

Volume 7

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

PAUL G. LANE, General Counsel-Missouri

LEO J. BUB, Senior Counsel

One SBC Center, Room 3520

St. Louis, Missouri 63101

314-235-4300

FOR: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri

CARL J. LUMLEY, Attorney at Law

Curtis, Oetting, Heinz, Garrett & O'Keefe

130 S. Bemiston, Suite 200

Clayton, Missouri 63105-1913

314-725-8788

FOR: Big River Telephone,

MCI Metro Access Transmission Services, LLC

Intermedia Communications,

MCI WorldCom,

NuVox Communications of Missouri

XO Communications

Socket Telecom

MICHAEL F. DANDINO, Senior Public Counsel

P.O. Box 2230

Jefferson City, Missouri 65102

573-751-5559

FOR: Office of Public Counsel and the Public

WILLIAM K. HAAS, Deputy General Counsel

P.O. Box 360

Jefferson City, Missouri 65102

573-751-6651

FOR: Staff of the Missouri Public Service Commission

1 P R O C E E D I N G S

2 JUDGE RUTH: We are on the record again. It is
3 Thursday, February 3rd and we are --

4 COMMISSIONER GAW: Judge, are you sure you want
5 to be on the record for this? Because I had go get a
6 little -- it's a buggy whip. I'll just set it in the corner
7 over here.

8 JUDGE RUTH: When I thought it was a switch, I
9 wondered who it was for. Excuse me.

10 We are back on the record for Case
11 TO-2005-0035. When we broke yesterday, we were in the midst
12 of Commissioner questions for Mr. Unruh -- did I get that
13 right?

14 MR. UNRUH: That's correct.

15 JUDGE RUTH: And that is where we will pick up
16 now. I will remind you, sir, that you are still under oath.

17 And, Commissioner Gaw, do you have any
18 questions to start off with?

19 COMMISSIONER GAW: If Commissioner Murray was
20 finished with her line of questioning, I have a few questions
21 left.

22 CRAIG A. UNRUH, having been previously sworn, testified as
23 follows:

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Mr. Unruh, I just wanted to follow up with a

1 few questions. And, in particular, I was just drawn to the
2 analogy yesterday about SBC and the horse and buggies. And,
3 in particular, it seemed to me that you tended to agree with
4 that analogy, that SBC was sort of like a horse and buggy in
5 regard to its wireline business. And I just wanted to make
6 sure that I understood you correctly. You believe that SBC's
7 wireline business is like the horse and buggy, that its days
8 are numbered?

9 A. I was agreeing to the fact that the analogy
10 demonstrated that substitutability, as we were discussing if
11 wireless were substitutable for landline service, is -- can be
12 similar to thinking about going backwards from a car back to
13 horse and buggy. I did add the statement that I sure hope we
14 don't suffer the demise of the horse and buggies and the IBM
15 Selectric. We --

16 Q. Would you -- go ahead. I'm sorry.

17 A. Just to complete the answer, we are certainly
18 trying to do what we can to ensure that our business is not a
19 horse and buggy.

20 Q. All right. So, in essence, when I think about
21 a horse and buggy and automobiles, didn't the automobile
22 become a replacement for the horse and buggy rather than a
23 substitute or an alternate?

24 A. It probably became I guess the -- the ultimate
25 substitute and everybody ultimately substituted their use of a

1 horse -- maybe not virtually, but virtually everybody
2 substituted their use for a horse and buggy --

3 Q. There are a few Amish out there --

4 A. There are a few people.

5 Q. -- that may still be using them. As a matter
6 of fact, the buggy whip I brought in this morning came from
7 the Amish, I think, if I recall. So there are still places
8 you can find them.

9 But the idea of what we're talking about when
10 we're talking about whether something's a substitute or not,
11 it seems to me, varies according to whose definition we're
12 referring to. When you're talking about a horse and buggy and
13 an automobile, you're talking about an era that changed and a
14 new technology that replaced an older technology for the most
15 part; isn't that correct?

16 A. And certainly -- and I think the analogy would
17 be that wireless is a newer technology, IP is a newer
18 technology and it could certainly replace circuit switched
19 technology.

20 Q. It could?

21 A. Certainly.

22 Q. We don't know today --

23 A. We don't know.

24 Q. -- whether it will or not. Correct?

25 A. Certainly.

1 Q. And when we're discussing the possibilities in
2 regard to where we are today, as you've already said, there
3 are a lot of uncertainties about the direction that not just
4 technology is going, but also the direction that consumers
5 will be going in over the next few years. Wouldn't you agree
6 with that?

7 A. Certainly it's part of what makes this an
8 exciting industry to be in. I think it's an exciting and
9 great time for consumers. I think there's a lot of things
10 coming that are going to improve consumers -- the services
11 that we and others provide to consumers and hopefully improve
12 their lives and hopefully they'll share a little bit of their
13 money with us in the process.

14 Q. It's difficult to predict at the present time
15 what direction these things are going in, wouldn't you say, in
16 regard to how consumers are going to respond to new ideas and
17 new services?

18 A. Certainly. I think as with virtually any
19 industry, they face technological risks associated with
20 continuing to offer the products and services they offer to
21 their consumers.

22 Q. And in regard to the status of some of the
23 things that we've seen in the rather short past when looking
24 back from '96 and coming up to the present, the technologies
25 and the means and modes of companies competing with SBC and

1 others that are traditional ILECs that are out there, we're in
2 a time today of another period of change, are we not, with the
3 FCC order still pending out there in regard to what's going to
4 happen with UNE-P and other things? We really don't know
5 where this is all headed in that regard, in that narrow area?

6 A. That's certainly the case. These carriers have
7 different options for how they -- how they want to continue to
8 serve their customers. How they choose to do that will be
9 dependent upon their business plan and what they think makes
10 the most sense.

11 Q. And what's difficult at the present time, at
12 least it would seem to me and I guess I'm going to ask you if
13 you agree or disagree with this, is an evaluation of -- in
14 regard to what is going to happen when UNE-P, which -- goes
15 away and how the carriers that are out there that have been
16 utilizing it will respond to that?

17 A. I agree it's difficult to say exactly what each
18 carrier's going to do. It's, again, up to their individual
19 business plans in terms of what they -- what they want to do,
20 what kinds of technologies they want to use, what kinds of
21 approach they want to use, do they want to do business with
22 us, do they want to do business with others do they want to
23 install their own -- their own technology, do they want to use
24 alternative forms of technology?

25 There's different options available to them and

1 I think we'll see perhaps a myriad of -- of solutions that the
2 different carriers will try.

3 Q. It poses a problem, does it not, to evaluate
4 whether or not those competitors stay in or find some other
5 way of competing with SBC?

6 A. It poses a problem --

7 Q. To try --

8 A. -- for them.

9 Q. -- to predict that -- to predict it?

10 A. I'm not sure we should be in the business of
11 predicting what carriers are going to do in terms of how they
12 serve customers.

13 Q. Or whether or not they're going to stay in
14 business in competition with you?

15 A. Again, as I mentioned, there may be some
16 carriers that they've -- look, they've taken advantage of --
17 for eight years now a set of -- a process that's never been
18 found to be lawful. And some carriers may have just tried to
19 take advantage of that for the duration of however long they
20 could hold out.

21 Q. Because those --

22 A. Those --

23 Q. Excuse me. Go ahead.

24 A. Those carriers ultimately may not have
25 long-term business plans that will allow them to successfully

1 compete in the marketplace. That's not necessarily bad. It's
2 probably stronger for this industry to weed out the marginal
3 players and let the stronger players continue to fight it out.

4 And I think there are a lot of carriers that --
5 that -- that were in this for the long term and they have
6 plans and they use a variety of ways of serving customers
7 today. They may be doing resale, they may be doing UNE-P, may
8 be using their own switch.

9 So they certainly may adjust their -- you know,
10 in terms of an individual customer, how they serve that
11 customer, but I think they -- they're in it for the long term,
12 they want to be in this business and I believe they'll find a
13 way to serve those customers.

14 In many cases the carriers already have their
15 own switches. They're liable to just start using those
16 switches or, again, if they want to continue to use our
17 switch, that's fine, we'll try to reach a mutually agreeable
18 price.

19 Q. When you say they were taking advantage of
20 things, are you referring again back to the -- what you have
21 testified earlier to about UNE-P being priced under what it
22 should have been priced at to begin with?

23 A. Yes.

24 Q. And we've already noted that SBC decided for
25 some reason not to take advantage of those lower prices in

1 operating as a CLEC in most areas that they could have taken
2 advantage of?

3 A. We've chosen to invest our limited resources
4 elsewhere, yes.

5 Q. Such as in purchasing AT&T?

6 A. And deploying DSL.

7 COMMISSIONER GAW: Judge, is it possible for
8 us -- is it possible for us to take notice of the filings that
9 SBC has made with us, some tariff filings on the prices that
10 have been changed over the period of time since the '96 Act on
11 vertical services and other things under the 8 percent rule?

12 JUDGE RUTH: I think in order to take notice of
13 those, I'd need to know exactly what they are. And I don't --
14 I mean, do you know what case numbers?

15 COMMISSIONER GAW: No, I don't.

16 JUDGE RUTH: I don't think I can protect the
17 record and give anyone a chance to respond and look at it
18 unless we know what we're -- exactly so that we can describe
19 what it is we're taking notice of.

20 COMMISSIONER GAW: Okay. I guess we could ask
21 for that information.

22 JUDGE RUTH: Yes. As a late-filed exhibit,
23 certainly.

24 COMMISSIONER GAW: Okay. And I think I'm going
25 to do that, at least a list of those exchanges in the

1 8 percent provision.

2 JUDGE RUTH: What I'll do then is I'll reserve
3 as late-filed Exhibit No. 42 -- this is something that I'll
4 expect to be filed by SBC, but I'll expect Staff to help them
5 in gathering the information. And it's my understanding it
6 would be all of the filings that have been made since 1996
7 that involve that 8 percent 392.245 -- the 8 percent price cap
8 change.

9 COMMISSIONER GAW: I don't want the filings of
10 all the case files. I just want to have the case numbers so
11 we can take notice of them in our records.

12 JUDGE RUTH: So it would be a list of the case
13 name and number. Do the parties understand what the
14 Commissioner's looking for?

15 MR. LANE: I think.

16 JUDGE RUTH: Okay. Then late-filed Exhibit 42
17 will be submitted within five business days of today unless
18 there's a problem, in which case you will let me know. And
19 the other parties will have three business days from that date
20 to file any kind of responses.

21 COMMISSIONER GAW: Thank you, Judge.

22 BY COMMISSIONER GAW:

23 Q. Now, Mr. Unruh, you've been -- have some
24 personal knowledge of some of those filings that have been
25 made in regard to vertical services and other things on

1 pricing over the last few years, don't you?

2 A. Yes. Yes, I do.

3 Q. Would it be -- would it be unfair to
4 characterize the increases in prices that Bell has filed on
5 many of those vertical services as being close to or at the
6 8 percent cap?

7 A. For the vertical services that we have
8 increased, which is not all of them, but for the vertical
9 services that we have increased, they tend to be around
10 7 or -- 6 to 8 percent, let's say.

11 Q. All right. In the meantime, the -- you may
12 have to help me with the terminology here. The cost of --
13 what's the name of the equivalent of the CPI for
14 telecommunications?

15 A. It's called CPITS, and the TS stands for
16 telecommunications service.

17 Q. Thank you.

18 Over that period of time in those years that
19 you have had increases, has that been running anywhere close
20 to 8 percent?

21 A. CPITS is going down, which means we've been
22 required to lower basic local service prices and switched
23 access prices on average over time, over that time period.
24 And, frankly, that revenue reduction is greater than -- like,
25 for example, last year we -- yeah, in 2004, we lowered basic

1 local -- basic local prices and switched access prices by
2 approximately 2.7 percent. That revenue reduction was
3 significantly higher than the revenue we generated from our
4 8 percent increases last year.

5 Q. Okay. So if I were to look at what has been
6 happening here over the last few years, would that be the
7 consistent statement from you every year that you filed those
8 requests for increases in the vertical services and other
9 things that are affected by the 8 percent cap?

10 A. I'm not exactly sure what you're referring to
11 in terms of that being similar.

12 Q. That you would have actually netted loss
13 revenue -- lost revenue?

14 A. It's -- I believe it's possible that -- pardon
15 me -- it varied by year, but I think overall it's been a net
16 loss.

17 Q. Okay. And is that contributed to by anything
18 other than the changes in prices? Are you including in that a
19 loss in lines or anything?

20 A. No.

21 Q. Okay. Now, if that's the case, then is it --
22 is part of the reason for the increase in the vertical service
23 amounts because of the decrease in the local basic revenues?

24 A. Yes.

25 Q. All right. As you move forward here, if we

1 were examining then -- well, let me ask you this first. I'm
2 sorry.

3 In addition to the fact that you have these
4 prices that are there that are subject to the 8 percent cap,
5 has SBC also been offering bundles of those services to
6 consumers at a discount?

7 A. Yes.

8 Q. All right. And in the scope of this, how is
9 that reflected -- how is that affected rather by the 8 percent
10 cap when you offer those bundles? Is that price when you
11 offer a price in a bundle then put into play on the 8 percent
12 cap or not?

13 A. I'm not sure I'm following your question. Let
14 me answer it this way.

15 Q. And I don't know. I'm asking because I'm
16 trying to understand how this whole thing fits together.

17 A. I think it varies by the bundle. There may be
18 in certain cases that a -- a bundle could be a discount off
19 the price and so the bundle may move -- if the underlying
20 components move in price, the bundle price could move. Now, I
21 would say in general we don't tend to do that. We've
22 historically tried to keep most of our bundles, packages
23 fairly fixed in price.

24 Q. Are they considered -- are bundles considered
25 promotions or are they -- do they then -- do they somehow

1 line up as a new service and get tariffed and subject to the
2 8 percent cap? That's what I'm trying to understand.

3 A. Okay. I guess you could do it either way. We
4 have what I'll -- just to separate it from promotions, I'll
5 call them permanent. I don't know that anything's ever
6 permanent.

7 Q. I understand.

8 A. But permanent bundles that, for example, may be
9 tariffed, like we offer a -- well, we're changing them over
10 time, but today we have a bundle -- a tariffed bundle
11 called -- I forget if this is the exact name, but I think
12 it's -- I believe it's called You Select Three or You Select
13 Five. And it allows customers, for a fixed price, to choose
14 the, say, three or five vertical services that they want. And
15 that's a tariffed bundle. And that's not a promotion, it's a
16 permanent price.

17 Q. Okay. All right. So is it subject to the
18 8 percent cap?

19 A. Yes.

20 Q. All right. But other bundles that you have,
21 are they classified as promotions and don't fall into that
22 category after they're offered? Do you know the answer to
23 that?

24 A. Well, you could certainly bundle a group of
25 things together and offer them for a promotional period of

1 time.

2 Q. Yes.

3 A. I'm -- I'm not aware that we've done much of
4 that kind of a -- of a bundling approach. For example, you'd
5 say, Hey, for the next six months you get Call Waiting, Caller
6 ID and -- and those two together at half price or whatever.

7 Q. When you bundle something together and you put
8 it out there at a price and it's not a promotion, then does
9 that bundle become considered a new tariffed service?

10 A. Yes.

11 Q. And then that initial price then if it's still
12 offered the next year, can only be moved up a maximum of
13 8 percent?

14 A. Correct.

15 Q. Okay.

16 A. And just -- yeah, just to make sure we're
17 complete here, if it's a regulated bundle -- and I think
18 that's what we're talking about --

19 Q. I'm talking about -- mainly talking right now
20 about vertical services.

21 A. Okay.

22 Q. So that would be the case?

23 A. Correct.

24 Q. All right. Now, if you mix in unregulated
25 services with that bundle, what happens then?

1 A. As -- well, if you're charging the tariffed
2 price for -- as -- as -- for the regulated services in the
3 bundle, then changing those tariffed prices would still fall
4 under either the CPITS or the 8 percent. If you have
5 non-regulated products in the bundle, then obviously you're
6 free to move those prices around to change your overall
7 package price.

8 Q. Okay. When you file a -- so when that bundle
9 is filed together at -- is that bundle considered a new
10 service that has one price subject to the 8 percent cap or is
11 it made up of the multiple parts that are -- then continue to
12 be subject to the 8 percent cap? Do you understand what I'm
13 asking?

14 A. I believe so. The -- the way we do it is that
15 the -- the bundle is made up of the component prices and then
16 we typically discount the non-regulated stuff to get to
17 whatever price we want in the marketplace. So the -- the
18 tariffed price of whatever service is in that bundle is still
19 subject to price cap rules, either the CPITS or the 8 percent.

20 Q. Okay. And then back to if all of the things
21 that were bundled were vertical services regulated by the
22 Commission and you lower the price on the bundle, is that a
23 one price number that then is subject to 8 percent going
24 forward or are those discounts again -- each individually
25 priced component part discounted and shown as a lower than --

1 a lower price on your tariff?

2 A. It -- it can be both.

3 Q. Okay.

4 A. We used to offer a bundle called -- I can't
5 remember what it's called now, but let's -- I think we offered
6 something called SBC Essentials. And I believe the way it
7 worked -- well, let me -- let me not say that that's the
8 particular one I'm talking about because it may not have
9 worked that way.

10 Historically what we did was we had a credit
11 driven mechanism when we bundled vertical services. So the --
12 the tariff -- just to make it simple, let's say it's Call
13 Waiting and Caller ID and we name that something. Call
14 Waiting let's say is \$5 and Caller ID is \$5. So the
15 individual tariffed price would be \$10.

16 And the way we would do the package is we'd
17 actually tariff the credit, so offer that for \$9 instead of
18 10. So we would tariff -- under what we used to do, we would
19 tariff a credit of \$1. So, you know, you'd add up the
20 individual pieces and then have that \$1 credit to get to the
21 effective price of \$9. I believe our new You Select bundles
22 is just a -- a price, 9.95, pick three vertical services.

23 Q. Okay.

24 A. So you can do it either way.

25 Q. If you do it the latter way, is that something

1 then going forward you have the 8 percent cap that attaches
2 to?

3 A. Yes. As was the credit mechanism too.

4 Q. How does the credit work on the 8 percent cap?
5 That seems --

6 A. It got a little tricky because if you were
7 raising the price, you -- you'd lower the credit and it was --
8 got a little tricky, but the math works.

9 Q. But it was considered to be a part of an
10 8 percent restricted -- restriction going forward?

11 A. Yes.

12 Q. Okay. Now, if you receive competitive
13 classification, then what would change in regard to how you
14 handle the relationship of those vertical services and other
15 things to your local basic service on your pricing? How would
16 that change? First of all, let's start out with in relation
17 to what you'd have to deal with with the Commission.

18 A. Well, we wouldn't be subject to the CPITS and
19 8 percent constraints.

20 Q. All right.

21 A. So if something moved up 9 percent and, you
22 know, something else could move down 10 and some CPITS-driven
23 thing would potentially go above the -- let's say CPITS goes
24 down, it's tracking another 3 percent decline this year, I
25 believe. Instead of lowering our rates by 3 percent as we

1 would under CPITS, let's say we chose not to lower them, we
2 leave them in place. And so that would all affect the pricing
3 of ala carte services as well as how we would target bundled
4 prices.

5 Q. Okay. Is there a restriction that's currently
6 in place that inhibits your ability to lower prices?

7 A. The regulations themselves do not preclude us
8 from lowering prices, but we might be disincented from
9 lowering certain prices because we can't raise other prices.

10 Q. But that's the dynamic that's there under the
11 current regulatory scheme --

12 A. Yes.

13 Q. -- right?

14 A. Yes.

15 Q. Just --

16 A. Our competitors don't face that. They can move
17 prices around.

18 Q. They can move -- they can adjust prices up or
19 down and they file their tariffs to reflect that. Correct?

20 A. Or they don't file tariffs at all depending on
21 who the competitor is, but yes, for the CLECs.

22 Q. Okay. That's fair.

23 If we're talking about wireless, they wouldn't
24 be filing tariffs --

25 A. Correct.

1 Q. -- correct?

2 Or let's say, Voiceover IP, some of them would
3 not be filing tariffs?

4 A. Correct.

5 Q. Okay. So the restriction here is really about
6 the ability to move prices upward beyond the restriction
7 that's -- that was placed in the '96 law for price cap
8 companies?

9 A. Correct.

10 Q. Yeah. Okay. So when we're looking at this
11 picture and where you are today, I guess I would ask you, were
12 you -- would SBC be better -- have been better off from a
13 revenue standpoint to have not gone under price cap and have
14 continued to be under full regulatory rate-making scheme?

15 A. I don't know.

16 Q. No one's ever done that evaluation, to your
17 knowledge, have they?

18 A. Depends on what kind of rate cases we would
19 have gotten into --

20 Q. Sure.

21 A. -- and any number of factors that I don't think
22 you could quantify.

23 Q. Is it possible that the revenues from SBC might
24 have actually been more if you'd been in traditional
25 rate-making than under price cap?

1 A. Possibly. You know --

2 Q. You haven't done that analysis is what you're
3 telling me though?

4 A. No.

5 Q. Okay.

6 COMMISSIONER GAW: That's all I have, Judge.
7 Thanks.

8 JUDGE RUTH: Let me ask if any of the other
9 Commissioners have additional questions?

10 Then we will have, again, some -- or actually
11 this will be for the first time recross based on questions
12 from the Bench and we'll start with Staff.

13 RE CROSS-EXAMINATION BY MR. HAAS:

14 Q. Hello, Mr. Unruh.

15 A. Good morning.

16 Q. Yesterday, in response to questions from
17 Commissioners Clayton and Murray, you were explaining how a
18 CLEC that had a switch in, say, St. Louis could use that
19 switch to provide service in an out-state exchange. And you
20 mentioned that one possibility would be for the CLEC to
21 purchase transport from SBC to haul that call. How much does
22 SBC charge for transport?

23 A. I'm not certain, but it's -- it's an
24 arbitrated -- it's in our interconnection agreements, the
25 prices have been arbitrated by this Commission --

1 Q. Do you know --

2 A. -- decided by this Commission.

3 Q. Do you know if SBC Missouri offers transport --
4 is it at a tariffed rate?

5 A. To CLECs?

6 Q. Yes. I don't know. I'm just asking.

7 A. Well, I mean, I -- I guess they can -- they
8 can -- they could buy special access, which could provide the
9 equivalent functionality, but they -- I believe prices tend to
10 be a lot cheaper under their interconnection agreement so
11 that's what they use.

12 Q. In response to a question from Commissioner
13 Applling, you stated something to the effect that if SBC
14 Missouri were to raise its rates too much, they would lose
15 customers or would risk losing customers. How much could SBC
16 Missouri raise its basic local rates before losing customers?

17 A. I don't know.

18 Q. We heard that Sage charges \$25 for its basic
19 entry level service. Could SBC Missouri charge \$24.50 and
20 keep its customers?

21 A. There are other CLECs that -- that charge --
22 that appear to charge about the same amount we do.

23 Q. All right.

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

25 JUDGE RUTH: Public Counsel?

1 MR. DANDINO: Thank you, your Honor.

2 RECROSS-EXAMINATION BY MR. DANDINO:

3 Q. Good morning, Mr. Unruh.

4 A. Good morning.

5 Q. I just have a few questions.

6 Commissioner Gaw was asking you about
7 priceage -- price changes that Southwestern Bell -- SBC has
8 made in Missouri since the 1996 Act. Do you recall that in
9 the -- was it TO-2001-467, which is your last case, that SBC
10 followed a late-filed exhibit that had a list of all those
11 price changes?

12 A. I do recall that.

13 Q. Yes. And I think it was Exhibit 29?

14 A. I don't recall that.

15 Q. Okay. I believe it was.

16 Has SBC updated that list?

17 A. I believe we have some similar information. I
18 can't attest to the fact that it would be complete.

19 Q. Okay. Is that something that you could provide
20 the Commission to satisfy Commissioner Gaw's information
21 request?

22 A. It -- if the information's not complete, it
23 would possibly take more work than Mr. Gaw's -- Commissioner
24 Gaw's request, but -- but that would get at the same kind of
25 information.

1 Q. Okay.

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

3 JUDGE RUTH: Mr. Lumley?

4 RECROSS-EXAMINATION BY MR. LUMLEY:

5 Q. Good morning.

6 A. Good morning.

7 Q. I don't know that I'll be able to reconstruct
8 the questioning exactly, but were you able to find the
9 information regarding Arkansas that Commissioner Gaw was
10 asking for yesterday?

11 A. I believe so.

12 Q. And do you remember what he was asking for?

13 A. Is that a trick question?

14 Q. No. I just knew he wanted the information, but
15 I didn't actually write down his question.

16 A. My understanding of what Commissioner Gaw was
17 interested in was -- was -- and we had talked about an
18 estimated UNE-P price for Missouri. He was interested in
19 knowing what the estimated UNE-P price was for Arkansas.

20 Q. And do you know that now?

21 A. I do. Information that we provided to the FCC
22 and the Department of Justice and Arkansas Commission
23 during -- during the 271 process where the equivalent of
24 Missouri's M2A would have been created called the A2A there,
25 that price was \$19.88.

1 Q. And was that a voluntarily price or an
2 arbitrated price?

3 A. At the time the Arkansas -- my understanding,
4 at the time the Arkansas Commission did not believe it had the
5 authority to set UNE prices, so those prices were imported, if
6 you will, from Kansas.

7 Q. On a voluntary basis? I mean, did Arkansas
8 order you to do that or SBC decided to do that?

9 A. I don't know.

10 Q. Okay. You had some questions yesterday
11 regarding the Sage agreement. Isn't it true that that
12 agreement includes volume commitment requirements with regard
13 to your equivalent of UNE-P?

14 A. I haven't studied it in detail and it's been a
15 while since I've looked at it. I do know there's some -- what
16 I would -- what I believe to be some volume-based discounts.
17 You used the term "commitments." I'm not sure about that.

18 Q. Do you recall there being restrictions against
19 Sage installing its own switch?

20 A. I don't recall that.

21 Q. Do you recall there being restrictions on
22 Sage's activity and participation in regulatory proceedings?

23 A. I recall hearing from Sage that they are
24 interested in getting out of regulatory battles and reaching
25 agreements so they can compete in the marketplace. I don't

1 specifically recall language to that effect -- to the effect
2 you described in the agreement.

3 Q. Turning to the question of -- you've had a
4 whole series of questions about what SBC's pricing plans might
5 be. And I understand your testimony. But if SBC had specific
6 plans in place today and didn't want competitors to know about
7 them, the protective order in this case would allow you to
8 tell the Commissioners on a highly confidential basis.
9 Correct?

10 A. That's correct.

11 Q. You had discussions about bundling that
12 included unregulated components. And you noted on a couple of
13 occasions that in those situations, the tendency is to use the
14 tariffed price of the regulated component of the bundle and
15 make your pricing adjustments on the unregulated components.
16 Correct?

17 A. That's correct.

18 Q. In those situations, you would not be making
19 any tariff filings and you would not have the pre-notification
20 issue that you and other SBC witnesses have discussed.
21 Correct?

22 A. That's correct.

23 Q. You had several questions about uncertainty
24 regarding CLEC participation, and I'm wondering if you paid
25 attention to financial news either late last night or early

1 this morning?

2 A. No, I did not.

3 Q. Have you heard any announcements regarding
4 Qwest negotiating to purchase MCI?

5 A. No. Sure haven't.

6 Q. All right. You had questions from Commissioner
7 Clayton regarding the statutes -- the different statutory
8 schemes for regulating SBC. Correct?

9 A. Yes.

10 Q. And under the prior system of classification
11 that you identify was established under HB-360, in that
12 situation -- first of all, it was not an exchange-based
13 analysis. Correct?

14 A. That's correct.

15 Q. It was based on --

16 A. Yeah, it was on a statewide -- it was by
17 service on a statewide basis.

18 Q. And there was a -- right. There was a level of
19 classifying services and then also classifying companies.
20 Correct?

21 A. Correct.

22 Q. And as you noted, the standard in Section
23 392.361 was that if the Commission determined in its
24 discretion that there was enough competition to justify a
25 lesser degree of regulation, it could then classify services

1 and/or companies as it found appropriate. Correct?

