into evidence. Are there any objections to its receipt?
24 Hearing none, it will be received into
25 evidence.

1 (EXHIBIT NO. 23 WAS RECEIVED INTO EVIDENCE.)
2 MS. CREIGHTON HENDRICKS: No further
3 questions.
4 QUESTIONS BY JUDGE WOODRUFF:
5 Q. Okay. I have a couple questions about ExOp.
6 In this case we've heard testimony about how it's operating
7 in the Kearney and Platte City exchanges. Does it operate
8 in other exchanges as well?
9 A. No, sir.
10 Q. Just the two?
11 A. Just Kearney and Platte City.
12 Q. And it has a franchise -- cable TV franchise
13 in Kearney?
14 A. Yes. Telephone and cable TV in Kearney.
15 Q. Telephone and cable. But not in Platte City?
16 A. Telephone only.
17 Q. Telephone only. Is it anticipated it will at
18 some point get a cable TV franchise in Platte City? Is
19 that --
20 A. We have negotiated with the City of Platte
21 City, but the current franchise agreement calls for a
22 42-month build-out and with \$500 daily fines if you're not
23 in compliance with that build-out. Based on our current
24 situation, we're not able to execute AN agreement of that
25 kind.

1 Q. By "build-out" you mean to complete the system
2 to serve everybody in the area?

3 A. Yes.

4 Q. Okay. This sale of ExOp that's just come to
5 light, do you anticipate that financing will be more
6 available for ExOp in the future with this?

7 A. I don't know for sure.

8 Q. Okay. It's an individual, Mr. Reckrodt,
9 that's buying it?

10 A. That's correct.

11 Q. Okay. Is he president of DZRZ, Incorporated.
12 Is that a new corporation or is that providing services
13 somewhere else?

14 A. I believe it's a new corporation.

15 Q. Okay. And it indicates Mr. Reckrodt is the
16 former general manager of ExOp. When did he leave?

17 A. I believe it was in April of this year.

18 Q. Okay. Do you know if he left in anticipation
19 of coming back and buying the company or --

20 A. Well, he left as a part of a -- I guess a
21 downsizing that flowed through from Aquila. And he was
22 severed. And I think that at that time he was aware that
23 the business was for sale, so he approached our -- became
24 active in the purchasing prospect of the business.

25 JUDGE WOODRUFF: That's all the questions I

1 have. So we'll go to recross based on questions from the
2 Bench. Staff?

3 MR. HAAS: No questions.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. DANDINO: No questions, your Honor. Thank
6 you.

7 JUDGE WOODRUFF: Fidelity?

8 MR. ROSS: No questions.

9 JUDGE WOODRUFF: Sprint?

10 MS. CREIGHTON HENDRICKS: No questions, your
11 Honor.

12 JUDGE WOODRUFF: Redirect?

13 MS. LIPMAN REIBER: If I might.

14 REDIRECT EXAMINATION BY MS. LIPMAN REIBER:

15 Q. Mr. Devoy, you were asked some questions by
16 Mr. Haas of Staff and by Judge Woodruff on behalf of the
17 Commission about the Platte City cable franchise and whether
18 ExOp indeed had one and what their plans were for obtaining
19 such a franchise.

20 MS. LIPMAN REIBER: Your Honor, I have here,
21 which I'd like to have marked for identification, an
22 ordinance passed by the City of Platte City which would
23 apply -- establishes regulations for all current and --
24 current and prospective cable providers.

25 And I think it might be instructive to the

1 Commission in that it, on page 23, lays out a build-out
2 requirement, page 41 has the penalty provisions for failure
3 to meet that build-out requirement. I'd like to have this
4 marked as Exhibit --

5 JUDGE WOODRUFF: Twenty-four.

6 MS. CREIGHTON HENDRICKS: Your Honor, I object
7 to the admission of this exhibit into the record. I think
8 this is just a supplemental -- this is information they
9 could have put in their Direct Testimony. They did testify
10 that it was unlikely they were going to get the cable
11 franchise. It was available to them at that time. It could
12 have been a part of the Direct. And I just see this as,
13 once again, another opportunity to supplement what should
14 have been in the record through their Direct Testimony.

15 JUDGE WOODRUFF: Okay. At this point it's
16 only been marked, so I'll defer ruling on your objection
17 until it has, in fact, been offered.

18 MS. LIPMAN REIBER: Well, your Honor, I
19 believe that this was -- the subject was placed into
20 evidence and the discussions as to why we had not obtained
21 one through the cross-examination, as I stated, of Mr. Haas
22 and of yourself. And I believe that this is certainly
23 relevant to the Commission's consideration and
24 Ms. Hendricks' objections go more to weight than to
25 admissibility.

