

1 and spell your name for the record.

2 THE WITNESS: Craig, C-r-a-i-g, Unruh,
3 U-n-r-u-h.

4 (Witness sworn.)

5 JUDGE THOMPSON: Please be seated. You may
6 proceed, Mr. Lane.

7 MR. LANE: Thank you.

8 CRAIG UNRUH testified as follows:

9 DIRECT EXAMINATION BY MR. LANE:

10 Q. Would you state your name for the record,
11 please.

12 A. My name is Craig Unruh.

13 Q. And by whom are you employed?

14 A. I'm employed by Southwestern Bell LP, doing
15 business as SBC, Missouri.

16 Q. And in what capacity are you employed?

17 A. I am executive director of regulatory.

18 Q. And, Mr. Unruh, have you prepared direct
19 testimony that has been premarked as Exhibit 1 in this
20 proceeding?

21 A. I have.

22 Q. Do you have any changes or additions to that
23 testimony?

24 A. I have two corrections.

25 Q. What's the first one?

1 A. The first one is page 4, line 4, the statutory
2 reference to 386.020, sub 35, should be changed to 34. So
3 it reads Section 386.020.34.

4 Q. And along that same line, on page 2 of your
5 testimony, line 5, is there a similar change to be made
6 there?

7 A. That would be correct.

8 Q. Again, 35 should be changed to 34?

9 A. That is correct.

10 Q. And do you have any other changes to your
11 direct testimony?

12 A. I have one more addition. On page 8,
13 beginning on line 9, I would like to add the sentence,
14 additionally, SBC Missouri has recently filed to reduce
15 basic local and exchange access services by .05 percent,
16 effective December 1st, 2003.

17 JUDGE THOMPSON: Would you read that back,
18 Kellene?

19 THE REPORTER: "I have one more addition. On
20 page 8, beginning on line 9, I would like to add the
21 sentence, additionally, SBC Missouri has recently filed to
22 reduce basic local and exchange access services by .05
23 percent, effective December 1st, 2003."

24 BY MR. LANE:

25 Q. Any other changes to your direct testimony?

1 A. No, there are not.

2 Q. Mr. Unruh, did you also prepare surrebuttal
3 testimony in this case that's been marked as Exhibit 2?

4 A. I did.

5 Q. Do you have any changes or corrections to that
6 testimony?

7 A. I do not.

8 Q. Mr. Unruh, if I were to ask you the questions
9 that are contained in Exhibits 1 and 2 today, with the
10 changes that you've given in mind, would your answers be the
11 same?

12 A. Yes, they would.

13 Q. And are those answers true and correct to the
14 best of your knowledge and belief?

15 A. Yes, they are.

16 MR. LANE: Thank you. Your Honor, at this
17 time we would offer Exhibits 1 and 2, and tender Mr. Unruh
18 for cross-examination.

19 JUDGE THOMPSON: Thank you, Mr. Lane.

20 Do I hear any objections to the receipt of
21 Exhibits 1 or 2?

22 (No response.)

23 JUDGE THOMPSON: Hearing no objections,
24 Exhibits 1 and 2 are received and made a part of the record
25 of this proceeding.

1 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
2 EVIDENCE.)

3 JUDGE THOMPSON: Cross-examination,
4 CenturyTel?

5 MR. FISCHER: I have no questions, your Honor.

6 JUDGE THOMPSON: Sprint?

7 MS. HENDRICKS: No questions, your Honor.

8 JUDGE THOMPSON: Staff?

9 MR. MEYER: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. MEYER:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Sir, could you elaborate on the statement on
14 pages 8 and 9 of your direct testimony where you reference
15 that customers don't necessarily experience the price cap
16 price increases? I know in your testimony you answer that
17 question as no and have a brief comment there. Could you
18 elaborate on that?

19 A. Certainly. The point I was trying to make is
20 that, even though some prices might be increased from time
21 to time, that that doesn't necessarily reflect what all end
22 users are paying for that service, because we may have made
23 other changes that offer promotional discounts for those
24 customers so they would, in effect, be paying lower prices,
25 or we might have -- the individual service might be part of

1 a bundled package that a significant percentage of our
2 customers purchase from us.

3 In that case the rate for their bundled
4 package might not have increased, so they would not
5 necessarily experience the price increase that was reflected
6 in that tariff filing.

7 Q. That may actually get there, but I'm not sure,
8 if it's possible, if you could maybe even give a more
9 concrete example with how a customer may have that increase
10 situated with a broader context.

11 A. Okay. Let's just pick Caller ID, for example.
12 Let's say hypothetically that we've increased the price for
13 Caller ID by 10 cents. Many customers might have purchased
14 Caller ID as part of a package. We offer some packages,
15 variety of packages. One package is called SBC Advantage,
16 for example, and it's a package of popular vertical services
17 that customers receive for a packaged price which reflects a
18 discount over the individual prices.

19 So the price, the individual price a la carte
20 price, if you will, for Caller ID may have increased by
21 10 percent, but a lot of the customers may be purchasing
22 Caller ID as part of a package, and that package price
23 didn't increase. So the effective rate the customer's
24 paying for Caller ID did not change.

25 Q. Is that a scenario that could apply to these

1 two specific services that we're talking about here, if you
2 know, the line status verification and busy line interrupt
3 services?

4 A. I don't know specifically whether those two
5 services are included in packages, but it certainly could be
6 the case.

7 Q. You also may not know the answer to this
8 question. It appears from the review of the past history of
9 these two services' rates, it appears that there was no
10 increase in costs in 1999 -- I'm sorry -- increase in the
11 charges to customers for this rate, this service in 1999,
12 but then nearly the maximum was taken in 2000 through 2002.
13 Is there any explanation perhaps for why in 1999 there was
14 no increase sought by the company?

15 A. Well, I think it just reflects the fact that,
16 although it's been alluded to by some that all of the price
17 capped companies are out raising every price they can by
18 8 percent every year, I think this demonstrates that that's
19 not correct. We evaluate our pricing changes based on
20 conditions in the marketplace, competition, what we think
21 customers are willing to pay, overall changes to our
22 revenue.

23 A number of factors are taken into account
24 and, in fact, the vast majority of our services for which
25 we -- we have not increased the prices for the vast majority

1 of services that we could have increased them on.

2 Q. Just to clarify, then, from your understanding
3 that there was no legal prohibition for Southwestern Bell
4 from taking an 8 percent or any increase at all in 1999; is
5 that correct?

6 A. That is correct. Under the law we could have
7 increased those rates by 8 percent, but we chose not to.

8 Q. On page 2 of your surrebuttal testimony, you
9 have a reference at line 2 in referencing the evidence
10 presented presumably by -- maybe it's specific by Staff
11 regarding the reasonableness of the proposed price
12 increases. You note that silence does not imply agreement
13 with the evidence. Is there any -- are there any factual
14 statements specifically in Mr. Thomas' or Mr. Peters'
15 testimony that you actually have a specific disagreement
16 with? And if necessary, I can break that question down.

17 A. Well, I think Mr. Peters and Mr. Thomas cover
18 a lot of ground in their testimony, and I haven't -- I have
19 not gone through their testimony sort of issue by issue
20 trying to decide whether I would hypothetically agree with
21 their position or the information they've presented or not,
22 because I believe the use of that information is really
23 irrelevant in this case in terms of what authority the
24 Commission has in terms of approving this tariff.

25 So I wasn't going to spend a lot of time

1 arguing about this economic indicator versus that, since
2 neither one is relevant to the lawful determination of
3 whether these tariffs should be approved.

4 Q. But you don't actually, for example, have a
5 disagreement that the CPI that Mr. Thomas references for a
6 specific year should be 1 percent one direction or another,
7 based on his research?

8 A. I did not cross check his numbers to check for
9 validity.

10 Q. Thank you. On page 3 of your surrebuttal
11 testimony, you note that focusing on -- and this is about
12 line 12 or so -- focusing on the 8 percent component does
13 not tell the whole story, but to your knowledge or in your
14 opinion, does the Commission have the authority to look at
15 anything outside the rates themselves?

16 A. Well, our position would be that since the
17 pricing changes comply with the price cap statute as
18 specified in 392.245, that there's no authority for the
19 Commission to review those rates other than to ensure their
20 compliance with 392.245, and that is that we filed a tariff,
21 it's been 12 months since we increased the rates, and those
22 rates are an 8 percent or less increase.

23 Q. Hypothetically speaking, if the Commission
24 does decide that it has the authority to look beyond the
25 rates -- I guess I should say the 8 percent number -- why do

1 you believe the Commission must look beyond this dollar
2 amount increase?

3 A. Well, again, it wouldn't be our position that
4 they could do that.

5 Q. Right. This is hypothetically.

6 A. But I guess, hypothetically speaking, it
7 wouldn't make sense to do that because the -- if we're going
8 to look at -- I think you have to look at the totality of
9 what the Legislature was trying to do. It was faced with a
10 decision that was how -- what is the -- what is a better
11 mechanism for regulating companies in Missouri that will
12 create better incentives for them to operate efficiently, to
13 invest in their networks in Missouri, and in that context
14 what is a better form of regulation, given the fact that we
15 are also at the same time moving into a more competitive
16 marketplace, because of other changes that were happening in
17 the 1996 time frame?

18 And so they were faced with that dilemma.
19 What's the best way? There's probably a better way than
20 rate-of-return regulation. So they conducted a thorough
21 analysis, if you will, of what's a better mechanism for
22 regulating these carriers in Missouri, and they decided on
23 this price cap statute where they laid out a series of
24 components to regulate the companies operating under price
25 cap. And so there were tradeoffs, which has been explained,

1 with this statute; quid pro quos, sharing of risk, sharing
2 of benefits and things you like, things you don't like.

3 And so I think to strictly focus on the one
4 pricing change under one component of the price cap statute
5 is an inappropriate way to think about whether price caps is
6 good or not. As Mrs. Creighton Hendricks pointed out, a
7 piece of the price cap statute more strictly regulates basic
8 service prices and, therefore, puts more risk on the price
9 cap companies who are operating under that, under that
10 statute.

11 So it's not all -- it was not all give to the
12 companies in terms of the 8 percent allowing us to increase
13 prices. There was a tradeoff among the various ways to
14 regulate our services, and the Legislature clearly decided
15 that it was more important to more strictly regulate and
16 more strictly control the prices for basic local service,
17 because they were more concerned about that, and exchange
18 access service. And in -- in return for that or part of
19 that equation, they recognized the need for additional
20 flexibility on the other services, which they created the
21 category called non-basic service.

22 They recognized that there would be impacts to
23 carriers' revenues due to competition. They recognized
24 carriers needed incentives to invest. And if we were in a
25 situation where we weren't allowed to adjust our pricing

1 structures, then those incentives to invest and to operate
2 efficiently might have been reduced in the state.

3 Q. You mentioned in your answer a reference to an
4 overall equation that is happening here as part of the price
5 cap statute. Would it be fair to say that the -- a
6 component of that equation would also include overall
7 profitability of Southwestern Bell?

8 A. No, I don't believe so. The Legislature
9 clearly recognized that rec-- that regulating carriers based
10 on their earnings levels or profitability under a
11 rate-of-return environment was not the best method of
12 regulating carriers going forward. And so they changed
13 the way carriers were to be regulated and they moved away
14 from -- strictly from an earnings review environment and
15 created price caps where earnings are no longer an issue.

16 Q. I'll ask a potentially open-ended question
17 here, but do you believe that there's a role for the aspect
18 under the statute that the -- a price-cap-regulated company
19 can have the opportunity to petition the company -- I'm
20 sorry -- the Commission to come back under a more
21 traditional rate-of-return regulation system or --
22 effectively for rate relief under Section 392.246?

23 A. Yes. I think, again, it's a recognition that
24 there was risk being imposed on the companies that were to
25 be regulated under price caps that the environment, the

1 situation could arise where price-cap-regulated companies
2 were not earning sufficient revenues to be an ongoing
3 business. And so the Legislature created a potential safety
4 valve, if you will, where price-cap-carrier-regulated
5 companies could petition the Commission for, in essence,
6 moving back under rate-of-return regulation.

7 And I believe the statute is structured such
8 that the Commission would then have the discretion of
9 whether or not to permit that. So I think that recognizes
10 the risk inherent from a company standpoint in going under
11 price cap regulation.

12 Q. Thank you.

13 On page 6 of your surrebuttal testimony, you
14 have a reference to -- and I guess it's in the question
15 portion of the testimony -- whether or not an isolated
16 review of the proposed price increases distorts the
17 realities of the marketplace. And then you note that the
18 services are competitive services and that the Commission
19 should essentially give Bell the discretion to charge what
20 it wants within the price cap statute's parameter.

21 Is it fair to say that the realities of the
22 marketplace are already distorted in this situation?

23 A. I think I could interpret your question
24 several ways.

25 Q. I can step back.

1 A. I'm not certain --

2 Q. It appears that --

3 A. I'm not certain what you're wanting me to
4 answer.

5 Q. The context of the question implies that the
6 realities of the marketplace are not yet distorted, and that
7 an isolated review would, in fact, create a distortion. I
8 guess our question is something on the lines of isn't there
9 already a distortion in place?

