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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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In the Matter of the Second)

Investigation into the State of)

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Competition in the Exchanges of) Case No. TO-2005-0035

Southwestern Bell Telephone, L.P.)

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d/b/a SBC Missouri)

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VICKY RUTH, Presiding,

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SENIOR REGULATORY LAW JUDGE.

CONNIE MURRAY,

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STEVE GAW,

LINWARD "LIN" APPLING,

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COMMISSIONERS.

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

2 JUDGE RUTH: Good morning. We are on the
3 record, back for continuation of the hearing in Case
4 TO-2005-0035. At this time the Commission is recalling
5 witness Matthew Kohly.

6 Mr. Kohly, you were sworn in last week, so
7 I will remind you that you are still under oath, and at
8 this time we will have some questions from the Bench.
9 Commissioner Gaw?

10 COMMISSIONER GAW: Thank you, Judge.

11 MATTHEW KOHLY testified as follows:

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Good morning, Mr. Kohly.

14 A. Good morning.

15 Q. Mr. Kohly, on page 13 of your amended
16 rebuttal testimony, you make a statement that it doesn't
17 appear that SBC's own line count was taken from the
18 911 database. And I'm paraphrasing there. Do you
19 remember making a statement like that?

20 A. Yes.

21 Q. Do you now -- are you now familiar with
22 where that information came from?

23 A. It is their own retail line count. It was
24 not taken from the 911 database.

25 Q. And of what significance is that?

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1 A. What I tried to do was in order to validate
2 the use of 911 data as a proxy for line counts was --
3 let's compare it to the line count SBC was using in this
4 case that they submitted in the direct testimony of Craig
5 Unruh. I submitted Data Requests asking for SBC's
6 information about what they had in the 911 database in
7 order to compare the two.

8 SBC did not answer the Data Requests, and
9 basically said that that would -- those Data Requests were
10 irrelevant and would not lead to discovery of useful
11 information. Or I'm paraphrasing the data request, but
12 that was their objection. They did not answer it, so I
13 could not do that comparison.

14 Q. Did your counsel raise the objection to the
15 Commission to see -- to get a ruling on it?

16 A. No, he did not.

17 Q. So what is your -- at this stage, you know
18 about the E911 data that has come in in regard to the
19 potential market share that -- the market share that might
20 be derived from the numbers that came from E911, right?

21 A. Right.

22 Q. Let me ask you first of all, do you think a
23 market share test from your standpoint is a relevant -- is
24 a relevant issue for the Commission, a factor for the
25 Commission?

1 A. I think it is, in that it gives you a
2 picture of what we have in the market today, where the
3 competitors are and what kind of -- what is their, I
4 guess, status in the market. So it gives you a picture of
5 where you are today. Based on that, possibly some trends
6 and other information, you can use that to determine if
7 there's effective competition.

8 Q. Well, you question the numbers that come
9 from the E911 data, right?

10 A. Right.

11 Q. Question their accuracy, correct?

12 A. Correct.

13 Q. Do you question them to the extent that you
14 believe that they are not relevant to this proceeding?

15 A. I think their accuracy is going to vary by
16 market segment. One of the things that I think should
17 have been done in the market share analysis is you should
18 have -- or the data should have been separated by
19 residential, and then for businesses it should have looked
20 at single line businesses, businesses served by trunks and
21 PBXs and then enterprise businesses, very large
22 businesses.

23 The 911 database and its accuracy I think
24 will vary by segment. For residential, it's probably
25 fairly accurate because generally one person has one phone

1 line, one number in the database. Where the data will be
2 very inaccurate is where you have a customer served by a
3 trunk in a PBX.

4 And in looking at some of Socket's data,
5 for example, we turned up a customer that requested 16
6 two-way voice lines. We ported a block of DID numbers
7 over from SBC, which one tells me SBC put those numbers in
8 its database. That customer is going to show up in the
9 database as having 102 lines. So when you get into that
10 market segment, it's going to be very overstated.

11 Q. Okay.

12 A. So that's why I think it's important to
13 look at it to segment -- especially the business market to
14 segment that and look at particular products and services.

15 Q. Is this Commission -- if the Commission had
16 that data separated, is the Commission allowed to separate
17 its declaration of competitive status in a similar way, in
18 your opinion, or do you know?

19 A. The issues list is teed up as all business
20 services.

21 Q. That's -- is that because that's what the
22 parties felt like the division should be or is it because
23 the parties felt like that's what the law provided for it
24 to be?

25 A. That was --

1 Q. If you know.

2 A. Essentially, my understanding is that's
3 what SBC asked for.

4 Q. Did Socket object to that characterization?

5 A. No. And it was our view it was their
6 position to ask for that. If it were us, I think we would
7 be asking -- you know, if we were asking for something
8 similar, we would ask to separate the market and segment
9 it.

10 Q. Why? Why would you have done that?

11 A. Because you -- you may have competition for
12 very high end businesses. That doesn't mean -- that
13 doesn't equate to having competition for a single line
14 business. We went through some testimony from Mr. -- or
15 questions from Mr. Lane. The business services Socket
16 provides are provided over a DS1 loop using EELs, and
17 that's, I don't want to say a specialized service, but it
18 is focused on a certain market. That does not mean that
19 it's economical or feasible for me to sell that service to
20 a customer that only wants one line or two lines.

21 Q. Tell me why that is.

22 A. The facilities we are leasing in order to
23 provide that service from SBC is an EEL, which is a
24 dedicated DS1 loop, and then it is transported from the
25 serving wire center back to our switch in St. Louis. The

1 service we provide over that is a number of voice lines
2 combined with an unregulated data service.

3 If -- it's just the margins aren't there to
4 provide that service to a single line business customer,
5 and so just because we can serve a 16-line customer does
6 not mean CLECs are ready to serve single line businesses
7 or residential customers.

8 Q. And are you familiar with where the margin
9 goes to a loss in -- rather than a profit margin,
10 approximately, and where that customer size or line count
11 is in serving customers the way Socket is currently?

12 A. I've not done that analysis. It kind -- it
13 will depend partially on what their data needs are. For
14 example, it might be economical to serve a 5-line customer
15 that needs quite a bit of data services, just like it
16 might be feasible to serve a 16-line customer that does
17 not need such data services.

18 Q. Can you explain that for me, why that is?

19 A. The data services are provisioned over the
20 same facility, and so once you incur the cost for those
21 facilities, I mean, it's a mix of services that generate
22 revenue. So if you have six voice lines plus a data
23 service, that revenue may equate to the same thing as
24 16 voice lines. And so that's why it's going to depend on
25 exactly what the customer's getting.

1 I think one thing that is relevant, and I
2 put this in my testimony, is where the Commission found in
3 the TRO case the cutover was between UNE-P and DS1 at
4 ten voice lines, and that is, I think, a relevant finding
5 to be able to -- where you separate the market.

6 Q. Well, when the issue is all wrapped up in
7 one big category of business services, how is the
8 Commission supposed to view that -- that factor or that
9 set of factors in regard to what may actually see
10 significant participation by CLECs in the business market
11 and what may not be something that the CLECs are really
12 geared to handle or marketing toward? How do we put all
13 that together under one heading of business services in
14 declaring something competitive or not?

15 A. I don't know. One way to look at it would
16 be the services are all lumped together, therefore we need
17 to focus on kind of the most common service, which is
18 single line business. And if you can find effective
19 competition for that, maybe move upwards, but you have to
20 focus on the least common denominator if you do that.

21 I don't know how the Commission, given the
22 issues list, will segment or separate the services out. I
23 guess one option would be have the parties refile
24 testimony focusing on that.

25 Q. You don't view the evidence currently in

1 regard to the amount of participation by CLECs in the
2 business market in evidence in this case to be segregated
3 sufficiently for the Commission to draw conclusions
4 regarding separated levels of business service?

5 A. No, I don't. It is all lumped together
6 when you do the market share analysis.

7 Q. When I look at this -- or if the Commission
8 looks at this from the standpoint of a least common
9 denominator -- and again, I'm just asking for your
10 opinion -- what do you see here as significant data from
11 your standpoint?

12 A. I can't see the exchange-specific data
13 because it's highly confidential, even though it relies on
14 CLEC 911 listings, so I can't look at a particular
15 exchange and tell you if that would need it or not.

16 Q. Yes.

17 A. But even before you get to that point, I
18 think you need to step back and try to separate out the
19 line counts for the different size of businesses. It
20 could be done. You could look at -- if you want to use
21 911 database for this purpose, you could look at the
22 business addresses, for example, and that's going to tell
23 you is that a business. And you could probably look at
24 that and get some idea of the number of lines that
25 location and that business name has.

1 Q. Are you saying that wasn't done in this
2 case or you don't know whether it was done in this case
3 because of your lack of access to the data?

4 A. I submitted Data Requests to the Staff
5 asking if any of that had been done, and the response was
6 no, nothing in the SBC testimony attempted to do that,
7 that I saw.