1 MS. CREIGHTON HENDRICKS: Well, your Honor, I
2 think they go directly to admissibility. I'm objecting to
3 it being admitted at this time.

4 I think the questions -- I reiterate the basis
5 for the admissibility being this should have been a part of
6 the pre-filed direct. The questions that have been posed to
7 Mr. Devoy is whether or not they've secured a cable
8 franchise, not as to why they haven't secured a cable
9 franchise. So I don't think that anything in the cross or
10 in the Commissioner questions or your questions brought this
11 into play.

12 Furthermore, as I said, this is a document
13 that existed when the, in this case, Rebuttal Testimony was
14 filed by Mr. Devoy. It could have been placed in there at
15 that time. It was subject -- I mean, discussed in his
16 Rebuttal Testimony.

17 JUDGE WOODRUFF: Okay. I'm assuming that
18 you're offering this into evidence at this time?

19 MS. LIPMAN REIBER: Yes. Your Honor, I would
20 move for admission of Exhibit 24, the Platte City cable
21 ordinance at this time.

22 JUDGE WOODRUFF: It is offered in response to
23 the questions from the Bench about whether or not ExOp was
24 going to be able to maintain a franchise in the City of
25 Platte City. I think it is relevant to that. It will be

1 admitted into evidence.

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

3 MS. LIPMAN REIBER: Thank you, your Honor. No

4 further redirect.

5 JUDGE WOODRUFF: Okay. Then you can step

6 down.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: And at this point we are due

9 for a break. Let's come back at 10 minutes until 3:00.

10 (EXHIBIT NO. 24 WAS MARKED FOR

11 IDENTIFICATION.)

12 (A RECESS WAS TAKEN.)

13 JUDGE WOODRUFF: And the next witness then is

14 for Fidelity, I believe, Mr. Taylor.

15 (Witness sworn.)

16 JUDGE WOODRUFF: You may be seated.

17 And you may inquire.

18 RICHARD TAYLOR testified as follows:

19 DIRECT EXAMINATION BY MR. ROSS:

20 Q. Mr. Taylor, would you please state your full

21 name for the record?

22 A. Richard L. Taylor.

23 Q. And for whom are you testifying today?

24 A. I'm testifying on behalf of Fidelity

25 Communications Services I, Inc.

1 Q. Are you the same Mr. Taylor that prepared and
2 caused to be prepared nonproprietary Rebuttal Testimony in
3 this case which has been marked as Exhibit 12?
4 A. Yes, sir.
5 Q. Do you have any changes or corrections to this
6 testimony?
7 A. I do not.
8 Q. If asked the same questions today, would you
9 give the same answers?
10 A. Yes, sir.
11 MR. ROSS: Your Honor, I move for admission
12 into the record of Exhibit No. 12, the nonproprietary
13 Rebuttal Testimony of Mr. Taylor
14 JUDGE WOODRUFF: Exhibit 12 has been offered
15 into evidence. Any objections to its receipt?
16 Hearing none, it will be received into
17 evidence.
18 (EXHIBIT NO. 12 WAS RECEIVED INTO EVIDENCE.)
19 MR. ROSS: I tender the witness for
20 cross-examination.
21 JUDGE WOODRUFF: Okay. For cross-examination
22 we begin with Staff.
23 CROSS-EXAMINATION BY MR. HAAS:
24 Q. Good afternoon, Mr. Taylor.
25 A. Good afternoon, Mr. Haas.

1 Q. I'll try to keep things short.

2 Please turn to page 4 of your Rebuttal
3 Testimony.

4 A. Yes, sir.

5 Q. At line 83 you begin a sentence that reads
6 that Sprint has only one consequential competitor in Rolla
7 lends significant doubt as to the existence of effective
8 competition.

9 In your opinion, do resellers provide
10 effective competition for basic local service?

11 A. In my opinion, certain resellers in certain
12 situations do. In the instant case that I was referring to
13 in the Rolla and St. Robert exchanges, the only resellers
14 there are prepaid resellers. And I don't believe they form
15 any form of true competition, certainly not effective
16 competition given that they can't differentiate any products
17 or services from the incumbent.

18 Q. Do you consider CLECs which use unbundled
19 network elements as providing effective competition for
20 basic local service?

21 A. I think they're certainly a lot closer to it.
22 And I've heard some parties in this case categorize those
23 providers who use unbundled network elements in conjunction
24 with some of their own facilities as partial facility-based
25 providers. I believe they come a lot closer to having the

1 capability of providing effective competition.

2 If they are sufficient in number and if they
3 have sufficient impact in terms of market share and the
4 other factors discussed, they'd certainly be due more weight
5 than a pure reseller or certainly a prepaid reseller, in my
6 judgment.

