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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 February 4, 2005
9 Jefferson City, Missouri
Volume 9

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12 In the Matter of the Second)
Investigation into the State of)
13 Competition in the Exchanges of) Case No. TO-2005-0035
Southwestern Bell Telephone, L.P.)
14 d/b/a SBC Missouri)

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VICKY RUTH, Presiding,
17 SENIOR REGULATORY LAW JUDGE.
CONNIE MURRAY,
18 STEVE GAW,
LINWARD "LIN" APPLING,
19 COMMISSIONERS.

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

2 JUDGE RUTH: Good morning. It is Friday
3 morning, February 4th, and we are ready to begin the
4 hearing in TO-2005-0035.

5 When we finished yesterday, we were in the
6 midst of Bench questions for Staff witness Peters. We are
7 going to set aside Mr. Peters. We will come back to you
8 later, and instead we're going to move to Public Counsel's
9 witness.

10 MS. O'NEILL: Your Honor, this is Ruth
11 O'Neill briefly appearing for Mr. Dandino. I don't know
12 what's going on. Mr. Dandino hasn't arrived yet. I'd ask
13 for maybe a brief delay for 15, 20 minutes. We can find
14 out what's going on.

15 JUDGE RUTH: Are you comfortable moving on
16 with the other witnesses?

17 MS. O'NEILL: I know nothing about this
18 case, but we're comfortable going on to a different
19 witness, yes.

20 JUDGE RUTH: Fine. We will move on to
21 Mr. Lumley's witness.

22 MR. LUMLEY: I don't think he's here yet,
23 your Honor.

24 JUDGE RUTH: Your witness isn't here yet.
25 Okay. Then we will stay off the record for about five

1 minutes, and hopefully in that five minutes maybe we can
2 get some more information.

3 MS. O'NEILL: I'll see what I can do,
4 Judge.

5 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

6 JUDGE RUTH: We are back on the record. We
7 are ready for Public Counsel to call its witness.

8 MR. DANDINO: Call Barbara Meisenheimer.

9 (Witness sworn.)

10 JUDGE RUTH: Thank you. Please be seated.
11 You may proceed.

12 MR. DANDINO: Thank you, your Honor.

13 BARBARA MEISENHEIMER testified as follows:

14 DIRECT EXAMINATION BY MR. DANDINO:

15 Q. Please state your name and position.

16 A. My name is Barbara Meisenheimer. I'm chief
17 economist with the Missouri Office of the Public Counsel.

18 Q. And are you the same Barbara Meisenheimer
19 that caused to be filed in this case Exhibit 26, which is
20 your rebuttal testimony, Exhibit 27 which is your HC
21 rebuttal testimony, Exhibit 28, which is your surrebuttal
22 testimony, and Exhibit 29, which is HC surrebuttal
23 testimony?

24 A. Yes.

25 Q. And do you have any corrections or

1 amendments to make to that testimony?

2 A. I do. I have a few corrections and
3 clarifications to my rebuttal testimony.

4 Q. Okay. Please point them out one by one.

5 A. The first is on the first page of my
6 rebuttal testimony at line 4, the P.O. Box is 2230.

7 Q. Any others?

8 A. Yes. On page 18, line 18, at the beginning
9 of the line I need to add "the 2002 rate for".

10 Q. Your next correction?

11 A. On page 19, at the end of line 6, I need to
12 add Springfield.

13 Q. Next one?

14 A. And page 22, line 15, the Commission should
15 have an apostrophe S.

16 Q. Is that all the corrections for your
17 rebuttal testimony?

18 A. Yes.

19 Q. Is there any corrections in your
20 surrebuttal testimony?

21 A. I don't believe there are.

22 Q. As corrected, is the testimony and the
23 schedules contained therein in these exhibits true and
24 correct to the best of your information, knowledge and
25 belief?

1 A. Yes, they are.

2 Q. And if I asked you the same questions that
3 are contained in these exhibits here today, would your
4 answers be the same?

5 A. Yes, they would.

6 MR. DANDINO: Your Honor, at this point I'd
7 like to offer Exhibits 26, 27, 28 and 29.

8 JUDGE RUTH: Okay. Thank you.
9 Exhibits 26, 27, 28 and 29, Ms. Meisenheimer's NP
10 rebuttal, HC rebuttal, NP surrebuttal and HC surrebuttal
11 have been offered into the record. Are there any
12 objections to them being received? Staff?

13 MR. HAAS: No objection.

14 JUDGE RUTH: SBC?

15 MR. BUB: None, your Honor.

16 JUDGE RUTH: CLECs?

17 MR. LUMLEY: No objection.

18 JUDGE RUTH: Exhibits 26, 27 and 28 and 29
19 are received into the record.

20 (EXHIBIT NOS. 26, 27, 28 AND 29 WERE
21 RECEIVED INTO EVIDENCE.)

22 MR. DANDINO: Your Honor, I now tender the
23 witness for cross-examination.

24 JUDGE RUTH: Thank you. We'll start our
25 cross-examination with Staff.

1 CROSS-EXAMINATION BY MR. HAAS:

2 Q. Good morning, Ms. Meisenheimer.

3 A. Good morning.

4 Q. In your rebuttal testimony, you suggest
5 that the Herfindahl-Hirschman Index, or HHI, is one factor
6 the Commission should consider in this analysis, correct?

7 A. Yes, I think it is reasonable for the
8 Commission to consider it.

9 Q. And have you read the surrebuttal testimony
10 of Mr. Peters?

11 A. Yes, what there was on this topic.

12 Q. All right. And in that testimony he
13 suggests or states that it requires at least six
14 competitors to break below the score of 1,800 on an HHI.
15 Do you at least agree with his math?

16 A. I wouldn't dispute six or seven.

17 Q. Do you think that it's reasonable or likely
18 that there would be that number of competitors in
19 Southwestern Bell's -- or SBC Missouri's exchanges?

20 A. Yes. Would you like me to expand on the
21 answer?

22 Q. Yes, please.

23 A. I do. I think that a significant
24 difference between the analysis that I conducted and that
25 which the Staff conducted was the treatment of various

1 types of competitors. The Staff focused primarily on
2 facilities-based competitors, and I feel that in
3 calculating the HHI numbers that are presented in my
4 testimony, I used more than simply facilities-based
5 competitors. However, even if you limited the
6 consideration to facilities-based competitors, in
7 St. Louis and Kansas City if you were talking about
8 certain services, I think you might have more than six
9 facilities-based competitors for certain services.

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

12 JUDGE RUTH: Mr. Lumley, do you have
13 questions?

14 MR. LUMLEY: No, ma'am.

15 JUDGE RUTH: SBC?

16 MR. BUB: Yes, your Honor. Thank you.

17 CROSS-EXAMINATION BY MR. BUB:

18 Q. Okay. I think I'm ready. Good morning,
19 Ms. Meisenheimer.

20 A. Good morning.

21 Q. I'd like to focus on the schedule BAM-4HC
22 that you have at the back of your rebuttal testimony. If
23 we could all go there for a second.

24 A. I'm there. I'm looking at the HC version.
25 Would it be necessary for me to answer with HC numbers?

1 Q. No. I'm going to try to stay away from
2 numbers. I'd just like to talk about the schedule
3 generally. If we need to, we can break, but if we do need
4 to get into numbers, then we'll go into HC in-camera.

5 Generally about this schedule, this is a
6 chart showing your estimated market share, is that
7 correct, for various SBC Missouri exchanges?

8 A. It is a representation of what I believe
9 would be the floor for an HHI in the event that you
10 utilize SBC's reported line counts.

11 Q. And that HHI, the Herfindahl-Hirschman, is
12 that correct?

13 A. Yes.

14 Q. That's the last, what, three columns of
15 this chart?

16 A. Yes. It should be the sum of the market
17 share squared.

18 Q. And directly to the left of that you have
19 about five columns, and that contains your estimate of
20 market share; is that correct?

21 A. That contains Southwestern Bell's -- or a
22 number that is based on Southwestern Bell's reported lines
23 for the various categories as was provided to me by the
24 company.

25 Q. Okay. Did you do any independent, like,

1 research to put the -- to gather information for this
2 schedule? Was it all --

3 A. In preparation of this particular schedule,
4 I relied on the information provided by Southwestern Bell.

5 Q. Okay.

6 A. That's not to say that I didn't look at
7 line count related information from other sources, but it
8 was not used in the preparation of this schedule.

9 Q. So this is all information, the source data
10 is all from SBC Missouri?

11 A. Yes. It was provided to me in e-mail by
12 Southwestern Bell.

13 Q. Okay.

14 A. And then the calculations were, of course,
15 my own. Those are not Southwestern Bell's calculations.

16 Q. I understand. Thank you.

17 You heard yesterday that Time Warner, at
18 least according to Staff, is providing service in
19 Kansas City. Did you hear that?

20 A. I heard, according to Staff, that Time
21 Warner is providing service in Kansas City. I could
22 discuss my investigation regarding Time Warner's
23 offerings.

24 Q. Okay. From your -- do you know whether or
25 not they're providing service in Kansas City?

1 A. I did visit Time Warner's website and found
2 that Time Warner offers something called a digital line
3 service, and my impression of that is that it is a
4 VOIP-like service over the cable facilities that they
5 have.

6 Our office also checked, and that was under
7 my supervision, for information regarding tariffed
8 offerings and annual report of line counts for 2003.

9 Q. Okay.

10 A. And I -- we didn't find those.

11 Q. So they did not file an annual report?

12 A. Or we couldn't find it. Sometimes a
13 company might file an annual report under a different
14 company name than you would expect to normally find it.

15 Q. Okay.

16 A. For example, MCI files -- filed line counts
17 as an IXC as opposed to a CLEC.

18 Q. Time Warner, cable company; is that
19 correct?

20 A. Oh, I was giving an example of MCI where
21 their line counts are in a different place than you might
22 expect them to be.

23 Q. With respect to Time Warner, though,
24 they're a cable company; is that right?

25 A. That's my understanding.

1 Q. And you wouldn't expect Time Warner's line
2 counts, since they're using their own facilities, to be
3 included in information that SBC gave you for your
4 Schedule 4HC; is that correct?

5 A. That's not entirely correct. My
6 understanding of the information that SBC provided relates
7 to 911 listings in part, and so in the event that Time
8 Warner were providing a traditional telephone service over
9 those lines, I would expect them to be in the 911
10 database.

11 Q. Do you know whether they are?

12 A. Whether they are in the 911 database?

13 Q. One way or another?

14 A. I would expect them to be. I didn't review
15 the 911 database information on that.

16 Q. Did you inquire with Time Warner to verify
17 that they included their line counts in the 911 database?

18 A. I actually spoke to someone at Time Warner,
19 and in finding out the types of facil-- or the types of
20 offerings that it seemed to me that they provided, that
21 they provide, I would not have expected there to be.

22 Q. Okay. So they did not tell you that they
23 included their line counts in the 911 database?

24 A. Well, I think that they -- that they would.
25 Even though they don't, based on my investigation, seem to

1 provide a traditional telephone service, they do offer the
2 ability for customers to have access to 911 service as
3 part of their terms and conditions and their contract that
4 customers sign, and so I would imagine that the
5 information does get into the 911 database based on that.
6 But in terms of actually looking at the data in the
7 database, I did not do that.

8 Q. Okay. And Time Warner specifically didn't
9 tell you that they included it?

10 A. Well, we did have a discussion about 911,
11 and I would -- I was led to believe by that discussion
12 that to the extent 911 offering is available to customers,
13 they would provide information to the 911 PSAP.

14 Q. Would you agree with me that in the event
15 they didn't report those lines, that those lines would not
16 be included in your analysis?

17 A. Sure.

18 Q. And there are other VOIP providers besides
19 Time Warner? That's just one example; is that correct?

20 A. There are a number of VOIP providers. Some
21 I believe offer a 911 service, although it's not really
22 the traditional 911 service, and to the extent that they
23 offer it, I think that information would be available to
24 the 91 PSAP. There's not an incredibly lengthy discussion
25 of how exactly they -- the nuts and bolts of how the

1 information gets to the PSAP. So although I believe it
2 should then get into the 911 database, I guess it's
3 possible that --

4 Q. You haven't done an independent
5 verification that, say, like Nuvio's numbers are in the
6 911 database?

7 A. Except to the extent that I visited --
8 reviewed information regarding 911 in the service terms
9 and contracts which spells out that in the event that a
10 customer does get some type of 911 service, that it would
11 be provisioned.

12 Q. You can't tell us for sure that their
13 numbers are in there, can you?

14 A. I said earlier I had not reviewed the
15 specific 911 database information, and so the answer would
16 be no again.

17 Q. Okay. To the extent that a Nuvio or a
18 Vonage didn't report their numbers to the 911 database,
19 they're also not in your analysis; would that be correct?

20 A. That would be correct.

21 Q. Okay. And in that event what you show as a
22 CLEC market share would be understated, wouldn't it?

23 A. Yes.

24 Q. And SBC's market share would be overstated?

25 A. It would depend on what type of market

1 share you're talking about. Since I don't believe that
2 those types of carriers should be considered as -- in
3 terms of their value as a competitor, if you're talking
4 about the market that I would look at for the Commission's
5 review in this case, they wouldn't have been included
6 either way. So it would neither over -- that particular
7 factor would neither over or underestimate.

8 Q. So you're saying that VOIP providers should
9 be given no weight?

10 A. In this consideration, in terms of
11 reviewing a market share, no, I do not think they should
12 be. Can they under other areas be considered to some
13 extent? Yes. I wouldn't -- I wouldn't disagree with that
14 because the Commission has the ability to consider other
15 factors. Did you want me to expand about that more or --

16 Q. Let's explore that a little bit. In the
17 event that VOIP providers capture 20 percent of the
18 market, you would completely exclude that from
19 consideration?

20 A. You and I have different definitions, I
21 guess, of what constitutes the market. The primary focus
22 of my testimony is on the market for basic local service,
23 and since VOIP does not offer what I consider to be an
24 adequate substitute for basic local service, they would
25 not be part of the market that I calculate market share

1 based on.

2 Q. If the Commission were to view VOIP as a
3 substitute, in that event would you agree that failing to
4 include them or consider them in your analysis would
5 overstate SBC's market share?

6 A. If that hypothetical were the case, then it
7 could underestimate Bell's market share.

8 Q. And similarly, it would overstate your
9 estimate of concentration in the market, too?

10 A. If the hypothetical that you offered were
11 the case, then yes, it could.

12 Q. Same thing for wireless, if that
13 hypothetical -- if the Commission were to consider the
14 wireless a substitute, the failure to -- let me back up.

15 Wireless was -- wireless lines are not
16 included in your analysis; is that correct?

17 A. I would -- I would have to verify that
18 Southwestern Bell did not include 911 listings for
19 wireless carriers. That's not as clear to me as VOIP. I
20 could probably review SBC's testimony and --

21 Q. Let's just maybe add that to the
22 hypothetical. Assuming that wireless numbers are not
23 included in 911 database, those would not be in your
24 analysis; is that correct?

25 A. They would not be in this piece of the

1 analysis, yes. I just would like to make it clear that
2 this calculation of an HHI is one component of the
3 analysis that I did.

4 Q. You would agree with me that if the
5 Commission were to see wireless as a substitute, the
6 failure to include the wireless lines in here again would
7 understate the competitors' market share?

8 A. It could, depending on how you treated the
9 various wireless options. Southwestern Bell is a
10 substantial owner in a large wireless carrier. So the
11 treatment of that would be a factor to consider as well.

12 Q. If we exclude Cingular, would the answer be
13 yes?

14 A. And AT&T Wireless?

15 Q. And AT&T Wireless.

16 A. It would have an impact. The size of that
17 impact would obviously not be as large given that you
18 would exclude both Cingular and AT&T Wireless in the
19 state.

20 Q. Excluding them, your analysis would
21 understate the competitors' market share; is that correct?

22 A. Under the hypothetical that we've been
23 discussing, yes, it would.

24 Q. Again, it would overstate SBC's market
25 share, same hypothetical?

1 her something?

2 MR. BUB: To show her something, uh-huh.

3 JUDGE RUTH: Would you show it to counsel,
4 first?

5 MR. BUB: Absolutely.

6 BY MR. BUB:

7 Q. I'll move up here because I know I can't be
8 heard over there. Ms. Meisenheimer, you testified in our
9 previous competitive classification case, TO-2001-467, did
10 you not?

11 A. Yes, I did.

12 Q. And in that case we asked you the
13 question -- and I'll approach the witness -- would you
14 agree -- would you agree that the best --

15 A. I'd like to review the context --

16 Q. Absolutely.

17 A. -- for a minute, because I think we might
18 have been talking about a specific area of the testimony.

19 Q. Sure.

20 Will you read the question and answer,
21 please?

22 A. Yes. The question is, Okay. Would you
23 agree that the best determination of market share is the
24 actual number of lines served by the CLEC? And my answer
25 was, Certainly.

1 I would point out that the context of this
2 discussion we were focusing in on reviewing a particular
3 schedule and line count information that appeared on that
4 particular schedule, and so I was speaking in a
5 specific -- to a specific piece of information that I was
6 reviewing at that time. The discussion that I just had
7 with you a minute ago was, I felt, more general. We
8 weren't honed in on specific numbers in a schedule. So I
9 find that to be a consistent statement.

10 Q. With this question I wasn't trying to be
11 tricky. As far as doing an analysis like this and your
12 particular schedule, BAM-4HC, we have a particular
13 schedule and you have actual numbers here that were
14 reported to you by the company. And where I was going
15 with this line of questions was, wouldn't actual data like
16 this be better than estimates?

17 A. And I don't mean to make the answer overly
18 complicated. The primary reason that I used the
19 information in this case that Southwestern Bell provided
20 to me is because it would not be as contentious, and so we
21 could focus on more what does this set of data show.
22 That's not to say that I agree with the mechanism by which
23 Southwestern Bell would have gathered or transformed
24 trunks into line counts. There was a difference in that
25 in a previous case.

1 But generally, I would agree actual -- an
2 actual demonstration that lines are being provided to
3 customers in an area is an important and a very relevant
4 piece of information for the Commission to consider.

5 Q. In this schedule I note that you exclude
6 prepaid providers; is that correct?

7 A. Yes.

8 Q. And that's consistent with SBC Missouri's
9 presentation here because it's not relying on evidence of
10 prepaid providers; is that your understanding?

11 A. That piece of information, that is correct.
12 In part I didn't use prepaid because I was relying on
13 Southwestern Bell's information that they provided to me
14 to do these calculations. But in addition, I would say
15 that I support the concept of not giving much weight to
16 the existence of prepaid providers for a number of
17 reasons.

18 Q. We're not relying on prepaid, so that's not
19 an issue here; is that correct?

20 A. That is my understanding that it was not
21 your intention to provide information or rely on prepaid
22 carriers.

23 Q. Craig Unruh spells that out in his
24 testimony that we're not relying on prepaid service
25 providers in this case?

1 A. That it was not your intention to, yes.

2 Q. You did include in your analysis lines
3 being served by full facility-based carriers; is that
4 correct?

5 A. The lines that were reported by
6 Southwestern Bell, yes.

7 Q. And UNE-P as well?

8 A. Yes.

9 Q. And resale?

10 A. Yes.

11 Q. And your approach is consistent with the
12 fact that these are methods CLECs are actually using to
13 provide service to their customers?

14 A. I agree that there are CLECs utilizing all
15 three forms to provide service to customers in areas of
16 the state, yes.

17 Q. Your analysis is consistent with that?

18 A. Yes.

19 Q. You also did a similar market share
20 analysis in a previous competitive classification case,
21 TO-2001-467, did you not?

22 A. Yes, I did.

23 Q. And there you also considered lines served
24 by full facilities-based carriers, UNE-P carriers and
25 resale carriers?

1 A. That's correct.

2 Q. And again, you excluded the prepaids?

3 A. Yes. That data I -- and it's been a while,
4 but I believe that much of that data that I used was also
5 provided by Southwestern Bell. I had done more research
6 in terms of asking Data Requests from particular CLECs and
7 wireless providers in an attempt to gain information from
8 them independently to verify that the line counts that
9 were reported. We ran into a great deal of difficulty in
10 that case getting full and complete answers, and so this
11 time just to avoid the confrontation --

12 Q. With the CLECs?

13 A. Actually, with Southwestern Bell, I use --
14 oh, I had trouble getting information from CLECs --

15 Q. That's what I meant.

16 A. -- and in particular wireless carriers who
17 felt they weren't required to answer. But in this case I
18 didn't -- based on the analysis I did, I didn't need --

19 Q. You relied on SBC data here?

20 A. Yes.

21 Q. And the whole point I was trying to make is
22 your analysis there, your approach in the prior case and
23 this case is generally consistent?

24 A. I believe that it is consistent, yes.

25 MR. BUB: Your Honor, can I have an exhibit

1 marked, please?

2 JUDGE RUTH: Yes. We are up to No. 49.

3 (EXHIBIT NO. 49 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. BUB:

6 Q. Ms. Meisenheimer, I've handed you what's
7 been marked as Exhibit 49. Could you verify for me that
8 this is the Commission's Report and Order dated
9 December 27, 2001 in Case TO-2001-467?

10 A. Yes, it is.

11 Q. And this is the case, the prior competitive
12 classification case for SBC Missouri; is that right?

13 A. Yes.

14 Q. And you testified there; is that right?

15 A. Yes, I did.

16 Q. And also presented an HHI estimate; is that
17 right?

18 A. That's correct.

19 Q. Would it be fair to say that the Commission
20 did not adopt your HHI analysis in that case?

21 A. Yes.

22 MR. BUB: Your Honor, I'd like to move for
23 the admission of Exhibit 49, please.

24 JUDGE RUTH: Exhibit 49, the Report and
25 Order in TO-2001-467 dated 12/27 of '01 has been offered

1 into the record. Are there any objections to it being
2 received? Staff?

3 MR. HAAS: No objection.

4 JUDGE RUTH: Public Counsel?

5 MR. DANDINO: No objection.

6 JUDGE RUTH: Mr. Lumley?

7 MR. LUMLEY: No objection, your Honor.

8 JUDGE RUTH: Exhibit 49 is received into
9 the record.

10 (EXHIBIT NO. 49 WAS RECEIVED INTO
11 EVIDENCE.)

12 BY MR. BUB:

13 Q. You also in Sprint's competitive
14 classification case, did you not?

15 A. Yes, I did.

16 Q. And that was Case No. IO-2003-0281. I
17 don't need you to verify that. That's just for the
18 record. In that case you also presented an HHI analysis,
19 did you not?

20 A. Yes, I did.

21 Q. And just for a little bit of background,
22 there Sprint was seeking competitive classification in
23 certain exchanges. For example, they were seeking
24 competitive classification in their Kearney exchange. Do
25 you recall that?

1 A. Yes. They only sought competitive
2 classification for a limited number of services in a
3 limited number of exchanges.

4 Q. And one of those was Kearney?

5 A. Yes.

6 Q. And in Kearney, the competitor Sprint was
7 pointing to was Exop; is that right?

8 A. That sounds correct, to the best of my
9 memory, yes.

10 Q. But you do remember that there was only one
11 competitor there that Sprint was relying on? Would it
12 help if I gave you the Order?

13 A. It would help a lot, yes. I do remember
14 that the company claimed to be relying on only one
15 facilities-based competitor. I've already said they
16 relied on one facilities-based.

17 Q. And in that case, the Commission indicated
18 that this HHI analysis was not controlled; is that your
19 recollection?

20 A. I'd love to see the Order again. I don't
21 remember the specific language.

22 Yes. The Order states, the
23 Herfindahl-Hirschman Index is perhaps a good tool for
24 measuring market concentration, but it does not control
25 the Commission's decision in this case. So I would say

1 that in this case, in the Sprint case it appears they were
2 more receptive to consideration than in the original SBC
3 case.

4 Q. And this Order indicates that the
5 Commission must rely on the guidance offered by the
6 Legislature when it enacted the controlling statutes, and
7 those statutes do not preclude a finding of effective
8 competition where there's only one competitor challenging
9 the incumbent local exchange carrier?

10 A. That is the statement in the Commission's
11 Order.

12 Q. And, in fact, what the Commission did is
13 they approved --

14 JUDGE RUTH: Can you turn the microphone so
15 that you'll be picked up? Thanks.

16 BY MR. BUB:

17 Q. I'll repeat that. What the Commission did
18 in that case is based on that one competitor in Kearney,
19 Exop, that one facilities-based competitor in Kearney,
20 which was Exop, it approved competitive classification for
21 Sprint in that exchange, for certain services that Sprint
22 was seeking classification?

23 A. I believe that the Commission actually has
24 discussion of more types of competition than simply the
25 one competitor. However, if you can point me to a

1 specific statement, I'd be happy to verify that it's in
2 the Order. I didn't review that Order again before I came
3 to testify in this case.

4 Q. Okay.

5 A. Or not all parts of it.

6 Q. Maybe we can short circuit it. There was
7 only one competitor in Kearney, Exop; is that correct?

8 A. There was one facilities-based competitor.

9 Q. And that was Exop?

10 A. That's my memory, yes.

11 Q. And the Commission gave Sprint competitive
12 classification in Kearney?

13 A. They did based on their consideration of
14 all the things that they considered to justify
15 competition.

16 Q. Same thing -- same thing in Rolla, there
17 was one facility-based competitor, Fidelity; do you recall
18 that?

19 A. I remember Fidelity. I remember Rolla. I
20 hate -- I hate to --

21 Q. That Order's already in.

22 A. -- to drag this on. It's in the record.

23 Q. We'll move on. I'd like to go to a couple
24 of statements that you made in your testimony, in your
25 direct testimony at page 14.

1 A. In my rebuttal on page 14?

2 Q. I'm sorry. Your rebuttal. Thank you.
3 Lines 12 through 15, you have a discussion there about
4 barrier to entry and what you characterize as bottleneck
5 facilities. Do you see that?

6 A. Yes.

7 Q. Would you agree with me that you did not
8 rely on any specific or identifiable analyses, reports,
9 documents, data or materials in reaching these
10 conclusions?

11 A. That's correct. I did not look at
12 something specific when preparing this line in my
13 testimony. Instead I relied on my general knowledge to
14 write that response.

15 Q. Okay. Let's go on to page 18 of your
16 direct, lines 8 through 9. There you discuss the quality
17 of VOIP service?

18 A. Yes.

19 Q. It would also be true that you did not rely
20 on any specific or identifiable analyses, reports,
21 documents, data or other materials?

22 A. I did not -- I did not specifically review
23 in writing that statement some particular document. I
24 relied on my general knowledge again for that statement.

25 Q. Same thing with your discussion on the

1 trend of SBC Missouri's rates under price cap, which you
2 have a discussion I think on page 20 -- at the bottom page
3 of 26. I think it goes from lines 20, 21, top of the next
4 page, maybe the first two lines of that page.