8 Q. Are you familiar with the analysis that
9 Staff did in regard to determining market share?

10 A. Generally I've heard the description of it.
11 I've not been able to see the exchange-specific
12 information.

13 Q. Are you familiar with the fact that they
14 used E911 data and also looked at the annual report data
15 that had been submitted into the Commission?

16 A. I understand they did that. I don't know
17 the details of that analysis.

18 Q. Okay. If they -- if they looked at a
19 particular exchange and suggested that there -- that if
20 the data from the -- from the annual report somehow
21 diverged or was significantly different from the data that
22 they received from the E911 data, that that would --
23 caused them to have a different opinion in regard to the
24 E911 data, do you view that generally as appropriate or an
25 invalid analysis? I know that's probably -- and that may

1 be too general to give an opinion about.

2 A. I think it was -- I guess any attempt to
3 validate the data I think is obviously a positive step. I
4 don't think that's still going to tell you what particular
5 services are being provisioned or able to be provisioned
6 in those exchanges.

7 Q. Can you tell me what concerns you have in
8 regard -- as a representative of Socket if SBC is granted
9 competitive status in any exchanges that you're doing
10 business? What problems do you have with that?

11 A. Our overall concern is that there is not
12 effective competition, and what they will be able to do is
13 raise rates in areas where there is not competition in
14 order to subsidize pricing in the areas where they face
15 competition. Right now Socket is focused on a specific
16 segment of the business market. Other CLECs -- I think
17 NuVox is focused on a similar segment, and they may go up
18 a little more than we will, but they're focused on a
19 similar segment.

20 The concern is that because we're focused
21 on that segment, it will be fairly easy to cut prices to
22 that segment only to the point where they are at cost or
23 below cost, make up that lost revenue by raising rates in
24 other areas or for other services that don't face
25 competition.

1 Q. Does it strike you as being a good
2 conclusion or good result of the '96 Act that CLECs would
3 be able to go take the cream off of the top of the market
4 and SBC not be able to respond with programs that can
5 counter that to avoid losing market share?

6 A. I guess I would take issue with the
7 suggestion that SBC cannot respond.

8 Q. All right. Tell me how.

9 A. I believe they can respond. They have
10 introduced a product that is similar to the product Socket
11 offers. It's an integrated T-1 product. They can
12 respond. They have a product that competes with our
13 product in the marketplace.

14 As far as the suggestion that CLECs are
15 cream skimming, one, you're going to have customers that
16 are more price sensitive. Those are going to be the ones
17 that are willing to change and probably spend more on
18 telecommunications. If you've got another issue, and
19 we've heard a lot of testimony about basic local service
20 being priced below cost, that's a universal service issue
21 that may need to be addressed, but that's not a
22 justification for granting competitive classification.

23 Q. Well, SBC -- and I'm very much paraphrasing
24 here, but I believe they have suggested that there is a --
25 that they have a difficult time responding to CLECs

1 because of the additional restrictions on their ability to
2 put forward a product in response to something the CLECs
3 are offering. Do you agree or disagree with that?

4 A. I disagree with that. They have bundled
5 offers out there today that bundle basic local service
6 with vertical features, with inside line wire maintenance,
7 with long distance, with DSL. I mean, they offer packages
8 of services. When Socket rolled out its product, we had
9 to file a 30-day tariff as well because it was a new
10 product. SBC has to do that, but it's the same timeframe.

11 They may have some additional requirement
12 to show that the service is priced above cost, but that's
13 because they're a noncompetitive company, but that does
14 not mean it will take longer to introduce the product. We
15 both face the 30-day time period.

16 Q. I've heard several people in here
17 testifying that they did not. Can you provide any
18 additional detail on the -- your understanding of the
19 filing requirements on new products?

20 A. You can -- a new service requires a 30-day
21 tariff filing for all companies. We filed our integrated
22 T-1 product on a 30-day tariff filing. You can file
23 promotions on a -- I believe a seven-day tariff filing. I
24 don't know what their requirements are for promotion, but
25 that's different than a new service. I think they file

1 promotions on a ten-day tariff filing, going by memory.

2 Q. Isn't SBC restricted in what it can price a
3 new product at in comparison to what a CLEC can price a
4 new product at?

5 A. Certainly they are under price cap service,
6 so there's a maximum, but a CLEC I guess in theory could
7 price above that. But I go back to it's kind of umbrella
8 pricing. How am I going to get a customer to switch to me
9 if I'm charging more than the incumbent for the same
10 service? In theory I could tariff it, but I'm not going
11 to get customers to switch.

12 Q. Is there a restriction on SBC being able to
13 offer a price that is lower rather than higher than the
14 price cap?

15 A. They can reduce the rates under price cap
16 regulation today.

17 Q. Does it put them in any box that you're
18 aware of in regard to future increases on that product if
19 they do that?

20 A. My understanding is if the price is \$20
21 today, they lower it to \$10, realize that was a mistake,
22 they can raise it back to the \$20. That's my
23 understanding of how the price cap regulation works.

24 Q. So that wouldn't be a restriction in your
25 opinion?

1 A. No.

2 Q. Are there restrictions in regard to SBC's
3 ability to bundle products that it has within the SBC
4 landline company itself? Not looking at its affiliates
5 now.

6 A. No. They could bundle basic local service
7 with vertical features.

8 Q. Are there restrictions in regard to how SBC
9 can bundle with other SBC affiliates in the law currently,
10 that you're aware of?

11 A. No. I mean, if you look in the marketplace
12 you'll see where they've bundled basic local service with
13 some vertical features, with long distance, with DSL, with
14 inside line wire maintenance. There's plenty of bundles
15 out there that they offer.

16 Q. So what does SBC gain by getting
17 competitive status in general that it doesn't have under
18 price cap regulation?

19 A. The ability to raise rates above the cap is
20 the only advantage I see that they would gain, or the only
21 thing that they would gain.

22 Q. You've already pointed out that when
23 there's significant competition for a particular service
24 or group of customers, that that wouldn't be in the
25 company's best interests to raise it above the rates that

1 are being offered by others that are competing, is that
2 correct, if they want to try to keep market share there?

3 A. As a general statement, yes.

4 Q. So what would be the problem with just
5 giving them competitive status in general, then?

6 A. I don't think there's effective competition
7 to curtail their ability to raise rates and then focus on
8 the few markets where they do face competition.

9 Q. Well, in general what areas do you view
10 them as not having significant competition that would have
11 an impact on controlling rates?

12 A. Given all of the uncertainty we have with
13 the FCC rules, I don't see how they face effective
14 competition in the residential market, the small business
15 market, and possibly even the medium-size business market.
16 I haven't seen the market share analysis to know are there
17 certain geographic areas where CLECs have had better
18 success than others.

19 Q. What do you view -- what would you view as
20 sufficient competition facts to warrant granting
21 competitive status hypothetically? What would you say
22 would be a minimum threshold and what would you look at if
23 you were going to draw conclusions in that regard?

24 A. I think you'd have to look at each product
25 and service, at least put them in some more specific

1 categories and start looking at the competitive options
2 out there. Are there competitors in the market that are
3 able to take customers away, have they had success in
4 doing that, and are they likely to continue to do that in
5 the future? And if you see that, then you can consider
6 it.

7 Q. Do you view -- and you view that analysis
8 as somewhat more complicated than dealing with the
9 business side of the product than in the residential
10 market; would that be fair or not fair?

11 A. Yes. Because of the diversity of services
12 you have in the business market, I think you have to
13 really focus on what's an alternative for a one or
14 two-line business versus a five or six-line business that
15 has some data needs versus an ISP that buys services
16 versus a very large business.

17 Q. Okay.

18 A. One thing you might do on the residential
19 side would be look at competition for primary lines versus
20 secondary lines.

21 Q. And what would be the difference there?

22 A. Customers -- there may be more options for
23 a secondary line where customers are able -- will cancel
24 their second line in order to get DSL service, but they
25 may not be willing to do that for a primary line.

1 Customers may be more willing to get a wireless phone
2 instead of a second line or they still want to maintain
3 their landline phone so they have 911, so they have a
4 directory listing.

5 Q. Which means what? What's your conclusion
6 from that?

7 A. You may have more substitutes for second
8 line than you do a primary line.

9 Q. What does that mean in regard to a
10 conclusion of whether or not you get competitive status,
11 is what I'm asking?

12 A. Well, I guess if you could differentiate
13 the products, and I don't know that this can be done, but
14 if you could have a product that's a second line, that may
15 face effective competition where the primary line does
16 not.

17 Q. I see. Did you see the -- I know you
18 discussed in your testimony to some extent the survey in
19 regard to wireless participation that was done by SBC on
20 contract.

21 A. Yes.

22 Q. Did you see the actual data on that or were
23 you allowed to see it?

24 A. I did see the survey and the responses,
25 that was available.

1 Q. Right. Do you have any -- after -- were
2 you in here when the witness who testified in regard to
3 that survey was on the stand?

4 A. For parts of it.

5 Q. All right. Do you have any different
6 opinion in regard to your responses about that survey
7 after hearing that testimony than you did when you were --
8 than you did when you gave your direct and rebuttal?

