

1                   BEFORE THE PUBLIC SERVICE COMMISSION  
2                   STATE OF MISSOURI  
3  
4                   TRANSCRIPT OF PROCEEDINGS  
5                   ON-THE-RECORD PRESENTATION  
6                   March 3, 2003  
7                   Jefferson City, Missouri  
8                   Volume 1  
9  
10  
11 In the Matter of a Recommendation )  
12 Surcharge for Deaf Relay Service ) Case No. TO-2003-0171  
13 and Equipment Distribution Program)   
14 Fund. )  
15  
16

17 BEFORE:                   \_\_\_\_\_  
18                   VICKY RUTH,  
19                                 SENIOR REGULATORY LAW JUDGE.  
20                   CONNIE MURRAY,  
21                   SHEILA LUMPE,  
22                   STEVE GAW,  
23                   BRYAN FORBIS,  
24                                 COMMISSIONERS.  
25                   \_\_\_\_\_

26 REPORTED BY:  
27 TRACY L. CAVE, CSR, CCR  
28 ASSOCIATED COURT REPORTERS  
29

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1 JUDGE RUTH: My name is Vicky Ruth and I'm  
2 the regulatory law judge assigned to this case. Today is  
3 Monday, March 3rd, 2003. And we are here for an oral  
4 presentation, question and answer session in Case  
5 No. TO-2003-0171 in the matter of a recommendation  
6 concerning the surcharge for Deaf Relay Service and  
7 Equipment Distribution Program Fund.

8 Let's begin with entries of appearance.  
9 Staff?

10 MR. ANDERSON: Good morning, your Honor. My  
11 name is Eric Anderson. I'm here on behalf of the Missouri  
12 Public Service Commission Staff. My address is 200 Madison  
13 Street, suite 800, Jefferson City, Missouri 65102.

14 JUDGE RUTH: Okay. Mr. Dority?

15 MR. DORITY: Good morning, your Honor,  
16 Commissioners. My name is Larry Dority with Fischer and  
17 Dority, PC. I'm appearing this morning on behalf of  
18 Southwestern Bell Telephone Company, LP, d/b/a SBC Missouri.  
19 My address is 101 Madison, suite 400, Jefferson City,  
20 Missouri 65101.

21 JUDGE RUTH: Okay. And I have a quick  
22 preliminary matter. I want to mention that on  
23 February 26th, 2003 Sprint filed a motion to be excused from  
24 today's proceeding. That motion is acknowledged. I'm not  
25 going to formally rule on it, but it is acknowledged.

1                   On February 28th, SBC filed a similar motion;  
2     however, they then made arrangements for Mr. Dority to  
3     represent them at today's on-the-record presentation.

4                   As I mentioned off the record, I anticipate  
5     offering the parties, starting with Staff, an opportunity to  
6     make comments on the Staff rec or general comments in this  
7     case. That will be followed up by questions from the Bench.  
8     And then at the end, if any of the parties want, you'll have  
9     an opportunity for closing remarks.

10                  Are there any questions before we begin?

11                  Okay. Seeing none, we will move to Staff.

12                  MR. ANDERSON: Thank you, your Honor. Good  
13     morning, Commissioners.

14                  Back in 2001, this Commission reviewed the  
15     surcharge amount. At that time it was at 13 cents. Staff  
16     filed a recommendation asking that it be moved to 9 cents.  
17     That recommendation was approved, I believe, back in April  
18     of 2001. And since that time, that is the collection point  
19     for the fund.

20                  The actual experience of the fund has been a  
21     little bit different than that ordered in that there is some  
22     time considerations as far as when that amount is collected  
23     and remitted and goes into effect.

24                  And upon the filing of Staff's original  
25     recommendation in this case, which was made in early

1 November of last year, this Commission still saw a sizeable  
2 fund balance and then requested Staff to follow-up its  
3 original recommendation and to try to provide some more  
4 information on why we were still seeing a large fund  
5 balance.

6 And Staff filed its supplemental  
7 recommendation on about the 10th of February of this year.  
8 And then from that, we received a request for this  
9 on-the-record presentation.

10 A couple of matters. Going back to Staff's  
11 original recommendation, Staff at that time felt that we  
12 could leave the surcharge at 9 cents per line per month,  
13 that being at its current rate. Staff, however, in its last  
14 paragraph also stated, Staff believes an increase in the  
15 surcharge will be necessary at some time in the near future.

16 And that's because, again, if you can follow  
17 along with me as far as the Attachment 1, we saw an increase  
18 in the fund balance and then we noted the time period when  
19 we went to the new surcharge back in April of '01. We still  
20 saw an increase and now we have seen a decrease. In fact,  
21 we are finding a decrease at an increasing rate, if you  
22 will.

23 With that decrease -- and let me go to the  
24 statutory section and just line out for the Commission what  
25 it is charged to do under the statutes. Under Section

1 209.259 under review of the surcharge reading from RSMo  
2 2000, From the date of implementing the Deaf Relay Service  
3 and Equipment Distribution Fund surcharge, the Commission  
4 shall review such surcharge no less frequently than every  
5 two years, but no more than annually and shall order changes  
6 in the amount of the surcharge as necessary to assure  
7 available funds for the provision of the programs  
8 established in Section 209.253.

9               Again, Staff makes its recommendation to  
10 increase the surcharge at this time from 9 cents to  
11 10 cents. And we feel this is needed to assure that the  
12 available funds that may be needed for this fund are  
13 available.

14               And in Staff's supplemental recommendation, we  
15 have tried to show a zero point for the Relay Fund Balance  
16 and the additional two months that that one penny increase  
17 will gain us in time.

18               Now, as far as when the Commission must act,  
19 again, we set the surcharge back in April of 2001. If this  
20 Commission is charged to do it no less frequently than two  
21 years, we have until April of 2003 to set the surcharge  
22 again.

23               We have many unknowns that are out there as  
24 the current relay contract is ending at the end of June. We  
25 are currently seeking bids from vendors. And right now we

1 really have no idea what those bids will show, whether they  
2 will show an increase in price. We're also discussing new  
3 service options such as CAPTEL, such as Caller ID options  
4 and what those additional costs will add on to relay.

5 Another part of the fund is taken by -- I  
6 believe its acronym is ATAP, and that's basically the  
7 organization that was set up to actually provide equipment  
8 for I believe it is the blind and the deaf.

9 Now, their budget is set by them, the  
10 Commission statutorily is kind of taken out of that process.  
11 However, we are still charged with providing the necessary  
12 funds for their program.

13 With that, Staff renews its recommendation to  
14 move the current surcharge from 9 cents to 10 cents to  
15 assure the fund balance will be there. Staff would also  
16 like to note that in its original recommendation we ask the  
17 Commission to look at a small problem talking about the  
18 \$30 or 1 percent or whichever was greater as far as keeping  
19 an amount for remitting the surcharge amount. We've had  
20 some CLECs that have taken that to mean if they collect less  
21 than \$30, they put in for a \$30 fee.

22 With that, I'd like to introduce Tom Solt, who  
23 is the brains behind the last two recommendations that have  
24 been filed with the Commission. He is Staff's witness here  
25 today. And Tom and I will be happy to entertain your

1 questions. Thank you.

2 JUDGE RUTH: Before we move onto questions  
3 from the Bench, I'll offer the opportunity for anyone else  
4 to have an opening statement.

5 And I would also like to note for the record  
6 that Public Counsel did come in after we began, so could you  
7 go ahead and do your entry of appearance right now?

8 MR. DANDINO: Yes, your Honor. And I  
9 apologize for being late. Michael Dandino, Office of the  
10 Public Counsel. Post Office Box 7800, Jefferson City,  
11 Missouri 651-- 65102, representing the Office of Public  
12 Counsel and the public.

13 JUDGE RUTH: Okay. Thank you.

14 Mr. Dority, did you have anything you wanted  
15 to add in the way of an opening statement?

16 MR. DORITY: Thank you, Judge. Good morning,  
17 Commissioners.

18 Just so you are aware, SBC Missouri takes no  
19 substantive position on the Staff's supplemental  
20 recommendation that was filed. Quite frankly, I think they  
21 are still in the process of reviewing it. I note that they  
22 have not taken a position in opposition to any of the Staff  
23 recommendations that have been filed in previous cases  
24 addressING this subject.

25 I think their primary concern would be that if



1 Staff's recommendation of increasing the surcharge from the  
2 9 cents to the 10 cents level is approved, that they be  
3 allowed a sufficient lead time for billing purposes to get  
4 that implemented. And it's my understanding a 60- to 90-day  
5 time frame is what would be required for them to actually  
6 implement it. So thank you very much.

7 JUDGE RUTH: Public Counsel, did you have any  
8 opening remarks?

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

10 JUDGE RUTH: Okay. Then we are going to move  
11 to questions from the Bench. And I'm going to first offer  
12 Commissioner Murray an opportunity to ask questions of  
13 whichever witness or counsel she desires.

14 COMMISSIONER MURRAY: Thank you, Judge. I  
15 guess I will ask Staff this and then anybody else that would  
16 like to comment would be welcome.