10 A. I think perhaps this is not where you were
11 going with this, but I think there is an argument that the
12 marketplace is distorted because of the past regulatory
13 vestiges of how rates were established and kind of, in
14 essence, then, the starting point for competition.

15 We had an environment where these optional
16 services, these non-basic services were priced as high as we
17 could possibly price them to try to maximize the revenue
18 creation that would -- maximize the contribution that then
19 would be used to help support the public policy goal of
20 keeping basic local prices as low as possible, particularly
21 residential basic local prices, since our business rates
22 tend to be two or three times higher than our residential
23 rates.

24 So focus was pretty much on basic residential
25 services and trying to keep those prices as low as possible.

1 When we embarked on price caps and we embarked on further
2 opening the market to competition, there weren't any steps
3 taken to shift where those prices were before we started the
4 competitive marketplace. And not only that, the price cap
5 statute sort of locks that pricing concept in place by
6 restricting the ability to move prices for basic local
7 services.

8 So I think we've started with an environment
9 of basic local -- primarily residential, basic local
10 residential prices being below what a competitive market
11 would have otherwise resulted in, and then we've imposed
12 competition on top that. So, yes, I think it -- that has
13 distorted the marketplace. It's resulted in -- you can --
14 it's evidenced in what we've seen in terms of competitive
15 results.

16 In Missouri, we know CLECs have at least
17 34 percent of the business access lines in SBC's Missouri
18 territory. The actual numbers may be higher, because we
19 don't know every line they have. Also from a revenue
20 standpoint, their revenue market share may be even higher,
21 because CLECs have tended to focus on the higher-margin
22 customers.

23 Competition in the residential market, while
24 still pervasive throughout Missouri, the CLECs have focused
25 less on serving -- at least historically. We're seeing that

1 change now, but historically focus more on business
2 customers first, especially higher-margin business
3 customers, less on lower-margin residential customers. Many
4 CLECs haven't focused very much on the residential customer
5 simply paying \$7 for basic local service.

6 They've sought residential customers who are
7 higher-margin customers who buy a lot of vertical services,
8 and we see that in the types of offers that the CLECs offer
9 in the marketplace. So I think that has resulted -- that
10 past vestige has resulted in a distorted marketplace.

11 MR. MEYER: You came around to where I was
12 going. Those are all the questions I have at this time.
13 Thank you.

14 JUDGE THOMPSON: Thank you, Mr. Meyer.

15 Mr. Dandino?

16 CROSS-EXAMINATION BY MR. DANDINO:

17 Q. Good afternoon, Mr. Unruh.

18 A. Good afternoon.

19 Q. I just want to follow up on that last comment
20 that Mr. Meyer discussed with you. You said that there was
21 already a distortion in the rate structure, is that what you
22 feel, marketplace?

23 A. Marketplace, I think, was the context we were
24 discussing.

25 Q. That's just your opinion, isn't it?

1 A. It's certainly the opinion I've offered here
2 today. I believe there would be others of like-minded
3 opinions.

4 Q. And do you know if the Public Service
5 Commission ever based a -- based the residential rates for
6 local basic service on any type of cost study, whether it
7 was an allocation for joint and common costs of that
8 service?

9 A. It's my understanding under the previous
10 rate-of-return environment, where local prices were set and
11 typically adjusted through earnings investigations, that the
12 Commission operated under this -- the principles outlined in
13 this order that we've discussed earlier today, which was
14 18-309.

15 Q. Sir, is the answer yes or no?

16 A. Well, I think I'm getting to that, and where
17 the --

18 Q. Well --

19 A. And so the intent of that order and that
20 direction that the Commission was operating under was to
21 residually price basic local service. So they would -- the
22 goal was to maximize contribution from these competitive and
23 discretionary services, and then residually price basic
24 local service.

25 JUDGE THOMPSON: Pardon me. Excuse me.

1 Mr. Unruh, you need to answer questions yes,
2 no, or I don't know, unless the question clearly calls for
3 narrative. If there's any sort of explanation necessary so
4 that the Commission can understand your answer properly,
5 your lawyer can elicit that from you on redirect.

6 MR. DANDINO: Your Honor, at this time I'd
7 like to move to strike the witness' answer as being
8 nonresponsive.

9 JUDGE THOMPSON: Mr. Lane, I'm sure you'd like
10 to weigh in.

11 MR. LANE: Your Honor, I think it's clearly
12 responsive to the question he asked. Not all questions can
13 be answered yes or no. It's a broad question that required
14 Mr. Unruh to explain the background of which he gave the
15 answer that he did.

16 JUDGE THOMPSON: Kellene, would you read the
17 question back?

18 THE REPORTER: "Question: And do you know if
19 the Public Service Commission ever based a -- based the
20 residential rates for local basic service on any type of
21 cost study, whether it was an allocation for joint and
22 common costs of that service?"

23 JUDGE THOMPSON: Well, I think that's clearly
24 a yes or no question, so we will strike the response as
25 being nonresponsive. Why don't you go ahead and ask the

1 question again, and we'll see if we can get a better
2 response.

3 BY MR. DANDINO:

4 Q. Mr. Unruh, has the Public Service Commission
5 priced basic local service based upon a cost-of-service
6 study that included a reasonable allocation of joint and
7 common costs, to your knowledge?

8 A. I'm not certain, but I was just reviewing
9 392.245.9, and I believe under the rebalancing concept that
10 Sprint and CenturyTel have been following that allows them
11 to lower their access rates and raise their basic local
12 rates, I believe there's a provision in there for -- for
13 those companies to demonstrate that their basic local
14 service is still below cost as they -- as they raise the
15 price. So I -- I'm not certain, but I believe that may have
16 been analyzed in some of their rebalancing tariffs.

17 Q. But you don't know that firsthand knowledge?
18 You have no firsthand knowledge of that?

19 A. I know I've been involved in discussions
20 around that topic. I don't know specifically what was
21 presented to the Commission.

22 Q. I believe you testified earlier that
23 Southwestern Bell did not increase its prices for these
24 services in 1999; is that correct?

25 A. Mr. Meyer indicated that that was the case,

1 and I believe that was the case. I was just trying to find
2 our pricing history on that.

3 Q. So the answer is?

4 A. That is correct. We did not increase those
5 rates in 1999.

6 Q. These two services, are they considered part
7 of basic local service?

8 A. No, they're considered non-basic.

9 Q. Are they included in the basic local tariff?

10 A. They are included in the local exchange
11 tariff.

12 Q. Local exchange tariff?

13 A. Yes.

14 Q. Okay. Approximately, if you know, how many
15 customers use either one of those services during a year?

16 MR. LANE: Your Honor, if I may, I'm not sure
17 we're getting into information that's highly confidential,
18 but if the witness is going to answer that, then I'd ask
19 that we go in-camera if he indicates that it's highly
20 confidential.

21 MR. DANDINO: And, your Honor, I don't want to
22 request highly confidential information if that's what that
23 is. If it is highly confidential, I'll withdraw the
24 question.

25 JUDGE THOMPSON: Well, I believe the number

1 that you requested is, in fact, highly confidential.

2 MR. DANDINO: Well, I'll go on.

3 JUDGE THOMPSON: Isn't that correct, Mr. Lane?

4 MR. LANE: Yes, your Honor.

5 MR. DANDINO: So I'll go on. It is -- I think
6 it is in the record, though.

7 BY MR. DANDINO:

8 Q. Mr. Unruh, is there any circumstances that you
9 can foresee that it would be appropriate for the Public
10 Service Commission to review a rate of SBC for a proposed
11 increase by SBC for a non-basic service that is less -- that
12 is 8 percent or less?

13 A. As long as the price increase complies with
14 the price cap statute, no, I don't believe there would be
15 any reason to review that.

16 Q. There's absolutely no circumstances that would
17 justify the Commission reviewing that?

18 A. I'll clarify that I think there would be areas
19 under 392.200 that, depending on what it was that was being
20 proposed, might need to be reviewed under 392.200. As an
21 example, we could hypothetically try to increase a price --
22 we'll just use busy line interrupt as an example. We might
23 have tried to increase busy line interrupt prices only for
24 left-handed people. Forgive me, anybody here that's
25 left-handed that I may have offended.

1 Q. That's almost all of our office.

2 A. But it's that kind of a scenario, I think,
3 where 392.200 and the discrimination issues that we've been
4 looking at could come into play and the Commission might
5 want to review that under 392.200. That is not the case
6 we've done here. We've increased busy line interrupt prices
7 statewide, and so there are no discrimination issues under
8 392.200.

9 The Legislature's directed that since it is an
10 8 percent increase or less and it's been at least 12 months
11 since we've increased that, that then those are just and
12 reasonable rates and, therefore, that covers the 392.200.1
13 reference that we've been talking about because 392.245.1
14 explains that that is what satisfies -- the price cap
15 regulation satisfies the 392.200.1 provision.

16 Q. Okay. So you're telling me that this
17 Commission could review an 8 percent increase under
18 Section 392.200 if it was -- if there was -- if the
19 Commission thought it was discriminatory?

20 A. Yes, I think hypothetically that situation
21 could occur. That's not the situation that we're confronted
22 with today.

23 Q. But I'm just saying -- I'm trying to get
24 your reasoning of how you would get to a review of the
25 8 percent under 392.200. How do you get there from -- how

1 do you get there from this statute?

2 A. Again, using our example, if we would have
3 proposed a -- an increase of some sort, price increase on
4 busy line interrupt only for left-handed people, so we
5 created some sort of distinction in terms of who was going
6 to see the increase that could be found to be
7 discriminatory, then that's the provision under which you
8 would review that, but not that the -- an across-the-board
9 price increase that complies with 392.245 would not be just
10 and reasonable, because 392.245.1 has already specified that
11 that sort of an increase is just and reasonable.

12 Q. Okay. So are you saying, then, that there are
13 circumstances under 392.245.11 for basic telecommunications
14 services where the Commission does have authority to review
15 the statute? There is a circumstance, you're telling me
16 it's discrimination, left-handed people.

17 A. And I think that's the position everybody's
18 taken here today.

19 Q. Excuse me. I just want to know, is that your
20 position?

21 A. Well, there's the clause in 392.245.11 that
22 includes --

23 JUDGE THOMPSON: Yes or no, Mr. Unruh.

24 THE WITNESS: Yes.

25 BY MR. DANDINO:

1 Q. Okay. Now, does it say except for dis-- or
2 that the 8 percent, that they shall look at discrimination
3 in Section 392.245.11?

4 A. The law makes that clear.

5 Q. At what point, sir?

6 A. 392.245.1 explains that --

7 Q. Does it say discrimination in there?

8 A. I'm trying to explain how you --

9 Q. Go ahead. I'm sorry. I'm sorry I interrupted
10 you. Go ahead.

11 A. 392.245.1 explains that the Commission shall
12 use price caps and that that is the mechanism for
13 determining that a price increase that would comply with
14 392.245 would be just and reasonable.

15 Q. Okay.

16 A. The reference to 392.200 is a reference back
17 to that whole section which covers a number of things
18 relative to discrimination; defining different classes of
19 customers, exchange-specific pricing, sub-exchange pricing.
20 And so you have those list of things that the Commission
21 would review under 392.200. But 392.245, the more specific
22 provision, has indicated that we already qualify or cover
23 392.200.1, which is the just and reasonable clause. We
24 satisfy that condition under 392.245.

25 Q. But it does not say -- in Section 392.245.11

1 the language does not say -- if I can find it. I just lost
2 it. Excuse me -- does not say, may change the rates for
3 services consistent with the provisions of Section 392.200,
4 point -- or 200, except subsection 1 of that section. It
5 does not say that.

6 A. Which is -- which is what the purpose of
7 392.245.1 is.

8 Q. Okay. That's in your opinion; is that
9 correct?

10 A. And those of the other parties in this
11 proceeding other than Office of the Public Counsel.

12 Q. You're the only one here. Is it your opinion?

13 A. It certainly is my opinion.

14 Q. Okay. Do you have any training in the law?

15 A. I have no formal classes. Obviously working
16 in this environment, I'm around attorneys and legal
17 practices as it relates to operations before this
18 Commission, so that exposes me to the statutes. And we work
19 on on a day-in and day-out basis in terms of working within
20 those statutes and complying with those statutes. So that
21 causes me to have need to review them and understand them.

22 Q. Are you a lawyer, sir?

23 A. I am not.

24 Q. You're not saying you conduct legal analysis
25 for your company, do you?

1 A. No, I do not.

2 Q. What happens if the Public Service Commission
3 does not approve the tariff filed under Section 392.245.11
4 after the expiration of 30 days?

5 A. Is your question what would the company do
6 or --

7 Q. Let me reword it. If the Commission -- first
8 of all, let's assume that the first did not -- okay. The
9 Commission has suspended your tariff. Was that a lawful act
10 of the Commission?

11 A. It would be.

12 MR. LANE: Your Honor, I think I'm going to
13 object to asking for a legal conclusion along this line.
14 Mr. Unruh has already said he's not a lawyer. I'm not sure
15 what the purpose of the question is, the relevance of this
16 to this proceeding.