9 A. No. I still think by calling the wireless
10 carriers, the survey was biased in favor of heavy
11 cellphone users. One of the things that the witness did
12 testify to that I did still have an issue with, he was
13 testifying that wireless only needs to be a substitute for
14 a number of customers, and that because it's only -- not
15 for everybody but for a percentage of them, whatever that
16 might be, because SBC's pricing will be constrained as
17 long as the percentage views it as substitute. And in
18 doing that he concluded that you really can't discriminate
19 in the market.

20 And I would disagree with that. Because
21 you have the ability to offer win-backs and retention as
22 well as a general offer, SBC is able to discriminate in
23 the market. So, for example, they could raise rates in an
24 exchange. If a wireless customer calls in to cancel their
25 line, they can say, well, I'll give you this reduced rate.

1 Where if the wireless customer does that, they'll give
2 them a reduced rate, if you're a person that lives in a
3 low-lying area, that's not an option and you'll never be
4 able to get that lower rate.

5 So I think because of that ability to
6 discriminate in the market you really need to focus on is
7 it a substitute for everybody.

8 Q. If we're dealing on whether or not --
9 dealing with whether or not an exchange is declared to be
10 competitive or not, is it important whether one individual
11 in an exchange can't get wireless service if the rest of
12 the individuals can get wireless service from inside of
13 their house, as opposed to some degree of individuals
14 within that exchange that cannot get good signal within
15 their house?

16 And I'm not asking that question well, so
17 if you want me to reask it, I'll try to break it down.

18 A. I think you need -- if -- well, because SBC
19 has the ability to discriminate in the market and be able
20 to separate customers that have options from those that
21 don't through retention offers or win-back offers, I think
22 you do need to look at is it a substitute or is -- first,
23 mainly is it a substitute for everybody? Part of that is
24 going to be, is it even available? And there is no data
25 really. The data focused on is wireless service

1 available, but it doesn't focus on how ubiquitous is it.

2 Q. So would it be -- we weren't dealing with
3 the win-back issue, and we -- and everybody had to have
4 the same price in that particular exchange, then you think
5 the question would be whether or not there's enough
6 wireless substitutability and competition in that exchange
7 to control prices?

8 If we're not dealing with win-back, if
9 everybody had to get the same price if it was offered for
10 instance to a residential customer.

11 A. In order to do that, assuming no ability to
12 price discriminate, you would still need to determine is
13 it a substitute for a significant portion of the
14 customers, and part of being a substitute means it's
15 available, yes.

16 Q. Part of it is being available, but -- and
17 what's the rest of it?

18 A. Well, even if it's available, then is it
19 also a substitute? It has to be available first before it
20 can be a substitute.

21 Q. All right. And then in order to determine
22 whether it's being -- it is actually being utilized as a
23 substitute, you'd have to look at how many customers are
24 actually -- what percentage of customers are actually
25 using it in that fashion?

1 A. Right. And -- yeah. And what -- what
2 customers have cut the cord or have disconnected their
3 landline and kept wireless only, and you might want to
4 look at is this a particular age group, I mean, or is it
5 across the spectrum where we've seen customers
6 disconnecting their landline.

7 Q. Okay. Do you know of any analysis that's
8 been out there or any theories that are advanced in regard
9 to what percentage of any market share is necessary before
10 it acts as a control on prices?

11 A. I can't point to a study that says it
12 requires X percent. There's been other analysis done to
13 look at that. I've not reviewed that in quite a while, so
14 I couldn't name a percentage. It's going to be a factor
15 of kind of market share. If you look at it and you don't
16 see much market share, then you need to step back and look
17 are there barriers to entry or other factors causing this.
18 So there's no magic number.

19 Q. Go back to the win-back issue for just a
20 moment. If I understand you correctly, your concern there
21 is that that makes it even more of a problem when you have
22 any customers that cannot actually utilize the service as
23 a substitute because they can't get the better price that
24 you could get on win-back, since they can't leave --

25 A. Right.

1 Q. -- to go to that particular service?

2 Am I following you?

3 A. That is correct.

4 Q. Let's talk for a little bit about the
5 current status of the FERC Order, and UNE-P.

6 A. I hope you mean FCC Order.

7 Q. I do, but I was reading FERC for some
8 reason. FERC, that's another federal agency?

9 A. One I'm not familiar with.

10 Q. We could talk about that, though, and talk
11 about electricity and things like that. Sorry about that.

12 The FCC order, you're right. Tell me what
13 your opinion is in regard to what that is -- will do to
14 the state of companies currently doing business in
15 Missouri as CLECs that may have been utilizing UNE-P up to
16 this point in time.

17 A. Obviously when the Order is released
18 Friday, it sets out a one-year transition plan where UNE-P
19 will go away in one year. I think given this carriers
20 that have announced they have no intent of continuing in
21 the consumer markets such as AT&T, MCI. That is going
22 away as an option, and so I've seen analyst reports that
23 estimate at least 80 percent of those lines will revert
24 back to the Bell companies, and so I think that is a
25 significant -- I think that segment of the market is dead

1 in a year and will probably start eroding before that year
2 is up.

3 Q. Is there any way for this Commission to
4 predict what will occur with those companies that are
5 doing business heavily as in the UNE-P -- utilizing UNE-P
6 after -- during that one year and after that one year
7 whether or not they will just get out of the business or
8 go to utilizing someone else's switch or acquiring their
9 own switch?

10 A. Not with any reliability. It's been
11 asserted that there's third-party switching out there. I
12 guess it was talked about in the MCI deal with McLeod.
13 AT&T before the merger was announced, announced that it
14 had a deal with McLeod to use their switching, but it also
15 set out several steps that were required, and one was a
16 hot cut process. The FCC order failed to require any kind
17 of hot cut process to be developed beyond what's out there
18 today.

19 So I think you really have to question,
20 well, those third party contracts, are they even valid
21 anymore at all? When you use those and look at the
22 actions MCI has taken and AT&T no longer being a CLEC
23 after the merger, I think there's no ability to predict,
24 certainly not favorably.

25 Q. So it's your opinion that the outlook would

1 be -- the level of competition would be trending downward
2 from those companies that were utilizing UNE-P, but it
3 would be uncertain what -- how far downward that would go?

4 A. Right.

5 Q. I don't want to put words in your mouth.
6 I'm just trying to understand what you're telling me.

7 A. That's correct. I certainly don't expect
8 it to shoot upwards.

9 Q. You talked about hot cut process, and I
10 don't know if there's anything in the record indicating
11 what that means. Would you explain that, please.

12 A. That is the process that is required when
13 you have a customer currently served by an ILEC such as
14 SBC and that customer switches to a CLEC that has its own
15 switch. You have to move that customer's loop essentially
16 from the SBC switch and do a hot cut, cut that over to the
17 CLEC switch. And you need to do that in a quick fashion
18 so that they don't lose service, they're not out of
19 service for a long period of time.

20 Q. Okay. And what happens if they -- if you
21 don't have that process?

22 A. If there's not a good process, the customer
23 will either be unwilling to switch because they know it's
24 very risky that they -- their service will be out or they
25 switch their service may be out for a long period of time.

1 Q. Is that a problem in any of the SBC
2 exchanges currently, do you know?

3 A. I don't know that there's been a lot --
4 because UNE-P was available, I don't know that there were
5 a lot of hot cuts going on, especially in the smaller
6 business market or the residential market.

7 Q. So the answer is you don't know?

8 A. I don't know.

9 Q. I think SBC -- I'm going to back up just
10 for a little bit here. I think SBC has indicated on
11 occasion with some of its testimony that a switch that is
12 a long ways away from an exchange utilizing EELs can be a
13 method by which companies like Socket and other companies
14 that are out there can reach customers and serve them in
15 that exchange. And earlier you referred -- would you
16 agree with that, first of all, that they made that
17 suggestion?

18 A. Yes.

19 Q. All right. I'm not asking whether you
20 think that's feasible at this point. Now, earlier you
21 made some mention to that being problematic with -- in
22 some -- to serve some customers, and I want you to explain
23 to me what group of customers you would view that as not
24 being appropriate for and why.

25 A. Socket uses EELs, for example, to serve a

1 customer where we purchase -- lease or purchase a DS1
2 loop, which is equivalent 24 voice grades, and we purchase
3 transport from SBC to carry that back to our switch in
4 St. Louis. And that is one segment of the market where I
5 don't think EELs are feasible is going to be in the one or
6 two-line residential and business customers. I'm not
7 aware that voice-grade EELs are even available. I think
8 Mr. Unruh testified that he was not sure either.

9 And so it may not even be an option. If it
10 is, you still have the economics of how -- back hauling
11 that traffic that distance. So I don't think EELs are an
12 option for the small -- very small business and the
13 residential market.

14 Q. When you say that's -- back hauling all
15 that traffic is not -- makes it not feasible or not an
16 option, why? Is it the expense? What is it?