7 Q. In your opinion, how many consequential
8 competitors would Sprint need in the Rolla exchange before
9 it would have effective competition?

10 A. Again, Mr. Haas, I -- I understand that that's
11 a judgment call. My judgment would be some number greater
12 than one. I understand some rational arguments that one
13 might be sufficient in some situations depending on that
14 individual company's success, vis-a-vis the total market,
15 and I agree that there's not an absolute number.

16 I would suggest more than one in a situation
17 like we're involved in in Rolla and St. Robert, although I
18 think there could be exceptions to that.

19 Q. In your opinion, would it be financially
20 feasible for there to be two facilities-based competitive
21 carriers providing service in Rolla?

22 A. In Rolla in particular, yes. I believe it is
23 feasible. That situation doesn't currently exist in Rolla.
24 I'm a little surprised by that frankly, but yeah, I do think
25 it's feasible that an exchange the size of Rolla or larger.

1 If you get much smaller than the size of Rolla, than it's
2 highly suspect.

3 Q. I have a couple more questions that are just
4 to kind of fill out some information.

5 Is Fidelity I a facilities-based carrier in
6 St. Robert?

7 A. Fidelity I is a very limited facility-based
8 competitor in Rolla, not nearly -- excuse me. Was your
9 question in Rolla?

10 Q. St. Robert.

11 A. Excuse me. Fidelity I is a facility-based
12 provider in St. Robert on a very limited basis, to a very
13 small portion of the geography whose facilities would serve
14 a very small portion of the exchange or the customers
15 located therein, not at all in comparison to Rolla.

16 Q. Mr. Idoux says in his Rebuttal at page 21, It
17 is Sprint's understanding that Fidelity has one contract to
18 provide local telephone service to the City of St. Robert.

19 Has Fidelity won that contract?

20 A. Fidelity has a contract to provide service to
21 the City of St. Robert. We are providing that service
22 currently with our facilities. Initially I believe we
23 provided the service through the resale of Sprint
24 facilities. It's currently being provided with Fidelity's
25 own facilities.

1 I do not know to what extent the City of
2 St. Robert might continue to have other services from
3 Sprint, but yes, we are providing service to the City of
4 St. Robert and using our facilities to do so.

5 MR. HAAS: That's all my questions. Thank
6 you.

7 JUDGE WOODRUFF: All right. Then for Public
8 Counsel?

9 MR. DANDINO: No questions, your Honor. Thank
10 you.

11 JUDGE WOODRUFF: Unite?

12 MS. LIPMAN REIBER: No questions, your Honor.

13 JUDGE WOODRUFF: Sprint?

14 MS. CREIGHTON HENDRICKS: What exhibit number
15 is it? Is it 26 at this point?

16 JUDGE WOODRUFF: Let me check and see. It's
17 25.

18 (EXHIBIT NO. 25 WAS MARKED FOR
19 IDENTIFICATION.)

20 CROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

21 Q. Good afternoon --

22 A. Good afternoon.

23 Q. -- Mr. Taylor.

24 As I understand your testimony with respect to
25 St. Robert, Fidelity just began operations in February of

1 2003; is that correct?

2 A. I believe that's right. Perhaps late January,
3 but I believe it was February.

4 Q. Okay. And you've indicated that only a small
5 portion of the exchange is covered by their own facilities;
6 is that correct?

7 A. That's correct.

8 Q. Would it be accurate to say that those
9 facilities reach primarily business customers?

10 A. That is correct. Well, that's who we're
11 serving with them at the current time, yes.

12 Q. Such as hotels?

13 A. One.

14 Q. City?

15 A. One.

16 Q. Does Fidelity intend to what is often referred
17 to as cherry pick, in essence, identify the most profitable
18 business customers and serve them only?

19 A. Well, those doing it call it selective
20 marketing and those having it done to them call it cherry
21 picking, but yes.

22 Q. That's what you intend to do?

23 A. At least in the foreseeable future. We do not
24 intend in the foreseeable future to completely over-build
25 Sprint's network in St. Robert as we have attempted to do in

1 Rolla.

2 Q. But you intend to compete, to the best you
3 can, for those profitable business customers within the City
4 of St. Robert; is that correct?

5 A. The ones that are in proximity to where we can
6 easily provide facilities, the ones that we can serve
7 primarily with our own facilities on a selected basis, yes,
8 ma'am.

9 Q. Okay. And do you know what percentage of
10 business customers in total would fall into the category you
11 just identified?

12 A. I do not. My best estimate with our existing
13 facilities is that we could probably serve perhaps 3 to 5
14 percent of the business lines in the -- in the St. Robert
15 exchange. And currently I think we're serving 67 access
16 lines and based on numbers I heard from some of your
17 witnesses earlier, I'd guess that's about 1 percent.