2 A. I believe that's a -- what I recall the statute
3 saying.

4 Q. And under that system, it wasn't just a matter
5 of the statutory pricing flexibility that would attach to the
6 classification process, which you did discuss, but
7 additionally, the Commission also had the power to waive
8 certain statutes and regulations to further reduce the
9 regulations of those classified services and companies.
10 Correct?

11 A. I -- the Commission certainly has exercised
12 that authority and I believe that's where that authority is
13 found.

14 Q. All right. Now, under the current price cap
15 statute, and in the case we're involved in today, the standard
16 is a determination of whether there is effective competition
17 or not. Correct?

18 A. That's correct.

19 Q. And that's a new standard that wasn't stated in
20 the prior HB-360 classification scheme. Correct?

21 A. That's correct.

22 Q. And now it's not just company or service based,
23 but it also has an exchange-by-exchange analysis component,
24 correct, under the price cap statute?

25 A. That's correct.

1 Q. Now, in your prior proceeding, the Commission
2 made a determination that classifications under the prior
3 statute could result in a release from price cap regulation,
4 correct, for certain services?

5 A. Yes. The Commission -- there was a -- back in
6 the 1992, '93 time frame we had a case where the Commission
7 found that several services were transitionally competitive.
8 The Commission in our last -- in our last competitive
9 classification case in 2001 found that those services that had
10 been found to be transitionally competitive back in the '93
11 case had automatically become competitively classified under
12 the provisions of 392.361 and 370.

13 Q. And the timing there was your company became
14 subject to price caps first and then the time period under the
15 prior classification statute ran after that. And your company
16 asserted that as a result of that, those specific services
17 should be automatically free from price cap based on the prior
18 classification, and the Commission agreed with you. Correct?

19 A. That's correct.

20 Q. All right. And Mr. Dandino and some of my
21 clients disagreed with that. Correct?

22 A. That's correct.

23 Q. And we went to court and the current status,
24 although it's not over, the Circuit Court said that the two
25 schemes were totally separate and the Court of Appeals said

1 that the two schemes were totally separate. Correct? And
2 that you couldn't rely on a classification under the HB-360
3 process as a basis for lifting price caps. Correct?

4 A. Yes. That's my understanding.

5 Q. Okay. And as I indicated, the matter is not
6 resolved and right now the parties have pleadings pending at
7 the Missouri Supreme Court and we don't know whether they'll
8 take the case or not. Correct?

9 A. That's correct.

10 Q. Okay. On the subject of unbundled network
11 elements, and specifically looking at switching and loops and
12 transport, the FCC's been working on rules regarding these
13 elements since 1996. Correct?

14 A. That's correct.

15 Q. All right. And to make a long story short,
16 we'll kind of jump into the middle. In August of 2003, we had
17 the triennial review order come out from the FCC which changed
18 the rules regarding those elements. Correct?

19 A. Can't attest to the date, but that sounds
20 right -- the context is right.

21 Q. And then in March of 2004, a Federal Court of
22 Appeals found that the FCC had not done all of those rules
23 right -- I should restate that -- had not done some of those
24 rules right?

25 A. That's correct.

1 Q. Okay. Subsequent to that -- and I'm trying to
2 shorthand this, so if you don't think I'm being fair, let me
3 know.

4 Through a combination of voluntary commitments
5 made by your company and others similarly situated and the
6 issuance of interim rules by the FCC in August of 2004, some
7 of the uncertainty about the impact of the court decision was
8 at least postponed and we are kind of in a status quo
9 situation today. Correct?

10 A. That's fair.

11 Q. Okay. And the FCC's interim rules that
12 preserved the status quo, right now that process would end on
13 March 15th of this year. Correct?

14 A. Yes. I believe that's the date.

15 Q. Okay. Roughly co-terminate with the official
16 expiration of the M2A agreement?

17 A. Generally.

18 Q. And just to be clear, the M2A does also have a
19 135-day extension for parties that are actively negotiating
20 replacements. Correct?

21 A. Correct.

22 Q. In the meantime, while we're in this status quo
23 period, on December 15th of 2004, the Commission issued the
24 press release giving the industry and state commissions, among
25 other people, some idea of what it thinks its permanent rules

1 are going to say, but we don't have the permanent rules yet.

2 Correct?

3 A. That's correct.

4 Q. And the details of that press release -- we
5 have the whole document in the record I think in a couple
6 places, so I'm not going to go over those details. But isn't
7 it fair to say that already your company has taken an official
8 position in court that the FCC has still got it wrong on loops
9 and transport?

10 A. What I'm struggling with a little bit is I know
11 USTA has made some filings, and I'm not clear on what we've
12 joined in and not particularly joined in.

13 Q. All right. Well, based on that uncertainty,
14 you would at least agree with me that a national organization
15 that your company has been involved in and represents
16 incumbent interests has said in court that the FCC has got it
17 wrong again on loops and transport?

18 A. Yes.

19 Q. All right. And you'd agree with me that your
20 company's position with regard to unbundled network elements
21 is that if there is not an effective FCC rule implementing
22 unbundling, then there is -- on a particular element, then
23 there is no unbundling obligation under the statute. Correct?

24 A. I believe that to be correct.

25 Q. And in conjunction with that in a variety of

1 proceedings regarding interconnection agreements, your company
2 has developed documents that come under the heading of Lawful
3 UNE Amendments. Are you familiar with what I'm talking about?

4 A. Generally.

5 Q. Okay. And the idea there is that your company
6 does not want to be obligated under interconnection agreements
7 to provide unbundled elements that it doesn't believe it's
8 lawfully required to do so; is that right?

9 A. I think that's generally correct.

10 Q. And one of the provisions there is if a rule
11 goes away with regard to a particular element, that on 30-day
12 notice, that element would come out of the contract; is that
13 accurate?

14 A. I believe that's correct.

15 Q. With regard to the enhanced extended loop or
16 the extended enhanced loop, I can't remember which way it is
17 but the EELs, E-E-L, would you agree with me that your company
18 does not offer EELs on a DSO level?

19 A. I'm not certain. It could be the case that the
20 transport piece might need to be a DS1 level. The loop piece
21 of that I believe would be at a DSO level.

22 Q. All right. Well, and just to be clear, a DSO
23 level is the equivalent of a voice grade loop. Correct?

24 A. Correct.

25 Q. And a DS1 level is 24 times that in capacity?

1 A. Correct.

2 Q. All right. Would you agree with me that one of
3 the benefits or advantages of the UNE-P combination
4 arrangement for CLECs is that it results in a direct
5 connection of the loop to the switch without the requirement
6 of a collocation?

7 A. I guess it depends on in what context you're
8 talking. If it's --

9 Q. At the location of the SBC switch that's
10 involved in the UNE-P arrangement, the loop and the switch are
11 connected by SBC and so a CLEC does not have to have a
12 collocation there to achieve that connection?

13 A. That's correct.

14 Q. Okay. And if a CLEC is making use of EELs,
15 again, it's a combination being provided by SBC. Correct?

16 A. To connect the transport piece and the loop
17 piece?

18 Q. Right.

19 A. Yes.

20 Q. And because SBC is providing that connection,
21 the CLEC does not have to have a collocation arrangement where
22 the loop and the transport come together?

23 A. That's correct.

24 Q. And that's one of the advantages of the EEL is
25 that it brings that loop and -- on an extended basis through

1 the transport piece to the CLEC's collocation in another spot?

2 A. That's correct.

3 Q. And so they can serve a variety of areas from
4 one collocation?

5 A. Correct.

6 Q. If the extended loop is not available as a
7 combination, then the CLEC is required to make the
8 cross-connect between the loop and the transport if it's not
9 going to put its switch, you know, where that loop is.
10 Correct?

11 A. Yes.

12 Q. And that would require them to have a
13 collocation arrangement where they bring -- the loop comes in
14 one way and the transport piece comes in another and they have
15 their equipment to achieve the cross-connect in their
16 collocation space?

17 A. I assume we're talking about it's an SBC
18 loop --

19 Q. Right.

20 A. -- not necessarily the CLEC's loop.

21 Q. An unbundled loop, right.

22 A. Yes.

23 Q. Okay. Now, without getting into great detail,
24 would you agree with me that collocation spaces don't just
25 spring up overnight, that there's a certain amount of delay

1 involved in a CLEC getting a new collocation space in an SBC
2 central office?

3 A. That's true.

4 Q. And it's a matter of quite a few months.
5 Correct?

6 A. Probably. I mean, potentially talking about,
7 you know, building cages and setting up equipment. It takes
8 time to do that.

9 Q. All right. And it's not, in the grand scheme
10 of things, an insignificant expense either. Correct?

11 A. It -- it certainly costs money for the CLEC
12 to -- to actually invest in facilities.

13 Q. And in some of your answers to Commissioner
14 questions, there was a discussion about if SBC were to raise
15 rates too much, competitors would come in, force you to lower
16 them back down. But you would agree with me that competitors
17 can't just on a 24-hour basis jump in and out of the
18 marketplaces? There's delays involved in setting yourself up
19 to compete. Correct?

20 A. If the CLEC is not actively in that market and
21 would need to invest in facilities to serve that market, yes,
22 that's correct.

23 Q. All right.

24 MR. LUMLEY: That's all my questions. Thank
25 you.

1 JUDGE RUTH: Okay. We'll move onto redirect.

2 REDIRECT EXAMINATION BY MR. LANE:

3 Q. Good morning.

4 A. Good morning. This isn't going to be my
5 toughest line of questioning, is it?

6 Q. It usually is.

7 I'm going to try to go in reverse order here
8 with the most recent to the first. First, in the area of the
9 price cap statute, is a price cap an optional choice for a
10 large incumbent local exchange company like SBC Missouri or is
11 it a required step when certain events occur?

12 A. It's a required step.

13 Q. And under what circumstances is that required
14 step taken?

15 A. When a CLEC enters the market anywhere where
16 the incumbent serves.

17 Q. Okay. And is that the same for a small
18 incumbent local exchange company in Missouri?

19 A. No, it's not. Small incumbents have -- it's an
20 option for them. They can choose to elect to go under price
21 caps or remain under rate of return regulation.

22 Q. And the option for the small ILECs to go under
23 price cap regulation, is that dependent upon a condition
24 occurring in their territory too with regard to competition?

25 A. Yes. I believe they have the same requirement,

1 that a CLEC enter their market.

2 Q. So if a CLEC operates in a large ILEC's
3 territory, the large ILEC is required to go under price caps
4 but the small ILEC has the option?

5 A. That's correct.

6 Q. Okay. You were asked some questions about
7 CPITS. Do you recall those questions?

8 A. I do.

9 Q. And you indicated that CPITS had generally been
10 going down since SBC Missouri has gone under price cap
11 regulation. Correct?

12 A. Correct.

13 Q. Could you explain, from your perspective, the
14 reason that's CPITS has gone down since SBC Missouri has gone
15 under price caps?

16 A. Yes. CPITS is a measure of inflation for
17 telecommunication services and it includes three general
18 categories of services. It includes local telephone services,
19 it includes long-distance service and it includes wireless
20 service. And what we've seen over time is with the rapidly
21 declining prices in wireless services and long-distance
22 services, that's driven the CPITS downward.

23 Q. And were wireless services included in the
24 determination of CPITS at the time that the Telecommunications
25 Act in Missouri was passed in 1996?

1 A. No, they were not.

2 Q. And do you recall when they came in to being
3 part of the package of determining CPITS?

4 A. I'm not certain of that.

5 Q. Some time between 1996 and 2002?

6 A. I believe so.

7 Q. Okay. You were also asked some questions
8 concerning what actions SBC Missouri has taken with regard to
9 increasing the prices for non-basic services under the price
10 cap statute. Do you recall those questions?

11 A. I do.

12 Q. And were you a participant in the case in which
13 the Commission suspended an investigative tariff filing for
14 SBC Missouri concerning line status verification and busy line
15 interrupt?

16 A. I was.

17 Q. And in that case, did you present information
18 for the calendar year I believe it was 2003 that indicated the
19 percentage of increases in non-basic services under the price
20 cap statute that SBC Missouri had requested and had approved?

21 A. Yes, I do generally recall that.

22 Q. And as a general matter, was your testimony in
23 that case to the effect that SBC Missouri had in calendar year
24 2003 increased its prices for non-basic services only 1/25th
25 of the amount that it would have been permitted to increase it

1 if it had used the full 8 percent?

2 A. Yes. That is what I presented.

3 Q. And to put it in dollar terms, if increasing
4 all of the non-basic services by 8 percent had generated \$1,
5 was it your testimony in that case that SBC Missouri had
6 actually increased its prices for non-basic services to
7 generate only 4 cents of the dollar it could have generated?

8 A. That's correct.

9 Q. Okay. You were asked some questions by
10 Commissioner Gaw, I believe, concerning SBC Missouri's
11 operations as a CLEC. Do you recall those questions?

12 A. I do.

13 Q. And has SBC generally followed a strategy of
14 operating as a CLEC where it needed to do so to follow its
15 major customers?

16 A. Yes. Yes. We're interested in trying to
17 serve -- one of our new focuses is trying to serve larger
18 business customers. And where we find that they -- larger
19 business customers tend to have services spread throughout the
20 country. And what we're trying to do is -- is establish
21 ourselves as being able to serve those customers wherever they
22 might reside -- wherever their businesses are located.

23 Q. You were asked some questions by Commissioner
24 Gaw concerning the time that AT&T and SBC had begun to engage
25 in negotiations that led to this merger announcement last --

1 or this Monday. Do you recall those questions?

2 A. I do.

3 Q. And I believe you gave, in response to a
4 question from Mr. Gaw -- Commissioner Gaw, your view that you
5 knew nothing about the status of the negotiations except what
6 you'd read in the paper, one of which was that the
7 negotiations had begun in the January time frame of this year.
8 Right?

9 A. That's correct.

10 Q. When did AT&T withdraw from its participation
11 in this case?

12 A. That was -- I wrote the date down somewhere.
13 It was November 18th, I believe.

14 Q. It was sometime in November, may have been
15 November 10th?

16 A. Very well could be.

17 Q. All right. Would the Commission's records --

18 A. I'm not sure what I did with that note, but
19 yes.

20 Q. Would the notice of withdrawal that AT&T filed
21 be part of the Commission record in this case?

22 A. Yes, it would be.

23 Q. You were asked some questions I believe by
24 Commissioner Gaw, though it could have been Commissioner
25 Clayton, concerning the exchanges that Staff had originally

1 recommended be given competitive classification for business
2 services but had then withdrawn that recommendation in the
3 Surrebuttal Testimony. Do you recall that?

4 A. Yes, I do.

5 Q. And could you identify those exchanges?

6 A. They identified Grain Valley, Greenwood,
7 Farley, and Smithville.

8 Q. Are you familiar with the method that is used
9 by SBC Missouri to serve those exchanges?

10 A. Yes, generally.

11 Q. Okay. And from a central office or switch
12 perspective could you explain how SBC Missouri serves each of
13 those four exchanges?

14 A. Sure. Smithville -- all four of those are
15 exchanges -- Smithville is an exchange that has its own switch
16 that serves customers in Smithville. On the other hand, the
17 other three exchanges, they are exchanges from a regulatory
18 perspective in terms of what we file in tariffs, but they do
19 not have their own switches that serve those customers. The
20 customers in Grain Valley, Greenwood and Farley are served by
21 switches in other exchanges.

22 For example, Grain Valley is served by Blue --
23 by a switch in Blue Springs, Greenwood is served by a switch
24 in Lee's Summit, and Farley is served by a switch in
25 Parkville.

1 Q. If a CLEC wishes to utilize its own switch to
2 serve a customer in Farley but also wishes to purchase a UNE
3 loop from SBC Missouri under its interconnection agreement at
4 the rates that are included in that agreement, how would they
5 do that? Where would they make the connection?

6 A. They would buy an unbundled loop from
7 Parkville.

8 Q. Same situation if a CLEC utilizing its own
9 switch wishes to serve a customer located in the Greenwood
10 exchange and buy a UNE loop from SBC Missouri, where would
11 they go to make that connection?

12 A. In that case, the loop would come from Lee's
13 Summit.

14 Q. And if a CLEC wishing to utilize its own switch
15 to serve a customer in Grain Valley also wished to use a UNE
16 loop acquired from SBC Missouri, where would the CLEC go to
17 make that connection?

18 A. That loop would come from Blue Springs.

19 Q. And from an SBC perspective, when that
20 customer -- or when that CLEC chose to serve the customer in
21 Farley, Greenwood or Grain Valley respectively utilizing their
22 own switch but utilizing a UNE loop, where would SBC reflect
23 that in the E-911 database or where would that be reflected in
24 the E-911 database?

25 A. Was your question -- I'm sorry. The question

1 was if a CLEC is using its own switch and then buying an SBC
2 unbundled loop?

3 Q. Right.

4 A. I'm not certain how they might count that. I
5 do know when -- when -- when we -- when SBC is looking at its
6 access lines, if you were just to pull access lines kind of
7 under the normal process and you didn't know to adjust for the
8 Grain Valley, Blue Springs factor, if you will, we would
9 over-count the access lines in Blue Springs. We would assume
10 those are Blue Springs access lines and would show no access
11 lines for Grain Valley.

12 To the extent a CLEC is also keying their
13 access lines off of, you know, where that loop is coming from,
14 they, likewise, could be treating those as if they were lines
15 out of Blue Springs, Lee's Summit and Parkville instead of
16 lines out of Grain Valley, Greenwood and Farley.

17 Q. But for purposes of E-911 database, are those
18 numbers utilized to advise emergency personnel of where the
19 person making the call actually resides? In other words, if a
20 customer that's in --

21 A. Okay. I'm sorry. Yeah, for the actual -- for
22 the 911 listing, the -- the -- the -- it's keyed off of the
23 customer's address. So the -- so the customer would be
24 located obviously in Grain Valley, so that listing will show
25 up as being Grain Valley.

1 Q. Okay. And so in the data that SBC utilized in
2 this case concerning E-911 listings, if a CLEC was serving
3 that customer in Farley, utilizing its own switch but also
4 utilizing unbundled loop from SBC Missouri, would that be
5 reported as a Parkville line or would that be reported as a
6 Farley line?

7 A. It would be reported as a Farley line.

8 Q. And similarly, would an E-91 listing -- E-911
9 listing for Lee's -- for a customer of a CLEC residing in
10 Greenwood be listed as a Lee's Summit or a Greenwood E-911
11 listing?

12 A. It would be listed as Greenwood.

13 Q. And with regard to Grain Valley, how would that
14 be listed?

15 A. It would be listed as Grain Valley.

16 Q. Can an individual CLEC utilize resale and UNE-P
17 and its own switch if it chooses in Missouri at the same time?

18 A. Certainly. They could choose to serve certain
19 customers by resale, certain customers by UNE-P and certain
20 customers using their own switch.

21 Q. Does that, in fact, occur?

22 A. Yes. With CLECs that have used all three
23 provisioning methods.

24 Q. Even in the same exchange?

25 A. I believe so.

1 Q. And can a CLEC utilize its own switch to serve
2 business customers but UNE-P to serve residential customers?

3 A. The CLEC has been free to do that.

4 Q. In your opinion, is the CLEC which has its own
5 switch and utilizes it to provide service to business
6 customers capable of utilizing that same switch to serve
7 customers that it today serves via UNE-P?

8 A. Yes.

9 Q. And similarly, if a CLEC has its own switch and
10 today serves some customers within an exchange with its own
11 switch, could it serve other customers in that same exchange
12 that it today serves via UNE-P via its own switch?

13 A. Yes, it could.

14 Q. And would that require an additional
15 collocation by that CLEC?

16 A. No, it would not.

17 Q. Okay. And could a CLEC utilize its own switch
18 to serve customers in Exchange A to also utilize it to serve
19 customers in Exchange B?

20 A. Yes, it could.

21 Q. And does that occur today?

22 A. Yes, it does.

23 Q. So if a CLEC is utilizing its own switch to
24 provide service to customers in Exchange A, could it utilize
25 that same switch to serve customers that are today served via

1 UNE-P in Exchange B via its own switch?

2 A. Yes, it could.

3 Q. And in the major metropolitan areas that
4 surround St. Louis, Kansas City, Missouri, are you familiar
5 with SBC Missouri's MCA service?

6 A. Yes.

7 Q. And from your perspective, if a CLEC utilizes
8 its own switch to provide service in the MCA area, could it
9 also utilize that switch to provide service to any of the
10 customers within the MCA that it today serves via UNE-P?

11 A. Yes, it certainly could.

12 Q. And that would be true for St. Louis, Kansas
13 City and Springfield?

14 A. That's correct.

15 Q. Okay. And further, you could use that same
16 switch to serve customers that are located within Missouri but
17 in other locations outside of the MCA areas. Correct?

18 A. That's correct.

19 Q. And would you expect that to occur in the
20 normal course?

21 A. Yes. I believe so.

22 Q. You were asked a number of questions concerning
23 how SBC Missouri goes about pricing its services. Do you
24 recall that?

25 A. I do recall that.

1 Q. And there were several questions where you
2 indicated that there was some risk under price caps in setting
3 a initial price for a service that SBC Missouri wanted to
4 offer. Do you recall those questions?

5 A. That's correct.

6 Q. And essentially if I could paraphrase, your
7 response to that was you can't always know what the correct
8 price is for a service up front; is that right?

9 A. That's correct.

10 Q. And I want to explore that with you just a
11 little bit. When SBC Missouri or any telecommunications
12 company decides to offer a new service and set a price, would
13 you agree with me that they need to determine the cost of the
14 service?

15 A. Yes. Typically the goal is for businesses to
16 try to make money, so you need to have an understanding of
17 what your -- what your -- what you think your costs are going
18 to be. And that's a component of trying to figure out what to
19 charge for the service.

20 Q. And in determining costs in the
21 telecommunications industry, are there typically some fixed
22 costs and some variable costs?

23 A. Yes. Definitely.

24 Q. Could you explain very briefly what's meant by
25 a fixed cost and what's meant by variable cost?

1 A. Sure. Fixed cost is just a cost that's not
2 going to change depending on how many people use it. Let's
3 say I need to change a billing system to offer a new product.
4 All of the costs associated with doing that, I'm going to, you
5 know, spend that cost. And whether or not anybody -- 1 person
6 buys it or 1,000 people buy it, it won't affect that cost.

7 Q. Okay. And a variable cost?

8 A. A variable cost is a cost that depends on how
9 many people are using the service or how much the service is
10 being used and, therefore, it varies.

11 Q. And is it always possible to determine
12 accurately up front what a company's fixed cost will be to
13 offer a service?

14 A. Not necessarily, although you tend to have a
15 better estimate of what you think you're going to incur to try
16 to get something into the marketplace.

17 Q. All right.

18 A. You can always be surprised by things, but in
19 general, certainly fixed costs are more estimatable than
20 variable costs.

21 Q. And is it always possible for a company to
22 determine up front what its variable costs will be in offering
23 a telecommunications service in Missouri?

24 A. Variable costs are much more difficult to
25 identify because you're making assumptions about how many

1 customers will buy the service, potentially how much they will
2 use the service.

3 Q. Is the anticipated demand for a service a
4 factor to be considered in setting -- in determining the cost
5 and then setting the price?

6 A. Yes. Definitely.

7 Q. And could you explain how that is?

8 A. You need to understand how many people are
9 going -- it may vary by service, but you typically need to
10 have an understanding of both how many customers will buy the
11 service and then how much they will use the service once they
12 buy it.

13 And that factor then -- that demand that you
14 use, you know you have a variable cost that varies by how much
15 those customers use the service so you make -- you make
16 estimations and assumptions about how much the customers will
17 use the service or how many customers will buy the service.
18 And then you use those demand figures essentially times those
19 estimated costs to try to estimate a cost for the product.

20 Q. Is it always possible for a company to
21 determine accurately up front what the demand for a particular
22 service will be?

23 A. Definitely not.

24 Q. Now, let's take a look at that under the price
25 cap statute. If a company is attempting to set the price for

1 a new service that it wishes to offer and it underestimates
2 the demand for that service, what will that mean in terms of
3 its ability to recover its cost at the price that it chose?

4 A. You've -- you've -- you've -- you've assumed
5 that you were going to generate more revenue because more
6 people were going to buy the service or more people were going
7 to use the service and you didn't -- you didn't achieve that
8 level of demand. So it's -- you -- you ended up potentially
9 having costs that aren't recovered by the prices you set.

10 Q. Would a company in that -- if the price that it
11 set for the service didn't recover its costs, would it be able
12 to increase its price up to a level that covered its now known
13 costs or more known costs?

14 A. Companies, in general, are free to adjust
15 prices to try to recover those costs.

16 Q. And would a company that's under price caps be
17 able to increase its price to ensure that in that example it
18 was recovering its costs?

19 A. Not necessarily. If -- if the price were
20 subject to the 8 percent, it might require a greater than
21 8 percent price increase to then recover those costs. Or if a
22 price were under CPITS, which we've seen is being driven
23 downward, you wouldn't have any ability to raise the price at
24 all and, in fact, the situation would get worse because the
25 price would continue to decline.

1 Q. And we had one example we went through where
2 the demand that was anticipated was greater than what was
3 actually experienced. I want to ask the reverse. Can you
4 also have a situation where the price that you set for a
5 product doesn't cover the cost because the demand was greater
6 than you anticipated?

7 A. Yes. Definitely.

8 Q. Could you explain how that would be?

9 A. If -- if -- in terms of variable cost, again,
10 you're trying to estimate how much a service would be used.
11 And if you underestimate the usage of that service, then
12 you've underestimated the cost associated with providing that
13 service. And based on that underestimation of cost, you --
14 it's very possible you set a price that was too low.

15 And so what then you then find in that example
16 is your costs are -- you're experiencing a much higher cost
17 level because you've experienced a much higher demand level
18 than what you've anticipated and you've set your price too low
19 and you're not recovering those costs.

20 Q. Let me ask you if you're familiar with a
21 service that SBC Missouri used to offer called Local Plus?

22 A. I am.

23 Q. And could you give a description of that
24 product for us?

25 A. Local Plus was a -- a plan that allowed

1 customers to call for a fixed monthly fee as much as they
2 wanted calls throughout the LATA. So a customer would buy the
3 service, pay a fixed price every month and then call for as
4 much time as they wanted to any customer anywhere in the LATA.

5 Q. And was the demand for that product greater or
6 less than what SBC Missouri had anticipated?

7 A. The demand ended up being significantly greater
8 than SBC anticipated.

9 Q. And did that put SBC Missouri in a position
10 where it wasn't recovering its cost of providing the service?

11 A. That's correct. The variable costs associated
12 with Local Plus, which are primarily terminating access
13 expenses, which are costs that we have to pay out of pocket to
14 other companies for -- when our customer terminates a call to
15 their customer, that's the largest variable cost involved in a
16 product like Local Plus.

17 And we found that as customers used the service
18 in far greater amounts than we anticipated, our expenses --
19 those terminating access expenses that we were having to pay
20 to other companies were rising very quickly and our price was
21 not sufficient to generate enough revenue to cover those
22 costs.

23 Q. And did SBC Missouri ultimately seek to
24 withdraw that service?

25 A. We did.

1 Q. And did the Commission immediately approve the
2 withdrawal of that service or was there a proceeding held?
3 Let me rephrase it. I'll start over.

4 A. Yeah, I'm actually -- yeah, go ahead.

5 Q. If SBC Missouri has a tariffed service offering
6 and it wishes not to provide it any longer, is it free to do
7 that on its own or does it have to seek approval from the
8 Commission?

9 A. No, it's not. If we've tariffed the offering
10 and, you know, as required, we have to seek permission from
11 the Commission to eliminate the service --

12 Q. And --

13 A. -- by filing a new tariff.

14 Q. And how long can it take for the Commission to
15 consider a tariff filing like that, either to add or withdraw
16 a service?

17 A. The Commission could suspend the tariff for
18 upwards of 11 months.

19 Q. Since Local Plus was withdrawn, has SBC -- let
20 me strike that.

21 Would you agree with me that enhanced local
22 calling scopes has been a matter of concern in Missouri from
23 various parties over time?

24 A. Definitely.

25 Q. And, in your opinion, would having a

1 competitive classification improve SBC Missouri's ability to
2 consider and offer enhanced local calling scope plans?

3 A. I believe it would.

4 Q. And is that in part because it's impossible to
5 know up front if you're pricing the service correctly for the
6 reasons that we've gone through for the last 10 minutes or so?