17 If we set the amount either at the amount that  
18 it currently is or increase it, as Staff has recommended, is  
19 it possible that we are creating a perverse incentive for  
20 the vendors to bid higher as well as for ATAP to use more  
21 funding than would otherwise be necessary if we keep those  
22 amounts, those balances up at the levels that they are or  
23 even increase them?

24 MR. ANDERSON: If I may, Commissioner, in the  
25 supplemental recommendation Tom's graph was based upon if we

1 were following the status quo. And he makes the comment in  
2 his recommendation that if the relay service contract  
3 results in a higher cost, the relay fund --

4 JUDGE RUTH: Could you use your mic?

5 MR. ANDERSON: Sure. Am I not on? Sorry  
6 about that.

7 If the relay service contract results in a  
8 higher cost, the relay fund balance will be depleted sooner  
9 than the September 2004 time period shown on Attachment 1.

10 So, again, we are decreasing at an increasing  
11 rate and we're trying to buy some time for the -- before the  
12 fund hits 0 or projected to hit 0 by adding this 1 cent  
13 adder.

14 However, we don't have a crystal ball here and  
15 having not seen the actual bids come in yet, I do not know  
16 what the increase will be over what the current vendor  
17 charges for deaf relay. I'm also unsure what ATAP's future  
18 plans are for its amount needed from the fund.

19 And I assume their -- that their budget would  
20 be yearly and possibly done on the same time frame as our  
21 budget. I'll leave that to Tom if he has any information as  
22 far as where ATAP is going.

23 MR. SOLT: If I'm not mistake, ATAP this year  
24 has appropriated \$2.6 million, as it has been for the past  
25 couple of years.

1                   COMMISSIONER MURRAY: So are you saying that  
2 there's no possibility that the amount of surcharge that we  
3 set will influence either the vendors or the ATAP  
4 expenditures?

5                   MR. SOLT: I don't --

6                   JUDGE RUTH: Can I interrupt you? I'm sorry.  
7 We talked about this briefly before we went on the record,  
8 but I neglected to remind you that if anyone but counsel is  
9 actually going to answer a question, I will need to swear  
10 you in as a witness.

11                   So can I move you over and do that? And I'm  
12 going to have to ask you to restate your answer to the last  
13 question too. And if you need that read back, I'm sure the  
14 court reporter can do that.

15                   (Witness sworn.)

16                   JUDGE RUTH: Thank you. Please be stated.

17                   And do you remember the previous question  
18 Commissioner Murray had asked you and your answer, or do you  
19 need that read back?

20                   THE WITNESS: I would appreciate it if you'd  
21 refresh my memory, please.

22                   JUDGE RUTH: Court Reporter, could you read --

23                   COMMISSIONER MURRAY: I can rephrase it if it  
24 would make it easier.

25 TOM SOLT testified as follows:

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. I just wanted to ask you, is it your position  
3 that the amount of surcharge will not or cannot influence  
4 either the amount of the bid from the vendors or the amount  
5 that ATAP chooses to expend?

6 A. I don't believe that it will do either of  
7 those things. The bids will be competitive so I think that,  
8 you know, that the fact that bidders are competing against  
9 each other will help to keep their costs down.

10 And the legislature appropriates money for the  
11 ATAP part of the program, and the legislature has not varied  
12 that over the past couple of years since that program was  
13 transferred to the Department of Labor and Industrial  
14 Relations.

15 Q. Okay. I'm sorry. I did not bring your latest  
16 filing up with me, but I have some of the summary of it that  
17 the judge had prepared. And I want to ask you if this is  
18 still accurate, that the fund balance has been -- you say  
19 the fund balance has been decreasing, but you said that  
20 dispersements for relay service have averaged \$338,356 per  
21 month and that's down from 342,000. But then you also say  
22 that monthly revenues have averaged 340,848 per month so it  
23 appears that -- and you're talking about 2002 there; is that  
24 correct?

25 A. (Witness nodded head.)

1           Q.       But it appears that the revenues still exceed  
2 the dispersements.

3           A.       Right. Those numbers were from my first  
4 recommendation, were they not? The one that was in  
5 November?

6           Q.       And I apologize. I didn't bring your two  
7 recommendations up here with me. Have those amounts  
8 changed?

9           A.       Yes, ma'am, they have changed. I don't have  
10 the numbers exactly right -- right now, but when I was  
11 re-running these numbers for this recommendation, the  
12 average receipts now are lower than the average expenses.

13          Q.       By what amount?

14          A.       \$100,000 a month, approximately.

15          Q.       Okay. So do you recall what the expenditures  
16 per month are averaging now?

17          A.       I don't recall that, no.

18                   COMMISSIONER MURRAY: Okay. I think I'm going  
19 to pass to the other Commissioners now. Thank you. Unless  
20 anybody else would like to comment on those questions.

21                   JUDGE RUTH: Seeing no questions from -- or  
22 comments from the other counsel members, we'll move onto  
23 Commissioner Murray -- I'm sorry -- to Commissioner Lumpe.

24                   COMMISSIONER LUMPE: Thank you.

25                   QUESTIONS BY COMMISSIONER LUMPE:

1           Q.       Mr. Solt, I don't have those numbers either  
2   that you are talking about, because I was going by the  
3   expenses being covered by the revenue that's coming in. And  
4   you're saying that was as far back as November, that's when  
5   that was? Or when did you do those numbers?

6           A.       Well, the first set of numbers were probably  
7   run around October of last year. And at that time the  
8   receipts were greater than expenses.

9           Q.       Would you tell me what the reason for the  
10  decline of receipts being greater than expenses -- did we  
11  add programs or what?

12          A.       No. We -- we have added a program, but we  
13  haven't started paying for that yet. But the -- the  
14  receipts have been declining, and I think the --

15          Q.       Is that because of something in the  
16  telecommunications industry that those receipts are  
17  declining or are people not using it as much?

18          A.       No. It has nothing to do with usage. The  
19  receipts are based on the number of lines that the telephone  
20  companies have in the state and each company pays 9 -- or  
21  yeah, right now 9 cents per line.

22                   What it appears is that -- and I have a -- a  
23  graph that I think counsel can provide to you. I don't  
24  really know exactly why the number of lines has been  
25  declining, but I did plot the number -- basically relay

1 receipts, which is a kind of proxy for the number of lines,  
2 against the Dow Jones Industrial Average close at the end of  
3 each month at the same time that the receipts are -- are  
4 graphed here. And it does follow very closely.

5 Q. Is it a loss of lines then that is causing  
6 this?

7 A. It would appear that that's probably the case.

8 Q. And is that because of competition from  
9 wireless and other telecommunications types of things? Is  
10 that because of -- does wireless pay into this fund?

11 A. Wireless does not pay into the fund. And as  
12 to whether wireless is affecting it, I don't know. It would  
13 appear that it's kind of based on the general state of  
14 economy.

15 Q. That along with loss of lines maybe to other  
16 telecommunications facilities and that sort of thing?

17 A. To a degree, yes, because if -- if lines are  
18 lost from an ILEC that has -- that pays -- that collects  
19 more than \$30 a month to a CLEC that has less collection  
20 than \$30 per month, then those lines don't -- the change in  
21 lines will actually result in a decrease in the amount --  
22 you would assume that, well, one's paying 9 cents, the other  
23 one's paying 9 cents.

24 But if the CLEC is small enough that it  
25 doesn't have enough lines -- and I can't think right offhand

1    how many lines it takes to get to \$30, but it's a fairly  
2    significant number of lines, several hundred.  If they don't  
3    have that many lines, then they just keep the money that  
4    they collect up to that \$30.

5           Q.       And \$30 is the maximum.  Right?  That's the --

6           A.       No.  That's the minimum basically.

7           Q.       Okay.  30 is the minimum.  So if you don't  
8    collect up to 30, you get to keep whatever you've collected?

9           A.       That's correct.

10          Q.       In other words, you don't pay 1 percent on it,  
11   you just keep it?

12          A.       Right.

13          Q.       And then above the \$30 -- the 1 percent goes  
14   on beyond the \$30?

15          A.       Yes, ma'am.

16          Q.       So the \$30 is the minimum?

17          A.       Well, yes.  It may be more than what the  
18   minimum is, because the way I understand how the fund should  
19   work and I addressed this in the original memo, the \$30 is a  
20   retention fee.  So if -- if you collect up to -- you know,  
21   \$30 or less, you keep what you collect.

22                    But that has been a problem also with at least  
23   one company where they've submitted a bill -- let's say that  
24   they collect \$25.  They send us a bill for the difference  
25   between the 25 they collected and the \$30 that is the



1 retention amounts. And we have in the past paid this. And  
2 so to clarify that -- I don't think that's your intent --

3 Q. No.

4 A. -- and I asked that that they be clarified in  
5 the order that comes out, that that is a retention amount.  
6 You get to keep what you collect, but not get the difference  
7 between that and 30.

