

1 Q. And nothing has changed since then, and you  
2 still don't believe that there -- you're still not taking a  
3 position in front of this Commission as to whether the rates  
4 were reasonable or not reasonable, right?

5 A. I don't think the position in the  
6 telecommunications department staff has changed. My  
7 recommendation --

8 Q. Well, I'm asking you, because it's your  
9 testimony.

10 A. My testimony is still my testimony. I did not  
11 contradict my testimony in any way, Mr. Lane.

12 Q. All right. So you're not telling the  
13 Commission that the rates are either reasonable or  
14 unreasonable in your position? You don't know?

15 A. I said reasonably the Commission could  
16 conclude they're reasonable or unreasonable, and I gave the  
17 justification for an unreasonable conclusion.

18 Q. All right. In your testimony you laid out two  
19 different ways that if the Commission had the authority to  
20 look at whether something was just and reasonable, two  
21 different ways they could look at it. One way was, look at  
22 all the rates, total rates, total cost, right?

23 A. Yes.

24 Q. You haven't presented any information that the  
25 Commission can't reject it on that basis, right?

1 A. That's right.

2 Q. The other way is, can you look at each rate  
3 individually, right?

4 A. Yes.

5 Q. And all you've presented was -- in response to  
6 questions from Commissioner Gaw was that this was the  
7 highest ILEC rate, it was above cost and it was above  
8 general economic indicators, right?

9 A. That's what I told Commissioner Gaw.

10 Q. Are those the only three things that you  
11 looked at in deciding to tell him that these rates were  
12 unreasonable and excessive?

13 A. Those were the three that jumped to mind.  
14 However I did look at everything that Mr. Peters and I both  
15 considered.

16 Q. Those are the three that you can sit here and  
17 tell today that justify a finding of unreasonableness; is  
18 that correct?

19 A. I think that those are the three most  
20 important that can justify finding of unreasonableness.

21 Q. Well, what else is there, that you presented  
22 in your testimony? What else is there? Because I'm going  
23 to go through each one with you.

24 A. Go right ahead.

25 Q. Are there any others beside those three?

1           A.       I think that there are all kinds of residual  
2 issues about the pricing of competitive carriers versus the  
3 pricing of non-competitive carriers that are issues here,  
4 too. And I think that my statements assumed that  
5 competitive carriers, the customers of competitive carriers  
6 generally have a much -- have a choice. When they're  
7 charged a \$20 rate for busy line interrupt, they can change  
8 carriers very easily, whereas the customers of an ILEC may  
9 have a more difficult time changing.

10          Q.       So there's four?

11          A.       And that's implicit -- implicit in No. 3.

12          Q.       All right.

13          A.       And I think there are all kinds of residual  
14 issues implicit in those issues.

15          Q.       Would you agree with me that Section 392.200.1  
16 is not part of the price cap statute?

17          A.       That's correct.

18          Q.       It applies, does it not, to every  
19 telecommunications company and to every telecommunications  
20 service?

21          A.       I believe that's correct.

22          Q.       And so I'm going to focus on the highest ILEC  
23 rate. You're also aware, are you not, that the rate charged  
24 by interexchange carriers for the same service is up to  
25 eight times greater than SBC Missouri proposes to charge,

1 correct?

2 A. That's correct.

3 Q. Is the rate charged by the interexchange  
4 carriers unjust and unreasonable under your analysis?

5 A. I think that argument could be made. I  
6 haven't made that statement, Mr. Lane, and I'm not  
7 purporting to have analyzed those rates in detail.

8 Q. What is it about being the highest ILEC rate  
9 that makes it unreasonable, but having a rate charged by an  
10 interexchange carrier that's eight times that for the same  
11 service is just and reasonable?

12 A. If I'm an AT&T customer and I get charged \$20  
13 for busy line verify, busy line interrupt, I can say, well,  
14 that was an excessive charge, I'm going to switch to MCI  
15 very easily. If I'm the customer of an ILEC, it's not  
16 always that easy if I'm dissatisfied with the charge to  
17 change services, to change customers -- to change companies.  
18 Excuse me.

19 Q. Let's look at that. If MCI -- Mr. Peters  
20 presented what MCI's charge is, right?

21 A. Yes.

22 Q. And they're lower than what SBC Missouri  
23 charges?

24 A. That's correct.

25 Q. So if you're dissatisfied with SBC Missouri's

1 charge after you receive a charge for it, you can switch and  
2 make all your busy line interrupt and line status  
3 verification calls through MCI, right?

4 A. I think in a perfect world, that's correct. I  
5 was not even aware, Mr. Lane, personally of the availability  
6 of these services prior to this case, and I don't think the  
7 average consumer is either.

8 Q. Okay. And if that is a matter of great  
9 interest to the individual consumer who gets charged a rate  
10 that he or she believes to be excessive, then they could  
11 investigate that and find themselves another carrier that  
12 could provide that, right?

13 A. They could.

14 Q. All of the interexchange carriers listed in  
15 Mr. Peters' testimony that have rates lower than that of  
16 Southwestern Bell could be utilized to provide both local  
17 busy line interrupt and line status verification or long  
18 distance for those two services, right?

19 A. If the customer was aware that the  
20 interexchange carriers even provided those services, which I  
21 doubt.

22 Q. And Mr. Peters also listed a good number of  
23 companies that are competitive local exchange companies that  
24 operate in SBC's territory, right?

25 A. Yes.

1 Q. That offer operator services, right?

2 A. Yes.

3 Q. And they utilize, many of them, they utilize  
4 Southwestern Bell's own operators for their service, right?

5 A. Yes.

6 Q. Branded with their name so it appears to the  
7 customers that --

8 A. In some instances.

9 Q. So it appears to the customer as if it's that  
10 particular company's operators that are providing the  
11 service, right?

12 A. In some instances, yes.

13 Q. And who controls the price that SBC Missouri  
14 charges to the CLECs for operator services that the CLECs  
15 then turn around and package into a line status verification  
16 or busy line interrupt?

17 A. I believe the Federal Act would control that  
18 pricing.

19 Q. And under the Federal Act, who has the  
20 authority to set the prices if two people don't agree?

21 A. This Commission.

22 Q. Okay. And has this Commission set prices for  
23 that service that are substantially below that which SBC  
24 Missouri proposes to charge for this service?

25 A. I'm not aware of the rate level that they have

1 set.

2 Q. Didn't Mr. Peters take a look at that?

3 A. I'm drawing a blank right now, if you could  
4 point me to that.

5 Q. If he testified in his testimony, if he  
6 presented evidence that the price that is included in  
7 interconnection agreements approved by this Commission calls  
8 for rates that are substantially below the retail rates that  
9 SBC Missouri charges, is that something that is important  
10 for the Commission to consider in determining whether these  
11 particular rates are reasonable?

12 A. I certainly think that's one thing the  
13 Commission could consider.

14 Q. Because any particular customers could turn to  
15 any one of dozens of CLECs and acquire a lower price than  
16 charged by SBC Missouri if they chose to, right?

17 A. In some areas, yes.

18 Q. Well, would you agree with me that in  
19 Southwestern Bell's exchanges that there's competition in  
20 every one of those exchanges?

21 A. For residential customers?

22 Q. And for business customers.

23 A. Are we talking prepaid residential competition  
24 or actual facilities-based competition?

25 Q. We're talking residential competition. You

1 can use it broadly.

2 A. I'd like to see your evidence.

3 Q. You haven't examined that, have you?

4 A. I'm not aware of it right now, Mr. Lane. It's  
5 been a while.

6 Q. Okay. And yet you testified, didn't you, that  
7 it was the lack of competitive alternatives that should  
8 cause this Commission to reject this particular tariff,  
9 right?

10 A. Customers' awareness of competitive  
11 alternatives is what -- customers are not aware that they  
12 have alternatives to the service, because many of them are  
13 not aware that these services even exist.

14 Q. And have you taken a survey to determine what  
15 the level of customer awareness is of the prices for busy  
16 line verification and --

17 A. No, I have not.

18 Q. Okay. So what customers know, your testimony  
19 concerning that is what you personally believe, right?

20 A. Based upon my discussions with others, yes.

21 Q. Based on others in the telecommunications  
22 department?

23 A. And others outside. I talked to my parents.

24 Q. How many?

25 A. Oh, not very many. Just multiple people that



1 I --

2 Q. You're not telling us --

3 A. -- had acquaintance with.

4 Q. -- that the people that you've discussed this  
5 with form any sort of scientific survey that would justify  
6 this Commission relying upon it, are you?

7 A. That's never been done.

8 Q. It's anecdotal evidence that you personally  
9 had?

10 A. That's correct. It's part of my basis, part  
11 of the basis for my opinion.

12 Q. All right. You're aware that there are some  
13 CLECs that charge more than SBC Missouri for these same  
14 services, right?

15 A. That's correct.

16 Q. Some of which compete with Southwestern Bell,  
17 right?

18 A. That's correct.

19 Q. Now, those rates also have to be just and  
20 reasonable under Section 392.200.1, don't they?

21 A. That's correct.

22 Q. And if the Commission has approved rates that  
23 are higher than those that SBC Missouri proposes to charge,  
24 would you agree with me that it can't reasonably say that  
25 these rates are not just and reasonable?