5 A. Yes, with the exact same response.

6 Q. Let me move back to the HHI Index for a
7 minute. Is it your understanding that the HHI Index is
8 primarily used in the context of analyzing mergers? Isn't
9 that what the Department of Justice uses as almost like a
10 litmus test when they analyze a proposed merger?

11 A. The HHI actually has broader application
12 than the limited application that the Department of
13 Justice generally uses it for in measuring market
14 concentration in evaluating mergers. The HHI is a theory
15 that I was first introduced to in my graduate -- actually
16 in my undergraduate and then more extensively in my
17 graduate studies at the University of Missouri. It is
18 a -- I would say a fairly commonly used tool in economic
19 analysis of market concentration.

20 Q. And the Department of Justice uses it a
21 lot, that's the point I was making, in their analysis of
22 proposed mergers?

23 A. The Department of Justice, based on my
24 experience, uses it very often in evaluating mergers.

25 Q. It's like a first test that they do, is it

1 not? They look at the HHI Index and if it's above or
2 below a certain threshold? I thought the threshold was
3 1,800, at least something around it.

4 A. It can be a factor where if the HHI is low
5 enough, there is less scrutiny of other factors that might
6 pose or might create market power.

7 Q. Okay. Would it be fair to characterize it
8 maybe as a beginning of an inquiry, they look at the HHI
9 Index, and if it's low enough then they stop?

10 A. My understanding of the process is that
11 carriers that process mergers generally submit a wealth of
12 information, and one of those things would be information
13 toward demonstrating what they believe the HHI would be.
14 So what -- you know, if you want me to say yes, yes, it is
15 commonly used --

16 Q. At least the beginning of an inquiry.

17 A. -- in that process, it can be an issue that
18 eliminates further consideration of other issues. But as
19 far as is it the first step, I can't go far enough to
20 agree to that.

21 Q. Okay. At least if it's high enough, then
22 the Department of Justice would look at more things, would
23 they not? Would they look at things like demand and
24 supply elasticity, things like that?

25 A. If a market appears to be highly

1 concentrated, it is highly likely that they would go on
2 and look at other factors. I can't say in every case that
3 they push forward to do that.

4 Q. Would you agree with me that just looking
5 at the HHI Index alone wouldn't give the full picture?

6 A. Sure, I'd agree with that.

7 Q. Would it be correct to say that one of the
8 chief concerns that the Office of the Public Counsel has
9 in this case is the possibility of the increase to
10 residential basic local rates?

11 A. Yes.

12 Q. Have you done any analysis of the impact of
13 potentially higher residential rates on subscribership in
14 Missouri?

15 A. I have not done any specific analysis
16 myself. However, I have reviewed information that is
17 available from the FCC in conjunction with the Universal
18 Service Joint Board Staff work that I do that indicates
19 that the higher the cost of basic local service, the less
20 likely it is that low-income customers would have
21 subscription.

22 Q. Okay. You're familiar with examples in
23 Missouri where companies have substantially higher rates,
24 higher local rates than those of SBC Missouri?

25 A. Yes.

1 Q. And in those cases there wasn't a decrease
2 in subscribership for residential basic service, was
3 there?

4 A. A decrease? I'm not sure that I understand
5 the context of the question. I am aware that there are
6 carriers that have higher rates in Missouri than SBC's
7 Rate Group A, B.

8 Q. Like, for example, Holway --

9 A. Yes.

10 Q. -- you recall the last case we talked a
11 little bit about Holway?

12 A. Yes.

13 Q. And you indicated that the range you recall
14 was somewhere between 16 and \$18 per month?

15 A. And I believe it was later lowered.

16 Q. But at least at one time it was in the 16
17 to \$18 range?

18 A. I think that that was when I was fairly new
19 to the Office of the Public Counsel, but yes, I am aware
20 of a rate that --

21 Q. You're not aware of any decrease in
22 subscribership when Holway implemented that rate?

23 A. Well, that's what I was trying to point
24 out, that I was new to Public Counsel then because I
25 wasn't with Public Counsel when that rate -- or I was not

1 at least involved in the case where the rate was set that
2 high, and it may, in fact, have predated my coming on
3 board with Public Counsel.

4 Q. Would you agree with me that if there is a
5 concern about affordability of basic residential service,
6 one way to ensure that there's a continued high level of
7 affordability is to utilize the low income portion of the
8 Missouri Universal Service Fund?

9 A. Sure.

10 MR. BUB: I think that's all the questions
11 I have. Thank you very much.

12 THE WITNESS: Thank you.

13 MR. BUB: Thank you, your Honor.

14 JUDGE RUTH: Okay. We'll move to questions
15 from the Bench, and I'll start down on the end.
16 Commissioner Murray, do you have questions?

17 COMMISSIONER MURRAY: I have a few. Thank
18 you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Ms. Meisenheimer, in your Schedule BAM-4HC,
23 I think I -- I hope I can ask you this without getting
24 into highly confidential numbers, but if we go there,
25 we'll just have to go in-camera. Do you have it?

1 A. Yes, I am. I'm there.

2 Q. First of all, the fourth call on the end
3 you show rate group, correct?

4 A. Yes.

5 Q. And then you have in that column, I think,
6 a total of four different rate groups; is that right,
7 A through D?

8 A. Yes. Those are Southwestern Bell's rate
9 groups. They also have a further breakdown, I believe, of
10 Rate Group C and D maybe.

11 Q. Isn't that what I said, A through D?

12 A. Yes. What I was suggesting is that you
13 heard testimony from the Southwestern Bell witness that
14 they have seven rate groups, and what I was trying to
15 clarify is that there are further breakdowns. But yes,
16 these are the four, and this information was provided by
17 Southwestern Bell.

18 Q. Okay. And do you have a -- the information
19 before you that shows the significance of those various
20 rate groups in terms of what -- for example, how Rate
21 Group A compares with Rate Group B compares with Rate
22 Group C, et cetera?

23 A. I have in the past actually done some
24 comparison of the size of the exchanges contained in these
25 rate groups, and I'm happy to speak to that if that's what

1 you're looking for, in terms of line count size and
2 whether an exchange actually fits into the line -- into
3 the group that it is identified based on the original
4 designations.

5 Q. Maybe what I'm looking for is can you tell
6 me what defines a rate group?

7 A. In Southwestern Bell's tariffs they set out
8 ranges of line counts that at one time I believe
9 controlled what rate group an exchange was identified as.
10 Now, I --

11 Q. So it's the number of lines that controls
12 the classification; is that what you're saying?

13 A. And I think that that was set at some point
14 in the past, and then on an ongoing basis I don't believe
15 that Southwestern Bell -- like, let's say an exchange gets
16 a few more lines and crosses over the boundary. I don't
17 know that they go ahead and change the rate group
18 assignment. I think it was more a historic designation.

19 Q. So Rate Group A would be the group with the
20 largest or smallest number of line count?

21 A. The smallest. And another way to get a
22 feel for the size of the exchanges, you see on the column
23 just before it where it says Exchange Size Rank?

24 Q. Yes.

25 A. That identifies of SBC's exchange, where

1 does this one rank, I think, in terms of the number of
2 line counts.

3 Q. So No. 1 would be the one with the greatest
4 number of lines?

5 A. Well, like, for example, No. 1, Farley.
6 I'm looking at 4.1HC.

7 Q. Yes. And I'm talking about exchange size
8 rank. No. 1 would be the one with the --

9 A. Yes.

10 Q. -- greatest number?

11 A. Yes. I'm sorry. I was confused on whether
12 we were talking about one on the table or one. So yes.
13 Yes, that's right.

14 Q. All right. And then the rates, how did the
15 rates between the various groups compare?

16 A. The Rate Group A, which is generally the
17 exchanges with the lowest line counts, tend to also have
18 the lowest rates. And as the rate group proceeds from A,
19 B, C, D, the rates increase. So the more urban exchanges
20 have the highest rates. It's not a tradeoff that you can
21 measure in any fixed percent, like you get a lot -- a lot
22 more lines in an urban area, but the -- you know, there's
23 an increase in the rate, but not a corresponding increase.

24 Q. Okay. Now, can you tell me what PP stands
25 for in your exhibit?

1 A. Prepaid. That was the same abbreviation
2 that Southwestern Bell utilized in providing me the
3 information.

4 Q. Okay. So when you're showing a chart
5 estimating CLEC lines without prepaid, what is the total
6 class-- are you including resold?

7 A. Yes. Some resold as long as it's not
8 prepaid is in there, yes.

9 Q. And you're including, of course,
10 facilities-based?

11 A. Yes. And those are based on the
12 calculations that SBC provided of what those line amounts
13 are.

14 Q. Did you do any determination of whether any
15 carriers have been granted ETC status in any of the
16 exchanges?

17 A. Not in calculating the numbers that appear
18 in these particular schedules. As a general rule, I am
19 familiar that there are carriers who have gained ETC
20 status in Missouri.

21 Q. Do you know in that's in the record
22 anywhere as to the SBC exchanges setting out any ETC
23 carriers within those?

24 A. I don't remember seeing it anywhere in
25 particular.

1 Q. But you didn't actually do any analysis
2 that would set that out specifically either; is that
3 correct?

4 A. That's correct. It's not in my testimony.

5 Q. Do you consider ETC status to have any
6 relevance in this proceeding?

7 A. Yes, I do. I would say that carriers that
8 are ETCs have committed to provide a more basic type
9 service, which is one of the focuses that our office is
10 concerned about in ensuring the availability of a basic
11 core set of services.

12 Although I said I didn't set out anywhere
13 where particular carriers have sought ETC status in my
14 testimony, I am generally aware that there are many, many
15 CLECs that have not sought to provide or to assume that
16 ETC status. And so if there were more that did, that
17 would be encouraging to me.

18 Q. Would you consider a carrier within an
19 exchange that had been granted ETC status to be
20 determinative of competitive status?

21 A. If effective -- effectively competitive
22 status?

23 Q. Yes, that's what I mean.

24 A. No, I don't think one would be enough.
25 Would it be a factor that increased my comfort with that?

1 It would be one factor.

2 Q. Okay. And in your analysis of existing
3 providers within the various SBC exchanges, did you
4 consider at all VOIP providers?

5 A. I did consider the existence of VOIP in the
6 overall context of my analysis. I did not include VOIP to
7 any more extent than it would have been provided to me in
8 SBC's estimates of the line counts that they provided that
9 I utilized.

10 Q. How did you -- when you say you considered
11 it, how did you consider it? What did you -- what value
12 did you give it?

13 A. Well, based on the review that I did of the
14 type of service which VOIP was and has become, because
15 there have been advancements regarding voice over
16 Internet, primarily based on the speed that's available in
17 various areas, but I did look at VOIP offerings in areas
18 of the state, carriers that hold themselves out to provide
19 VOIP.

20 I reviewed the terms and conditions in
21 particular of voice over Internet providers, and that was
22 a significant factor. Some of the things that they don't
23 provide, that was a significant factor in my not
24 considering VOIP a good substitute toward providing
25 effective competition in the exchanges.

1 Q. So for the answer to my question, is it
2 that you gave it zero value?

3 A. I gave it -- I gave it very little, if any,
4 yes.

5 Q. Okay. Are you familiar with the, the NTCA,
6 the -- get it right -- the National -- you say it.

7 A. The National Telecommunications Carriers
8 Association.

9 Q. I think that's correct. I think that's
10 what the acronym stands for. Are you familiar with that
11 organization, at least familiar with its existence?

12 A. The acronym sounds familiar to me.

13 Q. Okay. The reason I ask the question is, in
14 the latest NTCA Washington report, which was circulated to
15 the Commissioners recently as we frequently see a lot of
16 reports, and this is one that we see on a regular basis,
17 but Volume 37 No. 4, which was issued January 24th, 2005,
18 references a report done by E-ValueServe talks about VOIP,
19 and that -- the reference or the NTCA Washington report in
20 referencing that E-ValueServe report states --

21 A. I could probably make this quick. I'm not
22 familiar with that likely, so I can't testify as to what's
23 said in that report. If you're going to ask me a general
24 question about whether I agree with something, I can do
25 that.

1 Q. And that is what I'm going to ask you. The
2 title of that article there is, VOIP Posed to Threaten
3 Telecom Revenues New Report Finds. And then it goes on to
4 say, The rapid growth of voice over Internet protocol
5 services will lead to a global decline in traditional
6 telephone profitability by 2008 for both fixed and mobile
7 companies according to a January 6th report by
8 E-ValueServe, an international research firm. For the
9 U.S. telecom retail market that can mean the loss of as
10 much as 35 to 40 percent of revenues from the impact of
11 VOIP providers Skype alone. The report, quote, impact of
12 Skype on telecom service providers, end quote, focuses
13 specifically on that company, but it also examines the
14 impact of VOIP services in general. The report predicts
15 that Skype users could increase to as many as 245 million
16 by 2008, up from 15 million today. Skype reports that it
17 is gaining about 80,000 new subscribers daily.

18 Do you have any reason to disagree with
19 those numbers?

20 A. Since I have neither reviewed the
21 underlying data or analysis upon which that report was
22 based, I think it would be -- you know, I can't say that I
23 have anything specific to disagree with that about. I
24 would question whether that report takes into account that
25 VOIP, in particular carriers such as Vonage, I can't get

1 Vonage without already having some connection to the -- to
2 a high-speed line to Internet service, and so therefore I
3 don't know if that report or what underlies it is taking
4 into account the wholesale provisioning of getting people
5 to the Internet before they can subscribe to services such
6 as VOIP.

7 So I would question that and have to
8 investigate it. I don't have any facts one way or another
9 as we sit here since I have not reviewed it.

10 Q. I wouldn't expect you to verify any
11 numbers, but if we take the -- if we just assume
12 hypothetically that what they have stated about Skype
13 users and the potential for increase in numbers of
14 subscribers, and then -- and assume that this is correct,
15 they go on to say that globally the report projects a
16 decrease of between 22 percent and 26 percent in
17 profitability and a 5 percent to 10 percent drop in
18 revenues over the next three years. And they're talking
19 about -- they started out with the competition to
20 wireless, wireline and wireless.

21 If the increased usage of such services as
22 Skype do, in fact, result in a decrease of between 22 and
23 26 percent in profitability and a 5 to 10 percent drop in
24 revenues over the next three years to the wireline and
25 wireless telecommunications carriers, would you consider

1 services such as Skype to be competitors?

2 A. Lost revenue can be an important factor in
3 demonstrating that there is a level of competition, and,
4 you know, I qualified my last answer specifically because
5 of my concern about, well, the revenue that's lost, is
6 that limited to a consideration of the retail revenue
7 associated with that one service and not the wholesale
8 services that, you know, provide the backbone to get you
9 to the VOIP-type service. But, you know, generally lost
10 revenues for a comparable service can be a factor to look
11 at in determining whether effective competition exists.

12 I have concerns about VOIP in its present
13 form. That doesn't mean that in the future VOIP won't
14 develop further to be a better competitor and more
15 illustrative of effective competition or leading to more
16 effective competition in the exchange.

17 Q. Just give me one minute, please.

18 Ms. Meisenheimer, you've been reviewing
19 telecommunications issues for a number of years now, have
20 you not?

21 A. That's true.

22 Q. Would you agree that if we grant SBC
23 competitive status in all of its exchanges for retail
24 services, that SBC would continue to be regulated on a
25 different level than its competitors, on a greater level

1 than its competitors?

2 A. Only to the extent that you would have the
3 ability to take away in the future or some future
4 commission would have the ability to take away that
5 classification after those who disputed the existence of
6 effective competition had convinced you that effective
7 competition no longer exists.

8 Q. Let's explore that a little bit. Are SBC's
9 competitors required to share their networks on a
10 wholesale basis with other carriers?

11 A. The actual unbundling requirements?

12 Q. Let's look at wholesale in general. Is SBC
13 regulated differently for wholesale services?

14 A. There is an obligation for LECs to provide
15 things to competitors. Now, if you're talking about the
16 pricing standards --

17 Q. No. I'm talking about -- I'm talking
18 about -- we've talked about a level playing field, and
19 some have expressed concern that they don't really want
20 SBC to be on a level playing field because it's so much
21 bigger that that would be unfair.

22 Well, what I'm -- the point I'm trying to
23 make, and I'm seeing if you agree with it, is that even if
24 we grant competitive status on a retail basis in all of
25 SBC's exchanges, it will in no way be on a level playing

1 field with its competitors. Do you agree with that?

2 A. As I indicated in response to the first
3 question in this line, I agree that there is an extra
4 stick you hold over SBC in terms of being able to take the
5 designation away in the future after hurdles are met.

6 Q. But you didn't mention wholesale. Are you
7 saying that the regulation, that the obligations that are
8 imposed upon SBC wholesale obligations are irrelevant to
9 whether they're on a level playing field?

10 A. Well, the statute itself sets out the
11 allowance of an unlevel playing field to ensure the public
12 interest.

13 Q. And that will continue regardless of what
14 we do with the competitive status in this case for the
15 retail services within their various exchanges; is that
16 correct?

17 A. And I certainly don't mean to be
18 disrespectful. If you eliminate the requirements by
19 approving competitive status where effective doesn't
20 exist, then --

21 Q. Well, the requirements we're eliminating
22 are the requirements to be regulated under a price cap
23 statute, where they're asking us to eliminate requirements
24 that they can only do certain things in terms of retail
25 customer rates. Is that not accurate?

1 A. Yes, that's true. And in terms of even at
2 a wholesale level, it may be that we can get past this. I
3 agree that incumbent LECs had additional obligations
4 imposed on them in the '96 Act than do competitive
5 carriers.

6 Q. And you agree that this particular
7 proceeding does not affect that? That's what I'm driving
8 at. This proceeding is separate and apart from those
9 additional obligations?

10 A. I would agree that there is not a direct
11 effect.

12 Q. Okay. Thank you.

13 COMMISSIONER MURRAY: I believe that's all
14 I have. Thank you.

15 JUDGE RUTH: Okay. Commissioner Appling,
16 do you --

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Barb, I think they want to throw me in this
19 briar patch. I keep looking at the clock back there.

20 A. I've been in it for a while, so welcome to
21 the party.

22 Q. Barbara, Section 386 of the statute
23 provides direction for effective competition. It tells
24 exactly what the Commission should do and all that. I'm
25 sure you've read that before.

1 Very briefly for me, if you would, briefly,
2 restate briefly what OPC's position or recommendation in
3 this case is, if you can capture that in a few minutes.
4 Just bring me back up to speed. What's your -- what's
5 your position in this case?

6 A. Our primary concern in this case is that
7 you ensure that effective competition truly exists in an
8 exchange before you turn the company loose to price its
9 services upward as it will in that market. And, you know,
10 obviously in reviewing the level of competition that
11 exists in various areas of the state, there is a clear
12 difference between the level of competition that exists in
13 the urban-most areas of the state and even the mid-size
14 and small communities that exist in the state.

15 If you live in St. Louis or if you have a
16 business in St. Louis or Kansas City, there are
17 competitors out there looking for your business. You're
18 attractive. You spend a lot of money. You're close
19 enough to a central office where -- or you may be close
20 enough to a central office where it's less expensive to
21 provide services to you because you buy a lot and you buy
22 the expensive ones.

23 On the other hand, there are many areas in
24 this state -- and I live in the country. There are many
25 areas of this state where you do not have the same variety

1 of methods that provide high-quality and a guaranteed
2 provision of a minimum set of services in the state. And
3 your job, and I don't envy it, is it's your job to act, I
4 think, as the gatekeeper to ensure that before you turn
5 them loose, the people in those areas are going to be
6 protected by competition truly existing at an effective
7 level in the exchange.

8 A company can face an effective competitor.
9 I can have another business that does a good job winning
10 over my customers. But that is not enough because in some
11 cases like OPEC where you only have a few big providers of
12 the service, they can still set a price based on the
13 activities of how much is supplied in an area. Now, OPEC
14 is an extreme example because they do it -- they get
15 together and they specifically say, we're going to set
16 output and that's going to raise price.

17 I don't think it's quite that severe here,
18 but -- so what we primarily want you to do is to require
19 what the statute does, and that is for a demonstration of
20 effective competition in these exchanges before you turn
21 them loose. I have looked at the data that's been
22 provided. Some of it, I agree with it.

23 But for a large part, this data that's
24 presented, it looks good on paper, but they're not really
25 there. The competitors that are claimed to be there are

1 not necessarily there. They're not providing in some
2 cases services that are claimed, and in some cases they
3 are not providing the service that I would feel is
4 substitute constituting effective competition.

5 Q. Did you see the list of areas in which the
6 Staff recommended that we should consider to approve for
7 SBC as competitive?

8 A. I did, and in many respects I found, based
9 on certain factors in my initial analysis, a number of the
10 exchanges, a number of similar exchanges. There were a
11 couple of differences, but I don't think they were
12 completely dissimilar or way out of line. We used
13 different analysis to get there, that's for sure, but -- I
14 could talk to you about that if you want all the gory
15 detail.

16 Q. We started off saying we was going to be
17 brief. Anyway, just if we, using your word, turn SBC
18 loose in the state of Missouri and award them competitive
19 classification, is it your feeling that that would give
20 SBC a greater advantage over the rest of the competition?

21 A. I think it could give them an advantage
22 over competition, but my primary reason is because of the
23 protection of ratepayers. You have customers in areas
24 that they don't have the types of competitive choices that
25 ensure that they're not going to be charged prices that

1 are too high once you let them go. That's my primary
2 reason, the level playing field.

3 Q. Don't you also think that the competitors
4 as well as SBC is looking for where you can -- where you
5 can pick the most cotton in the shortest period of time in
6 your largest city, like in Kansas City and St. Louis? So
7 what's going to happen? We're dancing around the flag
8 here.

9 A. I absolutely agree with you that the
10 competitors and Bell alike have a primary incentive to
11 look for the best customers in the most populated areas.
12 The problem is, is that you end up with cost shifting from
13 other areas and other customers that don't have the same
14 kind of choices, and so their rates are not necessarily
15 protected.

16 So if you're looking at, you know, the big
17 customers in the most populated exchanges with the most
18 facilities, that's easier for me personally to take than
19 to turn them loose everywhere.

20 Q. Barb, it also causes so much confusion out
21 there in the marketplace. The average person really don't
22 know from day-to-day what they should choose and what's
23 best for them. I sit here today as a consumer myself and
24 don't know exactly what I should put in my house because
25 it's changing. If I go to Sprint, I get one thing. If I

1 go to SBC, I get something else. And to me that's what
2 competition is all about. It's just like me going down to
3 buy a set of tires for my truck. I'm looking for quality,
4 but I'm also looking for a price.

5 A. I agree with you. In my opinion, the
6 difference is that if you're going to look for tires on
7 your truck, how many different places can you go in town
8 to get tires for your truck, and do you feel pretty
9 confident that those tires are going to be the same and do
10 the same job? There's more variety.

11 In telecommunications at this minute point
12 in time, I don't think that you can feel as confident that
13 you have the same variety and same quality in many areas
14 of the state.

15 COMMISSIONER APPLING: Thank you very much.

16 JUDGE RUTH: Thank you. Commissioner --
17 I'm sorry. Were you finished?

18 COMMISSIONER APPLING: Yes.

19 JUDGE RUTH: Commissioner Gaw?

20 COMMISSIONER GAW: Yes.

21 JUDGE RUTH: Would you like to ask some
22 questions --

23 COMMISSIONER GAW: Yes.

24 JUDGE RUTH: -- of this witness?

25 COMMISSIONER GAW: Yes.

1 JUDGE RUTH: Please proceed.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. Ms. Meisenheimer, you say you live in the
4 country?

5 A. Yes, I do.

6 Q. You don't live in town somewhere?

7 A. I live in a town, but it is in a very rural
8 area.

9 Q. Oh, okay. So you don't really live in the
10 country country?

11 A. Oh, I don't know. I joke that I live one
12 block from the middle of town and one block from the edge
13 of town.

14 Q. I've been to a few towns that are kind of
15 like that.

16 A. You've probably been to the town I live in.

17 Q. Yes, I think I have. Well, if you're
18 thinking about some of those residents out in the rural
19 parts of the state, would you compare for me their access
20 to the outside world in a telecommunications sense to
21 somebody that might be living in St. Charles?

22 A. Yes. Primarily it -- I think that a
23 significant difference is how do you get to the customer,
24 how many options does the customer have for getting
25 service. Now, certainly customers have access to things

1 like, for example, satellite. The town I live in, I could
2 get a satellite option. The problem with that satellite
3 option where I live is that as soon as you get a good
4 thunderstorm, the clouds block the signal. And so if I
5 had Internet or phone service or something like that, it
6 wouldn't work. And that's important if you need emergency
7 access.

8 Cable, cable's an option in lots of areas.
9 Unfortunately cable only extends out so far. The
10 economics of laying the coaxial cable, just like the
11 economics of laying a telephone loop to customers' homes,
12 is that density. If you have high density, it makes it
13 cheaper. So cable generally tends to be more available in
14 urban areas.

15 The basic telephone network itself, if you
16 live a certain distance from the central office, that is,
17 if you live within about 18,000 foot of the central
18 office, then you can get higher speeds of service because
19 of the -- if you will, the impediment that exists on the
20 telephone line. And so people that live in rural areas,
21 and in particular, let's take it on out all the way to the
22 farm. I actually presented technology on the farm for the
23 Department of Agriculture Extension Center.

24 They are having an incredibly difficult
25 time trying to find ways to expand the economic

1 development to rural areas, and key to that I believe is
2 that you don't have the same access in rural areas to the
3 facilities that get you all these great bells and whistles
4 that technology can offer to us.

5 Q. All right. If we're looking at -- do you
6 believe that one of the -- one of the concepts in the '96
7 Act was that there should be -- before a price cap company
8 is declared competitive, there should be sufficient
9 competition to control prices in a similar way to what
10 regulation controlled the prices under price cap?

11 A. I believe that that was what was intended
12 by the 1996 Telecommunications Act, as well as
13 specifically Section 392.185, part 6 of the Missouri
14 statutes, which says to -- a purpose is to allow full and
15 fair competition to function as a substitute for
16 regulation when consistent with the protection of
17 ratepayers and otherwise consistent with the public
18 interest. I think it envisioned that where competition
19 protects consumers in an effective manner, then you can
20 rely on it. I think this says that where it doesn't, you
21 can't.

22 Q. I appreciate you bringing that particular
23 subsection up, because I have -- I believe that in trying
24 to interpret this chapter, it's important to weave all
25 these parts together, and that's just one part of it. I

1 guess what I -- I'd ask you to give me your perspective on
2 a couple of things. One is, does it strike you as being a
3 little different than normal discussions on regulation
4 versus competition that that section is worded that
5 competition -- when competition may act as a -- these
6 are my words -- surrogate for regulation rather than it
7 being -- than the phrasing being the other way around?

8 And what I'm getting to, it seems that I've
9 heard in regulatory discussions before that regulation
10 acts as a surrogate for competition, that that was part of
11 the reason for regulation coming about when competition
12 didn't exist. Have you heard that general statement made
13 in regard to regulatory theory?

