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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
February 2, 2004
Jefferson City, Missouri
Volume 4

In the Matter of a Commission)
Inquiry into the Possibility of)
Impairment Without Unbundled Loc) Case No. TO-2004-0207
Circuit Switching When Serving the)
Mass Market)

LEWIS MILLS, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

CONNIE MURRAY,
ROBERT M. CLAYTON, III,
COMMISSIONERS.

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

2 (EXHIBIT NO. 26HC WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE MILLS: We're on the record this morning
5 for a continuation of the hearing in TO-2004-00207. We were
6 in the process of taking questions from the Bench for SBC
7 Witness Fleming. Before -- I've got a few questions and I
8 believe the Commissioners are done with their questions.

9 Before we do that, we have a housekeeping
10 matter of Exhibit 26HC has been marked. This was discussed
11 by Mr. Magness with Mr. Fleming during Mr. Magness'
12 cross-examination.

13 Mr. Magness, do you want to offer this
14 exhibit?

15 MR. MAGNESS: Yes. The CLEC Coalition offers
16 Exhibit 26HC, which is a CLEC Coalition Request No. 1,
17 DR No. 1-21D(i), the SBC Data Response and the attendant
18 attached spreadsheet, and it is an HC exhibit.

19 JUDGE MILLS: Okay. Are there any objections
20 to the admission of 26HC?

21 MR. LANE: Yes, your Honor. I'll make kind of
22 a round-about objection. Different regulatory law judges
23 have different views on the foundation needed to introduce
24 Data Requests. We, frankly, have some Data Request answers
25 that we intend to introduce later in the questions, and not

1 knowing how you rule on those type of issues, I'm going to
2 make an objection here on the basis of foundation, since
3 Mr. Fleming hadn't seen the document before, wasn't familiar
4 with it and couldn't identify it. But I'm fine with however
5 you rule on it.

6 JUDGE MILLS: Hang on just one second. Let me
7 check my list here. Mr. Lane, just to refresh my memory,
8 did you make a similar objection to
9 Exhibit 25HC?

10 MR. LANE: No.

11 JUDGE MILLS: Okay. Well, then, I'm going to
12 accuse you of inconsistency here.

13 MR. LANE: Won't be the first time.

14 JUDGE MILLS: I think 25HC and 26HC are simply
15 different iterations of the same response, and I think 26HC,
16 for what it's worth, goes to show that at some point earlier
17 than 25HC was submitted, there was a somewhat different
18 response. I'm not sure that that's -- I'm not sure where
19 that's going to get us, but I just don't know that yet.

20 But to the extent that there's a problem with
21 the foundation on this, I think there would have been a
22 similar problem with foundation on 25HC, and I don't think
23 there was a problem. And I think 26HC simply serves to show
24 that the response in 25HC was different at an earlier point
25 in time. So I'm going to admit it. I don't think that

1 there's a problem with the foundation on this or 25HC.

2 Exhibit 26HC is admitted over objection.

3 (EXHIBIT NO. 26HC WAS RECEIVED INTO EVIDENCE.)

4 JUDGE MILLS: Okay. Questions from the Bench.

5 GARY FLEMING testified as follows:

6 QUESTIONS BY JUDGE MILLS:

7 Q. Mr. Fleming, I'm going to ask you just for
8 purposes of the record some very general sort of
9 definitional questions. I think a lot of the testimony has
10 sort of breezed past the sort of kindergarten-level stuff,
11 and so the record is devoid of some of the things that may
12 be necessary to craft an Order and have the record support
13 it.

14 So I'm going to ask you to define things like
15 wire center, UNE-P, UNE-L, central office. Let's go in that
16 order or as close to that order as I can remember. Can you
17 define for me exactly what is a wire center?

18 A. Yes, sir. Hang on just a minute. Let me make
19 sure I write these down and don't miss any.

20 Basically a wire center is a geographic area
21 where all of the loops in that area meet in a central point,
22 and at that central point you have a switch and transport
23 facilities. So a wire center itself you can talk about the
24 central office building where the switch is housed, but the
25 wire center area encompasses that entire serving area of

1 that switch.

2 Q. And generally speaking, in this case when the
3 parties have talked about wire center, they're talking about
4 the wire center service area rather than the wire center
5 itself?

6 A. They talk about it two ways. One you
7 collocate at a wire center and that's at the central office
8 building. When you talk about the serving area, though,
9 you're right, it's the entire geographic area.

10 Q. When they're talking about the geographic
11 delineation that we're setting forth in this phase?

12 A. That's correct, your Honor.

13 Q. Okay.

14 A. UNE-P is basic -- let me start with UNE-L.

15 Q. Okay.

16 A. And we'll build to UNE-P, if that would be
17 okay.

18 Q. That's fine.

19 A. Is basically just an unbundled loop. CLECs
20 can get access to a variety of different kinds of unbundled
21 loops and, in general, they have two means for that access.
22 They can either collocate in the central office and get
23 access to a loop in that manner, or they can use extended
24 enhanced loops, EELs, to get access to the loops and
25 transport those back to another collocation site. That

1 allows them to avoid the fixed cost associated with
2 collocation in those areas where they might not have as high
3 volumes.

4 Q. UNE-Ps?

5 A. UNE-P is basically the combination of
6 unbundled loop and un-- and an unbundled switching, and it's
7 called just the UNE platform because it is a combination of
8 those two. It also includes access to shared transport.

9 Q. And UNE stands for unbundled network element?

10 A. That's correct.

11 Q. Central office?

12 A. Central office is analogous to a wire center
13 building, in essence. You have a central office switch
14 that's located housed at the wire center. They're just
15 common terms for the same thing.

16 Q. Okay. Now, explain to me the network
17 configuration in which there is an exchange that has more
18 than one wire center or central office in it. How's that
19 set up?

20 A. If you're talking about, say, a metropolitan
21 area, for example.

22 Q. Before you answer that, let me ask you to
23 clarify that. Are there any exchanges in Missouri that have
24 more than one wire center that are not metropolitan areas?

25 A. I believe there are some two-exchange wire

1 centers that are pretty small, and I don't know whether
2 you'd classify them as a metropolitan area or not.

3 Q. Okay.

4 A. I'd have to go back and check the list to see
5 exactly which -- where those are, but there's some two-wire
6 centers that are in larger towns, but I don't know if they'd
7 qualify necessarily as a metropolitan area.

8 Q. Okay.

9 A. Certainly not an MSA.

10 Q. Okay. Do you know where in the record that
11 information would be?

12 A. It is located, I believe, in Staff -- as an
13 attachment to Staff. They included the exchange
14 information, along with some updates that -- that we
15 provided -- correction -- I provided in my rebuttal
16 testimony.

17 Q. And that will show the number of wire centers
18 per exchange?

19 A. It should in most cases. I'm trying to
20 remember. I need to look at that again, your Honor, to see
21 if Staff included all of the exchanges. I believe what they
22 did is they took my Schedule 2HC and put the exchanges on
23 there. So from that, you should be able to see those
24 two-wire center exchanges.

25 Q. Okay.

1 A. Now, in any network, whether it's a CLEC
2 network or an ILEC network, or if you want to look at just
3 the general public telecommunications network, you have
4 switches, and those switches, as we indicated at a wire
5 center level in the ILEC network, are connected to loops.
6 In turn, the switches are connected to each other with
7 transport. And that's just basic network architecture.

8 So a loop gets you to the switch and you can
9 draw a dial tone from the switch. Then you can give basic
10 dialing instructions, if you will; you dial into the switch
11 to tell it where you want to reach your call, and it uses
12 transport to get to another switch where, again, that switch
13 purpose there is, identify the loop that you're calling and
14 put ring current on that loop to ring the phone.

15 In the case of CLEC and ILEC networks, we also
16 interconnect. The fundamentals are all basically the same.
17 CLEC networks access a loop. The way they do that, as we
18 indicated before, is through collocation in an ILEC central
19 office or through EELs or through the provision of their own
20 loops, those three methods. Then they interconnect in
21 connection -- or in compliance with federal law.

22 We have interconnection agreements -- and
23 state law. We have interconnection agreements that
24 determine how we interconnect our networks and how we
25 exchange traffic between an ILEC and a CLEC customer.

1 Q. And then I think the last thing that I'd like
2 you to define is an exchange.

3 A. Exchange is really not -- let me do this two
4 ways. One is exchange sometimes is used in this business to
5 talk about a wire center. And we can talk about the
6 Chesterfield exchange, and in that case we might be talking
7 about the wire center. In fact, in that case, I believe
8 that's a single wire center that is a single exchange. An
9 exchange is not really a network term, though. It's a
10 regulatory term, state regulatory term, where my
11 understanding is that you have areas that are grouped
12 together from a local rate perspective.

13 Q. So really it's a rate concept rather than a
14 hardware concept?

15 A. That's correct.

16 JUDGE MILLS: Okay. I think that sort of
17 fills in the foundation for some of the testimony that was
18 kind of lacking, and that's really all the questions I have.
19 So at this point we will go for further cross-examination
20 based solely on questions from the Bench, beginning with
21 CenturyTel.

22 MR. DORITY: No questions, Judge Mills.

23 JUDGE MILLS: Sprint?

24 MS. HENDRICKS: None, your Honor.

25 JUDGE MILLS: Public Counsel is not here this

1 morning. Staff?

2 MR. WILLIAMS: Thank you, Judge.

3 RECROSS-EXAMINATION BY MR. WILLIAMS:

4 Q. Good morning, Mr. Fleming.

5 A. Good morning.

6 Q. Do you recall that in responses you made to

7 questions that Commissioner Murray asked regarding the

8 Staff's proposal to define the relevant geographic market

9 for purposes of determining if CLECs are impaired in

10 competing with ILECs if they do not have access to local

11 switching from the ILEC as an unbundled network element and

12 a total element long-run incremental cost price, you equated

13 the Staff's use of the term "exchange" with the term "wire

14 center"?

15 A. In some cases -- in some cases the Staff's

16 exchanges are single-wire center units.

17 Q. Is that true in all cases?

18 A. No, it's not.

19 Q. And, in fact, aren't the Springfield, Kansas

20 City and St. Louis exchanges made up of multiple wire

21 centers?

22 A. Those three exchanges are, yes.

23 Q. And are those -- the wire centers in those

24 exchanges accurately reflected in Staff Witness Thomas

25 Schedule 3, as modified by your testimony on page 15 of your

1 direct testimony at lines 6 through 16?

2 A. I believe it was in my rebuttal testimony.

3 Q. I'm sorry. You're correct. That would be
4 your rebuttal.

5 A. It was on page what now?

6 Q. I believe 15 at line 6 through 16.

7 A. Yes, that's correct.

8 Q. And Lewis has covered some definitions that I
9 intended to cover with you also. There have been a number
10 of terms that have been used in testimony presented to the
11 Commission, including in responses to questions from
12 Commissioners, including wire center, exchange, MCA, MSA and
13 LATA.

14 What I want you to do -- I'm not sure if it's
15 going to be best to take it term by term or to do them in
16 the aggregate, but what I'd like for you to do is explain
17 wire center relative to exchange, MCA, MSA and LATA.

18 A. Let me make sure I'm doing what you're asking
19 me to do. You want me to explain the relationship between
20 wire centers and exchange, MCA, MSAs and LATAs?

21 Q. Yes.

22 A. Okay. I'll do my best. Wire center, as we
23 just discussed, is basically a term -- it's a network term,
24 and I think I've already identified that, so I won't go back
25 over that ground again. But exchange, we also talked about

1 that that's a regulatory rate-based term rather than a
2 network architecture term.

3 As was indicated in Staff's testimony and
4 their attachment as modified by my rebuttal testimony, an
5 exchange can be comprised of multiple wire centers or it can
6 be comprised of individual wire centers. If you'll wait
7 just one second, please. In my rebuttal testimony, what I
8 indicated is of the 160 exchanges in SBC Missouri, 149 or 93
9 percent are individual wire centers.

10 Now, the MCA and MSAs are two different areas
11 from definitional -- from a definitional perspective. The
12 definition of an -- of an MSA is included in my direct
13 testimony. If you give me a second, I'll find that. An MSA
14 is a metropolitan statistical area.

15 And on page 7 of my testimony, starting at
16 line 2, I describe that in its June 6, 2003 bulletin, OMB
17 Bulletin No. 0304, the Office of Management and Budget, OMB,
18 defined an MSA as having at least one urbanized area of
19 50,000 or more population plus adjacent territory that has a
20 high degree of social and economic integration with the
21 core, as measured by community class.

22 So basically an MSA is a fairly large area.
23 It's comprised or defined by counties, and the relationship
24 between the two is there are multiple wire centers located
25 within an MSA.

1 Q. Would that be true of exchanges also?

2 A. It would be true of some exchanges, but not
3 the majority of exchanges. The majority of exchanges are
4 single wire center exchanges.

5 Q. Let me ask the question this way: Would an
6 MSA contain multiple exchanges?

7 A. Yes, it would. Yes, it would. MCA is a
8 metropolitan calling area. Just if you look at them on an
9 overlay of area -- and I think we had -- I don't know
10 whether we -- you asked us, Judge, last time to submit these
11 as exhibits; is that correct?

12 JUDGE MILLS: And I believe Mr. Lane pointed
13 out that those are already exhibits.

14 THE WITNESS: Okay.

15 JUDGE MILLS: Or at least some of them. Mr.
16 Lane, go ahead and correct me.

17 MR. LANE: I'm sorry. No, they're not. We
18 have copies of three of them, the three MSAs. I can offer
19 those at your pleasure.

20 JUDGE MILLS: Well, since the question seems
21 to be heading there, why don't we do that right now?

22 This will be Exhibit 27.

23 (EXHIBIT NO. 27 WAS MARKED FOR IDENTIFICATION
24 BY THE REPORTER.)

25 JUDGE MILLS: Go ahead, Mr. Lane. I'm sorry

1 -- Mr. Fleming.

2 THE WITNESS: As you can see from these charts
3 that are marked Exhibit 27, the red portion, the red thick
4 line defines the MSA boundary. The dark blue line defines
5 the MCA boundary. So as you can see, for St. Louis, for
6 example, the MSA boundary includes more wire centers than
7 the MCA. Similarly in -- excuse me. In the Kansas City,
8 the MSA boundary is larger than the MCA. The MCA is a
9 little bit more compressed geographic area. They don't
10 match up exactly, but they're close. And then in
11 Springfield again, the MSA boundary is larger than the MCA,
12 but they both are comprised of multiple wire centers.

13 I think your last question was about LATAs?

14 BY MR. WILLIAMS:

15 Q. Yes.

16 A. LATAs are local access transport areas. They
17 were set, I believe, around divestiture to define areas
18 within which the regional Bell operating companies could
19 originate and terminate calls. And they tend to be
20 extremely large areas. If you'll give me a second, I can
21 see if I've got a map and I can get more specific.

22 I'm sorry. I don't have a LATA map here. Is
23 that a LATA map there?

24 Q. I believe on this exhibit up in the upper
25 right-hand corner.

1 A. That looks like it appears that -- that's a
2 bit of an eye test. Could I see it a little bit closer? I
3 know you don't want to approach too close. I understand
4 that. That's okay.

5 So it shows that we have four LATAs in the
6 state. Jefferson City/Columbia market service area is what
7 that's called. So you have St. Louis, Kansas City and
8 Springfield, and then it's showing there's a service area
9 for Jefferson City. Those tend to be much larger areas,
10 encompassing large regions of the state, including
11 metropolitan and large areas of rural -- well, large rural
12 areas as well.

13 Q. When you say large, are you saying for the
14 most part they're larger than MSAs?

15 A. Yes, LATAs are definitely larger than MSAs in
16 the state of Missouri.

17 Q. And MSAs are larger than exchanges?

18 A. MSAs are larger than MCAs which are larger
19 than exchanges.

20 Q. And exchanges are either the same size or
21 larger than wire centers?

22 A. Yes.

23 Q. And I believe it was established earlier in
24 your testimony that MSAs do not -- you cannot find MSAs as
25 an increment that would cover the entire state of Missouri

1 geographically?

2 A. That's true. The state is made up of -- from
3 the OMB's perspective, it's -- there's MSAs, there's
4 micropolitan statistical areas, and then there's areas that
5 are not included in any statistical category from the OMB's
6 perspective.

7 Q. And if you use the metropolitan calling area
8 as your increment, would you be able to cover the entire
9 state with MCA?

10 A. The entire state is not covered with MCAs.
11 However, I don't think that that is necessary nor did the
12 TRI -- TRO require that. TRO only required that whatever
13 you select for an area to look at impairment, that you use
14 that same geographic market area for trigger and the
15 potential analysis and the batch hot cut.

16 Q. If you use the exchange as your unit, would
17 you be able to cover the entire geography of the state of
18 Missouri?

19 A. I would assume so, yes.

20 Q. And is the same true of wire centers?

21 A. There's wire centers all the way across the
22 state, yes. That's correct.

23 Q. If I wanted to find where a wire center was
24 located, the footprint of it, where would I get that
25 information?

1 A. You're talking about the entire serving area?

2 Q. I'm saying for a particular wire center, if I

3 wanted to find out the lines, the loops, what areas are

4 covered, you indicated that for MSAs you would vary the

5 geography of the MSA depending upon where the switch was

6 located for a wire center. You would modify the boundaries

7 of the MSA for Bell's proposal?

8 A. I don't think I said I'd modify the boundaries

9 of the MSA. What I said is the market would be comprised of

10 those wire centers whose switch were located in the MSA,

11 inside the MSA.

12 Q. That would cover a particular geography?

13 A. That's correct.

14 Q. And if I wanted to know what the geography was

15 of one of those particular wire centers, where would I

16 obtain that information?

17 A. I don't know the answer to that.

18 Q. What about for an MS-- or an exchange?

19 A. I would assume that the state tariffs tell you

20 the names of exchanges, but I don't believe in the tariff

21 they show you a map to tell you exactly where the dividing

22 lines are between the two, between two exchanges, for

23 example.

24 Q. And where would I find a definition -- or find

25 the area covered by an MCA?

1 A. The MCA, again, I would assume that that's
2 state tariffs.

3 Q. And I believe you've already covered earlier
4 in your testimony how you define an MSA.

5 I know in responses to questions from
6 Commissioners you referred to economies of scale and scope.
7 What is your understanding of the term "economy of scale"?
8 And perhaps an example would illuminate.

9 A. The TRO defines economy of scale as basically
10 the ability to provide service or spread a cost over more
11 consumers. So there's a formal definition in the TRO, if
12 you'd like me to provide that.

13 Q. I think your answers are adequate. What about
14 economy of scope?

15 A. Economy of scope is where you can reduce the
16 cost or spread the cost over a wider -- over a wider
17 spectrum by virtue of being able to offer more services with
18 the same facilities.

19 Q. A wider spectrum of?

20 A. Of consumers. Basically, you just spread your
21 costs because you're able to offer more services using the
22 same facilities. So a good example of that is where we're
23 talking about the DS0 cutoff, using DS1 loop, you can
24 provide not only voice services, but you can provide data
25 service as well.

1 MR. WILLIAMS: No further questions at this
2 time.
3 JUDGE MILLS: Thank you. Mr. Magness?
4 MR. MAGNESS: Thank you, Judge Mills.
5 RECROSS-EXAMINATION BY MR. MAGNESS:
6 Q. Good morning, Mr. Fleming.
7 A. Good morning, Mr. Magness.
8 Q. If we could return to the map where you were
9 with Nathan -- Mr. Williams a moment ago. Again a couple of
10 things, really, to understand it. The dark blue line --
11 let's look at the St. Louis MSA that's on page 1.
12 A. Okay.
13 Q. That dark blue line is -- represents an MCA?
14 A. That's correct.
15 Q. Okay. And I know you defined it a moment ago.
16 Is the MCA similar to MSA, in that it's defined by OMB?
17 A. No.
18 Q. Okay.
19 A. No, it's not.
20 Q. Okay. Well, does the -- the MCA follow
21 exchange boundaries -- or I'm sorry -- wire center
22 boundaries?
23 A. Yes.
24 Q. Okay. And is that going to be true in all
25 cases?

1 A. Yes.

2 Q. The gray areas that you have identified, say,
3 on the St. Louis map here, all of the smallest units that
4 you have identified are by wire center, correct?

5 A. You're saying the subdivisions within the dark
6 blue line?

7 Q. Take that for example. Yes, sir. I guess the
8 question I'm asking is, if you have -- you know, this map
9 goes from smaller to larger increments of area. The
10 smallest one that is here, those are all wire center
11 boundaries?

12 A. Yes, sir. That's correct.

13 Q. As opposed to county boundaries or something
14 else?

15 A. Yes, sir, that's correct.

16 Q. And so the wire centers, for example, in St.
17 Louis, if you look to the far left, I guess the westernmost,
18 that, say, the wire centers that are cut in half by an MSA,
19 that's because the MSA boundaries, as they're drawn, just
20 don't follow telecommunications boundaries; is that correct?

21 A. The MSA boundaries follow county lines.

22 Q. Okay. On the -- off the maps, on
23 Issue 2, I guess, the cutoff or cutover issue, Commissioner
24 Murray had some questions for you about what -- correct me
25 if I'm wrong -- I think you referred to as the default

1 four-line rule?

2 A. Okay.

3 Q. Is that -- do you remember that?

4 A. (Witness nodded.)

5 Q. Okay.

6 A. Yes.

7 Q. Thank you. I want to take you to the place in
8 the Triennial Review Order, if you have that with you this
9 morning. I think, as we established in talking about this
10 last week, there's really just two or three sentences and a
11 footnote or two that refer to that in 600 pages. I take you
12 to paragraph 497. Let me know when you've arrived at
13 paragraph 497.

14 A. Okay.

15 Q. In paragraph 497, there is a Footnote 1545.
16 Do you see that?

17 A. Yes. I didn't discuss that with the
18 Commissioner, but I see it.

19 Q. Okay. And the footnote reads, because the
20 previous carveout only applied where new -- quote, unquote,
21 new EELs, E-E-L small s, were made available and because
22 this Commission allowed state commissions to require
23 switching to be unbundled even in areas where the carveout
24 test was met, it appears that the four-line carveout was
25 adhered to in very few areas of the country. Do you see

1 that text?

2 A. Yes, I see that.

3 Q. And it references SBC reply at 30. Do you see

4 that?

5 A. Yes.

6 MR. BUB: Your Honor, I need to pose an

7 objection here. I think this goes beyond the scope of the

8 questions from the Bench.

9 JUDGE MILLS: Mr. Magness, do you have a

10 response?

11 MR. MAGNESS: Yes, your Honor. There were a

12 number of questions from the Bench that had to do with the

13 applicability of what Mr. Fleming and SBC referred to as the

14 four-line carveout or four-line default that provided the

15 entire basis for the analysis Mr. Fleming has done of this

16 issue.

17 And these few sentences and footnote are the

18 only things in the entire order that reference that

19 so-called default. So I think it's very fair cross to go

20 back to the issue Commissioner Murray raised about the

21 applicability of that so-called default.

22 JUDGE MILLS: I do recall the questions about

23 the default, and I believe this is within that scope.

24 Objection is overruled.

25 MR. MAGNESS: Okay. I'm going to brave the

1 elements and approach the witness with --

2 THE WITNESS: You're on your own.

3 BY MR. MAGNESS:

4 Q. Okay. To save us a minute, Ms. Mulvany's
5 going to distribute a copy to the parties. Mr. Fleming,
6 what I've provided you -- and I've provided copies to the
7 Bench.

8 What I've provided you is the full text of
9 what's entitled Reply Comments of SBC Communications Inc.,
10 which is an FCC filing in the -- just for shorthand
11 purposes -- in the triennial review proceeding. I believe
12 this is the SBC reply that is referenced in Footnote 1545.
13 I've also provided to the parties and to you, Mr. Fleming,
14 an excerpt, which is the front page, which shows this is the
15 reply comments, and I've provided page 30 and page 113 of
16 that document.

17 And I'd like to -- if you could turn your
18 attention to page 30, which is the page cited by the FCC for
19 this proposition that the four-line carveout was not adhered
20 to, I've highlighted a section where this is addressed,
21 which -- let me just read that section for purposes of the
22 record and we can discuss it.

23 ZTel -- references one of the members of our
24 CLEC Coalition. ZTel, the only other CLEC even to purport
25 to present empirical evidence, claims that the unbundled

1 switching restriction has reduced levels of mass market
2 competition in CLEC switch deployment, but ZTel's studies of
3 unbundled switching restriction are completely meaningless
4 because, as a practical matter, that restriction has not
5 been in effect in the vast majority of the country.

6 SBC, Verizon and QWest all have continued to
7 provide unbundled local switching throughout their
8 territory, and did so throughout the period in ZTel's
9 analysis, even to customers to whom the restriction applies.

10 Do you see that language, sir?

11 A. Yes, I do.

12 Q. Okay. And do you have any reason to quarrel
13 with me that these are the reply comments of SBC

14 Communications --

15 A. No, I do not.

16 Q. -- in the triennial review?

17 Okay. And I'd ask you to turn your attention
18 to page 113 and, again, I've highlighted some text here at
19 the bottom where it says, indeed the limited and conditional
20 carveout that the Commission established covered only 2
21 percent of SBC wire centers and 3 percent of its switched
22 access lines.

23 There's then a Footnote 404. That footnote
24 reads, this carveout was so limited that SBC
25 and most other BOCs chose not to meet onerous conditions

1 necessary to qualify for it. Do you see that, sir?

2 A. Yes.

3 Q. Okay. The sentence after these reply comments
4 are cited in the FCC order reads, as part of their analysis,
5 we expect states to make a finding of whether or not the
6 carveout was in effect.

7 Based on what SBC told the FCC, what is your
8 testimony as to whether -- what the Missouri Commission
9 should do as far as a finding of whether or not the carveout
10 was in effect in Missouri?

11 A. The footnote says, as you pointed out, that as
12 part of the analysis the state should make a finding.
13 However, the footnote doesn't say what they should do with
14 it, and --

15 Q. I'm sorry, Mr. Fleming. I guess really the
16 only question I had for you this morning was, this
17 Commission's been asked by the FCC to make a finding as to
18 whether or not the carveout was in effect.

19 I'm asking you, as the SBC witness on this issue,
20 what should that finding be? Was it in effect in Missouri
21 or was it not?

22 A. Oh, had SBC implemented it or not, is that
23 your question?

24 Q. My question is, what should the Commission's
25 finding be as to whether or not the carveout was in effect

1 in Missouri?

2 A. The carveout had not been implemented in
3 Missouri.

4 Q. Well, so was it not in effect?

5 A. I think you want me to say that it was not
6 applicable. It was applicable, but it had not been
7 implemented by SBC.

8 Q. Well, Mr. Fleming, really all I'm asking is
9 that the Commission has been asked to make a particular
10 finding by the FCC. SBC told the FCC that this carveout was
11 meaningless because it hadn't been implemented, SBC never
12 put it into effect, there would be onerous conditions that
13 they weren't willing to meet.

14 I'm asking, is there any basis whatsoever for
15 a finding that the carveout was in effect in Missouri?

16 A. No, it had not been implemented by SBC.
17 That's true.

18 Q. So there was no basis -- this Commission has
19 no basis in the record for finding that it was in effect?

20 A. Not that it had been implemented. It was
21 still applicable, but SBC had not -- had not activated it
22 simply because of the onerous conditions.

23 Q. Well, what's the difference to you between it
24 being implement and it being in effect?

25 A. It may be a semantical difference that we're

1 having just communicating back and forth.

2 Q. Okay.

3 A. I guess from my perspective --

4 Q. Could you explain the semantic difference,
5 because that's the part I'd really like to be clear about in
6 the record.

7 A. Right. I'd be glad to. This particular
8 footnote is puzzling. It's one of those that is less clear
9 to me why the FCC would ask the Commission to do this,
10 because -- and the problem that I'm having with it is, some
11 may think that the intent of this is clear, that it should
12 modify whether the -- whether the state commission should
13 use the default value or not.

14 Q. Excuse me. Mr. Fleming, where is the term
15 "default value" ever used in the discussion of this
16 carveout?

17 A. Let me restate that. It's generally the
18 carveout is associated with the default value from the FCC's
19 perspective. It's -- the cutoff will be four line absent
20 significant evidence to the contrary. In essence, that's my
21 issue with it. If the FCC had been intending to say that --
22 for example, the sentence before says, we expect in those
23 areas where the switching carveout was applicable, i.e.,
24 Density Zone 1 of the top 50 MSAs, the appropriate cutoff
25 will be four lines absent significant evidence to the

1 contrary.

2 If the FCC really felt that if SBC hadn't
3 implemented this, it shouldn't be considered by the
4 Commission, it would have been very easy just to modify that
5 sentence. So this footnote's puzzling to me. I'm not sure
6 what they're trying to do with it, but it does not seem to
7 me that it's not intended to say that it modifies whether
8 the Commission should consider the carveout.

9 Q. Well, let me make a suggestion as you try to
10 puzzle through it. If you look at the sentence in the
11 paragraph 497 -- and I hate that we have to go down this
12 road of semantics on particular sentences, but since there's
13 only two sentences in the entire order that are the basis
14 for this default claim, I'm afraid we have to.

15 We expect that in those areas where the
16 switching carveout was applicable. Now, was applicable
17 means past tense, right? Is that fair? Where it was
18 applicable, this order was issued in August, so do you think
19 it's safe to assume, common English usage, they meant that
20 it was applicable in August of 2003?

21 A. That's fair.

22 Q. Okay. So they're saying if it was applicable,
23 then the cutoff would be four lines absent significant
24 evidence; is that fair?

25 A. Okay.

1 Q. Okay. So the "if then" statement relies on an
2 if of it being applicable. It was not implemented in effect
3 or in application in Missouri on August of 2003, was it?

4 A. There's where we're probably going to have to
5 agree to disagree. I believe that it was applicable in
6 Missouri. It had not been implemented in Missouri.

7 And I think if the FCC had intended that
8 footnote to say what you're implying, it could have simply
9 just changed the sentence. There's no reason why they would
10 have needed it to read the way that it did. In fact, the
11 footnote doesn't even reference that sentence. It
12 references the next sentence, which makes it even more
13 puzzling.

14 Q. Well, then, what do you suggest the Commission
15 do about this finding that the FCC fairly clearly said the
16 Commission needs to make? As part of their analysis, we
17 expect states to make a finding of whether or not the
18 carveout was in effect.

19 Isn't it fair to think that they asked for a
20 finding because they needed to know whether it even had any
21 application whatsoever in the future, going forward?

22 A. No, I'm not sure that it means that. It may
23 have been that they want the Commission to consider whether
24 the terms were, in fact, onerous and that's what kept it
25 from being implemented and whether with

1 a -- different terms, for example, the FCC decided not to
2 connect this with the provision in EELs, where they might
3 have a different result altogether.

4 Q. So all those things that you just said, that's
5 your view of what the FCC meant when it said, as part of
6 their analysis, we expect states to make a finding of
7 whether or not the carveout was in effect?

8 A. Actually, my opinion of what they said is,
9 I've still got a little bit of puzzle of why they put that
10 in there at all. It just seems clear to me that if they
11 were intending to indicate that the switching carveout
12 should be considered only where SBC had implemented this,
13 they would have said so clearly in the text of the order,
14 rather than a footnote just saying that they needed a
15 finding about something.

16 Q. And if it was crystal clear in this order that
17 this was a default, would you have expected the FCC to say
18 that the four-line rule is a default?

