

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4  
5 TRANSCRIPT OF PROCEEDINGS  
6 Hearing  
7 August 11, 2004  
8 Jefferson City, Missouri  
9 Volume 1

10 The Staff of the Missouri Public )  
11 Service Commission, )  
12 Complainant, )  
13 v. ) Case No. TC-2004-0310  
14 Secured Technologies, L.C., )  
15 Respondent. )

16 RONALD D. PRIDGIN, Presiding,  
17 REGULATORY LAW JUDGE.  
18 CONNIE MURRAY,  
19 JEFF DAVIS,  
20 LINWARD "LIN" APPLING,  
21 COMMISSIONERS.  
22

23 REPORTED BY:  
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
25 MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 MARK W. COMLEY, Attorney at Law  
3 Newman, Comley & Ruth  
4 601 Monroe, Suite 301  
5 P.O. Box 537  
6 Jefferson City, MO 65102  
7 (573) 634-2266

8 FOR: Secured Technologies, L.C.

9 ROBERT BERLIN, Assistant General Counsel  
10 P.O. Box 360  
11 200 Madison Street  
12 Jefferson City, MO 65102  
13 (573) 751-3234

14 FOR: Staff of the Missouri Public  
15 Service Commission.

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

2 JUDGE PRIDGIN: Good morning. We are on  
3 the record.

4 This is the hearing for Case  
5 No. TC-2004-0310, the Staff of the Missouri Public  
6 Service Commission versus Secured Technologies, L.C.  
7 This case has been consolidated with Commission Case  
8 No. XE-2004-0433. I am Ron Pridgin, the Regulatory Law  
9 Judge assigned to preside over this hearing. It's being  
10 held on August 11th, 2004, in the Governor Office Building  
11 in Jefferson City, Missouri. The time is approximately  
12 8:35 a.m.

13 If I could, at this time I would like to  
14 get entries of appearance from counsel, beginning with  
15 Staff, please.

16 MR. BERLIN: Robert S. Berlin, Post Office  
17 Box 360, representing Staff of the Missouri Public Service  
18 Commission, Jefferson City, Missouri 65102.

19 JUDGE PRIDGIN: Mr. Berlin, thank you. On  
20 behalf of Secured Technologies, L.C., please.

21 MR. COMLEY: Good morning. Let the record  
22 reflect the appearance of Mark W. Comley, Newman, Comley &  
23 Ruth, PC, 601 Monroe Street, Jefferson City, Missouri  
24 65101, on behalf of Secured Technologies, L.C.

25 JUDGE PRIDGIN: Mr. Comley, thank you.

1                   I don't believe I have any pending motions.  
2   Are there any motions or anything else counsel needs to  
3   bring to my attention?

4                   MR. COMLEY:  None that I know of, Judge.

5                   MR. BERLIN:  Staff has none.

6                   JUDGE PRIDGIN:  All right.  Thank you.  At  
7   this time I would like to get exhibits marked, and I'd  
8   just like to do them serially if I could, beginning with  
9   Staff.  I do have your exhibit list, so I assume you're  
10  going to stick pretty close to that.

11                  Mr. Berlin, do you have some exhibits you'd  
12  like marked?

13                  MR. BERLIN:  Yes, I do, your Honor.  I  
14  believe that on the exhibit list I had the motion for  
15  leave to file annual report out of time and the 2002  
16  annual report.  Actually, I would like to just include as  
17  Exhibit 1 the motion for leave to file out of -- the  
18  motion for leave to file annual report out of time.  That  
19  will take care of the other exhibit because it has  
20  appended to it the 2002 annual report.  That is part of  
21  the motion.  So I don't believe I need to make that a  
22  separate exhibit.

23                  JUDGE PRIDGIN:  I'll just show it as  
24  Exhibit No. 1 for identification purposes, Secured  
25  Technologies' motion for leave to file annual report out

1 of time.

2 MR. BERLIN: And I believe the last exhibit  
3 was a letter from the director of the Missouri Public  
4 Service Commission, Robert Quinn. This is a letter dated  
5 February 3rd, 2003. It is a notice that is sent to all  
6 Missouri public utilities.

7 JUDGE PRIDGIN: All right. I will show  
8 marked as Exhibit No. 2 for identification purposes a  
9 letter from executive director of the Commission, Robert  
10 Quinn, dated February 3rd, 2003.

11 Mr. Berlin, any other exhibits?

12 MR. BERLIN: No, your Honor.

13 JUDGE PRIDGIN: Thank you. Mr. Comley, any  
14 exhibits?

15 MR. COMLEY: Yes. Yes, your Honor. I  
16 think that there was some overlap between the exhibit list  
17 prepared by the Staff and the Respondent. Our first  
18 exhibit to mark would be a letter from Robert Quinn to  
19 Secured Technologies dated April 25th, 2003.

20 JUDGE PRIDGIN: All right. We'll let the  
21 record show Exhibit No. 3 for identification purposes will  
22 be an April 25th, 2003 letter from executive director  
23 Robert Quinn.

24 MR. COMLEY: The next exhibit, which in  
25 order would be 4, is a letter dated May 22nd, 2003, to

3 JUDGE PRIDGIN: All right. Let the record  
4 reflect that Exhibit No. 4 for identification purposes is  
5 a May 22nd, 2003 letter from Missouri Public Service  
6 Commission General Counsel Dana Joyce to Secured  
7 Technologies.

8 MR. COMLEY: And the final exhibit would be  
9 the statement of revenue for Secured Technologies for the  
10 calendar year of 2002.

11 JUDGE PRIDGIN: All right. I'll show as  
12 Exhibit No. 5 for identification purposes a statement of  
13 revenue for calendar year 2002 on behalf of Secured  
14 Technologies, L.C.

15 MR. COMLEY: One other item would be in  
16 part of our case. I mentioned this to Mr. Berlin this  
17 morning. It's not on the exhibit list, but I noticed that  
18 there was nothing officially in the record indicating the  
19 time of certification for the company. At some  
20 appropriate time during our case in chief, if not before,  
21 I was going to ask the Commission to take official notice  
22 of the Report and Order in Case No. TA-99-251, which is  
23 the certificate of service authority granted to Secured  
24 Technologies, L.C. by the Commission.

25 JUDGE PRIDGIN: All right. The Commission

1 will take official notice of its own order, and that is in  
2 Case No. TA-99-251, which is the order that granted a  
3 certificate of service authority to Secured Technologies,  
4 L.C., is that correct, Mr. Comley?

5 MR. COMLEY: Yes. Thank you. And I do  
6 have copies in the event the Commission would prefer to  
7 have one in front of them.

8 JUDGE PRIDGIN: Thank you, Mr. Comley. Any  
9 other exhibits?

10 MR. COMLEY: That's all. Thank you.

11 MR. BERLIN: Staff has none.

12 JUDGE PRIDGIN: Anything further before we  
13 go to opening statement?

14 (No response.)

15 JUDGE PRIDGIN: All right. At this time,  
16 Mr. Berlin, if you'd please approach the podium and give  
17 your opening statement.

18 MR. BERLIN: Good morning, your Honor, and  
19 may it please the Commission?

20 Staff filed a complaint on January 20th,  
21 2004 against Secured Technologies, L.C., pursuant to  
22 386.390 of the Missouri statutes and 4 CSR 240-2.070 of  
23 the Commission rules. This complaint was filed for  
24 violating the Commission's statute relating to the filing  
25 of annual reports, specifically in that Secured

1 Technologies, L.C. failed to timely file its 2002 annual  
2 report that was due on April 15th of 2003. Secured  
3 Technologies is a telecommunications company as defined  
4 under Section 386.020, RSMo 2000.

5                   On February 24th, Secured Technologies  
6 filed its motion for leave to file an annual report out of  
7 time, and that created a new case number, XE-2004-0433.  
8 This new case was later consolidated to the complaint case  
9 TC-2004-0310 by order of the Commission.

10                   On March 1st of 2004, Secured Technologies  
11 filed its answer to the complaint, stating in paragraph 5  
12 of its complaint that Respondent admits that by law and  
13 Commission rule telecommunications companies are required  
14 to file an annual report with the Commission on or before  
15 April 15th of each year. It further stated in paragraph  
16 10 of its answer to its complaint that its failure to file  
17 a completed Commission annual report form was inadvertent,  
18 unintentional and not in disobedience to the orders or  
19 rules of the Commission, but rather was a result of  
20 innocent oversight and mistake.

21                   Staff during this proceeding will provide  
22 its witness Janis Fischer to attest to the facts of this  
23 complaint and answer any questions that the Commission may  
24 have as a result of this hearing today. Staff desires  
25 that the Commission make a finding of fact that Secured



1 Technologies, L.C. failed to timely file its 2002 annual  
2 report on the date that it was required, the date of April  
3 15th of 2003.

4 JUDGE PRIDGIN: Mr. Berlin, thank you.  
5 Mr. Comley, any opening?

6 MR. COMLEY: Yes, thank you.  
7 May it please the Commission?

8 JUDGE PRIDGIN: Mr. Comley.

9 MR. COMLEY: Secured Technologies applied  
10 for a certificate of service authority to provide  
11 interexchange telecommunications services in December of  
12 1998. In Case No. TA-99-251, which I've asked the Hearing  
13 Examiner already to take official notice of and has been  
14 taken, I understand, the Commission granted that  
15 application. The company was classified as a competitive  
16 company and its services were classified as competitive.  
17 The Order was effective January 18th, 1999.

18 Secured Technologies did not file its  
19 annual report for 2002 on April 15th, 2003. The company  
20 did not receive a notice that it had to do so, as far as  
21 it's known. It did not receive a notice that it was  
22 overdue. Its failure to file was an oversight. It was  
23 not deliberate; it was a mistake. Its failure to file was  
24 not in defiance of a Commission demand to file or a  
25 Commission order to file.

1                   On April 25th, 2003, ten days after the  
2     annual report deadline had passed, Mr. Robert Quinn, the  
3     executive director for the Commission, notified Secured  
4     Technologies that the Commission had not received the  
5     company's 2002 statement of revenue. Mr. Quinn warned  
6     that unless it was received, the company's revenue for  
7     this year would be estimated for purposes of calculating  
8     its annual assessment. There was nothing in Mr. Quinn's  
9     letter indicating that the annual report for 2002 was  
10    overdue.

11                   Secured Technologies filed its statement of  
12    revenue for 2002 pursuant to Mr. Quinn's notice. Its  
13    report showed zero revenue for the year in the state of  
14    Missouri.

15                   On May 22nd, 2003, approximately 37 days  
16    after the deadline had passed for filing annual reports,  
17    General Counsel for the Commission, Dan Joyce, sent a  
18    letter to the company advising that it had not paid its  
19    annual assessment for 2002. Mr. Joyce advised in the  
20    letter, To date you have an unpaid annual assessment of  
21    \$2.07. Mr. Joyce warned that if the annual assessment was  
22    not paid within 30 days, the company might be subject to  
23    penalties, and he cited the appropriate statute.

24                   There was nothing in Mr. Joyce's letter  
25    notifying the company that its 2002 annual report was

1     overdue. The company paid its 2002 assessment of \$2.07 on  
2     or about June 11th, 2003. The company did not receive any  
3     notice from the Staff or the Commission that the company's  
4     annual report for 2002 was overdue. The Staff made no  
5     demand on the company to file the annual report within a  
6     specified time frame or otherwise face penalties.

7                     Without warning, the Staff filed a  
8     complaint against the company on January 29, 2004, asking  
9     the Commission to find that the company failed to timely  
10    file its annual report and to authorize general counsel to  
11    seek statutory penalties, just as Mr. Berlin has  
12    mentioned. On January 24th, 2004, Secured Technologies  
13    asked the Commission for permission to file its 2002  
14    annual report out of time, and as you know, that motion  
15    has been consolidated.

16                    By my reckoning, and with a little  
17    inference, I calculate that the general counsel is asking  
18    you for authority to penalize Secured Technologies in a  
19    sum in excess of \$31,000.

20                    Let me discuss the Missouri operations of  
21    the company. Secured Technologies was certificated for  
22    the purpose of providing service for the occupants of  
23    state or federal detention or reformatory facilities. It  
24    eventually offered its services under a contract that  
25    supplied Tarkio Academy in Tarkio, Missouri with long

1 distance service. Tarkio Academy is a secondary education  
2 facility for troubled youth. That contract started  
3 sometime in the calendar year 2003, as I recall.  
4 Secured Technologies had no customers in Missouri in 2002,  
5 and that explains the zero balance on its statement for  
6 revenue that year.

7               Mr. Jerry Jacobs, vice president of the  
8 company, will testify about the company's history in  
9 Missouri and about its future. You see, the company  
10 wishes to keep its certificate active in Missouri. It is  
11 certificated already in Texas, and there is still the  
12 possibility it could expand its business in Missouri and  
13 adjacent states, including Iowa and Kansas. An active  
14 certificate in Missouri keeps options more widely open for  
15 the company.

16               Mr. Jacobs is also expected to testify that  
17 if the general counsel is successful at the circuit court  
18 to obtain a penalty against the company, it intends to  
19 cancel its tariffs and surrender its certificate.

20               Regarding the annual report itself, the  
21 Commission will hear testimony today about how annual  
22 reports differ between categories and classes of  
23 utilities. For instance, gas and electric utilities are  
24 required to file detailed annual reports which are used by  
25 the Staff not only for rate case references and

1 preparation of testimony, but also as ongoing tools to  
2 monitor the operations of each company.

3           Annual reports for competitive companies  
4 are not so detailed. In fact, the annual report for  
5 interexchange carriers like Secured Technologies is one of  
6 the most abbreviated. Here are the pieces of information  
7 the lack or untimely filing of which Staff counsel thinks  
8 penalties are proper: The date of company certification,  
9 the name of the company's contact person, the extent of  
10 merger and consolidation activity, the operating revenue,  
11 the type of tax return used by the company, its taxpayer  
12 ID, the name of the company's official representative, its  
13 consumer services representative, its comptroller,  
14 technical person, surveillance person and in-house and  
15 outside attorneys, and finally its consultants. There are  
16 other items about the same way.

17           There is no request for information on the  
18 company's relations with customers in this or in other  
19 states in which it is certificated. It does not ask about  
20 the company's customer base or projections of revenue in  
21 this jurisdiction. It does not talk about its plant. It  
22 does not talk about its depreciation. It does not talk  
23 about its financial future or its financial reports.  
24 The annual report asks for pieces of information which we  
25 contend the Staff could verify from its own records,

1 records of other state agencies, or could acquire by  
2 simply a phone call.

3               One thing I must emphasize, one thing that  
4 may not be entirely clear to the Commission, but it has a  
5 wide discretion in the authorization of its attorneys to  
6 file enforcement actions. By statute the Commission may  
7 extend the time in which a company may file an annual  
8 report, which means it may at any time allow a company to  
9 file its annual report out of time. It can even exempt a  
10 company from filing its annual report, and based upon the  
11 statute, may do so retroactively.

12               In this case you will find a company that  
13 has been obedient to every demand the Staff has made upon  
14 it. The company supplied information to the Staff each  
15 time the Staff notified it it was behind. The Staff had  
16 two occasions to advise the company it had an overdue  
17 annual report, but for some reason didn't do so. Instead,  
18 without warning, it seeks excessive penalties against the  
19 company over lack of information it already had or could  
20 have easily acquired in another way. It seeks penalties  
21 so high that it will affect the diversity of competition  
22 in the state of Missouri.