8 Q. But they don't pay the 1 percent then either,  
9 do they? In other words, they pay nothing to the fund; is  
10 that correct?

11 A. Right. That 1 percent is still retention  
12 amount. If you collect enough money that your share is more  
13 than \$30, then it goes to 1 percent, you get to keep  
14 1 percent of what you collect.

15 Q. I see. So below the \$30 you don't pay the  
16 1 percent, you just -- you wait until you get to \$30 and  
17 then you start the 1 percent; is that correct?

18 A. Yes. You get to keep 1 percent after that \$30  
19 and then you send in the rest to the --

20 Q. And you get to keep a minimum of \$30 and then  
21 beyond that -- if you make beyond that, then you pay the  
22 1 percent?

23 A. You keep 1 percent and send the rest, yes.

24 Q. So if you made \$25, you wouldn't pay 1 percent  
25 of the \$25?

1           A.       No.

2           Q.       I see. I thought it was 1 percent for  
3 everyone, but -- the \$30 you were saying was the maximum,  
4 but it's not?

5           A.       No. That --

6           Q.       It's different. Okay.

7           A.       That 1 percent is -- is retention still. It's  
8 just that if you've -- let's say, Southwestern Bell, for  
9 instance, if they collect -- I'll just through out a number,  
10 \$100,000, then they get to keep 1 percent of that; whereas,  
11 a smaller company that only collects \$25 in surcharge money  
12 would get to keep that 25.

13          Q.       Keep the 25.

14          A.       Or if they collected up to 30, they would keep  
15 that 30. And then once they grow beyond that to where  
16 they're collecting more than that \$30, then it would be  
17 1 percent.

18          Q.       Okay. I think I understand it now. I was  
19 somewhat confused about it.

20          A.       Okay.

21          Q.       I would -- it would be helpful to me to know  
22 what those changing numbers are that you're saying that now  
23 the expenses are exceeding the revenue coming in. That  
24 would be helpful to know what that is over -- since it's  
25 October, I guess is what you're saying, that that's what's

1    been happening; is that correct?

2           A.       Yes, ma'am.

3           Q.       Okay.  What kind of balance do you really  
4    think you need?  In other words, we've had this big balance  
5    prior that was like over 7 million and then we looked at it  
6    and we dropped the amount down to 9 cents and it still  
7    appeared that there was a significant balance going on.  
8    What do you think would be an appropriate balance?

9           A.       I guess what I've always tried to sort of  
10   shoot for since we've decided to try to lower this balance  
11   was about a million dollars.

12          Q.       Let's say the bids come in and whatever they  
13   are and we might assume it might be a decrease maybe because  
14   you're saying there are competitive bids.  Right?

15          A.       Uh-huh.

16          Q.       So it's conceivable that someone might come in  
17   that might decrease these.  Is that possible?

18          A.       It's -- it's certainly possible.

19          Q.       Yeah.  If that were the case and you think a  
20   million dollars is necessary, if it were to increase, could  
21   we not come back next year by April and increase whatever is  
22   needed at that time as opposed to doing it today?  You're  
23   not suggesting it's going to drop to 0 in the next year --

24          A.       Well --

25          Q.       -- are you?

1           A.       -- actually you cannot wait to set the  
2 surcharge beyond this April. Statutorily -- right? You  
3 understand that?

4           Q.       Correct. Yes. That's what I'm saying. So if  
5 we set it at 9 cents this April and then the bids come in,  
6 and I don't know what their time frame is, but you could  
7 also then reset it next year if you haven't gone below a  
8 million dollars. And I'm not thinking that you're going to  
9 go below a million dollars this year.

10          A.       Well, the problem is that we -- we -- if the  
11 Commission sets the surcharge in April, it can't reset it  
12 again until April of 2004 at the very earliest.

13          Q.       Correct.

14          A.       Okay. So if it winds up that the costs  
15 increase beyond what we -- beyond what we're paying now, you  
16 know, perhaps -- depending on what the increase is, perhaps  
17 it could run out of money by that time.

18          Q.       I mean, we're talking now about \$5 million  
19 still in the fund. Right?

20          A.       Yes, ma'am.

21          Q.       Is it your assumption that it's going to take  
22 5 million more dollars? That these bids are going to come  
23 in and it's going to be 5 million more?

24          A.       Well, within that year's time, there's going  
25 to be \$2.6 million just appropriated to ATAP.

1           Q.       Well, they've been an expending at about 1.4.  
2   Do you anticipate they're going to now expend at 2.6?

3           A.       I think that they're going to expend more. I  
4   don't know how much they're going to expend, but my  
5   understanding is that in the budget process they've added  
6   one or two more full-time employees that are -- I guess have  
7   been taken out of the federal part of their program and put  
8   into the state, so --

9           Q.       We're not supposed to be paying for employees,  
10   are we?

11          A.       I think they --

12          Q.       I think we're supposed to pay for equipment,  
13   aren't we?

14          A.       Well, I think they get money to run their  
15   program to include some employee money as well. I'm not  
16   positive.

17          Q.       That was not my understanding. That was not  
18   my understanding, that they were supposed to pay people out  
19   of that. I thought it was only equipment, but I would -- if  
20   you could tell me that's incorrect --

21          A.       I will double check that.

22          Q.       You'll double check that. Thank you.

23          A.       Yes, ma'am.

24          Q.       So that possibly they would still be only  
25   expending at maybe 1.5 or something like that. But if

1   you're telling me they're going to add people, I don't know  
2   what their salaries then might be or their expense -- I  
3   just -- I don't think that we intended that they were  
4   supposed -- or that the intention was that they were  
5   supposed to add personnel. I thought it was only for  
6   equipment. I would be pleased to learn whether that's the  
7   case.

8           A.       I will double check that.

9                    COMMISSIONER LUMPE: Thank you. That's all I  
10   have.

11                   JUDGE RUTH: Commissioner Gaw, do you have  
12   questions?

13                   COMMISSIONER GAW: Yes, Judge. I have a few  
14   questions.

15   QUESTIONS BY COMMISSIONER GAW:

16           Q.       Mr. Solt, let me start -- let's see if I can  
17   get a better grasp on this problem. Last fall this fund  
18   started to spend more than it was taking in; is that  
19   correct?

20           A.       I think that's based on the most recent  
21   numbers. And I'd have to look again at what I did when I  
22   calculated that.

23           Q.       We're going to need that, number one --

24           A.       Yes.

25           Q.       -- but go ahead. Is that your recollection at

1     this point, that last fall the fund started expending more  
2     money than it was taking in?

3             A.       I think that's based on, like, the average of  
4     the last year with -- with up to date, like, January numbers  
5     that I had.

6             Q.       January of?

7             A.       This year to December of last year -- the year  
8     before.

9             Q.       January of '03 back?

10            A.       Twelve months end of January '03.

11            Q.       So we're talking about the '02 year --

12            A.       Yes.

13            Q.       -- calendar?

14            A.       Pretty much.

15            Q.       And I heard you say something about that -- I  
16     think that at this -- over the last few months the -- well,  
17     let me back up.

18                    When you say it started to deficit spend, I  
19     don't know -- that's the wrong word -- that it started  
20     spending more than it was taking in, is it your recollection  
21     that that started occurring in the fall of '02?

22            A.       No. I don't believe it started occurring  
23     then, but it's expected -- I mean, that was -- that was the  
24     plan when we decreased the surcharge recommendation in  
25     2001 -- in April of 2001 from 13 cents to 9 cents, that was

1 done with the intent that the balance would decrease.

2 That's the main reason that we did it.

3 Q. And when did it start decreasing?

4 A. The -- when did the balance start decreasing?

5 Q. Yes.

6 A. January '02, approximately.

7 Q. All right. In January '02 there was a drop,  
8 but there's some pick-ups there and some increases in the  
9 fund after that, isn't there? Because you've got an  
10 increase in the fund in April of '02 --

11 A. Right.

12 Q. -- is that correct?

13 A. Uh-huh.

14 Q. And then some stabilization of that figure  
15 from April of '02 to July of '02. It's basically stable in  
16 that time frame?

17 A. That's -- that's correct. But with --

18 Q. There's some drop?

19 A. -- a general downward trend.

20 Q. Well, the downward trend starts some time --  
21 it looks like in May -- between May or June of '02 and then  
22 it goes down to July '02, if I'm reading this Attachment 1  
23 relay fund balance graph correctly. Is that your  
24 understanding? And then there's another -- there's another  
25 range of stability there where it stabilizes somewhere



1 around six and quarter million dollars --

2 A. Uh-huh.

3 Q. -- until October of '02; is that correct?

4 A. Yes. Uh-huh.

5 Q. And then it drops again -- and I should say it  
6 looks like it actually started dropping a little before  
7 October of '02. It drops again and then there's a pick-up  
8 back to about 6 -- it drops down to under 6 million, then a  
9 pick-up of around 6 million, a little over, some time before  
10 the first of this year it looks like?

11 A. Yes. That's correct.

12 Q. And then there's a drop down to \$5 million, a  
13 \$1 million drop from 6 million to 5 million in the span of  
14 less than -- it looks like less than -- well, maybe a month.  
15 I'm trying to read this graph. Is that accurate?