14 A. Yes. From an economic perspective, the
15 primary reason to use regulation of natural monopolies,
16 and this is -- this is what I teach.

17 Q. Okay.

18 A. As well as, you know, having a background
19 in my own education on it, the primary reason to regulate
20 natural monopolies that provide a necessary service to
21 people in terms of their health, welfare and meaningful
22 participation in society is that the economics of
23 providing certain services makes them such that customers
24 are captive. And so in that sense where it's a necessary
25 good or service as telecommunications is, then it becomes

1 imperative to ensure that regulation would protect
2 consumers.

3 Now, as you -- you used the term surrogate,
4 that the statute uses the term substitute. I find them to
5 be, you know, similar. This is -- I believe that from an
6 economic perspective where competition develops
7 sufficiently, that's when you can trust it to no longer
8 require the regulation that had in the past protected the
9 public interest.

10 Q. Well, okay. And just in -- there's always
11 discussion whenever we're into this topic about what the
12 Legislature intended in '96, and I always find it curious
13 that a lot of people have opinions of what the
14 Legislature's intent was. It's very insightful to me to
15 learn about what the Legislature intended in '96, by the
16 way. But when I look at -- when I'm trying to figure this
17 out, if I read that -- if I read sub 6, allow full and
18 fair competition to function as a substitute for
19 regulation and when consistent with the protection of
20 ratepayers and otherwise consistent with the public
21 interest, taken by itself it sort of -- would you -- I
22 mean, I find it difficult just reading that section alone
23 to come up with specifics of what that means. Do you
24 understand what I'm saying?

25 A. I agree. I think that is why the

1 Commission has the discretion with guidance to determine
2 when does that occur and when doesn't it.

3 Q. Well, here's -- if I look at the re--
4 the -- some of the other portions of the chapter, the
5 Legislature put into effect certain protections of
6 ratepayers with the '96 Act, did it not?

7 A. Yes.

8 Q. And among those protections was something
9 called price cap?

10 A. Yes.

11 Q. That price cap provided rate caps for basic
12 local service for one?

13 A. Yes.

14 Q. And that tied the basic local prices to a
15 particular index or indexes?

16 A. Chosen by the companies.

17 Q. Which were what?

18 A. One was the Consumer Price Index, the TS,
19 which is I believe what the companies have chosen.
20 Another might have been a Producer Price Index. I could
21 find that for you if you'd like me to.

22 Q. That's okay. It's in the statute.

23 A. Yes.

24 Q. So if -- and then in addition to that on
25 other services that were not basic local, they were tied

1 to this 8 percent maximum cap?

2 A. Yes.

3 Q. So within that framework, do you think it
4 is at least possible that the Legislature gave the
5 Commission some clues of what it felt was appropriate
6 protection for ratepayers in regard to pricing?

7 A. Well, in that a cap was adopted --

8 Q. Yes.

9 A. -- from an economic perspective, that leads
10 me to believe that there -- it could have been viewed as
11 potentially going higher, and therefore, the cap was
12 necessary. And that's consistent with the concept of
13 ensuring that competition acts as a substitute, a good
14 substitute before allowing a carrier the discretion to
15 price above what that cap would otherwise provide.

16 Q. All right. If -- now, there was testimony
17 earlier regarding whether or not basic local service was
18 in the opinion of at least one SBC witness priced below
19 cost. Do you remember that?

20 A. Yes.

21 Q. Were you here?

22 A. Yes, I was here.

23 Q. And I want to ask you first of all whether
24 or not you agree with Mr. Unruh's opinion about whether
25 basic local is priced below cost?

1 A. No, I do not believe it is, if you take
2 into account an appropriate allocation of costs among all
3 the services that are provided over the facilities.

4 Q. All right. And I'm not trying to say one
5 way or the other whether SBC is correct or incorrect or
6 you're correct or incorrect. It just -- you're telling me
7 from your standpoint you have a different opinion?

8 A. Yes.

9 Q. And you base that opinion upon what? I
10 think I asked Mr. Unruh the same thing.

11 A. I base it on a number of things. No. 1, I
12 actually developed cost studies within the context of
13 previous -- a previous case before this Commission.
14 Our office also contracted with a national expert to
15 determine -- it was in the context of access and a request
16 for rebalancing and the Commission -- I think it was the
17 Commission investigation of the cost of access.
18 Specifically, I believe that that national expert
19 developed for our office information on whether they felt
20 that the price of basic local service was above or below
21 cost.

22 Missouri is not the only state where this
23 issue has come up. There are regularly disagreements
24 about how to allocate the costs fairly among services.
25 Many decisions historically over whether it's fair that

1 certain services should get a free ride on facilities
2 while the basic local customer's saddled with the entire
3 cost of the loop, which is the primary cost of the
4 telecommunications network for a local carrier. So this
5 is an issue that there's been disagreement on. I've been
6 around for nine or ten years, nine years, but this goes
7 back even further based on my review of old cases.

8 Q. All right. And there's -- there are many
9 opinions about how to allocate those costs, is what you're
10 telling me, along the telecommunications lines when you're
11 determining what -- what's attributable to local and long
12 distance and everything in between?

13 A. Yes. And we have a variety of differences
14 on what costs are we talking about; incremental cost,
15 fully allocated cost? So yeah, I don't think that that's
16 something that we're going to agree on in this context.

17 Q. You would agree that there are cost studies
18 that you've seen out there that would say that Mr. Unruh
19 is correct if that cost study were accepted, that the
20 price of local basic in Missouri for SBC is priced below
21 cost according to maybe those cost studies?

22 A. Yes. I've seen many cost studies that
23 attribute the entire loop to basic local service, which it
24 shouldn't be, and they come up with the conclusion that,
25 in fact, basic is priced below its cost. I don't agree

1 with those.

2 Q. And you have seen and worked on yourself
3 cost studies that would say just the opposite?

4 A. Yes, I have.

5 Q. All right. So if I were -- if I were
6 looking here -- and first of all, let me ask you this:
7 Those cost studies that you mentioned, are they in any of
8 the cases or have they been filed in any of the cases that
9 have been in front of this Commission?

10 A. Yes. You've had cost studies submitted to
11 you in many cases. The USF case is one that comes to mind
12 where you had -- and that actually, I believe, was in four
13 different hearings, all through a span of years, you got
14 various versions of cost studies and allocations and
15 recommendations. There's also the investigation, the
16 access.

17 Q. Would you be able to provide at least a
18 partial listing of those cases where those -- where those
19 cost studies were -- were accepted into evidence?

20 A. Yes, I would be happy to provide at least a
21 partial listing. And if you would like, I would be
22 willing to see if any of the other parties had case
23 numbers to add to the list that I might recommend.

24 Q. Sure. That would be great.

25 A. Because they may -- they may have -- they

1 may remember some that I've forgotten.

2 All right. Thank you. And, Judge, thank
3 you.

4 JUDGE RUTH: I am writing down that this
5 would be late-filed Exhibit 50, and I'll put that Public
6 Counsel is responsible for filing the document but that
7 you may be checking with other parties for additional
8 information.

9 BY COMMISSIONER GAW:

10 Q. Mr. Unruh I believe -- were you here for
11 his entire testimony?

12 A. I might have missed little snippets, but I
13 got much of it.

14 Q. Okay. Do you recall Mr. Unruh testifying
15 about the -- that one of the inhibitors for SBC raising
16 its prices if they are declared to be competitive would be
17 political pressure or something to that effect?

18 A. That was one. And I believe they also made
19 some claim about that it would be difficult for them to do
20 billing or, you know, figure up the percentage differences
21 and things like that. I remember the two lines of
22 discussion.

23 Q. Do you believe that in -- do you have an
24 opinion in regard to whether or not in 1996 -- first of
25 all, were you around in '96 at the Public Counsel's

1 office?

2 A. January 1st, 1996 was my first day of work
3 with the Public Counsel's office.

4 Q. Were you involved in observing the
5 legislation when it was being worked on in '96?

6 A. I had some exposure to the process,
7 limited. I was still fairly new, but I was involved in
8 discussions and asked about certain things related to it
9 by other Public Counsel Staff members.

10 Q. In looking at what's in the statute, would
11 it appear to you that the Legislature had concern about
12 whether or not changes in the regulatory oversight under
13 the '96 Act might cause significant changes in the price
14 of local basic service for consumers in the state?

15 A. Yes. In looking at it, as well as just
16 from an economic perspective, I would have believed those
17 were valid concerns.

18 Q. All right. And would one of those things
19 that would be indicative of that be that price cap
20 language in regard to control of local basic rates?

21 A. Yes.

22 Q. All right. Do you think that this
23 Commission should be conscious of the Legislature's
24 language regarding local basic rates in the price cap when
25 looking at whether there is sufficient competition in a

1 particular exchange to release price controls on in this
2 case SBC by declaring the exchange to be competitive?

3 A. Absolutely.

4 Q. Can you explain any of your thoughts in
5 that regard?

6 A. I believe that the protection afforded by
7 price caps, although in my opinion not going far enough to
8 protect consumers --

9 Q. I understand.

10 A. -- is like the -- really the primary
11 protection, the only protection of significance for
12 consumers in areas that do not have effective competition
13 present. And I think that if you look to the industry,
14 based on just my knowledge of how the network works and
15 also in terms of what's evidenced by mergers and things
16 like that that we see occurring in the telecommunications
17 industry, that it is clear that large portions of the
18 telecommunications network are still subject to economies
19 of scale and scope to a degree that competition will not
20 necessarily flourish in all areas to the same degree.

21 And I think that the statute was designed
22 to let it -- to let it act as a substitute. Just as it
23 says, let it act as a substitute where there is sufficient
24 competition to ensure that protection, but then strictly
25 also would prohibit allowing it from being turned loose,

1 if you will, in areas where that competition is not going
2 to work in the interest of the ratepayers and the public
3 interest in general.

4 Q. All right. Now, let's get more specific
5 with Public Counsel's position in regard to where you
6 believe sufficient competition does exist to act as a
7 control on prices or in a way that would be a substitute
8 for the regulation that currently exists in that exchange.

9 You have -- you have listed those exchanges
10 where you think that there may be sufficient competition
11 in regard to business. And I want to ask you, first of
12 all, how does that list compare with the list that Staff
13 has?

14 A. I believe that the Staff has a few more
15 exchanges listed than I came up with. Let me see if I can
16 find that.

17 I don't have the surrebuttal of the Staff
18 witnesses to see the revised list. If someone has a list
19 of positions or the Staff's positions, I could review them
20 very easily.

21 Q. People are looking for it, I see. Do you
22 have that now, Ms. Meisenheimer? Give you time to look at
23 it.

24 JUDGE RUTH: Why don't we take a short
25 break now. We have been on the record for quite a while.

1 That will give you a minute to look at that. We'll be off
2 for 10 minutes. That means at 10:35 I am starting back.

3 Thank you.

4 (A BREAK WAS TAKEN.)

5 JUDGE RUTH: We're back on the record now.
6 We took a short break, and we are ready to continue some
7 questions from the Bench. Commissioner Gaw?

8 COMMISSIONER GAW: If I can remember where
9 we were.

10 JUDGE RUTH: You were asking
11 Ms. Meisenheimer to review a document and answer a
12 question.

13 BY COMMISSIONER GAW:

14 Q. Do you remember what we were talking about,
15 Ms. Meisenheimer?

16 A. Yes. You had asked me what was the
17 difference in the exchanges --

18 Q. Yes.

19 A. -- that the Staff found where they thought
20 there was effective competition --

21 Q. Yes.

22 A. -- versus the ones that I had identified as
23 potentially facing effective competition.

24 Q. Yes. Go ahead.

25 A. Okay. The Staff -- the Staff's list

1 includes Harvester. Mine does, too. And these are all
2 for business services, none for residential. So Harvester
3 is on both the Staff and the list that I provided. Fenton
4 is as well. Chesterfield is on both. Springfield is on
5 both. There was a change that I made to my testimony.
6 I'm not sure if you were in the room yet. I added
7 Springfield. That was an oversight on my part. I just
8 didn't include the exchange name.

9 Q. All right.

10 A. So Springfield's on both. Kansas City and
11 St. Louis, it's my understanding that SBC for business has
12 these two exchanges, and so it may be the Staff was simply
13 reaffirming what they had found in the past.

14 Q. Okay.

15 A. I didn't put them on my list. We're not
16 contesting those.

17 Q. All right. Is that it?

18 A. No. Valley Park is on both. I'm writing
19 on your copy. Manchester is on both.

20 Q. Okay.

21 A. I have Greenwood. The Staff does not.

22 Q. All right.

23 A. The Staff includes St. Charles,
24 Marionville, Pond, Eureka, Imperial, High Ridge, and
25 Maxville.

1 Q. Okay.

2 A. None of which of that group have I
3 included.

4 Q. All right. Let me -- are you done, first
5 of all?

6 A. Yes.

7 Q. Okay.

8 A. And those are all -- all for business.

9 Q. All right. And that's all I want to talk
10 about right now. I'll get to the residential. So help me
11 to understand what your criteria was to determine that
12 sufficient competition existed to act as a substitute for
13 regulation.

14 A. Would it help if I also point out where I
15 think there might have been some differences what the
16 Staff and I did?

17 Q. Sure.

18 A. Okay. I looked at a number of factors. I
19 conducted an evaluation in the previous Southwestern Bell
20 case, and some of the things that I think are relevant to
21 look at include some evaluation of market share. And I
22 know that lots of parties have had lots of different
23 opinions about the relevance, but I might point out to you
24 that Southwestern Bell, as well as the Staff, as well as
25 Public Counsel, provided you line count information in a

1 sense that gives you the idea of market share.

2 Q. All right.

3 A. Okay. So I looked at that. One of the --
4 one of the key differences, I think, between the Staff's
5 evaluation and my own evaluation and what might lead to
6 the differences that you primarily see between the
7 exchanges we recommend or we acknowledge could potentially
8 have competition, effective competition, is that the Staff
9 seemed to me to focus more on the existence of a
10 facilities-based carrier.

11 Q. Yes.

12 A. They focused primarily on the existence of
13 facilities-based, fully facilities-based provisioned
14 lines. And I don't limit in the -- to the same extent the
15 significance of other types of competitive lines in the
16 line count analysis and development of the HHI that I
17 presented.

18 Q. All right.

19 A. And would you like to know why.

20 Q. Yes, I would.

21 A. Okay. In part, it comes from my background
22 and experience. The FCC calls things that are both
23 provisioned over a company's own services exclusively over
24 their own services, as well as things that are provided
25 through unbundled network elements, they consider them all

1 to be facilities-based. Okay. And since I have had some
2 experience with issues at the federal level, that's kind
3 of where I tended in my analysis. And so I think that the
4 FCC has really a broader perspective of the value of being
5 able to take piece parts of other carriers' networks and
6 use them in a manner that would produce effective
7 competition.

8 Now, I'm being in a sense true to the
9 analysis isn't my -- do I feel the strongest about
10 facilities-based provisioning over a carrier's own
11 independent network? Absolutely. But is there some
12 recognition that other forms of competition have some
13 relevance? Yeah, I think so. Also resale.

14 Now, I -- I do agree that given that
15 there's only a marginal difference between retail rates
16 and the rate that's charged to the CLEC that, you know, I
17 don't feel like there's a lot of competition just in the
18 margin, but it is some level of competition.

19 And initially the belief was that a number
20 of carriers were going to come in and provide resale to
21 get their -- to get a toe hold, and then they were going
22 to move to UNE-P, and then ultimately they would move to
23 facilities-based. And in certain areas I can't disagree
24 that that's happened.

25 Q. Okay.

1 A. So I tend to use a broader measure. Now,
2 ultimately the 9 percent that the Staff used --

3 Q. Yes.

4 A. -- I'm not familiar with anything that
5 supports 9 percent. I am familiar with things that
6 support a larger number, and I think that I talk about
7 some of that in my testimony, about the FCC and when it
8 found the market was dominated. I talked about that in my
9 testimony a little bit.

10 Q. Right.

11 A. And so that using the broader context of
12 competition, put those together, and I came up with a list
13 that I don't feel is terribly dissimilar to what the Staff
14 did.

15 Q. All right. And give me just a -- if you
16 can, briefly, an understanding of how that analysis
17 worked, the analysis that caused you to conclude that
18 these particular communities should be classified or could
19 be classified as competitive.

20 A. Okay. I relied on information that was
21 provided by Southwestern Bell. I have experience from the
22 previous case, and it was a nightmare and not very
23 accurate in terms of gathering independent data in total
24 for all carriers. Very contentious.

25 And in this case, based on all the things

1 that I considered, I didn't feel that it was necessary to
2 do -- to put forth the position that I was comfortable
3 with. So I did look at what Southwestern Bell provided,
4 and, in fact, used it. I used it to create a floor which
5 I believe was a conservative estimate of the level of
6 competition in the exchange, given that you include some
7 recognition of UNE-P and some recognition of resale. And
8 then I compared that to what I know to be various measures
9 of market concentration and what's been used elsewhere as
10 kind of a guide to where is there competition or effective
11 competition or a lack of concentration.

12 I also looked independently at the annual
13 report data that's kept on file at the Commission. I gave
14 that some weight. I don't think -- well, in my opinion,
15 I'm not sure that I used it as extensively probably as the
16 Staff did. However, hearing Mr. Peters in the way that he
17 used that information, I thought that that sounded
18 reasonable, just as a confirmation that, in fact, where
19 SBC had reported lines, that we had something to back that
20 up.

21 I am aware that there are cases in the
22 reporting of the annual report line counts. One example
23 is, I think, MCI at one time reported numbers in their
24 interexchange annual report as opposed to their CLEC
25 report. And so I would have some concerns about, did you

1 miss any, you know, were there cases where some were
2 missed? But I think you asked Mr. Peters for additional
3 information --

4 Q. Yes.

5 A. -- that would identify is there anywhere
6 where that happened or could have happened. And then, you
7 know, you may want to follow that up by asking a further
8 question after you have a chance to review what you've
9 asked for.

10 Q. All right. So when you're looking at all
11 this information that you looked at, how much of this
12 was -- was formulary in determining an outcome, how much
13 of it is just you're looking at the information and coming
14 up with more of a subjective conclusion?

15 A. I did come up with a number, and I felt
16 that that was a good place to start in the considerations.
17 In the broader context, I made some adjustments, in
18 particular for the Farley exchanges. The Farley exchange,
19 if you did it strictly on the market share, it was --
20 would have had a higher CLEC market share -- or let me try
21 again -- a lower SBC floor for the market share. So it
22 would have fallen in my group if I'd only relied on this
23 HHI analysis, which I did not.

24 The reason that I took Farley out was
25 because I looked at Farley, and it seemed to me that

1 Farley in the data that I present in 4.1, the Schedule
2 4.1, you can see that Farley has a fairly low rank in
3 terms of how populated is the exchange.

4 Q. All right.

5 A. And I found that I was not entirely
6 comfortable with that there weren't just like maybe a high
7 concentration of lines to maybe a few customers. So I
8 didn't -- I didn't have that same comfort level, if you
9 will, as I would in a case where there were more lines in
10 an exchange to look at where the pool was bigger, if you
11 will.

12 So that is one reason. And SBC bears the
13 burden of proof in this case to demonstrate, and so I just
14 felt like I wasn't there yet on that one in terms of this
15 line count and market share analysis.

16 Then with Greenwood, I noticed that the
17 Staff excluded Greenwood after having once considered it,
18 and I looked at that, and I thought about it. I didn't --
19 I didn't take it out, and the reason is because it seems
20 to have significantly more lines and significantly more
21 that are facilities-based, and so I left it in.

22 You know, is this an exact science? I
23 don't think we can claim it is. So there's going -- I
24 think it's reasonable to expect there to be some level of
25 difference between what the Staff came up with and what I

1 did. We have a slightly different methodology.

2 But -- so that was where I started. I also
3 did consider, you know, the availability of wireless to
4 some degree. I know that wireless is generally a better
5 quality service in a more urban area, and so that factors
6 in in my thought process.

7 Q. When you say better quality service, better
8 than what?

9 A. Better than it might be in a more rural
10 area, or even a -- you know, like we could talk about
11 Mexico, Missouri. In Mexico, Missouri, for example, I
12 don't really think that the services or the providers that
13 Mr. Unruh identified -- well, he's got two listed, I
14 think. I don't think one of them is really there yet,
15 although it might intend to be.

16 You know, so I -- in terms of just the
17 signal quality, that makes sense to me, because I drive up
18 Highway 15 which goes out of Mexico, and, you know, you
19 get spots where you can't hear. I think you get those in
20 coming down through the river bottoms to Jeff City.

21 And so just in general, I think that in
22 more urban areas, the wireless technologies seem to do a
23 better job. There are still issues with 911 and issues of
24 number portability
25 and --

1 Q. How -- how much credit did you give to
2 wireless and to VOIP in doing your analysis? Is there --
3 was there a mathematical number that you applied when you
4 were doing your check? Was it just something that added
5 on in -- if something was close and you felt like there
6 was significant wireless service because it was a more
7 urban area, that the signal might be better and better in
8 the individuals' homes? Help me to understand what you
9 did there.

10 A. I have a math background, and it would make
11 me very happy if everything worked out well and there were
12 one neat clean answer. But the truth of the matter is, I
13 don't think there's a single formula that you can apply to
14 come up with an answer to this question that you're
15 considering. And so I think that's why you've -- that's
16 why there are analysts is because there are differences
17 and many ways to look at the same problem, the same issue.

18 And so I did as you -- consistent with what
19 you just described, I looked at the numbers. Had there
20 been a case that was kind of on the border and I felt that
21 it was likely there was a good presence of wireless
22 carriers, I would have then gone towards saying that I
23 felt more comfortable that there was effective
24 competition.

25 VOIP is, in my opinion, an interesting

1 technology. It will be interesting to see how it
2 develops. In terms of being a substitute for basic local
3 service, it's not there.

4 Q. And can you fairly briefly tell me why you
5 think that's the case?

6 A. Yes. And I will try to be really brief.

7 Q. Thanks.

8 A. I reviewed -- you know, I went to the VOIP
9 websites, and there are a couple of things. No. 1, I
10 can't even get VOIP as a stand-alone service from Vonage
11 which stands for voice over net age, so Vonage is a
12 perfectly good pronunciation of that.

13 Q. I'm glad to know that.

14 A. I reviewed -- No. 1, I mean even in their
15 service contracts they say you have to subscribe to
16 high-speed Internet to get them at all. So I can't call
17 Vonage on the phone and say, I want your service, and be
18 able to get it in a one-stop shop. I can't get it.

19 No. 2, I looked at the service contracts,
20 and not just for Vonage. I looked at a number of wireless
21 carriers. 911 service, while various carriers provide
22 some type of 911 service, it is not the same thing as
23 traditional 911 service as we know it from all these
24 carriers. And, in fact, I found a couple of them where
25 they specifically say in their terms and conditions that

1 you should have some other methods of getting 911.

2 Why? Because No. 1, the power could go
3 out. Local telecommunications carriers in the state of
4 Missouri are required to have backup power for their
5 switch facilities so the network does not go down in a
6 natural disaster or, you know, just something like
7 happened up in Iowa with the power all going off.

8 So there is network backup, which these
9 providers are not required to have. There's the issue of
10 911 service I've already talked about, so I won't go into
11 it because you said brief.

12 Q. Thank you.

13 A. Number portability. I specifically found
14 one contract where it says, well, we will -- we will be
15 willing to port your number back once your bill is paid in
16 full. And I don't even know if -- you know, if there were
17 a billing dispute with that account. So it's not clear to
18 me that if a customer switches from a landline carrier to
19 a VOIP provider, that you can even get your number back to
20 come back to the landline if you wanted to. So that for
21 me is an issue. Portability is an issue.

22 The VOIP does not necessarily provide you
23 with the access to some X11 dialed services, 211, 511, in
24 the same manner. And also I was talking about, I guess,
25 the VOIP signal quality to some extent when I talked about

1 the battery backup. But there are other things that can
2 be problems or cause problems with VOIP.

3 Cisco is a company that provides -- that
4 produces switching equipment. Cisco recently put out a
5 patch for what could have been potentially a problem with
6 VOIP, and that is hackers. So there are issues with --
7 with that. They're not under the same requirements to
8 provide lifeline service as is required for basic local
9 serv-- as a component or basic local service offering.

10 They're just not there yet. It's a neat
11 technology. Will it develop? Yes, I think so. Will
12 protections evolve? Probably. So I think it's something
13 to watch more in the future, and I just do not feel at
14 this time that it is an adequate substitute for basic
15 local service.

16 Q. Okay. You listed some exchanges earlier
17 that Staff found to be appropriate to be declared
18 competitive that you did not. I think -- and I don't know
19 if I've got this list exactly. Maxwell, High Ridge,
20 St. Charles, Marionville, Pond, Eureka and Imperial. I
21 may have left out some. Is that --

22 A. Did you get Manchester?

23 Q. Manchester I did not. And what about
24 Valley Park?

25 A. Valley Park we both have.

1 Q. Manchester I didn't have. So tell me why
2 you did not feel that group was appropriate to be declared
3 competitive.

4 A. Those were not ones that -- I mean, we did
5 a different type of analysis to get where we got. I can
6 look at some of those and see whether anything, you know,
7 just is a glaring concern for me, if that would be
8 helpful.

9 Q. Did you -- was there a reason why that --
10 was there a common reason why those exchanges in your mind
11 should not be declared competitive, if you look at Staff's
12 recommendation to declare them that?

13 A. Well, I think it's primarily a difference
14 of what standard did we use in terms of the component of
15 the analysis that dealt with market share and the HHI
16 calculation. I think that was probably the contributing
17 factor that created the difference. I -- I based it on a
18 standard that I know to have been used previously. I did
19 use a wider set of considerations, and the ones that Staff
20 identified that I didn't, they didn't make the cut in that
21 analysis.

22 Q. Okay. Now, let's just go on to
23 residential. Did you find any residential exchanges to be
24 recommended for competitive status?

25 A. No, I did not.

1 Q. And Staff, did they?

2 A. No, not to my knowledge. I don't think
3 they did.

4 Q. Okay. And can you tell me why, why not in
5 your analysis?

6 A. No. 1, I didn't feel like there was
7 sufficient existence of competitive alternatives. I was
8 unpersuaded after I did review SBC's information that
9 they -- that they reported. I found a number of
10 inconsistencies, or they might have just been plain errors
11 about where carriers are and what they offer. Some of
12 it's kind of surprising to me, since I think a lot of
13 these CLECs when they go out of business, the customers
14 end up back with Southwestern Bell.

15 So I would think that some of them they
16 would know that some of these carriers weren't even
17 certified anymore or weren't operating, but they're in the
18 presentation.