1           A.       It can reasonably find that SBC should be  
2 subject to more stringent regulation as it laid out.

3                   SBC Missouri is not a competitive LEC, as it  
4 is competitive.

5           Q.       But Section 392.200.1, Mr. Thomas, I thought  
6 we agreed that applied equally to all telecommunications  
7 companies and all telecommunications services?

8           A.       You're going to get me in a legal question  
9 here that I'm not qualified to answer, Mr. Lane. I think  
10 there may potentially be two different interpretations of  
11 that as well.

12           Q.       Assuming that Section 392.200.1 applies  
13 equally to all telecommunication companies and all  
14 telecommunications services, would you agree with me that  
15 the Commission couldn't reasonably determine that rates  
16 higher than charged by Southwestern Bell are okay but the  
17 lower rates proposed by Southwestern Bell are unjust and  
18 unreasonable as being too high?

19           A.       Assuming that that's the case and there's no  
20 basis for the Commission to treat carriers differently, then  
21 that would be a true statement.

22           Q.       Now, with regard to above cost, that was one  
23 of the rationales that you utilized --

24           A.       Yes.

25           Q.       -- to say that it was -- these rates were

1 excessive, right?

2 A. Yes.

3 Q. Okay. And when you factor this in, did you  
4 factor into that analysis that Southwestern Bell offers some  
5 services at below cost rates?

6 A. These services make a contribution to the  
7 overhead of the firm and that is part of --

8 Q. Did you factor in that some rates that  
9 Southwestern Bell charges are below cost?

10 A. That would be the necessary contribution to  
11 the overhead of firm that I discussed. That's where that is  
12 factored into the analysis. I didn't look at each  
13 individual service that SBC provides, and I think there's  
14 wide disagreement about what below cost pricing means,  
15 because SBC generally looks at things on a merit basis,  
16 which includes no contribution to overhead.

17 I think Mr. Dandino was just espousing a  
18 methodology that would include a contribution to overhead  
19 for those services. So I think we're going to disagree over  
20 that, and I think reasonable people will disagree.

21 Q. My question, though, to you is, when you said  
22 to the Commission that you think these rates were excessive  
23 because they're above cost, did you factor in the fact that  
24 Southwestern Bell offers other rates below cost?

25 A. To the extent that they do make a contribution

1 to the overhead of the firm.

2 Q. You would agree with me that if the Commission  
3 is permitted to reject these rates because they're priced  
4 above cost, that it ought to, at the same time, allow SBC  
5 Missouri to increase those rates that are below cost up to  
6 at least a cost level?

7 A. That would certainly be an interesting  
8 proceeding to watch.

9 Q. I didn't ask whether it was an interesting  
10 procedure to watch. I asked if you thought that would be a  
11 fair and reasonable approach?

12 A. I think it would certainly make some sense.

13 Q. And would you agree with me that under  
14 Section 392.245.4, that there's the same reference to just  
15 and reasonable -- excuse me -- there's the same reference  
16 to -- consistent with Section 392.200?

17 A. Would you rephrase that, Mr. Lane? You lost  
18 me.

19 Q. Yes. Would you agree with me that under the  
20 provisions of the price cap statute that deal with basic  
21 service and exchange access service, that there's the same  
22 reference to rates being consistent with the provisions of  
23 Section 392.200? You can look specifically at 392.245,  
24 subsection 4, subdivision 5.

25 A. Yes, sir.

1 Q. And so if the Commission finds that it has the  
2 authority to reject price increases for non-basic services  
3 on the basis that they're priced above cost and that  
4 wouldn't be consistent with just and reasonable rates under  
5 Section 392.200.1, then the converse would be that they  
6 would need to approve rates for basic services that are  
7 below cost in order to meet the same just and reasonable  
8 standards for Section 392.200.1, right?

9 A. Run through that again. Please rephrase your  
10 question. You lost me in your multiple parts there.

11 Q. All right. If the Commission assumes -- or if  
12 the Commission determines that it has the authority to  
13 evaluate rates for non-basic services that don't exceed  
14 8 percent and to reject them on the basis that they're not  
15 just and reasonable since they're above cost, then the  
16 Commission ought to look at the statute and determine that  
17 it will permit SBC Missouri to raise basic local rates to  
18 get them equal to cost in order to be consistent with  
19 Section 392.200.1?

20 A. I think that's one interpretation.

21 Q. And that's what should be done in your  
22 opinion, shouldn't it?

23 A. I think that's one way the Commission could  
24 address the concerns potential below cost price.

25 Q. Because it wouldn't be fair, would it, to the

1 company to say, I'm not going to let you increase rates that  
2 are above cost because they're above cost, while at the same  
3 time constraining the company from increasing rates that are  
4 below cost, right?

5 A. If you want to talk about fair to the company,  
6 the company can always come in under the provisions of  
7 392.246 and ask for rate relief.

8 Q. And that's not a simple matter, is it?

9 A. That's not a simple matter.

10 Q. You have to show that you're in financial  
11 disarray and distress, right?

12 A. That's true.

13 Q. You have to come in and beg, right?

14 A. That appears to be the language.

15 Q. And the Commission can either grant it or not,  
16 right?

17 A. That's true, but the company takes certain  
18 risks when they enter into price cap regulation.

19 Q. Let's talk about that. Wouldn't you agree  
20 with me that the price cap statute is not optional for large  
21 ILECs; it is mandatory? They do not elect into it?

22 A. Would you point me to that section, please?

23 Q. Section 392.245.2.

24 A. Shall, yes, sir.

25 Q. Pardon me?

1 A. That's correct.

2 Q. It provides, does it not, that a large  
3 incumbent LEC shall be subject to regulation under this  
4 section upon a determination by a commission that a CLEC has  
5 been certified to provide service and is providing such  
6 service anywhere in their territory, right?

7 A. That's right.

8 Q. It's not an option for the large ILEC to  
9 decide to become price cap regulated; it is mandatory once  
10 the Commission makes the determination, right?

11 A. That's correct.

12 MR. LANE: That's all I have. Thanks,  
13 Mr. Thomas.

14 THE WITNESS: Thank you.

15 JUDGE THOMPSON: Thank you, Mr. Lane.

16 Now we're ready for some redirect. Mr. Meyer?

17 REDIRECT EXAMINATION BY MR. MEYER:

18 Q. Mr. Thomas, a couple of points of  
19 clarification. I believe earlier you were asked whether you  
20 were aware of any SBC specific rate changes prior to price  
21 cap regulation, and could you elaborate again on that  
22 answer? I believe it was something -- well --

23 A. Would you ask me the question again? SBC  
24 specific --

25 Q. SBC specific rate changes prior to price cap

1 regulation. That was -- I'm not sure exactly whose question  
2 that was.

3 A. I believe that was Mr. Fischer.

4 Q. I think it may have been all the way back to  
5 Mr. Fischer.

6 A. I think that's correct. And I'm not aware of  
7 any rate changes prior to the advent of price cap regulation  
8 or SBC's determination -- the Commission's determination of  
9 SBC under price cap regulation. I'm not familiar with those  
10 decisions.

11 Q. Okay. I think it may have come across that  
12 you said actually out right now.

13 A. Okay.

14 Q. When there were references in  
15 cross-examination to your page 16 reference to current  
16 economic conditions, in your opinion, did those current  
17 economic conditions get fully addressed in the testimony  
18 that you prefilled?

19 A. I think we gave a good sample of the general  
20 economic conditions and a good overview of the general  
21 economic conditions, but to say they're fully and thoroughly  
22 addressed is probably a different matter. I think we gave a  
23 really good proxy for general economic conditions.

24 Q. You testified that you need to analyze all  
25 relevant factors to determine if a rate is just and



1 reasonable, and then I believe in answer to a Commissioner  
2 question noted that the Commission has enough in evidence,  
3 your testimony and in Mr. Peters' testimony, to make a  
4 decision on the two rates.

5           Could you clarify again how the Commission can  
6 use the information provided to make a determination in this  
7 case?

8           A.       Certainly. And I think part of the disconnect  
9 between what I said and -- in both cases was that I was  
10 thinking about all relevant factors means different things  
11 to reasonable people. And I think that one way that the  
12 Commission could find -- and you asked specifically about  
13 unreasonable, is that correct? Make sure I'm answering the  
14 right question.

15          Q.       I think I said just and reasonable.

16          A.       Just and reasonable in general?

17          Q.       Yes.

18          A.       Certainly all the information that Mr. Peters  
19 and I presented in our testimony are relevant factors.

20          Q.       In arriving at a conclusion, aren't there  
21 several combinations of factors between your tests and  
22 Mr. Peters that the Commission could use?

23          A.       There are multiple combinations of factors.

24          Q.       Did you provide any opinion on any particular  
25 preference among those factors?

1           A.       I laid out a way that I thought the Commission  
2 might be able to find that these rates are unreasonable.  
3 And that combination was the relative level of these rates  
4 amongst the ILECs, these rates relationship to cost, and the  
5 Commission's past decisions in 397, as well as the other  
6 things that went into my consideration, that are residual  
7 issues, I guess, to those.