17 A. Even if you -- I'm not -- first off, I'm
18 not sure that voice-grade EELs are an option. It's
19 certainly nothing we've ever considered, mainly because
20 even if they were an option, it's the economics of it.
21 You'd have to lease the loop. You'd have to lease
22 voice-grade transport all the way back to your switch.
23 And that's going to be prohibitively expensive to do that.

24 Q. All right. So is it a matter of paying for
25 that transport?

1 A. It is. And the other -- it is paying for
2 the transport. The other issue you have is outside of the
3 MCA, you have to establish a point of interconnection in
4 each exchange.

5 Q. What does that mean?

6 A. Okay. For example, the example they always
7 use in the 271 case, let's say Socket were to win a
8 customer in New Madrid and Socket's switch was in
9 St. Louis. Socket would have to pay for the loop facility
10 to the New Madrid central office, dedicated in this case
11 voice-grade transport back to St. Louis. And then in
12 addition to that, it would have to secure transport back
13 to New Madrid so that if that customer in New Madrid
14 called their next door neighbor, Socket would be required
15 to carry that call to St. Louis, switch it, carry it back
16 to New Madrid and hand it to SBC in New Madrid.

17 If you have one or two customer New Madrid,
18 you still have to secure that -- or you still have to put
19 in that point of interconnection. And so that is kind of
20 additional overhead cost you have, and it's going to get
21 more expensive as you reach further out using EELs.

22 Q. All right. Can you give me any specifics
23 on comparative costs in utilizing something that requires
24 that transport to a -- in your example a New Madrid to
25 St. Louis transfer to get to the St. Louis switch, as

1 compared to having access to a switch that would be
2 available under UNE-P in the SBC exchange?

3 A. I could -- I would need to look at the M2A,
4 and I could certainly provide a late-filed exhibit, if
5 that would be helpful. I can't do it off the top of my
6 head today.

7 Q. In general, have you got any idea about how
8 those costs compare?

9 A. The EEL would be much more expensive.

10 Q. All right. Would it be so much more
11 expensive that you could not price the service without
12 pricing it below cost at a level that would be similar to
13 what was offered by SBC in that territory?

14 A. Most likely, yes. I think that's where the
15 Commission's decision in the TRO is important, in that
16 they found the cutover between going to a facilities-based
17 EEL-type setup with ten lines. So I think you could look
18 at and conclude if it's below ten lines it's going to be
19 uneconomical to serve that customer absent UNE-P.

20 COMMISSIONER GAW: It might be helpful to
21 have that exhibit, Judge. And I don't know if we've taken
22 notice of that other case or not, but we might want to do
23 that as well.

24 JUDGE RUTH: Okay. This would be
25 late-filed Exhibit 53. CLECs, I will expect you to

1 provide that.

2 Mr. Kohly, do you understand exactly what
3 Commissioner Gaw is asking for?

4 THE WITNESS: Let me restate it and make
5 sure I'm correct. First of all, I'm going to determine
6 whether or not there is an option to have DS0 level EEL.
7 If there is, I will provide from the M2A, the loop cost,
8 the transport cost to carry that from New Madrid back to
9 an SBC wire center in St. Louis, and then I will compare
10 that to the cost for a UNE-P arrangement in the exchange
11 of New Madrid.

12 BY COMMISSIONER GAW:

13 Q. And just to be clear, from my standpoint,
14 we would be talking about what size line count with the
15 DS0?

16 A. It's a single line.

17 Q. Single line. And what happens when you go
18 to two or three lines?

19 A. The cost would just increase. You know, it
20 would double if you go to two lines, triple if you go to
21 three lines.

22 Q. Okay. And then when you get to ten lines,
23 is that -- I know you referred to that earlier in the
24 other case. Can you explain if there is a -- is there a
25 significant difference, then?

1 A. That was the Commission's finding in that
2 case. At some point you'll reach a threshold where then
3 it becomes more economical instead of using a -- 10 DS0s
4 or 12 DS0s, it's more economical to use a DS1 level EEL to
5 serve that customer.

6 Q. And what happens when that occurs, when you
7 go to a DS1, in regard to the economics of a -- using EELs
8 to get to St. Louis from New Madrid in your example?

9 A. At that point you would switch over and be
10 able to essentially provide up to 24 voice lines with no
11 additional loop and transport costs.

12 Q. So it becomes more financially doable if
13 you have enough line counts to transport that?

14 A. Correct. Now, make sure we're on the same
15 page. You can only use that DS1 level EEL to serve a
16 single location. So it's not as if you can go into
17 New Madrid, get ten different business locations and then
18 suddenly cut over and use an EEL, a DS1 level EEL.

19 Q. And why is that?

20 A. It's the UNE restrictions. In order to do
21 that kind of aggregation in multiple locations, you would
22 have to have multiplexing done in New Madrid, which would
23 require a collocation.

24 Q. So you're telling me it can't be done at
25 multiple locations?

1 A. Correct.

2 Q. At one point in time, Mr. Kohly, you were
3 testifying about the problem in getting appropriate credit
4 for access revenues if a number was ported to a CLEC. Do
5 you recall that conversation --

6 A. Yes.

7 Q. -- or discussion?

8 Can you fill that out just briefly for me,
9 because I have a question on it?

10 A. Essentially the situation would be if there
11 is an SBC customer in an exchange that changes to Socket
12 or Socket ports that customer's number to us, when you
13 look at intraLATA toll carried by the former primary toll
14 carriers or the ILECs, in that situation that call will --
15 let's say it originates from a Sprint customer, terminates
16 to the Socket customer. The call record and the access
17 revenue will still stay with SBC rather than go with
18 Socket because it's a ported number. Neither Sprint nor
19 Socket will know that that number -- neither Sprint nor
20 SBC will know that that number's been ported.

21 Q. All right. There are rules being
22 contemplated currently on -- by the Missouri Commission
23 dealing with records exchange, what I'm wanting, isn't
24 that correct?

25 A. Correct.

1 Q. Do you know whether those rules at this --
2 in the early draft stages at this point would have any --
3 provide any solution to that problem?

4 A. Yes. Socket filed comments along with a
5 couple other CLECs generally in support of the rules,
6 especially the provision that would allow carriers to use
7 their own terminating records in order to bill.

8 Q. All right. Is that -- is that what has to
9 be in the -- in the rule to fix the problem? Is that --

10 A. Yes.

11 Q. -- the only way to solve it from your
12 standpoint?

13 A. Yes.

14 Q. All right. Do you think it was appropriate
15 for the Staff to totally discount the UNE-P market share
16 numbers in its analysis or would you have done something
17 differently?

18 A. I would have discounted it similarly.

19 Q. Completely?

20 A. Yes.

21 Q. How about the resale market?

22 A. It has no ability to discipline price, so I
23 would have similarly discounted. I think it's also so
24 small, based on the statewide numbers I saw, it's not
25 going to make much of a difference. But I would have

1 discounted it as well.

2 Q. Do you see the -- do you see VOIP as
3 something that ought to be considered in our analysis?

4 A. At this time I don't. That could change if
5 we see that it is adopted in the future, but I don't
6 believe -- I did -- at this point I would not count it.

7 Q. And why is that?

8 A. I don't view it as a substitute for basic
9 local service.

10 Q. Why do you not view it as a substitute?

11 A. It requires a broadband connection in order
12 to get that, so if you're relying on DSL, you have to have
13 landline service. If you're relying on SBC DSL or DSL
14 provided by a company that resells their DSL, you have to
15 have basic local service with SBC. So for those
16 customers, it's clearly not a substitute.

17 If you go with a cable modem, it still
18 requires a broadband connection, and I just -- given the
19 data I've seen, the stuff I've read, I don't see that
20 that's a substitute for basic local service. I think it's
21 being used probably as a long distance substitute, but not
22 for basic local service.

23 Q. Can you tell me what your basis for that
24 opinion is when you say? Based on data you've seen
25 doesn't tell me much.

1 A. Just in general when you look at the price,
2 by the time you secure a cable modem and sign up for some
3 of the Vonage products, you're getting in a price point
4 that's above DS-- that's above basic local service. True
5 you're getting long distance, and that's why I think
6 people that buy it are probably ones that make more long
7 distance calls with it. You also have the 911 concern.
8 So I don't believe that it's a substitute for the mass
9 market where you've got 911 issues.

10 Q. And wireless, would you give any credit to
11 wireless in your opinion?

12 A. In the business market, I would give no
13 credit. In the residential, if you were to separate the
14 market for primary lines and secondary lines, as we've
15 discussed, I would give it some credit. But the studies
16 I've seen that Dr. Aron cited, that I cited show that the
17 substitution rate is 3 to 5 percent, which tells me it's
18 not a substitute for the majority of the customers. So if
19 I considered it at all, it would be given very little
20 consideration. I've not thought about how to incorporate
21 that into a market share analysis.