23               Staff's complaint should be dismissed. The  
24 Respondent's motion to accept the annual report should be  
25 granted without qualification, or the company should be

1 exempt from filing for 2002 and do that retroactively. At  
2 the end of the case, I intend to explain in more detail  
3 why this is important.

4 JUDGE PRIDGIN: Mr. Comley, thank you.  
5 Mr. Berlin, are you ready to call your first witness?

6 MR. BERLIN: Yes, your Honor.

7 JUDGE PRIDGIN: If you would.

8 MR. BERLIN: Staff calls Janis Fischer.

9 JUDGE PRIDGIN: Ms. Fischer, if you would  
10 please come to the witness chair and be sworn.

11 (Witness sworn.)

12 JUDGE PRIDGIN: Thank you very much. If  
13 you would please take a seat.

14 JANIS FISCHER testified as follows:

15 DIRECT EXAMINATION BY MR. BERLIN:

16 Q. Good morning, Ms. Fischer. Would you  
17 please state for the Commission your full name.

18 A. Janis, J-a-n-i-s, Elaine Fischer,  
19 F-i-s-c-h-e-r.

20 Q. And would you please state for the  
21 Commission your position on Staff.

22 A. I'm a Regulatory Auditor 4 in the auditing  
23 department.

24 MR. BERLIN: Staff tenders the witness for  
25 cross-examination, your Honor.

1 JUDGE PRIDGIN: All right. Thank you,  
2 Mr. Berlin. Commissioner Murray? The Order that I issued  
3 had questions from the Bench to begin first, so I don't  
4 think -- I don't know if the Bench will have any  
5 questions. If Mr. Comley has questions, the Bench may  
6 have some follow-up. Mr. Berlin, if you don't have any  
7 further direct and the Bench doesn't have any questions,  
8 I'll just let Mr. Comley have cross-examination.

9 MR. BERLIN: Your Honor, I might just ask a  
10 few questions of Ms. Fischer.

11 JUDGE PRIDGIN: Sure.

12 BY MR. BERLIN:

13 Q. Ms. Fischer, would you please state your  
14 duties with respect to the monitoring of annual reports?

15 A. The auditing department reviews the annual  
16 reports when they're received in the data center. We  
17 review the annual reports for completeness basically.

18 Q. Did you have any communications with  
19 Secured Technologies with regard to the 2002 annual  
20 report?

21 A. No, I did not. Myself personally, no, I  
22 did not.

23 MR. BERLIN: Your Honor, may I approach the  
24 witness?

25 JUDGE PRIDGIN: You may.



1                   MR. BERLIN: I have here, your Honor, what  
2 has been marked as Staff Exhibit 2.

3                   (EXHIBIT NO. 2 WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. BERLIN:

6               Q.       Ms. Fischer, I just handed to you what's  
7 premarked as Staff Exhibit 2. Could you please identify  
8 this document?

9               A.       This is a cover letter that is included in  
10 the packet that is sent to each company that is required  
11 to file an annual report and it more or less explains the  
12 rules and cites the section of the statutes where the  
13 rules are located. It goes into a little bit of an  
14 explanation on what is required to file for an extension  
15 or if you would like to have information in the annual  
16 report considered highly confidential. It also mentions  
17 that failure to file on time could lead to legal action.

18              Q.       And what is the date of this document?

19              A.       This letter was issued on February 3rd,  
20 2003.

21              Q.       And was this letter signed by Mr. Robert J.  
22 Quinn sent to all Missouri public utilities?

23              A.       Only the ones that are required to provide  
24 annual reports.

25              Q.       Would this letter have been sent to Secured

1 Technologies, L.C.?

2 A. Yes, it would have.

3 Q. And could you kindly read the portion of  
4 the first -- or rather second paragraph that is  
5 underlined?

6 A. In bold?

7 Q. Yes.

8 A. In larger font it says, reports that do not  
9 meet the requirements will not be considered filed.  
10 Utilities will be subject to legal action under state law  
11 for failure to file on time or make a timely extension  
12 request.

13 Q. And just in reviewing this letter sent to  
14 all Missouri public utilities, this letter also provides  
15 procedures for requests to file extensions for annual  
16 reports, does it not?

17 A. Yes, it does.

18 Q. Did Secured Technologies, L.C. make a  
19 request to late file their annual report prior to  
20 April 15th of 2003?

21 A. No, they did not.

22 MR. BERLIN: I have no further questions,  
23 your Honor.

24 JUDGE PRIDGIN: Mr. Berlin, thank you. Let  
25 me see first if we have any questions from the Bench

1 before cross.

2 COMMISSIONER MURRAY: I have no questions.

3 COMMISSIONER DAVIS: No questions.

4 JUDGE PRIDGIN: All right. Commissioner  
5 Appling?

6 COMMISSIONER APPLING: No questions.

7 JUDGE PRIDGIN: I don't know that I have a  
8 question so much as a request, and I do want to inform  
9 counsel, and I don't -- I don't think it's been put in the  
10 exhibits that I see, so I would like to request a  
11 late-filed exhibit from Staff, and that would be what I  
12 will mark as Exhibit No. 6, and that would be blank forms  
13 for both the statement of revenue and the annual report  
14 that Secured Technologies, L.C. should file or should have  
15 filed for the year in question.

16 MR. BERLIN: Could you restate that, your  
17 Honor?

18 JUDGE PRIDGIN: Yes, sir. What I would  
19 like as Exhibit No. 6, a late-filed exhibit, would be what  
20 Secured Technologies, L.C. should have received, the blank  
21 forms they should have received for the statement of  
22 revenue that they were supposed to file for the year in  
23 question, and also the annual report they were supposed to  
24 file for the year in question.

25 MR. BERLIN: If I understand, these are the

1 forms, the blank forms?

2 JUDGE PRIDGIN: Right. Whatever they would  
3 receive that they should complete and send back to the  
4 Commission. And I will mark that as Exhibit No. 6, and  
5 for the record, let me give parties the chance to object  
6 or state any kind of comment.

7 MR. COMLEY: I have no objection to that,  
8 Judge.

9 JUDGE PRIDGIN: All right. We'll show  
10 Exhibit No. 6 will be admitted without objection, and I  
11 don't have any questions for Ms. Fischer. Mr. Comley, any  
12 cross?

13 MR. COMLEY: Yes, thank you.

14 CROSS-EXAMINATION BY MR. COMLEY:

15 Q. Ms. Fischer, we've met before?

16 A. Yes.

17 Q. I'm Mark Comley. I represent Secured  
18 Technologies.

19 Mr. Berlin went through your job  
20 classifications. You are a Regulatory Auditor 4; is that  
21 correct?

22 A. Yes, that's correct.

23 Q. And can you tell the Commission when you  
24 started as a regulatory auditor? And I think you were a  
25 Regulatory Auditor 1 when you started.

1           A.       My employment with the Commission began  
2   October 15th, 1996.

3           Q.       1996?

4           A.       Yes.

5           Q.       And at that time you were a Regulatory  
6   Auditor 1?

7           A.       Yes.

8           Q.       Okay. So you've been in the auditing area  
9   for about eight years, then?

10          A.       Yes.

11          Q.       Your duties and responsibilities,  
12   specifically your duties, include review of annual reports  
13   filed by all public utilities; is that correct?

14          A.       That's correct.

15          Q.       And that includes the reports by  
16   telecommunications companies; is that correct?

17          A.       Yes.

18          Q.       Now, are some of the forms that you review  
19   more detailed than others?

20          A.       Yes.

21          Q.       So there would be a different form, say,  
22   for a gas utility than a competitive local exchange  
23   telephone company?

24          A.       Yes. Each utility has a different format.  
25   There are some common pages to the annual report, and then

1 each utility sector then has specific pages for that  
2 utility type.

3 Q. And -- okay. The more -- the more detail  
4 then you're saying covers quite a few more topics, in  
5 other words?

6 A. Yes. Well, for example, a gas utility, our  
7 annual report would include the FERC Form 2, which is over  
8 a hundred page document where the IX -- the interexchange  
9 carrier annual report, which would be Secured  
10 Technologies' annual report, has much more limited amount  
11 of information.

12 Q. Let me go through, I think when we visited  
13 before about this topic, you mentioned that the detailed  
14 annual reports may cover such things as plant information;  
15 is that true?

16 A. Yes, that's true.

17 Q. Depreciation information; is that correct?

18 A. Correct.

19 Q. In-depth balance sheets, income statements  
20 and revenue information by class, are all those covered by  
21 the more detailed reports?

22 A. Yes.

23 Q. Numbers of customers for electric  
24 utilities, for instance, is that covered by the electric  
25 utility annual report?

1           A.     Yes, it is.

2           Q.     Off-system sales?

3           A.     Yes, there are sections related to that.

4           Q.     How about salaries of key employees?

5           A.     Some of the annual reports have that  
6 information and others don't.

7           Q.     Does that vary by the degree of regulation  
8 of the company?

9           A.     Specifically related to salaries or --

10          Q.     Salaries. Let me withdraw the question.  
11 It's typical for the gas company annual report to have key  
12 information -- information about key employees and their  
13 salaries; is that correct?

14          A.     Yes, it would.

15          Q.     And would the electric utilities' annual  
16 report also have that information?

17          A.     I don't -- I don't really recall  
18 specifically if it's more geared towards directors, and I  
19 may be confusing it with Securities Exchange Commission  
20 filing. I know I have seen employee salary-specific  
21 information in a water annual report.

22          Q.     All right.

23          A.     But I couldn't really say without looking  
24 at one for sure. I know there are employee-related costs,  
25 numbers included in the annual reports. How specific it

1 gets, I'd have to go back and review.

2 Q. Thank you. What about for the electric  
3 utilities, would the annual report also reflect operating  
4 costs, O&M costs, like production or transmission?

5 A. Yes, it would.

6 Q. And distribution and general office  
7 administrative costs?

8 A. Yes.

9 Q. And would it be fair to say that from the  
10 point of view of an auditor, that extra detailed  
11 information for electric and gas companies, for instance,  
12 is important to the rate regulation of that company?

13 A. We typically in an audit for a rate case do  
14 go back and compare three, four, five years of  
15 information, and we typically use the annual report as one  
16 of our source documents for that information.

17 Q. And does that information generally wind up  
18 then in your prepared testimony in a contested case?

19 A. Specifically from annual reports on  
20 electric and gas, it could.

21 Q. Is it a fair statement to say that the  
22 annual reports for interexchange telecommunications  
23 carriers and shared tenant services certificate holders  
24 are the most abbreviated annual reports that the  
25 Commission issues?



1           A.       Yes. I think they're only six, seven,  
2 eight pages in length, yes.

3           Q.       So in the annual report for an  
4 interexchange carrier, the report does not request  
5 information about the company's plant, for instance?

6           A.       No, it does not.

7           Q.       And there's no request for depreciation  
8 schedules or for key employee salary information, for  
9 instance?

10          A.       No.

11          Q.       And there's no request for detailed  
12 financial information, like financial reports?

13          A.       No, not at this time.

14          Q.       And we'll go back to the 2002 report.  
15 There was no request for information pertaining to  
16 customer complaints?

17          A.       In the interexchange carrier annual report,  
18 that is not requested.

19          Q.       Or there's no questions about the nature of  
20 its quality of service; is that correct?

21          A.       That's correct.

22          Q.       There's no request for information  
23 concerning operating expenses; is that correct?

24          A.       No, we just -- the annual report requests  
25 revenue information, nothing related to expenses.

1           Q.       Is it fair to say that the annual report  
2       has been tailored in this abbreviated fashion because the  
3       Commission is not regulating the rates of these companies  
4       as intensively as they are the other gas and electric  
5       utilities, for instance?

6           A.       I would only be -- it would be my view as  
7       to whether that was the case or not because each annual  
8       report is more or less designed or fits the needs  
9       primarily of the department that regulates that type of  
10      utility. From my viewpoint, it appears that the length of  
11      the annual report or the amount of information has a  
12      relationship based upon how much regulation of the rates  
13      goes along with that utility type.

14          Q.       These follow the same lines, I think -- and  
15      maybe you've already touched on these -- but would it be  
16      fair to say that much of the information requested in the  
17      rate-regulated company's annual report forms is important  
18      to your ongoing interest in the reasonableness of the  
19      company's practices and rates?

20          A.       Could you repeat that one more time?

21          Q.       Would you agree that much of the  
22      information that you request in the rate-regulated  
23      company's annual report forms is important to the Staff's  
24      ongoing interest in the reasonableness of the company's  
25      practices and its rates?

1           A.       Yes.

2           Q.       Is it fair to say -- and maybe you've said  
3   this -- and is it also useful in a quasi-investigative  
4   mode to see whether the companies are earning correctly  
5   during the course of each year?

6           A.       Well, we review the annual reports --  
7   annual reports which are public documents. We also --  
8   there's a number of the larger utilities that we have  
9   surveillance information that's considered confidential.  
10   We would probably use both of those sources of information  
11   together, rather than just rely on the public annual  
12   report.

13          Q.       So it's a component of that investigatory  
14   process?

15          A.       Yes.

16          Q.       All right. Through your office, I  
17   understand that you will correct or contact companies that  
18   have filed reports that have erroneous information; is  
19   that correct?

20          A.       When we do our initial review, we are  
21   mainly looking for completeness. The question related in  
22   the annual reports that's similar in all of the reports  
23   related to the certificate case and the effective date,  
24   that's something that we already have in our electronic  
25   information system. So we compare that. That would be

1 one response from the utility company that we would  
2 correct if we found that what they submitted did not match  
3 what we have.

4 When it comes to revenue and the tax return  
5 and the employer ID number, we don't typically question if  
6 it's completed that the information is accurate. It's  
7 more a case of when a company submits an annual report  
8 with some of the responses left blank that we would  
9 contact them and tell them that we need additional  
10 information later, or if we have the time, then we may go  
11 into further review, say, for example, water and sewer  
12 annual report to verify that balance sheet information  
13 appears to balance out, but that depends kind of on the  
14 time we have available to dedicate to the project. But  
15 the initial review is more if we cite a deficiency, it's  
16 the lack of information provided.

17 Q. Let me ask you this: In 2003, through your  
18 department or through the Commission itself, Staff itself,  
19 if the Staff knew that an annual report had not been  
20 filed, would you through your department or through the  
21 Staff in general send a notice to the company advising  
22 that the annual report was overdue?

23 A. In 2003, that was not our practice to do  
24 that.

25 Q. Has that changed?

1           A.       Yes. In 2004, we did send letters towards  
2 the end of April to, I believe, over 130 companies  
3 notifying them that we hadn't received the annual report.

4           Q.       And in those letters, were they given an  
5 opportunity to file before there was a threat of action  
6 against them for penalties?

7           A.       I don't recall exactly the wording. I  
8 believe the letter notified them that they needed to get  
9 the annual report in and that there was a possibility of a  
10 fine or a penalty. I don't recall exactly. I don't  
11 believe it said provide it by a certain date or it will be  
12 a penalty, but it alluded to that, I guess.

13          Q.       Do you know at this time whether Staff or  
14 general counsel has filed suit against any of the  
15 companies that responded to that notice?