7 A. That can certainly be a component.

8 Q. Switch topics here. You were asked a lot of
9 questions concerning SBC Missouri's plans or lack thereof with
10 regard to price changes that it might consider if it's granted
11 competitive classification?

12 A. That's correct.

13 Q. Would you like any more?

14 A. Depends.

15 Q. Is competitive classification, if granted, is
16 that something that would be only in effect for a short period
17 of time?

18 A. No.

19 Q. Would SBC Missouri, if it's granted competitive
20 classification as it's requested, expect to, for the
21 foreseeable future, be under competitive classification?

22 A. Yes.

23 Q. For the next, 5, 10, 20 years?

24 A. We would certainly hope so.

25 Q. Is it possible today for a company to know

1 precisely what its plans are going to be for prices 2, 5, 10,
2 20 years down the road?

3 A. Definitely not.

4 Q. Is part of competitive classification the
5 ability to adjust your prices in relation to what happens in
6 the market and other factors that can't be known today?

7 A. Certainly.

8 Q. You were asked some questions concerning an
9 announcement that SBC Missouri had made concerning its fourth
10 quarter performance. Do you recall those questions?

11 A. I do.

12 Q. And did SBC Missouri -- or excuse me, did SBC
13 in that announcement for fourth quarter results announce that
14 there had been a decrease in UNE-Ps provisioned to CLECs?

15 A. Yes, it did.

16 Q. And do you recall the approximate level of
17 that?

18 A. I think it was around -- well, I don't recall
19 precisely. I think it was around 150,000.

20 Q. Okay. At the time that SBC Missouri reported
21 that there had been a decrease in the number of UNE-P lines
22 that had been ordered by CLECs, did it report then a
23 corresponding increase in the number of access lines that SBC
24 served?

25 A. No, it certainly didn't. SBC also lost retail

1 lines during the same period.

2 Q. And SBC lost more retail lines than it stopped
3 providing UNE-P lines? I didn't ask that very well. I'll try
4 again.

5 Not only did SBC not experience an increase in
6 access lines from the UNE-Ps that had gone away, but they
7 actually experienced an overall decrease in access lines?

8 A. That's correct.

9 Q. Does that indicate to you, Mr. Unruh, that when
10 the FCC order eliminating unbundled local switching enhanced
11 UNE-P goes into effect, that it's unlikely that customers that
12 are served by CLECs via UNE-P today will immediately become
13 SBC customers?

14 A. I think it shows the opposite, that they won't
15 and they'll find other ways of serving those customers. And
16 customers will select -- either stay with the CLEC they have
17 or certainly exercise their right to choose other carriers.

18 Q. You were asked a number of questions by
19 Commissioner Clayton concerning competitive classification
20 under HB-360 as reflected in Sections 392.361 and 392.370 of
21 the Missouri statutes. Do you recall those questions
22 generally?

23 A. I do.

24 Q. Okay. And in this proceeding that we're in
25 here, is SBC Missouri seeking relief under HB-360 as shown in

1 392.361 and 392.370?

2 A. No, we are not.

3 Q. What are we seeking and under what portion of
4 the statute?

5 A. We are seeking it under the price cap statute,
6 392.245.5.

7 Q. If SBC Missouri is granted competitive
8 classification in this case, will it be on equal regulatory
9 footing with wireless and VoIP providers?

10 A. No, it will not. We will still be subject to a
11 number of regulations that those competitors are not.

12 Q. Could you identify what some of those
13 regulatory items are?

14 A. Certainly. We have a number of -- as we've
15 discussed a lot here, we have a number of wholesale
16 obligations that will continue that wireless carriers and
17 Voiceover IP carriers and, in fact, CLECs are not under.

18 We have various Commission rules that we must
19 follow that wireless carriers and Voiceover IP providers do
20 not have to follow. Tariff filing requirements that we would
21 have to continue to meet that wireless carriers and Voiceover
22 IP providers do not follow.

23 Q. Wireless and VoIP providers, are they required
24 to file tariffs in Missouri?

25 A. They are not.

1 Q. From your perspective, if granted competitive
2 classification, would SBC Missouri still be at a disadvantage
3 relative to those wireless and VoIP providers?

4 A. Yes, I believe so.

5 Q. Okay. You were asked some questions concerning
6 late charges and whether that constituted a telecommunications
7 service that was subject to the 8 percent. Do you recall
8 those questions?

9 A. I do recall that.

10 Q. Okay. Are there some items that are provided
11 in SBC Missouri's tariffs today that don't carry a specific
12 charge associated with them? Probably a poor question. Let
13 me try it again.

14 Are you familiar with SBC Missouri's attempts
15 to initiate a charge on a tariff basis for services that were
16 being provided under tariff but didn't have a particular
17 charge associated with them, like a zero-based rate charge?

18 A. Yes. That issue has come up before.

19 Q. And would you describe what occurred when that
20 situation arose?

21 A. The Commission Staff argued that -- that if you
22 were providing something in essence for free or as part of a
23 price for some other component of the service that you were
24 providing, then you were not free to establish a new price for
25 that. In essence, 0 times 8 percent is still 0 so you can't

1 charge a new price.

2 Q. You were asked some questions concerning the
3 CLEC switches that are here in Missouri and you indicated that
4 there were 30 circuit based switches and some 38 that you
5 called soft switches. Do you recall that?

6 A. That's correct.

7 Q. Could you explain some of the differences
8 between how SBC Missouri places its network in the past on the
9 number of switches versus what's done today?

10 A. Certainly. You know, in our -- our network's
11 been around so it was deployed under a more, you know,
12 historical concept of network deployment. We put switches in
13 virtually every exchange. As we've discussed, there are about
14 four or five exchanges where we don't have a switch, but in --
15 in the vast majority of our exchanges we have an individual
16 switch. And then -- and then we don't transport calls very
17 far from a switch to get to the end-user making the call.

18 In today's architecture, it's -- it's
19 significantly -- it's easier to route traffic around over --
20 over facilities and place fewer switches. So what we see is
21 providers today who are creating networks today put in fewer
22 switches and then use those switches to serve a broader
23 geographic market than what SBC Missouri would have
24 historically done.

25 Q. When SBC Missouri placed the bulk of its

1 network that's out there today, was it copper technology that
2 was utilized for the loop at that point?

3 A. That's correct.

4 Q. And does copper technology have some
5 limitations in terms of how far it can carry a signal without
6 attenuation or other problems?

7 A. It does have those kinds of network issues
8 along with just limited capacity to carry calls. So to -- to
9 carry a significant number of calls we need to add more and
10 more wires.

11 Q. And is the -- or was the limited distance that
12 calls could travel over copper a reason for SBC Missouri's
13 placement of switches closer to the customers?

14 A. I believe so.

15 Q. Okay. Now, since the time that SBC Missouri
16 placed the bulk of its network, has fiberoptic technology --
17 is that now in place and utilized for transport?

18 A. That's correct.

19 Q. And does fiberoptic technology carry with it
20 the attenuation problems and the other issues associated with
21 copper?

22 A. No, it does not. It's capable of carrying
23 significant bandwidth over significant distances at a much
24 less costly manner than what copper was.

25 Q. And so if a new entrant in the market today, a

1 CLEC, is deciding how it's going to provide service, it has a
2 choice of determining how many switches it wants to place and
3 how it wants to utilize fiber or other transport capacity; is
4 that right?

5 A. That's correct.

6 Q. And is it an economic decision then that each
7 CLEC makes in terms of how many switches it chooses to utilize
8 versus how much transport it chooses to utilize?

9 A. That's correct. And as we see today, what they
10 choose to do is use fewer switches and more transport
11 technology.

12 Q. You were asked by Staff yesterday questions
13 concerning what action SBC Missouri had taken in the St. Louis
14 and Kansas City exchanges for business services after it had
15 received competitive classification. Could you describe
16 generally what SBC Missouri did with its business rates in
17 those two exchanges?

18 A. Yes. What -- what we have today is a -- or
19 historically is a very wide disparity between our single-line
20 prices for business services and our multi-line prices for our
21 service. So, you know, customer with one line is paying
22 significantly less on a per line basis for that single line
23 than is a two-line customer who structures -- you know, who
24 buys multi-line service.

25 And that disparity doesn't really make sense in

1 today's marketplace, so one of the things that we've -- we've
2 done in St. Louis and Kansas City as we've got a competitive
3 classification is we've taken steps to try to closer align
4 those two prices for those services. So we've increased
5 single-line business by a little bit and we've decreased
6 multi-line business by a little bit to try to reduce that
7 disparity.

8 Q. And is that the kind of analysis that may take
9 place with regard to residential prices if SBC Missouri is
10 ultimately granted competitive status?

11 A. Yes.

12 Q. There were a number of questions concerning
13 whether basic local service is priced below cost, particularly
14 with residential customers. Do you recall those?

15 A. I do.

16 Q. And I believe you expressed the view that, in
17 general, residential service was priced below its cost. Is
18 that a fair statement?

19 A. Yes.

20 Q. Okay. And you were asked some questions by
21 Commissioner Gaw concerning allocation of the loop and
22 expressed the opinion that OPC might take issue with the
23 proposition that basic residential service is priced below its
24 cost. Could you explain the basis of the issue there?

25 A. Certainly. In discussing or debating the cost

1 of basic local service, in our view, the loop cost is an
2 essential component of providing basic local service so the
3 cost of the loop should be included in the cost of providing
4 basic local service.

5 The Office of Public Counsel I believe would
6 take the view that the loop cost should somehow be allocated
7 to other services that a company might provide and not
8 attributed to bas-- solely attributed to basic local service.

9 Q. In your opinion, is it only through the
10 allocation of the loop that one could contend that basic
11 residential service is not priced below its cost?

12 A. I believe so.

13 Q. Okay. And do the unbundled network element
14 loop rates that this Commission has established in arbitration
15 proceedings and that are contained in the M2A, do they reflect
16 that perspective in terms of what the Commission determined
17 the cost of just the loop is?

18 A. Yeah. The -- the cost for an unbundled loop
19 is -- is -- is -- I guess the decisions the Commissions have
20 made -- Commission has made and are then reflected in our
21 pricing for unbundled loops take into account the full cost of
22 the loop and the cost that the -- that ultimately the price
23 that is in the -- that's either been arbitrated or is
24 contained in the M2A, for example, even those loop costs are
25 above the price of residential basic local service.

1 Q. And do you have with you some information that
2 would show what the TELRIC cost of the loop as determined by
3 the Commission is in the four rate groups that SBC Missouri
4 operates under today?

5 A. I do.

6 Q. Could you provide that, please?

7 A. Sure. The -- the unbundled loop prices for
8 just a basic analog loop, kind of what we typically think of
9 going to a typical end-user, the prices range from a low of
10 \$12.71 up to \$19.74.

11 Q. Okay. And is the low price of the loop, is
12 that reflective of the costs set by the Commission for
13 unbundled loops in the St. Louis and Kansas City metropolitan
14 exchanges?

15 A. That's correct.

16 Q. And the high factor that you gave, would that
17 be the Commission's determined TELRIC costs for our rate
18 group A in Missouri?

19 A. That's correct.

20 Q. And rate group A would be the more rural and
21 smaller exchanges in which SBC Missouri operates?

22 A. That's correct.

23 Q. Okay. Typically under 5,000 access lines?

24 A. That's correct.

25 Q. Okay. And if one were determining the cost of

1 local service, would the local loop be the only factor that
2 would have to be determined?

3 A. No. There would be other costs involved.

4 Q. Switching costs?

5 A. Like switching, for example.

6 MR. LANE: That's all I have. Thank you, your
7 Honor.

8 JUDGE RUTH: Okay. We are at a good place for
9 a break. We're actually going to go off the record then until
10 10:30. And when we start back up, it will be Staff calling
11 Staff's witness.

12 And, Mr. Unruh, you may be excused. Thank you.

13 (A recess was taken.)

14 JUDGE RUTH: We are back from our short break,
15 and now we will have Staff call its first witness.

16 MR. HAAS: Staff calls Walter Cecil.

17 (Witness sworn.)

18 JUDGE RUTH: Thank you. Please be seated.

19 Proceed.

20 WALTER CECIL testified as follows:

21 DIRECT EXAMINATION BY MR. HAAS:

22 Q. Please state your name.

23 A. My name is Walter Cecil.

24 Q. Where are you employed?

25 A. I'm employed by the Public Service Commission.

1 I'm a member of the telecommunications department Staff.

2 Q. Mr. Cecil, did you prepare the Rebuttal
3 Testimony that has been marked as Exhibit Nos. 18 and 19 in
4 this case?

5 A. Yes, I did.

6 Q. Do you have changes or corrections to that
7 pre-filed testimony?

8 A. Yes, I do.

9 Q. Please tell me what they are.

10 A. All right. On page 7, line 7, the figure
11 40 percent should be -- should read approximately 35 percent.

12 Q. What's the next change?

13 A. On page 8, line 9, the figure 74 cents should
14 read 73 cents. Same page, line 10, the figure \$1.11 should
15 read \$1.16. And then at the end of the testimony on Schedule
16 WC-1, across the bottom where it reads average rate, the
17 figure 744 should read 734 -- .734. And the figure \$1.107
18 should read \$1.16. And that's all.

19 Q. With those changes is your pre-filed testimony
20 true, to the best of your knowledge and belief?

21 A. Yes, it is.

22 MR. HAAS: Your Honor, I would move for the
23 admission of Exhibit Nos. 18 and 19 and I tender the witness
24 for cross-examination.

25 JUDGE RUTH: Okay. Thank you.

1 Exhibit 18, Mr. Cecil's NP Rebuttal, and
2 Exhibit 19, his HC Rebuttal, have been offered into the
3 record. Are there any objections to it being received? SBC?

4 MR. BUB: None, your Honor.

5 JUDGE RUTH: Mr. Lumley?

6 MR. LUMLEY: No objection.

7 JUDGE RUTH: And Public Counsel is not here, so
8 the exhibit will be received -- exhibits will be received into
9 the record.

10 (Exhibit Nos. 18 and 19 were received into
11 evidence.)

12 JUDGE RUTH: We'll move to cross. Public
13 Counsel is not here, so we will go on to Mr. Lumley.

14 MR. LUMLEY: No questions.

15 JUDGE RUTH: SBC?

16 MR. BUB: Your Honor, we pass as well.

17 JUDGE RUTH: Mr. Cecil, we are going to --
18 we're going to let you step down. And when agenda is over, it
19 may be necessary to recall you so that there can be some
20 questions from the Bench. Thank you.

21 Staff, would you like to call your next
22 witness?

23 MR. HAAS: Staff calls Adam McKinnie.

24 (Witness sworn.)

25 JUDGE RUTH: Okay. Thank you. You may be

1 seated.

2 You may proceed, Mr. Haas.

3 ADAM MCKINNIE testified as follows:

4 DIRECT EXAMINATION BY MR. HAAS:

5 Q. Please state your name.

6 A. Adam McKinnie, M-c-K-i-n-n-i-e.

7 Q. Where are you employed?

8 A. I'm employed by the telecommunications
9 department staff of the Missouri Public Service Commission.

10 Q. Did you prepare the Rebuttal Testimony that's
11 been marked Exhibit No. 20 and the Surrebuttal Testimony that
12 has been marked Exhibit 21?

13 A. Yes, I did.

14 Q. Do you have changes or corrections to your
15 pre-filed Rebuttal Testimony?

16 A. Yes, I do.

17 Q. Please tell me what those are.

18 A. I have one correction that I need to make in
19 four separate places. First of all, on page 11, starting
20 around line 16, I need to delete four exchanges. I need to
21 delete the exchanges of Farley, Greenwood, Grain Valley and
22 Smithville from that list of exchanges.

23 Q. What's next?

24 A. Next, is on page 12, around line 20 where,
25 again, I need to delete the exchanges of Farley, Greenwood,

1 Grain Valley and Smithville.

2 Q. What's the next change?

3 A. On page 13, starting around line 7. I again
4 need to delete the exchanges of Farley, Greenwood, Grain
5 Valley and Smithville.

6 Q. What's the next change?

7 A. And the last change I have is on page 32,
8 starting around line 4. I again need to delete the exchanges
9 of Farley, Greenwood, Grain Valley and Smithville.

10 Q. Very briefly, what's the reason that you're
11 eliminating those four exchanges?

12 A. I'm eliminating those four exchanges in order
13 to make my recommendation match up with Mr. Peters'
14 Surrebuttal recommendation.

15 Q. Did you have any other changes to your Rebuttal
16 Testimony?

17 A. No.

18 Q. Do you have any changes or corrections to your
19 pre-filed Surrebuttal Testimony?

20 A. No.

21 Q. With the changes that you've noted, is your
22 pre-filed Rebuttal Testimony and your pre-filed Surrebuttal
23 Testimony true, to the best of your knowledge and belief?

24 A. Yes, it is.

25 MR. HAAS: Your Honor, I would move for the

1 admission of Exhibit No. 20 and 21, the Rebuttal and
2 Surrebuttal Testimony of Mr. McKinnie, and I tender the
3 witness for cross-examination.

4 JUDGE RUTH: Okay. Thank you.

5 Exhibit 20, Mr. McKinnie's Rebuttal, and 21,
6 his Surrebuttal, has been offered into the record. Are there
7 any objections to it being received? Public Counsel?

8 MR. DANDINO: No objections, your Honor.

9 JUDGE RUTH: Mr. Lumley?

10 MR. LUMLEY: No objections.

11 JUDGE RUTH: SBC?

12 MR. LANE: No, your Honor.

13 JUDGE RUTH: Then Exhibits 20 and 21 are
14 received into the record.

15 (Exhibit Nos. 20 and 21 were received into
16 evidence.)

17 JUDGE RUTH: Public Counsel, do you have
18 cross-examination for this witness?

19 MR. DANDINO: No, your Honor. Thank you.

20 JUDGE RUTH: Mr. Lumley?

21 MR. LUMLEY: No questions, your Honor.

22 JUDGE RUTH: SBC?

23 CROSS-EXAMINATION BY MR. LANE:

24 Q. Good morning, Mr. McKinnie.

25 A. Good morning.

1 Q. I want to look first at the types of
2 information you did not consider in coming to your
3 recommendation in the case. It's fair to say, is it not, that
4 you gave little weight to total access line loss --

5 A. Could you discuss which one of my
6 recommendations you're referring to, please?

7 Q. I'm about to give you the question.

8 A. Okay. I'm sorry.

9 Q. It's fair to say you gave little weight to
10 total access line loss, increased amount of bundling and
11 reasons why companies might wish to compete; is that true?

12 A. And could you discuss which -- I want to make
13 sure we're talking about the right recommendation. Could you
14 discuss which recommendation you're referring to?

15 Q. Well, I'm trying to ask about what your
16 recommendation is in the case. And in your testimony I'm
17 asking if you gave little weight to total access line loss,
18 increased amount of bundling and reasons why companies might
19 wish to compete? Do you recall or not? Are those factors
20 that you gave little weight to or did you give great weight to
21 them?

22 A. I would not say I gave great weight to them.

23 Q. Okay. You gave little weight to them according
24 to your testimony. Right?

25 A. Yes.

1 Q. Okay. And you gave very little, if any, weight
2 to information on advertising by competitors. Right?

3 A. I took it in consideration. I would not say I
4 gave it a large amount of weight.

5 Q. Okay. And you gave no weight to cable or VoIP
6 competition on the basis that it's speculative. Right?

7 A. No. I don't think that's -- I don't think
8 that's a proper statement.

9 Q. Okay. Take a look at your Rebuttal Testimony
10 on page 14, if you would, please. And on lines 12 to 14 is it
11 correct that you say that, VoIP testimony that's been provided
12 is only speculative?

13 A. I have said that Craig -- that SBC Witness
14 Unruh has provided speculative evidence about the future of
15 VoIP and cable telephony.

16 Q. Okay. And as to wireless services, you
17 maintain that this might be a factor in evaluating effective
18 competition in the future, but not as of today. Right?

19 A. If you can point to me exactly where in my
20 testimony that is written, I might be able to better answer
21 your question.

22 Q. Well, as you sit here today, is it your view
23 that wireless may be a factor in evaluating effective
24 competition in the future but not today?

25 A. I think wireless is a factor that the

1 Commission should consider in its rec-- in its ultimate
2 decision in this case both today and in the future when making
3 an effective competition determination.

4 Q. All right. If you'd turn to page 32 of your
5 Rebuttal Testimony, lines 9 and 10. Do you take the position
6 there that wireless service may contribute to effective
7 competition in the future?

8 A. What I said is it is likely that wireless
9 service will contribute to effective competi-- effective
10 competition, pardon me, for residential services in the
11 future.

12 Q. Does it contribute today to effective
13 competition?

14 A. If you look at line 7 and 8 on that same page
15 it does say that they can contribute to effective
16 contribution, but do not provide effective competition in and
17 of themselves.

18 Q. Okay. So in terms of what you evaluated in
19 coming to the recommendations that you and Mr. Peters also
20 made in this case, only CLEC competition was considered in
21 terms of coming to your recommendations. Right?

22 A. I don't think that's an accurate statement.

23 Q. Okay. Is it accurate to say that you
24 considered but rejected competition from VoIP providers and
25 wireless providers in coming to your recommendation?

1 A. No, I do not believe that is an accurate
2 statement.

3 Q. You considered but gave little or no weight to
4 wireless and VoIP providers. Correct?

5 A. If you look at my -- if you look at my
6 testimony, it clearly says, Alternative services do not
7 provide effective competition in and of themselves.

8 They do provide some competition, but in and of
9 themselves they do not rise to the level of effective
10 competition, but they can contribute to effective competition.

11 Q. But your recommendation in this case is based
12 upon your finding that there was effective competition for
13 business services as a result of CLEC competitors. Right?

14 A. Are you discussing my ISDN and recommendations
15 of that nature in my testimony?

16 Q. I'm talking about your recommendations with
17 regard to business services, yes.

18 A. Okay. My recommendations with regard to those
19 business services are based on Mr. Peters' recommendation for
20 effective competition for the underlying business access line
21 services.

22 Q. And, in your view, is CLEC competition only to
23 be considered to the extent that a CLEC utilizes its own
24 switch or loops or other facilities?

25 A. I don't believe my testimony addresses that.

1 Are you asking my personal opinion?

2 Q. Yes.

3 A. In making what sort of recommendation again?

4 I'm sorry. I -- I want to make sure I understand your
5 question.

6 Q. That's fine.

7 With regard to your recommendations generally,
8 would you agree that you gave little or no weight to access
9 line loss, VoIP wireless and the like because it was not
10 exchange-specific information that was presented?

11 A. I think it might be nice to address those
12 issues one by one, if that's possible.

13 Q. Take a look at your Rebuttal Testimony on
14 page 21, if you would. And on line 17 with regard to VoIP, in
15 particular, you indicate that Missouri-specific data has not
16 been presented. Right?

17 A. I say, Little, if any, reliable
18 Missouri-specific data is presented. And that paragraph does
19 discuss VoIP usage.

20 Q. And wireless is the same, in your view; is that
21 fair? Little, if any, exchange-specific information was
22 presented and so you didn't give it much weight. Right?

23 A. I want to break down your question into the two
24 parts. There was very little, if any, real
25 exchange-specific -- the only exchange-specific information

1 that SBC presented was on carriers -- on wireless carriers
2 within an exchange. That was the only exchange-specific
3 information that I am aware of that SBC Witness Unruh has
4 presented with regard to wireless carriers on an
5 exchange-specific basis.

6 Q. And because it wasn't more exchange-specific
7 than that, and that's all that was presented, you didn't give
8 it much weight. Right?

9 A. We took the availability of -- I mean, we took
10 that into consideration.

11 Q. But you didn't give it much weight because it
12 wasn't exchange-specific other than a listing of the carriers.
13 Right?

14 A. The -- the bulk of the wireless information did
15 not rise to the level where we were -- where we were able to
16 recommend that as effective competition. So if you're asking
17 me whether or not we were -- had enough weight that we would
18 recommend it by itself, the answer to that question would be
19 no.

20 Q. Now, with regard to plexor services, you
21 recognize that that should be considered to be a competitive
22 service and given competitive classification. Right?

23 A. Staff does support SBC's request for plexor
24 being competitive statewide.

25 Q. And that's because PBX equipment with which it

1 competes is available statewide. Right?

2 A. That was one of the factors we took into
3 consideration.

4 Q. And based on that, you felt there wasn't a need
5 to examine it on an exchange-by-exchange basis. Correct?

6 A. Yes. I mean, that is -- that is one of the --
7 taking that into account, that factor with statewide, yes.

8 Q. All right. There's no information in the
9 record on an exchange-by-exchange basis with regard to plexor
10 service. Correct?

11 A. Not any that I can recall, no.

12 Q. But your recommendation was positive in the
13 sense that you recommend effective competition be found with
14 regard to plexor because the competition is there across the
15 state that affects each exchange. Right?

16 A. In that instance, that combined with -- that
17 combined with the other things I reference in my testimony, it
18 would lead me to recommend plexor be classified as competitive
19 on a statewide basis.

20 Q. And in the prior case in which this Commission
21 looked at effective competition in SBC Missouri's territory,
22 the Commission granted competitive class-- competitive
23 classification for SBC -- certain SBC Missouri services on a
24 statewide basis. Right?

25 A. That is correct.

1 Q. That would include LIDB, L-I-D-B, and SS7
2 services. Right?

3 A. Yes.

4 Q. And in that case no information was presented
5 nor did the Commission make any findings on any particular
6 exchange-specific information with regard to those services.
7 Right?

8 A. I believe that's an -- that's an accurate
9 characterization.

10 Q. No market share loss was required to be shown
11 for LIDB and SS7 services. Right?

12 A. I don't believe any was shown. I don't know
13 whether or not any was required to be shown. I --

14 Q. Well, it wasn't shown and the Commission found
15 effective competition. Would you say it's a fair statement
16 that the Commission didn't require it to be shown?

17 A. Yes. I think that's a fair statement.

18 Q. Okay. And you're also familiar with the Sprint
19 competitive classification case, are you not?

20 A. Yes, I am.

21 Q. And would you agree with me -- did you testify
22 in that case?

23 A. Yes, I did.

24 Q. And would you agree with me that
25 exchange-specific information was not presented on a number of

1 services for which the Commission ultimately granted a
2 competitive classification based upon a finding of effective
3 competition?

4 A. There were some services on which, yes, that
5 was the case.

6 Q. And would you enumerate what those were?

7 A. I could -- I could refer to my -- I could refer
8 to the order, if you would like.

9 Q. Do you recall what they were?

10 A. I believe they were roughly, if not exactly,
11 similar to some of the things that were classified statewide
12 in the 467 case.

13 Q. Okay. How about CENTREX service?

14 A. I do believe that that was one of them.

15 Q. Okay. And no information on exchange-specific
16 market share loss was required -- was presented or required
17 for the Commission to make a finding of effective competition
18 across all of Sprint's exchanges for CENTREX service. Right?

19 A. I think that's a fair characterization.

20 Q. And with regard to private line services, would
21 you agree that there was no exchange-specific information
22 presented with regard to market share loss for private line
23 services, but the Commission nevertheless found that effective
24 competition existed across all of Sprint's exchanges for
25 private line services?

1 A. Yes. That -- that seems fair.

2 Q. Okay. And with regard to ATM and Frame Relay
3 services, again, no exchange-specific information or market
4 share loss by exchange information was presented in the case,
5 nevertheless, the Commission found that there was effective
6 competition and granted competitive classification for ATM and
7 Frame Relay services in all of Sprint's exchanges. Right?

8 A. I believe so, yes.

9 Q. And with regard to MTS, Message
10 Telecommunications Services, WATS and 800 services, again, no
11 exchange-specific information was presented nor was any
12 exchange-specific market share loss information presented and
13 yet the Commission found, did it not, that effective
14 competition existed across all of Sprint's exchanges and gave
15 competitive classification for all those services?

16 A. For those services, that Commission did make
17 that finding.

18 Q. And with regard to LIDB, same thing. Right?

19 A. I believe so. I would have to check exactly,
20 but I have no reason to doubt your characterization.

21 JUDGE RUTH: Is this going to be Exhibit 43?

22 MR. LANE: Yes.

23 (Exhibit No. 43 was marked for identification.)