17 JUDGE THOMPSON: Mr. Dandino?

18 MR. DANDINO: Your Honor, the witness just
19 previously testified that he works with lawyers and feels
20 like he's qualified to make analysis of these laws and
21 render some type of -- and he's very familiar with this. He
22 says he's basically everything but a lawyer.

23 That may be an overcharacterization.

24 MR. LANE: He may be a better lawyer than
25 some.

1 JUDGE THOMPSON: Well, then, since you've
2 changed your position, Mr. Lane, go ahead and answer the
3 question, sir.

4 THE WITNESS: Could you repeat it, please?
5 BY MR. DANDINO:

6 Q. Sure. Was the Commission suspension of this
7 tariff a lawful act, in your opinion?

8 A. It would be my layman's opinion --

9 Q. Certainly.

10 A. -- that the fact that they did not approve the
11 tariff or permit the tariff to go into effect, I guess maybe
12 within 30 days would not comply with the law.

13 Q. So would it be Southwestern Bell's position
14 that by operation of law after 30 days the tariff was
15 already going into effect?

16 A. We are certainly not acting as if it went into
17 effect. If there is a legal argument that could argue that,
18 I'm not certain of that. I would -- I would assume that
19 perhaps a court would have had to make that determination.

20 Q. Is it Southwestern Bell's -- SBC's position
21 that the Commission must -- shall approve the tariff 30 days
22 after it is filed?

23 A. Either formally approve it or let it go into
24 effect, yes.

25 Q. And if they do not formally approve it, what

1 is the effect of that?

2 A. It would go into effect.

3 Let me clarify, I guess, absent some other
4 action that they've taken.

5 Q. If they suspended it, then it would not go
6 into effect?

7 A. Again, we are certainly not operating as if
8 the tariff went into effect. We continue to charge the
9 prices that were in existence before we filed this tariff.

10 Q. Well, what's SBC's position, has that gone
11 into effect or not, whether or not you act upon it?

12 MR. LANE: Your Honor, it's been asked and
13 answered three times now.

14 JUDGE THOMPSON: Mr. Dandino?

15 MR. DANDINO: I don't think he's answered that
16 question.

17 JUDGE THOMPSON: Mr. Unruh, you've testified
18 that Bell is not acting as though it's gone into effect. I
19 think the question Mr. Dandino is asking you for is your
20 opinion whether legally it has become effective. I
21 understand you're not an attorney, but nonetheless, let's
22 follow this particular road to its end. Please answer the
23 question if you can.

24 THE WITNESS: I guess I would have to say I
25 don't know. It's not something we've discussed.

1 MR. DANDINO: Fair enough. Thank you, sir.

2 That's all I have, your Honor.

3 JUDGE THOMPSON: Thank you, Mr. Dandino.

4 Questions from the Bench.

5 Commissioner Gaw?

6 COMMISSIONER GAW: No, thank you, Judge. Not
7 right now.

8 JUDGE THOMPSON: Commissioner Clayton?

9 QUESTIONS BY COMMISSIONER CLAYTON:

10 Q. Good afternoon, Mr. Unruh.

11 A. Good afternoon.

12 Q. I've asked this question of several people and
13 they look at me funny, so I'm going to ask you the question
14 and you can do the same thing.

15 In terms of all the services, the non-basic
16 services that are offered by SBC, do you see these two
17 services as being any different from any of the others, in
18 terms of having an emergency basis behind them, behind their
19 creation?

20 A. No, I do not. The Legislature simply laid out
21 two different types of service that -- what we were calling
22 basic service, which is typically basic local service and
23 exchange access, and then everything else is just under one
24 category called non-basic services. I think you could
25 probably identify a number of our services that some

1 customers might identify as being important for emergency
2 purposes.

3 Q. Could you give me an example of others?

4 A. Call waiting, for example. Somebody might
5 order call waiting so they can ensure that they can get
6 through to their home if they have a teenage daughter, for
7 example, who's on the phone a lot. They can instruct that
8 daughter, hey, when you hear the call waiting tone, please
9 pick it up, because it might be me needing to get ahold of
10 your mother. Those sorts of things.

11 Caller ID, I think, would be another example.
12 Second phone lines would be another example. I think there
13 are a number of areas where some particular customers might
14 find more particular value to a particular service, and that
15 concept wouldn't just be limited to busy line interrupt and
16 line status verify.

17 Q. Can you tell me -- and if I get into a
18 confidential area, I apologize, because I'm not sure when
19 I'm HC and when I'm not HC. But how does SBC make a
20 decision with regard -- if we accept that -- and I'm not
21 conceding this, but if we accept that you could do up to
22 8 percent a year, how do you decide where you go in the
23 scale from 1 to 8 percent? Is it based on cost, is it based
24 on competitiveness, is it based on what? Can you tell me
25 that?

1 A. I think I can cover that sort of generically
2 enough. I think it's an overall evaluation of the
3 marketplace. So it gets into a number of factors. What's
4 the -- you know, where's competition focusing, what do we
5 think the market will bear? It's ultimately an estimation
6 of what we think customers' willingness to pay is.

7 Q. That's fair.

8 A. Is probably what it all drives to.

9 Q. Does SBC keep records of -- well, I'm sure it
10 keeps records on the number of people that are new customers
11 and customers that are old customers that have since left
12 and gone to a competitor. Is that a fair -- are those
13 records kept?

14 A. There's -- there's a lot of records, you know,
15 a lot of different information. So there's -- there's, I
16 guess, different ways to perhaps get at trying to identify
17 that type of information.

18 Q. Well, certainly there are reports that would
19 be generated, how many new local customers that you have
20 coming into the system?

21 A. That is correct. We keep track -- we keep
22 track of how many new installations. That doesn't
23 necessarily get linked to did that new customer that just
24 signed up, was it a former customer of ours.

25 Q. Right.

1 A. We don't necessarily track that.

2 Q. You don't track the win-back people, the
3 people that went away and come back?

4 A. There are different mechanisms where we try to
5 track how many customers we're winning back. I guess I'm
6 not sure how specific you were trying to get in terms of is
7 there something that says, you know, on this day we
8 reconnected X number of customers that were former customers
9 of ours and have now come back to us.

10 Q. Well, I think what I'm asking is, you know how
11 many people are leaving every month, you know how many
12 people are coming back every month, or every two months. I
13 mean, you-all track those figures in terms of what your
14 position is in the marketplace, do you not?

15 A. Yes, we do certainly keep track of how many
16 new installations we have and how many disconnects we've
17 had. There's a variety of reasons for why customers
18 disconnect, obviously including competition but a number of
19 other factors; they may move, for example. And likewise a
20 number of reasons why customers install services.

21 Q. Do you track the reasons why people leave or
22 why they come back? Is there a mechanism for doing that,
23 and if there is, does SBC track those reasons?

24 A. We do try to track disconnect information,
25 particularly if a customer -- we don't have -- when our

1 service representatives are talking to customers and the
2 customer has called us to disconnect a line, for example, we
3 do try to ascertain why the customer is leaving; are they
4 moving, do they not like our prices, et cetera, so we have a
5 better understanding of what's happening to us in the
6 marketplace. We do try to do that.

7 Q. Do they -- are they quantified in and put into
8 reports and more than just a compilation of recorded phone
9 calls, but into data that can be analyzed?

10 A. It is possible to create reports that identify
11 the number of customers that leave by the categories that
12 we've created to try to track those. I think the answer is
13 yes.

14 Q. You really don't like answering yes or no.

15 A. Sorry.

16 Q. I don't understand the answer.

17 A. There is -- I guess I'm not certain that
18 somebody --

19 Q. I think the answer is yes. I mean, certainly
20 your marketing people would follow the trends of who's --

21 A. Yes.

22 Q. -- who has local service through SB and who's
23 leaving and why they've leaving. I mean, your marketing
24 people keep track of that, do they not?

25 A. Yes. Yes.

1 Q. Okay. In tracking that data, is line
2 verification and busy signal interrupt, are those factors
3 that pop up with frequency in determining who stays with SBC
4 and who leaves?

5 A. I don't believe -- I don't believe that would
6 be a category of items we would track.

7 Q. The marketing people don't go out and try to
8 sell SBC services based on a competitive rate for busy
9 signal interrupt?

10 A. That would be fair.

11 Q. Okay. That's not part of the overall
12 marketing strategy?

13 A. That would be fair. We sell thousands of
14 services, and --

15 Q. Can you -- then can you tell me how
16 competition plays a part in competitive pricing, plays a
17 part in some of these services that really aren't marketed?

18 A. I think it's still fair to say that we take
19 all of those factors into account. We recognize, for
20 example, in this particular service that there are
21 alternatives that customers can use, and that will factor
22 into what we want to do with these individual services. We
23 know that customers can use their long distance provider to
24 provide these sorts of service, so they have alternatives
25 available to them.

1 Q. How would one use -- just from a technical
2 standpoint, how would one -- and just for ease of an
3 example, if I lived in the City of St. Louis and my local
4 service provider is Southwestern Bell and I want to call a
5 resident in St. Louis County who's also a Southwestern Bell
6 customer, how would one go about using IXC or an alternative
7 provider in terms of breaking through or verifying a line?

8 A. For an interexchange carrier you would dial
9 double zero, 00 on the phone. That would connect you to
10 their long distance operator, their interexchange carrier
11 operator. That interexchange carrier operator could
12 complete that service for them.

13 Q. Okay. Is the double 0 -- is the double 0
14 option -- how would a customer know about that?

15 A. I think they would know that through just
16 their general dealings with their service provider.

17 Q. Is it listed in the phone book that you-all
18 put together?

19 A. I believe so.

20 Q. It is listed there?

21 A. I don't know that for certain, but I believe
22 so.

23 Q. I'm not saying that a person would want to do
24 that. I just want to know how one would try to bypass the
25 system and seek competition.

1 A. Certainly -- if I could just add one point to
2 that?

3 Q. Sure.

4 A. Certainly, the interexchange carriers have
5 marketed their operator services -- services to -- through
6 mass market advertising, TV ads.

7 Q. Are either of these services, do either of
8 them work with automated systems or are they all -- do they
9 all require an operator, a live person?

10 A. It is my understanding they all require an
11 operator.

12 Q. And if you cannot answer this question because
13 of confidentiality or something -- and you may have touched
14 on it with Mr. Dandino -- can you say whether or not the
15 current or the proposed price is above or below the cost to
16 provide these services?

17 I guess can you tell me that is the first
18 question, and then if you can --

19 A. Mr. Peters has -- in his testimony, which I
20 think is fine, has testified that the proposed current and
21 proposed prices are above our cost.

22 Q. Prices are above cost?

23 A. They are above, yes.

24 Q. Is it within the testimony how much higher the
25 cost is? Is that listed somewhere in the testimony?

1 A. Mr. Peters has included the highly
2 confidential information that reflects a cost study that we
3 had on these services, as well as an adjustment he has made
4 to account for rising labor costs that would raise the cost.
5 As you mentioned, this is a labor-intensive service.

6 Q. Can you explain to me how this -- how these
7 two services play into the overall revenue structure for
8 Bell? And I may be using the wrong terminology, but I know
9 somewhere in the testimony, it talks about how much revenue
10 is derived on these two services. And I don't think it's a
11 great amount in the overall scheme of things, is it?

12 A. It's fair to say it's a small amount.

13 Q. It's a small amount. Can you tell me how many
14 requests for these types of services that you receive on an
15 annual basis?

16 A. I have the information with me. We've deemed
17 it highly confidential.

18 Q. You have deemed it highly confidential. Okay.
19 But if you -- okay. So your dividend's not going to go up
20 even if we give you the 12 cents, right?

21 A. I don't think so.

22 Q. Bear with me just a second. I have a few more
23 questions for you.

24 I know that people in this setting love to
25 start off by saying, I'm not a lawyer but the way I read

1 this, but I want to ask for your interpretation with that
2 caveat. What do you believe in Section 11 -- subsection 11
3 of 245 of 392 the words, quote, consistent with the
4 provisions of Section 392.200, what do those words mean to
5 you in the context of price cap regulation?

6 A. Certainly. And I'll caveat this way: In my
7 layman's opinion, I believe as we've talked about a little
8 bit today the concept here of 392.200 inserted into the
9 price cap statute is to continue to allow the Commission to
10 review the elements that are specified in 392.200, which
11 contain several items. As has been pointed out, most of
12 them relate to discrimination issues, creating different
13 classes of service, exchange level pricing, sub-exchange
14 level pricing.

15 One component of 392.200 which we've been
16 talking about is 392.200.1, which is the just and reasonable
17 piece of 392.200. So overall, I think the Legislature
18 intended for the Commission to retain authority to review
19 prices under 392.200 concepts. However, they satisfied the
20 392.200.1 provision by specifying in 392.245.1 that the
21 rates established under 392.245 are just and reasonable.

22 Q. Can I, before you move on from that -- so is
23 what you're saying is that the 8 percent, by its definition,
24 is just and reasonable, is what you're saying?