8           Q.       I think in response to a question from  
9 Commissioner Gaw, there was a reference to the states, I  
10 think it was, that you had reviewed for price cap status,  
11 and history and mechanisms. Could you discuss some of the  
12 changes from some of the other states? I think it was  
13 implied that perhaps you had only reviewed four states.

14          A.       No. I reviewed the entire schedule. Those  
15 were some of the more interesting states. However, there  
16 are lots of other mechanisms that are listed in Schedule 4.  
17 For example, Connecticut, the caps are indexed to the GDPPI  
18 for basic and noncompetitive services and the cap levels  
19 don't change unless the GDPPI exceeds 5 percent a year and  
20 when the caps can rise by half the amount over 5 percent.  
21 So there are lots of different -- different mechanisms.

22                   For example, Mississippi stands out as  
23 services for other noncompetitive and competitive rates can  
24 increase by up to 20 percent a year.

25          Q.       I believe in response to Commissioner Gaw's

1 question, and just to clarify, although the price cap  
2 statute allowed 8 per-- allows an 8 percent increase as just  
3 and reasonable, from an economist's point of view, is it  
4 possible the rates may not be just and reasonable based on  
5 other factors such as CPI and GDP and other costs?

6 A. Yes.

7 Q. Staff has meetings to discuss issues that  
8 arise as a result of Commission orders or other sources; is  
9 that not fair to say?

10 A. That's fair to say.

11 Q. And in this case Staff did have meetings to  
12 discuss the issues that were raised by the Commission's  
13 orders in this case?

14 A. Staff had multiple meetings to address the  
15 issues the Commission raised.

16 Q. Does the telecommunications staff personnel  
17 always agree unanimously in its meetings upon -- I'll  
18 just -- does the Commission Staff always agree, the  
19 telecommunications staff always agree?

20 A. Absolutely not. I think that's -- the  
21 telecommunications staff is comprised of a group of  
22 reasonable, rational individuals, and reasonable, rational  
23 individuals do not always agree on specific issues. I think  
24 this is an issue where you're seeing that. I think if  
25 Mr. Peters is asked the same questions, his opinions would

1 be different.

2 Q. Are any members of the telecommunications  
3 staff attorneys?

4 A. No, they're not.

5 Q. And when legal issues arise, do you then seek  
6 legal counsel?

7 A. Absolutely.

8 Q. And in this case, you sought legal counsel  
9 from the General Counsel's Office of the Commission; is that  
10 correct?

11 A. Yes, sir. And the General Counsel's Office  
12 has had a running dialog on this issue. This issue has come  
13 up multiple times.

14 Q. Staff had filed a recommendation regarding  
15 these tariff filings by SBC; is that correct?

16 A. That's correct.

17 Q. And was this Staff recommendation in this case  
18 based on advice from the General Counsel's Office?

19 A. I think it was based on our past practice  
20 which, in turn, was based on the General Counsel's opinion.

21 Q. I believe in response to Commissioner  
22 Clayton's question, you were asked directly whether you  
23 personally had an opinion, not whether or not Staff or the  
24 General Counsel's Office had an opinion, on the legality of  
25 the Commission's possible role in this case; is that

1 correct?

2 A. That's correct.

3 Q. Do you think that other individual staff  
4 members may disagree with your personal conclusion on that  
5 topic?

6 A. I'm certain of that.

7 Q. And, again, when Commissioner Clayton asked  
8 you to draw your legal conclusions as an economist or  
9 telecommunications staff member, do you believe there are  
10 other opinions on those topics that could be equally valid?

11 A. Yes.

12 MR. MEYER: No further questions.

13 THE WITNESS: Thank you.

14 JUDGE THOMPSON: Thank you, Mr. Meyer.

15 You may step down, sir.

16 THE WITNESS: Thank you, Judge.

17 JUDGE THOMPSON: We will take five minutes,  
18 and then we will come back with Mr. Peters on the stand.

19 (A BREAK WAS TAKEN.)

20 JUDGE THOMPSON: Mr. Peters, raise your right  
21 hand, please.

22 (Witness sworn.)

23 JUDGE THOMPSON: Would you please spell your  
24 last name for the reporter?

25 THE WITNESS: P-e-t-e-r-s.

1 JUDGE THOMPSON: You may inquire, Mr. Meyer.  
2 BILL peters, being sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. MEYER:

4 Q. Mr. Peters, could you also state your address  
5 for the record, please?

6 A. 200 Madison street, Jefferson City, Missouri  
7 65101.

8 Q. And by whom are you employed?

9 A. Missouri Public Service Commission.

10 Q. And in what capacity?

11 A. As an economist with the telecommunications  
12 department.

13 Q. Did you prepare the prefiled testimony in this  
14 case which has been previously marked for identification as  
15 Exhibit 4NP and HC, the rebuttal testimony of yourself?

16 A. That's correct.

17 Q. And do you have any corrections or additions  
18 you wish to make to that prefiled testimony at this time?

19 A. I do. On page 9, I have a table at the top,  
20 and the line I have SBC Missouri bolded, identified busy  
21 line interrupt rate of 2.31, and the line status  
22 verification rate 1.50, and those added together would be  
23 3.81. Those are the current rates, and throughout the rest  
24 of the schedules I have the proposed rates on the SBC side.  
25 And I would just change that to 2.49 for the busy line

1 interrupt rate and 1.62 for the status verification rate,  
2 and 4.11 for those rates combined, to be consistent with the  
3 rest of the schedules.

4 Q. And did you have any other corrections to  
5 make?

6 A. That's the only correction.

7 Q. Given that, are the answers that you've  
8 provided now true and accurate to the best of your knowledge  
9 and belief?

10 A. To the best of my knowledge.

11 Q. And if I were to ask you those same questions  
12 today contained in your prefiled testimony, would your  
13 answers be the same?

14 A. Yes, they would.

15 MR. MEYER: I would like to offer Exhibit 4NP  
16 and HC version into the record and tender the witness for  
17 cross-examination.

18 JUDGE THOMPSON: Thank you, Mr. Meyer. Do I  
19 hear any objection to the receipt of Exhibit No. 4?

20 (No response.)

21 JUDGE THOMPSON: Hearing no objections,  
22 Exhibit No. 4 is received and made a part of the record of  
23 this proceeding.

24 (EXHIBIT NO. 4NP AND HC WERE RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE THOMPSON: Cross-examination, looks like  
2 Mr. Dandino?

3 MR. DANDINO: No questions, your Honor. Thank  
4 you.

5 JUDGE THOMPSON: Mr. Fischer?

6 MR. FISCHER: Just briefly, your Honor.

7 CROSS-EXAMINATION BY MR. FISCHER:

8 Q. Good afternoon, Mr. Peters.

9 A. Good afternoon.

10 Q. On page 12 of your rebuttal testimony, at line  
11 18, you state SBC's proposed rates also seem reasonable when  
12 comparing across states since they are near the lower end of  
13 that continuum; is that correct?

14 A. That's correct.

15 Q. I had a question asked of me that I didn't  
16 have the answer to, and I'd like to clarify that for the  
17 record this morning, and that was, what were the rates of  
18 CenturyTel and Spectra? Those are included in your  
19 testimony on page 11; is that right?

20 A. I believe so.

21 Q. CenturyTel's rates are listed at 1.10 for busy  
22 line interrupt and 58 cents for line status verification,  
23 and I believe Spectra's are 95 cents and 50 cents for those  
24 same services; is that right?

25 A. That's correct.



1 Q. Mr. Peters, would you agree that CenturyTel  
2 and Spectra's rates for these services would seem reasonable  
3 when comparing across the state, since they are near the  
4 lower end of the continuum?

5 A. When comparing across the SBC states?

6 Q. All the states -- all the states that you  
7 have.

8 A. Well, they're -- they're lower than the  
9 proposed SBC rate, so I would say that they're even lower on  
10 the continuum.

11 Q. More reasonable?

12 A. I would say so.

13 MR. FISCHER: Okay. Thank you.

14 JUDGE THOMPSON: Sprint?

15 MS. HENDRICKS: No questions, your Honor.

16 JUDGE THOMPSON: Mr. Lane?

17 CROSS-EXAMINATION BY MR. LANE:

18 Q. Good afternoon, Mr. Peters.

19 A. Good afternoon.

20 Q. You testified one other time; is that right?

21 A. That's correct. I also filed testimony in  
22 other another case, but haven't been on the stand for it.

23 Q. So this is your second time testifying on the  
24 stand?

25 A. That's correct.

1 Q. Now, on page 7 of your rebuttal testimony you  
2 discuss that demonstrating the reasonableness of rates is a  
3 difficult proposition. Do you see that?

4 A. That's correct.

5 Q. You also assert that two different persons can  
6 analyze the same information and reach different  
7 conclusions, right?