16 A. That is accurate, yes.

17 Q. What caused that drop?

18 A. What caused that drop was --

19 Q. It looks like that may be similar to a drop  
20 that occurred in the previous calendar year during that same  
21 time frame. It looks like there was a million dollar drop  
22 in that time frame also.

23 A. Yes. I think part of that drop was caused  
24 from a couple of bills from Sprint that came in that hadn't  
25 been processed previously. And then the fact that I think

1     that Southwestern Bell had missed its -- not missed, but  
2     didn't send in money during January --

3             Q.       Okay.

4             A.       -- but instead did in February.

5             Q.       Is that true for both of those time frames in  
6     '02 and '03 where we see that million dollar drop in the  
7     fund?

8             A.       I don't know that for positive, but it's  
9     probably a pretty good chance that that's true.

10            Q.       Do you want to find that out for us, please?

11            A.       Okay.

12            Q.       Then I heard you say something about that  
13     there was a -- and then afterwards your projection on this  
14     is that this fund balance just continues to drop at  
15     somewhere around a 45-degree angle down that graph from this  
16     point forward. And can you tell me what that projection is  
17     based upon?

18            A.       It's based on a regression analysis of the  
19     actual data that we have.

20            Q.       And the data from what time frame? What time  
21     frame are you using to project that decrease?

22            A.       I can't recall, but I think it's -- I think  
23     it's from April of '01 forward, which is when the surcharge  
24     changed.

25            Q.       All right. You want to give us that

1 information too?

2 A. Yes.

3 Q. All right. Now, you said something about  
4 there was -- that you believed that the expenditure rate is  
5 exceeding the income rate, the revenue rate into the fund by  
6 about 100,000 a month?

7 A. Yes.

8 Q. Did I hear you say that?

9 A. Yes.

10 Q. Now, if I use that figure and just use that,  
11 then I get -- maybe my multiplication is wrong, but I get  
12 about 1.2 million in a year of loss. Am I missing something  
13 there? What did I do wrong there?

14 A. That would probably be -- that would be  
15 correct, yes.

16 Q. So how is it that in a year's period of time  
17 I'm dropping -- I know I'm just missing this, but how is it  
18 we're dropping \$5 million in a year's period -- well,  
19 4 million instead of that 1.2 million on that projection?  
20 What is it that's causing that difference? Help me  
21 understand that.

22 A. What's causing the difference is the  
23 projection for relay payments, which is -- you know, I -- I  
24 have to -- I have to have some basis to make these  
25 projections.

1 Q. Right.

2 A. I have no idea -- I mean, I can't see into the  
3 future to see what our collections are going to be.

4 Q. Right.

5 A. So the only thing I can do is run the numbers  
6 and take the projected numbers.

7 Q. Well, you're --

8 A. The --

9 Q. Go ahead. I'm sorry.

10 A. The relay payments are forecast to decline to  
11 under -- by -- by April of next year to about 2 and -- a  
12 little more than 2 1/2 -- 250,000 a month.

13 Q. Yeah. So your projections show that the  
14 actual expenditure -- the net expenditure over revenue  
15 continues to accelerate, that it doesn't stay at 100,000,  
16 which is what you're saying it currently is, that it  
17 accelerates?

18 A. It doesn't accelerate. It decreases by the  
19 same rate. It's just a linear projection.

20 Q. You don't understand my question. I'm not  
21 expressing it correctly.

22 I'm saying that the rate of the increase in  
23 expenditures over revenues is increasing from 100,000, what  
24 you say it is now, to somewhere around 250,000 per month?

25 A. I don't think you're --

1           Q.       The rate of your increasing expenditures over  
2 revenue, it's accelerating?

3           A.       It's accelerating in that if -- if the  
4 revenues are, say, 100,000 less this month, then next month  
5 they might be 110,000 less.

6           Q.       That's the point of my question.

7           A.       Yes.

8           Q.       You agree with that?

9           A.       Yes.

10          Q.       What I need to understand is what is it that's  
11 causing that acceleration? I know what your projection is.  
12 I want to know what you theorize is the reason for that  
13 increase. Is it purely about the loss of lines that are the  
14 subject of the calculation for how much revenue should be  
15 sent in? Is that the sole cause, loss of lines?

16          A.       I think that -- I mean, I don't know and as  
17 far as I know, there's no way to know, but that does appear  
18 to correlate with the overall economy.

19          Q.       Well, I want to get to that Dow Jones thing in  
20 a minute, but the issue of the calculation -- just purely  
21 from a mathematical calculation in determining what the  
22 lowering of the revenue is, based upon what you've seen in  
23 experience up to this point in time, what is the reason for  
24 the lowering of the revenue in the -- if you're looking at  
25 this -- if there's a lowering of revenue, is it because of

1 the decreasing number of lines that are the element in  
2 determining how much money should be sent in from all the  
3 telecoms in the state?

4                   What else is there, I guess is what I'm  
5 saying? What other reason is there for decreasing revenues  
6 on this? If it's purely a calculation based upon the number  
7 of lines, and I know that's a little oversimplified, the  
8 number of lines times the rate --

9           A.       That's pretty much it.

10          Q.       So the only thing that it could be is that  
11 there are lowering -- a lesser number of lines subject to  
12 the calculation?

13          A.       Well, there are other things it could be, but  
14 I don't think it is. I mean, it could be that people stop  
15 paying. But I looked at that back in November or October  
16 and that did not seem to be the case.

17          Q.       All right. That's fair.

18          A.       It could be, as I mentioned before, that when  
19 a customer moves from an ILEC that has enough customers that  
20 they're paying, you know, to a CLEC, I seriously don't think  
21 that that is enough to make any -- any real difference.

22          Q.       It could have an impact. But my question was  
23 premised on the number of lines that are filled in in the  
24 calculation, not -- I mean, I know that that -- what I'm  
25 talking about are the number of lines that actually impact

1 the revenue --

2 A. Uh-huh.

3 Q. -- not the number of lines that are out there.  
4 The number of lines that impact the revenue stream on this  
5 calculation.

6 A. Right.

7 Q. So I guess what we need to know is how  
8 realistic is it that that decrease in number of lines will  
9 continue on that same rate over the course of this next  
10 period of time? Because that is the premise of your  
11 projection.

12 And I think we need to have some analysis  
13 about how realistic that premises is, because just looking  
14 at it from -- purely from the standpoint of here's what  
15 we've seen over the last year and calculating what it will  
16 be in the future may assume something that is not  
17 necessarily probable.

18 And I guess we -- I'd like to see some  
19 analysis of are we going to continue to see this drop in  
20 lines when we're looking at the calculation of how much  
21 revenue is coming in? And I don't think you've done that  
22 yet from what I've heard.

23 MR. ANDERSON: Commissioner, if I may, is your  
24 question for Mr. Solt whether the economy will continue its  
25 downward trend?

1                   COMMISSIONER GAW: Well, no. I haven't even  
2 got to that yet. I'm just asking the rationale for the  
3 assumption that the line decrease, the number of lines  
4 subject to this formula will continue to decrease at the  
5 rate that it evidently has in the calculation that you've  
6 made projecting the decreases in the future.

7 BY COMMISSIONER GAW:

8           Q.       And I want to know how realistic that  
9 projection is, how realistic that assumption is to begin  
10 with. I'm not questioning your calculation as much as I am  
11 the assumption of the decreasing numbers of lines that will  
12 be subject to this calculation for determining total  
13 revenue.

14                   And I'd like to see some analysis of that,  
15 because I don't think you've done it at this point. If I'm  
16 wrong, please speak up, Mr. Solt.

17       A.       Well, sir, the only -- the only information  
18 that I have that -- that -- you know, I -- as I said  
19 earlier, I can't foretell the future, so all's I can do is  
20 project the future based on the past. And this -- this  
21 isn't --

22       Q.       Let me ask you this. You took a time frame  
23 based upon April -- you said April of '01 through January of  
24 '03 --

25       A.       It may have been --



1 Q. -- in making your calculations?

2 A. It may have been July '98 through the current  
3 with all the receipts adjusted for 9 cents.

4 Q. All right. But you don't remember?

5 A. Well, I have that information. I don't recall  
6 right off hand.

7 Q. Yeah. Well, that would be helpful. I mean,  
8 the longer the time frame, the more reliable those numbers  
9 will --

10 A. And I believe that's correct. I believe it  
11 started in July of '98 and goes to the current, which was  
12 January of 2003.

13 Q. Okay. Okay. Let's just have you get that  
14 information to us.

15 All right. Because before this last year, the  
16 numbers were going the other direction. So I want to  
17 understand that. I understand we had a different level of  
18 funding. We were talking about a different level than  
19 9 cents, but all of those things can -- as you say, can be  
20 rectified easily on your formula and I know you've done that  
21 part already on adjusting to the 9 cents part of it.