22 Q. Do you -- you wouldn't give any credit for
23 the business side of it?

24 A. No.

25 Q. Why is that?

1 A. A business needs to have a directory
2 assistance listing. You don't get that with a cellphone.
3 And I just -- again, it's stuff I've -- SBC's survey did
4 not even focus on the business market. It focused solely
5 on the residential market, from my reading of
6 Mr. Shooshan's testimony.

7 Q. Isn't it true that Ford recently announced
8 it was cutting the cord somewhere? Do you know anything
9 about that?

10 A. I remember seeing that press release and I
11 was thinking about that. That may be something where the
12 employees talk to each other. I can't imagine they are
13 not going to have some kind of landline service where if
14 you want to call Ford for a warranty question.

15 So, for example, at Socket, a lot of people
16 that work there have cellphones. We also have landlines.
17 You don't call the cellphone if you want to sign up for
18 Socket service. And so I think it's a substitute in the
19 business -- or a complement in the business market.

20 Q. Are you familiar at all with how the
21 expenditures of residential customers have changed over
22 the last ten years in regard to total expenditures on
23 communications services? And if you're not, that's fine.

24 A. I read something Friday talking about the
25 SBC/AT&T mer--

1 Q. I don't want to get too far afield here.

2 A. I'm not focused on that a lot. I recently
3 on Friday read something talking about how long distance
4 expenditures have fallen over time. I've not focused on
5 their overall expenditures.

6 Q. I'm really talking about whether or not
7 individual residential customers are spending more money
8 in total than they used to be or less when you total up
9 their cellphone, their wirelines, their -- all other
10 things that they're spending on under a broad heading of
11 telecommunications today than they were ten years ago.
12 And if you don't know --

13 A. I have not read anything recently on that.
14 I can tell you mine has gone up.

15 COMMISSIONER GAW: Okay. I think I'm done.
16 Thank you, Judge.

17 JUDGE RUTH: Okay. Commissioner Appling,
18 do you have any questions for this witness? Please
19 proceed.

20 QUESTIONS BY COMMISSIONER APPLING:

21 Q. Good morning, Matt.

22 A. Good morning.

23 Q. I think I came in a little late, but I
24 thought I heard you say that the only edge that SBC would
25 have if we granted them competitive status is they would

1 have the opportunity to raise above the cap. Is that --

2 A. That's correct.

3 Q. Did I get you correct on that? Okay.

4 Follow-up question is, is I would think, though, if
5 you-all were aggressively marketing your products, that
6 you would want them to go up on their prices. Is that not
7 right?

8 A. If there were -- if we were competing for a
9 specific -- each of us competing for a specific product,
10 yes, I would want them to raise that rate. The problem we
11 have is, there's multiple products in multiple markets,
12 and my concern is, in markets and for products where they
13 don't have competition they will raise those rates in
14 order to recover reduced revenue from lowering them to
15 cost or below cost in the markets where I compete.

16 Q. Okay. Second question. If we granted SBC
17 competitive status for business and residential services
18 in all of the MCAs in Springfield, Kansas City and
19 St. Louis, what would that do to Socket?

20 A. I -- I've not been able to see the exchange
21 specific data to look at the levels of competition within
22 the MCA. From reading the testimony, from the parts that
23 I listened to in the hearing, nothing provides this kind
24 of natural break that I've seen. I've not been able to
25 see everything. So I would still have concern that there

1 are areas within the MCA residential market and business
2 markets where they will still be able to raise rates in
3 order to reduce rates for other service in markets where
4 they do face competition.

5 COMMISSIONER APPLING: Okay. The more
6 questions that I ask the more confused I get over this
7 issue. Anyway, thank you very much for that. Appreciate
8 it.

9 JUDGE RUTH: Commissioner Gaw?

10 COMMISSIONER GAW: As unusual, Commissioner
11 Appling's insight is great and caused me to think of a
12 couple things.

13 COMMISSIONER APPLING: I'm sorry I asked
14 the question. I wanted to get out of here before lunch.

15 COMMISSIONER GAW: That's not going to
16 happen.

17 FURTHER QUESTIONS BY COMMISSIONER GAW:

18 Q. The price for MCA service in Missouri, is
19 that -- is that price cap or is that set at a rate that
20 can't be changed? Do you know?

21 A. I believe that has been subject to some
22 litigation that I've not followed. My assumption would be
23 it was a retail rate at the date it went into -- they went
24 into price cap, so therefore it would be price cap
25 regulated rate.

1 Q. If we assume it's a price cap regulated
2 rate and you declared competitive status in each of the
3 MCAs in Missouri, what would -- what would that do to MCA,
4 the price of the MCA service?

5 A. It would essentially allow complete pricing
6 flexibility for that service and the ability to raise
7 rates.

8 Q. Now, in regard to the -- just a second.
9 Mr. Kohly, do you know how much the
10 residential rates would need to go up in the rural
11 exchanges before Socket would see that as an attractive
12 investment or an attractive market to pursue?

13 A. I've not done that analysis. I guess I'm
14 kind of comparing it to our DS1 product, and if
15 residential rates hit that level, which is essentially a
16 five-line-or-above-type service for business plus data, we
17 would look at it, but we'd have to do it -- provision it
18 through a DS1 loop, which is expensive, and I don't think
19 you want residential rates hitting \$100 or more.

20 Q. I'm just trying to see what that might
21 mean. This is a wonderful two-edged sword question,
22 because it sort of cuts through a couple of sides'
23 arguments here. But I'm curious about where rates would
24 have to go in order to get CLECs to actually be aggressive
25 in serving our rural areas.

1 A. They would have to -- it would be a
2 significant increase, because to go into an exchange at
3 DS0 level, if I don't have EELs, and I don't believe I do
4 at DS0 level, I would have to do some sort of collocation,
5 lease the loops, have a hot cut process that was
6 economical in order to convert that customer to me, and
7 that's going to be a significant investment to put a
8 collocation especially in the smaller exchanges.

9 You could also look at overbuild scenario,
10 but that would be prohibitively expensive as well. I've
11 not really done a kind of overbuild analysis. I think
12 your residential rates, certainly to attract Socket,
13 because using DS1 loops to get to the customers, I mean,
14 that would be \$300.

15 Q. \$300 what?

16 A. A month.

17 Q. A month?

18 A. That would also give the customers up to
19 24 voice lines.

20 Q. So there's significant capacity there
21 that's not being utilized?

22 A. Correct.

23 Q. So there's go-- there's surely some other
24 options?

25 A. The other option would be to establish a

1 collocation facility and bring in DS0 loops to that
2 facility and then have your multiplexer collocated where
3 you could pull that out to your switch.

4 Q. All right. And you don't know what that
5 would result in in regard to prices to the customer?

6 A. No. You'd be looking at a minimum CLEC
7 investment of probably \$30,000 minimum just for the
8 collocation and to be able to do that.

9 COMMISSIONER GAW: Okay. I guess I'll
10 stop. If I go down this road very much longer, I'm afraid
11 I'll not add much but I'll delay a lot, so I'll stop.

12 JUDGE RUTH: Commissioner Appling, do you
13 have any additional questions?

14 COMMISSIONER APPLING: Commissioner Gaw
15 asked all my questions. But I'm going to let it go.
16 Thank you.

17 THE WITNESS: Thank you.

18 JUDGE RUTH: We will move then to --

19 COMMISSIONER APPLING: Maybe I should ask.
20 Thank you.

21 JUDGE RUTH: We'll move to recross based on
22 questions from the Bench. Staff?

23 MR. HAAS: No questions.

24 JUDGE RUTH: Public Counsel?

25 MR. DANDINO: No questions, your Honor.

1 JUDGE RUTH: Intervenors -- I'm sorry.
2 SBC?
3 RECROSS-EXAMINATION BY MR. LANE:
4 Q. Good morning, Mr. Kohly.
5 A. Good morning.
6 Q. In response to questions from both
7 Commissioners Gaw and Appling, you indicated that there
8 was a concern in your mind about effective competition and
9 the pricing flexibility that would result because in
10 markets that you serve prices could be reduced to cost or
11 below cost. Do you recall that?
12 A. Yes. With the revenue -- that could happen
13 today under price cap.
14 Q. I just wanted to verify that's what you
15 said. Would you agree with me that reducing prices to
16 cost doesn't present any kind of competitive problem, does
17 it?
18 A. Your cost structure as an incumbent LEC
19 with ubiquitous network is very different from my cost
20 structure. So if SBC were to reduce costs, even to a
21 LIRC, for example, which is just the incremental cost,
22 that is still going to be below my cost.
23 My concern is not with that, but with SBC
24 reducing rates to an incremental cost in my market, making
25 up for the common costs of the overhead in other markets.

1 I don't have that option.

2 Q. Competitive theory does not object -- does
3 not pose an objection to pricing services at their cost,
4 does it?

5 A. No, it does not.

6 Q. And in this case you've already testified,
7 have you not, that SBC in your opinion has the authority
8 to price its -- to reduce its prices for the services to
9 its cost level, right?