18 Q. Okay. To the extent a profitable business
19 would request your service, do you anticipate you would use
20 unbundled network elements available through an
21 interconnection agreement with Sprint?

22 A. At least on an initial serving basis, that's a
23 possibility. We have done that in some cases in the past,
24 just as we've used the reselling of Sprint services. I know
25 in the St. Robert exchange the first 48 lines of service we

1 provided was by reselling Sprint's services until we had the
2 capability of providing it with our own facilities.

3 Q. So your reach in the market is not limited
4 based on where your current facilities are placed; is that
5 correct?

6 A. No. Not ultimately. Not ultimately. But,
7 again, we do not have plans to over-build the whole exchange
8 as we've done in Rolla. But, yes, we will take the business
9 opportunities that are presented to us and will evaluate
10 each one of them to see if we can make it work.

11 We would not expect to, on an ongoing basis,
12 provide service even to business customers in the St. Robert
13 exchange on a UNE basis or resale basis simply because the
14 economics aren't there to do so in our judgment.

15 Q. Do you advertise your business service
16 throughout the exchange of St. Robert? Are you just
17 selectively direct mailing certain businesses or --

18 A. We -- to my knowledge, we do not generally
19 advertise on an exchange-wide or community-wide basis
20 services. There are certainly some bleed-over opportunity
21 for customers in the St. Robert exchange who are privy to
22 our advertising in the Rolla exchange who might see the
23 Fidelity name and the offering of services, but we are not
24 mass marketing intentionally in the St. Robert exchange.

25 Q. How are you marketing in the St. Robert

1 exchange?

2 A. Primarily through contacts made through other
3 affiliates.

4 Q. And when you say "other affiliates," who are
5 you referring to?

6 A. Affiliates like our Fidelity Systems Plus,
7 which is a CPE vendor; Fidelity Networks, which is an ISP
8 provider who have some customer relationships in the area.

9 Q. And do either Fidelity Plus or Fidelity
10 Networks advertise throughout the exchanges of St. Robert?

11 A. I'm not sure, but it wouldn't surprise me.

12 Q. Okay. I have placed in front of you a
13 document that I've asked to be marked Exhibit 25. Can you
14 identify it for me?

15 A. I can tell you that it says it's an ordinance
16 authorizing and accepting the bid of Fidelity Systems Plus,
17 Inc., for the phone system and data cabling for the new
18 Municipal Center for the City of St. Robert.

19 Q. If you would like -- I don't know if you'd
20 like a few minutes to review the document --

21 A. I've not seen it before, but if you have
22 further questions, if you'd just direct me.

23 Q. Okay. Now, does the first page of this
24 document reflect that in June of 2002, almost a year ago,
25 the City of St. Robert accepted a bid placed by Fidelity

1 System Plus to provide it with 70 work stations through
2 which it would receive local exchange services?

3 A. Well, on the surface, my initial look at this
4 would tell me that it's a contract where our affiliate,
5 Fidelity Systems Plus, sold what I think is a premise PVX
6 system to the City of St. Robert. And I haven't looked far
7 enough into this to know who's providing trunks to that PVX
8 system, but if it was, in fact, as you said, in 2002, it --
9 it wasn't Fidelity the CLEC in St. Robert at that time.

10 Q. And when you say that, Fidelity Plus -- or
11 Fidelity Systems Plus was providing the equipment and it's
12 your belief that the dial tone was delivered by some other
13 entity; is that correct?

14 A. I don't know when this PVX was installed.
15 This document tells me that our affiliate, Fidelity Systems
16 Plus, sold what I gather to be a premise PVX to the City of
17 St. Robert. And apparently that was approved by the City on
18 June the 25th of 2002.

19 Q. Okay.

20 A. I don't know when it was installed.

21 Q. Okay.

22 A. If it was installed last week, then maybe the
23 first provider of trunks to it was Fidelity. If it was
24 installed a year ago, the provider of trunks to it
25 presumably would have been Sprint or someone else, but not

1 Fidelity.

2 Q. And to be fair to you, I think that that is
3 addressed later on in the document and I'll point that out
4 to you.

5 A. Okay.

6 Q. If you go to the second page, it says
7 Requested Installation Date, Fourth Quarter, 2002. Do you
8 see that up in the upper right-hand?

9 A. I do.

10 Q. Okay. Then if you go to a page that on the
11 top there is a fax line and it says page 5 on it --

12 A. Yes.

13 Q. -- and you look at the bottom where it says,
14 Note Above the T1 Connection, if you could read that.

15 A. I see the note.

16 Q. Okay. Does that assist you in understanding
17 perhaps how the dial tone was delivered in connection with
18 this contract?

