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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

July 14, 2003

Jefferson City, Missouri

Volume 3

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

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

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

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1 JUDGE WOODRUFF: We're here today for a
2 hearing in the matter of the investigation of the state of
3 competition in the exchanges of Sprint Missouri,
4 Incorporated. This is Case No. IO-2003-0281.
5 And we'll begin by taking entries of
6 appearance beginning with Staff.
7 MR. HAAS: Good morning, your Honor. The
8 Staff appears by William K. Haas. My address is Post Office
9 Box 360, Jefferson City, Missouri.
10 JUDGE WOODRUFF: Thank you.
11 And for Sprint?
12 MS. CREIGHTON HENDRICKS: Morning, your Honor.
13 Sprint appears on behalf -- or I am Lisa C. Creighton
14 Hendricks, 6450 Sprint Parkway, Overland Park, Kansas 66251.
15 JUDGE WOODRUFF: Thank you very much.
16 And for Public Counsel?
17 MR. DANDINO: Mike Dandino, Office of the
18 Public Counsel, Post Office Box 7800, Jefferson City,
19 Missouri 65102, representing the Office of the Public
20 Counsel and the public.
21 JUDGE WOODRUFF: Thank you.
22 And for SBC, Missouri.
23 MR. CONROY: Thank you, your Honor. Anthony
24 Conroy appearing on behalf of SBC Missouri, One SBC Center,
25 Room 3520, St. Louis, Missouri 63101.

1 JUDGE WOODRUFF: Thank you very much.
2 And for Green Hills?
3 MR. ENGLAND: Thank you, your Honor. Let the
4 record reflect the appearance of W.R. England on behalf of
5 Green Hills Telecommunications Services. My address is Post
6 Office Box 456, Jefferson City, Missouri 65102.
7 JUDGE WOODRUFF: And for ExOp of Missouri
8 doing business as United -- or as Unite?
9 MS. LIPMAN REIBER: Rachel Lipman Reiber. My
10 mailing address is 9647 Lackman Road, Lenexa, Kansas 66219.
11 JUDGE WOODRUFF: Thank you.
12 And for Fidelity?
13 MR. ROSS: Good morning, your Honor. Jason
14 Ross; Greensfelder, Hemker and Gale, PC, 10 South Broadway,
15 2000 Equitable Building, St. Louis, Missouri 63102 appearing
16 on behalf of Fidelity Communication Services I,
17 Incorporated. Thanks.
18 JUDGE WOODRUFF: Thank you.
19 For AT&T?
20 MR. WEBER: Good morning, your Honor. My name
21 is Steve Weber, 101 West McCarty, Jefferson City, Missouri
22 65101.
23 JUDGE WOODRUFF: Thank you.
24 And for MCI WorldCom? They filed a notice
25 last week indicating -- requesting leave not to appear for

1 this hearing. That leave will be granted. They, of course,
2 by not appearing are waiving their rights to cross-examine
3 or participate in this hearing.

4 I believe that's everyone. Is there anyone I
5 missed?

6 Okay. In a moment we'll go ahead and take
7 opening statements from the parties, but before we do that,
8 I need to deal with at least one preliminary motion. That's
9 AT&T Communication of the Southwest filed a motion for leave
10 to withdraw last week. Does any party wish to be heard on
11 that motion?

12 Then we'll go ahead and grant the motion for
13 leave to withdraw and AT&T Communication is granted leave to
14 withdraw from this case.

15 MR. WEBER: Thank you, your Honor.

16 JUDGE WOODRUFF: Thank you, Mr. Weber.

17 In a moment we'll take a break and I'll go up
18 and get the Commissioners and we'll have them come back down
19 for opening statements. And we'll go ahead and pre-mark
20 exhibits before I do that, but we don't need to be on the
21 record to do that. So at this time we're off the record.

22 (EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR
23 IDENTIFICATION.)

24 JUDGE WOODRUFF: We're back on the record at
25 this point. Exhibits have been marked. There was testimony

1 filed on behalf of AT&T, the testimony of Matt Kohly. Since
2 AT&T has withdrawn as a party, their testimony is also
3 withdrawn. So the testimony of Matt Kohly is withdrawn from
4 this case.

5 Any other matters that anyone wants to bring
6 up while we're on the record at this point? Any other
7 preliminary matters?

8 All right. At this point then, we're going to
9 take a short break and we'll come back at nine o'clock with
10 opening statements. Thank you.

11 (A RECESS WAS TAKEN.)

12 MS. CREIGHTON HENDRICKS: There was one thing
13 I failed to mention earlier if I may at this point.

14 JUDGE WOODRUFF: Go right ahead.

15 MS. CREIGHTON HENDRICKS: We probably may have
16 a witness scheduling problem. Mark Harper, who I think is
17 scheduled for this afternoon, unfortunately got tied up in
18 the state of Washington and will not be able to make it
19 until tonight here in Jefferson City. So we have notified
20 the parties and they are agreeable with going on with the
21 schedule in the event he can't make it.

22 JUDGE WOODRUFF: That's fine. And we'll do it
23 tomorrow, I assume.

24 MS. CREIGHTON HENDRICKS: Correct, your Honor.

25 JUDGE WOODRUFF: All right. Then let's go

1 ahead and begin with opening statements. And I believe
2 Sprint will be going first on that.

3 MS. CREIGHTON HENDRICKS: Good morning, your
4 Honor. This is a case that was initiated by Staff under
5 Section 392.245 of the Missouri statutes, the price cap
6 statute.

7 The price cap statute directs the Commission
8 to investigate the state of competition in Sprint's
9 exchanges within five years of an alternative provider being
10 certified to provide basic local service in Sprint's
11 exchanges. In the course of that investigation, if the
12 Commission finds effective competition, the statute further
13 allows Sprint to treat that service, subject to effective
14 competition, as a competitive service.

15 In this case, ExOp of Missouri, Inc., was
16 granted a certificate to provide basic local service within
17 Sprint's exchanges on December 15th, 1998. Therefore, the
18 five-year period following the certification runs on
19 December 15th of this year.

20 In conducting the investigation, the statute
21 provides a definition of effective competition to guide the
22 Commission's decisions. The statute directs the Commission
23 to consider the following items -- and I have blown up the
24 statute here to my right.

25 First, to consider whether or not the services

1 are available from alternative providers; second, whether or
2 not those services available from alternative providers are
3 functionally equivalent or substitutable; third, to consider
4 the policies of Chapter 392, and there's a specific
5 reference to reasonable rates; four, to consider any
6 existing barriers regulatory or economic; and five, any
7 other relevant factor the Commission may consider -- want to
8 consider.

9 In this case, Sprint has asked the Commission
10 to apply these factors and find that effective competition
11 exists for the core access line services, both business and
12 residential, and access line related services in five
13 specific exchanges. These exchanges are Norborne, Kearney,
14 Rolla, Platte City, and St. Roberts.

15 Sprint has also requested that some of its
16 non-local services be found subject to effective competition
17 in all of its 80 exchanges. These non-local services
18 include interLATA toll, 800 services, private line, Centrex,
19 LIDB, directory assistance and operator assistance.

20 Let me first talk about the local core access
21 line services and related services. These services are
22 addressed by Sprint's witness, Mr. John Idoux. The evidence
23 for effective competition in the five exchanges for the core
24 local services and access or line services is overwhelming.

25 To assist the Commission in following my

1 opening, I have developed a chart that will follow the
2 categories of evidence as I reference them. First, what the
3 Commission will find is that in each of the five exchanges,
4 there is an alternative provider. In each of the five
5 exchanges, that alternative provider is a facilities-based
6 provider. In each of the five exchanges the
7 facilities-based provider -- or let me -- I misspoke.

8 In four of the five exchanges the
9 facilities-based provider is also an ETC, which is an
10 Eligible Telecommunications Carrier. That means they are
11 going to serve the entire exchange. In each of the
12 exchanges, the service offered by the facilities provider
13 are the same, the exact same. And in most cases they're
14 offered or enhanced with additional services that are not
15 offered by Sprint. In each of the five exchanges, the
16 service offered by the alternative provider is offered at a
17 lower price than Sprint.

18 Further, in each of the five exchanges, the
19 presence of a facilities-based provider demonstrates there
20 is no economic or regulatory barrier to entry. And further
21 on this issue, the evidence will also show that there are 59
22 other carriers who have the regulatory authority to enter
23 into Sprint's exchanges and at some point in time in the
24 past five -- or four and a half years, 25 of them have.
25 Therefore, there is no regulatory barriers.

1 Finally, the market loss is substantial in
2 each one of -- or in the majority of these exchanges. And
3 that factor, considered with all the other factors I have
4 cited, should lead the Commission to the conclusion that
5 there is effective competition.

6 And just one note I'd like to say, there are
7 two exchanges where the market loss is just occurring or
8 beginning to occur at this point in time. But the
9 Commission will find in those exchanges that the competitor
10 that we're competing against is a facilities-based provider,
11 has advertised extensively and proven effective in adjoining
12 exchanges and has won some major contracts, specifically the
13 city contracts. Without a question, the evidence will show
14 effective competition.

15 Given the overwhelming evidence of effective
16 competition, the only challenge that has been raised is one
17 questioning whether competition from only one provider is
18 ever effective competition. The answer to that question in
19 this case is yes.

20 Yes, it is effective competition when that
21 competitor lays its own facilities. Yes, it is effective
22 competition when that competitor offers the same services at
23 lower prices. Yes, it is effective competition when that
24 competitor has the capability to secure the majority of the
25 market. Yes, it is effective competition when that

1 competitor secures important contracts within the city. And
2 lastly, yes, it is effective competition when that
3 competitor unquestionably serves as a controlling factor on
4 price.

5 Based on the evidence, this Commission should
6 find that effective competition exists in the five exchanges
7 subject to Sprint's request.

8 Next are the non-local services that I
9 referenced. And these are the services that Sprint seeks a
10 competitive designation in all 80 of our exchanges. These
11 services are addressed by Sprint's witness Mr. Mark Harper.
12 And these services are -- and to assist the Commission in
13 following me, I have a chart that will list them.

14 First I've listed Centrex, which is a central
15 office based system or service that offers call management.
16 Next we have the intraLATA private line services. These are
17 point-to-point non-switch services to transport voice and
18 data. Next, ATM and frame relay services. Again,
19 point-to-point services over specific technology to
20 transport voice and data.

21 IntraLATA MTS services, this is essentially
22 what is your interexchange toll service within a LATA.
23 IntraLATA WATS and 800 services, line information database
24 access services, often referred to as LIDB. This provides
25 the customer the ability to query a billing validation

1 database and it's used to ensure that calls are authorized
2 and billed properly.

3 Next we have speed dial. This allows a
4 customer to load a pre-selected list of numbers into their
5 phone and just press, for example, one and have that number
6 dialed or two on the phone. And the last two are directory
7 assistance and operator service.

8 With respect to these services, the evidence
9 will show, one, that there are at least 586 interexchange
10 carriers certified in Missouri, including Sprint's
11 exchanges. These certifications allow the IXC to offer
12 interLATA toll, WATS, directory services, operator services,
13 800 services and some private line ATM and frame relay
14 services.

15 Two, 52 of these certified IXCs, interexchange
16 carriers, are actually providing services in Sprint's local
17 exchanges. Three, Sprint offers intraLATA dialing parity.
18 Meaning it's just as easy to use us as it is to use an IXC
19 for toll or operator service.

20 Four, there are other nontraditional providers
21 actively competing in these fields such as wireless
22 providers, Internet providers and providers of customer
23 premise equipment. Five, with respect to many of these
24 services, there has been substantial loss in customer
25 volume, 75 percent in the intraLATA toll market and

1 36 percent in the directory assistance.

2 Finally, with respect to many of these
3 non-local services, the Commission determined years ago that
4 they represent competitive markets.

5 Given all this, it is not surprising that
6 there has been no opposition to Sprint's request to
7 designate most of these services as competitive. The only
8 opposition is to directory assistance, operator service and
9 Centrex.

10 With respect to directory assistance and
11 operator service, the real question is whether the
12 alternative providers identified by Sprint offer a service
13 that is substitutable. As explained by Sprint's witness,
14 Dr. Brian Stare, substitutability occurs when the services
15 satisfy the same demand. When the services have the
16 ability, actual or potential, to take away significant
17 amounts of business from each other.

18 With respect to directory assistance, these
19 substitutable services are offered by the following
20 providers. The long-distance providers, and that's the IXCs
21 that I reference, their service is available when you dial 1
22 plus your area code 555-1212. Wireless providers also offer
23 directory assistance. You dial 411, Send, you
24 get directory assistance. The Internet. There is is a
25 multitude of databases available on the Internet that will

1 list numbers and provide directory assistance.

2 With respect to operator services, the
3 alternative providers that offer these substitutable
4 services are, again, the IXCs or long-distance providers and
5 then there's calling card providers, pay phone providers and
6 wireless. All these services satisfy the same demand. The
7 demand to access an operator for assistance.

8 Once it is established, as we believe it
9 should be, that service is offered by the providers we have
10 identified is substitutable, then the remaining specified
11 criteria are met. They're all alternative providers
12 offering both directory assistance and operator service.
13 There are no barriers into these areas of the market.
14 Furthermore, they're reasonable prices. In some cases, for
15 example the Internet, the service is free.

16 Now, despite the specific criteria being met,
17 there are some parties that further claim that this
18 Commission should withhold the finding of effective
19 competition because operator service and directory
20 assistance are so tied to the basic local service that they
21 should not be separated.

22 In this case, the evidence does not support
23 that assertion. All the alternatives are available
24 regardless of who your local provider is. For example,
25 every customer has the option to select a different

1 interLATA toll provider. Indeed the record will reflect the
2 majority of Sprint's customers, the overwhelming majority
3 have, in fact, done that.

4 All those customers have to do is dial the
5 1 plus the area code 555-1212 and they get directory
6 assistance offered by an alternative provider regardless of
7 who their local phone provider -- local service provider is.

8 Further, the evidence will show that more than
9 50 percent of Missourians use the Internet which offers the
10 directory assistance. And this assistance is available
11 regardless of who your local service provider is.

12 Therefore, the realities of the competitive
13 market is a reality that separates directory assistance and
14 operator service from who the local provider is. And we ask
15 the Commission to recognize that reality. Based on that, we
16 believe there's no reason that directory assistance and
17 operator service should not be found to be subject to
18 effective competition.

19 Now, the last service that I mentioned that
20 has received some objection is the Centrex service. And
21 this objection comes from Fidelity. And the basis for the
22 objection is the fact that Centrex service includes dial
23 tone. Based on this, Fidelity argues that it's a basic
24 service.

25 This is incorrect. Centrex is a business

1 service that is not purchased to achieve basic local
2 service. It's purchased to achieve a call management
3 service. It allows you to manage calls between stations, to
4 do meet-me conferencing, call forwarding and a variety of
5 other call management functions.

6 And the alternative providers that compete in
7 satisfying this demand for the call management function are
8 big players in the market. They're the Verizon, SBC,
9 Seamans, they're huge. And they provide to a customer the
10 equipment generally put on the premise that delivers the
11 same call management function.

12 Now, they still have to arrange for a dial
13 tone, even on a retail basis or a wholesale basis. However,
14 that dial tone will remain regulated by the Commission. And
15 it's not the dial tone that is the service, it's the call
16 management capabilities of Centrex is the reason why someone
17 goes to purchase the service. If they want just basic
18 local, they can purchase our B-1.

19 So we ask the Commission, as they weigh the
20 objection, to focus on really the demand being satisfied by
21 this Centrex service, which is the call management. Based
22 on that, we agree the record will support and substantially
23 support a finding that Centrex is subject to effective
24 competition.

25 In this opening I attempted to frame the

1 issues for what services and what exchanges is Sprint
2 subject to effective competition. On this issue or in
3 response to this question, Sprint's request is narrowly
4 tailored to the services and exchanges which face
5 substantial effective competition.

6 Further, Sprint's evidence of effective
7 competition clearly supports the Commission finding that it
8 exists in the five exchanges that I have referenced,
9 Norborne, Kearney, Rolla, Platte City and St. Roberts and
10 across Sprint's exchange for the non-local services that
11 I've identified. Thank you for your time.

12 JUDGE WOODRUFF: Thank you.

13 And next up is Staff.

14 COMMISSIONER GAW: Judge, I would like to
15 inquire briefly.

16 JUDGE WOODRUFF: All right. Go ahead.

17 COMMISSIONER GAW: I'm curious. There's some
18 testimony from Staff and I think from Public Counsel about
19 the Commission making a further finding -- and I'm
20 referencing your last comment that your request is narrowly
21 crafted to finding effective competition in certain areas
22 and with certain topics that the Staff and Public Counsel
23 are requesting the Commission find that they're not -- there
24 is not effective competition existing in other areas that
25 are not narrowly crafted to your request. And I want to

1 know what Sprint's position is in regard to that issue in a
2 broad sense.

3 MS. CREIGHTON HENDRICKS: Well, in a broader
4 sense -- and that raises some other issues too in the case.
5 If you look at 392.245, there are several sentences that
6 address finding effective competition. I believe the first
7 sentence addresses finding it in exchanges the provider's
8 actually been providing for five years and in that case,
9 there's a presumption of it.

10 The second sentence addresses a general
11 investigation that must occur within five years of a
12 certification and that's across all exchanges. And that's
13 what is occurring in this case.

14 Now, the Commission has handled one of these
15 cases before. SBC came here last year and requested the
16 same, even though they requested it across their exchanges.
17 We went back to that case. And in that case the Commission
18 said the burden is on the party who wants the finding of
19 effective competition to come forward with the evidence of
20 effective competition. We have accepted that burden with
21 respect to the five exchanges in the non-local services I
22 have listed.

23 With respect to the other exchanges in the
24 local service, we have not put in any evidence of effective
25 competition. And I -- I think --

1 COMMISSIONER GAW: Does Sprint disagree with
2 the proffer of Staff and Public Counsel that the Commission
3 should make a finding that no effective competition exists
4 in those areas that Sprint has not made the request?

5 MS. CREIGHTON HENDRICKS: I believe that to
6 the extent it was handled in the SBC case, we would agree
7 with that. And I think in that case you made affirmative
8 findings in certain exchanges and I think the assumption was
9 that it did not exist in the others.

10 COMMISSIONER GAW: All right. Thank you.

11 JUDGE WOODRUFF: Ms. Hendricks, if you'd move
12 your chart. Thank you.

13 All right. Then Staff?

14 MR. HAAS: May it please the Commission.

15 As you've heard from Ms. Creighton Hendricks,
16 this hearing will investigate the extent to which Sprint's
17 services face competition.

18 Sprint is an incumbent local
19 telecommunications company subject to price cap regulation
20 under Section 392.245 of the Revised Statutes of Missouri.
21 Subsection 5 of that statute directs the Commission to --
22 pardon me -- to determine the state of competition for a
23 price cap company's various services in an exchange no later
24 than five years following the first certification of a
25 competitive local exchange carrier or a CLEC in the

1 exchange.

2 If the Commission determines that effective
3 competition exists in an exchange, Sprint may then adjust
4 its rates for its competitive services upward or downward as
5 it determines appropriate in its competitive environment.
6 If the Commission determines that effective competition does
7 not exist, then the price cap statute continues to apply to
8 those services.

9 This is the second status of competition case
10 before the Commission. The first, Case No. TO-2001-467,
11 investigated the state of competition in Southwestern Bell's
12 exchanges. To make the current case manageable, the parties
13 have grouped Sprint's hundreds of services into baskets, as
14 was done in the Southwestern Bell case.

15 Section 386.020, subsection 13 of the Missouri
16 Revised Statutes lists factors which the Commission is to
17 consider in determining whether effective competition
18 exists. These factors include the extent to which services
19 are available from alternative providers and the extent to
20 which the services of alternative providers are functionally
21 equivalent or substitutable.

22 The factors include the extent to which the
23 purposes and policies of Chapter 392 the state's
24 telecommunications law, are being advanced and also whether
25 barriers to entry exist.

1 Finally, the Commission is to look at other
2 factors deemed relevant. Staff Witness McKinnie presents
3 the Staff's analysis and recommendations concerning the
4 state of competition for Sprint's services. I will use this
5 opportunity to address the highlights.

6 It is the Staff's opinion that Sprint faces
7 effective competition for its residential and business basic
8 local services and related services in the Norborne, Kearney
9 and Rolla exchanges. The parties who oppose a competitive
10 classification for basic local service in these exchanges
11 suggest that one facilities-based CLEC is not enough.

12 In the Southwestern Bell case, however, the
13 Commission found that effective competition existed for
14 residential services in the St. Charles and Harvester
15 exchanges, which had one facilities-based CLEC.

16 It is the Staff's position that the local
17 operator services at issue and directory assistance services
18 should be classified as competitive only in the Norborne,
19 Kearney and Rolla exchanges.

20 Sprint has asked for competitive
21 classification for these services throughout all of its
22 exchanges. In the Staff's opinion, these services are so
23 closely tied to basic local service that they should only be
24 classified as competitive where basic local service is also
25 found to be competitive.

1 The Staff, having considered Sprint's
2 Surrebuttal Testimony, is also now recommending that
3 Sprint's pay phone services should be classified as
4 competitive in the Norborne, Kearney and Rolla exchanges
5 where, in Staff's opinion, Sprint faces effective
6 competition for basic local business services.

7 It is the Staff's opinion that Sprint faces
8 effective competition from interexchange carriers for its
9 intraLATA toll, WATS and 800 services. The other parties do
10 not seem to object to this position except for the Office of
11 Public Counsel, which opposes the classification of flat
12 rate toll plans as competitive. Sprint, however, does not
13 offer any flat rate toll plans.

14 The Staff believes that the adoption of its
15 recommendation is consistent with the purpose and policies
16 of Chapter 392 and, in particular, with Section 392.185,
17 subsection 6. The Staff's recommendations consistent with
18 that subsection allow full and fair competition to function
19 as a substitute for regulation when consistent with the
20 protection of ratepayers and otherwise consistent with the
21 public interest. Thank you.