16          A.       I don't believe that has occurred yet.

17          Q.       Mr. Berlin identified the motion that was  
18 filed by Secured Technologies to file its annual report  
19 out of time as Exhibit 1. What I have in my hand is just  
20 the addendum to that, but I would like to refer to that as  
21 the addendum to Exhibit 1. And I'm not too sure we have  
22 marked it yet for the court reporter and for the  
23 Commission. Is that something we should do? I was going  
24 to go ahead and ask the ones that refer to that document.

25                   JUDGE PRIDGIN: If we could get that

1 marked, and perhaps I could just correct the identity of  
2 Exhibit No. 1.

3 MR. COMLEY: Very well.

4 JUDGE PRIDGIN: I'm sorry. What's your  
5 addendum, Mr. Comley?

6 MR. COMLEY: It's going to be the addendum  
7 to --

8 MR. BERLIN: Your Honor, Staff has no  
9 objection to that. In fact, it may be a good time to move  
10 for the admission of Staff Exhibits No. 1 and No. 2.

11 JUDGE PRIDGIN: All right. Let me --

12 MR. COMLEY: No objection.

13 JUDGE PRIDGIN: Let me take these matters  
14 one at a time to be sure I have a clean record. Let me  
15 identify Exhibit No. 1 as Secured Technologies' motion for  
16 leave to file annual report out of time. And that motion  
17 will also include the annual report for the year 2002, is  
18 that correct, Counsel?

19 MR. COMLEY: Exactly. It was attached to  
20 our motion.

21 JUDGE PRIDGIN: And I understand that  
22 Exhibits No. 1 and No. 2 have been offered into evidence.  
23 Any objection?

24 MR. COMLEY: No, sir.

25 JUDGE PRIDGIN: Exhibits No. 1 and 2 are

1 admitted.

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

4 JUDGE PRIDGIN: Mr. Comley, please  
5 continue.

6 MR. COMLEY: I have copies of the annual  
7 report that was attached to the motion, and I'd be happy  
8 to distribute them. I wanted to explain in advance, there  
9 is an exhibit number at the bottom of this exhibit. It  
10 was for a deposition taken June 4th. So with that in  
11 mind, I wanted to qualify this and let you know what was  
12 coming your direction.

13 JUDGE PRIDGIN: Thank you.

14 MR. COMLEY: Your Honor, what I'd like to  
15 do is ask Mrs. Fischer to look at this as we go through  
16 it, and so may I hand this to her?

17 JUDGE PRIDGIN: Certainly.

18 BY MR. COMLEY:

19 Q. Ms. Fischer, I've handed you what has been  
20 identified as the addenda to Exhibit 1. It's been  
21 admitted into evidence. Can you identify that as the  
22 interexchange telecommunications carrier annual report to  
23 the Missouri Public Service Commission for the period  
24 ending December 31st, 2002, submitted by Secured  
25 Technologies, L.C. pursuant to its motion for authority to

1 late file it?

2 A. Yes.

3 Q. And you're familiar with this document, are  
4 you not?

5 A. Yes, I am.

6 Q. I'd like for you and I to examine this line  
7 by line and go through it with the idea of explaining to  
8 the Commission the purposes, as you understand each line  
9 represents, and I think the first one's fairly self  
10 explanatory. The No. 1 line on page 1, you simply want to  
11 have the confirmation of the certificated name of the  
12 company; is that correct?

13 A. Yes.

14 JUDGE PRIDGIN: And, Mr. Comley, if I could  
15 interrupt and ask, I guess, on the relevance on your line  
16 of inquiry, why do you want to go through every single  
17 line of the report?

18 MR. COMLEY: It would be to find out just  
19 how important this information is to the Staff and if it  
20 is important to the nature of its regulation of this  
21 company, and to get into the record the nature of its  
22 importance, what is the significance to the regulation of  
23 the company.

24 JUDGE PRIDGIN: Well, I'm not -- I'm not  
25 sure I see the relevance. I mean, if the legal



1 requirement is that a company has to file the annual  
2 report, I mean, isn't it the report itself that's  
3 significant? I guess I don't understand why you need to  
4 go through line by line.

5 MR. COMLEY: The issue before the  
6 Commission is whether or not the company should be  
7 penalized for not submitting this. The contention and  
8 argument that Secured Technologies would have is that if  
9 this information is critical, there is a greater argument.  
10 If it is not critical, then no harm was done, then there  
11 shouldn't be a penalty. So this line of inquiry is to  
12 find out whether or not it serves a useful purpose to the  
13 Commission to have this information from the reporting  
14 entity. If it doesn't serve a compelling and useful  
15 purpose, our contention would be that it is grossly  
16 improper to assess a penalty against the company.

17 JUDGE PRIDGIN: I want to give you some  
18 leeway, Mr. Comley, but if it appears to me you're simply  
19 going to be reading off the report for quite a while, I  
20 may -- I may stop the line of questioning.

21 MR. COMLEY: Very well. I would reserve  
22 the right to make an offer of proof with the witness  
23 through Q and A on each of those lines. Whether these are  
24 material matters for regulation, I think, needs to be  
25 addressed by the witness to the extent she can.

1 JUDGE PRIDGIN: Okay. You may proceed.

2 BY MR. COMLEY:

3 Q. Regarding question No. 2, which is the date  
4 of certification for the company, I think you've mentioned  
5 that already in testimony in my cross-examination, but the  
6 date of certification is something that the Staff can  
7 acquire from its own records; isn't that correct?

8 A. That's true, but that's not why we put the  
9 question. My understanding is both 1 and 2, from my  
10 perspective, are included in the annual report so that we  
11 can identify accurately who is being represented by that  
12 annual report.

13 Q. And if a company doesn't file that annual  
14 report, though, you still have information within your  
15 files and records to determine who is certificated and  
16 when that certificate was granted; isn't that correct?

17 A. That information would be available, yes.

18 Q. No. 3, it asks about the company's  
19 certificates in any other name. Would that information be  
20 available to the Staff as well in another format, in  
21 another form?

22 A. It would, but I believe 3 -- question  
23 No. 3 goes along with 1 and 2. It's in order to be able  
24 to identify this company and sort through name changes and  
25 relationships between past certificated company names and

1 current certificated company names. So 3 goes along with  
2 1 and 2 in helping us identify specifically who is being  
3 represented by the annual report.

4 Q. Let's go to question 4. Does the Staff  
5 maintain an official address for the company?

6 A. Yes, it does.

7 Q. What is the purpose of identifying the  
8 name, title and e-mail address of the annual report --  
9 person completing the report?

10 A. Well, part of that, from my perspective, is  
11 in the review process, if we need to contact someone to --  
12 if we have a question as to why information wasn't  
13 provided or the appearance of information that's  
14 inaccurate, we know who to contact.

15 But also something that hasn't been brought  
16 up is the fact that the annual report's a public document,  
17 so any customer or citizen that walks into the data center  
18 could get a copy of the annual report, or with the  
19 electronic system could go in to the electronic system and  
20 actually look at the annual report, if they wanted this  
21 information.

22 Q. You could create a public document  
23 yourself, couldn't you, indicating who the contact person  
24 was for the company? If not, the public records include  
25 the certificate; isn't that correct?

1           A.       If a person can obtain a copy of the order  
2       in which the certificate was granted, that has an address  
3       for the company.

4           Q.       No. 5 asks for the name of the company's  
5       regulatory contact person?

6           A.       Yes.

7           Q.       Why is that critical to the Staff?

8           A.       That would be important if there -- I guess  
9       my understanding is that the Commission has a number of  
10      mailings that go out, and we use this information to know  
11      who to direct that mailing to.

12          Q.       No. 6, listing of all mergers and  
13      consolidations?

14          A.       Yes.

15          Q.       Why would that be important to the Staff?

16          A.       That, in my opinion, goes back to questions  
17      1, 2 and 3, being able to identify relationships and  
18      associations with other certificated companies. That's --  
19      at least that's what I see that as being used for.

20          Q.       No. 7, the following information concerning  
21      total company revenue. This information is also asked by  
22      another department within the Staff; is that correct?

23          A.       Yes.

24                   MR. COMLEY: Your Honor, I'd like to go  
25      ahead and refer to Exhibit No. 5, which has been marked.

1 I have copies for the court reporter here.

2 (EXHIBIT NO. 5 WAS MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 MR. COMLEY: The Commission would note that  
5 this is also bearing an exhibit mark of Exhibit No. 2.  
6 This is a deposition exhibit number. For purposes of the  
7 hearing this morning, it's been identified as Exhibit  
8 No. 5.

9 Your Honor, I'd like to show this to the  
10 witness.

11 JUDGE PRIDGIN: You may.

12 BY MR. COMLEY:

13 Q. Ms. Fischer, I just handed you what's been  
14 marked by the court reporter as Exhibit No. 5 for this  
15 hearing. And are you familiar with that document and can  
16 you identify it for the Commission, please?

17 A. This is the statement of revenue for the  
18 fiscal year 2004.

19 Q. And that's for the fiscal year 2004. When  
20 was it due?

21 A. At the bottom of the document it says, no  
22 later than March 31, 2003.

23 Q. All right. Have you seen this document  
24 before?

25 A. Yes.

1           Q.     And isn't it correct that this is the  
2     statement of revenue that was filed by Secured  
3     Technologies for the calendar year, and I'm referring to  
4     the calendar year, of 2002?

5           A.     Yes, I believe it is.

6           Q.     Now, this document has at the top the name  
7     of the company; is that correct?

8           A.     Yes, it does.

9           Q.     It also has the name of the officer who  
10    filled it out; is that correct?

11          A.     Yes.

12          Q.     And it's also supplied under oath; is that  
13    correct?

14          A.     That's correct.

15          Q.     Respecting the addendum to Exhibit 1, the  
16    annual report form, paragraph 7 of that report and the  
17    statement of revenue form would have the same numbers, or  
18    they should, shouldn't they?

19          A.     Yes, they should.

20          Q.     Do you ever cross check those figures in  
21    looking at annual reports?

22          A.     I personally do not do the cross checking.  
23    There is someone in the -- in another department that --  
24    the person responsible for the statement of revenue, at  
25    least the way the process is set up currently, they are

1 the ones that make the comparison between the two  
2 documents.

3 Q. And that would be Ms. Davis?

4 A. Yes.

5 Q. When the comparison is made, does she alert  
6 you that it is erroneous?

7 A. She has a listing of the companies that  
8 have variances between the two documents. I haven't  
9 received that from her yet this year. I know it's a work  
10 in process. I know she has mentioned informally some  
11 instances, because we were trying to determine what could  
12 cause the differences, and I know she did contact some  
13 companies to investigate that further.

14 Q. So that would be -- if a -- if you, in your  
15 department, see a discrepancy between the reported  
16 revenue, between the annual report and the statement of  
17 revenue, you and Ms. Davis' department will coordinate on  
18 notifying the company that there appears to be an error;  
19 is that correct?

20 A. My department wouldn't notice the  
21 discrepancy unless Ms. -- Mrs. Davis brought it to our  
22 attention. She is the one that is notifying the companies  
23 of the differences at this point.

24 Q. The statement of revenue for this company  
25 was filed around May of 2003; is that correct?

1           A.     I believe that's what you said earlier.

2           Q.     Do you know whether that's the case?

3           A.     I personally don't know.

4           Q.     Let's go to paragraph 8, the type of  
5 Missouri tax return filed by the company.

6           A.     Yes.

7           Q.     And No. 9, the Missouri taxpayer ID. Is  
8 this information that's also maintained by the Department  
9 of Revenue?

10          A.     Yes, they would have that information.

11          Q.     And it's not inconceivable that your  
12 department would contact someone in the Department of  
13 Revenue in the event you needed that information; isn't  
14 that correct?

15          A.     I believe that's possible, but I'm not  
16 aware of us doing that or how readily that information  
17 would be available to us.

18          Q.     But it is possible you could contact them?  
19 It is public information, isn't it?

20          A.     I'm not sure if it's public information or  
21 not, the type of tax return that an entity files. I'm not  
22 really sure.

23          Q.     Taxpayer ID?

24          A.     I don't believe that that would be public,  
25 but I'm not sure.



1           Q.       All right. Let's go to paragraph 10.  
2       There are several lines for information there, among other  
3       things, the official representative, the consumer services  
4       contact, individuals to receive statements of revenue, the  
5       assessment, the tariff shop, the comptroller, technical  
6       surveillance, and in-house attorneys and outside  
7       attorneys, consultants. Please explain to me, what is the  
8       significance of this information for the regulation of the  
9       company?

10          A.       When the Commission began implementing its  
11       electronic filing and information system, which we call  
12       EFIS, it is set up so that we could include this type of  
13       information for each company to develop a database of  
14       contacts, and then this is also available to the public if  
15       they access EFIS. So if they want to know who the  
16       consumer services representative is of a company, it would  
17       be provided in EFIS.

18                   Staff would also use it, as I mentioned  
19       before, in a filing that needed to be directed, say, to  
20       the individual responsible for tariffs as opposed to if we  
21       receive a customer complaint, we would want to be able to  
22       contact the individual in charge of consumer services.

23          Q.       Paragraph 10, then, is information that  
24       would be useful to the public in contacting the variety of  
25       departments that the company may have, correct?

1           A.       Yes.

2           Q.       Let me ask you this:  If there was a person  
3   of the public who made inquiry to the Staff about who to  
4   contact at Secured Technologies, isn't it conceivable that  
5   the Staff could make a phone call and find out?

6           A.       If we had a phone number, yes.

7           Q.       Or an address; is that correct?

8           A.       If we have a current address, yes.

9           Q.       All right.  Let me ask you a little bit  
10   about your knowledge of the company, if you have -- do you  
11   know if there are any or have been any complaints against  
12   Secured Technologies by any of its customers?

13          A.       I don't recall if I checked that or not.  
14   I'm not sure if I did or not.

15          Q.       But you don't know at this time?

16          A.       I don't know.

17          Q.       Was the complaint filed by the Staff in  
18   this case prompted by a complaint from a customer?

19          A.       No, it was not.

20          Q.       Do you know how long it was before the  
21   Staff knew that Secured Technologies had not filed its  
22   2002 annual report on April 15, 2003?

23          A.       Well, we would have known at that time.  
24   The auditing department maintains a spreadsheet in the  
25   review process of the annual reports where we document the

1 date the annual report was received. So in doing a sort  
2 of that spreadsheet, we would have been able to identify  
3 at any date who had submitted an annual report and who had  
4 not.

5 Q. So that would have been done on April 16th,  
6 provided it was a business day? I'm not sure what it was.

7 A. Well, we didn't actually on April 16th do  
8 the sort. I mean, I know we looked at it periodically,  
9 because there were reports made to the Commission at  
10 various points in time as to the status of the annual  
11 reports that had been received and those that hadn't.

12 Q. Would you have known that information by  
13 April 23rd, 2003?

14 A. I would guess that by that time a sort  
15 would have been done to identify -- to have a list of the  
16 companies that hadn't filed.

17 Q. Let me ask you this: Would you agree with  
18 me that the absence of a 2002 annual report for Secured  
19 Technologies by the deadline did not impair your ability  
20 to regulate the company?

21 A. I guess that would depend if we had current  
22 addresses and current contact information, which if it was  
23 included on the statement of revenue would have been  
24 within the building at least.

25 Q. So if you had the name and the current

1 amount of revenue, you had enough so that the absence of  
2 the annual report didn't impair your duties; is that  
3 correct?

