

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

October 28, 2003

Jefferson City, Missouri

Volume 3

In the Matter of Southwestern Bell) Case No. IT-2004-0015
Telephone Company, d/b/a SBC)
Missouri's Proposed Revised Tariff)
Sheet Intended to Increase by Eight)
Percent the Rates for Line Status)
Verification and Busy Line)
Interrupt as Authorized by Section)
392.245, RSMo., the Price Cap)
Statute.)

BEFORE: _____
KEVIN A. THOMPSON,
DEPUTY CHIEF REGULATORY LAW JUDGE.
STEVE GAW,
COMMISSIONERS.

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

287
ASSOCIATED COURT REPORTERS
573-636-7551 JEFFERSON CITY, MO
573-442-3600 COLUMBIA, MO

1 JUDGE THOMPSON: Mr. Peters is on the stand.
2 I'll remind you you're still under oath, sir.
3 Before we begin, Mr. Dandino brought to my
4 attention that some of the hard copies of Ms. Meisenheimer's
5 testimony that were supplied to counsel earlier than
6 yesterday may not match the EFIS version perfectly. He has
7 corrected hard copies for those of you who want them. I
8 would just urge you to please cite from the EFIS version of
9 Ms. Meisenheimer's testimony.
10 Of course, you're not briefing after this, so
11 I don't know. It's really not that big a deal, but just to
12 pass that onto you.
13 Commissioner Gaw has not made it in yet, so I
14 will open with questions from the Bench. And, Mr. Peters, I
15 won't excuse you. Okay? So when Commissioner Gaw gets
16 back, we'll call you back to the stand and he can complete
17 his questions from the Bench. All right?
18 BILL PETERS, having been previously sworn, testified as
19 follows:
20 QUESTIONS BY JUDGE THOMPSON:
21 Q. Okay. Mr. Peters, I see from your testimony
22 that you have a masters degree in applied economics; is that
23 correct?
24 A. Correct.
25 Q. And your particular area of study, in fact,

1 was utility regulation; is that correct?

2 A. That's correct.

3 Q. And so did you learn about rate of return

4 regulation, the theory and practice of it?

5 A. Yes, we did.

6 Q. And did you learn about price cap as an

7 alternative means of regulation?

8 A. We learned about price cap as well.

9 Q. Okay. And would you agree with me that the

10 basis that underlies traditional rate of return or cost of

11 service regulation is, in fact, the costs incurred by the

12 utility in providing the service?

13 A. That's correct.

14 Q. Now, is that also true in price cap

15 regulation?

16 A. Price cap regulation is -- the company's not

17 regulated in that manner. They're just -- I mean, as we see

18 in our state, the prices were set at a particular level and

19 then they're allowed to increase or decrease depending on

20 whatever criteria the regulators have put into the law.

21 And in some cases, if the company earns a

22 certain amount of profit, some sharing will go back to the

23 consumers and some -- some of that profit will go to the

24 company. In some cases, it will all go to the company. And

25 in some cases there's no sharing at all, like in Missouri.

1 Q. I see. So, in fact, there are different
2 schemes of price cap as it's been implemented in different
3 states?

4 A. Oh, as we've seen. And my colleague, Chris
5 Thomas' testimony, has a list of -- well, a summary of price
6 cap regulation in the rest of the states.

7 Q. This TV show production is really just not
8 what it's cracked up to be. Those of you with children
9 thinking about getting into TV, don't. Don't let them.

10 Would you agree with me that in price cap
11 regulation, the focus instead is on the reasonableness of
12 prices as measured by some sort of objective economic
13 criteria?

14 A. Well, I don't know if the -- the objective of
15 price cap is -- well, of course -- of course, when they set
16 the prices, they want to set the prices reasonable. And --
17 and whatever criteria the regulators choose, they would like
18 the prices to be reasonable.

19 But I think the reason for switching to an
20 alternative form of regulation is to try to give the utility
21 better opportunity to invest and innovate by allowing them
22 to keep more of their revenues as profits. That gives them
23 that incentive.

24 Q. Okay. I'm trying to change the camera view
25 here and not having a lot of success with it.

1 JUDGE THOMPSON: I think that's all the
2 questions that I have. Thank you. As I said, you're not
3 excused. We'll bring you back when Commissioner Gaw gets
4 back.

5 Our next witness, I believe, is yours,
6 Mr. Dandino.

7 MR. DANDINO: Yes.

8 MR. MEYER: Your Honor, just to clarify, I
9 assume the Staff will do redirect at the conclusion of all
10 questions for Mr. Peters?

11 JUDGE THOMPSON: You're correct. We can't do
12 the recross based on questions from the Bench until, in
13 fact, the questions from the Bench are completed. And we
14 can't do redirect until we've done recross based on
15 questions from the Bench.

16 So at this point we just have to simply put
17 Mr. Peters back into the on-deck box while we turn to the
18 examination of Ms. Meisenheimer.

19 Hang on just a minute while I finish this
20 message to our television technician.

21 Okay. Thank you.

22 (Witness sworn.)

23 JUDGE THOMPSON: Thank you very much. Would
24 you please spell your last name for the reporter.

25 THE WITNESS: M-e-i-s-e-n-h-e-i-m-e-r.

1 JUDGE THOMPSON: Thank you. You may inquire,
2 Mr. Dandino.

3 MR. DANDINO: Thank you, your Honor.

4 BARBARA A. MEISENHEIMER testified as follows:

5 DIRECT EXAMINATION BY MR. DANDINO:

6 Q. Please state your name and position for the
7 record, please.

8 A. My name is Barbara Meisenheimer. I am chief
9 economist in telecommunications for the Missouri Office of
10 the Public Counsel.

11 Q. And, Ms. Meisenheimer, did you cause to be
12 filed with the Commission Rebuttal Testimony of Barbara A.
13 Meisenheimer which has been marked for identification
14 purposes as Exhibit 5 in this proceeding?

15 A. Yes.

16 Q. And do you have any corrections to that?

17 A. Yes. I have two.

18 Q. Please identify them by page and line number.

19 A. The first is on page 6, line 8. The word
20 "its" should be replaced by the word "it." On page 11, line
21 14, I would like to insert the word "gave" after the word
22 "rebalancing" and I would like to delete the word "gave"
23 after the word "carriers."

24 Q. Does that complete your corrections?

25 A. Yes, it does.

1 Q. As corrected, is the testimony contained in
2 Exhibit 5 true and correct and accurate, to the best of your
3 information, knowledge and belief?
4 A. Yes, it is.
5 Q. And if I asked you the questions that are
6 contained herein today, would your answers be substantially
7 the same?
8 A. Yes, they would.
9 MR. DANDINO: Your Honor, at this point I'd
10 like to offer Exhibit 5.
11 JUDGE THOMPSON: Very well. Do I hear any
12 objections to the receipt of Exhibit 5?
13 MR. LANE: Yes, your Honor.
14 JUDGE THOMPSON: Yes, sir.
15 MR. LANE: I have an objection to a portion of
16 the testimony, which would be found on page 11, lines 9
17 through 19.
18 JUDGE THOMPSON: Hang on just a sec.
19 MR. DANDINO: Is that 11, 9 through 14?
20 MR. LANE: Page 11, lines 9 through 19.
21 JUDGE THOMPSON: Why don't you sit down,
22 Mr. Lane, and talk into the microphone so I can hear you
23 better.
24 Thank you. What page and what lines?
25 MR. LANE: Page 11, lines 9 through 19.

1 JUDGE THOMPSON: Yes, sir. Very well. And
2 what is your objection?

3 MR. LANE: That portion of Ms. Meisenheimer's
4 testimony purports to state what unspecified people and
5 companies told the legislature in 1996, but doesn't identify
6 who they are or when it was said. And as such, it's both
7 irrelevant and it's hearsay.

8 JUDGE THOMPSON: Very well.
9 Mr. Dandino?

10 MR. FISCHER: CenturyTel will join in that
11 objection.

12 JUDGE THOMPSON: CenturyTel what? Excuse me?

13 MR. FISCHER: CenturyTel will join in that
14 objection.

15 JUDGE THOMPSON: Very well.

16 MR. DANDINO: Your Honor, as an expert
17 witness, Ms. Meisenheimer can rely upon matters which are
18 hearsay. Also, this is offered to show her understanding of
19 what occurred and what the history of the regulation was.
20 And I believe it is relevant and I believe that it should be
21 allowed. And I think if -- to the extent that the
22 Commission wants to attach some weight to it, whatever
23 weight they want to, they can do so.

24 JUDGE THOMPSON: Mr. Lane?

25 MR. LANE: Yes, your Honor. Missouri does not

1 maintain a legislative history and the Commission is to
2 interpret the meaning of the statute, as are the courts,
3 based on what the legislature provided in the statute
4 itself.

5 Recitations of what unstated people and
6 unstated companies on unstated dates allegedly said to some
7 unspecified legislators does not pass the test for
8 relevance, does not pass the test for hearsay. No one has
9 the opportunity to respond to allegations that are made that
10 don't say who made the assertions, when they made them, i n
11 what context and to whom.

12 JUDGE THOMPSON: Very well. I will receive
13 the challenged lines for the limited purpose of
14 demonstrating the basis on which Ms. Meisenheimer formed her
15 expert opinion. I will not receive it as evidence of what
16 actually happened. Okay? So I guess the objection is
17 sustained to that degree.

18 You may proceed.

19 Any further objections to the receipt of
20 Exhibit No. 5?

21 Hearing none, the exhibit is received subject
22 to the limitation I just announced.

23 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

24 JUDGE THOMPSON: Are you tendering the
25 witness?

1 MR. DANDINO: Yes, your Honor. I tender the
2 witness for cross-examination.

3 JUDGE THOMPSON: Thank you. And I believe,
4 Mr. Meyer, you're first.

5 CROSS-EXAMINATION BY MR. MEYER:

6 Q. Good morning.

7 A. Good morning.

8 Q. Ms. Meisenheimer, your testimony was filed at
9 the same time as Staff filed its testimony in this matter.
10 Do you disagree with any of the factual statements in
11 Mr. Thomas' or Mr. Peters' testimony, or at least I guess I
12 could limit that by do you have any material disagreements
13 with their factual statements?

14 A. I don't have any material disagreements with
15 the economic indicators that they provided in their
16 testimony.

17 I do have a disagreement with material that I
18 don't think is relevant to this proceeding with respect to
19 Case 18-309 and their characterization of the relationship
20 between cost and prices.

21 Q. On page 6 of your testimony at lines 17 and 18
22 you reference that -- or I guess I should say the link the
23 concept of just and reasonable rates with the cost of
24 service and reference Section 392.200.1. I'll let you get
25 there.

1 A. Yes.

2 Q. Okay. Could you explain a little bit more

3 about why you've linked those two concepts together?

4 A. From an economic perspective, efficiency is

5 maximized where prices approximate cost. Now, certainly

6 that must be tempered by social considerations. However,

7 under competition, under price cap regulation or under rate

8 of return regulation, there are mechanisms by which prices

9 can be designed to approximate cost. Would you like me to

10 expand on that?

11 Q. Sure.

12 A. In a competitive market, the forces of

13 competition drive prices toward cost. Under a price --

14 price cap mechanism, a safeguard of a maximum allowable

15 price, whether it be for individual services or a basket of

16 services, can be established. Other protections might

17 include things such as a sharing, a rebasing at some point

18 in time.

19 But the fundamental mechanism of price caps,

20 its primary purpose, in my opinion as an economist, is to

21 allow an incumbent to match price decreases generally that

22 they're driven to by competitive forces. So, in other

23 words, to compete they need the ability to adjust prices.

24 Generally we would hope that that would be downward.

25 Under rate of return regulation, the

1 regulator, after reviewing the cost of service, determines
2 what is an appropriate amount of rate base and a revenue
3 requirement and then sets rates in a manner that is designed
4 on an overall basis to recover that revenue requirement. So
5 in that case there is more emphasis on -- that in total the
6 company's prices approximate their cost or, in fact,
7 hopefully equal their cost.

8 Q. Going back more from a historical perspective,
9 do you agree that coming into the price cap era for
10 Southwestern Bell, that there had been a three-category
11 method in setting the SBC rates that we have previously --
12 as you heard previously discussed in that matter?

13 A. I agree that there was a process by which
14 three categories of services were identified. And I would
15 be happy to provide my understanding of how each of those
16 prices -- or how the price for each category was set.

17 Q. Actually, let me ask you this question. In
18 your testimony, you did not actually mention Case 18-309.
19 Is there a reason why you did not mention that case?

20 A. I think it's irrelevant is why I didn't
21 mention it.

22 Q. On page 7 you do have a reference to historic
23 regulation of Southwestern Bell at the bottom around --
24 starting around line 19. Could you explain a little bit
25 about what your view is on the relevancy of that historical

1 regulation setting?

2 A. The reason that I included a discussion of
3 rate of return regulation is to put it in context with
4 respect to a movement toward price cap regulation.

5 Historically, the existence of a monopoly -- a
6 regulated monopoly that exists-- characteristics that are
7 termed natural monopoly provides the basis by which we would
8 want to transition through price cap regulation toward
9 competitive markets. So that is the context in which I
10 included a discussion of historic rate of return regulation.

11 Q. Okay. Later in your testimony I know you have
12 a reference to the concept that the price that was
13 charged -- I think I'm restating this correctly -- was
14 probably in line with the cost of these particular services
15 circa 1999. And that you also have a reference to the fact
16 that labor rates have gone up about 5 percent. And I
17 apologize. I don't have the exact cite in your testimony.
18 I think it's probably around page 12.

19 A. Page 14.

20 Q. Page 14. Okay. Is it fair to say -- and I
21 think this was referenced in Mr. Thomas' testimony -- the
22 company would have also had productivity gains over that
23 same time period, in your opinion?

24 A. They -- I -- I do believe that they would have
25 had productivity gains related perhaps to improvements in

1 technology. Now, the 5 percent that I identified as an
2 increase in cost related to labor, I believe that that would
3 have actually implicitly reflected any productivity gains by
4 the workers.

5 Q. In your testimony you note that if substantial
6 competition exists, there would be no need for a cost study
7 or other similar evidence in this matter. Could you define
8 a little bit more what you mean by the concept of
9 substantial competition?

10 A. Well, certainly where there is a greater
11 degree of competition -- and that could be characterized by
12 improved similarity between the products that are offered by
13 various carriers, more carriers potentially providing in the
14 market, those are things that could increase the level of
15 competition.

16 But where there is a greater level of
17 competition -- and I said substantial competition meaning as
18 you move toward something that is effectively competitive,
19 if you will, that's a term that we've used in these
20 proceedings in the past -- in Commission proceedings in the
21 past.

22 As you move toward competitively effective --
23 or effectively competitive markets -- I think I've lost
24 where I was at. Could I ask you to ask me the question
25 again?

1 Q. I think you were going towards a definition of
2 substantial competition or effective competition as you
3 didn't use in your testimony but as you just stated here.

4 A. Yes. So substantial competition I would
5 characterize as meaningful competition between a number of
6 providers similarly situated in terms of their -- their cost
7 of production, their availability of the service, customers'
8 awareness of the service and other characteristics.

9 Q. Thank you. Ms. Meisenheimer, are you familiar
10 with the recommendations on page 16 of Mr. Thomas'
11 testimony, specifically the suggestions by Staff of what
12 possible examinations the Commission might make depending
13 upon how it determines to proceed in this matter?

14 A. I -- I see on page 16 a number of if-thens.

15 Q. Right. I guess my question is essentially, do
16 you have any opinion on these proposals or, for example,
17 which one you would believe on behalf of -- in your expert
18 opinion what would be the most appropriate outcome or test
19 for the Commission to use in determining whether or not the
20 rates are just and reasonable in this matter?

21 A. I-- I'd be happy to go through each one. The
22 first, which is identified at line 1, I disagree with. Our
23 office disagrees with. So from both an economic and a legal
24 perspective, we don't think that that is the appropriate
25 choice for the Commission.

1 JUDGE THOMPSON: What page are you on?

2 THE WITNESS: I'm on page 16, line 1 is the

3 first alternative that I just spoke to.

4 JUDGE THOMPSON: Very well. Please proceed.

5 THE WITNESS: The alternative that begins at

6 line 3, which suggests that if the Commission determines it

7 has the authority, then it must also determine if it has the

8 authority to examine each rate increase individually or if

9 it must examine the overall profitability of price caps.