19 A. It says, Network T1 connection provided by
20 Sho-Me Technologies. Fiber T1 span to be channelized for
21 8 DSO voice circuits.

22 Sho-Me Technologies, as I recall, is a
23 subsidiary of Sho-Me Power, not a subsidiary or an affiliate
24 of Fidelity. I can -- I don't have personal knowledge. I
25 can speculate that perhaps a T1 was leased. I don't know

1 what the connecting points were, but could have -- could
2 have been drawing dial tone out of Fidelity's Rolla switch
3 and carried on a T1 to St. Robert. I don't know that.

4 But if there's more information in here that
5 you want to direct me to, I'd be happy to look at it and
6 give you an honest evaluation.

7 Q. I'd like to direct you to what has been marked
8 as page 8 reflected in that fax line.

9 A. Page 8 of my testimony?

10 Q. Page 8 of this exhibit.

11 A. Is that the fax page number?

12 Q. Yeah. The fax page number which appears on
13 the upper right-hand corner.

14 A. Okay.

15 Q. It has a description of scope of work and it
16 says, Install 70 voice/data work stations. Do you see that?

17 A. I do.

18 Q. Now, do you understand that to mean that, in
19 essence, you're handling 70 lines for the City?

20 A. Sev-- no, I do not.

21 Q. Okay. I guess what I'm trying to ascertain is
22 with respect to responding of the access lines served within
23 St. Robert, as you look at this document -- and I don't know
24 if there's anything about this page that would assist you in
25 being able to say, well, this would represent so many access

1 lines.

2 A. I think if you read further -- and, again, I'm
3 not personally conversant with this, but if you read
4 further, I don't think the 70 voice work stations means 70
5 access lines.

6 Q. Okay.

7 A. It -- you could have a situation where you had
8 a 70-station PVX that was served by 10 or 15 trunks or
9 central office trunks or -- or access lines. I think if
10 I -- if I read a little further here, it talks about 48 port
11 CAT5 patch panels. I'd come closer to believing that there
12 may have been as many as 48 lines, not 70.

13 And one of the other reasons that I'd
14 speculate that number is I know earlier this year, I think
15 February of this year, Fidelity's line count in the
16 St. Robert exchange was, in fact, 48 lines. And we were at
17 that time not providing them with our own facility located
18 in St. Robert. So it's possible that that could have been
19 the 48 lines that were on our initial line count.

20 Q. Well, Mr. Taylor, you did very well in
21 anticipating my next question, which was going to be your
22 reference to the 67 lines, whether or not that included the
23 lines represented under this contract?

24 A. We are currently pro-- as of June 30th, 2003,
25 we're providing 6-- let me clarify. If I said 67, and I

1 think I did, I misspoke. It should be 69. And of those
2 69 lines, 49 of them are being provided to the City and the
3 remainder are being provided to two other business customers
4 in the City of St. Robert. That's the most current
5 information I have. It's as of June 30th.

6 Q. Okay. And so it is your belief that the lines
7 covered by this contract is within the information you just
8 provided; is that correct?

9 A. Yes, ma'am.

10 Q. Now, I direct your attention to the page which
11 has the page 9 line on top of the fax reference, page 9.
12 And there's proposed incentives identified on that page.
13 And I'm particularly interested in the fourth entry, which
14 starts the T1 termination. If you could take a few minutes
15 and read that.

16 A. Okay.

17 Q. It references the dial tone being received
18 from Rolla, the switch in Rolla; is that correct?

19 A. Well, I -- I think -- I think what I'm reading
20 there in that paragraph tells me that my earlier speculation
21 may have been accurate when I said perhaps a facility was
22 leased from Sho-Me to use at least temporarily to provide
23 dial tone out of the Rolla switch -- our Fidelity switch
24 located in Rolla to get that dial tone up to St. Robert.
25 I -- I think that's what it's telling me.

1 Q. And it mentions a complete study of present
2 facilities and proposals or recommendations to be made
3 during the June/July time frame. Are you familiar with the
4 proposals that were recently made to the City of St. Robert?

5 A. No. I have -- this -- what you've shared with
6 me is by far the most I know about it.

7 Q. But yet you are offering testimony about
8 Fidelity's operations in St. Robert; is that correct?

9 A. Yes, ma'am.

10 Q. Okay. If you look at this document, you
11 mentioned that it was a PVX contract; is that correct?

12 A. Yes.

13 Q. Okay. And can you obtain functions and
14 features through the use of this PVX system similar to what
15 you can obtain from Sprint's Centrex system?

16 A. I don't know with any certainty, because I
17 don't know what kind of PVX this is. I -- I would
18 acknowledge that there are certain features and functions
19 available from some PVXs -- premise PVXs that are similar in
20 capabilities to Centrex.