10 A. Right. And I believe what you're seeking
11 is the ability to raise those rates in other areas.

12 Q. Let's talk about the theory of predatory
13 pricing. Would you agree with me that Dr. Aron addressed
14 that on pages 22 to 26 of her surrebuttal testimony?

15 A. I don't have the testimony. I remember
16 reading it where she addressed one form of predatory
17 pricing, which is where you reduce rates below cost, drive
18 the competitors from the market, later raise those rates.
19 I'm also concerned about another form of predatory pricing
20 where you simultaneously recoup those reduced revenues by
21 raising rates in other areas.

22 Q. I'm just trying to ask one question at a
23 time. If you could answer my question, I'd appreciate it.
24 All right?

25 Would you agree with me that in her

1 testimony she cites to Arita and Oldenkamp (ph. sp.), who
2 are two noted anti-trust authorities?

3 A. Yes.

4 Q. And have you studied their works in your
5 economic studies?

6 A. I have read some of their stuff in the
7 past, yes.

8 Q. And they're considered, if not the
9 foremost, one of the foremost authorities on anti-trust
10 economics?

11 A. I would say one of. They have their own --
12 they have their theory.

13 Q. And would you agree with me that their
14 theory as laid out in Dr. Aron's surrebuttal testimony is
15 that courts and regulators need to be very concerned about
16 people objecting to lowering rates because one of the
17 primary tenets and benefits of competition is lower rates,
18 right?

19 A. Yes.

20 Q. Would you agree with me that the U.S.
21 Supreme Court has said the same thing, that we should look
22 askance at allegations that prices will be reduced below
23 cost when raised by a competitor, since that's one of the
24 basics of what one expects to happen in competition is
25 that prices will be reduced, right?

1 A. The theory of competition is that rates
2 will be driven to their cost.

3 Q. And the U.S. Supreme Court has said, has it
4 not, that predatory pricing is rarely attempted and even
5 more rarely successful, right?

6 A. For that form that she is -- Dr. Aron is
7 talking about, yes, but that's not the form I am concerned
8 about.

9 Q. And to be successful in a predatory pricing
10 scheme, you'd have to be able to raise your rates under
11 your theory in one market without encouraging any
12 competitors to come in, and then reduce prices in the
13 market, drive everybody else out in the one you're trying
14 to take over and keep them out on a long-term basis to
15 recoup the revenues that you lost, right?

16 A. No. Under my concern, you would
17 simultaneously recoup these reduced revenues by raising
18 the rates in the markets where you don't face effective
19 competition today. So it's not the form of predatory
20 pricing where you recoup revenues in the future.

21 Q. So you're not trying to drive the
22 competitors out of the market?

23 A. No. What you're doing -- I did not say no
24 to your question. Let me explain my answer. The form of
25 predatory pricing I am concerned about is where in certain

1 customer segments rates are reduced below cost and the
2 revenues associated with that, that is subsidized by at
3 the same time raising rates in other markets for other
4 products where you don't face effective competition. In
5 essence, shifting your revenues to markets where you don't
6 face competition to make up for subsidized rates in other
7 markets.

8 Q. All right. And I'm trying to ask about the
9 long-term. If you're saying that you're going to cut the
10 prices in the market where you're seeking to take over,
11 are you or are you not trying to drive the other
12 competitors out of the market?

13 A. Yes.

14 Q. So you have to drive them out of the market
15 so you can then increase rates in those markets?

16 A. Not necessarily. As long as you're able to
17 simultaneously recover that reduced revenue from another
18 market segment, you don't need to. You may want to, once
19 you drive the competitors out.

20 Q. You really have a two-fold issue. You have
21 people drive them out or keep them from coming into the
22 market where you want to raise the rates and keep them
23 from coming back into the market where you want to lower
24 the rates, right?

25 A. Correct.

1 Q. Okay. And all that has to be accomplished,
2 does it not, with the anti-trust authority sitting silent
3 by the sidelines, as well as the regulators, right?

4 A. I think that could happen, yes.

5 Q. And at the same time, the Commission
6 retains the authority to set wholesale prices for
7 unbundled network elements that CLECs can purchase to
8 compete where they choose to compete, right?

9 A. Yes, as long as rules are in place for
10 those elements.

11 Q. You had some discussion about MCA service.
12 Do you recall that?

13 A. Yes.

14 Q. And would you agree with me that CLECs that
15 are currently operating within the MCA areas in
16 Springfield, Kansas City and St. Louis typically price
17 their service without having a separate MCA charge?

18 A. I know some do. I don't know the extent
19 that all do or most do.

20 Q. And those that do can and do utilize their
21 own switches and determine their own calling scopes, which
22 they may set to be as broad as the entire MCA, right?

23 A. They would still have -- they can do that,
24 but they would still have to pay switched access if the
25 call was not an MCA call on the terminating end.

1 Q. The CLEC competitor controls whether or not
2 it's an MCA call by designating the NXX as one for MCA
3 service, right?

4 A. Yes, but you will still have --

5 Q. All right. That's fine.

6 A. -- calls that terminate to a non-MCA
7 customer that are not considered MCA calls.

8 Q. If they're considered an MCA call when
9 offered by the ILEC, that same call if offered by a CLEC
10 utilizing an NXX that's designated as an MCA NXX will be
11 treated exactly the same, right?

12 A. Yes, for intercompany compensation.

13 Q. It's fair to say Socket doesn't serve any
14 residential customers anywhere in Missouri today, right?

15 A. No.

16 Q. It's fair to say that you haven't
17 personally done a business plan that analyzes the cost of
18 serving residential customers anywhere in the -- for
19 Socket anywhere in Missouri, right?

20 A. I did that analysis using UNE-P. However,
21 with the FCC rules, I obviously could not pursue that.
22 I've not looked at it on a facilities basis.

23 Q. All right. Other CLECs have different
24 business plans than Socket, right?

25 A. Yes.

1 Q. And some CLECs today serve residential
2 customers utilizing their own facilities, do they not?

3 A. Some do.

4 Q. And those CLECs would certainly be in a
5 better position to analyze their ability to continue
6 serving than a CLEC like Socket who doesn't provide
7 residential services, right?

8 A. I don't know that I'd agree with that.

9 Q. You indicated in your -- in response to a
10 question from Commissioner Gaw that you had read an
11 analysis that some 80 percent of customers that are
12 utilizing UNE-P may go back to the RBOCs for service. Do
13 you recall that?

14 A. Yes, that was in my testimony.

15 Q. Okay. And would you also agree with me
16 that the information that you provided to Mr. Lumley
17 concerning SBC's fourth quarter results indicates just the
18 opposite?

19 A. No, I would not agree.

20 Q. Okay. And would you agree with me that the
21 information in SBC Missouri's -- SBC's fourth quarter
22 results show that an access line decline of 580,000 in the
23 quarter at the same time as UNE-P lines dropped by
24 283,000?

25 A. Can I see the document you're questioning

1 me about?

2 MR. LANE: Sure. May I approach?

3 JUDGE RUTH: Yes, but would you show it to
4 counsel first, please.

5 MR. LANE: Sure.

6 THE WITNESS: Can you restate your
7 question?

8 BY MR. LANE:

9 Q. Would you agree with me that the fourth
10 quarter results for SBC showed that while it lost 283,000
11 UNE-P wholesale lines, that at the same time it lost a
12 total of 580,000 access lines for the quarter?

13 A. Yes.

14 Q. And that's an indication that when UNE-P
15 lines go away, that doesn't mean that they come back to
16 SBC because there's other places that they can go, right?

17 A. It does not say that. I would not agree
18 with that. Every one of those customers could have gone
19 back to SBC. The 580,000 could be associated with people
20 subscribing to DSL and cancelling their second lines.

21 Q. You haven't done any analysis of that, have
22 you?

23 A. No.

24 Q. With regard to a hot cut analysis that you
25 were discussing with Commissioner Gaw, would you agree

1 with me that the FCC found no impairment to CLECs with
2 regard to hot cut procedures?

3 A. Yes, and that was a surprise.

4 Q. It's one of the many things where you
5 disagree with the FCC, right?

6 A. Yes.

7 Q. And would you agree with me that the FCC
8 found that new hot cut processes developed by each of the
9 BOCs significantly addressed difficulties that it had
10 previously identified with hot cut processes in the
11 Triennial Review Order?

12 A. I don't recall that from the Order.

13 Q. Did you read the Order over the weekend?

14 A. I read parts of it over the weekend.

15 Q. Did you read paragraph 210?

16 A. I read parts of the hot cut process. I
17 don't know if 210 was in that.

18 Q. You had responded to a question from
19 Commissioner Gaw concerning the price of service where you
20 had indicated it started at \$20, it could be cut to \$10,
21 and SBC or any other price cap company could later raise
22 the price back to \$20, right?

23 A. Correct.

24 Q. How about a different hypothetical. What
25 if the price that was introduced for a new service was

1 \$20, but SBC Missouri later determined that the
2 appropriate price to cover all of its costs and reach the
3 appropriate levels of demand was \$40. Would you agree
4 with me that SBC Missouri couldn't raise its rates from 20
5 to \$40 in that example?