4 A. Personally, from the auditing department,  
5 we typically don't do any rate analysis of the  
6 interexchange carriers. I couldn't really say what other  
7 departments might be lacking without the annual report  
8 information.

9 Q. From your point of view, would you have  
10 done anything differently yourself if Secured Technologies  
11 had filed its report, completed report on April 15, 2003?

12 A. No, I personally wouldn't have.

13 Q. Would you agree with me that the statement  
14 of revenue form is perhaps the time-sensitive form that  
15 the Commission sends out?

16 A. I believe by statute they're both  
17 time-sensitive.

18 Q. They may be, but in terms of practicality,  
19 isn't the statement of revenue form the time-sensitive  
20 form?

21 A. Are you asking me to choose one or the  
22 other? I guess --

23 Q. I never asked you that question before.

24 A. I know -- I know the statement of revenue,  
25 it's critical to have that information as soon as possible

1     because it's required that the assessments be calculated  
2     and sent to the companies by July 1, so that the clock is  
3     ticking for the statement of revenue, a turnaround time,  
4     and it's critical to have it as soon as possible.

5                     The annual report isn't tied to any  
6     assessment. So to say that it's critical that we have it  
7     by a certain date, except for the fact that it's required  
8     by a certain date, I can't really say that it's  
9     time-sensitive, you know.

10            Q.     Just a second. Do you remember when we  
11     took your deposition in this case?

12            A.     Yes.

13            Q.     It was on June 4th, this year?

14            A.     Yes.

15            Q.     Let me see if I can locate this. I think  
16     that we've talked about this subject before.

17                     MR. COMLEY: Your Honor, I'll offer the  
18     witness a chance to look at her deposition.

19                     JUDGE PRIDGIN: All right.

20                     MR. BERLIN: Could you say the page you're  
21     on?

22                     MR. COMLEY: Certainly.

23     BY MR. COMLEY:

24            Q.     Let me ask you this: At our deposition, do  
25     you remember me asking a question that's now located on

1 page 50 of the deposition, page 50 -- excuse me --  
2 page 51. And the question was, so if there's a deficiency  
3 or some sort of erroneous information in the annual report  
4 concerning the annual revenue, Ms. Davis would send out  
5 the notice that there should be some correction? Do you  
6 see that question?

7 A. Yes.

8 Q. And do you also see your answer that  
9 extends onto page 52, at the top of page 52, your answer  
10 was, I mean, it's not -- we're not going to force them to  
11 redo. Hers is very time-sensitive because of when the  
12 assessments are required to be calculated and sent out to  
13 the companies. Am I reading your answer correctly?

14 A. Well, there's several paragraphs before  
15 that, so I don't know.

16 Q. Am I reading that part of the answer  
17 correctly?

18 A. Yes.

19 Q. Is your testimony that Mrs. Davis'  
20 statement of revenue form is the time-sensitive form or is  
21 it just a time-sensitive form?

22 A. It is a time-sensitive form.

23 Q. Before the filing of the complaint, did you  
24 or your department or any of the other members of the  
25 Staff that you know of consider the company's zero revenue

1 for the course of the year 2002 and whether or not it  
2 might be affected competitively by a penalty in this case?

3 A. Since I hadn't reviewed the statement of  
4 revenue, I wasn't aware of the fact that they had zero  
5 revenue, since they hadn't filed an annual report. And  
6 no, I don't believe that was considered in any of the  
7 cases where a complaint was filed.

8 Q. And no inquiry had been made by the Staff  
9 with the company directly about what its revenue  
10 production was in the state; is that correct? At least  
11 you did not; is that correct?

12 A. That's correct.

13 Q. Did your department or anyone from the  
14 Staff consider whether a successful penalty action against  
15 this company would affect its competitive position  
16 throughout the state or nearby?

17 A. I don't really know what the other staff,  
18 if anyone would have considered that or not. I don't  
19 know.

20 Q. Did you or the Staff consider recommending  
21 to the Commission that the company be exempted from filing  
22 this report?

23 A. I can only speak for myself. I know I had  
24 not done that.

25 MR. COMLEY: That's all my questions.

1 JUDGE PRIDGIN: All right, Mr. Comley.

2 Thank you.

3 Mr. Berlin, any redirect?

4 MR. BERLIN: One, your Honor.

5 REDIRECT EXAMINATION BY MR. BERLIN:

6 Q. Ms. Fischer, Mr. Comley asked you several  
7 questions regarding the Secured Technologies annual report  
8 form. Is this annual report form used to collect  
9 information regarding contact of the company with regard  
10 to, say, consumer complaints?

11 A. Yes, it is.

12 MR. BERLIN: No other questions.

13 JUDGE PRIDGIN: Mr. Berlin, thank you. Let  
14 me see if we have questions from the Bench. Commissioner  
15 Murray?

16 COMMISSIONER MURRAY: Thank you. I do have  
17 a few questions now.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Is the annual report requirement a  
20 statutory requirement?

21 A. Yes, it is.

22 Q. Is it useful for the public records, as  
23 well as for Staff's use internally?

24 A. Yes, it is. As compared to the statement  
25 of revenue, which is a confidential document, the annual



1 report is a public document.

2 Q. Are you familiar with why the public might  
3 seek information contained in annual reports?

4 A. I suppose there could be a lot of reasons,  
5 whether they're interested in determining what service  
6 provider to sign up with or they may want to know about  
7 who to contact related to consumer questions. They may  
8 want to know the name of the regulatory contact. I can't  
9 imagine all the things they may want to know.

10 But at least with the annual report  
11 information, especially now with EFIS, they have it right  
12 at their fingertips if they have a computer, where it's  
13 instantaneous, that information, as opposed to in the past  
14 if they had to come in to the Commission and go to  
15 microfilm to try to seek out information on a company. So  
16 I think it's very helpful to the public.

17 Q. Would that be the most concise form in  
18 which a member of the public could seek just general  
19 information about a regulated utility, or would there be  
20 an easier way to seek that information?

21 A. With EFIS, the annual report would be one  
22 document they could go to to gather all this information  
23 in one place. If they were looking for specifically, say,  
24 contact information, the information on the annual report  
25 is then inputted into EFIS so that they could go to the --

1 to a certificated company screen and look at contact  
2 information through the EFIS system.

3 But in general, the annual report would be  
4 one of the best documents for an individual to go to to  
5 get that type of general information.

6 Q. Was the February 3rd notice that was sent  
7 to -- addressed to all utilities, was that sent to Secured  
8 Technologies?

9 A. Yes. They would have been on the list of  
10 companies, and that list was generated from EFIS. All  
11 certificated and active companies, the address and the  
12 names of the companies would have been pulled and they  
13 would have been included, yes.

14 Q. And do you have with you what address that  
15 was sent to?

16 A. Yes, I do. That is the same address that  
17 we listed in the complaint, and I know there was a  
18 question later about some information that we had at the  
19 Commission listed Suite 2 versus also we received the  
20 annual report for 2002, it indicated Suite 1. And I know  
21 there was some correspondence or e-mails between the data  
22 center and Staff questioning the accuracy of those  
23 addresses.

24 Q. Was it addressed to the company name at  
25 1418 Bitters Road?

1 A. Yes, it was.

2 Q. Was Jerome Jacobs listed on that at all, do  
3 you recall?

4 A. No. And part of the reason for that is  
5 that prior to the 2003 annual reports where we added  
6 contact names to the annual report for a lot of companies,  
7 we wouldn't have had the name to send the annual report  
8 to.

9 Q. Okay. When you get -- when you receive a  
10 report back, do you check it for compliance?

11 A. Yes, we do.

12 Q. And on the report that Secured Technologies  
13 did file, which has been presented in evidence here --  
14 it's an attachment, I believe, to Exhibit 1. Anyway, do  
15 you have that in front of you?

16 A. Yes, I do.

17 Q. On question 4, who is listed there?

18 A. Jerome E. Jacobs, vice president.

19 Q. And what does the statute require in terms  
20 of who should file the report?

21 A. I'm not sure exactly what the wording is on  
22 that.

23 Q. Do you check for that, that it is filed by  
24 the individual that the statute says should require -- or  
25 should file it?

1           A.       I can't really say that we verify that it's  
2     the correct individual, no.

3           Q.       I have the statute in front of me, and the  
4     wording is that such annual report -- this is 392.210,  
5     subsection 1 -- shall be verified by the oath of the  
6     president, treasurer, general manager or receiver, if any,  
7     of such companies or by the person required to file the  
8     same.

9                   Now, I suppose that gives some discretion  
10    there as to who could file it, but that's not something  
11    that the Staff ordinarily reviews for compliance; is that  
12    right?

13          A.       We look to see that there is an individual  
14    named, and we also then, when it comes to the verification  
15    page, which is the last page, we check to see that that is  
16    completed and an officer of the company -- and it's  
17    probably something we should be a little more strict on  
18    making sure that that exactly matches the statute.

19          Q.       Okay. As to the statement of revenue that  
20    you've talked about, is that a statutory requirement?

21          A.       I'm not really sure. I don't work with the  
22    statement of revenue. I'm not really sure how it -- I  
23    believe it is, but I couldn't cite you to where.

24          Q.       Do you know what date it is due?

25          A.       March 31st.

1 Q. So it's due prior to the annual report?

2 A. Yes, it is.

3 Q. Then is it accurate that those things, the  
4 statement of revenue and the annual report, generally come  
5 in separate mailings to the Commission?

6 A. Typically they come in separate mailings,  
7 yes.

8 Q. Because --

9 A. Well, yes, they do. I know there are some  
10 instances where they do come together, but I would say the  
11 majority by far come separately.

12 COMMISSIONER MURRAY: All right. I think  
13 that's all I have. Thank you, Judge.

14 JUDGE PRIDGIN: Commissioner Murray, thank  
15 you. Commissioner Davis, any questions?

16 COMMISSIONER DAVIS: Not at this time.

17 JUDGE PRIDGIN: Thank you. Commissioner  
18 Appling?

19 QUESTIONS BY COMMISSIONER APPLING:

20 Q. Good morning.

21 A. Good morning.

22 Q. A couple of questions. How many -- how  
23 many annual reports did the Public Service Commission --  
24 approximately how many annual reports do we receive?

25 A. Between 6 and 700.

1 Q. 6 and 700 annual reports we receive?

2 A. Yes. It could be above 700. I believe  
3 there were 800 or so sent to companies, and I think we've  
4 received around 700 back.

5 Q. And in the month of February, EFIS sends  
6 out a report to each one of these companies notifying that  
7 April the 15th is the cutoff date for your annual report?

8 A. Well, we -- it takes more human contact  
9 than that. We generate the list of companies and the  
10 addresses from EFIS, and then we go through a process  
11 where we manually stuff envelopes, identifying the type of  
12 annual report that the company should receive, and then  
13 the cover letter comes from Mr. Quinn and it's inserted  
14 with the packet. We may have -- we do have some companies  
15 that have multiple certificates, so their packet would  
16 include two or three annual reports, where another may  
17 just have one annual report.

18 And typically we try to get that out in  
19 January. In 2004 they went out around January 15th.  
20 February 3rd was very late for that to actually occur.

21 COMMISSIONER APPLING: I have one more  
22 question, but I lost it. I'll come back to you later on  
23 it. Okay. Thank you.

24 JUDGE PRIDGIN: Commissioner Appling, thank  
25 you.

1                   I don't believe I have any questions for  
2 Ms. Fischer. If you would at this time -- Ms. Fischer,  
3 you may step down, but if you would please remain  
4 available in case the Commission has questions for you  
5 later.

6                   MR. COMLEY: Your Honor, let me ask you  
7 this: Will there be any opportunity to recross  
8 Ms. Fischer based upon what the questions were from the  
9 Bench? I may not have read that too clearly in the  
10 procedural order schedule, but the subjects raised by  
11 Commissioner Appling and Commissioner Murray have prompted  
12 some more questions for the witness. I know we only have  
13 one witness, and I don't know if it overburdens the  
14 procedure if we would do that and give Mr. Berlin an  
15 opportunity for redirect.

16                  JUDGE PRIDGIN: It's not in my order, but I  
17 don't suppose I have any objection to it, if you can be  
18 quite brief with it.

19                  MR. COMLEY: Thank you very much.

20 RE-CROSS-EXAMINATION BY MR. COMLEY:

21                  Q. Ms. Fischer, Commissioner Murray asked you  
22 about the statutory requirements. Isn't it clear from the  
23 statute that the Commission has a duty to notify a company  
24 of erroneous entries in its annual report?

25                  A. You're asking me if the statute

1 specifically says that?

2 Q. You had questions from the Bench about the  
3 statute, and I thought I'd check with that. Are you aware  
4 that the statute requires the Commission Staff or the  
5 Commission itself to notify companies when their annual  
6 reports are erroneous?

7 A. I'm afraid I'm only familiar with certain  
8 specific statutes. I don't recall that being -- I'm not  
9 familiar with that being in the statute. So I can't  
10 really say if it is or not.

11 Q. Let me quote from the statute, Section 1.  
12 It says, when the report of any telecommunications company  
13 is defective or erroneous, the Commission shall notify the  
14 company to amend the same within a time prescribed by the  
15 Commission. Commissioner Murray had questions about  
16 public access. Would it be fair to say that the customers  
17 are the ones that are the most likely to be interested in  
18 the information supplied by the annual report; is that  
19 correct?

20 A. I don't really know. I know from looking  
21 at the statistics, the hits on the website, it's a huge  
22 number, and I couldn't really tell you what type of  
23 individuals access annual report information. I have no  
24 idea.

25 Q. Wouldn't the customers, though, be



1 interested in that information?

2 A. I would think they would be one group that  
3 would be interested in the information, yes.

4 Q. When there are no customers for a company,  
5 would you expect to have the same degree of interest in  
6 public access to its annual report?

7 A. I don't really know.

8 Q. There were questions from Commissioner  
9 Murray about the way in which the statements of revenue  
10 and annual reports are received, and I understood the  
11 question -- your answer to say they would come in  
12 separately; is that correct?

13 A. Maybe I -- from my understanding, the  
14 annual reports come into the data center. I'm not there  
15 when they open up their mail, but in passing or  
16 informally, they've indicated that they receive an annual  
17 report. They don't tell me that the statement of revenue  
18 comes in with it. So I just don't -- I know there are  
19 instances when they do come in together and there are  
20 instances when they don't, and my belief is that the  
21 majority don't come in together.

22 Q. Let me ask you this: Is the statement of  
23 revenue form and the annual report form sent out by the  
24 Commission in the same package?

25 A. I've only been involved in the actual

1 process for the last two years. I know when we sent out  
2 the 2003 annual reports in January of 2004, we also  
3 included the statement of revenue in the same packet. My  
4 understanding is that that hasn't been done in the past.

5 Q. So they were sent out separately; is that  
6 correct?

7 A. In the past, yes, they were.

8 MR. COMLEY: That's all I have.

9 JUDGE PRIDGIN: Mr. Comley, thank you.

10 Further questions from the Bench?

11 (No response.)