22 JUDGE WOODRUFF: Thank you.

23 And for Public Counsel?

24 MR. DANDINO: May I?

25 MS. CREIGHTON HENDRICKS: Yes, you may.

1 MR. DANDINO: Thank you, your Honor. May it
2 please the Commission.

3 The Federal Telecommunications Act of 1996 and
4 Senate Bill 507 promised the consumer lower prices, better
5 service, more service options and alternatives. This
6 proceeding is an investigation into the status of
7 competition in each of Sprint's exchanges for each of
8 Sprint's telecommunications services. Essentially, you are
9 determining whether the promise of the Telecommunications
10 Act and Senate Bill 507 is being kept or is still
11 unfulfilled.

12 The task at hand for the Commission is to
13 determine whether there exists effective competition for
14 each Sprint Missouri telecommunications service in each of
15 the Sprint telecommunication exchanges. This is very
16 important to not have just a broad generalization that
17 competition exists for this service. I think you have to
18 identify exactly those exchanges, present evidence in those
19 exchanges where the effective competition exists.

20 Sprint's task is to come forward and present
21 competent substantial evidence that demonstrates the
22 existence of effective competition in each one of those
23 exchanges for each one of those services.

24 Of course, as we start this investigation and
25 as we start this proceeding, we need a point of reference

1 for the investigation. Obviously Section 392.245, the price
2 cap statute, the provision that explains exactly what this
3 Commission needs to decide when you want to transition a
4 price cap company -- the services of a price cap company to
5 a competitive status.

6 Ms. Creighton Hendricks presented you with the
7 definition of effective competition and that certainly is
8 the guidepost for you to use. Mr. Haas also mentioned
9 Section 392.185, which presents the goals of Section 392 for
10 the regulation of the telecom.

11 Of course, he emphasized one section -- I
12 believe it was subsection 6 -- that talks in terms about
13 competition serving as a substitute for regulation
14 consistent with the protection of the ratepayer and
15 consistent with the public interest.

16 Please look at that phrase once again. It is
17 the substitute of competition for regulation, but there's a
18 condition on it. And it's a very important condition. It's
19 the protection of the ratepayer and it's the public
20 interest.

21 Now, another guidepost also -- back to Section
22 392.185, it also provides that just and reasonable rates is
23 one of the goals of Chapter 392, bringing up parity to rural
24 and urban areas. Each one of the seven items listed in
25 Section 392.185 is the regulatory goal of this Commission,

1 therefore, it should also be the competitive goal, the goal
2 of competition, to bring those same benefits and same items,
3 same scope of protection, same umbrella of protection to the
4 ratepayer.

5 In a monopoly regulation -- well, we have a
6 continuum here where you start with monopoly regulation at
7 one end and to the very far end you have pure perfect
8 competition. Price cap regulation falls somewhere in
9 between there.

10 Monopoly regulation, there's a bargain, a
11 regulatory bargain where the companies limit their ability
12 to raise prices to expenses and to a reasonable rate of
13 return and the regulator provides no competition, a monopoly
14 atmosphere.

15 In competition, I think there's also a
16 competitive bargain, a competitive covenant. This is that
17 the ratepayer will be protected by those same forces of the
18 competition, the invisible hand of the market power in the
19 same manner as this Commission stands to protect the
20 ratepayer. So I call it a competitive covenant with
21 consumers.

22 The PSC should demand strict proof of the
23 existence of effective competition prior to releasing Sprint
24 from the protections offered by price cap regulation to
25 enforce that covenant.

1 And I think we have three categories of
2 services that -- I break them into three different
3 categories than Sprint or the Staff did. Not necessarily
4 based upon function, but based upon Public Counsel's
5 position on it.

6 Sprint first seeks to reclass-- the first
7 category are those services Sprint seeks to reclassify and
8 Public Counsel opposes. These are the residential core
9 access services and business and the associated lines. Also
10 includes directory assistance, operator services and flat
11 rate toll plans.

12 First, discussing the flat rate toll plans,
13 Mr. Haas mentioned that Sprint does not have such products;
14 however, it does have MCA, which we consider at least to be
15 a flat rate toll plan. It's a substitute for toll. And we
16 think that should -- certainly should not be granted
17 competitive status.

18 As far as directory assistance and operator
19 services, if you're using the criteria of the functional
20 equivalent or substitutability, I think you have to look
21 exactly not only at the function, but also how you can use
22 those. There's a big difference when you're a local -- when
23 you're the local company and people dial -- dial 1 plus 411
24 and can reach you versus dialing 1, the area -- 1 plus the
25 area code plus 555-1212 or, you know, whatever other --

1 maybe 1010 numbers to get around it. The 555-1212 plus the
2 area code plus 1 plus is not the equivalent of just dialing
3 1 plus 411.

4 Now, 50 percent of Missourians, as
5 Ms. Creighton Hendricks, stated may use the Internet. That
6 would not be surprising. But the real issue is how many of
7 them use the Internet to obtain directory assistance or
8 operator services or especially directory assistance.

9 Now, let's look at the comparison chart that
10 Ms. Hendricks has presented by each exchange
11 facilities-based provider. In each one of them they last
12 list yes. And how many is there? One. And I think that's
13 a big issue. Does one service provider, one alternative
14 equal, effective competition?

15 It goes more than to the numbers. It goes
16 into all the other facts involved in it. If you look in
17 the -- let's see -- in the Platte City and the St. Roberts
18 exchange, the presence of the facilities-based is tenuous.
19 It hasn't made very much penetration at all.

20 Look also at the lower competitive rates.
21 Here's something that -- Sprint is bragging that their
22 competitor has lower rates than they do and that's a
23 justification for granting them competitive status.

24 Now, this Commission in the Southwestern
25 Bell -- in the Southwestern Bell investigation into

1 competition said that effective competition includes having
2 a discipline on prices. Well, I don't see any discipline on
3 prices. Certainly don't see any discipline on Sprint's
4 prices.

5 Sprint has the ability, under price cap
6 authority, to lower their rates to meet competition, but
7 apparently they're not. And it is questionable whether that
8 competition has had any discipline on their prices.

9 If you look at the substantial market loss,
10 look very carefully at the evidence of how they calculate
11 their market loss. In the -- I believe it's in the Kearney
12 and the Norborne, Platte City exchanges, you're looking at
13 franchise fees and calculations based on that. I think I
14 would look very carefully at that type of evidence.

15 The next level are those that Sprint has
16 requested reclassification and the Office of Public Counsel
17 has taken no position on. This should not be taken as
18 acquiescence in their application. We just believe that
19 we're going to focus our resources on those key residential
20 business and related core services. The other parties in
21 this case have addressed some of those other services.

22 Public Counsel asks you to hold Sprint to a
23 strict standard of proof where they can produce evidence of
24 that effective competition.

25 Finally, in those cases where Sprint does not

1 request a reclassification, as Sprint acknowledged up here,
2 that they're not presenting any evidence of effective
3 competition. And I believe in the absence of further proof,
4 the investigation should conclude and make an affirmative
5 statement that effective competition does not exist.

6 I think also add to this that the legal
7 requirement is -- I question whether the Commission can
8 grant more than what a company asks for. I know that
9 certainly that is the case in a rate case, that the
10 Commission cannot grant them a greater rate than they
11 request and I think it's just as applicable here.

12 Some, I guess, 20 years ago, the Gallo Wine
13 Company had an advertising slogan that said, We will sell no
14 wine before its time. In a similar way, Public Counsel's
15 asking the Commission here to approve no classification
16 before its -- reclassification before its time, before there
17 is mature, before there is hardy, before there is robust
18 competition.

19 Until there is effective competition to
20 counterbalance the natural power and advantage of the
21 incumbent and assure that there are reasonable rates and the
22 consumers are protected, this Commission should not
23 reclassify these services in Sprint's exchanges. I'm asking
24 you to keep the competitive covenant. Thank you.

25 JUDGE WOODRUFF: Thank you. And, Mr. Dandino,

1 if you'd move your chart.

2 MR. DANDINO: I will move her chart.

3 JUDGE WOODRUFF: AT&T has withdrawn from the
4 case and MCI was granted permission not to participate in
5 the hearing, so we'll move onto Unite.

6 MS. LIPMAN REIBER: Good morning,
7 Commissioners. Rachel Lipman Reiber appearing on behalf of
8 ExOp Missouri, doing business as Unite.

9 ExOp of Missouri, Inc., doing business as
10 Unite, opposes Sprint's request that it be found subject to
11 effective competition in Kearney and Platte City.

12 While ExOp acknowledges that the Commission
13 has a much more difficult decision to make with respect to
14 Kearney, ExOp is somewhat surprised that Sprint would even
15 apply for effective competition in Platte City since ExOp
16 has only been providing service in Platte City for less than
17 one year and has achieved only minimal penetration on the
18 business side and negligible penetration on the residential
19 side.

20 ExOp is a full facilities-based carrier
21 offering voice, video and data services exclusively over its
22 own facilities. On the residential side of the business,
23 the only way the economics for a facilities-based build-out
24 work is if a majority of the customers subscribe to at least
25 two of the three available services.

1 ExOp does not have a cable franchise in Platte
2 City and does not plan to obtain one at any time in the near
3 future due to the fact that Platte City has adopted a cable
4 ordinance that requires a 42-mile build-out requirement with
5 a \$500 per day penalty for failure to meet that build-out
6 requirement. So, therefore, ExOp has not built out Platte
7 City and has no plans to do so.

8 The only way a residential customer has the
9 opportunity for service is if it is on the small portion of
10 facilities that do exist within the city. Sprint bases its
11 case on the fact that ExOp has received a designation from
12 the Commission that it is an Eligible Telecommunications
13 Carrier, or ETC, has contemplated by Section 214 E1 of the
14 Communications Act of 1934 as amended.

15 With this designation, a carrier is eligible
16 to receive Federal Universal Service Funds for each access
17 line that it serves. While the statute references a
18 carrier -- that a carrier provide service throughout the
19 exchange, the FCC has issued an order indicating that a
20 carrier need not be providing service throughout the entire
21 exchange before requesting that designation. This
22 Commission has been entirely consistent with the FCC in its
23 application of the statute.

24 Moreover, Sprint never opted to participate in
25 ExOp's ETC cases in either Kearney or Platte City and,

1 hence, should not be permitted to re-litigate the results of
2 those cases in this proceeding.

3 Whether ExOp operates in a maintenance mode
4 serving existing customers and customers that are accessible
5 through its currently constructed facilities or in an
6 expansion mode is key to the Commission's determination in
7 this case.

8 ExOp is a wholly-owned subsidiary of UtiliCorp
9 Communications Services, which, in turn, is a wholly-owned
10 subsidiary of Aquila. The Commission is very aware of the
11 problems facing ExOp's parent company, Aquila.

12 As Aquila has been ExOp's sole source of
13 funding, Aquila's financial problems have a direct effect on
14 ExOp and clearly impact its planned expansion in Platte City
15 and completion of the Kearney build-out. Until a buyer is
16 found for ExOp, the expansion plans of ExOp are clearly on
17 hold and are unclear for the future.

18 That concludes my statement. Thank you very
19 much.

20 JUDGE WOODRUFF: Thank you.

21 For Fidelity?

22 MR. ROSS: Good morning. Jason Ross on behalf
23 of Fidelity Communications Services I, Incorporated.

24 There seems to be a little bit of a dispute
25 about the scope of this proceeding. Mr. Dandino suggests

1 that the Commission should investigate each service and each
2 exchange; whereas, Ms. Hendricks, I believe it's correct to
3 say, suggests that you should really investigate what we're
4 asking for.

5 Either way, Sprint's markets have been open to
6 competition for less than five years. And based on what
7 Sprint's asking for in this case, it's pretty clear, at
8 least for the most part, that their incumbent monopoly my
9 reigns supreme.

10 Even in the exchanges where Sprint is seeking
11 a specific finding of competition, there's generally only
12 one true competitor providing service. Substantial barriers
13 to entry still abound. Particularly in the rural exchanges
14 at issue in this proceeding where the cost of building out a
15 network and providing service are substantial.

16 My client, Fidelity Communications Services I,
17 currently provides service in the Rolla and St. Robert
18 exchanges. As Ms. Hendricks mentioned in her opening
19 statement, aside from statewide relief for certain services
20 such as Centrex and directory assistance, Sprint is seeking
21 a competitive classification for residence and business
22 access lines and access line -- access line-related services
23 in the Rolla and St. Robert exchanges.

24 Note that Fidelity has only been providing
25 service in the Rolla exchange for approximately three years

1 and in the St. Robert exchange for approximately six months,
2 which in both cases is significantly less than the five
3 years required for the statutory presumption of effective
4 competition to apply. In other words, in this case Sprint
5 bears the burden of proving by substantial and competent
6 evidence that effective competition exists.

7 Sprint acknowledges that in both Rolla and
8 St. Robert, Fidelity is the only true competitor. Sprint is
9 seeking competitive classification in Rolla for two reasons.
10 Number one, Sprint is -- I'm sorry -- Fidelity is
11 principally a facilities-based provider; and secondly,
12 Fidelity has captured what Sprint believes to be a
13 substantial share in the market.

14 Sprint's seeking competitive classification in
15 St. Robert because they speculate that since Fidelity has
16 achieved some success in Rolla, they'll achieve a similar
17 success in St. Robert. Not only does speculation not
18 count, the question is really whether effective competition
19 exists currently, not whether it might exist at some
20 indeterminate point in the future.

21 But the evidence does not support Sprint's
22 doomsday view in Rolla -- I'm sorry -- doomsday prediction
23 in the first instance in St. Robert.

24 Does Fidelity have synergies in Rolla? Yes.
25 Has Fidelity made strides in Rolla since it first began

1 providing service there three years ago? We like to think
2 so. But does effective competition exist in Rolla or
3 St. Robert? Certainly not. Not when you look at all the
4 factors: market share, sustainability, number of
5 competitors, etc.

6 There's a general overriding theme to Sprint's
7 testimony, You gave it to Southwestern Bell so give it to
8 us. We agree, at least with respect to the issue that's
9 Fidelity has weighed in on, that the Commission should treat
10 Sprint in the same manner it treated Southwestern Bell. The
11 Southwestern Bell decision is instructive on the issues of
12 effective competition in Rolla and St. Robert and on the
13 statewide request for Centrex and directory assistance
14 services.

15 The Commission has previously defined
16 effective competition as competition that exerts sustainable
17 discipline on prices and moves them to the competitive level
18 of true economic cost. Also, market share loss is the
19 factor that the Commission considers to be most
20 determinative of the extent to which services are available
21 from an alternative provider in the market.

22 The Commission doesn't need to look very far
23 to see that Sprint has failed in this case to meet its
24 burden of supplying substantial and competent evidence of
25 competition that exerts sustainable discipline.

1 Fidelity's market share in Rolla and St.
2 Roberts is not substantial. In fact, in St. Robert it's
3 inconsequential. As far as we can tell, Fidelity's market
4 share even in Rolla falls short of the market share of the
5 CLECs in the Southwestern Bell exchanges found to be
6 competitive. Also, unlike the Southwestern Bell exchanges
7 found to be competitive, there's only one CLEC, Fidelity,
8 not 30 or more operating in the Rolla and St. Robert
9 exchanges.

10 Finally, Sprint's request for statewide
11 competitive classification of Centrex and directory
12 assistance services fail for the same reason they failed in
13 the Southwestern Bell case. Sprint has placed too much
14 emphasis on deregulated, what Ms. Hendricks refers to as
15 non-traditional sources of competition and on paper
16 competition, and is not presented an exchange-by-exchange
17 analysis or any substantial evidence of companies actually
18 providing these services.

19 In conclusion, Fidelity offers one more
20 thought. What is Sprint going to do with its rates if it
21 gets the competitive classification it seeks in this case?
22 Sprint already has the ability, under existing price cap
23 regulation, to petition the Commission to reduce rates on an
24 exchange-specific basis.

25 Therefore, Fidelity respectfully requests that

1 the Commission deny Sprint's request to classify its
2 competitive basic local services in the Rolla and
3 St. Roberts exchanges and Centrex and directory assistance
4 services statewide. Thank you.

5 JUDGE WOODRUFF: Thank you.

6 And for Green Hills?

7 MR. ENGLAND: Thank you, your Honor. Green
8 Hills has no opening statement, and if it's appropriate,
9 would at this time request to be excused from the remainder
10 of the hearing but remain a party for purposes of briefing.

11 JUDGE WOODRUFF: All right. You are so
12 excused.

13 MR. ENGLAND: Thank you.

14 JUDGE WOODRUFF: And for SBC?

15 MR. CONROY: Thank you, Judge. May it please
16 the Commission. Good morning. It's not very often I get a
17 chance to go last in a case, so it's a nice position to be
18 in.

19 This morning when I got up, made a pot of
20 coffee, it was still dark outside and I was wondering what
21 kind of weather I'd have for my drive up to Jefferson City.
22 Unfortunately, it was still dark so I couldn't tell by
23 looking out the window. So I checked on my computer,
24 checked on a weather website, found I was going to have a
25 great day for my drive up to Jefferson City.

1 While I was online -- I had learned over the
2 weekend that a friend of mine that I knew in college about
3 20 years ago was going to move back from Boston to her
4 hometown outside Little Rock.

5 No idea how to contact this person. Typed in
6 her name and number on a website that's on Sprint's
7 testimony in this case. Within a matter of two seconds I
8 had the contact information. But it was 5:30 in the morning
9 so I couldn't call her. So I slipped -- I wrote the number
10 down on a piece of paper and slipped it in my pocket.

11 On my drive up here, when I got to a more
12 reasonable hour, I used my cell phone and called her. No
13 problems, talked for a little while, found out why she was
14 moving.

15 You may ask how these examples are relevant to
16 the Commission's job in this case and I would submit to you
17 that they're very relevant. The Commission's job in this
18 case is to evaluate whether Sprint's services are subject to
19 effective competition under Missouri statutes. The answer
20 should be obvious. And the answer about what evidence
21 should be considered is obvious.

22 The three examples I just discussed are just
23 the tip of the iceberg when it comes to the new competitive
24 landscape that exists in the state of Missouri and
25 throughout the world. And there's been extensive evidence

1 presented by other parties in this case of this competitive
2 landscape.

3 A lot of this evidence some parties would have
4 you completely ignore. And I would submit to you that that
5 would just be completely unrealistic to ignore the evidence
6 of this competition.

7 I didn't dial 411 to get the contact
8 information of my friend in Boston and I didn't have to use
9 my long-distance provider to call that person when it was
10 convenient for me at a more economical time and for a better
11 rate.

12 As the Commission considers the evidence in
13 this case, SBC Missouri would urge the Commission to
14 recognize that we're evolving and that there are a lot
15 of forms of competition out there. It's no longer only
16 about the number of alternative local exchange providers in
17 an exchange or the market share loss by the incumbent. To
18 be sure, those are important factors for the Commission to
19 consider, but it's more than that. It's about all the
20 competition that exists for all the services.

21 SBC Missouri supports Sprint's request for
22 competitive classification for the services identified by
23 Sprint in their pleadings and in the exchanges requested by
24 Sprint.

25 And that concludes my opening statement,

1 Judge, and I would also request to be excused. We'll have
2 no cross-examination, but would like to brief the case.

3 JUDGE WOODRUFF: All right. And SBC then will
4 be excused from further participation in the hearing.

5 I believe that's all the opening statements.
6 So let's go ahead and get started on our first witness, John
7 Idoux.

8 MS. CREIGHTON HENDRICKS: Yes. Sprint calls
9 John Idoux.

10 (Witness sworn.)

11 JUDGE WOODRUFF: All right. You may inquire.
12 JOHN IDOUX, III testified as follows:
13 DIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:

14 Q. Mr. Idoux, could you state your complete name
15 for the record?

16 A. John Idoux.

17 Q. And for whom are you providing testimony
18 today?

19 A. Sprint Missouri, Inc.

20 Q. Are you the same John Idoux that filed -- or
21 pre-filed Direct and Surrebuttal Testimony in this case?

22 A. Yes, I am.

23 Q. If I direct you to your Direct Testimony,
24 there is a proprietary and a nonproprietary version of your
25 Direct Testimony; is that correct?

1 A. Yes, there is.

2 Q. Do you have any changes to that testimony?

3 A. No, I do not.

4 Q. If I was to ask you the same questions in your

5 Direct Testimony, would you provide the same answers here

6 today?

7 A. Yes, I would.

8 Q. Now, you have also pre-filed Surrebuttal

9 Testimony. And you have one copy of that, a nonproprietary

10 copy; is that correct?

11 A. Correct.

12 Q. Now, do you have any corrections or edits to

13 your Surrebuttal Testimony?

14 A. No, I do not.

15 Q. If I were to ask you the same questions that

16 appear in your Surrebuttal Testimony, would you provide the

17 same answers today?

18 A. Yes, I would.

19 MS. CREIGHTON HENDRICKS: Your Honor, I move

20 for the admission into the record of Exhibit 1, 1P and

21 Exhibit 2. And for the record, Exhibit 1 is the

22 nonproprietary Direct Testimony on behalf of John R. Idoux.

23 Exhibit 1P is the proprietary version of the Direct

24 Testimony. And Exhibit 2 is the Surrebuttal Testimony of

25 John Idoux.

1 JUDGE WOODRUFF: Thank you.

2 Exhibit 1NP, 1P and Exhibit 2 have been

3 offered into evidence. Are there any objections to their

4 receipt?

5 Hearing none, they will be received into

6 evidence.

7 (EXHIBIT NOS. 1NP, 1P AND 2 WERE RECEIVED INTO

8 EVIDENCE.)

9 MS. CREIGHTON HENDRICKS: I tender the witness

10 for cross-examination.

11 JUDGE WOODRUFF: Okay. And for

12 cross-examination, we'll begin with Staff.

13 CROSS-EXAMINATION BY MR. HAAS:

14 Q. Good morning, Mr. Idoux.

15 A. Good morning.

16 Q. In your Direct Testimony at page 11, line 21

17 you say that Sprint has identified 16 wireless providers

18 that also have the ability to offer a local service in

19 Sprint's exchanges. Do you have data as to the number of

20 Sprint customers who have discontinued their wireline

21 service to go to wireless service?

22 A. No.

23 Q. Do you have any general information about the

24 state of Missouri as to how frequently that's happened?

25 A. To how frequently Sprint's customers have

1 disconnected?