19 Now, it may be that it's just different
20 parts of a big company weren't talking to each other or
21 something. I'm not sure. But I don't find the
22 information to be persuasive. I pointed out some errors
23 in my testimony and have found more since. The Mexico
24 with Nextel example was one. Also Meta is an exchange
25 where SBC said that -- they said Nextel offered service,

1 and I went to the Nextel website and typed in the zip code
2 which you can get from the post office website search
3 stuff and typed in the Meta zip code -- there's only one
4 of them -- and came up saying there wasn't service in my
5 area.

6 Now, you know, could it be that there are
7 some differences about where a carrier reports on its
8 website that it provides service versus where it's
9 actually providing service? There could be. But from a
10 consumer perspective, does the consumer have a choice? If
11 I go to that website wanting that service and they tell
12 me, sorry, we're not there, I'm giving up. I don't have
13 effective competition to choose from in my area.

14 So just that one wireless example is one,
15 but I showed in this schedule to my testimony, I provided
16 it in the directory listings. Craig Unruh had a nice
17 thick stack of attachments that purported to show where
18 competitive offerings were available. And, you know,
19 granted, telephone books get out to date -- get out of
20 date and things like that, but I have to tell you, I was
21 -- I was very disappointed to see the differences between
22 how many carriers appeared to be listed in those
23 directories versus how many I found that could -- were
24 actually offering service there.

25 There were only a few, in most case -- and

1 prepaid was very prevalent. And prepaid is not a
2 substitute for Southwestern Bell's basic local service.
3 So for a residential customer, I mean, how many times do
4 you have to call and get no answer or someone that says,
5 oh, we don't provide service there or your rate's going to
6 be 50 to \$70 before you come to the conclusion that there
7 really isn't competition in your area and for you to take
8 advantage of.

9 Q. Okay. And you have a schedule that
10 responds to Mr. Unruh's schedule; is that correct?

11 A. I have a couple. I have one which is BAM
12 rebuttal 1A and 1BHC. What I did is I took Mr. Unruh's
13 directory pages that were in his testimony, and I gave you
14 little boxes beside it showing what I found when, you
15 know, I called them or -- also I had some help from
16 someone else in my office that was working under my
17 supervision, and they did some of this work as well.

18 And so between us we looked at -- we
19 looked, No. 1, could we get ahold of a carrier. We looked
20 at, well, what did their annual report show, and I had
21 done this in the previous case and updated for this case,
22 because I think it's also helpful for you to think about
23 where were we. The first time were a lot of unknowns. We
24 didn't know whether competition was really going to
25 develop and whether these carriers were really going to be

1 there. We had high hopes.

2 Well, what I see in the evolution of what's
3 truly out there in many exchanges is that has evolved into
4 a few, if any, choices and a lot of prepaid, which is not
5 meaningful competition for a reasonably priced alternative
6 basic local service. I also provided another schedule
7 which I updated in my surrebuttal, and some of the
8 information is very similar.

9 But in the first case I went through and
10 actually tried to compare information on the CLECs that
11 was available from the Staff at that time to who was out
12 there actually providing, because, you know, lots of
13 carriers come in and they get certified and then they're
14 supposed to get tariffed and then they're supposed to
15 offer services. Well, it doesn't really work out that
16 way, and it's kind of hard to get information and keep it
17 updated all the time.

18 And so I tried to go through and find out
19 to the extent possible are those carriers really there and
20 what's the extent to which they actually provide service?
21 Do they provide service to residential? Found a lot of
22 carriers that just provide service to business only and
23 not to residential at all.

24 And so I took all of these things, the
25 weight of all of these things into consideration as I

1 said, no -- no set formula is going to tell you where
2 effective competition is. I looked at lots of things, and
3 so I was comfortable with the -- with the ones I listed.

4 Q. All right. Let me ask you this, and I'm
5 going to try to wrap this up. What is your concern or
6 what are your concerns if competitive status is granted to
7 SBC in exchanges that you do not recommend competitive
8 status be granted? What's your -- what do you think will
9 occur that concerns you?

10 A. Well, I'm very concerned that at least for
11 some period of time, until such time as a party like
12 Office of Public Counsel does a new investigation,
13 requests the Commission to hold a hearing to reevaluate
14 the status of competition, and then the time that it takes
15 to actually have that proceeding, get a decision
16 and move forward with changing things, that in that
17 interim period you've got a period during which if there
18 is not -- or if price caps are not in effect, then
19 customers are subject to price increases that are unjust
20 and unreasonable.

21 Q. And do you believe -- do you believe that
22 that is likely to occur or just that it might happen? I
23 mean, do you have a perspective on what, based upon your
24 experience in dealing with -- with these issues and
25 observing what's happened in other areas, do you think

1 that it's likely to happen that those rates are going to
2 increase to an unjust and unreasonable level, or do you
3 think it just might happen?

4 A. I believe that it is likely to happen in
5 some areas and for some services, in particular basic
6 local service, and primarily in more rural areas and to
7 customers who are less sophisticated in terms of the
8 extent to which they use telecommunications or are aware
9 of the options available to them.

10 Q. Explain your answer to me. Why do you
11 believe that that would be the -- those would be the
12 individuals and those would be the areas that would be
13 impacted the most by price increases?

14 A. I have heard testimony in the past -- and
15 this is my perception.

16 Q. I'm asking you for your opinion.

17 A. Okay.

18 Q. I recognize that others disagree with you
19 on this point.

20 A. Based on my experience in the cases that
21 I've been involved in, I have heard frequently claims that
22 basic local service is subsidized, underpriced, that it
23 needs to go up so that competitive offerings can be
24 offered in more urban areas so they can meet competition.

25 I heard the Bell witness that talked about

1 the packages that are offered, talking about what the
2 market will bear. And that worries me, because from an
3 economic perspective, basic local customers are -- where
4 there are not sufficient alternatives, are captive in the
5 sense that they need this service, they use this service,
6 it's important to have this service. So they have what is
7 called relatively inelastic demand for the service.

8 My -- my education tells me that one
9 primary mechanism for a firm to determine where is it best
10 for them to price services has something to do with
11 something called Ramsey pricing, and that says that you
12 price highest to the customers who are -- have the most
13 inelastic demand. Those who will pay it, you get it from
14 them to the greatest extent possible. And where there is
15 more competition, you price lower.

16 Well, is there any specific fault with
17 that? No. It's a business enterprise. You know, is it
18 something that it's important for a Commission to protect
19 those consumers from? Yes.

20 Q. Okay. And so you believe based upon that
21 theory, that those who would be most impacted would tend
22 to be those individuals who are dependent upon local basic
23 service and do not have many alternatives that are viable?

24 A. Yes.

25 Q. And who are we generally talking about

1 here, is what I'm asking you. Give me some -- give me a
2 little more specific both with the people that would
3 likely be affected, if you can, and the geographic areas
4 that would likely be affected in Missouri.

5 A. Low income customers. There is evidence
6 that for low income customers they tend to have lower
7 subscription rates. I mean, I think it's pretty
8 reasonable to assume that that has to do with cost,
9 especially since there's other evidence that says if you
10 give them sufficient support, their subscription rate
11 increases. So I view it as if you -- if something causes
12 basic local rates in areas to rise, generally low income
13 customers can be harmed by that, less informed consumers.

14 I mean, sitting here in this room, many of
15 us are pretty familiar with telecommunications technology,
16 what's available, how does it work, you know, college
17 educated, the people that tend to use those types of
18 services and be -- and to have exposure to them and the
19 means to secure them.

20 So I believe that customers who were not as
21 savvy with respect to the offerings that are out there or
22 not as comfortable with the use of technology, in some
23 cases it may be -- it may be older people. I don't think
24 it exclusively is because, you know, I think there's some
25 pretty -- I'm a hip grandma. I can get on the Internet.

1 So -- but as a general rule, I think that people that are
2 less comfortable with technology, definitely people in
3 rural areas. We've heard regularly in various proceedings
4 that rural consumers' rates are subsidized.

5 I haven't heard anybody speak a whole lot
6 about the fact that the network is a two-way network as
7 opposed to a one-way network and the bearing that that has
8 on who should share in the cost. But setting that aside
9 because we've argued that in other places, rural
10 customers. High-cost areas tend to align with rural
11 areas. I believe there would be upward pressure on
12 price --

13 Q. Okay.

14 A. -- and less availability of services.
15 There are big holes in the coverage that I noticed in
16 reviewing, you know, various wireless alternatives. I
17 think I live in one of those holes actually. It's not SBC
18 territory, so I wasn't going to raise that here, but --

19 COMMISSIONER GAW: All right. Thank you,
20 Judge. Thank you, Ms. Meisenheimer. I'm done.

21 JUDGE RUTH: Okay. Are there any
22 additional questions from the Bench?

23 Yes?

24 COMMISSIONER MURRAY: Yes.

25 JUDGE RUTH: Then you may proceed.

1 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good morning still, Ms. Meisenheimer. I
3 just had a couple more questions. You are an economist,
4 correct?

5 A. I am an economist, yes.

6 Q. Would you call yourself a free market
7 economist?

8 A. Yes. Would you like me to explain that?
9 Because I'd love to.

10 Q. No, no. I'll go ahead and ask you my next
11 questions, and perhaps your explanation will come with
12 those. Do you think that residential telecommunications
13 in rural areas should ever be declared competitive or
14 should ever become competitive?

15 A. I think that they will in some rural areas,
16 and I think that over time we will see more and more rural
17 areas have the availability of sufficient competition to
18 consider it to be effective.

19 Q. Do you think that's positive?

20 A. Absolutely.

21 Q. Do you think that will occur everywhere?

22 A. I think we need to put a time frame on it.
23 Are we talking 5 years? Probably not. Are we talking
24 10 years? Maybe.

25 Q. So you're looking at a very extended time

1 frame for certain -- some areas to become competitive; is
2 that what you're saying?

3 A. Yes. I think -- I think that there's some
4 pretty -- yes, I think there could be an extended time
5 frame for some areas. I think -- I think there have been
6 a lot of advancements in some areas. We see some
7 overbuilding of one incumbent by another. I think that's
8 a pretty hopeful sign where it occurs, but generally that
9 happens in town. We're not talking about out the 5-mile
10 country road yet.

11 Q. This is something that I've struggled with
12 over time since I've been on the Commission, the fact that
13 we have the most difficulty getting the competition in the
14 rural areas, it appears. It's always appeared to be that
15 way, and there usually is an explanation for something
16 that occurs. And the best explanation that I have been
17 able to come up with -- and maybe it's not just one
18 explanation but a combination of things -- is that if it
19 is -- if rates in an area are kept at a very low rate,
20 there's one provider and the rates are very low,
21 especially if it's costly to serve that area. It's very
22 unlikely that a competitor is going to come in and offer
23 service. Would you agree with that?

24 A. I would agree with that, and one of the
25 primary ways to break down that cost issue, that high cost

1 issue is with emerging technologies. As it becomes less
2 expensive to provide services through improvements in
3 technology or innovations like the concept of satellite,
4 if there were a way to make sure the signal would go ahead
5 and pass through the thunderhead so that your service
6 could be more reliable from satellite providers, those
7 advancements, I think it's reasonable to assume they will
8 come and are coming. It's just an issue of how long.

9 Q. Okay. But with your focus on rates and the
10 competition -- I think I hear you saying that competition
11 should never result in increased rates. Are you saying
12 that, or are you just personally opposed to increased
13 rates occurring anywhere and, therefore, opposed to
14 competition if it allows that?

15 A. Well, I think that, you know, the path has
16 been set. As a general rule, competition is terrific if
17 it leads to lower prices, more choice. Those are good
18 reasons to have competition, but --

19 Q. Competition doesn't always lead to lower
20 rates, does it?

21 A. No, it doesn't. Where --

22 Q. And then it's not good?

23 A. Where substantial economies of scale and
24 scope exist, you can't expect necessarily for prices to be
25 driven down by the existence of a competitor or

1 competition. And I -- from my perspective, where it is a
2 necessary good or service, that's why it's important to
3 ensure that regulation is there until such time as
4 technology advances to get the cost to a reasonable level.

5 Am I saying that prices under no
6 circumstances should increase? No. I didn't -- I'm not
7 saying that. Is there something the customer gets in
8 return? Is there technology that brings them a bigger
9 calling scope? We've seen wireless. It's doing that.
10 It's not quite there. Just as I said in the last case,
11 I view wireless as being offering potential. I think it
12 has -- I see more now than there was then. Just like now
13 I only see a little bit of value, if any, in VOIP, but the
14 next time I come before you, it may be completely
15 different.

16 Q. Let me ask you that, because I don't recall
17 where your stand was on wireless. What value did you give
18 wireless in terms of considering it as a competitive
19 service?

20 A. I gave it more in this case from just my
21 own -- I didn't do a formulaic. There is a formula I use,
22 there is a comparison of numbers. That's only one piece
23 of the analysis. Do I think wireless is better in terms
24 of its coverage today? Yes. I think it's made
25 improvements in terms of like the ANI being able to

1 transfer the location. Now phones are required to have
2 where is the customer for 911 purposes, whereas back then
3 I don't think that most phones did at that time.

4 Q. Okay. You had said that wireless was one
5 piece of your analysis. How important a piece of your
6 analysis was it?

7 A. Just from the work that I did, I identified
8 exchanges where I felt like there was facilities-based,
9 partially -- or I'm using the terminology of another
10 party, or some resale or resale available and not prepaid,
11 looked at those areas, and then --

12 Q. How much weight did you give it?

13 A. Well, what I was trying to say is, my
14 analysis, it can't be broken down into a numeric weight.
15 Did I consider it? Yes. Could it have made the
16 difference for me in recommending some areas from others
17 if I felt like the information on wireless that I had --
18 that had been offered as evidence was persuasive? It
19 could have made the difference for me.

20 Q. Were there any exchanges in which you
21 recommend competitive status?

22 A. Yes.

23 Q. And they were? Just tell me a number. How
24 many were there?

25 A. I don't know. Six or seven.

1 Q. Six or seven.

2 A. Well, I don't -- I don't find relevance in
3 a particular -- in the number.

4 Q. I didn't ask you if you felt it was
5 relevant. I do.

6 A. Harvester, Fenton, Chesterfield,
7 Springfield, Greenwood, Valley Park and Manchester. It's
8 on page 19 of my rebuttal testimony. Springfield I added.
9 I think you were here when I first got on the stand this
10 morning.

11 Q. And you corrected your testimony?

12 A. Yes, I did.

13 Q. Yes, I saw that.

14 A. So those are all for business. And
15 generally I was talking about multi-line business service
16 offerings.

17 Q. So you're not recommending competitive
18 status for anything other than multi-line business in
19 those areas?

20 A. Those are the ones that I identified. We
21 also had recommended that the Commission take into
22 consideration evidence presented by the competitors, and
23 so --

24 Q. Meaning what?

25 A. Meaning, you know, I wish that I could say

1 I have perfect knowledge, but I don't. And I can look at
2 some things, things that I felt were relevant, the things
3 that I have access to, but I think there's a real value in
4 the Commission also listening to the experiences of the
5 competitive local exchange carriers that have entered in
6 these areas. And so I also recommended that the
7 Commission consider the barriers to entry that were
8 presented by the CLECs.

9 And I think Mr. Idoux -- Mr. Cadieux.
10 Sorry. I was thinking -- I was talking to Mr. Idoux
11 earlier. Mr. Ed Cadieux and Matt Kohly have presented
12 testimony for you from the CLEC perspective, and I think
13 it provides a range of sizes of customers that they focus
14 on.

15 Q. Okay. But you're really -- you're not
16 indicating that you think that we should be looking at
17 protecting competitors, are you?

18 A. No. I think that the relevance of their
19 testimony is, do they face barriers to entry. And another
20 thing I felt was particularly interesting and valuable in
21 their testimony is their reaction to the FCC's
22 unbundling --

23 Q. And --

24 A. -- and impairment.

25 Q. Ms. Meisenheimer, as an economist, you are

1 familiar with contestable markets, are you not?

2 A. I have heard the term used, done some
3 reading. In fact, I think there might be some in this
4 book that I've got right up here. If you ask me the
5 question -- I may not use the same terminology. You know,
6 different economists use different terms.

7 Q. Let me just tell you what I mean by a
8 contestable market. I mean one in which a competitor may
9 not have actually begun service, but if the incumbent or
10 the only company providing a service in an area raises
11 prices to a certain level, there are those who are out
12 there willing, ready and able to come in and provide
13 service when the price reaches a level that they consider
14 competitive or consider one that would cause customers to
15 switch.

16 A. I am familiar with that concept. In fact,
17 the -- my experience with the merger guidelines and how
18 the Department of Justice views potential competition
19 might be another term, maybe a broader term than
20 specifically what you're thinking, but I could talk a
21 little bit about what the Department of Justice might use
22 in evaluating --

23 Q. Mergers?

24 A. -- whether a market is truly contestable.
25 They used it in the context of merger, but

1 just like the HHI, it's applicable to a broader set of
2 issues than simply mergers.

3 Q. Well, let's just -- let me just ask you
4 this: Are you of the opinion that the SBC exchanges in
5 Missouri, other than those that you have recommended for
6 competitive classification, are not contestable?

7 A. To various extents, I would say some are
8 contestable. I don't believe that's really currently the
9 primary --

10 Q. Let me stop and ask you for clarification.

11 A. -- consideration.

12 Q. Now, when you say some -- you believe some
13 are, you're saying some of the ones that you have not
14 recommended for competitive status are contestable; is
15 that correct?

16 A. I believe it's reasonable to say that, yes,
17 they could be. They could be.

18 Q. Um --

19 A. Would you like me to explain?

20 Q. No. I'm really not trying to get into a
21 lengthy discussion here. I'm just trying to get to the
22 points that are particularly relevant to this proceeding.
23 Let me see. I may be about finished.

24 Oh, you did make a statement earlier about
25 that your -- I think your fear of having competitive

1 status declared or a price cap regulation removed was that
2 rates could rise to unreasonable levels. Is that -- did I
3 hear you correctly, or is that an inaccurate paraphrase?

4 A. That is an accurate paraphrase.

5 Q. And is it your testimony, then, that
6 pricing up to unreasonable levels or above -- above
7 reasonable levels, let's put it that way, would not
8 incentivize competitors to come into those markets and
9 provide service?

10 A. I do believe it could provide an incentive.
11 Whether they would have the capability in a reasonable
12 time frame and given reasonable cost to get in there and
13 whittle away the excess profit or the excessive rates in a
14 reasonable time frame, that's a whole different issue than
15 simply an in-- having incentive to come.

16 Q. Okay. And let me just go back to one
17 thing. I believe when I first started asking you
18 questions just now, I think you indicated that your
19 testimony frame for believing that some rural areas in the
20 state would have effective competition would be maybe as
21 far away as 10 years?

22 A. If you want to look on the long end of what
23 I said, yes, 10 years.

24 Q. And the bottom line for that, to you, would
25 be that all of the ratepayers would be assured that rates

1 would not increase significantly; is that accurate?

2 A. I think that I also talked about getting
3 more for your money, if you will, in terms of the types of
4 services that are available. Things that expand the
5 calling scope have a significant impact on whether I think
6 that the price should reasonably be increased or not. So
7 I think that was just -- it wasn't -- it was too
8 simplified a statement for me to agree with.

9 Q. And you must not think that technology will
10 be advancing very quickly, then, in terms of services
11 available?

12 A. I have had some limited experience with
13 respect to how long does it take for standards to be
14 developed for things like -- exchanging porting is one,
15 number pooling. I mean, it takes time for standards to be
16 worked out among companies and other interested parties,
17 and I know that ten years -- you know, you chose the long
18 end of the scale that I think I said. I think that some
19 areas we actually see overbuilding. That's a very hopeful
20 sign to me. Improvements in wireless and potentially
21 improvements in delivery through satellite, electric,
22 there are a lot of opportunities. I think I said --
23 didn't I say something more like five to -- five to ten
24 years?

25 Q. And I'm saying up to. I believe I said

1 your time range was up to -- in some areas, up to as long
2 as ten years.

3 A. Okay.

4 Q. Maybe I didn't phrase it that way, but
5 that's what I meant.

6 A. I appreciate that. I just wanted to point
7 out that I didn't necessarily think it would necessarily
8 be 10 years in all the rural areas.

9 COMMISSIONER MURRAY: Okay. I think that's
10 all my questions. Thank you.

11 THE WITNESS: Thank you.

12 JUDGE RUTH: All right. I think that's all
13 the questions from the Bench. Then we will move to
14 recross based on the Bench questions. Staff?

15 RECROSS-EXAMINATION BY MR. HAAS:

16 Q. Ms. Meisenheimer, Commissioner Murray asked
17 you some questions about Skype. Can you describe the
18 sorts of services that Skype provides?

19 A. I'm not familiar with that particular --
20 with that particular name. I think that in general
21 Commissioner Murray was pointing out that Skype is a VOIP
22 provider, and as such, I am familiar based on my research
23 with the types of services that VOIP providers offer here
24 in Missouri. I could speak to that.

25 Q. Please do.

1 A. VOIP providers offer a voice over the
2 Internet service. The VOIP providers we've been talking
3 about specifically in this proceeding, some of the big
4 names that we've heard, focus on providing over a high
5 speed Internet connection, whether that be cable modem. I
6 would assume you could also reach them if you have a
7 traditional -- like a DSL line as well.

8 They offer a service that lets you choose a
9 number, and in some cases you could pay more and get more
10 than one number, and it allows you to select the area
11 where you would like to identify to be your local
12 exchange, so you're not bound by the traditional landline
13 exchange carriers of the location where you live. They
14 offer -- some offer a 911 product. That 911 product I
15 believe to be inferior for a number of reasons to the
16 traditional 911 access that is required of local exchange
17 carriers here in Missouri.

18 In terms of -- and also service quality in
19 terms of the reliability of the service during like even
20 busy periods on the network that the packet technologies
21 can have issues with how quickly because the packet
22 technology breaks the call up and sends it as little bits
23 of information, so there can be issues there.

24 But generally they offer a product that can
25 be a substitute for local service or long distance

1 service. Have I gotten where you want me to yet?

2 Q. How would a customer who has VOIP phone
3 service contact a customer who's still on POTS?

4 A. The call would originate over the Internet
5 service of the VOIP customer and may terminate to either
6 like another VOIP number or could be carried across the
7 landline network.

8 Q. Let's assume that it's going to across the
9 landline network to a receiver who does not have VOIP
10 service. Do you know for purposes of intercompany
11 compensation if that would be a local or long distance
12 call?

13 A. The treatment -- it wouldn't be under the
14 jurisdiction of the state commission, I don't believe,
15 currently, based on the FCC's treatment of VOIP. But, I
16 mean, there is certainly going to be an issue with
17 compensation between carriers for this type of traffic,
18 just as there have been issues in the past that took time
19 to work out regarding the exchange of wireless traffic.

20 We just recently had an issue with
21 exchanging wireless ported calls. I mean, many of those
22 same types of issues that have been occurring in some
23 cases, or through some cases not, I would expect similar
24 types of issues to arise.

25 Q. In discussion with Commissioners Gaw and

1 Murray, I believe you said that you had a quantitative
2 starting point or had a formula. What is your formula
3 that you used for your analysis or the starting point that
4 you used for your analysis?

5 A. Well, I -- and I think that in discussions
6 with Mr. Bub, I wasn't quite ready to call it a starting
7 point, but a part of my analysis was to look at a
8 calculation of the HHI, which is the sum of the market
9 share squared. I specifically looked at what would be the
10 floor, because I don't think we have perfect information
11 regarding the existence of competitors and the market
12 share of competitors. So the floor means that it is the
13 very lowest. It would be based on the pool of market or
14 the size of the market, the inclusion of the various
15 services that I consider as part of the market.

16 The number would go higher if you also
17 added in sums for the market shares of competitors if you
18 knew each and every one. So the concentration that I
19 provided, the estimate of concentration was a minimum. It
20 could have been higher. It could have been more
21 concentrated based on the market I looked at.

22 Q. What was the floor that you used? I'm
23 looking for a number here.

24 A. Oh, well, I did not pick a drop-dead
25 number, if that's what you're asking for. I used some

1 guidelines. There is a number that I'm familiar with in
2 terms of generally what did the FCC use when it was
3 considering whether AT&T still had dominance in the long
4 distance interexchange market. There's a number I'm
5 familiar with generally from economics that talks about
6 monopoly doesn't have to be only one provider. We can say
7 a market is monopolized if you reach a certain level of
8 market share. The HHI does have some cutoffs that
9 recommend when is a market highly concentrated versus less
10 concentrated. I'm not sure --

11 Q. I think you've given me two additional
12 descriptions of guidelines, but you still haven't told me
13 what the number was where you began your analysis using
14 any of these guidelines.

15 A. You mean, like, did I pick a number like
16 9 percent and say above counts and below doesn't? I did
17 not do that.

18 Q. For HHI, did you pick a number and say
19 above -- I'll start my analysis at perhaps 5,000?

20 A. No, I did not do that. Generally, there
21 were ranges with respect to the HHI that have been
22 identified as being highly concentrated. And I looked,
23 what were the numbers that I arrived at relative to those
24 changes. I did not look at is it 1,801 or is it 1,801 or
25 is it 1,800? I didn't do that.

1 Q. You mentioned that you are aware of at
2 least two other numeric guidelines. Do those other
3 sources start at a certain point?

4 A. There are -- once again, I would
5 characterize those more as ranges, that the FCC -- I've
6 read a couple of previous cases regarding the use of the
7 number for market dominance, and I think it was -- for
8 different services, it was used in a range.

9 Q. What's that range?

10 A. I would -- I believe that range for market
11 dominance, I need to check to make sure that if I just --
12 if I -- well, the FCC has used 60, 65 percent.

13 MR. HAAS: No further questions.

14 JUDGE RUTH: Mr. Lumley, do you have
15 questions for the witness?

16 MR. LUMLEY: No, your Honor.

17 JUDGE RUTH: SBC Missouri?

18 MR. BUB: Yes, your Honor. Thank you.

19 RE-CROSS-EXAMINATION BY MR. BUB:

20 Q. Hello again.

21 A. Hello.

22 Q. Let's go back to the part of the
23 cross-examination from Commissioner Murray. Do you
24 remember the discussion with her that you had concerning
25 ETC or eligible telecommunication carrier status for

1 qualifying for high cost support?

2 A. Yes.

3 Q. Would you agree with me that a competing
4 carrier's abilities to qualify for high cost support as an
5 ETC is tied to the underlying ILEC's ability to qualify
6 for high cost support?

7 A. Are we talking about federal --

8 Q. Yes.

9 A. -- state?

10 Q. Federal.

11 A. Federal. I believe it is.

12 Q. So you're aware that SBC Missouri does
13 not --

14 A. For -- and we're not talking about rural
15 carriers?

16 Q. No. Well, then as well. Same rules. If a
17 rural carrier would qualify for high cost support, then
18 the CLEC coming in to complete would also have the ability
19 to try and qualify. We're not talking about rural
20 carriers here. We're really talking about SBC, so I don't
21 know if we need to get into them. The next question is
22 going to focus right in on SBC.