22 Okay. Let's get to this graph that you've  
23 given on the relationship of receipts to the Dow Jones  
24 Industrial. And will you explain to us what this is telling  
25 us, this Receipts versus DJIA that we were handed?

1           A.       Basically, just on sort of a whim to try and  
2 see if that might correlate with -- the Dow Jones might  
3 correlate with what we're seeing in the receipts, I went  
4 ahead and plotted the Dow Jones adjusted to get it on the  
5 same scale as the receipts are.

6                   And, you know, it -- it looks pretty much like  
7 it is a fairly close match on what it -- what the Dow is  
8 doing. Now, what does that really tell us? Probably not  
9 all that much, but it's kind of odd that it does match the  
10 trend of the receipts as well as it does.

11          Q.       I understand that it's interesting and it may  
12 be somewhat -- you may be able to make some ties into it,  
13 but it seems to me like there are a whole lot of other  
14 factors that may impact the number of lines that are subject  
15 to the calculation on this formula. Wouldn't you agree?

16          A.       Oh, yeah. And just like there's a lot of  
17 factors that affect what the Dow closes.

18          Q.       Sure. Sure. Okay. On the expenditure side,  
19 if you'd go back again for me. Tell me what the expenditure  
20 history has been over this same time frame that you've been  
21 calculating the revenue stream. Do you have a graph on  
22 that?

23          A.       That's part of the original filing, wasn't it?

24          Q.       Probably. Probably. I don't know that I have  
25 it.

1           A.       That would be Attachment 4 to the November 5th  
2 recommendation. I've got it.

3           Q.       If you've got something in color, that would  
4 be nice. Great. Thank you.

5                    Okay. We're talking about Attachment --

6           A.       Four, it should be.

7           Q.       All right. I'm with you now.

8                    COMMISSIONER GAW: We'll have all these  
9 marked, Judge, eventually?

10                   JUDGE RUTH: Yes. I made a note. Thank you.

11 BY COMMISSIONER GAW:

12           Q.       All right. So you're showing on your graph on  
13 Attachment 4 -- all right. Let me ask you something first  
14 so I'm following this. Okay. Your blue line there on your  
15 color graph is your actual adjusted expenses?

16           A.       That's correct.

17           Q.       What does that mean? Adjusted for what?

18           A.       I adjusted -- over that time period, we had,  
19 like, several different rates that we were paying for relay  
20 service. It started out at 77 1/2 cents and it changed over  
21 a period of time because of changes that were necessitated  
22 to comply with FCC mandates.

23                    So it's basically all at the same rate what  
24 we're paying now for per minute of relay service. They're  
25 adjusted so that it would be as if we were paying the same

1 rate the whole time. So, in other words, what it shows is  
2 basically the number of minutes.

3 Q. Okay. So this isn't the actual amount of  
4 expense then?

5 A. Right.

6 Q. That's not on here?

7 A. Right. The -- the right side of the -- of the  
8 reddish-colored line would be actual, because it's at the  
9 rate we're paying now. And as you go more to the left,  
10 that's where the changes would have occurred. Because those  
11 were the numbers that were adjusted to what we're paying now  
12 from what we were paying then.

13 Q. Okay. Where would the line be if we were just  
14 doing actual expenses? Would that be lower on the left-hand  
15 side than the blue lines or higher?

16 A. It would be lower.

17 Q. Lower?

18 A. Because we were paying less per minute.

19 Q. Okay. You wouldn't mind giving us one of  
20 those, would you, later so we could see that too?

21 A. What would that be?

22 Q. Can you add a line to this graph with the  
23 actual expenses?

24 A. I can do that.

25 Q. That would be good.

1                   Now, I don't know if we call that red or pink  
2 or whatever that line is, what color is that?

3           A.       I don't really know. I just call it red.

4           Q.       Okay.

5                   COMMISSIONER: Fusia.

6                   COMMISSIONER GAW: Thank you, Commissioner.

7 BY COMMISSIONER GAW:

8           Q.       That, based upon the trend of the total actual  
9 adjusted expenses, is a downward trend?

10          A.       Yes.

11          Q.       And your prediction for the total projected  
12 expenses is that it continue along that downward trend?  
13 Basically, the same line it continues on out?

14          A.       Yes.

15          Q.       On the actual adjusted expenses beginning in,  
16 it looks like, September, there's a spike that appears to  
17 continue to go up until the end of your reflections of total  
18 actual adjusted expenses. You see that there?

19          A.       Uh-huh.

20          Q.       What is that due to?

21          A.       More minutes of use that month.

22          Q.       There were no other programs, no other things  
23 that were added during that time frame?

24          A.       Right.

25          Q.       Everything is the same?

1           A.       Right. The variation that you see in there is  
2 due to minutes of use.

3           Q.       Okay. Is that reflected in previous years  
4 during that same time frame or is it an anomaly to that time  
5 frame, in your opinion?

6           A.       It could be a seasonal variation.

7           Q.       Is it clear to you that there's any previous  
8 time -- seasonal time frames in other years that would  
9 support your statement?

10          A.       No. I mean, I don't think it is. I mean, I'm  
11 just saying it could be.

12          Q.       Yeah. Okay. Now, the total projected  
13 expenses, is that the figure that you use -- I mean, the  
14 projections that you use in calculating when the fund  
15 balance would -- the projections on the decreasing amount of  
16 the fund balance?

17          A.       Yes.

18          Q.       So if this isn't an anomaly going up, if  
19 indeed that is an upward trend of usage and not just  
20 seasonal, your projections could be on the side of actually  
21 being too conservative. Is that accurate in regard to when  
22 the fund may be depleted?

23          A.       No. Actually, if it's an upward trend, they  
24 would be not conservative enough.

25          Q.       Maybe I'm misstating that. In other words,

1 the fund balance could be depleted sooner?

2 A. Yes.

3 Q. That's what I'm asking about.

4 A. Yes. But the next month went back down again,

5 so --

6 Q. And that's not shown on here?

7 A. It's just the red is on top of the blue dot.

8 You just can't see it. That's the line --

9 Q. There's no connecting line I guess down to

10 that blue dot. Am I missing that?

11 A. I see the line I just don't see the dot. Did

12 that not come out?

13 JUDGE RUTH: I don't see a blue line after the

14 upward thing. I don't see a blue dot either.

15 THE WITNESS: Oh, okay. Okay. All right.

16 Yeah.

17 BY COMMISSIONER GAW:

18 Q. Go ahead, Mr. Solt. Do you have a copy that

19 does show one going down?

20 A. Well, I seem to.

21 JUDGE RUTH: We're on Attachment 4. Correct?

22 THE WITNESS: Yes.

23 BY COMMISSIONER GAW:

24 Q. If you have updated numbers on that, maybe you

25 could provide those as well.

1           A.       I actually think I'm on the wrong

2   Attachment 4.

3           Q.       That would explain it.

4           A.       Okay. Okay. Yeah. That does not show it  
5   going back down.

6           Q.       It does not show it?

7           A.       Yes. And if that is a trend, then that could  
8   be a problem. But you have to keep in mind too that these  
9   expenses going forward are worthless because in three months  
10   time, it's going to change to something completely different  
11   or could -- let me put it that way, it could change to  
12   something completely different. We don't know.

13          Q.       Yeah. You're basing this on -- your  
14   projections on the same level of cost for the program  
15   itself?

16          A.       Right.

17          Q.       And if those costs go up, of course, that  
18   would change it, but that would exacerbate this problem if  
19   this is a trend, would it not?

20          A.       Exactly. Exactly.

21          Q.       So if I'm looking at what your projections are  
22   based upon, if I'm understanding your projections, your  
23   projections of the problem with the fund is based not upon  
24   expenditures -- your projections -- but on the revenue side,  
25   not on the expenditure side?



1           A.       Right.

2           Q.       And if I understood that correctly, that's  
3 based upon the premise that there is a decreasing number for  
4 the number of lines used in the calculation of the revenue  
5 stream that comes in on this fund?

6           A.       Right. If I could restate that, there's  
7 basically two problems.

8           Q.       Please.

9           A.       We have decreasing revenues and we have  
10 unknown costs going forward from July 1 of this year.

11          Q.       Yeah. Your graphs are all based upon a  
12 prediction in the amount of cost?

13          A.       Right.

14          Q.       And the problem that you are pointing out  
15 based upon your predictions in the graphs has to do with the  
16 revenue side. You are not spelling out anything that you  
17 can predict on the cost side except for the projections that  
18 you have based upon the same cost to the program with  
19 continuing downward trends and expenditures?

20          A.       Correct.

21          Q.       So if there is an increase, that is a bigger  
22 problem?

23          A.       Right.

24          Q.       Okay. Now, I guess I'm going to get into  
25 Commissioner Lumpe's question about some of your testimony

1 in regards to other possibilities of increasing  
2 expenditures. I think it would be really important for us  
3 to see what those potential expenditure increases would be  
4 in.

5 And I'm not talking about the change in the --  
6 in the contract that is going to be out for bid. I'm  
7 talking about possibility of adding employees and other  
8 things onto this program, because I don't think we've heard  
9 about that before, so --

10 A. Right. Now, that's the -- the Labor and  
11 Industrial Relations portion of the equipment distribution  
12 program.