2 Q. Customers that might have been Bell customers
3 or CenturyTel, but customers who have left wireline to go to
4 wireless service in Missouri.

5 A. No.

6 Q. At page 16 of your Direct Testimony, at lines
7 6 to 8 you say that consumers are using cable service as a
8 substitute for Sprint's second lines. Do you have any
9 information as to the number of customers who have replaced
10 a second phone line with cable service?

11 A. Not Missouri specific.

12 Q. How about for Sprint Missouri specific?

13 A. No.

14 Q. In your Surrebuttal Testimony on page 33,
15 lines 18 to 19, you say that Fidelity enjoys
16 exchange-specific pricing flexibility whereas Sprint does
17 not.

18 What is the basis for your statement that
19 Fidelity enjoys exchange-specific pricing flexibility?

20 A. I believe they operate in two exchanges, Rolla
21 and St. Robert, and they have different prices for each
22 exchange according to the tariff.

23 Q. Green Hills' position statement on issue one
24 says that Sprint will be able to engage in predatory pricing
25 in its Norborne exchange by cross-subsidizing below cost

1 rates in Norborne with above cost rates in other exchanges
2 where Sprint does not face competition.

3 Do you agree with Green Hills' statement?

4 A. Absolutely not. Sprint's not entitled to
5 raise prices in other areas of the state as a result of
6 lowering prices if that's what it intends to do in Norborne.
7 Sprint is only allowed to raise prices as allowed by the
8 price cap statutes. And there's no other way to raise rates
9 as suggested in that statement.

10 Q. Do you know whether Sprint would plan to have
11 below cost rates in Norborne if it is granted competitive
12 classification?

13 A. I don't have anything to -- I don't have any
14 knowledge of what prices -- Sprint's prices would be once
15 competitive classification is granted.

16 Q. Do you think that Sprint is authorized to have
17 below cost rates in Norborne if it's granted competitive
18 classification in that exchange?

19 A. No. I believe it's specifically prohibited by
20 statute specific to telecom in Missouri. I also believe
21 there's some anti-trust concerns.

22 MR. HAAS: Thank you.

23 THE WITNESS: Thank you.

24 JUDGE WOODRUFF: For Public Counsel?

25 MR. DANDINO: Before I knock that over, I

1 thought I better move it. May I move this?

2 JUDGE WOODRUFF: You may.

3 CROSS-EXAMINATION BY MR. DANDINO:

4 Q. Mr. Idoux. Good to see you again.

5 A. Good morning, Mr. Dandino.

6 Q. If you would turn to your Direct Testimony,
7 please, at page 5.

8 A. I'm there.

9 Q. You see that? And in I guess lines 1 through
10 8 you quote a section from the Commission's Southwestern
11 Bell competition case; is that correct?

12 A. Correct.

13 Q. Now, I understand -- if I remember right --
14 and I can remember right because I have it right in front of
15 me -- there's another sentence after that quotation of up to
16 five years of the future; is that correct?

17 A. I'd have to get the order.

18 Q. Okay. Well, if I would -- let me just
19 inquire. It says, As witnesses such as Dr. Aron testified,
20 this means that effective competition is competition that
21 exerts sustainable discipline on prices and moves them to a
22 competitive level of true economic cost.

23 Do you disagree with that statement?

24 A. That -- I don't have the order in front of me,
25 so I --

1 MR. DANDINO: May I?

2 MS. CREIGHTON HENDRICKS: For the record, I

3 think lines 9 and 10 of Mr. Idoux's testimony contains --

4 MR. DANDINO: Excuse me. I'm sorry. I

5 apologize.

6 THE WITNESS: I do have the order here if you

7 want me to confer with what it says.

8 BY MR. DANDINO:

9 Q. I would say then you do agree with that

10 statement from Dr. Aron which is quoted in the Commission's

11 order and in your testimony at 9 and 10?

12 A. Give me a second to fine that sentence.

13 MS. CREIGHTON HENDRICKS: For a point of

14 clarification, are you asking him to agree with the fact it

15 was in the Commission's order or agree with the statement?

16 MR. DANDINO: Whether Mr. Idoux agrees that

17 that statement is correct.

18 THE WITNESS: If I agree with the Commission?

19 BY MR. DANDINO:

20 Q. Yes.

21 A. You happen to know what page that's on?

22 Q. It's set out on page 5 of your testimony,

23 9 and 10 -- lines 9 and 10.

24 MS. CREIGHTON HENDRICKS: For the record,

25 Sprint does have an economist that will be providing

1 testimony that --

2 JUDGE WOODRUFF: I'm sorry to interrupt, but

3 Ms. Hendricks, you need to use the microphone.

4 MS. CREIGHTON HENDRICKS: Note for the record

5 that Sprint does have an economist that is testifying in

6 this proceeding, and it is not Mr. Idoux.

7 THE WITNESS: I'm looking for it in the -- if

8 you could -- maybe it would be easier if you could repeat

9 what that says, the sentence you want me to --

10 BY MR. DANDINO:

11 Q. I'll just read the sentence from your

12 testimony. It says, Furthermore, the Commission noted that

13 effective competition is, quote, competition that exerts

14 sustainable discipline on prices and moves them to the

15 competitive level of true economic cost.

16 Do you agree with the Commission on that

17 statement?

18 A. Yes. Sprint would agree with that -- that

19 position.

20 Q. Okay. Effective competition, is that an

21 economic term or is that a legal term?

22 A. Well, I believe it's -- I believe there's

23 probably connotations of both legal and economic.

24 Q. In this case it is specifically defined by --

25 or at least referenced by statute, isn't it?

1 A. Yes.

2 Q. You're not an economist so you couldn't answer
3 whether it was an economic term of art; is that correct?

4 A. Correct. I am not an economist.

5 Q. So you don't know whether it's a term of art,
6 effective competition?

7 A. I'll try and defer that to Sprint's economic
8 witness since we do have one.

9 Q. Are the exchanges that Sprint is seeking
10 competitive status for, the basic services, both residential
11 and business, do you consider those rural exchanges?

12 A. Some of them, but not all of them.

13 Q. Which ones do you not consider as rural
14 exchanges?

15 A. Well, Rolla certainly is not rural. Of
16 course, once again, it goes by what definition you're using.
17 Platte City is on the outskirts of Kansas City and is
18 generally referred to as part of the Kansas City
19 metropolitan area. I know Kearney is part of the Kansas
20 City MCA. Norborne I would believe would be considered
21 rural. From what I understand, St. Robert is part of the
22 Rolla metropolitan area.

23 Q. I'm sorry. So what would be your definition
24 of rural exchange?

25 A. I think Norborne clearly is rural.

1 Q. Well, I know you identified it, but I mean, as
2 to define it -- to define what is a rural exchange versus
3 something that's in a metropolitan area?

4 A. Well --

5 Q. What attributes does it have?

6 A. Well, like I said, for, I believe Sprint's USF
7 purposes, all of those exchanges are considered rural. So
8 it depends upon what definition you use for rural.

9 The definition I was just going through had
10 more of a -- just a common understanding. I don't -- I've
11 been to Rolla. It seems to be a larger city as opposed to
12 some of the rural exchanges that just aren't that big. I
13 mean, we have quite a few -- 15,000 access line in Rolla.
14 Size is probably a good indication.

15 Q. I understand that -- well, excuse me.

16 One of the elements of effective competition
17 or consideration -- let's put it this way. One of the
18 considerations that this Commission took into consideration
19 in the Southwestern Bell case is the discipline upon prices
20 of Southwestern Bell.

21 I did not see in any of the testimony that
22 Sprint filed any indication or any exhibit that showed the
23 increases or decreases that Sprint has made since Sprint
24 became a price cap company. Is that correct, there was no
25 such exhibit, no such information provided?

1 A. Of Sprint's increases or decreases?

2 Q. Since becoming a price cap company.

3 A. Correct. There's nothing in my testimony that

4 shows that.

5 Q. Okay. And is it true that Sprint increased

6 local rates in 2000, 2001 and 2002?

7 A. Correct. Sprint did increase its local rates

8 statewide as a result of the price cap statute. There's two

9 aspects of that. The first one is a rate rebalancing. On a

10 statewide basis, Sprint did raise its residential rates

11 \$1.50 and offset that on a revenue neutral basis to access

12 charges to bring both access rates and its local service

13 more in line with its true cost.

14 The other aspect of that has Sprint lowering

15 its R-1 rates or raise them based upon the price cap

16 inflation productivity factor specified in -- in statute.

17 And those were done on a statewide basis because that's what

18 the price cap statute calls for.

19 Q. It required the lowering of the prices based

20 on the Consumer Price Index. That's correct?

21 A. That is correct.

22 Q. And you were required to do that?

23 A. That's correct.

24 Q. But voluntarily to meet competition did Sprint

25 reduce local basic rates for residential or business

1 service?

2 A. No. And to do so under the price cap statute
3 would require a statewide reduction. If Sprint wanted to
4 lower its Kearney rates, for example, it would have to lower
5 its rates in Warrensburg and all the other tier rate band --
6 or rate group three exchanges or seek a different type of --
7 of waiver from the Commission.

8 Q. So if Sprint obtains a reclassification in
9 these exchanges that you're petitioning for, you would not
10 be able to lower the rates just in those exchanges unless it
11 was part of a statewide reduction; is that true?

12 A. No. I believe if Sprint received competitive
13 classification for its rates in these five exchanges, we
14 could lower them for those exchanges only and not the
15 remaining 75 exchanges for Sprint.

16 Q. They would be completely separate from all
17 your other exchanges?

18 A. Absolutely.

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

20 JUDGE WOODRUFF: Thank you.

21 Then for Unite?

22 CROSS-EXAMINATION BY MS. LIPMAN REIBER:

23 Q. Good morning, Mr. Idoux.

24 A. Good morning.

25 Q. Now, Mr. Idoux, is it your testimony that the

1 mere fact that ExOp is providing a comparable service to
2 Sprint, that that is sufficient to justify a finding of
3 effective competition in both Kearney and Platte City?

4 A. No. Our position is that is one of the many
5 factors the Commission must consider, but it also must
6 consider the other factors.

7 In both Kearney and Platte City, Unite has
8 received ETC status. Now, the fact that they received ETC
9 status alone -- I mean, that in itself is a factor, but the
10 other factor that's also relevant were the statements made
11 by Unite in obtaining those ETC certifications, that it
12 advertises throughout both exchanges, it provides service
13 throughout both exchanges.

14 Other relevant factors, I mean, clearly are
15 the market share as one of the factors. I know Sprint has
16 presented evidence both upon access lines and franchise fee
17 information to hint at the size of market that Unite enjoys
18 in both of those particular exchanges.

19 Another factor is, you know, price. Sprint
20 put forth evidence that the price of Unite is substantially
21 lower than the price of Sprint in those two exchanges. So
22 it's not just the defining factor. It's one of many factors
23 that this Commission should consider in making its overall
24 conclusion.

25 Q. On page 17 of your Surrebuttal you claim that

1 in Platte City you have lost 116 access lines during the
2 first six months of 2003 and this is in addition to the
3 55 residential access lines and 148 access lines reported on
4 ExOp's annual report filed as of the end of 2002; is that
5 correct?

6 A. That is correct.

7 Q. Do you have personal knowledge of the
8 percentage of the Platte City exchange served by ExOp
9 facilities?

10 A. No, I do not.

11 I'm sorry. Could you repeat the question?

12 Q. Whether you have personal knowledge of the
13 percentage of the Platte City exchange served by ExOp
14 facilities?

15 A. I'm going to correct my earlier statement. I
16 don't have personal knowledge of where the cable is.
17 However, based upon ExOp's own statements, they do serve all
18 of Platte City.

19 Q. So your conclusions are based solely on what
20 ExOp stated in its ETC application for Platte City?

21 A. Well, the fact that they do have customers,
22 the fact that when I placed phone calls to ExOp over the
23 last couple weeks depending upon what side of the highway I
24 lived on, they could serve me. They could not serve me
25 within the city limits of Platte City, although, you know,

1 the exchange boundaries and the city boundaries don't
2 necessarily equal.

3 The fact that they recently won the ability to
4 serve the City of Platte City, which is within the city
5 limits and I guess it's being served without a cable TV
6 franchise. I mean, those are all indicators that there is
7 competition in Platte City.

8 Q. But not throughout the city, only in certain
9 places where ExOp has facilities; isn't that correct?

10 A. Well, there's -- I don't know exactly what
11 part of the cities are facilities -- ExOp's facilities go
12 by, so that is correct. However, there are other means to
13 serve customers. I believe there is an interconnection
14 agreement between ExOp and --

15 Q. Let's talk about --

16 A. -- Sprint.

17 Q. -- the interconnection agreement. Have you
18 reviewed it in preparation for this proceeding?

19 A. I've reviewed many of them. I did --

20 Q. Are you aware that ExOp does not operate under
21 the standard Sprint interconnection agreement?

22 A. I don't have personal knowledge of that. I
23 probably have it back here.

24 Q. Are you aware that it's only a traffic
25 termination agreement?

1 A. That -- I don't know.

2 Q. Now, did Sprint intervene in either of the ETC
3 dockets involving either Kearney or Platte City? And for
4 your recollection, that would be either for Kearney
5 TA-2001-251 and for Platte City CO-2003-0252.

6 A. No. Sprint saw no reason. We -- Sprint does
7 not necessarily oppose ETC -- CLECs receiving ETC
8 classification.

9 Q. Did you, in preparation for this hearing,
10 review the Commission's order in TA-2001-0251?

11 A. Which one was that again?

12 Q. That was the Kearney.

13 A. Yes, I did.

14 Q. And is it your position -- or Sprint's
15 position that in order to be designated as an Eligible
16 Telecommunications Company, a company must provide service
17 throughout the entire exchange?

18 A. Well, I believe those were the statements made
19 and -- by ExOp. I believe that there was an affidavit filed
20 by an officer of ExOp stating just that, that they operate
21 and advertise throughout the entire exchange.

22 Number two, I believe it is an FCC requirement
23 that when an ETC status is given, it is for the entire study
24 area. And in Missouri, I believe the study area has been
25 defined by the Commission as the exchange.

1 Q. Mr. Idoux, did you have an opportunity to
2 review FCC Order 00248 in preparation for this hearing?

3 A. No, I did not.

4 MS. LIPMAN REIBER: Your Honor, I would
5 request that the Commission take administrative notice of
6 FCC Order 00248. And for the convenience of the Commission,
7 I will be prepared to have this marked as an exhibit at this
8 time to have it available to the Commissioners for their
9 review.

10 JUDGE WOODRUFF: Go ahead and mark it as an
11 exhibit. I don't know that -- I'm not sure we can take
12 administrative notice of an FCC document.

13 MS. LIPMAN REIBER: Well, I have copies
14 available for everyone, so if it could just be simply marked
15 as an exhibit, that would be quite satisfactory.

16 JUDGE WOODRUFF: Go ahead and mark it as an
17 exhibit. We'll see if there's any objections drawn to it
18 and you may need to lay additional foundation for it if
19 there's an objection.

20 (EXHIBIT NO. 13 WAS MARKED FOR
21 IDENTIFICATION.)

22 BY MS. LIPMAN REIBER:

23 Q. Mr. Idoux, I have handed you what I believe
24 has been marked as Exhibit --

25 JUDGE WOODRUFF: 13.

1 BY MS. LIPMAN REIBER:

2 Q. -- 13. Could you identify it for the record,
3 please?

4 A. I -- the cover letter says it's a declaratory
5 ruling in CC Docket No. 96-45.

6 Q. And isn't that the basic universal service
7 docket that the FCC has had going, for lack of a better
8 term, since the passage of the Telecommunications Act in
9 1996?

10 A. I believe it's one of many. There's several.

11 MS. LIPMAN REIBER: Your Honor, we would like
12 to offer Exhibit 13 for consideration -- for admittance to
13 the record at this time, please.

14 MS. CREIGHTON HENDRICKS: Your Honor, I have
15 an objection based on relevance. I believe that --

16 JUDGE WOODRUFF: Use your microphone, please.
17 You can sit down if you'd like.

18 MS. CREIGHTON HENDRICKS: I have an objection
19 based on relevance. I believe this order goes solely to ETC
20 status in non-rural areas in Missouri, so it would only
21 apply to SBC's territories and not Sprint. So it's not
22 relevant to the line of questioning posed by Ms. Reiber.

23 JUDGE WOODRUFF: Do you have a response to
24 that?

25 MS. LIPMAN REIBER: Well, your Honor, I just

1 think that's an incorrect interpretation. I think it talks
2 about the ETC status and when it's appropriate and when it's
3 not. And it also discusses, particularly on paragraph 10
4 through 14, the circumstances under which an entire --
5 build-out of an entire area is required before ETC status is
6 contemplated.

7 MS. CREIGHTON HENDRICKS: Your Honor, I'm not
8 denying it says what it says in those paragraphs, but I am
9 raising an objection based on the relevance. And if
10 Ms. Reiber can establish that this applies to rural ETCs in
11 Missouri, then I would withdraw my objection. Or let me --
12 companies that are provided ETC status in rural exchanges in
13 Missouri.

14 JUDGE WOODRUFF: I'm going to go ahead and
15 overrule the objection. I believe it is relevant at this
16 point as to -- the exact application of this ruling can
17 certainly be a topic of discussion amongst the parties in
18 the briefing at that time. So at this time Exhibit 13 will
19 be admitted into evidence.

20 (EXHIBIT NO. 13 WAS RECEIVED INTO EVIDENCE.)

21 MS. LIPMAN REIBER: Thank you, your Honor.

22 BY MS. LIPMAN REIBER:

23 Q. And, Mr. Idoux, can I direct you to paragraph
24 10, please? It's a one-sentence paragraph. And if you
25 would read it, I'd appreciate it.

1 A. It states that, We find that requiring a new
2 entrant to provide service throughout a service area prior
3 to designation as an ETC has the effect of prohibiting the
4 ability of new entrant to provide intrastate or interstate
5 telecommunications service in violation of Section 253A.

6 Q. Thank you. Now, Mr. Idoux, on page 33 of your
7 Direct Testimony you present a price comparison of the
8 Sprint rate of \$25.27 versus the ExOp rate of 21.99.
9 Sprint's rate for basic local service actually is \$12.92,
10 isn't that correct, for Group 3?

11 A. On page 33?

12 Q. Of your Direct, yes.

13 A. I can check real quick. That sounds about
14 right, but this includes MCA service.

15 Q. That's right. So the 25.27 reflects your
16 local service rate of \$12.92, plus the MCA rate of \$12.35;
17 is that correct?

18 A. Correct.

19 Q. Now, ExOp does not offer a stand-alone basic
20 local service rate; is that correct?

21 A. Correct. I believe its MCA is required.

22 Q. MCA is included --

23 A. I'm sorry. MCA is included.

24 Q. -- in that 21.99? If you would verify that
25 the 21.99 that ExOp charges --

1 A. Does include MCA. So the only apples to
2 apples comparison is Sprint's R-1 with its MCA service.

3 Q. Now, in addition to Sprint's basic local
4 service rate of \$12.92 on a stand-alone basis, or \$25.27
5 combined with the MCA rate, isn't it true that Sprint also
6 charges the maximum UCO rate of \$6.50, plus the USF
7 surcharge, plus number portability surcharge?

8 A. Correct. Those are all federal charges.

9 Q. Now, isn't it true that if Sprint so desired,
10 they could forgo charging those surcharges and if they
11 decided to forgo those surcharges, Sprint's rates would be
12 lower than ExOp's?

13 A. Oh, I believe so. But I believe the only way
14 we could do that is on a statewide basis.

15 Q. Now, are you aware that ExOp does not charge
16 the customers UCO, USF or number portability?

17 A. Oh, we're very well aware, yes.

18 Q. Now, you state in your Surrebuttal at page 6
19 that if Sprint lowered its rates 5 percent in the Kearney
20 exchange, it would have a financial impact of \$60,000
21 annually; is that correct?

22 A. In my example using the assumptions of the
23 exhibit, that is correct.

24 Q. But in order to match ExOp's residential rate
25 of \$21.99, Sprint would have to lower its rates 13 percent,

1 which using just a proportion, that would have a \$156,000
2 rate impact, isn't that right -- revenue impact?

3 A. Well, several things. Approximately for that
4 exchange, you're right. But to do that on a statewide basis
5 I believe it would be about a \$4 million impact to react to
6 one exchange. Furthermore, as you've already mentioned,
7 that doesn't include all the federal surcharges. So even if
8 we did lower our in-state rate, the end result from the
9 end-user would still be higher because of the federal
10 charges.

11 Q. But we're talking just about Kearney here.
12 That's the only question that I asked you.

13 Now, we talk about \$156,000 just to match the
14 basic price -- \$156,000 revenue impact if Sprint were to
15 charge an apples to apples rate with ExOp on basic
16 residential service; isn't that right?

17 A. I'm going to have to disagree that it's -- the
18 Kearney impact is 156,000 but the overall impact to Sprint,
19 because it doesn't enjoy exchange-specific pricing, would
20 exceed \$4 million.

21 Q. And there could be a further revenue impact on
22 Sprint caused by lowering the business rates to match ExOp
23 or to lower custom calling features compared to ExOp's
24 rates; is that right?

25 A. I believe the example I used also included

1 business lines, so I think that's part of the 156 in your
2 example. If we include additional calling features,
3 absolutely.

4 Q. But if Sprint decided to eliminate the UCO,
5 the USF and number portability charges, this would further
6 reduce revenues? I mean, that's pretty obvious. Right?
7 But it's your position that you cannot eliminate any of
8 those charges on an exchange-specific basis without
9 deregulation; is that right?

10 A. No. That's not a correct statement. I
11 believe those charges that we just referred to are federal
12 tariff and they're offered on a statewide basis. Granted
13 competitive classification on an in-state basis by this
14 Commission won't affect the federal subscriber line charge,
15 the federal USF or the federal local number portability
16 surcharges.

17 Q. Now, you state that all of Sprint's rate
18 increases have been in accordance with Commission orders.
19 That's correct, right?

20 A. Well, they've been in accordance with the
21 price cap statutes as approved by the Commission, correct.

22 MS. LIPMAN REIBER: I'd like to have this
23 marked as Exhibit 14.

24 (EXHIBIT NO. 14 WAS MARKED FOR
25 IDENTIFICATION.)