8 A. Correct.

9 Q. Would that be true if both persons used the  
10 same factors or standards to measure reasonableness?

11 A. You mean if they use the same threshold for  
12 judging what's reasonable; for example, are these rates over  
13 a dollar, is that what you mean?

14 Q. Yes.

15 A. If there's a standard guideline?

16 Q. If there was a standard, whatever it was, if  
17 the two persons are utilizing the same standard, can they  
18 still reach different conclusions as to whether a particular  
19 rate is reasonable?

20 A. Well, I think if we had a set standard for  
21 reasonableness and there was evidence presented that's  
22 related to that standard, you would probably need to come to  
23 the same conclusion.

24 Q. Okay. And if the two different persons are  
25 applying two different standards, would you agree that it's

1 more likely that they would come to different conclusions?

2 A. That's correct.

3 Q. And if there's no standard at all that's set  
4 out in the statute for judging whether something is just and  
5 reasonable, would you agree that that would make it even  
6 more difficult to come to a rational decision?

7 A. I agree.

8 Q. Would you agree that Section 392.200.1 doesn't  
9 set out factors or standards to determine whether particular  
10 rates are just and reasonable?

11 A. My reading -- my layman's reading is 392.200.1  
12 just says that the Commission will make sure that the prices  
13 are just and reasonable. It doesn't say exactly how.

14 Q. Okay. Let's look at how rates used to be  
15 determined under a rate-of-return environment. Would you  
16 agree that in determining whether rates are just and  
17 reasonable under a rate-of-return environment is an easier  
18 task because there is an ultimate standard to apply in  
19 determining whether all the rates in their total are just  
20 and reasonable?

21 A. Yeah. Under the rate-of-return regulation  
22 setting, there are more clear guidelines how prices should  
23 be set and based on what criteria.

24 Q. Okay. And just and reasonable in that context  
25 means that on the whole the rates have to be such that they

1 give the company the opportunity to earn the revenue  
2 requirement that's found by the Commission, right?

3 A. I believe that that's the case.

4 Q. But when you take away that standard that says  
5 tie all rates back to an overall revenue requirement, then  
6 you're left with no clearcut items or factors to apply to  
7 determine whether any individual rate is just and  
8 reasonable, correct?

9 A. Right. The just and reasonable standard  
10 becomes further ambiguous.

11 Q. Let's look at the factors that you used.  
12 There's seven that you set out on page 7 of your testimony,  
13 correct, or six?

14 A. I'm reading six.

15 Q. My mistake. And would you agree with me that  
16 none of those six factors that are identified on page 7 of  
17 your rebuttal testimony are listed in the price cap statute?

18 A. Right. These factors weren't put together by  
19 consulting a price cap statute to find the standards.

20 Q. And where did they come from?

21 A. From discussions that we had as  
22 telecommunications staff and trying to ascertain, you know,  
23 what is -- what are just and reasonable rates and how would  
24 we determine that, you know, given the lack of clearcut  
25 guidelines.

1 Q. You knew the Commission wanted to have some  
2 evidence put forth on what just and reasonable rates might  
3 be, right?

4 A. Correct.

5 Q. And so you debated among yourselves, trying to  
6 come up with some factors that the Commission could  
7 consider, right?

8 A. What we found could best represent or best  
9 allow the Commission to determine if the rates are  
10 reasonable.

11 Q. Okay. And none of the factors that you came  
12 up with tie back in any particular way either to the price  
13 cap statute or to Section 392.200.1, right?

14 A. Not explicitly, no.

15 Q. Or implicitly, right?

16 A. A lot of things you can do if you imply.

17 Q. All right.

18 A. I don't know if I could say that.

19 Q. Don't know if they're implicitly there or not;  
20 is that a fair statement?

21 A. Correct.

22 Q. Okay. It's also fair to say that the factors  
23 that you developed are focused solely on the particular  
24 services at issue; busy line verification and line status  
25 verification and busy line interrupt?

1 A. Correct.

2 Q. For example, you looked at revenues and costs  
3 for line status verification and busy line interrupt, but  
4 not for all of the other services offered by SBC Missouri,  
5 right?

6 A. That's right.

7 Q. You also don't analyze the prices for basic  
8 local and switched access services under the price cap  
9 statute, right?

10 A. Right.

11 Q. Would you agree with me that how prices were  
12 established under rate-of-return regulation is an important  
13 factor in looking at the reasonableness of rates under the  
14 price cap statute?

15 A. I don't know if that's set forth in the price  
16 cap statute, but it seems like something -- it would be  
17 something that I reasonably -- that I would like to look at  
18 and determine whether these current rates are reasonable,  
19 well, how did they get there in the first place?

20 Q. The price cap statute took the existing prices  
21 that were in effect at the time that a company goes under  
22 price caps as the initial maximum allowable prices?

23 A. That's right. The prices one year prior.

24 Q. December 31st of the year prior?

25 A. Correct.

1 Q. All right. Would you agree that prices for  
2 basic local and switched access under the price cap statute  
3 is an important factor to consider in determining the  
4 reasonableness of non-basic rates and whether those prices  
5 are just and reasonable?

6 A. I guess I don't understand the question.

7 Q. If the Commission were to find that under  
8 rate-of-return regulation that the prices for basic local  
9 were established at a below cost rate and that price caps  
10 came in and took those rates and made them permanent except  
11 for adjustments as a result of CPI telephone service, that  
12 that's an important factor to consider in determining  
13 whether the rates for non-basic services are just and  
14 reasonable?

15 A. It would be -- would definitely be something I  
16 would like to consider when looking at the company as a  
17 whole.

18 Q. Because the company wouldn't be permitted to  
19 increase rates for basic local services up to a cost level  
20 under the price cap statute, right?

21 A. Right. And they get -- and the company gets  
22 revenues from both the basic services and the non-basic  
23 services.

24 Q. So the fact that rates for basic local service  
25 may be below cost would be something that the Commission

1 ought to consider in determining whether these particular  
2 rates for non-basic services are just and reasonable, right?

3 A. They certainly ought to recognize that.

4 Q. And since SBC Missouri has gone under price  
5 cap regulation, would you agree that the rates for basic  
6 service have gone down?

7 A. I agree.

8 Q. And as Mr. Unruh presented in his testimony,  
9 they decreased .92 percent in December of 2000, they  
10 decreased .75 percent in December of 2001, they increased  
11 .9 percent in December of 2002, and there was a filing  
12 before the Commission to decrease the rates .05 percent  
13 effective December of 2003, right?

14 A. I would like to agree with you if I could look  
15 at that specific --

16 Q. Sure. It would be page 8 of Mr. Unruh's  
17 direct.

18 A. Mr. Unruh testified that the rates were frozen  
19 until 2000. They were decreased by .92 percent in December  
20 2001 -- wait. In December 2000 the rates were decreased by  
21 .92 percent. In December 2001 they were decreased yet again  
22 by .75 percent. December 2002 rates were increased by  
23 .9 percent, and he testified that the overall effect of  
24 these changes is a decrease of approximately .77 percent.

25 Q. And then he testified today, did he not, that



1 there was an additional filing that was made that would  
2 decrease rates for basic local and switched access by  
3 .05 percent effective December of 2003, right?

4 A. That's correct, although I haven't seen that  
5 filing.

6 Q. And if the rates for basic service and  
7 switched access are going down, would you agree that the  
8 only revenue source to increase rates would be non-basic  
9 services?

10 A. If we assume that the only revenue that SBC  
11 receives is from either non-basic revenue or basic revenue,  
12 if Category A is decreasing, then, of course, the only way  
13 to increase the sum is to increase Category B.

14 Q. Right. Let me look at the factors that you  
15 lay out in your testimony. The first one was rate  
16 comparisons, and you explain in your schedule on table -- on  
17 page 8 of your testimony various rates charged by different  
18 IXCs, correct?

19 A. That's correct.

20 Q. And AT&T, CenturyTel and Sprint on the IXC  
21 side all have rates substantially greater than that proposed  
22 by SBC Missouri in this case, right?

23 A. I agree with that.

24 Q. For the same services, right?

25 A. Yes.

1 Q. And then for busy line interrupt, AT&T prices  
2 its service at \$19.98, CenturyTel at \$19.98 and Sprint at  
3 \$6.50, right?

4 A. Those are the rates listed in the schedule.

5 Q. And those rates were approved by the  
6 Commission or allowed to go into effect, right?

7 A. That's correct.

8 Q. If those rates were reasonable, would you  
9 agree that you can't say that SBC Missouri's rate of \$2.49  
10 for busy line interrupt is unreasonable?

11 A. If the only thing I was looking at, I guess,  
12 is two homogeneous services offered by two, I guess,  
13 companies on equal ground before the Commission and they  
14 were bringing these similar rate proposals to the  
15 Commission, I would say if the Commission approved the high  
16 rate, then they must approve the lower rate. The fact is  
17 the company's on -- well, in this schedule particularly, all  
18 interexchange carriers which have been treated differently  
19 by the Commission, and are under different regulatory  
20 authority.