24 MR. LANE: Your Honor, I've given the witness
25 and distributed to the parties a copy of the Commission's

1 Report and Order in Case No. IO-2003-0281 and I would ask that
2 the Commission take official notice of that decision. We'd
3 offer that as an exhibit in evidence in the case.

4 JUDGE RUTH: Okay. The Report and Order from
5 IO-2003-0281 has been offered. Are there any objections to it
6 being received into the record, Staff?

7 MR. HAAS: No objections.

8 JUDGE RUTH: Public Counsel?

9 MR. DANDINO: No objections.

10 JUDGE RUTH: Mr. Lumley?

11 MR. LUMLEY: No objections.

12 JUDGE RUTH: Exhibit 43 is received.

13 (Exhibit No. 43 received into evidence.)

14 BY MR. LANE:

15 Q. And, Mr. McKinnie, if you would, would you turn
16 to page 41 of Exhibit 43 that I've handed you? And in that
17 case, Issue 7 dealt with intraLATA private line services.
18 Correct?

19 A. Correct.

20 Q. And it's fair to say that the Commission made a
21 determination here that suppliers of intraLATA private line
22 services aren't limited to a single exchange, but they can and
23 do offer their services to customers in any of Sprint's
24 exchanges, and accordingly, there was, quote, no need for
25 Sprint to make an exchange-by-exchange analysis of competition

1 for these services, unquote. Do you see that?

2 A. That language is in the or-- or a
3 characterization of the first part, yes.

4 Q. And if you'd turn to page 42 under Issue 8
5 dealing with ATM and Frame Relay services, would you agree the
6 Commission made essentially the same findings with regard to
7 those services, that competitors aren't limited to a single
8 exchange, that they operate in all of the exchanges, and
9 accordingly, there's no need to make an exchange-by-exchange
10 analysis?

11 A. Very similar language is in here too, yes.

12 Q. Okay. And on page 42 and 43, referring to
13 intraLATA MTS services, essentially the same finding was made
14 by the Commission, that suppliers of these services don't
15 operate on an exchange-by-exchange basis, they operate across
16 all exchanges, and accordingly, there was no need to show an
17 exchange-by-exchange analysis of competition. Right?

18 A. For these services, yes.

19 Q. Okay. Same with regard to Issue 11 on page 43
20 concerning WATS services and 800 services. Right?

21 A. For those -- for those services, yes.

22 Q. Okay. And you don't take issue with that as a
23 concept, do you, Mr. McKinnie, that if competitors operate in
24 all of the exchanges for a particular service, that you can
25 find effective competition from that without doing an

1 exchange-by-exchange analysis. Right?

2 A. For those services, I would agree.

3 Q. Would you agree with me that in this case, that
4 Mr. Unruh has demonstrated with regard to wireless services
5 that those are available throughout the state in each of SBC
6 Missouri's exchanges?

7 A. Mr. Unruh has provided a list where he does
8 offer a list of wireless carriers and where he says that they
9 are -- that they are serving.

10 Q. And do you take issue with that evidence? Did
11 you present anything in your Rebuttal or Surrebuttal Testimony
12 that said that those companies weren't providing services --

13 A. No, I did not.

14 Q. -- in those exchanges?

15 A. I'm sorry. No, I did not.

16 Q. And as far as you know, that's what they're
17 doing, they are providing services in those exchanges today.
18 Right?

19 A. That's -- that's what his evidence purports.

20 Q. Okay. And, again, you don't present any
21 contrary evidence. Right?

22 A. I have not in my written testimony.

23 Q. Okay. And would you agree with me that
24 Mr. Unruh has shown that on an exchange basis that 75 percent
25 of the exchanges in which SBC Missouri operates, that

1 customers there have at least two non-affiliated wireless
2 providers from which to choose?

3 A. If you could point me to that line of his
4 evidence, I'd be glad, but I have -- I mean, I seem to recall
5 something similar, but if you can point me to the exact line,
6 I can verify that statement.

7 Q. All right. His Direct Testimony on pages 36
8 and 37, if you look at the -- beginning on line 20 on page 36
9 and carrying over to page 37.

10 A. He does write that, According to the
11 information we gathered, 75 percent of SBC's exchanges have
12 two or more wireless providers, even after excluding both
13 Cingular and AT&T Wireless.

14 Q. Would you also agree that Mr. Unruh has
15 demonstrated that 96 percent of SBC Missouri's landline
16 customers have at least two non-affiliated wireless carriers
17 from which they can take service?

18 A. I mean, his next sentence says that he
19 estimates that.

20 Q. Right. And have you presented any information
21 to the Commission that would indicate that Mr. Unruh's
22 evidence that he's presented on this point is incorrect?

23 A. No.

24 Q. Okay. Now, would you agree with me that
25 wireless providers typically provide service -- strike that.

1 Would you agree with me that wireless providers
2 typically offer services at prices that are available on a
3 nationwide basis?

4 A. Do you mean the same price everywhere in the
5 nation?

6 Q. Yes.

7 A. I believe there are some plans that operate
8 like that, yes.

9 Q. Okay. Verizon Wireless for one?

10 A. They -- they may be one, yes.

11 Q. Sprint PCS?

12 A. That is also possible.

13 Q. Nextel?

14 A. Same response, also possible.

15 Q. Okay. And did you do any research to determine
16 at all whether they offer services on -- or prices on a
17 state-specific basis?

18 A. I did not examine the prices of wireless
19 carriers in -- in Illinois and Iowa and Kansas and then
20 compare them to prices in Missouri. I did not perform that
21 analysis.

22 Q. And as a consumer, you're familiar generally
23 with the nationwide advertising that Sprint PCS and Nextel and
24 Verizon engage in, are you not?

25 A. I do watch some nationwide programs that do

1 have those sorts of advertisements.

2 Q. And the prices that are advertised there are
3 done on a nationwide basis. Right?

4 A. I know that there is often fine print on those
5 commercials that goes fast -- it goes pretty fast that I can't
6 see, but I do know that they do tend to advertise one price.

7 Q. Okay. Wireless providers certainly don't offer
8 prices for their service on an exchange-by-exchange basis in
9 the same manner that incumbent local exchange companies like
10 SBC Missouri offer. Correct?

11 A. I'm not aware of any that price in that exact
12 same manner.

13 Q. You know in general that you can get the same
14 price for Verizon Wireless services in any of SBC Missouri's
15 exchanges. Right?

16 A. That -- that seems accurate, yes.

17 Q. All right. And the same for Sprint PCS? Where
18 they offer service in SBC Missouri's territory, they have the
19 same price across all of the exchanges. Right?

20 A. There may be some determinants depending on how
21 you purchase the service. I mean, if you purchase the service
22 at a store, you may get a different price than if you purchase
23 it online or if you purchase it via -- by phone call. So some
24 of those things may vary. And, granted, the availability of
25 where a store is may kind of vary throughout the state, but

1 the other two methods, yes, I -- I think so.

2 Q. All right. By whatever method you acquire the
3 service, you'll pay the same price regardless of which
4 particular SBC Missouri exchange you happen to reside in.
5 Correct?

6 A. That seems accurate.

7 Q. Okay. And then much like -- well, strike that.

8 I'm going to switch topics with you and ask you
9 to take a look at pages 14 to 16 of your Rebuttal Testimony.
10 And I may be taking the tone of this wrong and you can correct
11 me if I am, but it appears here that you're criticizing SBC
12 Missouri for not presenting source data behind Schedules 16
13 and 17 of Mr. Unruh's Direct Testimony. Right? Is that a
14 fair characterization of what you said?

15 A. I was saying that I wish I had that source
16 data.

17 Q. Okay. If there's some implicit criticism
18 there, it was not intended?

19 A. I -- I filed a data request and I -- I wish
20 that they would have provided the source data when the data
21 request was first responded to. So to that extent if there's
22 some criticism, it's on that level.

23 Q. And let's talk about Exhibits 16 and 17 of
24 Mr. Unruh's Direct. Would you agree with me that those
25 generally provide information on where VoIP providers and

1 cable modem providers are operating in Missouri?

2 A. Can you give me one -- I mean, can you give me
3 one second to look at them exactly?

4 Q. Sure.

5 A. That is how Mr. Unruh characterizes them.

6 Q. And I may again be misreading what you're
7 saying there. Is that a correct characterization of it from
8 your perspective?

9 A. Depending on some of the issues, I -- I think
10 that it may be a little bit misleading at times.

11 Q. All right. What he's trying to show, in any
12 event, is where VoIP providers are operating and where cable
13 modem service is available. Right?

14 A. I understand the cable modem one. I think the
15 cable -- the cable modem one, I would tend to agree with that
16 statement. But on the VoIP one, I may differ on which portion
17 of the map we're talking about.

18 Q. All right. And I wasn't trying to get you to
19 agree that the information is correct and accurate. I was
20 trying to get you to agree that that's what he purports to
21 show. Right?

22 A. Oh, yes. That is what he purports to show. My
23 apologies.

24 Q. Well, my question, I'm sure, wasn't precise.

25 Now, you indicated that you had submitted a

1 data request to SBC Missouri and you wished the source data
2 had been provided when you asked for it. Right?

3 A. Yes.

4 Q. Okay. Is it fair to say that the request for
5 the source data in this case actually was in a data request
6 that was submitted by Mr. Peters of the Staff. Right?

7 A. Yes.

8 Q. Okay. And so when you say you submitted it,
9 you're properly reflecting that if someone from Staff requests
10 it, that you expect the information to be provided to that
11 person and it's then available to you as well as to
12 Mr. Peters. Right?

13 A. Yes. It would be available.

14 Q. Okay. And it's a fair characterization, is it
15 not, that SBC Missouri provided a data request response to
16 you, to the Staff, on December 7th and that the next day,
17 December 8th, there was a conference call in which you
18 participated and Mr. Peters participated and others, in which
19 you said or someone said essentially, Didn't get all the
20 information we wanted, I'd like to see some source data? Is
21 that a fair characterization of what happened?

22 A. I'm not exactly sure on the dates, but yeah, I
23 believe that's roughly what occurred.

24 Q. And then would you agree with me that two days
25 later, on December 10th, that SBC Missouri submitted to

1 Mr. Peters the source data that was requested and that there
2 was -- by electronic mail and there was some nine megabits of
3 information provided?

4 A. I don't know if I'm going to characterize that
5 as exactly the source data we requested, but you did make a
6 submission to Mr. Peters on that date.

7 Q. And there was no additional source data
8 provided to you after your Rebuttal Testimony was filed, was
9 there?

10 A. To me as an individual or to Staff?

11 Q. There was no additional information given to
12 Staff other than the information that had been given on
13 December 10th. Right?

14 A. No -- no additional source data was received by
15 Staff after that date.

16 Q. Okay. And December 10th was some seven days
17 before you filed your testimony in the case. Right? Your
18 Rebuttal Testimony?

19 A. That sounds accurate. I don't know the exact
20 date right off of when Rebuttal was filed.

21 Q. Okay. And prior to the time that you submitted
22 your Rebuttal Testimony on December 17th, did you review the
23 information that had been sent to Mr. Peters on December 10th,
24 the nine megabits of information?

25 A. No, I did not.

1 Q. You didn't know that he'd received it, did you?

2 A. I think that's a fair characterization.

3 Q. And yet when you filed your Surrebuttal
4 Testimony on January the 20th, you didn't report that actually
5 the information had been submitted to Mr. Peters, but you just
6 didn't know about it, did you?

7 A. No, I did not write that in my testimony.

8 Q. Okay. So if there's any implicit criticism for
9 not responding, that really isn't a very fair
10 characterization, is it? Because the information had been
11 provided to Staff, but wasn't shared with you by Mr. Peters
12 for whatever reason. Right?

13 A. On that issue, it does appear that the
14 criticism may have been misplaced.

15 Q. Okay. Now, let's talk about what actually was
16 provided. You've subsequently had a chance to review the
17 information that was submitted on December 10th. Right?

18 A. I did make a -- you know, make the best attempt
19 possible to examine that information.

20 Q. Okay. And when did you -- when did you start
21 reviewing that information? Sometime after your Rebuttal
22 Testimony was filed. Right?

23 A. After Rebuttal Testimony was filed, correct.

24 Q. And it's fair to say that you didn't like all
25 the information that was provided because you weren't able to

1 use it in the fashion that you would have liked. Right?

2 A. I did have some -- some concerns with the data
3 that was provided.

4 Q. Okay. And you received some information that
5 was able to be, you know, printed out in Word form. Right?

6 A. Some of the information we were able to use and
7 work around to get the information to be displayed.

8 Q. Okay. Let me go through the list of what you
9 got. You got release notes from 2004 Claritas Cable, a
10 Nielsen company?

11 A. Yes.

12 Q. Okay. Did you read that?

13 A. Yes, I did.

14 Q. Okay. And what does it tell you?

15 A. That -- I believe -- I don't have it with me,
16 but I believe it discusses how they list cable modem providers
17 by each of their -- I believe it's a proprietary area
18 designation.

19 Q. Okay. Boundaries and where they operate.
20 Right?

21 A. Yes. I believe that is what that document
22 entailed.

23 Q. And you also received a GDT Wire Center Premium
24 product, did you not?

25 A. I believe I did. I -- I may have it thought of

1 differently in my mind, but --

2 Q. Okay. And what did that information tell you?

3 A. Are we discussing the actual data now or are
4 we -- I mean, I need to make sure --

5 Q. No. I want you to generally characterize what
6 the GDT Wire Center information that was given to you showed.
7 Without getting into the proprietary information, but just a
8 general description of what it is.

9 A. I believe that data shows which areas on the
10 map are, for lack of a better word, lit, that they are -- that
11 they are, I guess -- or Mr. Unruh purports that they show
12 where certain things are available.

13 Q. All right. And were you also provided the ESRI
14 Shape File Technical Description?

15 A. Yes, we were.

16 Q. Okay. And can you tell me -- that was in Word
17 form. Right?

18 A. I believe that file description was in Word
19 form.

20 Q. And that generally described how the graphic
21 information system worked. Right?

22 A. I'm not a -- I'm not an expert in that subject,
23 but -- but yes, that is what it seemed to have entailed.

24 Q. And you were provided with an ADSL Office
25 Status Report. Right?

1 A. Yes.

2 Q. Okay. And that demonstrated what to you?

3 A. That -- I mean, it -- it said it showed, and I
4 have no reason to doubt it, that that was where SBC was
5 offering DSL service.

6 Q. Okay. Now, in addition, it was explained to
7 you that some of the information you were being provided
8 couldn't be utilized except through the application of Graphic
9 Information System software. Right?

10 A. I did have additional discussions about that
11 information with SBC personnel.

12 Q. And is that an accurate characterization of
13 what you were told?

14 A. Yes. Some of it I couldn't open because I
15 didn't have the proprietary software.

16 Q. And some of it you could open. Right?

17 A. Some of it, yes.

18 Q. And you could open, on a cable file,
19 information that was designed to demonstrate the location
20 where cable modem service was provided. Right? It would give
21 you a point on a map if you had a map?

22 A. If I wished to go through and -- I mean, if I
23 wished to go through and try to figure out each of those
24 proprietary areas from that table of information, I could have
25 made sure that the map was properly, for lack of a better word

1 again, lit.

2 Q. Okay. And the same for the other information
3 that you were presented? It gave you points on a map in Word
4 form, but not the ability to actually put it on a map
5 yourself. Is that a fair statement?

6 A. I'm not sure if we ended up opening it up in
7 Word or Excel. Not that that's a real important issue, but
8 using a Microsoft Office product, we were able to look at the
9 data in that manner.

10 Q. So essentially you had the raw data that would
11 show where the VoIP operators were operating, where the cable
12 companies were operating, and where SBC's DSL service was
13 available. Right?

14 A. I may disagree with the application of that
15 information, but we had the information that the SBC Witness
16 Unruh purported to show.

17 Q. And the difficulty that you had in utilizing
18 the information was that you didn't have Graphic Information
19 software that would allow you to take the raw data points --
20 you know, that show points on a map and actually put them on a
21 map yourself. Right?

22 A. That was one of the problems with -- with the
23 data that we -- I mean, that is one concern.

24 Q. Okay.

25 A. Yes. I mean --

1 Q. You were trying to verify that the information
2 presented in Mr. Unruh's Exhibit 16 and 17 was accurate and
3 correct. Right?

4 A. Accurate and correct and also perhaps to try to
5 figure out where the source of -- where the source of some of
6 the -- some of the lights were, to use the lack of the better
7 term again.

8 Q. Right. So you had all the source data given to
9 you, but you don't have Graphic Information System software
10 that would enable you to put them on a map?

11 A. I'm going to slightly disagree with that. I
12 believe that I may have had a different idea in mind when I
13 asked for source data than the SBC respondents had in mind
14 when I asked for the source data.

15 Q. But from the SBC Missouri perspective, you were
16 asking for the source data behind Exhibits 16 and 17, right,
17 in Mr. Unruh's Direct Testimony?

18 A. The words "source data" are in the data
19 request.

20 Q. Right. And they gave you the source data that
21 underlies those two exhibits. Right?

22 A. Yes. They gave me the data that lights up the
23 various portions of the map.

24 Q. Right. And while you didn't have the software
25 to do that, you could have made calculations by hand to place

1 these points on a map to verify, yes, ADSL service is offered
2 there, yes, cable service is offered there, yes, VoIP service
3 is provided there. Right?

4 A. It is true that I could have audited the
5 information that SBC was giving and how it was mapped.

6 Q. Okay.

7 A. I agree with that characterization.

8 Q. Okay. And you didn't audit it. Right?

9 A. No, I did not sit down and map out and try to
10 acquire the proprietary locations of these datas that the
11 Nielsen --

12 Q. Sure.

13 A. -- that the Nielsen company used. I did not
14 sit down and draw those maps. I --

15 Q. Right. Now, the cable companies are identified
16 on Exhibits 16 and 17. Right? One of those two. Right? The
17 cable companies that Mr. Unruh points to as offering cable
18 modem service. Right?

19 A. Most of them are. There is one location named
20 Other.

21 Q. Okay. And had you wanted to do an independent
22 verification of what Mr. Unruh presents in that exhibit, you
23 could have called the cable companies and said, Do you offer
24 cable modem service in this area. Right?

25 A. Yes, I could have called the cable companies.

1 Q. And you didn't. Right?

2 A. I did not call individual cable companies, no.

3 Q. Okay. And similarly, if you had some doubts on
4 Mr. Unruh's description of where VoIP service was provided,
5 you could have called the VoIP providers that he identified to
6 confirm whether they did or did not offer VoIP service in
7 those areas. Right?

8 A. We were trying to figure out exactly what was
9 meant by Mr. Unruh's characterization of where VoIP providers
10 serve. So, yes, that is something I could have undertaken.

11 Q. But didn't. Right?

12 A. I did not call individual VoIP providers.

13 Q. Okay. So at the end of the day, after all the
14 information was provided to you, you didn't audit it and you
15 didn't check on your own to see if the VoIP providers were
16 offering service, if the cable modem service was being offered
17 or if the DSL service was available. Right?

18 A. To the point that I did not audit the
19 information on a -- on a chart-to-map basis, no, I did not
20 audit that information.

21 Q. Okay. I --

22 A. I mean, I was not able to audit the information
23 in other ways.

24 Q. Right. And I guess the point that I'm making
25 is that you dismiss all of the evidence as speculative because

1 you couldn't verify it, but it's fair to say you didn't try to
2 verify it, you didn't try to audit it by these other methods.
3 Right?

4 A. I did not -- I'm sorry. I did not use the
5 methods you described to audit the data, no.

6 Q. Okay.

7 A. I -- I did send data requests and I did try to
8 learn more about the information that was provided, but I did
9 not audit it in the manner that you described.

10 Q. All right. Instead, from your perspective, you
11 rejected the information on the provision of VoIP service as
12 speculative because you couldn't verify it as you describe in
13 your testimony. Right?

14 A. The evidence that I'm referring to as
15 speculative on line 14 of my Direct Testimony is speculative
16 evidence about the future of VoIP and cable telephony. That
17 is the evidence that is being referred to as speculative.

18 Q. But don't you go on and describe the
19 information about the purported availability of cable
20 broadband through a map and then discuss that you didn't get
21 source data that would allow you to verify it?

22 A. I did say that he has provided no information
23 about the methodology involved in its creation.

24 Q. Okay. And then you finish up on page 15 of
25 your Rebuttal in saying, Without the source data, Staff is not

1 able to verify the validity of the schedule. Right?

2 A. Understanding that we may have a different
3 understanding of what source data is, yes.

4 Q. All right. But there's no question in your
5 mind, is there, that SBC Missouri gave you all the information
6 they had about the source data that underlies Exhibit 16 and
7 17. Right? Your problem was you couldn't open some of it
8 because you don't have the proper software?

9 A. I don't think that was my only problem with
10 what SBC's data response was.

11 Q. All right. And I'd like to ask your view of
12 Staff's kind of role in this case, if you would. Would you
13 say that Staff's role is to independently acquire and present
14 information to the Commission in this case, or do you perceive
15 Staff's role to be to criticize and/or evaluate information
16 that SBC Missouri presented?

17 A. I believe Staff's role could be either of those
18 things.

19 Q. Okay. And which role did you do in this case?

20 A. Which role did I do in this case? Well, I did
21 some of both.

22 Q. Okay. Is it fair to say that your independent
23 gathering of evidence was limited to data requests to
24 companies that this Commission regulates?

25 A. Information that I attempted to gather myself

1 or --

2 Q. Yes.

3 A. -- Staff as a whole?

4 Q. You can do both if you know both.

5 A. I think -- let me talk about me.

6 Q. Okay.

7 A. There was information that I gathered which is

8 within my testimony, which is from parties -- I mean, when I

9 refer to this, I refer to the amount of Internet availability,

10 for example. That's information that is not received from a

11 data request from a regulated company that's a party to the

12 case.

13 Q. Okay.

14 A. So that is an example of something where it's

15 not just from a data request.

16 Q. Okay. Is it fair to say that Staff did not go

17 to try to seek out from wireless companies and from VoIP

18 providers directly information about what services they

19 offered, where they offered them and what the price was?

20 A. Staff did not make any of those attempts.

21 Q. Okay. And in that respect, Staff's operation

22 was limited to a review and critique of the information that

23 SBC Missouri provided on those points. Right?

24 A. I would say we evaluated SBC data --

25 Q. Okay.

1 A. -- in those respects.

2 Q. And the problem -- one of the problems I guess
3 that you'd face, is it fair to say, that in trying to do an
4 independent evaluation of it, is that you don't have access to
5 wireless companies' data because they're not regulated by the
6 Commission?

7 A. I would say that they may have, let's say at
8 the very least, a lesser obligation to respond to Staff data
9 requests, if that's fair to you.

10 Q. Does the Commission regulate wireless service
11 providers?

12 A. They reg-- I mean, they might regulate their
13 interconnection with an incumbent local exchange carrier.

14 Q. In terms of the wireless provider's ability to
15 decide where they're going to offer service, what services
16 they're going to offer and what the prices of those services
17 are, would you agree with me that the Commission plays
18 absolutely no role in that?

19 A. This Commission does not.

20 Q. Okay. Wireless providers don't provide Annual
21 Reports to the Commission that provides the type of
22 information that the Staff considered in this case with regard
23 to competitive local exchange companies. Right?

24 A. Wireless carriers do not provide Annual Reports
25 to the Commission.

1 Q. Okay. And with the possible exception of Time
2 Warner, is it fair to say that VoIP providers are not
3 regulated by this Commission?

4 A. If we're going to talk about VoIP providers, I
5 think it might be nice at this time to kind of talk about the
6 two different types of VoIP providers as previous SBC
7 witnesses have.

8 Q. All right. And why don't you characterize the
9 two types and then we'll talk about them?

10 A. Sure. If we're going to talk about the Vonage
11 or however it's -- I know it's been pronounced multiple
12 different ways in this hearing. If we talk about those types
13 of providers, no, I have not seen an Annual Report provided by
14 any of those type of providers.

15 Q. For clarity sake, the two types of providers
16 that you divide them into would be those that own the
17 broadband connection to the customer and those that don't own
18 the broadband connection but use someone else's broadband
19 connection. Is that a fair way to characterize it?

20 A. I'm trying to make sure that -- with the Time
21 Warner, because I don't know if you have to, like, buy the
22 broadband in that case. But I -- I think that's approximately
23 a fair characterization.

24 Q. Okay. I'm trying to match up with what you
25 want to talk about because you said you wanted to break them

1 down. Is that a fair way to break them down from your
2 perspective?

3 A. With that one caveat about broadband, yes.

4 Q. And then when we talk about those that utilize
5 someone else's broadband connection, the Vonages the Nuvios
6 and the like, you'd agree that the Commission doesn't regulate
7 those providers in any respect. Right?

8 A. In the way we think about them regulating the
9 actual activities of a company, I would definitely agree with
10 you that the Commission does not regulate them.

11 Q. And I guess specifically those carriers don't
12 come to the Commission for a certificate, they don't come to
13 the Commission and file tariffs, they don't come to the
14 Commission and get approval for prices or where they operate?

15 A. That is all true.

16 Q. Okay.

17 A. At this time that is all true.

18 Q. Right. And they don't submit Annual Reports to
19 the Commission that provide the type of exchange-specific data
20 that CLECs and ILECs are required to provide. Right?

21 A. I think that's fair, yes.

22 Q. Now, talking about VoIP providers that own the
23 broadband connection, the cable companies and the like, with
24 the possible exception of Time Warner, does the Commission
25 regulate those providers?

1 A. It's kind of a difficult answer because we're
2 kind of in a transition period, to be honest. I know that
3 there has been an application by, for example, MCC, which I
4 believe is either a subsidiary or a family member of MediaCom
5 Cable, who has requested a certificate, which I -- I know that
6 there's some -- there's some snags in that process right now.

7 Q. Okay.

8 A. And if Charter, for example -- I don't -- I
9 don't know exactly how -- if they wish to switch to a VoIP,
10 how that would work.

11 Q. Okay. And Charter was certificated by the
12 Commission when it was operating as a circuit switched
13 telephony provider. Right?

14 A. Yes. When they were running their -- when
15 their loops were coax -- or coaxial cable.

16 Q. Right. And to the extent that Charter is
17 operating as a VoIP provider, do you know whether they operate
18 pursuant to tariffs that are on file with the Commission? And
19 if you don't know, that's fine.

20 A. No. I don't -- I don't know if they offer the
21 exact same prices and they've just managed to switch over.
22 I'm not -- I'm not aware.

23 Q. Okay. And are you aware that Charter has moved
24 into areas other than Harvester and St. Charles where they
25 originally bought the telephony operations and cable

1 operations of AT&T?

2 A. Which portions of Charter are you discussing as
3 having been moved in?

4 Q. Okay. I'll re-ask it in case it wasn't clear.

5 A. Sure.

6 Q. Originally when Charter began operating as a
7 cable telephony provider, they did so in the Harvester and
8 St. Charles exchanges after purchasing those facilities from
9 AT&T. Right?

10 A. I think that's accurate, yes.

11 Q. And are you aware that Charter has branched out
12 and is offering either VoIP or/and telephony service outside
13 of those areas?

14 A. I do believe Charter is offering telephony
15 services in other areas other than Harvester and St. Charles.

16 Q. When you say "telephony services," are you
17 including VoIP in that?

18 A. I know they're reporting lines in places other
19 than St. Charles and Harvester. Maybe that's a more
20 characterization.

21 Q. And do you know whether or not Charter is
22 reporting lines that are served via VoIP? If you don't know,
23 that's fine.

24 A. Well, I -- there's an Annual Report that's due
25 in April and I don't know how things are going to work

1 exactly. I don't know what they're going to do with that
2 Annual Report. But are you asking me if they have in the
3 past?

4 Q. As of today in terms of what reporting they've
5 done, is it fair to say that you don't know whether they're
6 reporting VoIP services that they provide?

7 A. I'm not certain.

8 Q. Okay. Would you agree with me that the lack of
9 availability of exchange-specific information on wireless
10 providers' market share and VoIP providers' market share is a
11 good reason not to apply a market share test at all when
12 assessing whether SBC Missouri faces effective competition for
13 its services in its exchanges?

14 A. I just want to make sure, because I was
15 thinking about the first part of your question. Did the
16 second part of your question reference competition or
17 effective competition?