21 I know this is not Centrex service. I know
22 Fidelity, the CLEC, isn't providing any Centrex service in
23 the St. Robert exchange to this customer or any other. And
24 I know that Fidelity Systems Plus sells premise equipment,
25 not Centrex services.

1 Now, whether or not this was a bid that
2 competed with a Sprint Centrex, I don't know. I don't know
3 what kind of service the City had before they bought this.

4 Q. Okay. And I'm not contending that Fidelity
5 has a service called Centrex, per se. I guess what I was
6 trying to ascertain is whether or not the features of a
7 Centrex and the functions of a Centrex, some of these
8 features can be replicated through the use of the equipment
9 that is being installed by Fidelity Systems Plus under this
10 contract?

11 A. Yes. And the answer is, yes, some of them
12 can.

13 Q. And, in fact, the dial tone, as you mentioned
14 earlier in connection with this, is not provided by Sprint;
15 is that correct?

16 A. At -- at this point, it is not. And if my
17 speculation is accurate, perhaps it never was. But it isn't
18 today being provided by Sprint --

19 Q. Okay.

20 A. -- although it could be. I mean, the customer
21 could have purchased the PVX from Fidelity Systems Plus or
22 someone else and continued to buy local trunks from Sprint.
23 Apparently in this case they chose not to do that.

24 Q. That was my question.

25 MS. CREIGHTON HENDRICKS: Your Honor, I move

1 for the admission of Exhibit 25 into the record at this
2 time.

3 JUDGE WOODRUFF: Exhibit 25 has been offered
4 into evidence. Are there any objections to its receipt?

5 Hearing none, it will be received into
6 evidence.

7 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

8 MS. CREIGHTON HENDRICKS: No further
9 questions, your Honor.

10 QUESTIONS BY JUDGE WOODRUFF:

11 Q. All right. Now, Mr. Taylor, Fidelity is a
12 CLEC -- Fidelity Services I, I think it's called?

13 A. Yes, sir.

14 Q. Does it provide services in any other
15 exchanges besides Rolla and St. Robert?

16 A. No, sir.

17 Q. Okay. But it is affiliated with an ILEC in
18 neighboring exchanges?

19 A. It is affiliated with an ILEC which is
20 Fidelity Telephone Company, which is headquartered in
21 Sullivan, Missouri.

22 And just to be sure that I don't
23 mischaracterize anything, Fidelity Communications, which is
24 the holding company, also owns two other CLECs, one that for
25 want of a better names is referred to as Fidelity II and one

1 that's -- and that one is a certified CLEC in what's now
2 CenturyTel exchanges, and Fidelity III, which is a CLEC
3 which is certified in Southwestern Bell exchanges. Though
4 neither of them are providing services in those territories
5 to my knowledge at this point.

6 Q. Okay.

7 A. But Fidelity I is providing services only in
8 St. Robert to a limited extent and a greater extent in
9 Rolla.

10 Q. Okay. And it has a cable TV franchise in
11 Rolla; is that right?

12 A. In Rolla, not in St. Robert and no prospects
13 of getting one.

14 Q. And it's only in the City of Rolla not the
15 entire exchange of Rolla?

16 A. I'm not sure that that's true. It may be --
17 and I've frankly tried to verify that recently. It may be
18 that we can provide some cable services outside the City of
19 Rolla. There's a competing cable TV company, Phelps County
20 CableVision, that has a franchise in the city and outside
21 the city limits of Rolla.

22 Q. All right.

23 A. And they have a requirement to -- for their
24 city franchise to over-build the whole city at least within
25 five years.

1 JUDGE WOODRUFF: All right. I don't believe I
2 have any other questions so we'll go to recross. Staff?
3 MR. HAAS: No questions.
4 JUDGE WOODRUFF: Public Counsel?
5 MR. DANDINO: No questions.
6 JUDGE WOODRUFF: Unite?
7 MS. LIPMAN REIBER: No questions.
8 JUDGE WOODRUFF: Sprint?
9 MS. CREIGHTON HENDRICKS: No questions.
10 JUDGE WOODRUFF: All right. Redirect?
11 REDIRECT EXAMINATION BY MR. ROSS:
12 Q. Mr. Taylor, in response to a question from the
13 Judge, you mentioned that Fidelity Communications Services I
14 has an affiliated ILEC company. In what exchanges is that
15 ILEC providing services or certificated to provide services?
16 A. Well, several exchanges. And I'm embarrassed
17 that I can't name all of them, but it's about eight
18 exchanges centered around -- the largest of those exchanges
19 is Sullivan, Missouri and several other nearby smaller
20 exchanges.
21 Q. Ms. Hendricks pointed out on page 8 of her
22 Exhibit 25, I believe -- she asked you to read the language
23 to install 70 voice/data. Could you read the remaining
24 words that go along with that for me, please?
25 A. Yeah. It's under the heading of Scope of