21 Q. All right. But all of them are under  
22 Section 392.200.1, aren't they?

23 A. As far as I know, yes.

24 Q. Hasn't been waived for anybody, right?

25 A. No.

1 Q. And on the CLEC side and ILEC side, we have at  
2 least one company, ZTel, that charges a rate substantially  
3 above what SBC Missouri proposes to charge for both busy  
4 line interrupt and line status verification, right?

5 A. Well, I guess I wouldn't use substantially,  
6 but I would say it was definitely above that rate.

7 Q. Okay. And the Commission either had to  
8 approve those rates or allow them to go into effect, right?

9 A. That's correct.

10 Q. And would you agree with me that if the rates  
11 for ZTel, which are higher than those proposed by SBC  
12 Missouri, are just and reasonable under Section 392.200.1,  
13 then the same must be true for SBC Missouri's rates?

14 A. If -- if the Commission had approved the rates  
15 based on the sole criteria of 392.200.1 and, for example, in  
16 ZTel's case and they were going to use that threshold until  
17 this particular instance, I would answer yes.

18 Q. Okay. And Section 392.200.1 does apply to  
19 CLECs and to ILECs and to IXCs, right?

20 A. As far as I know.

21 Q. And doesn't lay out a different standard for  
22 prices for ILECs than it does for CLECs or IXCs, correct?

23 A. 200.1? Not that I'm aware of.

24 Q. Would you agree that the only way that you  
25 could come to a conclusion that SBC's rates for busy line

1 interrupt and line status verification are unreasonable  
2 while prices offered by IXCs and CLECs that are above that  
3 are reasonable is by applying different standards?

4 A. I suppose that would be true. The different  
5 standards might have something to do with whether the  
6 Commission would want to substitute competition for  
7 regulation wherever possible and those parts of the statute.

8 Q. But Section 392.200.1, as we indicated  
9 earlier, applies equally to all of the telecommunications  
10 providers in the state, right?

11 A. As far as I know. And I'm not a lawyer and,  
12 you know, I don't know how you -- legally how I used 392.1,  
13 together with -- I don't have the statute in front of me,  
14 but there's one provision in there -- I think it's 5 -- that  
15 says the Commission should allow competition to substitute  
16 for regulation.

17 Q. That's under Section 392.185, isn't it?

18 A. Okay. That's correct.

19 Q. And with regard to Section 392.200.1, the one  
20 that's at issue here, the use of the phrase just and  
21 reasonable applies to IXCs, ILECs and CLECs alike, correct?

22 A. To the best of my knowledge.

23 Q. And doesn't set out different standards for  
24 determining justness and reasonableness for one group of  
25 companies than for another, right?

1           A.       They're not different standards in that  
2 statute.

3           Q.       With regard to whether an SBC Missouri  
4 customer can utilize the line status verification and busy  
5 line interrupt services of an interexchange carrier, would  
6 you agree that that's something that's technically possible?

7           A.       Yes, definitely possible.

8           Q.       And they do that by dialing 0 minus, meaning  
9 dialing zero twice, right?

10          A.       That's correct.

11          Q.       And that's the way they reach the  
12 interexchange carrier that they've chosen?

13          A.       Correct.

14          Q.       So if a customer was satisfied with SBC  
15 Missouri's rates for busy line interrupt or line status  
16 verification, one alternative that customer has would be to  
17 utilize the same services offered by an interexchange  
18 carrier, correct?

19          A.       Yes, it's technically possible that they could  
20 do that.

21          Q.       And if we look through your schedule, you  
22 identify a number of IXC's with lower rates than those  
23 charged by SBC Missouri, correct?

24          A.       That's correct. I know my IXC list is smaller  
25 than the other lists.

1           Q.       And another alternative that a customer has if  
2 they were dissatisfied with the rates charged by SBC  
3 Missouri for line status verification and busy line  
4 interrupt would be to utilize the services of a CLEC,  
5 correct?

6           A.       I don't know if I'd really consider that the  
7 immediate choice. I could either use SBC or I could, for  
8 example, get TCG to use those services. The first example  
9 you gave, I have -- I have my local service through SBC and  
10 I can choose at that moment between either SBC or my  
11 interexchange carrier, but in the second example, I can  
12 choose based on busy line interrupt rates or line status  
13 verification rates.

14                   I don't know if I'd do that unless I got hit  
15 with a particularly high charge, but I would have to choose  
16 my local exchange carrier based on that particular service.  
17 It's definitely possible that you could choose your local  
18 exchange carrier based on that price. I don't see it as the  
19 same choice, though.

20           Q.       Okay. And I would disagree with that, but the  
21 customer has the choice in determining who he wants to have  
22 as his or her local exchange provider and can choose a CLEC  
23 that offers lower rates for some particular service that  
24 that customer finds is attractive or necessary or what have  
25 you, right?

1           A.       If that CLEC is available in the customer's  
2 area, then in the end the customers does make that decision.

3           Q.       Okay. The second factor that you utilize is  
4 cost. First, is it fair to say that the Commission has not  
5 looked at the cost for AT&T, CenturyTel Long Distance or  
6 Sprint, the interexchange carrier, or any of the CLECs, in  
7 terms of their offerings of line status verification and  
8 busy line interrupt?

9           A.       To my knowledge, they haven't looked at the  
10 costs.

11          Q.       Would you agree with me that it would be  
12 inappropriate to reject SBC Missouri's tariffs based on cost  
13 when the Commission didn't even look at the costs for the  
14 other companies that are offering line status verification  
15 and busy line interrupt?

16          A.       That, again, the answer would be yes, if you  
17 were applying the exact same standard to every company. And  
18 some of the companies you mentioned are interexchange  
19 carriers and SBC is an ILEC.

20          Q.       Now, these services that SBC Missouri offers  
21 are also offered in connection with long distance service,  
22 right?

23          A.       I don't understand what you mean. In  
24 connection meaning you can -- you can get these services  
25 from long distance carriers?

1 Q. If you want to buy line status verification or  
2 busy line interrupt in connection with a long distance call,  
3 intraLATA toll call, you can utilize SBC Missouri's services  
4 for that, right?

5 A. For an intraLATA call.

6 Q. IntraLATA toll call?

7 A. Right. The SBC customer dials zero, and it's  
8 my understanding that that same SBC operator will be able to  
9 process the request if the target party is in that caller's  
10 exchange or in another SBC exchange.

11 Q. So you can use it for both local and for  
12 intraLATA calls if you want the operator to do line status  
13 verification or busy line interrupt?

14 A. Right. And I would have to clarify the last  
15 answer that it would have to occur -- the SBC operator could  
16 process the request within the same LATA.

17 Q. Correct. And would you agree if you're  
18 applying the same just and reasonable standards under  
19 Section 392.200.1, and you look at cost as a factor, that  
20 you couldn't reasonably come to the conclusion that SBC  
21 Missouri's rates for busy line interrupt and line status  
22 verification are unjust and unreasonable because they exceed  
23 cost when you haven't examined the costs of the other  
24 carriers that offer the same service?

25 A. Again, if that just and reasonable standard is



1 my sole criteria for either approving or rejecting the  
2 rates. And I guess what you're saying is that in  
3 determining whether they're just and reasonable, I'm -- I  
4 will use the standard of cost, and in Case A, with  
5 considering homogeneous companies, I've approved the rate  
6 without -- approved a similar rate or the same rate, for  
7 example, without looking at the cost, then I would say it  
8 doesn't seem fair to not approve the rate in the second  
9 situation, because you looked at the cost and decided that  
10 there was some problem with it.

11 Q. And your Schedule 3 identifies more than  
12 50 companies that purchase operator services from SBC  
13 Missouri, correct?

14 A. Correct. There's quite a few.

15 Q. And the price that SBC Missouri charges for  
16 the average call for line status verification or busy line  
17 interrupt is substantially less than SBC Missouri's proposed  
18 retail rate, correct?

19 A. I'm not familiar with every particular  
20 agreement, but I know that many of these agreements are  
21 governed by the M2A, and if we would use that as the  
22 standard for the price SBC is charging the other carriers,  
23 then I would agree with your statement.

24 Q. So CLECs could utilize SBC Missouri's own  
25 operators and provide busy line interrupt and line status

1 verification services at rates less than SBC Missouri  
2 proposes to charge here, right?

3 A. Through -- through agreements with SBC, that's  
4 correct.

5 Q. Or they could use their own operators if they  
6 could do that on a less expensive basis, right?

7 A. Absolutely.

8 Q. Now, on page 16, you discuss the historic  
9 pricing under 18-309 and how that may make the relationship  
10 between cost and price reasonable for these services. Do  
11 you see that?

12 A. Yes.

13 Q. But you also make the statement that the  
14 Commission might not want to discourage competition by  
15 holding onto monopoly pricing philosophies. Do you see  
16 that?

17 A. That's correct.

18 Q. And that's the part I want to explore a little  
19 bit. Would you agree with me that 18-309 is not a decision  
20 that was made solely in a monopoly environment, but  
21 considered a competitive environment as well?

22 A. In 1977? I'm not sure exactly when MCA  
23 started offering long distance communication between Chicago  
24 and St. Louis. I think it was 1969 when they started doing  
25 that. I'm not sure the extent of the long distance market

1 at that time. I've actually forgotten the question.