19 A. I'm not sure that I'm following you. I'm
20 sorry.

21 Q. Okay. Well, the FCC tells the commissions in
22 the rule and they describe to the state commissions in
23 paragraph 497 the analysis they are to undertake to
24 determine the multi-line cutoff, do they not?

25 A. Yes, sir.

1 Q. And I think we both agreed last week that if
2 the state commission in Missouri didn't undertake that
3 analysis, this Commission would be in violation of the FCC
4 rule, right?

5 A. Could you ask the question again? I'm sorry.

6 Q. Sure. I think we agreed last week when we
7 were discussing this that if the state commission in
8 Missouri didn't undertake the analysis that's in the FCC's
9 rule concerning the multi-line cutoff at all, that would be
10 a -- they wouldn't be in compliance with the FCC rule.
11 Would you agree with that?

12 A. That's right. They were instructed to do this
13 as part of their analysis. We talked about that the last
14 time. So they've been instructed to do the DS0 cutoff, to
15 make that as part of their analysis, and the FCC said in
16 that analysis, absent significant evidence to the
17 contrary -- and I would assume that would be from their
18 analysis -- we expect you to use our carveout in these
19 areas.

20 Q. Where it was in effect?

21 A. Where it was applicable.

22 Q. Where it was applicable.

23 JUDGE MILLS: Mr. Fleming, pardon me for
24 interrupting. I understand you're not feeling well this
25 morning. If you would like to take a recess at any time,

1 just wave at me or whatever and we'll take a recess.

2 THE WITNESS: Five minutes wouldn't be bad.

3 MR. MAGNESS: Actually, I don't have any more
4 for Mr. Fleming.

5 JUDGE MILLS: Let's go off the record for a
6 five-minute recess.

7 (A BREAK WAS TAKEN.)

8 (EXHIBIT NO. 28 WAS MARKED FOR
9 IDENTIFICATION.)

10 JUDGE MILLS: Mr. Lumley?

11 MR. LUMLEY: Thank you, your Honor.

12 RECROSS-EXAMINATION BY MR. LUMLEY:

13 Q. Mr. Fleming, first, are you familiar with the
14 terms "host" and "remote"?

15 A. Yes.

16 Q. Can you explain how those relate to switches
17 in the telecommunications network?

18 A. In some cases -- in some cases you can serve
19 an area without putting a full switch complement in that
20 area. You can use what's called a remote switch, which
21 basically uses a host to do some of the more complex
22 processing, and generally also provides the trunking to
23 other exchanges, other wire centers.

24 Q. Okay. So does a remote switch constitute a
25 wire center unto itself?

1 A. It can be used in different ways. In some
2 cases, it can be the wire center switch, yes, sir.

3 Q. So there could be situations where there's
4 multiple switches and it's within an exchange and it's
5 considered one wire center?

6 A. I think we've both been guilty of using that
7 exchange and wire center term -- and I'm sorry. I started
8 it. But within a wire center it is possible to have more
9 than one switch serving an area. It can be for a variety of
10 reasons. It could be that you were serving it with an older
11 technology switch and you capped that older technology and
12 you do your growth with the newer technology switch.
13 There's a variety of reasons why you might have multiple
14 switches.

15 Q. At page 226 of the transcript, you were
16 discussing with Commissioner Murray your analysis in
17 Schedule GAF-6, which is where you're comparing the cost of
18 four DS0s to one DS1. And I just want to clarify that your
19 -- the ultimate conclusion there, you're identifying
20 quantities of revenues at which -- in the different zones at
21 which, if those revenues were derived, it would make -- you
22 would break even, offering a DS1 instead of four DS0s,
23 correct?

24 A. It would be the break-even point. Again, as
25 you said, if you assume increased revenue opportunity, then

1 that would be the break-even point. That would be the
2 amount of revenue you would get -- you would need to have --
3 to reach break even.

4 Q. All right. And would you agree with me that
5 the only pertinent revenues would be revenues that you
6 couldn't get through the use of the DS0s? These have to be
7 new revenues that you could only obtain because you were
8 using the DS1 instead of four DS0s?

9 A. It's got to be incremental revenue,
10 Mr. Lumley. I'm not sure that the question of whether you
11 could get it or not -- I think in the comparison what you're
12 doing is you're comparing four DS0s serving a multi-line
13 voice -- four DS0 voice grade lines serving the customer
14 versus serving them with a DS1.

15 Q. Well, and the fact that you need additional
16 revenues is because it still costs more to have the DS1 than
17 the four DS0s, right?

18 A. Yes, sir, it does.

19 Q. All right. So if you could get additional
20 revenues using the four DS0s, that would make economic sense
21 because they're cheaper? You wouldn't increase your costs
22 if you didn't have to, right, just basic business?

23 A. You wouldn't increase your -- well, again, we
24 need to back up just a little bit. The point of this is to
25 split the market. It's not necessarily what someone is

1 going to do or not going to do. The point of this is the
2 TRO said, you need to do an analysis and determine that
3 point at which it becomes economical. It's not going to
4 dictate to any service provider what they must or must not
5 do in serving that end user customer with their own switch.

6 Q. Let me ask the question a different way, then,
7 to be more clear.

8 A. Okay.

9 Q. For the Commission to evaluate whether or not
10 it's likely that these additional revenues are out there,
11 for example, the \$108 that you need in the first zone,
12 you're really asking to only look at revenues that can only
13 be obtained through the use of a DS1?

14 A. No, not necessarily. No, sir. In some
15 instances -- and I think I explained this when I was
16 speaking to the Commissioner. In some instances there's
17 been a tendency to characterize this as you're looking at
18 four-line customers that may or may not have a need for
19 data, and that would be your whole customer base that you
20 would be going after. But, in fact, you could have a
21 four-line customer out there today that
22 is -- that's getting data from another provider, they might
23 be getting that.

24 If it's DS0 they could be getting that over a
25 DS0 capable loop. But if you win that customer, you'd have

1 an opportunity for incremental revenues and the -- the
2 difference between the T1 and the DS0 is pretty pronounced,
3 as far as what you can offer the customer.

4 Q. And that's my point. You're asking them to
5 consider the opportunity for additional revenues from
6 services that could only be provided if a DS1 was in place
7 instead of four DS0s?

8 A. That's what we're comparing.

9 Q. Thank you. And you've not included any kind
10 of take rate analysis in your study, have you?

11 A. No, it has not.

12 Q. But aren't you asking the Commission to
13 conclude that, on average, if you look at all of the
14 customers, on average they would generate at least
15 this -- in the Zone 1, \$108?

16 A. What I'm asking the Commission to conclude or
17 consider is what the TRO said, and that is, the Commission
18 needs to consider when they're setting the cutoff the point
19 at which increased revenue opportunity could make it
20 economical. It doesn't say that every customer is going to
21 take it or that five out of ten customers or eight out of
22 ten.

23 It's the point where that opportunity would
24 make it more economical to serve the customer with a DS1
25 loop. So if the opportunity is there, I think that would be

1 their consideration whether that opportunity exists or it
2 does not.

3 Q. All right. But you have not supplied any
4 statistical evidence as to whether or not, on average, all
5 of the CLECs' customers in the scenario of implementing the
6 DS1 would generate the \$108 in additional revenues?

7 A. I have not done any statistical studies on
8 that, that is correct.

9 Q. On page 240 of the transcript -- and I think
10 this was just a slip. I'm trying to clarify. You had some
11 questions with Commissioner Murray regarding the boundaries
12 of the MSA and exchanges and what have you, and you said
13 that Staff excludes Clever, Billings, Ash Grove and Walnut
14 Grove. I just wanted to clarify.

15 You would agree with me that Staff is not
16 purporting to restrict the Commission's ability to assess --
17 or to conduct a trigger analysis or a potential deployment
18 analysis in any exchange, are they?

19 A. I'm sorry. I don't see that part of the
20 transcript. So I'm trying to catch up with you from a
21 memory perspective. I don't --

22 Q. Do you have page 240?

23 A. I don't have the transcript with me. I'm
24 sorry.

25 Q. Well, your statement was -- and again, you're

1 talking about the comparison of exchange boundaries and
2 MSA boundaries. Okay?

3 A. Okay.

4 Q. And MCA boundaries, all those discussions, and
5 you said --

6 MR. BUB: Excuse me. I can give him this
7 (indicating).

8 MR. LUMLEY: Thank you.

9 BY MR. LUMLEY:

10 Q. Now that your counsel has provided you with a
11 copy of the transcript, I'm just trying to clarify. When
12 you said Staff excludes Clever, Billings and a couple other
13 exchanges, you would agree with me that Staff's proposal to
14 use exchanges as the market definition, they are not asking
15 the Commission to prejudge or exclude a consideration of any
16 particular exchange for purposes of subsequent trigger
17 analysis or potential deployment analysis, are they?

18 A. Again, I haven't had a chance to read this,
19 but I don't believe Staff was -- that it was their intent to
20 exclude the possibility of doing an impairment analysis.

21 Q. Thank you.

22 A. I'm sorry if that took a long time to get
23 there.

24 Q. That's okay.

25 A. Believe me, I'm sorry.

1 Q. At page 242, you were discussing the decision
2 of a CLEC whether to use a UNE-P or different facilities,
3 and you said, it's a price point issue. Do you see that,
4 the top of page 242? Actually, the pagination's a little
5 off, but -- it's probably actually line 24 of page 241.

6 A. Let me read this for just a second. See
7 what's -- okay.

8 Q. Do you see that?

9 A. Yes, sir.

10 Q. And as you just indicated in a prior answer,
11 the entire analysis that's down the road once we've defined
12 the market is an economic analysis. The potential
13 deployment analysis is an economic analysis and the triggers
14 are a surrogate for that, correct?

15 A. I don't know that the triggers are a surrogate
16 for that. The triggers eliminate the need for any further
17 analysis.

18 Q. Okay. But potential deployment analysis is an
19 economic analysis?

20 A. Yes, it is.

21 Q. So it's a price point issue, ultimately?

22 A. No, I wouldn't agree with that. What I was
23 talking about here is the decision is made whether
24 something's cheaper or not by the price point issue, not
25 whether it's economically feasible. The potential analysis

1 will look at whether it's economically feasible or whether a
2 CLEC is impaired, which is different than whether it's just
3 cheaper.

4 Q. But costs are a significant factor in that
5 analysis?

6 A. Certainly they are.

7 Q. At page 243, lines 11 and 12, you indicated
8 that you couldn't think of any definition that could be more
9 narrow, really, than a wire center in terms of the market
10 definition.

11 Would you agree with me that the FCC has
12 actually used a customer location definition for some of
13 these purposes?

14 A. It has not used a location definition for
15 switching, no, sir.

16 Q. But in the TRO it used customer location as --

17 A. For a loop, simply because a loop does go to a
18 single customer, and it's a fixed facility. A switch, on
19 the other hand, by its nature is used to serve -- as MCI
20 noted, you need to be able to spread that cost over broad
21 numbers of customers. So a wire center in that particular
22 case would be -- as I said, I can't imagine anything much
23 more narrow than that, that would even conceivably be
24 considered.

25 Q. But a customer location market would be more

1 narrow than a wire center market?

2 A. Yes, single customer would be more narrow.

3 Q. Page 244 of the transcript, you're having a
4 discussion with Commissioner Murray regarding her questions
5 about whether or not a wire center market definition would
6 require the establishment of a switch at every wire center.
7 Do you recall that part of the exchange?

8 A. Yes, I do.

9 Q. And you would agree with me that the FCC has
10 made it very clear that the physical location of a switch is
11 not pertinent?

12 A. That's correct.

13 Q. And so the Commission could consider or
14 conduct a trigger analysis or potential deployment analysis
15 in a wire center market and look at a switch that was
16 located physically outside that wire center?

17 A. Yes, certainly that's true.

18 MR. LUMLEY: That's all my questions, Judge.

19 JUDGE MILLS: Thank you. Ms. Mudge?

20 RECROSS-EXAMINATION BY MS. MUDGE:

21 Q. Are you all right, Mr. Fleming?

22 A. Yes.

23 Q. Okay. Mr. Fleming, let me ask you to -- you
24 do have a copy of the transcript in front of you, do you
25 not, sir?

1 A. Yes, I do.

2 Q. Would you look at page 223 of the transcript,
3 please, sir.

4 A. (Witness complied.)

5 Q. Are you there, sir?

6 A. Yes, ma'am.

7 Q. And this is a -- you were having an initial
8 discussion with Commissioner Murray with respect to
9 basically sort of the implications of the DS1 cutoff. Do
10 you see that?

11 A. Could you point me to a line, please?

12 Q. Surely. The -- Commissioner Murray's question
13 starts on -- actually on the bottom of
14 page 222. It goes to lines 1 through 4 of page 223. Do you
15 see that?

16 A. Yes, I do.

17 Q. And your answer -- and I want to make sure
18 that I read this correctly, so do you have that answer in
19 front of you, which are on lines 5 through 11?

20 A. It may be a difference in line numbers. Mine,
21 the answer starts on line 9 and says, yeah, the cutoff
22 actually is. Is that where you're --

23 Q. No, sir.

24 MS. MUDGE: May I approach the witness, your
25 Honor?

1 JUDGE MILLS: Yes, you may.

2 MS. MUDGE: Thank you.

3 JUDGE MILLS: I think some of us have

4 differently paginated transcripts. I've got an electric

5 version I'm trying to follow along on and it doesn't track

6 as well.

7 BY MS. MUDGE:

8 Q. To make it clear for the record, then, let me

9 read the question of Commissioner Murray, which is at the

10 very beginning -- in fact, I believe it was the first

11 question that was asked of you, and the question is, let me

12 just start with that last question. Is it accurate that

13 above the cutoff level a CLEC could continue to serve the

14 customers with four lines or more without going to DS1 but

15 just as the CLEC would not be able to get the TELRIC

16 pricing. Do you see that question?

17 A. Yes, ma'am, I do.

18 Q. Let me make sure, then, that we get the

19 answer. Again, correct me if I'm wrong in terms of reading.

20 Your answer is, I think all this discussion back and forth

21 has kind of muddled the issue -- this issue. The cutoff is

22 solely an issue for the impairment analysis. A CLEC can

23 choose to serve however they want. This economic cutoff is

24 just a point to draw a line between the mass market and an

25 enterprise. It's not going to dictate to any CLEC how they

1 choose to serve a specific customer.

2 Did I read that accurately?

3 A. Yes, you did.

4 Q. And I believe in response to some questions of

5 Mr. Magness, I believe that you also used that last sentence

6 generally, again, that the cutoff is not going to dictate to

7 any CLEC how they choose to serve a specific customer. And

8 as I recall in your answer, you also added for a CLEC that

9 owns its own switch. Is that accurate?

10 A. Yes, that's accurate.

11 Q. So this particular response when you were

12 talking about a CLEC, you were talking about a CLEC that

13 owned its own switch, correct?

14 A. Certainly in that second question I did

15 dictate that it's one that owns their own switch. I believe

16 also in response to that it's true -- it's true as well,

17 simply from the fact that we're still required to provide

18 unbundled access to switching, according to 271.

19 Q. All right.

20 A. It's just at a different price.

21 Q. Right. And thank you for that clarification.

22 So with respect to a UNE-P carrier and a UNE-P CLEC that

23 does not own its own switch, a decision as to the specific

24 cutover will dictate that that CLEC will no longer get

25 unbundled local switching at the TELRIC price, correct?

1 A. That's my understanding of it, yes, ma'am.

2 Q. And it will dictate that, upon that finding,

3 that UNE-P CLEC has to determine what other options it has

4 in order to continue to provide service to that customer

5 that is above or is now considered an enterprise customer,

6 correct?

7 A. That's correct. In markets where -- in

8 markets that are found to continue to be impaired for the

9 mass market, it would be applicable for enterprise

10 customers, then unbundled switching and TELRIC prices would

11 not be available to -- for serving enterprise customers.

12 Q. So one of the options is, is to -- for that

13 UNE-P CLEC is to determine if it is -- continues to be

14 economical to serve that enterprise customer at a yet

15 undisclosed market rate, correct?

16 A. Yes. And there's a transition period that the

17 FCC set up. It's about a 27-month transition period in

18 which to transition to whatever's next.

19 Q. And I appreciate that, but I'm talking about

20 the type of decisions that have to be made, and if we could

21 stay with that, I think I'll be done quicker.

22 A. Okay.

23 Q. Then the UNE-P CLEC also has, I guess, as a

24 second option to ascertain whether it's economical to

25 purchase a switch, and along with the switch, basically all

1 the other facilities and resources that are required to
2 provide continued service to that customer, correct?

3 A. It would need to make a buy-or-lease-type
4 decision, I would assume, yes.

5 Q. And the third option, I guess, is to ascertain
6 -- and perhaps this is what you were speaking about in terms
7 of a lease option -- is to ascertain if there is any other
8 competitive carrier or any third party out there that would
9 provide unbundled local switching, correct?

10 A. That's correct.

11 Q. And I don't believe anywhere in your testimony
12 that you have identified any third-party carriers that are
13 willing or currently providing unbundled local switching,
14 did you?

15 A. I have not identified any in my testimony,
16 which -- basically I just didn't identify whether any are
17 out there or not.

18 Q. Okay. Now, would you agree with me, then,
19 sir, that based on those type of decisions that have to be
20 made, that those decisions also ultimately affect that
21 enterprise customer as to who its carrier either is or
22 continues to be?

23 A. Yeah. The enterprise customer, I would
24 assume, would either stay with the same provider or if that
25 provider decided -- or if they decided they wanted to go

1 with someone else, it would be a decision they would make.

2 Q. But it's a decision that the customer is going
3 to have to make?

4 A. Could, yes.

5 Q. Okay. Now, one last question.

6 MS. MUDGE: Judge, have these maps been marked
7 as an exhibit? I just would like to reflect my question
8 accurately.

9 JUDGE MILLS: Exhibit 27, yes, they have been
10 marked.

11 MS. MUDGE: Thank you, sir.

12 BY MS. MUDGE:

13 Q. Do you have Exhibit 27 in front of you, Mr.
14 Fleming?

15 A. Yes, ma'am.

16 Q. I believe that -- I guess my basic question
17 is, the boundaries that are shown, the individual boundaries
18 of the wire centers, do you see those, sir?

19 A. Yes, ma'am.

20 Q. Those are SBC-defined definitions of the wire
21 center geographic area, correct?

22 A. I guess that's a fair characterization. In
23 many cases these were -- the wire centers were established
24 based on population and technical limitations of loop
25 serving capability, but SBC did define those.

1 Q. Okay. I'm sorry. I didn't mean to cut you
2 off.

3 A. That's okay. I was done.

4 Q. And so at least the SBC definition of the
5 geographic area of each of these wire centers is known. I
6 mean, it's public, correct?

7 A. I'm not -- when you say known -- and Staff
8 asked me that question earlier, where would you go to find
9 what the actual boundary is, and I just don't know the
10 answer to that. I'm sorry.

11 Q. But at least what we do know is we can look at
12 Exhibit 27 and identify the basic geographic boundaries of
13 each of the wire centers; isn't that correct?

14 A. Yes. You and I can. I don't know if that's a
15 publicly available document. I just don't know the answer
16 to that. It may be.

17 Q. And Exhibit No. 27, for example, is not a
18 highly confidential report?

19 A. No, ma'am, it's not.

20 MS. MUDGE: All right. And -- okay. Then
21 those are all the questions I have. Thank you, Mr. Fleming.

22 THE WITNESS: Thank you, Ms. Mudge.

23 JUDGE MILLS: Thank you.

24 MS. MUDGE: Thank you, Judge.

25 JUDGE MILLS: Okay. I think we're up to

1 redirect.

2 MR. BUB: Thank you, your Honor

3 MR. MAGNESS: Your Honor, before we leave

4 cross, just as a housekeeping matter, I'd intended to offer

5 the reply comment of SBC Communication that's discussed with

6 Mr. Fleming as Exhibit 28.

7 JUDGE MILLS: Are there any objections to the

8 admission of Exhibit 28?

9 MR. BUB: Your Honor, we would have the

10 foundation objection to that. I think Mr. Fleming testified

11 before that he hadn't seen SBC's comments. I don't think he

12 had identified the document or was familiar with it, so I

13 don't think a proper foundation has been laid.

14 JUDGE MILLS: Mr. Magness?

15 MR. MAGNESS: If I could respond, I asked

16 Mr. Fleming if -- I gave him the entire document, not just

17 the excerpt that I'm asking to admit. He had an opportunity

18 to look at the document. I asked him if he had any reason

19 to believe this wasn't the FCC comments filed by SBC.

20 One other thing I'd add, your Honor, is these

21 specific reply comments are referenced in the Triennial

22 Review Order sections about which Mr. Fleming is testifying.

23 So I think there is a firm foundation on which to admit this

24 exhibit.

25 JUDGE MILLS: I agree. Although I will do

1 this, Mr. Bub. If you want to go back somewhere and verify
2 that this -- what's been marked as Exhibit 28 is an accurate
3 copy, I'll allow you to do that, but I think there is
4 sufficient foundation for it.

5 MR. BUB: No. I don't have any -- I don't
6 think there's a need to do that. I can certainly trust
7 Mr. Magness.

8 JUDGE MILLS: Okay. Then Exhibit 28 is
9 admitted.

10 (EXHIBIT NO. 28 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE MILLS: Also, while we're doing this, I
12 don't believe Exhibit 27, which is the maps we've talked
13 about, has been offered. Would SBC like to offer that now?

14 MR. LANE: Yes, your Honor, we'd offer Exhibit
15 27.

16 JUDGE MILLS: Any objection to the admission
17 of Exhibit 27?

18 (No response.)

19 JUDGE MILLS: Hearing none, it will be
20 admitted as well.

21 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

22 JUDGE MILLS: Okay. Now let's move to
23 redirect.

24 MR. BUB: Thank you, your Honor.

25 REDIRECT EXAMINATION BY MR. BUB:

1 Q. Mr. Fleming, just a few minutes ago you were
2 asked -- in answering some questions from Ms. Mudge, I
3 think, you indicated that -- I think she asked whether you
4 were aware of any CLECs that offered switching on a
5 wholesale basis, and you indicated that you hadn't presented
6 anything in your testimony as to that.

7 Could I direct your attention to your rebuttal
8 testimony, specifically Exhibit GAF-3HC, and caution you
9 that it is an HC exhibit. Are you with me?

10 A. Yes.

11 Q. While in your direct testimony you didn't have
12 any evidence of a wholesale offering by another CLEC, in
13 your rebuttal testimony you did in GAF-3HC offer evidence of
14 a wholesale switching provider that's operating in Missouri;
15 is that correct?

16 A. That's correct.

17 MS. MUDGE: Objection, your Honor.
18 That -- that is not what this sentence says. I believe that
19 the question mischaracterizes the answer and, therefore, I
20 will object. The document speaks for itself as the best
21 evidence.

22 JUDGE MILLS: The document certainly does
23 speak for itself. Mr. Bub, could you rephrase the question
24 to refer more closely to what the document says?

25 MR. BUB: Sure.

1 BY MR. BUB:

2 Q. The question in this document, GAF-3HC, as to
3 the extent your company owns its own switch, state whether
4 your company is currently offering wholesale mass market
5 unbundled local switching to CLECs within the state of
6 Missouri, and that's the question in this attachment to your
7 rebuttal, is it not, Mr. Fleming?

8 A. That's true.

9 Q. And then in that answer you identified one
10 CLEC offering wholesale unbundled service in Missouri; is
11 that correct?

12 A. That's true.

13 Q. Thank you.

14 JUDGE MILLS: Thank you. I think that
15 question and answer sort of moots out the objection.

16 MS. MUDGE: Thank you.

17 BY MR. BUB:

18 Q. Now, Mr. Fleming, I'm going to take you back
19 to last week real quickly, if we could. Sprint's attorney,
20 Ms. Creighton Hendricks, she asked you several questions
21 about various SBC small business offerings. Do you recall
22 that?

23 A. Yes, I do.

24 Q. Exhibit 23?

25 A. Yes.

1 Q. Are you aware of any integrated service
2 offerings that SBC offers to business customers?

3 A. Yes. They have an offering that they call
4 Access Advantage Plus, and that particular offering --

5 MS. HENDRICKS: Your Honor, if I could just
6 stop here. I do object to this question. As I understood
7 Mr. Fleming's earlier testimony when I tried to question him
8 on SBC's product offering, he said he had no knowledge of
9 SBC's products out in the market and that that information
10 was not important to his testimony. I think it's unfair now
11 to give him time to get knowledge and allow a line of direct
12 on a subject matter that he did not have knowledge of when I
13 cross-examined him.

14 JUDGE MILLS: Mr. Bub, do you have a response?

15 MR. BUB: I think he's certainly entitled to
16 look into the product offerings, and if he does have
17 additional information based on what he has seen and what --
18 his research, he's certainly entitled to talk about it. And
19 those offerings were offered in a vacuum. At the time he
20 had not seen those specific advertisements. I think they
21 were promotional offerings and they really didn't reflect
22 the current offerings that SBC makes available to the line
23 of business customers.

24 So I think he's entitled to go back and
25 research what would be an appropriate comparison. And if

1 those came in, which they did, that we're entitled to offer
2 into evidence and put into evidence offers that we have
3 available to that market area, that segment of the market.
4 And I can certainly lay a foundation with Mr. Fleming about
5 where his knowledge came from.

6 JUDGE MILLS: I disagree. I don't think
7 redirect is the point in time at which the witness goes out
8 and gets more information to bolster the case and to answer
9 questions that he could not answer before. So I -- the
10 objection is sustained as to these questions.

11 BY MR. BUB:

12 Q. Okay. Let me change gears here. These
13 questions also go to a few that you received last week
14 concerning how the enterprise versus mass market is defined
15 in terms of lines.

16 I believe Mr. Magness gave you examples of
17 various customers, some that had one, some that had two,
18 some that had five, some that had fifteen-line customers.
19 And Commissioner Clayton also asked you how to define cutoff
20 figure.

21 Could you tell us with respect to the
22 practical application that Commissioner Clayton was asking
23 about, what have you actually seen CLECs doing in the
24 market?

25 A. Yes, I sure can. I've seen -- I've got three

1 examples here of CLECs that are providing integrated access
2 services. One of these is a highly confidential response,
3 and so I'm not sure exactly what I need to do as far as to
4 talk about this. I'll try to talk about it in general
5 terms, but if that's going to be problematic --

6 JUDGE MILLS: Well, I don't know if it will be
7 problematic or not. If we need to talk about highly
8 confidential information, we'll need to clear the courtroom
9 of anyone who shouldn't be here and designate that portion
10 of the transcript as highly confidential.

11 MS. HENDRICKS: Your Honor, I do have one
12 objection to this line of questions before we get into it.
13 My understanding is that Mr. Fleming has already testified
14 about CLEC product offerings in his direct testimony, as
15 well as his rebuttal. Commissioner Clayton's question went
16 to what definition was in the TRO as far as the difference
17 between enterprise and the mass market customer.

18 At this point, as they start talking about
19 additional CLEC offerings, I do think that they're just
20 trying to get more direct testimony that should have been in
21 the prefiled testimony, and I don't see it responds to
22 Commissioner Clayton's question, which specifically went to
23 the definition of enterprise customers in the TRO.

24 JUDGE MILLS: Well, redirect is based on
25 cross-examination, including questions from the Bench, and I

1 don't think that this is outside the scope of the
2 cross-examination. I think this is within the scope of the
3 questions that Commissioner Clayton asked about the
4 differences between -- the difference between a mass market
5 customer and an enterprise customer.

6 So I don't think that this is outside the
7 scope and your objection is overruled, which doesn't really
8 get us anywhere on the highly confidential portion.
9 Mr. Fleming, you're really sort of in charge of that. If
10 you need -- if to answer the question fully you need to get
11 into highly confidential stuff, then we will go in in-camera
12 and clear the courtroom.

13 THE WITNESS: Let me try this, Judge. Let me
14 try just talking about these three -- these three offerings
15 without necessarily identifying that particular -- that
16 particular CLEC and see if we can do it that way and still
17 keep it confidential. Will that work?

18 BY MR. BUB:

19 Q. Mr. Fleming, why don't we start with the easy
20 ones first?

21 A. Okay.

22 Q. Why don't we do the ones that are not HC, and
23 then you can talk about names -- because they're not HC?

24 A. This is -- this first document that I'm
25 looking at is Expedia's Business Solutions and their

1 complete access product, which is an integrated access
2 product. And it says, simply select Internet bandwidth and
3 amount of phone services that suit your needs from 4 to 64
4 lines. So in this instance they're serving this customer
5 with a DS1 and they're saying that they begin that service
6 as low as four lines.

7 Another offering is XO Integrated Access,
8 which again, is an integrated access service similar to what
9 I testified about where service is being provided, a
10 combination of voice and data over a T1 line. In this case,
11 they said, it's flexible to meet individual demands and
12 scalable to grow with your business. Integrated access is
13 ideally suited for any smaller growing company with moderate
14 bandwidth and voice, 6 to 23 line requirements. So those
15 are the two that are public.

16 MR. BUB: Your Honor, if I could make a
17 suggestion for the one that's not public.

18 JUDGE MILLS: Okay.

19 MR. BUB: What he's about to talk about is
20 some information that we got from NuVox on or about January
21 19th, and I'd like to show this to Mr. Lumley to make sure
22 it's okay with him, but one way we can short-circuit this is
23 just to make this into an exhibit, and then we can be
24 finished with this line of questions.

25 JUDGE MILLS: Let's go off the record for a

1 couple minutes while you talk to Mr. Lumley. We're off the
2 record.

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

4 MR. BUB: Your Honor, we'd like to have an
5 exhibit marked, please.

6 JUDGE MILLS: Okay. We're up to No. 29. I
7 assume this is HC.

8 MR. BUB: Yes, your Honor.

9 JUDGE MILLS: So this will be 29 HC.

10 (EXHIBIT NO. 29 HC WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 THE WITNESS: Mr. Bub, may I finish my
13 response now?

14 MR. BUB: Yes.

15 JUDGE MILLS: Go ahead.

16 THE WITNESS: So what we see by all three of
17 these is that these CLECs have apparently found, if you
18 believe the cost analysis that we've seen from Sprint and
19 from AT&T saying it's economic -- the economic breakpoint
20 from their perspective is at 10 to 13, what we found is that
21 there's reason to believe that there are increased revenue
22 opportunities that are leading CLECs to offer this at much
23 lower levels than those cost analysis figures would lead you
24 to believe.

25 BY MR. BUB:

1 Q. Let me back up just one minute, Mr. Fleming.
2 You've been handed Exhibit 29 HC. Would you identify this
3 as a Data Request response SBC Missouri received from NuVox
4 on or about January 19th?

5 A. That's correct.

6 MR. BUB: With that, your Honor, I'd like to
7 move for the admission of Exhibit 29 HC.

8 JUDGE MILLS: Are there any objections to the
9 admission of Exhibit 29 HC?

10 (No response.)

11 JUDGE MILLS: Hearing none, it will be
12 admitted.

13 (EXHIBIT NO. 29 HC WAS RECEIVED INTO
14 EVIDENCE.)

15 MR. BUB: Thank you, your Honor.

16 BY MR. BUB:

17 Q. Last final area, I'd like to go back to
18 Mr. Magness's five-line customer that he referenced last
19 week. I believe it was a law firm that had five lines, no
20 data. Do you recall that line of questioning?

21 A. Yes, I do.

22 Q. And if the cutoff is set at the FCC's default
23 so that four lines and above comprise an enterprise market,
24 if that was the outcome here, could a CLEC still get five
25 unbundled loops from SBC to serve that particular customer?