1 BY MS. LIPMAN REIBER:

2 Q. Mr. Idoux, while I was handing this exhibit

3 out to the Commission and to counsel, you've had a little

4 opportunity to look at it. I assume it's familiar to you.

5 Could you identify it for the record, please?

6 A. Appears to be a summary of Sprint's price cap

7 changes under the price cap statute -- or a portion of it,

8 selected portions.

9 Q. And was this document provided to ExOp as a

10 data request?

11 A. I believe it was.

12 Q. And --

13 A. I need to clarify that. The entire document

14 is, oh, 50, 60 pages, I believe.

15 Q. But this is what was provided to ExOp?

16 A. I'm corrected. We provided this to other

17 parties as well. I think you only asked for a small subset.

18 Correct. This is what was provided.

19 Q. So just for clarification, at the time you

20 provided it, the handwritten notations were not on the

21 document, were they?

22 A. No.

23 Q. But as far as you can tell, is there anything

24 inaccurate on the handwritten notations?

25 A. No. They look all right.

1 MS. LIPMAN REIBER: Your Honor, at this time,
2 ExOp would move for the admission of Exhibit 14.

3 JUDGE WOODRUFF: Let me ask you about the
4 handwritten notations. These are your notations?

5 MS. LIPMAN REIBER: Yes, they are.

6 JUDGE WOODRUFF: Okay. What do those numbers
7 mean?

8 MS. LIPMAN REIBER: Those numbers are based on
9 some research that was done with Sprint's tariffs. And they
10 indicate, based on number of access lines, what group a
11 particular exchange would be in and the fact that Kearney
12 and Platte City have between 4,001 and 20,000 access lines
13 would place them within Group 3.

14 JUDGE WOODRUFF: Thank you. I wanted to be
15 clear on what that meant.

16 Exhibit 14 has been offered into evidence.
17 Are there any objections to its receipt?

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

20 (EXHIBIT NO. 14 WAS RECEIVED INTO EVIDENCE.)

21 BY MS. LIPMAN REIBER:

22 Q. Now, Mr. Idoux, according to this chart, since
23 1999, the Group 3 residence one-party rate has increased by
24 \$6.10; is that correct?

25 A. Well, that's what -- that is correct.

1 However, I believe as part of our -- Sprint's first -- I
2 believe it was its first price cap annual filing that
3 happens every December, it did include a process where we
4 combined it with touch tone.

5 Before that, a touch tone was a separate
6 stand-alone item and I don't recall what the price was. So
7 this rate does include an increase because we rolled it into
8 the basic R-1, because it was pretty much a standard feature
9 across -- across all access lines.

10 Q. But prior to 1999, the residence one-party
11 rate for customers residing in Group 3 would have been
12 \$6.82?

13 A. Correct. For an access line without touch
14 tone service.

15 Q. Now, it appears that in 2002 there was a
16 13 percent rate increase quantified as \$1.50. Do you see
17 that on the chart?

18 A. Well, that wasn't for 2002. That was probably
19 since the beginning of 1999. We don't --

20 Q. Doesn't the chart break it out by year? This
21 would be in the fourth column of figures.

22 A. Oh, yes, it is. \$1.50?

23 Q. Yes.

24 A. Yeah. 13 percent, yep.

25 Q. Do you know how much the 2002 rate

1 increases -- now, this would be the collective, all of the
2 ones not only represented on these pages, but probably
3 additional pages since there are additional pages. Do you
4 know how much the 2002 rate increases, even though they were
5 subject to statute, boosted Sprint Missouri's revenues?

6 A. Zero. It was revenue neutral.

7 Q. It was revenue neutral?

8 A. Yeah. The \$1.50 increase in local rates is
9 directly attributed -- is as a result of decreases on the
10 access side per statute. So for every additional amount of
11 revenue Sprint receives from the R-1s, it also must decrease
12 its access rates. So it's completely revenue neutral.
13 There is no financial impact to Sprint or to any price cap
14 company, for that matter.

15 Q. But is there a cost of living adjustment that
16 would be also permitted to increase the Sprint Missouri
17 rates annually?

18 A. That is the -- the rates are adjusted by the
19 CPI, Consumer Price Index, for the telecom sector. Sprint's
20 first two years in price cap saw decreases. Last year the
21 index was positive. There was a small increase, but it was
22 not taken to the R-1 rates. So the access line rate was not
23 affected by that.

24 Q. Has that calculation been made yet for the
25 year 2003?

1 A. No. Sprint will make its filing late October
2 with an effective date of December. The last I had heard,
3 and it was a couple of months ago, is that it will be
4 another decrease. It won't be an increase like it was for
5 that one time.

6 Q. Mr. Idoux, you take issue with Mr. Devoy's
7 contention that allowing Sprint to be subject to effective
8 competition would allow -- would not allow you to engage in
9 individual customer pricing; is that right?

10 A. That is correct. Statute allows individual --
11 or ICB, individual customer based pricing, for select number
12 of services, but for the basic consumer services and the R-1
13 and the basic custom calling features, that is not allowed
14 for. So, no, it would not be customer specific.

15 Q. So under your understanding, interpretation of
16 the law, Sprint could -- if found subject to effective
17 competition, could have exchange-wide pricing for Kearney
18 and Platte City that was different from your Zone 3 pricing,
19 but the law would not permit you to offer different rates to
20 customers within those two exchanges based on whether or not
21 they resided within an area covered by ExOp facilities?

22 A. That is correct. We'd have to serve the
23 entire exchange, both portions within the city and the
24 portion outside the city.

25 Q. But there's nothing that would prevent you

1 from making a win-back or retention offer under the guise of
2 a promotion that would only be directed towards customers
3 who currently subscribe to ExOp services?

4 A. By a promotion you -- I'm -- as far as a
5 promotion, that -- that might be possible, a win-back
6 promotion if it's not deemed discriminatory. But I believe
7 most of the -- I mean, up to this point most of the win-back
8 offerings offered either by a CLEC or an ILEC have come
9 under Commission scrutiny. So to the -- to the fact that
10 it's consistent with prior Commission rulings, we would be
11 able to offer them.

12 Q. So then the only constraint would be that ExOp
13 would have to charge a price that is above the price floor
14 in the event that effective competition was granted for
15 either or both exchanges?

16 A. That ExOp would have to charge a price floor?

17 Q. Excuse me. I'm sorry. The only constraint
18 would be that Sprint would have to charge a price that's
19 above the price floor?

20 A. Correct. And have to be offered throughout
21 the entire exchange.

22 Q. Now, do you know what the price floor is for
23 local service in Zone 3?

24 A. I don't. I don't know what it is for Kearney
25 specifically either.

1 Q. Do you know what the price floor is for MCA
2 service -- MCA 3 service?
3 A. No.
4 Q. Do you know what the UNE price is for loops in
5 Kearney and Platte City?
6 A. Not off the top of my head. I'm sure it's
7 filed with the Commission in a contract.
8 Q. So your answer would be the same for the UNE-P
9 rate for Kearney and Platte City?
10 A. Correct.
11 Q. Is it fair to assume that the reason that
12 Sprint has not experienced more market entry by entities
13 other than ExOp in Kearney and Platte City is that there is
14 an insufficient differential between Sprint's retail and
15 wholesale rates that competitors have not been able to
16 justify market entry?
17 A. I don't think that's a fair statement at all.
18 I don't know the CLECs' business plans or anything like that
19 so I can't make any type of opinion one way or the other. I
20 know if there is a dispute with Sprint's prices, there is an
21 arbitration process. And to date Sprint has not been in an
22 arbitration process for Missouri. We've been able to
23 successfully negotiate dozens and dozens of CLEC contracts.
24 Q. Now, on page 18 of your Surrebuttal you
25 attempt to refute Mr. McKinnie's statement that due to the

1 fact that -- well, let me restate that.

2 That ExOp's lack of access to capital should

3 not be a concern in this proceeding; is that correct?

4 A. Well, I -- I think the point I was trying to

5 make is there's been absolutely no evidence put forward to

6 substantiate that claim that that should be a relevant

7 factor. I --

8 Q. And basically you take the position that it's

9 a tight capital market and tough on everyone in the

10 telecommunications business. Is that --

11 A. Correct.

12 Q. -- what you state in your testimony?

13 A. Correct.

14 Q. How familiar are you with the Aquila and its

15 problems?

16 A. Just what's in the newspapers.

17 Q. Did you know what its stock price closed at on

18 Friday?

19 A. Aquila's?

20 Q. Yes. Closed stock price.

21 A. Not a clue. But I do know that Aquila in

22 winning the service for the City of Platte City, according

23 to a newspaper article that I have as an exhibit, was

24 bragging that it was not receiving funds from Aquila, that

25 it was completely separate from Aquila, that Aquila's

1 financial woes have no impact on ExOp and that -- those
2 statements were used in order for ExOp to win over the City
3 of Platte City.

4 Q. Mr. Idoux, for a company that's not receiving
5 additional capital, can a distinction be made between
6 serving customers that reside or are located on an existing
7 facilities versus customers that are in areas that have yet
8 to be built?

9 A. Aquila isn't necessarily the only source of
10 capital for Unite. I don't know -- I've not seen that any
11 place put into evidence that the sole source of capital was
12 from Aquila.

13 The fact that they are already clearly
14 throughout Kearney, they're winning over contracts in Platte
15 City, they've stated before this Commission that they offer
16 service throughout Platte City, I mean, those are just as
17 compelling factors.

18 I mean, the fact that a cable franchise can't
19 be obtained, well, Sprint doesn't have a cable franchise.
20 You can package it with long distance. There's other
21 bundling opportunities out there than bundling it with
22 cable.

23 And the article I was referring to where they
24 made assurances that they don't need Aquila's funding was in
25 April of this year, April 23rd I believe. So it's very

1 recent.

2 Q. Mr. Idoux, getting back to Aquila, do you know
3 what its current bond rating is from the three major rating
4 agencies, Standard and Poor's, Moody's and Fitch?

5 A. No, I don't.

6 Q. Are you aware that Aquila's bond ratings are
7 considered less than investment grade or what is commonly
8 referred to as junk?

9 MS. CREIGHTON HENDRICKS: Your Honor, I object
10 to the question. I think at this point counsel's trying to
11 put evidence into the record that is not presently in the
12 record.

13 JUDGE WOODRUFF: I'm going to overrule the
14 objection. She's just asking questions. He can respond as
15 he wishes.

16 THE WITNESS: I don't know their present --
17 like I said, I do not know their present bond rating.

18 BY MS. LIPMAN REIBER:

19 Q. Do you think that a subsidiary of a firm that
20 is in financial difficulty is likely to be able to get
21 financing?

22 A. Well, I believe that is the case. And I know
23 Sprint doesn't have as good a bond rating as it once used
24 to. I know Sprint has been in the news about trying to
25 resecure loans and obtain funding. So, I mean, I agree with

1 that statement because Sprint is in that same position.

2 Maybe not to the level of Aquila, but --

3 Q. Well, given the poor capital markets for the
4 telecom sector, don't you think that it's possible that ExOp
5 could be facing a double whammy because not only does it
6 face a poor capital market for telecom, but it has a parent
7 which is in extreme financial distress?

8 A. Well, there's assets in the ground. I mean,
9 there is a switch in Kearney owned and operated by Unite.
10 There's paying customers, there's incoming cash flow for
11 those associated with those assets.

12 The market share, you know, gained in Kearney
13 makes Unite the dominant player in that particular exchange.
14 The fact that a parent might have problems paying for other
15 type of activities, I -- that's not a relevant factor in
16 this matter. The fact that there's assets currently
17 operating, currently bringing in cash flow, currently
18 bringing in cash flow from the majority of the customers is
19 a compelling factor.

20 Q. But you don't have personal knowledge of
21 ExOp's financial situation and their ability to obtain
22 financing to complete a build-out of Kearney or to initiate,
23 in essence, a residential build-out of Platte City? You
24 have no personal knowledge about the ability to obtain
25 financing, do you?

1 A. You're right. I have no personal knowledge of
2 the financing initiatives underway by either Aquila or
3 Unite. I go back to the fact -- to my previous statements
4 though that that isn't necessarily needed. There's
5 currently substantial investment in the ground. A build-out
6 isn't necessarily required. There are other avenues to
7 reach customers without the capital extensive cable
8 operations.

9 Q. And you also give short shrift in your
10 testimony to the fact that ExOp is in the process of being
11 sold by Aquila; isn't that correct?

12 A. I think that's an irrelevant statement, you're
13 absolutely correct. Anybody that's going to purchase it
14 isn't -- any company that purchases it is going to purchase
15 it on an ongoing concern, meaning that they're going to use
16 the facilities and the cash flow that those facilities
17 currently brought into play.

18 Now, any type of doomsday tactic that that
19 might be, there is an over-controlling check and balance the
20 Commission has. In the event that it does deem Kearney and
21 Platte City competitive and ExOp is sold and its assets
22 liquidated rather than utilized within a very quick
23 proceeding, I imagine, the Commission can bring back --
24 can -- can recertify Sprint as not eligible for competitive
25 classification for those exchanges.

1 Q. But assuming there is a sale and the business
2 is to be operated as an ongoing concern and that a sale was
3 approved by the Commission, isn't the financial wherewithal
4 of the buyer going to be a determining factor whether there
5 is a continuation of the existing business or completion of
6 the build-out in both of those cities?

7 A. I guess I'm not really following your
8 question. I guess if your question is --

9 Q. Well, let me restate the question. The
10 financial wherewithal of the builder is going to determine
11 whether the building will continue to -- whether the
12 business will continue to operate as-is, serving existing
13 customers or serving customers off of existing plant versus
14 whether the new buyer has the ability to expand the
15 operations and engage in additional build-out; isn't that
16 right?

17 A. Not necessarily. There's many other factors
18 that go into that equation.

19 JUDGE WOODRUFF: Let me interrupt now. We've
20 been going for about two hours now, so we're due for a
21 break.

22 MS. LIPMAN REIBER: I have, like, one more
23 question.

24 JUDGE WOODRUFF: That's what I was going to
25 ask you. Go ahead and ask your question and then we'll take

1 a break.

2 BY MS. LIPMAN REIBER:

3 Q. This is changing directions slightly.

4 Mr. Idoux, has Sprint recently introduced a product known as

5 Sprint Complete Sense?

6 A. Yes. Although I don't know which Sprint

7 entity made that offer. I'll have to check my notes to see

8 if it was Sprint Missouri, Inc., or Sprint Communications

9 Company, LP, which is its long-distance division.

10 MS. LIPMAN REIBER: Well, just a couple --

11 just a couple of very short follow-up questions.

12 JUDGE WOODRUFF: Go ahead.

13 BY MS. LIPMAN REIBER:

14 Q. Mr. Idoux, as I understand it, for a flat rate

15 of \$55 and -- for that amount a customer gets local service

16 and some undetermined amount of long-distance service as

17 well as custom calling features.

18 A. Okay. If -- I agree with your summary and I

19 go back reaffirm what I thought it was. That is a Sprint

20 Communications Company, LP offering, not a Sprint Missouri,

21 Inc., offering.

22 Q. So you're saying that that offering is not

23 currently available to customers in Kearney and Platte City?

24 A. I believe that is the case.

25 MS. LIPMAN REIBER: I have nothing further.

1 JUDGE WOODRUFF: All right. Thank you.
2 With that then, we will go ahead and take a
3 break. We'll come back at 11:15.
4 (A RECESS WAS TAKEN.)
5 JUDGE WOODRUFF: All right. We're back on the
6 record. And when we left off, we were dealing with
7 cross-examination of Mr. Idoux and we're ready for
8 cross-examination by Fidelity.
9 CROSS-EXAMINATION BY MR. ROSS:
10 Q. Hello. Nice to see you again.
11 A. Good morning.
12 Q. I'd like to start off by asking you a few
13 questions about what Sprint's seeking in the Rolla and
14 St. Robert exchanges.
15 In the context of this proceeding, Sprint is
16 requesting competitive classification for certain services
17 on a statewide basis and certain additional services in
18 Rolla and St. Robert. Correct?
19 A. That is correct.
20 Q. Generally speaking, those additional
21 exchange-specific services for which Sprint is seeking
22 competitive classification in Rolla and St. Robert are
23 referred to in the issues list and your testimony as
24 residence and business core access line services and
25 residence and business access line related services.

1 Correct?

2 A. That's generically how they're referred to,
3 correct. There's an exhibit in there that specifies on a
4 service by service perspective which --

5 Q. Sure. And I'm just asking generally speaking.

6 A. Correct.

7 Q. On page 21 of your Direct Testimony -- would
8 you turn to that, please -- lines 4 through 10, you identify
9 the various factors that you believe the Commission should
10 take into account in determining the presence or absence of
11 effective competition in a particular exchange, do you not?

12 A. What page was that?

13 Q. That's page 20, lines 4 through 10 of your
14 Direct Testimony. And, again, the question is on page 20
15 and 21 -- maybe I misspoke -- page 21, lines 4 through 10
16 you identified the various factors that you believe the
17 Commission should take into account in determining the
18 presence or absence of effective competition in a particular
19 exchange. Correct?

20 A. Correct.

21 Q. For the purposes of the record, do you mind
22 reading those five factors for me, please?

23 A. Market share loss; the number of carriers
24 including resellers actually providing both resale and
25 facilities-based service in the exchange; No. 3 is the

1 number of carriers certified to do business in the
2 particular exchange; No. 4, the comparative longevity of the
3 companies doing business; and 5, the CLEC-owned fiber
4 networks.

5 Q. In your opinion, which of these factors, if
6 any, should be given greater weight in the Commission's
7 analysis?

8 A. Well, I think that has to be evaluated on a
9 case-by-case basis once you take all the factors into
10 consideration.

11 Q. Isn't it true that in the SBC competition case
12 that the Commission previously held that factor No. 1,
13 market share loss, is particular determinative of the extent
14 to which services are being provided by an alternative
15 provider in the market?

16 A. They may have done so in that particular case.
17 I'd have to go back and take a look at it, but the order
18 speaks for itself.

19 But we're not Southwestern Bell. We don't
20 operate in the same type of cities. They are a very urban
21 based -- or actually their given competition was in Kansas
22 City and St. Louis. Nowhere can that compare to the same
23 characteristics of Sprint's largest exchange, which is Rolla
24 in this particular case. So, I mean, that's an apples to
25 oranges comparison and the only way to do it is on a

1 case-by-case basis.

2 Q. And when you say Southwestern Bell was given
3 competitive classification in St. Louis and Kansas City, you
4 mean with respect to business services only. Correct?

5 A. Correct. Business only.

6 Q. And residential was which exchanges?

7 A. St. Charles and Harvester.

8 Q. Okay. Isn't it true also in the Southwestern
9 Bell competition case -- you mentioned that the Commission
10 held that residential services were competitive in the
11 Harvester and St. Charles exchanges. Isn't it also true
12 though that there were certain exchanges in which SBC had
13 suffered market share loss for business -- I'm sorry. I
14 messed up the question.

15 You mentioned in your testimony here that the
16 Commission found in the Southwestern Bell case that business
17 services were competitive in the St. Louis and Kansas City
18 exchanges. Correct?

19 A. Correct.

20 Q. But isn't it also true that the Commission
21 held with respect to business services that there were
22 certain exchanges in which Southwestern Bell had suffered a
23 similar or greater market share loss but those exchanges
24 were not held to be competitive. Correct?

25 A. I don't know.

1 Q. Okay. I believe you mentioned this, but isn't
2 it true that the Sprint exchanges at issue in this
3 proceeding are more rural, less urban than the exchanges
4 held to be competitive in the SBC competition case?

5 A. I would agree.

6 Q. So it doesn't surprise you to see less
7 companies competing in these exchanges than in the SBC
8 exchanges?

9 A. Oh, not surprising at all. I don't think
10 we'll ever get the same number of CLECs operating in
11 Sprint's exchanges that Southwestern Bell demonstrated in
12 its case.

13 Q. Right.

14 A. And so, therefore, you can't -- like I said,
15 you have to look at each particular exchange and request on
16 a case-by-case basis and evaluate all the characteristics
17 and relevant factors.

18 I mean, if the Commission said you cannot
19 receive competitive designation unless there's 31 providers
20 providing service, then there's no way Sprint, in any of its
21 exchanges, would be able to reach an artificial number of --
22 artificial benchmark of 31 carriers. So it has to be done
23 on a case-by-case basis looking at all the factors.

24 Q. Why is it the case that it's highly unlikely
25 that Sprint's going to see a large number of alternative

1 providers in these rural areas?

2 A. Well, because CLECs go to the larger, urban
3 areas first. Some have no intentions of going beyond that
4 scope. It's up to each individual CLEC to come up with
5 their own business plan. It makes much more sense to focus
6 your efforts on the bigger cities first than -- for national
7 players anyway -- than to, you know, cover some of the
8 smaller cities within a particular state.

9 Q. Is it fair to say that, generally speaking, on
10 a per subscriber basis it's more costly to provide services
11 in these rural exchanges of Sprint's as opposed to
12 Southwestern Bell exchanges, at least for those carriers who
13 are providing them on a facilities-based basis?

14 A. Not necessarily. You have to look -- once
15 again, you have to look at each particular case on a
16 case-by-case basis. If you have a pretty small rural area
17 that is very highly concentrated downtown and pretty close
18 to the switch, it might be more cost effective than to serve
19 some of the exchanges such as Kansas City that's spread out.

20 Q. Let's look at Rolla, if you don't mind. How
21 many CLECs are certified to provide service in the Rolla
22 exchange? Let me help you out.

23 A. Are certified?

24 Q. Yeah. Are certified, certificated to provide
25 service in the Rolla exchange.

1 A. I'd have to go back to Staff's exhibit.

2 Q. It might actually be in your Direct Testimony.

3 If you don't mind taking a look at page 11, lines 18, I

4 believe.

5 A. That just says there's 59 CLECs that have

6 certificate of service. That wasn't specific to Rolla.

7 Q. Sure. So you don't know sitting here today

8 how many CLECs are actually certificated to provide service

9 in the Rolla exchange?

10 A. I don't have an exact number, correct.

11 Q. Okay. But it's not going to be greater than

12 59, but it could be conceivably be less than 59?