10 I agree with that in -- to the extent that the

11 Commission has the authority to examine proposed price

12 increases. I believe that in this instance the Commission

13 should look at the rates individually and to the extent that

14 the final phrase in that alternative indicates in some

15 manner that the Commission should do something like it used

16 to do with rate cases, I completely disagree that the

17 Commission should -- should do that with respect to these

18 particular services that are in front of the Commission

19 today.

20 BY MR. MEYER:

21 Q. Do you have an opinion on the next scenario?

22 A. With respect to the next scenario, I agree

23 with the process in terms of that the Commission does have

24 the authority to examine the proposed nonbasic rate

25 increases.

1 I would strengthen the statement that's --
2 that's numbered 2 in that they should look at the rates
3 individually. And regarding the information that Staff has
4 presented in its testimony regarding economic indicators and
5 price levels of alternative services, I think that to
6 differing degrees for various services, the information that
7 the Staff has provided -- the types of information the Staff
8 has provided would be relevant.

9 Q. When you say "to differing degrees," is there
10 any particular hierarchy that you believe should be followed
11 in determining what the most important factors are, for
12 example?

13 A. Yes, I do.

14 Q. Would you like to elaborate?

15 A. With respect to services that are subject to
16 significant competition, I think that we can have a greater
17 level of confidence that prices will be just and reasonable.
18 Where there is less competition, I think that there -- that
19 it becomes more imperative than to look at things simply
20 like the prices that are charged by alternative carriers or
21 for similar services.

22 So, in other words, where there is a great
23 deal of competition, I think prices of other service
24 providers have some value. In cases where there is lack of
25 competition, I don't think -- or a lack of substantial

1 competition, I don't think the prices of other providers
2 have much value.

3 With respect to price -- a price index, along
4 a similar line, Consumer Price Index that is service
5 specific, such as for telecommunications, would have more
6 benefit to me in terms of my evaluation in the event that
7 there was a great deal of competition for the services that
8 gave -- gave rise to the average prices that customers pay.

9 In cases where there is lack of competition
10 simply because consumers on average are paying higher prices
11 doesn't necessarily mean that those prices are just and
12 reasonable. So that's why I said that it -- for -- for
13 different services, some of those factors that the Staff
14 identified may be more relevant than others.

15 GDB -- GDP indicator as an indicator of
16 overall economic performance, I guess to an even more
17 limited degree you could argue that it has some economic
18 value in terms of what level of prices might be viewed as
19 reasonable in the economy overall. In my testimony, the
20 economic indicator that I emphasized was the labor cost
21 specific to operator services.

22 In this instance where I believe that there is
23 not substantial competition for these services as a whole, I
24 think that the actual cost of providing -- or the cost of
25 providing -- or the cost of the lion's share of providing

1 this service is the best indicator. And that's why I
2 emphasized the one that I did.

3 However, as I said, I believe that other
4 indicators that the Staff has provided have -- have some
5 relevance.

6 Q. And regarding the last alternative in
7 Mr. Thomas' testimony at page 16, line 12, do you have an
8 opinion on that?

9 A. I do not believe that it is appropriate to
10 examine the company's overall profitability in the context
11 of evaluating the prices for individual services. I mean,
12 the price cap structure that we're operating under -- I'm
13 sorry. Would you like me to explain?

14 Q. If you think an explanation is necessary,
15 explain what I guess is -- I guess I can't -- well, I can
16 ask you. Explain what?

17 A. Why I think it is appropriate for the
18 Commission to review the company's overall profitability in
19 the context of evaluating these particular service prices.

20 Q. Why you think it is not appropriate?

21 A. Yes.

22 Q. Yes, please explain.

23 A. I think that it is inappropriate to look at
24 the company's overall profitability because, number one,
25 that's something that at least at this time is not the

1 structure we're operating under.

2 With respect to the price cap structure, there
3 is a maximum allowable price consistent with provisions in
4 the statute. So long as the company is charging prices
5 below that maximum, as I said, within the bounds of the
6 other sections of the statute, then the overall
7 profitability is -- isn't the relevant factor. It is the
8 price of this service or that service.

9 And that makes sense from an economic
10 perspective because you would -- you would want to
11 acknowledge -- and I think that the system we're operating
12 under does -- that different services will become
13 competitive at different times, some, if at all, in the
14 reasonable future. And I'll stop there.

15 MR. MEYER: And that is all the questions that
16 I have. Thank you.

17 JUDGE THOMPSON: Thank you, Mr. Meyer.
18 Mr. Fischer?

19 MR. FISCHER: Your Honor, I'll pass the
20 witness at this time. Thank you.

21 JUDGE THOMPSON: Thank you.

22 Ms. Creighton Hendricks?

23 MS. CREIGHTON HENDRICKS: No questions.

24 JUDGE THOMPSON: Mr. Lane?

25 CROSS-EXAMINATION BY MR. LANE:

1 Q. In response to a question from Mr. Meyer, you
2 indicated that you did not agree with the concept that the
3 Commission should look at the overall profitability of a
4 company's services under price caps in determining whether
5 to approve a specific price increase for nonbasic services.
6 Correct?

7 A. That's true.

8 Q. And that's because you think it's beyond the
9 authority of the Commission?

10 A. I think that is not the path that we have gone
11 down --

12 Q. That's not my question.

13 A. -- up to this point.

14 Q. I'm asking whether you believe it's in the
15 authority of the Commission to do it?

16 JUDGE THOMPSON: Ms. Meisenheimer, you need to
17 answer yes or no, if possible. If the question calls for a
18 narrative, then you may provide a narrative, but otherwise,
19 yes, no or I don't know is the favored response.

20 THE WITNESS: I believe under certain
21 circumstances, it would be appropriate for the Commission to
22 do it, yes.

23 BY MR. LANE:

24 Q. And the question is, do you believe the
25 Commission is authorized to do it?

1 A. Yes.

2 Q. And, in your view, the meaning of the
3 provision in Section 392.245, subsection 7 is what?

4 A. Section 392.245, part 7 refers to Section
5 392.240, Section 1. This, it is my understanding, is the
6 process by which a price cap company would not be subject to
7 the same type of overall rate of return review as it had
8 been previously under rate of return regulation.

9 Q. And how does an overall profitability analysis
10 differ from an overall revenue requirement analysis under
11 Section 392.240.1?

12 A. As I began to explain, I believe that the
13 Commission has authority to determine when to use price cap
14 regulation. And to the extent they choose to use price cap
15 regulation and exercise the authority to use it, then they
16 would no longer apply these sections.

17 However, the history of Public Counsel's
18 position on this issue is that prior to implementing price
19 cap regulation, the Commission could have done a rate review
20 of Southwestern Bell and --

21 Q. I'm not interested in what your position was
22 in the past.

23 A. Okay.

24 Q. On page 5 and 6 of your Rebuttal Testimony you
25 discuss the impact of Section 392.185 on this case.

1 Correct?

2 A. Yes.

3 Q. Would you agree with me Section 392.185 is a
4 general statement of purpose or intent of the legislature?

5 A. Absolutely.

6 Q. And your view of Section 392.185 is from an
7 economist perspective, not from a legal perspective. Right?

8 A. My view is from an economic perspective.

9 Q. Let me explore then the impact of 392.185 from
10 your economic perspective. If the Commission determines
11 that the purposes of Section 392.185 are best served by
12 allowing SBC to raise its basic local rates beyond the price
13 cap formula, is that a permissible function for the
14 Commission to perform?

15 A. No.

16 Q. What if the --

17 A. Because of other sections of the statute.

18 Q. What if the Commission finds that the current
19 basic local rates of SBC Missouri are below cost? Would it
20 then be permissible under Section 392.185 to allow SBC
21 Missouri to raise those local rates up to their cost level?

22 A. There are other sections of the statute that
23 limit changes to basic local rates.

24 Q. Is your answer yes or no?

25 A. I -- I think that the provisions of 392.185

1 working in concert with other sections of the statute would
2 not let the Commission do that in -- if the Commission
3 determined that price was not at cost.

4 Q. Would not let them do that?

5 A. Yes.

6 Q. Okay. So Section 392.185 is a general
7 statement of purpose, but can't override a specific
8 provision of the statute stated otherwise. Is that your
9 view?

10 A. No. I don't think that what I explained is
11 fairly characterized by the statement you just made.

12 Q. How about increases above 8 percent for
13 nonbasic services? Is that permissible if the Commission
14 determines that the purposes of Chapter 392.185 would best
15 be served by that?

16 A. I think, once again, 392.185 working in
17 concert with other provisions of the statute that we're
18 currently working under would not allow that.

19 Q. Okay. And let me just explore that for a
20 minute with you, make sure. I'm saying the Commission makes
21 its own determination, whether you agree with it or not,
22 that Section 392.185 would best be served by allowing rates
23 to be increased above 8 percent for nonbasic services. Does
24 the Commission have the authority then to allow price
25 increases above 8 percent?

1 A. Given that the Commission has, in addition,
2 exercised its -- my answer would be no. Given the
3 Commission, in addition, has exercised its authority to --

4 Q. If it's no, fine. That's all I need.

5 A. -- implement price caps.

6 Q. So under your analysis of the statute and how
7 you would apply it, the Commission could not permit the
8 company to raise its basic local service rates to cost and
9 could not permit the Commission -- or the company to raise
10 its nonbasic service rates above 8 percent. Right?

11 A. I'm having difficulty answering this question
12 because you based one of the questions that you've asked
13 this most recent question in relation to on assumption that
14 basic local would need to be raised to get it to cost. I --
15 I haven't --

16 Q. My assumption is that the Commission
17 determines that the rates are below cost, not your personal
18 opinion as to whether they are. But if the Commission
19 determines the rates to be below cost, in your view, they
20 wouldn't have the authority to permit them to be raised nor
21 would they have the authority to permit nonbasic services to
22 be raised above 8 percent. Right?

23 A. Based on the assumptions that you have just
24 clarified for me, given their decision regarding other
25 sections of the statute, no, I don't think they would.

1 Q. And I'm not asking you based on -- well,
2 strike that.

3 I want to know if you think that there's any
4 set of circumstances under the price cap statute under which
5 the Commission could permit either local rates to be raised
6 above the level that would be yielded by the formula or
7 nonbasic services raised above the level of 8 percent. Yes
8 or no?

9 A. No. Not under the price cap statute, Section
10 392.245.

11 Q. Okay. And, in your view, the Commission has
12 the discretion to either approve or disapprove a price
13 increase for nonbasic services of less than 8 percent.
14 Correct?

15 A. They have -- they have discretion consistent
16 with Section 392.200.

17 Q. With regard to application of the price cap
18 formula for basic services, does the Commission have
19 discretion either to refuse to permit a price cap company to
20 increase its local rates to the extent that the formula
21 would permit or not to require the company to reduce its
22 basic local service rates to the extent that the application
23 of the formula would require it?

24 A. I'm afraid I got lost in the question. I --

25 Q. All right. Basic local service formula could

1 lead to an increase or a decrease in local rates. Correct?

2 A. 392.245, yes, I agree.

3 Q. And to the extent that application of the

4 formula would yield an increase in the rates, does the

5 Commission have the authority, in your view, to refuse to

6 permit the price cap company to have a tariff filed and

7 approved to yield those higher rates?

8 A. Something that would be inconsistent with the

9 price cap statute that sets forth the specific change?

10 Q. Sorry. Are you asking a question or giving an

11 answer?

12 A. I'm asking for some clarification of the

13 question.

14 Q. Application of the price cap formula would

15 yield an increase in rates for basic local service. In your

16 view, does the Commission have the authority to refuse to

17 permit the company to file tariffs to charge those higher

18 rates?

19 A. If they have approved price cap status, then

20 no.

21 Q. And if application of the price cap formula

22 for basic local service rates would yield a decrease in

23 rates, does the Commission have the authority to permit the

24 company not to make a filing to charge those lower rates?

25 A. Can you direct me to the section of the

1 statute which discusses changes for basic local?

2 Q. Section 392.245.4.

3 A. They could not approve a rate which would
4 cause it to exceed the maximum allowable.

5 Q. Let me just clarify that. My question was if
6 the price cap formula applied to basic services would result
7 in a decrease in rates, is it your view that the Commission
8 does or does not have authority to permit the company not to
9 file for the lower rate, but to continue to charge the
10 higher rate?

11 A. I -- I guess I need to change my -- the answer
12 I just gave. I think that I was thinking in the other
13 direction. I think the Commission could reject a price
14 reduction.

15 Q. They could permit the company not to reduce
16 its rates for basic local service even though application of
17 the formula would otherwise require that. Is that your
18 testimony?

19 A. I don't necessarily agree that the application
20 of the formula would require it.

21 Q. Okay. I may be confused. Let me try one more
22 time.

23 You agree that the price cap formula for basic
24 service that has been applied in the state so far for SBC
25 Missouri is that rates go up or down based on changes in the

1 CPI for telephone service. Right?

2 A. It -- the maximum allowable price changes.

3 Q. All right.

4 A. I don't view that necessarily to be the same

5 as the actual rate.

6 Q. Let me ask the question this way then. In

7 your view, does the Commission have the authority to reject

8 a price increase that would otherwise be permissible under

9 the price cap statute for basic services?

10 A. Not and be consistent with the price cap

11 statute.

12 Q. And does the Commission have the authority to

13 permit the company not to reduce its rates when the

14 application of the price cap formula for basic services

15 would otherwise require it?

16 A. Once again, I -- I don't think the question is

17 clear cut in that I don't think that it would require a

18 reduction in the rate.

19 Q. I asked you to assume that application of the

20 price cap formula would result in a reduction in the rates.

21 With that assumption, is it your view that the Commission

22 has the authority to permit the company not to reduce its

23 rates to the level required by application of the price cap

24 statute?

25 A. If the Commission required it and if -- or

1 if -- if the price cap statute required that, according to
2 your assumption, and if the Commission exercised its
3 authority -- authority to apply the price cap statute, then
4 I would say, no, they could not reject a reduction.

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

6 JUDGE THOMPSON: Thank you, Mr. Lane.

7 We're ready for questions from the Bench and
8 I'm going to go ahead and inquire. And when I'm done, we're
9 going to recess until after the lunch hour so that the
10 Commissioners will have the opportunity to be here at the
11 end of agenda. Okay?

12 QUESTIONS BY JUDGE THOMPSON:

13 Q. Ms. Meisenheimer, can you tell me what, in
14 your opinion -- you are an expert economist; is that
15 correct?

16 A. Yes.

17 Q. Okay. So as an expert economist, can you tell
18 me what, in your opinion, is a just and reasonable rate?

19 A. A just and reasonable rate is one that bears a
20 relation to cost. With respect to the cost, its -- the
21 price of the service should exceed its incremental cost and
22 be less than its stand-alone cost.

23 As an economist employed in a regulatory
24 setting under which there's specific certain goals that have
25 been set forth in terms of public interest, I think that

1 there are also considerations regarding reasonableness and
2 that those factors might include things such as ubiquitous
3 availability of the service, affordability of the service to
4 customers and that there be a recognition of not placing an
5 undue burden on one customer class versus another customer
6 class.

7 These are the same types of things that the
8 Commission regularly considers, in my opinion, as all
9 relevant factors and that I've presented testimony on as all
10 relevant factors in water, gas, telecommunications issues.

11 Q. Are you finished?

12 A. Yes.

13 Q. Okay. I don't want to rush you. I just want
14 to make sure I get everything that you want to say.

15 So if I can summarize what you said and make
16 sure that I understand, you indicated that a just and
17 reasonable rate has a relation to cost such that the price
18 exceeds the incremental cost of the service and is less than
19 the stand-alone cost and which also meets certain public
20 interest considerations such as reasonableness, general
21 availability, affordability and does not place an undue
22 burden on any particular customer class.

23 That's my summary of your answer. Do you
24 agree or disagree with that summary?

25 A. I -- I do agree. I would qualify that the --

1 those other considerations, that the price above incremental
2 and below stand-alone, would be consistent with those other
3 factors that I mentioned after that.

4 Q. Okay. I think I understand what you said.
5 I'm not trying to put you on the spot. I'm simply trying to
6 understand as a starting point for discussion what is a just
7 and reasonable rate.

8 Now, would you agree with me that a just and
9 reasonable rate is the goal of the Commission's activity in
10 a rate of return regulation proceeding?

11 A. Yes, I would.

12 Q. Would you agree the Commission, in fact, has a
13 duty under the law in a rate of return regulation proceeding
14 to set a just and reasonable rate?

15 A. Yes.

16 Q. Now, what about in a price cap proceeding? Is
17 a just and reasonable rate, as you've described it, is that
18 applicable to a price cap regulated utility?