12 JUDGE PRIDGIN: Mr. Berlin, anything else?

13 MR. BERLIN: No further questions, your  
14 Honor.

15 JUDGE PRIDGIN: All right. Thank you.

16 What I'd like to do is take a very brief recess,  
17 and let's try to go back on -- I see the clock back there  
18 shows 10 o'clock. Let's try to go back on at 10:15. I'd  
19 like to remind the parties that we're webcasting; these  
20 microphones are hot. So depending on what you want to  
21 talk about, you might want to step away from the  
22 microphones.

23 Anything else?

24 MR. COMLEY: Housekeeping matter, Judge.

25 I'd like to offer into evidence before our break Exhibit

1 No. 5, which was referred to during the testimony of  
2 Ms. Fischer.

3 JUDGE PRIDGIN: Any objection?

4 MR. BERLIN: No objection.

5 JUDGE PRIDGIN: All right. Exhibit No. 5  
6 is admitted in evidence.

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

8 JUDGE PRIDGIN: If there's nothing further,  
9 we will be in recess until 10:15.

10 (A BREAK WAS TAKEN.)

11 (EXHIBIT NOS. 1, 3 AND 4 WERE MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13 JUDGE PRIDGIN: All right. We're ready to  
14 go back on the record.

15 We are back on the record. Let me get  
16 verification from counsel, if I could. I don't recall  
17 talking with anybody about this hearing while we were off  
18 the record. Mr. Berlin, is that correct, have we  
19 discussed this while we were off the record?

20 MR. BERLIN: No, your Honor.

21 JUDGE PRIDGIN: Mr. Comley, did we discuss  
22 the hearing while off the record?

23 MR. COMLEY: No, sir, we didn't.

24 JUDGE PRIDGIN: All right. Thank you.

25 Mr. Berlin, any further witnesses?

1                   MR. BERLIN: Let me, if I could, make a  
2 correction to that. I did discuss with Deputy Chief Bill  
3 Haas.

4                   JUDGE PRIDGIN: I'm sorry. Do you need a  
5 moment?

6                   MR. BERLIN: No, your Honor. You asked me  
7 a question. I wanted to be more complete in my answer to  
8 you. During the break, I did just make a few comments to  
9 Mr. Bill Haas.

10                  JUDGE PRIDGIN: I'm sorry. My intent was,  
11 did you discuss this case with me or any of the  
12 Commissioners while off the record?

13                  MR. BERLIN: Okay. I didn't understand  
14 your question. No, sir.

15                  JUDGE PRIDGIN: Any further evidence,  
16 Mr. Berlin?

17                  MR. BERLIN: No, your Honor.

18                  JUDGE PRIDGIN: Mr. Comley, any witnesses?

19                  MR. COMLEY: Yes, your Honor. We call  
20 Mr. Jerry Jacobs.

21                  JUDGE PRIDGIN: Mr. Jacobs, if you would  
22 please come to the witness stand and be sworn.

23                         (Witness sworn.)

24                  JUDGE PRIDGIN: Thank you very much. If  
25 you would please take a seat and, Mr. Comley, whenever

1     you're ready, sir.

2                     MR. COMLEY: Thank you, Judge.

3     JEROME JACOBS testified as follows:

4     DIRECT EXAMINATION BY MR. COMLEY:

5             Q.     Mr. Jacobs, would you state your full name  
6     for the court reporter and the Commission, please.

7             A.     Jerome Elliott Jacobs.

8             Q.     And are you an officer with Secured  
9     Technologies, L.C., the Respondent in this case?

10            A.     Yes.

11            Q.     Can you briefly explain your duties and  
12     responsibilities as an officer for the company?

13            A.     I am a vice president. I handle some  
14     customer service, some degree of marketing, new accounts,  
15     and I do most of the -- most of the administrative and PUC  
16     filings.

17            Q.     Are you considered the authorized officer  
18     for filing of annual reports with Missouri and other  
19     jurisdictions?

20            A.     Yes.

21            Q.     Do you have general management  
22     responsibilities for the company as well?

23            A.     Yes.

24            Q.     Let's talk about the business of the  
25     company in general. Is the company certificated in any

1 other state?

2 A. Secured?

3 Q. Yes.

4 A. Yes. Texas.

5 Q. In Texas. Let me ask you this: In Texas,  
6 is the company under any complaint or threat of a  
7 complaint or penalty action with respect to its  
8 relationship with its customers or its rates?

9 A. No.

10 Q. Talk about the business of the company in  
11 Missouri. Since the company's certification in late '99,  
12 I think it was, in early -- yeah, early '99, what has been  
13 the nature of its business in Missouri?

14 A. There hasn't been any 'til just recently,  
15 and I believe it was, I want to say mid '03, maybe August,  
16 September, something with respect to a youth detention  
17 facility called Tarkio Academy.

18 Q. And what's the nature of the relationship  
19 that you have with Tarkio Academy?

20 A. We have a -- we had a contractual  
21 relationship with them to provide -- I don't want to say  
22 inmate, because they're more like youth, but provide phone  
23 service for the kids there.

24 Q. Is this the only customer the company has  
25 at this time?

1           A.       Correct.

2           Q.       Let me ask you this:  Has the company ever  
3   been named in a complaint before this Commission, with the  
4   exception of the present one?

5           A.       No.

6           Q.       Has the company, to your knowledge, ever  
7   been the subject of an informal complaint before this  
8   Commission, to your knowledge?

9           A.       No.  No.

10                  MR. COMLEY:  Your Honor, I need to show  
11   Mr. Jacobs an exhibit.

12                  JUDGE PRIDGIN:  You may approach the  
13   witness.

14   BY MR. COMLEY:

15           Q.       Mr. Jacobs, I've handed you what has been  
16   marked for the record as Exhibit 3 for purposes of this  
17   hearing.  And I'd note for the Commission that it was also  
18   Exhibit 3 in a previous deposition, and your copy may  
19   reflect that previous exhibit designation.

20                  Can you identify this for the Commission,  
21   please?

22           A.       Yes.  It's a request from the Missouri  
23   Public Service Commission to file the revenue statement.

24           Q.       And what's the date on this letter?

25           A.       April 25th, 2003.

1 Q. And who is it signed by?

2 A. Robert J. Quinn, Jr.

3 Q. Is it a true and accurate copy of the  
4 letter you received?

5 A. Yes.

6 JUDGE PRIDGIN: If I could interrupt just  
7 briefly. Mr. Jacobs, if I could trouble you to try to  
8 speak into the microphone.

9 THE WITNESS: Oh, I'm sorry.

10 JUDGE PRIDGIN: Hopefully it's working all  
11 right. Thank you very much. I'm sorry.

12 BY MR. COMLEY:

13 Q. And again, the nature of the letter, they  
14 are requesting a statement of revenue form; is that  
15 correct?

16 A. Yes.

17 Q. And the statement -- did the company  
18 eventually submit a statement of revenue form?

19 A. Yes.

20 Q. And was that the statement of revenue form  
21 that was in Exhibit 5?

22 A. Yes, I believe so.

23 Q. Do you recall when the statement of revenue  
24 form was sent to the Commission? Do you need to look at  
25 the exhibit?



1           A.       Yeah. I don't know offhand. My  
2       recollection, it was around early May, but I'm not  
3       positive. It would have been -- probably would have  
4       been -- probably would have been May 12th.

5           Q.       Around May 12th. Thank you very much.

6                   MR. COMLEY: Your Honor, I'd move at this  
7       time the admission of Exhibit 3.

8                   JUDGE PRIDGIN: Objection -- I'm sorry. Go  
9       ahead, Mr. Comley, did you want to further --

10                  MR. COMLEY: I wanted to identify it as a  
11       letter from Mr. Robert Quinn dated April 25th, 2003 to  
12       Secured Technologies.

13                  JUDGE PRIDGIN: Thank you. Any objection?

14                  MR. BERLIN: No objection.

15                  JUDGE PRIDGIN: Exhibit No. 3 is admitted  
16       into evidence.

17                   (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

18       BY MR. COMLEY:

19           Q.       Mr. Jacobs, let me ask you as well about  
20       the annual assessment. Did the company receive a notice  
21       addressed to the company that its annual assessment for  
22       2002 was overdue?

23           A.       I believe so, yeah. I think I remember  
24       seeing a letter to that effect, yes.

25           Q.       Having handed you what's been marked by the

1 court reporter for this case as Exhibit 4, could you  
2 identify that, please?

3 A. Yeah. This is what you had just indicated  
4 that we had owed a -- owed a dollar amount based on our  
5 revenue statement.

6 Q. Is this a true and correct copy of the  
7 letter that you received?

8 A. Yes, it is.

9 Q. Did the company respond to that letter?

10 A. Yes, we did.

11 Q. And do you recall when the company  
12 responded?

13 A. Not offhand. I'd have to see the document.

14 Q. Do you have some notes that you could look  
15 at?

16 A. Probably, yeah. It looks like it was  
17 sometime in early June we sent that.

18 Q. And how did you respond to the letter? You  
19 sent what?

20 A. A check for the amount that they had  
21 indicated we owed them.

22 Q. And how much was that?

23 A. \$2.07.

24 Q. Let me ask you this, Mr. Jacobs, about the  
25 annual report for 2002. Did the company file by

1 April 15th, 2003 its annual report to the Commission for  
2 the calendar year of 2002?

3 A. No.

4 Q. Please explain to the Commission why the  
5 company didn't.

6 A. We -- I have never received to this date  
7 any form from the Missouri Public Service Commission  
8 indicating to file that annual report until we did it by  
9 leave through that motion.

10 Q. You are -- are you referring to the letter  
11 that's been marked as Exhibit 2 in this proceeding?

12 A. Yeah. The report that you went through,  
13 the annual report.

14 Q. You mentioned that you did not receive any  
15 notice to file, and I --

16 A. I received no report and no notice to file  
17 for that particular report. The first I saw of that was  
18 when we started this process.

19 Q. Let me hand you what's been marked  
20 previously as Exhibit 2. Did you receive that notice from  
21 the Commission?

22 A. No.

23 Q. Had you received that notice, what would  
24 have been your response?

25 A. We would have either called them to request

1 an annual report form or we would have tried to get online  
2 and -- and execute that form.

3 Q. Did you deliberately fail to file the  
4 report?

5 A. No.

6 Q. Did you intentionally try to file -- did  
7 you intentionally not file the report?

8 A. No.

9 Q. Was it a mistake?

10 A. Apparently.

11 Q. Did the company receive any notices in  
12 addition to the notices that were set forth in Exhibit 3  
13 and Exhibit 4?

14 A. No.

15 Q. That the -- no other notices came?

16 A. No.

17 Q. Did you receive any notice that the company  
18 was overdue in the filing of its annual report for 2002?

19 A. No. And see, let me give you a little  
20 explanation. We do about 15 to 17 other states under  
21 Consolidated Telecom, which is the parent company of  
22 Secured, and some of those states where there also is zero  
23 revenues, then a lot of times there's not a filing,  
24 there's no additional type of filing that's requested.

25 And so I don't -- though I didn't know

1 about this annual report, I thought -- or at least because  
2 you filed -- we got the indication to do this revenue  
3 statement, once they were all zeros that that was really  
4 basically all you had to do.

5 Q. Did you feel like the statement of revenue,  
6 then, was in compliance with the requirements for Missouri  
7 law then?

8 A. Yes.

9 Q. Let me talk about the company and its  
10 prospects in Missouri. Does the company have any plans,  
11 Mr. Jacobs, to cancel its tariffs and surrender its  
12 Missouri certificate of authority in the near future?

13 A. Not at this time.

14 Q. Does the company have any plans to expand  
15 its business in Missouri or any neighboring jurisdictions?

16 A. We had talked about trying to get more  
17 active in Missouri, Iowa and Indiana for this upcoming  
18 year, yes.

19 Q. And would Secured Technologies be a part of  
20 that expansion?

21 A. Yes.

22 Q. If the company would be subject to a fine  
23 or penalty as a consequence of Staff's complaint in this  
24 case, could you tell the Commission what the company's  
25 plans would be then?

1           A.       Probably not to market extensively and  
2 maybe even decertify. I don't know. I can't answer that  
3 at this time.

4           MR. COMLEY: I have no other questions.

5           JUDGE PRIDGIN: Mr. Comley, thank you. Let  
6 me see if I have any questions from the Bench.  
7 Commissioner Murray?

8 QUESTIONS BY COMMISSIONER MURRAY:

9           Q.       Good morning.

10          A.       How are you?

11          Q.       Where did you get the blank form that you  
12 did file?

13          A.       That I think came once the complaint had --  
14 we received that, and we indicated that we had contacted  
15 counsel there, and that's when we had tried to comply with  
16 that.

17          Q.       So did you receive it in the mail?

18          A.       You know, I don't recall honestly.

19          Q.       But it was upon inquiry that you --

20          A.       Right.

21          Q.       -- got it?

22          A.       Exactly. Because before that we didn't  
23 even know that it was something that had to be done.

24          Q.       Did you receive the notice that was sent on  
25 February 14 regarding the statement of revenue form?

1           A.       February 14?

2           Q.       Well, I'm referring to -- if I can find it  
3 here, it was an exhibit that Mr. Comley just entered a few  
4 moments ago. It was the letter, Exhibit 3.

5           A.       The April 25th letter, ma'am?

6           Q.       It was in the April 25th letter. It  
7 references on February 14, 2003, a letter and the  
8 statement of revenue form were mailed to you. Did you  
9 receive that?

10          A.       I don't know. I don't recall, but I would  
11 have to say no, because if we had received that, we would  
12 have filled this out sooner. So I don't know. I had  
13 never seen it personally, no.

14          Q.       Where does mail go that comes into that  
15 address generally to Secured Technologies?

16          A.       And that's part of the issue here. We  
17 acquired -- Consolidated Telecom acquired Secured in  
18 either late '99 or early 2000. I don't recall when  
19 exactly. And we have two offices, and -- one in Dallas  
20 and one in San Antonio, and we took a process to bring all  
21 the financial information and all of the compliance  
22 information, took some time to bring that from the  
23 San Antonio office up to the Dallas office. So  
24 conceivably some things could have slipped through the  
25 cracks.

1 Q. You say Consolidated Telecom acquired  
2 Secured Technologies?

3 A. Yes. It's a wholly owned subsidiary,  
4 ma'am.

5 Q. And who was it owned by previously?

6 A. Gentleman by the name of Scott Moreland,  
7 who is also an officer, and I think he's listed or was put  
8 on that annual report that we ended up completing  
9 subsequent to the time required.

10 Q. So does Consolidated Telecom also receive  
11 mail at 1418 Bitters Road?

12 A. No, it receives mail at 1320 Greenway  
13 Drive, Suite 450, Irving, Texas.

14 Q. So it wouldn't have been mixed up with  
15 general mail to Consolidated Telecom?

16 A. Like I said, there was a transition period  
17 from the acquisition to bringing that stuff up there,  
18 so -- but they're separate.

19 Q. What is the difference between Suite 1 and  
20 Suite 2?

21 A. They moved their offices. The office down  
22 in San Antonio moved, and I don't know if it moved from 1  
23 to 2 or 2 to 1. I'd have to go back and check. I don't  
24 know the exact dates of that move, but I could get those  
25 if need be.



1           Q.       Has there been any problem with getting  
2 mail forwarded from Suite 2 to Suite 1, that you're aware  
3 of?

4           A.       You know, I don't know. I mean, I don't  
5 know if there's any things that may have had a problem,  
6 but they did move. I can get the exact dates if need be.