13 Q. Yeah. Is that coming out of this fund also?

14 A. Yes, it is.

15 Q. That's what's leaving, and we're talking about  
16 the expenditures of this fund. Right?

17 A. Yes.

18 JUDGE RUTH: Could you indicate for the record  
19 that your answer was yes, since you were nodding your head?

20 THE WITNESS: Oh, I'm sorry. Yes.

21 JUDGE RUTH: Thank you.

22 BY COMMISSIONER GAW:

23 Q. Now, if we used your projections without  
24 taking into account the possibility that that contract cost  
25 may increase or that there may be other increases affiliated

1 with assuming additional obligations for employees, etc., if  
2 we use that as our base if -- let me finish my question,  
3 then -- if I can.

4                   Then if we were trying to keep this fund  
5 balance from -- if we were trying to level off so that we  
6 were not having more expenditures then we were having  
7 revenue, on your projections, how much would you have to  
8 raise this assessment fee to?

9           A.       Offhand, I don't know.

10          Q.       I'd like to see that too.

11          A.       More than 10 cents, that's for sure. Can I  
12 clarify one thing, sir?

13          Q.       Yes, please.

14          A.       The total -- just the expenses line, that will  
15 not change no matter what the Department of Labor and  
16 Industrial Relations does as far as -- if indeed there are  
17 FTEs included in there, that will not change because what I  
18 have in there for them is what they're appropriated. So the  
19 only way that will change is if the appropriation changes.

20          Q.       Would that have to be done by the General  
21 Assembly?

22          A.       Legislature, yes, sir.

23          Q.       So they'd be moving equipment over to personal  
24 service if that occurred, but it would not change the total  
25 amount of expenditure out of the fund --

1 A. Right.

2 Q. -- is what you're saying? Thanks for  
3 clarifying that, although Commissioner Lumpe's questions are  
4 very important, I think.

5 So back to my question then. If you could  
6 provide us with the information about based upon your  
7 projections how much would you have to increase this fund,  
8 this -- the fee in order to get a projection on your numbers  
9 that would even the expenditures and revenues to a net 0.

10 A. Okay.

11 Q. I'd like to see how much that would have to  
12 be.

13 A. But -- but my understanding has been that the  
14 Commission wanted to decrease the fund balance so that it  
15 wasn't attractive to the folks down the street.

16 Q. You can ignore your assumptions.

17 A. Okay.

18 Q. I want to know what that number is.

19 A. Okay.

20 Q. Because at some point in time if you are  
21 correct, you're going to have to keep this from depleting  
22 and you're going to have to come up with some revenue stream  
23 that supports the expenditures.

24 A. Uh-huh.

25 Q. Do you understand what I'm saying?

1           A.       Yes, sir.

2           Q.       So the other question I have is if there is no  
3 money in the fund or if the expenditures appear to be  
4 increasing to the level that you are showing they are and we  
5 would get to the point where there is nothing in the fund, I  
6 mean, what is the -- how is the law set up to prevent there  
7 from being deficit spending in the fund?

8           A.       It's set up so that -- I mean, the Commission  
9 is charged with setting the surcharge at such an amount that  
10 it ensures money for the operation of the fund. There is no  
11 deficit spending from that fund. There is no -- as far as  
12 with what I'm familiar with the law, if the fund runs out of  
13 money, the fund runs out of money.

14          Q.       And there is no way of deficit spending is  
15 your understanding?

16          A.       That is my understanding.

17          Q.       All right. And what criteria exists in the  
18 law to guide the Commission in setting the appropriate  
19 amount for the fund in revenues to fulfill the statutory  
20 obligations of the Commission on ensuring that funds are  
21 coming in to -- that revenues are coming into that fund in a  
22 sufficient amount? What guidance is there in the statute?  
23 That may be more of a question for counsel.

24                   MR. ANDERSON: Well, Commissioner, the  
25 statutory sections I'll refer to are 209.253, which is the

1 statewide dual party relay system establishment by the PSC  
2 and also provides in it and -- for this Commission to assure  
3 adequate funding.

4                   And we have 209.255 that talks about the rate  
5 established to recover the costs of these programs. And my  
6 reading of it provides more of a limitation on this  
7 Commission as far as how that rate will be recovered instead  
8 of providing for things such as going to a 0 balance or a  
9 negative balance. That does not seem to be a possibility  
10 under the statute.

11                   COMMISSIONER GAW: All right. And thank you  
12 for answering that other question, but I guess what I'm  
13 asking is as far as the Commission's duty to set this rate  
14 is concerned, what is contemplated in the statute or maybe  
15 in any kind of rule-making that there has been that would  
16 give guidance to the Commission on establishing the amount  
17 of revenue that should be coming in for the funding of these  
18 programs? Now, that on its -- I'll stop there and then I'll  
19 follow up.

20                   MR. ANDERSON: Well, Commissioner, I don't  
21 think you're going to find any help in the statute or in a  
22 rule.

23                   COMMISSIONER GAW: All right. So if we're  
24 trying to come up with a way of ensuring that we're not  
25 under- or over-collecting, I would assume that part of that

1 duty would be to ensure that the funding is adequate for the  
2 programs and that the programs are meeting the requirements  
3 of the statute.

4 MR. ANDERSON: In Section 209.259 in review of  
5 the surcharge which this Commission is charged to do every  
6 two years and not more than every year, this Commission is  
7 to order such changes to the amount of the surcharge as  
8 necessary to assure available funds for the provision of the  
9 programs established in Section 209.253.

10 COMMISSIONER GAW: So is the Commission in  
11 that regard supposed to inquire as to the expenditures of  
12 the program in order to assure that the program is meeting  
13 the statutory -- well, the -- in order that it's  
14 accomplishing the purposes of the statute?

15 In other words, are we supposed to inquire  
16 about the expenditures of the program itself in assessing  
17 what the revenues should be?

18 MR. ANDERSON: I suppose that might depend  
19 upon which program you're referring to, whether it be the  
20 Missouri Assistive Technology Advisory Council or the ATAP  
21 program, which it oversees as far as -- I'm trying to read  
22 as I talk to you, which is sometimes difficult as far as --

23 COMMISSIONER GAW: I don't necessarily need to  
24 know this right now. I'm asking the question so that we can  
25 have that information when we're looking at this.

1                   And I might take another step at this because  
2   what I'm -- where I'm headed is if the Commission is simply  
3   supposed to ensure that whatever's spent, that there is  
4   sufficient revenue to cover it and we have no right or duty  
5   to inquire as to whether those funds are expended properly  
6   or whether there's an over-expenditure, under-expenditure of  
7   those funds, then our only responsibility in this hearing is  
8   to ensure that we have sufficient revenue to cover the  
9   expenses that are spent, if that's all we're supposed to do.

10                  They could spend \$50 million and we've got to  
11   make sure that there's enough money to cover it. We have no  
12   right to look into whether the expenditures are too high or  
13   they could spend a dollar and we have no right to look into  
14   whether they're too low.

15                  I want to know where our responsibility stops  
16   in this hearing. Because it makes a fairly significant  
17   difference in the analysis of whether or not we should --  
18   not just in this case, but in any case when we're adjusting  
19   the amount charged about how much depth we need to make a  
20   decision, how much analysis we need.

21                  If we only look at the revenue side, then  
22   we're only looking at, it seems to me, whether or not the  
23   calculation on future expenditures is likely to lead to an  
24   imbalance in the fund, period.

25                  But if we're supposed to look at more than



1     that, then I think we need a little more analysis on the  
2     expenditure side than probably what we have up to this point  
3     in time. And perhaps some accounting back to us on that.  
4     If it's not us, then I want to know who is it that's  
5     accountable and who they're accountable to.

6                     MR. ANDERSON: Commissioner, I'd be happy to  
7     look into that further, but I would just state that a lot of  
8     these amounts we're looking into are established on a  
9     contractual relationship as far as who the present relay  
10    provider is and also from different agencies to which this  
11    oversight of -- by this Commission may have been limited  
12    statutorily. With those two caveats, I'll be happy to look  
13    into it further.

14                    COMMISSIONER GAW: And that may answer the  
15    question. It may be that the Commission is not supposed to  
16    inquire. I just want to know where we are with that and  
17    what we're supposed to do in this analysis.

18                    If we're only supposed to look at the revenue  
19    side and then base what revenue -- the revenues should be in  
20    comparison to what the projected expenditures are without  
21    inquiring any further on the expenditure side, I want to  
22    know if we're supposed to stop there or if our analysis  
23    should go any further than that.

24                    And anyone else want to jump into that?  
25    Public Counsel, if you've got any guidance there, I'd be

1 glad to hear it.

2 MR. DANDINO: I don't know how much, but it  
3 seems to me this is only -- that it's broke down where the  
4 part that is under the Labor and Relations Board is  
5 something that's set and is going to be outside your  
6 purview. It's whatever they budget.