18 Q. I'll restate it.

19 A. I'll pay more -- I'm sorry. It's long.

20 Q. That's fine.

21 Would you agree with me that the lack of
22 availability of data from unregulated providers like wireless
23 and VoIP on an exchange-specific basis is a good reason not to
24 require a -- or utilize a market share loss test when
25 evaluating whether SBC Missouri faces effective competition in

1 the exchanges in which it operates?

2 A. I don't believe it means that we should abandon
3 market share entirely.

4 Q. But if market share is a significant factor in
5 evaluating it from Staff's perspective, would you agree that
6 there's some deficiencies in it when you do not have
7 information about wireless and VoIP providers on an exchange
8 basis?

9 A. I'm sorry. I'm -- may I ask you to repeat your
10 question?

11 Q. Sure. And I'm not trying to be complicated.

12 A. Sure.

13 Q. The lack of data from wireless and VoIP
14 providers on an exchange-specific basis is a good reason not
15 to utilize a market share test in analyzing whether SBC
16 Missouri faces effective competition in its exchanges?

17 A. Now, that sounds similar to your last question.
18 And I think my answer would still be no, it doesn't mean we
19 should abandon the market share -- doesn't mean we should
20 completely abandon any evaluation of market share.

21 Q. It's a reason not to make it a significant
22 factor, isn't it?

23 A. I think we're just going to have to disagree on
24 that.

25 Q. That's fine.

1 Okay. Let me ask this way. Would you agree
2 with me that if you had exchange-specific information on
3 wireless and VoIP providers, that you'd use that in evaluating
4 a market share test?

5 A. If there was a market share test, we would use
6 that information.

7 Q. Okay. Now, in the analysis of the existence of
8 effective competition, the legislature has said that we're to
9 be guided by the factors that are enumerated in Section
10 386.020.13. Correct?

11 A. Correct.

12 Q. And it's fair to say that Staff has not
13 conducted a factor-by-factor analysis of those factors that
14 are set out in that section of the statute?

15 A. No, I don't think that's fair.

16 Q. Okay. It's fair to say, isn't it, that the
17 existence of barriers to entry is one of the enumerated
18 factors. Right?

19 A. It -- it does appear that -- yeah, that's --
20 that's a rough characterization of D in 386.020.13.

21 Q. Right. And it's fair to say that in your
22 Rebuttal Testimony, you don't have any discussion of entry
23 barriers. Right?

24 A. I believe that is correct.

25 Q. Okay. Does that mean you did the analysis and

1 didn't present it?

2 A. It means that when I am responding to SBC
3 testimony, I did not choose to respond to that.

4 Q. So you didn't take issue with the SBC testimony
5 that there are not entry barriers that prevent competitors
6 from operating in the exchanges as it demonstrated. Right?
7 You didn't take issue with it?

8 A. I did not respond to it.

9 Q. Okay. It's also fair to say that in your
10 testimony, you don't present any analysis of the purposes of
11 Chapter 392. Right?

12 A. Are you asking me if I tried to ascertain the
13 intent of Chapter 392?

14 Q. One of the factors that's listed in 386.020.13
15 is the extent to which the purposes of the chapter are being
16 advanced, or words to that effect. Right?

17 A. Are you discussing E? I'm just trying to make
18 sure we're talking about the same thing, because it's kind of
19 both in C and E and I just want to make sure we're talking
20 about the same thing.

21 Q. C.

22 A. C?

23 Q. C.

24 A. Did I explicitly make -- did I explicitly write
25 about C in my testimony?

1 Q. Yes.

2 A. I did not -- I did not explicitly set out this
3 is the area of my analysis where I am talking about factor C.

4 Q. And the purposes of the chapter are enumerated
5 in Section 392.185. Right?

6 A. That is what it says.

7 Q. Okay. And you didn't specifically lay out
8 those purposes nor evaluate each of those purposes when you
9 made your analysis. Right?

10 A. When I made my analysis or when I wrote my
11 recommendation?

12 Q. When you wrote your recommendation to the
13 Commission for them to consider.

14 A. When I wrote my recommendation for them -- for
15 the Commission to consider, I did not take the nine portions
16 of 185 and write about them explicitly, no.

17 Q. And with regard to substitutability of
18 services, which is in 386.020.13, subsection B I think, the
19 only time that you analyzed substitutability was with regard
20 to wireless services. Right?

21 A. First of all, I think you're leaving out part
22 of B. It's substitutable -- functionally equivalent or
23 substitutable at comparable rates, terms and conditions. I
24 want to make sure we're talking about that.

25 But I definitely do talk about the

1 substitutability of wireless.

2 Q. That's the only discussion that you have on
3 substitutability, right, is with regard to wireless service?

4 A. If we take the whole -- I mean, if you want to
5 just talk about substitutability and not rates, terms and
6 conditions, substitutability is discussed in the wireless
7 section, yes.

8 Q. Now, you've reviewed Mr. Shooshan's testimony
9 in this case, have you not?

10 A. Yes.

11 Q. And he presents a survey of wireless and
12 wireline customers in St. Louis, Kansas City and Springfield,
13 metropolitan areas. Right?

14 A. In the three MCA areas, yes.

15 Q. And the purpose of the survey was to
16 demonstrate that, at least from his perspective, that wireless
17 is a substitute for wireline. Right?

18 A. In his testimony the other day he kind of
19 mentioned -- I don't want to say kind of mentioned. He
20 mentioned that he was trying to figure out how customers view
21 the two services.

22 Q. Okay. And when we're analyzing
23 substitutability of a service, we're supposed to be looking at
24 it from a customer's point of view. Right? That's the
25 important point of view?

1 A. I think that's definitely -- that's definitely
2 an important point of view. I think there are other things
3 that one can look at, but that's definitely an important point
4 of view.

5 Q. The view of substitutability from the
6 supplier's perspective isn't nearly as important, if at all,
7 than whether the consumers think it's a substitutable product.
8 Right?

9 A. If you're asking from a supplier versus
10 consumer point of view, I definitely agree we should look at
11 the consumer's point of view.

12 Q. And when we look at substitutability of service
13 of wireless for wireline, would you agree with me that the
14 substitutability perception of the customers in rural areas
15 may well be even stronger than what was demonstrated in the
16 urban areas of Mr. Shooshan's testimony because wireless
17 service gives an even broader calling scope on a local basis
18 than wireline service?

19 A. Is that possible? Is that what you're asking
20 me? Or you're asking me if that is absolutely, positively the
21 case?

22 Q. Is it possible?

23 A. Yes, that's possible.

24 Q. Okay. Because wireless typically does give a
25 larger local calling scope in the rural areas as compared to

1 wireline. Right?

2 A. In -- for many plans.

3 Q. I mean, you're not aware of any plan that
4 offers a local calling scope in any rural area of Missouri
5 that's smaller than the calling plan offered by SBC Missouri's
6 wireline company, are you?

7 A. I'm not aware of any, but sometimes there --
8 I'm -- no, I'm not aware of any.

9 Q. Okay. And, in fact, that's one of the
10 important features or benefits of wireless service from a
11 consumer's point of view is that you can use it on a local
12 basis on a wider area certainly in rural areas than the
13 wireline. Right?

14 A. Yeah. I think consumers -- yeah.

15 Q. It's fair to say that SBC Missouri has
16 presented information that wireless is a substitute for
17 wireline, but that you claim that, in fact, these are
18 complimentary products. Right?

19 A. That is what Mr. Shooshan purports to say. And
20 I do write in my testimony that these two products are
21 complimentary.

22 Q. Now, in economic terms -- is your background in
23 economics?

24 A. I do have a degree in economics.

25 Q. Okay. And in economic terms, if a product is a

1 compliment, would you agree with me that consumer demand for
2 the complimentary product goes down if the price of the
3 compliment rises?

4 A. That is a definition of complimentary in a --
5 let me make sure I -- let me make sure I get that right.

6 Q. Okay. Why don't you tell me what a
7 complimentary product is in economic terms?

8 A. One definition of complimentary term in
9 economics is that if the price of good A goes up, then the
10 demand for good B at the same price -- if good B price stays
11 the same, ceteris paribus, that demand for the product would
12 go down.

13 Q. An example you use in your testimony is peanut
14 butter and jelly. If the price of peanut butter goes up,
15 demand for jelly will go down?

16 A. Yes. That's an example I give in my testimony.

17 Q. Okay. And you still agree with that. Right?

18 A. Yes.

19 Q. Okay. On the other hand, if products are
20 substitutes, than the increase in price of one product will
21 cause an increase in demand for the other. Right?

22 A. In theory, yes.

23 Q. Okay. And that's classic economic theory.
24 Right?

25 A. I don't know about classic, but it is economic

1 theory.

2 Q. Right. I mean, that's the definition, is it
3 not, of what it means to have products be substitutes. Right?
4 If the price of good A goes up, then the demand for good B
5 will increase?

6 A. I would say that there are kind of degrees
7 within that. I don't think it's a binary world where things
8 have to be, you know, absolutely substitutes or absolutely not
9 substitutes or absolutely compliments and absolutely not
10 compliments. I think that's also economic theory.

11 Q. Sure. There's ranges within it. Right? I
12 agree with that.

13 A. Sure.

14 Q. But in economic theory, the definition of a
15 substitute product is if the price of good A goes up and the
16 demand for good B goes up, that indicates that those services
17 are substitutes or products are substitutes for each other.
18 Right?

19 A. That is how I would teach Economics 101.

20 Q. And if we apply that to wireline and wireless
21 service, would you agree with me that under that economic
22 analysis, that if the services were compliments, then an
23 increase in wireline prices would cause people to buy less
24 wireless products?

25 A. In a ceteris paribus world, that would be the

1 case.

2 Q. On the other hand, if the services are
3 substitutes, than an increase in wireline price would tend to
4 make people buy more wireless service. Right?

5 A. Depending on what else is happening in the
6 market. I mean, I think there are some interesting things
7 that maybe make that a little -- I'm going to say murky, for
8 lack of a better word.

9 Q. Everything else remaining the same, as you did
10 in the example of complimentary products, that's true with
11 regard to substitutability. Right?

12 A. I think you also need to look at such factors
13 as whether or not the market is saturated. I mean, if
14 everybody already owns a product or maybe close to everybody
15 already owns a product, then the market might act a little bit
16 differently.

17 Q. Okay. Let's use an example. Let's say that
18 residential wireline service increases from \$10 a month to \$50
19 a month. Everything else being equal, would you anticipate
20 that people will buy more or less wireless services as a
21 result?

22 A. I would -- I would anticipate that some
23 individuals would substitute to wireless in that situation.

24 Q. And that's because in general economic terms,
25 wireline and wireless are essentially substitutes because the

1 increase in price of wireline service will lead to more demand
2 for wireless services. Right?

3 A. For some people, definitely.

4 Q. Okay. Let's shift over and talk about VoIP
5 service providers. And maybe we'll short circuit this. Is it
6 fair to say that you don't have any information about where
7 VoIP services are offered in Missouri other than what has been
8 presented in SBC Missouri's testimony in the case?

9 A. No, I don't think that's a fair
10 characterization.

11 Q. Okay. Are there any other providers of VoIP
12 service that are operating in Missouri that you're aware of
13 other than those that SBC Missouri has presented?

14 A. Again, we need to talk about what type of VoIP
15 we're talking about.

16 Q. Both types.

17 A. I'm -- there may be carriers that SBC has not
18 identified that are operating in the market.

19 Q. Okay. Who are they?

20 A. I do not have an exhaustive list of all VoIP
21 carriers.

22 Q. And I'm not trying to trick you. I just want
23 to know if there's other VoIP providers that are operating in
24 the market that you know about that SBC Missouri hasn't
25 presented in its testimony. If you know some, great.

1 A. In its testimony or in the myriad of press
2 releases and advertisements that have been offered or -- I
3 mean, do you want me to --

4 Q. Okay. Let's look at Schedules 16 and 17 of
5 Mr. Unruh's Direct. And so that will -- that will be the
6 basis. And we'll start with Exhibit 16 in which Mr. Unruh
7 attempts to display the names and areas served by VoIP
8 providers. Are there others besides that that you're aware of
9 that are operating?

10 A. I would disagree with that characterization
11 just slightly because one of the things on the legend is the
12 VoIP potential market for Comcast. So I would disagree with
13 that characterization just a slight bit.

14 Q. All right. And, again, I wasn't asking you to
15 agree with each and every thing that's on the exhibit. I'm
16 trying to ask you if you're aware of other VoIP providers that
17 are operating in Missouri besides those that are spelled out
18 on Exhibit 16?

19 A. You mean operating in Missouri, do you mean
20 providing service to a Missouri customer?

21 Q. Yes.

22 A. Yes, there are -- there are VoIP providers that
23 are providing service to Missouri customers who are not listed
24 on this chart.

25 Q. And who would you put on that list?

1 A. You mean who would I put on the list of people
2 providing service to VoI-- I mean, I want to make sure we're
3 talking about that list and not like the legend at the bottom
4 left-hand part of the page, because we might quibble about
5 that later.

6 Q. I'm not asking you to agree with the legend on
7 the bottom left part of the page. I'm just asking you, are
8 there other providers of VoIP service operating in Missouri,
9 providing services to Missouri customers that aren't listed
10 here. Okay?

11 A. Okay.

12 Q. Not saying that this is accurate. It may not
13 be complete in some respect and if you could tell us what
14 other ones you know about, that would be great.

15 A. Sure. There's a company called Packet 8 that
16 is offering VoIP service in Missouri.

17 Q. Okay. How about Nuvio?

18 A. I believe Nuvio is probably -- most probably
19 also offering service in Missouri.

20 Q. Okay. Any other VoIP providers that you know
21 of?

22 A. There's other VoIP providers. I do not know
23 for certain whether or not they are serving customers in
24 Missouri.

25 Q. Okay. Did you attempt to check to see if they

1 were?

2 A. I did not make that attempt. I did not contact
3 a VoIP provider, as I said earlier.

4 Q. One of the reasons that you gave for not giving
5 weight to VoIP providers is regulatory uncertainty. Right?

6 A. I did mention that, yes.

7 Q. Okay. With the possible exception of Time
8 Warner and Charter, with whom you've indicated you don't know
9 whether their VoIP operations are being regulated by the
10 Commission or not, it's fair to say that the others clearly
11 are not being regulated today?

12 A. Well, I mean, we're talking about -- are we
13 talking about their operations? If we're talking about things
14 like tariffs and certificates and things -- if we're talking
15 about those two things, I would definitely agree with your
16 characterization.

17 Q. Okay. Vonage, Nuvio and Packet 8, none of them
18 are regulated. Right?

19 A. None of them have Comcast in and asked for a
20 certificate and none of them are filing tariffs with the
21 Commission.

22 Q. And they don't make Annual Reports with the
23 Commission. Right?

24 A. None of them have filed Annual Reports with
25 this Commission.

1 Q. Okay. In evaluating whether effective
2 competition has been shown, is it your view that we should
3 look at who is providing service today rather than who might
4 be providing service in the future?

5 A. I think that's a factor that should be
6 considered.

7 Q. Okay. And so it's appropriate to consider VoIP
8 today to the extent it's being offered today. Right?

9 A. Well, again, I mean, are we talking about
10 offering as in actually serving customers or offering as
11 availability? I mean, I think we should -- I think that the
12 statute says that one of the things we should talk about is
13 availability. I agree with that. And I also think to the
14 extent that it's actually being used, we should consider that
15 as well.

16 Q. So you'd want to consider both. Right?

17 A. Yes, I would.

18 Q. Okay. Now, how about if a company is providing
19 service today, serving customers in Missouri, but you have
20 some speculation or concern that they might not be providing
21 service in the future? Would you agree with me that as you've
22 looked at the statute and the words that you've emphasized,
23 that we should be focusing on the fact that they're providing
24 service today, not speculating about whether they will still
25 do so in the future?

1 A. I think we -- I think that the Commission has
2 been willing to look at the future before within some
3 guidelines.

4 Q. Okay. That's not really responding to my
5 question.

6 A. My apologies.

7 Q. I'm trying to draw a distinction, and maybe I
8 didn't make it clear. You're not willing to look at wireless
9 and VoIP because you consider, especially with regard to VoIP,
10 the information about service offerings to be speculative and
11 to be something that might be occurring in the future. Right?

12 A. I think that's an inaccurate characterization,
13 because the first few words talk about how we don't consider
14 them and I've -- that -- that's not the case.

15 Q. All right. You characterize information about
16 VoIP providers as being speculative and information about
17 wireless as being speculative and indicate that they may do so
18 in the future. Maybe I'm mischaracterizing your testimony,
19 but I understood you to be saying that those things weren't
20 providing effective competition today but they might be in the
21 future and that you went on to say might be doesn't count
22 under the statute, we've got to look at what they are today?

23 A. Boy, there's so many parts to that question.

24 Q. Okay.

25 A. Let's --

1 Q. All right. I'll re-ask it.

2 A. Yeah. I mean, I could try to answer on a
3 part-by-part basis, but when something gets that long, I like
4 to make sure I know what I'm answering.

5 Q. That's fine. It's pretty broad.

6 Would you agree with me that in your view of
7 the statute, that we need to be looking at who's providing
8 service today, and the possibility or speculation that one or
9 more companies might not be offering it at some point in the
10 future shouldn't be considered under the terms of the statute?

11 A. Should not be considered?

12 Q. Should not be considered.

13 A. I think that those -- I think that those things
14 can be considered if the Commission deems them relevant under
15 E.

16 Q. Okay. But under A and B, no, because we're
17 supposed to look just at whether they're providing service
18 today. Right?

19 A. I -- I do see the word "are available" in A.

20 Q. And that's something that you emphasized in
21 your testimony. Right?

22 A. Yes, I did.

23 Q. Okay. And so you say -- you would agree with
24 me that from your perspective, that shouldn't be considered
25 under A, but it might be considered under E. Right?

1 A. I think that's a fair characterization.

2 Q. And the same would be true, would it not, from
3 your perspective of companies like VoIP providers that may not
4 be providing service today but may be doing it in the future,
5 we shouldn't consider it under A, but it is appropriate for
6 the Commission to consider it under E?

7 A. Okay. You're asking me to make an analogy.
8 You're asking me to say if I -- you're asking if I should
9 apply that same analysis --

10 Q. Yeah.

11 A. -- to other carriers?

12 Q. Yes.

13 A. I -- I think the Commission could if they -- if
14 the Commission deemed that relevant.

15 Q. Okay. If competition isn't effective in the
16 future, if current competition today goes away, wouldn't the
17 Commission have the ability to re-look at whether effective
18 competition still exists at that point in the future, and if
19 so, to put the company back under price caps?

20 A. Are we talking about putting the company back
21 under price cap or the company's services back under price
22 cap?

23 Q. I'm not sure there's a distinction, but go
24 ahead.

25 A. Well, I mean, for certain services it could be

1 one way or the other.

2 Q. Okay.

3 A. I do agree that I think the Commission could
4 put certain services of a company back under price cap.

5 Q. Okay. Another reason that you gave in your
6 analysis of VoIP as a reason not to give it much weight was
7 that in some places it's dependent on having DSL service from
8 SBC Missouri. Right?

9 A. That is something I discuss in my testimony.

10 Q. And I guess, first off, you'd agree with me
11 that that concern is irrelevant where cable modem service is
12 available. Right?

13 A. The fact that SBC would be the provider would
14 not -- may not be relevant where there are other -- other
15 options.

16 Q. Okay. And you reviewed Ms. Stoia's testimony
17 in this case. Right?

18 A. Yes, I did.

19 Q. And without utilizing the number itself, would
20 you agree with me that on Exhibit 4-P of Ms. Stoia's
21 testimony, that she describes the availability of both DSL and
22 cable modem services in terms of the percentage of SBC's
23 access lines that they can reach?

24 A. She does have a schedule titled Broadband
25 Availability and she talks about 2003 households and does list

1 numbers talking about broadband availability, DSL availability
2 and cable modem availability.

3 Q. Okay. And it's fair to say, is it not, that
4 the availability of cable modem service as portrayed there is
5 greater than the percentage of DSL availability?

6 A. When we're talking about is on a -- on a
7 household basis. So I would say that that -- that that does
8 seem to be a fair characterization.

9 Q. Okay. And that comports, does it not, with
10 your general understanding of the DSL versus cable modem
11 market? Cable modem was there first, it's more established,
12 it has a greater customer base, etc.?

13 A. I'm not sure if -- I think the customer base
14 thing is changing. I think that that's -- that's a changing
15 thing, but -- I'm sorry. I didn't answer your question.
16 Could you repeat your question because I'm -- I didn't -- I
17 just wanted to make sure I was answering the right thing
18 again.

19 Q. Okay. The availability of cable modem service
20 on a wider area in terms of household penetration as reflected
21 on Ms. Stoia's exhibit is consistent with your general
22 understanding of the market, that cable modem service has been
23 out there longer and available in more places. Right?

24 A. I think that's a fair characterization.

25 Q. Okay. Even where cable modem's not available,

1 you're not required to take Internet access service from SBC's
2 affiliate, are you?

3 A. Can you discuss exactly what you mean by
4 Internet access service? Because --

5 Q. Yeah. And let's see if we agree, that DSL is a
6 transport service that can be utilized by a provider to offer
7 high-speed Internet access. Is that a fair statement?

8 A. I'm just -- I'm just making sure we're talking
9 about the same thing.

10 Q. Sure.

11 A. If you wish to break up the service into the
12 transport and then the actual Internet access -- is that what
13 you're -- I'm just trying to make sure I understand your
14 question.

15 Q. Yes. That's what I'm trying to do.

16 A. I do agree that there might be different ways
17 to kind of brand the DSL by offering different Internet access
18 service providers.

19 Q. And would you agree with me that the way it
20 operates in Missouri is that the DSL transport service is
21 offered by SBC's affiliate called ASI and that company makes
22 its DSL transport services available to any Internet service
23 provider that wants to offer the high-speed access to the
24 Internet, including SBC's affiliate Southwestern Bell Internet
25 Services or SBIS?

1 A. Or S-- I mean, or SBC I guess, or is that who
2 you're also referring to?

3 Q. No. Okay. I'll do it broad, I'll ask it
4 again. I'll break it down.

5 Would you agree with me that the way that it's
6 provided in Missouri, DSL service is offered as a transport
7 service by SBC's ASI. Agree?

8 A. I think that's a fair characterization.

9 Q. And SBC ASI offers its DSL transport services
10 to any Internet service provider that wants to acquire it.
11 Right?

12 A. I'm not intimately familiar with that
13 agreement.

14 Q. Okay. You're aware, are you not, that Internet
15 service providers can utilize SBC's DSL transport service to
16 provide high-speed Internet access. Right?

17 A. I believe they can.

18 Q. Okay. It's not --

19 A. I'm not --

20 Q. Sorry. It's not limited to SBC's affiliate in
21 terms of being able to utilize that DSL transport to provide
22 high-speed Internet access. Right?

23 A. I believe that's fair, but I have not studied
24 that issue --

25 Q. Okay.

1 A. -- intently or -- or -- or with a lot of depth.

2 Q. Okay.

3 MR. LANE: That's all I have. Thank you very
4 much.

5 JUDGE RUTH: Okay. So that concludes your
6 cross-examination, Mr. Lane?

7 MR. LANE: Yes, your Honor.

8 JUDGE RUTH: Then we will now break for lunch.
9 It's five minutes after 12:00. We will break until 1:15 and
10 start back up here. If Commissioners are available, we'll do
11 questions for Mr. McKinnie from the Bench. If the
12 Commissioners are not available, then we will continue with
13 Staff's next witness. We're off the record.

14 (A recess was taken.)

15 JUDGE RUTH: Okay. We are back on the record
16 after a lunch break in Case TO-2005-0035.

17 Right before the break, SBC had finished its
18 cross-examination of Staff Witness Adam McKinnie, so we will
19 move to redirect. Mr. Haas, you may proceed.

20 REDIRECT EXAMINATION BY MR. HAAS:

21 Q. Good afternoon, Mr. McKinnie.

22 A. Good afternoon.

23 Q. During his cross-examination, Mr. Lane asked
24 you if you or if the Staff had considered wireless and VoIP in
25 your analyses. And did you consider wireless in your

1 analysis?

2 A. Yes, we did.

3 Q. And did you consider VoIP in your analysis?

4 A. Yes, we did.

5 Q. There were some questions from Mr. Lane where
6 he asked under which of the five statutory guidelines did you
7 consider different items. And under which of the five
8 statutory guidelines did you consider wireless?

9 A. I would say we considered them under A, the
10 extent to which services are available from alternate
11 providers in the relevant market. We definitely considered
12 them under B, the extent to which the services of alternative
13 providers are functionally equivalent or substitutable at
14 comparable rates, terms and conditions. I would say we
15 definitely considered them under C, the extent to which the
16 purposes and policies of Chapter 392 RSMo, including the
17 reasonableness of rates is set out in Section 392.185 RSMo are
18 being advanced. I would say we considered them under
19 factor D, and I would say we considered them under factor E.

20 Q. And under which statutory factors did you
21 consider VoIP? And if you need to break that out into the
22 Vonage type VoIP and the Time Warner VoIP, do so.

23 A. I think for the purposes of this question, I
24 could say that we considered each of those two services under
25 all five of the criteria.

1 Q. During his cross-examination, Mr. Lane pointed
2 out that Staff did not have exchange-specific information on
3 plexor. How is it that you were able to make a recommendation
4 for statewide competitive classification without having
5 exchange-specific information on plexor?

6 A. I looked at two specific things when I made my
7 recommendation of plexor. First of all, the availability of
8 the PBX service, which is a service that -- or I'm sorry, the
9 PBX, which is a device which is available in all exchanges.
10 And second of all, I looked at the statute, which talks about
11 the individual case base pricing for that service already.
12 Those are the two things I looked at when I made that
13 analysis.

14 I didn't make -- I didn't break it down to an
15 exchange-specific level because it was very similar to things
16 the Commission has considered in the past, such as the Sprint
17 case. And they considered the CENTREX service, which is
18 essentially the same thing as plexor.

19 Q. Mr. Lane asked you some questions about source
20 data for some maps that were attached to Mr. Unruh's
21 testimony. What source data were you looking for that you do
22 not believe you received?

23 A. When I submitted that data request, my
24 intention was to receive data where I could try to figure out
25 exactly what criteria had been met for any one place to be

1 lit. I thought it might say, this area -- first of all, they
2 would break it down by area, which they did. Then they would
3 tell me whether or not the area met their qualifications,
4 which is what they did. But then also they would tell me why
5 an area met their qualifications.

6 And I thought that when I asked for source
7 data, they would provide me the criteria for which a place
8 would be lit or not lit. And evidently there was a
9 misunderstanding on that term.

10 Q. Can you give me an example of what sort of
11 criteria might have been used or that you think might have
12 been used to determine if an area was lit?

13 A. Well, one of the areas we were specifically
14 interested about was the Vonage -- was the Vonage VoIP active
15 market listing. And Mr. Unruh's schedule -- in Mr. Unruh's
16 Schedule 16, we were trying to figure out what made that a
17 Vonage VoIP active market. And we thought if we asked them
18 the criteria why -- if we asked them for the source data, that
19 source data would include that information.

20 We later did ask them specifically about the
21 VoIP Vonage active market when, under analysis of the source
22 data, it did not appear to have any criteria for why a
23 specific region or area or geographic location would be,
24 again, for lack of a better word, lit.

25 Q. Mr. Lane questioned you about the term

1 "compliment." Is SBC's goal of getting customers to buy both
2 wireline and wireless service an example of compliments in an
3 economic sense?

4 A. I would say that is definitely an action you
5 would take towards compliments.

6 MR. HAAS: That's all the questions I have.

7 JUDGE RUTH: Okay. Mr. McKinnie, you may step
8 down, but you are not excused. It may be necessary to recall
9 you to the stand.

10 Staff, you may call your next witness.

11 MR. HAAS: The Staff calls Bill Peters.

12 (Witness sworn.)

13 JUDGE RUTH: Okay. Please be seated. Thank
14 you.

15 BILL PETERS testified as follows:

16 DIRECT EXAMINATION BY MR. HAAS:

17 Q. Please state your name.

18 A. Bill Peters.

19 Q. Where are you employed?

20 A. At the Missouri Public Service Commission.

21 Q. What is your position?

22 A. I'm a regulatory economist in the
23 telecommunications department.

24 Q. Did you prepare the Rebuttal Testimony that's
25 been marked Exhibits 22 and 23 and the Surrebuttal Testimony

1 that's been marked 24 and 25 in this case?