25 A. That is correct.

1 Q. I remember when -- when I was in the
2 Legislature someone wanted to reclassify a certain animal as
3 wildlife as opposed to livestock. And they said, well, just
4 because you call an elk livestock, it's still wildlife. And
5 I know this example doesn't work, and the joke's not
6 working, but it was an interesting point because it's a
7 matter of is just and reasonable what is just and reasonable
8 in the world in the abstract, or is it what the Legislature
9 says? And what you're saying is that it's automatically
10 that and that there's no review there at all. Is that what
11 you're saying?

12 A. Yes. I think the Legislature recognized that
13 just and reasonable's kind of an amorphous concept, and so
14 for purposes of deciding how they were going to regulate the
15 large ILECs in the state, they, in essence, took care of
16 that for you and defined what is just and reasonable.

17 And it really had two components; the basic
18 service piece, which is more heavily regulated under the
19 inflation-oriented factors, and then the 8 percent non-basic
20 piece. They've said rates established under those two
21 concepts are just and reasonable.

22 Q. Mr. Dandino asked you -- and I'm not sure what
23 you can answer in this or not. But I guess according to the
24 statute, the word shall is -- is used on several occasions,
25 and I believe the language is that the Commission shall

1 approve and it shall be effective 30 days after filing,
2 something to that effect.

3 Do you believe that the Commission had the
4 ability to suspend the tariff and have this hearing?

5 A. What I was struggling with a little bit in
6 Mr. -- in my answer to Mr. Dandino's question is, I'm not
7 sure of the -- the Commission may retain authority to
8 technically suspend something, even under 392.245. That I'm
9 not certain of. But my opinion of 392.245 would be that at
10 the end of 30 days, the price that otherwise complied with
11 392.245 would need to be approved or allowed to go into
12 effect.

13 Now, in the meantime, could the Commission
14 have suspended the filing? Maybe. I don't know. But as
15 long as there was action by the end of 30 days to either
16 approve that rate or let it go into effect is what's --

17 Q. What statute would give us the ability to
18 suspend on a temporary basis?

19 A. I don't know.

20 Q. Do you know what statute would authorize us to
21 suspend on a permanent basis, or is there one? And if you
22 don't know, you don't know.

23 A. I don't know for certain. Obviously, I think
24 that would be something that spells out your ability --

25 Q. Wouldn't that be a conflict?

1 A. -- to do that.

2 I can't recall where it's at.

3 Q. Wouldn't that be a conflict, if there is a
4 statute that says we have the ability to suspend, while the
5 price cap statute says that we shall approve, wouldn't you
6 say that that would be a conflict?

7 A. I don't think so, because the statute that
8 would allow you to suspend tariffs is inclusive of all
9 providers. It's a -- my understanding would be it's a broad
10 statute that would cover rate-of-return carriers,
11 interchange carriers, CLECs. And then the more specific
12 provisions, and there could be tariffs that you could
13 otherwise suspend of price cap companies that might not
14 comply with other provisions of the statute.

15 However, something that complies with 392.245,
16 I don't believe you have the authority not to allow that
17 rate to go into effect 30 days later.

18 Q. We do not have the authority to not?

19 A. Sorry to add two notes. I hesitate to say you
20 could not suspend it. I was trying to draw that
21 distinction, because I don't know the answer to that
22 question.

23 Q. So you don't know whether we can suspend it or
24 not?

25 A. I do not know the answer to that question, but

1 I believe the statute spells out that you would have to
2 either approve or permit the tariff to go into effect
3 30 days later.

4 Q. Okay. Which hasn't been done here?

5 A. That's correct.

6 Q. Is there a mechanism to -- would there be a
7 legal mechanism to stop the suspension under price cap by
8 this Commission, a legal mechanism, would you know, by writ
9 or otherwise?

10 A. Well, I suppose, in theory, you might be able
11 to go to a court to try to seek some sort of injunction or
12 something to stop the Commission's action.

13 Q. You mentioned that you thought, and if I
14 mischaracterize what you're saying, correct me. But I
15 thought what you were saying is that the Commission may have
16 broad ability under its broad powers to, I suppose,
17 temporarily suspend while we run our calculators here. Is
18 that an accurate reflection of what you said?

19 A. I think that's possible, although in practice
20 I don't necessarily know that that would ever happen,
21 because --

22 Q. I don't either.

23 A. Yeah.

24 Q. If we accept that there is this broad power of
25 the Commission, could we not also look at other broad powers

1 that the Commission would have, including what's referenced
2 under Section 200, in assessing whether to -- on our own
3 whether something's just and reasonable?

4 A. I don't believe so because -- and again,
5 answering as a layman, it's my understanding that you have
6 to -- and I forget the correct legal term, but the specific
7 provisions of a statute govern over the general terms of a
8 statute. And so where 392.245.11, for example, is very
9 specific in terms of what is to happen with that one piece
10 of things that happened in front of the Commission, that
11 that is not inconsistent with or, I guess, governs over the
12 more broad authority the Commission remains under more
13 general provisions of the statutes.

14 Q. Would you agree with the specific reference in
15 sub 11 to Section 200, that that would create some confusion
16 because it is such a specific reference as to which
17 provisions in Section 200 would apply?

18 A. I don't believe so, because I think you just
19 have to look back to 392.245.1, to where it shows that the
20 just and reasonableness concept under 392 -- 392.200.1 has
21 been satisfied. The Legislature already took care of that
22 piece of 392.200 for us.

23 Q. I'm not going to get you to concede there's
24 any ambiguity there, am I?

25 A. No.

1 COMMISSIONER CLAYTON: Okay. I don't have any
2 further questions.

3 JUDGE THOMPSON: Thank you, Commissioner.
4 Further questions from the Bench?

5 COMMISSIONER GAW: Just one second, Judge. I
6 think I'll pass. Thank you.

7 JUDGE THOMPSON: Thank you, Commissioner.
8 QUESTIONS BY JUDGE THOMPSON:

9 Q. Mr. Unruh, are you familiar with price cap
10 regulation in other states than Missouri?

11 A. Some very broad general awareness of different
12 things that might be regula-- different ways carriers might
13 be regulated in other states. I did review Mr. Thomas'
14 summary of regulation in other states.

15 Q. Are you able to tell me whether or not other
16 states have a provision similar to that that we're
17 discussing in 392.245, sub 11 where the price cap for
18 certain services is permitted to increase by a specified
19 percentage annually, regardless of any other factor?

20 A. I believe there's a variety of ways,
21 mechanisms in which that concept exists in other states. I
22 think it ranges everywhere from things that are similar in
23 terms of a percentage increase all the way to areas where
24 essentially the -- what would be the equivalent of our
25 non-basic services are price deregulated, so there is no

1 constraint, there is no 8 percent constraint like we have in
2 Missouri.

3 JUDGE THOMPSON: Okay. Thank you very much,
4 sir.

5 THE WITNESS: Uh-huh.

6 JUDGE THOMPSON: Redirect based on -- excuse
7 me -- recross based on questions from the Bench.

8 CenturyTel?

9 MR. FISCHER: I have no questions, your Honor.

10 JUDGE THOMPSON: Sprint?

11 MS. HENDRICKS: No questions, your Honor.

12 JUDGE THOMPSON: Mr. Meyer?

13 MR. MEYER: No questions, your Honor.

14 JUDGE THOMPSON: Mr. Dandino?

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

17 JUDGE THOMPSON: Redirect, Mr. Lane?

18 REDIRECT EXAMINATION BY MR. LANE:

19 Q. You know, this is the really hard part.

20 A. This is the hardest part.

21 Q. Actually, I just have one question. You were
22 asked some questions by Staff concerning SBC Missouri's
23 practices regarding how much of the time it has increased
24 prices the maximum of 8 percent for non-basic services. Do
25 you have some information that would generally describe what

1 types of revenue Southwestern Bell generated, as compared to
2 how much it could have generated under the non-basic price
3 cap increases?

4 A. Yes. In light of this case, we went back and
5 took a look at what we've done in 2003, just to sort of put
6 it in context. And we estimate that the -- that we only
7 increased 4 percent of the revenues that we could have
8 increased under this 8 percent concept.

9 Q. And to clarify that, are you saying you could
10 have generated 25 times more revenue than you actually did
11 with increases for non-basic services under the price cap
12 statute?

13 A. That's correct.

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

15 JUDGE THOMPSON: Thank you, Mr. Lane. And am
16 I correct that concludes your witnesses?

17 MR. LANE: Yes, your Honor.

18 JUDGE THOMPSON: Thank you.

19 We'll go ahead and recess for five minutes,
20 and when we come back, I believe, Mr. Meyer, you will be
21 starting with Mr. Thomas; is that correct?

22 MR. MEYER: Yes.

23 JUDGE THOMPSON: Thank you.

24 (A BREAK WAS TAKEN.)

25 (Witness sworn.)

1 JUDGE THOMPSON: Would you please spell your
2 last name for the reporter, sir.

3 THE WITNESS: T-h-o-m-a-s.

4 JUDGE THOMPSON: Thank you. You may inquire,
5 Mr. Meyer.

6 CHRISTOPHER THOMAS testified as follows:

7 DIRECT EXAMINATION BY MR. MEYER:

8 Q. Mr. Thomas, could you state your address for
9 the record as well?

10 A. My address is 200 Madison Street, Jefferson
11 City, Missouri 65102.

12 Q. And by whom are you employed?

13 A. The Missouri Public Service Commission.

14 Q. And in what capacity?

15 A. As an economist in the telecommunications
16 department.

17 Q. Did you prepare the prefiled testimony in this
18 case which has been previously marked for identification as
19 Exhibit 3, rebuttal testimony of -- your rebuttal testimony
20 in this case?

21 A. Yes, I did.

22 Q. Do you have any corrections or additions to
23 make to that prefiled testimony at this time?

24 A. I have two corrections. The first one would
25 be on page 14, line 2, the word "considering" should be

1 replaced with the word "concerning," and the whole question
2 would read, has Staff gathered information concerning price
3 cap adjustments for non-basic-type services in other states?

4 Q. And you have a second correction?

5 A. Yes, I do. On page 16, line No. 6, the word
6 "in" should be replaced with the word "is," and that entire
7 paragraph would read, if the Commission determines that it
8 has the authority to examine the proposed increases, then it
9 must also determine if it has the authority to examine each
10 rate increase individually or if it must examine the overall
11 profitability of price cap carriers in determining that a
12 proposed rate increase is unreasonable.

13 Q. Are those the only corrections you have?

14 A. Yes, they are.

15 Q. Are the answers you have now provided true and
16 accurate to the best of your knowledge and belief?

17 A. Yes, they are.

18 Q. If I would ask you the same questions today
19 that are contained in the prefiled testimony, would your
20 answers still be the same?

21 A. Yes, they would.

22 MR. MEYER: Offer Exhibit 3 into the record
23 and tender the witness for cross-examination.

24 JUDGE THOMPSON: Thank you, Mr. Meyer.

25 Do I hear any objections to the receipt of

1 Exhibit No. 3?

2 (No response.)

3 JUDGE THOMPSON: Hearing no objections,
4 Exhibit 3 is received and made a part of the record of this
5 proceeding.

6 (EXHIBIT NO. 3 WAS RECEIVED INTO THE RECORD.)

7 JUDGE THOMPSON: Cross-examination,

8 Mr. Dandino?

9 MR. DANDINO: No questions, your Honor.

10 JUDGE THOMPSON: Thank you.

11 Mr. Fischer?

12 MR. FISCHER: Your Honor, before I commence
13 cross-examination, this morning I was asked a question
14 regarding the level of revenues that CenturyTel receives
15 from these particular line services and I have that
16 information that I'd like to give to Commissioner Clayton at
17 this time, if that would be appropriate.

18 JUDGE THOMPSON: That would be fine. Is the
19 information highly confidential?

20 MR. FISCHER: No, I don't believe it is. It's
21 our understanding that between the two companies that I
22 represent, Spectra and CenturyTel, together both services as
23 an aggregate produce less \$6,000 in revenues.

24 COMMISSIONER CLAYTON: \$6,000?

25 MR. FISCHER: Yeah.

1 JUDGE THOMPSON: So this is your big earner.

2 MR. FISCHER: Yeah.

3 COMMISSIONER CLAYTON: Thank you.

4 CROSS-EXAMINATION BY MR. FISCHER:

5 Q. Mr. Thomas, I have just a couple of questions
6 basically to get a little bit more history from you, if that
7 would be all right.

8 A. Sure.

9 Q. Under the public policy adopted, the 18-309
10 that I think you talked about in your rebuttal testimony,
11 the Public Service Commission historically adopted a policy
12 of using residual pricing for basic local exchange service;
13 is that right?

14 A. That's correct.

15 Q. Can you explain for the Bench a little bit
16 more your understanding of 18-309 and how it worked?

17 A. Sure. Sure. Basically the Commission -- the
18 Commission at the time divided service categories into three
19 different categories; Category 1, 2 and 3. And what they
20 did, essentially, was they determined the appropriate level
21 for basic local service and then they residually -- then
22 they went backwards and they priced the other services to
23 cover the company's overall contribution.

24 So essentially, what you have is you didn't
25 price basic local based on cost, you had a level of value of

1 service.