1 A. Sure. It has nothing to do with their access
2 to unbundled loops.

3 Q. And would TELRIC pricing still apply to those
4 loops?

5 A. Yes, to those loops it would.

6 MR. BUB: Thank you. Your Honor, those are
7 all the questions we had.

8 JUDGE MILLS: Thank you. Okay, Mr. Fleming,
9 you may be excused.

10 It's my understanding that the parties propose
11 that we take Mr. Gillan out of order; is that correct?

12 MR. MAGNESS: Your Honor, I'm sorry. There
13 was some confusion about that. I think CenturyTel was still
14 expecting their witness to come on first, which is -- we
15 certainly have no problem with, but we would appreciate
16 Mr. Gillan going after him.

17 JUDGE MILLS: So you want to do Martinez, and
18 then Gillan, and then get back to the established order?

19 MR. MAGNESS: Yes, sir.

20 JUDGE MILLS: Okay. That's what we'll do,
21 then. Could you raise your right hand, please?

22 (Witness sworn.)

23 JUDGE MILLS: Thank you. You may be seated.
24 Go ahead.

25 MR. DORITY: Thank you, Judge.

1 ARTHUR P. MARTINEZ testified as follows:

2 DIRECT EXAMINATION BY MR. DORITY:

3 Q. Good morning. Would you please state your
4 name for the record.

5 A. Yes. My name is Arthur P. Martinez.

6 Q. Mr. Martinez, by whom are you employed and in
7 what capacity?

8 A. I'm employed by CenturyTel of Missouri, LLC,
9 and Spectra Communications Group, LLC, d/b/a CenturyTel, as
10 the director of government relations.

11 Q. Thank you, sir. And are you testifying in
12 this proceeding on behalf of CenturyTel?

13 A. Yes, I am.

14 Q. And did you prepare and cause to be prefiled
15 direct testimony in this phase of the proceeding that has
16 been marked for purposes of identification as Exhibit No. 5?

17 A. Yes.

18 Q. Likewise, did you prepare and cause to be
19 prefiled rebuttal testimony in this phase that has been
20 marked for identification as Exhibit No. 6?

21 A. Yes.

22 Q. And do you have any changes or corrections to
23 your prefiled testimony?

24 A. No, I do not.

25 Q. If I ask you the same questions today, would

1 your answers be the same?

2 A. Yes.

3 Q. And are those answers true and correct to the

4 best of your information, knowledge and belief?

5 A. Yes.

6 MR. DORITY: Your Honor, I would offer

7 Exhibits 5 and 6 into the record and tender the witness for

8 cross-examination.

9 JUDGE MILLS: Are there any objections to the

10 admission of Exhibit 5 or Exhibit 6?

11 (No response.)

12 JUDGE MILLS: Hearing none, they will be

13 admitted.

14 (EXHIBIT NOS. 5 AND 6 WERE RECEIVED INTO

15 EVIDENCE.)

16 MR. DORITY: Thank you, Judge.

17 JUDGE MILLS: Thank you. Cross-examination,

18 SBC?

19 MR. LANE: No questions, your Honor.

20 JUDGE MILLS: Sprint?

21 MS. HENDRICKS: No questions, your Honor.

22 JUDGE MILLS: Staff?

23 MR. WILLIAMS: Thank you, Judge.

24 CROSS-EXAMINATION BY MR. WILLIAMS:

25 Q. I'd like to direct your attention to

1 page 10 of your direct testimony. And there at lines 12
2 through 17, you testified that a determination that the wire
3 center is a geographic market could inhibit facilities-based
4 competition?

5 A. Yes.

6 Q. Are you making the assumption that a finding
7 of impairment in a particular MSA would apply to all ILECs
8 that are serving wire centers or exchanges within that MSA?

9 A. Could you restate your question?

10 Q. Whenever you make that statement, are you
11 making an assumption that a finding of impairment in a
12 particular MSA would apply to all of the ILECs that are
13 serving wire centers or exchanges within that MSA?

14 A. Yes.

15 Q. I want to turn to some -- defining some terms
16 that have been used during this proceeding. Is a DS0 line
17 an analog voice grade line that is typically used to serve
18 mass market customers?

19 A. Yes, it is.

20 Q. Could you contrast a DS0 line with a DS1 line?

21 A. A DS1 lines provides 24 voice grade lines.

22 Q. Is a DS1 line analog or digital?

23 A. It could provide both.

24 Q. The service it provides could be analog or
25 digital. How about how it's provisioned?

1 A. I believe it's a digital facility.

2 Q. Could you define for me what a wire center is?

3 A. Yes. A wire center is a location or the

4 switch that a customer draws dial tone from.

5 Q. How would remote hosting play into a wire

6 center, according to your definition? Are you familiar with

7 remote hosting?

8 A. Yes. Well, the -- the customers that draw

9 dial tone off the host would be served by the host, and that

10 would be the wire center for those particular customers.

11 Those customers that draw dial tone from the remote would be

12 served from that remote.

13 Q. And how would you find the geographic

14 footprint of a wire center where you have both remote and

15 host switching?

16 A. Well, you would -- you would look at the area

17 that is served by each one of those wire centers. I'm not

18 sure if you're referring to exchanges or wire centers.

19 Q. Well, you've defined wire centers in terms of

20 drawing dial tone from a particular switch. I'm asking how

21 you would go about then defining the geographic area served

22 by that particular wire center or, I guess, by your

23 definition switch where dial comes from?

24 A. Well, in most areas that CenturyTel serves,

25 it's fairly easy because usually the exchange boundary

1 coincides with the wire center area that -- of provisioning
2 service. So for the most part and, in fact, in almost all
3 cases, it's -- exchange boundaries is synonymous with wire
4 center.

5 Q. If it's not synonymous, what's the difference
6 between an exchange and a wire center?

7 A. Well, in an exchange, it's a geographic
8 boundary established by the state commission, and within
9 that exchange you could have multiple wire centers.

10 Q. If I wanted to find out the geographic
11 footprint of a wire center of CenturyTel, where would I
12 obtain that information?

13 A. I guess -- I assume from the company.

14 Q. What about if I wanted to find out the
15 geographic area covered by an exchange served by CenturyTel?

16 A. I believe those may be contained in our
17 tariffs on file with this Commission.

18 Q. Do you know if that would include a map or
19 not?

20 A. I understand that in most cases it includes a
21 map.

22 Q. How would you define a metropolitan calling
23 area?

24 A. I believe that's an area that was established
25 by this Commission.

1 Q. And metropolitan statistical area?

2 A. I believe that takes into account socio and
3 economic factors and is established on a county line basis.

4 Q. And a LATA, L-A-T-A?

5 A. A LATA is a local access and transport area
6 and is used to distinguish intrastate intraLATA boundaries.

7 Q. Can you do a comparison of the geographic
8 footprints of a wire center versus an exchange versus an MCA
9 versus an MSA versus a LATA? In other words, is a wire
10 center smaller than an exchange?

11 A. Could be.

12 Q. Would it ever be larger than an exchange?

13 A. I don't know. I'm not aware of an instance
14 where it is.

15 Q. Would the MCA be larger than an exchange?

16 A. Yes.

17 Q. Would it also be larger than a wire center?

18 A. Yes.

19 Q. Would an MSA be larger than an exchange?

20 A. Yes.

21 Q. Would it be larger than a wire center?

22 A. Yes.

23 Q. Would it also be larger than an MCA?

24 A. Depends on how big the MCA is, but I guess if
25 we're talking about the St. Louis --

1 Q. Let's limit it to the MSAs in Missouri, the
2 portions of the MSAs in Missouri.

3 A. I believe the MSAs are larger than the MCA.

4 Q. And can you compare a LATA to an MCA, which
5 would be larger?

6 A. A LATA would be larger than an MCA in general.

7 Q. Would it also be larger than an MSA or
8 smaller?

9 A. I think for Missouri, the LATAs are larger
10 than an MSA.

11 Q. If I were to use the MSA as a unit, would I be
12 able to cover the entire state with MSAs, state of Missouri,
13 geographically?

14 A. No.

15 Q. If I were to use the MCA as a unit, would I be
16 able to cover the entire geographic area of the state of
17 Missouri?

18 A. No.

19 Q. If I were to use exchanges, would I be able to
20 cover the entire geographic area of the state of Missouri?

21 A. If you're looking at individual units, no.

22 Q. If I were to aggregate and use exchanges as a
23 unit in aggregation, would I be able to cover the entire
24 state of Missouri geographically using exchanges as units?

25 A. Yes, you would, but you would also be able to

1 cover an MCA and -- an MCA.

2 Q. And if I were to use wire center as my unit,
3 would I be able to cover the entire state of Missouri
4 geographically by aggregating wire centers?

5 A. Yes.

6 Q. What is your understanding of the term
7 "economy of scale"?

8 A. I believe economy of scale from an economic
9 standpoint is, as you mass produce something, the average
10 cost decreases.

11 Q. How about what's your understanding of how the
12 Federal Communications Commission has used that terminology
13 in its Triennial Review Order?

14 A. Well, I believe it would apply in that as more
15 units of a service is provisioned, the cost for that
16 service -- and if we look at the DS0/DS1 crossover, the more
17 units that you put on that, it would -- the cost per unit
18 would decrease.

19 Q. And as the FCC has used the term "economy of
20 scope" in the Triennial Review Order, what's your
21 understanding of the meaning of that term?

22 A. Again, if we look at a DS1 facility, the more
23 products -- maybe it helps to provide a definition of
24 economy of scope. Economy of scope would be your total
25 average cost would reduce as you provide multiple products

1 on that same facility. So if we look at a DS1, as you're
2 able to provide a varying group of services on that, then
3 your total cost -- average total cost would reduce.

4 Q. Could you provide a definition of UNE-P or
5 unbundled network element platform?

6 A. I understand UNE-P to be a combination of a
7 loop and switching UNE.

8 Q. And UNE-L?

9 A. Is UNE loop.

10 MR. WILLIAMS: No further questions at this
11 time.

12 JUDGE MILLS: Thank you. Mr. Magness?

13 MR. MAGNESS: Your Honor, I have no questions
14 for this witness.

15 JUDGE MILLS: Mr. Lumley?

16 MR. LUMLEY: Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. LUMLEY:

18 Q. Good morning.

19 A. Good morning.

20 Q. Just to clarify your proposal to use MSAs to
21 define the market, first of all, you're only proposing to
22 use those parts of MSAs that lie within the state of
23 Missouri, correct?

24 A. That's correct.

25 Q. And you're also only proposing to use those

1 parts of your territory that are within an MSA; is that
2 correct?

3 A. That's correct.

4 Q. And in the event -- do you have situations
5 where you have wire centers that are in -- both within and
6 outside of an MSA, where the MSA border cuts through the
7 wire center area?

8 A. I think we may, yes.

9 Q. And are you having -- making the same proposal
10 that Southwestern Bell's witness has made that you would
11 decide whether or not to include the wire center based on
12 the physical location of the switch, whether it was within
13 or without the MSA?

14 A. That is not part of my testimony.

15 Q. All right. And are you indicating that
16 there's a CenturyTel market within an MSA and an SBC market
17 within the MSA or are you lumping them together into one
18 market?

19 A. Well, I think the proposal is to look at the
20 MSA as one market. However, for impairment and trigger
21 analysis, which I understand would be conducted in the
22 subsequent phases of this proceeding, we would look at the
23 specific competitors that would meet those triggers, and
24 they may apply to both CenturyTel and SBC.

25 Q. I just want to make sure I understand your

1 proposal. Are you indicating that you could rely on SBC's
2 proof or would you have to make a separate proof for a
3 separate CenturyTel market within an MSA?

4 A. We would provide our own proof.

5 MR. LUMLEY: Thank you. No further questions.

6 JUDGE MILLS: Thank you. Ms. Mudge?

7 CROSS-EXAMINATION BY MS. MUDGE:

8 Q. Good morning, Mr. Martinez.

9 A. Good morning.

10 Q. Just a couple of questions if I might, sir.

11 First of all, with respect to your discussion on economies
12 of scale and scope, would you agree that population density
13 is a primary factor for determining whether one deploys
14 facilities in a specific telecommunications market?

15 A. Yes.

16 Q. And so would you also agree with me, then,
17 that to the extent that a market does not have an extensive
18 or dense population, that a carrier would have to ascertain
19 the economies of whether or not it would be appropriate to
20 serve that particular market with a switch?

21 A. Yes.

22 Q. Okay. Now, and I just want to make sure that
23 I understand your testimony. Your testimony does not
24 contain an analysis of, for example, the location of the
25 mass market customers or enterprise customers being served

1 by competitive carriers in Missouri, correct?

2 A. No, it does not.

3 Q. And your testimony does not include an

4 analysis of some of the various factors affecting

5 competitors' abilities to serve customers within the

6 CenturyTel serving areas; is that correct?

7 A. That's correct.

8 Q. And I don't believe also that you have any

9 analysis with respect to the competitors' ability to target

10 and serve specific markets within the CenturyTel serving

11 areas; is that correct?

12 A. That's correct.

13 MS. MUDGE: That's all the questions I have.

14 Thank you.

15 JUDGE MILLS: Thank you. Questions from the

16 Bench, Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Good morning, Mr. Martinez.

20 A. Good morning, Commissioner.

21 Q. The question that you answered earlier about

22 -- and I believe this was from Staff, the question was,

23 would a finding of impairment within the MSA apply to other

24 ILEC areas within the MSA, and I believe you answered yes;

25 is that right?

1 A. That's correct.

2 Q. And I'm not sure I understand that, because

3 then later, I believe you indicated that for the impairment

4 analysis and trigger analysis, you have to look at the

5 separate markets. Wouldn't we -- I don't -- I guess I don't

6 understand why a finding of impairment --

7 A. Well, maybe I can state it another way. A

8 finding of non-impairment, assuming that the market is

9 determined to be the MSA, would apply to the entire MSA, so

10 conversely a finding of impairment in the MSA would equally

11 be applicable to the entire MSA.

12 Q. Okay. But in order to make that finding, the

13 various markets would be examined?

14 A. Yes, because I'm not sure that SBC can speak

15 for CenturyTel, nor can CenturyTel speak for SBC. So we

16 would have to put forth our own evidence to show what

17 competitors are providing switching -- mass market switching

18 within the market that we would propose, which is the MSA.

19 And then taking all that evidence together we would -- we're

20 asking this Commission to find that the MSA is the

21 appropriate market.

22 Q. Okay. And this is probably -- this is a very

23 basic question, but in that -- in that SBC has asked us to

24 find non-impairment for SBC within three MSAs in Missouri,

25 is CenturyTel also asking the Commission to find

1 non-impairment within those same MSAs in Missouri?

2 A. Yes, although I did not address it
3 specifically in my testimony. If this Commission were to
4 find non-impairment in the Kansas City, Springfield, I
5 believe it's Columbia and all the MSAs that are listed in
6 SBC's testimony, then I believe that CenturyTel would then
7 have to provide specific proof within those MSAs to show
8 that there's not impairment.

9 Q. But you did not -- CenturyTel did not come to
10 us independently and ask us to determine non-impairment; is
11 that correct?

12 A. I believe that we're asking that the MSA be
13 determined -- since a CLEC is going to target an area and a
14 switch is certainly capable of supporting more than a wire
15 center, and the fact that there are already competitors in
16 the market that aren't even represented here today that
17 would further reduce the available market for any competitor
18 or UNE-P provider, it's -- it's highly probable that they're
19 going to look at a -- at an area that's much greater than a
20 wire center or an exchange.

21 They're going to look at an area where they
22 can -- where there's certainly much more density, and you
23 can't just do that on a wire center by wire center basis.

24 Q. If the Commission were to use Staff's exchange
25 basis as the market, geographic area in order to determine

1 whether there was impairment, would that result in the ILECs
2 having to present different evidence for almost every wire
3 center within those MSAs?

4 A. It depends on which -- which trigger analysis
5 you're looking at. I would think that if there are three or
6 more CLEC switches in the MSA and this Commission finds that
7 the MSA is the appropriate market, then I would consider the
8 trigger as being met. If we're looking at the potential for
9 deployment, then I would think we might have to look --
10 drill down a little further.

11 Q. But my question was, if we determine that the
12 exchange was the appropriate market as Staff has taken the
13 position.

14 A. Oh, I'm sorry. I misunderstood your question.
15 Yes, if Staff were -- if the Commission were to adopt
16 Staff's proposal that the exchange be an appropriate market
17 definition, then we would have to provide this information
18 on an exchange-specific basis.

19 However, it's highly unlikely that we're going
20 to find three competitors that have deployed a CLEC switch
21 or a switch in every wire center or exchange.

22 Q. And in the three MSAs we're considering here,
23 how many wire centers are there?

24 A. In the MSA?

25 Q. In the total of the three MSAs, what is the

1 total number of wire centers, do you know?

2 A. I do not know the answer to that question.

3 Q. On pages 9 and 10 of your testimony,

4 you -- beginning on line 21 at page 9, you say, once an

5 efficient batch hot cut process has been established by the

6 Commission, the technical disparity that may exist between

7 providing circuit switching to the enterprise customer

8 versus the mass market customer no longer exists. Is that

9 what your testimony says?

10 A. Yes.

11 Q. And does the enterprise customer not require a

12 hot cut process?

13 A. No. It's my understanding that they do not,

14 at least not to this same degree or -- that a mass market or

15 process would contemplate.

16 Q. In the redirect of Mr. Fleming a couple

17 minutes ago, he was asked the question if -- whether TELRIC

18 pricing would apply to any UNEs provided even if four were

19 the cutoff for enterprise customers. Do you recall that

20 question and answer?

21 A. Yes.

22 Q. And I recall that he said yes. Is that what

23 you recall?

24 A. Yes, I do recall that.

25 Q. And I'd like to know if you know why that

1 would require TELRIC pricing?

2 A. Because I believe the RBOCs as a condition of
3 their 271 -- the grant of 271 authority are still required
4 to provide UNE-Ps or UNEs on a -- as a condition of that
5 authority.

6 COMMISSIONER MURRAY: Thank you. That's all I
7 have.

8 JUDGE MILLS: Thank you. Rather than go
9 through the list, let me just ask in general, is there
10 further cross-examination based on questions from the Bench
11 from anyone?

12 Okay. Well, I will go through the list, then.
13 SBC, you're first.

14 RECROSS-EXAMINATION BY MR. LANE:

15 Q. Good morning, Mr. Martinez.

16 A. Good morning.

17 Q. I want to follow up on Commissioner Murray's
18 questions to you on TELRIC pricing for loops. Would you
19 agree with me that the FCC's decision in the TRO was that
20 with regard to most loops, there was a finding of
21 impairment, and that it's a separate proceeding that's going
22 to examine whether there's impairment with regard to the
23 provision of loops?

24 A. Yes.

25 Q. And for the purpose of setting the geographic

1 market and making the determination of impairment for
2 switching, that's a separate decision than the one for
3 loops, correct?

4 A. That's correct.

5 Q. And if the Commission finds that there is
6 impairment -- excuse me. If the Commission finds there's
7 non-impairment for switching, then under the TRO rulings,
8 one need not make -- the ILEC need not make available
9 unbundled local switching to those customers at TELRIC
10 rates, correct?

11 A. That's correct.

12 Q. But the pricing for the loops still remains
13 TELRIC unless and until the Commission makes some finding of
14 non-impairment with regard to loops, correct?

15 A. Yes, that would be my understanding.

16 Q. And so in this phase of the proceeding, and
17 then in Phase 2, if the Commission finds non-impairment with
18 regard to switching, that affects the TELRIC -- that affects
19 the requirement of an ILEC to make unbundled local switching
20 available at TELRIC prices, but doesn't affect the pricing
21 of loops or the availability of loops under the TRO, right?

22 A. That's correct.

23 MR. LANE: Thank you.

24 JUDGE MILLS: Thank you. Sprint?

25 MS. HENDRICKS: No questions, your Honor.

1 JUDGE MILLS: Staff?

2 MR. WILLIAMS: No questions.

3 JUDGE MILLS: Mr. Magness?

4 MR. MAGNESS: No questions, your Honor.

5 JUDGE MILLS: Mr. Lumley?

6 RECROSS-EXAMINATION BY MR. LUMLEY:

7 Q. Mr. Martinez, just to clarify again -- and I

8 asked Mr. Fleming the same question -- if the Commission

9 were to utilize either exchanges or wire centers for

10 purposes of market definition, notwithstanding that, the FCC

11 has said very clearly that physical location of switches is

12 not determinative, correct?

13 A. That's correct.

14 Q. And so using those markets would not require

15 proof that there is a switch physically located in each

16 exchange and wire center?

17 A. That's correct.

18 Q. And following up on Mr. Lane's questions, if

19 an ILEC is only making unbundled switching available under

20 271 obligations and no longer as an unbundled element under

21 251, it's not TELRIC pricing, it's a reasonableness

22 standard, correct, it's a market standard?

23 A. Yes. I understand it would be a market-based

24 price.

25 MR. LUMLEY: Thank you.

1 JUDGE MILLS: Thank you. Ms. Mudge?
2 MS. MUDGE: No questions, your Honor.
3 JUDGE MILLS: Redirect?
4 MR. DORITY: Just a couple.
5 REDIRECT EXAMINATION BY MR. DORITY:
6 Q. Mr. Martinez, in response to questions from
7 Commissioner Murray regarding the geographic area, you
8 understand -- let me just ask you, for purposes of your
9 testimony in this Phase 1 of the proceeding, what is your
10 understanding of Phase 1 and the import of the Commission
11 identifying the geographic area?
12 A. The whole purpose of Phase 1 is just to define
13 the appropriate geographic market to determine whether or
14 not there's impairment with regard to mass market switching.
15 Q. It is your understanding that
16 CenturyTel -- once that geographic market determination is
17 made by this Commission in Phase 1, is it your understanding
18 that CenturyTel would then come forward in Phase 2 and
19 present your analyses, whether it be trigger or potential
20 deployment for the Commission's consideration?
21 A. Yes.
22 MR. DORITY: Thank you. That's all I have.
23 JUDGE MILLS: Thank you, Mr. Martinez. You
24 may step down.
25 Okay. It's my understanding that we are going

1 to take Mr. Gillan next out of order, by agreement of all
2 the parties. So if we can have Mr. Gillan come forward.
3 And before we get to him, there's a pending motion about his
4 testimony that I'm going to address, but we'll bring him up
5 and get him seated and swear him in, and then we'll talk
6 about the pending motion.

7 MR. MAGNESS: Your Honor, if I could suggest,
8 since the motion pertains only to the rebuttal testimony, we
9 might go ahead and enter the direct, if there's no other
10 objections to the direct.

11 JUDGE MILLS: That's fine.

12 Mr. Gillan, could you raise your right hand,
13 please?

14 (Witness sworn.)

15 JUDGE MILLS: Thank you. Mr. Magness, you may
16 proceed.

17 JOSEPH GILLAN testified as follows:

18 DIRECT EXAMINATION BY MR. MAGNESS:

19 Q. Would you please state your name and business
20 address.

21 A. Joseph Gillan, P.O. Box 541038, Orlando,
22 Florida 32854.

23 Q. Mr. Gillan, do you have before you what's been
24 marked as Exhibit No. 11, the CLEC Coalition direct
25 testimony of Joseph Gillan?

1 A. Yes.

2 Q. Is this your testimony?

3 A. Yes.

4 Q. If I asked you all of the questions that are
5 asked and answered in this testimony marked as Exhibit 11
6 today, would your answers be the same?

7 A. Yes, they would.

8 Q. Do you have any changes, corrections or
9 additions to make to your testimony?

10 A. No.

11 MR. MAGNESS: Your Honor, I move the admission
12 of Exhibit No. 11, the CLEC Coalition direct testimony of
13 Joseph Gillan.

14 JUDGE MILLS: Are there any objections to the
15 admission of Mr. Gillan's direct testimony,
16 Exhibit 11?

17 (No response.)

18 JUDGE MILLS: Hearing none, it will be
19 admitted.

20 (EXHIBIT NO. 11 WAS RECEIVED INTO EVIDENCE.)

21 MR. MAGNESS: And, your Honor, on the rebuttal
22 testimony, again, before we get to the motion to strike, one
23 housekeeping matter. Mr. Gillan's affidavit that was to be
24 attached to the rebuttal was not submitted when the
25 testimony was filed at the Commission. He has executed the

1 affidavit. We'll provide copies to the parties, and I would
2 suggest we just add this to what's been marked as Exhibit
3 12, Mr. Gillan's rebuttal testimony.

4 JUDGE MILLS: That's fine, if you can provide
5 a copy to the court reporter as well.

6 MR. MAGNESS: Yes, your Honor.

7 With that addition, your Honor, if you'd
8 rather have me go through the questions for Mr. Gillan or
9 you'd like to take up the motion.

10 JUDGE MILLS: Why don't you go through the
11 questions? Then you can offer the testimony and I'll see if
12 there are any other objections in addition to the ones that
13 were filed a couple weeks ago.

14 BY MR. MAGNESS:

15 Q. Mr. Gillan, do you have before you what's been
16 marked as Exhibit No. 12, the CLEC Coalition rebuttal
17 testimony of Joseph Gillan?

18 A. Yes.

19 Q. Is this your testimony?

20 A. Yes.

21 Q. If I were to ask you all of the questions that
22 are asked and answered in this Exhibit 12, would your
23 answers today be the same?

24 A. Yes.

25 Q. And do you have any additions, corrections or

1 changes to make to this testimony?

2 A. No.

3 Q. And I would just note for the record there are

4 exhibits which are identified within the testimony that are

5 attached to both the direct and the rebuttal testimony. You

6 prepared those exhibits,

7 Mr. Gillan?

8 A. Yes.

9 MR. MAGNESS: We would move the admission of

10 CLEC Coalition Exhibit No. 12, the rebuttal testimony of

11 Joseph Gillan.

12 JUDGE MILLS: Okay. We already have

13 objections from Southwestern Bell, and I'll address those in

14 a moment. Are there any other objections to the admission

15 of Exhibit 12, Mr. Gillan's rebuttal testimony?

16 (No response.)

17 JUDGE MILLS: Okay. With respect to the

18 objections that SBC filed, let me just briefly paraphrase

19 for the record, they are that the Commission's rules require

20 that the party present its case in chief in direct testimony

21 and that, in SBC's opinion, Mr. Gillan has held back and

22 rather than presenting his case in chief in direct

23 testimony, he has waited and filed it in rebuttal testimony.

24 And that, in SBC's view, unfairly prejudices them.

25 The Commission's rules regarding the scope and

1 shape of prefiled testimony are found at
2 4 CSR 240-2.130, specifically paragraph 7, which states for
3 the purposes of filing prepared testimony, direct rebuttal
4 and surrebuttal testimony is defined as follows: A, direct
5 testimony shall include all testimony and exhibits asserting
6 and explaining that party's entire case in chief.

7 Then it goes on to define rebuttal testimony
8 in cases where all parties file direct testimony, which I
9 believe this case falls under that general category.
10 Rebuttal testimony shall include all testimony which is
11 responsive to the testimony and exhibits contained in any
12 other party's direct case.

13 In this instance, Mr. Gillan's direct
14 testimony did contain a reference or two to the use of LATAs
15 as the appropriate market. However, most of the supporting
16 material for that position was filed in the rebuttal
17 testimony.

18 So what I'm going to do for the purposes of
19 the record in this case, I'm going to allow Mr. Gillan's
20 rebuttal testimony in its entirety, but the portions that
21 are referred to in SBC's motion in which Mr. Gillan is
22 testifying about the appropriate use of a LATA as the
23 geographic market, those will be allowed in only for the
24 purposes of rebutting the other parties' testimony as to
25 other appropriate geographic markets.

1 So they will not be used for the purposes of
2 supporting a direct case, a case in chief, an affirmative
3 case for the use of LATA as the appropriate geographic
4 market, but only to show that there are flaws -- at least in
5 this witness' opinion, that there are flaws in the
6 approaches of the other witnesses that Mr. Gillan is
7 rebutting.

8 So to that extent, the testimony is admitted.
9 However, with those restrictions --

10 MR. MAGNESS: Your Honor, just one
11 clarification. So the references to the LATA suggestion,
12 recommendation, whichever word we use that are in direct are
13 maintained?

14 JUDGE MILLS: Yes.

15 MR. MAGNESS: There's no question that he can
16 speak to the use of a LATA, and certainly subject to
17 cross-examination and argument?

18 JUDGE MILLS: Certainly.

19 MR. MAGNESS: With that, then, you have
20 entered the Exhibit No. 12, correct, your Honor?

21 JUDGE MILLS: I have, yes.

22 (EXHIBIT NO. 12 WAS RECEIVED INTO EVIDENCE.)

23 MR. MAGNESS: And with that I'll tender the
24 witness for cross-examination. Thank you, your Honor.

25 MR. DORITY: Your Honor, may I interrupt? May

1 Mr. Martinez be excused?

2 JUDGE MILLS: Commissioner Murray has had an
3 opportunity to ask questions. It's my understanding that
4 Commissioner Gaw does not have questions for Mr. Martinez.
5 Commissioner Clayton is having a little trouble with the icy
6 roads, and I do not know whether or not he has questions for
7 Mr. Martinez. So if he can stick around for a while, I can
8 let you know as soon as I have an opportunity to ascertain
9 whether Commissioner Clayton has questions.

10 MR. DORITY: Thank you.

11 JUDGE MILLS: I will try to do that as soon as
12 I can. You're welcome.

13 Cross-examination for Mr. Gillan, first MCI.

14 MR. LUMLEY: No questions, your Honor.

15 JUDGE MILLS: Sage?

16 MS. MUDGE: No questions, your Honor. Thank
17 you.

18 JUDGE MILLS: Staff?

19 MR. WILLIAMS: Yes, your Honor.

20 CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. Good morning, Mr. Gillan.

22 A. Good morning.

23 Q. I want to direct your attention to your
24 rebuttal testimony, which I believe has been marked as
25 Exhibit 12. Would you please turn to page 2, and I'm going

1 to direct your attention to lines 15 through 19. There you
2 state that Staff has suggested a market definition that, if
3 combined with SBC's arguments as to how mass market UNE-L
4 should be measured, would translate into a reason to
5 eliminate UNE-P in more than 65 percent of the state.

6 You are not suggesting by this testimony that
7 Staff is supporting SBC's arguments of how mass market UNE-L
8 should be measured, are you?

9 A. No.

10 Q. I'm going to direct your attention to page 5
11 of your rebuttal testimony, in particular lines 8 through
12 15. There you encourage the Commission to make any
13 determination at this stage on the geographic market
14 tentative.

15 Don't you think for purpose of this case that
16 it's reasonable for the Commission to want to go ahead and
17 define the market for purposes of proceeding forward?

18 A. No, actually I don't think so. First I'd note
19 that, quite frankly, throughout the entire country, you're
20 the only state I'm aware of that's trying to lock in to a
21 market definition before you actually see the rest of the
22 case. And in some fashion it's not so much you're putting
23 the cart before your horse, you're building a cart not
24 knowing what the horse looks like.

25 And I think as a practical matter the

1 Commission would find its understanding as to the potential
2 ramifications of different market definitions and how they
3 interoperate with the core issues that are going to surface
4 in this proceeding in the next phase that's an -- it's in a
5 better position to respond to that information if it doesn't
6 lock itself in to a decision in this phase when it's so
7 blind to all those other factors.