2 Q. Okay.

3 A. I would like it read back.

4 JUDGE THOMPSON: Kellene, would you like to  
5 read back the question?

6 MR. LANE: I'll reask it.

7 BY MR. LANE:

8 Q. The 18-309 decision contemplated that services  
9 of SBC Missouri would be either competitive or discretionary  
10 or basic, right?

11 A. Right.

12 Q. And it set a pricing philosophy for  
13 competitive services by establishing a standard that said  
14 we'll price it at cost plus as much above cost as we can to  
15 maximize the contribution to basic local rates, right?

16 A. That's correct.

17 Q. And the only -- and the monopoly pricing  
18 characteristic of 18-309 would be the price of basic local  
19 service below cost, right?

20 A. I think the whole -- the whole regulation of  
21 the companies was what I'm characterizing as a monopoly  
22 pricing environment. We didn't see -- we didn't see the  
23 Telecommunications Act, which was to encourage competition  
24 in the telephone market, until 1996, and I'm not sure that I  
25 would believe that SBC was anything but a monopoly in 1977.

1           Q.       Okay. Let me try it this way. You say that  
2 you don't think the Commission should discourage competition  
3 by holding onto monopoly pricing philosophies. With that in  
4 mind, would you agree that the Commission should take steps  
5 to allow SBC Missouri to increase its basic local service  
6 rates to at least a cost level to encourage competition?

7           A.       If -- if the Commission wanted to encourage  
8 competition, I think that's well beyond the scope of this  
9 proceeding. It may actually be a significant tangent, but  
10 bringing rates closer to cost, I think, would be -- would be  
11 beneficial to bringing competition to consumers in Missouri.  
12 And one of the problems might be that competitors might not  
13 want to come into a small market in Missouri where the  
14 incumbent is charging a \$7 rate and where it would cost that  
15 company, for example, hypothetically \$35 to serve the  
16 customer.

17          Q.       And the converse of that is that the rates in  
18 urban areas, and particularly for business customers, were  
19 set substantially above their cost and that has the effect  
20 of encouraging competition in those areas, right?

21          A.       Well, I guess when you say encouraging  
22 competition, it's giving room -- having rates that are above  
23 cost, say that they are above cost, would give a competitor  
24 the opportunity, if they can provide the service for the  
25 same cost, that they could provide it to the customer for

1 slightly less than SBC is. And if that were the case, that  
2 SBC was pricing services above cost in whatever area that  
3 may be, that would give an opportunity for competitors, if  
4 they could do it at the same cost as SBC, to take some  
5 customers away.

6 Q. All right. Your next factor was revenue and  
7 you report declining revenues for SBC Missouri in the  
8 provision of line status verification and busy line  
9 interrupt, correct?

10 A. That's correct.

11 Q. And it wasn't clear to me what your conclusion  
12 was here. Are you indicating that the rate increase is  
13 unreasonable because revenues are decreasing?

14 A. No, I didn't indicate that.

15 Q. Okay. Is this essentially a nonfactor in this  
16 particular instance, the fact that revenues are declining,  
17 in terms of analyzing the justness and reasonableness of  
18 this price increase?

19 A. I think -- I think -- I guess I would need  
20 some more information for --

21 Q. That's what I need.

22 A. Well, I would need -- for example, I would  
23 need to know what's the -- what's the basis for SBC  
24 increasing the prices? Is their -- the reason they're  
25 increasing the price to increase the revenue? I guess that

1 could be one stipulated fact. And then I would need to  
2 know, well, what reasons -- what reasons do they have for  
3 this specific increase?

4 And the only thing I've gotten so far is,  
5 well, we can increase this by 8 percent because the law says  
6 we can increase it by 8 percent. And it doesn't give me  
7 enough information to tell whether this decreasing revenue  
8 should justify them increasing the rate.

9 Q. Okay. And I'm trying to analyze, and these  
10 are the factors that you presented that you think the  
11 Commission could consider if they want to evaluate the  
12 justness and reasonableness of it. And my question is, how  
13 does declining revenues play in your opinion? Does that  
14 make it -- does that make the price increase just and  
15 reasonable, unjust and unreasonable, or something else? I  
16 don't know.

17 A. I guess it depends on your criteria for what's  
18 reasonable. I can see -- I'm going to give you -- I'm going  
19 to try to answer your question. I see that the revenue is  
20 declining, and this is almost like when you were asking me  
21 about, well, if the non-basics were going down, what's the  
22 only way to increase the revenue? Or if the basics were  
23 going down, the only way to increase the revenue is to  
24 increase the non-basics.

25 And we see here the revenues for this service

1 are going down. Well, of course, the way to -- that might  
2 increase the revenue for the service would to be raise  
3 rates, but raising rates wouldn't definitely increase the  
4 revenue for the service.

5 Q. It depends on the elasticity of demand,  
6 doesn't it?

7 A. Right. And you have pro-- SBC has provided  
8 general operator services to Staff, but nothing specifically  
9 for this service. It's -- it's really hard to tell, based  
10 on the revenue, if it's reasonable. The only loose  
11 connection that you might be able to make is what I answered  
12 in that simple sentence, increasing rates is one possible  
13 way to increase revenue.

14 Q. So it may make the rate just and reasonable,  
15 but it certainly doesn't make if unjust and unreasonable?

16 A. I guess I may agree with that, unless I would  
17 be able to find that, well, these revenues are decreasing  
18 because -- because of the increases SBC has made in these  
19 services in the past and because -- well, they increased the  
20 rates, I'm not going to use the service. And the Commission  
21 may have some policy consideration where they would like  
22 customers to have affordable access to busy line interrupt.

23 Q. And you didn't make that finding here, right,  
24 that the rates had gone down because customers --

25 A. No. I couldn't make that finding with the

1 evidence I had.

2 Q. So based on the evidence that you have, to the  
3 extent the Commission should include revenues in its  
4 analysis of justness and reasonableness, it doesn't tell us  
5 that the rates are unjust and unreasonable?

6 A. Correct. I just wanted them to know that this  
7 is what's happening to the revenue from the services.

8 Q. Same thing on demand. You present some  
9 information concerning decreasing demand for SBC Missouri's  
10 line status verification and busy line interrupt, right?

11 A. That's correct.

12 Q. And again, it's fair to say to the extent  
13 that's a factor to be considered, it's something that might  
14 support a finding that the increase is just and reasonable,  
15 but it doesn't support a finding that the increase is unjust  
16 and unreasonable. Is that a fair statement?

17 A. I would say given the caveat of my last  
18 sentence about the revenue.

19 Q. And the caveat of your last answer was, if  
20 you'd done some analysis to make some findings, which you  
21 haven't done here, right?

22 A. And if there was some specific policy  
23 consideration that the Commission had for these particular  
24 services.

25 Q. Now, the next factor is the competitiveness of



1 line status verification and busy line interrupt, and your  
2 analysis consists primarily of quoting from this  
3 Commission's decision in Case No. TO-2001-467, right?

4 A. I do quote from that order.

5 Q. That case analyzed whether SBC Missouri should  
6 have complete pricing flexibility for its services, instead  
7 of remaining under price caps, right?

8 A. That's correct.

9 Q. And the Commission found the -- had the  
10 Commission found the services to be subject to effective  
11 competition, SBC Missouri would have been able to set prices  
12 at any level it wanted, even as high as the \$19.98 rate  
13 charged by AT&T and CenturyTel, right?

14 A. I guess theoretically, or the Commission could  
15 suspend it, saying that it wasn't just and reasonable.

16 Q. Okay. Would you agree with me that it doesn't  
17 make sense to say that a finding that SBC Missouri is not  
18 entitled to move out of price caps should be used to deny  
19 SBC the right to change rates under price caps? Is there a  
20 disconnect there?

21 A. Well, I don't think that's what I was --  
22 that's the finding I was attempting to make.

23 Q. Okay. It would be inappropriate, wouldn't it,  
24 to deny this particular price increase on the basis that  
25 busy line interrupt and line status verification is not

1 subject to effective competition sufficient to remove us  
2 from price caps at all, and use that to deny an increase  
3 that's otherwise permitted under price caps?

4 A. Okay. So what you're saying is my sole  
5 criteria for denying these price increases is that these  
6 services are not subject to effective competition, based on  
7 the Commission's order in this previous case, and I -- I  
8 don't think you can base your conclusion on just that case.

9 Q. Okay. To the extent we are referring to that  
10 case and it provides any guidance to us, it doesn't truly  
11 apply here because this is a test of whether we should be  
12 allowed to increase rates under price caps, not whether we  
13 should be entitled to be completely removed from price caps  
14 and charge whatever we want, right?

15 A. Well, it's my understanding that this  
16 proceeding has been initiated to examine the justness and  
17 reasonableness of these two price increases. And I think,  
18 clearly, knowing how competitive the services are is  
19 important to that analysis.

20 Q. All right. And I may not be communicating  
21 with you, but --

22 A. I don't think this -- I don't think this  
23 proceeding is what you said it was.

24 Q. All right. This proceeding is to examine  
25 whether the Commission has the authority to reject these

1 tariff increases, and if they do, whether they should  
2 approve them because they're nevertheless just and  
3 reasonable, right?