7           Q.       As I was listening to the dates at which  
8 various notices seemed to be sent from the Commission, I  
9 was wondering if for companies who do business in several  
10 states and, therefore, have to keep track of a lot of  
11 different regulatory requirements, each with its own  
12 unique aspects, I'm sure, would it be helpful if we had a  
13 process whereby we consolidated -- and I'm just thinking  
14 off the top of my head. I don't know. I haven't  
15 discussed this with anybody. I don't know if this is  
16 possible, if there are arguments against it, but would it  
17 be helpful for a company to keep track of the filing  
18 requirements in a particular state if we were to send all  
19 of you a notice of all of your filing requirements at the  
20 same time?

21          A.       Absolutely.

22          Q.       This is what you're required to do annually  
23 and these are the dates?

24          A.       Absolutely, because like I said, we deal in  
25 15 states and we've got the qualifications to do business,

1   you've got a revenue report, you've got sometimes an  
2   informational form like this that come at different times,  
3   and we're a small company. It's not like we have, you  
4   know --

5           Q.       You don't have someone full-time, I guess,  
6   monitoring whether you're complying with all of these  
7   state filings?

8           A.       Exactly. That would be very helpful.  
9   Honestly, it would be, there's no question about that.

10          Q.       Do you know if that's the case for other  
11   states? Do you -- do they all vary in the way that they  
12   notify the carriers?

13          A.       I would say they do vary. Some of the  
14   other states send it all at one time, but it's like here,  
15   certain things are due at different times for various  
16   reasons, and just the idea of this -- of the revenue  
17   statement and the annual report coming in the same thing  
18   would make a lot -- a lot easier to keep track of, because  
19   it's extremely difficult.

20          Q.       Would it be -- would you be the one filling  
21   out the revenue statement, as well as the annual report?

22          A.       I would fill it out, but I would get the  
23   information from our CFO. He would actually do the  
24   compilation of it, typically, and then I would, you know,  
25   fill out any of the other information that would be a part

1 of the form, although in this particular form looks like  
2 it's almost all financially based. It doesn't seem like  
3 there's anything else on it, other than strictly operating  
4 revenue. So --

5 Q. From an efficiency standpoint, if you knew  
6 or if you received notice at one time that you had two  
7 reports due, the statement of revenue report and the  
8 annual report within 30 days of one another, from an  
9 efficiency standpoint, would you fill those out  
10 simultaneously?

11 A. Yes. Yes.

12 Q. You would mail them simultaneously?

13 A. Yes.

14 Q. And you had no customers in Missouri in  
15 2002; is that correct?

16 A. Yeah, that's correct.

17 Q. The first customer you ever had in Missouri  
18 was sometime in 2003?

19 A. Yeah. Yes. I think I -- I believe it was  
20 September or August, but I'm not sure.

21 Q. I think you were asked by your counsel  
22 about your intentions to keep your certificate in the  
23 state of Missouri, and I recall your answer being that you  
24 had no intention at this time of cancelling your  
25 certificate. I'm assuming that it would be your desire to

1 stay in compliance with all of the Missouri requirements?

2 A. Correct.

3 Q. And if the -- I would also assume you have  
4 to weigh when you're making a decision between hanging on  
5 to a certificate even if you're not using it versus  
6 cancelling it and perhaps having to apply again, that you  
7 have to weigh some things, and I guess one of the things  
8 you would weigh would be whether it's too difficult to  
9 remain in compliance without revenue?

10 A. Uh-huh. That's true.

11 Q. Is it your opinion that Missouri  
12 requirements are not overly burdensome provided that you  
13 have adequate notice of everything that you are required  
14 to do?

15 A. I would agree with that. That's true.

16 Q. But is it also your opinion that the notice  
17 that you have actually received or that you actually  
18 received for your 2002 requirements was not adequate to  
19 prevent you from inadvertently becoming in noncompliance?

20 A. Well, the question was, why would I have  
21 complied or filled out a revenue statement and not filled  
22 out an annual report if I had received both of those? You  
23 know, I would not have done that. So my understanding  
24 from previous testimony is that those reports now are sent  
25 together, so I wouldn't see any real problem from a

1 compliance standpoint.

2 Q. When you -- you did receive the letter that  
3 was put in evidence here as Exhibit 3, which was the  
4 April 25th letter from Robert Quinn; is that correct?

5 A. Yeah. Right.

6 Q. Now, when you had received that letter, if  
7 that letter had also referenced that you had not filed  
8 your annual report and that it was due on April 15, would  
9 you have at that time also completed your annual report  
10 and returned it to the Commission?

11 A. What I would probably have done is picked  
12 up a phone and called the Missouri Public Service  
13 Commission and asked them what this form was, and then  
14 they would have either directed me to a website or they  
15 would have sent me out a form, and it would have been sent  
16 in the same time that this other one was sent. That's  
17 what I would have done.

18 Q. And as to the statement of revenue form,  
19 when you received this April 25th letter, was a form  
20 attached or was it merely referenced, were you merely  
21 referred to the website?

22 A. I think I called on this and then -- and  
23 they directed me, and then I did it from there.

24 Q. From the website?

25 A. Yeah, my recollection. You know, I do a

1 lot of these. I don't want to swear under oath to that,  
2 but --

3 Q. I'm sure it's difficult to remember the  
4 various states exactly what you've done. But do you  
5 recall when you went to the website whether there was  
6 anything obvious about the annual reports on the website?

7 A. Not that I recall, no. And I don't know if  
8 they're together or not or if they sent -- or, in effect,  
9 they may have sent it with this. I don't remember,  
10 because some of them I -- some of them I get in the mail,  
11 and some of them they -- you know, they'll direct you to a  
12 website and you download it. I'm not positive which is  
13 which.

14 Q. Well, it appears this letter referred you  
15 to a website.

16 A. Okay. Then maybe that's how I did it. I'm  
17 not positive.

18 Q. It said it's located under the forms icon,  
19 and I was just wondering if when you go to that forms  
20 icon, if the form for annual report also pops up.

21 COMMISSIONER MURRAY: Okay. I think that's  
22 all the questions I have. Thank you very much.

23 THE WITNESS: Thanks.

24 JUDGE PRIDGIN: Commissioner Murray, thank  
25 you. Commissioner Appling?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. Mr. Jacobs, good morning. How are you  
3 doing, sir?

4 A. Good.

5 Q. I apologize for being in and out of your  
6 hearing here and I'm not completely up to speed, so help  
7 me out with one or two questions here.

8 The first one is, what are you seeking  
9 here? What do you want the Commission to do for your  
10 company here?

11 A. Well, I guess it's to be reasonable with  
12 respect to trying to comply with the annual report, with  
13 respect to doing it on a late filing and not imposing a  
14 \$100 a day fine or imposition for the period of time that  
15 it was late, because had I received some sort of notice to  
16 file that or had sent or somehow been told that that  
17 needed to be complied with, we would certainly have done  
18 so much more timely than it appears in the record here.

19 Q. Did you have a good understanding that the  
20 annual report is covered by a Missouri statute?

21 A. Honestly, no. I mean, we do about 15 or  
22 20 states; they have different requirements. Sometimes if  
23 there is no revenues on a particular state, you don't have  
24 to do anything. I just got a call back from Nevada that  
25 they lost our form, but they know we filed it because they

1 had a \$100 check. They're asking me to see if I can find  
2 it in my files. So to answer your question, no. I mean,  
3 maybe I should have been more in tune with it, and to  
4 that -- to that extent, anyway.

5 Q. My next question is, you're operating in  
6 several states, and working with the government is kind of  
7 a -- there's a lot of forms that you have to fill out.

8 A. Sure.

9 Q. You know that as well as I do.

10 A. Absolutely.

11 Q. And you know that the law is the law.

12 A. Understood.

13 Q. And that we have to all follow it, you and  
14 I. I think my last question, did you-all take this annual  
15 report serious or is it just something that you-all just  
16 think that you can --

17 A. No. I mean, honestly, I didn't know it had  
18 to be filed until this process started going. The only  
19 thing I thought we had to file was the revenue statement,  
20 quite frankly. And I can't explain why -- why I didn't  
21 receive this particular notice here (indicating), whether  
22 it was because of the transition from our San Antonio  
23 office up to -- I mean, obviously that is not your  
24 problem. It has become our problem. But quite frankly, I  
25 was not aware of that, that informational form.



1 COMMISSIONER APPLING: Okay. Thank you  
2 very much, sir.

3 JUDGE PRIDGIN: Commissioner Appling, thank  
4 you. Let me see if we have any cross-examination.

5 Mr. Berlin?

6 MR. BERLIN: Yes, your Honor.

7 CROSS-EXAMINATION BY MR. BERLIN:

8 Q. Good morning, Mr. Jacobs.

9 A. How are you doing?

10 Q. Great. Mr. Jacobs, you indicated that you  
11 are a vice president of Secured Technologies, L.C.; is  
12 that correct?

13 A. Yes, sir.

14 Q. You have responsibilities for customer  
15 service?

16 A. Yes, sir.

17 Q. Marketing?

18 A. Yes, sir.

19 Q. And administration; is that correct?

20 A. Yes.

21 Q. Does the administration portion of your  
22 responsibilities include submission of reports?

23 A. Yes.

24 Q. Your company is certificated in Texas,  
25 correct?

1 A. Yes.

2 Q. Does Texas have reports, annual report  
3 submission requirements?

4 A. I'd have to go back and look, but I would  
5 imagine, yes, sir. I don't know offhand, but I do know I  
6 do a lot of filing in a variety of states, yes.

7 Q. You indicated that there is a parent  
8 company called Consolidated Telecom. Could you explain  
9 that relationship, please?

10 A. Yeah. Secured Technologies is a wholly  
11 owned subsidiary of Consolidated Telecom, and Consolidated  
12 acquired Secured in either mid '99 or 2000. I'd have to  
13 go back and look. I didn't know that that would be  
14 relevant to this hearing, but yeah, so it was -- it's a  
15 wholly owned subsidiary, sure.

16 Q. And were you with the company in December  
17 of 1998?

18 A. With Secured?

19 Q. Yes.

20 A. No. No.

21 Q. You indicated, I believe, in response to a  
22 question from Commissioner Murray that you were in the  
23 process of moving your office. When did that occur?

24 A. Well, moving the different things that we  
25 have to do. In other words, we still have the San Antonio

1 office, but it's primarily a -- for technical support, for  
2 equipment and for like data, all of the servers and that  
3 kind of stuff for data entry and basically how the systems  
4 work and stuff is down in San Antonio. But what we try to  
5 bring up is all the financial, all the administrative,  
6 most everything except for data and for sending out  
7 equipment, that kind of stuff.

8 Q. So for the purposes of Staff and the  
9 Missouri Public Service Commission, would we contact  
10 Secured Technologies at the address listed on its '02  
11 annual report?

12 A. Yeah. I mean, the people -- the people at  
13 the San Antonio office are Scott Moreland, and then, like,  
14 two technical people, so there's -- it's still available  
15 there, but looking at -- I have to look at the form, but I  
16 think I may have put in the Dallas numbers for contacting  
17 on certain of those questions that were set forth on that  
18 annual report.

19 Q. You indicate, I believe, in response to an  
20 earlier question that you -- you or your company was  
21 located at Suite 2, 1418 Bitters Road, San Antonio, Texas  
22 78216. Do you recall that question?

23 A. I recall the question. All I know is they  
24 moved either from 2 to 1 or 1 to 2. I'm not sure which, I  
25 think they moved from 2 to 1, is my recollection. I'd

1 have to -- I'd have to -- I should know that.

2 Q. So if your 2002 annual report shows your  
3 contact address as Suite 1, would it surprise you if your  
4 application filed December 4th of 1998 reflected the same  
5 street address but Suite 2?

6 A. No, because that would not be -- no, that  
7 would be normal because that's when we moved. I want to  
8 say within the last -- they moved within the last year  
9 maybe. I could get the exact date for you.

10 Q. Now, Mr. Jacobs, did Secured Technologies,  
11 L.C., file its 2002 annual report on or before April 15th  
12 of 2003?

13 MR. COMLEY: Objection. The question's  
14 been asked and answered.

15 JUDGE PRIDGIN: Sustained.

16 BY MR. BERLIN:

17 Q. And, Mr. Jacobs, your company currently is  
18 receiving mailings from this Staff and this Commission at  
19 the 1418 Bitters Road, Suite 1 address; is that correct?

20 A. Yes.

21 MR. BERLIN: No further questions, your  
22 Honor.

23 JUDGE PRIDGIN: Mr. Berlin, thank you.  
24 Mr. Comley, any questions?

25 MR. COMLEY: No redirect.

1 JUDGE PRIDGIN: Thank you, Mr. Comley.

2 Anything from the Bench?

3 (No response.)

4 JUDGE PRIDGIN: All right. Thank you.

5 Mr. Jacobs, you may step down. Thank you.

6 MR. COMLEY: Your Honor, I would like to  
7 offer into evidence Exhibit 4. My notes reflect that I  
8 have not made that offer and would do so now. That's the  
9 letter from General Counsel Joyce dated May 22nd, 2003.

10 JUDGE PRIDGIN: Any objection?

11 MR. BERLIN: No objection, your Honor.

12 JUDGE PRIDGIN: Exhibit No. 4 is admitted  
13 without objection.

14 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

15 MR. COMLEY: Defendant has no other  
16 witnesses.

17 JUDGE PRIDGIN: Thank you. Any further  
18 evidence from the parties?

19 MR. BERLIN: Nothing further, your Honor.

20 JUDGE PRIDGIN: Seeing no further evidence,  
21 closing arguments. Mr. Berlin?

22 MR. BERLIN: Your Honor, I believe this  
23 will be a fairly short closing statement. I think it's  
24 very clear from the record that Secured Technologies, L.C.  
25 did, in fact, fail to file its 2002 annual report on its

1 due date or by its due date of April 15th, 2003. And  
2 Staff would only request that this Commission make a  
3 finding of fact that Secured Technologies, L.C. did indeed  
4 fail to timely file its 2002 annual report on April 14th,  
5 2003, as is required by statute and Commission rule, and  
6 that the Commission would make this finding of fact and  
7 authorize its general counsel's office to pursue penalty  
8 actions in circuit court.

9 I have no further statements, your Honor.

10 JUDGE PRIDGIN: Thank you, Mr. Berlin.  
11 Commissioner Murray?

12 COMMISSIONER MURRAY: Mr. Berlin, I'd just  
13 like to ask you on the interpretation of 392.210,  
14 subsection 1, do you believe that the Commission has  
15 discretion within that statute to determine that we will  
16 not seek penalties, even if it is clear that an annual  
17 report was filed untimely?

18 MR. BERLIN: I believe, if I understand  
19 your question, Commissioner Murray, that 392.210,  
20 subsection 1 gives specific grant to the Commission to set  
21 the period, fix the period for the filing of an annual  
22 report, and to set the filing date and to either and  
23 possibly extend the filing date, if the Commission  
24 determines the necessity to do so.

25 So with those specific grants of authority

1 in the statute, it is Staff's opinion that the Commission  
2 does have the authority to settle this, if I understand  
3 your question correctly.

4 COMMISSIONER MURRAY: Okay. Let me ask you  
5 specifically in the statute, the language. It's a little  
6 above the middle of subsection 1. Do you have it in front  
7 of you?