23 A. Okay.

24 Q. So I don't know if we need to worry about
25 the rural carrier.

1 A. Okay. Then let's not worry about them.

2 And then I would say yes.

3 Q. So you're aware SBC Missouri does not
4 qualify for high cost support even though it serves more
5 high cost exchanges than any other?

6 A. Yes, based on the aggregate cost over the
7 study area, yes.

8 Q. That's because SBC requires carrier costs
9 be analyzed on a statewide basis, and that's why SBC does
10 not qualify?

11 A. I'm trying to -- based on the study areas,
12 yes.

13 Q. So we can't just point to a particular
14 exchange and say we're a high-cost area there and qualify.
15 SBC's just not qualified because it's looked at in
16 that --

17 A. In the aggregate.

18 Q. In the aggregate. Would you agree with me
19 that that explains why no CLECs sought to qualify as an
20 ETC in SBC Missouri exchanges? We're not qualified, then
21 they couldn't be qualified either and receive the funds?

22 A. I don't know. I can't speak for them.

23 Q. Okay.

24 A. I don't --

25 Q. That's fair enough. Would you agree with

1 me that if they did seek to qualify as an ETC, they
2 wouldn't be eligible to receive any funds, but they sure
3 would acquire the obligations of an ETC?

4 Maybe it might help if I restate it. Would
5 you agree with me that there wouldn't be any reason for
6 them to seek to qualify as an ETC when they would be
7 taking on the obligations of an ETC but not getting the
8 benefits of funding of an ETC?

9 A. The reason I hesitate is you're talking
10 about only high-cost support?

11 Q. Yes.

12 A. Yes, I believe that's true.

13 Q. Okay. Commissioner Murray also asked you
14 about regulation. And assuming that SBC Missouri would be
15 granted competitive classification, she asked you about
16 the regulation SBC would still be subject to. Do you
17 recall that?

18 A. Yes.

19 Q. Okay. So, for example, even if SBC were to
20 be given competitive classification by the Commission
21 here, SBC Missouri would still be subject to all the
22 requirements that are in the Telecommunications Act?

23 A. Yes, and the interpretations of those by
24 regulatory authorities.

25 MR. BUB: May I approach the witness, your

1 Honor?

2 JUDGE RUTH: Yes, but first show counsel.

3 BY MR. BUB:

4 Q. Ms. Meisenheimer, I'm going to show you
5 telecommunications statute Section 251(c) and this is the
6 section of the Act that shows the additional obligations
7 of incumbent local exchange carriers. Do you see that?

8 A. Yes.

9 Q. Do you want to take a look at that for a
10 minute?

11 A. I know what you want me to look at. I'm
12 saying this is -- this states additional obligations of
13 incumbent local exchange carriers. I was going back to
14 look for the ones that are obligated for all local
15 exchange carriers.

16 Q. This is just right above B.

17 A. Okay. I'm ready.

18 Q. Would you agree with me that Section 251(c)
19 sets out the additional obligations of incumbent local
20 exchange carriers?

21 A. Yes.

22 Q. Okay. And those would include the duty to
23 negotiate?

24 A. And potentially arbitrate.

25 Q. Right.

1 A. Yes.

2 Q. Interconnection obligations, and those are

3 251(c) (2), right?

4 A. Yes.

5 Q. And then --

6 A. All companies have a requirement to

7 interconnect with other carriers, but I agree there are

8 additional --

9 Q. Different ones for the ILECs, and those are

10 set out in 251(c) (2)?

11 A. Yes.

12 Q. Okay. It also sets out the requirements

13 for an incumbent LEC to provide unbundled access, the

14 unbundled network elements --

15 A. Yes.

16 Q. -- in accordance with the pricing standard,

17 the TELRIC pricing standards, and that's 251(c) (3), right?

18 A. Yes.

19 Q. Then 251(c) (4), the duty to resell at a

20 discount?

21 A. Yes, at a discount.

22 Q. Right. Other telecommunications carriers

23 are required to resell, but there's no requirement there

24 that they give a discount, is there?

25 A. That's true.

1 Q. There's also a requirement on ILECs to
2 provide collocation?

3 A. Yes.

4 Q. And that's 251(c) (6)?

5 A. Yes.

6 Q. Okay. None of those obligations would be
7 affected by the Commission's granting SBC Missouri
8 competitive classification in this case; is that correct?
9 We'd still have to do what the Federal Act requires?

10 A. Have to do it, yes. At what rate -- at
11 what -- it could affect the prices.

12 Q. This proceeding?

13 A. If you are given a competitive
14 classification where you raise your retail rates.

15 Q. Then the whole retail discount wouldn't
16 change, but the rate that the company would sell to a
17 CLEC, sure that would change, that would vary. But that
18 exception, there would be no change?

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

20 Q. We'd still be required to resell at a
21 discount. That wouldn't change. We'd still have the
22 requirement to resell?

23 A. Yes.

24 Q. Now, those obligations don't apply to CLEC
25 competitors, do they? Those are all ILEC duties?

1 A. That's true.

2 Q. And none of those requirements apply to the
3 wireless carriers, do they? They're ILEC duties?

4 A. Not the wireless offering, no.

5 Q. Nor do they apply to the VOIP providers?

6 A. Not for the VOIP services.

7 Q. I'd like to turn a minute to some questions
8 that Commissioner Appling asked. One of the things that
9 you expressed to him was that you were concerned that
10 there continue to be a guarantee of a minimum level of
11 service in the state?

12 A. Mr. Bub, I needed to supplement an answer
13 that I gave you earlier --

14 Q. Sure.

15 A. -- with respect to the pricing, and we
16 talked about the resale pricing. To the extent the
17 interpretation -- I'm not as confident regarding the
18 unbundled network prices.

19 Q. Unbundled network element prices?

20 A. Yes.

21 Q. The TELRIC pricing?

22 A. With respect to the negotiated and
23 arbitrated prices, but other than pricing, I was
24 comfortable with that previous answer regarding the
25 obligations that Southwestern Bell would be under that

1 CLECs are not.

2 Q. Maybe I can help on that one. For the
3 unbundled network elements that the FCC continued to
4 require SBC Missouri to provide, those would still be
5 required to be done pursuant to even negotiated or
6 arbitrated TELRIC prices. Would that be fair?

7 A. I think that's fair.

8 Q. If we could move to Commissioner Appling's
9 questions, I recall you expressing to him a concern that
10 there continued to be a guaranteed minimum level of
11 service in the state. Do you recall that?

12 A. I don't remember it in those specific
13 words, but you might jog my memory if you want to ask me a
14 question.

15 Q. With that in mind, you would acknowledge
16 that SBC Missouri is not looking for any reduced level of
17 oversight over the quality of its services here? In other
18 words, we'd still be subject to all the state commission
19 quality of service requirements even if we were granted
20 competitive classification?

21 A. For your telecommunications services, yes,
22 I would agree with that.

23 Q. And we're not looking to be relieved of any
24 obligation to serve all of our customers, are we?

25 A. I don't think you're specifically seeking.

1 I'm not sure what happens with the AT&T customers that you
2 might have out in rural areas. I don't know what's
3 happening, but I don't know that this case affects that
4 specifically.

5 Q. We haven't asked to be relieved of carrier
6 of last resort obligation in this case, have we?

7 A. As a local carrier?

8 Q. Right.

9 A. No.

10 Q. I also recall you telling Commissioner
11 Applying that one of the reasons you weren't supporting --
12 the Public Counsel wasn't supporting competitive
13 classification was that competitors really aren't there.
14 Do you recall that?

15 A. I think that's just a simplified
16 description of the answer I gave.

17 Q. Okay. Would you agree with me that
18 yesterday Mr. Cadieux from NuVox was here and testified?

19 A. Yes.

20 Q. And he explained in pretty good detail in
21 the Springfield, St. Louis and Kansas City area where
22 they're actually not only offering, but providing services
23 to their customers?

24 A. And can you say the exchanges for me again?

25 Q. Well, Springfield.

1 A. Yes, I remember that.

2 Q. St. Louis?

3 A. Okay.

4 Q. Kansas City?

5 A. Okay.

6 Q. Okay. And without getting into the

7 specifics, for example, in St. Louis he explained that

8 they are actually providing services in the MCA, at least

9 out through MCA 4, with a couple of exceptions here and

10 there.

11 A. I remember that you had a discussion, and I

12 guess if you don't mind, we'll let the record speak for

13 itself on that one.

14 Q. That's fine. But you do remember him

15 talking about where in the MCA he provided service?

16 A. I do remember him speaking to you about

17 that.

18 Q. So at least with respect to one of the

19 CLECs that came here, they are actually in the

20 marketplace?

21 A. Yes.

22 Q. Let's move on to some questions that

23 Commissioner Gaw had for you. Recall that he asked you to

24 compare where Staff found that there was sufficient

25 evidence of effective competition --

1 A. Yes.

2 Q. -- exchange by exchange?

3 A. And he asked you to line that up against
4 where you believed that there was sufficient evidence of
5 effective competition. Do you recall that?

6 A. Yes.

7 Q. And there were certain ones that matched,
8 like Harvester, Fenton, Chesterfield, Springfield, Valley
9 Park and Manchester, and then you also had one that Staff
10 didn't, Greenwood?

11 A. I'm trying to remember Manchester. Let me
12 pull my list back out.

13 Q. I hope I got that right. If not, please
14 correct it.

15 A. Oh, yes, you're right.

16 Q. In those areas you wouldn't oppose SBC
17 Missouri being granted competitive classification for
18 business services?

19 A. Well, from the analysis that I did, I said
20 these are the ones where I felt like there might be
21 effective competition and then recommended that the
22 Commission listen to the evidence by the other parties. I
23 did not present additional evidence to eliminate them.
24 It's fair to say that.

25 Q. But that's different than Office of the

1 Public Counsel's position statement in this case, is it
2 not?

3 A. I just tried to explain the difference. I
4 said a position statement is based -- now, I'm not an
5 attorney, but my understanding is the position statement
6 is based on everything we see in a case, and my analysis,
7 I specifically indicated that it -- it would be good for
8 the Commission to listen to the testimony presented by the
9 competitors and --

10 Q. In your testimony?

11 A. I said that in my testimony. And what I'm
12 saying is I think the position statement is a general
13 statement of where are we at just before the case starts
14 based on all the evidence in the case.

15 Q. Would it be fair to characterize Office of
16 the Public Counsel's position statement as that there
17 should be no exchange either res or bus. to be given
18 effective competitive classification in this case?

19 A. We're not recommending any exchange as is
20 indicated in the position statement.

21 Q. So it's no business exchanges, no
22 residential exchanges, period?

23 A. That -- in terms of a recommendation. Now,
24 would we oppose or appeal certain ones? That's a
25 different issue.

1 Q. Based on what you've heard -- let me ask
2 this a different way. You also indicated to Commissioner
3 Gaw that you were disappointed with the White Pages
4 listings that were in Mr. Unruh's testimony. When you
5 investigated, some weren't in business anymore or whatever
6 problems you found. Would you agree with me that that
7 wasn't the only evidence that Mr. Unruh presented in his
8 testimony of the SBC exchanges?

9 A. Yes. And I found problems with many parts
10 of Mr. Unruh's --

11 Q. Would you agree with me that he presented
12 that -- a number of exhibits showing the number of lines
13 that are served by CLECs in each of the SBC Missouri
14 exchanges?

15 A. As Southwestern Bell derived them, yes.

16 Q. And you also used Southwestern Bell
17 information for your analysis of the market share in each
18 of the SBC Missouri exchanges?

19 A. I utilized it not necessarily because I was
20 supporting the methodology.

21 Q. Okay. He also --

22 A. I spoke to why I used it earlier, I think,
23 when we discussed it.

24 Q. You used it?

25 A. Yes, I did use it.

1 Q. And Mr. Unruh also had quite a bit of
2 advertisements, materials, brochures, newspaper articles
3 that are actually being used in the marketplace by
4 competitors to sell their services in our exchanges,
5 correct?

6 A. I saw lots of that provided in Southwestern
7 Bell testimony.

8 Q. Now, you actually -- I think you said
9 earlier, you don't live in SBC Missouri exchanges, do you?

10 A. That's true, I don't.

11 Q. Whose territory do you live in?

12 A. Spectra.

13 Q. Not living in any of our exchanges, you
14 haven't been able to observe at least the very local
15 advertising that competitors do. Like our competitors
16 seeking our customers wouldn't be sending you any of their
17 direct mail pieces, would they?

18 A. No, not direct mail pieces. I do -- you
19 know, I drive about 70 miles to work one way every day
20 that I work, and so I pass through Mexico, Missouri, which
21 is an SBC exchange. In Paris, Missouri we have the Salt
22 River Journal, which is a really great paper, but some of
23 our news comes from the larger town of Mexico, so I
24 receive the Mexico paper regularly. I would -- I drive on
25 the major highways, so I would see billboard and things

1 like that.

2 So no, I wouldn't get direct mailings. I
3 think I might get some exposure to what you distribute. I
4 read the st. Louis paper, portions of it. Can't say I
5 read it front to back.

6 Q. You wouldn't have seen like the Birch
7 billboards advertising their services in St. Louis, for
8 example, or Kansas City?

9 A. I'm familiar with that Birch did put up
10 billboards.

11 Q. Quite a few?

12 A. I didn't count.

13 Q. And you also wouldn't have had the
14 opportunity to see Charter Telecommunications blanketing
15 the St. Louis area with direct mail to every household?

16 A. I can't testify to that because I don't
17 know that.

18 Q. You haven't seen it? You wouldn't have had
19 the opportunity since you don't live there to receive one
20 of those?

21 A. Whether I live there or otherwise, I'm
22 not -- I'm not aware of that.

23 JUDGE RUTH: Mr. Bub, let me tell you that
24 we are going to break very, very soon.

25 MR. BUB: I'm sorry.

1 JUDGE RUTH: And I -- if you'll only have
2 one or two more questions, I'll let you go. Otherwise
3 we'll just pick it up again.

4 MR. BUB: Fine to pick it up.

5 JUDGE RUTH: Okay. Then we're going to
6 take our lunch break. It is six minutes after 12, so
7 we'll start back up 10 minutes after one. We're off the
8 record now.

9 (A BREAK WAS TAKEN.)

10 JUDGE RUTH: Good afternoon. We are back
11 on the record after our lunch break. When we took a
12 break, we were doing SBC questions of OPC's witness. A
13 lot of acronyms there. Mr. Bub, do you have more
14 questions for this witness?

15 MR. BUB: Your Honor, I looked through my
16 notes. I think we're finished.

17 JUDGE RUTH: I don't think your
18 microphone's working. Would you check that?

19 MR. BUB: I went through my notes, and I
20 can stop. So we're finished.

21 JUDGE RUTH: Then we will move to the
22 redirect.

23 MR. DANDINO: No questions, your Honor.
24 Thank you.

25 JUDGE RUTH: This witness may be excused.

1 Commissioner Gaw assured me that he does
2 have questions for Mr. Peters. However, since
3 Commissioner Gaw is not here at this time, we'll go ahead
4 and move on and allow the CLECs to call your next witness.

5 MR. LUMLEY: He's right outside, your
6 Honor. He hasn't stepped in from the lunch break.

7 We call Matt Kohly to the stand.

8 JUDGE RUTH: Okay. Mr. Kohly, would you
9 raise your right hand.

10 (Witness sworn.)

11 JUDGE RUTH: You may be seated. Please
12 proceed, Mr. Lumley.

13 MR. LUMLEY: Thank you, your Honor. I need
14 to mark an exhibit.

15 JUDGE RUTH: My notes indicate it would
16 be 51.

17 (EXHIBIT NO. 51 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 MATTHEW KOHLY testified as follows:

20 DIRECT EXAMINATION BY MR. LUMLEY:

21 Q. State your name for the record, please.

22 A. My name is Matt Kohly.

23 Q. By whom are you employed?

24 A. Socket Holding Company, assigned to work
25 for Socket Telecom.

1 Q. And in what capacity?

2 A. Director of telecommunications carrier and
3 government relations.

4 Q. Did you cause to be prepared and filed in
5 this action rebuttal testimony that's been marked as
6 Exhibit 32 and surrebuttal testimony that's been marked as
7 Exhibit 33?

8 A. Yes.

9 Q. Do you have before you what's been marked
10 as Exhibit 51?

11 A. Yes.

12 Q. And can you identify that document?

13 A. That is an errata sheet for the revised
14 rebuttal testimony that I filed.

15 Q. And when you refer to revised rebuttal,
16 what was the only change?

17 A. The only change to that was to add line
18 numbers and page numbers.

19 Q. And with regard to Exhibit 51, are these
20 primarily corrections of typographical errors?

21 A. Yes, they are.

22 Q. And then what's the last change?

23 A. The last change is on page 30, line 13,
24 replace the exchange name of Westphalia with the exchange
25 name of Linn.

1 Q. With the corrections that are set forth on
2 Exhibit 51, if I were to ask you the questions contained
3 in your rebuttal testimony, Exhibit 32, and your
4 surrebuttal testimony, Exhibit 33, if I were to ask you
5 those questions today, would your answers be the same?

6 A. Yes, they would.

7 Q. And are those answers true and correct to
8 the best of your knowledge, information and belief?

9 A. Yes, they are.

10 MR. LUMLEY: Your Honor, we would move the
11 admission of Exhibits 32, 33 and 51.

12 JUDGE RUTH: We have offered before us
13 Exhibit 32, Mr. Kohly's amended rebuttal, and Exhibit 33,
14 his surrebuttal, and Exhibit 51, the errata sheet. Are
15 there any objections to these three exhibits being
16 received into the record? Staff?

17 MR. HAAS: No objection.

18 JUDGE RUTH: Public Counsel?

19 MR. DANDINO: No objection, your Honor.

20 JUDGE RUTH: And SBC?

21 MR. LANE: No objection.

22 JUDGE RUTH: Then Exhibits 32, 33 and 51
23 are received.

24 (EXHIBIT NOS. 32, 33 AND 51 WERE RECEIVED
25 INTO EVIDENCE.)

1 MR. LUMLEY: Thank you, your Honor. We
2 tender the witness.

3 JUDGE RUTH: Okay. Staff, would you like
4 to begin with cross?

5 CROSS-EXAMINATION BY MR. HAAS:

6 Q. Hello, Mr. Kohly.

7 A. Hello.

8 Q. In your rebuttal testimony, you stated a
9 concern with the accuracy of using 911 information as an
10 estimate of line count. Has the Staff's use of annual
11 report line counts as a check addressed your concerns?

12 A. I don't know to what extent -- I don't know
13 to what extent Staff did such analysis, and I still have
14 the concern that for different market segments it will
15 misreport the number of lines served by a CLEC.

16 Q. And why is that?

17 A. Depending on -- Mr. Cadieux was asked a
18 question yesterday about the use of PRIs with DID numbers.
19 In that case, every DID number or every number will be put
20 into the 911 database, which will overstate the number of
21 lines actually provisioned. So in that case, for that
22 particular product line, the 911 database will show more
23 CLEC lines being served than is actually being served.

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

25 JUDGE RUTH: Mr. Dandino?

1 MR. DANDINO: No questions, your Honor.

2 JUDGE RUTH: SBC?

3 MR. LANE: Yes, your Honor.

4 CROSS-EXAMINATION BY MR. LANE:

5 Q. Good afternoon, Mr. Kohly.

6 A. Good afternoon.

7 Q. I'm going to ask some general questions
8 about Socket first. Can you tell me in what SBC Missouri
9 exchanges Socket operates?

10 A. Socket's tariff lists the exchanges where
11 it is -- where it offers service, and I don't have the
12 tariff with me. It's in there.

13 Q. Okay. Are you providing service in every
14 exchange that's listed in your tariff?

15 A. We are tarified to provide service there
16 and would offer it there.

17 Q. Okay. My question is, are you currently
18 providing service?

19 A. No, we are not.

20 Q. And that's what I want to focus on right
21 now. I want to know where you're providing service. Can
22 you tell me the exchanges where you're providing service
23 today?

24 A. Trying to decide if this should be at least
25 proprietary. I guess not.

1 We are providing service in -- at least
2 some type of service in Fenton, Flat River, Fulton,
3 Hannibal, Lake Ozark, Osage Beach, Manchester, Mexico,
4 Poplar Bluff, Sikeston and St. Louis.

5 Q. How about Cape Girardeau?

6 A. I missed that one. Yes, Cape Girardeau.

7 Q. How about Eldon?

8 A. My hesitancy with Eldon is, I think in
9 response to the Data Request you submitted, I provided
10 line count information, and I assume that's what you're
11 working off of. That Data Request had a footnote that
12 said, these lines were in the ordering and provisioning
13 system and may or may not be yet in service. I don't know
14 that service in Eldon is actually being provisioned. If
15 it's not actually, it shortly should be.

16 Q. All right. And then how about Camdenton?

17 A. Again, with the same qualification, yes.

18 Q. You may be providing it in Camdenton and
19 Eldon today, but if you're not, you will be within the
20 next few weeks?

21 A. Yes.

22 Q. Okay. Does Socket provide essentially the
23 same type of services in each of the exchanges that you
24 described or identified?

25 A. No, it does not.

1 Q. Tell me generally what type of services you
2 offer in those exchanges.

3 A. Socket --

4 MR. LUMLEY: Could I -- you're going back
5 and forth from offering and providing. Is that
6 intentional or --

7 MR. LANE: No. I'm trying to -- if I did,
8 it was unintentional. I'll reask it, Mr. Kohly.

9 BY MR. LANE:

10 Q. Tell me what services you are providing in
11 those exchanges that you identified.

12 A. Socket is currently providing two basic
13 service. One is an inbound ISDN PRI service sold
14 typically to Internet service providers. The other is a,
15 what's called basically an integrated T-1 product which
16 allows the customer to have voice lines and data on the
17 same DS1 service.

18 Q. All right. And where are you providing the
19 integrated T-1 service?

20 A. In the -- I guess for that I'd probably
21 want to call that highly confidential.

22 Q. Okay.

23 JUDGE RUTH: You do? Something's HC? Do
24 we need to go in?

25 MR. LANE: Yes, please, your Honor.

1 JUDGE RUTH: And you're going to assist in
2 clearing the courtroom?

3 MR. LANE: Just did.

4 JUDGE RUTH: All right. Give me just a
5 second.

6 (REPORTER'S NOTE: At this point an
7 in-camera session was held, which is contained in
8 Volume 10 of the transcript, pages 1161 through 1165.)

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1 BY MR. LANE:

2 Q. And I'm not sure exactly where we left off,
3 Mr. Kohly, but let me ask, does Socket have E911 listings
4 in the database in those exchanges where it's providing
5 the integrated E911 product?

6 A. Yes.

7 Q. Is Socket a facilities-based provider?

8 A. Yes.

9 Q. Does the facilities that Socket provides
10 vary depending upon whether it's offering its inbound ISDN
11 PRI service or its integrated T-1 product?

12 A. Not necessarily. I mean, in each instance
13 we -- Socket has its own switch, utilizes transport
14 facilities and loops, either purchased or leased from SBC
15 or other providers, and that is the same setup used
16 regardless if it's the inbound PRI service or the
17 integrated T-1 service.

18 Q. And then if we categorize your facilities
19 that you provide or acquire from someone, it would be
20 loops, transport and switching?

21 A. Well, we -- Socket has its own switching,
22 its own switch and switch facility.

23 Q. Okay. I'm trying to include that in either
24 you provide yourself or you acquire from someone, the
25 facilities we're talking about are switching, loops and

1 transport, right?

2 A. Yes.

3 Q. With regard to switching, how many switches

4 does Socket have?

5 A. Socket has one switch.

6 Q. And where is that switch located?

7 A. St. Louis.

8 Q. And is that switch utilized, then, to

9 provide the integrated T-1 product in the three exchanges

10 that you identified earlier?

11 A. Yes, it is.

12 Q. And is that switch also used to provide the

13 inbound ISDN PRI lines in the exchanges that you

14 identified earlier?

15 A. Yes, it is.

16 Q. Then in terms of transport to get to those

17 exchanges, does Socket provide that itself?

18 A. No, it does not.

19 Q. And from whom does Socket obtain the

20 transport from its switch to those exchanges that you're

21 currently providing service in?

22 A. That would vary by location.

23 Q. Okay. Go ahead and take me through the

24 locations then. Tell me how you do it.

25 A. I don't have -- I don't know which route

1 which providers used. I don't have that information with
2 me.

3 Q. Okay. Tell me what information you do have
4 in terms of which providers you utilize for transport.

5 A. Depending on the route, we would probably
6 use -- we'd either use Lightcore or Missouri Network
7 Alliance or ILEC-leased facilities, or possibly MCI.

8 Q. Lightcore --

9 A. Yes.

10 Q. -- is that one of them?

11 And do you know in what areas you utilize
12 Lightcore, what transport routes?

13 A. No.

14 Q. Would that be within -- to serve, though,
15 SBC Missouri exchanges?

16 A. Could be. I'm not -- I don't know if
17 they're being used there or not.

18 Q. The same with MCI and Missouri Network
19 Alliance, would those be utilized to provide transport
20 from your location in St. Louis to one or more of the
21 locations of the exchanges that you identified?

22 A. Could be.

23 Q. And --

24 A. SBC's facilities could be leased as well.

25 Q. Are your agreements with Lightcore and

1 Missouri Network Alliance and MCI, are those done under
2 the Federal Act, or are they done on a commercial basis?

3 A. Commercial basis.

4 Q. Were those arbitrated in front of the
5 Commission?

6 A. No, they were not.

7 Q. Were they subject to review by the
8 Commission?

9 A. Actually, they're probably provided out of
10 tariff.

11 Q. Out of the tariffs of the -- of Missouri
12 Network Alliance and MCI?

13 A. They could be or it could be a contract. I
14 have not reviewed those.

15 Q. And how about Lightcore?

16 A. Same thing, I have not reviewed those
17 contracts. Many of the contracts have a -- contain a
18 tariff reference, and that's why I don't know the answer
19 to that.

20 Q. Okay. But in any event, the contracts
21 themselves aren't submitted to the Missouri PSC for
22 approval, right?

23 A. Correct.

24 Q. And they're not filed with the Missouri
25 PSC, right?

1 A. No.

2 Q. Does Socket permit any other carriers to
3 utilize Socket's switching facilities?

4 A. No.

5 Q. With regard to loops that are utilized to
6 provide the ISDN PRI services, does Socket itself
7 provision those?

8 A. No.

9 Q. Where do you get those?

10 A. Loops would be leased from the incumbent
11 LEC.

12 Q. Is that pursuant to the interconnection
13 agreement --

14 A. Yes, it is.

15 Q. -- between Socket and SBC Missouri?

16 A. Yes.

17 Q. And how about your integrated T-1 product,
18 is the loop there obtained from SBC Missouri, or is it
19 self-provisioned?