4 A. That's correct.

5 Q. And it would be inappropriate to analyze  
6 justness and reasonableness of the rates based on the  
7 conclusion that they're not subject to effective  
8 competition, when that standard is utilized to get us out of  
9 price caps and have them no longer apply, whereas here we're  
10 under price caps and trying to determine what the rates  
11 should be, right?

12 A. So your question is that should I use, in  
13 making my determination, the absolute threshold of are these  
14 services subject to this absolute competitive standard when  
15 deciding a smaller just and reasonable standard?

16 Q. No. I'm trying to ask about your  
17 recommendation in the case, and to the extent we're  
18 analyzing the competitiveness of the service, the fact that  
19 they're not subject to effective competition doesn't mean a  
20 whole heck of a lot, because that's a standard to get us out  
21 of price caps entirely, and the issue here is under price  
22 caption, whether we're permit to have an increase in prices.  
23 Do you agree with that?

24 A. I guess I don't think you should not use it --  
25 not use it as a factor in finding out if the services are

1 competitive, but I still think what -- I also think what  
2 you're saying is there's a greater -- I still think what  
3 you're saying is there's a greater absolute standard that  
4 the Commission determines, well, you can absolutely raise  
5 rates without this 8 percent criteria and, you know, because  
6 they didn't make that determination, does that mean that  
7 this 8 percent increase is unreasonable?

8           And I think I understand what you're talking  
9 about. And I -- I agree that you can't use that decision in  
10 the case, this sole criteria to determine whether these  
11 rates are just and reasonable.

12           Q.       Okay. That was my question. Thank you.

13           The next question is what you call critical  
14 service consideration. Would you agree that the Legislature  
15 imposed significant constraints on price increases for basic  
16 local and switched access under price caps, correct?

17           A.       Correct. There's standards for how the prices  
18 can be changed for those services.

19           Q.       And if the Legislature had wanted to include  
20 emergency services under the same constraints as basic  
21 local, it could have done so, right?

22           A.       I'm sure they had every opportunity to.

23           Q.       But the basic local service definition doesn't  
24 include operator services like line status verification or  
25 busy line interrupt, right?

1           A.       It doesn't include that explicitly, to my  
2 knowledge.

3           Q.       It explicitly finds that operator services are  
4 considered to be non-basic services, right?

5           A.       That's correct.

6           Q.       The last factor that you analyzed was  
7 what you called other considerations, and you referenced  
8 Section 392.515, right?

9           A.       That's correct.

10          Q.       And that statute applies to alternative  
11 operator service providers, right?

12          A.       Yes.

13          Q.       And under your -- under that statute, the  
14 legislation provides that rates are to be approved if  
15 they're less than the operator services of an interexchange  
16 carrier, right?

17          A.       I believe no higher than operator service  
18 rates of certificated interexchange telecommunications  
19 companies which were not alternative operator services  
20 companies.

21          Q.       Right. And the rates here would meet that  
22 test, right?

23          A.       If that was the standard we were applying,  
24 yes.

25                   MR. LANE: Thank you very much, Mr. Peters.

1 JUDGE THOMPSON: Thank you, Mr. Lane.

2 Questions from the Bench? Commissioner  
3 Clayton?

4 QUESTIONS BY COMMISSIONER CLAYTON:

5 Q. Bear with me just a second, Mr. Peters. I  
6 know we're getting close to five o'clock.

7 Mr. Peters, I know I've got one question, and  
8 it's coming to mind. I've been dying to ask it all day.  
9 You did some time in Armenia, didn't you?

10 A. Yes.

11 Q. Do they use price cap regulation in Armenia?

12 A. Not to my knowledge. The telephone system was  
13 state owned until, I believe, 1997 or 1998.

14 Q. Are you a lawyer, Mr. Peters?

15 A. I am not a lawyer.

16 Q. You say that with some pride in your voice.

17 A. I'm quite proud that I'm not a lawyer.

18 Q. Well, let's not get carried away. You have  
19 read the price cap statute, have you not, Section 245?

20 A. Yes.

21 Q. Do you believe it grants authority for the  
22 Commission to reject a tariff increase under this price cap  
23 section?

24 A. I think from what I heard this morning, the  
25 legal arguments from -- well, I guess I'll say it -- from

1 Mr. Dandino and everyone else, that both of their readings  
2 seem equally reasonable to me.

3 Q. So could I summarize that by stating that you  
4 believe that there's an ambiguity there?

5 A. Yeah, I guess I would say I don't know.

6 Q. Can I ask you how you retrieved all the data  
7 that you have on the different divisions of SBC, as well as  
8 other companies? How did you track down all that  
9 information on the cost -- or not the cost, but the price of  
10 these two services?

11 A. We issued data requests to Sprint, CenturyTel  
12 and SBC, and SBC provided us with all of the SBC information  
13 in my schedules, save PacBell in California. That's a --  
14 that's actually a CLEC that I found over the Internet on my  
15 own, their tariffed rates. And the other rates were taken  
16 from the tariffs downstairs here at the Commission.

17 Q. When you retrieved that data, did you also  
18 analyze the different regulatory structures in each of those  
19 states?

20 A. Well, yes. For example, in Arkansas where  
21 non-basic rates are basically deregulated -- and I believe  
22 these rates would fall into that category -- I noticed that  
23 the rates are something like \$6 and \$7 for these services.  
24 And I looked at that and I looked at, well, what are the  
25 interexchange carriers charging for this? Sprint's charging

1 6.50 for both the services in Missouri, and it kind of made  
2 me think that, okay, this is -- these are the prices that I  
3 would see if there was no regulatory constraint on the  
4 rates.

5 COMMISSIONER CLAYTON: I don't have any other  
6 questions, Judge.

7 Thank you, Mr. Peters.

8 JUDGE THOMPSON: Thank you, Commissioner  
9 Clayton.

10 Commissioner Gaw?

11 COMMISSIONER GAW: Thank you, Judge.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Mr. Peters, earlier you were having a  
14 discussion with counsel for SBC in regard to, I think,  
15 392.200. Do you recall some of that discussion?

16 A. Yeah. If you could be more specific, I'll let  
17 you know.

18 Q. Do you recall the general discussion?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. I'm trying to understand what you were saying  
23 there. Are you suggesting that you believe that this  
24 Commission's authority in regard to reviewing -- reviewing  
25 rates under the entire chapter of 392 that pertains to



1 telecommunications companies is the same for whether a  
2 company is determined to be competitive or not?

3           A.       I think the -- the question he was asking me  
4 specifically is does the specific statute 392.200.1 apply  
5 differently to CLECs, ILECs or IXCs. And I'm not a lawyer,  
6 and my lay reading of that is that it says the Commission  
7 will make sure that there's just and reasonable rates, and  
8 since I see no explicit -- nothing explicit in that section  
9 that says unless the telephone company is a CLEC or, you  
10 know, unless it's an IXC, then you apply this different  
11 standard of justness and reasonableness.

12                   If I look at that alone, then I would say,  
13 yes, that that would probably apply equally to everyone, but  
14 then I also think about, well, the Commission also has the  
15 duty to, as far as I understand, encourage competition  
16 wherever possible, and substitute that for regulation where  
17 possible. And I think that probably all the statutes go  
18 together, but I think his question was, does this -- the way  
19 I felt about it anyway -- does this specific statute tell  
20 the Commission to act differently if the company is a  
21 different type of company.

22           Q.       You were, in other words, answering the  
23 question as though 392.200.1 was the only consideration in  
24 determining whether or not the Commission treated those  
25 companies differently?

1           A.       Right. And again, I'm -- I'm not a lawyer,  
2   so --

3           Q.       I understand. I'm just --

4           A.       I don't know.

5           Q.       But you were making some testimony earlier in  
6   regard to that, and I have -- I have to see if I can  
7   understand what you're saying a little clearer. So in  
8   392.200.1, does it say anything about this Commission  
9   treating a company that's been deemed competitive  
10   differently than one that's, for instance, a small ILEC,  
11   still under regulated return status?

12                   Do you see anything in that section that says  
13   anything about treating those companies differently?

14           A.       Can I actually look at it? Because --

15           Q.       If you like, sure.

16                   MR. MEYER: May I approach the witness?

17                   JUDGE THOMPSON: You may.

18   BY COMMISSIONER GAW:

19           Q.       I believe you're being brought a copy of it.

20           A.       I don't see anything 392.200.1 that changes  
21   the guidelines for competitive or non-competitive companies.

22           Q.       But does the Commission not treat them  
23   differently?

24           A.       It's the fact that the -- a fact that the  
25   Commission does treat the companies differently.

1 Q. And they're treated differently not because of  
2 that particular section necessarily, are they? They're  
3 treated differently because of other sections within the  
4 chapter, isn't that true?