8 I can understand why it might want to express
9 some tentative choices, but I think it makes sense for it to
10 hold its options open until it fully has the information in
11 front of it to understand how all of this tends to work
12 together and how it will impact Missouri consumers. And
13 there's just no way to do that in this phase of the case.

14 Q. I want to step through some definitions with
15 you. Would you define a DS0 grade line for me?

16 A. Yes. For purposes of the way the term's used
17 in this proceeding and coming out of the TRO, it's
18 synonymous with the term "analog loop." It's a basic copper
19 wire that comes to your house or your business and it
20 carries your phone conversation in the form of electrical
21 waveform. That's what really makes it different than a
22 digital service. It's your basic POTS line copper loop that
23 is -- basically carries phone traffic in the same way that
24 Alexander Graham Bell, to the extent that he did invent it,
25 invented the mechanisms that carry phone traffic.

1 Q. And would you define a DS1 line?

2 A. Yeah. DS1 is -- basically it's a digital

3 service, and what it means is that it takes your

4 conversation, if it's being used for voice service, it

5 breaks it up into samples much the same way that a CD is

6 made, and it turns that into zeroes and ones, and then it

7 transports that information by turning the power on and off

8 the -- basically four wires.

9 It can carry 24 voice conversations, but

10 that's the basic difference between a DS1 in this

11 environment and an analog loop.

12 Q. Okay. Can a DS0 line carry more than one

13 voice conversation at a time?

14 A. A DS1, did you say?

15 Q. Or DS0.

16 A. It's really designed around the idea that it's

17 going to carry one voice conversation, one simultaneous

18 voice conversation. You'd hear me talk and I'd hear you

19 talk. I guess that's one conversation or two voices.

20 Q. Would you define the term "wire center"?

21 A. Wire center in this context is generally being

22 used to describe the area served by a single switch, where

23 all the wires in that area come to a central location where

24 they're connected to a switch.

25 Q. And would you define exchange, please?

1 A. Exchange is -- as the other telephone company
2 witnesses testified, it's a pricing term. It's the -- it's
3 the area that the phone company establishes to set forth for
4 that particular area the terms and conditions of service,
5 what price it will charge and where people can call. It's
6 really a -- it's a pricing boundary more than anything else.

7 Q. Metropolitan calling area, would you define
8 that, please?

9 A. My understanding is in part from the prior
10 witnesses that it's the term of art used in this state to
11 describe the calling plans that are offered for the larger
12 communities, the St. Louis and Kansas City that allow
13 multiple exchange -- people who reside in multiple exchanges
14 to obtain services, though they were all covered under the
15 same local calling plan. At least that's my understanding.

16 Q. So is your understanding based on
17 what's -- the proceedings that have gone on here?

18 A. Yes. Yes.

19 Q. Metropolitan statistical area, would you
20 define that, please?

21 A. The government uses a variety of areas to
22 collect statistics and use it to measure things like
23 population, income, et cetera. The area that the Office of
24 Management and Budget uses is called a metropolitan
25 statistical area. They have a criteria they apply, and then

1 using county boundaries as the basic are you in or are you
2 out area, they identify communities in the United States. I
3 think the core requirement is it has to have 50,000 people.

4 Of course, then that county is part of the
5 metropolitan statistical area, and then they look around the
6 surrounding counties and they look at whether or not there
7 are commuting patterns,
8 et cetera, of whether there are people who drive into that
9 city to work, et cetera, and they build up these areas that
10 they then collect statistics on for employment, income,
11 unemployment, things like that.

12 Q. And then would you define LATA, please?

13 A. The LATAs are the boundaries used to define
14 the difference between exchange access and interexchange
15 service. At the time of the AT&T divestiture, they had to
16 split what was then called AT&T, but would probably be
17 better today to refer to as the Bell system. It offered all
18 its services in one company. They had to split it up.

19 So they made their best judgment as to how
20 large is the exchange area, which would be more like a
21 natural monopoly, and then the result would be the calling
22 in between these exchange areas or LATAs would be open to
23 competition as long distance service.

24 So it was sort of the Department of Justice's
25 way in cooperation -- if that's the right word -- with the

1 Bell system at the time of the AT&T divestiture of drawing
2 up boundaries that best approximated where they thought the
3 limit of the Bell monopoly, exchange monopoly was in the
4 competitive long distance industry today.

5 Q. Are you familiar with remote and host
6 switching?

7 A. Yes.

8 Q. What, if any, impact would that have on your
9 definition of wire center?

10 A. In my experience at least, the wire center is
11 still defined as where the wires come together. Now, if you
12 put a remote switch in a location instead of the host
13 switch, it just really means that where those wires come
14 together, you're going to put a -- a simpler switching
15 machine in there, but a remote switching machine rather than
16 a more complicated one. So it doesn't -- it doesn't really
17 change the definition of the wire centers at all.

18 Q. So if I understand you correctly, you're
19 saying where the remote switch was located would be the wire
20 center for purposes --

21 A. Would still be the wire center, yes. The
22 easiest way to think about it is it's where the wires come
23 together.

24 Q. And if you were to compare each of these
25 geographic areas, the wire center, the exchange, the MCA,

1 the MSA and the LATA, how would you rank them in terms of
2 geographic footprint from the smallest to largest? And if
3 there are any that are the same, please note.

4 A. Well, the largest would be the LATA,
5 and the LATA is not only the larger generally -- I should --
6 I should say generally, because there's one very small LATA
7 in this state -- it also has the feature that all of SBC's
8 exchanges are in one of the four LATAs, so it's a
9 comprehensive definition.

10 The next step down would be the
11 MSA boundaries. The MSA boundaries come out of a completely
12 different non-telecom process. They're
13 the -- they're basically collections of counties used to
14 aggregate statistics for government economic purposes more
15 than anything else. And so whether they're smaller or
16 larger than a LATA really depends on the state.

17 In some states I've seen MSA boundaries cover
18 two different LATAs. There are some instances where -- I
19 guess there's no instance that I'm aware of where a LATA
20 completely encompasses different MSAs, but since they come
21 kind of out of this different process, they tend to be
22 smaller but you end up with sort of a checkerboard effect if
23 you overlay them with LATAs, depending on the state.

24 Wire centers and exchanges would be -- well, I
25 guess in this state the MCA would be the next larger unit,

1 but my understanding is it's specific to only two cities
2 Kansas City and St. Louis, and it's -- represents boundaries
3 of a pricing plan that SBC offers.

4 Q. You said larger unit. Did you mean smaller?

5 A. Yes.

6 Q. Is MCA smaller than the LATA?

7 A. It's smaller than a LATA and it's smaller than
8 -- according to the maps, it's smaller than an MSA. Sort of
9 the primal ingredient to any telecom boundary is the wire
10 center, and wire centers in this state typically are the
11 same as the exchange, with some exceptions in the state,
12 again in the larger cities, where multiple wire centers have
13 been grouped into exchanges.

14 Q. Is it fair to say that an exchange is the same
15 size as a wire center or larger?

16 A. In this state, that's my understanding, yes.

17 Q. Do you know where I would get information to
18 determine geographically where a wire center was located?

19 A. The telephone company does have maps that
20 explain the outeredges of their wire center, their -- in
21 effect, their outside plant maps, because it tells them
22 customers located in this area are going to be served off of
23 facilities that extend out in certain ways.

24 I don't know whether or not those maps are on
25 file with the Commission. I doubt very much that they're

1 publicly available any longer.

2 Q. Same question for exchanges. Do you know
3 where I would find information about the geographic
4 footprint of a particular exchange?

5 A. No, not in this state.

6 Q. Same question for MCA, do you know where I
7 would find the geographic footprint of a metropolitan
8 calling area in this state?

9 A. Well, let me back up for a minute. In a sense
10 you're asking me the same question in different ways,
11 because the exchange is either going to be one or more wire
12 centers. Once you find maps for wire centers, the exchange
13 is just going to -- the exchange information is just going
14 to tell you what wire centers are in that exchange.

15 The MCA boundary is just going to tell you
16 what exchanges are in that MCA. So once you know what the
17 wire center boundaries are, it will -- that information is
18 the same as giving you exchange information and MCA
19 information.

20 Q. Do you know where I would get information as
21 to find out what an MSA was in Missouri, a particular MSA?

22 A. Rand McNally, as a practical matter, tracks
23 county boundaries. So all you really need to know is what
24 -- I mean, the one advantage of an MSA is they're easy to
25 map because they have nothing to do with telecom. You go to

1 almost any -- if you Google search, you'll find someplace
2 that sells maps of counties and can calibrate it back to
3 what counties belong in what MSAs.

4 Q. If I were to use MSAs as my unit of geography,
5 would I be able to cover the entire state of Missouri
6 geographically by the use of MSAs?

7 A. No. There's a -- actually, there's a table on
8 page 14 of my rebuttal testimony that -- I apologize. It's
9 actually page 13 -- that would, in effect, tell you -- well,
10 at least for the three principal LATAs in Missouri, Kansas
11 City, St. Louis and Springfield, what percentage of the
12 lines and how many wire centers would be uncovered by that
13 kind of definition.

14 Q. If I were to use the LATA as my increment,
15 I would be able to cover the entire geographic area of the
16 state of Missouri?

17 A. Yes, insofar as the territory served by SBC,
18 which realistically is the issue here.

19 Q. And if I were to use exchange as my unit of
20 increment, I would be able to cover the entire state of
21 Missouri using exchanges, geographically?

22 A. In the aggregate, yes. There's
23 something -- there's something north of 200 exchange -- or
24 200 wire centers in Missouri. The LATAs are combinations of
25 -- represent combinations of those wire centers. So to use

1 wire centers to cover the state, it takes 200 and something.
2 If you use LATAs it takes basically four, and my
3 recommendation -- or my non-recommendation would be that you
4 really take a smaller one of those and combine it with one
5 of the others to do your analysis.

6 Q. Well, my question was exchanges, and I think
7 your answer was wire centers.

8 A. I apologize. Wire -- yes. The exchanges
9 would cover all the SBC territory in the state. It would be
10 some number smaller than 200, but would still be a
11 significantly large number.

12 Q. And if we went beyond SBC's territory to any
13 telephone company, ILEC's territory, would we be able to use
14 exchanges, again, to cover the entire state of Missouri
15 without putting the SBC limitation in place?

16 A. Yes. To the extent that there's phone service
17 in every area of the state, you'll have every area of the
18 state covered by an exchange.

19 Q. And if I were to use wire centers as my unit,
20 would I be able to cover the entire state geographically
21 with wire centers?

22 A. In the total of them, yes.

23 Q. Yes, in the aggregate. Would you define
24 UNE-L?

25 A. UNE-L in this context refers to an entry

1 strategy where you gain access to the monopoly loop network
2 by putting in a switch and putting in collocations, and then
3 the item you -- the only item you purchase -- that's not the
4 only item, but the main item you purchase from the incumbent
5 is the loop reaching the customers. So that's what -- UNE-L
6 refers to that business strategy.

7 Q. And would you define UNE-P, and if you can
8 compare it to UNE-L.

9 A. Well, both UNE-P and UNE-L, basically, the
10 goal is to access the monopoly loop network of SBC, of the
11 incumbent. One of the differences is that with UNE-L you
12 access that monopoly network by putting in a switch and
13 then you have to manually access the loop of every customer
14 you -- you seek to serve.

15 UNE-P gives you access to that monopoly loop
16 network by also leasing capacity in the incumbent's local
17 switch, and the reason you do that, among others, is that
18 that switch is already connected to the loops that go out to
19 everyone's premise, and so if you lease capacity in the
20 switch, you can gain electronic access to that monopoly loop
21 network, as opposed to the manual access that you have to
22 use with UNE-L.

23 Q. Right now at this point in the proceeding,
24 we're focusing on access to local switching. Isn't the
25 ultimate result in this case, and not just this phase of it,

1 with respect to local switching going to be at what price
2 competitors will have access to ILEC local switching?

3 A. Perhaps. Perhaps. Yes. There's some --
4 unfortunately, there's some uncertainty as to what the
5 implication would be on that price. Let me answer it this
6 way, which I think gets to the core of it. If we were to
7 start the proceeding backwards and instead of worrying about
8 market definition and impairment and all those things, but
9 just ask the simpler question, here we have a TELRIC rate
10 standard that produced a certain price for unbundled
11 switching.

12 We know that -- SBC conceded unambiguously
13 that under 271 they would still have to sell it under a just
14 and reasonable standard. Now, it could very well be that
15 the just and reasonable -- that the price produced by just
16 and reasonable equals the price produced by TELRIC. There's
17 no real reason to believe going into this exercise that
18 they're different.

19 In fact, by law the TELRIC price has to be
20 just and reasonable. So we know that the just and
21 reasonable range has in it somewhere TELRIC. If we had a
22 docket about whether or not the existing TELRIC price was
23 also just and reasonable, we might very well conclude that
24 the price difference is so small that the rest of this
25 docket may not be necessary.

1 So yes, in part this has to do with the
2 pricing. Unfortunately, there's a whole lot of other
3 collateral issues, and the way that the docket is laid out,
4 we have to do this part first, unaware as to what the
5 consequence on pricing might be.

6 Q. Well, isn't the ultimate question whether or
7 not CLECs will have access to local switching at TELRIC
8 rates?

9 A. Well, not necessarily, because imbedded in
10 that, the way you phrase that question, is the conclusion
11 that the TELRIC pricing, that when you apply the TELRIC
12 pricing standard, you get a rate different than if you apply
13 the just and reasonable rate standard.

14 Without turning this into a rate hearing,
15 there's a lot of reasons to believe that TELRIC is at the
16 high end of just and reasonable. And this could all be
17 about, unfortunately, holding the CLECs to a pricing
18 standard that produces a rate that is higher than they would
19 pay under a variety of other approaches to just and
20 reasonable results.

21 So the reason I say that is that it's very
22 possible that at the end of the day, even if you applied the
23 just and reasonable rate standard, you still come up with
24 the price that is the same as the rate you came up with when
25 you applied the TELRIC pricing standard.

1 Q. Currently we know what the TELRIC rates are,
2 do we not?

3 A. Yes.

4 Q. So isn't -- let me try another way. Isn't the
5 ultimate result of this proceeding a determination as to
6 whether or not CLECs will have access to unbundled -- or
7 local switching at known TELRIC rates?

8 A. Yes.

9 Q. And the purpose for which we're defining
10 markets is to decide at what geographic areas we should be
11 looking at for making that ultimate determination?

12 A. For actually making the determination of
13 whether to serve that geographic area are CLECs impaired
14 without access to unbundled switching to serve this customer
15 segment, the POTS user.

16 Q. When we say unbundled switching, aren't we
17 also getting into the unknown TELRIC cost for that
18 switching?

19 A. Yes.

20 MR. WILLIAMS: No further questions of this
21 witness at this time.

22 JUDGE MILLS: At this point we've gone about
23 90 minutes without giving the court reporter a break, so
24 we'll take a ten-minute recess. We're off the record.

25 (A BREAK WAS TAKEN.)

1 JUDGE MILLS: Let's go back on the record.
2 Let's see. Mr. Williams, were you finished?
3 MR. WILLIAMS: I'm finished.
4 JUDGE MILLS: Then we next turn to
5 Ms. Creighton Hendricks.
6 MS. HENDRICKS: No questions, your Honor.
7 JUDGE MILLS: SBC?
8 CROSS-EXAMINATION BY MR. LANE:
9 Q. Good morning, Mr. Gillan.
10 A. Good morning.
11 Q. You were identifying MCAs for Staff. Do you
12 recall those questions?
13 A. Yes.
14 Q. And you indicated there were only two MCA
15 areas in Missouri, St. Louis and Kansas City?
16 A. I think what I tried to convey was that my
17 knowledge of your local calling areas was based on your
18 witnesses' testimony. Those were the only two areas I
19 recall them referring to. There may be more; I just don't
20 recall.
21 Q. Do you recall testimony from any of the
22 witnesses about the Springfield MCA area?
23 A. Obviously not.
24 Q. Did you look at Exhibit 27 that reflects MCA
25 calling areas for Kansas City, St. Louis and Springfield?

1 A. I probably did.

2 Q. Now, your background is in economics, correct?

3 A. Yes.

4 Q. And for the last 24 years you've either worked

5 for the Illinois commerce Commission or in your consulting

6 witness practice, except for one year at U.S. Switch,

7 correct?

8 A. I think it was longer than a year. Sure felt

9 longer than a year, but yes.

10 Q. It's fair to say that you don't have an

11 engineering background, correct?

12 A. Not a formal engineering background, no.

13 Q. It's also fair to say that you haven't

14 designed any CLEC network, correct?

15 A. No.

16 Q. That's not correct?

17 A. It is fair to say I've not designed a CLEC

18 network.

19 Q. And despite the lack of your designing a CLEC

20 network and not having an engineering background, you feel

21 qualified to testify regarding the appropriate geographic

22 market and the appropriate DS1/DS0 crossover point?

23 A. Oh, sure.

24 Q. On your direct at page 5 you state that the

25 decisions here will have a direct impact on residential and

1 small business consumers, correct?

2 A. Yes.

3 Q. Assume with me that the Commission finds that

4 the geographic market should be MSAs, and that ultimately

5 the Commission determines that CLECs are not impaired

6 without access to unbundled local switching in the St.

7 Louis, Kansas City and Springfield MSAs. Are you okay with

8 that assumption?

9 A. That's the hypothetical?

10 Q. Sure.

11 A. Yes.

12 Q. Now, in the rest of the state served by SBC

13 Missouri outside of the three MSAs, would you agree with me

14 that under that assumption that CLECs would still have

15 access to unbundled local switching?

16 A. As a regulatory theory, yes. As a practical

17 commercial opportunity, I think that that's -- that's very

18 much in doubt. If you reduce -- if you tell CLECs that they

19 can't compete in Kansas City, St. Louis and Springfield,

20 Missouri, I think you ought to just expect them to hear that

21 as, you can't compete in Missouri. There's no reason to --

22 this is all interlocked. This is why they call it a mass

23 market.

24 Q. All right. My question --

25 A. Your ability to compete across that market,

1 including those areas that your -- that your testimony
2 ignores, is linked in a carrier's ability to use the same
3 entry strategy across those portions of the state where the
4 majority of the population lives.

5 MR. LANE: Your Honor, I ask to have the
6 answer stricken after the answer, as a regulatory matter,
7 yes, I agree. It's not responsive to my question.

8 JUDGE MILLS: I think it was expositive of his
9 response to your question. I think it further explained his
10 response to your question, so I'm not going to strike it. I
11 think it perhaps went farther than you wanted him to, but I
12 think it was confined to his explanation of the brief yes or
13 no answer that he gave. So I'm going to allow it.

14 BY MR. LANE:

15 Q. All right. With regard to those SBC Missouri
16 areas outside of the three MSAs, CLECs would have access to
17 unbundled local switching and at TELRIC rates, correct?

18 A. As a regulatory matter, yes.

19 Q. Within the MSAs, the CLECs will still have
20 access to unbundled local switching from SBC Missouri under
21 Section 271, correct?

22 A. Until you ask for forbearance from the FCC,
23 yes.

24 Q. So if we ask for forbearance, then we're no
25 longer required to provide unbundled local switching under

1 Section 271?

2 A. My understanding, if the FCC grants the
3 forbearance, that you would no longer be required. I mean,
4 effectively it -- it shifts the decision as to whether or
5 not this entry strategy would be available in Missouri from
6 the Missouri Commission to the FCC, if you rely exclusively
7 on that approach.

8 Q. At this point, if the Commission were to make
9 the decision we described earlier in the hypothetical,
10 finding the geographic market area to be the MSAs and
11 finding non-impairment for CLECs with regard to access to
12 unbundled local switching in the three MSAs, the CLECs would
13 continue to have access to unbundled local switching under
14 Section 271, correct?

15 A. Yes, with a caveat, however. When I say yes
16 to access, I'm trying to say yes to the phrase commercial
17 access, like you could really use it. There is a dispute
18 about whether or not SBC would be -- still be required to
19 connect loops to switch ports under Section 271 in the same
20 way that they're required to connect them under Section 251.

21 Now, that has a very large implication for
22 people's ability to serve customers that are growing. I
23 mean, if you have a hair shop and they've got three lines
24 and they want to add a fourth line, well, under Section 251
25 of the Act, the CLEC knows if they call up SBC as their

1 wholesale supplier and say, hey, this hair shop wants a
2 fourth line, I'll put it in, I'm going to purchase it as
3 UNE-P, they get it.

4 Under Section 271, there's a dispute as to
5 whether or not SBC would actually be required to honor that
6 requirement, and of course, there's enormous commercial
7 implications if you have to tell all your customers that I
8 can serve you today but I can't -- if you want an additional
9 line, I'm sorry, I can't provide it to you.

10 So with that caveat, at least to lay it out
11 there so we've fully got it identified, the answer is yes,
12 you'll still have access to 271, but it's not entirely clear
13 what that access requires at this point.

14 Q. And if I understand your caveat correctly,
15 you're indicating it may be that while unbundled local
16 switching is available under Section 271, the CLECs have to
17 actually make the cross-connect in their collocation area,
18 correct?

19 A. Well, which would mean that the CLEC would
20 actually have to have the collocation -- a collocation area,
21 roll a truck, incur all those costs and be able to provide a
22 product at a price point and in a way that would be useful
23 to the customer. I mean, there's an enormous commercial
24 implication about this that I don't think we really need to
25 dispute, you know, argue about right now.

1 Q. I thought you were bringing it under --

2 A. Quite frankly, I don't think your legal

3 position is right, but I just wanted to highlight for the

4 Commission that it isn't just the case of, well, the same

5 thing happens under 251 and 271. I think it should, but

6 there's still some ongoing disputes between SBC and the CLEC

7 community as regards your 271 obligations.

8 Q. And the physical activity that the CLEC would

9 have to undertake is to make the cross-connect at their

10 collocation area or wherever else they choose to

11 interconnect with the company, correct?

12 A. That would be -- at the very least the

13 activity would have to do with the intended very significant

14 costs involved.

15 Q. And would you agree with me that the TRO makes

16 clear that while SBC Missouri must still provide access to

17 unbundled local switching in areas where non-impairment is

18 found, that TELRIC pricing no longer applies?

19 A. No. Well, the TELRIC pricing standard -- and

20 it's an important distinction. It is true that the TELRIC

21 pricing standard no longer applies.

22 Q. All right. And the FCC made that clear in its

23 TRO order, correct?

24 A. I think it's paragraph 603.

25 Q. The last sentence of paragraph 652

1 makes it clear that the obligation to provide under Section
2 271 is to be at just and reasonable rates, correct?

3 A. Sorry. I'm going to it now. Yes. That's one
4 of the places where it makes statements like that.

5 Q. All right. And again at paragraph 659, if
6 you'd turn to that, would you agree that the FCC TRO makes
7 it clear that while RBOCs would continue to be required to
8 provide unbundled local switching under Section 271, that
9 does not require TELRIC pricing?

10 A. Yes. My point, if I may, just to make sure
11 we're clear on that --

12 Q. I'll come to your point. I understand it.

13 A. Okay.

14 Q. And again, at paragraph 664, would you agree
15 that that's where the FCC spells out what the just and
16 reasonable rate requirement under Section 271 means, right?

17 A. Well, paragraph 663 and 664.

18 Q. And with regard to paragraph 664, the FCC
19 spells out two possibilities on how pricing would be
20 determined to be just and reasonable, correct?

21 A. To the extent that the FCC has the issue
22 before it, it indicates some ways that it might look at it.
23 However, I think that the issue is twofold, whether the FCC
24 sees this in the first instance and then whether there are
25 other ways to apply the just and reasonable standard that is

1 found in state and federal law.

2 Q. Let's look at the two particular ways that the
3 FCC found that the just and reasonable standard could be
4 satisfied in paragraph 664. The first is that if the BOC
5 offers comparable functions to similarly situated purchasing
6 carriers under its interstate tariff, to the extent that
7 those analogs exist, that's one way for the just and
8 reasonable standard under Section 201 and 202 of the Act to
9 be met, right?

10 A. Well, it's -- it's a way that the FCC might
11 look at it if a particular action is brought to it. I mean,
12 we shouldn't overcome the fact that in describing it they
13 use the phrase a BOC might satisfy this standard.

14 Q. The second alternative that the FCC indicated
15 would satisfy the just and reasonable standard would be
16 arm's length contracts between the BOC and a CLEC, correct,
17 also in paragraph 664?

18 A. Yes, with the important caveat that the FCC
19 said that that might be a way that a BOC could satisfy it in
20 terms of an issue in front of the FCC.

21 Q. And in paragraph 664 where the FCC outlines
22 the two ways that a BOC might show just and reasonable
23 rates, TELRIC pricing is not referred to, correct?

24 A. Well, it refers to just and reasonable
25 pricing, and as I indicated before, TELRIC is defined as

1 just and reasonable. We know it's in the range somewhere.
2 So it doesn't specifically say TELRIC, no, but it does say
3 just and reasonable.

4 Q. The words "just and reasonable" appear in
5 Section 664, but not TELRIC pricing equated with it, right?

6 A. That is correct. The law, the statute defines
7 TELRIC as just and reasonable, the Telecom Act.

8 Q. Now, on page 12 of your direct, you discuss
9 the DS1 crossover point and state that the crossover is,
10 quote, a governmentally drawn upper boundary to the mass
11 market. Do you recall that and see that in your testimony?

12 A. Yes.

13 Q. In fact, we're talking about a governmentally
14 drawn boundary to a governmentally imposed duty, that is, to
15 make unbundled local switching available to competitors,
16 correct?

17 A. Yes.

18 Q. There's nothing unusual about having a
19 governmentally imposed limitation on a governmentally
20 imposed duty, is there?

21 A. No.

22 Q. In fact, the obligation to unbundle ILEC
23 networks at all is recognized as an extraordinary
24 obligation, is it not?

25 A. Well, there's -- yes, in some courts. It's a

1 voluntarily embraced obligation in Section 271.

2 Q. With regard to Section 251, would you agree
3 with me -- strike that.

4 Would you agree with me that the FCC itself
5 indicated that unbundling networks at all in Section 251 and
6 252 is an extraordinary obligation?

7 A. I don't recall the specific cite, but I have
8 no reason to disagree with your comment.

9 Q. You have the TRO in front of you?

10 A. Yes.

11 Q. Would you take a look at paragraph 2? With
12 regard to the sentence that begins on the bottom of page 6
13 and carries over to page 7, those two statements, would you
14 agree that the FCC identified Section 251 obligations to
15 unbundle and then characterized that as an extraordinary
16 vehicle for opening local exchange markets?

17 A. Well, the sentence says what it says, yes.

18 Q. Okay.

19 A. I'm not sure that they were really saying that
20 the vehicle is so extraordinary as much as the extensive
21 debate and litigation, but it says what it says.

22 Q. I thought they used the phrase "extraordinary
23 vehicle for opening local exchange markets"; is that a
24 correct reading?

25 A. Yes, but if you read the whole paragraph, it

1 starts with a reference to all the litigation and time and
2 resources. I'm not trying to tell you that this isn't an
3 unusual step or this isn't an important step. I was merely
4 pointing out that the overall context of this was both that
5 it was a significant obligation on your part, but also that
6 it has taken an awful lot of work on everyone's part to get
7 it to this point.

8 Q. Perhaps I misinterpreted. I thought you
9 indicated that you thought extraordinary might be modifying
10 the litigation that surrounds it as opposed to the vehicle
11 itself. Would you agree with me it's the vehicle itself
12 that the FCC described as extraordinary?

13 A. Sure.

14 Q. And in paragraph 3, the FCC also noted that
15 the unbundling obligations, to the extent they're too
16 broadly imposed, that they rob both ILECs and CLECs of the
17 incentive to invest?

18 A. Well, the FCC was clearly of two minds on that
19 particular point, at times issuing that -- referencing that
20 concern, but at the same time saying that the evidence on
21 whether or not unbundling, in fact, incentives to invest was
22 ambiguous.

23 So kind of reading the TRO overall, I don't
24 think you can argue that the FCC drew a conclusion one way
25 or the other, particularly -- you know, particularly when

1 what they ended up doing was saying, look, the only place it
2 can affect your incentives to invest is along -- is for
3 those new facilities that you haven't invested in yet.

4 And so they reduce the ILEC's unbundling
5 obligations for future decisions of future technologies that
6 they hadn't invested in, but at the same time they pointed
7 out that it's impossible to affect your incentive to invest
8 in legacy equipment that's already out there.

9 And that's really what the issue with this
10 proceeding has to do with whether or not CLECs will get to
11 use the existing legacy equipment to provide traditional
12 services, not those advanced services. So I don't think you
13 can draw the conclusion that the TRO --

14 Q. I'll go back to my question then. With
15 reference to paragraph 3 of the TRO, would you agree with me
16 that the FCC found, quote, while unbundling can serve to
17 bring competition to markets faster than it might otherwise
18 develop, we are very aware that excessive network unbundling
19 requirements tend to undermine the incentives of both
20 incumbent LECs and new entrants to invest in new facilities
21 and deploy new technology.

22 A. Yes. And that's why they reduced your
23 unbundling obligations for new technologies, but that's not
24 what this docket is about.

25 Q. And new facilities?

1 A. This docket doesn't give us access to new
2 facilities, packet switching. This docket is only involving
3 access to legacy equipment.

4 Q. Let's discuss the impact of the crossover
5 point analysis, if we could. Do you contend that once the
6 crossover point is set, that CLECs may not order multiple
7 DS0s for a single customer that exceed that cutover?

8 A. No. The cutover has to do with whether or not
9 they can order switching to serve those locations.

10 Q. If the Commission here sets the cutover or
11 crossover point at four DS0s or above, would you agree with
12 me that a CLEC would be permitted to order five, six or more
13 DS0s from the ILEC?

14 A. They'd be permitted to order it. The issue is
15 whether or not there would still be impairments that they
16 would confront that would prevent that from being an
17 economic opportunity. That's what the -- the crossover is
18 supposed to match up where the impairment disappears, and
19 the impairment doesn't disappear at four DS0s or five or
20 six. It disappears at the point at which you can serve a
21 multi-line voice grade customer with a DS1. And that's the
22 whole basis of the cutover to try and figure out where does
23 the impairment disappear.

24 Q. Actually, would you agree with me that the
25 purpose of the crossover is to determine where the

1 enterprise market begins and where the mass market stops,
2 and then impairment is decided in the next phase?

3 A. Actually, not entirely. It's part of the
4 problem of trying to split this off from the impairment
5 debate. The reason you have a cutover tied to the break
6 point between analog facilities and DS1 facilities is
7 because the FCC reached an impairment finding that said --
8 that said for analog facilities to access the legacy analog
9 network of the incumbent, there's a national impairment.
10 For the enterprise, we're going to find that there isn't an
11 impairment.

12 So while it does leave open the next phase of
13 the proceeding to ask the second -- to ask the question are
14 there particular circumstances in a part or parts of a state
15 that mean that the national finding was in error, the
16 purpose of that cutover is to match up for that national
17 finding of impairment that the FCC reached.

18 There's impairment on analog, there's not
19 impairment on digital, and there's a recognition that
20 somewhere out there somebody could actually have so many
21 analog loops that, since it's better for them to be served,
22 less costly for them to be served on a DS1, we're going to
23 adjust this impairment tracking crossover accordingly.

24 Q. Above the crossover point, the FCC has already
25 determined that there is no impairment with regard to access

1 to unbundled local switching for CLECs, correct?