13 A. It could be less than 59.

14 Q. In the Rolla exchange how many CLECs are

15 actually providing those exchange-specific services for

16 which Sprint seeks a finding of competitive classification?

17 A. More than 1, but Fidelity is probably

18 99.9 percent of the ones providing the service.

19 Q. The -- you say more than 1 --

20 A. There's some resellers.

21 Q. By "resellers," what kind of services are

22 these resellers providing? Are these prepaid resellers?

23 A. Many of them are. I'd have to look at them on

24 a case-by-case to see if they all were.

25 Q. Customers such as prepaid resellers

1 generally -- I'm sorry.

2 Customers of prepaid resellers generally pay

3 rates substantially higher than Sprint's basic local rate.

4 Correct?

5 A. Oh, sure.

6 Q. Does Sprint offer prepaid local service in

7 Rolla?

8 A. We offer the same service.

9 Q. But not on a prepaid basis. Right?

10 A. Actually, it is prepaid. When you pay your

11 bill, it's for the month in advance. So -- we don't charge

12 the rates that they charge and a deposit's required. So if

13 the differentiation is a deposit, Sprint most likely would

14 charge a deposit.

15 Q. Is it fair to say that Sprint's not relying on

16 the presence of those resellers as justification for its

17 request of competitive -- for competitive classification in

18 Rolla?

19 A. Yes.

20 Q. So Sprint's really only relying on the

21 presence of Fidelity for its request in this case?

22 A. Correct.

23 Q. Do you have any evidence of any CLEC other

24 than Fidelity that plans to provide service besides prepaid

25 local in the Rolla exchange?

1 A. There's wireless providers that are also
2 providing service. I think we put in some wireless services
3 for the -- specific to the Rolla exchange, although we've
4 not put any market share estimate.

5 Q. So other than these wireless providers, you
6 don't have any evidence of any companies that plan to
7 provide service in Rolla again except Fidelity?

8 A. That are currently providing, correct.

9 Q. The question is that have plans to provide.

10 A. Correct.

11 Q. Okay. How long has Sprint or its predecessor,
12 Interest United, been providing service in the Rolla
13 exchange?

14 A. I don't know when we started. I'd have to --

15 Q. Any guess? More than 50 years?

16 A. I probably have the tariffs back here. I
17 could probably look it up if it was needed.

18 Q. An educated guess will suffice.

19 A. A long time.

20 Q. Okay. A long time. To the best of your
21 knowledge, how long has Fidelity been providing service in
22 Rolla?

23 A. Fidelity has been providing service in Rolla
24 for three or four years, but it also has affiliates that
25 have been providing service in Missouri since 1961 or 1959

1 or whatever my testimony says.

2 Q. What actions, if any, has Sprint taken to
3 counteract the effects of competition in the Rolla exchange?

4 A. We've not taken any to date.

5 Q. Has Sprint offered -- I'm sorry.

6 Has Sprint lowered prices in Rolla as a result
7 of competition?

8 A. No, it has not. And as I was explaining with
9 Kearney and Platte City, if we wanted to lower rates under
10 the price cap statutes, we would have to lower them for
11 Jefferson City as well since Rolla is in the same tier as
12 Jefferson City, or go through another costly proceeding to
13 get a different classification.

14 Q. Let me ask you about that statement. Isn't it
15 true that Sprint, under the existing price cap regulation,
16 could seek exchange-specific pricing capability in Rolla
17 rather than reacting on a statewide basis for all similar
18 rate groups?

19 A. I don't believe that's part of the price cap
20 statutes. I believe it's part of the general provisions. I
21 might be mistaken on that, but nonetheless, yes, Sprint
22 could seek exchange-specific, but that nowhere comes close
23 to being a competitively neutral type of regulation as
24 anticipated by the price cap statutes for a competitively
25 classified ILEC. The competitors would still have

1 substantial regulatory advantages over Sprint.

2 Q. Does --

3 A. And it would take another proceeding that,
4 quite frankly, this Commission's never undertaken with
5 Sprint or any other particular company, price cap or
6 non-price cap, so it's pretty much unchartered water.

7 Q. Does Sprint have any current plans to change
8 rates in Rolla in the event of a finding of effective
9 competition in that exchange?

10 A. We don't have any proposed tariffs sitting on
11 a shelf that we're going to file once we get competitive
12 classification, no.

13 Q. In your Direct Testimony on page 5, lines 8
14 through 10, you state that in the SBC competition case that
15 the Commission noted that effective competition is
16 competition that exerts sustainable discipline on prices and
17 moves them to the competitive level of true economic cost.
18 Correct?

19 A. Correct.

20 Q. Are your current prices for residential access
21 line services in Rolla above or below your economic cost?

22 A. You're -- all going to be depended on how you
23 define cost. There's embedded cost, there's total long-run
24 incremental cost. I don't have specific knowledge sitting
25 here today of what our cost factors are.

1 Q. So you can't say by any measure whether you
2 look at embedded cost, total element or long-run incremental
3 cost, if your prices are above or below your economic cost?

4 A. No. And you'd have to look at all the
5 components. I mean, access, you know, being one of them,
6 the contributions from custom-calling features also play
7 into that. And that's specifically important when the trend
8 in the industry today is to go to bundled applications.

9 Q. Is it fair to say that given that you don't
10 know sitting here today whether your prices are above or
11 below your cost, that in the event of a finding of effective
12 competition, you don't know if your prices are going to go
13 up or down?

14 A. Well, we're -- I mean, like I said, I've not
15 seen any proposed tariffs sitting on the shelf, so I don't
16 know if our prices are going to go up or down. What I do
17 know is if they go up, we're going to be losing more
18 customers than we're currently losing today for the low
19 prices that Fidelity is offering in both St. Robert and in
20 Rolla.

21 So even if we get competitive classification
22 and don't to anything to prices and just maintain the
23 current prices as they are, we're going to continue to lose
24 prices because Fidelity has substantially lower costs than
25 Sprint as far as the end-user's concerned.

1 Q. In your testimony you offer a few calculations
2 to show Fidelity's relative success in the Rolla market.
3 The first is Sprint access's line growth rate and the second
4 is Sprint's market share loss. Correct?

5 A. I show a couple of ratios, correct.

6 Q. I'd like to take a look at the access line
7 growth rate figures. Would you please turn to the chart on
8 the top of page 16 of your Direct Testimony?

9 A. Oh, okay.

10 Q. Would you --

11 A. That's not for just Rolla, by the way.

12 Q. Correct.

13 A. That's for all --

14 Q. Would you -- let me ask it this way. This
15 chart shows a comparison of access line growth rates for
16 what you have termed the competitive and the non-competitive
17 exchanges. Correct?

18 A. Correct.

19 Q. For purposes of clarification, your term
20 "competitive exchanges" includes only the Rolla, Norborne
21 and Kearney exchanges and does not include St. Robert or
22 Platte City even though you're seeking a finding of
23 effective competition in those two latter exchanges.
24 Correct?

25 A. Correct. I mean, Sprint's not hiding from the

1 fact that its request for St. Roberts and Platte City -- we
2 fully acknowledge that competition just started within the
3 past year.

4 Q. And also, for purposes of clarification, this
5 chart includes both business and residential access lines.
6 Correct?

7 A. Yes.

8 Q. Also, this is probably an obvious question,
9 but does the chart reflect growth rates as compared to the
10 previous year or compared to a base year of 1998?

11 A. Previous year.

12 Q. So in 2000, Sprint experienced approximately a
13 4 percent growth in access lines from the previous year in
14 its so-called non-competitive exchanges. Correct?

15 A. Correct.

16 Q. And in 2001, Sprint experienced a 1 percent
17 growth in access lines from the previous year in the
18 non-competitive exchanges?

19 A. Correct.

20 Q. In 2002, Sprint suffered a 4 percent decrease
21 in access lines from the previous year in the
22 non-competitive exchanges. Correct?

23 A. Correct.

24 Q. I'd like to compare those figures to the
25 access line growth rates for the Rolla exchange. So would

1 you please turn to the chart at the top of page 41 of your
2 Direct Testimony? And I apologize in advance. You might
3 need a calculator to figure up the percentages so if you
4 need one, just let me know. I brought one.

5 A. I don't have a calculator.

6 Q. We'll see if you need one.

7 A. Okay.

8 Q. If you do, be more than happy to give it to
9 you.

10 In the year 2000, the year that Fidelity
11 enters the scene, Sprint experienced less than a 1 percent
12 decrease in access lines in the Rolla exchange from the
13 previous year. Correct?

14 A. Between '99 and 2000?

15 Q. Correct.

16 A. Correct. It looks like a little under 200
17 access lines were lost.

18 Q. Okay. I'd ask that you hold your place and
19 turn over to page 31 under Surrebuttal Testimony at lines 15
20 to 16.

21 A. I'm sorry. Which page?

22 Q. Page 31, I believe, lines 15 to 16 of your
23 Surrebuttal Testimony.

24 A. Oh, okay.

25 Q. You state that as of June 30th, 2000, Sprint's

1 annualized access line decrease for the Rolla exchange was
2 18 percent?

3 A. Oh, I'm sorry. That should be as of
4 June 30th, 2003.

5 Q. Okay. Let's flip back to your Direct
6 Testimony, page 41, the chart there.

7 A. Okay.

8 Q. In the year 2000, the year -- I'm sorry.
9 In the year 2001, Sprint experienced
10 approximately an 8 percent decrease in access lines from the
11 previous year in the Rolla exchange. Correct?

12 A. That's a close approximation, correct.

13 MR. ROSS: Okay. Your Honor, the next
14 question I'm going to ask I believe calls for some
15 proprietary information.

16 JUDGE WOODRUFF: Okay. Is there any way to
17 get the information without actually having him disclose the
18 number or do we need to go into --

19 MR. ROSS: I think we'll need to go into a
20 closed session.

21 JUDGE WOODRUFF: -- in-camera?

22 At this time then we'll need to go into an
23 in-camera session. Anyone in the audience who needs to
24 leave, please do so.

25 I see several people leaving.

1 MR. ROSS: And I believe for purposes of
2 clarification, that this is just proprietary information,
3 not highly confidential information.

4 JUDGE WOODRUFF: Either way, we need to be
5 in-camera. We're going off the Internet.

6 (REPORTER'S NOTE: At this time, an in-camera
7 session was held, which is contained in Volume No. 4, pages
8 113 through 115 of the transcript.)

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1 JUDGE WOODRUFF: All right. We're out of the
2 in-camera session. I appreciate you letting me know that
3 promptly. We're back in regular session at this time.
4 CROSS-EXAMINATION (CONT'D) BY MR. ROSS:
5 Q. Would you please turn over to your Direct
6 Testimony, page 45, lines 9 and 10?
7 A. All right.
8 Q. Here you indicate that based on the amount of
9 franchise fees paid to the City of Rolla, Fidelity has
10 captured over 30 percent of the market. Correct?
11 A. Correct.
12 Q. I want to clarify that by the market you mean
13 the City of Rolla as opposed to the entire Rolla exchange.
14 Correct?
15 A. Correct. Franchise -- I think my testimony
16 spells that out. It's only within the city limits of Rolla
17 for the franchise tax portion.
18 Q. Do you happen to know what percentage of
19 access lines for the Rolla exchange are located within the
20 City of Rolla?
21 A. No.
22 Q. Do you know how many access lines are in the
23 Rolla exchange total, roughly?
24 A. For Sprint or Unite -- or, I'm sorry,
25 Fidelity?

1 Q. Let's start with for Sprint.

2 MS. CREIGHTON HENDRICKS: Your Honor, the only

3 question I have is whether or not this is proprietary

4 information, the response.

5 THE WITNESS: It would be.

6 BY MR. ROSS:

7 Q. I actually think in the Surrebuttal Testimony

8 it's out there. It's not --

9 A. Well, it's out there in the Direct Testimony.

10 Q. Okay.

11 A. I'm sorry, no. It's proprietary in the Direct

12 Testimony. I don't believe my Surrebuttal -- I'd have to

13 double -- Surrebuttal does have the total. It's not broken

14 out between bus/res, which is why it's not deemed

15 nonproprietary.

16 Q. Okay. That's the number I'm looking for,

17 total number, how many access lines does Sprint have in the

18 Rolla exchange.

19 A. Okay. The beginning of May, Sprint had 14,589

20 access lines in Rolla.

21 Q. Are Sprint's rates in Rolla -- what rate group

22 are those in?

23 A. Rate Group 4.

24 Q. Since Sprint now has less than 20,000 access

25 lines in Rolla, why haven't they adopted Group 3 pricing

1 instead of Group 4 pricing?

2 A. I can't answer that.

3 Q. Wouldn't this be a way for you to change

4 prices in Rolla to help you compete?

5 A. I'm not familiar with the reclassification

6 portions of the rules or statutes to know if that's

7 available or not. But even if it was, it wouldn't still

8 give -- it would not be a competitively neutral form of

9 regulation for where our competitors come in and obtain

10 substantial market share.

11 Q. But conceivably there is a mechanism currently

12 in place for you to reduce your prices in Rolla? You could

13 simply --

14 A. There's many mechanisms to reduce the prices.

15 That's not -- necessarily mean it's competitively neutral

16 nor does Sprint receive the other advantages of competitive

17 classification.

18 Q. Bear with me for just one moment here.

19 A. And if I can follow-up on that, I'm -- I'd

20 have to check the tariff, but I don't believe -- I believe

21 it's dependent upon the number of customers a particular

22 end-user can call, not necessarily the size of customer

23 Sprint would have. So I don't know if that's available at

24 all, so no.

25 Q. Okay. Let's shift gears here a bit.

1 Throughout your testimony you cite the SBC competition case
2 for authority on what constitutes effective competition.
3 Correct?
4 A. I use it as a reference. I think the statute
5 spells out what constitutes effective competition.
6 Q. Should the Commission be consistent in this
7 case with what it did in the Southwestern Bell case?
8 A. Consistent in what ways?
9 Q. In your Surrebuttal Testimony at page 5, lines
10 12 through 15 you state, Further, while I was not privy to
11 the highly confidential information of the SBC competition
12 case that discussed specific market loss, I would believe
13 that it is highly unlikely that SBC faced the level of
14 market loss experienced by Sprint in certain exchanges.
15 Correct?
16 A. Correct.
17 Q. When you say "certain exchanges," what
18 exchanges do you mean?
19 A. Well, I know there's two exchanges that are
20 well above 50 percent.
21 Q. Is Rolla included --
22 A. No.
23 Q. -- in your --
24 A. Rolla is not included in that.
25 Q. If Fidelity's market share were lower than the

1 market share in certain SBC exchanges found by the
2 Commission could not be subject effective competition, would
3 Sprint's position in Rolla change?

4 A. No. Once again, you have to look at all the
5 relevant factors, not just one factor.

6 Q. In the St. Robert exchange, how many CLECs are
7 providing those exchange-specific services for which Sprint
8 seeks the finding of effective competition?

9 A. I believe there's one primary one.

10 Q. And who would that be?

11 A. Fidelity.

12 Q. So as with the Rolla exchange, Fidelity's
13 activities are your sole justification for seeking
14 competitive classification in St. Robert?

15 A. Correct.

16 Q. As we discussed previously in the in-camera
17 portion, Sprint's access lines in St. Robert have grown in
18 the past five years. Correct?

19 A. Correct. They've pretty much grown in all the
20 exchanges around there.

21 Q. Have Sprint's access lines in the last five
22 years grown in the St. Robert exchange at a rate higher than
23 they've grown in the surrounding exchanges?

24 A. Yes.

25 Q. How many access lines is Fidelity serving in

1 St. Robert?

2 A. I don't know as of -- the only thing I have
3 would be as of end of the year.

4 Q. Let me ask you this. In your Surrebuttal
5 Testimony at page 21, line 21, you state that Sprint has
6 experienced a line decrease of 186 lines in the St. Robert
7 exchange?

8 A. Correct.

9 Q. Are you sure that all of them went to
10 Fidelity?

11 A. I have no way of knowing that they all went to
12 Fidelity.

13 Q. And isn't it possible that some persons, like
14 those who have moved out of the exchange, simply
15 disconnected?

16 A. Oh, absolutely. That's why you have to have
17 some sort of comparison. And when you compare it to all the
18 other exchanges around St. Robert, it's still out of
19 alignment with the access line decrease experienced by
20 Sprint in all the other exchanges around St. Robert.

21 Q. What percentage of the market does Fidelity
22 have in St. Robert?

23 A. I don't know.

24 Q. In your Surrebuttal Testimony, page 21, lines
25 1 through 2 you state that Sprint has suffered an annualized

1 decrease of 6 percent for the year in the St. Robert
2 exchange. Correct?

3 A. Correct.

4 Q. That was for -- you came up to that -- you
5 arrived at that figure --

6 A. It was 3 percent for the six months times 2.
7 6 percent annualized.

8 Q. So at the most, Fidelity would have a
9 3 percent market share in the city of -- in the exchange of
10 St. Robert. Correct?

11 A. Oh, there's no way of telling, no. At the
12 most, no, I disagree. I mean, St. Robert -- the city
13 account of St. Roberts was recently approved -- or recently
14 went to Fidelity. I'm aware of -- it's my understanding
15 that several new hotels also went to Fidelity.

16 Q. But that's not in your testimony, is it?

17 A. And -- well, if I can finish.

18 Q. Sure.

19 A. If those are new accounts or if that
20 particular city purchased additional lines, there could be,
21 in effect, a market share growth that Sprint not only was
22 not able to enjoy part of that growth, but they also lost an
23 additional 186 lines. So to say the most that they have is
24 3 percent is not a correct statement.

25 Q. In your testimony you cite, at least to your

1 knowledge at that time, that the only customer that Fidelity
2 had obtained in the St. Robert exchange was the City of
3 St. Robert. Correct?

4 A. Correct.

5 Q. Is it fair to say that Sprint is basing its
6 request for competitive classification in the St. Robert
7 exchange not on the market share that Fidelity currently has
8 obtained, but rather what it could potentially obtain?

9 A. That's not a true statement. We're not basing
10 it on market share alone. We're basing it on all the
11 relevant factors. And I list them there in my testimony.

12 And I can go over them if you'd like, but I
13 mean, the fact that they are a facilities-owned -- I'm
14 sorry -- facilities-based CLEC-owned competitor is one. The
15 fact that they have substantial name recognition in the area
16 is another. The fact that they are a very experienced
17 telecommunication provider in the state of Missouri with
18 ILEC operations, CLEC operations, wireless, cable operations
19 is another.

20 I believe the newspaper article referred --
21 indicated that 85 percent of Fidelity's customers accept
22 Fidelity long-distance as a bundled package. So that's
23 another factor that the Commission should consider. So to
24 say market share alone, no, that's not a correct statement.

25 Q. The press release you cited when you stated

1 that 85 percent of Fidelity's customers use Fidelity's
2 long-distance affiliate as their provider, is that just for
3 the Rolla exchange only, or do you know?

4 A. I don't know.

5 Q. At page 46, lines 12 through 14 of your Direct
6 Testimony you state that there's no reason to believe that
7 Sprint will not experience the same type of access line loss
8 to Fidelity in St. Robert as it has experienced in Rolla.
9 Correct?

10 A. Correct.

11 Q. When you say "the same type of loss," I'm
12 assuming that, at least among other things, these other
13 factors you've mentioned, you mean loss to Fidelity as a
14 facilities-based provider in St. Robert?

15 A. Correct.

16 Q. Because Sprint is not relying on the presence
17 of resellers as a justification for its competitive
18 classification?

19 A. That's one of many factors the Commission
20 needs to consider.

21 Q. You state in your testimony that one advantage
22 Fidelity has in Rolla is that it can package cable services
23 offered by its affiliate. Correct?

24 A. I -- I believe the fact that it was used as an
25 advantage was from -- that came from Mr. Taylor's testimony

1 so Fidelity --

2 Q. I don't want --

3 A. -- considers it an advantage.

4 Q. I don't want to mischaracterize what you say

5 here. Take a look at your Surrebuttal Testimony, page 33,

6 lines 6 through 7.

7 A. Okay.

8 Q. Would you read those two lines for me?

9 A. Six and seven?

10 Q. Sure.

11 A. Sprint cannot offer all services provided by

12 Fidelity in that it cannot package cable TV service with any

13 of its offerings.

14 Q. Fidelity has a local business office in Rolla.

15 Correct?

16 A. Correct.

17 Q. Does it have a local business office in the

18 St. Robert exchange?

19 A. I don't know.

20 Q. Does Fidelity have an affiliate providing

21 cable services in St. Robert?

22 A. I don't -- according to Mr. Taylor's

23 testimony, no. I don't know how that's relevant in that

24 case though.

25 Q. What percentage of the Rolla exchange, if you

1 know, can Fidelity serve using its own facilities currently
2 in place?

3 A. I don't know.

4 Q. What about the percentage of the St. Robert
5 exchange that Fidelity can serve using its own facilities?

6 A. I don't know.

7 Q. Would your opinion as to the finding of
8 effective competition in the St. Robert exchange change if
9 you were to find out that Fidelity could serve less than
10 5 percent of the St. Robert exchange using its existing
11 facilities in place?

12 A. Absolutely not.

13 Q. That's --

14 A. All the other factors that are -- are -- that
15 we discussed are still present and they always -- they have
16 other avenues available to them. They have an
17 interconnection agreement with Sprint that allows for at
18 least in the loops and they could use their own switch.
19 They could also do a full UNE-P based, so there's many
20 options available to them.

21 Q. Sure. But, again, the basis of your request
22 is that Fidelity is a facilities-based provider in
23 St. Robert. Correct?

24 A. Correct. And they can be a facilities-based
25 provider in St. Roberts by leasing just the loop portion and

1 using their own switch.

2 MR. ROSS: Thank you. That's all the
3 questions I have.

4 JUDGE WOODRUFF: Thank you.

5 We'll come up for questions from the Bench
6 then. Commissioner Murray?

7 COMMISSIONER MURRAY: Thank you.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good morning, Mr. Idoux.

10 A. Good morning.

11 Q. It is still morning by a couple of minutes.

12 A. Snuck it in.

13 Q. In Rolla and St. Roberts, are there -- let's
14 take Rolla by itself first. Are there resellers providing
15 service there?