2 Q. I believe you -- I believe you may have turned
3 that around.

4 A. I think I did.

5 Q. You started with basic local. Don't you start
6 with the non-basic first?

7 A. You do start -- excuse me. You're correct.
8 You start with the non-basic services. You price them at a
9 level that would either maximize the contribution to
10 overhead or take into account some social considerations,
11 and then you would price basic local service.

12 Q. So is it correct that under 18-309, the Public
13 Service Commission first looked to obtain the necessary
14 revenues for any increase from non-basic services before
15 they turned to local exchange services?

16 A. That's true.

17 Q. Is it your understanding that during the late
18 1970s and 19 -- early '80s when this policy was in effect,
19 that there were some cases that Southwestern Bell actually
20 had increases for their non-basic service rates and no
21 increase for local exchange?

22 A. I can't answer that question.

23 Q. Do you know if there also are cases where they
24 had increases for non-basic services and their local rates
25 actually went down?

1 A. I'm not aware of cases during that time
2 period.

3 Q. And the record of the Commission cases would
4 reflect whatever happened, I guess, during that period?

5 A. Yeah.

6 Q. Okay. On page 11 of your testimony, at
7 lines 19 through 21, you state that the application of the
8 principles established in case 18-309 have the effect of
9 removing the relationship between rates and their cost; is
10 that correct?

11 A. That's correct.

12 Q. Do you have an opinion about whether that's
13 true today, whether non-basic service rates are -- there's a
14 connection between the rates and the costs today?

15 A. I think there's still some effects of the
16 18-309 decision that are reflected in the current prices,
17 but I'm not sure what effect that the change to price cap
18 regulation would have on the answer to that question.

19 Q. Is it correct to conclude that, historically,
20 non-basic service rates were priced substantially above cost
21 in order to keep basic local as low as possible or
22 affordable?

23 A. Historically, yes.

24 Q. And then on page 12, lines 15 through 17, you
25 state, essentially the Commission allowed some services to

1 be priced well above their cost in order to maintain
2 universal service; is that correct?

3 A. Yes.

4 Q. Now, I'd like to ask you to turn to page 16 of
5 your testimony, and there you're talking about various
6 scenarios about whether the Commission determined they had
7 authority to look at these issues. And at one point here on
8 page 16, at lines 7 through 11, you indicate that if the
9 Commission determines, one, that it does have the authority
10 to examine the proposed non-basic rate increases of price
11 cap carriers and, two, that it can examine each rate
12 individually, then Staff presented information suggesting
13 that an 8 percent increase in rates for non-basic services
14 is a very generous increase, given current economic
15 conditions.

16 Do you see that?

17 A. Yes, I do.

18 Q. What are you referring to there about general
19 economic conditions? Are you just talking about current
20 inflation rates?

21 A. Inflation rates for the most part. The
22 general economic conditions that I examined are in both
23 consumer prices and producer prices.

24 Q. Are you just saying that the general inflation
25 rate has been more than 8 percent in the last two years?

1 Excuse me -- that the --

2 A. Less than 8.

3 Q. Less than 8 percent in the last two years?

4 A. Yes, sir.

5 Q. Of course, if you look at the Commission's
6 history, they have granted increases much more than
7 or much less than any inflation rate, even for
8 rate-of-return-regulated companies; is that true?

9 A. I'm not aware of anything to that effect. I'm
10 just not aware.

11 Q. Okay. On page 16 you discuss the possibility
12 the Public Service Commission examined the profitability of
13 each individual non-basic service rate, and you state that
14 the Commission would also need to determine what it
15 considers to be a normal profit?

16 A. Yes, sir.

17 Q. And further would need to decide if SBC is
18 earning this normal profit. That sounds a lot to me like
19 what we used to do under traditional rate-of-return
20 regulation. Is that true?

21 A. I think it would be very similar. I don't
22 think it's the same process, because I'm not sure that the
23 Commission would have the same authorities or
24 responsibilities. But I think it's a similar process.

25 Q. You'd be looking at the overall earnings of

1 the company to determine whether they were earning a normal
2 profit; is that right?

3 A. That's correct.

4 Q. And then you'd be looking at the individual
5 services to determine whether each individual service was
6 earning a normal profit?

7 A. If the Commission was concerned about the
8 overall profitability of SBC, I think they would have to
9 look at the overall contribution from those services to
10 SBC's overhead.

11 Q. And that's what they used to do under
12 traditional rate-of-return regulation?

13 A. I think that's a very similar process.

14 Q. Let's assume for a minute that all non-basic
15 service rates were priced at cost plus a normal profit. Can
16 you assume that for me?

17 A. Sure.

18 Q. And that in doing so, that resulted in
19 substantial rate decreases for non-basic services.

20 A. Okay.

21 Q. Let's also assume hypothetically that the
22 ILEC's basic local exchange rates were capped at less than
23 their cost hypothetically. Can you assume that?

24 A. Okay.

25 Q. Now, hypothetically, would the telephone

1 company that earned a normal profit on all non-basic
2 services but had its basic local rates capped at less than
3 cost, would that company earn a normal profit overall?

4 A. I think likely would not.

5 MR. FISCHER: Thank you very much.

6 JUDGE THOMPSON: Thank you, Mr. Fischer.

7 Ms. Creighton Hendricks?

8 MS. HENDRICKS: No questions, your Honor.

9 JUDGE THOMPSON: Mr. Lane?

10 CROSS-EXAMINATION BY MR. LANE:

11 Q. Good afternoon, Mr. Thomas.

12 A. Good afternoon, Mr. Lane.

13 Q. On page 4 of your testimony, you note that the
14 Commission specifically asked whether an 8 percent increase
15 is reasonable, given current economic conditions. Do you
16 see that reference?

17 A. Yes, I do.

18 Q. From an economist's point of view, would you
19 agree that the reasonableness of a proposed rate cannot be
20 judged solely by current economic factors?

21 A. I think there are lots of different
22 considerations that go into determining the reasonableness
23 of a particular rate.

24 Q. One of them may be current economic factors,
25 but -- current economic conditions, but there are likely

1 many other factors, aren't there?

2 A. That's a true statement.

3 Q. Would you agree that one must look at all
4 relevant factors in determining from an economist's
5 perspective whether a proposed price is reasonable?

6 A. That's a true statement.

7 Q. For example, if we assume that the current
8 price of a service recovers only 50 percent of its true
9 economic costs, that alone doesn't tell you whether an
10 8 percent increase in the price of that service is
11 reasonable or unreasonable, correct?

12 A. That's correct.

13 Q. Even if we assume as true all of the general
14 economic data that you set out on pages 4 to 11 of your
15 rebuttal, that alone doesn't tell us whether an 8 percent
16 increase is reasonable or unreasonable for a service that's
17 priced at 50 percent of its true economic cost, right?

18 A. That's correct.

19 Q. And we could go the other way as well, right?
20 If we assume that all of your economic data on pages 4 to
21 11 of your rebuttal testimony is true, and we assume that
22 the proposed price for the services are double their true
23 economic cost, those two things by themselves don't tell you
24 whether a proposed rate increase of 8 percent is reasonable
25 or unreasonable, right?

1 A. By themselves, they do not.

2 Q. We'd have to look at all of the services
3 provided by the company and the relationship of the revenues
4 they produce to the costs incurred to determine whether a
5 proposed increase is reasonable or unreasonable under an
6 economist's perspective, right?

7 A. Not necessarily. We could look at those rates
8 in a vacuum and still have to consider the relative position
9 of those rates to other carriers in the marketplace. I
10 don't know that that necessarily means we have to look at
11 the overall profitability of the carrier.

12 Q. Looking at the rate for any particular service
13 in comparison with the rates charged by other carriers for
14 the same service doesn't tell you whether the first
15 carrier's rates are reasonable or unreasonable by
16 themselves, do they?

17 A. Not in a vacuum, no, sir.

18 Q. You'd have to look at all of the services
19 provided both by the company proposing the rate increase and
20 the other carriers to whom you're comparing to determine
21 whether a proposed increase is reasonable or not, correct?

22 A. Could you repeat the question?

23 Q. Sure. We'll put it this way: What else
24 would you need to look at besides the rates proposed by
25 Company A for a particular service and the rates charged by

1 every other carrier in the state offering that service to
2 determine whether the rates proposed by Carrier A are
3 reasonable or not?

4 A. You'd probably want to look at things such as
5 the cost of providing that service and the rates charged by
6 the carriers in the marketplace, like we discussed, and
7 probably the contribution to the carriers' overhead and the
8 reasonableness of that contribution potentially.

9 Q. Would you agree with me that under
10 rate-of-return regulation, there were clear standards to
11 apply to evaluate whether, on an overall basis, the prices
12 charged by a company for each of its services were just and
13 reasonable?

14 A. I think clear is a somewhat subjective term
15 but, yeah, I'll agree with you.

16 Q. At least there was a standard for that?

17 A. There was a standard.

18 Q. And if we're dealing under the price cap
19 statute, if the Commission were to have the authority to
20 decide whether an increase that doesn't exceed the 8 percent
21 cap for non-basic services is just and reasonable, there's
22 no clear standard to apply, is there?

23 A. Not to my knowledge.

24 Q. And would you agree with me that neither you
25 nor any other witness in the case has presented all relevant

1 factors that the Commission would need to decide whether
2 this particular proposed rate increase is just and
3 reasonable?

4 A. I think there's some outstanding questions the
5 Commission would need to answer to determine if the proposed
6 rates were just and reasonable. I think there's plenty of
7 evidence in the record the Commission could use to make that
8 determination, and it depends upon what the Commission
9 determines to be all relevant factors.

10 Q. Have you presented in your testimony all of
11 the relevant factors that should be considered by the
12 Commission in determining whether these proposed price
13 increases are just and reasonable?

14 A. I think it depends upon the scope of the
15 Commission's authority. If the Commission can look at each
16 rate individually and believes they can, as they've said in
17 some past orders, I believe, then there's probably evidence
18 in the record to allow them to do that.

19 Q. But you believe, from an economist's
20 perspective, that you can't just look at one particular rate
21 increase to decide whether it's just and reasonable based on
22 economic conditions or based on relationship of that service
23 price to cost, right?

24 A. When we discussed that earlier, we discussed
25 each individual factor in a vacuum. And I think taking the

1 sum total of those -- those factors, you may be able to
2 conclude that either the rate is reasonable or not
3 reasonable.

4 Q. And is it your testimony in this case that
5 you've presented enough information to judge whether the
6 proposed price increase in this case is just and reasonable?

7 A. I think that reasonable people could come to
8 different conclusions as to whether or not the rates are
9 reasonable, based upon the information in my testimony and
10 in Mr. Peters' testimony.

11 Q. I believe you indicated earlier that you would
12 need to analyze all relevant factors related to a particular
13 company to determine whether the price for any one
14 particular service is just and reasonable, right?

15 A. Potentially.

16 Q. And no one has done that in this case, right?

17 A. That's correct.

18 Q. Now, on pages 4 to 11 of your rebuttal
19 testimony, you examine various indices, including CPI,
20 GDPPI, PPI, ECI, productivity factors and cost of capital,
21 right?

22 A. Yes, sir.

23 Q. Does the statute direct the use of any of
24 these factors in setting rates for non-basic services under
25 price caps?

1 A. To my knowledge, it does not.

2 Q. But the statute does direct the use of either
3 CPI or GDPPI with the productivity factors in setting basic
4 rates, correct?

5 A. That's correct.

6 Q. Would you agree with me that if the
7 Legislature intended to have the Commission use CPI or GDPPI
8 or productivity factors in setting non-basic rates under the
9 price cap statute, then it could have simply said so?

10 A. It could have.

11 Q. But the Legislature did make it clear that
12 the all-relevant-factors test was not to be used when it
13 expressly exempted price cap companies from regulation under
14 392.240.1, correct?

15 A. I think that's one reasonable interpretation.

16 Q. Is it yours?

17 A. It's my legal counsel's.

18 Q. Do you disagree with it?

19 A. I don't disagree with it, but I'm not an
20 attorney and I'm not going to testify as an attorney.

21 Q. From an economist's perspective, do you agree
22 with that?

23 A. From an economist -- I'd like to see the
24 language.

25 Q. Have you read the statutes?

1 A. I have.

2 Q. Okay.

3 A. I have. I just don't have it in front of me
4 to speak to. I've read lots of statutes.

5 Q. On page 6, you exam CPI and GDPPI and present
6 a table. Do you see that?

7 A. Yes, sir.

8 Q. And you note that CPI for local service has
9 increased by 4.17 percent per year for the last two years,
10 right?

11 A. Yes, sir. That's an average over the last two
12 years.

13 Q. Okay. And an average over the last ten years
14 has been an increase of 2.73 percent, correct?

15 A. Yes.

16 Q. Would you agree with me that SBC Missouri's
17 rates for basic local service have decreased over the last
18 ten years?

19 A. Yes, I would. They're tied to the CPI total
20 telephone service component.

21 Q. In fact, the figures that you present for CPI
22 of local service of a 4.17 percent increase over the last
23 two years on the average, and a 2.73 percent increase per
24 year over the last ten years, on average, those percentages
25 are dragged down by SBC Missouri's basic local rates, right?