6 A. Yes. It would be regulated as a non-basic
7 service, so you could not -- there's a way around that, I
8 believe, but you're correct.

9 Q. But a CLEC offering the same service for
10 \$20 which determined that it either misstated its cost or
11 overestimated the demand could raise its rate to \$40 for
12 that same service, right?

13 A. Yes.

14 Q. You were also asked some questions by
15 Commissioner Gaw concerning the division of the business
16 market into various segments. Do you recall those
17 questions?

18 A. Yes.

19 Q. And would you agree with me that in the
20 first SBC Missouri competitive classification case,
21 TO-2001-467, that the Commission and the parties followed
22 the exact same process that they have proposed here in
23 that they looked at all business services within an
24 exchange?

25 A. I'd have to see the issues list from that

1 case. I think -- I'm concerned that vertical features and
2 things like that were a separate category. I can't
3 remember if the business market was somewhat segmented or
4 not.

5 Q. You have no recall of that at this point?

6 A. I'd like to see the Order or the issues
7 list.

8 Q. How about in the Sprint competitive
9 classification case, would you agree with me in that case
10 as well the Commission didn't attempt to segment the
11 business market into small, medium and large; they treated
12 all business services within the exchange as either
13 competitive or not competitive based upon that analysis?

14 A. Again, I'd like to see the issues list.

15 Q. You made a statement in response to a
16 question from Commissioner Gaw that the porting of numbers
17 from SBC Missouri to Socket tells you that the numbers
18 were in the E911 database. Do you recall that?

19 A. Yes.

20 Q. Would you agree with me that the porting of
21 the number is separate from whether it is in the E911
22 database?

23 A. Would you like me to explain what I was
24 talking about?

25 Q. First tell me if those are two different

1 things.

2 A. You have the number porting that the
3 customer sees, but also in the 911 database, if the
4 number's in there and it's associated with SBC, you have
5 to migrate that number over to the CLEC. If it's not in
6 there, you simply enter the number. So the fact that we
7 ported the number also meant that we had to migrate that
8 number over from SBC to us in the E911 database.

9 Q. If the number was in the E911 database, you
10 would do a separate transfer of that, correct?

11 A. Right.

12 Q. But the porting of the number itself is
13 independent of whether it's in the E911 database, right?

14 A. You can port numbers that are not in the
15 E911 database. However, if the number you port is in the
16 911 database, you also need to move that over in that
17 database as well.

18 Q. Right. So there's two separate processes
19 that are involved. Porting a number is independent of
20 whether you also need to take action in the E911 database,
21 right?

22 A. Yes, but if -- as I said before, if the
23 number's in there, you have to move it, so they're not
24 completely independent.

25 Q. You were asked some questions both by

1 Commissioner Murray and later by Commissioner Gaw
2 concerning the access revenue issue. Do you know what I
3 mean when I refer to that?

4 A. Yes.

5 Q. And that's generally a situation that you
6 were describing where a number that may be ported from SBC
7 Missouri to Socket, and your concern was whether you were
8 receiving access charges for intraLATA toll calls that
9 were ultimately terminated to your Socket customer, right?

10 A. Correct.

11 Q. Let's make sure we go through that
12 analysis. Would you agree with me that for purposes of
13 having that call completed to the Socket customer, that
14 the originating carrier needs to do a database dip to know
15 whether that number was ported and, if so, to whom so that
16 they then know where to route the call?

17 A. The originating carrier would not need to
18 do the dip. Ported numbers -- I mean the originating
19 carrier could do the dip. SBC at some point could do the
20 dip and route it to us as well.

21 Q. In fact, are you a network expert,
22 Mr. Kohly?

23 A. Define network expert.

24 Q. In this particular case, do you know how
25 calls are routed via utilizing -- when the number is

1 ported? And I'm separating that from the question of
2 records that are created for purposes of billing access
3 charges. I'm talking about the routing of the call
4 itself.

5 A. I have looked at that issue as it relates
6 to the interconnection agreements and had discussions on
7 that issue.

8 Q. Isn't it true that when a call is
9 originated, that the carrier needs to do a database dip in
10 order to know where to route the call to the correct CLEC
11 or ILEC who's serving the end user customer being called?

12 A. At some point along the call path, a dip
13 needs to be done. It could be done by the originating
14 carrier. It could also be done when that call hits an SBC
15 end office where it's realized, oh, this carrier's no
16 longer here, we'll route this over our local
17 interconnection trunks to that CLEC, and the dip can be
18 done at that end as well.

19 Q. And my question is, do you know what's
20 done, Mr. Kohly?

21 A. Either one of those two scenarios is done.

22 Q. Do you know that there are situations where
23 it's the transiting carrier, I'll call it, at that point
24 that does the database dip, as opposed to the
25 interexchange carrier that originates the call?

1 A. Yes. If you look at the replacement M2A,
2 it has provisions for how to handle undipped calls that
3 hit an end office.

4 Q. All right. Would you agree with me that in
5 Missouri that the vast majority of the ILECs that
6 transport intraLATA toll calls do so utilizing an
7 interexchange carrier?

8 A. I haven't seen the -- I couldn't agree with
9 that. I've not seen the numbers on that.

10 Q. Okay. You don't know one way or the other?

11 A. I mean, there's a significant number
12 carried still by the LECs in the form of the PTCs. I've
13 not seen -- and we don't get all of the calls that
14 terminate to us, we don't get call records for those to be
15 able to calculate what that is.

16 Q. All right. But you're aware generally that
17 many of the small LECs have created interexchange carrier
18 subsidiaries or utilized another interexchange carrier to
19 carry intraLATA toll calls, right?

20 A. Yes. I misunderstood your questions. The
21 small LECs generally use an IXC.

22 Q. Okay. And the small LECs that utilize an
23 IXC doesn't create the issue that we were just talking
24 about in terms of making sure that Socket in your case
25 gets the appropriate access revenues?

1 A. Correct. It's only when it's an ILEC
2 carried call by the former primary toll carrier.

3 Q. Okay. And would you also agree with me
4 that Southwestern Bell for its intraLATA toll originated
5 calls utilizes a database dip in the LRN in order to send
6 that call to the appropriate customer and to then send the
7 appropriate bill on an originating customer to the
8 terminating LEC or CLEC?

9 A. I'm not aware of SBC's procedures.

10 Q. Okay. So to the extent that SBC on its own
11 originated intraLATA toll calls, creates an originating
12 record and sends it directly to Socket if Socket is the
13 terminating carrier, that would eliminate the issue as
14 well for those calls, right?

15 A. It would eliminate it for the -- if that
16 was done, that would eliminate it for the SBC carried
17 calls. We still have the revenue impact with the call
18 carried by Sprint and CenturyTel, who I'm confident don't
19 do the dip based on discussions with them.

20 Q. And would you agree with me that the FCC
21 when they considered the issue determined that they would
22 not require the originating carrier to create and do a
23 database dip, even knowing the results that could occur,
24 or do you know if the FCC -- that was a poor question.
25 I'll try again.

1 Do you know whether the FCC addressed this
2 particular issue that you're discussing?

3 A. No. I'm assuming obviously the originating
4 carrier can do a dip. Also calls hit at the end office
5 that aren't dipped so --

6 Q. Do you know whether the FCC --

7 A. No, I don't.

8 Q. -- has addressed this issue?

9 A. No, I don't.

10 Q. Okay. In any event, the issue exists to
11 the extent you've described it, whether or not SBC
12 Missouri is declared to be subject to effective
13 competition in its various exchanges, correct?

14 A. Correct.

15 MR. LANE: That's all I have. Thanks,
16 Mr. Kohly.

17 THE WITNESS: Thank you.

18 JUDGE RUTH: Okay. We're actually going to
19 take a short break before we move to the redirect. We'll
20 come back at a quarter 'til. We're off the record.

21 (A BREAK WAS TAKEN.)

22 (EXHIBIT NO. 54 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 JUDGE RUTH: We are back on the record
25 after a break in TO-2005-0035. As we were coming back

1 onto the record, Mr. Lumley has handed me a document that
2 I've marked as Exhibit 54. You may proceed.

3 MR. LUMLEY: Thank you, your Honor.

4 REDIRECT EXAMINATION BY MR. LUMLEY:

5 Q. Exhibit 54, is that the SBC information
6 that you were discussing with Mr. Lane during his
7 questions regarding their fourth quarter?

8 A. Yes, it is.

9 Q. And is it the same document that was
10 discussed earlier in the hearing by Dr. Aron when I was
11 questioning her?

12 A. Yes.

13 MR. LUMLEY: I move admission of
14 Exhibit 54, just to clarify the record.

15 JUDGE RUTH: Okay. Exhibit 54 has been
16 offered into evidence. Are there any objections?

17 Staff? You can have a minute to look at
18 it. Sorry.

19 MR. HAAS: No objection.

20 JUDGE RUTH: Mr. Dandino?

21 MR. DANDINO: No objections, your Honor.

22 JUDGE RUTH: SBC?

23 MR. LANE: No, your Honor.

24 JUDGE RUTH: Okay. Exhibit 54 is received
25 into the record. Thank you. And you may proceed.

1 (EXHIBIT NO. 54 WAS RECEIVED INTO
2 EVIDENCE.)