1 Work. To install 70 voice, slash, data work station CAT5e
2 jack locations, wire out each location with one CAT5e blue
3 data 24 gauge inside PVC cables and one CAT5e gray voice
4 24 gauge inside PVC cable, install 4-position wall jack
5 assemblies at 70 locations, install one 7-foot floor mount,
6 19-inch rack assembly, two 48-port CAT5e patch panels for
7 termination of CAT5e data cables and create MDF for
8 connection to CAT5 voice cables and Sprint, slash, Fidelity
9 service to the PSTN.

10 Q. What we're really talking about here is the
11 inside wiring in the jacks. Right? We're not talking about
12 access lines being provided. Correct?

13 A. For the most part, that's correct.

14 Q. Also, this Exhibit 25, is this for the
15 provision of local exchange services by Fidelity
16 Communications Services I?

17 A. No. It's a sales contract to sell what I
18 believe to be a premises PVX by an affiliate, not a CLEC, to
19 the City of St. Robert.

20 Q. You mentioned that Fidelity has 69 access
21 lines in the St. Robert exchange. What percentage of the
22 market share does that represent, if you know?

23 A. Based on the numbers that I heard from Sprint
24 witnesses, I backed into a number of approximately 1
25 percent.

1 MR. ROSS: No further questions.

2 JUDGE WOODRUFF: All right. You may step
3 down.

4 Now, at the beginning right after we came back
5 from lunch, I mentioned that we'd have some questions about
6 Exhibit 16. So I'd like to bring Mr. Idoux back to the
7 stand, please.

8 (Witness recalled.)

9 JOHN IDOUX, III testified as follows:

10 QUESTIONS BY JUDGE WOODRUFF:

11 Q. Thank you for coming back and you are still
12 under oath.

13 Yesterday Commissioner Gaw asked for
14 information about price changes Sprint had instituted since
15 it became a price cap company. And, in particular, he was
16 concerned about what had happened to the prices for the
17 services for which Sprint was seeking competitive
18 classification.

19 And in Exhibit 16 you provided many, many
20 individual price changes for various services. And the
21 Commissioner wanted to know which ones of these relate to
22 the services for which you're seeking competitive
23 classification. Is there a way to break that out?

24 A. There is. If you turn to my Exhibit 17 and my
25 Surrebuttal Testimony, that's a 50-some page Excel

1 spreadsheet. There's actually five sets of indexes. The
2 first one's 32 pages representing Sprint's services in its
3 general exchange tariff. The second one is a two-page index
4 referencing Sprint's services from its MTS tariff followed
5 by four pages of services from its private line tariff.
6 The fourth set of indexes are for its access services and
7 that's 7 pages and the final one -- I guess that was the
8 final one.

9 There you can see very clearly which services
10 Sprint is seeking competitive classification for and there
11 is a tariff reference number. Those are the same tariff
12 references and service name as listed on Exhibit 16. So
13 there is a cross-reference, although it would be a very
14 manual process.

15 Q. Okay. So those where it says yes under
16 exchange specific competitive, that's the ones you're
17 seeking status --

18 A. Yes. For those five exchanges, Norborne,
19 Kearney, Platte City and the other two. We're seeking
20 statewide service -- or statewide classification for things
21 like directory assistance, Centrex and those services
22 discussed by Sprint Witness Mark Harper.

23 That, I guess, second column there where it
24 says Statewide Service Classification on page 1 it says
25 non-basic, towards the end -- or towards the middle you

1 could start seeing -- for example, under ATM on page 7 it
2 goes to a competitive classification and that's grayed out
3 to bring ready attention to it. So where it says
4 competitive in that column are the statewide -- or that
5 represents Sprint's statewide request.

6 Q. Okay. And those services that are identified
7 in your exhibit attached to your testimony correspond to
8 what's on Exhibit 16?

9 A. Yeah. That would be -- probably not going to
10 be in the exact same order, but you'd be able to go back and
11 forth and see.

12 Q. Okay. Obviously I haven't done that yet to
13 correspond back and forth, but are there any patterns that
14 you could identify for the Commissioner?

15 A. I didn't develop the spreadsheet, so I don't
16 know. I don't believe so, because I think it first talks
17 about business and it goes into residence and then I don't
18 believe it follows exactly.

19 But it does list -- on Exhibit 16, the second
20 column there, it tells you what tariff it's in. GSST of
21 course would be the general tariff and so it's pretty
22 explicit about which tariff it comes out of.