7 And Mr. Solt has stated the appropriation,  
8 which would be the maximum appropriation, would be the  
9 maximum amount that they could spend to guarantee it.

10 But I think on the other side, on the relay  
11 program, that it is the Commission's responsibility to  
12 oversee that. And I think there it's almost like it's a  
13 term and supply contract to the extent that you're almost  
14 setting how much they're going to spend -- it's probably  
15 hard to say it's per unit or for those services, for a  
16 certain level of services. If it's more, you're going to  
17 have to make sure there's more.

18 The only thing -- and I think that when you  
19 review the contract, you're going to have to build in there  
20 or -- in what the level of services you expect in order for  
21 that contract amount to be able to cover your anticipated  
22 expenses. That way you can -- in a way, you are indirectly  
23 influencing the fund -- influencing the amount you're going  
24 to have to collect.

25 COMMISSIONER GAW: Thank you, Mr. Dandino.

1 Anybody else?

2 If you all could get some of that information  
3 that I requested, that would be helpful and just -- it's  
4 very -- it's just very troubling that this fund is going to  
5 basically spend \$5 million in a little over a year's time  
6 based on these projections even with the revenue stream back  
7 where it was before it was adjusted to 9 cents. And I  
8 really want to make sure I understand that when we're making  
9 our decision. And I guess that's all I have. Thank you.

10 Thank you, Judge.

11 JUDGE RUTH: Before we move onto Commissioner  
12 Forbis, I want to mark for identification purposes some of  
13 these graphs that have been discussed. And then we'll later  
14 need to decide whether they're going to be offered into the  
15 record.

16 The first graph that was handed out I'm  
17 marking as Exhibit 1 and it's called Receipts versus DJIA.

18 And, counsel, after the hearing, would you  
19 make sure you provide a copy to the court reporter or you  
20 can hand them to her now, if you prefer?

21 Exhibit 2 for identification purposes is a  
22 color version of the packet that was actually attached by  
23 Staff in their initial pleading. Is that correct, Staff?  
24 These are the exact same graphs as were attached to your  
25 first recommendation, only they are a color version. Is

1     that correct, Staff?

2                     MR. ANDERSON:  I believe that's correct.

3     These are --

4                     THE WITNESS:  This is --

5                     MR. ANDERSON:  -- Exhibit 2 and those were  
6     attached to the recommendation?  Yes.

7                     JUDGE RUTH:  Mr. Solt seems to be nodding his  
8     head yes.  Correct?

9                     THE WITNESS:  That's correct.

10                    JUDGE RUTH:  Exhibit 3, for identification  
11     purposes, is another packet of one, two, three, four graphs  
12     and these include Mr. Solt's updates to the exact same  
13     packet of graphs just on an updated version.  Correct?

14                    THE WITNESS:  That's correct.

15                    JUDGE RUTH:  So I've marked those three for  
16     identification purposes and after questions from the Bench,  
17     we'll move onto whether they need to be admitted to the  
18     record.

19                    Commissioner Forbis, do you have questions?

20                    COMMISSIONER FORBIS:  Just a couple.  Thank  
21     you.  Just more of a comment than question.

22     QUESTIONS BY COMMISSIONER FORBIS:

23             Q.       Following up -- you've been talking to us for  
24     a while now.  Good morning.  I'll follow up on a couple  
25     things.

1                   Okay. In your regression formula, you  
2 included the appropriation for the TEDP, not the actual  
3 expenditure which they're running about half; is that  
4 correct?

5           A.       That's correct.

6           Q.       So let's see. For FY 2003 appropriation is  
7 2.7, looks like it might be 1.4 million, so about half of  
8 the appropriation. So assuming that same trend would then  
9 continue for FY '04, we may be building in a couple million  
10 dollars more of expenditures than actually will be there?

11          A.       That's possible. But since it's appropriated,  
12 they could spend it, so it has to be there, yes, sir.

13          Q.       Right. But it actually may not be spent. And  
14 so even if the contract comes in higher with this perhaps  
15 \$3 million cushion, we could be okay at 9 cents or 10 cents  
16 beyond the October '04 deadline --

17          A.       Yes, sir.

18          Q.       -- based on what the TEDP program would do?

19          A.       Yes, sir.

20          Q.       Okay. Commissioner Gaw asked the same  
21 question that's been troubling me this whole -- throughout  
22 the morning.

23                   Assuming the expenditures do follow this line,  
24 and we go through \$5 million in a year and a half, wouldn't  
25 the fund have -- wouldn't the amount, the surcharge amount,

1 have to rise somewhat dramatically in order to even put the  
2 fund back on an even keel if at 10 cents we go through  
3 \$5 million in a year and a half?

4 I think I would like to see those numbers too,  
5 because that -- and I'm just thinking it's going to be huge,  
6 I mean, relative to what it has been in the past if, in  
7 fact, these numbers prove out to be true.

8 A. It would definitely have to increase, yes,  
9 sir.

10 Q. And you haven't done that yet, but I'm  
11 thinking it would have to increase a lot in order to just  
12 maintain the fund given the expenditure level that's  
13 projected and if we're going to try to build any kind of a  
14 fall-back in there or balance, it would have to be even  
15 higher. So that worries me. I look forward to seeing those  
16 numbers.

17 And we don't know what the contract might come  
18 in at, the new contract. Right?

19 A. That's true, yes, sir.

20 Q. Do you think it's -- well, you may have been  
21 asked this already, but just to make sure, do you think it  
22 would be more than -- maybe that's not -- if you don't to  
23 want answer this, tell me. Would it be more than that  
24 million dollars difference between what TEDP has  
25 appropriated and expending? You wouldn't want to even

1 guess?

2 A. I really can't guess because I don't have any  
3 indication whatsoever.

4 Q. Okay. So we just don't have any idea where  
5 that might end up?

6 A. (Witness nodded head.)

7 Q. All right.

8 JUDGE RUTH: Would you state for the record  
9 your answer to that question? I believe you nodded your  
10 head to Commissioner Forbis's last question. He asked, So  
11 we don't have any idea where that would end up? And I  
12 believe you nodded.

13 THE WITNESS: That is true. We don't have any  
14 idea where with that would end up.

15 JUDGE RUTH: Just trying to preserve the  
16 record.

17 COMMISSIONER FORBIS: It's a small picture.  
18 It's hard to tell. If you haven't been following up all the  
19 ups and downs of the camera, it's been very interesting.  
20 Not the judge's fault, by any means. I'm trying to make  
21 that very clear. I assume it wasn't the judge's -- I don't  
22 know.

23 BY COMMISSIONER FORBIS:

24 Q. So we're assuming that the expenditures are  
25 going up primarily because of line loss, there might --

1     there's just a lot of unknowns in this formula, aren't  
2     there?

3             A.       Yes, sir.

4             Q.       We don't know for sure why expenditures are  
5     going up, we don't know if TEDP is going to spend all its  
6     money, we don't know what the contract is going to do so and  
7     we think we'll run out of money by October of next year.

8                     So you're thinking then that -- you're  
9     suggesting this 10 cents amount just sort of as a hedge  
10    based on best guess? All this stuff put together now you  
11    think 10 cents would be at the safest point rather than keep  
12    it at 9 and then -- because we can visit in a year again,  
13    right, which would give us April '04?

14            A.       Yes, sir.

15            Q.       So the risk is if the new contract comes  
16    along, is higher dramatically than it has been and TEDP  
17    jacks up their expenditure level, we might run out of money  
18    by next April?

19            A.       Yes, sir. Originally when the -- the  
20    recommendation was put out in November, I was kind of hoping  
21    for an order sometime around that time so it would just be a  
22    few months from the time that we got the new contract in  
23    place until the rate could be set again.

24            Q.       Okay.

25            A.       But now we've got, you know, eight or nine



1 months in between when the new contract is going to  
2 take over. So given that we have less time to react, that  
3 was the reason -- I mean, just to -- to be on the safe side,  
4 I recommended going to 10 cents and giving a little more  
5 cushion so that the fund would not deplete before then.

6 Q. Given all the other factors holding the same,  
7 appropriation would be the actual expenditure amount and  
8 that these other trends continue --

9 A. Yes.

10 Q. -- as I understand your position?

11 This seems kind of unusual, isn't it, for the  
12 relay fund? Seems a lot more -- is this sort of uncertainty  
13 rather common or is this kind of new to the game?

14 A. Traditionally there's always been a lot of  
15 uncertainty with relay, because that's one of the reasons  
16 that -- kind of a legacy that the relay fund balance has  
17 been so high is because we have to respond to unfunded  
18 mandates from the FCC quite often.

19 Just about -- and I may not be exact on the  
20 date. I think it was the year before last the FCC came out  
21 with major upgrades to relay service where they said, you  
22 know -- they basically just made a lot of changes that  
23 resulted in higher costs. And we had to -- to, you know,  
24 amend the contract at that point to provide for those things  
25 and with resulting higher costs, as I told Commissioner Gaw

1 earlier.