1 A. To the extent that SBC Missouri was polled to
2 come up with those indices, yes. And I don't know that for
3 a fact, if they were polled, Mr. Lane.

4 Q. Okay. Would you agree with me that the reason
5 that the CPI for telephone service is negative over the last
6 two years and six years, as you've presented in your
7 testimony, while CPI for local service is positive, is
8 generally because wireless rates have gone down during that
9 period of time and long distance rates have gone down during
10 that period of time?

11 A. I think that's a reasonable assumption.

12 Q. And the wireless rates have gone down because
13 of competition on wireless carriers, right?

14 A. That's correct.

15 Q. And long distance rates have gone down because
16 switched access charges to long distance companies have
17 decreased, especially on the federal level; is that correct?

18 A. Especially on the federal level, yes, sir.

19 Q. Are you aware of the components of CPI for
20 telephone service?

21 A. To a general basis, yes.

22 Q. Would you agree that those factors as
23 presented by Mr. Unruh in his surrebuttal testimony are
24 correct and that they include interstate and intrastate long
25 distance, wireless, basic local and non-basic local?

1 A. I believe that's correct.

2 Q. Is the fact that Southwestern Bell's rates for
3 basic local service and switched access have gone down over
4 the past six years while CPI for local service has gone up a
5 factor that the Commission should consider in determining
6 whether these particular rate increases are just and
7 reasonable?

8 A. Could you ask the question one more time,
9 repeat the question?

10 Q. Sure. Would you agree that the fact that
11 CPITS has gone down over the last six years while the CPI
12 for local service has gone up is a factor that this
13 Commission should take into account in determining whether
14 these particular proposed rate increases are just and
15 reasonable?

16 A. I think it's one thing the Commission could
17 consider.

18 Q. And the reason that the Commission could
19 consider that is because prices are constrained for basic
20 local and have gone down, even though the CPI has gone up
21 for local service, right?

22 A. That's true.

23 Q. And the only way to generate any additional
24 revenues for the company when you have decreasing revenues
25 for basic services is to increase non-basic service rates,

1 correct?

2 A. That's true.

3 Q. On page 7 of your rebuttal testimony, you
4 examine various PPI factors, correct?

5 A. Yes.

6 Q. It's fair to say that the Legislature did not
7 direct the use of any of these factors in the price cap
8 statute, correct?

9 A. That's correct.

10 Q. Same for labor costs that you present, it's
11 fair to say that the Legislature did not direct the use of
12 any changes in labor costs to set rates under the price cap
13 statute?

14 A. That's a fair statement.

15 Q. Has the Staff evaluated SBC Missouri's
16 changing labor costs for line status verification or busy
17 line interrupt in this case?

18 A. We've gotten some general information
19 concerning labor rate increases, but no information
20 concerning productivity changes, so I would say no.

21 Q. You haven't attempted to analyze any
22 productivity changes, right?

23 A. That's -- that's correct.

24 Q. Okay. Now, generally productivity increases
25 come about as a result of the implementation of new

1 technology that results in achieving the same level of
2 output with a decreasing number of workers, correct?

3 A. Yes, generally.

4 Q. And are you aware of any evidence of
5 technology increase that have been -- excuse me.

6 Are you aware of any technology changes that
7 have been implemented in the provision of line status
8 verification and busy line interrupt that would have
9 increased productivity for those services?

10 A. I'm not aware of any changes, but we didn't
11 ask those questions.

12 Q. Those services, busy line interrupt and line
13 status verification, are heavily labor dependent, are they
14 not?

15 A. Based on the information I've seen, they are.

16 Q. And technology doesn't play a particular role
17 in the provision of those services, does it?

18 A. At least in the way it's been explained to
19 Staff.

20 Q. And there certainly, as far as you know of,
21 there haven't been any technological changes that have
22 increased productivity over the last two or four years or
23 any other period of time for line status verification and
24 busy line interrupt, correct?

25 A. I don't have any specific knowledge to that

1 effect, no, sir.

2 Q. You also discuss the cost of capital on
3 pages 9 and 10 of your rebuttal. Do you recall that?

4 A. Yes.

5 Q. You haven't attempted to analyze what SBC
6 Missouri's cost of capital is, have you?

7 A. I have not.

8 Q. That's kind of a specialized area of
9 expertise, isn't it, that requires substantial training and
10 so forth, right?

11 A. Yes, sir.

12 Q. And you don't purport to hold yourself out as
13 expert in determining the cost of capital for a company,
14 right?

15 A. I do not. We merely chose those factors
16 because they were the simplest ones to demonstrate the
17 change over time.

18 Q. And would you agree with me that comparing SBC
19 Missouri's proposed cost of capital tells us nothing about
20 whether the rates for these particular services are just and
21 reasonable?

22 A. In a vacuum, it does not.

23 Q. Isn't it more important to know what rate of
24 return was authorized and whether SBC Missouri was earning
25 it if you want to factor in the cost of capital at all in an

1 analysis of justness and reasonableness?

2 A. I think it's certainly one way the Commission
3 could choose to look at it.

4 Q. It's certainly more relevant in analyzing
5 justness and reasonableness than what SBC has already
6 proposed as its cost of capital, isn't it?

7 A. I think it would give the Commission more
8 useful information, although it would come at a cost. It
9 would be much more difficult to get that information and it
10 would have to withstand extensive testimony hearings, I'm
11 sure, to determine what the final cost of capital would be.

12 Q. And just a follow-up to a few questions that
13 Mr. Fischer asked you concerning 18-309.

14 A. Sure.

15 Q. You agree with Mr. Unruh's assessment of how
16 rates were set for SBC Missouri under 18-309, correct?

17 A. Yes.

18 Q. And the result of 18-309 was to remove the
19 relationship between rates and cost, right?

20 A. Yes.

21 Q. And price caps were then superimposed upon
22 existing rates, correct?

23 A. That's correct.

24 Q. The Legislature did not require nor did it
25 permit rates to be rebalanced at cost for each service

1 before a large ILEC went under price cap regulation, right?

2 A. Not for each service, other than the general
3 rebalancing spelled out in the price cap legislation.

4 Q. And that general rebalancing applies just to
5 switched access and just for a limited number of companies,
6 right?

7 A. That's correct. I believe in your position,
8 yes, that's true.

9 Q. Not for SBC Missouri, right?

10 A. I don't have an answer. I think that's SBC's
11 position. I don't know the full context to answer that
12 question.

13 Q. But in any event, in the exception of that
14 rebalancing in the price cap statute, there was no effort
15 made by the Legislature to require that the rates for
16 non-basic services be moved down to cost before the company
17 went under price caps, right?

18 A. That's true.

19 Q. And other than that one particular provision
20 that we've discussed which is in 392.245.10, I believe,
21 there's no provision for requiring or permitting all basic
22 local rates to be moved up to cost at the time that company
23 went under price cap regulation, correct?

24 A. To my knowledge, that's correct.

25 Q. So the fact that a non-basic rate is above its

1 cost is meaningless from an overall cost recovery
2 perspective since other rates may well be below cost, right?

3 A. From a cost recovery perspective, yes.

4 Q. If the Commission were to preclude price
5 increases on non-basic services because rates were already
6 above the cost, would you agree that it should also then
7 permit basic rates to be increased to cover their costs?

8 A. That's certainly one avenue that could be
9 taken, if it was legal. I'm not sure of the legal
10 implications of that statement.

11 Q. From an economist's point of view, would you
12 agree that would be a fair way to handle it?

13 A. Yes.

14 Q. Finally, you looked at price cap adjustments
15 in other states, correct?

16 A. Yes.

17 Q. Fair to say that in the other states that you
18 examined, that non-basic rates can be increased by any
19 amount that the company chooses in each of the four states
20 that you examined, right?

21 A. And you're speaking of page 14 of my
22 testimony?

23 Q. Yes.

24 A. Non-basic rates?

25 Q. Yes. We can go through them each one at time,

1 and for Nebraska --

2 A. That's correct, sir. I'm sorry. I just
3 wanted to reread what I had in my testimony because I know
4 there's -- there's a wide disparity amongst the schedule.

5 Q. In each of the four states that you examined
6 in your testimony on page 14, the company is not limited at
7 all in raising rates for non-basic services, correct?

8 A. That's correct.

9 Q. It can raise them well above 8 percent per
10 year if it chooses; is that correct?

11 A. That's correct.

12 MR. LANE: That's all I have. Thank you.

13 JUDGE THOMPSON: Thank you, Mr. Lane.

14 Questions from the Bench.

15 Commissioner Gaw?

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. Mr. Thomas, if you would assume for me for the
18 moment that the Commission would have the authority to
19 assess the reasonableness of rates, in addition to the
20 authority it has to utilize price cap regulation, that it
21 could utilize other mechanisms to determine whether or not
22 those rates were just and reasonable, do you have
23 suggestions in regard to what this Commission needs to look
24 at or should be examining in order to make some sort of an
25 analysis in that way?

1 A. Yeah. I think I can give you two different
2 scenarios. I can give you a scenario where the rates would
3 be considered unreasonable and where they could be
4 considered reasonable, because I think as I laid out on
5 page 15 or 16 of my testimony, since we're assuming the
6 Commission has the authority to look at non-basic rates,
7 then under the first scenario that I laid out, that the
8 Commission determines that it can examine each rate
9 individually -- and I'll give you some authority for that, I
10 guess.

11 The Commission in the -- actually it was
12 Chair Simmons pointed out in his concurring opinion in this
13 case that -- and I'll quote this from the TO-97-397 order --
14 that the premise of price cap regulation is that the focal
15 point should be on the reasonableness of the company's
16 prices for its services, generally in relationship to some
17 economic indicator, but without relationship to a company's
18 earnings. So I think the Commission's found before that it
19 can look solely at each individual price through that
20 statement.

21 And I think that if you're looking at these
22 prices individually, you've got evidence from Mr. Peters
23 that says that these are the highest ILEC rates in the state
24 after the proposed increase, they are above cost, the cost
25 that SBC identified for providing the service. And one more

1 further justification I think I'll give you for this,
2 Commissioner Gaw, is that there are provisions in 392.246
3 that say the ILEC may petition the Commission for rate
4 relief if they're not earning a certain return or sufficient
5 return on their capital.

6 And I think that's one way you can say that
7 the rates are unreasonable, because essentially you'd be
8 saying we're concerned about the ratepayers in Meta,
9 Missouri who may get charged this rate and not have an
10 opportunity to switch to another carrier, whereas companies
11 like AT&T that Mr. Peters identified in some of his
12 schedules, if I got charged \$20 by AT&T for a busy line
13 interrupt, I could switch carriers very easily. And I think
14 that when you've got an ILEC, you've got some situation
15 where it may not be as easy for some of those carriers --
16 some of those customers to switch carriers.

17 And now on the other hand you might be able to
18 say, well, certainly you could dial zero or double zero to
19 get the service provided. So you could go through an
20 interexchange carrier, these rates are on the low end of the
21 spectrum of what's charged by competitive carriers in the
22 state, and that you don't think it's necessary to undertake
23 the entire analysis of what -- what you have to look at to
24 see that these rates are earning a normal return for SBC,
25 because you're -- you'd be looking at SBC's total

1 profitability at that point. And that would be the second
2 scenario.

3 Q. Well, if the -- if the Commission were to
4 determine and if it were at some point determined to be the
5 law that -- that it was appropriate to have some sort of a
6 safety net check on the just and reasonableness of rates in
7 addition to utilize the price cap tool, in general, not
8 specifically looking at this case, but do you know or --
9 what Staff would be looking at as a list of factors to make
10 some sort of a determination in that regard?

11 Have you -- do you have that -- does Staff
12 have a position about what factors should be examined in
13 that event?

14 A. I don't think we have a position on what
15 factors should be examined as an over -- as a definitive
16 list. I think Mr. Peters and I examined lots of factors and
17 have given you lots of evidence on these specific services
18 and on general economic conditions, but we haven't sat down
19 to compile a list of what we look at for each individual
20 service or for all these services as a whole.

21 Q. Do you think it's possible to come up with
22 some sort of an analysis or a test in order to have some
23 opinion as to whether or not rates are just and reasonable,
24 absent -- if you take away the price cap provisions?

25 A. I think we could probably discuss that and

1 come up with something for you.

2 Q. But at this point, Staff hasn't done that?

3 A. No, we have not. We struggled through just
4 getting the evidence for these specific services.

5 Q. All right. And in looking at -- in looking at
6 what you have in your testimony, are you -- is it your
7 belief that this is just a partial list of things that you
8 have in your testimony and -- and that are also filed in
9 other Staff testimony, or is a complete list in regard to
10 these issues?

11 Give me some sense of what you're saying.

12 A. Some idea. I think it's a pretty exhaustive
13 list. I think we did a pretty good job. I'm not going to
14 say we didn't omit something unintentionally. But I think
15 we did a pretty complete job of getting you the evidence
16 you're going to need. We had multiple brainstorming
17 sessions, and we sat and went through every possible thing
18 we could consider, and this is what we were presented.