2 A. Yes, I did.

3 Q. Do you have changes or corrections to your
4 pre-filed Rebuttal Testimony?

5 A. Yes, I do.

6 Q. What are those changes?

7 A. On page 9, line 19, strike the word "until" and
8 replace that with "such that" and also strike the word
9 "longer."

10 MR. LANE: I'm sorry, Bill. Could you repeat?

11 THE WITNESS: Page 9, line 19, strike the word
12 "until" replaced with the words "such that" and replace
13 the word -- or strike the word "longer."

14 So the whole sentence would read, In fact, it
15 is entirely possible, especially in the lower priced
16 residential wireline market, that the company could lower
17 prices for a period of time in order to squeeze out any
18 current competition and subsequently raise prices such that
19 there are no economic rents available in the market.

20 BY MR. HAAS:

21 Q. Do you have additional changes or corrections?

22 A. Yes. On page 12, in footnote 8, I just want to
23 strike the word "minimum." And that's it.

24 Q. Do you have any changes or corrections to your
25 Surrebuttal Testimony?

1 A. No, I do not.

2 Q. With the changes, is your pre-filed Rebuttal
3 Testimony and your pre-filed Surrebuttal Testimony true, to
4 the best of your knowledge and belief?

5 A. Yes.

6 MR. HAAS: Your Honor, I would move the
7 admission of Exhibits 22 and 23, 24 and 25, which are the
8 Rebuttal and Surrebuttal Testimony of Bill Peters, and I
9 tender the witness for cross-examination.

10 JUDGE RUTH: Thank you.

11 Exhibits 22, 23, 24 and 25, Mr. Peters'
12 pre-filed testimony, has been offered into the record. Are
13 there any objections to it being received? Public Counsel?

14 MR. DANDINO: No objections, your Honor.

15 JUDGE RUTH: Mr. Lumley?

16 MR. LUMLEY: No objections.

17 JUDGE RUTH: SBC?

18 MR. LANE: No objection, your Honor.

19 JUDGE RUTH: Exhibits 22, 23, 24 and 25 are
20 received into the record.

21 (Exhibit Nos. 22, 23, 24 and 25 were received
22 into evidence.)

23 JUDGE RUTH: Public Counsel, do you have cross
24 for this witness?

25 MR. DANDINO: No questions, your Honor.

1 JUDGE RUTH: Mr. Lumley?

2 MR. LUMLEY: No questions.

3 JUDGE RUTH: SBC?

4 MR. LANE: Yes, your Honor.

5 CROSS-EXAMINATION BY MR. LANE:

6 Q. Good afternoon, Mr. Peters.

7 A. Afternoon.

8 Q. Would you agree with me that the standard of
9 the effective competition which the Commission is to apply in
10 this case are the factors set out in Section 386.020.13?

11 A. That's correct.

12 Q. And that statute sets out four factors to be
13 evaluated and then a catch-all that says whatever the
14 Commission wants to consider so long as it's necessary to
15 achieve the purposes of the chapter essentially. Correct?

16 A. That's correct.

17 Q. Okay. It's also fair to say that your
18 testimony does not do a factor-by-factor analysis. Correct?

19 A. That's correct.

20 Q. You don't evaluate existing economic or
21 regulatory barriers to entry. Correct?

22 A. There's no exposition on that.

23 Q. Okay. And you don't evaluate the extent to
24 which the purposes and policies of Chapter 392 are being
25 advanced. Correct?

1 A. There's no analysis on that.

2 Q. Okay. And the purposes of the chapter are set
3 forth in Section 392.185. Correct? Nine factors that are
4 listed there?

5 A. Right.

6 Q. And you don't analyze any of those nine
7 factors. Correct?

8 A. There's no explicit exposition.

9 Q. Okay. Your analysis of factors A and B under
10 Section 386.020.13 is limited to an analysis of the presence
11 of facilities-based providers. Correct?

12 A. I don't believe that's so.

13 Q. Okay. The critical determining point in
14 whether you recommend effective competition is the presence of
15 facilities-based CLEC providers. Correct?

16 A. I think -- well, you can see in the testimony,
17 I explain that we -- we didn't find sufficient evidence for a
18 finding of effective competition for some of the other
19 criteria such as the presence of broadband telephone service
20 or wireless service in and of themselves. And we did look
21 for -- you can call it a critical point, but we -- we -- we
22 determined that where there was facilities-based -- evidence
23 of facilities-based competition, we were most confident in the
24 extent of the competition in those exchanges.

25 Q. All right. You didn't recommend a finding of

1 effective competition in any exchange unless you found the
2 presence of facilities-based competition. Correct?

3 A. That's correct.

4 Q. Okay. And there wasn't any exchange-specific
5 market analysis for wireless or VoIP presented in your
6 testimony. Right?

7 A. And none was offered by SBC.

8 Q. Right. And so the presence or absence of that
9 was something that was applicable to all of the exchanges.
10 Correct?

11 A. Presence or absence of?

12 Q. Information on market share of wireless and
13 VoIP providers.

14 A. Well, I don't think there was any information
15 on market share of wireless and VoIP providers, but
16 information about wireless and VoIP providers we took -- we
17 took generally.

18 Q. Okay. And it generally applied across all of
19 the exchanges, did it not?

20 A. Well, the -- the general information was
21 general information.

22 Q. Right.

23 A. So nothing was exchange specific.

24 Q. There's presence of wireless competition in
25 each one of SBC Missouri's exchanges. Correct?

1 A. Well, according to -- I think it's Craig Unruh
2 exhibit -- or Schedule 5, he sets forth how many -- how many
3 wireless providers they found on a certain website that were
4 providing in zip codes that correlated to SBC exchanges. And
5 I think there was at least one where they couldn't find a
6 wireless provider according to that website. And I think
7 Mr. Unruh said in his testimony that, nonetheless, he was sure
8 there was wireless available.

9 Q. All right. You don't quarrel with the
10 information that was presented by Mr. Unruh with regard to the
11 presence of wireless competitors in the exchanges that he
12 identified. Correct?

13 A. Well, I -- I don't quarrel with the -- I don't
14 quarrel with the information, but I don't know if I could -- I
15 could agree that what they -- what SBC uses as source to gain
16 that information is some sort of standard where I would find
17 out if there were those providers providing in the exchanges
18 that would tell me the extent of the coverage in those
19 exchanges and whether telephone numbers are available in those
20 exchanges.

21 Q. All right. Let me ask you the same question
22 that I asked Mr. McKinnie. Did you see Staff's role in this
23 case as being, A, doing an independent neutral review of all
24 the evidence that could be gathered from any source and
25 presenting it to the Commission; or, B, reviewing SBC

1 Missouri's evidence that it presented and giving either a
2 thumbs up or thumbs down based on that evidence?

3 A. I -- I saw Staff's role as, you know, A,
4 looking at SBC Missouri's information and analyzing how well
5 it -- it can substantiate effective competition in SBC
6 Missouri exchanges. And to the extent possible, gathering
7 whatever additional information and knowledge that we could.

8 Q. All right. So primarily you saw yourself as
9 being in a position of critiquing and evaluating SBC
10 Missouri's evidence, but if some other evidence came your way
11 or you found it, you were willing to consider that as well.
12 Is that a fair statement?

13 A. Well, I don't -- I don't -- I don't think I
14 thought of it as if some other evidence were to find its way
15 to me, that I would use it.

16 Q. All right. Let me try it this way.

17 A. I did actively seek as much independent
18 information as I could.

19 Q. You were certainly aware that an issue in the
20 case is whether wireless competition existed in SBC Missouri's
21 exchanges and what impact that has on a finding of effective
22 competition. Right?

23 A. Yes.

24 Q. And it's fair to say that you did no
25 independent research to determine whether any wireless

1 providers were offering service anywhere in the state other
2 than reviewing the information that Mr. Unruh set out. Right?

3 A. I -- I don't think it could be said that I
4 didn't do anything. I mean, I did research the wireless
5 carriers and -- and see what service plans they were offering
6 and --

7 Q. All right. Did you contact any of the wireless
8 companies that were identified by Mr. Unruh to determine
9 whether they were or were not providing services in the
10 exchanges that he claimed they were?

11 A. No.

12 Q. Okay. And to the extent you had any
13 disagreement with what Mr. Unruh presented as evidence that
14 wireless providers were providing service in a particular
15 exchange, you didn't undertake any independent research to
16 show that Mr. Unruh was not correct?

17 A. Frankly, I couldn't see how to verify his
18 information.

19 Q. Okay. And why is that, Mr. Peters, that you
20 couldn't see how to? Why is that? Let me help out. Is it
21 fair to say that you couldn't see any way to verify it because
22 they were not a company -- the wireless companies are not
23 regulated by the Commission, don't submit any information to
24 the Commission and don't file any Annual Reports with the
25 Commission?

1 A. Well, I think you alluded to it before in some
2 earlier questions, that if -- if the wireless companies and
3 broadband-based telephone companies and other alternative
4 providers such as that were to submit reports to the
5 Commission on an axis lines provided by exchange like the
6 CLECs and the ILECs do in the state, then it would have been a
7 much easier -- well, I would have been able to substantiate
8 the competition.

9 Q. All right. And then to get to the question I
10 asked, the reason you weren't able to substantiate or
11 determine whether wireless providers were operating in the
12 exchanges that were designated as such by Mr. Unruh in his
13 testimony is because they don't have reports that they file
14 with the Commission and they're not regulated by the
15 Commission?

16 A. Well, a reason why I don't have that
17 information out of reports would be because they don't file
18 reports. But you're right, I don't see -- aside from an
19 obligation to the Commission, that they would submit a report
20 on the exchange level.

21 Q. Okay. And would you agree with me that the
22 absence of information of market share of wireless providers
23 by exchange is a reason that the Commission should not adopt
24 any kind of metric test market share test in evaluating the
25 existence of effective competition?

1 A. Are you -- are you asking me if they should --
2 they shouldn't look at the -- the CLEC and ILEC access line
3 reports by exchange? Is that what you're asking? Or if they
4 should not rely on that entirely is maybe what you're asking?

5 Q. No. What I'm asking is --

6 A. Sorry.

7 Q. -- would you agree that the absence of
8 information of exchange-specific wireless market share data is
9 a reason that the Commission should not adopt a market share
10 test in determining whether effective competition exists?

11 A. Well, I don't -- I don't think that the
12 Commission can determine effective competition based entirely
13 on market share.

14 Q. Okay.

15 A. Because the other, as we've stated, can't be
16 substantiated. You know, on the other hand, if, you know,
17 competition from whatever type of service that we don't have
18 yet, let's call it super wireless service, can't be
19 substantiated, I don't know how to measure its effect.

20 Q. Market share is an inappropriate criteria to
21 utilize to determine effective competition where one does not
22 have information about market share from all competitors in
23 all exchanges. Do you agree with that?

24 A. As a sole determinant?

25 Q. As a primary or significant determinant.

1 A. I -- I don't think that -- I don't think that I
2 can agree with that. I don't think that if I have information
3 on -- specific information on a certain competitor and I don't
4 have information on the other competitors, that -- I don't see
5 how the place where I don't have the information would be more
6 significant than the place where I do have information such as
7 the facilities-based market shares that we calculated.

8 Q. All right. And maybe I didn't ask that -- I'm
9 going to try it again. If the Commission were to adopt a
10 market share test in analyzing effective competition, would
11 you believe that that would be inappropriate because the
12 Commission doesn't have market share exchange-specific
13 information from wireless and from VoIP providers?

14 A. Like I said, I don't think it would be
15 inappropriate.

16 Do you have more questions, I mean, on that
17 issue?

18 Q. You don't think what would be inappropriate?

19 A. Relying solely on any type of market share
20 as --

21 Q. Let me make sure we're communicating. Are you
22 saying that it would be or it would not be appropriate for the
23 Commission to adopt a market share test when determining
24 effective competition realizing that they don't have that kind
25 of information for wireless or VoIP providers?

1 A. Well --

2 Q. It would be, A, appropriate or, B,
3 inappropriate?

4 A. What do you mean a market share test though?

5 Q. I mean a market share test like you present in
6 your testimony. You analyze market share, don't you?

7 A. I -- I analyzed -- well, I think specifically
8 what you're talking about is a share -- facilities-based
9 shares in the exchanges --

10 Q. That's how --

11 A. -- with CLECs and ILECs.

12 Q. -- you defined it. But you present a market
13 share test. Right?

14 A. No. I don't think I presented any sort of
15 test.

16 Q. All right. Okay. Because you don't think it's
17 appropriate to say market share should be a test when you
18 don't have all of the information on all the providers.
19 Right?

20 A. Well, I -- I -- I don't think it's appropriate
21 to say that the facilities-based market in any of those
22 exchanges is -- is the only market for communication services.

23 Q. And what other things should be considered in
24 looking at the market for communication services?

25 A. I mean, certainly -- certainly the availability

1 and -- the availability of wireless and broadband telephones
2 and -- and how their rates, terms and conditions are
3 comparable to the other -- the other market information that
4 we do have.

5 Q. All right. Imagine a hypothetical market in
6 which a third of the exchange lines were held by wireless
7 providers, a third were held by VoIP providers, and a third
8 were held by SBC Missouri.

9 A. In the hypothetical market is -- I know I'm not
10 supposed to be answering questions -- asking questions. I'm
11 assuming that all of the lines are the same type of line.
12 Like you get the same service, you get a telephone number, you
13 get basic line and Caller ID.

14 Q. Similarly substitutable services --

15 A. Right.

16 Q. -- offered by each of those three. Okay?

17 A. Okay. And we're able to -- and we're able to
18 determine how many of each of those customers there are?

19 Q. Right. And the hypothetical is a third of the
20 customers are wireless customers, a third of them are VoIP
21 provider customers, and a third of them are SBC Missouri
22 customers.

23 A. Okay.

24 Q. In that hypothetical market, would you agree
25 with me that that would likely be something where there was a

1 demonstration of effective competition?

2 A. I would -- I would still need to look at the
3 rates, terms and conditions, but --

4 Q. Assuming those are comparable.

5 A. Those are comparable, so I'm signing -- okay.
6 So if there's a contract, it's the same across all and -- and
7 all the rates are the same and I'm getting the same amount of
8 minutes, then -- then I think with that sort of evidence, I
9 could -- yeah, it's definitely effective competition.

10 Q. Okay. The way that Staff approached it in this
11 case though, such an exchange would not be designated as
12 effective because you don't have any information on wireless
13 market share or VoIP market share. Right?

14 A. I can't substantiate it, that's correct.

15 Q. Okay. And the absence of a CLEC with
16 facilities-based technology would, under my hypothetical,
17 prevent you from finding effective competition from Staff's
18 viewpoint but the market itself would actually be effectively
19 competitive. Right?

20 A. I think it might in your interpretation of
21 Staff's testimony, but given that we don't have the
22 information you stated in your hypothetical, I think you're --
23 you're stretching Staff's analysis a bit far.

24 Q. All right. And maybe there's some
25 misunderstanding on my part of what your view is. Would you

1 look at page 5 of your Rebuttal Testimony? And at lines 1
2 through 3 you make the statement that, quote, In the business
3 market, a facilities-based penetration rate of at least
4 9 percent was sufficient to meet the standard of effective
5 competition, especially when considering the higher prices
6 commanded in the business market --

7 A. Correct.

8 Q. -- do you see that?

9 All right. Now, I read that, Mr. Peters, as
10 you're adopting a 9 percent market share test to determine
11 whether effective competition exists. Is that not Staff's
12 intent?

13 A. No, that is not my intent. I was trying to
14 explain in the -- if you allow me to explain.

15 Q. Yeah. I do want you to.

16 A. I was trying to explain in this paragraph an
17 example of -- in the data that we looked at, where did --
18 where did Staff find effective competition, what was an
19 example. And, you know, if I'm giving you the example. I can
20 give you the market share that I have in that example of
21 facilities-based market and an additional example of where
22 we -- where we did not think that the evidence was -- there
23 was substantial evidence of facilities-based competition.

24 Q. All right. Let me ask it this way. It's a
25 fair statement, is it not, that Staff found no effective

1 competition in any exchange in which CLECs did not have
2 facilities-based market share of at least 9 percent. Right?

3 A. That's correct.

4 Q. And at least in your Direct Testimony, Staff
5 recommends a finding of effective competition in every
6 exchange in which there's facilities-based CLEC competition
7 and at least a 9 percent market share. Right?

8 A. That's correct.

9 Q. So I think -- would you agree it would be fair
10 to take from that that either Staff picked 9 percent market
11 share, or alternatively, they picked a group of exchanges and
12 said effective competition exists here and by the way, it
13 happens to be a 9 percent market share? So is that a fair
14 assessment? It's got to be one of those two?

15 A. Were those both the same question?

16 Q. I'll try again.

17 A. I heard two alternatives.

18 Q. I was trying to understand --

19 A. Sure.

20 Q. -- how Staff did it.

21 It seems to me, based on what you just
22 described to me, that either Staff had, A, a predetermined
23 9 percent standard or, B, Staff looked at exchanges generally
24 and said, This one's competitive, this one's competitive and
25 then happened to look over and see that it was a 9 percent

1 market share or better.

2 A. Well, I think we looked at -- at the facilities
3 market share and we also looked at that along with the other
4 information that was provided where SBC purports to outline
5 where -- where there is high-speed Internet service available
6 through cable providers.

7 Q. But it's fair to say, is it not, Mr. Peters,
8 that the information that SBC Missouri provided with regard to
9 wireless and VoIP providers applied to a broad spectrum of
10 exchanges on an equal basis. Right?

11 A. Well, I do not -- I don't think it applied --
12 well, it applied to a broad spectrum of exchanges, but I don't
13 think that it applied on equal basis given that -- given that
14 you don't just have one color covering all your exchanges. It
15 says all SBC Missouri exchanges have eight wireless
16 providers -- or I think the top is five in his schedule. So I
17 think that differs.

18 Q. All right. But you would agree with me that
19 the determining factor in your recommendation is the presence
20 of facilities-based CLEC competition. Right?

21 A. Correct. Without substantial evidence of
22 facilities-based competition, I was not able to recommend
23 effective competition.

24 Q. And as it happens, those where you found that
25 there was enough CLEC facilities-based competition happened to

1 have a 9 percent or greater market share. Right?

2 A. Well, I think the -- I think the data speaks
3 for itself.

4 Q. Okay. That was, from your perspective, kind of
5 happenstance that there's a market share criteria that's
6 associated with it, from what I'm -- from what I'm gathering
7 from your testimony?

8 A. I don't think it's happenstance. I think I
9 looked at the facilities-based market share and saw -- and saw
10 at that point in time there was a natural break in the data.

11 Q. Okay. That's what I was trying to get to. I
12 thought you were telling me that's not what you did.

13 You looked at all the data and you picked a
14 point on there and said, okay, above that point, which was
15 9 percent, I think there's enough competition; and below that
16 point, there's not. Right?

17 A. Well, I -- I picked -- it didn't seem there was
18 a natural break in the data at that point where I thought that
19 there was a substantial amount of facilities-based
20 competition. And I also evaluated along that -- along with
21 the other evidence.

22 Does -- does the evidence that Mr. Unruh
23 provided tell me that there are many wireless providers in the
24 exchange and does it tell me that there is the availability of
25 broadband from -- or high-speed Internet from cable providers?

1 I think we didn't disregard the other evidence.

2 JUDGE RUTH: You can move that out. I had just
3 moved it back when we weren't using it.

4 BY MR. LANE:

5 Q. Mr. Peters, you're generally familiar with SBC
6 Missouri's exchange boundaries and the existence of MCA
7 service, are you not?

8 A. Yes. Both.

9 Q. Okay. And I have a map here that just depicts
10 the St. Louis MCA area and it shows it in blue wrapped around
11 here. And that comports with your general understanding of
12 where the boundaries of the SBC Missouri MCA area is. Right?

13 A. Yeah.

14 Q. Okay. Now, specifically then, with regard to
15 the other criteria that you considered in addition to market
16 share, i.e., presence of wireless providers and the presence
17 of VoIP providers, that that criteria applies essentially
18 equally to all of the exchanges within the St. Louis MCA area?

19 A. I don't think I can agree with -- with that,
20 equally across all the exchanges without looking at them.

21 Q. All right.

22 A. And I got to tell you, it's really hard to
23 compare a map to a spreadsheet.

24 Q. All right. You're generally though familiar
25 with the MCA areas in St. Louis. Right?

1 A. Yes.

2 Q. And it's fair to say that that is looked upon
3 by the Commission as an area where there is a lot of community
4 of interest and that's why the MCA plan was adopted. Right?

5 A. Right. Because people wanted an extended
6 calling area --

7 Q. Right.

8 A. -- the Commission created it.

9 Q. And, generally, you're aware, are you not, that
10 a wireless provider who offers service in the St. Louis area
11 typically makes that service available throughout the MCA area
12 at the same rate, terms and conditions. Right?

13 A. I doubt the rates and terms and conditions
14 would be different throughout the MCA area.

15 Q. All right. And there's a number of wireless
16 providers in the St. Louis area, including Verizon and Nextel
17 and Sprint PCS and others. Right?

18 A. I don't doubt that those are the providers, but
19 all I'm looking at right now is the number of providers.

20 Q. Okay. But those providers operate throughout
21 the St. Louis area, including the MCA areas. Right?

22 A. As far as I can tell, there's only one exchange
23 in Missouri where Craig Unruh was unable to locate a wireless
24 provider.

25 Q. And there's several wireless providers in all

1 of the exchanges that comprise the MCA. Right? That's
2 general knowledge and is reflected in Mr. Unruh's schedule.
3 Right?

4 A. Yeah. There's -- there's several providers
5 in -- in many SBC exchanges.

6 Q. And the VoIP providers that are operating in
7 the St. Louis area are generally operating and people are able
8 to take their service throughout the MCA areas. Right?

9 A. Well, I -- to the extent that it's throughout
10 the entire MCA area, I would disagree. I have -- I have
11 listed wire centers that have available local numbers from a
12 few of the providers. And I'll tell you, the lists aren't
13 that long.

14 Q. All right. Would you agree with me that there
15 is not a significant difference in the availability of VoIP
16 services by exchange across the St. Louis MCA?

17 A. I -- I haven't matched the available telephone
18 numbers up with the MCA.

19 Q. Right. You haven't done that. Right?

20 A. Right.

21 Q. And so when you say that the distinguishing
22 characteristic wasn't just market share, it was also
23 availability of wireless and availability of VoIP --

24 A. Sure.

25 Q. -- that doesn't really match up with what you

1 did, does it, because those places are available -- either the
2 wireless is available throughout and the VoIP is available
3 either throughout or in a manner unrelated to your
4 recommendations. Right?

5 A. I -- I don't think -- I don't think that's
6 true, because another part of the recommendation is comparing
7 the rates, terms and conditions of those services to SBC's
8 services. And I think Commissioner -- Commissioner Murray
9 pointed out in one of her questions to Craig Unruh these other
10 carriers, she said, they generally charge more than SBC, don't
11 they? And he agreed that they did.

12 Q. All right. You'd agree with me that wireless
13 carriers typically charge the same price on a nationwide
14 basis, certainly on a state-specific basis. Right?

15 A. They -- they generally charge the same price
16 for their nationwide plans and they have regional plans as
17 well that might not necessarily agree with the state.

18 Q. All right. And those priced plans are not
19 based on exchange-specific market areas. Right? They don't
20 follow exchange boundaries, do they?

21 A. Where you can use it? That's correct.

22 Q. No, what they charge.

23 A. Oh, what they charge isn't based on an
24 exchange?

25 Q. They don't charge a different rate in downtown

1 St. Louis to somebody who lives there as opposed to somebody
2 who lives in Festus. Right?

3 A. They probably don't.

4 Q. So it is not a distinguishing characteristic in
5 terms of saying effective competition in the Festus exchange
6 in St. Louis MCA versus downtown St. Louis to say the presence
7 of wireless makes a difference, because the providers are
8 generally the same and the price plans that those providers
9 offer are generally the same. Right?

10 A. The providers in Festus and downtown St. Louis,
11 I -- they're probably the same provider in both places.

12 Q. Right.

13 A. And I doubt that --

14 Q. Either they're the same or you haven't analyzed
15 it. Right? One of the two?

16 A. I haven't -- I haven't looked to see what
17 wireless providers -- who they exactly are in Festus and if
18 those same providers are in St. Louis.

19 Q. All right. I guess, you know, let me try it
20 this way. I say to you in a question and you say -- you're
21 basically having a market share test from CLECs
22 facilities-based? And you typically say, No, no, I also
23 considered the availability of wireless and VoIP?

24 A. That's correct.

25 Q. And I am questioning now to say isn't it, in

1 fact, true that the presence of wireless and VoIP are -- at
2 least in the St. Louis MCA -- essentially equal across all of
3 the exchanges and your really -- your only distinguishing
4 characteristic is market share. Right?

5 A. I don't think that I can tell you that it's --
6 well, I can say it's generally the same availability
7 throughout the MCA, but without looking at -- all these
8 numbers of wireless providers that Mr. Unruh provided are
9 different across all SBC exchanges.

10 Q. Right. You'd have to look at that, but you
11 didn't in terms of making your recommendation to the
12 Commission. What you looked at was the CLEC facilities-based
13 market share. Right?

14 A. I -- I did not reveal the -- I did not reveal
15 the additional columns that I used where we -- where we tried
16 to -- tried to move from the map to spreadsheet as to how many
17 wireless providers there were and whether there were cable
18 Internet service there and whether you had purported that
19 there was VoIP service available. I did not reveal those
20 columns. Because in the end, I think that those services
21 generally cost more than SBC's services.

22 Q. All right. So from your perspective then, the
23 existence of wireless and the existence of VoIP were
24 essentially irrelevant to your analysis because of your view
25 that the price was high and didn't offer competition to SBC

1 Missouri's services. Right?

2 A. At -- at comparable rates, terms and
3 conditions.

4 Q. Right. Leaving only CLEC facilities-based
5 competition for you to evaluate from your perspective. Right?

6 A. Without substantiation of -- to the extent of
7 the other competition, that's correct.

8 Q. All right. And then within that parameter, you
9 chose 9 percent as a market share and that's the
10 distinguishing characteristic. It either was above 9 percent
11 or it wasn't. Right?

12 A. In the business market, that's where the line
13 was drawn.

14 Q. All right. And it's fair to say that what you
15 employed was a market share test because that's the
16 distinguishing characteristic in your recommendation on the
17 business market side. Right?

18 A. I think it would be fair to say that I can't
19 recommend effective competition based on any of the other
20 evidence in and of itself.

21 Q. Okay. And then if we move over to the Kansas
22 City exchange, it's the same result, isn't it? Neither VoIP
23 nor wireless, in your opinion, provide comparable rates, terms
24 and conditions; therefore, they were discounted for purposes
25 of your analysis there and you recommended a finding of

1 effective competition on the business side only where the CLEC
2 facilities-based market share was 9 percent or greater.

3 Right?

4 A. Correct. Without further substantiation, I
5 couldn't --

6 Q. Okay. Now, would you agree with me that the
7 Statute 386.020.13, when it lists the factors, does not list
8 market share loss as a factor?

9 A. I would agree it doesn't say market share loss
10 is the factor.

11 Q. Okay. And if the legislature had wanted market
12 share to be the determinant, it would and could have easily
13 said, 9 percent market share loss means effective competition.
14 Right?

15 A. They surely could have defined it that way.

16 Q. Okay. You would agree with me that Staff has
17 cited FCC statistics indicating that 5 to 6 percent of
18 customers with wireless service don't have any wireline
19 service. Right?

20 A. That's correct.

21 Q. Okay. Was that a significant factor to Staff?

22 A. I think that it was.

23 Q. Okay. Did you assume that that applied in
24 Missouri as well?

25 A. I -- along in the same report there's

1 information on Missouri and -- but it doesn't tell me how many
2 have cut the cord in Missouri. So generally, yes.

3 Q. Okay. So did you assume for each exchange in
4 Missouri that 5 to 6 percent of customers had wireless service
5 only and no wireline service?

6 A. I -- I was saying when we were first beginning
7 to talk about it, that all we have evidence for nationwide is
8 that 5 percent of people -- of consumers have only a wireless
9 bill and not a wireline bill. And that, you know, if I can't
10 substantiate the evidence at the exchange level in Missouri,
11 that I think that that's a fair estimate.