19 A. I believe that it is.

20 Q. Okay.

21 A. How --

22 Q. Now, there's been --

23 A. How you achieve that just and reasonable rate,
24 in my opinion, varies by the form of regulation that you're
25 operating under.

1 Q. Okay. There's been discussion about
2 subsection 1 of the price cap statute, 392.245. There's
3 been discussion as to whether that first subsection amounts
4 to a legislative declaration that prices set by the price
5 cap formula are just and reasonable as a matter of law.
6 Have you heard that discussion?

7 A. I -- I have heard that discussion.

8 Q. Now, I know -- you're not an attorney, are
9 you?

10 A. No, I'm not.

11 Q. Okay. But we have taken lay opinion on legal
12 matters in this proceeding. And I'm going to ask you for
13 your lay opinion.

14 Do you agree with the position that's been
15 announced or taken by some parties in this matter that
16 subsection 1 of the price cap statute amounts to a
17 legislative declaration that prices set according to the
18 price cap formula are just and reasonable as a matter of
19 law? Do you agree or disagree with that position?

20 A. I disagree with that position. And a
21 significant part of my opinion for that is based on my
22 experience in economics. It just doesn't make sense from an
23 economic perspective.

24 Q. Okay. So is it your opinion or not that the
25 price cap formula -- formuli, I should say, there are two of

1 them, are intended to result in just and reasonable rates?

2 A. Is it my opinion --

3 Q. Yes.

4 A. -- that the price cap formulas are intended to

5 produce just and reasonable rates?

6 Q. Yes, ma'am.

7 A. Certainly.

8 Q. Okay. Now, when I read -- and you would agree

9 with me, would you not, there are two formulas? Or would

10 you agree?

11 A. That -- I'm -- there are two formulas with

12 respect to the potential adjustment. There are two

13 formulas --

14 Q. Let me clarify the question.

15 A. -- for different companies.

16 Q. As I read the price cap statute, I find in

17 subsection 4 a formula setting the maximum allowable price

18 or price cap, as we call it, for basic local and exchange

19 access services. Do you agree or disagreement with that

20 statement?

21 A. Subsection 4. Yes. I would agree with that.

22 Q. Okay. And when I look at subsection 11 of the

23 price cap statute, I find a different formula for nonbasic

24 services.

25 A. Yes.

1 Q. Okay. In fact, we're here today over two
2 nonbasic services subject to price cap regulation under the
3 formula in subsection 11; isn't that correct?

4 A. That's correct.

5 Q. Okay. So now that we've established those
6 basic parameters, there was a statement that has been quoted
7 from the Report and Order in which the Commission found
8 Southwestern Bell, the predecessor to SBC Missouri, to be
9 subject to price cap regulation.

10 And that particular statement was quoted, I
11 believe by Commissioner Simmons, in his concurrence to the
12 order suspending tariff in this case. And let me read that
13 sentence to you. The premise of price cap regulation is
14 that the focal point should be on the reasonableness of a
15 company's prices for its services generally in relationship
16 to some economic indicator, but without relationship to a
17 company's earnings.

18 Do you agree or disagree with that statement?

19 A. I agree with that statement.

20 Q. Okay. And are you generally familiar with the
21 formuli in subsection 4 and subsection 11 of the price cap
22 statute?

23 A. Yes, I am.

24 Q. Okay. And can you tell me what role does the
25 costs incurred by the utility in providing its services,

1 what role do those costs play in setting the maximum
2 allowable price under either subsection 4 or subsection 11?
3 A. Under subsection 4 --
4 Q. Yes, ma'am.
5 A. -- to the extent that average prices are
6 consistent with cost of service, then I think that provision
7 is intended to move basic local service prices toward cost,
8 along with other sections of the statute that have allowed
9 rebalancing.
10 Q. And that's your opinion as an economist of
11 what the likely effect of price cap setting under this
12 formula would be?
13 A. That is my opinion of what an economic
14 justification for selecting those adjustments would be --
15 Q. Okay.
16 A. -- under --
17 Q. I guess I'm focused more on sort of the nuts
18 and bolts. I'm wondering where in subsection 4 or
19 subsection 11 is the Commission directed to pay any
20 consideration at all to the costs that the company has
21 incurred in producing its service?
22 A. Subsection 11 --
23 Q. Yes.
24 A. -- for nonbasic services, which is what I
25 guess we're focused on in this proceeding --

1 Q. Yes, ma'am.

2 A. -- references Section 392.200.

3 Q. Okay.

4 A. And I believe it's in Section 1 of -- well,

5 let me -- let me find it. Section 392.200, part 1

6 specifically talks about facilities.

7 Q. Yes, ma'am.

8 A. And then goes on to say that the prices

9 associated with those facilities, that's how I read it,

10 shall be just and reasonable. And, in fact, it identifies

11 the prices demanded in connection with those facilities. So

12 from -- from an economic perspective, what that means to me

13 is that there should be a relation to cost --

14 Q. Okay.

15 A. -- of the facilities.

16 Q. Do you have that text of 392.200 sub 1 in

17 front of you?

18 A. Yes, I do.

19 Q. Do you see the word "cost" in that subsection

20 anywhere?

21 A. The word "cost" --

22 Q. Does the word "cost" --

23 A. -- does not appear in the text.

24 Q. Okay. And turning back to subsection 11 of

25 the price cap statute, do you have that in front of you?

1 A. Yes, I do.

2 Q. Do you see the word "cost" in that subsection

3 anywhere?

4 A. I do not believe that the word "cost" appears

5 in the text of that section.

6 Q. And would you agree with me that, in fact,

7 that is exactly what we would expect given the quote that I

8 read to you out of the Report and Order, which stated that

9 the focus is not on cost or the relationship of prices to

10 cost, but rather on the relationship of prices to some

11 general economic indicator? Would you agree with that?

12 A. No.

13 Q. You would not?

14 A. No.

15 Q. And why not?

16 A. Economic indicators -- prices should be based

17 on economic indicators. And an economic indicator is

18 reasonable cost from an economic perspective.

19 So, I mean, at the surface level, while one

20 might say under price cap you focus on that price be below

21 some level or within some range, such as between incremental

22 and below the maximum allowable, the economic justification

23 for selecting that range, in my opinion as an economist, is

24 that price ranges relation to the cost.

25 Q. Okay. But were you here yesterday during the

1 testimony of the various witnesses?

2 A. Yes, I was.

3 Q. And did you hear the discussion to Section

4 392.246, which was characterized as a safe harbor provision

5 for the price cap regulated carrier?

6 A. Yes.

7 Q. And so the existence of that provision

8 suggests that, in fact, maximum allowable prices set through

9 the price cap formula might not have any relation to costs;

10 that, in fact, prices set in that manner might not be

11 sufficient to produce revenue to cover costs. Doesn't that

12 suggest that? Why else would a company need rate relief?

13 A. What I think that it suggests is that a

14 carrier, as in a competitive market, may not be able to

15 charge a price that recovers their cost. There are plenty

16 of businesses --

17 Q. Isn't that what I just said?

18 A. I thought you were talking about the maximum

19 allowable price and its relation to cost.

20 Q. Well, the statute gives us a way of setting a

21 maximum allowable cost or, as we refer to it affectionately,

22 a price cap. Right?

23 A. Yes.

24 Q. And the price can be below that, but never

25 higher than that. Right?

1 A. Yes.

2 Q. The price set by the company with its tariffs?

3 A. Yes.

4 Q. And it may be at that level?

5 A. It might be.

6 Q. But it may not -- can't be higher?

7 A. Yes.

8 Q. Now, there's evidence in this case that, in

9 fact, Bell's cap under subsection 4 has been going down the

10 past several years. Are you familiar with that evidence,

11 that --

12 A. That the cap for basic local has been going

13 down except in 2002, yes.

14 Q. I mean, the evidence that I'm familiar with

15 suggests that Bell's prices are at the level they were in

16 1984. Are you familiar with that testimony?

17 A. I don't remember that specifically.

18 Q. Okay.

19 A. I --

20 Q. But, in other words, the price cap, tied as it

21 is to the Consumer Price Index Telephone Services, CPI slash

22 or dash TS, has been reducing. Would you agree?

23 A. Yes. On average for the last few years.

24 Q. On average for the last few years. Is there

25 any evidence that Bell's costs have been going down?

1 A. I do believe that there's evidence that costs,
2 in general, for telecommunications have been going down and
3 that shared cost, in particular, as new services are
4 introduced and subscription to existing services increases,
5 that economies of scale can lead to cost reductions over
6 time.

7 Q. Now, is that evidence specific to Bell or is
8 that just based on your general knowledge of the
9 telecommunications industry?

10 A. That is based on my general knowledge of the
11 telecommunications industry. I'm going to have to leave it
12 at that.

13 Q. That's fine. That's fine. All I'm trying to
14 establish is the disconnect between costs and prices under
15 the price cap statute. Would you agree there is a
16 disconnect of prices and costs?

17 A. I would agree there is a disconnect between
18 the company's overall prices and their overall cost of
19 service.

20 Q. Okay. Now, would you agree that the
21 telecommunications industry, in general, has seen a movement
22 towards deregulation over the past decade or so?

23 A. Yes.

24 Q. And would you agree with me that, in fact, the
25 telecommunications industry is simply one of several

1 industries that have seen a movement towards deregulation?

2 A. Yes.

3 Q. And are you familiar at all with the airline

4 industry?

5 A. In a very general -- very general way.

6 Q. I just really -- I only have very general

7 questions.

8 Are you aware there used to be an airline

9 called TWA?

10 A. Yes.

11 Q. What happened to TWA, if you know?

12 A. I believe that the company -- the company's

13 explanation was that they were not covering their cost.

14 Q. They were not producing revenues sufficient to

15 cover their costs; is that correct?

16 A. That's what they claimed, yes.

17 Q. And is it possible that that might happen to a

18 telecommunications carrier under price cap regulation?

19 A. Yes.

20 Q. Okay. And what about fully competitive

21 telecommunications carriers?

22 A. The same could happen for fully competitive

23 telecommunications carriers.

24 Q. As far as you know, have there been any CLECs

25 that have gone bankrupt?

1 A. Yes. There have been a number, I believe,
2 that have gone bankrupt.

3 Q. Okay. And what about traditional rate of
4 return regulation? Were utility bankruptcies common or rare
5 prior to deregulation?

6 A. I believe that they were relatively rare. The
7 reason being that there was, if you will, a compact under
8 which the -- the company was provided the opportunity -- not
9 a guarantee, but the opportunity to recover reasonably
10 incurred costs associated with providing service in their
11 service territory.

12 Q. Okay.

13 A. Would you like me expand more on why that
14 was --

15 Q. Absolutely.

16 A. -- why that was a reasonable method of
17 provisioning?

18 Q. Please proceed.

19 A. That allowed consumers and the public as a
20 whole to enjoy the benefits of economies of scale that
21 existed generally in the provision of utility services
22 through lower cost and also ensured that there would be a
23 provider there or gave more confidence that there would be a
24 provider that was viable, if you will. So that was one
25 justification for allowing natural monopolies to operate as

1 regulated monopolies --

2 Q. Okay.

3 A. -- and providing them with prices which

4 allowed them the opportunity to recover their cost of

5 service.

6 I would also add that there were incentives

7 built in to promote innovation by way of allowing the

8 companies to retain any profit above cost, if you will,

9 until such time as the next rate review occurred.

10 Q. Okay. Now, you were present, I think you

11 indicated, yesterday; is that correct?

12 A. Yes, I was.

13 Q. And I believe there was testimony elicited on

14 cross that in a recent water case that some customers had

15 received rate increases of over 200 percent. Did you hear

16 that testimony?

17 A. I heard -- I heard -- I believe that was a

18 statement made by an attorney.

19 Q. So you doubt that it's true?

20 A. Not at all. I was involved to some degree in

21 that water case and was feeling a little bad that I didn't

22 specifically remember the exact level of the increase, but

23 there were -- there have been large increases approved.

24 Now, Public Counsel wasn't in support of that particular

25 level of increase at the time, but --

1 Q. I understand that you hated it desperately,
2 but nonetheless, it did happen, didn't it?

3 A. There were large increases that happened,
4 although I can't, off the top of my head, remember the exact
5 numbers.

6 Q. And, if you know, was that a rate of return
7 regulation proceeding?

8 A. Yes, it was.

9 Q. So that sort of increase would have been
10 supported by what?

11 A. That increase, in part, was supported by the
12 revenue requirement that was approved by the Commission
13 that's associated with the cost of service, and also the
14 Commission's accepted -- acceptance of a particular rate
15 design to recover in rates that revenue requirement.

16 Q. So a particular revenue requirement as
17 distributed across the various customer classes by a class
18 cost of service study. Would you agree?

19 A. Yes. Based on class cost of service studies.

20 Q. Now, if Missouri American Water Company were
21 subject to price cap regulation under 392.245, do you think
22 it would have gotten that kind of increase because its costs
23 showed that it needed that sort of revenue requirement?

24 And, of course, Missouri American is not a phone company so
25 perhaps that's an absurd question.

1 A. Well, I think I can reason that if in water
2 there were similar -- a similar price cap regulatory
3 structure and that if the cap in that was set at 8 percent,
4 then they wouldn't be getting that much in one bite.

5 Q. Okay. Now, I believe it's your position, and
6 correct me if I'm wrong, that the Commission has authority,
7 that indeed the Commission is required to examine proposed
8 rate increases under subsection 11, such as the one we're
9 here on today, for reasonableness; is that correct?

10 A. Yes.

11 Q. And, in your opinion as an economist and based
12 on your knowledge of the price cap statute, what is the
13 yardstick that the Commission should use in measuring
14 whether the proposed price increases are reasonable?

15 A. As I described in response to Mr. Meyer, I
16 think that it isn't one-size-fits-all measure that can --
17 that can be identified. I believe that it depends on the
18 competitiveness in -- for the particular service that you're
19 talking about.

20 I -- I think that in all -- all respects that
21 it links back to just and reasonable under Section 392.200.
22 How you measure what is just and reasonable is what I was
23 saying varies by the particular service.

24 Where there's a lot of competition, I think
25 that you can look at things like the prices charged by

1 companies providing a similar service. Where there is less
2 competition, I think it is more critical to take some look
3 at what the cost of providing the service is to determine --
4 Q. So you think the Commission should look at
5 cost?
6 A. I think there are cases where it's reasonable
7 for the Commission to look at the cost of the service, yes.
8 This is one of those cases.
9 Q. Well, what if I propose to you that the
10 Commission should look at the CPI-TS as its sole measure of
11 whether or not a proposed price increase under subsection 11
12 is or is not reasonable? What would your response to that
13 proposal be?
14 A. As the sole measure, I wouldn't find it very
15 meaningful in this case.
16 Q. And yet you would agree, would you not, that
17 the CPI-TS is the sole measure that's used with respect to
18 Bell's basic local and exchange access rates that are set
19 under subsection 4 of the price cap statute; isn't that
20 correct?
21 A. Yes, it is.
22 Q. So why wouldn't that be the appropriate
23 measure to use in looking rates set under subsection 11?
24 A. I believe that under -- for basic local
25 services that -- to adhere to the price cap statute, the

1 Commission is constrained more. For basic local service on
2 the annual increases, for some price cap companies there
3 were also adjustments that were approved in terms of
4 rebalancing between access and basic local rates. And I
5 might point out that those were to be based in certain years
6 on evaluation of cost.

7 Q. But we're not talking about rebalancing here,
8 are we? We're talking about reasonableness of nonbasic
9 services under subsection 11 and what measure to use.

10 A. I'm sorry. I was talking about the basic
11 services.

12 Q. I apologize. Please continue.

13 A. Under section 11, which addresses nonbasic
14 services, I hate to be repetitive, it links to Section
15 392.200. The discussion of the facilities and prices in
16 connection with those facilities being just and reasonable I
17 think indicates that they should be looked at in relation to
18 some reasonable measure that bears a relation to cost.

19 To the extent that a particular price index
20 bears a relation to cost, then I would find it meaningful.
21 I do not, in this instance, feel that that particular price
22 index is meaningful.

23 Q. Okay. So if I understand your point of view
24 correctly, it is your belief that the Commission should
25 essentially conduct a traditional rate of return proceeding

1 in order to determine whether or not a proposed price
2 increase under subsection 11 is just and reasonable?

3 A. Absolutely not.

4 Q. Well, then where would the Commission get this
5 cost information?

6 A. A rate proceeding involves looking at the
7 company's overall cost of service and the company's overall
8 rate structure to ensure that the prices that are set
9 recover the overall cost.