19 Q. If by chance the Commission would take a
20 position that rates would be presumed to be just and
21 reasonable at price cap if the price cap mechanisms were
22 followed, but that it would not necessarily -- would not be
23 a conclusive presumption, would your analysis in regard to
24 whether or not Staff ought to take a position on a
25 particular issue utilize some of the things that you have in

1 your testimony, in regard to factors to examine to see
2 whether or not that Staff should move forward in that frame
3 of reference?

4 A. I think that's certainly one possibility, yes,
5 sir.

6 Q. Is it possible, Mr. Thomas, that you envision
7 the possibility that facts might exist in a particular
8 service where you had information that indicated to you, as
9 an economist, that rates were not just and reasonable but
10 that did not violate the price cap mechanism in Chapter 392?

11 A. Could you rephrase that question or ask me
12 again, please?

13 COMMISSIONER GAW: I'll just have the court
14 reporter read it back.

15 THE REPORTER: "Question: Is it possible, Mr.
16 Thomas, that you envision the possibility that facts might
17 exist in a particular service where you had information that
18 indicated to you, as an economist, that rates were not just
19 and reasonable but that did not violate the price cap
20 mechanism in Chapter 392?"

21 THE WITNESS: I think that's a possibility.

22 BY COMMISSIONER GAW:

23 Q. In other words, let me ask it a different way,
24 then, as well. Can you envision the possibility that from
25 an economist's standpoint, rates charged for a particular

1 service were not just and reasonable?

2 A. Certainly.

3 Q. But that they complied with the price cap
4 mechanism in Chapter 392?

5 A. The 8 percent --

6 Q. Yes.

7 A. -- non-basic mechanism?

8 Yes, sir.

9 Q. Now, tell me how that -- how that could
10 happen, if you know.

11 A. And once again, from a economist's perspective
12 like you asked the question, I think that you'd look at the
13 overall general sense of inflation in the economy and say
14 8 percent seems to be a very generous increase, given the
15 overall inflation we've seen in the economy, and considering
16 the fact that these specific rates are already making a
17 contribution to overhead in the firm, which I think is SBC's
18 largest concern. Because you don't have any idea how their
19 revenue streams are decreasing, and I don't think it's your
20 responsibility; it becomes their responsibility.

21 COMMISSIONER GAW: I think that's all, Judge.

22 Thanks.

23 JUDGE THOMPSON: Thank you, Commissioner.

24 Commissioner Clayton?

25 QUESTIONS BY COMMISSIONER CLAYTON:

1 Q. Mr. Thomas, how long have you been with the
2 Commission?

3 A. Little over three years, three and a half
4 years.

5 Q. A little over three years?

6 A. Yes, sir.

7 Q. And have you been with the telecommunications
8 department all that time?

9 A. Yes, I have.

10 Q. And I think in your testimony you've worked on
11 or provided testimony for several cases before the
12 Commission in the past?

13 A. Yes, sir.

14 Q. Have any of them involved price cap regulation
15 per se? And if you don't know --

16 A. No, sir, they have not.

17 Q. You have not?

18 A. I have not.

19 Q. Now, several times in your testimony you state
20 that you are not taking a position on whether or not there
21 is discretion of the Commission to reject this 8 percent
22 increase; is that accurate?

23 A. That's accurate.

24 Q. Would you explain to me why you are not taking
25 a position on that?

1 A. Our position -- the position given to us by
2 the General Counsel's Office, based on their legal
3 interpretation of the statutes, is that the Commission does
4 not have discretion. And so our view of our role as the
5 Staff was to try to get you the evidence that would enable
6 you to make the determination without taking a position on
7 the legal issues. So we tried to get you all the
8 information we could without extending ourselves into the
9 legal realm.

10 Q. I understand. You graduated from college?

11 A. Yes, sir.

12 Q. And you got a graduate degree?

13 A. Yes, sir.

14 Q. Was that a master's in business
15 administration?

16 A. No. It was a master's in economics and
17 finance.

18 Q. Economics and finance. Okay. You have read
19 Section 392.245, subsection 11, have you not?

20 A. I have.

21 Q. In your reading of it, do you believe that the
22 Commission has authority to reject this 8 percent increase?

23 A. I would like for legal counsel to provide me a
24 copy of the statute, if I could look at it while I answer
25 your question, sir.

1 Q. Sure. Take your time.

2 A. Commissioner Clayton, would you ask me your
3 question again, sir?

4 JUDGE THOMPSON: Could you read the question
5 back, please?

6 THE REPORTER: "Question: In your reading of
7 it, do you believe that the Commission has authority to
8 reject this 8 percent increase?"

9 THE WITNESS: I don't believe so.

10 BY COMMISSIONER CLAYTON:

11 Q. What do -- what do you believe the language
12 consistent with Section 392.200, what do you take that as to
13 mean?

14 A. Maybe I looked in the wrong spot, Commissioner
15 Clayton. What I see are 392.200.

16 Q. If I told you 200, you're supposed to be
17 reviewing Section 245.11.

18 A. 11. And I think it's the next clause that was
19 getting me -- where it says, consistent with provisions of
20 392.200 but not to exceed the maximum allowable prices.

21 Q. Okay. What do you take -- how do you
22 interpret consistent with Section 392.200?

23 We took lay opinions earlier from some of the
24 other witnesses, and I think in your experience, I'd like to
25 know what your opinion is.

1 A. Surely.

2 Q. And if you don't have one, if you haven't
3 thought about it, that's fine.

4 A. I haven't given it a lot of thought. I could
5 give you -- I'd rather not.

6 Q. Okay.

7 A. To tell you the truth.

8 JUDGE THOMPSON: Is Mr. Meyer intimidating
9 you?

10 THE WITNESS: He is.

11 BY COMMISSIONER CLAYTON:

12 Q. Can you tell me whether or not the
13 telecommunications department has a position on this issue?

14 A. I don't think we've discussed it beyond the
15 position given to us by the General Counsel's Office, other
16 than how we discussed getting you the information you needed
17 in our testimony while staying consistent with what the
18 General Counsel's Office has said.

19 Q. So within the telecommunications department,
20 there's never been a discussion about whether or not the
21 Commission has authority to reject this 8 percent increase;
22 is that your testimony?

23 A. No, sir. I think there have been many
24 discussions with the General Counsel's Office, but I don't
25 think we've made any contrary decision.

1 Q. Let me ask it this way: Does the General
2 Counsel work for you or do you work for the General Counsel?

3 A. I think that's a good question. I think -- I
4 think the General Counsel represents us.

5 Q. Okay. But they are telling you what your
6 position ought to be?

7 A. In this instance.

8 Q. Okay. Well, how do you feel about that?

9 A. Well, to tell you the truth, it's a little
10 frustrating.

11 Q. Okay.

12 A. But I don't know -- once again, I'm not going
13 to -- I don't want to make a legal interpretation and stand
14 here and -- they're the authority on that issue and I have
15 to respect their opinion.

16 Q. Well, and that's what I'm trying to find out
17 here is, obviously General Counsel's taken one position, but
18 I also want to know what the telecommunications department
19 feels about this, because you-all work on this on a
20 day-to-day basis.

21 Now, we've taken testimony from some other
22 non-lawyers and they've given their opinions, perfectly
23 fine. That's why I was wondering, is there -- I guess let
24 me ask you this: Does the -- does the telecommunications
25 department have any policy with regard to Commission

1 discretion on price cap regulation?

2 A. I don't think we have any formal policy on
3 that, no, sir. And I'm not aware of any informal policy.
4 Not to say that it doesn't exist. I think it's --

5 Q. Do you believe that -- do you believe that the
6 telecommunications department should have an opinion on
7 this?

8 A. I think that there probably is an opinion
9 within the telecommunications department, but we have not
10 expressed that due to the General Counsel's Office.

11 Q. Well, can you tell me what that opinion is?

12 A. I'm not aware, sir. I can't tell you right
13 now. I think that one of our positions in this case is that
14 reasonable people can come to reas-- to different
15 conclusions based upon the evidence we present and based
16 upon a reading of the statute. And what we've tried to do
17 is get you as much information as we can --

18 Q. I understand. Before we get to the factual
19 information, I want to know about the legal interpretation
20 about whether or not we have authority to even consider
21 those facts.

22 A. Yeah.

23 Q. And what you're saying is that no one in your
24 department has ever thought about it?

25 A. I'm sure we thought about it, but -- we've had

1 many discussions with the General Counsel's Office, but I
2 don't know that our opinion as a department is necessarily
3 different than the General Counsel's position.

4 Q. But you're not sure?

5 A. I'm not sure. That's correct.

6 Q. Okay.

7 A. I think there's -- like I said, reasonable
8 people can interpret this language in different ways.

9 Q. Would you agree that there's an ambiguity in
10 the law?

11 A. I think there's an ambiguity in every law,
12 sir.

13 Q. I didn't ask you if there was an ambiguity in
14 every law. Is there an ambiguity in the price cap statute?

15 A. I think that one's been pointed out in this
16 hearing. I think there are two positions on the same
17 language.

18 Q. I know that there are two different positions,
19 but would you agree that it could be interpreted
20 differently?

21 A. Absolutely.

22 Q. Okay. In your testimony you've thrown out
23 several bits of factual information?

24 A. Yes, sir.

25 Q. And I want to make sure just very quickly that

1 I understand what you're asking -- or what you state here.
2 First of all, in terms of inflation over the last year, the
3 8 percent increase is greater than the level of inflation?

4 A. Yes, sir.

5 Q. Would you agree also that this 8 percent is
6 greater than the increase in the Consumer Price Index and
7 the CPI telephone services?

8 A. Yes, sir.

9 Q. This increase is also greater than the Gross
10 Domestic Product Price Index?

11 A. Yes.

12 Q. You also made reference to several labor
13 standards, specifically on page 8, that increases in labor
14 costs for several different standards have not reached the
15 8 percent level?

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. You also indicated that the cost of capital
20 in your, I guess it would be limited analysis was only 2.81
21 percent, as referenced on page 10?

22 A. Averaged annual change, yes.

23 Q. Okay. But you also stated that that would --
24 you only did limited analysis on that and perhaps lacked the
25 ability to make an accurate determination there?

1 A. That's correct, sir. We tried to do it as
2 simply as we could, using the available information without
3 muddying the water too much for you. I think it's a good
4 proxy for cost capital.

5 Q. Do you believe the 8 percent increase is just
6 and reasonable?

7 A. I think the 8 percent increase is excessive.

8 Q. It's excessive?

9 A. It's excessive, given changes in economic
10 conditions and given the previous decisions by the
11 Commission that I pointed out to Commissioner Gaw in the
12 97-397 case about the relationship of prices and cost and
13 prices to earnings.

14 Q. Notwithstanding what your lawyer tells you, do
15 you think we can reject it?

16 A. I'd like to see you reject it, but I don't
17 know -- I think that there's probably a foundation to reject
18 it.

19 COMMISSIONER CLAYTON: Thank you.

20 JUDGE THOMPSON: Thank you, Commissioner.

21 Further questions from the Bench?

22 QUESTIONS BY JUDGE THOMPSON:

23 Q. Mr. Thomas?

24 A. Yes, sir.

25 Q. Would you agree with me that there are

1 basically three schemes of regulation of ILECs in Missouri
2 at present? For example, some ILECs are regulated, are they
3 not, under what's been called rate-of-return regulation?

4 A. That's correct.

5 Q. And some ILECs are, in fact, free of
6 regulation, they're fully competitive, is that not correct?
7 Or should I say some CLECs?

8 A. Some CLECs, yes, sir. Not ILECs, but LECs in
9 general, yes, sir.

10 Q. So they're not incumbent LECs, but they are
11 intrusive LECs?

12 A. That's correct.

13 Q. Okay. And finally there's some ILECs that are
14 price cap regulated?

15 A. That's correct.

16 Q. Now, between rate-of-return regulation on one
17 end of the spectrum and competitive local exchange companies
18 on the other end of the spectrum, do you have an opinion as
19 to where price-cap-regulated LECs fall?

20 A. Price-cap-regulated LECs fall in between more
21 toward the regulated end of the spectrum.

22 Q. Okay. Now, a regulated -- a LEC subject to
23 rate-of-return regulation, would you agree with me that that
24 is the traditional form of government regulation of
25 utilities?

1 A. That's correct.

2 Q. And in the past, such utilities have been
3 monopolies; is that not correct?

4 A. That's true.

5 Q. And perhaps some of these price cap regulated
6 ILECs are still monopolies; is that correct?

7 A. That's correct.

8 Q. And the theory -- would you agree with me the
9 theory behind government regulation of these monopoly LECs
10 is that in the absence of regulation by the government,
11 there would be no control over the pricing; is that correct?

12 A. That's correct.

13 Q. And that consumers have nowhere else to turn
14 and they would be subjected to, what's the euphemism, an
15 abusive market force?

16 A. That's true.

17 Q. Okay. Whereas with competitive LECs, is there
18 anything that regulates their pricing?

19 A. The ability that the customers would have to
20 switch carriers in the event that they were charged a rate
21 they considered to be excessive.

22 Q. Now, with respect to price-cap-regulated LECs,
23 what is there that controls their pricing?

24 A. In some areas, I think there would be
25 competitive pressure that could control their pricing,

1 depending upon the services we're talking about, but in
2 other areas there may not be those pressures.