3 BY MR. LUMLEY:

4 Q. In the figures regarding access line
5 changes, losses, do they differentiate between business
6 and residential lines?

7 A. No, they did not.

8 Q. You had some questions regarding new
9 product pricing. Are there ways that SBC could avoid
10 being locked into its initial desired price when it
11 introduces a new product under price caps?

12 A. Yes, there are.

13 Q. Give us some examples.

14 A. One way they could avoid that situation
15 would be to -- if the desired rate they want to try is,
16 say, for example, \$20, they could file the initial tariffs
17 with the rate of \$40, and either as that tariff becomes
18 effective or shortly thereafter it becomes effective file
19 a promotion or reduce that rate to the \$20 rate they
20 wanted to. That way it would be in the market at \$20 and
21 they'd have the flexibility to raise that rate.

22 Q. You had questions regarding unbundled
23 elements and the wholesale pricing rules that apply to
24 those elements.

25 A. Yes.

1 Q. Is the list of unbundled elements staying
2 constant, getting larger or getting smaller?

3 A. It is dwindling.

4 Q. You had questions about MCA pricing. What
5 could SBC do with regard to MCA pricing if it was released
6 from price caps?

7 A. One of the things they could do would be
8 obviously to increase the rates, and I think they could be
9 fairly aggressive in doing that. One of the conditions of
10 optional MCA, if you want to get rid of that service, is
11 you have to change your phone number. So you're going to
12 have customers reluctant to change their phone number,
13 especially business customers. So in that sense there's
14 quite a bit of ability to raise the rate for MCA service.

15 Q. You had questions regarding hot cuts. Why
16 has -- why is it necessary to be able to hot cut a
17 business customer?

18 A. A business customer is not going to want to
19 have their phone out of service. They need to be able to
20 be called by their customers. An additional concern would
21 be if the hot cut fails or there's not a process and
22 another person tries to call that customer, they will
23 receive a recording that says that line is out of service.
24 They may think that business has gone out of business and
25 never try to contact them again.

1 Q. Regarding the wireless information, does
2 the information in the record provide any insight as to
3 whether those customers that don't have a wireline phone
4 at the time they were surveyed have made a permanent
5 decision to move to wireless or whether they were in
6 transition?

7 A. There's no evidence either way.

8 Q. Do the lines that Socket uses to provide
9 inbound service to an ISP reflect any level of competition
10 for voice services?

11 A. No, they don't. That's a very specialized
12 service sold only to Internet service providers and does
13 not even allow you to make voice calls.

14 Q. There's been -- you had questions regarding
15 basic local service being priced under cost and the
16 allegations regarding that. Assuming that to be true that
17 these services are priced below cost, does that mean that
18 SBC is losing money on the whole?

19 A. No, it doesn't. There's an implicit
20 subsidy mechanism in the rates today which is their
21 switched access rates that basically -- or designed to
22 recover the cost providing local basic service.

23 Q. And is there any provision in the price cap
24 statute that would require them to reduce switched access
25 rates if residential basic voice service was released from

1 caps and those prices started going up?

2 A. No. They would be free to raise
3 residential rates as they saw fit. The switched access
4 rates would remain under price cap and stay at the level
5 they are today, subject to minor adjustments by the CPITS,
6 Consumer Price Index for Telephone Service.

7 Q. And so there you have basically a wholesale
8 service that's under a retail pricing regime?

9 A. Correct.

10 Q. And has SBC in its testimony proposed to
11 make any adjustments in switched access prices?

12 A. No. They would keep that subsidy mechanism
13 in place.

14 Q. Do you still have your testimony?

15 A. Yes.

16 Q. If you could turn to page 30 of your
17 amended rebuttal. You had a rather lengthy discussion
18 with Commissioner Murray regarding this part of your
19 testimony. And I think -- I think the point is clear in
20 the written testimony. I think it got a little mottled in
21 the discussion.

22 First of all, just to clarify, you are not
23 asserting that SBC is requiring your company to install
24 tandem switches, correct?

25 A. Correct.

1 Q. What was the point that you were trying --
2 if you could just kind of distill it down to the basic
3 message that you were trying to get across in this section
4 of your testimony.

5 A. The point was that they still have market
6 power. We were -- I guess there were two points. One is
7 that they still have market power. They were willing to
8 not allow their customers to place calls to Socket's
9 customers in order to get Socket to enter into an
10 agreement. If they were -- if the competitors were equal,
11 they would be worried about having their customers get mad
12 by not being able to terminate calls and leave them. So
13 the fact that that was not a consideration is indicative
14 to me that they have market power.

15 The other point was that they were holding
16 up interconnection facilities in Springfield in order to
17 get -- which is -- Springfield is an SBC Missouri
18 exchange -- in order to get Socket to enter into an
19 agreement that really governed our relationship when we
20 compete outside of their territory.

21 Q. With regard to the manner in which you --
22 which Socket provides service, you've indicated that
23 in those areas of the state in which you don't have
24 collocations -- and I think it was confidential, but it's
25 in the record which areas you do what. But in those areas

1 where you're not -- where you don't have collocations, you
2 indicated that you're making -- in SBC's territory, you
3 indicated that you're making use of EELs or enhanced
4 extended loops?

5 A. Correct.

6 Q. And that's a combination of unbundled
7 elements that your company obtains from SBC under the M2A?

8 A. Correct.

9 Q. And would your company be able to continue
10 to serve those customers if you -- if it lost the ability
11 or lost access to EELs?

12 A. No.

13 Q. And why not?

14 A. There's really no other facility in place
15 that we could use to get to that customer location.

16 Q. And is the availability of EELs at risk
17 today?

18 A. It is. The FCC released its Order on
19 Friday. SBC has signed a petition to appeal that
20 decision, and so if those rules are overturned, it's also
21 their position that, absent no rules, there's no
22 requirement to provide those network elements.

23 MR. LUMLEY: That's all my questions.

24 JUDGE RUTH: All right, then. Mr. Kohly,
25 you may step down, and you are excused.

1 I want to take just a minute to go over the
2 exhibit list so we can make sure we're all on the same
3 page. The late-filed exhibit that was offered today,
4 late-filed Exhibit 53, Mr. Lumley, do you anticipate that
5 you would be able to have that filed by Thursday,
6 February 10th?

7 MR. LUMLEY: Yes.

8 JUDGE RUTH: Then the deadline for
9 late-filed Exhibit 53 will be Thursday, February 10th,
10 with responses, if any, or objections due February 15th,
11 which is Tuesday.

12 The other late-filed exhibits, let's see,
13 we have 36, 39, 41, 42 and 50, have some varying
14 deadlines, actually from February 8th to February 10th.
15 In order to be consistent, I would prefer that they all be
16 due on the same day. Would the parties be able to get all
17 of those in by February 9th?

18 The only one that was due later, I think,
19 maybe was Exhibit 50, OPC was doing. Do you think you
20 would be able to do that by the 9th?

21 MR. DANDINO: The 9th is?

22 JUDGE RUTH: Wednesday.

23 MR. DANDINO: I think, yes.

24 JUDGE RUTH: I'm going to set the deadline
25 for all of those to be February 10th -- I'm sorry --

1 February 9th, with objections filed Monday the 14th, if
2 any. So we still have two dates, but at least it's only
3 two days instead of three or four for those late-filed
4 exhibits.

5 Then I'll just also note that we've
6 admitted Exhibits 1 through 30, 32 through 35. We'll have
7 late filed Exhibit 36. We've admitted 37, 38. We will
8 have late-filed Exhibit 39. We've admitted 40, and we
9 will have late-filed Exhibits 41 and 42. We have
10 Exhibit 43, 44, 45, 46, 47, 48, 49. Exhibit 50 will be
11 coming, and we have Exhibits 51 and 52, with the last one,
12 53, a late-filed exhibit coming.

13 MR. LUMLEY: And 54 was just admitted.

14 JUDGE RUTH: Yes. Sorry. Exhibit 54.
15 Okay. We also talked last week a little bit about the
16 briefing schedule. The transcript has been expedited, and
17 it is all due February 9th. Findings of Fact and
18 Conclusions of Law along with the one round of brief are
19 due February 18th. And again we had discussed that last
20 week.

21 Are there any questions or procedural
22 matters that we need to address before we adjourn?

23 (No response.)

24 JUDGE RUTH: Okay. I'm seeing no
25 questions, comments. We are then off the record. The

1 hearing's adjourned. Thank you very much.

2 WHEREUPON, the hearing of this case was

3 concluded.

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I N D E X
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MATTHEW KOHLY

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EXHIBITS INDEX

MARKED RECEIVED

EXHIBIT NO. 54

1/27/05 E-Mail to Carl Lumley from

Matt Kohly

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