10 Q. Okay.

11 A. That is a different mechanism than looking at
12 a particular service and finding out to what degree does the
13 price of that service relate to cost.

14 Individual markets will become competitive at
15 different times and the level of competition for those
16 services will vary. So the more competitive the market for
17 particular services, the less I think you have to
18 specifically look to the individual cost of the service.

19 Because the more confident you can be that
20 competition provides discipline on the price to approximate
21 the cost -- where you have a lack of discipline from
22 competitive forces, the more important it becomes to look at
23 the cost of that service.

24 JUDGE THOMPSON: Okay. Thank you very much.

25 I think that's all the questions that I have.

1 As I explained earlier, we're going to recess
2 until after the noon hour. I apologize for any
3 inconvenience this may pose to anyone, but I think you'd all
4 agree that the case is being tried for the benefit of the
5 Commissioners who, in fact, make the decision and not for my
6 benefit.

7 And, consequently, we will back and finish
8 questions from the Bench for Mr. Peters and questions from
9 the Bench for Ms. Meisenheimer. Then we will take recross
10 based on questions from the Bench and redirect for each of
11 those two witnesses. And finally we will conclude with
12 closing argument.

13 Why don't we all come back at 1:30? Thank
14 you. We are recessed at this time.

15 (A RECESS WAS TAKEN.)

16 JUDGE THOMPSON: Questions from the Bench for
17 Ms. Meisenheimer, Commissioner Gaw.

18 COMMISSIONER GAW: Thank you, Judge.

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Good afternoon, Ms. Meisenheimer.

21 A. Good afternoon, Commissioner.

22 Q. I just have a few questions. And I need to
23 know what your opinion is in regard to, first of all, Public
24 Counsel's position as to whether or not this Commission has
25 authority to look at the just and reasonable factor in a

1 price cap company outside of the price cap provisions?
2 Does Public Counsel believe that this
3 Commission has the authority to look at other factors in
4 evaluating whether or not something which is clearly within
5 the price cap, under the price cap is perhaps not just and
6 reasonable?
7 A. And let me make sure that I have the question
8 I'm being asked correct.
9 Q. All right.
10 A. Something that would otherwise fall under the
11 8 percent cap, you want to know whether you have the
12 authority to look on -- look at it based on other factors?
13 Q. Yes. Nonbasic service.
14 A. Absolutely you do. And I'd be happy to run
15 through the argument that's set out in my testimony.
16 Q. I'm just laying sort of the premise here. You
17 have already laid all of that out in your testimony. Right?
18 There isn't anything else to add other than what's in your
19 testimony in regard to your rationale for that?
20 A. That's correct.
21 Q. Okay. So let me ask you this. Does Public
22 Counsel take the position that an evaluation of whether or
23 not a rate is just and reasonable, which is a rate that
24 would be subject to the price cap provisions, whether or not
25 there is a presumption in favor of it being just and

1 reasonable because of the price cap language?

2 A. When you say "the price cap provisions,"

3 I'm --

4 Q. I'm --

5 A. -- going to need clarification.

6 Q. All right.

7 A. Are you talking only about the 8 percent or

8 are you talking about all the --

9 Q. Let's just narrowly focus on something that

10 would fall as a nonbasic service on a company subject to

11 price cap and would -- and do you need more than that? Do

12 you need more definition than that?

13 A. I think there are more provisions that have to

14 be satisfied than just below 8 percent. That's where my

15 difficulty is.

16 Q. Go ahead and explain what you're talking about

17 and maybe I can answer your question in such a way that

18 allows you to answer mine.

19 A. In addition to not exceeding the maximum

20 allowable price of 8 percent that's established for the

21 nonbasic services, I believe and -- you know, based on

22 economic reasons, and our legal staff believes based on

23 legal reasons that it also has to be consistent with Section

24 392.200. So with -- consistent with those two provisions, I

25 just wanted to be clear on the context.

1 Q. Well, if an increase that was proposed would
2 be subject to the price cap statute, okay --

3 A. Okay.

4 Q. -- does Public Counsel believe that if it is
5 under the 8 percent -- if the rate increase is under the
6 8 percent, that there's any presumption in favor of it being
7 just and reasonable?

8 A. No. Not necessarily. And I'd be happy to
9 explain why I think that.

10 Q. Go ahead.

11 A. In the -- in some cases the Commission has
12 previously determined that there is not effective
13 competition for services. And in those cases it doesn't
14 make much sense to me why there would be an assumption that
15 an increase up to a cap of 8 percent would be just and
16 reasonable in terms of a good approximation of the cost or
17 what would otherwise occur in a competitive market.

18 So I think that the criteria should depend --
19 what you look at I think should depend on how competitive is
20 the service and who you look for -- or who you look to in
21 terms of who should bring forth evidence or proof.

22 I think if there -- if you've determined that
23 something is competitive or very competitive, then you can
24 give the benefit of the doubt to the company that the price
25 that they propose is -- is likely going to be closer to what

1 is just and reasonable in its approximation to cost.

2 Where there is little or no competition, as is
3 true for the vast majority of exchanges for this service and
4 for the vast majority of customer classes for this service,
5 I think it's fully reasonable to ask the company to come
6 forward with proof.

7 And I -- I tried to do that in a polite way in
8 my testimony and tell them at the end of my Rebuttal
9 Testimony that based on what I looked at, which was the cost
10 of labor of operators and the old cost study that they were
11 kind enough to provide to me, I wasn't convinced that the
12 rate was just and reasonable and suggested that the
13 Commission seek additional information from the company.

14 I was kind of hoping that the company would
15 provide additional information in their Surrebuttal. They
16 chose not to. They're viewing this at this stage as it
17 appears -- and I mean, they can speak for themselves.

18 But more as a legal argument, that, in my
19 opinion, given for the vast majority of exchanges, you've
20 previously found that there isn't effective competition,
21 that if that -- if you're not comfortable that you have
22 enough information at this time, reject it, they can refile
23 it and come back with support once you get past the legal
24 argument that the attorneys are presenting for you.

25 Q. Public Counsel takes the position that it's

1 the company's burden to show that the rate proposed is just
2 and reasonable even if it complies with the rate being under
3 8 percent?

4 A. Yes. And that's because in addition to the
5 rate being under 8 percent, it must -- it must be consistent
6 with Section 392.200 where it identifies that -- you know,
7 it discusses the facilities and that the rates demanded
8 associated therewith or in connection therewith should be
9 just and reasonable.

10 In my mind, that means they should approximate
11 cost. And based on what I looked at, I think there is some
12 evidence that they may be in excess of what's just and
13 reasonable.

14 Q. Well, yesterday -- I think it was yesterday, I
15 asked Mr. Peters what would have to be done in order to
16 determine whether or not something was a just and reasonable
17 price. Were you here yesterday?

18 A. Yes, I was.

19 Q. I thought he said -- and maybe you can -- you
20 have a different recollection. I thought he said something
21 to the effect that it would take a full-blown rate case to
22 make that determination.

23 A. I disagree with that.

24 Q. Did you hear him say that --

25 A. I --

1 Q. -- or something similar to that?

2 A. I heard something similar to that. That is --

3 Q. If I take that analysis and look at it,

4 doesn't it cause me to have to come to the conclusion that

5 if that's the way you read that statute, that the price cap

6 provision is really nothing other than an additional clamp

7 on what -- on what a so-called price cap company can earn in

8 addition to having to somehow prove that its rate increase

9 would be appropriate under a rate of return base regulation?

10 A. I don't agree with -- that that's what would

11 be necessary.

12 Q. Do you understand why I'm asking the question

13 about what his position was though? Because under that

14 scenario, I have a difficult time seeing how this case -- I

15 mean, how the price cap provision is of any significance at

16 all. In reading through it, it just appears to be an

17 additional burden over and above the normal rate of return

18 regulation provisions.

19 A. I -- I would have a difficult time too if I

20 were in your position and attempting to understand and

21 perhaps adopt such a recommendation. The way that I view it

22 I think is the appropriate way to view it and that is --

23 Q. That's what I'm going to get to.

24 A. Okay.

25 Q. I didn't mean to stop you other than just to

1 say I want to know what you believe we ought to look at. If
2 we're looking at something in addition to mathematically
3 calculating whether or not it is below the cap -- a service
4 is below the cap, what would we look at?

5 A. Number one, I don't think that you need to do
6 a full-blown rate case. In fact, I don't -- I don't think
7 that's really consistent with the price cap scheme. And I
8 don't mean that in a bad way, that's -- the use of that
9 term.

10 I think that rate of return regulation was
11 intended to ensure that in total, taking into consideration
12 factors important to the public interest, that the company
13 was given an opportunity by the design of all of its rates
14 in total to recover its revenue requirement, which was
15 reflective of its cost in total.

16 In some cases, certain services might be
17 providing more contribution than others. I -- I don't view
18 that as relevant in this instance in -- under price cap
19 regulation when the primary purpose for it is to introduce
20 the element of competition for certain services as those
21 services become subject to competition. That is generally
22 created based on production techniques and technology
23 advances.

24 So as certain services become subject to
25 competition, I believe that the goal is -- and I think it

1 should be, as an economist, that you want to allow certain
2 prices -- certain markets to become subject to competition
3 and to allow competition, to the extent it exists with
4 certain protections and safeguards, to start moving prices
5 to cost.

6 That's what I view as the role of price cap
7 regulation, as that intermediate step between rate of return
8 regulation that we used to operate under and competition,
9 which we're hoping to move toward. In -- in --

10 Q. Well, how do -- with that as your premise,
11 what factors would the Commission look at in determining
12 whether or not rates were just and reasonable? What would
13 be your guidance for the Commission about what factors are
14 important and relevant and in what order of importance, if
15 there is an order?

16 A. As I said, I believe that it depends on the
17 level of competition that exists for the particular service.
18 But I would point you to Staff's testimony, and I'm looking
19 for my copy of it. Chris Thomas in his testimony
20 included -- included a list of factors. And it will take me
21 a minute to find the page. I believe it was Chris -- Chris
22 Thomas' testimony. Let me check Mr. Peters' testimony.

23 MR. DANDINO: Here. Should have been turned
24 right to it.

25 THE WITNESS: No. There's a list.

1 Can the Staff assist me in finding the page
2 where you list things such as competition, cost?

3 Here it is, it's page 7 of Mr. Peters'
4 testimony. I think there are a number of factors that you
5 can look to. I think the relevance of those factors depends
6 on the particular situation, the particular service.

7 But I think that this list that Mr. Peters has
8 included in his testimony on page 7, lines 6 through 11 --
9 rate comparisons with other companies, in this case, I don't
10 think that is -- I don't think that's the most relevant
11 factor to look at.

12 Cost of providing service, in this case I
13 think it is the most relevant factor to look at. Revenue
14 received from the services, I'm -- I find that less
15 meaningful in this instance. Demand for the services might
16 be a factor to look at. Competitiveness and the critical
17 nature of the service. I think that that's a good list of
18 things to start looking at.

19 The Staff also included information for you on
20 the Consumer Price Index, another price index. I think that
21 you could look at a price index for a particular service or
22 service category if there were a great deal of competition
23 because then the prices would generally approximate the
24 cost.

25 But in this case where prices can't be

1 depended on to approximate cost, I think the only way that
2 you get to just and reasonable is to look for something that
3 forms a cost basis.

4 And that's why I looked at the cost study that
5 was provided by the company in the past, and then looked at
6 how is the primary driver -- what I believe to be the
7 primary driver of those costs increased over the last few
8 years? So that's what I looked at.

9 I think other things -- other economic
10 indicators could be relevant for various services. My
11 analysis came up that in this instance. I'd say it's a
12 pretty close call.

13 My call is I think they could use to --
14 provide you some additional justification, so we suggested
15 to reject it. You know, you can look at that information
16 and you may or may not agree on, you know, whether --
17 whether you can accept it as you see it, but no matter what,
18 I think you have the authority to decide.

19 BY COMMISSIONER GAW:

20 Q. The list that's on page 7 of Mr. Peters'
21 testimony, did you use all of those factors in analyzing
22 this case?

23 A. I considered many of these factors. And, in
24 fact, at some point I believe that I had a conversation with
25 the Staff and shared with them what I thought relevant

1 factors would be.

2 Now, you know, the things I think that I might
3 have spoken to them about isn't an exact match for this
4 list, but I think the general ideas are captured.

5 I think rate comparisons for various companies
6 is reasonable where there's significant competition. Cost,
7 certainly if you have cost information, that would be
8 relevant to look at. Whether or not you have a great deal
9 of competition, that should be telling.

10 Revenues you can relate back to, you know,
11 prices to some degree. So if you look at price indexes,
12 that -- that might have relevance. So competitiveness of
13 the service, I view that as significant. And the critical
14 nature takes into account public interest factors.

15 So I think that as general principles, you
16 could look at this. I did consider factors such as that. I
17 didn't provide you specific data related to each of these
18 things because I didn't find each one relevant in this case,
19 but in another case I might.

20 Q. Okay. And I want to digress for just a
21 moment. In regard to the critical nature of this particular
22 service, did you have an opinion about whether or not this
23 service had some unique characteristics about it because of
24 these two services and because of what it might mean in an
25 emergency situation?

1 A. Yes. I think that this -- these services more
2 than other services might likely be used in emergency
3 situations. And so, therefore, that's another reason to
4 take a closer look at these. I think you have the authority
5 to do so and especially given that consideration, I think
6 it's reasonable to do so.

7 In -- I'm trying to think of the case number.
8 It was the effective competition case. You know, we
9 argued -- and by me -- by we I mean Public Counsel and I
10 believe also the Staff argued in Bill Voight's testimony
11 that operator services are very -- local operator services
12 are very closely linked to the access line, the provider of
13 the access line.

14 And so it is reasonable for the competitive
15 status of those services to be aligned with what is the
16 competitive status of the local service. And I believe that
17 the Commission at that time agreed with that and decided
18 consistent with that.

19 Q. But that's the tie of the two services as
20 operator related. Is there a more -- is there an additional
21 factor here in regard to this service that may differentiate
22 it even further?

23 In the event that someone, for instance, was
24 attempting to contact a relative whose phone had been busy
25 or constantly ringing for hours and knew that the relative

1 had been there earlier in the morning and lived a couple of
2 hours away, is this a service that might be utilized in that
3 situation to try to verify whether or not the phone was off
4 the hook or whether or not the individual was talking to
5 someone?

6 A. Yes. And another -- I mean, yes, that's a --
7 an important factor, its -- its potential use in emergency
8 situations. Certainly a critical component. You know, we
9 believe in the health and welfare of consumers.

10 Q. Why does that -- if it is considered a service
11 which at least, in part, it would be utilized in an
12 emergency situation, how does that interplay with the
13 concept that it is unique? Why is that relevant to this
14 discussion?

15 A. Well, as a -- in my opinion, as a Public
16 Service Commission, it -- there are certain services that
17 it's critical that you watch over the availability of and
18 the affordability of.

19 And that prices -- well, I mean for all
20 services it should be just and reasonable, but it's even
21 more critical that the prices for the most fundamental of
22 services that protect the health and welfare be -- be just
23 and reasonable and affordable for consumers.

24 Q. I guess my question is whether or not it's
25 relevant because of how I would say most reasonable people

1 would react if they were in a situation where they were
2 trying to contact someone, whether or not they checked the
3 price before they ask for --

4 A. I don't --

5 Q. -- somebody to check on the line.

6 A. I can imagine many cases where this would not
7 be a service where customers would want to engage in a great
8 deal of price shopping before trying to complete the call to
9 make sure of the health of welfare of who they were trying
10 to contact.

11 Q. Yeah.

12 A. So, yes, it would be comparison shopping when
13 the customer's over a barrel. That wouldn't be a very good
14 policy to pursue.

15 Q. Let me pursue this issue about how much
16 competition may be available for a particular service. If
17 the Commission would have previously determined that that
18 service were subject to effective competition for that
19 company, do you believe that in that case the Commission is
20 also supposed to further examine whether or not the rate is
21 just and reasonable in the same fashion that you've
22 described for me?

23 A. Not -- not in the same fashion. I mean, I
24 think that there are -- there are safety provisions where in
25 the event that after you grant competitive class --

1 effective -- or where you find effective competition, if you
2 believe at some later point that it no longer exists, that
3 you can pull back the reins on that to protect consumers.