2 A. Derivatively, yes, because they concluded that
3 you don't need -- there is no impairment to serve a customer
4 with a DS1, and the crossover is, is this customer, based on
5 its voice circuits, the number of analog loops it's
6 currently buying, is it really economically efficient to
7 serve it on a DS1? Because if it is economic to serve it on
8 a DS1 based on its voice lines, then its impairment is no
9 different than any other DS1 user, other than the fact that
10 you haven't rolled out a DS1 to serve the customer yet.

11 But that's the point of the crossover, to
12 figure out how many voice lines does it take before you
13 could have served them with a DS1. And since the DS1, at
14 least in the structure of the TRO, is assumed that you could
15 do that without access to unbundled switching, you must be
16 able to serve this customer without access to unbundled
17 switching as well.

18 Q. I'll go back to my question. Would you agree
19 with me that for the enterprise customers above the default
20 cutoff that's set -- above the crossover point that's set by
21 the Commission, that the FCC has already determined that
22 there is no impairment with regard to lack of access to
23 unbundled local switching, right?

24 A. Yes, because they would be presumed to be
25 serviceable, based on voice traffic, by the DS1, and that's

1 the break point.

2 Q. So your discussion on page 12 of your
3 testimony that refers -- of your direct that refers to
4 whether a customer does or does not want a DS1 is relevant
5 to the extent the customer is still entitled to choose if
6 they want to buy DS0s above that crossover point, right?

7 A. I'm sorry. I didn't follow the question.

8 Q. On page 12 of your direct testimony, you
9 discuss your concerns that a customer might want DS0s above
10 the crossover point and not take a DS1.

11 And my question to you is, would you agree
12 that the customer in your example can still do so and can
13 purchase as many DS0s as it wants, even if it's above the
14 crossover point?

15 A. I'm sorry. I'm still confused. My point
16 here, maybe I'll -- the point here is that when the
17 Commission draws this line, it's going to strand some
18 customers from competitive choice because there are still
19 going to be customers that for a variety of reasons still
20 want to buy analog-based service.

21 And since the impairment continues on all
22 those analog lines, if you can't as a practical -- in a real
23 world way move them onto a DS1 where perhaps the impairment
24 is less, then you can't offer them competitive service.

25 I wasn't suggesting that the Commission permit

1 CLECs to buy loops above that level with switching. I was
2 just merely pointing out that that line drawing exercise is
3 going to -- since it can't consider all the reasons why a
4 customer may still not want a DS1, even though it has, in
5 theory, enough voice lines to justify it, there's going to
6 be some stranded customers, but I wasn't recommending that
7 you change your policies or the cutoff because of that.

8 Q. My question wasn't that, though. My question
9 is, if that customer decides that it wants DS0s in a number
10 that's above the crossover point, the customer can still
11 order it from the CLEC and the CLEC can still order it from
12 the ILEC, right?

13 A. In theory, but because the impairment would
14 still remain, the CLEC couldn't serve it in any commercially
15 meaningful way, so the customer would have to stay with the
16 ILEC, which is the problem here.

17 Q. Okay. And that's not what the FCC said,
18 that's your opinion as to what the impact in the market
19 would be, right? The FCC said the customer can order as
20 many DS1s or DS0s as it wants, right? There's no limitation
21 on that under the TRO, right?

22 A. There's never a limitation. The only issue is
23 whether or not a CLEC can gain access to those DS0s with
24 switching or without switching, and if you can't -- if the
25 only way to gain access to those DS0s without suffering

1 impairment is with access to unbundled switching, if you
2 take away access to unbundled local switching, even though
3 in theory, yes, you can buy them as analog loops, if there's
4 still impairment, it means you can't commercially put
5 together a product and compete in a meaningful way against
6 the incumbent.

7 Q. On page 14 of your direct, you list the
8 factors which the FCC said are to be considered in setting
9 the geographic market. The first is the location of
10 customers actually being served, right?

11 A. Yes.

12 Q. Is it fair to say that your approach to this
13 is to provide evidence of where CLECs are providing service
14 via UNE-P, not where CLECs are providing service with their
15 own switch, correct?

16 A. No, I'd look at both.

17 Q. Would you take me through your testimony where
18 you describe where CLECs are providing service with their
19 own switch?

20 A. Yes. If we go to Exhibit JPG-3, okay? Do you
21 have it?

22 Q. Uh-huh.

23 A. Okay. If you look at JPG-3, it shows on the
24 top of that chart where customers are being served by UNE-P,
25 and if you look on the bottom part of that chart, it shows

1 where customers are being served by UNE-L. So looking at
2 this comprehensively, you can see by the chart that the --
3 the location of customers being served by UNE-P is the
4 entire state at some pretty, at least compared to UNE-L,
5 significant inroads, whereas when you look at it for UNE-L,
6 it's virtually non-existent.

7 And then if you -- similarly, if you look on
8 any of the exhibits to my rebuttal testimony, and JPG was
9 repeated there, but JPG-4, JPG-5 and JPG-6, which look at it
10 on a LATA-by-LATA basis, it makes the same type of
11 comparison between customers served by UNE-P and customers
12 served by UNE-L. So actually throughout the testimony, I
13 look at both.

14 Q. Right. To the extent that you're looking at
15 where UNE-P is being provided as opposed to where CLECs are
16 utilizing their own switch, would you agree that this
17 approach doesn't serve to any differentiation in identifying
18 the market?

19 A. No, I don't think so at all.

20 Q. Haven't you found that CLECs are utilizing
21 UNE-P essentially throughout all of SBC Missouri's
22 exchanges?

23 A. Yes, and that tells me that the market -- the
24 markets have to collectively add up to all of SBC Missouri,
25 because today -- I mean, people came into this mass market,

1 they served customers everywhere. Quite frankly, it's
2 exactly the type of competition that Congress was looking
3 for when they passed this law. And there's no reason to --
4 in fact, it turns this problem upside down to ignore -- to
5 try to define the mass market by not looking at where the
6 mass market entry strategy has brought competitive choice to
7 mass market customers.

8 Q. But CLECs are not utilizing their own switches
9 to serve every area of the state, are they?

10 A. No, but CLECs aren't using their own switches
11 to serve the mass market. That's the problem. You're
12 trying to define a market by looking at an entry strategy
13 that fails in that marketplace and then somehow define the
14 market so that you conclude that the entry strategy
15 succeeds. It's not the appropriate way to market
16 definition. The mass market is every one of those consumers
17 across the state.

18 Q. Your approach looks at where UNE-P is being
19 provided and would support saying that the market should be
20 all of the exchanges where SBC Missouri provides service,
21 right?

22 A. That could have been one of the possible
23 market definitions, but the FCC said, you can't look at a
24 market as equal in the entire state. You have to have at
25 least two markets.

1 Q. And I didn't say the entire state. I said all
2 of the areas where SBC Missouri is providing service.

3 A. That's true. And quite frankly, I think as a
4 legal matter one could take the -- could argue the position
5 that the FCC's requirement that you can't serve the entire
6 state could still be satisfied if you only looked at SBC
7 territory, but without getting --

8 Q. And, in fact, that's what you did in Ohio,
9 right?

10 A. No. That's what the Ohio Commission did, and
11 I said the data supported that tentative conclusion by the
12 Ohio Commission.

13 Q. Wasn't that your recommendation?

14 A. I still think that, as a practical matter, if
15 they felt that they had the legal basis to to do it, that
16 was a pretty good approximation of the mass market in Ohio.
17 Just like, quite frankly, you look in Missouri, mass market
18 customers live everywhere. That's why it's called the mass
19 market, and we've got customers serving -- being served by
20 competitors everywhere.

21 MR. LANE: Judge, I'd move that the last part
22 of the answer be stricken. It's really not responsive to
23 the questions that I'm asking.

24 JUDGE MILLS: I'm not going to strike that
25 one, but yes, that was getting a little bit beyond. You can

1 answer the question and then give some explanation, but to
2 get off onto a discourse is really uncalled for. So
3 consider yourself on notice.

4 THE WITNESS: Yes, sir.

5 BY MR. LANE:

6 Q. Let's look at AT&T and Birch, which are two of
7 the companies that you're testifying on behalf of today,
8 right?

9 A. Yes.

10 Q. In your analysis, have you presented where
11 AT&T has switches in the state of Missouri?

12 A. Only through -- only by the number of mass
13 market analog loops that SBC identified. I didn't look at
14 where the switch location was. I looked at the analog loops
15 in total, the mass market analog loops in total identified
16 by SBC.

17 Q. Where does AT&T have its switches in the state
18 of Missouri?

19 A. I don't know.

20 Q. What exchanges or other areas does AT&T
21 utilize in those switches today to provide service in?

22 A. I didn't look at an individual carrier. I
23 looked at the total universe of mass market UNE-L loops that
24 you identified in your testimony.

25 Q. How about Birch?

1 A. Didn't look --

2 Q. Do they have a switch that they're utilizing

3 in Missouri?

4 A. I did not look at any individual carrier. I

5 looked only at the entire universe of UNE-L loops, mass

6 market UNE-L loops identified by you.

7 Q. How about Birch, is Birch utilizing a switch

8 in Missouri, its own?

9 A. To my knowledge, not to serve mass market

10 customers, no.

11 Q. Is Birch utilizing a switch to provide service

12 to customers in Missouri?

13 A. My understanding is Birch has a switch in

14 Missouri and serves enterprise customers with it, yes.

15 Q. Okay. And we won't know what they're serving

16 until we know what the crossover point is between enterprise

17 and mass market, will we?

18 A. Partially, although I think what you're going

19 to find is that fundamentally carriers are serving customers

20 on DS1 loops. If -- there's a problem with serving

21 customers with analog loops, which is why there are so few

22 analog loops being purchased. While it is true that there's

23 some analog loops out there that may qualify as enterprise

24 once we establish the crossover, what we know about the

25 carriers is really going to be defined by the amount of DS1s

1 they're buying and the type of DS1 services they're
2 offering.

3 Q. How many customers is Birch serving via DS0s?
4 A. I don't have that information.

5 Q. How about AT&T?
6 A. I looked at the total number of DS0s served by
7 all carriers, not individuals.

8 Q. The second area that was identified by the FCC
9 in setting the geographic market was the variation of
10 factors affecting competitors' ability to serve each group
11 of customers. Do you recall that?

12 A. Yes.

13 Q. And have you provided a specific analysis of
14 that?

15 A. Yes. I compared the competitive activity in
16 the different LATAs.

17 Q. Okay. And in the LATAs that you propose, we
18 have customers in at least three zones for UNE pricing,
19 correct?

20 A. Yes.

21 Q. And it's fair to say that the difference in
22 UNE pricing across those three zones in the LATA doesn't
23 materially affect the CLECs' ability to serve throughout the
24 LATA, correct?

25 A. It certainly doesn't appear to have that

1 effect in terms of using UNE-P, no.

2 Q. And that would be true in utilizing either
3 UNE-P or the carrier's own switch, correct?

4 A. Not necessarily.

5 Q. So you haven't provided an analysis of what
6 the impact would be to a carrier utilizing its own switch to
7 provide service throughout the LATA, right?

8 A. To me, that -- that is true in part. What
9 I've done is looked at the pattern of entry of exis-- of
10 the -- I'm trying to think of a word that's less than
11 trivial -- the insignificant number of mass market UNE-L
12 lines in the state.

13 There's a certain amount of analysis you can
14 do with the information we have here. There's a certain
15 amount of analysis we can do when we go into the second
16 phase, which is another reason why a tentative decision
17 makes sense.

18 Q. To the extent that you did analyze the
19 variation of factors and looked at the difference in UNE-P
20 pricing, you would agree that that also would support
21 finding the geographic market to be the MSA rather than the
22 LATA, correct?

23 A. On that factor, it doesn't appear to have any
24 difference, correct.

25 Q. And the third factor that the FCC cited is the

1 competitor's ability to target and serve specific markets
2 economically and efficiently, using currently available
3 technologies, right?

4 A. Yes.

5 Q. And did you take that into account in your
6 recommendation of the LATA?

7 A. Yes.

8 Q. And if this factor supports the use of the
9 LATA, then it also supports the use of the MSA as the
10 geographic market, correct?

11 A. Yes. These aren't the flaw -- these aren't
12 the things that identify the flaws in the MSA approach.

13 Q. With regard to how the LATAs were set, would
14 you agree that those were determined back in the 1983 time
15 frame, right before divestiture took place?

16 A. Yes.

17 Q. And that the RBOCs, including Southwestern
18 Bell at that time, were permitted to propose their own LATA
19 configurations in each of the states in which they served?

20 A. Yes.

21 Q. And those LATAs were set sufficiently large in
22 many states, including Missouri, in order to keep the RBOCs
23 financially viable, including by having a lot of intraLATA
24 toll revenues available to them, correct?

25 A. That could have been one reason. I mean,

1 LATAs were set small in other states, like Illinois. It
2 seems to me that the RBOCs proved their financial viability
3 under a variety of conditions.

4 Q. All right. My question was in Missouri, would
5 you agree that this was one of the states where the LATAs
6 were drawn large in order to ensure that there would be
7 financial viability for Southwestern Bell by having an area
8 that was big enough to support a lot of intraLATA toll
9 dialing?

10 A. I'll accept it, subject to check.

11 JUDGE MILLS: Wait a minute.

12 MR. LANE: I'm going to go on.

13 JUDGE MILLS: That's not really an answer. I
14 mean, either you know or you don't know.

15 THE WITNESS: Okay. I don't know.

16 MR. LANE: May I approach the witness, your
17 Honor?

18 JUDGE MILLS: Yes, you may.

19 THE WITNESS: Sorry, your Honor. I thought it
20 would move it along by not being --

21 JUDGE MILLS: Well, that's okay. As sort of a
22 custodian of the record in this case, that leaves me with a
23 very unclear answer. I don't know when you're going to
24 check or what you're going to check.

25 BY MR. LANE:

1 Q. Mr. Gillan, I'm going to show you the case
2 United States v Western Electric. It's
3 569 F Sup 990, April 20th, 1983 decision, and ask you to
4 look at page 995, the highlighted portion. Would you agree
5 with me that in that -- that Judge Green, in this case, was
6 identifying why large LATAs might be appropriate and
7 referred specifically to having large calling areas that
8 would support the financial viability of local exchange
9 companies?

10 A. That's what he says, more or less.

11 Q. And would you agree that Southwestern Bell
12 initially proposed to utilize 15 LATAs in Missouri and later
13 changed that to 3?

14 A. I'm sorry. I don't know whether they did
15 that.

16 MR. LANE: Approach again, your Honor?

17 JUDGE MILLS: Yes, you may.

18 BY MR. LANE:

19 Q. Showing you the same decision from
20 569 F Sup 990 at page 1047. Would you agree that with
21 regard to Missouri that's precisely what happened, the
22 original proposal is for 15 LATAs and it was reduced to 3?

23 MR. MAGNESS: Your Honor, if I could object to
24 the form of the question. I think Mr. Lane is showing
25 Mr. Gillan a court decision. The Judge said certain things

1 in the court decision, but he's asking him if SBC or then
2 Southwestern Bell proposed something at that time and
3 whether that was what happened. The court decision
4 obviously can speak for itself, and if he would like to read
5 some of it into the record, I would be pleased to hear it,
6 but --

7 JUDGE MILLS: Well, he's asked the question,
8 and if the witness doesn't know the answer to it, he can say
9 that's what the court decision says or he can say, oh, yes,
10 I remember now, that's exactly what happened. But I don't
11 know that the question in and of itself is improper.

12 MR. MAGNESS: Thank you, your Honor.

13 THE WITNESS: Can I have the question read
14 back? Sorry.

15 THE REPORTER: "Question: Showing you the
16 same decision from 569 F Sup 990 at page 1047. Would you
17 agree that with regard to Missouri that's precisely what
18 happened, the original proposal is for 15 LATAs and it was
19 reduced to 3?"

20 THE WITNESS: Well, it's the precisely what
21 happened part. This does indicate that it was reduced from
22 15 to 3, but it appears to directly contradict your prior
23 characterization that it was being done because of the
24 financial issues for Southwestern Bell, because as you read
25 on, it appears to say that Southwestern Bell believed that a

1 large number of small LATAs were in its financial best
2 interests, and the Department of Justice stepped in because
3 they were concerned that that would give too much of the
4 market over to AT&T.

5 And I actually -- it points out further in the
6 footnote that the Public Service Commission felt like the
7 whole issue really needed a revenue analysis that
8 Southwestern Bell had not produced. So while it is true
9 that this says that at one time you thought about 15 and you
10 ultimately proposed 3, it appears to totally contradict the
11 reasoning that the Judge had earlier as to why an ILEC in
12 general would want large versus small.

13 Because the prior quote you showed me didn't
14 have anything to do with Missouri. It had to do with the
15 Judge's opinion, and evidently he disagreed with your
16 thinking, at least at one point in time.

17 BY MR. LANE:

18 Q. All right. It looks like what happened is
19 that Southwestern Bell came to the conclusion as the Judge,
20 correct, that large areas for LATAs would be in its
21 financial interest because it increased the level of
22 intraLATA toll calling that would remain with the -- with
23 Southwestern Bell?

24 A. That's not what this says. This says the
25 Department of Justice stepped in, was concerned about how

1 large an area that AT&T would then have in Missouri. And
2 part of the LATA issue was the area between the LATAs was
3 then going to be opened up to long distance competition.
4 And their concern was if you split the state into a whole
5 bunch of small areas, it would be too broken up for long
6 distance carriers to come in and compete effectively with
7 AT&T.

8 Q. Moving from 15 LATAs to 3 increased the amount
9 of intraLATA toll revenues that would remain with
10 Southwestern Bell post divestiture, right?

11 A. That may be, but it seems --

12 Q. Thank you.

13 A. -- that that has to do with taking it away
14 from AT&T.

15 Q. Is it a fair to say that your recommendation
16 of a LATA is designed to ultimately support a finding of
17 impairment in all areas of the state and to thereby preserve
18 UNE-P?

19 A. Quite frankly, impairment exists, so no matter
20 how many -- how you dice up the market, I believe the
21 Commission is going to find impairment. If you dice it up
22 in a whole bunch of small areas, you're going to find
23 impairment in all of the small areas. The problem
24 fundamentally about why I propose LATAs is that you create
25 these -- your proposal creates these orphan stepmarkets that

1 need to be addressed.

2 MR. LANE: Judge, I'm going to ask that
3 this be stricken. It's just not responsive.

4 JUDGE MILLS: I think it was responsive, so
5 I'm going to overrule that.

6 BY MR. LANE:

7 Q. All right. Let me ask you this,
8 Mr. Gillan: Assuming that the Commission determines that a
9 switch that's -- let me strike that. Move to another area
10 first.

11 Is it correct to say that you believe using a
12 larger geographic market makes it more likely that the
13 triggers will be met?

14 A. No, I don't think so.

15 Q. Is it your view that using larger -- a larger
16 geographic area like the LATA will make it less likely that
17 the triggers will be met?

18 A. It's not entirely clear to me whether the
19 geographic area really affects the likelihood of triggers
20 being satisfied. I do believe that the Commission should
21 not -- they should not look out over competition as it
22 succeeds over a broad area and mistakenly assume that
23 something is a substitute for it, which is what a trigger
24 analysis is, unless the triggers also are capable and are
25 providing service across that broad geographic area.

1 So in that sense, I guess it would make it
2 less likely for triggers to be satisfied, because they would
3 have to be more mature and actually demonstrate that they
4 can produce competition across the mass market.

5 Q. Would you agree with me that the FCC has made
6 it clear that larger geographic areas make it more likely
7 that the triggers be satisfied?

8 A. I know there's a footnote that says that, yes.

9 Q. And that's Footnote 1536, correct? It would
10 be on pages 315 and 316 of the TRO.

11 A. Did you say 1536?

12 Q. Yes.

13 A. Okay.

14 Q. Is that where it is found?

15 A. Yes.

16 Q. Okay. And the FCC specifically found in that
17 footnote, quote, to the extent the states define a
18 geographic market broadly, it is more likely that such
19 geographic market will capture sufficient switching
20 alternatives to satisfy the trigger, thus resulting in the
21 removal of the particular UNE in that geographic market, a
22 result that the sentence would seem to endorse. Did I read
23 that correctly?

24 A. Yes.

25 Q. But that's contrary to your opinion?

1 A. Yes, it is. At least it is different than my
2 opinion. However, I'd also point out that, like your
3 witness that was just up here, he pointed out that it isn't
4 where the switch is located anyway that matters. It's where
5 the loops that that switch is being used to serve are
6 located. And as a practical matter, whether you make the
7 area big or small, the loops are where the loops are.

8 So it's not clear to me why -- while the
9 statement is true that if you expand the area larger you
10 might end up with more switches, the reality is whatever
11 area you draw, if they're serving customers in those areas,
12 you'll pick that up because you actually look at the loops
13 that are purchased to be -- to provide service with that
14 switch, not the location of the switch itself.

15 Q. Would you agree with me that the FCC's
16 directive in the TRO is to identify geographic markets in
17 such a way as to find non-impairment in some areas, but not
18 in all areas?

19 A. No. I think the direction of the TRO is for
20 the Commissions to draw areas the best they can to reflect
21 these telecom services, and then we've got national findings
22 of impairment in place to determine whether there's anything
23 localized there that means that that national finding is in
24 error.

25 I don't think it's designed to take switching

1 away or take anything away. It's designed to help people
2 look to see whether there's some unusual circumstance that
3 makes the national finding not correct.

4 Q. Would you look at paragraph 495? And I'm
5 going to refer specifically to the sentence that begins on
6 page 315 and carries over to 316. Would you agree that in
7 that sentence the FCC makes it clear that the geographic
8 market should be set in an attempt to distinguish among
9 markets where different findings of impairment are likely?

10 A. Yes, I guess I was interpreting your prior
11 question as suggesting that the purpose was to draw markets
12 to create different findings of impairment. And that was
13 what I was responding to.

14 Q. Let me ask you to assume that the Commission
15 determines that utilizing a switch in the geographic market
16 area that it sets is counted towards the trigger if it
17 serves any part of that market and it doesn't need to serve
18 the entire market as identified by the Commission. Do you
19 understand that assumption?

20 A. Can you show me where that assumption is in
21 the TRO?

22 Q. I'm asking you to assume this with me for
23 purposes of my next question.

24 A. Okay. The assumption is that?

25 Q. The assumption is that this Commission

1 determines that a switch in the geographic market area that
2 it sets counts towards the trigger if it's utilized to
3 provide service anywhere in that market, even if it doesn't
4 provide service to all areas of that market. Okay. That's
5 the assumption.

6 A. Okay. I don't have to like the assumption; I
7 just have to agree it's in place?

8 Q. I'm assuming you don't like it.

9 A. Okay.

10 Q. If that's the Commission's determination, do
11 you continue to recommend the LATA as the geographic market?

12 A. I hate questions that ask me, can you make two
13 wrongs equal a right? If the Commission makes that
14 decision, then I think it has fundamentally decided that
15 it's not interested in mass market competition in this
16 state. Can they repair that decision by choosing some other
17 geographic area? I don't think so.

18 As a practical matter, would I tell them then
19 make the area as small as possible? Yes, probably, but it
20 would only be alongside testimony, quite frankly, that said,
21 look, you can't have a mass market where you can only serve
22 some pieces of it. This really -- the mass market is either
23 you can do it or you can't. And if you chop it up into a
24 bunch of holes based on some theory that you can take it
25 away in some places and not others, you're missing sort of

1 the quintessential feature of the marketplace as being
2 something that requires scale and size.

3 Unfortunately, you're telling me they've
4 already rejected that, because they've adopted a theory that
5 says that a company that comes in and doesn't serve the mass
6 market, which is a broad area, it serves only a little
7 area, that that should be treated as proof that there's no
8 impairment and the business plans of companies that are
9 serving that broad market should be terminated.

10 Q. Isn't that --

11 A. If they do that, then I guess you shrink it
12 back to the bad decision they make, but I just don't think
13 that two bad decisions are going to get you a positive
14 outcome, even by then using smaller wire centers.

15 Q. Referring back to Footnote 1536 again, on page
16 314 and 315 of the TRO, would you agree with me that if the
17 FCC had said, as it did, that the broader the geographic
18 market is defined, that the more likely it is that it will
19 capture sufficient switching alternatives to satisfy the
20 trigger, that that's a pretty conclusive statement that the
21 FCC believes that if a switch is being used anywhere in the
22 market area, that it then counts towards satisfying the
23 trigger?

24 A. There's no way I'm going to agree with you
25 that that's a conclusive statement. If the FCC was going to

1 impose a condition on state commissions that caused them to
2 go out and render whole areas of the country uneconomic to
3 serve for mass market customers, it would have at least put
4 it in the text.

5 Q. So if it's in the footnote --

6 A. Maybe even a rule.

7 Q. Explain to me how you can have that the
8 broader the geographic market that you've set, the more
9 likely it is that you're going to have the switching
10 triggers met if you don't count a switch unless it serves
11 the entire geographic market area.

12 A. I can't.

13 Q. Okay.

14 A. But on the other hand, I can point you to
15 probably 15 places in this order where the FCC looked at the
16 type of data that you provided here and said, no way,
17 cowboy, this does not prove non-impairment.

18 So as a practical matter, they were pretty
19 clear that they expect the triggers to have some significant
20 type of activity before they're counted, because they
21 rejected insignificant levels of competitive activity
22 throughout this order, not just in one footnote, but in
23 paragraph after paragraph after paragraph.

24 Q. But the larger --

25 A. Is it theoretically possible that somebody

1 could go in and only serve part of a market and at the same
2 time satisfy this broad -- this sort of minimal level of
3 competitive activity standard and still be counted? I
4 guess. I can't explain it, no.

5 Q. Through? I'm sorry. Are you through?

6 A. Yes.

7 Q. Okay. Would you agree with me that under
8 paragraph or Footnote 1536 that -- well, strike that.

9 Let me switch over and talk about the DS1
10 crossover with you.

11 JUDGE MILLS: Before we get there, I think --
12 well, let me just ask you how much more you have.

13 MR. LANE: I have enough. I mean, it makes
14 sense to take a break.

15 JUDGE MILLS: Well, are you going to go for 5
16 minutes, 10 minutes, half an hour? Just give me a guess.

17 MR. LANE: I'm going to guess 20 minutes, but
18 I'm not positive.

19 JUDGE MILLS: Okay. Mr. Dority, how much
20 questioning do you have?

21 MR. DORITY: Not a lot. Probably five
22 minutes.

23 JUDGE MILLS: Okay. I think we'll go ahead
24 and take a recess then. We'll break for lunch and come back
25 at 1:15. We're off the record.

1 (A BREAK WAS TAKEN.)

2 JUDGE MILLS: Let's go back on the record.

3 We're back on the record. We're continuing with SBC

4 cross-examination of the CLEC Coalition Witness Gillan.

5 And before we get into this, let me just say

6 that the parties originally proposed that this case be heard

7 in one day. Obviously that was a gross miscalculation on

8 the part of the parties.

9 At the rate we're going, we may not finish in

10 four days, so let me again ask the witness to try to keep

11 your answers brief, to the point. If you need to explain

12 your answer to the question, that's fine, but we certainly

13 don't need to have you try to put every question in context

14 of some larger picture. If we just answer the questions, if

15 you will feel that a brief explanation is absolutely

16 necessary, that's fine, too, but let's try to keep it brief.

17 Okay. Mr. Lane?

18 MR. LANE: Thank you, your Honor.

19 BY MR. LANE:

20 Q. Mr. Gillan, on pages 19 and 20 of your

21 rebuttal testimony, you make the assertion that data

22 revenues should not be included in the DS1 crossover

23 analysis, correct?

24 A. Yes.

25 Q. And would you agree that the rule adopted by

1 the FCC requires increased revenue opportunities to be
2 considered when determining the appropriate DS1 crossover?

3 A. Yes, but only from voice service.

4 Q. All right. If you would refer to the rule
5 itself, which is 51.319(D)(2), iii, B4, would you agree that
6 voice service is not included in the rule there?

7 A. No, I would not, because it -- actually it is.
8 It says that you look at the increased revenues from, and
9 then it gives you the network configuration of higher
10 capacity loops and a carrier's own switching. They're not
11 talking about -- they're talking about a comparison between
12 analog loops that go to switching leased from the ILEC to a
13 DS1 loop that goes to the carrier's own switching. That
14 means it's voice. It's a voice application. It is not a
15 data application.

16 Q. All right. My question, Mr. Gillan, was,
17 would you agree with me that the rule itself does not use
18 the word "voice revenues" in its description?

19 A. Correct. It just uses the network
20 configuration of voice service.

21 Q. All right. And would you agree with me that
22 in setting the geographic market, the FCC specifically
23 indicated that data revenues were to be considered in that
24 context?

25 A. I would need you to show me exactly where you

1 refer to.

2 Q. Okay. If you would, take a look at paragraph
3 495, and specifically Footnote 1541. I'm sorry. Paragraph
4 496. I think I said 495.

5 A. Yes. That would be consistent with the use of
6 it in both the potential deployment and trigger analysis.

7 Q. And with regard to potential deployment
8 analysis, the FCC also made clear that data revenues were to
9 be considered in that context, correct?

10 A. I believe it was a matter that they left to
11 the judgment of the state commission but, yes, they
12 indicated that they certainly could be.

13 Q. And with regard to paragraph 519, would you
14 agree with me that rather than a matter of judgment, it says
15 that the state must also consider the revenues a competitor
16 is likely to obtain from using its facilities for providing
17 data and long distance services and from serving business
18 customers?

19 A. I'm sorry. I'm trying to find that. In
20 paragraph 519?

21 Q. Paragraph 519, the sentence that
22 begins -- the last sentence begins on page 328 and carries
23 over onto page 329 provides, quote, the state must also
24 include the revenues a competitor is likely to obtain from
25 using its facilities for providing data and long distance

1 services and from serving business customers.

2 A. Yes. But they use the term "likely," which to
3 me starts taking you into, again, an area where the state
4 commission is to apply judgment. And I think, while I can't
5 take you to every specific paragraph reference, when you go
6 into the potential deployment scenario, I think it gives the
7 states some discretion in what they believe to be the type
8 of operational profile of the CLEC that they're going to
9 analyze.

10 Q. Would you agree with me that sentence that I
11 just read makes it mandatory that they consider it? But I
12 suppose you're saying that the Commission could decide that
13 it's not likely that they'd receive any revenues?

14 A. Yes.

15 MR. LANE: Okay. Fair enough. That's all I
16 have. Thank you, your Honor.

17 JUDGE MILLS: Thank you. CenturyTel?

18 CROSS-EXAMINATION BY MR. DORITY:

19 Q. Good afternoon, Mr. Gillan. My name is Larry
20 DORITY. I represent CenturyTel in this proceeding.

21 A. Good afternoon.

22 Q. I just have a couple of questions for you, and
23 I'll try to keep them brief. And I think they can be
24 answered with a yes or no, hopefully, and I would ask you to
25 try to do that if you can.

1 I noticed in your direct testimony,
2 particularly the exhibit that was attached to it that lists
3 your experience and qualifications, you indicate that a
4 number of the dockets that you had been involved in
5 previously dealt with expanded local calling scopes; is that
6 correct?

7 A. Yes.

8 Q. And I expect during your time on the Illinois
9 Staff and in many of these cases that you had to deal with
10 many of the policy debates and issues associated with that
11 issue of expanding the local calling scopes; is that
12 correct?

13 A. Yes.

14 Q. And would you agree with me that a part of the
15 considerations involved in those debates dealt with social
16 issues or social considerations, such as ability to call
17 neighbors, school, family members --

18 A. Yes.

19 Q. -- would that be correct?

20 And likewise, the consideration of economic
21 factors, such as the ability to call my local office or a
22 doctor or businesses with whom I wish to deal with, those
23 economic considerations were also involved in those policy
24 debates, correct?