3 Q. Do you believe with respect to line status
4 verification and busy line interrupt that there are
5 competitive procedures regulating the prices?

6 A. I don't believe so.

7 Q. Okay.

8 A. I think that's evidenced in the schedules that
9 Mr. Peters has in his testimony concerning the competitive
10 carriers' rates for these services.

11 Q. In fact, the Commission did a case, did it
12 not, to determine the existence of effective competition
13 with respect to SBC Missouri?

14 A. It did.

15 Q. Not too long ago?

16 A. That's correct.

17 Q. And wasn't it specifically determined by the
18 Commission that these two services were competitive with
19 respect to business customers in perhaps two exchanges and
20 with respect to residential customers in perhaps two other
21 exchanges?

22 A. I think the Commission tied them closely to
23 basic local, so that would be correct.

24 Q. Okay. And do you happen to know how many
25 exchanges SBC has in Missouri?

1 A. I'm not sure, sir.

2 Q. Would it be in excess, do you believe, of 100?

3 A. Yes.

4 Q. Okay. So if these services are subject to
5 competitive pressure, it's in only a very small part of SBC
6 Missouri's service area; is that correct?

7 A. That's correct.

8 Q. Okay. And you also referred to 392.246, I
9 believe?

10 A. Yes, sir.

11 Q. Now, that is an interesting provision. What
12 is the purpose of that provision if you, as an economist,
13 have an opinion?

14 A. That's basically a fail safe for the price cap
15 statute. If the price cap regulation fails, the company's
16 not able to attract capital, they can come to the Commission
17 and say, we're not able to attract capital, we're suffering;
18 please grant us relief.

19 Q. Now, do you think there's an equivalent fail
20 safe for the consumer if the price cap statute is resulting
21 in rates that are increasing? Does the consumer have a safe
22 harbor?

23 A. In areas where there was effective
24 competition, potentially, and in other areas, probably not.

25 Q. Okay. So if the reference to Section 392.200

1 in subsection 11 of the price cap statute were to be read in
2 the manner that Public Counsel has suggested, would that, in
3 fact, provide something of a safe harbor for consumers?

4 A. I think it would.

5 Q. And given that the Legislature provided a safe
6 harbor for the company, perhaps it wouldn't be too
7 outrageous that they might provide one for the consumer as
8 well?

9 A. I don't think it would be too outrageous, no.

10 JUDGE THOMPSON: Okay. Thank you very much.

11 THE WITNESS: You're welcome.

12 JUDGE THOMPSON: Recross based on questions
13 from the Bench.

14 Public Counsel?

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

17 JUDGE THOMPSON: Mr. Fischer?

18 RECROSS-EXAMINATION BY MR. FISCHER:

19 Q. Mr. Thomas, I'd like to explore a little bit
20 more your statement that you believe that an 8 percent
21 increase is excessive at this time.

22 A. Yes, sir.

23 Q. If I understood the total testimony that you
24 provided, is it basically because you think 8 percent has
25 exceeded the inflation rate over the last couple of years?

1 A. And I think we're talking these specific
2 services, or at least that was the context I wanted to give
3 my answer in, Mr. Fischer, and that these services are
4 already priced well above their cost.

5 Q. It's not because they're increasing these
6 rates by 12 cents and 18 cents?

7 A. I think -- well, the increase in conjunction
8 with that, you can't look -- I'm not looking at that
9 increase in a vacuum. I'm looking at that increase in
10 addition to the other factors.

11 Q. I'm trying to understand that. It sounded to
12 me like it principally was inflation, CPI, gross index,
13 labor and cost of capital. Those were the --

14 A. Those were the factors that I examined in my
15 testimony, and Mr. Peters also did an examination of the
16 rates relative to the rates of other carriers in the state.

17 Q. And with the exception of the cost of capital,
18 the others related to increases in basically inflation?

19 A. That's correct.

20 Q. So are you saying that any increase above the
21 cost -- or above the inflation rate would be considered
22 unjust and unreasonable?

23 A. Not necessarily. I think there are other
24 factors you could consider. I don't think they've been
25 raised -- we didn't raise them with respect to those two

1 services because of the nature of the services, but I think
2 that in other services there could be other factors that
3 need to be considered.

4 Q. Certainly that -- would you agree with me that
5 the inflation rate has not been the standard for determining
6 what are just and reasonable rates for the past 70 years in
7 front of this Commission?

8 A. I think the Commission looked at all the
9 factors.

10 Q. They take all relevant factors into account?

11 A. That's correct.

12 Q. Would you agree with me that in some cases
13 this Commission has granted increases substantially above
14 the rate of inflation?

15 A. I don't have any information that would
16 disagree with that, sir.

17 Q. Okay. Are you aware, for example, in the
18 last Missouri-American case, some water district got a
19 233 percent increase in rates?

20 A. I did read a story about that.

21 Q. Would that be considered unjust and
22 unreasonable based upon your analysis of what's excessive
23 and what's a just and reasonable rate?

24 A. I think that's a different mechanism.

25 Q. Why is that a different mechanism?

1 A. That's a mechanism that considers the cost of
2 service, the company's cost of service, and I don't think
3 that that's a part of the price cap statute.

4 Q. We're looking, aren't we, at what is just and
5 reasonable under the rates? That's the standard you're
6 trying to apply, isn't it?

7 A. We're looking at these specifically under the
8 price cap statute, under the price cap mechanism.

9 Q. Are just and reasonable rates different under
10 the price cap statute than they are under the traditional
11 regulation by the company?

12 A. I think there's a disconnect in rates and
13 costs under the price cap statute that's not -- there is a
14 connection between cost of service and rates that exist in
15 the regulated monopoly environment that may not necessarily
16 exist in the price cap environment as we move towards
17 competition, as evidenced in the Commission's order in the
18 397 case.

19 Q. So are you saying that the inflation rate is
20 the principal standard that the Commission ought to look at
21 if it's a non-basic increase in -- for a price cap company?

22 A. I'm saying it's one of the standards that they
23 could look at.

24 Q. One of the standards?

25 A. Yes, sir.

1 Q. But that for other public utilities, the
2 inflation rate is not -- is not to be considered the
3 principal standard for using just and reasonable rates?

4 A. I'm not familiar with how other utilities are
5 regulated necessarily. I don't know the specifics of their
6 regulation.

7 Q. Would you be familiar, for example, with a
8 major case in front of the Commission in the '80s involving
9 Callaway Nuclear Power Plant?

10 A. No.

11 Q. So you wouldn't know if they increased rates
12 70 percent in that case and phased it in over a number of
13 years?

14 A. It wouldn't surprise me, based on that
15 company's cost of service.

16 Q. So we wouldn't look at just inflation rates
17 historically in determining what are just and reasonable
18 rates?

19 A. Historically under the rate of return
20 environment, no.

21 Q. Are you suggesting that non-basic service
22 rates, in the price cap environment, that's the principal
23 thing we should look at?

24 A. I think that's one of the things we should
25 look at. And in the event of these two services, that was

1 one of the things that caused me to make my determination,
2 but it was based upon all the other evidence we considered.

3 Q. And even though your counsel in this case has
4 suggested it would be unlawful to reject this, I believe I
5 heard you say you'd like to see them reject it, the
6 Commission?

7 A. I think that there needs to be a safe harbor
8 for the consumers, just like the Judge indicated.

9 Q. Is that because you'd like to see Mr. Meyer
10 defend that in court?

11 A. No, not necessarily. In fact, that's one of
12 the drawbacks of that decision.

13 Q. And you understand this is a 12 cent increase
14 per call?

15 A. I do.

16 MR. FISCHER: Okay. That's all I have. Thank
17 you.

18 JUDGE THOMPSON: Thank you, Mr. Fischer.

19 Ms. Creighton Hendricks?

20 RECROSS-EXAMINATION BY MS. HENDRICKS:

21 Q. Good afternoon, Mr. Thomas.

22 A. Good afternoon.

23 Q. You received some questions from Commissioner
24 Clayton that went to where the telecommunications department
25 stood on the price cap tariffs vis-a-vis the legal

1 department. Do you recall that?

2 A. Yes, ma'am.

3 Q. Now, in this case, did the telecommunications
4 department issue an opinion or a recommendation to approve
5 the tariff?

6 A. Yes. The recommendation was to approve the
7 tariff initially.

8 Q. And that recommendation was issued without any
9 analysis of labor rates, cost of capital or inflation
10 factors; is that correct?

11 A. That's correct.

12 Q. And that was the opinion of the
13 telecommunications department?

14 A. Yes. And when I answered his question, our
15 opinion has been evolving, obviously, over the course of
16 this case, and that was part of the foundation for, I think,
17 why we went round and round with that.

18 Q. And this is not the first price cap tariff
19 filing that the telecommunications department has evaluated;
20 is that correct?

21 A. That's correct.

22 Q. And in the past, the telecommunications
23 department has approved increases to non-basic service
24 without any analysis of labor rates, cost of capital or
25 inflation factors; is that correct?

1 A. That's correct.

2 Q. As long as they're within the 8 percent, the
3 department has recommended approval; is that correct?

4 A. That's correct.

5 Q. Another question. There's been some
6 discussion of the safe harbor provision and references to
7 392.246, and I think it was Judge Thompson's questions. Do
8 you recall that?

9 A. Yes.

10 Q. Now, would you agree with me that the consumer
11 is afforded protection through a limit or restriction on
12 what I can increase or ultimately may have to decrease for
13 basic services?

14 A. I think that's a reasonable interpretation.

15 MS. HENDRICKS: No further questions.

16 JUDGE THOMPSON: Thank you, Ms. Creighton
17 Hendricks.

18 Redirect, Mr. Meyer?

19 MR. LANE: Excuse me, your Honor.

20 JUDGE THOMPSON: Did I miss you? I'm sorry,
21 Mr. Lane. I can't imagine how I did that.

22 MR. LANE: I can't either.

23 RECROSS-EXAMINATION BY MR. LANE:

24 Q. Mr. Thomas, when you filed your testimony, you
25 didn't take any position at all with regard to whether the

1 rates should be approved or not approved, right?

2 A. That's correct.

3 Q. And, in fact, the telecommunications
4 department consistently in this case and in every other case
5 recommended approval of all non-basic increases that didn't
6 exceed 8 percent, right?

7 A. That's true.

8 Q. Your evolving view, is it based on whether the
9 Commission -- whether you think the Commission wants you to
10 adopt a particular position?

11 A. No, sir. I think that reasonable people can
12 come to different interpretations. And I think that if you
13 ask Mr. Peters the same question that I was asked, you may
14 get a very different answer.

15 Q. Okay. And you came to your position
16 apparently sometime after you filed your testimony in this
17 case, right?

18 A. That's correct, considering all the evidence
19 that Mr. Peters filed and what I filed.

20 Q. You didn't read Mr. Peters' testimony before
21 he filed?

22 A. I read it before he filed, but we
23 considered -- once again, we're trying to stay consistent on
24 what our legal position on these issues is and trying to get
25 the Commission all the evidence that we can get to them.

1 Q. Right. You were attempting to present
2 information on the reasonableness of rates for the
3 Commission to evaluate, right?

4 A. That's correct.

5 Q. And your position was that you weren't taking
6 a position. You weren't telling the Commission whether it
7 was reasonable or unreasonable; is that correct?

8 A. That's correct.

9 Q. And you read your testimony and you read
10 Mr. Peters' testimony. You filed yours and you had no
11 position, right?

12 A. That's correct.

13 Q. And you were asked by your lawyer here, did
14 you have any changes to your testimony? You said, no, you
15 didn't have any, right?

16 A. No, we don't have any -- I don't have any
17 changes, Mr. Lane. Our legal position is still our legal
18 position, and I'm still maintaining that. My legal advisor
19 is telling me the Commission cannot legally adjust these
20 rates.

21 Q. All right. We're not communicating. Your
22 testimony that you've provided in this case was an
23 evaluation of factors that the Commission could consider if
24 they had the authority to look at the reasonableness of the
25 rates, correct?

1 A. That's correct.

2 Q. And your testimony and your recommendation to
3 the Commission in connection with whether -- on the
4 reasonableness question was you're taking no position,
5 right, not because of the legal constraints, but because you
6 weren't taking a position on the reasonableness of the
7 rates, right?

8 A. Because there's a further scenario that we
9 laid out on page 16 of my testimony, Mr. Lane, another issue
10 the Commission needs to determine. And that -- the basis
11 for my answer was based on one of those scenarios. The
12 Commission still needs to determine the factors, still needs
13 to determine the conclusion for the second question I
14 presented in my testimony on page 16, line 18, whether it
15 can examine --

16 Q. With regard to the reasonableness -- with
17 regard to the reasonableness of rates, what you were looking
18 at, you were presenting evidence to the Commission but not
19 taking any position on whether the rates were reasonable or
20 unreasonable, right?

21 A. That's correct.

22 Q. And you looked at Mr. Peters' testimony, you
23 looked at your own and you reaffirmed that today when you
24 took the stand, right?

25 A. That's correct.