4 Q. And place it back in price cap status --

5 A. Yes.

6 Q. -- for instance? Is that what you're
7 referring to?

8 A. Yes.

9 Q. But are you saying that within the price cap
10 analysis, if the service is subject to price cap, that you
11 still will examine the amount of competition that would
12 exist and that is a factor that changes according to the
13 amount of competition that exists for that service?

14 A. I believe that in determining whether a rate
15 is just and reasonable --

16 Q. Okay.

17 A. -- your confidence or pardon the term "comfort
18 level" with how -- with whether that price is just and
19 reasonable can depend and can vary with the level of
20 competition that exists for the service.

21 Southwestern Bell is not here simply asking
22 for a price increase for services that you found effectively
23 competitive in exchanges where you found it to be
24 effectively competitive. This applies on -- I -- my
25 understanding is company-wide, state-wide service.

1 So I -- I think that the services that you've
2 not found to be competitive and where you look at price
3 caps, it's very reasonable to consider the level of
4 competition.

5 And, in fact, I think under the basic -- the
6 guidelines for basic local there's still an acknowledgment
7 at least under one mechanism the company could have chosen
8 for basic local increases that you would consider the level
9 of competition. And I can point you to that if you want to
10 see it. I believe it's there.

11 Q. If you want your counsel to do it later, or if
12 you want to do it now. Whichever is easier.

13 A. Let him do that.

14 Q. Figured that might be the case.

15 So it is not your view that just because
16 something hasn't been determined to be effective -- subject
17 to effective competition, that there couldn't be variations
18 of the level of competition underneath that --

19 A. That's absolutely correct.

20 Q. -- is that what you're saying?

21 A. That's exactly what I'm saying, yes.

22 Q. All right. Let me ask you this. If the
23 Commission were to make some pronouncement that its analysis
24 of this case were based upon there being a presumption that
25 the rate was just and reasonable if it complied with the

1 price cap provisions, in other words, less than 8 percent --
2 been mathematically determined less than 8 percent increase,
3 is there sufficient evidence here to overcome that burden in
4 this case, in your opinion?

5 A. Yes. I think there is sufficient evidence, in
6 my opinion, that I looked at to overcome that. I -- I'd be
7 happy to talk about what I think that is and I -- I don't --
8 it doesn't -- I don't know why you would want to make such a
9 presumption when you could look at it on a case-by-case
10 basis.

11 Q. I understand. I understand what you're
12 suggesting in regard to that, whether that analysis is
13 appropriate. But if that were the analysis, I'm asking you
14 your opinion as to whether or not there is sufficient
15 evidence in the record to overcome some presumption to that
16 effect?

17 A. I believe that there is. And the things that
18 I think it includes --

19 Q. Thank you. That's what I wanted to ask next.

20 A. I believe that it includes the recognition
21 that in the past you -- the Commission has found that these
22 services are not effectively competitive in the vast
23 majority of exchanges.

24 I believe that it includes the information
25 that I looked at regarding the previous cost, the cost study

1 as of about 19-- it covered the period 1997 and 1999 that I
2 was provided by Southwestern Bell. The rates -- the rate
3 increases since that time have exceeded what I thought could
4 reasonably be based -- or reasonably be expected based on
5 the increases in labor costs of operators.

6 Now, that was a general factor that I looked
7 at. It -- it was not Southwestern Bell specific, the number
8 that I looked at. However, I believe that information --
9 and I believe it came from the Staff's -- the Staff's
10 testimony regarding Bell specific was -- was in that same
11 ballpark, at 5 percent increase.

12 So an 8 percent rate increase a year compared
13 to a 5 percent cost increase a year, it's 3 percent a year
14 above cost every year that they come in for the increase.
15 At some point, I mean, I -- I don't think that that's
16 supported as just and reasonable. And I think that that --
17 that evidence is here for you at this time.

18 Q. You're not taking a position that it is unjust
19 and unreasonable, are you?

20 A. What I said in my testimony is I said that I
21 was -- that I was concerned that -- let me give you -- I
22 thought for a while on the language, so let me go find it.

23 What I -- what I recommended was that you seek
24 further information from the company. I also wrote that as
25 an invitation to the company to provide you with that kind

1 of data in Surrebuttal. I recommended that you reject it
2 otherwise.

3 And I cited those -- you know, some of those
4 same reasons why I thought the competition had not moderated
5 the prices or you couldn't -- didn't have confidence -- or
6 shouldn't have confidence that competition had moderated the
7 prices up until now.

8 So, I mean, it's -- obviously it will be your
9 call. I looked at the numbers and have given you the
10 recommendation that I have based on those numbers.
11 Certainly you may view those numbers differently.

12 Q. Have you seen other -- you've seen other cases
13 dealing with the services subject to price besides this one,
14 haven't you?

15 A. I -- I've been involved in a number of cases
16 related to price cap, various issues.

17 Q. Have you looked at whether or not the -- have
18 you looked at the issue on other cases, on another tariffs
19 whether or not the rates were just and reasonable in as much
20 depth as you have this one, for instance?

21 A. I have spent a reasonable amount of time
22 looking behind access cost studies, basic local cost. This,
23 though, is really with respect to a nonbasic service and I
24 would say that I -- that this is the one probably that I've
25 spent the most time on so far as a nonbasic service.

1 If the Commission determines that it has the
2 authority to look at these cases, then it's likely that, you
3 know, we -- we may start spending more resources reviewing
4 individual services as tariffs come along.

5 Q. Well, let's just go down that road for just a
6 bit here. Let's make an assumption, if you would for me,
7 that there is some sort of determination like that made.

8 How would that work as far as an analysis
9 would be concerned when tariffs are filed? Would you have
10 to stop every tariff to make an analysis? Would you stop
11 some of them? How would you make the determination of which
12 ones should be analyzed further? Have you thought about
13 that?

14 A. Yes.

15 Q. And have you got some ideas?

16 A. Yes, I do.

17 Q. All right. Let's hear them.

18 A. I think that what happened in this case is a
19 prime example of how I would expect it to happen. It was
20 this is a service where there is specific concerns that
21 merit at least investigation. And the Commission on its own
22 motion, not the motion of the Staff and not the motion of
23 the Public Counsel, suspended this to look into it.

24 Our office certainly wouldn't want to be an
25 obstacle in the process of, you know, fulfilling the

1 requirements of the statute. And, I mean, to the extent
2 that we felt that something looked really out of line,
3 something was obviously a problem and to the extent our
4 office's resources allow, we might raise issue and ask that
5 a certain one be suspended at some time.

6 I don't view it to -- I don't view it as a
7 process where we would be an obstacle to tariffs being
8 approved that looked like they were in line.

9 COMMISSIONER GAW: I think that's all I have,
10 Judge. Thank you.

11 JUDGE THOMPSON: Thank you, Commissioner.

12 Recross based on questions from the Bench, Mr.
13 Meyer?

14 MR. MEYER: No questions, your Honor.

15 JUDGE THOMPSON: Mr. Fischer?

16 MR. FISCHER: In the interest of brevity, I'll
17 pass the witness.

18 JUDGE THOMPSON: Ms. Creighton Hendricks?

19 MS. CREIGHTON HENDRICKS: I just have a few.

20 RECROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

21 Q. Ms. Meisenheimer, as I understand the
22 responses you gave Commissioner Gaw, it is OPC's position
23 that the statute does not create a rebuttable presumption
24 that any increase in nonbasic service within 8 percent is
25 just and reasonable; is that correct?

1 A. That is correct. And would you like me to
2 explain?
3 Q. No, no. I just want the answer.
4 Now, wouldn't it be supportive of your
5 position the fact that the legislators knew how within the
6 price cap statute to create a rebuttable presumption and
7 did, in fact, do it in the first sentence of Section 5 of
8 the price cap? Wouldn't that be supportive of your position
9 that there's no rebuttable presumption created?
10 A. I haven't given that any thought.
11 Q. Okay.
12 A. Would you like me to?
13 Q. You recall in the effective competition cases
14 there were -- initially in SBC's there was an issue about
15 who had the burden of proof in the case as far as to show
16 effective competition or disprove if effective competition
17 was present. Do you recall that?
18 A. I remember that very well.
19 Q. And, in fact, the Commission ruled that if
20 there's a situation where a competitor was present for a
21 five-year period, there was a rebuttable presumption of
22 effective competition that was created under the statute by
23 the language of the statute and it would be the opposing
24 party who would have the burden to oppose it -- to disprove
25 effective competition; is that correct?

1 A. No. Would you like me to explain?

2 Q. What part of my statement is incorrect?

3 A. Something that is unstated makes the question

4 you've -- or the question that you've asked incorrect.

5 MS. CREIGHTON HENDRICKS: No further

6 questions.

7 JUDGE THOMPSON: Thank you.

8 Mr. Lane?

9 RE CROSS-EXAMINATION BY MR. LANE:

10 Q. Ms. Meisenheimer, you had some questions from

11 Judge Thompson concerning what you meant by cost. Do you

12 recall those, that discussion with him?

13 A. I remember having a discussion.

14 Q. And one of the criteria that you laid out for

15 cost was whether a particular price was above its

16 incremental cost and below its stand-alone cost. Do you

17 recall that?

18 A. Yes.

19 Q. And is that the test that you think should be

20 applied to determine whether cost justifies a price

21 increase?

22 A. I think that that is, in part, what justifies.

23 And I'd be happy to expand on what else I think should be

24 considered.

25 Q. I'm just trying to focus on cost.

1 And in this case, would you agree with me that
2 the price that SBC Missouri has proposed for both busy line
3 verification -- busy line interrupt and line status
4 verification are above incremental cost and below
5 stand-alone cost?

6 A. Yes. The other qualification --

7 Q. I didn't ask about the other qualifications.

8 But that would meet the cost standard that you
9 discussed with Judge Thompson; is that right?

10 A. I believe that I supplemented that cost
11 statement with additional factors that I discussed.

12 Q. But the cost standard's met. Right?

13 A. That is a component of the cost. There's also
14 a reasonable allocation to joint and common cost that I
15 don't think is met strictly by the one condition of above
16 incremental and below stand-alone.

17 Q. Well, stand-alone cost you have to take all of
18 the costs of the firm and say, I'm only producing one
19 service. So that allocates all of the cost, doesn't it?

20 A. Yes. That's correct.

21 Q. So you don't have to do an allocation. That
22 sets the absolutely high mark of what you can charge.
23 Right?

24 A. That's correct. I'm saying that an additional
25 qualification or additional limit, a honing down in that

1 range would be based on what is a reasonable allocation of
2 joint and common cost.

3 Q. That ratchets down from the stand-alone cost?

4 A. Yes.

5 Q. So that any price that's between incremental
6 cost and some ratcheted down stand-alone cost is acceptable?

7 A. Not strictly between. It ratchets it down
8 from the top and it lifts it up from the bottom that at
9 least incremental cost plus some reasonable allocation of
10 joint and common costs should be included.

11 What is a reasonable allocation of joint and
12 common costs, that -- I would say there is some discretion
13 in choosing what that is. So I don't -- I don't necessarily
14 think that you would expect that at incremental cost or at
15 stand-alone cost would be a reasonable number. There are
16 also public policy considerations where in the past there's
17 been a discussion of potentially going below incremental
18 cost for a service.

19 Q. Okay. Your discussion with Commissioner Gaw
20 concerning the existence of competition as a significant
21 factor in whether a rate increase is just and reasonable is
22 the next area I want to focus on.

23 Would you agree with me that under price
24 caps -- that a company would go under the price cap method
25 if it has competition from one other provider for basic

1 local service in any of its exchanges?

2 A. I'm -- that was sufficient for the Commission
3 in the past to allow a company to go into price cap
4 regulation.

5 Q. Okay. You don't have to have competition for
6 all services in all exchanges to be subject to price cap
7 regulation. Correct?

8 A. Can I look at the statute just for a second?

9 Q. Sure.

10 A. And you're asking for the company to be
11 subject for price cap regulation or for a particular service
12 to be subject?

13 Q. Well, services aren't subject to price cap
14 regulation. Companies are, aren't they?

15 A. Well, the rates for what those -- the prices
16 that would be allowable for those services.

17 Q. The statute doesn't send particular services
18 to be treated under price cap regulation. It sends
19 companies to be treated under price cap regulation for all
20 of their services. Correct?

21 A. I was thinking about competitive services
22 where they wouldn't be bound by the price cap.

23 Q. I'm asking what it takes for a company to be
24 subject to price cap regulation.

25 A. I think it's that a company be certified to

1 provide basic local service and is providing. And, I mean,
2 Public Counsel, I believe in the past, argued that you would
3 look at that on an exchange basis in any part of the large
4 incumbent service territory. I'm sorry. It's --

5 Q. Section 392.245.2. Right?

6 A. .2.

7 Q. You have one company providing basic local
8 service in any part of an incumbent local exchange service
9 area, than the company shall be subject to price caps.
10 Right?

11 A. That's the criteria for allowing price caps,
12 yes.

13 Q. And if no other company comes in to provide
14 service in any other exchange of the company or any other
15 service area, the company still remains subject to price
16 caps. Right?

17 A. I -- I believe that's true.

18 Q. Okay. But you would engraft an additional
19 restriction on the ability to impose price increases on
20 nonbasic services that would require some level of
21 competition that's unstated before those price increases
22 could be permitted. Right? Or must be permitted. Right?

23 A. No. Would you like me to explain?

24 Q. No.

25 Would you also agree that there's a provision

1 in the price cap statute that takes a company out of the
2 price cap regulation if it's subject to effective
3 competition as defined by the legislature?

4 A. Let me look for what that is. Could you refer
5 me to something?

6 Q. Didn't you participate in the case where the
7 Commission was looking whether we had -- whether SBC
8 Missouri was subject to effective competition and you
9 discussed that with Commissioner Gaw?

10 A. Yes. That related to specific services facing
11 effective competition as opposed to the company for all
12 services.

13 Q. All right. I'll reask it. There's a
14 provision in the price cap statute that allows services of a
15 company subject to price caps to be removed from the price
16 cap regulation if the Commission determines that effective
17 competition exists for that service in that particular
18 exchange. Right?

19 A. Subject to that later not being revoked, if
20 you will, yes.

21 Q. And if the Commission determines that there is
22 effective competition for a service in an exchange, then the
23 company is permitted to price that service in that exchange
24 at any level it chooses. Correct?

25 A. Yes.

1 Q. Just like its competitors. Right?

2 A. Yes. Provided that isn't for some reason

3 revoked.

4 Q. Okay. Does the rate have to be just and

5 reasonable under that circumstance?

6 A. I believe that if effective competition truly

7 exists, that that's consistent with the assumption that

8 competitive forces exist to drive the price to a just and

9 reasonable level.

10 Q. Okay. And so in any exchange where a

11 competitor is operating and offers that service and that

12 competitor is classified as a competitive company, then

13 those rates are just and reasonable?

14 A. No.

15 Q. Only if the Commission has found that a price

16 cap company is subject to effective competition do the rates

17 of the competitor become just and reasonable by definition?

18 A. Where -- where effective competition exists --

19 Q. Okay.

20 A. -- within --

21 Q. How about a company that is classified as

22 competitive by the Commission and for a service that has not

23 been classified as subject to effective competition for the

24 incumbent? Does the Commission have the authority to

25 determine whether the rate charged by the competitor is just

1 and reasonable?

2 A. I think that they do.

3 Q. Is that under the same statutory provision,

4 392.200.1 --

5 A. Yes.

6 Q. -- that you're applying here?

7 A. I think -- I think so, yes.

8 Q. And is there a different standard then that

9 applies to determining what just and reasonable is for a

10 competitive company that's offering a service that hasn't

11 been declared to be subject to effective competition when

12 offered by the incumbent?

13 A. Is there a different standard --

14 Q. To determine whether the rate is just and

15 reasonable.

16 A. I'd say yes.

17 Q. Okay. And where in the statute, if we look at

18 392.200.1, does it indicate that there are different

19 standards for justness and reasonableness depending on which

20 company's offering it?

21 A. I think that the -- the different standards

22 are the means by which you determine whether various

23 company's rates could be considered just and reasonable.

24 Q. Right. And my question was, point to me where

25 in the statute it indicates that there's different standards

1 or different tests to determine whether a rate is just and
2 reasonable depending upon who's offering it.

3 A. I think by virtue of the different treatment
4 under the statute, it is -- it demonstrates that there
5 are --

6 Q. Because they've done it, it must be okay?

7 A. No. Absolutely not. Based on sound economic
8 justification --

9 Q. Okay. Let me ask you the question then.

10 A. -- an incumbent --

11 Q. Where in the statute, in 392.200.1, do you
12 look to to say that there's a different standard to
13 determine whether something is just and reasonable depending
14 upon which company's offering it?