23 The order -- it looks like the order of
24 Exhibit 16 first addresses all the services in the general
25 exchange tariff and then goes to private line and then MTS.

1 So it is categorized -- well, no, then towards the end it
2 jumps back to GS-- yeah, it does business first and then
3 residential second. Residential starts on page 22 of
4 Exhibit 16. And after that, it follows the general tariffs.
5 Everything in general exchange tariff followed by private
6 line MTS and access.

7 Q. Has Sprint done any sort of analysis of this
8 information that would indicate whether prices for services
9 that you're seeking competitive classification for have gone
10 up in price more or less than other services? Has that sort
11 of analysis been done?

12 A. This is the only thing that's been done that
13 lists every single service. It shows the year over year
14 price increase and price percentage as well as the
15 cumulative effect from when Sprint first entered price cap.

16 JUDGE WOODRUFF: Okay. Well, thank you. I
17 think that answers the questions as much as they can be
18 answered anyway.

19 I'll go ahead and give everybody else an
20 opportunity to ask any further questions they may have just
21 based on questions from the Bench. Does anyone wish to make
22 any recross based on those questions?

23 All right. Any redirect based on those
24 questions?

25 MS. CREIGHTON HENDRICKS: No, your Honor.

1 JUDGE WOODRUFF: Okay. You can step down.
2 Okay. Is there any other evidence anyone
3 wishes to present? Probably lots of evidence somebody
4 wishes to present.
5 MS. CREIGHTON HENDRICKS: Well, now that you
6 ask, yeah.
7 JUDGE WOODRUFF: All right. That would be
8 proper to present at this time I guess I should qualify.
9 Well, it appears then the only thing left to
10 do is to talk about briefing schedule.
11 MS. CREIGHTON HENDRICKS: Your Honor, if I
12 may, I thought you earlier mentioned that the Commissioners
13 had some questions of the Staff witness.
14 JUDGE WOODRUFF: That seems to have been
15 resolved through other -- there are no other Commissioners
16 down here. They couldn't get away so we'll let them go at
17 this time. You're off the hook.
18 Okay. Briefing schedule, I believe we'd be
19 looking at somewhere late August for initial briefs. I
20 believe Sprint's initial proposed procedural schedule said
21 September 1, which actually is a holiday, but that sounds
22 about right. Let me bring up my calendar here. We'd be
23 looking at -- do the parties have any preference as to what
24 day of the week you have briefs come in on?
25 MS. CREIGHTON HENDRICKS: If it's following a

1 holiday week, it would great to be after a weekend, say, on
2 Wednesday. I don't know if that's --

3 JUDGE WOODRUFF: September -- that would be
4 September 3rd.

5 MS. CREIGHTON HENDRICKS: And, your Honor,
6 just so we initially understand, it's simultaneous initial
7 briefs and simultaneous --

8 JUDGE WOODRUFF: Yes. Reply briefs.

9 MS. CREIGHTON HENDRICKS: -- reply briefs?
10 I'm open to the 5th of September too.

11 JUDGE WOODRUFF: Well, let's go with the 3rd.
12 That way I have a chance to look at them a little bit before
13 the end of the week too. So initial briefs September 3rd
14 and let's say reply briefs three weeks later, which would be
15 September 24th. Anyone have any objections to that?

16 Okay. I'll make that order then. Initial
17 briefs due on September 3rd, reply briefs due on
18 September 24.

19 And we had one -- Exhibit 21 I believe from
20 Sprint was going to be the Report and Order of TO-93-116,
21 you were going to give me copies of that. I assume you
22 don't have those yet?

23 MS. CREIGHTON HENDRICKS: No, your Honor. I
24 do not have them. I will mail them to all parties and to
25 the Commission.

1 JUDGE WOODRUFF: If you'd do that within
2 10 days then.

3 MS. CREIGHTON HENDRICKS: Yes, your Honor.

4 JUDGE WOODRUFF: All right. Are there any
5 other -- yes, Mr. Haas?

6 MR. HAAS: Your Honor, one minor matter. I
7 was just wondering if your records show that all of the
8 exhibits have been received or there's some that were not
9 received yet?

10 JUDGE WOODRUFF: My records show that all were
11 received. Do you disagree?

12 MR. HAAS: No, your Honor. I just wanted to
13 confirm.

14 JUDGE WOODRUFF: Yes.

15 MR. ROSS: Your Honor, do we have any idea
16 when transcripts will be available?

17 JUDGE WOODRUFF: I believe transcripts will be
18 available 10 working days after today, which I believe
19 should give you plenty of time to get briefs in.

20 Okay. Any other matters anyone needs to bring
21 up while we're still on the record?

22 All right. With that then, we are adjourned.
23 Thank you.

24 WHEREUPON, the hearing was adjourned.
25

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