12 Q. All right. And so if you had included in each
13 exchange an assumption that 5 to 6 percent of the customers
14 had cut the cord and utilized wireless only and counted that
15 in any kind of market share calculation, then a 9 percent
16 calculation or standard would have brought in a number of
17 additional exchanges. Right?

18 A. Well, I -- I don't think -- I don't think
19 that's the way I did it, but if you were going to add them
20 together and you wanted to do it that way, then -- and you
21 wanted to pick 9 percent of facilities-based and then add
22 5 percent, I just don't know how the analysis would be done --

23 Q. All right.

24 A. -- in that way.

25 Q. Tell me why, in your view, that 9 percent was

1 sufficient to show effective competition instead of
2 10 percent.

3 A. Oh, instead of 10 percent?

4 Q. Yeah. I want to know the exact methodology
5 that you went about in making that determination.

6 A. Well, I think I explained it in my testimony.
7 And I don't know if you've read my testimony, but -- I think
8 you're saying that you have, but --

9 Q. Believe me, I have.

10 A. But I -- I said looking -- looking at this, at
11 some point the evidence is just less compelling. And --

12 Q. Okay. What makes it less compelling at
13 9 percent versus 10 percent? What's the determining factor in
14 your view? Because you say -- you keep telling me you don't
15 have a market share test and so there must be some way that
16 you differentiated between 9 percent and 10 percent. There
17 must be some way you did that, and I need to understand why or
18 how.

19 A. Well, I didn't differentiate between 9 percent
20 and 10 percent. I differentiated between -- I looked at the
21 extent of facilities-based competition in the Maxfield
22 exchange, for example, where I show out of the
23 facilities-based lines according to the data that --

24 MR. HAAS: Excuse me.

25 JUDGE RUTH: Hold on.

1 MR. HAAS: Are you about to read HC material?

2 THE WITNESS: Yes.

3 BY MR. LANE:

4 Q. I'm not asking you to do that. Let me try it
5 this way. When you made your determination, you looked at the
6 percentage of CLEC facilities-based access lines in each
7 exchange. Right?

8 A. That's correct.

9 Q. And where it was 9 percent or more, you found
10 effective competition or recommended that for business
11 services. Right?

12 A. Well, and I also looked at -- well, yeah,
13 that's where I found it.

14 Q. Right. And I'm trying to understand if you
15 didn't use a market share test, why the breakpoint wouldn't
16 have been at 10 percent? What's the difference -- in an
17 economic analysis that does not take into account market
18 share, why didn't it come out that you recommended 10 percent
19 instead of 9 percent? Why didn't those things fall that way?

20 A. I don't think that I said that I didn't take
21 into account market share. That was certainly -- that was
22 certainly one of the things that I looked at. And the other
23 thing I looked at was, okay, well, how many facilities-based
24 lines do I have that are significantly different than zero in
25 this exchange? And the market share is -- is how many

1 facility-based lines do CLECs have compared to how many -- how
2 many facilities-based lines that SBC has in that exchange.

3 And I think those two things combined, you
4 know, with the additional information about availability of
5 wireless carriers that Mr. Unruh provided and the availability
6 of --

7 Q. But we've already determined, haven't we, that
8 wireless and VoIP wasn't any kind of determining factor
9 because you consider both of those priced too high and
10 irrelevant, right, for purposes of finding effective
11 competition. Right?

12 A. Well, I did not consider them irrelevant, but I
13 consider them possibly not comparable rates, terms and
14 conditions.

15 Q. Okay. And if you had assumed some particular
16 level of market share from VoIP service providers, 5 or 6
17 percent, then your recommendation to the Commission may well
18 have been different as well. Right?

19 A. If I had some substantiation of VoIP or
20 broadband-based telephone competition, I would be able to come
21 up with a different recommendation probably.

22 Q. Okay. And the lack of data on VoIP market
23 share by exchange is an inhibiting factor in your analysis of
24 whether you should recommend effective competition on that
25 basis. Right?

1 A. Right. I can't -- I can't tell you how much
2 competition that's providing in the exchange.

3 Q. Now, where you determined that VoIP services
4 were being provided in an exchange, did you attribute a
5 certain number of access lines as being served in that method
6 when you came to your conclusion and recommendations?

7 A. No. I had no way to approximate how many
8 people were subscribing to that service in those exchanges.

9 Q. All right. And so the fact that VoIP service
10 may have been provided in one exchange and not available in
11 another wouldn't be a critical factor to you because neither
12 one -- because in the former you don't have any
13 exchange-specific market share information. Right?

14 A. Well, I think that it's still a factor because
15 I think we know that -- that these services are being offered.

16 Q. Okay. But then when you made your analysis and
17 looked at your breakpoint, you gave no credit in any exchanges
18 where VoIP was being provided as opposed to those exchanges
19 where VoIP was not being provided. Correct?

20 A. Well, I -- I didn't add -- I didn't add -- I
21 didn't add factor A with factor B with factor C and come up
22 with a total market share number for that. I think that I
23 explained before that those things in and of themselves I
24 didn't think represented effective competition

25 And the facilities-based market share that I'm

1 looking at, I'm only looking at it in terms of the
2 facilities-based numbers that we have. And --

3 Q. Right.

4 A. -- I don't think -- I don't think it's fair to
5 add -- add one to the other and come up with some -- some
6 other market share when all I'm -- all I'm showing with
7 these -- with these market share numbers from the data that
8 Mr. Unruh provided is the share of those facilities-based
9 lines that he provided. I don't think that I can add, you
10 know -- if you want to give 5 percent credit to I guess --

11 Q. I guess --

12 A. -- broadband telephones to that --

13 Q. My problem, Mr. Peters, is that --

14 A. Okay.

15 Q. -- by all appearances, you did a market share
16 test, but you don't want to say that. And then you want to
17 cite other factors like VoIP presence. And then I ask what
18 kind of credit did you give in your market share and the
19 answer is zero. Right?

20 A. I have looked to see if they were available.

21 Q. Is a VoIP provider available in every exchange
22 in which you recommended?

23 A. Is a VoIP telephone numbers available in every
24 exchange?

25 Q. Where you recommended.

1 A. There is -- there's broadband Internet from
2 cable providers in every exchange where I recommended
3 effective competition.

4 Q. And is there VoIP providers present in any
5 other exchanges where you did not recommend?

6 A. Can they offer their service over the broadband
7 lines?

8 Q. It's the same question. Are there VoIP
9 providers available in some of the exchanges where you did not
10 recommend --

11 A. Yes.

12 Q. -- a finding of effective competition?

13 A. Yes.

14 Q. All right. And there's some where VoIP service
15 isn't available. Is that a fair statement?

16 A. That's correct.

17 Q. Okay. And then when you made your market share
18 analysis and your recommendations, there was no
19 differentiation among exchanges where there was and was not
20 VoIP competition. Right?

21 A. That I represented in the testimony?

22 Q. And made your recommendation on.

23 A. There were --

24 Q. That's all right.

25 A. Can you ask it again?

1 Q. No. I'll go on.

2 A. No?

3 Q. Okay. It's fair to say that in your evaluation
4 of CLEC competition, that you excluded UNE-P. Right?

5 A. That's correct.

6 Q. Okay. Had you given weight to UNE-P, it's fair
7 to say that that would have significantly influenced what
8 recommendations you made to the Commission. Right?

9 A. That's true.

10 Q. And the basis of your refusing to consider
11 UNE-P competition is that the FCC has removed unbundled local
12 switching from the list of UNEs which must be provided.
13 Correct?

14 A. That's correct.

15 Q. That means -- I'm asking if you agree -- that
16 you assumed that all of the customers that are presently being
17 served by UNE-P will not be served by CLECs in the future and
18 will instead be universally served by SBC Missouri. Right?

19 A. That was not my assumption.

20 Q. Okay. Tell me how you broke down what would
21 happen to those customers that are today served by UNE-P when
22 the FCC decision takes effect and the transition period
23 expires. How did you decide where those customers would go
24 when you're analyzing market share data?

25 A. I don't know where those customers would go,

1 and so I did not break it down, assign any to any place.

2 Q. To the extent customers that are being served
3 by UNE-P today remain customers of CLECs after the transition
4 period following the removal of unbundled local switching --
5 excuse me, strike that.

6 The market share data that you present is where
7 on yours in terms of UNE-P? What schedule of yours? And I'm
8 not going to ask numbers.

9 A. Okay.

10 Q. Is it Schedules 3 and 4? Is that how you do
11 it?

12 A. I have to look. I know it's -- it's Craig's
13 data presented alongside --

14 Q. Right.

15 A. -- mine.

16 Q. Schedule 3 shows residential, Schedule 4 shows
17 business; is that right?

18 A. That's right.

19 Q. On both residential and the business side,
20 inclusion of UNE-P in the market share analysis would have led
21 to significantly different results. Right? I think I might
22 have asked you that and you already said yes, but I want to
23 reaffirm that.

24 A. That's true.

25 Q. Okay. Let's take a look at the options that

1 the UNE-P providers have today after the transition period one
2 year after the FCC's order comes out. Would you agree that
3 those UNE-P providers could utilize their own switching
4 facilities?

5 A. To the extent that they have them.

6 Q. Or could acquire them. Right?

7 A. Both.

8 Q. Okay. And they can utilize any switching
9 services that are offered by SBC Missouri. Right?

10 A. To the extent that SBC Missouri will reach an
11 agreement with those companies.

12 Q. Okay. And they can take switching services
13 from other CLECs, can they not?

14 A. To the extent those CLECs make those switching
15 services available.

16 Q. Okay.

17 MR. LANE: At this point, your Honor, I need to
18 go into HC.

19 JUDGE RUTH: Okay. Just give me a minute.

20 (Reporter's Note: At this time, an in-camera
21 session was held, which is contained in Volume No. 8, pages
22 946 through 983 of the transcript.)

23

24

25

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

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

- 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

- 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

- 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

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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

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

- 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

1 (Off the record.)

2 JUDGE RUTH: Okay. We are back on the record
3 after a short break. And, Commissioner Gaw, we're ready for
4 your questions.

5 COMMISSIONER GAW: Okay. Thank you.

6 QUESTIONS BY COMMISSIONER GAW:

7 Q. Mr. Peters, I want to spend a little bit of
8 time here just understanding some portion of what I just heard
9 you discussing with Mr. Lane because I had some similar
10 questions -- or at least in general some similar questions
11 about why you removed some of the recommendations that you had
12 initially -- that Staff had initially made in regard to the
13 business and those particular exchanges.

14 So help me to understand, first of all, what
15 specifically was it that caused you to remove those exchanges
16 that -- initially that you had said would be appropriate for
17 competitive classification?

18 A. Well, when we first looked at the data and we
19 looked for evidence of facilities-based competition, we were
20 operating under the idea that the E-911 database would
21 represent a minimum number of facilities-based lines in that
22 exchange.

23 The questions about the ability to use the
24 E-911 database to approximate facilities-based access lines
25 were brought up in Mr. Kohly's Rebuttal Testimony. And after

1 that -- after that information, Staff investigated and
2 called -- called CLECs and we used as a starting point the
3 CLECs. And my schedule that shows facilities-based providers
4 in the E-911 database, called them to ask them how they enter
5 information into the E-911 database to find out if I look at
6 E-911 listings from that company, will it overstate or will it
7 understate the number of access lines they have.

8 Q. Yes.

9 A. And we also asked them if they had a process in
10 place to, I guess, approximate that for us. And all of them
11 answered that they hadn't. And some of them answered in the
12 same way Mr. Kohly had represented in his testimony, that when
13 they enter E-911 data, they enter it for all the lines, like
14 inbound and outbound lines, as opposed to testimony we've
15 heard before that only outbound lines are listed in the E-911
16 database. And in those instances, we determined that if the
17 company reported that way, the E-911 database would be an
18 accurate estimate of the number of access lines they served.

19 Some of the companies also told us that when
20 they -- when they get a PBX customer, they'll enter every
21 single telephone number on that PBX into the E-911 database.
22 And if I was serving 100 telephone numbers through 10 access
23 lines and I looked at the E-911 database to try to estimate
24 those -- the number of facilities-based lines, I would see 100
25 because they had listed all 100 telephone numbers in the

1 database instead of the 10 access lines that are being used to
2 serve them and you can only use 10 simultaneously. So in that
3 instance, it would over-report the access lines.

4 And then in some interviews, the CLECs answered
5 that -- that they do it in the traditional manner and only
6 enter their outbound access lines into the E-911 database. So
7 there would be, for example, one dummy number for a PBX
8 location and they might serve 100 telephone numbers, but you
9 would only see one listing in the E-911 database.

10 And from this, Staff concluded that the E-911
11 database is still an estimate of facilities-based lines, but
12 we have -- we have no clear way to tell in any given situation
13 whether it's an underestimate or an overestimate based on
14 those interviews.

15 Q. All right. So how did that impact your removal
16 of certain exchanges from your initial recommendation?

17 A. Well, what we tried to do also at the same
18 time, concurrently, I thought we needed to have an additional
19 way to estimate -- estimate facilities-based CLEC lines in
20 those exchanges. And so to the best of our ability, we took
21 the information from Annual Reports of CLECs and compiled that
22 so that we could look in each SBC exchange and see according
23 to CLEC Annual Reports how many UNE-L based and facility --
24 full facilities-based lines they were serving in those
25 exchanges to try to get an estimate of facilities-based

1 competition from those Annual Reports that present a snapshot
2 of the data from December 31st of 2003.

3 And -- and so I had -- so I had two sets of
4 data and there's problems with the Annual Report data as well.
5 The Annual Report data, the CLEC may not have reported it
6 correctly, they may have given me just a statewide total, they
7 may have reported it by city instead of exchange or county.
8 And we -- we tried our best to triangulate where those would
9 be in SBC Missouri exchanges.

10 And other problems are that, you know, I didn't
11 go through every single CLEC Annual Report and do the same
12 thing. It was quite time consuming -- it was a very time
13 consuming project to put it together, but we started at the
14 point of the companies listed in SBC's motion to open this
15 case and investigate competition who we felt they identified
16 as their competitors. And -- and the CLEC data from the
17 Annual Report represents nearly all the companies in -- that
18 are represented in the E-911 database. And so I felt that it
19 was good in that respect.

20 And I don't know if you had heard earlier,
21 but -- about the total number of lines that I compiled for SBC
22 Missouri from those CLEC Annual Reports is 330,000. We had
23 another document that another Staff member had compiled before
24 that gave us an estimate of all the CLEC lines in the state of
25 Missouri and that total was something like 370,000. So I felt

1 confident that we had taken -- we had a good snapshot of the
2 competition from the Annual Reports.

3 And so I had these two pieces of data that were
4 purportedly telling me facilities-based competition in SBC
5 exchanges and I felt that I was most confident when both sets
6 of data showed substantial evidence of facilities-based
7 competition in those exchanges.

8 Q. Okay. So when you got the second set of data
9 from the Annual Reports, if you had both the data from the
10 Annual Report and the E-911 data that you received from Bell
11 giving you a picture -- a certain picture that you believe
12 indicated competition, if both of them gave you that
13 indication, then you would have them on your final list?

14 A. That's the way I compiled the final list.

15 Q. All right. Did you find areas that the Annual
16 Reports would indicate that there were -- there was
17 significant CLEC activity if you had just looked at that
18 Annual Report data by itself that would have caused you to
19 say, I think that points toward sufficient competition for me
20 to say they should get competitive status but the E-911 data
21 didn't give you the same picture?

22 A. Yes.

23 Q. In what communities did you have that
24 indication, or do you have that somewhere in your testimony?

25 A. I don't. I don't have that in the testimony.

1 I would have to -- I would have to look, but there are --
2 there are some that have, for example, UNE-based lines in the
3 CLEC Annual Report that show no E-911 listings in SBC's data
4 that they've given us.

5 And I don't have a list of what those exchanges
6 are, but those instances occurred. And I did think about what
7 Staff's recommendation should be on those. And, like I said,
8 I felt most confident when there were data in both places that
9 pointed to substantial competition, especially given that
10 one -- one set of data is from December 31st of 2003 and one
11 set of data is from July of 2004.

12 Q. Well, what was your criteria for the Annual
13 Report data in regard to what would cause you to say that's an
14 indicator that there's sufficient competition to allow Bell to
15 get competitive status in that exchange if the E-911 data also
16 says -- points in that direction? What was your criteria on
17 the Annual Report side of the equation?

18 A. That there were substantial number of UNE-L
19 and/or facilities-based lines.

20 Q. And what does that mean when you say
21 "substantial"?

22 A. Substantially different than zero.

23 Q. All right. And what was the minimum that you
24 found was sufficient? I'm trying to gauge where you viewed
25 your cutoff.

1 A. I -- I didn't -- I didn't have a cutoff, per
2 se.

3 Q. What did it end up being on your list? What's
4 the lowest number that you recommended competitive status on?

5 A. I'll have to look. I don't have that compiled.

6 Q. All right. And I'm also interested in the list
7 of exchanges that you felt, according to the Annual Report
8 data, would indicate to you that there's significant
9 competition ongoing in that exchange that you have not
10 included in your testimony.

11 Not right now. I assume that that's something
12 you'd provide maybe tomorrow.

13 JUDGE RUTH: Do you want them to provide it as
14 a late filed?

15 COMMISSIONER GAW: Or maybe tomorrow.

16 JUDGE RUTH: Will you be able to provide that
17 information tomorrow?

18 THE WITNESS: I'm sure I can, because the data
19 is here. I would just take those exchanges out really.

20 JUDGE RUTH: Okay. Then we'll move on, get to
21 that tomorrow.

22 THE WITNESS: Can you state exactly what you
23 want again?

24 BY COMMISSIONER GAW:

25 Q. Yeah. I'm assuming that the way you're looking

1 at this, and you tell me if I'm right or wrong, is that if you
2 achieved a certain level in the E-911 data for an exchange and
3 achieved a certain level over here on the Annual Report data
4 that there was significant competition, whatever that is in
5 your estimation, that if you got both of those, you
6 recommended competitive status?

7 A. Correct.

8 Q. So what I want to know is, what exchanges did
9 you find indicated competitive status on the account -- on the
10 Annual Report, excuse me, that were not so indicated on the
11 E-911 data? You've told me in your testimony the flip of
12 that. Right?

13 A. Uh-huh.

14 Q. And so I want to know that information. I want
15 to go the other direction.

16 A. So what exchanges exhibited facilities-based
17 competition in the CLEC Annual Reports that I did not
18 recommend for effective competition?

19 Q. Yes. That's another way of putting it,
20 probably a better way.

21 Okay. I forgot what I was asking you when I
22 interrupted.

23 A. I don't remember.

24 COMMISSIONER GAW: Maybe the court reporter can
25 remind me.

1 THE COURT REPORTER: "Question: And what was
2 the minimum that you found was sufficient? I'm trying to
3 gauge where you viewed your cutoff."

4 BY COMMISSIONER GAW:

5 Q. Is that the information you were looking for?

6 A. Right. I was going to explain I didn't have a
7 cutoff, per se, on that side. I looked first at where I had
8 recommended effective competition and looked to see in the
9 Annual Report data if I felt that reflected a significant
10 amount of competition.

11 And then I looked at what you were talking
12 about, exchanges that reflected facilities-based competition,
13 the Annual Reports, and did not reflect facilities-based
14 competition in E-911 data and had made the decision that if --
15 if I see it in both places, I'm most confident. And I didn't
16 know how I could recommend one over the other.

17 Q. I understand what you're telling me on that
18 level. What I guess I'm asking you right now is, what is it
19 that you would do on your criteria to say, I'm going to put
20 this exchange in the competitive bucket and this exchange I'm
21 going to put in the bucket that says I don't think there's
22 sufficient competition in just looking at the Annual Report
23 data? How did you -- where did you -- where did you make the
24 determination to put the exchange in the competitive bucket or
25 the non-competitive bucket?

1 A. I guess there would be the possible competitive
2 bucket and the not possible competitive bucket. And where I
3 did not look at it was where the Annual Report data showed no
4 evidence of facilities-based competition where the UNE-L
5 facilities-based lines would equal zero. Anything above that
6 would be considered possible competition.

7 Q. All right. So if you saw any facilities-based
8 competition indicated in an Annual Report, that would have
9 been sufficient if it were matched up with the criteria you
10 set over on the E-911 data to give a positive recommendation?

11 A. Correct.

12 Q. All right. I think I understand what you're
13 saying.

14 A. And there's also the smaller consideration of
15 how different that is from zero.

16 Q. What do you mean by that?

17 A. Like, if I had one line in St. Louis and
18 there's 2 million facilities-based lines in St. Louis, I
19 wouldn't consider that as -- as much competition as 10,000
20 lines.

21 Q. I can understand what you're saying, but were
22 there some that might fall in that category that you said
23 that's not enough to indicate competition on just looking at
24 now -- just looking at the Annual Report data?

25 A. I -- I can't tell you. I didn't -- I didn't do

1 the evaluation with just the Annual Report data given -- I --

2 Q. I understand. But I'm trying to make sure that
3 when I just -- when I piece this thing together one block at a
4 time and your analysis, that when I look at the Annual Report
5 data, that all you examined there was did they show evidence
6 of any facilities-based competition in that exchange?

7 A. Correct.

8 Q. Any at all is enough?

9 A. Any at all was enough to -- to consider it
10 against the other data.

11 Q. All right. Okay. And then you would look at
12 the E-911 data. Right?

13 A. Correct.

14 Q. And while you were looking at the E-911 data,
15 what factors did you look at in that block to say that's
16 another indication of sufficient competition?

17 A. In the E-911 data, the -- the analysis is very
18 similar. Is it -- is it -- you know, if it made it -- if it
19 made it to the list in the first place, then -- then it had --
20 showed a significant penetration of facilities-based
21 competition of -- of 9 percent penetration or greater. The
22 next -- the next exchange that showed the next lowest
23 penetration was 4 percent.

24 And given that the data was reducing very
25 slowly down to 9 percent and it dropped to 4 and that

1 seemed -- that seemed like a natural break in the data, then I
2 additionally looked at how significantly different is this --
3 is this degree of facilities-based competition from zero. And
4 you know, how different is it from zero and how does it
5 compare to the total number of facilities-based lines in that
6 exchange.

7 Q. Well, if you had one at 8 percent, what would
8 you have done with it?

9 A. It -- it depends on the specific situation.

10 Q. All right. What would it depend on? What
11 would you be looking at?

12 A. I would be looking for significant --
13 significant data greater than zero and also its penetration --

14 Q. What do you mean?

15 A. -- which is the 8 percent that --

16 Q. All right.

17 A. -- that you've said.

18 Q. Would there be any significance to you as to
19 whether or not there was any access -- I know you've answered
20 some of these questions before and I apologize -- any access
21 to wireless or any significant wireless presence?

22 A. I think that was definitely in the
23 consideration.

24 Q. All right. Did you assume wireless presence in
25 your analysis when you were determining whether or not there

1 was sufficient competition? Did you assume any percentage of
2 wireless?

3 A. I didn't presume any percentage of wireless
4 competition in any exchange. I presumed that 5 percent of the
5 nation had cut the cord and had gone totally wireless. And
6 that -- in the back of my mind -- that was in the back of the
7 mind along with the evidence of facilities-based competition.
8 We looked at Mr. Unruh's data on the availability of wireless.
9 In each of those exchanges there are -- there are a few
10 wireless providers and Internet service available from cable
11 operators, for example.

12 Q. Where did you get your 5 percent number?

13 A. It's -- it's quoted by the FCC and the number
14 comes from the Consumer Expenditure Survey and it's a survey
15 of households that -- and that number is the number of
16 households -- estimated number of households that have only a
17 wireless bill and not a wireline bill.

18 Q. All right. How do they do that survey, do you
19 know?

20 A. I don't know the particulars of the survey.

21 Q. Okay.

22 A. I wasn't able to get my hands on the actual
23 survey.

24 Q. Okay. Now, how important do you think it is
25 today that there is access in some areas to Voiceover

1 Internet? How important is it in evaluating competition for
2 SBC?

3 A. I think it's -- I think it's certainly
4 important to recognize that that form of telephone service is
5 available. To the extent it can be substantiated on the
6 exchange level, I -- I can't say.

7 So -- and with that service, in particular, you
8 don't just buy the one service. I mean, I think that that
9 service is particularly attractive to people that already have
10 broadband service, who already subscribe. And, of course, it
11 will be attractive to people who might subscribe to broadband
12 service if it were, you know, so many dollars cheaper or if
13 they could get something extra out of it. But I know that
14 it's most attractive to those that are already getting
15 broadband.

16 And, in my opinion, I think it's least
17 attractive to those who are getting broadband through their
18 incumbent telephone company, especially if the telephone
19 company requires them to buy a telephone line in order to have
20 that high-speed Internet connection, which is the case with
21 SBC and also the case with Sprint here in town.

22 Q. Explain why you think that's less attractive.

23 A. Well, if -- if I was going to substitute one
24 for the other, I -- I would not be enticed by the company that
25 sells me broadband, which is required for the one, in order to

1 replace the other.

2 Q. Can you be more specific?

3 A. I don't find -- I don't find it attractive
4 myself to substitute my telephone service with broadband
5 telephone service if I have to buy telephone service in order
6 to get my broadband.

7 It's almost like -- well, I've already bought
8 the telephone service in order to get the broadband so it --
9 it needs to cost a lot less for me to even need the broadband
10 telephone service. If I don't have to buy telephone
11 service -- you know, I don't have to buy two telephone
12 services. If I don't have to buy that in the first place, I
13 think that the broadband telephone service becomes much more
14 attractive.

15 Q. All right. And in the SBC exchanges, can you
16 buy the broadband service without the telephone service?

17 A. You can't buy it from SBC without telephone
18 service. You can buy it from -- from cable companies that
19 offer broadband service and --

20 Q. All right.

21 A. -- I know that -- I know that you can -- you
22 can buy broadband from cable companies generally without
23 buying their cable service, although they offer you a discount
24 to get both generally. And you can also get broadband service
25 from satellite providers, although that to me, is

1 prohibitively expensive at this point in time because the
2 equipment costs about \$600 to start up and the per month
3 charges are much higher than any of the other high-speed
4 access rates.

5 Q. All right. Did you have any data, Mr. Peters,
6 in regard to the VoIP penetration percentages in any of the
7 SBC exchanges?

8 A. I -- I don't have any data that shows how many
9 people are subscribing to broadband-based telephones.

10 Q. Was there any data presented that you're aware
11 of in this case in that regard?

12 A. The data that was presented in this case was
13 SBC's approximation of where broadband service is available.
14 And they also showed where broadband service is available
15 through cable providers to the best -- to the best of their
16 ability and they also tried to show where the broadband-based
17 telephone providers were -- were offering service.

18 But in that case -- like in the Vonage case, in
19 their information, they present areas where they say Vonage is
20 an active provider and it -- and it just means that broadband
21 service is available in that area as opposed to can I get a
22 telephone number in that exchange.

23 Q. Explain what you mean by the distinction.

24 A. Well, as you probably know, if you subscribe to
25 a broadband-based telephone service, you can plug it into any

1 broadband connection. But in order to get a local telephone
2 number, the company you subscribe from has to offer those
3 telephone numbers. And at this point in time those telephone
4 numbers aren't ubiquitous, although they are expanding into
5 more and more rate centers.

6 Q. You don't have access to any information in
7 this case that would let you know or assess what that
8 availability is in SBC exchanges in Missouri? Would that be
9 yes or no or --

10 A. Not in -- not in this case. There -- there is
11 information available like, for example, on Vonage's website.
12 They will tell you what telephone exchanges they're offering
13 numbers in in Missouri.

14 Q. Okay. But that's not -- no one has introduced
15 that into the record that you're aware of or has it in any of
16 the testimony?

17 A. That's correct.

18 COMMISSIONER GAW: That's all I have, Judge,
19 thank you.

20 JUDGE RUTH: Commissioner Appling?

21 Okay. Then I have a couple of questions that
22 one of the Commissioners has sent to me if you'll -- okay.

23 QUESTIONS BY JUDGE RUTH:

24 Q. Can you remind me what the date of the consumer
25 survey on wireless that you used for your data, what the date

1 was for that?