15 A. I think that in Section 392.245 where it sets
16 out requirements for price cap companies that apply to
17 previous reg--

18 MR. LANE: Your Honor, can I ask that the
19 witness be directed to answer the question that I asked?

20 JUDGE THOMPSON: Ms. Meisenheimer, the
21 appropriate answer is yes, no or I don't know unless the
22 question calls for a narrative. Any explanation that's
23 necessary to fully understand your answers can be elicited
24 by your counsel on redirect. Thank you.

25 Please proceed. Do you need the question read

1 back?

2 MR. LANE: I'll ask it again.

3 BY MR. LANE:

4 Q. Could you point to me where in Section

5 392.200.1 it provides that a different standard to judge

6 whether a rate is just and reasonable should be applied

7 depending upon what type of company is offering the service?

8 A. No.

9 Q. When we talked earlier about the provision of

10 the price cap statute that allows a service to be declared

11 to be effectively competitive in a particular exchange, you

12 mentioned that there are provisions that would allow the

13 Commission to withdraw that effective competition

14 designation. Do you recall that?

15 A. Yes.

16 Q. And would you agree with me that the statute

17 also provides in that instance that price cap regulations

18 should be re-imposed?

19 A. Yes.

20 Q. And that if price cap regulation is

21 re-imposed, that it is to set a new maximum allowable price

22 that's equal to the rate which would have been there had the

23 company applied all of the increases that it could have

24 applied during the period that it was subject to effective

25 competition designation?

1 I'll ask it this way, if that's confusing.
2 How is the price to be determined if the company's service
3 that has been declared effectively competitive is
4 subsequently determined not to be subject to effective
5 competition any longer?
6 A. My understanding is that it is the rates that
7 would have otherwise applied under the price cap statute.
8 Q. What about increases in the maximum allowable
9 prices that could have been made during the period that the
10 company was subject to effective competition designation for
11 that service?
12 A. Can you point me to a section of the statute?
13 Q. 392.245.5.
14 A. The maximum allowable prices established for
15 the telecommunications service of such incumbent local
16 exchange telecommunications company should reflect all index
17 adjustments which were or could have been filed from all
18 preceding years since the company's maximum allowable prices
19 were first adjusted pursuant to subsection 4 or 11 of this
20 section.
21 Q. So the new maximum allowable price would be
22 set at a level that includes all of the adjustments which
23 were or could have been made. Right?
24 A. That's what the language says, yes.
25 MR. LANE: That's all I have. Thank you.

1 JUDGE THOMPSON: Thank you, Mr. Lane.
2 Mr. Dandino, redirect?
3 MR. DANDINO: Yes, your Honor.
4 REDIRECT EXAMINATION BY MR. DANDINO:
5 Q. Ms. Meisenheimer, Mr. Lane had asked you about
6 what would happen if it was determined that a price cap
7 company or a -- that services were no longer considered
8 subject to effective competition. I believe you just -- you
9 read something from a portion of 392.245.5. What does that
10 indicate to you as to a company's entitlement to the
11 8 percent?
12 A. They wouldn't be allowed to bank that over the
13 en-- each year over the entire time, if you will. So it
14 wouldn't be the sum of the 8 percent year to year to year.
15 Q. Now, Mr. Lane asked you where in Section
16 392.200 it provided some type of an element or checklist for
17 criteria for what's just and reasonable. How do you
18 determine -- is there any way in the statutes that you're
19 aware of in 392 that creates a checklist for just and
20 reasonable rates?
21 A. No. I believe the Commission has discretion
22 in carrying out the intent and purpose of the chapter, and
23 that the different treatment under the statute of various
24 types of companies reflects that you can reasonably expect
25 that just and reasonable rates can be arrived at in

1 different -- by different means for different types of
2 companies.

3 Q. Did you refer to that as
4 one-size-doesn't-fit-all before?

5 A. That would be descriptive, yes.

6 Q. Okay. And so to determine what is just and
7 reasonable, the Commission's going to have to look at
8 factors depending on what?

9 A. I think one of the primary factors that they
10 need to look at is the level of competition and the form of
11 competition.

12 Where an incumbent monopoly is transitioning
13 into a competitive environment where it faces few or weak
14 competitors, I think that it is fully reasonable to expect
15 that the only way you're going to achieve just and
16 reasonable rates is by imposing both a price cap structure
17 and an additional check and balance that the Commission can,
18 as they can in this case, look at individual service rates,
19 if necessary, to ensure the rate's just and reasonable.

20 Q. But that still doesn't address what Mr. Lane
21 was trying to get at in Section 392.200, that it doesn't say
22 anything about -- I just lost the word in my mind -- about
23 competition, about levels of competition. He's making a
24 point that it doesn't say levels of competition. And what
25 are you telling this Commission?

1 A. I view this as -- I view Section 392.200 as
2 the goal and other pieces of the statute that provide
3 different types of regulatory environments for different
4 companies as the means by which you achieve this goal.
5 So I view them as working together, not that
6 you can look at one section in isolation and say, you know,
7 where does it say each of these companies have different --
8 these types of companies have different criteria. I don't
9 think that's relevant
10 MR. DANDINO: That's all I have, your Honor.
11 Thank you.
12 JUDGE THOMPSON: Thank you, Mr. Dandino.
13 You may step down, Ms. Meisenheimer. You're
14 excused.
15 Mr. Peters, would you retake the stand,
16 please?
17 Thank you, sir. I'll remind you that you're
18 still under oath. Recross based on questions from the
19 Bench, Mr. Dandino?
20 MR. DANDINO: No questions, your Honor.
21 JUDGE THOMPSON: Mr. Fischer?
22 MR. FISCHER: No questions.
23 JUDGE THOMPSON: Ms. Creighton Hendricks?
24 MS. CREIGHTON HENDRICKS: No questions.
25 JUDGE THOMPSON: Mr. Lane?

1 MR. LANE: I'd like to get an exhibit marked,
2 if I could, your Honor.

3 JUDGE THOMPSON: You may. How would we
4 describe this exhibit?

5 MR. LANE: This is from the Commission's
6 website, CLEC Application, Tariffs and Interconnection
7 Agreements, instructions from the Commission.

8 JUDGE THOMPSON: Okay.

9 (EXHIBIT NO. 6 WAS MARKED FOR IDENTIFICATION.)

10 JUDGE THOMPSON: This will be Exhibit 6, CLEC
11 Applications, Tariffs and Interconnection Agreements.

12 THE WITNESS: David, can I have statutes?

13 JUDGE THOMPSON: Please proceed.

14 BILL PETERS, having been previously sworn, testified as
15 follows:

16 RECROSS-EXAMINATION BY MR. LANE:

17 Q. Mr. Peters, I've handed you a copy of what's
18 been marked as Exhibit 6 in this case, which is from the
19 Commission's website and provides instructions for CLECs in
20 terms of their applications, tariffs and interconnection
21 agreements. Do you see recognize that as coming from the
22 Commission's website?

23 A. Yeah. It's from the Commission's website.

24 Q. And if I could refer you to page 2 of what
25 I've provided to you under Section 2.5, on page 2 it has a

1 listing of waivers that CLECs may seek in connection with
2 the certification process. Correct?

3 A. Correct.

4 Q. And would you agree with me that of the
5 sections of the statute that are subject to the standard
6 waiver process, that Section 392.200 is not one of those
7 listed?

8 A. That's correct.

9 MR. LANE: Your Honor, I'd offer Exhibit 6 at
10 this time and conclude my recross of Mr. Peters.

11 JUDGE THOMPSON: Thank you, Mr. Lane.

12 Any objections to the receipt of Exhibit 6?

13 MR. FISCHER: No objection.

14 JUDGE THOMPSON: Hearing no objections,
15 Exhibit 6 is received and made a part of the record of this
16 proceeding.

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

18 JUDGE THOMPSON: Redirect, Mr. Meyer?

19 MR. MEYER: Thank you, your Honor.

20 REDIRECT EXAMINATION BY MR. MEYER:

21 Q. Mr. Peters, this goes back fairly far early on
22 in the discussions with questions. So far I can't remember
23 who asked you the question.

24 Price cap companies did not have cost of rate
25 investigations before they went into price cap status. Is

1 that a correct statement?

2 A. The companies that have gotten price cap
3 status have not gone through rate investigations.

4 Q. Okay. So those companies applied for
5 authority from the Public Service Commission and received
6 permission?

7 A. That's correct.

8 Q. Okay. In questions that involve the concept
9 of competitiveness, is it fair to say that there was more to
10 your discussion than the Public Service Commission's
11 decision actually finding that there was no effective
12 competition that was referenced as part of your testimony?
13 Is that correct?

14 A. You mean that my testimony didn't solely deal
15 with just that one aspect regarding competitiveness of the
16 services? Is that the question?

17 Q. That is the question. I'm trying to find the
18 section of your testimony that addresses that.

19 Starting on page 19 of your testimony. Would
20 it be fair to say you used that citation to the Commission's
21 order as a starting point of your discussion of
22 competitiveness and not as the sole basis for your
23 discussion of that point?

24 A. Well, yes. It was one -- one of the points
25 that I discussed and it was the first. And I go on to

1 discuss there are substitutes and -- yeah, it wasn't the
2 only thing.

3 Q. So, in fact, you actually discussed what
4 considerations should have been given to competitive choice
5 and evaluating the reasonableness of particular rates and
6 again not basing that disharmonization solely on the
7 Commission's previous decision; is that fair to say?

8 A. Yes.

9 Q. In the discussions yesterday you used phrases
10 such as "homogenous companies" or referenced treating all
11 companies the same or all companies being regulated the
12 same. Is SBC positioned the same as all of these presumably
13 homogenous or all other companies that you referenced for
14 purposes of comparison, in your opinion?

15 A. Well, I don't think -- I don't think the
16 companies that I referenced in my testimony, for example,
17 are all homogenous or they're all the same. And among the
18 ILECs, CLECs and IXC's that would probably be the case also.

19 Q. Would you like to elaborate a little bit on
20 your concept of a homogenous or all companies the same type
21 concept?

22 A. Well, I suppose -- I suppose I'd break it down
23 to just the too good world where all telephone companies
24 only offer busy line interrupt and line status verification,
25 which would be silly since somebody would have to be having

1 a phone conversation before they'd be able to have that.

2 Say they only offer interrupt and basic local.

3 A homogenous company would offer -- say, one company may be
4 in Jefferson City and one company may be in St. Louis and
5 both companies offer me the same quality of service, the
6 dial tone when I pick it up, it's the same, when I make the
7 telephone call, it's the same and they charge me the exact
8 same price for that.

9 Q. And do you believe that SBC is in the similar
10 position as the other companies referenced in your testimony
11 or these sort of homogenous companies?

12 A. No. I don't think that the companies are
13 equal in that respect.

14 Q. In response to I believe a Commissioner
15 question, you had noted that you thought it would be
16 appropriate to look at SBC as a whole in determining
17 justness and reasonableness of rates. Could you explain
18 what you mean when you said SBC at that point? Did you mean
19 SBC, the ILEC entity, or did you mean something beyond that?

20 A. Well, I'm not -- I'm not sure how far the
21 Commission's jurisdiction would go, whether it would go past
22 just the SBC ILEC. But I meant specifically just the SBC
23 ILEC, thinking that the Commission wouldn't be able to
24 examine areas where they don't have jurisdiction and can't
25 regulate.

1 Q. In response to questions from the Judge, I
2 believe also yesterday, you had stated that the objective of
3 price cap regulation was to allow a company to keep more of
4 its profits, thereby providing an incentive to innovate.

5 Just to qualify that from an economic
6 perspective, does this mean a company should be allowed to
7 maximize its profits by raising prices?

8 A. I don't think that that's what that meant at
9 all. It -- it really depends on the form of price cap
10 regulation where they can raise the prices or not. And I
11 haven't seen a form of price cap regulation where the
12 guidelines set forth say that, you know, company maximizes
13 profits on this category of services and raises prices
14 accordingly.

15 Q. Does or perhaps should a company have an
16 opportunity to maximize its profits with any given set of
17 constraints such as the constraints outlined by the price
18 cap statute, in your opinion?

19 A. I think it's to the company's advantage to do
20 that, but whether they should be granted price increases or
21 decreases based on that is a matter of the price cap
22 guidelines.

23 Q. You responded to, I believe, a series of
24 questions about whether people can look at the same data and
25 reach a different conclusion in this case, for example. If

1 there was a clear line black and white test, would you then
2 expect the same outcome or the same opinion to be reached by
3 multiple people?

4 A. For example, the guidelines -- if Test A
5 results in, you know, 32, then prices are reasonable? I
6 think that two people would look at the same test and if the
7 result was 32, then they would have to say that the prices
8 are reasonable.

9 Q. If instead of such a numeric target that there
10 were, in fact, different factors to be considered and
11 unknown or differing weights to be placed upon them as
12 discussed, for example, in your testimony, and Mr. Thomas'
13 testimony, is it reasonable to expect there might be
14 different outcomes depending upon the individual reviewing
15 it?

16 A. What you're saying is if the guideline is not
17 as clear as black or white and then -- and I guess there was
18 some ambiguousness to the evidence that was being looked at,
19 of course you could have different answers from reasonable
20 people.

21 Q. So is it possible for the same person to look
22 at the evidence and your testimony and Mr. Thomas' testimony
23 and reach different conclusions depending on what the
24 standard is that's being reviewed and applied?

25 A. Absolutely.

1 MR. MEYER: I have no further questions.

2 JUDGE THOMPSON: Thank you, Mr. Meyer.

3 You may step down, Mr. Peters. You're

4 excused.

5 Now, counsel, I don't think you have proposed

6 an order of closing argument. Do we have any suggestions as

7 to an order of closing argument?

8 MS. CREIGHTON HENDRICKS: What about the order

9 of opening?

10 MR. MEYER: I think -- I had envisioned

11 something along the lines of the same order as the opening,

12 which is why I didn't place that in our filing.

13 JUDGE THOMPSON: Well, it's fine with me.

14 MR. MEYER: But admittedly didn't explicitly

15 state that.

16 JUDGE THOMPSON: If that's what you want to

17 do. So we will hear then from Bell, CenturyTel, Sprint,

18 Staff and Public Counsel. Is that acceptable to everybody?

19 All right. We will be in recess until

20 three o'clock and then we will hear from Bell and the other

21 parties in the order I've just announced. Thank you.

22 JUDGE THOMPSON: Mr. Lane. And before we

23 start, is there any reason to suppose we will not finished

24 by five o'clock today?

25 MR. LANE: I'll be finished by 5:00.

1 JUDGE THOMPSON: Well, the room is available
2 tomorrow so if we have to go over, we can do that.

3 Please proceed

4 MR. LANE: Thank you, your Honor. This case
5 is primarily a legal issue. Does the Commission have the
6 authority to reject tariffs filed by SBC Missouri For
7 nonbasic services that don't exceed the 8 percent permitted
8 under Section 392.245.11?

9 There's been a lot of testimony from lay
10 witnesses on their views of the statute. All of those are
11 irrelevant. Statutory interpretation's not a matter for an
12 evidentiary hearing. It's not decided based on the weight
13 of the evidence. It's decided based on what the law is and
14 what it says.

15 So how does the Commission interpret the
16 statute? We must follow the canons of statutory
17 construction. There's three that apply here. First is, if
18 the statute is unambiguous, the Commission must apply it.

19 Second is, that general statements of
20 legislative purpose can't be used to override specific
21 statutory directives. Commission can't use the general
22 parameters and general purposes of Section 392.185 to
23 override the specific provisions of 392.245.

24 And that makes sense. There's nine purposes
25 listed in Section 392.185. They're not always consistent.

1 Policy that promotes one general purpose can be detrimental
2 to some other purpose. And the general purposes are so
3 broad that they could be used to justify almost any policy
4 that the Commission wants to adopt. But general statements
5 of purpose can't be used to override the specific statutory
6 language.

7 Third canon of construction is that the
8 specific statute controls over general statute. So how do
9 we apply those canons of statutory construction here? We
10 must look to the provisions of 392.245 and apply them.
11 Subsection 11 clearly and unequivocally provides for the
12 right to increase the maximum allowable prices of nonbasic
13 services by 8 percent per year.