20 A. Obtained from SBC Missouri.

21 Q. Is Socket collocated in any central offices
22 in SBC Missouri's territory?

23 A. No, it is not.

24 Q. Does Socket indirectly collocate in any SBC
25 Missouri central offices through the collocation space of

1 one or more other carriers?

2 A. Yes.

3 Q. And can you tell me what exchanges you do
4 that in or what central offices you do that in?

5 A. That's getting into network layout. I'd
6 want to call that highly confidential.

7 JUDGE RUTH: Just a moment and we'll go
8 in-camera.

9 (REPORTER'S NOTE: At this point an
10 in-camera session was held, which is contained in
11 Volume 10 of the transcript, pages 1172 through 1175.)

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1 JUDGE RUTH: We're in the public session
2 again. Let me know when I need to close it, Mr. Kohly.

3 BY MR. LUMLEY:

4 Q. I'm going to reask the question, make sure
5 we're tracking with each other. I wanted to know what
6 unregulated products or services that Socket offers in
7 those exchanges where it is currently providing its
8 integrated T-1 product.

9 A. Typically data services.

10 Q. And when you say data services, could you
11 describe what you mean?

12 A. Services that allow the customer to
13 transmit data; for example, dedicated data services,
14 dedicated Internet access, for example.

15 Q. And if those are transport-type services,
16 why would those be unregulated?

17 A. What do you mean by transport-type
18 services?

19 Q. I thought you were describing the data
20 services as transport from that location of data to
21 another location. Did I misunderstand you?

22 A. Basically it would be dedicated Internet
23 access.

24 Q. And where does your service take you from
25 and to, then, to get -- that comprises the dedicated

1 Internet access? The data service that you provide, where
2 does it take you from and to?

3 A. When I say dedicated, it guarantees you a
4 certain amount of bandwidth to access, for example, the
5 Internet. It's not dedicated point to point between two
6 locations. It's a dedicated bandwidth, dedicated data
7 capacity, if you will, to the Internet.

8 Q. Okay. Is that done by taking the service
9 from the customer location where you're providing the T-1
10 service back to Socket's switch in St. Louis and then out
11 to the Internet from there?

12 A. Yes.

13 Q. And what unregulated services, if any, do
14 you provide in those exchanges where you're currently
15 providing your inbound ISDN PRI service?

16 A. None.

17 Q. When you're providing the integrated T-1
18 service in the three exchanges that we identified earlier,
19 how do you get the service or the traffic flowing back
20 from there to your switch in St. Louis? Is that via the
21 transport facilities that we discussed earlier?

22 A. Yes.

23 Q. And do those transport providers then have
24 to have a collocation site at the central offices serving
25 those three exchanges that we identified?

1 A. No. For example, you could have an
2 exchange where we're leasing dedicated T-1 transport from
3 SBC, leasing it between one exchange, bringing it back to
4 St. Louis.

5 Q. And in that case collocation isn't
6 required?

7 A. No. In that case we would need to have
8 basically a dedicated DS1 loop associated with that
9 customer to haul the traffic out of there. We would also
10 have to establish what could be viewed a dedicated
11 interoffice transport or point of interconnection with
12 those exchanges as well.

13 Q. And would you describe what you mean in
14 that circumstance by the point of interconnection, what's
15 the physical facility that you have there?

16 A. In order to provide local service in Bell
17 exchanges outside of the MCA, we're required to establish
18 a point of interconnection in those exchanges. That is
19 the point where we hand traffic back to SBC. If, for
20 example, our local customer in those exchanges places a
21 call to another SBC local customer in that exchange, we
22 will haul it to St. Louis via the EEL facilities, switch
23 it, haul it back to that exchange via the dedicated
24 interoffice transport to SBC to that point of
25 interconnection in that exchange.

1 Q. And is the point of interconnection at the
2 central office or some other spot?

3 A. Generally the central office.

4 Q. Does Socket provide VOIP services?

5 A. No, it does not.

6 MR. LANE: Your Honor, may I approach the
7 witness?

8 JUDGE RUTH: Yes. If you're going to show
9 him something, would you show counsel?

10 MR. LANE: Sure. Your Honor, I know from
11 past experience that we probably need to be in-camera for
12 these questions that I'm going to ask.

13 JUDGE RUTH: I'll take your word for it.
14 We'll go back in-camera, and you need to look around and
15 make sure -- actually, Mr. Kohly needs to look around,
16 make sure both of you -- we're set?

17 (REPORTER'S NOTE: At this point an
18 in-camera session was held, which is contained in
19 Volume 10, pages 1180 through 1181 of the transcript.)

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1 JUDGE RUTH: And you may proceed.

2 MR. LANE: Thank you, your Honor.

3 BY MR. LANE:

4 Q. Does Socket provide an annual report to the
5 Commission?

6 A. Yes.

7 Q. And did Socket provide one in the year
8 2003?

9 A. Yes, it did.

10 Q. Do you have that with you today?

11 A. No, I do not.

12 Q. Was that something that was requested in
13 the course of discovery?

14 A. Yes, it was.

15 Q. And it's fair to say that Socket declined
16 to produce it to SBC Missouri?

17 A. We objected to the Data Request, yes.

18 Q. Okay. And I take it from the mere fact
19 that you objected to providing it doesn't indicate that
20 the information that you had provided in the annual report
21 was unreliable, does it?

22 A. No.

23 Q. Socket made a decision to utilize its own
24 switch to serve the small exchanges in the three areas
25 that we identified, right?

1 A. Yes.

2 Q. It made kind of -- it had choices of
3 whether to buy unbundled local switching from SBC
4 Missouri, was one of its choices, right?

5 A. No, it was not.

6 Q. Okay. Did Socket have the opportunity to
7 purchase switching from another carrier if it had so
8 chosen?

9 A. We did not look at that. I do not believe
10 we did.

11 Q. Were you there at the time that decision
12 was made?

13 A. Yes. But we already owned the switch.

14 Q. Okay. So once you had owned the switch
15 already, you were able to expand its use into other
16 exchanges that you didn't at that time serve?

17 A. Yes.

18 Q. And with your switch in St. Louis, you were
19 able to reach and serve with that switch services located
20 in -- I think the three exchanges are not HC; is that
21 right? Can I say the names?

22 MR. LUMLEY: Well, I think --

23 MR. LANE: I'm asking.

24 MR. LUMLEY: Ultimately it discloses the
25 nature of the service by virtue of your question.

1 MR. LANE: All right. I'll ask a different
2 way.

3 BY MR. LANE:

4 Q. You utilized that switch in St. Louis to
5 provide the integrated T-1 service in the three exchanges
6 that we discussed earlier, right?

7 A. Yes.

8 Q. On pages 4 and 5 of your surrebuttal, you
9 state that you contacted SBC operations to get a count of
10 Socket's E911 listings. Do you see that in your
11 testimony? Do you recall it?

12 A. Yes.

13 Q. And when you say you contacted SBC
14 operations, can you tell me who made the contact and who
15 they contacted?

16 A. An employee of Socket Telecom contacted --
17 and I don't know the SBC employee's name, but it's the SBC
18 911 contact that we have, and asked for a listing of all
19 of the Socket 9-- or a report of all the Socket 911
20 listings in the database so that we can look at that.

21 Q. Does Socket not have its own list of
22 numbers that it submitted to the E911 database?

23 A. We do, but we wanted to compare that list
24 to the list that SBC had.

25 Q. And with regard to the status as of

1 June 30th of 2004, can you tell me the number of E911
2 listings that Socket had at that point?

3 A. Not at that point.

4 Q. Would Socket have had less or more E911
5 listings than it has now?

6 A. Less.

7 Q. And less because you weren't at that point
8 offering the T-1 integrated service in the three exchanges
9 that we identified earlier?

10 A. Yes.

11 Q. The only E911 listings you would have had
12 back on June 30th of 2004 would have been those associated
13 with your ISDN PRI service?

14 A. And possibly some administrative lines.

15 Q. And with the exception of the
16 administrative lines, your current policy would say that
17 you wouldn't submit any of those E911 listings to the
18 database administrator at all, correct?

19 A. For that specialized ISDN PRI service, yes,
20 the inbound piece.

21 Q. So if we're looking at the information in
22 this case before the Commission with regard to Socket, it
23 was -- what Staff looked at was E911 listings as of
24 June 30th of 2004, right?

25 A. Yes, I believe that's what they looked at.

1 Q. And at that point the number of E911
2 listings that Socket had in the database was very, very
3 substantially below the number of access lines served at
4 that time, right?

5 A. I don't know the number of E911 listings
6 Socket had as of the end of June 2004.

7 Q. It would have been something -- the number
8 of E911 listings would have been something less than
9 1 percent of the access lines that Socket had, right?

10 A. I don't know that.

11 Q. Are we talking about something in that
12 general area?

13 A. I don't know. Based on the information I
14 received from Southwestern Bell, after our request on the
15 operations side in December, I mean, I have that, but I
16 don't have what was in the 911 database at the end of
17 June.

18 Q. There isn't any question in your mind that
19 the number of E911 listings in the database was
20 substantially less than the number of actual access lines
21 that you had, right?

22 A. For the ISDN PRI service, probably, you're
23 right. For other services it would be overstated.

24 Q. But as of the data point that we're using
25 in this case, it was June 30th of 2004, and you had no

1 other E911 listings at that point because you weren't
2 providing your T-1 service at that point, right?

3 A. Right.

4 Q. So to the extent that there's any problem
5 with E911 listings reflecting access lines, as far as the
6 data the Commission's looking at in this case with regard
7 to Socket, there's no question but that the number of E911
8 listings substantially understates the number of access
9 lines that Socket utilized?

10 A. With respect to Socket, yes, but the same
11 problems that I identified would also apply to other CLECs
12 utilizing the same processes for putting listings in the
13 911 database.

14 Q. All right. But you haven't provided any
15 other information about any other CLECs in this case, have
16 you?

17 A. No.

18 MR. LANE: Okay. That's all I have.

19 Thanks, Mr. Kohly.

20 JUDGE RUTH: Okay. We will move to
21 questions from the Bench. Commissioner Murray, would you
22 like to start?

23 COMMISSIONER MURRAY: Thank you.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Kohly.

1 A. Good afternoon.

2 Q. Did you read Mr. Cadieux's testimony?

3 A. Yes, I did.

4 Q. Do you have it with you by any chance?

5 A. I do not.

6 Q. I wonder if your counsel could supply you
7 with a copy.

8 JUDGE RUTH: While we're waiting, then,
9 I'll state that I have received permission to excuse
10 witnesses Cecil and McKinnie. It was my understanding
11 that we were finished with those. If I've overlooked
12 something, then we'll get back to them. But they may be
13 able to look at their counsel and leave the room if they
14 wish.

15 BY COMMISSIONER MURRAY:

16 Q. Mr. Kohly, you now have a copy of
17 Mr. Cadieux's testimony?

18 A. Yes, I do.

19 Q. On page 15, at actually 15, 16 and 17, he
20 talks about some FCC evidence regarding various forms of
21 competition. Is that -- do you see --

22 A. Yes. He has a question and answer about
23 competition from cable companies and mass market
24 competition from wireless carriers.

25 Q. Okay. And is that -- do I understand

1 that -- or do you understand, I should say, that that is
2 referencing -- his numbers there that he sets out are
3 referencing a December 2002 document? And I'm looking at
4 Footnote 28.

5 A. Yes. His Footnote 28 cites to high-speed
6 services December 2002 report at Table 1.

7 Q. Okay. And I don't see, in going through
8 those next several items, any different citation to
9 indicate that these numbers relate to anything other than
10 the year 2002. Do you?

11 A. I do not.

12 Q. Then would you look at your testimony, your
13 direct, page 8.

14 MR. LUMLEY: You mean rebuttal,
15 Commissioner?

16 COMMISSIONER MURRAY: I believe it's
17 direct.

18 THE WITNESS: I only filed rebuttal and
19 surrebuttal.

20 COMMISSIONER MURRAY: I do mean rebuttal.
21 Thank you.

22 BY COMMISSIONER MURRAY:

23 Q. And there's a question posed on line 5
24 regarding some other information that had been supplied by
25 SBC concerning competitive data. It says, Do you think

1 the level of competition as of June 2004 is useful in this
2 case? And your answer there is, Not any longer.

3 So my question to you is, did you think
4 that the data that Mr. Cadieux supplied in relation to
5 2002 is useful in this case?

6 A. I would think the trends associated with
7 that data could be useful. I did not analyze the data he
8 looked at.

9 Q. Could the trends associated with the data
10 that SBC cited as of June 2004 be useful?

11 A. What I was referring to in this question
12 and answer was, given the FCC's decision as it relates to
13 UNE-P, specifically market share analysis that takes into
14 account UNE-P I do not believe is relevant anymore. And
15 that's the structural change that I referred to, and it's
16 a structural change.

17 In my opinion, when you eliminate one of
18 the means used to serve these customers, that's a
19 structural change that would warrant the data that relies
20 on that to be not useful.

21 Q. So you're only referring to UNE-P as a
22 result of the FCC?

23 A. Yes. Trends in other areas could be
24 useful.

25 Q. Okay. And do you think the more current

1 information -- the most current information would be the
2 most useful?

3 A. Yes.

4 Q. Is the telecommunications industry in
5 general and the intermodal modes of competition, are they
6 changing on a fairly rapid basis, in your opinion?

7 A. I don't think so. The studies I've seen
8 showing wireless substitution, I think in my testimony I
9 refer to the first case Mr. Hughes presented something
10 saying there was 3 percent wireless substitution. I've
11 seen more recent studies that say it's 3 to 5 percent.
12 Some say it's 5 percent. I don't see that as a rapid
13 change.

14 Q. And those aren't the only studies
15 available; is that correct?

16 A. I'm sure there are others that I've not
17 seen.

18 Q. On page 3 of your rebuttal you talk about
19 that SBC could chart -- could sign customers up for
20 multi-year contracts. I believe it's on that page where
21 you're discussing that.

22 A. Yes.

23 Q. At line 14 you mention that. And my
24 question is, can Socket sign customers up for multi-year
25 contracts?

1 A. Yes. The concern I was talking about with
2 SBC is that where they have a monopoly or face limited
3 competition, if allowed to, they could dramatically
4 increase rates but allow customers to avoid that by
5 agreeing to a multi-year contract. Socket is not in a
6 similar position to be able to do that.

7 Q. You are an economist, correct?

8 A. Yes.

9 Q. How do you define monopoly?

10 A. Typically it would be where there is a
11 single provider.

12 Q. Now, further on down on page 3 of your
13 rebuttal, where you talk about the -- you say, While these
14 flowery public relations sound bites may sound good at a
15 very high level, the Commission needs to realize that all
16 carriers are not equal and, therefore, there is a need to
17 treat them differently.

18 You're not suggesting, are you, that if we
19 give SBC competitive classification, that SBC will be
20 treated just like all of its competitors?

21 A. With respect to its retail services, it
22 would be.

23 Q. And in terms of what it has to provide to
24 its competitors, it certainly would not be; is that
25 correct?

1 A. As far as the obligations under the Federal
2 Act --

3 Q. Yes.

4 A. -- those would not change.

5 Q. I think you were in the room probably when
6 I believe Mr. Bub was questioning someone -- they all run
7 together after a while -- about the various obligations
8 under the Telecommunications Act.

9 A. Yes.

10 Q. You wouldn't disagree with that, would you,
11 those answers that were given that those won't change as a
12 result of what we do here?

13 A. I hate to admit I was not paying attention
14 to the specific question and answers. Not that it wasn't
15 riveting. The obligations of the Federal Act will not
16 change.

17 Q. Thank you. You speak on pages 3 and 4, I
18 believe, about CLECs being not realistically able to
19 obtain customers. Let's see. CLECs' pricing ability is
20 effectively capped by the presence of the incumbent local
21 exchange carrier.

22 A CLEC can purchase as a straight reseller
23 for a 19 point something percent discount from the
24 incumbent; is that right?

25 A. Yes.

1 Q. Okay. And so the CLEC can always
2 underprice and still make a profit, is that -- would you
3 disagree with that?

4 A. I would. The 19.3 percent discount would
5 be the wholesale cost, and that is based on the formula by
6 the FCC of avoidable costs. The CLEC, in addition to that
7 direct cost, is going to have its own costs --

8 Q. Marketing?

9 A. -- marketing, customer acquisition,
10 billing, customer care. And really the only place we've
11 seen the use of resale is in prepaid resellers, which
12 generally charge higher than the incumbent.

13 Q. That's the only place you've seen resale?

14 A. That's generally where it's been a
15 long-term strategy has been in that market. If you look
16 at the trends even presented in SBC's testimony, it's been
17 declining.

18 Q. And isn't that beneficial for everybody if
19 that declines and carriers move toward facilities-based?
20 I mean, isn't it better in general if carriers become
21 facilities-based?

22 A. If your goal is to promote facilities-based
23 competition, yes.

24 Q. Do you think facilities-based competition
25 is better than resale competition?

1 A. Yes, in that it allows you to differentiate
2 your product, provides price discipline and other aspects
3 of it.

4 Q. Now, with straight resale, a CLEC could set
5 its rate for local basic service -- well, first of all,
6 get the local service at a 19.3 percent discount, correct?

7 A. Yes.

8 Q. And then the CLEC could price that local
9 basic service two or three times what SBC is pricing it at
10 if it chose to do that?

11 A. Could.

12 Q. And, in fact, some do, do they not?

13 A. Yes.

14 Q. And then that same CLEC could bundle a
15 group of services together with that local basic and sell
16 it significantly below what the customer could get that
17 same bundle for from SBC, could it not?

18 A. I guess could you provide an example?

19 Q. Okay. Let's say you bundled local basic
20 service with call waiting, call forwarding and caller ID.

21 A. Okay.

22 Q. And that carrier has the ability, does it
23 not, to price that bundle anywhere within that range --
24 they're getting all of those things for 19.3 percent
25 discount, so anywhere within that discount, after taking

1 into consideration what other expenses the CLEC may have,
2 has the ability to bundle those at a price below what SBC
3 offers that same bundle for, does it not?

4 A. It could.

5 Q. So it could. And, in fact, I think we've
6 seen examples here in this hearing where some do price
7 local basic service two or three times more than SBC's
8 service, but they price bundles lower than SBC prices.
9 Would you disagree with that?

10 A. I've not seen examples of that. A CLEC
11 could do that. I'm not sure why they would.

12 Q. Did you not see that in some of the
13 testimony that was presented here? We had one exhibit
14 that showed what some of the carriers are offering in
15 various bundles as well as what they're charging for
16 basic -- local basic service.

17 A. I did not think -- I don't recall that
18 exhibit. I didn't think there was one regarding resale.

19 Q. And I can't -- and it may not have been on
20 a pure resale basis. Okay. That may be where the problem
21 is in your answering my questions.

22 But even if it were not on a resale basis,
23 that is a potential, is it not, that the competitor can
24 offer local basic at prices significantly above what the
25 ILEC prices it --

1 A. Correct.

2 Q. -- but also offer bundles significantly
3 below?

4 A. Correct.

5 Q. Okay.

6 A. What I was referring to in my testimony,
7 though, is their ability to get customers if they do that.
8 And while theoretically I could tariff basic local service
9 at \$100 a month, it's very doubtful I will get customers
10 asking for that service at that rate. That's what I was
11 referring to in my testimony, effectively tendering CLECs
12 are under an umbrella.

13 Q. And you wouldn't be likely to get any
14 customers that would just ask for local basic service if
15 you priced it that way; is that right?

16 A. Right.

17 Q. But you could say, but if you wanted to
18 bundle, I'd sell it to you for how much you get from your
19 current provider. There's much more likelihood of that,
20 is there not?

21 A. Really let's say you're doing this strategy
22 through the UNE-P. Your cost is the same regardless of
23 whether you have -- they're very much the same regardless
24 of whether you add vertical features or not. So I guess
25 I've seen examples where a CLEC priced basic local service

1 at \$20, the bundled service with all the vertical features
2 at \$22. That's a function of their cost structure. I
3 don't know why they would have an incentive to necessarily
4 price the stand-alone at \$100 but selling the bundled at
5 \$22.

6 Q. Suppose they didn't want to sell just one
7 service, just the local basic.

8 A. I guess if that were their basic strategy,
9 they could theoretically do that.

10 Q. They do have that flexibility, in other
11 words, if they chose to do that; would you agree?

12 A. Yes.

13 Q. On pages 5 and 6, you talk -- I believe
14 beginning on page 5, you say, The Commission must consider
15 both the depth and breadth of local competition in
16 determining whether there is effective competition in
17 Missouri. Typically the best way to determine this is by
18 performing an analysis of market share data and the manner
19 in which competitive services are provisioned by CLECs.
20 Is that -- did I read that accurately?

21 A. Yes.

22 Q. But the act itself, the statute itself does
23 not say the extent to which alternative services are
24 provided. It says the extent to which alternative
25 services are available. Do you think there's a difference

1 between provided and available? Market share just uses --
2 just measures provided, right?

3 A. Right. And by looking at the market share,
4 it tells you what you have and what's out there in the
5 market.

6 Q. But it doesn't tell you what is available
7 that just hasn't been subscribed to yet; is that right?
8 It just tells you the share that CLECs --

9 A. That's out there today, yes.

10 Q. -- actually have today?

11 A. But I think what is out there is indicative
12 of what is available. I don't think you're going to --
13 stop there.

14 Q. Okay. But you will admit that there is a
15 difference between available and provided?

16 A. Yes.

17 Q. On pages 29 and 30, I believe, you talk
18 about inter-carrier -- an inter-carrier compensation
19 issue, and I'm really wanting to go into these questions
20 because I am confused, and perhaps you can help clarify my
21 understanding for this issue.

22 Are you saying that number porting has
23 created a whole new inter-carrier compensation issue?

24 A. Not necessarily. Let me explain the
25 problem and just start with that.

1 Q. All right.

2 A. In the situation where we have today where
3 we're relying on originating records, if Socket wins a
4 customer in an SBC exchange, imports that number over to
5 Socket so Socket is now serving that customer, what will
6 happen with the -- to the extent the originating records
7 are used in the interLATA toll market, when a -- say, for
8 example, a Sprint customer calls Socket's customer and it
9 has that ported number, the call will get routed,
10 terminated by Socket to the Socket customer.

11 However, when it comes time to get the
12 access fees associated with that, Sprint as the
13 originating carrier will look at the terminating number.
14 They'll only look at it and identify it as, well, this did
15 belong to SBC, so, therefore, I will send a summary record
16 to SBC.

17 Q. So the wrong carrier gets the bill?

18 A. Right. In essence, Socket does not get the
19 money. In fact, its direct competitor does.

20 Q. Now, on the next page you talk about SBC's
21 asking Socket to put some tandems in various places.
22 Wouldn't that solve that problem?

23 A. No, it doesn't. What this does, I think
24 SBC realizes that transiting other carriers will not get
25 them the call records. What we had to agree to do, what

1 they wanted us to do, we'd be putting direct trunks to
2 each of their end offices at our expense.

3 Q. I'm sorry to cut you off, but the judge has
4 informed me that we need to take a break right now. Be a
5 very short break.

6 JUDGE RUTH: Just like one minute, and I'll
7 ask you not to even leave the room.

8 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

9 JUDGE RUTH: We're back on the record. I
10 apologize for that. You may continue, Commissioner.

11 BY COMMISSIONER MURRAY:

12 Q. Mr. Kohly, I'm sorry, but I really got
13 sidetracked and did not listen to your last answer. You
14 were telling me about tandems and the request that you put
15 tandems in various locations that you find objectionable,
16 and if you want to answer that question again, please.

17 A. Okay. The example I'm talking about on
18 lines 5 through 17 on page 30 refers to when Socket
19 competes not -- not with SBC, but with, for example,
20 Sprint in Jefferson City. SBC wanted us, wanted Socket to
21 put in trunks to the Linn office in order for them to send
22 us intraLATA toll traffic.

23 That really is not going to change -- that
24 won't -- that has no real effect on the other problem we
25 have when we are competing in SBC changes of getting

1 calls -- getting compensated for terminating calls to
2 ported numbers.

3 Q. It does not identify the calls any
4 differently?

5 A. No.

6 Q. And then down on lines 20 and 21, you
7 indicate that -- you say all ILECs are not equal and
8 should not be -- or all LECs are not equal and should not
9 be regulated equally. First, SBC does not require any
10 other ILEC to agree to these terms.

11 And the question that that posed to me, and
12 I don't know if that same answer that you just gave
13 applies to this or not, but isn't that because the
14 identification of the number lies with the ILEC? So if
15 it's an ILEC transporting the call, it's obvious who gets
16 billed?

17 A. But what the LECs will do is they will
18 transit each other's network. What they're telling us we
19 have to do is trunk to each tandem or each end office, and
20 there is a difference.

21 In this case, in the Jeff City case, we
22 would have been sitting behind the Jefferson City local
23 tandem, and so that call could have gone out of the Linn
24 office, through Sprint to us.

25 Q. But it would have been identified as a

1 Sprint call, wouldn't it, or not? It would have been
2 identified as one of the ILECs?

3 A. It would have been identified -- well, if
4 the call originated at Linn, it would have been identified
5 as an SBC call, when it's in an exchange served by SBC.

6 Q. But if you had a tandem, you're saying that
7 wouldn't change?

8 A. On the ported number situation, no, it
9 wouldn't.

10 Q. Because that ported number would always be
11 identified with the ILEC from whom -- or whichever LEC it
12 started with?

13 A. Well, yes. It's also possible in theory
14 that the number -- not in theory. The number could be
15 ported from a CLEC to an ILEC as well.

16 Q. So if it started with the CLEC, it would
17 always be identified with the CLEC?

18 A. Right.

19 Q. So you are saying that number porting has
20 created a whole new inter-carrier compensation issue?

21 A. It's created, I guess, I would say more a
22 record exchange issue. The access rates are the same. So
23 it's not a -- it's not that kind of compensation issue,
24 but it is a record exchange issue.

25 Q. And I assume that's not just in Missouri?

1 A. It is where carriers rely on originating
2 records. It is an issue in Missouri. It's not an issue
3 in other states that rely on terminating records.

4 Q. Okay. Now, how is that -- I wanted to ask
5 you those questions because it posed an interesting
6 question to me that I needed some help with, but how is it
7 relevant here?

8 A. One of the things that you need to look at
9 are the barriers and what's going to affect
10 facilities-based competition. If Socket is going out into
11 areas to compete and it's denied a revenue stream that the
12 ILEC gets, it's obviously at a disadvantage. It's even
13 worse when the ILEC gets the revenue the CLEC should have
14 got.

15 So it is a barrier. It is an additional
16 problem that carriers, especially those, I believe, in
17 more rural areas are going to face where you have more
18 intraLATA calling.