16 A. There are a handful of resellers in Rolla
17 providing service, although the number of lines is
18 minuscule.

19 Q. Are there resellers providing service in
20 St. Roberts?

21 A. Yes.

22 Q. Okay. You've been asked quite a number of
23 questions about whether Sprint has responded to competition
24 by lowering prices. You recall those questions?

25 A. Yes.

1 Q. Are you familiar with the recent Circuit Court
2 decision affirming the Commission in part and reversing and
3 remanding in part as to the Southwestern Bell investigation
4 and the state of competition?

5 A. Yes, I am.

6 Q. Then are you also aware that the court --

7 COMMISSIONER MURRAY: And I guess I'll ask the
8 Judge. No one has offered the Circuit Court decision in
9 evidence, I guess; is that correct?

10 JUDGE WOODRUFF: Not to my knowledge.

11 BY COMMISSIONER MURRAY:

12 Q. Let me ask you this then. Are you aware that
13 the Circuit Court addressed that issue of prices in relation
14 to finding effective competition?

15 A. I know that they did address that.

16 Q. And are you aware that the court determined
17 that that was a factor that had never been mentioned in
18 statute as to competitive activity?

19 A. That's my recollection, yes.

20 Q. All right. So would it be your opinion that
21 these questions related to whether Sprint has lowered its
22 prices in any of its price cap exchanges is not relevant to
23 a determination on competitive classification?

24 A. Correct.

25 Q. And Fidelity's attorney asked you some

1 questions about the Rolla area and I think he was suggesting
2 that it was a rural area. Did you --

3 A. He was indicating that it was not as urbanized
4 as Kansas City or St. Louis.

5 Q. Okay. Would customers in an area that is not
6 as urbanized as Kansas City or St. Louis benefit from
7 Sprint's gaining competitive classification there? Would
8 they possibly benefit?

9 A. Oh, absolutely. I believe any time you can
10 move to a competitive environment rather than a regulated
11 environment, consumers will benefit.

12 Q. And would one of those potential ways be that
13 Sprint would be free to lower prices in that exchange
14 without lowering them statewide?

15 A. Correct.

16 Q. And would another possible benefit be that
17 competitors might respond to those lowered prices?

18 A. Correct. Respond both in price as well as new
19 offerings, new products, new services.

20 Q. And the FCC declaratory ruling, Exhibit 13,
21 that was offered by ExOp's counsel --

22 A. Yes.

23 Q. -- do you have a copy of that?

24 A. Yeah.

25 Q. Okay. On page 11 of that, No. 24 --

1 A. Yes.

2 Q. -- would you read the first sentence?

3 A. Sure. It says, A new entrant can make a
4 reasonable demonstration to the State Commission of its
5 capability and commitment to provide universal service
6 without the actual provision of the proposed service.

7 Q. And then would you read the last sentence of
8 that paragraph?

9 A. Yes. The carrier must reasonably demonstrate
10 to the State Commission its ability and willingness to
11 provide service upon designation.

12 Q. And do you think that the FCC expects that
13 when a State Commission grants ETC status to a carrier, that
14 that carrier must demonstrate that it is capable and
15 committed to provide service in the entire exchange?

16 A. Oh, absolutely. What I believe this order
17 lays down is a foundation that says you don't have to -- you
18 don't have to be actually providing service throughout the
19 entire studying area when you apply; however, if anybody
20 within that service study requests service, you must be able
21 to provide it.

22 Also, this particular order from the FCC was
23 supplemented later that year this came out in August, but in
24 December and -- it was attached to ExOp's application for
25 ETC status and I can refer it to you. It's in my testimony

1 as an exhibit.

2 MS. CREIGHTON HENDRICKS: JRI-20, I believe.

3 THE WITNESS: Thank you. JRI-20.

4 BY COMMISSIONER MURRAY:

5 Q. And that is attached, I believe, to your

6 Surrebuttal Testimony?

7 A. Surrebuttal. And Exhibit A of ExOp's

8 application for ETC status includes an FCC order. And on

9 page 10 of that -- whoops, I'm sorry --

10 Q. Is that following the stipulation of facts?

11 A. It's probably easier to go from the back of

12 the exhibit -- of my Exhibit JRI-20 and look for an FCC

13 order that's called Exhibit A.

14 MS. CREIGHTON HENDRICKS: I believe it's

15 page 7 of Exhibit A, first paragraph.

16 THE WITNESS: Correct. And basically -- yeah,

17 on page 7 of Exhibit A, that particular --

18 BY COMMISSIONER MURRAY:

19 Q. Wait a minute. Just a moment. I'm sorry.

20 Let me locate that. I've got your Schedule 20. And the

21 first thing in Schedule 20, as I see it, is a stipulation of

22 facts; is that correct?

23 A. Correct. It's back a ways from that.

24 Q. Okay. I'm right now at a brief of ExOp. Is

25 it --

1 A. It's behind that.

2 Q. -- beyond that? All right. Docket 96-45?

3 A. Correct.

4 Q. Okay. Thank you.

5 A. Released December 26th.

6 Q. And what page?

7 A. That was page 7.

8 Q. All right. Thank you.

9 A. And that sentence reads, As the Commission

10 noted in the universal service order, Section 214E, prevents

11 eligible carriers from attracting only the most desirable

12 customers by limiting eligibility to common carriers and

13 requiring eligible carriers to offer and advertise supported

14 services throughout the service area. And throughout the

15 service area is in quotes.

16 Q. Okay. And now again in your exhibit -- or

17 your Schedule 20 --

18 A. Yes.

19 Q. And this was -- the first thing in that

20 Schedule 20 was the stipulation of facts before the Missouri

21 Public Service Commission and ExOp's application for

22 designation of ETC status; is that right?

23 A. Correct.

24 Q. And No. 4 on that stipulation of facts, would

25 you read that?

1 A. Pursuant to tariffs approved by the
2 Commission, ExOp provides basic local telecommunication
3 service exclusively through the use of its own facilities
4 throughout the Kearney, Missouri exchange.

5 Q. Okay. Let's see. We're talking about a
6 different exchange there though, aren't we?

7 A. Yeah. JRI-20 was for Kearney. I believe --
8 JRI-19 I believe was for Platte City.

9 Q. Is there a similar statement in that
10 application?

11 A. I believe on Item 12 it says, ExOp, through
12 its own facilities, offers in Platte City, Missouri exchange
13 all of the services supported by the federal universal
14 service support under 254C of the Act.

15 And in 13 it says that, ExOp advertises the
16 availability of and charges for services using media of
17 general distribution within its Platte City, Missouri
18 service area, and have included in Appendix B several
19 examples of the advertising.

20 Q. And if there's a request for service anywhere
21 within the service area, it has to provide it; is that
22 correct?

23 A. That is correct.

24 Q. And that is to be granted the ETC designation.
25 Now, if ExOp then wants to request universal service

1 support, does it have to demonstrate at that time that it is
2 providing service in the entire exchange?

3 A. No. I believe it has everything it needs to
4 seek USF support from the universal service support. It has
5 the designation from the Commission.

6 Q. And it does not then need to go at that point
7 and provide evidence that it is providing -- in fact,
8 providing service throughout the entire exchange?

9 A. No. The FCC delegated that authority to the
10 states and all they need is an ETC status granted by the
11 State Commission.

12 Q. Okay. Can you tell me if a customer -- a
13 basic local customer of Sprint could purchase Centrex from
14 another provider and remain a basic local customer of
15 Sprint?

16 A. They cannot provide -- end-user customer
17 purchase Centrex from a different provider? Centrex I
18 believe is a trademark name like Southwestern Bell's Plexar,
19 so they'd probably call it something different.

20 I don't know if the other CLECs are offering
21 that particular service, but they can get the functional
22 equivalent through hundreds of PBX vendors in the state.

23 Q. So it would not be called Centrex, but it
24 would be the functional equivalent --

25 A. Correct.

1 Q. -- of the Centrex service?

2 A. Correct.

3 Q. And they could do so while remaining a local

4 basic customer or basic local customer of Sprint; is that

5 right?

6 A. Correct.

7 Q. And in your application here for the

8 competitive designations that -- the designations that

9 you're seeking for competitive classification of services --

10 A. Uh-huh.

11 Q. -- and locations, you are not simply relying

12 on any one factor to claim competitive status; is that

13 right?

14 A. Correct. We're encouraging the Commission to

15 evaluate all the relevant factors.

16 Q. And for each classification that you're

17 seeking you have provided evidence that there are various

18 elements that are competitive?

19 A. Correct.

20 Q. And you're relying on non-traditional forms of

21 functionally equivalent services as simply one factor; is

22 that right?

23 A. Right. It's one factor for the Commission to

24 consider. We've not put a lot of evidence -- I mean, there

25 is some evidence in the testimony and Surrebuttal Testimony

1 of Sprint, but that is one factor for the Commission to
2 consider.

3 Q. And I found it interesting in some of the
4 testimony from a couple of the parties as well as testimony
5 of yours in your Surrebuttal, you indicated on page 23 --
6 and I'm quoting from your Surrebuttal Testimony -- No
7 reasonable individual can argue the fact that certain
8 customers use wireless services provided by wireless
9 carriers instead of an ILEC's wireline service. Nor can any
10 reasonable individual argue that certain customers use cable
11 modems provided by cable operators instead of wireline
12 service.

13 And I found that interesting because I am one
14 of Sprint's former customers who uses wireless instead of
15 wireline and I use cable for my Internet connection. So
16 I've not had a land-line phone for well over a year, so I
17 find that portion to be very believable. And I just found
18 it was interesting that it was addressed by several parties
19 as to whether or not it was -- you know, there was true
20 competition in wireless and cable modems.

21 A. The difficulty there is trying to attribute
22 how much those non-traditional players have on the effect of
23 competition. You can't necessarily issue them a data
24 request and get data back on something -- I mean, it can't
25 be done for the industry very easily and to break it down

1 for some of Sprint's exchanges is just not practical.

2 Q. But, as you said in your testimony, certainly

3 nobody could argue that some customers don't --

4 A. Correct.

5 Q. -- use those competitive services?

6 COMMISSIONER MURRAY: I think that's all I

7 have, Judge. Thank you.

8 JUDGE WOODRUFF: Commissioner Gaw?

9 COMMISSIONER GAW: Thank you, judge.

10 QUESTIONS BY COMMISSIONER GAW:

11 Q. Good afternoon, Mr. Idoux.

12 A. Good afternoon.

13 Q. Do you know if you could point out to me on

14 the record if there is -- if there is any data that was

15 supplemented to the Commission in this case that details the

16 prices for the services that Sprint seeks to be classified

17 as competitive on a statewide basis since Sprint became a

18 price cap carrier? Is there something in the record that

19 shows that?

20 A. For its statewide services?

21 Q. Yes. That Sprint seeks to be classified as

22 competitive.

23 A. I don't believe there's anything that's been

24 offered into evidence on that, no.

25 Q. Does Sprint have that data?

1 A. Of all statewide services and the prices?

2 Q. That -- that the price changes that have

3 occurred on those services that Sprint seeks to be

4 classified as competitive since Sprint became price cap

5 regulated.

6 A. Yes. Sprint does have -- have that.

7 Q. Would it be difficult to supply that to the

8 Commission?

9 A. I don't believe it would be difficult. I know

10 it's out there as far as discovery.

11 Q. If we could see that in a fashion that would

12 let us know what those prices started out being just prior

13 to price cap status and how, if they have at all, changed

14 since that time on each time that they were requested to be

15 changed and perhaps a percentage of increase or decrease, I

16 would appreciate that.

17 A. Okay.

18 MS. CREIGHTON HENDRICKS: Commissioner Gaw, I

19 will check and see the time frame in which we can get that

20 to you. I don't know if we need to reserve an exhibit now

21 for that, a late-filed exhibit.

22 JUDGE WOODRUFF: Since we're probably going to

23 go more than one day on this, just let me know by tomorrow

24 and, if necessary, we'll reserve a number for it.

25 MS. CREIGHTON HENDRICKS: Yes, your Honor.

1 COMMISSIONER GAW: Thank you.

2 BY COMMISSIONER GAW:

3 Q. On the exchanges that you seek classification
4 as competitive for particular services on more local -- on a
5 local exchange, do you have an opinion as to the cost of
6 delivering services in those exchanges as compared to the
7 average cost of Sprint delivering those services in the
8 exchanges it serves in Missouri?

9 A. I don't have any information on that.

10 Q. So when the Commission is analyzing the prices
11 that are charged by Sprint for those services, Sprint is not
12 offering any evidence that would allow this Commission to
13 make any assessment as to whether the prices charged by
14 Sprint on those services would have any relevance or any
15 relation to the charges that -- excuse me -- the cost of
16 those services in those particular areas?

17 A. That is correct. There's nothing that's been
18 offered.

19 Q. In comparing those exchanges in Rolla and
20 St. Roberts and Kearney and Platte City and Norborne in
21 relation to whether or not they are more or less rural than
22 other exchanges that Sprint serves, can you give me any
23 assessment of that in a general sense?

24 A. I believe Norborne is definitely the most
25 rural and it's a small town.

1 Q. And when you say that, you're comparing it to
2 the other exchanges you're seeking competitive
3 classification or in regard to Sprint's overall service
4 territories in Missouri?

5 A. Uh-huh. I'm comparing it to Sprint's overall
6 service territory.

7 Q. All right.

8 A. Jefferson City and Rolla are its -- the
9 biggest cities. St. Robert is, for lack of a better word, a
10 suburb of Rolla. It's right there in the Rolla vicinity so
11 it's part of the general Rolla area. So to the point -- to
12 the extent that Rolla is an urbanized area so would
13 St. Robert.

14 Q. Isn't St. Robert more identified with Fort
15 Leonard Wood and Waynesville than Rolla? I mean, just
16 trying to understand the geography.

17 A. I mean, I've been there. I don't really know
18 what they -- what it's considered part of. I know our
19 public affairs manager considers it all part of the Rolla
20 area.

21 Q. Okay. And, again, if you want to continue, I
22 may have stopped you on your answer.

23 A. Yeah. I know Platte City is, you know, just
24 north of the KCI Airport off I-29. That's considered part
25 of the Kansas City metropolitan area. It's a bedroom

1 community of Kansas City.

2 I know Kearney in a lot of ways is considered
3 the same. It's part of the MCA of Kansas City. You know,
4 it's -- it's a little hike out there, but depending on where
5 you work and how you drive, it's very much part of the
6 Kansas City metro area -- or can be considered by some.

7 Norborne is -- it's -- I have been to Norborne
8 as well, but it seems to be a pretty small town when
9 compared to the others.

10 Q. Norborne's over in an area west of Carrollton
11 maybe?

12 A. Yeah. It's over there by Carrollton, yeah.

13 Q. If you are looking at the percentage of
14 customers in each of those exchanges as compared to the
15 total percentage of Sprint customers -- local exchange
16 customers, are those figures in any of the testimony that
17 you've filed or in anyone else's that you're aware of?

18 A. As far as the number of customers?

19 Q. Yeah. Just the percentage of customers served
20 by those particular areas as compared to the total number of
21 customers Sprint has.

22 MS. CREIGHTON HENDRICKS: Should be JRI-3, I
23 believe.

24 THE WITNESS: JRI-3 to my Direct Testimony --
25 is it JRI-3 -- is 2001 exchange access line count. And I

1 sorted this one from biggest -- the largest exchange to the
2 smallest exchange. And the reason I used 2001 is so it
3 remain public. And, of course, I didn't total it by
4 percentages there, but that kind of gives you a feel for how
5 many access lines Sprint has.

6 BY COMMISSIONER GAW:

7 Q. All right. And in assessing the likelihood of
8 Sprint's future plans if competitive status were granted, I
9 know there's been questions of you of that and so far I
10 haven't heard much -- that you have any knowledge of what
11 those future plans might be.

12 If we're looking and assessing the likelihood
13 of Sprint's reaction to the granting of competitive status,
14 is there any assurance that the Commission could be given by
15 Sprint as to the impact that customers are likely to see in
16 Sprint's participation in those markets that they seek
17 competitive status in on the local basis?

18 A. And when you refer to assurances --

19 Q. I'm trying to gauge -- I haven't heard
20 anything up to this point in time that I recall that
21 indicates what, if any, plans Sprint may have if they're
22 granted competitive status and how that might impact local
23 customers. I'm looking for --

24 A. When we talked to --

25 Q. -- something from you if you have information

1 that would help me in that regard.

2 A. When we talked to our marketing folks both in
3 the business side and residential side about this very
4 issue, about this very case, because we knew this question
5 was going to come up, the only consistent answer we received
6 was, you know, we'll decide once we get the competitive
7 classification.

8 I mean, this case probably won't be resolved
9 until mid-December. And for the marketing department, I
10 mean, they're trying to make plans for next week. To try to
11 get them to make some type of definite plan, you know, six,
12 eight months out just isn't practical.

13 So, I mean, that's the reason we don't have
14 definite plans for those particular markets. It's not known
15 yet if we'll get competitive classification, and if we do,
16 it's going to be six, eight months now and the market place
17 will be substantially different than today.

18 Q. So the answer is we're probably not going to
19 get any guidance here?

20 A. I -- I don't have any to offer.

21 Q. Would you be able to tell me whether or not
22 you believe that at current pricing the services that you
23 seek competitive status for in those local exchanges you're
24 seeking competitive status, whether or not they are making
25 Sprint money? Are you deriving profit at those prices?

1 A. Well, Sprint obviously is a for-profit company
2 and Sprint does make money. Sprint makes money in Missouri.
3 Q. I'm being more specific than that.
4 A. We have -- Sprint does not manage its business
5 at the exchange level, so we would not be able to drill down
6 and say the exchange of Norborne, Missouri provides this
7 much contribution to the overall bottom line.
8 Q. Do you believe that Sprint is making money in
9 those exchanges on those services you seek competitive
10 classification on?
11 A. I -- I don't know. I think we're getting --
12 we're seeking competitive classification for everything
13 except switched access, I believe, from those exchanges.
14 And looking at it in total -- specific -- I just don't have
15 any way to answer. I know if I can defer a little bit more
16 to Sprint Witness Brian Staihr, he might be in a better
17 position to -- to respond to that.
18 Q. Perhaps he can offer that up at the time in
19 the event that I'm not present when he's testifying.
20 If I could ask you then, if you are -- you're
21 familiar with both Fidelity and ExOp's system in the areas
22 that Sprint operates and they operate as well?
23 A. Uh-huh.
24 Q. Is there a reason why those companies would be
25 able to offer services at a cheaper rate than Sprint if

1 Sprint -- if you're just assessing the costs that both
2 companies occur in those areas?

3 A. Well, there's -- as Fidelity has indicated,
4 they came into Rolla with a bundled offering of cable. I
5 don't know how many of the costs they are assessing to the
6 cable portion versus the wire -- the telephone portion.
7 There's just no way of knowing that cost without looking at
8 cost allocation perspectives or to see what other type of,
9 you know, related companies may or may not be contributing
10 to the cost end or the revenue side of it.

11 Q. So the answer is you're not -- you really
12 don't know based upon your knowledge of the --

13 A. Correct.

14 Q. -- system --

15 A. Correct.

16 Q. -- enough to be able to assess it?

17 A. Correct.

18 Q. If Sprint -- is Sprint required to serve those
19 areas, those local areas you're seeking competitive
20 classification in?

21 A. Yes, we are.

22 Q. So do you believe that even without the
23 requirement that Sprint serve those areas -- serve those
24 areas, that Sprint would continue to seek to serve those
25 areas?

1 A. I have no way of -- to answer that.

2 Q. Is it possible for a scenario to develop even
3 for a carrier of last resort where there is not sufficient
4 motivation to compete at a certain price for Sprint to lower
5 its prices sufficiently enough to really be competitive in
6 areas that they serve?

7 A. When we look at it in the total picture, as I
8 said a couple minutes ago, I mean, the trend clearly now is
9 bundling. If the answer was strictly an R-1 where -- in
10 Norborne at 6.50 or something like that, would Sprint want
11 to go in and compete just for an R-1 at 6.50? Most likely
12 not if it didn't have the carrier of resort obligation.

13 But you have no idea -- that \$6.50 access line
14 might bring in hundreds of access revenue -- hundreds of
15 dollars in access revenue if it's a heavy toll user. That
16 toll may or may not be going to Sprint long-distance. If it
17 is, it's an extra bonus. So to look at it on a stand-alone
18 basis is pretty much impossible to gauge.

19 Q. I guess as long as Sprint has the carrier of
20 last resort obligation on a local basis, what does that
21 require of Sprint in regard to -- in regard to maintaining
22 facilities?

23 A. I believe as long as we have carrier of last
24 resort obligations, we're required to maintain the
25 facilities at a level consistent with the Commission's

1 policies.

2 Q. And what would that be, if you know?

3 A. I know there's different standards as far as,

4 like, busy line, the ability to get dial tone when you need

5 it, answer times in the repair centers as well as the

6 service centers, access to 911, access to directory

7 assistance, operator assistance and your pre-subscribed

8 long-distance carrier. Other standards include number of

9 troubles and repair in-- or repair intervals, installation

10 intervals, those types of things.

11 Q. I want to take you through a scenario that may

12 be totally fictional, but what would happen if we were

13 dealing with one of these exchanges, whether that be Rolla

14 or Kearney or Norborne, and Sprint lost -- because of the

15 pricing on the other side, service on the other -- of the

16 particular telecoms discussed in this case, Sprint lost all

17 of its customers --

18 A. Uh-huh.

19 Q. -- what would occur if that happened?

20 A. Sprint lost 100 percent of its customers?

21 Q. First of all, what would occur with Sprint?

22 A. I'm not sure I'm following you. What would

23 occur at Sprint?

24 Q. Well, I guess I'm asking, if you were --

25 continued to be a carrier of last resort --

1 A. All right.

2 Q. -- in that area, what would happen with
3 Sprint's facilities in that area?

4 A. Sprint's facilities are still there. The
5 switch is still there, the cables are in the ground or on
6 the poles or wherever it is, Sprint's receiving no revenue
7 for any of those lost customers.

8 I mean, Sprint has several -- actually just a
9 couple of options at that point. It can try to get some
10 customers on the line, it can seek to get out of its carrier
11 of last resort obligation or can try to sell the particular
12 exchange.