14 Relevant language is found in 392.245.11. It
15 says, quote, Thereafter, the maximum allowable prices for
16 nonbasic telecommunications services of an incumbent local
17 exchange company may be annually increased by up to
18 8 percent for each of the following 12-month periods when
19 providing notice to the Commission and filing tariffs
20 establishing the rates for such services in such exchanges
21 at such maximum allowable prices, unquote.

22 That is clear, it's unambiguous. The price
23 cap company has the right to make the filing by giving
24 notice and filing a tariff and it may then increase the
25 rates.

1 You can't cite to the general purposes of
2 Section 392.185 to override that. You can't impose
3 conditions under Section 392.470 to override it.

4 Now, there's a subsequent sentence of the
5 price cap statute that's been debated here. That subsequent
6 sentence says, An incumbent local exchange
7 telecommunications company may change the rates for its
8 services consistent with the provisions of Section 392.200,
9 but not to exceed the maximum allowable prices by filing
10 tariffs which shall be approved by the Commission within
11 30 days provided that any such rate is not in excess of the
12 maximum allowable price established for such service under
13 this section.

14 What does that mean? First, it applies to
15 price changes after the maximum allowable prices have been
16 made or been set based on the sentence that I read to you
17 previously.

18 It's not a situation that we're even dealing
19 with here. We're not seeking to change a rate after we've
20 increased it to its maximum allowable price. We're simply
21 filing to have the maximum allowable price set and approved
22 in a tariff.

23 What does the reference to consistent with
24 Section 392.200 mean? Let me say what it doesn't mean. It
25 does not give the Commission the authority to reject price

1 cap changes on the basis that they're not, quote, just and
2 reasonable.

3 What it does mean is that we need to look at
4 Section 392.200.2 through 392.200.9, which involve various
5 nondiscrimination provisions that the Commission may apply.
6 No one contends that this particular tariff violates or is
7 inconsistent with any of the provisions of Section 392.200.2
8 through 392.200.9.

9 This is a tariff of general application that
10 applies statewide to all customers in all exchanges. Had we
11 proposed to have a lower rate after we had the maximum
12 allowable prices established for a particular exchange, Cape
13 Girardeau, for example, then the Commission would have
14 authority under the consistent with Section 392.200 language
15 to look to see if that was permissible under those
16 provisions.

17 Had we done that, the Commission would have
18 looked under Section 392.200.4 and decided whether we were
19 permitted to do that, as one example. I could give you
20 many. But that's not what we did here. We filed a tariff
21 to increase the maximum allowable prices and the statute
22 says approve it, period.

23 Let's look at why Section 392.200.1 can't be
24 used to override Section 392.245.11. What we have in the
25 price cap statute in Section 392,245.1 is a legislative

1 declaration that when price cap regulation is used, the
2 rates yielded are just and reasonable, period. It's not
3 voluntary to use price cap regulation once you meet the
4 provisions of Section 392.245.2. In that circumstance, the
5 Commission shall apply price cap regulation, period.
6 Commission's already done that with SBC Missouri.

7 What those that are opposing the tariff are
8 asking the Commission to do is ignore the legislative
9 directive that price cap prices are just and reasonable as
10 determined by the legislature under Section 392.245.1 by
11 pointing to Section 392.200.1 and saying, Well, just and
12 reasonable means something different.

13 But it doesn't. It's the same language, it's
14 the same meaning and we have a legislative declaration under
15 Section 392.245.1 that they are just and reasonable, period.

16 I'd also point out that interpretation of
17 Section 392.200.1 would give the Commission authority to
18 evaluate whether prices are just and reasonable without
19 providing any yardstick or standard to determine that those
20 rates are just and reasonable. It would give the Commission
21 unrestrained authority. That's not consistent with what the
22 legislature has done in Section 392.245.

23 Nothing that's been proposed here makes sense.
24 Office of Public Counsel says look at cost. Judge Thompson
25 properly pointed out in his questions to Ms. Meisenheimer of

1 Office of Public Counsel that there's no reference to cost
2 whatsoever in Section 392.245.11 nor in Section 392.200.1.
3 Can't be inflation factors. The legislature
4 used CPI and GDPPI in terms of setting what are the
5 permissible increases or decreases for basic local service,
6 but specifically did not use inflation factors in deciding
7 what prices would be approved for nonbasic services.
8 You can't engraft something that the
9 legislature specifically included in basic services on top
10 of what the legislature decreed for nonbasic services.
11 It can't be based on rates charged for others
12 for similar services. If we carry that to its conclusion,
13 it leads to the ultimate finding that every company has to
14 charge the same rate for every service.
15 If you look at Company A and say, well, it
16 charges more than Company B for its service, that justifies
17 requiring Company A to lower its price to Company's B level,
18 you wind up having everybody move to the lowest rate that's
19 charged for the service. Again, that is totally
20 inconsistent with the concept of the price cap statute.
21 It's also inconsistent with what competition means.
22 The problem with trying to rely upon Section
23 392.200.1 in this case is that that applies, has meaning
24 when it's tied to a rate of return regulation. Just and
25 reasonable has meaningful application in that context

1 because ultimately the prices have to tie back to allowing
2 the company to earn its revenue requirement.

3 Once you cut that tether, you have nothing
4 left as a standard by which to apply what just and
5 reasonable means. It would make the Commission a roving
6 Commission to do whatever it felt was proper in any
7 particular circumstances. It would lead to nothing but
8 arbitrary and capricious decisions. That's not what the
9 legislature intended.

10 There's a clear balance struck by the
11 legislature. The legislature decided that we would
12 constrain basic local rates. We would tie them to a
13 standard that leads to very small increases or, as we've
14 seen in the past few years, decreases in rates.

15 We charge less for basic local today than we
16 did when we went under price caps in 1997. In fact, we
17 charge less today than we charged in 1984.

18 At the same time, the legislature gave
19 flexibility for nonbasic services. It was done not because
20 there would be competition everywhere. Because, remember, a
21 company goes under price caps if one company in any exchange
22 offers local basic service, period. You don't have to have
23 competition for every service in every exchange to go under
24 price cap. And so to engraft a competition requirement on
25 price increases is clearly inconsistent with the

1 requirements of the price cap statute.

2 I'd also note that the evidence in this case
3 is that where we've had that authority, we've exercised it
4 judiciously. As Mr. Unruh testified, we've only made 1-25th
5 of the price increases that we could have made under
6 nonbasic services under the price cap statute this year.

7 And several witnesses noted, and SBC Missouri
8 would agree, that it would be inherently unfair and clearly
9 unlawful to reject these tariffs on the basis that the rates
10 are not just and reasonable for all the reasons that I've
11 mentioned.

12 We'd respectfully request the Commission to
13 follow the law as it has been followed since 1997. The law
14 hasn't changed and it can't be changed by anyone except the
15 legislature. Thank you.

16 JUDGE THOMPSON: Thank you, Mr. Lane.

17 Mr. Fischer?

18 MR. FISCHER: Thank you, your Honor. I'm
19 tempted to just say I agree with what Paul Lane said, but
20 since we get so few opportunities in this forum to do a
21 closing argument, I think I'm going to take a few minutes of
22 your time.

23 JUDGE THOMPSON: Certainly.

24 MR. FISCHER: During the course of these
25 proceedings, there's been a lot of discussion about what the

1 statute means when it says that nonbasic service prices may
2 increase by up to 8 percent annually consistent with the
3 provisions of Section 392.200 which contain the phrase "just
4 and reasonable rates."

5 Of course, as Mr. Lane has just pointed out,
6 that Section 392.200 also contains nine sub-- or eight
7 subsections dealing with such concepts as unjust
8 discrimination and unreasonable preferences.

9 I think in order to properly understand this
10 particular reference, the overall regulatory framework in
11 Missouri needs to be considered. The legislature has
12 established three different and distinct levels of
13 regulation for telephone companies in the state.

14 The first is the traditional rate of return
15 regulated company. The second is the price cap regulated
16 company. And, of course, the third is the competitive
17 company where the company obtains complete pricing
18 flexibility. These are different and they're distinct
19 methods of regulation designed to move toward a fully
20 competitive marketplace.

21 Traditional rate of return rate base
22 regulation includes an overall review of the company's
23 earnings and the prices for individual services based upon
24 their individual cost of providing service.

25 Under price cap regulation, on the other hand,

1 there's not an overall review of the company's earnings and
2 prices are not based upon the cost of individual services.
3 Instead, the price cap statute has specified how prices will
4 change based upon indexes for basic local services and
5 access charges in the case of rebalancing.

6 For nonbasic services, the statutes mandate
7 that the price cap regulated companies may raise nonbasic
8 rates by up to 8 percent a year. Now, they don't have to.
9 They have that discretion under the statute. And as I
10 suggested in my opening statement in this case, CenturyTel
11 believes that the legislature has determined that such
12 increases are, by definition, just and reasonable.

13 Finally, the third distinct method for
14 regulating the telephone companies, that companies can
15 demonstrate that there is effective competition in their
16 exchanges and, therefore, the Commission should declare the
17 companies to be competitive companies. Competitive
18 companies have complete pricing flexibility and there's no
19 review of the company's earnings or its cost of providing
20 individual services.

21 Now, Judge, these are separate and distinct
22 methods of regulation. The statutes clearly spell out the
23 steps that must be taken to move from rate of return
24 regulation to price cap regulation to fully competitive
25 status.

1 There are also statutory provisions and
2 mechanisms for the Commission to re-impose price cap
3 regulation upon a fully competitive company if it finds it
4 is no longer facing effective competition. In that event,
5 the statute requires that the Commission revert back to
6 price cap regulation, the middle one, the second one.

7 Now, during this case, there's also been some
8 discussion of the provision of Section 392.246 which someone
9 I think referred to as the safe harbor provision that would
10 allow a price cap company to petition the Commission to be
11 regulated as a rate of return regulated company under
12 certain stringent conditions.

13 Essentially if the company cannot attract
14 capital on reasonable terms or if its ability to provide
15 safe and adequate service is threatened, then the company
16 can petition to go back to rate of return regulation.

17 At that point if the Commission determines
18 that maximum rates are insufficient to yield a reasonable
19 compensation for services rendered, then the Commission
20 shall, under the statute, establish with due regard to the
21 average return on the value of the property used in the
22 public service the just and reasonable rates to be charged
23 by the company. At that point the company is back under
24 traditional rate of return regulation.

25 My point is that there are three distinct

1 methods of regulation in the state. Under the price cap
2 statute, the legislature has authorized price cap companies
3 to raise nonbasic rates up to 8 percent.

4 But if the phrase "consistent with just and
5 reasonable rates or consistent with Section 392.200" is
6 interpreted to mean that the company has to do something in
7 addition to showing that their nonbasic rates are less than
8 the maximum 8 percent authorized by that statute, then in my
9 opinion, we're going to have a fourth method of regulation,
10 a hybrid. A hybrid between price cap regulation and
11 traditional rate of return regulation. And I don't think
12 there's any justification in the statute for finding that
13 kind of a hybrid course of action.

14 Assuming though, just for purposes of
15 argument, that such a hybrid was to be used, what would be
16 the legal standard for determining what are just and
17 reasonable rates for nonbasic services of price cap
18 regulated companies? It can't be some nebulous standard
19 like we'll know it when we see it. That would be arbitrary
20 and capricious and it would be a violation of law.

21 So what would be the standard? Well, in the
22 Commission's order suspending the tariffs in this
23 proceeding, the Commission expressed the concern that the
24 condition of the national economy over the course of the
25 past two years might not support an 8 percent increase in

1 rates for nonbasic telecommunications services.

2 The order went on to note that the price cap
3 statute suggests that rates should be consistent with
4 Section 392.200, which is the statute that says that rates
5 should be just and reasonable or at least makes that
6 reference.

7 The order then tees up the following issue to
8 be addressed in this case. Quote, The question is whether
9 an 8 percent increase in rates for nonbasic
10 telecommunications services at this time is just and
11 reasonable?.

12 Now, whenever I read that part of the order,
13 Judge, I interpreted the question to be whether 8 percent
14 increase of the nonbasic telephone rates would be consistent
15 with a national economy that's been experiencing relatively
16 low inflation.

17 I began to think about other cases that I've
18 been involved with over the years and how that standard
19 would have been applied to determine just and reasonable
20 rates if rate increases were limited to the inflation rate
21 over the past couple of years.

22 For example, in the Callaway Nuclear Power
23 Plant case after conducting a prudence review of the
24 construction of the power plant, the Commission disallowed
25 \$384 million from the company's rate base, which still

1 stands I think as the largest single disallowance in the
2 state's history and at that time was the single largest
3 disallowance in the whole country.

4 But even after that large disallowance in the
5 cost of construction, the Commission was faced with raising
6 the electric rates of Eastern Missouri by approximately
7 70 percent based upon traditional rate of return rate based
8 regulation principles.

9 Now, if the Commissioners at that time had
10 merely applied the inflation rate over the previous two
11 years as the legal barometer for any rate increase for that
12 case, our decision would have been much different than the
13 actual approach taken by the Commission.

14 In the end, the Commission decided to grant
15 the 70 percent rate increase based upon the law as we
16 understood it at that time using rate base rate of return
17 principles, but to phase it in over six years coupled with
18 the inclusion of carrying costs to keep the company whole.

19 More recently, in the last Missouri American
20 case, which I know you're very familiar, the Commission
21 authorized a 233 percent increase in the rates for Missouri
22 American sales for resale class, which happened to be the
23 water districts that I was representing in that case, and
24 150 percent increase for some St. Joseph industrials and
25 about a 40 percent increase in the residential class for the

1 St. Joseph district.

2 If just and reasonable merely means limiting
3 rate increases to the national inflation rate, then clearly
4 those rates in the Callaway case and the Missouri American
5 case would not have been considered just and reasonable
6 using that standard. Yet, that seems to be the standard
7 that's being considered for applying an analysis of the
8 nonbasic rate increases in this case.

9 In other cases that I'm familiar with, the
10 Commission has also not been inclined to merely compare the
11 rates of one public utility company to another and decide
12 that the lower rate must be the most reasonable in applying
13 a just and reasonable standard in that way.

14 Your Honor, in closing, CenturyTel would
15 respectfully request that the Commission approve SBC's
16 proposed rates in this proceeding and give other price cap
17 regulated companies some certainty that they will be
18 permitted to exercise the discretion to increase nonbasic
19 rates without an earnings investigation or without providing
20 cost of service studies for each of these individual
21 services.

22 And I'd also ask you to think about where we
23 go in the event that we have to provide cost of service
24 studies for all of these nonbasic service rates that these
25 telephone companies provide. We're talking a massive effort

1 and I suppose you'd have a huge proceeding to look at that
2 in the event you went down this road.

3 And I would certainly urge you to stay with
4 the statute. It says you can raise rates up to 8 percent.
5 It's clear, it's unambiguous. The General Counsel agrees
6 with that analysis and I'd certainly encourage the majority
7 of the Commission to go along with that perspective. Thank
8 you.

9 JUDGE THOMPSON: Thank you, Mr. Fischer.

10 Ms. Creighton Hendricks? I see you're not
11 going to waive your opportunity to make closing remarks.

12 MS. CREIGHTON HENDRICKS: No. But I will be
13 brief.

14 It won't come as a surprise --

15 JUDGE THOMPSON: You were up before he had
16 finished speaking.

17 MS. CREIGHTON HENDRICKS: I know. I'm trying
18 to get home at a reasonable hour.

19 It won't be a surprise that I agree with the
20 comments of SBC and CenturyTel. And I want to make sure
21 that this question -- because we've had a lot of questions
22 from the Bench and questions from the attorneys -- that this
23 is not a question of whether price cap companies are
24 escaping the Commission's jurisdiction. This is a question
25 of how the Commission applies its jurisdiction to price cap

1 companies.

2 And to answer that question, the Commission
3 must look to the statutes. Because they are a creation of
4 the statutes. They have no authority but what is granted to
5 them by statute.

6 Now, in looking at the statute, we all agree
7 that SBC in this case is subject to the price cap statute,
8 Section 392.245. We all agree that Section 392.245 says
9 that the Commission shall have the authority to ensure that
10 rates are just, reasonable and lawful by employing the price
11 cap statute.

12 Further, we all agree that the price cap
13 statute tells the Commission when it shall exercise that
14 authority that it's given. And that's when a CLEC is
15 certified in the territory of a large incumbent LEC such as
16 SBC.

17 Further, we all agree that the statute tells
18 the Commission that it shall approve a tariff when it is
19 filed by a price cap company and meets certain standards.

20 Finally, we all agree that there's a reference
21 to Section 392.200 within the price cap statute. What we
22 don't agree is the impact of that reference.