2 A. I can't tell you the exact date off the top of
3 my head. I think it's 2003. I can provide that.

4 Q. Since you're coming back tomorrow to answer
5 some of Commissioner Gaw's questions, would you please get
6 that information also?

7 And then the next question is, did you look at
8 any more recent data?

9 A. Rather than the Consumer Expenditure Survey?

10 Q. Yes.

11 A. That's -- that's the most recent data I could
12 find on that subject.

13 Q. Okay. And do you think that the penetration of
14 wireless has increased or decreased or remained stagnant since
15 the date of the survey?

16 A. The number of people subscribing to wireless
17 service? I guess I'll just have to assume --

18 Q. I assume that that's what it means.

19 A. I know that the FCC's report on local
20 competition has showed -- shown the number of wireless lines
21 in Missouri has increased since -- since June of this year.
22 There's been two reports this year and it has increased this
23 year.

24 JUDGE RUTH: Okay. It's possible Commissioner
25 Murray might have some follow up on those questions tomorrow

1 also. We'll see.

2 Did that raise any more questions for you?

3 COMMISSIONER GAW: No.

4 JUDGE RUTH: Okay. I suggest since we are
5 going to recall this witness for questions tomorrow, that we
6 skip with the recross and the redirect and we'll finish that
7 tomorrow.

8 And instead, it's my understanding that SBC has
9 a witness that they would like to take out of order. I don't
10 know that we can finish today -- I'm sorry, it wasn't SBC. It
11 was Mr. Lumley.

12 MR. LUMLEY: Correct.

13 JUDGE RUTH: I don't know that we'll be able to
14 finish today, but we can at least start. Sorry, Mr. Peters,
15 you may step down.

16 And, Mr. Lumley, you may call your witness.

17 MR. LUMLEY: Call Ed Cadieux.

18 JUDGE RUTH: And it was my understanding that
19 none of the other parties objected to taking this particular
20 witness before Ms. Meisenheimer; is that correct?

21 I see no objection.

22 All right. Mr. Cadieux, if you could step up
23 here and then raise your right hand for me.

24 (Witness sworn.)

25 JUDGE RUTH: Thank you. You may be seated.

1 And you may proceed, Mr. Lumley.

2 MR. LUMLEY: Thank you.

3 EDWARD J. CADIEUX testified as follows:

4 DIRECT EXAMINATION BY MR. LUMLEY:

5 Q. Would you state your name for the record,
6 please?

7 A. Edward J. Cadieux.

8 Q. And by whom are you employed?

9 A. NuVox, Inc., and on behalf of its subsidiaries
10 including, for the purposes of this case, it's NuVox of
11 Communications Missouri, Inc.

12 Q. And what's your position with the company?

13 A. Senior regulatory counsel.

14 Q. And did you cause to be prepared the Rebuttal
15 Testimony under your name that's been labeled as Exhibit 30 in
16 this matter?

17 A. Yes, I did.

18 Q. And do you have any corrections to that
19 testimony?

20 A. Yes, I do.

21 Q. And would you identify those corrections for
22 us?

23 A. Yes. On the affidavit, the title -- my title
24 is wrong. It was -- it is listed in the affidavit as
25 executive director, regulatory and public affairs. That was

1 my old title. As I indicated, the current title is senior
2 regulatory counsel. That's in Item 1 of the affidavit.

3 On page 8 of the Rebuttal, footnote 17, you
4 should delete the word "is" and in its place insert the phrase
5 "has the bandwidth of." So the footnote would read, The DSO
6 loop has the bandwidth of a regular POTS line.

7 On page 11, line 26, the word "for" f-o-r
8 should be inserted immediately after the word "deployment."

9 On page 11, line 38, the word "loop" should be
10 changed to "facility."

11 And, finally, on page 18, line 29, at the
12 beginning of that line there's a phrase that's repeated "and
13 to," so delete one of those phrases.

14 Q. Is that all your corrections?

15 A. Yes, it is.

16 Q. And with those corrections, if I were to pose
17 to you today the questions stated in Exhibit 30, would your
18 answers be the same as contained therein?

19 A. Yes, they would.

20 Q. And are those answers true and accurate, to the
21 best of your information, knowledge and belief?

22 A. Yes, they are.

23 MR. LUMLEY: I'd move admission of Exhibit 30
24 and tender the witness.

25 JUDGE RUTH: Exhibit 30 has been offered into

1 evidence. It is Mr. Cadieux's Rebuttal Testimony. Are there
2 any objections to it being received? Staff?

3 MR. HAAS: No objection.

4 JUDGE RUTH: Public Counsel?

5 MR. DANDINO: No objections, your Honor.

6 JUDGE RUTH: And SBC?

7 MR. BUB: None, your Honor.

8 JUDGE RUTH: Okay. Exhibit 30 is received into
9 the record.

10 (Exhibit No. 30 was received into evidence.)

11 JUDGE RUTH: Staff, do you have
12 cross-examination for this witness?

13 MR. HAAS: Yes. Brief questions.

14 CROSS-EXAMINATION BY MR. HAAS:

15 Q. Hello, Mr. Cadieux.

16 A. Good afternoon.

17 Q. Do you know how NuVox reports lines for 911
18 purposes? For instance, would it report an inbound-only line
19 for 911 purposes?

20 A. For an inbound-only 9-- inbound-only line we
21 would not report that for 911 purposes.

22 Q. How would NuVox report a line or lines that go
23 into a PBX?

24 A. We report all -- well, where there are DID
25 numbers involved with a PBX, we report all of the DID numbers.

1 There's a reason why we do that.

2 Q. Go ahead.

3 A. The -- as I understand it, we either some of
4 the time or all of the time will not know whether the customer
5 has programmed their CPE in a way that they want to transmit
6 station level 911. And that will not necessarily be visible
7 to us, what the customer's preference is and how they've
8 programmed the PBX. So we believe we need to work under an
9 assumption that to be safe, THAT the customer wants all of
10 those numbers to transmit for 911 purposes. So we report all
11 of them to the 911 database.

12 MR. HAAS: That's all my questions.

13 JUDGE RUTH: Thank you.

14 I'll move to Public Counsel.

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

17 JUDGE RUTH: SBC?

18 MR. BUB: Yes, your Honor. Thank you.

19 CROSS-EXAMINATION BY MR. BUB:

20 Q. Good afternoon, Mr. Cadieux.

21 A. Good afternoon.

22 Q. You all were kind enough to answer the data
23 request that we sent and I'd like to ask you a few questions
24 about those, if I may.

25 A. Okay.

1 MR. BUB: Before I do that, I'd like to go off
2 the record and have a couple of exhibits marked.

3 JUDGE RUTH: I think we'll stay on the record,
4 but you just tell me which ones and we'll move right through
5 them. I have the next one as 44.

6 MR. BUB: This will be a description of NuVox
7 FLEXline or FLEXlinx --

8 THE WITNESS: FLEXlinx.

9 MR. BUB: F-L-E-X-L-I-N-K-- or I'm sorry,
10 L-I-N-X.

11 JUDGE RUTH: And the next one?

12 MR. BUB: The next one is NuVox PSC Annual
13 Report for the year ended December 31, 2000.

14 JUDGE RUTH: All right.

15 MR. BUB: The next would be the NuVox Annual
16 Report the year ending 2002.

17 JUDGE RUTH: Okay.

18 MR. BUB: The next one, NuVox Annual Report the
19 year ending 2003.

20 JUDGE RUTH: Yes.

21 MR. BUB: And the final will be a supplemental
22 data request that shows line counts for year ended 2004. And
23 all of these Annual Reports are highly confidential so I need
24 to mark those as HC. But as I understand the product
25 description is not highly confidential.

1 BY MR. BUB:

2 Q. Is that correct, Mr. Cadieux?

3 A. That's correct.

4 JUDGE RUTH: Number 48, the supplemental data,
5 is that also HC?

6 MR. BUB: Yes, it is. It has line count
7 information in it.

8 MR. LUMLEY: Could I ask a question? What's
9 No. 45? Was that actually 2000 or was it 2001? Was there a
10 gap or were they consecutive years?

11 MR. BUB: I meant to make them consecutive.
12 It's 2001 I thought, Carl. If I misspoke, I apologize.

13 So at this time I'll distribute the product
14 information.

15 JUDGE RUTH: That's fine. That one has been
16 marked for identification as 44.

17 (Exhibit No. 44 was marked for identification.)

18 BY MR. BUB:

19 Q. Mr. Cadieux, could you please identify 44,
20 please, for us?

21 A. Yes. Exhibit 44 is a -- is marketing brochure
22 with information about the NuVox FLEXlinx product, which is
23 NuVox's current bundled voice and broadband Internet product.

24 Q. Okay. It's a business product, is it not?

25 A. Yes.

1 Q. Okay. And this brochure describes the
2 different features and functions; is that correct?

3 A. Yes.

4 Q. Could you tell us what those features are that
5 are offered to business customers?

6 A. Well, I mean, there's a long list of features.
7 I won't go through all of them. It's voice, broadband
8 Internet, long distance and a number of I guess what I'd call
9 ancillary services to -- to the voice and a long -- for
10 example, there's a number of vertical features on the voice
11 side and there are various Internet-related tools and products
12 on the broadband side.

13 Q. Okay. Without going through the whole list,
14 would it be fair to say this is the business product that you
15 offer in competition with the business products being offered
16 by SBC?

17 A. Yes.

18 Q. And also you offer it in competition with the
19 other CLECs?

20 A. Yes.

21 Q. Okay. Who are some of the CLECs you compete
22 with?

23 A. Well, in Missouri, you know, the --
24 particularly in Kansas City and St. Louis, I think the primary
25 one is Birch. I mean, we do -- you know, XO to some extent,

1 MCI to some extent and that's really pretty much it. We -- in
2 part, that's explained by we're focused on what we
3 characterize as the small- to medium-size business market.
4 So, for example, to the extent that there are carriers more
5 focused on the very high-end business customers, we're not
6 really competing with them.

7 Q. And you focus your market in certain areas of
8 the state, do you not?

9 A. Yes. We -- we focus on the St. Louis, Kansas
10 City and Springfield metropolitan areas.

11 Q. And this FLEXlinx bundle business services you
12 offer in all three areas?

13 A. Yes.

14 Q. Okay.

15 MR. BUB: Your Honor, with that I'd like to
16 offer Exhibit 44.

17 JUDGE RUTH: Exhibit 44 has been offered into
18 the record. I've described it as the description of the NuVox
19 FLEXlinx. Are there any objections to it being received into
20 the record? Staff?

21 MR. HAAS: No objection.

22 JUDGE RUTH: Public Counsel?

23 MR. DANDINO: No objection, your Honor.

24 JUDGE RUTH: CLECs?

25 MR. LUMLEY: No objection.

1 JUDGE RUTH: Exhibit 44 is received.

2 (Exhibit No. 44 was received into evidence.)

3 MR. BUB: Next, your Honor, I'd like to
4 distribute 45.

5 MR. BUB: If you want to hand them to me, I'll
6 mark on them for the Commissioners.

7 (Exhibit No. 45-HC was marked for
8 identification.)

9 BY MR. BUB:

10 Q. Mr. Cadieux, could you please describe what's
11 been marked as Exhibit 45, please?

12 A. It's NuVox's Annual Report to the Missouri PSC
13 for the year ended December 31, 2001.

14 Q. Okay. And toward the back of the exhibit, you
15 have a two-page chart that lists a highly confidential line
16 count; is that correct?

17 A. That's correct.

18 Q. And DOES this exhibit show the number of lines
19 you have in each of the exchanges which you offer service --

20 A. That's correct.

21 Q. -- actually provide service?

22 A. Yes. That we actually provide service.

23 Q. Okay. There was part of this exhibit that we
24 weren't able to read and I was wondering -- it's at the
25 bottom, there's an asterisk.

1 A. Yes.

2 Q. Can you help us with that?

3 A. Right. At the time this report was prepared --
4 what the footnote indicates is that our records at that point
5 could not separate out UNE-P lines from other UNE lines on an
6 exchange basis. So we noted that and also -- but gave our
7 best estimate. And I think the missing verbiage on the copy
8 is that our best estimate was that of the total number of
9 lines in the UNE column, we estimated that --

10 MR. LUMLEY: Wait. Do you want that number
11 published?

12 MR. BUB: We don't need a number.

13 THE WITNESS: I won't give a number. The
14 percentage we don't have a problem with disclosing.

15 That our best estimate at that point was about
16 1 percent of our -- of the total lines in the UNE column were
17 UNE-P. And that's because we -- we have used UNE-P on a very
18 limited -- limited basis.

19 BY MR. BUB:

20 Q. Thank you.

21 MR. BUB: Your Honor, with that, we'd like to
22 offer Exhibit 45 into evidence, please.

23 JUDGE RUTH: Thank you. Exhibit 45 is the
24 NuVox PSC Annual Report for the year ending 12/31/01. Are
25 there any objections to it being received into the record?

1 Staff?

2 MR. HAAS: No objection.

3 JUDGE RUTH: Public Counsel?

4 MR. DANDINO: No objection.

5 JUDGE RUTH: Intervenors?

6 MR. LUMLEY: No.

7 JUDGE RUTH: Exhibit 45 is received into the

8 record.

9 (Exhibit No. 45-HC was received into evidence.)

10 JUDGE RUTH: Thank you. You may proceed.

11 MR. BUB: Thank you, your Honor.

12 Next, I'd like to distribute what's been marked

13 as Exhibit 46.

14 (Exhibit No. 46-HC was marked for

15 identification.)

16 MR. BUB: And just to be clear, Exhibits 45,

17 46, 47 and I think we also have 48, those are all HC because

18 they have highly confidential line counts for NuVox.

19 BY MR. BUB:

20 Q. Mr. Cadieux, could you please identify

21 Exhibit 46 for us, please?

22 A. Yes. It is NuVox's Annual Report to the

23 Missouri PSC for the year ended December 31, 2002.

24 Q. And at the back of the report as well, this

25 also contains a highly confidential chart showing the line

1 count for NuVox?

2 A. Yes.

3 Q. And this displays the exchanges throughout
4 which NuVox actually is providing service and the line
5 counts --

6 A. Yes.

7 Q. -- for those exchanges?

8 MR. BUB: Your Honor, with that, we'd like to
9 offer Exhibit 46-HC into the record.

10 JUDGE RUTH: Okay. Exhibit 46-HC has been
11 offered and NuVox Annual Report for year end 2002. Are there
12 any objections? Staff?

13 MR. HAAS: No objection.

14 JUDGE RUTH: Public Counsel?

15 MR. DANDINO: No objections.

16 JUDGE RUTH: CLECs?

17 MR. LUMLEY: No.

18 JUDGE RUTH: Exhibit 46-HC is received into the
19 record.

20 (Exhibit No. 46-HC was received into evidence.)

21 JUDGE RUTH: Thank you.

22 MR. BUB: Now I'd like to distribute 47.

23 (Exhibit No. 47-HC was marked for
24 identification.)

25 BY MR. BUB:

1 Q. Mr. Cadieux, could you please identify
2 Exhibit 47 for us, please?

3 A. Yes. This is NuVox -- NuVox's Annual Report to
4 the Missouri PSC for the year ended December 31st --
5 December 31st, 2003.

6 Q. And, again, this Annual Report also at the end
7 has a chart showing the various exchanges throughout which
8 NuVox was actually providing service and the number of lines
9 in each of those exchanges?

10 A. Yes.

11 Q. Okay. One thing I noted with this exchange --
12 or this report that's different than the others, instead of
13 using names, it's using looks like SILI codes --

14 A. SILI codes for wire centers.

15 Q. Was there a reason for that change?

16 A. I think that's just the way it was reported.
17 In retrospect, you know, to make it apples to apples and what
18 could be done is to, you know, accumulate those wire centers
19 that are in, for example, principal zone and zones 1 and 2 of
20 the St. Louis MCA and report the other -- the wire centers in
21 the outer zones separately. Not sure why that wasn't done.
22 Could have been done and it seems to be the only report of the
23 group that is reported this way.

24 Q. Okay. Because it looks like with the most
25 recent one you provided, you went back to using names?

1 A. Yes.

2 Q. Okay.

3 A. And, in fact, in the -- personally the
4 supplemental response that I know you're going to get to, I
5 spent an afternoon doing that accumulation.

6 Q. Very much appreciate it. The names are much
7 easier.

8 MR. BUB: With that, your Honor, we'd like to
9 offer Exhibit 47-HC.

10 JUDGE RUTH: Exhibit 47-HC has been offered.
11 It's NuVox Annual Report for the year ending 2003. Are there
12 any objections? Staff?

13 MR. HAAS: No objection.

14 JUDGE RUTH: Public Counsel?

15 MR. DANDINO: No objection.

16 JUDGE RUTH: CLECs?

17 MR. LUMLEY: No.

18 JUDGE RUTH: Exhibit 47-HC received into the
19 record.

20 (Exhibit No. 47-HC was received into evidence.)

21 JUDGE RUTH: You may proceed.

22 MR. BUB: Thank you, your Honor.

23 And the last exhibit that we'd offer is 48.

24 And I'll distribute that now.

25 (Exhibit No. 48-HC was marked for

1 identification.)

2 BY MR. BUB:

3 Q. Could you please identify this for us?

4 A. Yes. This is a supplemental response to
5 NuVox -- this is NuVox's supplemental response to SBC Data
6 Request No. 2 in this case.

7 And by way of explanation, I'd say that when
8 we -- DR No. 2 from SBC requested line count information. At
9 the time we received the data request, we had -- we had not
10 done the annual special study that we do in order to generate
11 the -- the line counts for the Annual Report. We had not done
12 that yet for calendar year 2004. I think -- in fact, I think
13 we got the data request for the end of 2004. And we only do
14 this on a special study basis. We don't do it on a rolling
15 continuous basis.

16 So earlier this week we were able -- so
17 originally we just supplied the 2003 data, but earlier this
18 week we were able to complete the special study and that data
19 is included.

20 Q. I do want to thank you for doing that work for
21 us.

22 If you could turn to that chart for a minute,
23 please. You're familiar with the St. Louis, Kansas City and
24 Springfield MCAs, are you not?

25 A. Yes.

1 Q. And I'm trying to stay away from disclosing
2 anything that's highly confidential. The question I'm going
3 to ask is, I guess first, is it highly confidential for you to
4 disclose which exchanges within the different MCA tiers that
5 you offer or provide service or --

6 A. I think if we can stay away from the specific
7 numbers, that that would not be a problem.

8 Q. Okay. Maybe we can do it this way. Would it
9 be -- let's see. The principal zone in St. Louis you offer
10 service --

11 A. Yes.

12 Q. -- and you provide service?

13 And then going outside, you have the MCA 1, you
14 offer service there?

15 A. Yes.

16 Q. Okay. The MCA 2?

17 A. Yes.

18 Q. Okay. And then that next tier, the MCA 3,
19 would it be fair to say that with the exceptions of Portage
20 Des Sioux, Orchard Farm and Manchester, you provide service in
21 those other exchanges? Would a map help you?

22 A. Yeah. The -- I'm sorry. Yes. I don't recall
23 all of the tier 3, tier 4, tier 5 exchanges off the top of my
24 head, so --

25 MR. BUB: May I approach the witness, your

1 Honor?

2 JUDGE RUTH: Yes.

3 THE WITNESS: Could you give me the question
4 again?

5 BY MR. BUB:

6 Q. Would it be fair to say with the exception of
7 Portage Des Sioux, Orchard Farm and Manchester, that you
8 provide service in all the other MCA 3 exchanges? And take as
9 much time as you want to --

10 A. I think the answer is yes, but I think there's
11 an error here because Manchester should be on -- now that I
12 see this, Manchester should be on this list because I do know
13 we provide service in Manchester.

14 Q. Okay.

15 A. Now, what I don't know off the top of my head
16 is whether Manchester might, in error, have been included in
17 the totals of St. Louis principal zone and zones 1 and 2 or if
18 we just flat out missed Manchester and did not have it
19 included in here.

20 Q. Okay. So it would be fair to say that you do
21 provide service in Manchester and the only two you do not is
22 Orchard Farm and Portage Des Sioux?

23 A. That looks to be correct.

24 Q. Let's move out to the next tier, MCA 4. Would
25 it be fair to say that you provide service to business

1 customers throughout that MCA 4 with the exception of
2 Dardenne, O'Fallon and St. Peters?

3 A. I think that's correct.

4 Q. Okay. Do you offer service in those exchanges?

5 A. I think we offer it to the extent those are
6 in -- in the SBC territories.

7 Q. Okay.

8 A. At least we're -- let me put it this way.
9 We're tariffed for it and we're certificated for it, but
10 doesn't look like we have any customers there.

11 Q. Okay. Now, if we could move to Kansas City, if
12 we could do the same thing. Kansas City principal zone you
13 provide service there?

14 A. Yes.

15 Q. The MCA 1, you provide service there?

16 A. Yes.

17 Q. And the MCA 2. Correct?

18 A. Yes.

19 Q. Okay. And then going to that outer MCA 3 tier,
20 it looks like the only ones that you do not provide service in
21 are Missouri City and Ferrelview? Do you want to take a
22 minute to take a look at that?

23 A. That -- that appears to be correct.

24 Q. Okay. Do you know whether you offer service in
25 Ferrelview or Missouri City?

1 A. Again, I believe we're tariffed for it, but
2 apparently we don't have any customers.

3 Q. Okay. And last area is the Springfield MCA.
4 There you are providing service in the Springfield principal
5 zone; is that correct?

6 A. Yes.

7 Q. And then in the Springfield MCA 1 throughout --
8 you provide throughout?

9 A. Yes.

10 Q. Okay. And that would be in each of the
11 exchanges, Willard, Fair Grove, Strafford, Nixa and Republic?

12 A. Yes.

13 Q. And then going to the next tier, the MCA 2,
14 would it be fair to say that you provide service in I think we
15 should do it in reverse maybe, just name those.

16 A. The --

17 JUDGE RUTH: Mr. Bub, it's been brought to my
18 attention that people that are listening to this cannot hear
19 you. So you'll either need to move that microphone or move
20 back over to the podium.

21 MR. BUB: Thank you, your Honor.

22 BY MR. BUB:

23 Q. With respect to the MCA 2 area, rather than
24 give the exclusions, why don't we name the ones that you are
25 providing service in, please.

1 A. Okay. That would be Ash Grove, Billings,
2 Bolivar. Then there's a couple that are actually outside the
3 Springfield MCA and that's Branson and West Branson, Clever,
4 Highlandville, again some of these -- a few of these may be
5 outside the Springfield MCA. Kimberling City, Marionville is
6 included in the MCA area, Ozark would be included. All right.
7 Seymour.

8 Q. I don't think so.

9 A. That may be outside the MCA. And Willard,
10 which looks like it must be outside the MCA also.

11 Q. Thank you, Mr. Cadieux

12 MR. BUB: Your Honor, with that, we'd like to
13 offer exhibit -- was it 48-HC -- into evidence, please.

14 JUDGE RUTH: Yes. Exhibit 48-HC has been
15 offered. It's the supplemental data. Are there any
16 objections to it being received into the record? Staff?

17 MR. HAAS: No objection.

18 JUDGE RUTH: Public Counsel?

19 MR. DANDINO: No objection.

20 JUDGE RUTH: And Intervenors?

21 MR. LUMLEY: No, your Honor.

22 JUDGE RUTH: Exhibit 48-HC is received.

23 (Exhibit No. 48-HC was received into evidence.)

24 MR. BUB: Thank you.

25 Mr. Cadieux, those are all the questions we

1 have for you at this time. Thank you very much.

2 JUDGE RUTH: Okay. Here's the deal. We are
3 stopping at five o'clock today, and I'm sorry. We will move
4 on to questions from the Bench and see how far we get. It's
5 my understanding there may not be any questions from the
6 Bench.

7 COMMISSIONER GAW: Okay. There won't be
8 questions from my Bench.

9 JUDGE RUTH: Then are there -- I'm sorry, is
10 there redirect?

11 MR. LUMLEY: Just one question.

12 REDIRECT EXAMINATION BY MR. LUMLEY:

13 Q. If you'd look at Exhibit 48-HC, just so the
14 record's clear --

15 A. Which --

16 Q. The most --

17 JUDGE RUTH: Supplemental data page.

18 BY MR. LUMLEY:

19 Q. The last one you were just reading from.

20 MR. BUB: I think that was taken.

21 THE WITNESS: Yes.

22 BY MR. LUMLEY:

23 Q. If you could look at the first page of the
24 chart where the column headings are.

25 A. Yes.

1 Q. Am I correct that the headings of business
2 UNE-L and business full facilities-based should each move over
3 one column to the left?

4 A. No. Actual-- I'm sorry. Actually, what should
5 occur -- that column with the blank on it --

6 Q. Yeah.

7 A. -- that should be business UNE-P.

8 Q. Oh, okay.

9 A. The title, the heading got left off.

10 Q. All right.

11 MR. LUMLEY: That's all my questions, your
12 Honor.

13 JUDGE RUTH: Okay. Mr. Cadieux, you may step
14 down and you are excused.

15 THE WITNESS: Thank you, your Honor.

16 JUDGE RUTH: Then just to go over procedure a
17 bit, tomorrow we will start at 8:30 in the morning. We will
18 be taking up the Staff witnesses again, recalling them, and
19 then moving on to Ms. Meisenheimer and Mr. Kohly. 8:30 sharp.
20 Does anyone have any questions about the procedure?

21 All right. We're off the record then. Thank
22 you.

23 WHEREUPON, the hearing was adjourned until
24 8:30 a.m., February 4, 2005.

25

1	I N D E X	
2	SBC'S EVIDENCE	
3	CRAIG A. UNRUH	
4	Questions by Commissioner Gaw	776
5	Recross-Examination by Mr. Haas	795
6	Recross-Examination by Mr. Dandino	797
7	Recross-Examination by Mr. Lumley	798
8	Redirect Examination by Mr. Lane	811
9	STAFF'S EVIDENCE	
10	WALTER CECIL	
11	Direct Examination by Mr. Haas	840
12	ADAM MCKINNIE	
13	Direct Examination by Mr. Haas	843
14	Cross-Examination by Mr. Lane	845
15	Redirect Examination by Mr. Haas	905
16	BILL PETERS	
17	Direct Examination by Mr. Haas	909
18	Cross-Examination by Mr. Lane	912
19	Cross-Examination by Mr. Lane (In-camera)	947
20	Questions by Commissioner Gaw	984
21	Questions by Judge Ruth	1000
22		
23		
24		
25		

1	NUVOX'S EVIDENCE	
2	EDWARD J. CADIEUX	
3	Direct Examination by Mr. Lumley	1003
4	Cross-Examination by Mr. Haas	1005
5	Cross-Examination by Mr. Bub	1006
6	Redirect Examination by Mr. Lumley	1023
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX		
2		Marked	Rec'd
3	Exhibit No. 18		
4	Rebuttal Testimony of Walter Cecil		842
5	Exhibit No. 19-HC		
6	Rebuttal Testimony of Walter Cecil,		
7	Highly Confidential		842
8	Exhibit No. 20		
9	Rebuttal Testimony of Adam McKinnie		845
10	Exhibit No. 21		
11	Surrebuttal Testimony of Adam McKinnie		845
12	Exhibit No. 22		
13	Rebuttal Testimony of Bill Peters		911
14	Exhibit No. 23-HC		
15	Rebuttal Testimony of Bill Peters,		
16	Highly Confidential		911
17	Exhibit No. 24		
18	Surrebuttal Testimony of Bill Peters		911
19	Exhibit No. 25-HC		
20	Surrebuttal Testimony of Bill Peters,		
21	Highly Confidential		911
22	Exhibit No. 30		
23	Rebuttal Testimony of Edward J. Cadieux		1005
24	Exhibit No. 43		
25	Report and Order in Case No. IO-2003-0281	855	856

1	Exhibit No. 44		
2	NuVox FLEXlinx brochure	1008	1011
3	Exhibit No. 45		
4	NuVox Annual Report for year ending 12/31/01	1011	1013
5	Exhibit No. 46-HC		
6	NuVox Annual Report for year ending 12/31/02,		
7	Highly Confidential	1013	1014
8	Exhibit No. 47-HC		
9	NuVox Annual Report for year ending 12/31/03,		
10	Highly Confidential	1014	1016
11	Exhibit No. 48-HC		
12	NuVox's Supplemental Response to SBC Data		
13	Request 2, Highly Confidential	1016	1022
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			