8 MR. BERLIN: I do.

9 COMMISSIONER MURRAY: If any  
10 telecommunications company shall fail to make and file its  
11 annual report as and when required or within such extended  
12 time as the Commission may allow, such company shall  
13 forfeit to the State the sum of, and then it goes on with  
14 the penalty. But do you think that the Commission has the  
15 authority within that language to extend the time after  
16 April 15? If a report is not received by April 15, is it  
17 within our discretion at that point to extend the time  
18 allowed for filing?

19 MR. BERLIN: I read the statute that the  
20 Commission does have the discretion to extend the time for  
21 filing.

22 COMMISSIONER MURRAY: Even after  
23 April 15th?

24 MR. BERLIN: Yes, Commissioner Murray,  
25 because I read these statutes in their entirety and try to

1 listen to the intent that the Legislature has on these  
2 statutes and that these -- my reading of it is that there  
3 are some specific grants of authority given to this  
4 Commission under this statute, and if you look down  
5 further in subsection 1, you'll see where it says -- and  
6 I'm reading from there -- the Commission may, when it  
7 deems it advisable, exempt any telecommunications company  
8 from the necessity of filing annual reports until the  
9 further order of the Commission.

10 COMMISSIONER MURRAY: So we can  
11 specifically say to one company, you're exempt from the  
12 requirement until further order; is that correct?

13 MR. BERLIN: I do believe that's what the  
14 statute says.

15 COMMISSIONER MURRAY: And would it be --  
16 would one of those instances in which we might choose to  
17 do that, reasonably choose to exempt the company for the  
18 necessity of filing annual reports, be an instance in  
19 which a company maintains a certificate but has no revenue  
20 within the state?

21 MR. BERLIN: I believe that's within the  
22 Commission's discretion.

23 COMMISSIONER MURRAY: Would it be a  
24 requirement, a prerequisite that the company ask for such  
25 exemption or could the Commission, according to the



1 statute, exempt the company without a request to do so?  
2 The Commission may when it deems it advisable exempt, and  
3 I'm wondering if that requires any request to do so or can  
4 the Commission do that on its own motion?

5 MR. BERLIN: Commissioner Murray, my  
6 reading of that is that that's some broad language there,  
7 when it deems it advisable, and I believe it perhaps shows  
8 intent that perhaps not all of these late filing cases are  
9 not the same, even though a late-filed report may on its  
10 surface be late, according to the statute and the  
11 Commission rules, but my reading of that statute is that  
12 the Commission may, when it deems it advisable, exempt any  
13 telecommunications company from the necessity of filing  
14 annual reports until further order of the Commission.

15 COMMISSIONER MURRAY: It sounds like pretty  
16 broad discretion to say when it deems it advisable, does  
17 it not?

18 MR. BERLIN: It does appear to provide  
19 discretion, yes.

20 COMMISSIONER MURRAY: And then the  
21 requirement or the statement within that same section  
22 about the penalties if any telecommunications company  
23 shall fail to make and file its annual report as and when  
24 required or within such extended time as the Commission  
25 may allow, such company shall forfeit to the State and the

1     sum of such forfeiture shall be recovered in an action  
2     brought by the Commission in the name of the State of  
3     Missouri.

4                     Now, there's been a question as to whether  
5     the words shall mandate -- for example, in that sentence  
6     such forfeiture shall be recovered in an action brought by  
7     the Commission, whether that mandates that the Commission  
8     bring the action. But if you read the previous sentence,  
9     that failure within the time required by the Commission or  
10    within such extended time as the Commission may allow, if  
11    the Commission has the discretion to say, you're exempt  
12    from this annual report filing requirement until further  
13    notice, or you have an extension to file it within so many  
14    days of the time you receive notice that you were late,  
15    then there really wouldn't be a violation that the  
16    Commission would have to bring an action for recovery of  
17    penalties, would there?

18                    MR. BERLIN: It would appear that way to  
19    me, Commissioner Murray.

20                    COMMISSIONER MURRAY: All right. Thank  
21    you.

22                    JUDGE PRIDGIN: Commissioner Murray, thank  
23    you. Commissioner Appling?

24                    COMMISSIONER APPLING: Commissioner Murray  
25    always does this to me, she stirs up questions that I

1 don't have answers for and don't understand. But did the  
2 company ask for an extension after they was notified that  
3 they was delinquent on this report? Was there such a  
4 request, that you know of?

5 MR. BERLIN: No, sir, there was no filing  
6 for an extension of time that I'm aware of.

7 COMMISSIONER APPLING: I'm just trying to  
8 get at the heart of Commissioner Murray's question.

9 I suppose my second question is, taking a  
10 step back, do you feel that the Commission is doing -- we  
11 realize the statute is there and we choose not to change  
12 that, but what -- are we doing everything that we can to  
13 help companies like Secured Technologies? I know they  
14 received a -- we sent out the letter on the 4th of  
15 February notifying people that April 15th is the cutoff  
16 day. There's a question whether they received that  
17 letter. And the second is that we sent another letter, I  
18 think it was April the 25th, I believe, if I'm correct.

19 I'm just asking you, do you think we're  
20 doing enough? Is there something else we need to be doing  
21 from the Commission to make sure there's no question in  
22 our mind whether people are getting notification or not?  
23 Are we doing all we can do or doing enough?

24 MR. BERLIN: I believe, Commissioner  
25 Appling, if I understand your question --

1                   COMMISSIONER APPLING: I know I have four  
2 or five questions in one there, so if you can sort it out,  
3 I'd appreciate it.

4                   MR. BERLIN: It appears to me that there  
5 are some things that might be done to improve the process  
6 of the mailings of certain notices. It appears that  
7 Secured Technologies is receiving mail from us. We have  
8 some companies, telecommunications companies, as you know,  
9 who appear to not be receiving mail from us. I know that  
10 from anecdotal-type comments from some companies that  
11 there is an enormous amount of mail received by a company  
12 from this Commission.

13                   It appears to me as well, though, we have  
14 made it easy to access reports with our website. As you  
15 know, the annual reports form and the statement of revenue  
16 forms and quite a bit of other additional information is  
17 widely available on the website. But -- and I believe  
18 that if I remember correctly, the statements of revenue,  
19 are they being mailed with the annual reports now? I  
20 believe that was one improvement that was made.

21                   I'm the kind of person who thinks that  
22 there's always ways to improve communications, so I think  
23 that's certainly a step in the right direction.

24                   COMMISSIONER APPLING: Thank you very much.

25                   COMMISSIONER MURRAY: One more.

1 JUDGE PRIDGIN: Commissioner Murray?

2 COMMISSIONER MURRAY: Just one follow-up to  
3 that. With regard to an extension for the time within  
4 which a report has to be filed, is there any statutory  
5 requirement that the company apply for an extension? I  
6 don't see any language that says upon application. I see  
7 the language that says, if any telecommunications company  
8 shall fail to make and file its annual report as and when  
9 required, or within such extended time as the Commission  
10 may allow. I don't see any language that says upon  
11 application.

12 So if, in fact, a carrier just simply files  
13 the report late, as soon as they have notice that it's  
14 late, that it's due, and they file it without requesting  
15 an extension, in your opinion, does the Commission still  
16 have the ability to consider that report timely filed by  
17 extending the date by which it was due?

18 I'm sorry. Did I make that too  
19 complicated? It's a very simple question. I don't know  
20 why I made it so long. I'll try again if you need me to.

21 MR. BERLIN: Is your question whether the  
22 Missouri statutes specifically directs a company to make  
23 an application to the Commission if it intends to late  
24 file its annual report?

25 COMMISSIONER MURRAY: Well, not exactly.

1 Let's take the example where a company inadvertently does  
2 not file on time, receives a notice sometime later or a  
3 complaint is filed against the company for failure to  
4 file. The company says, whoops, and immediately files the  
5 annual report. Does the Commission have discretion to  
6 extend the time for filing to that date that it was  
7 received without a formal pleading saying I'd like the  
8 Commission to extend the time for filing?

9                   And you may not have an opinion on that.  
10 If you don't, that's fine.

11                   MR. BERLIN: For the Commission to take an  
12 action to extend the filing date when there is no  
13 application by the company?

14                   COMMISSIONER MURRAY: When the company  
15 simply files the report rather than make -- either make an  
16 application to file it late or accompany the report by an  
17 application to accept the late filing of the report.

18                   MR. BERLIN: I don't have an opinion as to  
19 the statute. I believe the application would be set forth  
20 in your Commission rules with regard to making application  
21 for extension of time. I don't know that I can answer --  
22 in fact, I'm having trouble understanding that because I  
23 don't find an answer for that in the statute.

24                   COMMISSIONER MURRAY: Do you have the rule  
25 that references application for late filing?

1                   MR. BERLIN: Yes, Commissioner Murray.  
2     It's 4 CSR 240-3.540, and that is the rule pertaining to  
3     annual report submission requirements for  
4     telecommunications companies, and specifically paragraph 6  
5     states, a telecommunications company that is unable to  
6     meet the submission date established in Section 1 of this  
7     rule may obtain an extension of up to 30 days for  
8     submitting its annual report by, and then it goes to  
9     subparagraph A, submitting a written request which states  
10    a reason for the extension to the attention of the  
11    secretary of the Commission prior to April 15th. And it  
12    puts another requirement in subparagraph B, certifying  
13    that a copy of the written request was sent to all parties  
14    of record in pending cases before the Commission where the  
15    utility's activities are the primary focus of the  
16    proceedings.

17                  COMMISSIONER MURRAY: So there is a  
18    specific requirement that an application for an extension  
19    be filed prior to April 15?

20                  MR. BERLIN: Correct.

21                  COMMISSIONER MURRAY: Do our rules say  
22    anything about exempting a telecommunications company from  
23    the necessity of filing the reports?

24                  MR. BERLIN: If your question is, is there  
25    a Commission rule that allows the Commission to exempt the

1 filing of an annual report?

2 COMMISSIONER MURRAY: Well, there doesn't  
3 have to be that, the statute allows, but is there a  
4 statute that states how it should be done?

5 MR. BERLIN: I would have to go into this  
6 rule a little bit further, Commissioner Murray. I can't  
7 answer your question.

8 COMMISSIONER MURRAY: Thank you,  
9 Mr. Berlin.

10 JUDGE PRIDGIN: Anything further from the  
11 Bench?

12 (No response.)

13 JUDGE PRIDGIN: Mr. Berlin, thank you.  
14 Mr. Comley, any closing argument?

15 MR. COMLEY: Yes, thank you.

16 May it please the Commission? During the  
17 course of my remarks, I'm hoping to address some of the  
18 things that you've already raised, and they are good  
19 questions, and I think with my help, although you see my  
20 position will be a little different perhaps than  
21 Mr. Berlin's, but I'll try to address those as I go  
22 through.

23 We'll be honest with you, the issue in this  
24 case is not whether the company filed a 2002 annual report  
25 on time. The record is clear that the company didn't do



1     that. The issue is whether this amounts to violation of  
2     Commission rules that warrant extraordinary punishment,  
3     and our position is, in equity and fairness, that can't be  
4     the case, and here's why.

5                     First, the failure to file was not  
6     intentional; it was not deliberate. There's not defiance  
7     of any direct command to file a report. The exhibits that  
8     are Exhibits 3 and 4, the two letters that we received,  
9     the one about our statement of revenue and the one about  
10    the annual assessment, again, we were getting information  
11    from the Commission, and in those letters it said if you  
12    don't do this, we're going to go after you and you have  
13    this time limit to do it. So we got a warning about two  
14    things, and the company complied.

15                    Here's what we didn't get, and I'll talk  
16    about this more. We didn't get a notice that the annual  
17    report was overdue. The first time there was notice that  
18    this was a problem was with Mr. Berlin's complaint. And  
19    that's something else I'll bring up, but the failure was  
20    by inadvertency and by oversight. It was not the product  
21    of contempt for the Commission or the Commission Staff.

22                    Second, our position is that the  
23    information that was essential to a proper regulation of a  
24    company like this company for 2003, one that had no  
25    customers in 2002, was the information supplied by the

1 statement of revenue. That sufficed for purposes of the  
2 interest of the Staff at that time, and there is a statute  
3 that talks about substantial compliance. Now, that  
4 statute is Section 386.610. I'm not going to read it for  
5 you. But the tenor of the statute goes, if the Commission  
6 itself substantially complies with everything in the  
7 chapter, that's sufficient to make -- give effect to the  
8 rules and statutes that it -- when it rules and orders it  
9 enters.

10 I look at it as well from the liberal  
11 construction you're supposed to place on this statute, and  
12 that is if substantial compliance is enough for the  
13 Commission, well, in fairness substantial compliance with  
14 at least the annual report requirement should be enough  
15 for utilities. So one of our defenses is, we  
16 substantially complied with the requirement. In other  
17 words, there is no reason to seek a penalty for a company  
18 that does its best to comply.

19 The other thing, the delay in filing the  
20 information was not detrimental to the operations of the  
21 Staff. The information was available, if necessary, by a  
22 phone call. The customer that we now have could still  
23 reach us. They know how to get to us, the essence of that  
24 being the public -- I think there's a minimal, if any,  
25 kind of effect caused by the absence of that for the

1 period of time.

2 Failure to file the information on  
3 April 15th was utterly harmless to the operations of the  
4 Commission and the Staff. For the company, well, the  
5 company should not pay a penalty for conduct that has  
6 harmed no one. The other thing is threatening a penalty  
7 against a company, a small company particularly for so  
8 minor an offense is contrary to the intention of  
9 Section 392.183. That's the section that sets out how the  
10 chapter should be interpreted.

11 There are three things I want out of that  
12 statute. The provisions of the chapter on  
13 telecommunications, Chapter 392, need to be construed to  
14 promote universally available and widely affordable  
15 telecommunications services, to promote diversity in the  
16 supply of telecommunications services and products, and  
17 No. 5, permit flexible regulation for competitive  
18 telecommunications companies and competitive  
19 telecommunications services. We started out opening  
20 remarks reminding the Commission that this is a  
21 competitive company. Its services have been classified as  
22 competitive services.

23 There appears to be a request for some  
24 inflexible interpretation and application of the penalty  
25 statute, and if there's inflexible interpretation and

1 application of it, that is certainly going to discourage  
2 small companies like Secured Technologies and other  
3 companies like it from either entering or remaining in the  
4 state. And I think you recall the testimony that if there  
5 is a penalty successfully applied to the company for some  
6 reason, then this company's going to have to seriously  
7 consider removing itself from the jurisdiction.

8                   The other thing is the company had only --  
9 has only one customer now. It didn't have for the  
10 calendar year 2000 any revenue, no customers. Potentially  
11 the company will be subject to a fine of over \$31,000 for  
12 failing to supply information Staff probably knew already  
13 and could locate conveniently from other sources, and  
14 didn't have a need for at that time. It was something  
15 they could do without and they did without.

16                   And our position is the company shouldn't  
17 suffer exorbitant penalties for petty inconveniences that  
18 may result to the Staff. It's oppressive. It's  
19 outrageous. It's in excess of what's considered to be  
20 right under the organic law of the state of Missouri. We  
21 cannot permit excessive fines or penalties.

22                   Commissioner Murray raised questions about  
23 the discretion, and here's our position on that: You've  
24 looked very carefully at 392.219.1, and I think you've  
25 centered on the ones that I think give the broadest

1 discretion to the Commission. You have the right to  
2 extend the time within which an annual report can be  
3 filed.