19 Q. Let's walk through that a little bit
20 further. A carrier going into a rural area to compete, a
21 CLEC going into an SBC rural exchange --

22 A. Yes.

23 Q. -- tell me how it affects them.

24 A. Okay. For example, well, the CLEC wins the
25 customer, ports the number over.

1 Q. Ports it from SBC?

2 A. Ports it from SBC to itself. It will not
3 receive terminating switched access revenue for intraLATA
4 toll calls carried by the various LECs. That is a revenue
5 stream that it will not get.

6 Q. Now, is that universally the case that the
7 CLEC who has ported a number never gets the interLATA --
8 intraLATA revenue from that?

9 A. If it's a ported number, they will not.

10 Q. Ever?

11 A. Ported number for intraLATA toll calls
12 carried by a LEC. If they're carried by an IXC, it may
13 not be an issue, or it will not be an issue.

14 Q. And how are they identified when they're
15 carried by an IXC?

16 A. Then they come in over Feature Group D
17 trunks. There's a whole -- on a ported number, there's a
18 local routing number that identifies the fact that that's
19 been ported to a CLEC. The call gets routed to the CLEC.
20 And based on the LRN, or local routing number, the CLEC is
21 able to bill that.

22 Q. So you're using that as an example of what,
23 barrier to entry?

24 A. Yes. I believe it's an additional barrier
25 to entry and one that will probably affect carriers

1 focusing on rural areas more than others simply because of
2 the amount of intraLATA toll.

3 The other point when you referenced -- you
4 read the testimony about secondly, if Socket and SBC had
5 equal market power --

6 Q. I'm sorry. Where are you?

7 A. Bottom of page 30. Didn't you also ask a
8 question about the market power sentence or not?

9 Q. No, I don't believe I did, but what do you
10 want to say about it?

11 A. One of the things that was frustrating when
12 we ran into this problem, and this kind of surprised some
13 of the people at Socket, until we signed an agreement
14 called the OE LEC agreement, SBC was not going to route
15 intraLATA toll calls to Socket. Instead, they would block
16 those calls.

17 And when I explained this to the people at
18 Socket, they're like, well, but their customers will get
19 mad at them and want to leave. Well, where are they going
20 to go? So SBC was willing to make its customers worse off
21 and not allow them to terminate calls to Socket customers
22 out of exchange.

23 Socket as a competitor can't do that and
24 get away with it or its customers will leave. I think
25 that is indicative of the fact how the ILECs and CLECs

1 have to look at the world differently because they have
2 different market power.

3 Q. And the contractual agreements were -- did
4 you enter into them, by the way?

5 A. Pardon?

6 Q. Did you accept those contractual --

7 A. Yes. We eventually signed an agreement
8 that requires, in this LATA, in order to send -- when
9 Socket competes in Sprint and CenturyTel's territory, we
10 had to agree to route all calls going to SBC's exchanges
11 in this LATA to them through an IXC.

12 Q. So they could be identified?

13 A. So that they can bill for them. We will
14 still receive calls that transit through Sprint to us.

15 Q. But which calls did you have to route
16 through the IXC?

17 A. Any intraLATA toll call going to an SBC
18 Missouri customer in this LATA.

19 Q. Meaning? What financially does that mean
20 for that call?

21 A. That means we will -- Socket Telecom has an
22 IXC affiliate. We will either -- if the customer picks
23 Socket, we will hand that call to the IXC. The IXC will
24 carry it over Feature Group -- well, Socket will carry
25 that call over a Feature Group D trunk. If the carrier

1 picks -- if the local customer picks another IXC, we'll
2 hand it off to that IXC. But in no instance are we
3 permitted to transit intraLATA toll calls to SBC over the
4 LEC-to-LEC network.

5 Q. Okay. What does that mean financially?

6 A. Well, financially it means we will hand
7 that call off to our IXC wholesale provider and will pay a
8 terminating access rate to them.

9 Q. To your affiliate?

10 A. To a whole-- the affiliate uses -- resells
11 the IXC services of another interexchange carrier. So we
12 will hand that call off to the interexchange carrier, and
13 they will terminate it to SBC exchanges. We will have to
14 pay that interexchange carrier a rate to do that. They
15 will, in turn, pay SBC an access rate.

16 Q. And if it were not routed that way, what's
17 the scenario?

18 A. If we were permitted, we could transit that
19 call through the Sprint network to SBC, and we would pay
20 Sprint terminating access -- or I'm sorry -- we would pay
21 SBC terminating access.

22 Q. So SBC is going to get terminating access
23 either way?

24 A. Right.

25 Q. Socket's going to pay somebody for

1 terminating access either way?

2 A. We will pay an IXC to take that call and
3 hand it to SBC. Not necessarily terminating access, but
4 we'll pay them a rate.

5 Q. And you'd rather pay Sprint?

6 A. I think what would be -- we would prefer is
7 if we are going to have to route calls through an IXC to
8 solve a billing problem for SBC, SBC should have had to
9 agree to route their calls to an IXC to us so we can
10 properly bill for them.

11 Q. Okay. So this instance here that you had
12 to agree to is not costing you anything financially?

13 A. There may be a marginal cost that's higher
14 for handing it to the IXC versus handing it -- transiting
15 it through Sprint.

16 Q. But that was not your -- that's not the
17 point you're making?

18 A. No.

19 Q. Okay. They really didn't have you over a
20 barrel there for anything? I mean, you weren't giving up
21 anything to agree to that; you were just saying that you
22 think they ought to do the same thing if they're going to
23 transit traffic to you?

24 A. What they were doing was refusing to
25 provision interconnection facilities in Springfield,

1 refusing to let their customers call our customers until
2 we signed an OE LEC agreement.

3 Q. Which didn't cost you anything except
4 perhaps marginally some --

5 A. It does have some --

6 Q. -- measurable difference?

7 A. It required us to use an IXC. It required
8 us to also -- there's a provision in there, I believe,
9 that requires us still to trunk to any end office not
10 subtending an SBC tandem.

11 Q. What does that do to you financially?

12 A. We'll have to incur trunking cost to get to
13 an SBC end office covered by that situation.

14 Q. When do you have to do that?

15 A. Any time an SBC end office does not subtend
16 an SBC tandem outside of this LATA.

17 Q. You're going to have to go more slowly.
18 I'm sorry. I'm not quite as familiar with all these
19 things as you are. I have to think about them. Any
20 time --

21 A. In instances where there's an SBC end
22 office that does not subtend an SBC tandem, we agree to
23 provide trunking facilities to that tandem or to that --
24 I'm sorry -- to that end office if we are going to
25 terminate calls to that end office.

1 Once we put in those trunking facilities,
2 if a number is not ported, SBC would be able to use the
3 trunking facilities we paid for to hand us calls for us to
4 route back at our expense.

5 Q. Any time you connect with an SBC end office
6 that does not subtend an SBC tandem, is that what you
7 said?

8 A. For every SBC end office, whether we serve
9 in that exchange or not, if we are going to terminate
10 intraLATA toll calls to that tandem, to that end office --
11 I'm making this even worse -- to that end office, we had
12 to agree to provide trunking to that end office if that
13 end office does not subtend an SBC tandem. We also had to
14 agree --

15 Q. Wait just a second. I don't want to go
16 beyond that one yet because I don't understand that one
17 yet. What did that cost you?

18 A. What we will end up doing in the short run
19 is routing all of our long distance traffic to an
20 interexchange carrier.

21 Q. You won't put those trunk -- you won't put
22 that trunking in?

23 A. In order to avoid that cost, we will not
24 put that trunking in, and the agreement allows for that.

25 Q. Okay. That's as you were doing under the

1 first part of the agreement you talked about, right?

2 A. Right.

3 Q. And it's no more expensive that way for
4 you, but it does provide a method of identifying the
5 calls?

6 A. It allows SBC to identify the calls coming
7 to them so that they may bill. It does nothing to resolve
8 our issue of not getting compensated.

9 Q. I understand you have issues, but I'm
10 trying to determine how this is hurting you from your
11 standpoint.

12 A. Well, the issue is, in order for me to get
13 facilities, I had to agree to take care of SBC's issue of
14 them not getting compensated. There is nothing in there
15 that handles my issue of not getting compensated.

16 Q. And that is you're not getting -- that is
17 your issue of not getting compensated for calls from your
18 customer in the area of an SBC exchange where you are
19 coming in as a competitor; is that right? Is that what --
20 I mean, is that what you're referencing?

21 A. The agreement we had to sign was when we
22 competed outside of SBC's exchanges.

23 Q. When you competed outside?

24 A. So they were holding up our interconnection
25 facilities in their exchanges to get us to agree to

1 something that applied only when we interconnected and
2 competed outside of their exchanges.

3 Q. So it was no barrier to entry to their
4 exchanges?

5 A. They would not provision interconnection
6 facilities until we reached that -- until we signed that
7 agreement.

8 Q. But that, in itself, was no barrier to your
9 entering their exchanges; is that correct?

10 A. I cannot enter their exchanges until I
11 establish interconnection.

12 Q. I'm talking about entering their exchanges
13 to compete in their exchanges.

14 A. Right.

15 Q. As a CLEC.

16 A. As a CLEC. I cannot compete in their
17 exchanges unless I establish a point of interconnection.

18 So during this period of time, they refused to provision
19 interconnection facilities in Springfield, Missouri.

20 During that period of time, Socket could not enter
21 Springfield, Missouri and compete.

22 Q. You could not get a customer in
23 Springfield, Missouri during that period of time; is that
24 what you're saying?

25 A. Right.

1 Q. Okay. And then the agreement that you
2 entered into affected you -- didn't affect you in terms of
3 what you had to pay in order to be interconnected,
4 correct?

5 A. It affected how we will route toll calls
6 terminating to SBC.

7 Q. Which did not affect you financially?

8 A. The rate we pay our wholesale IXC provider
9 is higher than the terminating access rate.

10 Q. And I believe you said marginally so?

11 A. Yes.

12 Q. So it really was not a financial issue in
13 terms of what you had to pay to be interconnected; is that
14 correct?

15 A. Correct.

16 Q. Okay. But the issue you're saying is that
17 as a competitor in their exchange, because of -- because
18 SBC does not interconnect with you in sending traffic in
19 reverse in the same manner, that you may not be fully
20 compensated for the traffic coming the other direction; is
21 that accurate?

22 A. Can you restate what you just said?

23 Q. Okay. I believe you're claiming -- and I'm
24 just trying to understand what it is you're saying -- that
25 once interconnected, having agreed to the interconnection

1 arrangements that were not a financial concern to you from
2 the standpoint of what you had to pay to be
3 interconnected, but once you're there with that
4 interconnection agreement, your concern is that you're not
5 being fully compensated for the calls that terminate to
6 you because SBC is not sending its calls to you the same
7 way you are required under the interconnection agreement
8 to send your calls to them. Is that right?

9 A. There -- I don't know if I should start
10 over.

11 Q. Did I completely miss the point?

12 A. No. What's confusing is we have an
13 interconnection agreement that governs our interconnection
14 with SBC, and when we compete in SBC Missouri exchanges
15 with SBC, that interconnection agreement governs those
16 operations.

17 Q. Governs how you send traffic to them?

18 A. Right.

19 Q. Does it govern how they send it to you?

20 A. Yes, it does. And it's all inclusive in
21 that agreement. Now, once we started competing outside of
22 their exchanges in CenturyTel Missouri exchanges, Sprint
23 exchanges, SBC would not route intra -- LEC-carried
24 intraLATA toll calls to our customers until we signed
25 another agreement.

1 So this is when we're outside of their
2 territory. If we weren't competing with them, we would
3 not have needed anything from them. So even in that --

4 Q. Wait just a second. You're outside of
5 their territory, but if you weren't also in their
6 territory, you wouldn't have needed anything?

7 A. Correct.

8 Q. Okay. And because you're within their
9 territory, how does that affect what you need?

10 A. What SBC did in order to get us to sign an
11 agreement that governed our operations when we competed
12 with Sprint and CenturyTel, they refused to provision
13 interconnection facilities for us in Springfield,
14 Missouri, which is their territory, and they also refused
15 to let their intraLATA toll customers place toll calls to
16 our toll customers residing in Sprint and CenturyTel
17 exchanges until we signed another agreement.

18 Q. So they blocked -- did they block traffic?

19 A. Yes. Well, what they did is they would not
20 load our NPA NXXs into their switching tables, which meant
21 if a customer dialed a Socket number and they were not --
22 and they were using SBC, I believe they would get a little
23 tone and then a message saying does not recognize the
24 number or number cannot be completed as dialed.

25 Q. Okay. And that was an agreement required

1 before -- that was an agreement -- what did you have to
2 agree to there to route your calls --

3 A. In that additional agreement --

4 Q. -- to the IXC?

5 A. -- we had to agree to route when we
6 competed out of region, out of their region -- in this
7 LATA was where our specific concern was because in the
8 other LATAs we've already established a point of
9 interconnection with them or we're in the process of doing
10 that.

11 In this LATA we do not have plans to do
12 that. So in this LATA we had to agree --

13 Q. This LATA being which LATA?

14 A. They call it the Westphalia LATA.

15 Q. Okay. Go ahead.

16 A. In this LATA we had to agree to route all
17 of our calls that will terminate to their customers to an
18 IXC. They will still route -- when one of their customers
19 in Westphalia or Linn calls one of our customers in, let's
20 say, Jefferson City, they will still transit that call
21 through Sprint and then to us, and then Sprint will hand
22 it to us. If it's a ported number, SBC will look at that
23 and think it's a Sprint customer and will pay Sprint for
24 it.

25 Q. Pay Sprint for terminating?

1 A. Yes, even though we are the carrier that
2 serves that customer.

3 Q. And you think that they ought to route it
4 through an IXC?

5 A. I think it was inappropriate of them to,
6 one, refuse to provision interconnection facilities in
7 region for this issue. I think, two, if we had equal
8 market power, they would not have refused to allow their
9 customers to call us, because if we had equal market
10 power, their customers would be mad, but they weren't
11 willing to do that. And the only agreement we reached
12 will take care of their billing issue, but not ours.

13 Q. And that was through -- this was through
14 interconnection agreements; is that right?

15 A. It was through the M2A agreement we're
16 operating under and an amendment to that agreement called
17 the OE LEC agreement.

18 Q. And you must have decided that it was more
19 beneficial to accept the agreements and go forward with
20 your provision of service than it was to come back to the
21 regulatory body to arbitrate the agreement, is that --

22 A. We needed to get in business, so we signed
23 the agreement. We will deal with it in the upcoming
24 arbitrations.

25 Q. Deal with it in the upcoming arbitrations?

1 A. The M2A is expiring in March.

2 Q. Oh, okay.

3 A. And that is likely -- unless there's a
4 significant changing of the mind, that is likely to be an
5 issue to be arbitrated.

6 COMMISSIONER MURRAY: I think Commissioner
7 Appling is going to have to fill the void until
8 Commissioner Gaw gets back. Thank you.

9 JUDGE RUTH: Do you have any questions,
10 Commissioner?

11 QUESTIONS BY COMMISSIONER APPLING:

12 Q. I think I have one, Matt. I've been pretty
13 well educated on trunks and competitive classification and
14 all that today. But the one question that I have, say
15 this Commission in the next month here awards SBC
16 competitive classification. Say we've made that decision.

17 A. For all services?

18 Q. For all services. What effect is that
19 going to have on Socket?

20 A. My concern is that if that is done and SBC
21 receives competitive classification, you will see them
22 increase rates in areas where there is not effective
23 competition and use those revenues to subsidize reducing
24 rates in areas where they do face competition.

25 In essence, they will either engage in

1 predatory pricing, will price services below cost where
2 they do face competition and recoup those revenues in
3 areas where they don't, or if they don't price them below
4 cost, they'll price them at cost or near cost.

5 Q. And will that put Socket out of business?

6 A. If that is allowed to happen, it certainly
7 could.

8 Q. What's going to happen when that day comes
9 and you-all are really going to have to compete?

10 A. I think we already have to compete, and if
11 there's effective competition, they won't have the ability
12 to raise certain rates to subsidize offers below cost in
13 other areas. So if the decision is made when it's
14 appropriate, then this will not be a concern. I just do
15 not believe this is the appropriate time.

16 Q. Okay. Now, SBC has been sitting back there
17 all week telling us that they are not going to raise their
18 prices, they will make that commitment that they won't do
19 that. I've heard them say that. So you're telling me
20 that you don't believe that?

21 A. I've not heard a commitment not to. If you
22 listen to them, they talk about we need to have all of
23 this pricing flexibility, we need to think like a
24 competitor, but then they'll turn around and say, but we
25 need revenue neutrality. That tells me that they don't

1 think like a competitor and that they will raise some
2 rates to make up for reducing rates in other areas.

3 As a competitor, I don't have the luxury of
4 revenue neutrality. I have to price it what the market
5 will bear or I will not get customers.

6 COMMISSIONER APPLING: Thank you, Matt.

7 COMMISSIONER MURRAY: One follow-up.

8 JUDGE RUTH: Of course. Go ahead.

9 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Mr. Kohly, what I heard -- and I guess
11 Commissioner Appling and I heard it slightly differently,
12 but I'd like to know how you heard what Mr. Unruh said
13 yesterday on the stand, and I -- I interpreted what he
14 said to be that SBC understood the political ramifications
15 and the public policy issues behind certain rates staying
16 pretty low or not being raised significantly, and that
17 they would not be taking the risk of creating public
18 policy, political ramifications and making customers angry
19 by increasing beyond a reasonable degree rates in various
20 areas. I did not understand them to say that they were
21 committing to not raising rates.

22 A. I heard Mr. Unruh say that political
23 pressure would not allow them to unreasonably raise rates.
24 And I think the fact that they cite political pressure is
25 indicative that there is not effective competition. If

1 there were effective competition, the market would say
2 they could not raise rates unreasonably.

3 Q. Well, I'm going to argue with you on that
4 one, because I believe that in a truly competitive market,
5 competitors are free to adjust their prices amongst
6 various services, various locations, whatever, to suit
7 whatever is most attractive to them financially, to
8 attract the customers that they want most to attract, to,
9 you know, not attract those that they prefer not to
10 attract, that sort of thing, in a truly competitive
11 market.

12 Would you not agree that in a truly
13 competitive market, one that is not regulated at all, that
14 competitors are free to raise and lower their prices and
15 find out for themselves what the market will bear?

16 A. In a truly competitive market, yes.

17 Q. Would you also agree that this is not by
18 any means a truly competitive market in terms of being
19 free of regulation?

20 A. I would agree with it in terms of not being
21 free of regulation, and just in general it's not a
22 competitive market.

23 Q. And when you have a mixture of regulation
24 and competition, it's impossible to arrive at perfect
25 competition, is it not?

1 A. Can you explain what you mean by perfect
2 competition?

3 Q. Well, I guess when I say perfect
4 competition, I mean that -- competition by which every
5 carrier is truly on a level playing field, every
6 competitor is truly on a level playing field, every
7 competitor can come up with whatever offers in terms of
8 services, products, price them according to what he or she
9 thinks best, try it out in the marketplace without
10 regulatory constraints, and the only constraints basically
11 are, if I do this, is my -- is a competitor or are other
12 many competitors going to either underprice me, offer
13 better services more quickly, provide better things to go
14 with it?

15 Basically it's a response to what the
16 customers are willing to pay, what the customers want and
17 what the competitors are able to offer, is it not, in what
18 you would call -- what I would call perfect competition?

19 A. In the -- in a textbook example of perfect
20 competition, that is true.

21 Q. Okay. And that won't happen as long as
22 there is any regulation, will it?

23 A. I think the regulation is in place to
24 curtail the market power that a dominant provider has, and
25 that is necessary to get to a more competitive market.

1 Once you get to that point, you can release regulation.

2 If you release it prematurely, you are going to not ever
3 arrive there either.

4 Q. Sometimes it's the case of the chicken and
5 the egg, which comes first, right, because one can surely
6 impede the other?

7 A. Yes. And I would argue that you should not
8 release regulation prematurely.

9 Q. Would you also argue that you should not
10 overregulate?

11 A. Yes.

12 Q. And I'm trying to remember what I
13 started -- what question I started out with here because I
14 had a point, which I've lost. If LiveNote were working, I
15 could look back and see what I said, but it's not.

16 COMMISSIONER MURRAY: So I think maybe I'm
17 finished now. Thank you.

18 JUDGE RUTH: I'm sorry about LiveNote.
19 They did try to get it fixed at lunch, but it didn't work.

20 We're going to go off the record now, take
21 a very short break until five minutes after three by the
22 clock in the back. Thank you.

23 (A BREAK WAS TAKEN.)

24 JUDGE RUTH: When we left, the
25 Commissioners were asking questions. However, I'm going

1 to have to ask you to step down, and we will probably
2 recall you, Mr. Kohly, when the Commissioners return, and
3 instead I would like Staff witness Peters to come up.
4 Commissioner Gaw has reminded me that yesterday he asked
5 Mr. Peters several questions and Mr. Peters agreed to get
6 that information and present it today. That's what I'd
7 like to do at this time. Are you ready, Mr. Peters?

8 MR. PETERS: Yes. It's all in this box.

9 JUDGE RUTH: Wonderful. You're going to
10 distill it, though, in an easily understood manner, aren't
11 you?

12 MR. PETERS: Yes.

13 JUDGE RUTH: I'll remind you that you are
14 under oath, and you may sit down. I hope, then, you do
15 remember the questions Commissioner Gaw asked you
16 yesterday to which you were supposed to come back and
17 respond.

18 MR. HAAS: Your Honor, I'd like to have an
19 exhibit marked.

20 JUDGE RUTH: Yes. It would be Exhibit 52.

21 MR. HAAS: Your Honor, this should be HC.

22 (EXHIBIT NO. 52HC WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 JUDGE RUTH: Okay. I have marked this for
25 identification purposes only as Exhibit 52HC. You may

1 proceed.

2 BILL PETERS testified as follows:

3 THE WITNESS: Okay. Commissioner Gaw, I
4 believe you asked me if I had a copy of the data
5 showing -- I guess sorted by, sort of, by the percentage
6 of penetration if we were looking at the annual reports
7 and how that compared to the recommendations that I made.

8 And in this exhibit on the first page where
9 it lists the business facilities baselines, I have
10 highlighted at the top in the lighter highlight those --
11 those exchanges that are highlighted are those that I
12 recommended for effective competition, and those that are
13 not highlighted I didn't recommend. And in the darker
14 highlight, for example -- I don't know if the exchange
15 name is HC.

16 JUDGE RUTH: I can go in-camera if you want
17 to actually discuss --

18 COMMISSIONER GAW: If it's easier for him
19 to talk about it, that's fine.

20 (REPORTER'S NOTE: At this point an
21 in-camera session was held, which is contained in
22 Volume 10, pages 1227 through 1236 of the transcript.)

23

24

25

1 JUDGE RUTH: Someone can let them know
2 outside that they can come back in if they want. You may
3 proceed, Mr. Haas. You were saying something.

4 MR. HAAS: Yes, your Honor. I would move
5 for the admission of Exhibit No. 52HC, the CLEC market
6 share report prepared by Mr. Peters.

7 JUDGE RUTH: Okay. Exhibit 52HC has been
8 offered. Are there any objections to it being received
9 into the record? Public Counsel?

10 MR. DANDINO: No objection.

11 JUDGE RUTH: CLECs?

12 MR. LUMLEY: No objection.

13 JUDGE RUTH: And SBC?

14 MR. LANE: No, your Honor.

15 JUDGE RUTH: Okay. Exhibit 52HC is
16 received into the record.

17 (EXHIBIT NO. 52HC WAS RECEIVED INTO
18 EVIDENCE.)

19 COMMISSIONER GAW: I think that's all I
20 have for Mr. Peters. Thank you.

21 JUDGE RUTH: Go ahead, Commissioner.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good afternoon, Mr. Peters.

24 A. Good afternoon.

25 Q. I think I'm just going to ask you some

1 general questions without specific numbers.

2 A. Sure.

3 Q. The dark highlighted exchanges are
4 exchanges that you had evaluated as reaching what you
5 considered to be a level of competition?

6 A. Originally and had subsequently withdrawn.

7 Q. And you withdrew those because the annual
8 report numbers did not reflect the percentage that you
9 considered to be the level, minimum level for effective
10 competition; is that right?

11 A. Yes.

12 Q. And you did not go backwards and adjust in
13 the opposite direction where annual reports showed that
14 the exchanges exceeded your threshold whereas your
15 original number did not reach the threshold; is that
16 right?

17 A. I did -- I did look at the other exchanges
18 on here with respect to their annual report numbers, but
19 when I, I guess, assimilated the other data, I did not
20 find significant data in my opinion in both places.

21 Q. So you looked at exchange by exchange, for
22 example, the -- let me find one and maybe I can identify
23 it without a name or a number. Let's look below the
24 first -- or the second lightly highlighted group, the
25 first line below that.

1 A. Before the second lightly highlighted?

2 Q. Yes.

3 A. Okay.

4 Q. The ex--

5 A. Can I just check with you to make sure it's

6 the same one?

7 JUDGE RUTH: Do you want me to go

8 in-camera, Commissioner?

9 COMMISSIONER MURRAY: Well, just general

10 concepts here. I'm really not talking numbers.

11 BY COMMISSIONER MURRAY:

12 Q. And yes, we agreed that we're talking about

13 the same line. It is the exchange that falls just below

14 the second group of lightly highlighted groups on page 1

15 of 6 of Exhibit 52HC. And there the exchange was, by

16 Staff's initial evaluation, based on the E911 data showing

17 zero percentage; is that correct?

18 A. Correct.

19 Q. And the annual report data showed

20 10 percent?

21 A. Correct.

22 Q. But Staff did not change its recommendation

23 as to competitive classification for that exchange?

24 A. Correct.

25 Q. And why did you not?

1 A. Because I did not -- did not show in my
2 opinion significant data in both places.

3 Q. You indicated earlier that you would expect
4 the annual report data to be more accurate than the E911
5 data, did you not?

6 A. I would expect it to be a more accurate
7 reflection of access lines.

8 Q. Okay. Would you reflect -- would you
9 expect it to be a more accurate reflection of the access
10 lines assigned to each carrier or served by each carrier?

11 A. They're collected at different times, but
12 if they were collected at the same time and we were able
13 to compare them that way, yes.

14 Q. Okay. Is it likely in your opinion that
15 the numbers are likely -- more likely to increase or to
16 decrease or more likely to stay static than to do either,
17 or impossible to know?

18 A. I couldn't tell you one way or the other.

19 Q. Okay. But you believe that if on
20 December 31st, 2003, an exchange showed through its annual
21 report that its access lines -- that a competitor's access
22 lines exceeded -- or the number of competitive access
23 lines exceeded your threshold, that it should still not be
24 granted competitive status?

25 A. I didn't -- I didn't develop a -- I guess I

1 did develop a threshold for the annual reports, but --
2 well, if it didn't also match up to the other data, no.