23 Now, SBC, CenturyTel, Sprint and Staff
24 maintain that the implication of that reference is answered
25 if you look at the canons of statutory construction, well

1 known canons of statutory construction.

2 And the first one is if you have a general
3 statute, such as we all agree 392.200 is, its provisions are
4 overridden by a specific statute, such as what we all agree
5 392.245 is.

6 Second of all, in construing both of them, in
7 addition to allowing the specific statute to control over
8 the general, you also ensure that the statutes are construed
9 in a manner that make them consistent with each other.

10 And in answering that question -- and I think
11 the Judge, you raised that question at the conclusion of my
12 opening, is how come the reference of 392.200 only -- or
13 didn't also state 392.200.2 through 9 and stated 392.200.
14 And the answer to that is answered by those two principles
15 of statutory construction I just identified.

16 First of all, the legislators knew that when
17 they drafted a specific statute and the specific statute
18 used the specific words of just, reasonable and lawful
19 prices that ensured when you employ price cap statute, that
20 they were controlling and establishing a standard that
21 controlled over general standard in 392.200 that they
22 reference.

23 Furthermore, they knew even when they cited to
24 392.200 that the Commission was bound to have to interpret
25 the two consistent with each other.

1 Now, in interpreting consistent with each
2 other, you've got to give meaning to the words in 392.245.
3 And these words include a reference to 30 days in which the
4 Commission shall approve a tariff, a reference to the fact
5 that the tariff shall be approved if the price is within the
6 maximum allowable price increase allowed under the statute.

7 Therefore, I believe that SBC and I know
8 Sprint, CenturyTel and Staff have come to the conclusion
9 that the statute did not give the Commission discretion to
10 go back under 392.200, subsection 1, and decide what they
11 wanted to look at to determine if it was just and
12 reasonable. Because that determination is made under
13 392.245, the price cap statute.

14 Now, there are some of us who are struggling
15 to try to get that consistency, but allow 392.200.1 to play
16 a role here. And I've heard a suggestion that there's a
17 rebuttable presumption perhaps that the legislators intended
18 to create by the reference to 8 percent in a maximum
19 allowable price in the nonbasic section of the price cap
20 statute.

21 The problem with maintaining that position is
22 that, first of all, the legislators knew how to create a
23 rebuttable presumption and they, in fact, did that within
24 the price cap statute in subsection 5, first sentence. It
25 states that effective competition shall be presumed unless

1 after notice and a hearing somebody else proves that it does
2 not exist. That language is not present in subsection 11,
3 which provides the maximum allowable price increase for
4 nonbasic services.

5 Furthermore, given the testimony we had today
6 as to what would need to be evaluated if the Commission
7 decided that they had authority under 392.200, there is no
8 way that the words "within 30 days" could mean anything.

9 Therefore, it's impossible to come to the
10 interpretation of rebuttable presumption and give meaning to
11 the statute and the words in subsection 11 and to be true to
12 the canons of statutory construction that must be applied in
13 this case.

14 Based on what I've said in this closing and
15 the comments made by CenturyTel and SBC in this case, we ask
16 the Commission to apply the price cap statute and approve
17 the tariff filed by SBC. Thank you.

18 JUDGE THOMPSON: Thank you.

19 Mr. Meyer?

20 MR. MEYER: Thank you. In this proceeding
21 Staff has provided evidence that can serve as tools to
22 arrive at a conclusion respecting the justness and
23 reasonableness of the proposed rate increases. However, the
24 individual pieces of the evidentiary record combined in
25 different ways could lead to different conclusions.

1 The points raised on page 16 of Mr. Thomas'
2 pre-filed testimony are designed to create a framework for
3 the Commission to arrive at a determination that would
4 provide such guidance.

5 That said, we reach the legal arguments in
6 this case which I will now discuss. The first sentence of
7 Section 392.245.1 says that the Commission may ensure that
8 the rates, charges, etc. are just and reasonable by
9 employing price cap regulation.

10 By saying this, the legislature actually meant
11 something as, of course, all language of the legislature is
12 presumed to mean something. Here it appears that means that
13 the price cap regulation derived rates that are just and
14 reasonable by their nature and that given the precise limits
15 established by the legislature, any rate or charge or price
16 within those limits is just and reasonable.

17 The cross reference, as has been thoroughly
18 discussed here to Section 392.200 in Section 392.245,
19 subsection 11, can be harmonized with this concept with the
20 reference to the just and reasonable requirement in Section
21 392.200.1.

22 The other provisions of Section 392.200 still
23 apply and still require a review process to accommodate,
24 which Staff would perform. And the reference to Section
25 392.200.1 certainly matches the language of 392.245.1 and

1 can be considered to be complimentary.

2 Section 392.245.11 says that the maximum
3 allowable prices for nonbasic telecommunications services
4 may be annually increased by up to 8 percent upon providing
5 notice to the Commission and filing tariffs.

6 Although the verb tense is written in the
7 passive voice, it is an extremely logical conclusion that
8 the statute refers to the company providing the notice and
9 filing the tariffs as the actor in the determination to
10 increase the maximum allowable price.

11 Jurisdiction remains with the Commission
12 clearly, as the statute later states the tariffs must be
13 approved within 30 days. And that permits a review to
14 ensure the tariff sheets are properly prepared and that the
15 rates they contain are within the amount permitted by
16 statute.

17 As the right appears to be vested in the price
18 cap statute to make the tariff sheet filing and to provide
19 the notice to the Commission of its intent to increase the
20 maximum allowable price, it follows that the reference to
21 the statute -- in the statute to the word "shall" implies an
22 actual obligation on the part of the Commission to approve
23 the tariff sheets if they meet the statutory requirements.

24 Section 392.245.4, subsection 2 and subsection
25 5 -- actually that might be sub-sub section -- suggests that

1 the price cap companies are entitled to a degree of pricing
2 flexibility and close scrutiny by the Commission appears to
3 defeat such flexibility. Now, this is the basic context,
4 but it does certainly give a sense of the general tenor of
5 the statutory price cap section.

6 At Section 392.245.7 the legislature
7 explicitly exempted companies from regulation under
8 subsection 1 of Section 392.240, which is the section that
9 gives the Commission the authority to determine whether
10 rates are unjust, unreasonable, unjustly discriminatory,
11 unduly preferential or any wise violation of law -- any wise
12 in violation of law. This subsection also gives the
13 Commission the authority to determine the appropriate, just
14 and reasonable rates.

15 The Commission has a frame of reference to
16 determine justness and reasonableness in Section 392.245.4
17 as it pertains to basic telecommunications services rates.
18 There the legislature references the CPI or the GDP.

19 In subsection 11 the Commission receives no
20 guidance at all from the legislature other than the
21 reference that the rates may be increased up to 8 -- up to
22 8 percent. If the legislature expected the CPI or the GDP
23 to be the decisive factors for nonbasic services, it clearly
24 could have said so, as it did in Section 392.245.4.

25 If the Commission finds that it has the

1 authority to control maximum allowable price increases up to
2 8 percent, a test would certainly be expected and, in fact,
3 could be necessary to ensure that the treatment of proposed
4 rate increases is not arbitrary and capricious.

5 In the absence of any reference to a test and
6 in the absence of any statutory authority to examine the
7 rate creases -- increases beyond mathematical verification,
8 we respectfully suggest that the Commission should act
9 within those statutory constraints. Thank you.

10 JUDGE THOMPSON: Thank you, Mr. Fischer --
11 Mr. Meyer. Excuse me. I'm confused about who's up there.

12 Before you step away, I have a question for
13 you.

14 MR. MEYER: Certainly.

15 JUDGE THOMPSON: Is it your view -- based on
16 your closing argument and your discussion of 392.240.1, is
17 it your view that the reference then to 392.200 does not
18 even authorize the Commission to determine that rates are
19 not unduly preferential, for example, or illegally
20 discriminatory?

21 MR. MEYER: I think 392.200 sections other
22 than .1 would certainly give the Commission that authority.

23 JUDGE THOMPSON: Okay.

24 MR. MEYER: I think the Commission would
25 certainly need to rely on a section other than Section

1 392.240.1 as its authorization to proceed, but I think there
2 are other statutory sections that might grant that
3 authority.

4 JUDGE THOMPSON: Thank you.

5 Mr. Dandino?

6 MR. DANDINO: Thank you, your Honor.

7 Thank you, your Honor. May it please the
8 Commission. I want to keep this -- try to go back to the
9 very basics of this.

10 When we're talking about the authority of the
11 Commission -- and what the Public Counsel is asking the
12 Commission to do is to recognize that they have broad
13 authority and broad power to act in order to protect the
14 ratepayers and to protect the public interest.

15 Yes, of course, they must act within their
16 statutory authority, but the legislature has crafted
17 statutes which interact with one another. Use the word
18 *impara materia*, that you must look at all the statutes on
19 the same subject, which is telecommunications regulation, in
20 context with one another. They round out and dovetail
21 together or they form a unified system of regulation.

22 And with that, you have an over -- excuse me,
23 an overriding power of the Commission which has necessary
24 and proper powers to carry out the goals set forth by the
25 legislature.

1 Now, Mr. Lane from SBC was correct in saying
2 Missouri has no legislative history for their statutes.
3 Everything you heard here about the motivations behind the
4 legislature and what balancing and what they thought and
5 what they said and who they thought they were going to
6 benefit is just the opinions of the people and hearsay. It
7 is not -- it is not the legislative history.

8 You want the intent and purpose of the
9 statutes, look to 392.185. The provisions of this chapter
10 shall be construed to, and then the legislature lays out
11 nine elements, nine goals, nine legislative intents, nine
12 legislative purposes which they want this Commission to
13 carry out.

14 Now, if you look at Section 392.245.11, the
15 infamous reference to Section 392.200, I fail to see how any
16 interpretation can exempt 392.200.1 when the statute simply
17 doesn't say that. It is not exempt.

18 The companies and Staff say, well, 2 through
19 the remainder of the statute, well, of course that applies,
20 no question about it. But .1, which talks about just and
21 reasonable standard or just and reasonable rates simply
22 doesn't apply.

23 The way I look -- looking at all 392 -- or
24 Chapter 392 -- and really Chapter 386, the whole purpose of
25 leg-- of utility regulation is to provide safe and adequate

1 service, utility service at just and reasonable rates.

2 Now, I don't know -- the term "just and
3 reasonable rates" is used in the statutes and used in 392,
4 but I don't see it actually defined. Reasonable charges in
5 Section 392.185, subsection 4 is not defined. There is no
6 standard set out. But this Commission time and time again
7 decides what reasonable charges are.

8 And how do they do that? They base it on
9 their expertise, they base it on the information and
10 evidence presented here on relevant factors. And their job
11 is to consider all relevant factors. And I think that's
12 what they have to do when they're considering the -- any
13 tariff that is presented to them.

14 In rate of return companies, their rates are
15 governed by just and reasonable standard. I don't think
16 there's any doubt about that. Now, price cap I believe is
17 too. And I think the competitive companies, it's just and
18 reasonable standard too.

19 Now, what factors, what measures that go into
20 determining what that is is reflected as what
21 Ms. Meisenheimer said. One of the factors is the level of
22 competition. Staff has come up with a number of other
23 things.

24 This legislature has -- this legislature --
25 this Commission looks at these matters and determines what

1 are the relevant factors and tries to apply them with their
2 expertise as the best they can in trying -- and going back
3 to Section 392.185 to carry out each one of these goals.

4 And we go back to allow full and fair
5 competition to function as a substitute for regulation when
6 consistent with the protection of ratepayers and otherwise
7 consistent with the public interest.

8 Who defines the consistent with the public
9 interest in rate-making? This Commission does. I still
10 haven't seen a standard set out in the statutes of what
11 constitute the public interest. It's for this Commission to
12 develop.

13 Of course, it's going to have to be reasonable
14 and based on some evidence. It can't be arbitrary. But I
15 think just because there's no definition of just and
16 reasonable, there's no standard set out whether it's just
17 and reasonable does not make an invalid consideration.

18 The Office of Public Counsel just wants the
19 Commission to consider that they are not a calculator, they
20 are not just here to perform mathematical observations and
21 to use a punch card checklist. They're here to exercise
22 their expertise to find just and reasonable rates. And they
23 have the authority to supervise all telecommunications
24 companies.

25 Now, let's go to the specific proposal. And,

1 once again, I think we want to talk to a -- talk in terms
2 of -- talk in terms of what we're proposing. We're not
3 talking about this Commission just turning every case into a
4 full-blown consideration of costs and competition.

5 The Commission has discretion whether or not
6 to suspend a rate when it's filed. They can -- and they're
7 supposed to consider all relevant factors in making that
8 decision.

9 All we're saying -- all Public Counsel is
10 saying is this Commission should consider all relevant
11 factors. And all relevant factors are many of these other
12 factors that Staff has brought up, Ms. Meisenheimer has
13 brought up. And it shouldn't be, well, it's 8 percent, it's
14 less than 8 percent. I think the Commission has discretion,
15 has the authority to look just beyond that 8 percent in
16 order to protect the public, to carry out these nine
17 elements.

18 As Ms. Meisenheimer pointed out, the
19 Commission is probably going -- is no doubt going to give
20 the price cap companies the benefit of the doubt if it is a
21 percent or less unless there is probably some -- some
22 substantial reason, some really compelling reason why it
23 should be suspended or why this is not just and reasonable.

24 I'm not going to say it's any one factor.
25 It's not necessarily inflation, it's not necessarily cost.

1 Because it could vary depending on the situation. It's not
2 necessarily a presumption.

3 I think it's almost giving some type of a
4 deference to the price cap company really based on the
5 statute, that, you know, they're proposing an 8 percent,
6 okay, that's within their authority to propose that and --
7 but I think it's also -- and the Commission has the
8 authority for the protection of the ratepayers and the
9 protection of the public interest not just to blindly accept
10 that, but to have the authority to look at it if all other
11 relevant factors indicate that they ought to look at it.

12 In this particular case, Ms. Meisenheimer
13 pointed out that, you know, in her opinion, she's not going
14 to endorse it as just and reasonable and -- but and we --
15 and she was pointing out that Southwestern -- that SBC was
16 invited by her to come forward with evidence and they stuck
17 to the 8 percent in the statute.

18 Staff has presented some information and I
19 think this Commission, in exercising their discretion, their
20 expertise can look at what the record is in this and make a
21 decision one way or the other. They may decide it's just
22 and reasonable, it satisfies them.

23 Public Counsel's not willing to endorse it,
24 but we think the important issue is that the Commission
25 exercise their discretion, their authority and make a

1 decision that this Commission raised on their own, they
2 raised the problems on their own. And I think that's
3 important. On their motion, they -- the Commission
4 suspended this and wanted to investigate.

5 And if this Commission is satisfied based on
6 what they've seen here, you know, so be it. But I think
7 it's important that they confirm their authority to
8 investigate when they feel that the public interest and the
9 protection of the ratepayers is at stake. Thank you.

10 JUDGE THOMPSON: Thank you, Mr. Dandino.

11 Does anyone have anything else to bring to my
12 attention at this time?

13 Thank you very much. We are adjourned.

14 WHEREUPON, the hearing was adjourned.

15
16
17
18
19
20
21
22
23
24
25

1	I N D E X	
2	STAFF'S EVIDENCE	
3	BILL PETERS	
4	Questions by Judge Thompson	289
5	Recross-Examination by Mr. Lane	374
6	Redirect Examination by Mr. Meyer	375
7	OPC'S EVIDENCE	
8	BARBARA A. MEISENHEIMER	
9	Direct Examination by Mr. Dandino	293
10	Cross-Examination by Mr. Meyer	297
11	Cross-Examination by Mr. Lane	307
12	Questions by Judge Woodruff	317
13	Questions by Commissioner Gaw	337
14	Recross-Examination by Ms. Creighton Hendricks	358
15	Recross-Examination by Mr. Lane	360
16	Redirect Examination by Mr. Dandino	371
17	Closing Statement by Mr. Lane	382
18	Closing Statement by Mr. Fischer	389
19	Closing Statement by Ms. Creighton Hendricks	397
20	Closing Statement by Mr. Meyer	401
21	Closing Statement by Mr. Dandino	406
22		
23		
24		
25		

1	EXHIBITS INDEX		
2	Exhibit No. 5	Marked	Rec'd
3	Rebuttal Testimony of Barbara A. Meisenheimer		296
4	Exhibit No. 6		
5	CLEC Applications, Tariffs and Interconnection		
6	Agreements	374	375
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			