13 Q. As far as pricing is concerned in that area,
14 is there a point at which -- I mean, do we reach a point at
15 which the -- at least the possibility exists that the
16 competitor ends up being almost in a monopoly situation, the
17 competitor that you have now?

18 A. Oh, I mean, absolutely. I mean, if you take a
19 look at some of the numbers, like I said, there's two -- two
20 of the five exchanges the competitor has more than
21 50 percent of the access lines and one of them is
22 substantially more than 50 percent of the access lines. So
23 clearly Sprint is not only the minority player, but the
24 minority player in a big way.

25 There the -- I mean, the competitor still has

1 to live up to the service quality standards as they apply to
2 the non-ILECs, but that's a situation where a majority of
3 the customers are on a non-regulated competitor and the
4 customers that remain at Sprint, you know, Sprint doesn't
5 have that regulatory parity.

6 Q. Is there a difference in the way that calls
7 are handled on intraLATA toll if someone is in a Sprint
8 exchange if it's handled by Sprint as opposed to another --
9 as opposed to an IXC?

10 A. These are -- can I ask for a point-to-point
11 example? Because it gets kind of tricky. Are you talking
12 about if someone's, for example, in Norborne and calls the
13 city next to it?

14 Q. If that would normally be --

15 A. IntraLATA toll.

16 Q. -- an intraLATA toll call, that would be fine.

17 A. If it's handled by Sprint Missouri, Inc., the
18 ILEC, and Sprint Missouri, Inc., is a pre-subscribed carrier
19 for intraLATA toll, the call would go from the end-user to
20 Sprint's switch in Norborne and then -- I'm trying to think
21 where Sprint's switch is. And then it would be delivered
22 to -- wherever through Sprint's facilities if that
23 customer -- if it's a Sprint-to-Sprint call.

24 Q. Yeah. And it would not go to a switch that
25 moved it over to Sprint, the IXC, and I'm sorry I can't keep

1 track of all of Sprint's names.

2 A. Neither can I. That's okay.

3 Q. But in that event it goes over the local

4 exchange company's lines?

5 A. If they have Sprint Missouri, Inc. as their

6 pre-subscribed carrier --

7 Q. All right.

8 A. -- it would not go to Sprint long-distance

9 network.

10 Q. Yeah.

11 A. Now, it might be -- dependent upon what office

12 it sat behind, it might go to a Bell office and then

13 terminate at Feature Group C network.

14 Q. And when Sprint is using its -- I don't want

15 to use the word direct line, but when it doesn't go over an

16 IXC switch, is that a Feature Group C --

17 A. Correct.

18 Q. -- with Sprint as well?

19 A. Yeah. LEC -- if it's Sprint, the ILEC --

20 Q. Yes.

21 A. -- Sprint, the ILEC, uses a LEC-to-LEC

22 network, Feature Group C network.

23 Q. Similar to what SBC has --

24 A. Correct.

25 Q. -- on its network?

1 A. Correct.

2 Q. If it goes the IXC route, if it's -- say they
3 have AT&T, then it's a Feature Group D transfer?

4 A. Correct. It goes from the end-user to
5 Sprint's switch. Sprint's switch recognizes that as a
6 1-plus AT&T call and we route it to AT&T's point of
7 presence.

8 Q. Okay. Do you know whether or not companies
9 actively -- when -- and let me start over here.

10 When an IXC is marketing to customers for
11 business, do you know whether or not they actively seek
12 intraLATA toll business in their marketing?

13 A. I'm not aware of any companies that go out
14 there and have a business plan solely on intraLATA
15 long-distance. It's the long-distance market including
16 interLATA in-state and international.

17 Q. Yeah. If I were receiving a telemarketing
18 call from one of the IXCs trying to get me to switch, for
19 example, to their long-distance company, do you know whether
20 as a part -- if I agree, yes, please, switch me, would I be
21 switched on intraLATA toll as well as being switched on
22 interLATA?

23 A. It depends on -- on -- most likely you would
24 because most likely you would have given them permission to
25 switch both your intraLATA and interLATA.

1 Q. Do you know whether or not companies actively
2 seek the switching of both when they're making those phone
3 calls --
4 A. I know Sprint long--
5 Q. -- or do they differentiate between the two in
6 their sales pitch?
7 A. I know Sprint long-distance asks for both.
8 I'm not familiar with other carriers.
9 Q. Okay. Is the price that's charged on
10 intraLATA toll by Sprint in Missouri similar to the price
11 that IXCs offer for intraLATA toll service in Missouri? And
12 I know that's a -- that question ranges a lot in regard to a
13 possible answer, but to the extent that you can answer --
14 A. I would say, no, it's not similar. Sprint
15 Missouri, Inc., the ILEC, doesn't have a large number of
16 calling plans for intraLATA toll. That's pretty much well
17 known. Most of the creative plans come on the Sprint
18 long-distance side that are available to the customers. So
19 Sprint only offers its MTS package.
20 Q. And you might explain that.
21 A. Basic. Basic, no block of time, no monthly
22 recurring fee, plain old pay-by-the-minute type activity.
23 Q. And do you know what that cost is? I assume
24 that's public.
25 A. It is public. I don't have it off -- I would

1 have to look in our --

2 Q. Do you want to provide that in a little bit?

3 We'll break here in a little while maybe and you can provide

4 it when we get back.

5 A. Yeah.

6 COMMISSIONER GAW: And I'll ask the Judge if I

7 happen to not be here, if you could follow-up on that?

8 JUDGE WOODRUFF: Sure.

9 BY COMMISSIONER GAW:

10 Q. And is that -- you say that's a per minute --

11 generally a per minute amount, isn't it?

12 A. Correct.

13 Q. And is there just basically -- if I go around

14 the state in any Sprint area on intraLATA toll call, is it

15 pretty much the same?

16 A. Yes. Let me -- let me check.

17 Q. Yeah. Sure. Go ahead.

18 MS. CREIGHTON HENDRICKS: Commissioner or

19 Judge --

20 JUDGE WOODRUFF: Yes.

21 MS. CREIGHTON HENDRICKS: Just as a point in

22 the record, while I think Mr. Idoux is doing very good in

23 answering these questions, we do have a witness dedicated

24 solely to our statewide request.

25 COMMISSIONER GAW: I know.

1 MS. CREIGHTON HENDRICKS: He will be available
2 tomorrow if Mr. Idoux cannot answer your questions
3 sufficiently.

4 COMMISSIONER GAW: And if he doesn't have the
5 information, I don't mind him telling me that.

6 THE WITNESS: This is what I suspected and I
7 wanted to double check. Sprint rates are based upon how far
8 the call goes. So a 1- to 10-mile call is going to be
9 priced differently than a 200-mile call.

10 BY COMMISSIONER GAW:

11 Q. All right. And do you know about how many
12 breaks there are in that, just approximately?

13 A. There's about -- about 16 different
14 categories, but the last 5 all have the same price so
15 11 different prices.

16 Q. What's the range if you've got it in front of
17 you?

18 A. About 092 cents for the initial minute down
19 to -- wait a minute -- 9.2 cents to 58 cents a minute.

20 Q. And is that a range -- that's a range
21 depending on the mileage?

22 A. Correct.

23 Q. And I assume the longer the mileage, the
24 greater the price is --

25 A. Yeah.

1 Q. -- for what you're giving me?

2 All right. Well, maybe we can get -- we might

3 get that a little bit later from you or your other witness

4 so I'll have it in front of me, but that would be great.

5 COMMISSIONER GAW: I think that's all I have

6 right now. Thank you, Judge.

7 JUDGE WOODRUFF: Commissioner Gaw -- or excuse

8 me, Commissioner Forbis?

9 COMMISSIONER FORBIS: We're interchangeable.

10 JUDGE WOODRUFF: Yes. That's right.

11 COMMISSIONER FORBIS: We always think the

12 same.

13 QUESTIONS BY COMMISSIONER FORBIS:

14 Q. Mr. Idoux, how are you doing?

15 A. Just fine. Thank you.

16 Q. Just a couple of questions. This is one --

17 I'll start with one specific, one more general.

18 On page 10 of your Direct the question on

19 line 17 is, Why does Sprint view competitive classification

20 as needed? Well, it should be "e-d" there. Anyway, in your

21 answer behind that -- are you there?

22 A. Yes.

23 Q. Okay. Get the "e-d" in there.

24 A. I just put it there.

25 Q. It says, Currently, Sprint is subject to a

1 price cap under -- which allows Sprint to adjust its rates
2 downwards, but there is a statutory limit on any increased
3 prices.

4 So that just sort of begs the question I have
5 to ask. So would you ever foresee a time under a
6 competitive status when Sprint might raise its rates more
7 than 8 percent or more than the CPI for some of these
8 services?

9 A. Well, like I said, we don't have any definite
10 plans. Do we have the ability to raise prices if we're
11 given competitive classification? Absolutely.

12 But you need to take a look at the competitive
13 nature of the exchanges we're seeking. Like I said,
14 Norborne is \$6.50. I mean, if we do nothing, we're going to
15 lose customers. If we raise prices, we're going to lose
16 customers, you know, faster than we're losing them today.
17 And Commissioner Gaw's example of a competitor having
18 100 percent is not that far fetched if we do that. I --
19 I'll leave it at that.

20 Q. Okay. The other question I have is more of a
21 general one. We're looking at some statewide issues, of
22 course, and these five exchanges. And best I can -- reading
23 your testimony, for example, do you have a standard, do you
24 suggest a standard for analyzing each of these that would be
25 the same?

1 Is there, you know -- some of the -- some of
2 the exchanges and the line loss is some huge percentage, for
3 example, and others it's not but you're still seeking
4 competitive status where in some cases we're look at press
5 releases, in other cases we're looking at name ID of other
6 potential companies.

7 I'm having a hard time getting a handle on
8 what standard do you think ought to be applied to determine
9 whether or not competitive status should be granted.

10 A. I mean, this is an issue that I believe every
11 Commission across the state -- I'm sorry, across the
12 country, you know, struggles with. A magical mathematical
13 formula that you can just go yes/no would be, you know,
14 simplest for everybody.

15 Q. You don't have one of those with you?

16 A. But we don't have one of those. And each
17 particular exchange is different, like I said. And for
18 St. Charles and Harvester, I mean, those market places are
19 drastically different than Norborne, Missouri and Kearney,
20 Missouri. And so the only way to do it is to look at each
21 market on a case-by-case basis. And I believe that's what
22 the statute kind of envisioned.

23 Q. Even then, with a case-by-case basis, there's
24 still not a standard that you have in mind, if you will?

25 A. No. Not -- not a de-- I mean, you have to

1 look at all the relevant factors. In some exchanges we have
2 a much, much higher market share than we do in others, but
3 that doesn't mean those other factors that we discussed, ETC
4 status, the fact that they have their own facilities in
5 place, they're winning over customers, they offer lower
6 prices, you know, should be thrown away.

7 We have to take a look at all of the different
8 factors and see if it's going to have a controlling
9 influence on price and, thus, be, you know, an effective
10 competition exchange.

11 Q. Absent any standards, that seems rather
12 subjective.

13 A. Oh, absolutely.

14 Q. And with regard to wireless and voice-over and
15 others, I mean, you reference it -- and maybe this is the
16 same -- this goes back to what you just said. Even though
17 you reference it in your testimony, as do others, when we
18 get to specifics on the exchanges again, for example,
19 there's almost -- relatively little mention made of those
20 other forms of communications, how many lines -- how many
21 access lines are out there, how many access lines have been
22 lost or whatever.

23 And you talk about the fact that we don't have
24 a lot of Missouri-specific data. So how do you feel we
25 should incorporate weighing those factors with very little

1 to weigh with?

2 A. I mean -- I mean, each factor that Sprint
3 presents is going to have to be weighed, you know,
4 individually. And the fact that we didn't put hard numbers
5 forward would suggest that it probably doesn't deserve as
6 much weight as where we put other hard numbers or other hard
7 evidence on the record.

8 As we go from, you know, decision point to
9 decision point with the different exchanges, those
10 factors -- because every market's different, how much weight
11 you put on a particular factor is also going to adjust to
12 that particular market. So to say that, you know, we're
13 going to give market share 20 percent weight and wireless
14 2 percent, I mean, that's going to vary all over the board
15 based on each evaluation that's made.

16 Q. You appreciate the difficulty of that --

17 A. Absolutely.

18 Q. -- in making this decision.

19 A. Absolutely.

20 Q. I'm trying to think if I want to develop this
21 any further. No. I think I'll stop.

22 COMMISSIONER FORBIS: Thank you.

23 JUDGE WOODRUFF: Commissioner Clayton?

24 COMMISSIONER CLAYTON: I have no questions.

25 COMMISSIONER MURRAY: Judge, may I ask one

1 follow-up?

2 JUDGE WOODRUFF: Go ahead.

3 COMMISSIONER MURRAY: Thank you.

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5 Q. I just wanted to ask for you to summarize what
6 would be the outcome of the findings that the Commission
7 makes here. And just tell me if I'm correct. For those
8 exchanges and those -- and/or those services that we
9 classify as competitive, then Sprint will have full pricing
10 flexibility; is that correct?

11 A. Yes. Full pricing flexibility as well as
12 regulatory -- regulatory parameters would be competitively
13 neutral as with our competitors, meaning the filing
14 requirements, the cost studies, those type of things, those
15 other benefits that competitive companies enjoy that Sprint
16 doesn't.

17 Q. And for those services and exchanges that we
18 do not classify as competitive, they will continue under
19 price cap regulation?

20 A. Correct.

21 COMMISSIONER MURRAY: Okay. Thank you.

22 JUDGE WOODRUFF: All right. That concludes
23 questions from the Bench then.

24 And it's time for a break. We'll take a break
25 now and come back at two o'clock with recross.

1 (A RECESS WAS TAKEN.)

2 JUDGE WOODRUFF: All right. We're back on the

3 record. And when we left off, we had just finished with

4 questions from the Bench, so we'll go to recross beginning

5 with Staff.

6 MR. HAAS: No questions.

7 JUDGE WOODRUFF: Public Counsel is not present

8 at the moment.

9 Unite?

10 MS. LIPMAN REIBER: No questions.

11 JUDGE WOODRUFF: Fidelity?

12 MR. ROSS: Just one question.

13 JUDGE WOODRUFF: Okay.

14 RECROSS-EXAMINATION BY MR. ROSS:

15 Q. Fidelity is not an ETC, Eligible

16 Telecommunications Carrier, in St. Robert, is it?

17 A. No. Just Rolla.

18 MR. ROSS: Thanks.

19 JUDGE WOODRUFF: That's it. Okay.

20 Then redirect?

21 MS. CREIGHTON HENDRICKS: Your Honor, if I may

22 approach my witness.

23 JUDGE WOODRUFF: You may.

24 REDIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:

25 Q. Mr. Idoux, I have placed in front of you a

1 document. Can you identify it for me?

2 A. Yes. It's the Findings of Fact, Conclusions
3 of Law and Judgment in what we refer to as the SBC
4 competition case. That was the appeal to the Circuit Court
5 of Cole County, Case No. 02CV-323762 in the SBC competition
6 cases, Case No. TO-2001-467.

7 Q. Is that the decision that you were referencing
8 in the course of the questions that came from Commissioner
9 Murray?

10 A. Yes. Commissioner Murray inquired about this
11 appeal order.

12 MS. CREIGHTON HENDRICKS: Your Honor, if I
13 could get it marked as an exhibit and move for the admission
14 of the court ruling into the record.

15 JUDGE WOODRUFF: You may.

16 MS. CREIGHTON HENDRICKS: I don't know. Are
17 we on Exhibit 16?

18 JUDGE WOODRUFF: Exhibit 15.

19 MS. CREIGHTON HENDRICKS: I am currently
20 having copies made and I will distribute them when I receive
21 them.

22 JUDGE WOODRUFF: Exhibit 15 has been offered
23 into evidence. The parties haven't had a chance to see it
24 yet, although I expect they're familiar with it. However,
25 I'm going to defer ruling on it until you can give everybody

1 a chance to -- a copy of it and we'll come back to that.

2 MS. CREIGHTON HENDRICKS: Yes, your Honor.

3 BY MS. CREIGHTON HENDRICKS:

4 Q. Now, Mr. Idoux, there's been a lot of
5 discussion in the course of your cross and your Commissioner
6 questions about the responsibility of an ETC or an Eligible
7 Telecommunications Carrier. Ms. Reiber put an Exhibit 13 in
8 front of you. Do you have that?

9 A. Yes, I do.

10 Q. I'd like to direct your attention to
11 paragraph 17, which is found on page 8 -- or at least part
12 of the paragraph is on page 8. And --

13 A. I'm sorry. Which paragraph?

14 Q. It's paragraph 17, a portion of the paragraph
15 that appears on page 8. In there has the Commission -- or
16 the FCC made a statement as far as what is required of an
17 ETC once they receive the certification as far as extending
18 its network?

19 A. Yes. I'll read it. A new entrant once
20 designated as an ETC is required, as the incumbent is
21 required, to extend its network to serve new customers upon
22 reasonable request.

23 Q. Thank you. Ms. Reiber -- or Mrs. Reiber also
24 made a mention of a possibility that ExOp's facilities in
25 Platte City and Kearney may be sold. Do you recall that?

1 A. Yes, I do.

2 Q. Did Sprint issue a data request seeking all
3 documents relating to the sale of those facilities?

4 A. Yes, we did.

5 Q. And what was the response?

6 A. No documents exist.

7 Q. Now, you also received a question from
8 Commissioner Forbis about the standards that the Commission
9 applies in connection with finding effective competition.
10 Do you recall that?

11 A. Yes.

12 Q. Now, the response you gave, was that intended
13 to espouse or explain the last criteria in the statutory
14 definition or was that intended to cover all of them?

15 A. No. It was just the last. His question dealt
16 with wireless coverage and market share and more to the
17 wireless and that factor of the five factors is what is more
18 subjective than the other four. The other four are pretty
19 cut and dry as to whether a carrier meets those criteria.
20 It is not subjective. The statute itself has some standards
21 spelled out.

22 MS. CREIGHTON HENDRICKS: Okay. No further
23 questions, your Honor.

24 JUDGE WOODRUFF: All right. Then at this
25 point you may step down. Will you be staying around?

1 THE WITNESS: Yes.

2 JUDGE WOODRUFF: Okay. Just in case there's

3 any problems with exhibits.

4 Okay. You can call your next witness then.

5 MS. CREIGHTON HENDRICKS: Sprint calls Dr.

6 Brian Staihr.

7 (Witness sworn.)

8 JUDGE WOODRUFF: You may be seated and you may

9 inquire.

10 BRIAN STAIHR testified as follows:

11 DIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:

12 Q. Dr. Staihr, could you state your full name for

13 the record?

14 A. Yes. It's Brian K. Staihr.

15 Q. And on whose behalf are you testifying today?

16 A. On behalf of Sprint -- sorry -- Missouri, Inc.

17 Q. Now, are you the same Dr. Staihr who pre-filed

18 Surrebuttal Testimony in this case?

19 A. Yes, I am.

20 Q. Do you have any changes to that testimony?

21 A. No, I don't.

22 Q. If I were to ask you the same questions that

23 appear in your testimony, would you provide the same

24 responses today?

25 A. Yes, I would.

1 MS. CREIGHTON HENDRICKS: Your Honor, I move
2 for the admission of Exhibit -- I believe it's 5, the
3 Surrebuttal Testimony of Dr. Brian K. Staihr, into the
4 record at this time.

5 JUDGE WOODRUFF: All right. Exhibit 5 has
6 been offered into evidence. Are there any objections to its
7 receipt?

8 Hearing none, it will be received into
9 evidence.

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

11 MS. CREIGHTON HENDRICKS: I tender the witness
12 for cross-examination.

13 JUDGE WOODRUFF: All right. For
14 cross-examination beginning with Staff?

15 CROSS-EXAMINATION BY MR. HAAS:

16 Q. Good afternoon, Dr. Staihr.

17 A. Good afternoon.

18 Q. Would you please turn to page 20 of your
19 Surrebuttal Testimony?

20 A. Yes. I'm there.

21 Q. On lines 20 to 22 you state that if customers
22 perceive that an online service such as whitepage.com or
23 yellowpages.com satisfies the same demand that previously
24 was met by Sprint's DA offering, then the two services are
25 substitutes.

1 I notice your sentence begins with the word
2 "if." Do you have any evidence that the customers do
3 perceive the online services as substitutes for Sprint's DA
4 services?

5 A. I haven't conducted a specific study. I
6 personally perceive them to be substitutes. That's just one
7 customer's opinion. I don't have any specific data showing
8 the quantity of hits that would have been hits or calls to
9 Sprint's DA, nor do I know how it would be possible to
10 obtain such data.

11 Q. On page 21 at line 11 you say, There is no
12 question that a portion of the market perceives them to be
13 substitutes. And I believe you're referring to wireless and
14 wireline?

15 A. Yes.

16 Q. What size is the portion of the market that
17 perceives wireless and wireline to be substitutes?

18 A. It depends on the conditions, but there was a
19 study that was just put out by Ernst & Young, the
20 Primetrica, that specifically looked at this issue. I have
21 it, we can put it in the record, whatever. And depending on
22 the price offering, a number that I remember was 15.5
23 percent of customers would consider replacing their wireline
24 phone with a wireless phone.

25 Q. And how many have done that?

1 A. I don't know personally how many have. I do
2 know that if you ask Sprint PCS, they will say 7 percent of
3 their customers have no wireline phone.

4 Q. Do you have information as to the size of the
5 portion of that market in Sprint's Missouri exchanges that
6 considers wireless to be a substitute for wireline?

7 A. No. I don't have any Missouri Sprint specific
8 territory data.

9 Q. Do you know whether wireless and wireline
10 services are available at comparable rates in Sprint's
11 Missouri exchanges?

12 A. Yes. I believe that at least as far as Sprint
13 PCS is concerned, there are some low-end offerings that
14 would be comparable taking into consideration the additional
15 charges that go on top of an R-1 rate that a wireline
16 customer really can't avoid.

17 Q. Are wireless and wireline services available
18 at comparable terms and conditions in Sprint's Missouri
19 exchanges?