2                   The Attachment 4 expenses are adjusted over  
3 the period of time since -- since '98 for these various  
4 changes in requirements and that's why even though we've --  
5 I think there's been some changes because of options to the  
6 contract that also changed the price, but also because of  
7 mandates from the FCC that changed the level of service.

8           Q.       We don't expect any of those in the near term?

9           A.       Actually, as of the -- as of December 31st of  
10 this year, the -- and I believe that date is correct, the  
11 FCC can -- may decide whether it will continue paying for  
12 video relay services or not.

13                   Video relay services right now, if I'm not  
14 mistaken, are running \$17 a minute. If they were to say  
15 we're not going to pay for that, states you have to,  
16 obviously that would be a major blow. But I would assume  
17 that we would have time to implement that and there would be  
18 time to -- at that point if it came out in December of 2004,  
19 we surely wouldn't have to implement that within four months  
20 time, so there would be time to, you know, change the  
21 surcharge --

22           Q.       So you --

23           A.       -- but --

24           Q.       December '04 or December '03?

25           A.       I'm sorry. December '03.

1 Q. Okay. So you haven't factored that in?

2 A. No.

3 Q. But it could happen?

4 A. It could.

5 Q. And then the hope would be that there would be

6 time for us to respond?

7 A. Yes, sir.

8 Q. But then if that took place and the level of

9 usage continued, that would be another dramatic hit on the

10 fund?

11 A. Yes. That's true.

12 Q. Okay. This regression formula, can you build

13 in some more variables? Question marks, A, B, C question

14 mark, sub 1, sub 2?

15 COMMISSIONER FORBIS: I think that's it for my

16 questions. Thank you.

17 THE WITNESS: Thank you.

18 JUDGE RUTH: Are there any additional

19 questions from the Bench? Commissioner Murray?

20 Commissioner Lumpe?

21 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

22 Q. Did I hear you correctly that the contract

23 will be finalized in October or when will the contract be

24 finalized?

25 A. It hopefully will be finalized by July 1st of

1 2003.

2 Q. Okay. July 1st?

3 A. Yes, ma'am.

4 Q. All right. And your point was that you  
5 wanted -- you would need time to react to that by the next  
6 April; is that correct?

7 A. Yes.

8 Q. Okay.

9 A. Yes, ma'am.

10 COMMISSIONER LUMPE: Thank you.

11 JUDGE RUTH: Any additional questions,  
12 Commissioner Gaw?

13 COMMISSIONER GAW: No, thank you.

14 JUDGE RUTH: Commissioner Forbis?

15 Okay. Thanks. Then at this time I want to  
16 ask Staff if you intend to offer into the record Exhibits 1,  
17 2 and 3? They have been discussed and relied upon. And I  
18 realize Exhibit 2 is really just a color version, but since  
19 there were references made to the colors, it might be  
20 helpful to have those in the record.

21 MR. ANDERSON: Your Honor, we can offer those  
22 at this time.

23 JUDGE RUTH: Are there any objections to  
24 Exhibits 1, 2 and 3 being received into the record?

25 MR. DORITY: I have no objection, Judge, but

1 at Mr. Anderson's convenience if he could provide us a copy,  
2 I would appreciate it.

3 MR. ANDERSON: Certainly.

4 JUDGE RUTH: And, Mr. Dandino?

5 MR. DANDINO: I would agree with that.

6 JUDGE RUTH: Then I'll ask counsel to  
7 follow-up with these color copies to all the parties at your  
8 earliest convenience after the hearing. And it's my  
9 understanding you've already provided copies to the court  
10 reporter?

11 MR. ANDERSON: I will now.

12 JUDGE RUTH: Okay. Then seeing no objections,  
13 Exhibits 1, 2 and 3 are received into the record.

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

16 JUDGE RUTH: At this time I'll allow the  
17 parties to make any closing comments, if you want. And I'm  
18 actually going to start with SBC, move to Public Counsel and  
19 then let Staff end it.

20 MR. DORITY: Your Honor, on behalf of SBC, I  
21 have no closing comments. I would indicate that I'll look  
22 forward to receiving what I understand is an expedited  
23 transcript, because there were a number of questions asked  
24 from the Bench and my client may like to have the  
25 opportunity to respond to some of those, so we'll be happy

1 to do that.

2 JUDGE RUTH: Thank you.

3 And, Mr. Dandino?

4 MR. DANDINO: I have no closing comments.

5 Thank you, your Honor.

6 JUDGE RUTH: Staff?

7 MR. ANDERSON: Your Honor, Staff will be happy  
8 to provide what answers it can to the Commissioners'  
9 questions here today. We will do those as expeditiously as  
10 possible. I think possibly this -- we've got Mr. Solt here  
11 as Staff's expert in this area and it may come down to what  
12 your feelings of the word "assure" are.

13 And we will discuss further in pleadings as  
14 far as what we feel the Commission's obligations are to this  
15 fund. And, again, we will be providing that information as  
16 soon as we can.

17 As far as, again, reminding the Commission of  
18 the time line of this matter, that the statutes call for the  
19 decision to be made no less frequently than two years, which  
20 puts our deadline at April of this year, which does not give  
21 us a whole lot of time and we appreciate the opportunity to  
22 respond to you today. Thank you.

23 JUDGE RUTH: Okay. Can you refresh my memory?  
24 Isn't that deadline actually April 5th or 6th?

25 MR. ANDERSON: I believe it's the 5th.

1 JUDGE RUTH: When we first began, I had asked  
2 the court reporter if she could do the transcript on an  
3 expedited basis, five business days. And that will remain  
4 the official deadline.

5 But I would like to ask the court reporter  
6 since the hearing has not lasted even two hours if she would  
7 try to get that even sooner. It would be my hope that she  
8 could do it in three business days but just -- or sooner,  
9 but I'll talk to her further about that afterwards. The  
10 official deadline is still Monday, but I'm requesting that  
11 she do that more quickly, if possible.

12 With that in mind, I want to ask Staff when  
13 they anticipate being able to file the supplemental  
14 pleadings? There are several things that Staff has to  
15 respond to. I -- I know that an explanation was provided on  
16 the \$30 or 1 percent issue, but I would request that you try  
17 to follow-up with a more thorough written explanation for  
18 that.

19 Also, there were the question of the new  
20 numbers. The first Staff rec had some numbers listed for  
21 expenditures and revenue, the second Staff rec didn't update  
22 those, but I think there was an answer on the stand that you  
23 have those numbers. If you have them, could you please  
24 provide them?

25 And then Commissioners Gaw and Lumpe had quite

1 a few questions that were unanswered. I think Commissioner  
2 Murray and Commissioner Forbis might have also, but I  
3 understand you'll need to look at the transcript in order to  
4 answer all those questions.

5 Can you give me an estimate -- if the  
6 transcript comes in at the very latest on Monday, when would  
7 you have your supplemental pleading filed? And one thing  
8 I'm asking you to keep in mind is the Commission really  
9 needs to issue its order with a 10-day effective date, so  
10 we're looking at making -- the Commission needs to make a  
11 decision, you know, by the 24th or 25th at the very, very  
12 latest.

13 MR. ANDERSON: If I may have a moment, please.

14 JUDGE RUTH: Certainly. Let's go off the  
15 record and I'll give us a three-minute break. You can  
16 confer with your witness.

17 MR. ANDERSON: Thank you.

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

19 JUDGE RUTH: We have had a brief break. We're  
20 back on the record.

21 I had asked Staff for an estimate of when they  
22 would be able to have their supplemental pleading filed.  
23 Staff?

24 MR. ANDERSON: Your Honor, we expect that we  
25 will not wait for the transcript in this matter, that we



1 will proceed quickly on the notes that we have. We expect  
2 to make a filing by Friday of this week, which is the 7th, I  
3 believe.

4 MR. DANDINO: Yeah.

5 JUDGE RUTH: Okay. If it turns out that you  
6 need the transcript and it has not yet arrived, will you at  
7 least file something on Friday --

8 MR. ANDERSON: Yes.

9 JUDGE RUTH: -- informing the Commission you  
10 need additional time? Otherwise, I'll make a note that we  
11 will expect Staff's recommendation by Friday and I will  
12 follow-up with a notice that any response to Staff's rec is  
13 due on the second business day after it.

14 By that I mean if Staff's rec is filed Friday,  
15 I want any response no later than Tuesday. Response not  
16 required. This is optional.

17 Any comments from counsel? Okay. Then let me  
18 check my notes to make sure I've -- okay. Are there any  
19 other matters from the parties?

20 MR. ANDERSON: Is Mr. Solt excused?

21 JUDGE RUTH: Mr. Solt is excused.

22 Do the parties have anything else that needs  
23 to be addressed at this time?

24 MR. DANDINO: No, your Honor.

25 MR. DORITY: Thank you, Judge.

1 JUDGE RUTH: No responses, then we will  
2 conclude this hearing. Thank you.

3 (EXHIBIT NOS. 1, 2 AND 3 WERE MARKED FOR  
4 IDENTIFICATION.)

5 WHEREUPON, the hearing was adjourned.

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