25 A. To a certain extent.

1 Q. Okay. I mean, generally speaking, the idea of
2 social and economic integration is not something foreign to
3 the debates that go on in the telecom policy world. Would
4 you agree with me with that?

5 A. Yes.

6 MR. DORITY: Thank you. That's all I have.
7 Thank you.

8 JUDGE MILLS: Thank you. Mr. Gillan, there
9 may be questions from some of the Commissioners. They're
10 not able to be here right now. So you're subject to being
11 recalled later this afternoon, if that's convenient. I
12 don't believe it will be too long before I'm able to find
13 out whether or not there are questions, and I'll endeavor to
14 do that as quickly as possible.

15 THE WITNESS: Thank you.

16 JUDGE MILLS: But for now we'll move to
17 redirect.

18 MR. MAGNESS: Thank you, your Honor.

19 REDIRECT EXAMINATION BY MR. MAGNESS:

20 Q. Mr. Gillan, there was some discussion just
21 before the lunch break about this Footnote 1536. Do you
22 recall that?

23 A. Yes.

24 Q. And I recall -- and correct me if I'm
25 wrong -- that Mr. Lane asked you to make an assumption in

1 looking at that paragraph that the Commission would decide
2 that a switch doesn't have to serve an entire market to
3 count as a trigger. I think you referenced that you would
4 quarrel with that assumption, based on other provisions in
5 the Order.

6 Could you explain what provisions in the Order
7 you're referencing there?

8 A. Yes. And there may be more than these, but
9 throughout the TRO, there are places where during the debate
10 at the federal level, the incumbents pointed to some
11 isolated low levels of competitive activity
12 and argued that those were sufficient to find
13 non-impairment, and the FCC rejected them. And by way of
14 example, paragraph 438 talks about the ILECs pointing to
15 self-deployed local switches that were allegedly serving
16 some mass market customers.

17 And the FCC says that, even excepting that the
18 ILEC -- I inserted the phrase "the ILEC" -- figure however,
19 it represents only a small percentage of the residential
20 voice market. It amounts to less than 3 percent. And it
21 goes on just a little bit more, but that's the main thought.

22 In paragraph 444, the Commission talks about
23 some of the cable telephony claims of the ILECs, and I think
24 that paragraph generally points out, yes, there is some
25 underway, but it's only about 9 -- the phrase itself is only

1 about 9.6 percent of the total households in the nation. So
2 again, they recognize that there was some activity but did
3 not find it as probative.

4 And similarly, in the very next paragraph, in
5 445, they pull out the same type of thing when they took at
6 CMRS providers, saying yes, there are some CMRS providers
7 providing services, but in, quote, only about 3 to 5 percent
8 of CMRS subscribers use their services as replacement for
9 the primary fixed wireline service.

10 So there are places throughout where they
11 recognize that you're going to find isolated pockets of all
12 kinds of things, but that that wasn't what they were viewing
13 as sufficient evidence to overturn the finding of
14 impairment.

15 Q. And in looking at that finding of impairment,
16 there was some discussion in the cross about the difference
17 it might make to look at a LATA versus an MSA versus a wire
18 center exchange. Could
19 you -- and just very briefly, because there's certainly a
20 lot to it in the Order -- very briefly explain, assuming a
21 LATA is used, what the primary criteria in the switching
22 trigger analysis would be using a LATA.

23 A. What the primary criteria are going to be is,
24 are the carriers enterprise carriers or mass market? Are
25 their switches enterprise switches, are they mass market?

1 Are they actively providing service, or is the loop that
2 they're acquiring left over from some other business
3 strategy? Those are the types of things that would be the
4 primary criteria.

5 Q. And if the Commission were to choose an MSA as
6 its market definition, would the analysis required in the
7 trigger part of the case be any different?

8 A. Not against those criteria, no.

9 Q. And would you answer the same if an exchange
10 or a wire center were chosen as the market definition?

11 A. Yes.

12 Q. So is the analysis in the trigger part of the
13 case more focused on what those companies are actually doing
14 in the marketplace? I say those companies. I'm not being
15 clear. The companies identified as potential trigger
16 companies.

17 A. Yes. What they're actually doing in the
18 marketplace and whether they actually rise to the type of
19 level of activity that the FCC -- above the levels that the
20 FCC had already rejected as not being a demonstration of
21 non-impairment.

22 Q. Okay. I'd like to ask you a few questions on
23 this topic Mr. Lane raised about pricing of network
24 elements. Do you recall the discussion you had with him --

25 A. Yes.

1 Q. -- about that?

2 First thing, you referenced that the just and

3 reasonable rate standard is in the Act. Could you explain

4 where in the Act?

5 A. Yes. When the Act's -- I guess it's Section

6 252 of the Act.

7 MR. MAGNESS: Actually, your Honor, I can make

8 this simpler and quicker. I've reproduced sections of --

9 and I can hand them to the parties, please.

10 BY MR. MAGNESS:

11 Q. I'm sorry, Mr. Gillan. I got a little ahead

12 of myself. I've put in front of you a document consisting

13 of four pages. At the very top it says Telecommunications

14 Bill , Section 1, short title, colon, references. Do you

15 have that in front of you?

16 A. Yes.

17 Q. Would you have any quarrel with me if I

18 represented to you that this is Sections 251 and 252 of the

19 Federal Telecommunications Act of 1996, or at least excerpts

20 therefrom?

21 A. No.

22 Q. And is that a statute that you've reviewed

23 before?

24 A. Yes.

25 Q. Okay. The question I asked you was, you had

1 referenced in cross-examination that the just and reasonable
2 standard for 251 unbundled network element pricing is in the
3 statute. Could you direct us in this portion of the statute
4 to where it is?

5 A. Yeah. If you go to what is page 9.

6 Q. That is at the bottom of the page?

7 A. Yeah.

8 Q. That's the last page of this excerpt?

9 A. Yes. And up at the top, it lays out what
10 would -- if you went backwards, would be 252(D)(1), where it
11 lays out the pricing standards section, and it indicates
12 that determinations by state commission of the just and
13 reasonable rate for the interconnection of facilities and
14 equipment for purposes of subsection C2 of Section 251, and
15 the just and reasonable rate for network element for
16 purposes of subsection C3 of such section.

17 And then it goes on to talk about the
18 cost-based requirement that the FCC had rules required to be
19 TELRIC. So basically the way the Act is laid out is it
20 defines as -- the pricing standard itself is it has to be
21 just and reasonable. And then it goes on to define just and
22 reasonable to be based on the costs which the FCC defines as
23 TELRIC.

24 That's what I was trying to convey with the
25 idea that we know by definition just and reasonable has to

1 be inside the -- or excuse me -- that the TELRIC pricing
2 standard must be producing a rate that is within the range
3 of just and reasonable rates.

4 Q. And this TELRIC standard that the FCC chose,
5 has that been challenged in the courts?

6 A. Yes, and it was -- well, it was taken to the
7 Supreme Court and upheld by the Supreme Court.

8 Q. Okay. And that's the standard that's used for
9 setting the rates for UNEs, as we call them, right?

10 A. Yes.

11 Q. And UNEs that comprise the unbundled network
12 element platform in Missouri are currently priced at TELRIC
13 rate; is that right?

14 A. Yes.

15 Q. And I think the exchange you had with
16 Mr. Lane was about what would happen if those network
17 elements were no longer available under 251 but were
18 available under Section 271 of the Act. Do you recall that
19 discussion?

20 A. Yes.

21 Q. Okay. And I guess if you could just explain
22 your view of where things stand as to pricing if a network
23 element was delisted under Section 251.

24 A. Well, it would still have to be found to be
25 just and reasonable, which then means it could be the

1 current rate, which we already know is just and reasonable.
2 Perhaps it could be lower. Perhaps it could be higher.

3 I guess the most important thing is the fact
4 that, while the TELRIC pricing standard has been -- has gone
5 through the legal process that took, I guess, six, seven
6 years of being adopted by the FCC, being addressed at the
7 appeal level, being addressed by the Supreme Court, we don't
8 have that background of litigation yet on what the just and
9 reasonable standard is.

10 So while logically there could be almost no
11 price difference or even -- well, there could be almost no
12 price difference, let's leave it that for right now, what
13 happens by delisting a network element is you overlay an
14 enormous amount of uncertainty as to what the outcome will
15 ultimately be on carriers, because the new pricing standard
16 or the pricing standard to be applied to elements that have
17 been delisted has never been fully vetted.

18 There's never -- there aren't any court cases
19 yet. There aren't any rules in place. There haven't really
20 been determinations by commissions, so nobody really knows
21 what it means.

22 Q. And in order to assemble the unbundled network
23 element platform -- and let me back up a minute just to be
24 sure we're clear. The JPG, I believe it's 2 and 3 attached
25 to your direct testimony, where you talk about UNE-P

1 penetration in the state --

2 A. Yes.

3 Q. -- you're talking about the unbundled network
4 element platform as we know it today; is that right?

5 A. Yes.

6 Q. And does it include a combination of elements?

7 A. Yes.

8 Q. Has that topic of whether the incumbent such
9 as SBC must combine certain elements into the platform been
10 a subject of controversy?

11 A. Yes. The controversy surrounding -- I
12 apologize. Not only did I not know I had this on, in 15
13 years, that's never happened.

14 JUDGE MILLS: And that should serve to
15 everyone as a reminder to turn off your cell phones and
16 pagers, please.

17 BY MR. MAGNESS:

18 Q. Mr. Gillan, before your phone rang, I believe
19 you were addressing -- we were talking about the question --

20 A. It's worse yet. It was my wife.

21 Q. Now you're in trouble double.

22 A. Yeah.

23 Q. Okay. With the judge and her.

24 In any event, I'm sorry to -- I'm sorry. Let
25 me go back.

1 I was asking you, in order to create the
2 unbundled network element platform, I think you agreed that
3 there has to be a combination of network elements created by
4 the incumbent; is that right?

5 A. Yes.

6 Q. And you were addressing the question of
7 whether -- that question, that is how and when ILECs must
8 combine, has been a subject of some controversy, and could
9 you describe that?

10 A. Yes. As a practical matter -- and I think the
11 exhibit actually summarizes why all this is controversial.
12 If you look at JPG-3 and it shows the type of competitive
13 success UNE-P has had versus UNE-L, there's a reason why the
14 ILECs would like to see UNE-P go away. They have argued
15 about the pricing of UNEs generally. We talked about that
16 earlier.

17 But they also tried to avoid their obligation
18 to combine network elements and provide them to the entrants
19 in that form, and that also went all the way to the Supreme
20 Court, where the Supreme Court finally ruled in favor of the
21 CLECs that we do have a right or the CLECs have a right
22 under the statute to obtain network element combinations.

23 And that issue -- it was -- once again, it was
24 litigated in the context of 251. It has not been fully
25 litigated in the context of 271. So it's another source of

1 the uncertainty that will come about if an element is
2 delisted. We'll have an uncertainty as to what the price is
3 and we're going to have an uncertainty as to whether the
4 ILEC will actually provide the combinations.

5 Q. Has there been any controversy in the world
6 of, whether we do 251 or 271 unbundling, about who decides
7 whether this Commission and other state commissions decide
8 or the FCC decides that?

9 A. Yes. I mean, there's the issue as to whether
10 this Commission should have a role in deciding whether or
11 not a network element should be unbundled. But even beyond
12 that, there's an outstanding dispute as to how the prices
13 for a 271 network element get established.

14 There are -- there are RBOCs around the
15 country arguing that it doesn't get established through the
16 normal process of negotiation followed by arbitration by a
17 state commission, where the state commission arbitrates it,
18 but that rather it --- which is not clear to me how it sort
19 of mystically appears in some fashion, and if you don't like
20 the price they charge, you have to take it to the FCC.

21 So there's a big ongoing dispute as to how do
22 you even agree to disagree about what a 271 price is, and
23 then who do you take that disagreement to?

24 Q. So if this Commission or other state
25 commissions were to delist the switching unbundled network

1 element, which is the issue in this case, in order for the
2 UNE-P that we know today, which has created the competitive
3 penetration you show on JPG-2 and 3 and in your testimony,
4 in order to create something that's exactly the same as
5 that -- let me be sure I have the -- a number of stars would
6 have to align, I guess, with the pricing, the combinations,
7 jurisdictional elements, about whether this Commission ever
8 gets to decide that question again would all have to come
9 out in a particular way, would they not?

10 A. That is correct.

11 Q. So what are the -- what do you think the
12 consequence of a wrong decision, at least in your opinion,
13 in your view by the state commissions in these cases would
14 be?

15 A. I guess, quite frankly, the best case scenario
16 would be that we end up with all those stars realigning, but
17 after six more years of litigation, which this, you know,
18 quite frankly, the competitive side of this industry can ill
19 afford to undertake.

20 So it's possible if after this case all the
21 stars do align again, we do demonstrate that a just and
22 reasonable rate should be a price similar to or below, quite
23 frankly, or perhaps above, the rate that comes out of the
24 TELRIC methodology, we -- the CLEC industry demonstrates
25 that it has a right under nondiscriminatory provisions to

1 have access to combinations, which is what the issue was
2 before, and you have a right to arbitrate these disputes,
3 these and other disputes and about all the other terms and
4 conditions through the existing interconnection process, but
5 each one of those would find its own little litigation path
6 that we've seen takes several, you know, five, six years to
7 run its entire course.

8 Q. Now, on that question of price, you mentioned
9 that the price might be ultimately higher, lower or the
10 same. And you said to Mr. Lane that the TELRIC price might
11 actually be the upper limit. I think the folk wisdom
12 traditionally is those TELRIC rates, as FCC put it, are rock
13 bottom. Do you disagree with that?

14 A. Well, yes. It certainly -- here is the issue:
15 When you look at TELRIC for loops, there's a variety of
16 issues involved, and whether or not you properly consider
17 the ILECs' existing network or you made a hypothetical
18 network and there are other issues that the CLECs and ILECs
19 disagree about; however, whether you buy UNE-P or do UNE-L,
20 the rate you pay for the loop is the same.

21 All those TELRIC issues have nothing to do
22 with the issue in this proceeding. The issue here is
23 something that people haven't talked a lot about, and that
24 is, is there any reason to expect the TELRIC rate for
25 switching to be lower or higher than some other cost

1 methodology would produce.

2 And importantly, most of the issues that exist
3 for how the loop rate is calculated were actually resolved
4 in the ILECs' favor when it came to switching, the number of
5 switches, you have to accept it, are in the ILEC network
6 today. The location of the switches, you put that into the
7 cost model.

8 So the things that we've disputed over the
9 years about how you set the loop rate, all those decisions
10 went against the CLEC industry in 1996 when it came to
11 switching, and as a result, the switching rates are set very
12 much based on the ILECs' existing architecture.

13 Now, one of the things about TELRIC is, TELRIC
14 never rewards you for accumulated depreciation. It's a
15 forward-looking cost methodology. So every year you pay
16 prices that assume that the ILEC has built -- put this
17 equipment in new. In reality, in Missouri, 70 percent of
18 the switching cost was incurred before 1990.

19 Q. How do you know that?

20 A. They report it in ARMIS.

21 Q. Who does?

22 A. The SBC files reports with the FCC called
23 ARMIS that keeps track of their total plant in service.
24 When you look at their total plant in service under central
25 office switching, you see that 70 percent of their total

1 cost was incurred prior to 1990. About
2 80 percent was incurred prior to the Act being passed.

3 So for at least 15 years -- or almost
4 15 years, 70 percent of that cost has been depreciating
5 downward each and every year. You never get that benefit in
6 a TELRIC rate. TELRIC is sort of the gift that keeps on
7 giving, because you never get advantage of the fact that,
8 hey, the equipment was actually purchased 5 years ago or 10
9 years ago or 15 years ago, and its value is less today than
10 when you put it in through accumulated depreciation.

11 You're always assuming that it's brand-new and
12 shiny. And that's why even though you might have debates
13 about whether TELRIC is good or bad versus for ILECs versus
14 CLECs, when it comes to loop prices it's a very, very
15 different set of considerations when it comes to switching,
16 and they tend to say, hey, but the TELRIC price is probably
17 higher than what -- than a number of other different cost
18 methodologies would give you for switching if you want just
19 that switching.

20 Q. Is it those older switches that are really
21 what's at issue when we look at mass market --

22 A. Yes.

23 Q. -- cost service?

24 A. Yes. In fact, under the FCC's order we're not
25 entitled to new packet switching technology. The CLECs are

1 only entitled to the older circuit switch technology. So
2 you're really trying to value what should they pay SBC to
3 use a resource that is legacy, that's been out there for a
4 long time, that they've been recovering their costs for a
5 period of time over? And when those are the questions,
6 quite frankly, TELRIC does not do the competitor any favor.

7 Q. I just have one other -- a few questions, Mr.
8 Gillan. Mr. Lane asked you whether you had reviewed
9 specific data about AT&T or Birch switches. Do you recall
10 that?

11 A. Yes.

12 Q. And you answered you had not, right?

13 A. Yes.

14 Q. Do you expect that in the second phase of this
15 case you and/or perhaps other witnesses will be looking at
16 the specifics of CLEC switches in Missouri?

17 A. Yes. That would be the phase that we look at
18 whether or not particular companies qualify as triggers. I
19 look at aggregate data for this exercise, because we're
20 trying to define something that's a much higher level
21 entity, the idea of this -- notion of this market area. So
22 I looked only at the cumulative information of all the
23 carriers, not individual carriers.

24 Q. And that cumulative information is, because it
25 is aggregated, going to include AT&T, Birch, NuVox, as well

1 as everyone else, correct?

2 A. As well as everyone else, yes.

3 Q. And that's SBC data, isn't it?

4 A. Yes.

5 Q. I'd ask you to look one more time at JPG-2 and

6 3, the attachments to your direct testimony. When you

7 prepared the UNE-L parts of those exhibits, were you looking

8 at this aggregate data that should be picking up all of the

9 UNE-L activity in the state?

10 A. It's all the UNE-L activity that SBC claims

11 was mass market.

12 Q. Okay. Please explain what you mean.

13 A. Well, there is some UNE-L activity out there

14 that is -- well, most of the UNE-L -- all the UNE-L DS1

15 activity is, by definition, enterprise, and so that would

16 not be in this chart. And as Mr. Lane pointed out, at some

17 point when the Commission establishes the break point

18 between how many voice lines are still mass market and how

19 many voice lines take you into the enterprise market,

20 there'll be some plain analog or there's a possibility, at

21 least, that some plain analog lines will be taken out of

22 mass market and put into enterprise.

23 This doesn't actually consider any of that.

24 It's based solely on the analog lines that SBC, using the

25 three-line rule, said -- or the three line standard, said

1 was mass market.

2 Q. Let me ask you one question about that while
3 you're there. Mr. Fleming testified this morning he was
4 rather puzzled by the four-line or three-line issue, as the
5 FCC describes it. Are you similarly puzzled or could you
6 give us an explanation?

7 MR. LANE: Judge, I think this goes beyond the
8 scope of the examination of this witness. No questions were
9 asked of him about that.

10 MR. MAGNESS: Not about that footnote, but
11 about the Issue 2, about the cutover, he certainly asked
12 questions. And the basis of the SBC cutover analysis is
13 this four-line issue. The fact that he wasn't asked about a
14 specific footnote in the 600-page order I think is not
15 appropriate as a limit for redirect examination. He was
16 asked some questions about that cutover.

17 JUDGE MILLS: He was asked questions about the
18 cutover. He wasn't asked about the specific grounds for
19 SBC's four-line proposal, and I think that's what the
20 questions are getting to.

21 MR. MAGNESS: Thank you, your Honor. I'll
22 withdraw the question.

23 BY MR. MAGNESS:

24 Q. I'd then ask you to look at your rebuttal
25 testimony on page 9. Kind of back on the subject we were

1 discussing, which was the UNE-L data review. The Table 1 on
2 page 9, did you hear, too -- when you identified UNE-L over
3 there on the far right where you show a zero percent market
4 share or, at most, 1 percent market share for UNE-L in
5 Missouri, did that include, as you described it just a
6 moment ago, basically SBC's definition of the mass market?

7 A. Yes.

8 Q. And did you -- were you using the aggregated
9 data provided by SBC about how much UNE-L is served in the
10 state?

11 A. Yes.

12 Q. And if a CLEC is using anything except its own
13 loops and is serving UNE-L, shouldn't that data be picked
14 up?

15 A. In the mass market, yes.

16 Q. So the numbers that you show on UNE-L are
17 based on the aggregated data throughout, correct?

18 A. Yes.

19 Q. What were you doing last night between about
20 5:30 and 9 p.m.?

21 A. I was watching the football game with you.

22 Q. And I believe you made a reference to the
23 Commission not -- building in this proceeding, dangerously
24 coming close to building a cart before they knew what the
25 horse looked like?

1 A. Yes.

2 Q. Didn't you say that?

3 A. Yes.

4 Q. Did you or did you not steal that from a
5 Budweiser ad? Did you see the one with the burro?

6 A. It's my favorite ad. It's my favorite ad. I
7 actually always wanted a miniature burro, but no, I didn't
8 steal it from that ad. It was actually the other one that
9 was even less tasteful.

10 Q. There will be no recross on that, I trust. I
11 do have, seriously, one serious question on that. How is it
12 the Commission could go about making this tentative decision
13 that you recommend within the contours of the TRO, as you
14 understand the Order on market definition, without putting
15 the burro before the beer wagon?

16 A. By asking -- in this phase, whatever choice it
17 makes, saying it's a tentative choice, subject to parties
18 being able to propose alternatives and explain further in
19 the next phase as we actually sit down and start talking
20 about how the triggers would -- could be applied, would be
21 applied, what it would mean. Because quite -- without
22 having that full record in front of you, in front of the
23 Commission, the possibility of locking yourself into
24 something is -- is there, and it's there unnecessarily.

25 Q. I have just one more question. Do you think

1 Justin Timberlake did that to Janet Jackson on purpose?

2 MR. MAGNESS: I withdraw the question. Thank
3 you.

4 JUDGE MILLS: The way we're going to proceed,
5 we're going to do questions from the Bench, and then we'll
6 go back and pick up further cross-examination, if necessary,
7 based on questions from the Bench, and then another round of
8 redirect based on those questions from the Bench, if
9 necessary. Commissioner Gaw?

10 CHAIRMAN GAW: Thank you.

11 QUESTIONS BY CHAIRMAN GAW:

12 Q. Let me ask you, since we keep skirting around
13 on the edges of it, and there may be -- and I know there's
14 probably more than that, but in your view, what is the next
15 phase for the Commission to -- designed to determine?

16 A. Fundamentally what will happen is SBC will
17 come in and will tell you that it has identified X number of
18 carriers that it says are providing mass market services.
19 And, quite frankly, I expect it to be that kind of
20 cut-and-dried presentation.

21 The CLEC industry will, in all likely, come to
22 you and say, look, this is not the type of analysis that
23 you're required to make under the TRO or, quite frankly,
24 even expected to make under the TRO, where you just look and
25 say, hey, if a carrier has a switch in this area, whatever

1 it is, and they've got some analog lines on it, that that's
2 enough to say, well, clearly people don't need UNE-P to
3 compete.

4 We'll talk to you about things in the TRO that
5 try to give -- that demonstrate, quite frankly, that when
6 the FCC was presented with that same type of evidence, it
7 rejected it. It said, hey, if we're going to -- before we
8 say that this is enough to show non-impairment, it better be
9 real activity, enough for the FCC to conclude that those
10 carriers that are out there doing it without switching are
11 demonstrating that this -- that all the problems that all
12 the carriers say that UNE-P solves must not be real, because
13 when you look out into the market, you see people doing it
14 without it, and not just in a few isolated areas, but across
15 a pretty broad area. That's what the debate's going to be.

16 Now, in this phase -- and that's why I think
17 it's sort of so uncomfortable is people are trying to tell
18 you what areas you should actually look at without really
19 learning what type of operations those carriers have, which
20 is why I keep coming back to you and saying, look, whatever
21 you do here, make it tentative, because until you really see
22 the types of carriers that SBC says to you is enough to show
23 that people don't need switching to compete in this market,
24 I don't think you'll really have a full enough picture as to
25 what areas you should conduct that analysis over.

1 I mean, at bottom -- I'll just go to the chart
2 that my testimony is left at -- they're fundamentally saying
3 there are carriers out there that over eight years have
4 failed to get above a zero percent market share, and because
5 of that kind of success, you should take away this other
6 thing that the numbers show is up at 6 percent, and it's
7 across the entire state.

8 And that's -- really when you boil down this
9 whole debate and by the time we get to the next phase, SBC's
10 going to be telling you, hey, the FCC told you that when you
11 see this kind of stuff that adds up to zero, you're supposed
12 to count to three and take switching away. And the Staff's
13 going to be saying, no, when you see this type of activity,
14 it's de minimis.

15 These are carriers that are largely doing
16 something else and the loops that SBC are counting are
17 tangential to the business plans and it's not a strategy that
18 shows that people don't need access to switching to compete
19 for these basically average customers. I mean, that's all
20 we're talking about, res and average business customers that
21 still want analog phone service.

22 Q. Is the analysis regarding impairment that we
23 are to -- that we are to do based upon an analysis of what
24 the status is in regard to what exists in CLEC-owned
25 switching presence in whatever geographic area we're talking

1 about, or is it much deeper than that and involved in
2 determining what it is that would cause there to be so many
3 CLEC-owned switches or UNE-Ls or whatever you want to call
4 it out there?

5 A. Actually, it's in a sense both. The FCC set
6 --

7 Q. And what I want you to do for me is
8 explain -- explain that so that -- and frame up the issue,
9 if you would, from your-all's standpoint, but also you might
10 frame up your -- what you believe is SBC's position on it,
11 to the extent you know.

12 A. Actually, on this -- the answer to this
13 question, I think we're on the same -- I think we have the
14 same answer.

15 Q. Thank you. Well, and I'm sure I'll hear more
16 if that's not the case, but go ahead.

17 A. The FCC set up a two-step process which, as I
18 understand it, SBC is actually at this point only asking you
19 to conduct the first step of which. The first step is, much
20 like your question, do you look out at what's happening in
21 the marketplace today, and that's the so-called trigger
22 analysis.

23 And in simpler terms, I think it's how you
24 really -- it has structure to it, but the goal is to look
25 out at the actual market and try and determine whether or

1 not people's activity in the marketplace actually shows that
2 the carriers don't need switching. That's the part of the
3 analysis that's trigger tested. SBC has asked.

4 The second part is what they call -- is called
5 the potential deployment test, and it's actually framed in
6 the reverse of how you asked the question. Because as I
7 understood your question, you asked, are we supposed to look
8 at why people are impaired?

9 The way the TRO is structured is the FCC said
10 the CLECs are impaired. So they're really asking you to
11 find out -- it's kind of the reverse, not why are people
12 impaired, but are those impairments real enough that you
13 still couldn't do it even though nobody has done it,
14 nobody's out there doing it today?

15 I don't know how that potential deployment
16 case is really going to develop in the SBC region, because
17 unless I'm mistaken, SBC has chosen around the country, as
18 has Verizon, to only ask state commissions to do the first
19 part of what the TRO requires, to look at what is actually
20 occurring in the marketplace and see if there's enough of
21 that -- and we'll disagree about what that means -- for
22 switching to still be available.

23 Only in the BellSouth region has the ILEC
24 started to broach the debate about the potential deployment
25 test, which gets much more into the causes. Quite frankly,

1 I think as all of us go through to explain to you the
2 trigger analysis, we're going to be explaining to you, look,
3 there's a reason why, when you look out -- when you look at
4 these charts that I have in my testimony, it shows almost no
5 UNE-L competition.

6 And where the UNE-L competition that does
7 exist barely exists in a few places, there are reasons why
8 the market looks that way, and we will in the next phase
9 start explaining that to the Commission, not so much because
10 it's absolutely critical for conducting the analysis, but I
11 think it's absolutely critical for you to understand why the
12 world looks the way it looks, so that you have a better
13 sense of whether these carriers that are being characterized
14 as proof that you don't need access to switching aren't
15 actually proving that point.

16 Q. So is it your belief that part of the reason
17 that there is impairment, assuming that to be the case, in a
18 region is based upon technical difficulties, locations being
19 in a certain area that are difficult to connect back to a
20 particular location on the CLEC switch, other things that
21 are technical, ignoring the pricing signals and things for a
22 moment?

23 A. Oh, yes. The price -- the pricing really has
24 -- the pricing really has nothing to do with it and, you
25 know, if we had all the time in the world to talk about it,

1 I think I could demonstrate to your satisfaction that the
2 price that CLECs pay SBC to use their switch is very fair in
3 terms of compensation.

4 The issue really falls into two categories.
5 One is, you start out -- if you start out with at least
6 accepting that the -- that loop network, all those lines
7 that go to everybody's house and business, nobody's going to
8 replicate that, at least not any time soon. All right. Now
9 the question becomes, well, if I have to buy that no matter
10 what, what is the best way to actually gain access to it?

11 There's two ways. One way is I put in a
12 switch and then I try and bring those loops to my switch; or
13 two, I lease capacity in the switches that already exist.
14 That's UNE-P. I lease capacity in the switches that already
15 exist, and there's two reasons why that's inherently
16 superior and can't be easily corrected, and it's really
17 illustrated by that map over there.

18 The first part is all those loops that exist
19 today, they go to a switch that is in each one of those, I
20 think that map shows wire centers, but whether they shows
21 wire centers or exchanges doesn't matter. There's just a
22 whole bunch of areas there. So if I had to find a way to
23 take every single one of those loops and bring it all the
24 way back to where my switch is, the cost of doing all that
25 kind of transport and backhaul in a market POTS service that

1 just isn't outrageously profitable, I'm never going to make
2 it work. Those loops just go to too many places that the
3 ILEC is at and that I'm not at. That's part 1.

4 Part 2 is, in order -- even if some technology
5 shows up and I'm able to reach every single one of those
6 wire centers, when I get there I still have this 19th
7 Century solution given to me of every time a customer
8 decides they want service from me instead of the incumbent,
9 some human being has to go take copper wires and take them
10 off a frame and put them on mine.

11 And, you know, the network was never built to
12 try to mass produce local competition where people are
13 manually touching those wires. I'm sure at some point in
14 your life you've played with a paperclip. You know, a
15 paperclip is, like, ten times thicker than these copper
16 wires. You don't play with them very often before they
17 break.

18 The reason the ILEC network is designed the
19 way it was is that you put the copper wires up on those
20 frames and you never went back and touched them. It isn't
21 designed for somebody to be constantly there moving them
22 around. So if I access that loop network by leasing
23 capacity in the switch that's there now all of a sudden, I
24 can change the carriers -- or the customer's carrier
25 electronically. And that's just all the difference in the

1 world for mass market.

2 All of a sudden, two conditions I need for
3 mass market competition are satisfied. I can serve little
4 people no matter where they live, and I can do it through an
5 electronic software command instead of trying to manually
6 reconfigure the network. You can't do hand-crafting in the
7 mass market and expect it to succeed and, quite frankly,
8 there isn't any simple solution to that anywhere in the near
9 term.

10 Q. If I accept -- if I accept that, then when
11 would it ever make sense from a technical standpoint for a
12 CLEC to employ its own switch?