4                   And I think there is another paragraph in  
5 that rule, it may be paragraph 4 in the rule. I don't  
6 have it in front of me, but I think there are several ways  
7 in the rule that people can apply for extensions. In  
8 fact, the motion that's in front of you now was filed  
9 under paragraph 4 of that rule, as I recall.

10                   The other thing is, and you were talking  
11 about the word "exemption" when the Commission deems it  
12 advisable. If a person was looking for a way through  
13 this, I think when it deems advisable is fairly large  
14 enough for a legal locomotive to drive through. I think  
15 there's a sufficiently broad discretion given the  
16 Commission to elect to afford forfeitures for small  
17 companies by fairly exercising its discretion in cases  
18 where there's inadvertent failure to comply with the  
19 rules.

20                   We're not dealing with disobedience,  
21 willful disobedience. We're dealing with a mistake, a  
22 company that would have complied had it received the  
23 report, a company that did that in a pattern right after  
24 the report was due. We do have a record of compliance.  
25 Each time the company was notified that it was behind, it

1 complied.

2                   Other discretionary acts. Section 386.600,  
3   that's a section that gives the right to the Commission to  
4   bring the action, it may bring the action. It can bring  
5   it in any circuit court in the state. It doesn't mean it  
6   shall bring the action. There's a lot of room there for  
7   the Commission to exercise regulatory discretion to  
8   determine whether or not a penalty action would be  
9   consistent with the role the Commission plays in  
10   regulating and supervising utilities.

11 In many respects the Commission's the  
12 steward of public services. If its action should in some  
13 way impede or impair actions of decent public services to  
14 the -- so that customer quality and everything is upset  
15 unnecessarily, then that's a concern. I think the statute  
16 is broad enough for you to fulfill your mission, at the  
17 same time bringing people into compliance. There's a  
18 balance there, and I think it can be achieved through the  
19 discretion supplied by the statute.

20                   Another thing you might want to look at,  
21   and, Commissioner Murray, here's the citation for you;  
22   it's Heckler versus Cheney, 470 US 821-831. I don't have  
23   the companion citations in the Supreme Court Reporter or  
24   the --

25 COMMISSIONER MURRAY: Please repeat that.

1                   MR. COMLEY: It's 470 US 821, and what I've  
2 got in my notes is that, as an administrative agency with  
3 the enforcement power through specialized types of penalty  
4 actions, your decision not to prosecute or to prosecute,  
5 whether through a civil or criminal process, is a decision  
6 ultimately committed to your own discretion. It is yours.  
7 It is something that really can't be distributed on  
8 people. So again, you have the wide discretion we think  
9 as confirmed by Section 392.210.

10                   In addition, you have discretion in when an  
11 enforcement action can be brought and where, and how much  
12 you can apply to penalize somebody for. And then the  
13 other thing is, as a matter of your position as an  
14 administrative agency of the state, discretion is very,  
15 very broad.

16                   Our point that we think the equities would  
17 lie with Secured Technologies, a small competitive  
18 telephone company still interested in Missouri operations  
19 inadvertently fails to file its annual report with the  
20 Commission on a timely basis. It has no problems with  
21 customers or quality of service, and it has no problems  
22 with its competitors that draw this Commission into any  
23 kind of skirmishes. It simply failed to inform the Staff  
24 of some contact information by a statutory deadline.

25                   Something for you, Commissioner Applling.

1 This is in the evidence. It received absolutely no notice  
2 that its annual report was overdue. It did not know that.  
3 And although the Staff did notify us twice earlier of  
4 things that we didn't do, and one of those things that we  
5 had to attend to was paying them a check for \$2.07, which  
6 we did. Now the Staff is in a position where it wants to  
7 seek \$31,000 or more and has done so without any warning  
8 that we have failed to do something required by the  
9 statute.

10 Our position is that the Staff has  
11 developed a pattern. We have appreciated the pattern. In  
12 fairness, that pattern should apply to our annual report.  
13 It should have been told to us that the annual report was  
14 overdue. As Mr. Jacobs testified, if that had been known,  
15 it would have been filed in accord with the demands made  
16 by the general counsel or members of the Commission Staff.

17 We -- I wanted to point out again by  
18 statute the Staff does have the duty to notify companies  
19 that file annual reports that there's something erroneous  
20 about them, if they find something. That's a statutory  
21 duty. We think there's a corollary to do that, before the  
22 Staff can come to you and seek authorization to seek  
23 excessive penalties, that there has to be some sign that  
24 the company ignored a notice, did so to your rules,  
25 actually failed to comply with the notice and demand that



1   they comply, and upon failure to do so, that penalties  
2   will be requested.

3                   Mr. Jacobs also answered your question  
4   about what we wanted. Let me add a little to what he  
5   said. It's in our pleadings, and I don't want to confuse  
6   the issue. Here is really what we want. We think that in  
7   the exercise of the Commission's discretion, in the  
8   interest of fairness and equity and justice, Staff's  
9   complaint should be dismissed, and Secured Technologies'  
10   motion to accept the annual report of February 24th should  
11   be granted without qualification by the Commission, or in  
12   the alternative, and that's the other item that we've put  
13   in our defense, you have the authority to retroactively  
14   exempt the company from filing an annual report for 2002.

15                   And I would say that the order could go  
16   like this: The company's exempt from filing 2002 annual  
17   report. It is hereby ordered to file annual reports from  
18   this date forward on a timely and compliant basis.

19                   That's all we have. Thank you very much.

20                   JUDGE PRIDGIN: Mr. Comley, thank you.

21   Anything from the Bench? Commissioner Murray?

22                   COMMISSIONER MURRAY: Let me think for just  
23   a moment, please.

24                   COMMISSIONER APPLING: Sir, can we back up  
25   just one step?

1 MR. COMLEY: Certainly.

2 COMMISSIONER APPLING: When the company  
3 applied for the certificate to operate in the state of  
4 Missouri -- and this is a question that may be more to the  
5 Staff than it is to you -- and your certificate is mailed  
6 out or is authorized by the Public Service Commission, is  
7 there anything that is attached to that certificate that  
8 kind of steps down everything that the company's  
9 responsible for?

10 It would seem to me that if I was operating  
11 in the state of Texas and I had a certificate to operate,  
12 and as the CEO of the organization I would want to know if  
13 there's anything else the state of Texas required me to  
14 operate there, i.e., an annual report, a quarterly report,  
15 some type of report. I don't think that I would just go  
16 to 14 states and not inquire.

17 And the reason I attach that, because when  
18 I was in the Secretary of State's Office, we instituted  
19 such when they was registered at the Secretary of State,  
20 these are the things that you need to do, and it was  
21 something attached. So I don't know whether that was or  
22 not, but I'm thinking that the company has responsibility  
23 here to ask the question, is there something else that I  
24 need to do other than just to pick up my certificate and  
25 walk away with no other requirements here?

1                   Can you help me out with that can,  
2   Mr. Jacobs or can the Staff help me out with that?

3                   MR. COMLEY: Regarding the certificate  
4   itself, at least in my experience it's never been the  
5   custom for the certificate, the report and order to be  
6   followed by, here's a list of things you must do by  
7   statute. I think the Commission and the Staff presume  
8   that the applicant has agreed to comply with the rules and  
9   regulations of the Commission, and as a consequence, that  
10  gives them qualification to be certificated.

11                  I don't think that the company I represent  
12  nor I are going to tell you that compliance was the No. 1  
13  issue with the company. I think there would be some  
14  admission that review of the statutes and rules and  
15  regulations of this jurisdiction was not perfect. And  
16  that still being -- even though that's the case, the issue  
17  for the Commission is whether or not under these  
18  circumstances it warrants a fine of \$31,000 or more. And  
19  our position is no, it's not.

20                  And again, this is a small company. At the  
21  time it had no customers. It really probably wasn't as  
22  acute as it should have been, and that led to the  
23  violation. So I can tell you this, and even though I -- I  
24  think with confidence I can say the company is compliant  
25  at this time, that the annual reports required for it up

1 to this point, as well at its assessments, have been paid.

2 So if anything, this has been an exercise  
3 in encouraging a wake-up call, if you will, to review the  
4 statutes and rules and regulations of this body so that it  
5 complies.

6 COMMISSIONER APPLING: Thank you very much,  
7 sir.

8 JUDGE PRIDGIN: Thank you. Commissioner  
9 Murray?

10 COMMISSIONER MURRAY: Mr. Comley, do you  
11 have 386.600 in front of you?

12 MR. COMLEY: No, I don't. I don't have  
13 that in front of me.

14 COMMISSIONER MURRAY: Does anybody have a  
15 copy?

16 MR. BERLIN: I think I do.

17 MR. COMLEY: I do. I have it. I borrowed  
18 Mr. Berlin's copy of the Revised Statutes.

19 COMMISSIONER MURRAY: That section -- and  
20 thank you for pointing that out -- begins with an action  
21 to recover a penalty or forfeiture under this chapter or  
22 to enforce the powers of the Commission under this or any  
23 other law may be brought in any circuit court in this  
24 state, and I think you pointed out that that appears to  
25 give the Commission discretion regarding any law that we

1 may bring to the circuit court.

2 MR. COMLEY: Yes.

3 COMMISSIONER MURRAY: And then my question  
4 to you about this is the very end of that statute, the  
5 last sentence it says, any such action, and I'm assuming  
6 that's any such action that has been brought to the  
7 circuit court, may be compromised or discontinued on  
8 application of the Commission upon such terms as the court  
9 shall approve and order.

10 Now, on the one hand I think that gives us  
11 pretty clear discretion to settle something once it's been  
12 taken to circuit court, penalty action, but on the other  
13 hand, there would be those who argue that by giving us the  
14 discretion at that point may infer that it takes away our  
15 discretion to settle prior to actually taking the action  
16 to circuit court.

17 MR. COMLEY: By doing that, I think you  
18 edit out serious portions of Section 392.210. That would  
19 be in terms of a virtual amendment to that statute. It  
20 has to be given some effect, and that's how I would argue  
21 that, Commissioner Murray.

22 COMMISSIONER MURRAY: Because I think there  
23 may be those who argue that.

24 MR. COMLEY: All right.

25 COMMISSIONER MURRAY: And there has been a

1 concern expressed, and I believe -- I would like to say  
2 that I don't think that Staff is purposefully attempting  
3 to be unreasonable with these complaints. I believe the  
4 Staff is trying to act upon direction or perceived  
5 direction from the Commission.

6 MR. COMLEY: Very well. The thing is,  
7 principles of advocacy would require they were the only  
8 target.

9 COMMISSIONER MURRAY: Yes, I understand. I  
10 appreciate your directing it at Staff rather than the  
11 Commission.

12 MR. COMLEY: Very well.

13 COMMISSIONER MURRAY: I just felt a little  
14 bit obliged to indicate that it may not be Staff's firm  
15 commitment that these penalties should apply. I can't  
16 speak for Staff, but that would be my reading.

17 MR. COMLEY: Having no other contrary  
18 evidence, and they did file the complaint, that's how I  
19 couch my behavior.

20 COMMISSIONER MURRAY: I was leading up to a  
21 question, but I've talked so long I've forgotten it. Let  
22 me think for a minute. Oh, yes. A concern has been  
23 raised that because the statute provides for penalties for  
24 the filing, the failure to file annual reports in a timely  
25 manner, and provides the amount of those penalties, that a

1 failure by the Commission to pursue penalties in every  
2 instance in which there is a late filing or no filing and  
3 to seek the full penalties provided in the statute could  
4 be construed in an audit, a later audit of this Commission  
5 to not be doing its job to receive all of the penalties  
6 for the State that has been -- have been provided for in  
7 the statute.

8 MR. COMLEY: I would respond two ways.  
9 One, that ignores the discretion that's in the statute.  
10 We've talked about that before.

11 Second, if the Commission were to  
12 inflexibly and in a hard way apply the penalty provisions  
13 without any kind of consideration of their effects, the  
14 management audit may reflect that by being so harsh in  
15 enforcement, the Commission has discouraged robust  
16 competition in the state and the consumers have lost track  
17 of competitively established rates in the long distance  
18 market for here or for other markets.

19 I think it's a two-edged sword. I think  
20 even though the Commission can carry that sword, I think  
21 it should be used sparingly and only for the intentional  
22 wrongdoer. I don't think it should be used for those who  
23 may be unfamiliar with the Commission's rules and  
24 regulations and its statutes and have had no warning in  
25 advance that there could be this harsh and financially

1 burdensome. That's how I'd respond.

2 COMMISSIONER MURRAY: Okay. And also a  
3 question has arisen in my mind about whether we can apply  
4 any public interest standard in this situation. I know  
5 that standard seems to be a catchall whenever it's  
6 convenient for anybody to argue for anything that it's  
7 either in the public interest or not in the public  
8 interest to do such and such, and in your opinion, would  
9 you think that the public interest argument should apply?

10 MR. COMLEY: It's -- the way I approached  
11 it in coming here was to remind the Commission of  
12 Section 392.185, because I think -- I think the  
13 Legislature attempted to further identify how the public  
14 interest should be maintained by the Commission. I think  
15 there's areas there, Commissioner Murray, that help define  
16 the public interest there. So I didn't go into that.

17 And the other thing, you're right, I  
18 don't -- my thoughts are that public interest analysis on  
19 this isn't necessarily directly involved. I know that  
20 that's the hallmark of this body is that it conducts  
21 itself and makes decisions that are in the public  
22 interest. So that may hang over everything, but it may  
23 not be directly involved.

24 COMMISSIONER MURRAY: Thank you very much.

25 JUDGE PRIDGIN: Thank you. Anything



1 further from the parties?

2 (No response.)

3 JUDGE PRIDGIN: All right. Seeing nothing,  
4 the evidence is closed. This matter will be taken under  
5 advisement, and we are off the record. Thank you very  
6 much.

7 WHEREUPON, the hearing of this case was  
8 concluded.

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1	I N D E X	
2	Opening Statement by Mr. Berlin	7
3	Opening Statement by Mr. Comley	9
4	STAFF'S EVIDENCE:	
5	JANIS FISCHER	
6	Direct Examination by Mr. Berlin	15
7	Cross-Examination by Mr. Comley	20
8	Redirect Examination by Mr. Berlin	48
9	Questions by Commissioner Murray	48
10	Questions by Commissioner Appling	53
11	Recross-Examination by Mr. Comley	55
12	SECURED TECHNOLOGIES' EVIDENCE:	
13	JEROME JACOBS	
14	Direct Examination by Mr. Comley	61
15	Questions by Commissioner Murray	70
16	Questions by Commissioner Appling	79
17	Cross-Examination by Mr. Berlin	81
18	Closing Statement by Mr. Berlin	85
19	Closing Statement by Mr. Comley	96
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX	
2		RECEIVED
3	EXHIBIT NO. 1	
4	Motion for Leave to File Annual Report Out of Time	31
5	EXHIBIT NO. 2	
6	2/3/03 Important Notice to all Missouri Public Utilities	31
7	EXHIBIT NO. 3	
8	4/25/03 Letter to Secured Technologies From Robert Quinn	65
9	EXHIBIT NO. 4	
10	5/22/03 Letter to Secured Technologies From Dana K. Joyce	85
11	EXHIBIT NO. 5	
12	Statement of Revenue	59
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		