20 A. I haven't done a study, so what you're getting
21 is my opinion. And I would say, in general, yes, they are.

22 Q. And how did you reach that conclusion?

23 A. Well, because the -- the contract, if you want
24 to call that, what one enters into with regard to wireless
25 service, any more there's such a variety in terms of prepaid

1 calling, in terms of being able to buy a certain portion of
2 minutes and when that portion of minutes is used up, you're
3 done, that the customer actually has quite a bit more
4 flexibility with regard to wireless service any more than
5 with wireline.

6 So I would say that wireless is at least
7 comparable in terms of the flexibility it offers someone
8 that enters into a contract.

9 Q. Are contracts required for a customer to get
10 Sprint's wireline service?

11 A. Forgive me. When I use the word "contract,"
12 I'm talking in an economic sense in terms of there is an
13 offer, it is considered, it is accepted. Whether that's an
14 implicit contract or an explicit contract, it's still a
15 contract.

16 Q. Are there term limits -- or term agreements?
17 For instance, must a wireless customer sign on for contract
18 of a year or two or three?

19 A. Wireless?

20 Q. Wireless.

21 A. Not necessarily.

22 Q. Isn't that the standard for wireless
23 contracts, that it be for a term of a year or more?

24 A. Unless they're prepaid.

25 MR. HAAS: That's all my questions. Thank

1 you.

2 JUDGE WOODRUFF: Public Counsel?

3 CROSS-EXAMINATION BY MR. DANDINO:

4 Q. Good afternoon, Dr. Staihr.

5 A. Good afternoon.

6 Q. The conversation you had with Mr. Haas

7 expressing your opinion on percentage of customers who may

8 just have wireline and no -- I mean wireless rather than

9 wireline, I believe you said that wasn't based on any study

10 that you made; is that correct?

11 A. No. I believe I did reference an Ernst &

12 Young Primetrica study.

13 Q. But that's not a study that you conducted?

14 A. No. It was conducted by a colleague of mine

15 named Dr. Kevin Duffy Deno.

16 Q. So you have no personal knowledge of it?

17 A. I have it here if you'd like to see it.

18 Q. That wasn't the question, sir. You have no

19 personal knowledge of how it was conducted and what it --

20 A. Well, I have the methodology contained in the

21 study, so I do have knowledge of how the study was conducted

22 based on the methodology printed in the study.

23 Q. But you can't come before this Commission and

24 testify that it's true and accurate, that study?

25 A. I didn't do the study, sir.

1 Q. That's correct.

2 A. That's right.

3 Q. Okay. So really that's -- that's just your
4 opinion based on your experience, something you read?

5 A. As much as my opinion that the CPI, which I
6 also didn't calculate, is something that should be relied
7 upon.

8 Q. Okay. And you had no data as to the break-out
9 on any Missouri-specific information concerning wireless
10 use; is that correct?

11 A. That's correct.

12 Q. And you had no information on
13 Missouri-specific prices, terms and conditions of wireless
14 service?

15 A. My knowledge of wireless service pricing is
16 that it tends not necessarily to be state specific.

17 Q. It's national. Right?

18 A. Yes, sir.

19 Q. Much of the discussion in your surrebuttal
20 involves around the -- see if I can say it right here -- the
21 Herfindahl-Hirschman Index?

22 A. Yes, sir.

23 Q. And from now I'll refer to it as the HHI.

24 A. Okay.

25 Q. Now, is it a tool to be used to determine how

1 concentrated a market is?

2 A. It measures market concentration.

3 Q. Okay. And is it a factor that the Department

4 of Justice uses in determining how concentrated the market

5 is?

6 A. It's a factor the Department of Justice uses

7 to analyze merges.

8 Q. Okay.

9 A. And what they use it for is to see how the

10 concentration is affected by a merger. Obviously any

11 merger, two firms becoming one, is going to increase

12 concentration.

13 Q. And is concentration an attribute of

14 competition?

15 A. It can be in certain circumstances.

16 Q. And as to the calculations that

17 Ms. Meisenheimer performed on developing the HHI values, do

18 you have any disagreement as to how those were calculated?

19 A. It's a very simple arithmetic -- it's

20 arithmetic. No.

21 Q. Sure. And what would those values tell you

22 looking at the values?

23 A. That the market is served by a small number of

24 firms.

25 Q. And do you think that's a relevant

1 consideration for this Commission to consider?

2 A. Not necessarily.

3 Q. It's not a consideration at all? It's

4 something they should ignore?

5 A. I didn't say they should ignore it. I believe

6 you said relevant.

7 Q. That's true.

8 A. I don't necessarily think it's relevant. It

9 is a consideration.

10 Q. Well, the Commission is supposed to consider

11 all relevant information.

12 A. Uh-huh.

13 Q. So if it isn't irrelevant information, it's

14 something this Commission could lawfully and probably

15 reasonably ignore?

16 A. Could they? Certainly they could. Would they

17 be wise to if they have a reason to think it affects the

18 possibility of effective competition? In this case, the

19 number of firms does not necessarily affect the possibility

20 or probability of effective competition.

21 Q. Well, the HHI factor concentration does affect

22 competition; is that correct?

23 A. And I said not necessarily.

24 Q. I believe didn't you say in some cases?

25 A. And that is the same thing as saying not

1 necessarily.

2 Q. So in some cases it does?

3 A. And in this case it doesn't.

4 Q. But shouldn't the Commission review that and
5 make that determination?

6 A. Well, if they looked in my testimony, they
7 would see that whether or not concentration can affect
8 effective competition depends on the firms -- the small
9 number of firms being able to restrict their output. That's
10 not the case in this situation.

11 Q. How would telecommunications companies
12 restrict their output?

13 A. As the gentleman from Fidelity said, we've
14 only served a portion of this market so we've restricted our
15 output.

16 Q. Is that the only way they can?

17 A. I can't think of another way.

18 Q. Are you familiar with the term "bertrand
19 competition"?

20 A. Yes, I am.

21 Q. What does that mean?

22 A. Bertrand competition is a model of oligopoly
23 competition in which firms choose a specific price that they
24 will set based on a price that another firm will set. And
25 the decision variable in that case is the output of the

1 firm.

2 Based on deciding that they will charge a
3 certain price, the firm follows, charges a price and
4 produces a certain amount of output. And you get a result
5 in terms of a price and an amount of output that may be
6 greater than or less than a competitive level.

7 Q. Now, could that be applicable to the
8 telecommunications market?

9 A. Not when you have incumbents who can't change
10 their amount of output.

11 Q. So if the incumbents can't change their amount
12 of output, then -- well, they can certainly change the price
13 certainly?

14 A. They can try.

15 Q. What role does market dominance have in
16 competition -- in determining whether there is effective
17 competition?

18 A. You're going to have to define market
19 dominance for me.

20 Q. Well, what do you understand it to mean?

21 A. As I said in my testimony, there are multiple
22 definitions. According to the FCC, a firm is a dominant
23 firm if it has market power. Market power is perfectly
24 consistent with most of the competition we see in the real
25 world. It's not necessarily consistent with textbook

1 competition.

2 There's another type of dominance as dominance
3 expressed by a dominant firm, in a typical dominant firm
4 model where they set prices and the other firms follow.
5 It's their ability to set prices and have other firms follow
6 that make them dominant.

7 Q. Okay.

8 A. It may or may not have anything to do with
9 market power in that case.

10 Q. Now, I understand that the Staff's witness has
11 filed Surrebuttal Testimony. Have you seen that?

12 A. I have seen it. I read it once. I think I
13 have it here if --

14 Q. Okay. It is his opinion that the HHI measure
15 is inappropriate for telecommunications. Do you agree with
16 that?

17 A. Inappropriate for what?

18 Q. Well, inappropriate for considering effective
19 competition.

20 A. Oh, for deciding whether or not there's
21 effective competition. I agree that it is inappropriate.
22 It's not inappropriate, it's just not useful.

23 Q. Has the FCC ever used the HHI to determine the
24 level of competition?

25 A. In the case of mergers, I believe they have.

1 Q. In any other respects?

2 A. No. The FCC doesn't look at the state of the

3 market and calculate an HHI and say because the HHI is this

4 number or that number, it -- this market exhibits or doesn't

5 exhibit competition. They have looked at it in the cases of

6 merger, the Sprint/WorldCom merger.

7 Q. Is that a measure that they do calculate on a

8 regular basis for the industry?

9 A. I don't know. I don't know how regularly they

10 do it. I sincerely don't know.

11 Q. I understand that you believe that local

12 exchange telecommunications service is a natural monopoly;

13 is that correct?

14 A. I believe that wireline service, as provided

15 by an incumbent local telephone company, is a natural

16 monopoly. Now, to the extent that a cable company, which is

17 also a natural monopoly, exists because of regulation and

18 you have two natural monopolies in the same market, by

19 definition it's no longer a monopoly.

20 Q. What would that be called?

21 A. A dualopoly.

22 Q. A dualopoly. In a rural telephone market, the

23 density of the population or the investment required, do you

24 see that as any barrier to entry?

25 A. It certainly can be in some cases. In other

1 cases, it doesn't necessarily have to be. Sprint has a
2 little bitty exchange in Kansas called Omega where we have a
3 competitor who's over-built the central 80 percent of the
4 lines and has basically taken that much away from us. It's
5 very small, it's very rural. Overall the exchange is very,
6 very sparse, but there is a section of it that's dense. And
7 as a result, there's effective competition in that exchange.

8 Q. And that's the exception to the rule though,
9 isn't it?

10 A. I don't know. I haven't done a specific study
11 on the dispersion of customers across the rural locations
12 that Sprint serves.

13 Q. Dr. Staihr, are you aware that the Public
14 Service Commission has decided a case that discusses the
15 term "suitability" and "functional equivalency"? Have you
16 read that case?

17 A. I don't know if I read the case. I think I've
18 read the order. Could you identify it for me so I would
19 know for sure?

20 Q. That's what I was just looking for.

21 A. Or I could tell you what I've read and you
22 tell me if that's it.

23 Q. Okay. That's fine.

24 A. Okay. Case No. TO-93-116.

25 Q. What --

1 A. I'm sorry. In the matter of Southwestern Bell
2 Telephone Company's application for classification of
3 certain services as transitionally competitive.

4 Q. That's correct.

5 A. Okay.

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

7 JUDGE WOODRUFF: All right. Thank you.

8 Unite?

9 CROSS-EXAMINATION BY MS. LIPMAN REIBER:

10 Q. Dr. Staihr, I have one question based on some
11 cross-examination that was elicited by Mr. Dandino.

12 If I heard you correctly, I believe you stated
13 that you believe that wireline telephone companies are a
14 natural monopoly and cable companies are a natural monopoly;
15 is that true?

16 A. I need to be careful here. The local loops
17 specifically exhibit the characteristics of a natural
18 monopoly. And to the extent that in the past local loops
19 have been -- local telephone companies have been given sole
20 control over the local loop, yes, then technically it
21 constitutes a natural monopoly.

22 A natural monopoly in the sense that your
23 costs are going to continue to decrease as you add units of
24 output past the point of serving the entire market. Yes, I
25 would say they both are.

1 Q. Would you classify then Kearney as an
2 exception to the general rule when you have Unite, which not
3 only competes with Sprint in the wireline telephone
4 business, but also competes with Time Warner, the incumbent
5 in the cable business?

6 A. I would -- I would classify over-builds of any
7 kind as less likely than more likely. I don't know if I'd
8 go so far as to say they're the exception of the rule.
9 They're certainly less likely.

10 That's why we have unbundled elements. So the
11 FCC didn't require everybody to go in and build a duplicate
12 network. In some places it makes sense. Obviously for your
13 company in some places it makes sense. In other places, no.
14 So I don't know if I would say it's the exception to the
15 rule. I would say it's less likely than more likely.

16 Q. So is it your testimony that Sprint no longer
17 has a natural monopoly over wireline telephone service in
18 Kearney?

19 A. Well, no, because there's another provider of
20 wireline telephone service in Kearney.

21 MS. LIPMAN REIBER: Thank you. No further
22 questions.

23 JUDGE WOODRUFF: All right. For Fidelity?

24 CROSS-EXAMINATION BY MR. ROSS:

25 Q. Hello, Dr. Staihr.

1 A. Hello.

2 Q. One point I wanted to clarify. You mentioned
3 earlier in your testimony in response to a question that was
4 raised by Mr. Dandino that a gentleman from Fidelity had
5 said that one or more carriers had restricted output. Could
6 you clarify that for me, please?

7 A. I believe it was -- I'm sorry. I thought you
8 were either with Fidelity or representing Fidelity.

9 Q. No. I certainly am.

10 A. Then I should have said someone representing
11 Fidelity had discussed the possibility or had discussed what
12 if Fidelity was only serving 5 percent of the market. That
13 possibility obviously suggests that it is possible for them
14 to not serve the entire market, which is to restrict output.

15 Q. Okay. Thanks.

16 Were you present during my cross-examination
17 of Mr. Idoux?

18 A. Yes, I was.

19 Q. I had mentioned to him that there's a
20 definition of competition -- of effective competition in the
21 Southwestern Bell decision that mentioned that effective
22 competition is competition that drives prices down toward
23 economic cost. Do you remember those questions?

24 A. Yes, I do.

25 Q. I also asked him if he knew whether or not

1 Sprint's costs -- I'm sorry -- Sprint's prices for the Rolla
2 and St. Robert exchanges exceeded or were below Sprint's
3 economic costs. Do you happen to know the answer to that
4 question?

5 A. I -- if I could ask you for a little bit more
6 clarification, there are very -- multiple versions of
7 economic costs.

8 Q. Sure. Let me ask it this way. How would you
9 define economic costs?

10 A. Well, economic cost is an alternative to
11 accounting cost. Accounting cost is essentially what you
12 spent. Economic cost involves a certain amount of
13 efficiency. There are different types of economic costs.
14 There are forward-looking economic costs, which ignore sunk
15 costs. There are long run, short run, incremental, average,
16 all of which can fall under economic costs.

17 Q. So there are several different methodologies
18 for calculating economic costs?

19 A. There are several different economic costs.

20 Q. By any measure, do you know -- can you say by
21 any measure, however you would define economic costs, do
22 Sprint's prices exceed those costs currently?

23 A. Are you asking me on average?

24 Q. With respect to the Rolla and St. Robert
25 exchanges, if you know.

1 A. And the difficulty is that cost varies for
2 every customer based on their location. So to the extent
3 that one price is charged across the whole exchange, some
4 customers will, by definition, be paying a price above cost
5 and some below.

6 Q. Okay.

7 MR. ROSS: Thank you.

8 JUDGE WOODRUFF: All right. I have no
9 questions from the Bench so there's no need for recross.

10 Any redirect?

11 REDIRECT EXAMINATION BY MS. CREIGHTON HENDRICKS:

12 Q. Dr. Staihr, there were several questions I
13 believe you received both from Staff and from the Office of
14 Public Counsel that in response you cited to an Ernst &
15 Young study. Do you recall that?

16 A. Yes, I do.

17 Q. Now, the Ernst & Young study that you cited
18 to, is it reasonable for someone in your field to rely on
19 this type of study?

20 A. Absolutely. Especially when you know the
21 qualifications of the people who conducted the study.

22 Q. Okay. And as I recall, you indicated that the
23 study reflected -- was it 15-some percent?

24 A. 15.5 percent of the survey respondents would
25 opt for a wireless alternative to replace their wireline

1 phone.

2 Q. You also received some questions geared
3 towards identifying whether we had any Missouri-specific
4 evidence to indicate that that would apply to Missouri. Do
5 you recall that?

6 A. I recall the question.

7 Q. Do you have any reason to believe that
8 Missouri's cell phone or wireless phone users are so
9 different than those across the United States that such a
10 number would not apply to Missouri?

11 A. No. As a matter of fact, I have reason to
12 believe exactly the opposite. If you take the FCC's local
13 competition report, they talk about mobile phone usage and
14 Missouri is not far off of the nationwide average. It's not
15 exact, but it's within a range of reasonableness.

16 MS. CREIGHTON HENDRICKS: Thank you very much.

17 JUDGE WOODRUFF: All right then. You may step
18 down.

19 Now, I understand that Mr. Harper is not here
20 today. Is that --

21 MS. CREIGHTON HENDRICKS: That is correct.

22 JUDGE WOODRUFF: So we'll skip back over him
23 and come back to him tomorrow.

24 MS. CREIGHTON HENDRICKS: Can I have
25 Dr. Staihr excused?

1 JUDGE WOODRUFF: You asked to have Dr. Staihr
2 excused?

3 MS. CREIGHTON HENDRICKS: Correct.

4 JUDGE WOODRUFF: That's fine.

5 MR. ROSS: Your Honor, we would object to the
6 Staff witness taking the stand before Sprint has closed its
7 case. It seems that Sprint bears the burden of proof in
8 this case and, frankly, our cross of Mr. McKinnie is really
9 going to turn on how Mr. Harper responds to certain
10 questions we may pose to him in cross. So --

11 MS. CREIGHTON HENDRICKS: Your Honor, I would
12 offer to keep Mr. Harper around. I was unaware of any
13 objection. I did notify the parties about two days ago and
14 I don't recall receiving objection, but we could keep
15 Mr. Harper --

16 JUDGE WOODRUFF: Mr. Harper won't be here
17 until tomorrow?

18 MS. CREIGHTON HENDRICKS: Correct.

19 MR. ROSS: What we would be looking for is the
20 right to cross Mr. McKinnie after Mr. Harper.

21 JUDGE WOODRUFF: Okay. Would you have the
22 same objection if we skipped over Mr. McKinnie as well and
23 went to some of the other witnesses? I don't know if that's
24 possible. Are the other witnesses here?

25 MR. DANDINO: We weren't anticipating that

1 because we thought that --

2 MR. ROSS: We would have the same objection.

3 JUDGE WOODRUFF: To anybody else? Okay.

4 MR. DANDINO: We thought Mr. Harper was just

5 switching places with Dr. Staihr.

6 MR. ROSS: I'm sorry if there was a

7 miscommunication. I was under the impression that all of

8 Sprint's witnesses would be presented before any of Staff's

9 witnesses.

10 MS. CREIGHTON HENDRICKS: Well, there's always

11 a possibility that -- let me have a discussion with

12 Mr. Idoux just a second. I may have an answer.

13 Your Honor, here's my challenge. And I did

14 indicate in the e-mail that Mr. Harper was caught up in the

15 state of Washington because he was out there and he had his

16 vehicle break down. He's with his family and they could not

17 return by themselves and it took time to get the vehicle

18 fixed. I informed the parties. I was unaware of any

19 objection.

20 JUDGE WOODRUFF: Okay.

21 MS. CREIGHTON HENDRICKS: I don't know if

22 Fidelity is asking if they strike the testimony of

23 Mr. Harper. I am --

24 MR. ROSS: No, no. Certainly we would give

25 Mr. Harper the opportunity to testify. I mean, the point is

1 that it doesn't make sense to us that a Staff witness would
2 precede Sprint's witness. It seems to us that Sprint needs
3 to close its case before a Staff witness can be presented.
4 Sprint bears the burden of proof here.

5 MR. DANDINO: Is Harper going to be here in
6 the morning?

7 MS. CREIGHTON HENDRICKS: Harper -- I mean,
8 Mr. Harper will be coming in tonight. I don't know if Staff
9 would oppose to having their witness still available after
10 Mr. Harper just for sake of --

11 JUDGE WOODRUFF: I don't know that it's
12 necessary to have him testify twice. It's now approximately
13 20 minutes until 3:00. We're scheduled to go all week and
14 from based on what I've seen today, it's quite likely we're
15 not going to go all week on this hearing, so I don't have
16 any problem with adjourning for today and coming back
17 tomorrow and just start then.

18 MR. DANDINO: I think that's best, your Honor.

19 JUDGE WOODRUFF: Any comments about that?

20 MR. ROSS: It seems that we're on schedule
21 anyway. Under the procedural schedule we were scheduled for
22 two Sprint witnesses today.

23 JUDGE WOODRUFF: Okay. Any other matters we
24 need to take care of before we adjourn for the day then? I
25 know there were some other exhibits, specifically Exhibit

1 15. Do you have copies of that yet?

2 MS. CREIGHTON HENDRICKS: I don't have them.
3 We're going to go pick them up. I do have information that
4 contains responses to what Commissioner Gaw had requested.
5 And if you want me to put it in through a witness, I can do
6 it through Mr. Idoux or I can just mark them and put them
7 in.

8 JUDGE WOODRUFF: Let's bring Mr. Idoux back up
9 to the stand and deal with that.

10 (EXHIBIT NO. 16 WAS MARKED FOR
11 IDENTIFICATION.)

12 (Witness recalled.)

13 JOHN IDOUX, III testified as follows:

14 DIRECT EXAMINATION MS. CREIGHTON HENDRICKS:

15 Q. Mr. Idoux, I have placed a document in front
16 of you that's been marked Exhibit 16. Can you identify it
17 for me?

18 A. Yes. It's titled Sprint Missouri, Inc., Price
19 Change Summary.

20 Q. Earlier when you were receiving questions from
21 Commissioner Gaw, he made a request for information that
22 contained all our rate adjustments since entering price cap;
23 is that correct?

24 A. That is correct.

25 Q. And does this document contain information

1 responsive to that request?

2 A. Yes. It includes all Sprint's services from
3 its various tariffs. There's five different tariffs. And
4 it includes the dollar change as well as a percent change of
5 all of its services as a result from price cap. It also
6 includes a listing of all services that were not adjusted
7 and all promotions.

8 Q. Commissioner Gaw also had a question
9 pertaining to the MTS rates, I believe.

10 A. Yes. He inquired as to what the MTS rates
11 were. And I guess starting on page 35 -- whoops --
12 actually, starting on page 34 and going over to page 36 are
13 the MTS rates. Not only the current ones, but the recent
14 history of those.

15 MS. CREIGHTON HENDRICKS: Your Honor, I move
16 for the admission of Exhibit 16 into the record.

17 JUDGE WOODRUFF: Exhibit 16 has been offered
18 into evidence. Are there any objections to its receipt?

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

21 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: Any other matters while we're
23 still on the record?

24 At this time then we are adjourned until 8:30
25 tomorrow morning. Thank you.

1 WHEREUPON, the hearing was adjourned until
2 July 15, 2003 at 8:30 a.m.
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