5 A. Well, definitely the authority comes from  
6 other parts of the statute.

7 Q. And in a -- your opinion that you -- that you  
8 stated earlier to Mr. Lane was only some non-legal lay  
9 opinion in regard to what you read that particular provision  
10 to mean without considering all of the other provisions in  
11 Chapter 392, isn't that -- is that what you were saying?

12 A. Well, I mean, I'm just trying to read the  
13 words and tell you what I think the words mean. And one of  
14 the things that Mr. Lane pointed out was that provisions of  
15 392.190 to 392.530 shall apply to all telecommunications  
16 service between one point and another within the state of  
17 Missouri and to every telecommunications company. And then  
18 he brings me to this specific statute and says, well, does  
19 this apply equally to every telecommunications company? And  
20 it's my understanding from reading the words that, well, it  
21 must.

22 Q. But you didn't look at 392.245.4, sub 5, did  
23 you?

24 A. When answering that question?

25 Q. I'm not reading that correctly. Hold on a

1 second. I think that's 4 -- I think that's 4, sub 5. I  
2 think it is.

3 Did you look at anything in 392.245 when you  
4 were rendering your opinion?

5 A. On that particular question?

6 Q. Yes.

7 A. No, I was just trying to, I guess, explain  
8 what the words on the page meant to me.

9 Q. All right. Just wanting to understand where  
10 you were coming from on it, Mr. Peters.

11 The issue of whether or not -- the  
12 telecommunications companies that you referred to earlier as  
13 IXC's that you did your research on, are those competitive  
14 companies?

15 A. Yes, they're competitive companies.

16 Q. They have competitive status?

17 A. That's correct.

18 Q. And is that -- and is that true of those  
19 services -- of all services of those interexchange  
20 companies?

21 A. Yeah. It's my understanding that if the  
22 company is competitive, all services within the company are  
23 also considered competitive.

24 Q. All right. And so the -- is there any -- all  
25 right. And is that the same status that SBC has in regard

1 to the services that are the subject of the tariffs at issue  
2 in this case?

3 A. I think it's been mentioned earlier that the  
4 Commission has determined that these two services are so  
5 closely tied to basic local that they're not subject to  
6 effective competition unless basic local is subject to  
7 effective competition.

8 Q. And there are some -- some cases where that's  
9 true, where there has been some determination by the  
10 Commission that in certain regions, residential or business  
11 basic local has been deemed to be competitive?

12 A. Correct. For business services in Kansas City  
13 and St. Louis and residential in the St. Charles and  
14 Harvester exchanges.

15 Q. That's not in front of us. That portion is  
16 not in front of us, is it?

17 A. I guess this price increase would apply  
18 equally across the board to all exchanges, so those four  
19 exchanges, I would suppose, are in front of us also.

20 Q. All right. So in this particular tariff, you  
21 think all of that's included, all of exchange -- all of the  
22 exchanges are included?

23 A. All of SBC's exchanges.

24 Q. But in those areas that you mentioned, those  
25 are -- there may be some portions of that that have been

1 deemed competitive?

2 A. That's correct.

3 Q. But -- and then some that have not been so  
4 deemed?

5 A. I would say the great majority.

6 Q. All right. Mr. Peters, if you could remind  
7 me, did you come to a conclusion in regard to whether or not  
8 the rates proposed for these services in issue are just and  
9 reasonable?

10 A. No, I did not.

11 Q. And the reason that did you not, or reasons?

12 A. I can't come to a clear threshold of where --  
13 where I can decide whether, based on the evidence I  
14 presented, where these rates become reasonable or  
15 unreasonable. To tell you the truth, I've been on the fence  
16 and I've been on the reasonable side during this hearing and  
17 on the unreasonable side during this hearing. I guess  
18 absent clear guidance of how to determine what is a just and  
19 reasonable rate, I'm forced to make a decision. If I had to  
20 go to the polls and vote for one candidate or the other, the  
21 lesser of two evils, I don't know which I would choose.

22 Q. I want to clarify why you're on the fence on  
23 this, for purposes of understanding what's impacting your  
24 decision. Is your decision or lack thereof impacted by not  
25 being aware of what factors to analyze, because of a lack of

1 guidance up to this point from any authority?

2 A. Well, I think it -- I definitely understand  
3 some factors that I would like to look at personally, and  
4 those are things that I've presented and Chris Thomas has  
5 presented in his testimony.

6 Q. Let me stop you for a moment. Those factors  
7 that are listed in your testimony and in Witness Thomas'  
8 testimony, are those factors the ones that you would  
9 recommend that the Commission look at if the Commission were  
10 to determine that it should, in some circumstances, examine  
11 whether or not rates are just and reasonable outside of the  
12 price cap provisions?

13 A. I would say that the Commission should look at  
14 those factors. I would also say that the Commission may  
15 decide that it needs to look at these services as if it's  
16 going to make these determinations as part of the whole of  
17 SBC. And you need to know a lot more information than just  
18 the prices of these services and these services in other  
19 states if you make that determination, which I'm not a  
20 lawyer, but I think that, you know, the price cap law says  
21 that the company will not be subject to rate-of-return  
22 regulation and part of rate-of-return regulation is taking  
23 into account all those factors. It gets kind of hairy.

24 Q. What other things would you recommend that  
25 this Commission look at, other than what you have in your

1 testimony?

2 A. I guess that comes down to the answer to  
3 Mr. Thomas' question at the end of his testimony, does the  
4 Commission just look at these rates and these rates alone?  
5 And I think if the Commission decides that it does have the  
6 authority or it does just look at these rates and these  
7 rates alone, I think what we've presented is -- is pretty  
8 sufficient information to determine if they're reasonable.

9 It's like -- I guess I would think, what  
10 information do I need to know to decide where I'm going to  
11 buy my computer from, if I'm going computer shopping. If I  
12 know the rates of all the other dealers that are selling the  
13 same homogeneous machine, then I think I have a good basis  
14 for deciding who to purchase it from in the first place.

15 But if -- if you decide -- which is an equally  
16 valid decision -- that while you have to take into account  
17 that these rates and these revenues effect the company as a  
18 whole, then you need a lot more information about the whole  
19 of SBC's operations.

20 Q. But as an economist -- you are an economist,  
21 isn't that true?

22 A. That's correct.

23 Q. As an economist, are the things that are  
24 listed in your testimony and in Witness Thomas' testimony,  
25 taken together, a reasonable way for this Commission to



1 analyze whether or not rates are just and reasonable?

2 A. I guess as an economist I would have to answer  
3 that I think you -- I would answer Chris' question in his  
4 testimony that in order to determine these rates are just  
5 and reasonable, I need to look at everything.

6 Q. And everything means what in the scope of your  
7 answer?

8 A. Oh, I would need to look at SBC as a whole to  
9 decide if those rates are reasonable. I couldn't just look  
10 at the individual rates, knowing that that they were set in  
11 a manner that had those prices above cost so it could  
12 support these basic local services that could be priced  
13 below cost and now the company is forced to -- I guess  
14 directed by statute to a .77 percent decrease since 1984 in  
15 those services. I don't think it's fair to the company to  
16 just look at the one rate.

17 Q. Mr. Thomas, if you were to -- excuse me.  
18 Mr. Peters. I'm sorry. If you were to assume that the  
19 Legislature had set some of sort of policy that rates that  
20 were in effect were going to be assumed to be appropriate in  
21 1996, is it possible to analyze whether or not those rates  
22 have become -- are not appropriate just based upon viewing  
23 the change in those rates since 1996?

24 A. I think if all the prices were determined to  
25 be appropriate at that time in 1996, then -- well, in

1 analyzing these prices, this price increase, I would also  
2 have to know what are all -- what are all the price  
3 decreases or increases based on the basic category and how  
4 has that affected the company and what are all the increases  
5 or decreases in the non-basic category and how has that  
6 affected the company in order to -- in order to be fair.

7 Q. Is that all not a matter of record?

8 A. I think the absolute increases or decreases  
9 are a matter of record, but how they've affected revenue and  
10 how they've affected the company, I don't think that's a  
11 part of the record.

12 Q. Okay. Well, are you suggesting that the only  
13 way you can do that is through a full-blown rate case? Is  
14 that what you're suggesting to me?

15 A. I suppose I'm suggesting the only way to be  
16 fair to the company is through something that looks like a  
17 full-blown rate case.

18 Q. All right. If that's -- if --

19 A. And it's sort of a -- it's sort of what, I  
20 guess, Paul Linn was getting at. Well, of the Commission  
21 can look at these rates and say, well, they're above cost  
22 and they shouldn't be above cost, so that's not reasonable,  
23 then the company should be equally able to come in and raise  
24 their basic local rates that are below cost to cost based  
25 rates. It seems fair.

1 JUDGE THOMPSON: Do you need to quit?

2 COMMISSIONER GAW: We can continue in the  
3 morning. I'll just stop.

4 JUDGE THOMPSON: Thank you, Commissioner.

5 We will adjourn at this time and return  
6 tomorrow at 8:30. Tomorrow at 8:30 with Mr. Peters back on  
7 the stand and we will continue with questions from the Bench  
8 at that time.

9 Thank you.

10 WHEREUPON, the hearing of this case was  
11 recessed until October 28, 2003.

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