13 A. There are going to be two reasons why you'd --
14 two main reasons today why you would deploy your own switch.
15 And maybe actually after I think about it, they really
16 collapse back to one. If I'm going to serve larger business
17 customers, they're a different set of customers, and they're
18 different in a couple of really critical ways.

19 First of all, they're used to signing
20 contracts. So if I go through a lot of trouble to serve
21 you, I can nail you down into a contract and I can amortize
22 the cost of that over a long period of time.

23 Two, the service you're going to buy from me
24 isn't going to be POTS. We're going to sit down and we're
25 going to talk about your data. I'm going to bring a DS1

1 pipe or larger out to your premise. We're going to have a
2 little party, we're going to have a little cutover party.
3 You know, you're going to be happy. I'm going to be happy.
4 It's the type of stuff you could never do to serve a
5 grandmother or a small business, right? You can't do that
6 at scale, but if the customer's large enough, you can take
7 them through that.

8 Most importantly, there's a new type of
9 switching technology called soft switches that's coming
10 along, and I don't know why we come up with all these words,
11 but the idea basically is, I design your service around the
12 service being a data service, and then I treat a voice call
13 as a very particular type of data transaction that requires
14 certain -- has special handling instructions, you know, like
15 you actually get to hear the person on the other end in real
16 time. You know, it has special needs.

17 And so I set up your voice conversation as a
18 data session that has to obey very particular rules. Well,
19 that kind of technology, that kind of switching capability
20 we can't get from the incumbent anyway. So CLECs, as they
21 compete in the enterprise market, will continue -- have in
22 the past and will continue to roll out technologies that are
23 best for the enterprise market, and over time there's always
24 going to be customers that are kind of at the cusp. Do I go
25 data, do I go voice, and over time, the number of customers

1 that are voice customers is going to continue to shrink and
2 they're going to end up being considered enterprise
3 customers, not because of some silly cutoff, but because
4 they actually decided they wanted these new, advanced
5 services.

6 And the only people that can compete in those
7 new advanced services are going to be people offering --
8 putting in their own package switching and developing those
9 networks.

10 So if you've got a long-term view of how
11 you're going to serve the market, the reality is for the
12 POTS market this application, this approach makes sense and
13 it works. It's just a commodity. For the enterprise
14 market, I'm going to continue to invest in and deploy new
15 technologies. Over time POTS is going to shrink, enterprise
16 is going to go up. But, you know, it's never going to go
17 away.

18 I think you have 2 million POTS customers in
19 this state. I mean, even if these new technologies gain
20 rapid acceptance, ten years from now you're still likely to
21 have a million. I mean, it's a big group of people, and
22 this is the way they're likely to gain service for any time
23 in the future.

24 Q. Describe for me the difference between what's
25 involved in moving the old POTS lines over to a new switch

1 as opposed to what you would be dealing with on a DS1.

2 A. Actually, some of the steps are very similar.
3 The difference is, is the amount of customer inconvenience
4 that they're willing to have. Let's assume that there's 24
5 of you up here. So the issue is, gee, do I bring 24 lines
6 up or do I bring a DS1? If I were to serve you in the way
7 that you're served today and try to do it off my current
8 switch, you all will have 24 wires that go to a central
9 office.

10 I've got to go into that wire center, I've got
11 to establish a collocation, and I've got to go to that main
12 distribution frame, find each one of your wires, which is
13 not as easy as you would think, break them off, get them
14 cross-connected, then coordinate with the incumbent the --
15 all the different transactions that need to occur on the
16 back end to make sure that when people dial your number, it
17 comes the right way, et cetera.

18 If I'm going to serve you on a DS1, many of
19 the steps are going to seem similar, but there -- there will
20 be differences in your attitude. What I will then -- what
21 happens in the marketplace generally today is, I first order
22 the DS1 from SBC, and they set up a whole separate pipe that
23 comes in to here. So you've still got your service working,
24 but now a separate DS1 has been installed by the phone
25 company. I pay them for setting up that.

1 You don't -- obviously nothing bad has
2 happened to you. All right. Now, after that is set up, and
3 I -- and it's in digital form and I can just cross-connect
4 that new connection over to my collocation cage, I can test
5 it all the way through. So as a CLEC I know, all right,
6 I've got a hot pipe that is running in correct fashion from
7 my central office all the way to here.

8 Here, somewhere in the building, I have to
9 mount my equipment to take your phone lines. But that's
10 when -- that's when we have our little cutover party. I now
11 roll my truck, and I'm not dealing with the phone company
12 anymore in terms of how does the hot cut proceed? My
13 technician is here. You know, I've sold you a DS1. So the
14 very fact I sold you a DS1, you know, whether you bought the
15 DS1 from me or from the phone company, these same steps are
16 going to happen.

17 Someone's going to have to come to your
18 premise. They're going to show up, they're going to install
19 equipment and they're going to start snipping lines and
20 reconnecting them. So it's not a question of, well, if I
21 stay with the phone company nothing happens, but if I go
22 with you, all this stuff happens.

23 It's -- no matter who you bought the DS1 from,
24 these are the things that happen when I go to DS1. And then
25 because the CLEC technician is here, whatever happens, good

1 or bad, it's the CLEC who did it to you, and he's going to
2 do the crossover. It's going to be -- since he's got to be
3 here anyway and -- you know, like I said, normally in the
4 real world, there's some fanfare about that. Your service
5 is being cut off and you get taken to lunch and they cut
6 over the circuits here, and then they still have to go
7 through the process with the phone company to port the
8 number so that the phone calls come in. But so much more of
9 it is inside the CLEC's control, he's doing to a customer
10 who's big enough that the customer itself is worth the
11 hand-crafting exercise.

12 The hand-crafting is going to come pretty much
13 either way, and I probably got you locked into a contract so
14 that those service initiation costs are amortized.

15 Q. Give me an example of why it might be an
16 important factor in the later -- later process, later phase
17 of this process to know what the outcomes would be prior to
18 finalizing the geographic area. Tell me what it is -- give
19 me an example of what might box the Commission in in a
20 decision in regard to the geographic area that might -- that
21 might have influence on -- an influence on us because it was
22 an unforeseen event, without hearing that portion of the
23 phase.

24 A. I guess the one that comes immediately -- the
25 one that comes immediately to mind is, taking SBC's proposal

1 as an example, SBC has consistently come up here and told
2 you, hey, I only have three markets, Kansas City,
3 Springfield and St. Louis. You don't have to worry about
4 anything else.

5 Well, if you were to adopt their proposal, one
6 of the things I think would become apparent in the next
7 phase of this case is that that left a whole bunch of places
8 in the state orphaned. I called them earlier orphaned
9 stepmarkets. The reality is right now people are serving
10 this entire state.

11 I think in the next phase, we will have the
12 opportunity to be able to demonstrate to you that the
13 ability for people to serve across the entire state
14 is so -- is tied to the ability to serve Kansas City, St.
15 Louis and, I guess to a lesser extent, Springfield.

16 You're getting statewide competition, but if
17 all somebody could do was serve using UNE-P, that
18 15 percent of the state that SBC says don't worry about,
19 you're not going to see people come to Missouri, learn how
20 to do all the operating systems with SBC, deal with all the
21 things it takes to be a CLEC to serve in the most rural part
22 of the state.

23 Now, SBC would never come to you and tell you
24 that if you split them up into four companies, one to serve
25 St. Louis, one to serve Springfield, one to serve Kansas

1 City and one to serve the rest of the state, that they'd be
2 able to continue operation in that kind of mode. But that's
3 kind of what they're implying that you should do here and
4 not look at those downstream consequences for the part of
5 the state that they haven't included in their filing.
6 That's part of it.

7 I think the Staff's proposal, quite frankly,
8 was -- with all due respect to Staff, was an effort at
9 minimizing the potential risk of a bad decision by using an
10 MSA, by using a smaller area. But from my perspective, at
11 least, when I look at Staff's proposal, if you cut out the
12 exchange of Kansas City and the exchange of St. Louis, you
13 know, those core areas, you're going to have an affect on
14 statewide competition that isn't really any different than
15 if you lifted out the MSAs.

16 The wire center -- and actually, if you keep
17 shrinking it down, I think you'll see that the consequences
18 of pretending that you can isolate out some part of the
19 geography of the state and take it away and yet you still
20 have mass market competition, I think those two views of the
21 world are very inconsistent, but it's very hard to talk
22 about that in its completeness, in just this phase of the
23 case when we're just trying to say, we'll draw these
24 boundaries.

25 Because we have to do it by saying, draw these

1 boundaries but then let me explain to you why you need to
2 look at trigger companies as really serving this market, not
3 just one little pocket, not one little area, but actually
4 serving the market in the same kind of way that UNE-P does,
5 because that's the kind of -- because mass market
6 competition is broad, but you can't count triggers that
7 don't serve broad areas.

8 Now, that issue is 100 percent in the next
9 phase of the case, but I think it's going to
10 cause -- could cause the Commission to think differently
11 about how to design the areas. And then what they expect of
12 their trigger companies.

13 Q. Is there a -- are there technical difficulties
14 within an MSA that would prevent a CLEC from serving the
15 entire MSA if they were located in such a way that -- if
16 they were located in a wire center with their own switches
17 within that MSA?

18 A. Yes. And it's just the whole -- the whole
19 answer I gave you earlier about for the mass market, it's
20 the same two; it's the hot cut and the fact that the loops
21 are spread out a lot of places.

22 If you look at the whole state, that point is
23 obvious. If you look at just an MSA, well, it's the same
24 point actually. I still have the hot cut problem
25 everywhere, and I still have loops that are in a lot of

1 different places.

2 I can't -- I can't recall how many
3 switch -- actually, I have the number. The exhibit JPG-4 is
4 for the Kansas LATA, but not the Kansas MSA. I think they
5 were pretty close, however. There's some 40-odd end offices
6 in the Kansas LATA, which means there's probably between 30
7 and 40 of those wire centers in the Kansas MSA.

8 And it is -- requires an extensive amount
9 of capital to extend loops out -- or extend transport
10 facilities out to each one of those wire centers, even if
11 the hot cut problem was solved and you could man-- you could
12 efficiently move loops between the ILEC and your network for
13 this type of customer without reaching the kind of problems
14 that we're seeing.

15 So, you know -- I'm trying to think of how to
16 articulate this. Part of the fundamental problem here is
17 that the type of business strategy you pursue with a UNE-L
18 strategy is so different than the type of business strategy
19 you pursue with UNE-P, when we're in this docket trying to
20 ask, well, what is the best geographic area where we get to
21 compare the two, the answer is, you know what, there is no
22 really good geographic area to compare the two, because they
23 do two different things.

24 Q. Well, that --

25 A. That's the conclusion you're supposed to be

1 reaching.

2 Q. The difficulty I'm having is understanding
3 what that distinction is from a technical standpoint, and
4 how is it that that Commission could draw boundaries to
5 reflect that difference?

6 A. I don't know that you should be trying to draw
7 the boundary to reflect the difference.

8 Q. Okay.

9 A. I think the boundary needs -- I think you
10 actually start at a little higher level and you ask,
11 do -- is the mass -- the mass market is made up of a whole
12 bunch of smaller users. How big an area do I have to have
13 in order for it to make sense for people to enter and serve
14 that whole bunch of small users? Because you've got to grow
15 it out to have enough of them.

16 Then you can look at UNE-P and conclude, based
17 on all the data that, well, UNE-P can serve that market.
18 Then the only thing you're left to test is, can UNE-L really
19 serve that market? And when you do --

20 Q. Exactly. So what is it about UNE-L that is
21 limited where UNE-P is not, from a technical standpoint?

22 A. From a technical standpoint, it has to do when
23 a CLEC enters and uses UNE-P, they don't need to get 2,000
24 customers at this wire center and none at the other one.
25 When you compete in the wire -- when you compete using

1 UNE-P, if I have 10 here, 15 here, 20 here, 25 here, then
2 everything is fine, because I lease enough switching to
3 serve 10 here, 15 here, 20 here, you know, the same thing.

4 If I come in on UNE-L, I've got to go only at
5 concentrations of customers, and as a practical matter I can
6 only go after the big -- biggest of those customers. So
7 that's why at the end of the day, you -- the technical
8 limitation of UNE-L is that fundamentally it can't succeed
9 in an environment where you're not out there building
10 concentrations of large customers.

11 That's what it can do. It can serve
12 concentrations of large customers. It can't serve broadly
13 dispersed groups of smaller customers.

14 Q. And that is because?

15 A. That is because I can never -- I can never
16 justify the cost to build out a network to serve 10 people
17 here, 15 people here, 20 people here. I never achieve
18 economies of scale. I have to go someplace where the minute
19 I put that capital in the ground, I've got customers there,
20 enough big customers that they're paying for that piece of
21 capital.

22 Q. And I understand your comment on the financial
23 and economic side. I'm looking for the limitations of UNE-L
24 on the technical side as to why that is the case. And it's
25 a -- I know it's a very simple concept. I'm just wanting to

1 get it into the -- into the discussion here.

2 What is it about UNE-L that prevents you from
3 doing the same thing on a technical -- from a technical
4 standpoint that you can do with a UNE-P? And I know it has
5 to do with the fact that you can get into many different
6 switches or different switches at different locations on
7 UNE-P.

8 A. Yes.

9 Q. But you only have one switch on UNE-L, and you
10 have to run all of your wires into that switch.

11 A. Into that switch.

12 Q. What I'm looking for is, tell me how that is
13 different, in layman's terms, if you could.

14 A. Well, first, it's not a simple issue because
15 if it was, I wouldn't be having so much trouble with it.

16 Q. Well, I understand.

17 A. The technical differences, I'm not
18 sure -- I'm struggling because many of the consequences are
19 easier to articulate in terms of finance and economic than
20 technology.

21 Q. But the two are -- the two are tied together?

22 A. The two have some links. Part of the
23 technical problem is all the hot -- if you took all the
24 pricing and economic issues out, you have this operational
25 difference between the type of disruption a regular POTS

1 customer is willing to live with versus a DS1 customer. It
2 isn't so much that the DS1 customer doesn't experience it;
3 it's just that he's expecting it through this process.

4 Here's another example of a technical nature.
5 The phone service you have at home is based on the idea that
6 you're going to talk into a phone and you're going to have a
7 -- this may be too technical, but I'll try and make it very
8 simple. It's based on the idea that I put on a piece of
9 copper wire electricity that's going to fluctuate in a way
10 that carries your voice, right?

11 Well, that is a great technology, it's been
12 with us for over 100 years, but it has one real distinct
13 downside. The longer that copper wire is, the more the
14 impedance on that electrical current degrades it. So
15 there's only so far I can serve you on copper.

16 If I've got you on a DS1, I've turned you into
17 digits, and I can carry something a very long way before the
18 piece of equipment on the other end gets confused about
19 whether it's a zero or a one. When I'm carrying your signal
20 in an analog wave form, once it starts getting distorted, my
21 piece of equipment at the other end isn't smart enough to
22 figure out the difference between static and you screaming,
23 right? I mean, it's just all the same. It's all noise to
24 it. Nothing personal obviously.

25 Q. I understand.

1 A. Well, once I got it in digital format, zeros
2 and ones, I can go a lot longer before it confuses a zero
3 and a one. What that means is that, if I'm serving digital
4 customers, I can very easily, once I get them to that wire
5 center, even though my switch isn't there, since they're
6 already in digital form, I can roll them onto another
7 digital transport facility and bring them all the way back
8 to my switch without there really being a degradation in
9 their service, because all I'm carrying is zeros and ones.

10 When I've got you out there on a POTS line,
11 when it comes up to the wire center, I can't carry you back
12 to the switch, because by the time it's there, it's garbage.
13 So I've got to put equipment in that wire center that takes
14 your voice, that puts it into a digital format, and then it
15 grooms you and then it puts you on a digital pipe to bring
16 you up to the switch.

17 Q. And that adds expense --

18 A. Yes.

19 Q. -- to the equation?

20 A. Yes. That's sort of the three big pieces of
21 cost that get tied to the technical problem are, I've got to
22 deal with this -- this wire being moved, which is
23 operationally horrible; I've got to deal with this pipe that
24 I've got to run from the wire center back to my switch; and
25 in that central office -- and this is actually a very big

1 component -- I've got to deal with the fact that I can't
2 bring the signal back to my switch in its current form.

3 I have to make it a digital signal to put it
4 on that pipe first. And that adds additional costs and
5 expense that I don't -- I don't really incur if I didn't
6 have to try to transport the signal out of that central
7 office.

8 Q. And are you familiar with the distances that
9 an analog signal can travel before it degrades, if you are?

10 A. Not -- no, not any longer.

11 Q. All right. At one point in time in your life
12 you were?

13 A. At one point in time I used to know a little
14 bit about everything. Now I know nothing about anything.

15 Q. Okay. I'm sure that -- I'm sure --

16 A. Don't take that too literally.

17 CHAIRMAN GAW: We're waiting for that to be.
18 Okay. I'm done. Thank you.

19 JUDGE MILLS: Okay. We'll do a round of
20 follow-up cross-examination based on those from the Bench,
21 in the same order that we originally went, beginning with
22 MCI.

23 MR. LUMLEY: No questions, your Honor.

24 JUDGE MILLS: Sage?

25 MS. MUDGE: No questions, your Honor.

1 JUDGE MILLS: Staff?

2 MR. WILLIAMS: No questions.

3 JUDGE MILLS: Sprint?

4 MS. HENDRICKS: No questions, your Honor.

5 JUDGE MILLS: SBC?

6 RECROSS-EXAMINATION BY MR. LANE:

7 Q. Let me start first with the technical issues

8 that you were discussing with Commissioner Gaw. Would you

9 agree that whether you're under UNE-P or whether you're

10 utilizing your own switch to provide service, that shared

11 transport or dedicated transport is available to the CLEC

12 under either circumstance unless the Commission makes

13 another finding in the Phase 3 portion of the case that

14 they're not impaired without access to that?

15 A. No.

16 Q. Okay. You would agree with me that the FCC

17 made a decision that transport was going to remain available

18 and was a national finding of non-impairment unless the

19 Commission makes a specific finding to the contrary, and

20 that's what Phase 3 is addressing, right?

21 A. Yes.

22 Q. Let me switch over and talk about hot cuts for

23 a minute. The impairment that the FCC found for switching

24 was not based upon an analysis of the mass market, other

25 than a look at the hot cut process, correct?

1 A. I think that's generally true. It's
2 focused -- its focus primarily was on the hot cut, and it
3 left to the state commissions to investigate the other
4 impairments.

5 Q. In fact, it was based exclusively on the hot
6 cuts, was it not?

7 A. Pretty much that's how I would interpret the
8 Order, yes.

9 Q. That's what they said in the Order, wasn't it?

10 A. I think they -- I'm not disagreeing with you.
11 That's my interpretation. I've heard other people argue
12 other things. I actually agree with you that that's
13 basically what the FCC looked at and that's the only thing
14 they considered. They recognized there were other
15 impairments, but they left the states to look at those.

16 Q. Paragraph 473 and 476 make that clear,
17 correct?

18 A. Will you let me accept this subject to check?

19 JUDGE MILLS: Sorry. No.

20 BY MR. LANE:

21 Q. First sentence of paragraph 473, our national
22 finding of impairment is based --

23 A. Can I find it first?

24 Q. Sure.

25 A. That's --

1 Q. Page 298, paragraph 473.

2 A. Okay. I've read 473.

3 Q. Okay. First sentence says, the national
4 finding of impairment is based on the combined effect of all
5 aspects of the hot cut process on competitors' ability to
6 serve mass market voice customers, right?

7 A. Yes.

8 Q. And then if you turn to paragraph 476, would
9 you agree that they made the same conclusion there, that
10 while there were other factors that might be considered,
11 that they did not form the basis of the national impairment
12 finding but only the hot cut process --

13 A. Yes.

14 Q. -- formed the basis?

15 A. Yes.

16 Q. All right. You were asked some questions by
17 Commissioner Gaw concerning the framework that the
18 Commission should utilize in the next phase of the case. Do
19 you recall those questions?

20 A. Yes.

21 Q. And would you agree that paragraph 494 lays
22 out the two-step process that was discussed?

23 A. It is one of the places where they lay it out,
24 yes.

25 Q. And you were characterizing SBC's position,

1 and would you agree that a more correct characterization of
2 what SBC Missouri has said with regard to the next phase is
3 that if the Commission adopts the crossover point that we
4 recommend and the geographic market that we recommend, then
5 we will limit ourselves to a trigger analysis, but otherwise
6 we may do a potential deployment analysis as well?

7 A. Okay.

8 Q. And you had read our pleading that said words
9 to that effect when you made your answer to Commissioner
10 Gaw, right?

11 A. Yes.

12 Q. You were asked some questions about the
13 switching issue. Would you agree with me that most of the
14 CLECs -- well, strike that -- many of the CLECs have their
15 own switches today that they are currently utilizing to
16 serve enterprise customers in the
17 St. Louis, Kansas City and Springfield areas?

18 A. Many of what CLECs? Many of the CLECs that
19 are there are doing that? I'm sorry. It's the form of the
20 question that's confusing me.

21 Q. Would you agree that there's many CLECs in St.
22 Louis, Kansas City and Springfield that have their own
23 switches that are utilizing them to provide service to
24 enterprise customers today?

25 A. I haven't looked at them with the specifics to

1 draw that conclusion yet. That's really part of the trigger
2 analysis. I'll accept it.

3 Q. Okay. And those switches that they have that
4 they're utilizing for enterprise customers are also
5 available to use to serve CLEC mass market customers as
6 well, correct?

7 A. Not necessarily, no.

8 Q. All the Class 5 switches that are utilized to
9 provide switching to enterprise customers are also capable
10 of providing service to mass market customers, correct?

11 A. In a theoretical sense, but the real question
12 -- part of the question would be, have they actually
13 deployed the equipment in any of the collocations that do
14 the types of conversions we talked about earlier, would be
15 one of many factors that you might have to -- you would --
16 at least that one I know you'd have to consider before you
17 could even consider them, quote, potentially available.

18 Q. The switch itself is capable of providing
19 service to mass market customers as well, correct?

20 A. Not necessarily. It only has digital switch
21 ports on it, then it is not capable at -- with that
22 configuration of providing service to mass market customers
23 just by -- with that information.

24 Q. Every Class 5 switch is capable of having
25 equipment added to it to provide service to mass market

1 customers, correct?

2 A. Yes.

3 Q. Okay.

4 A. I think that is correct. I can't imagine a
5 Class 5 switch that wouldn't be, yes.

6 Q. And aren't Class 5 switches that which CLECs
7 typically utilize to provide service to enterprise
8 customers?

9 A. The ones that made their switching investment
10 before they realized it was a bad investment, yes. Most new
11 ones are designed around the premise of doing packet
12 architectures on a going-forward basis, but there are some
13 legacy circuit switches that CLECs have acquired that have
14 that capability, yes.

15 Q. And have you analyzed the existing capacity in
16 those switches to determine whether or not there's
17 sufficient capacity for the CLECs to serve not only their
18 enterprise customers but their mass market customers as
19 well?

20 A. No. That issue was -- if that issue was
21 relevant at all, it would be in the potential deployment
22 case that you've only potentially indicated you might do
23 after we do this phase and the trigger phase.

24 Q. And with regard to collocation, that issue
25 needs to be addressed with regard to a switch that's used to

1 serve only enterprise customers the same as the -- strike
2 that. Try it again.

3 You had indicated collocation was an issue
4 that you had to look at in determining whether or not you
5 could utilize a switch that's serving enterprise customers
6 to also serve business cus-- mass market customers. Do you
7 recall that?

8 A. Yes.

9 Q. And that collocation issue is the same issue
10 that they faced when they placed the switch to serve
11 enterprise customers, right? You have to be collocated --

12 A. No.

13 Q. -- in the central offices to serve the
14 customers?

15 A. It could -- sorry. It could be the same; it
16 could be different. If I'm only going to serve digital
17 customers, then all I need is to have the ability to have
18 DS1 circuits terminate on whatever piece of transport
19 equipment I need to bring that back to my switch.

20 I might choose to locate that type of
21 equipment with that type of capability in a virtual
22 collocation arrangement, as opposed to a physical
23 collocation arrangement, because I have different equipment
24 and access needs once -- if I were to take the step of
25 trying to serve mass market customers in a commercially

1 meaningful way off of the -- off of my switch.

2 So it's not just a simple, oh, you put some
3 equipment in a central office someplace one time; you must
4 be able to do anything at all.

5 Q. In either case, you have to make arrangements
6 either for collocation or EELs or some other method to get
7 out to serve those customers, right, and that's the same
8 whether you have enterprise or mass market customers,
9 correct?

10 A. No. I think it's -- the considerations become
11 different. For instance, in EEL, there is some use of
12 buying DS1s that then get multiplexed onto some sort of
13 transport facility, but when you look at that for taking
14 analog loops and putting it up on a digital transport
15 facility, you rapidly see that that configuration makes no
16 sense.

17 And it's been pretty much unused around the
18 country because of that, so there are different
19 considerations.

20 Q. You had some discussion with Commissioner Gaw
21 concerning what I believe was called the electronic loop
22 provisioning; is that right?

23 A. No.

24 Q. Were you discussing hot cuts with him?

25 A. I was discussing with him hot cuts, yes.

1 Q. And were you suggesting in that that the
2 impairment issue was going to be materially affected by
3 whether or not electronic loop provisioning was made
4 available?

5 A. We didn't get into that, no.

6 Q. I may have misunderstood. You had no
7 discussion with him concerning electronic loop provisioning,
8 then?

9 A. I only recall talking to him about why the
10 manual processes are unworkable for the type of mass market
11 competition that we have at issue here. I did not engage in
12 any discussion that I recall about whether -- what other
13 ways of provisioning loops might be considered as ways to
14 lessen that.

15 Q. All right.

16 A. We just talked about the problems.

17 Q. I may have misunderstood you. I thought you
18 were indicating that an electronic loop provisioning
19 scenario was going to be necessary for customers to serve in
20 the mass market area.

21 A. We did not get into issues of how to solve the
22 problem.

23 Q. And with regard to electronic loop
24 provisioning for mass market, would you agree that the FCC
25 made an express decision that they were not going to require

1 it, because it was not technically possible at this time,
2 except for at such a high level of cost that it may lead to
3 \$100 billion or more?

4 MR. MAGNESS: Your Honor, I'd object. Mr.
5 Lane apparently is trying to bootstrap a discussion of
6 something that was not in the clarifying into his recross.
7 Mr. Gillan has already said he didn't discuss electronic
8 loop provisions. I don't believe Chairman Gaw raised it.

9 JUDGE MILLS: I agree. I believe that's
10 outside the scope of the questions from the Bench.

11 MR. LANE: Okay.

12 BY MR. LANE:

13 Q. With regard to the second phase, would you
14 agree that the FCC determined that if the triggers were met,
15 that that ended the discussion and they need not go any
16 further because no impairment exists in that market?

17 A. Yes.

18 Q. And the only way around that is if the
19 Commission were to find some extraordinary basis to find
20 that impairment still did exist, in which case they could
21 petition the FCC to require switching to be made available,
22 even though the triggers would indicate no impairment
23 existed?

24 A. If the triggers were met, demonstrating that
25 there was no impairment, that is true. You and I will never

1 come to an agreement as to what that sentence means.

2 Q. Someday we probably will, won't we? It will

3 be made clear either by the FCC or this Commission or

4 someone?

5 A. Maybe when you become a CLEC.

6 MR. LANE: I'm going to bite my tongue.

7 JUDGE MILLS: CenturyTel?

8 MR. DORITY: No questions, Judge.

9 JUDGE MILLS: Redirect based on questions from

10 the Bench and the further cross-examination?

11 MR. MAGNESS: Thank you, your Honor.

12 REDIRECT EXAMINATION BY MR. MAGNESS:

13 Q. Mr. Gillan, real quickly on this question of

14 what's coming in Phase 2, I mean, I know all the pleadings

15 speak for themselves, but are you involved in working on

16 these triennial review related issues in other SBC states?

17 A. Yes.

18 Q. Are you aware of any state where SBC has made

19 a declaration that it is doing anything more than putting on

20 a trigger case?

21 A. There were a lot of negatives in that. I am

22 not aware of any state where they have indicated they are

23 putting on anything other than a trigger case.

24 Q. For example, is it your understanding that in

25 Texas, SBC has said it ends after triggers?

1 A. It's been a while since I reviewed the Texas
2 pleadings, so I just know that in all the states I'm
3 working, it is all -- they're all being geared up as
4 trigger-only cases.

5 And while -- while SBC, obviously represented
6 by able counsel, has caveated its pleadings to reserve its
7 rights, as a practical matter in the, I don't know, 11
8 states, 10 states that I'm working in, there's no indication
9 at this point that it's anything other than a trigger case.

10 Q. There was one point in one of Chairman Gaw's
11 questions where you said -- I think I wrote it down -- we
12 can't get soft switching from the ILEC anyway, when we were
13 talking about these new types of switches. What did you
14 mean when you say, we can't get it from the ILEC anyway? Do
15 you mean as an unbundled element or the use of ILEC switch?
16 What did you mean by that?

17 A. That when the FCC issued the Triennial Review
18 Order, its basic structure was that it was going to carve
19 out from the incumbent unbundling obligations the new
20 technologies that are being deployed today and not apply 251
21 unbundling obligations on those new technologies, but that
22 when it came to giving CLECs access to the legacy network
23 that SBC inherited from its decades of being an incumbent
24 monopoly under government protection, that the Commission's
25 policies were going to look at the impairment and reach

1 findings uncolored by its desire to encourage the deployment
2 of advanced network capabilities.

3 And so the Commission set up this structure
4 whereby if CLECs hoped to offer services to customers that
5 are migrating into advanced services like those offered by
6 soft switches, then the only path to that is through
7 investing in their own switches and purchasing whatever else
8 of the legacy network they need to provide service. So that
9 was what I was referring to.

10 Q. Okay. I'm going to come back to Chairman
11 Gaw's questions to you about the difference, as he put it, I
12 guess the difference between the mass market and the
13 enterprise or the difference between serving the mass market
14 or serving DS1. Two questions on that.

15 One, you described fairly well with the -- you
16 know, you were taking everybody to lunch and cutting ribbons
17 and all that stuff on the DS1 hot cut. Could you -- and you
18 described a bit if we had 24 lines coming up here, if this
19 was mass market, that each one of those lines would have to
20 be touched.

21 Could you give us a little bit more
22 description of how the typical mass market hot cut would
23 need to work?

24 A. Yes. If I were to try and do that for the
25 same 24-line customer, I would have to have the -- the ILEC

1 technician go and locate each of those
2 24 copper pairs. If I was trying to accomplish this all so
3 that there was a service rollover that occurred where they
4 didn't have still some lines with SBC and some lines with
5 the CLEC, which, you know, obviously a business might want
6 to have its calls roll from one line to the other, if one
7 line's busy keep going, so you want everything to move at
8 once, I would not only have to coordinate the wire being
9 cut, moved over to the CLEC facility, and having the number
10 ported in a fashion where the customer's outage was
11 minimized, I'd have to coordinate that activity across all
12 24 lines so that they were all -- that all occurred
13 reasonably within the same time frame, so that the customer
14 didn't notice the experience of shifting carriers.

15 Q. And why is it important for a mass market
16 customer not to notice, when the DS1 customer you described,
17 you're proud for him to notice these changed carriers?