3 Q. The other data meaning E911 data?

4 A. Correct.

5 Q. But you did make the alternate adjustments
6 when the annual report data did not match up with the E911
7 data to remove exchanges from your recommendation for
8 competitive status?

9 A. Correct.

10 Q. And why did you make that -- why were you
11 willing to make that adjustment?

12 A. In order to be consistent in both places, I
13 wanted -- I wanted the data to be significant in both sets
14 of data. I think it's consistent in both places where --
15 in the first instance you discuss an exchange I had not
16 originally recommended, but the second set of data may
17 have shown significant competition, I decided to not
18 include it. I felt most comfortable -- I felt
19 uncomfortable recommending effective competition for such
20 an exchange where it didn't show significant data in both
21 places.

22 In the exchange -- in one of the exchanges
23 that's highlighted darker on the exhibit which I had
24 withdrawn, when I looked at both sets of data consistent
25 with the previous recommendation, I did not see

1 significant data in both places and, therefore, withdrew
2 my recommendation.

3 Q. And yet your E911 data for the first
4 exchange that has a dark highlight, the E911 data showed
5 16 percent, whereas the annual report data showed
6 2 percent, and the annual report data was dated 12/31/03.
7 Your E911 data was dated July 2, 2004. And you think you
8 should have gone backwards and removed that from your
9 recommendation even though it significantly exceeded in
10 the E911 column your threshold?

11 A. I guess I don't understand what you mean by
12 go back when you were referencing the two different -- two
13 different dates as well.

14 Q. Well, go back, look at the annual report
15 data, say, well, the annual report data which was dated
16 seven months earlier didn't show that high a percentage.
17 Therefore, we're just going to remove that one from
18 recommendation for competitive status.

19 A. Well, that is -- that is what I did.

20 Q. That is what you did. And you think
21 that -- well, I guess if you did it, you felt it was
22 justified.

23 And then on the two highlighted, two darkly
24 highlighted ones on page 2 of 6, both of which very
25 significantly exceeded your threshold for E911 data but

1 came in at zero for the annual report data, you also
2 removed those from your recommendation?

3 A. That's correct.

4 Q. Do you think your E911 data was just
5 totally unreliable? How could it have been that
6 different?

7 A. How could the E911 data be that different?
8 We've heard testimony in this case that one line could
9 be -- one line could be being served at a PBX location,
10 for example, one trunk, and that there may be ten entries
11 in the E911 database and that it can be overstated.

12 Q. Okay. But a difference between 0 and 32
13 percent is -- how would you explain that?

14 A. I don't know how to explain the difference.

15 Q. But you're still claiming that your E911
16 data is the data that should be used, with the exception
17 of when the annual report data comes in below it?

18 A. No. I'm sorry if it's confusing, but I
19 tried to be consistent, and in all -- in all situations
20 where I found significant data in both places, I felt
21 comfortable recommending effective competition. Where I
22 found the data in only one place, I did not feel
23 comfortable recommending effective competition.

24 Q. And I assume that on page 3 of 6, for the
25 exchange that is highlighted there to indicate that you

1 originally recommended competitive classification and now
2 you are withdrawing that recommendation, that your E911
3 data showing 72 percent, you can't explain that either,
4 I'm assuming? And if I'm assuming wrong, please explain.

5 A. I can't explain -- the difference between
6 the two, is that the question?

7 Q. Can you explain why your E911 data would
8 have shown 72 percent if, in fact, there is less than
9 9 percent or zero percent?

10 A. The only explanation is that those two --
11 those two pieces of data come from different places. I
12 mean, I can't explain it.

13 Q. But we should be able -- we should look at
14 this and be confident that the E911 data is reliable?

15 A. No. I think that in places where I found
16 significant data in both places, I am more comfortable
17 with the data in both places.

18 Q. Is either number reliable?

19 A. Is either number the most accurate? I
20 don't think so.

21 Q. Now, look at page 4 of 6, if you would, and
22 I see two lines that are darkly highlighted there. What
23 are you indicating by those dark highlights?

24 A. Those were the exchanges where I've
25 recommended effective competition.

1 Q. Those are not exchanges where you
2 originally recommended effective competition and now are
3 not recommending it, correct?

4 A. Correct. Nothing -- I did not change my
5 recommendation on the residential side.

6 Q. They look like dark highlights to me, but I
7 guess they must be light highlights.

8 A. Well, I'm not sure that they're highlighted
9 the same color.

10 Q. Okay.

11 A. I didn't feel the need to differentiate on
12 this page.

13 Q. Now, can you sit here and tell us that
14 either annual report data or E911 data is an accurate
15 reflection of the market share, either one by itself?

16 A. The accurate data -- the accurate
17 reflection of facilities-based market share?

18 Q. And that is only what you're measuring
19 here, right? You're not measuring anything other than
20 facilities-based market share?

21 A. Correct.

22 Q. So there could be significantly different
23 numbers if we look at resale, and then still different
24 numbers if we look at wireless, and still different
25 numbers if we look at other modes of provision, correct?

1 A. Correct.

2 Q. Okay. Just facilities-based CLECs is what
3 this chart looks at, and it looks at data based on E911
4 records. Can you tell us that is an accurate measurement?

5 A. That the E911 is an accurate measurement of
6 facilities-based lines? No.

7 Q. Can you tell us that the annual report data
8 is an accurate measurement of facilities-based lines?

9 A. I think that the annual report, if filled
10 out correctly, should be the correct measure of the access
11 lines in an exchange.

12 Q. But you're not willing to just look at --
13 just look at that?

14 A. Well, given that -- given that the annual
15 report data is six months older than the E911 data, I
16 don't know if it's fair to distinctly compare them, expect
17 one to be the other, and --

18 Q. So are you saying that for today, measuring
19 the number of lines today, facilities-based access lines
20 today, that those annual report numbers are not reliable?

21 A. They're reliable as far as measuring
22 facilities-based access lines for December 31st, 2003.

23 Q. But not for today?

24 A. They are not a snapshot of today.

25 Q. And that's why you're not willing to rely

1 on them for today?

2 A. Exclusively, that's correct.

3 Q. And can you tell me that either one of
4 those numbers is relevant to what it is we're determining
5 here?

6 A. I think to the extent that you want to know
7 CLEC facilities face competition, I think both are
8 estimations of access lines.

9 Q. Okay. To the extent we want to know that.
10 But is this what you based your recommendation on, just
11 the CLEC facilities-based competition, actual provided
12 competition?

13 A. I did not base my recommendation entirely
14 on facilities-based competition. It is the cornerstone
15 without which I do not feel comfortable recommending
16 effective competition for any exchange.

17 Q. So it was a but-for. If you didn't have
18 your threshold level of facilities-based competition, you
19 did not recommend the exchange; is that right?

20 A. Correct.

21 Q. Okay. So it was a -- it was an essential
22 criteria?

23 A. Certainly.

24 Q. Without it, you're saying you can't get it?
25 Unless you have this amount of facilities-based CLEC

1 competition, there is not effective competition?

2 A. Correct.

3 Q. And you know that there is great debate
4 about whether that is an accurate or reasonable
5 determination of what is effective competition?

6 A. Well, I know that -- I know there's debate
7 about that.

8 Q. And you are aware that there are wireless
9 providers providing service throughout the state
10 basically?

11 A. I'm aware of wireless service and that they
12 are providing service.

13 Q. And are you aware of the other intermodal
14 forms of competition, such as VOIP, for example?

15 A. Yes.

16 Q. And are you aware that there are -- there's
17 evidence in the record that customers have given up their
18 wireless lines to some degree to substitute one or another
19 of those various services?

20 A. Yeah. I think -- I think you said it the
21 other way. There's evidence that's been presented in the
22 record that a certain degree of customers have substituted
23 their wireline phone for wireless.

24 Q. Did I say it backwards?

25 A. Yes. Sorry.

1 Q. Okay. What I meant to say was they have
2 substituted their -- substituted wireless for their
3 wireline.

4 A. Oh, okay. Then I agree with you.

5 Q. Okay. But you don't consider -- you don't
6 consider there to be competition, effective competition,
7 unless there are CLECs providing what you consider to be a
8 threshold amount of facilities-based competition within
9 the exchange today?

10 A. I think the -- the evidence that has been
11 presented into the record of those customers who have
12 substituted away from their wireline phone and have
13 wireless instead, I consider that a relatively small
14 amount, and to the extent that I can't substantiate that,
15 in SBC Missouri exchanges I feel uncomfortable
16 recommending effective competition based on wireless
17 service for any of those exchanges.

18 Q. And you don't think it's relevant that a
19 customer can do that, pick up the phone and do that at any
20 time, or go down to their wireless provider and do -- make
21 that substitution?

22 A. I don't feel certain that they can do that
23 in every SBC Missouri exchange and to what extent they
24 can.

25 Q. And you didn't even evaluate that, in fact,

1 did you?

2 A. I don't think that's true.

3 Q. Did you evaluate that?

4 A. I spent a lot of time trying to figure out
5 how I can substantiate wireless competition at the
6 exchange level, and I can't find a way to do it.

7 Q. Okay. So you're sitting here telling us
8 you don't think wireless is effective competition?

9 A. I can't substantiate it in any exchange,
10 and I think in and of itself, I don't feel it is effective
11 competition.

12 COMMISSIONER MURRAY: Thank you for your
13 input. That's all I have.

14 JUDGE RUTH: Any other questions from the
15 Bench at this time?

16 CHAIRMAN GAW: Not here, no.

17 JUDGE RUTH: All right. We will move to
18 recross based on all the questions from the Bench for
19 Mr. Peters. Public Counsel?

20 MR. DANDINO: I have no questions for
21 Mr. Peters.

22 JUDGE RUTH: Mr. Lumley?

23 MR. LUMLEY: No questions.

24 JUDGE RUTH: SBC?

25 RE-CROSS-EXAMINATION BY MR. LANE:

1 Q. Mr. Peters, you qualified your discussion
2 of the annual report information several times during
3 cross-examination from the Commissioners with the words to
4 the extent that the information is accurate. Do you
5 recall that?

6 A. Yes. I think I was being asked a question
7 about how accurate the annual reports are.

8 Q. And we went through when you were
9 cross-examined previously by me, and you indicated many
10 areas where you recognize that the annual report data is
11 both incomplete and inaccurate, right?

12 A. That's true.

13 Q. And it's incomplete because we have many
14 carriers who do not file their annual reports with the
15 Commission, right?

16 A. I'm not aware of how many carriers don't
17 file their annual report.

18 Q. Didn't you tell me yesterday that there
19 were dozens of carriers that did not file annual reports
20 at the Commission?

21 A. I don't recall that.

22 Q. Didn't you start to read through a list of
23 all of the carriers and you had at least a dozen when you
24 got to the Cs going through the alphabet, at which point
25 you said, do you want me to continue to keep reading, and

1 I said, will you agree there's dozens and dozens that
2 don't, and you said, I agree with that? Do you recall
3 that?

4 A. I remember I was reading that list, and
5 from that list it was -- it was a list of the companies
6 that had filed annual reports and have reported numbers,
7 and it was a list of all the carriers in Missouri.

8 Q. All right. Then let's go through it. Time
9 Warner is a facilities-based provider in Missouri,
10 correct?

11 A. That's true.

12 Q. And they are not listed anywhere on your
13 Exhibit 52 or your Exhibit 12, right?

14 A. No, they're not.

15 Q. Because they never filed an annual report,
16 did they?

17 A. They hadn't filed an annual report because
18 they weren't certificated until this year.

19 Q. All right. Big River Telephone Company,
20 they never filed an annual report, but they're a
21 facilities-based provider in Missouri, are they not?

22 A. They are a facilities-based provider to
23 some extent.

24 Q. But you don't find them anywhere on
25 Exhibit 12HC from your surrebuttal or the Exhibit 52 that

1 you presented today, right?

2 A. Right, Big River is not on those exhibits.

3 Q. And Mr. Unruh presented evidence in this
4 case that there's approximately 65 CLECs that are actively
5 providing service in Missouri today in the various SBC
6 Missouri exchanges, correct?

7 A. According to his analysis.

8 Q. And you have about 20-something companies
9 that are listed on your Exhibit 12HC and Exhibit 52HC,
10 right?

11 A. That's correct.

12 Q. So if Mr. Unruh's testimony is correct and
13 there's that many CLECs that are providing service in
14 Missouri today, then we know that there are dozens of them
15 that are not filing their annual reports, and you couldn't
16 take them into account when you prepared Exhibit 12HC or
17 when you prepared Exhibit 52HC, right?

18 A. No, I don't think that's accurate, that I
19 couldn't take them into account or --

20 Q. All right. Tell me how --

21 A. -- or that they haven't filed their annual
22 reports.

23 Q. You've got --

24 A. Can you let me look for something?

25 Q. I'm sorry.

1 A. I'm trying to look for that list that I had
2 yesterday. I mean, the list that I was reading is the
3 CLECs that have filed annual reports and --

4 Q. All right.

5 A. And the total -- and the total number of
6 access lines I have out of all of the companies in all of
7 Missouri is about 370,000 access lines. And if you
8 look -- if you'll look in my schedule, the CLECs that I
9 have in my schedule in SBC territory total to something
10 like 330,000. So I think I've captured a significant
11 portion of those CLECs.

12 Q. All right. You recall pages 21 and 22 of
13 Mr. Unruh's direct testimony, do you not?

14 A. I'll have to look at it.

15 Q. All right. Well, let me ask you this:
16 I'll represent to you that this chart is from that, and it
17 reflects that CLECs served some 561,847 lines in Missouri,
18 right?

19 A. That's what it reflects.

20 Q. Okay. And if you're reflecting in your
21 records 330,000 or so in SBC Missouri's territory, then
22 you're not capturing a significant number of the access
23 lines, right, assuming that Mr. Unruh's figures are
24 correct?

25 A. Can you tell me where that is?

1 Q. Pages 21 and 22 of his direct testimony.

2 MR. LANE: May I approach the witness, your
3 Honor?

4 JUDGE RUTH: Yes. If you're going to show
5 him something, though, please show his counsel first.

6 BY MR. LANE:

7 Q. Right? The question was, if Mr. Unruh's
8 presentation of 560,000 access lines is correct and your
9 annual report figures capture only 330,000 or so lines in
10 SBC Missouri's territory, then there's a significant
11 number of access lines that aren't being recorded by CLECs
12 in their annual report, right?

13 A. Well, that wouldn't necessarily be true
14 given that -- given that the annual report data is
15 December 31st, 2003, and this data represented here is by
16 SBC's estimate on June of 2004.

17 Q. All right.

18 A. So I can't --

19 Q. And then if that's true, then, if that's
20 the reason for it, then that shows an incredibly dramatic
21 increase in the level of competition from December 31st of
22 2003 and June of 2004, correct?

23 A. Correct.

24 MR. LUMLEY: Your Honor, I object. The
25 questions are mischaracterizing Mr. Unruh's testimony.

1 The chart specifically carves out 911 listings as a
2 separate figure subsumed by the 560,000 figure.
3 Mr. Peters has made it clear repeatedly his numbers don't
4 include resale and UNE-P lines. By mischaracterizing the
5 testimony, he's trying to get him to compare apples and
6 oranges and not disclosing that to him. I think it's a
7 misleading question and mischaracterizing Mr. Unruh's
8 chart.

9 JUDGE RUTH: You may respond.

10 MR. LANE: Sure. His assertion is
11 inaccurate. The annual report figures include resale plus
12 UNE-P plus facilities-based lines. Is that correct,
13 Mr. Peters?

14 THE WITNESS: That's correct.

15 JUDGE RUTH: Do you have a response to
16 that, Mr. Lumley?

17 MR. LUMLEY: That's not what I understood.

18 JUDGE RUTH: And so for my understanding,
19 tell me again what's included.

20 MR. LANE: The annual report figures that
21 he's using for his 330,000 is resale plus UNE-P plus
22 facilities-based.

23 JUDGE RUTH: And is that your
24 understanding, that the numbers --

25 THE WITNESS: Yes. The 330,000 I was using

1 includes all competition.

2 JUDGE RUTH: Then the objection is
3 overruled.

4 BY MR. LANE:

5 Q. So my question was, Mr. Peters, if the
6 timing of the data is the only explanation for the
7 difference, and the fact that there were 330,000 access
8 lines on December 31st of 2003 and 561,000 as of June of
9 2004 indicates a dramatic increase in the level of
10 competition across the state, right?

11 A. If you were to accept the CLEC E911
12 listings as an accurate predictor of access lines, that
13 would be true. I understand that this 561,000 number
14 includes CLEC E911 listings, and so that could explain the
15 difference as well.

16 Q. Right.

17 MR. LANE: And this will be a quick HC,
18 your Honor.

19 JUDGE RUTH: Okay.

20 (REPORTER'S NOTE: At this point an
21 in-camera session was held, which is contained in
22 Volume 10 of the transcript, pages 1258 through 1275.)

23

24

25

1 JUDGE RUTH: And we will start redirect,
2 but we may not finish it today. We've not had a break, so
3 we are going to break in about probably 15 minutes or so.
4 We have some technical things to discuss, too. There was
5 a -- it's my understanding that the parties may want to
6 discuss a change in briefing schedule, and we'll also need
7 to talk about when to continue the hearing.

8 So redirect.

9 REDIRECT EXAMINATION BY MR. HAAS:

10 Q. Mr. Peters, during cross-examination you
11 were asked if market share is used in the effective
12 competition statute, and your answer was no. But is there
13 a place in the definition of effective competition or in
14 the criteria used for effective competition where it would
15 be appropriate, in your opinion, to look at market shares?

16 A. I think the part that -- where it says to
17 the extent that substitute services are available from
18 alternate providers, certainly a place where I would look
19 at if they're being provided.

20 Let me look at the statute. I'd certainly
21 enlighten you to Part D for existing economic
22 regulatory -- economic or regulatory barriers to entry. I
23 can substantiate the competitors who are providing
24 service.

25 Q. Let me ask it this way: Would you consider

1 it under subsection A, the extent to which services are
2 available from alternative providers in the relevant
3 market?

4 A. Certainly.

5 Q. Would you consider it under B, the extent
6 to which the services of alternative providers are
7 functionally equivalent or substitutable at comparable
8 rates, terms and conditions?

9 A. Certainly.

10 Q. So there is a place to consider it in the
11 criteria?

12 A. I think so.

13 Q. Did SBC Missouri provide more
14 Missouri-specific wireless information in this case than
15 in the last case?

16 A. I think they did. They provided -- they
17 provided their wireless survey that surveys customers in
18 St. Louis, Springfield and Kansas City, and they've also
19 provided their compilation, what they believe to be the
20 number of wireless providers available by entering zip
21 codes into the website, I believe it's called
22 saveonphone.com, and taking its list and counting those
23 providers. And that is -- that's the Missouri-specific
24 evidence that they presented.

25 Q. What was the lowest facilities-based CLEC

1 market share for an exchange that the Commission found to
2 face effective competition in the last SBC case?

3 A. If I were to do that same calculation like
4 I've done in this case for facilities-based lines, I come
5 up with approximately 17 percent -- or actually I did the
6 calculation. It was approximately 15 percent market share
7 for business services in St. Louis. The rest of them are
8 higher. Did you want any more?

9 Q. No. I just wanted the lowest.

10 When UNE-P goes away, is it possible that a
11 CLEC could stop serving those customers that it serves by
12 UNE-P today?

13 A. Certainly possible. We've -- we've gotten
14 a number of snap-back announcements when CLECs go out of
15 business, and I can certainly see that happening again.

16 Q. Do CLECs have switch -- their own switches
17 in every exchange where they have UNE-P customers?

18 A. I don't believe they have their switches in
19 every exchange where they have UNE-P customers.

20 Q. So if they were wanting to continue to
21 serve those customers, they would need to arrange for
22 transport?

23 A. If transport was needed to get from, I
24 guess like Matt Kohly's example where he said they want to
25 serve out of an exchange where they don't have

1 collocation, they have to arrange for transport to get to
2 their switch.

3 Q. Do you know what any CLECs are planning to
4 do when UNE-P goes away?

5 A. We have sent Data Requests to ask them what
6 they're going to do, and they have told us that they don't
7 know what they're going to do.

8 Q. Yesterday you were asked a question from
9 the Bench about, I believe it was a wireless survey. What
10 was the date of that survey?

11 A. Give me a moment. I have here footnoted in
12 FCC 9th Report on CMRS Competition that it's from a
13 February 2004 special supplement to the current population
14 survey.

15 Q. Do you have any more recent information on
16 wireless phone usage?

17 A. The only other recent information I have
18 is, I guess it was regarding number portability and where
19 you could now -- you can now, based on what the FCC has, I
20 guess, obligated, transfer your phone number, port your
21 phone number from your wireless phone to your wireline
22 phone, and the predictions for how many of those numbers
23 would be ported were quite high compared to what the FCC
24 reported had actually occurred,

25 Q. Whose prediction are you talking about?

1 A. I guess it was just industry analyst
2 predictions. There's an article in the Kansas City Star.
3 It says, It's a far cry from the predictions some analysts
4 offered before the service became available on
5 November 24th, 2003.

6 Q. And what was the prediction and what was
7 the result?

8 A. They predicted 30 million transfers, and
9 the result was 8 and a half million numbers were
10 transferred.

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

13 JUDGE RUTH: Just a moment, please. There
14 are Commissioner -- you may step down, Mr. Peters. Excuse
15 me.

16 There are going to be some Commissioner
17 questions for Mr. Kohly. Then we will have to move on to
18 the recross and redirect. I don't think it's possible to
19 finish today, so I propose to take this back up at 8:30 in
20 the morning on Monday, which is February 7th. We need to
21 do it fairly quickly. If that time is not available,
22 Tuesday, February 8th at one o'clock might be, but that
23 one's still kind of in doubt.

24 It appears that Monday at 8:30 is probably
25 going to be the best option. Do the parties have their

1 calendars available? Can you look at them, let me know if
2 we can continue Monday morning? I can go off the record
3 for just a minute while you take a look at your calendars.

4 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

5 JUDGE RUTH: We are back on the record.
6 Parties, can you tell me if you will be able to be here
7 for the hearing Monday morning, 8:30? Start with --
8 uh-oh.

9 MR. LUMLEY: We can be here, but I vote for
10 nine o'clock.

11 JUDGE RUTH: Nine o'clock is acceptable.

12 MR. LUMLEY: Thank you.

13 JUDGE RUTH: Okay. Then I do want to take
14 up one thing that was mentioned by someone on a break.
15 Right now the transcript is due on the 9th. I am still
16 hopeful that that will be the case. I will talk to the
17 court reporter afterwards and make sure that Monday's
18 transcript can be expedited and still ready then. That
19 will be a two-day transcript.

20 And then Findings of Fact and Conclusions
21 of Law are due the following Wednesday, which is
22 February 16, and I believe -- and I suggested that the
23 appropriate briefing schedule might be Friday,
24 February 18th. And as I mentioned before, there will be
25 only one round of briefs. However, it's my understanding

1 that the parties had a comment about my proposed date of
2 February 18th for the briefs. Was that comment from you,
3 Mr. Bub?

4 MR. BUB: I was suggesting that we move the
5 Proposed Findings of Fact and Conclusions of Law from the
6 16th to be filed the same time as the Brief, and that was
7 the 18th, and then there was some discussion about making
8 it a two week. I think that came from Mr. Lumley.

9 JUDGE RUTH: And as I indicated, I'm not
10 going to change the Finding of Fact, Conclusion of Law
11 date unless that is agreeable among all the parties. Is
12 this something you had a chance to discuss with the other
13 parties?

14 MR. DANDINO: Fine with me.

15 JUDGE RUTH: Mr. Haas?

16 MR. HAAS: I agree they should be on the
17 same date.

18 JUDGE RUTH: Mr. Lumley?

19 MR. LUMLEY: Agreed.

20 JUDGE RUTH: Okay. So if the parties agree
21 they should be on the same date, does that -- I'm not
22 hearing another date besides the 18th.

23 Then it will be February 18th for both the
24 one round of Briefs and the Findings of Facts and
25 Conclusions of Law. And I will see you Monday morning at

1 nine o'clock. Thank you.

2 WHEREUPON, the hearing of this case was
3 recessed until February 7, 2005.

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I N D E X

2

OPC'S EVIDENCE

3

BARBARA MEISENHEIMER

Direct Examination by Mr. Dandino 1033

4

Cross-Examination by Mr. Haas 1036

Questions by Commissioner Murray 1063

5

Questions by Commissioner Appling 1076

Questions by Commissioner Gaw 1082

6

Further Questions by Commissioner Murray 1120

Recross-Examination by Mr. Haas 1131

7

Recross-Examination by Mr. Bub 1136

8

CLECS' EVIDENCE

9

MATTHEW KOHLY

Direct Examination by Mr. Lumley 1153

10

Cross-Examination by Mr. Haas 1156

Cross-Examination by Mr. Lane 1157

11

Questions by Commissioner Murray 1187

Questions by Commissioner Appling 1219

12

Further Questions by Commissioner Murray 1221

13

MATTHEW KOHLY (In-Camera Session - Volume 10

Cross-Examination by Mr. Lane 1161

14

Cross-Examination by Mr. Lane 1172

Cross-Examination by Mr. Lane 1180

15

16

STAFF'S EVIDENCE

17

BILL PETERS

Questions by Commissioner Gaw 1226

18

Questions by Commissioner Murray 1237

Recross-Examination by Mr. Lane 1250

19

Redirect Examination by Mr. Haas 1276

20

BILL PETERS (In-Camera Session - Volume 10

Questions by Commissioner Gaw 1227

21

Recross-Examination by Mr. Lane 1258

22

23

24

25

1	EXHIBITS INDEX		
2		MARKED	RECEIVED
3	EXHIBIT NO. 26		
4	NP Rebuttal Testimony of Barbara Meisenheimer		1035
5	EXHIBIT NO. 27		
6	HC Rebuttal Testimony of Barbara Meisenheimer		1035
7	EXHIBIT NO. 28		
8	NP Surrebuttal Testimony of Barbara Meisenheimer		1035
9	EXHIBIT NO. 29		
10	HC Surrebuttal Testimony of Barbara Meisenheimer		1035
11	EXHIBIT NO. 32		
12	Amended Rebuttal Testimony of Matthew Kohly		1155
13	EXHIBIT NO. 33		
14	Surrebuttal Testimony of Matthew Kohly		1155
15	EXHIBIT NO. 49		
16	Report and Order, Case No. TO-2001-467	1053	1054
17	EXHIBIT NO. 50		
18	Listing Where Cost Studies Were Accepted Into Evidence	*	
19	EXHIBIT NO. 51		
20	Errata Sheet, Revised Rebuttal Testimony Of Matthew Kohly		1155
21	EXHIBIT NO. 52HC		
22	CLEC Market Share	1225	1237
23	*Late-filed exhibit.		
24			
25			