18 A. The DS1 customer, fundamentally, you've sold
19 him a new service that he understands that new facilities
20 are going to be run, the network's going to be rearranged.
21 It's all part of -- quite frankly, it's all part of the
22 sales call. And part of the reason to can make economic
23 sense is that instead of the customer having to pay for 24
24 copper lines back to the incumbent switch, in effect you buy
25 four lines -- well, actually two, two pairs, they add up to

1 four, in order to provision the DS1, so that there's a --
2 there's a savings there that helps justify the service to
3 the customer.

4 So part of the whole package of what you sold
5 the customer was, hey, we're going to do this to you, but
6 the reason is you're going to save money, because instead of
7 paying 24 times the business rate, you can only -- you only
8 have to buy this one thing from me, but it's going to give
9 you the same functional equivalent as you had before.

10 Q. I want to finally focus on, if we can, just so
11 we're all looking at the same maps, because there was some
12 discussion of maps. There's a map that SBC has entered as
13 Exhibit 27, and I'd like to ask you a couple questions about
14 the example that Chairman Gaw posed to you about operational
15 issues, and reference this map as opposed to the other ones
16 that people are looking at.

17 If you look at the first page of that Exhibit
18 27, let's say you have a CLEC switch in way over, on the far
19 right side, in Festus.

20 A. Excuse me, Counselor.

21 Q. You don't have it?

22 A. I don't have the exhibit.

23 Q. Let me share the map with you.

24 A. And it was okay while you were holding it up,
25 but once you put it down, I couldn't see it.

1 Q. Well, I think I could probably do this holding
2 it up. If you have a CLEC switch that you put in way over
3 here on the right side, I guess the east side of the St.
4 Louis LATA, in the Festus wire center, and you want to --
5 and you want to serve a customer way over in the green one
6 over here on the far west side, and it's called Beauford,
7 okay? So Festus to Beauford, that's what we want to do.
8 All right?

9 And a CLEC puts in a switch, and let's say the
10 switch is one of those we've been talking about. Let's say
11 it's a Class 5 switch capable of providing local service.
12 Now, tell me, if I want to get a line -- just a mass market
13 service, I'm not talking about DS1 -- from over here in
14 Festus way over there to Beauford, operationally -- let's
15 just make a list to try to keep it simple, of what you need
16 to do.

17 You mentioned transport, you mentioned
18 collocation.

19 A. I would need -- I would need to have a
20 transport facility of some kind from Festus to Beauford,
21 install equipment in Beauford. Let's assume for a moment
22 that I need -- that I use a physical collocation
23 arrangement, in which case I'm going to have to order it,
24 they're going to have to construct it out. I'm going to
25 have to make arrangements for power to be available into

1 that collocation.

2 I'm going to have to install the equipment in

3 that collocation, and then when I -- the frames upon which

4 you terminate the copper wire once you bring them into my

5 cage is off of the frame they're on. So I have to establish

6 that whole footprint, and then have that same -- that loop

7 rolled over onto the frame, which means that the --

8 Q. And that frame, where is that frame? Is it in

9 Festus?

10 A. Beauford.

11 Q. Are we still in Festus?

12 A. No, we're in Beauford.

13 You sure it's not Beauford?

14 Q. I don't know.

15 MR. WILLIAMS: It's Beauford.

16 MR. MAGNESS: It's Beauford. It is Festus,

17 isn't it?

18 MR. WILLIAMS: Yes.

19 BY MR. MAGNESS:

20 Q. Okay. The guy with the limp. Okay. My

21 switch is in Festus, Mister.

22 A. I thought it was Chester, too.

23 Q. Let me choose another couple of central

24 offices. And I'm sorry, but if we have our switch in

25 Festus, let's say we're just looking at the east end of here

1 and you're trying to reach a customer in Beauford. Okay?

2 A. I need to build a transport facility across

3 the -- I guess that's an MSA map?

4 Q. Uh-huh.

5 A. -- to Beauford. I have to terminate it in a

6 cage. I have to establish the power requirements, the

7 environmental capability. I have to get all that from the

8 ILEC, because as a practical matter, the central office

9 equipment that I put there is environmentally sensitive.

10 I have to put in a frame for the copper

11 wire to be cut to. I then have to have their technician go

12 find the customer's copper wire, attach it off of the frame

13 that it's currently connected through to their switch, onto

14 whatever frame has the cross-connect capability back to my

15 frame, back into the equipment that digitizes the customer

16 service, multiplexes it onto the transport facility, hauls

17 it on the transport facility over to my switch.

18 Q. In Festus?

19 A. In Festus. And if I make the assumption that

20 I've built that transport facility, as opposed to

21 leasing it from the incumbent, then the facility can come

22 into my switch room.

23 If I've leased it, then that transport

24 facility actually goes to their central office or their

25 wire -- their central office there in Festus, in which case

1 I have to also have an ability to cross-connect there from
2 that transport facility onto whatever facility I've
3 constructed between myself and the incumbent to bring it
4 over to my switch.

5 But in the simplest case, I've brought that
6 transport facility myself directly into my switch location,
7 so I don't have that intermediate step of having to deal
8 with the incumbent network also in Festus.

9 Q. Now, all that you just said, the cage over
10 in -- is it Beauford? The cage in Beauford, the
11 cross-connects, the collocation, the transport facility
12 you've got to buy, the crossing over of wires from one frame
13 to another, those sorts of things have to be done to get
14 from Festus to Beauford whether you're serving a DS1
15 customer or a mass market customer?

16 A. Basically with the exception of some of the
17 equipment that I would put in the collocation in Beauford
18 becomes less complicated if all of the services -- all the
19 network elements that I'm purchasing out of that collocation
20 are already in digital format, in digital form, so that they
21 can be plugged into my network there. I don't have the
22 additional step of taking the analog signal and digitizing
23 it.

24 Q. Now we're out in Beauford, okay? We're ready
25 to serve the customer, the DS1 customer you've already

1 described. The DS1 customer is the party at the office and
2 you take the big pipe out there and install channel bank
3 equipment and that sort of thing, right?

4 A. Yes.

5 Q. Okay. Let's say the customer is not the DS1
6 customer. The customer is the grandmother you mentioned.
7 She's got one POTS lines. She just wants to try somebody
8 new. You describe what all happens for the DS1. What has
9 to happen for the DS0 or the mass market customer? You've
10 got your gear collocated, you've got your cage all built,
11 you've got your transport facility in place. Now what do
12 you got to do to actually get to that one-line customer?

13 A. Her line has to be -- her line has to be
14 disconnected from the ILEC network. Her service goes down.
15 It has to be reconnected on my network through the steps
16 that that takes, where her ability to make outbound calls
17 gets restored, but her ability to receive inbound calls is
18 going to occur after an additional step.

19 Obviously none of this is going to happen for
20 a -- for a small customer with any hand-holding from the
21 CLEC, because you cannot hand-hold customers through this
22 kind of process when they're small. You can only justify
23 account teams and customer coordination when the customer is
24 sufficiently large enough.

25 So when this happens, how it happens, how it

1 influences her life is going to be something that -- that
2 she isn't going to be groomed for.

3 Q. So to get from Festus to Beauford -- well, to
4 get from Festus to Beauford, the CLEC has got to do the same
5 thing and incur the same costs and have the same operational
6 issues whether they're serving grandma or whether they're
7 serving a large business, is that what you're saying, just
8 to get that part done?

9 A. Just to get that part done, yes.

10 Q. And then when you get to serving the mass
11 market customer, you also face a more difficult transition
12 to get the loop out than you would if you were doing a DS1,
13 more risky, say, to the customer?

14 A. It's not risky to get the loop out. It's all
15 the processes around manually migrating it are in the hands
16 of the ILEC instead of the CLEC, and the customer can't be
17 prepared for it in the same way that you can do with a DS1,
18 and you cannot recover those costs inside the same type
19 economic framework that you can with a DS1 customer who was
20 going to be interested in contract services instead of month
21 to month.

22 Q. Well, since we were focused on operation with
23 Chairman Gaw's question, let me introduce another layer of
24 operational. If between you and grandma your collocation
25 cage in Beauford -- Beauford and --

1 A. I think you have me saying Beauford now.

2 Q. Yeah. Beauford, who you're going to serve,
3 there is something called a digital loop carrier in the ILEC
4 network. Does that have any impact on how it all works?

5 A. Yes. If -- depending on the outside plant
6 used by the incumbent, if they have a digital loop carrier,
7 they cannot actually separate out the loop in any meaningful
8 way from being served on their loop or on their switch. And
9 the reason is, quite frankly, that the customer signal is
10 digitized out there towards where the customer is. It's
11 brought up in this system and that system terminates
12 directly into their switch.

13 So you can't just pull it out of there,
14 because it's already plugged into their switch. You have to
15 go create a parallel loop to serve that customer that's on a
16 system that isn't integrated into their switching
17 architecture.

18 Q. Does SBC have any -- to your knowledge, have
19 any digital loop carriers in its outside plant network?

20 A. I've not looked at statistics specific to
21 Missouri.

22 Q. But if they did, that problem could exist that
23 you've just described?

24 A. Yes.

25 Q. And I have -- I know operational was the

1 focus -- but an issue that has -- I guess, maybe crosses
2 between operational and, say, marketing is the concept of
3 churn in the mass market. And what impact does customer
4 churn differences between a DS1 and a DS0 have on your
5 operational ability to serve?

6 A. Well --

7 Q. You know what I mean by churn?

8 A. Yes. Churn fundamentally is the fact that
9 customers come to you for a while and then they leave and
10 they go somewhere else. Let's face it, the group of
11 customers that choose CLECs are not known for their loyalty.
12 And as a practical matter, this is true when long distance
13 was first introduced.

14 A lot of customers left AT&T and went to a
15 long distance carrier, but then left that long distance
16 carrier to go to the next long distance carrier, because
17 once they committed in this process of not being an AT&T
18 customer, they moved among CLECs more freely. And the
19 problems that caused in the long distance industry was
20 relatively minor, because when the customer came to you and
21 left you, all you did was pay for the software command to
22 execute that change in carrier.

23 But in this environment where you're having to
24 pay for the cost of manually changing them over, if they
25 stay for a very short period of time, then you have those

1 same operational problems in reverse. Your systems have to
2 -- you have to release the number, the number has to be
3 reported, the customer has to be disconnected and
4 reconnected onto the other CLEC's network.

5 And if a customer is known for doing this
6 relatively frequently, as different bargains or prices come
7 into place, then nobody ever gets to recover the cost of
8 changing the customer.

9 The DS1 marketplace, because you have
10 contract-based arrangements, are -- they're basically the
11 norm in that product market. You can contractually tie your
12 customer to -- at least, if he's not going to leave you,
13 he's going to pay you to offset those nonrecurring costs to
14 establish his service.

15 Q. And once he's had -- gone to the expense of
16 putting in the channel bank and going through all that, his
17 decision-making may be a little bit different than
18 grandma's?

19 A. Yes. And, quite frankly, he becomes harder to
20 convince on the front end, because he knows he's going to be
21 relatively sticky during the life of the contract, so it
22 ends up with a different type of marketing relationship as
23 well. He's not going to
24 just -- he's not going to try you for 30 days to see how
25 your DS1 works.

1 He's going to research what he wants, make a
2 selection and understand that once he makes that choice and
3 -- because he's going to incur costs, too, in terms of
4 productivity losses and everything else while this whole
5 process goes underway. It's something that he's going to do
6 with an expectation of staying with that vendor for a period
7 of time.

8 Q. Now, if you're the grandma in Beauford, churn
9 isn't -- I mean, the fact that churn exists isn't a bad
10 thing, is it? I mean, doesn't that really just mean that
11 she's able to easily switch one carrier back to SBC to
12 somebody else wherever she wants? It's not a bad thing in
13 the industry, is it?

14 A. It's not great for the industry per se, but
15 it's great for the consumer, because really what you want to
16 do from the consumer perspective is, like was done in long
17 distance, is make it so there's very low transaction costs
18 involved in having a customer change carriers and providers,
19 so that they can easily move between them and take advantage
20 of price wars and other service offerings.

21 The providers would prefer all customers to be
22 sticky. Consumers will always prefer to maintain as much
23 flexibility as possible.

24 Q. Okay. So just to kind of make the list I was
25 talking about before, the operational/marketing issues

1 include churn and the ability to switch easily, the hot cut
2 process for the mass market customer, and then the -- would
3 you agree those are differences between the DS1 and the mass
4 market?

5 A. Yes.

6 Q. Okay. And then the network that goes from
7 Festus to Beauford is not different, as we described it, the
8 CLEC network, but as I take it what you're testifying is
9 that the revenue opportunity out in Beauford is awfully
10 different; is that right?

11 A. No. I was also testifying that the network is
12 different at the Beauford end.

13 Q. Okay. Just -- it's different at the Beauford
14 end, and summarize for me for my list why that is.

15 A. Because in Beauford, if it's an analog
16 customer, it can't be put on the digital facility without
17 some conversion of signal, if the signal needs to be
18 prepared for transport. Whereas, the DS1 customer is
19 already in Beauford, already in a digital format and can
20 more easily and inexpensively be multiplexed into the
21 transport network.

22 Q. Okay. And when you start adding up the
23 multiplexing and the cross-connects and the transport and
24 collocation, the operational issues begin to run into money
25 issues at some point, do they not?

1 A. Yes.

2 Q. And you are not claiming in your testimony,
3 are you, that the switches that are operating -- operated by
4 CLECs are not being used, the question is more how they're
5 being used; is that fair?

6 A. Particularly if you look at how they're being
7 used now to determine whether -- what they really actively
8 are doing today. They're being used, but I think the next
9 phase of the proceeding will show that they're not being
10 used as mass market switches.

11 Q. Well, do you believe that companies have tried
12 to serve the mass market using their own switches?

13 MR. LANE: You know, Judge, this is way beyond
14 the scope of the questions from Commissioner Gaw. That's
15 the only ones we dealt with. We've gone longer with him
16 than with Commissioner Gaw at this point.

17 JUDGE MILLS: I'm not going to comment on how
18 long we've gone, but I do think that this particular
19 question is beyond the scope, and I'm going to sustain your
20 objection on that basis.

21 MR. MAGNESS: That's all I have, your Honor.

22 JUDGE MILLS: Thank you. Mr. Gillan, you may
23 step down. And we will take a ten-minute recess until 3:10.

24 (Witness excused.)

25 JUDGE MILLS: We're off the record.

1 (A BREAK WAS TAKEN.)

2 JUDGE MILLS: We're back on the record, ready

3 to begin with Sprint Witness Harper. Mr. Harper, if you

4 could raise your right hand.

5 (Witness sworn.)

6 JUDGE MILLS: Thank you. You may proceed.

7 MARK D. HARPER testified as follows:

8 DIRECT EXAMINATION BY MS. HENDRICKS:

9 Q. Mr. Harper, would you state your full name for

10 the record.

11 A. It's Mark D. Harper.

12 Q. On whose behalf are you testifying today?

13 A. On behalf of Sprint Missouri, Inc. and Sprint

14 Com, LP.

15 Q. Are you the same Mark Harper that filed both

16 direct and rebuttal testimony in this case?

17 A. Yes, I am.

18 Q. First, I'd like to talk about your direct

19 that's been marked Exhibit 7. If I were to ask you the same

20 questions to appear in your direct, Exhibit 7, would you

21 provide the same answers?

22 A. Yes, I would.

23 Q. And are those answers true and correct to the

24 best of your knowledge?

25 A. Yes.

1 MS. HENDRICKS: Your Honor, I move for the
2 admission into the record of Exhibit 7, the direct testimony
3 of Mr. Harper.

4 JUDGE MILLS: Are there any objections to the
5 admission of Exhibit 7?

6 (No response.)

7 JUDGE MILLS: Hearing none, it will be
8 admitted.

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

10 BY MS. HENDRICKS:

11 Q. Mr. Harper, with respect to your rebuttal
12 which has been marked Exhibit 8, if I were to ask you the
13 questions that appear in your rebuttal testimony, would you
14 provide the same answers?

15 A. Yes.

16 Q. And those answers are true and correct to the
17 best of your knowledge?

18 A. Yes, they are.

19 MS. HENDRICKS: Your Honor, I move for
20 admission into the record of Exhibit 8, the rebuttal
21 testimony of Mr. Harper.

22 JUDGE MILLS: Any objection to the admission
23 of Exhibit 8?

24 (No response.)

25 JUDGE MILLS: Hearing none, it will be

1 admitted.

2 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

3 MS. HENDRICKS: Your Honor, Sprint tenders Mr.

4 Harper for cross-examination.

5 JUDGE MILLS: Thank you. And before we go to

6 that, I don't know if any of you have looked outside during

7 that last break. Apparently it's snowing fairly hard. I've

8 had reports through e-mail that the roads are getting pretty

9 bad. So if you don't have to be here, you might want to hit

10 the road before it gets any worse. Okay.

11 Cross-examination for Sprint witnesses, Staff?

12 MR. WILLIAMS: Yes, your Honor.

13 CROSS-EXAMINATION BY MR. WILLIAMS:

14 Q. Mr. Harper, doesn't the Staff's proposal to

15 define geographic markets on the basis of exchanges enhance

16 the Commission's ability to examine the existence of a

17 competitor's ability to serve customers economically within

18 the MSA, rather than

19 use -- let me rephrase that.

20 Doesn't the Staff's proposal to define the

21 geographic markets on the basis of exchanges enhance the

22 Commission's ability to examine the existence of a

23 competitor's ability to serve customers economically within

24 the MSA, rather than using MSAs to define the geographic

25 markets?

1 A. No, I don't believe so. Setting the market as
2 the MSA would allow them to properly view the evidence of
3 actual switch deployment and whether that proves the
4 economic feasibility of someone serving the mass market.

5 Q. I'm going to take your attention to
6 page 9 at lines 8 through 12 of your direct testimony.

7 A. Direct?

8 Q. Direct.

9 A. Okay.

10 Q. At that point in your testimony you include a
11 list of geographic areas within which a small group of
12 customers would be served?

13 A. Yes, I see it.

14 Q. If that group of customers fell within all the
15 categories listed, wouldn't they also fall within an
16 exchange?

17 A. Yes, they would.

18 Q. Would you define for me a wire center?

19 A. I've heard many good definitions today. Mine
20 would essentially be the same, which is the place where the
21 wires would terminate into a switching device.

22 Q. And would you define an exchange?

23 A. My understanding of exchange is it's a piece
24 of geography outlined, in our case in our tariff, that says,
25 this is the area within which we offer service and defines

1 those geographic limits, defines terms and conditions and
2 pricing.

3 Q. Do your tariffs include a map of the exchange
4 boundaries?

5 A. Last time I looked there was a map there.

6 Q. Would you define MSA?

7 A. The MSA is a definition -- I'm sorry. The
8 MSA is a definition produced by the government, I believe by
9 the Census Bureau, to measure beginning with an urbanized
10 area and then taking a look at the economic flow, commuting,
11 other patterns, to build an area based on counties
12 surrounding that urbanized area.

13 Q. And how would you define MCA?

14 A. The MCA is the product of a Commission order
15 in the Case 92-306 that basically established a calling plan
16 that is mandatory for some customers, optional for others in
17 St. Louis, Kansas City and Springfield.

18 Q. And how would you define a LATA?

19 A. A LATA was a -- a creation of the -- of the
20 court in the modified final judgment regarding the
21 divestiture of the Bell companies. It identified
22 responsibility for carrying traffic.

23 Q. And if I wanted to define the geographic
24 footprint of a wire center, where would I obtain that
25 information?

1 A. Probably in the ILEC records.

2 Q. For purposes of the TRO, do you have a
3 definition for economies of scale?

4 A. I think I referenced one in my testimony, but
5 just simply a declining cost -- unit cost with increasing
6 output.

7 Q. And economies of scope?

8 A. I tend to view that as essentially the same
9 thing, reducing cost, but through the offering of additional
10 product or offering the product over a greater scale.

11 Q. And is a DS0 line an analog line that normally
12 carries voice?

13 A. That would be my understanding.

14 Q. And a DS1 line is a digital line?

15 A. Yes, uses a digital format.

16 Q. And you can carry voice and/or data over a DS1
17 line?

18 A. Certainly.

19 Q. Would you provide a definition of the UNE
20 platform?

21 A. The UNE platform is a collection of UNEs that
22 allows essentially a CLEC to utilize the ILEC network to
23 provide service; be a combination of loop and switching and
24 in some cases shared transport.

25 Q. And would you compare that to what's been

1 termed UNE-L?

2 A. Essentially under UNE-L, the CLEC for the most
3 part would be using ILEC loops. Of course, they'd have to
4 have collocation to put their equipment or to connect to
5 those loops, but they'd be supplying their own transport and
6 switching.

7 Q. Are you familiar with host and remote
8 switching?

9 A. I'm not an engineer, but I'm aware of
10 the -- generally the structure of the network, yes.

11 Q. How would you define a wire center where
12 there's a host and remote switching being -- taking place?

13 A. In my experience, the remote itself would be
14 -- normally be a wire center, as well as the host would be a
15 separate wire center.

16 Q. Are you familiar with or have you seen Exhibit
17 27, which is the maps?

18 A. Yeah, I happened to pick one up.

19 Q. And do you agree that those maps generally
20 show the different geographic footprints of wire centers and
21 exchanges and MCAs and MSAs?

22 A. Yeah, I would agree with that.

23 MR. WILLIAMS: No further questions for this
24 witness at this time.

25 JUDGE MILLS: Thank you. Mr. Magness?

1 If you can go check and see if he's right out
2 there in the lobby.

3 MR. MAGNESS: No questions, your Honor.

4 JUDGE MILLS: Mr. Lumley?

5 MR. LUMLEY: No questions, your Honor.

6 JUDGE MILLS: SBC?

7 MS. MUDGE: No questions, your Honor.

8 JUDGE MILLS: I'm sorry. I forgot Sage. I
9 was on the wrong line.

10 MS. MUDGE: We're pretty unforgettable, your
11 Honor, but no questions.

12 MR. LANE: I thought she was speaking for me.

13 CROSS-EXAMINATION BY MR. LANE:

14 Q. Good afternoon, Mr. Harper.

15 A. Hello. How are you?

16 Q. Great. Now, your testimony in this case is on
17 behalf of Sprint the ILEC and Sprint the CLEC, right?

18 A. Correct.

19 Q. But it's fair to say that Sprint the ILEC is
20 not seeking any relief in this proceeding, right?

21 A. No, I've stated that in my testimony, as well
22 as in Data Request response to Staff. No, we're not.

23 Q. You're not trying to contend that there is
24 non-impairment without access to unbundled local switching
25 in any of the Sprint the ILEC territories; is that correct?

1 A. No, not in Missouri.

2 Q. But Sprint the CLEC has something to gain in
3 this proceeding, right?

4 A. Something to gain? I would say something to
5 retain.

6 Q. Okay. Sprint the CLEC's position is that they
7 want to try to have unbundled local switching remain
8 available as a UNE under Section 251 in all the areas served
9 by SBC Missouri, right?

10 A. We'd like to demonstrate that there is still
11 impairment for switching in the mass market cus-- or mass
12 market, yes.

13 Q. And your testimony deals only with the
14 geographic market definition issue, as opposed to the DS1
15 crossover issue, right?

16 A. Correct.

17 Q. And with regard to the geographic market
18 issue, you recommend the use of the MSA, but only if it is
19 used -- or the geographic market is used in the way that you
20 recommend, right?

21 A. That's how we couch it, definitely.

22 Q. And it's fair to say that your theory is that
23 a switch can't count as meeting the trigger unless it's used
24 to serve all parts of whatever geographic area is selected
25 by the Commission, right?

1 A. No. The term I used in terms of throughout,
2 the concept I was trying to get across is you'd use that
3 geography to measure whether there is a demonstration of do
4 the switch providers provide a demonstration of economic
5 feasibility? It's not just searching to find if there's
6 switches there.

7 I wouldn't argue that they have to serve 100
8 percent of the mass market, but the mass market is within
9 that market, and they need to be serving a substantial
10 majority.

11 JUDGE MILLS: Mr. Harper, can I get you to
12 move a little closer to the mike? Thank you.

13 BY MR. LANE:

14 Q. Let me see if I can clarify, make sure I'm
15 following you. Your position is that a switch shouldn't
16 count as meeting the trigger unless, one, it's serving the
17 entire geographic area as selected by the Commission, and
18 two, it's serving some sufficient number of customers in
19 your view, right?

20 A. Well, first off, let me -- in terms of the
21 actual interpretation of the triggers and the application of
22 the triggers, that's for the next phase of the case.

23 What I'm trying to say in my testimony is that
24 the market the Commission defines is the area that is going
25 to be used to determine the -- the extent of the triggers

1 meeting or the switches that are there meeting the trigger
2 application.

3 Q. All right. If you'd turn to page 5 of your
4 rebuttal, if you'd look at lines 4 through 7.

5 A. Page 5?

6 Q. Yes.

7 A. Okay.

8 Q. Is it fair to say that on lines 4 through 7,
9 you make the assertion that a switch shouldn't be counted in
10 the trigger analysis unless you look at how many customers
11 are being served and how much of the market is being served?

12 A. Yes, I do. I draw that conclusion from the
13 TRO.

14 Q. And your position on that is that the switch
15 has to be utilized to serve all of the geographic market
16 area that's selected by the Commission, right?

17 A. As I stated earlier, I have not said they had
18 to serve all. I have not established a level, a hurdle
19 rate, no. But I've said they don't have to serve every
20 customer in the mass market to count, no.

21 Q. And how do we make that determination?

22 A. How do we make which determination?

23 Q. How much they have to serve?

24 A. That's for the next phase of the case, and the
25 evidence that's presented to the Commission.

1 Q. And you don't have a position at this time on
2 what that is?

3 A. No, I do not.

4 Q. Okay. Would you agree with me that the larger
5 the geographic market selected by the Commission, the more
6 likely it is that there'll be sufficient switches to meet
7 the trigger requirements of the TRO?

8 A. I agree that there will be more switches, but
9 I think the term "sufficient" as used by the FCC in the
10 footnote you referenced earlier suggests perhaps more than a
11 counting exercise.

12 Q. And apart from the counting exercise, you
13 would agree that the FCC has made it clear that the larger
14 the geographic area, the more likely it is that there'll be
15 a sufficient number of switches to meet the trigger, right?

16 A. I think it's a logical statement that says the
17 bigger circle you draw, the more likely that there are
18 switches in that circle.

19 Q. So it's clear from that that the FCC doesn't
20 intend that the switch has to serve all areas of the market
21 in order to count as a trigger, correct?

22 A. I don't think that -- again, I didn't say all,
23 but I don't think it's clear that a -- based on the TRO,
24 that they're saying the simple presence of a switch serving
25 10 percent, let's say, is evidence that that's proven the

1 economic ability of serving the mass market within that area
2 defined.

3 Q. I'm not trying to say that it's your view, but
4 you would agree with me that the FCC has made it clear that
5 the larger the geographic market area, the more likely it is
6 that switches will exist to meet the trigger means that,
7 from the FCC's perspective, the switch does not have to
8 serve the entire geographic area to be counted, right?

9 A. I guess at this point I can agree that's one
10 interpretation of what they're intending to say there. I
11 don't believe it's a good interpretation of the complete
12 process of trigger analysis as intended by the FCC.

13 Q. You would also agree that the FCC has made it
14 clear in the TRO that the geographic market can't be set in
15 such a way as to find impairment in all areas, that it can't
16 be designed for that purpose?

17 A. You'd have to show me where it says that.

18 Q. Okay. Would you look at paragraph 495, which
19 is on pages 315 and 316, referring specifically to the last
20 sentence that begins at the bottom of 315 and carries over
21 to page 316.

22 A. I don't conclude from reading that sentence
23 that it implies that there will automatically be a finding
24 of non-impairment. It's talking about how to define markets
25 and perhaps in defining them, attempt to distinguish where

1 findings might be likely, but it doesn't preclude the final
2 result or it doesn't state what the final result is going to
3 be.

4 Q. All right. Let me try again with the
5 question. Make sure we're on the same track. The directive
6 out of the FCC in the TRO is to set a geographic market in
7 such a way where different findings with regard to
8 impairment are likely, right?

9 A. The guidance here is to attempt to do that,
10 yes.

11 Q. It would be inappropriate under the TRO to try
12 to set the geographic market in such a way that it results
13 automatically in a finding of impairment in all cases,
14 right?

15 A. I'm not sure how you would do it so it would
16 be automatic, but I don't think any -- I mean, the process
17 is not designed to produce an automatic result, no.

18 Q. And the flip side of that is that you should
19 try to set a geographic market in such a way that you
20 identify those areas where finding of non-impairment is
21 likely, right?

22 A. I mean, no, I think the result is -- or the
23 objective is to determine a piece of geography, a market,
24 and to evaluate the existence of actual switch providers and
25 whether that provides evidence of the economic feasibility

1 of serving that market. I don't think there's an automatic
2 presumption you're looking to find a size that -- to make
3 certain that that's the result.

4 Q. If there's a geographic area that exists where
5 a finding of non-impairment is likely, then the geographic
6 market ought to be set to make that happen, right? Isn't
7 that what the FCC is saying there, telling us to distinguish
8 among markets where different findings of impairment are
9 likely in the geographic market definition?

10 A. Again, the words speak for themselves.
11 They're a guidance to the states. I'm not going to agree
12 that there is an area where it's likely. I haven't seen the
13 evidence yet.

14 Q. All right. Let's do it this way.
15 Assume with me for a minute that there is in existence some
16 particular geographic area where you have three or more
17 CLECs utilizing their own switch to provide customers -- to
18 provide service to mass market customers in a way that you
19 would agree would meet the trigger requirements. All right?

20 A. Okay.

21 Q. However you choose to define that. Would you
22 agree with me that if the Commission agrees with you in that
23 analysis that they should try to identify the geographic
24 market area, that particular one, in a way that you get a
25 finding of non-impairment?

1 A. I'm having a hard time making that last step.
2 I believe the definition of the market is the MSA is the
3 area -- to us it's a market that, from the entrant's point
4 of view, from Sprint's point of view, it's the market that
5 it would intend to serve, and that's where the evaluation --
6 or the evaluation of impairment should occur.

7 Q. On page 8 of your direct testimony, I believe,
8 lines 20 and 21, would you turn to that?

9 A. Yes.

10 Q. You make the statement, and the TRO states
11 that these switches do not meet the necessary criteria for
12 the trigger analysis that will often follow the defining of
13 markets. This is addressed in more detail below.

14 Could you just reference me to where you
15 discuss that issue below?

16 A. What the parenthetical is referring to?

17 Q. Yes.

18 A. I can't say that I followed up on it. I'm
19 sorry. It may be an extraneous -- may be a parenthetical
20 that referred to an argument that I didn't follow through
21 and make.

22 Q. Okay. And on line 21 of page 8, you have a
23 footnote cite to paragraph 508 of the TRO?

24 A. Yes.

25 Q. And would you agree with me that that section

1 that you're referencing does not deal with the trigger
2 analysis, but instead deals with the potential deployment
3 analysis?

4 A. It is contained in the potential deployment
5 section, yes.

6 Q. And we don't even look at the potential
7 deployment analysis test if the triggers are met, correct?

8 A. Logically there would be a relationship
9 between the switches that are there and may be considered
10 for potential deployment versus the ones that are there and
11 considered under actual deployment, and this states that the
12 switches serving enterprise markets do not qualify for the
13 triggers described above. That's the sentence that starts
14 at the very bottom of 322 and continues on the top.

15 Q. All right. But my question was, if the
16 Commission finds that there is non-impairment under the
17 trigger analysis, you don't even go to the next stage on the
18 potential deployment test, correct?

19 A. That is true. There may be other references
20 to talk about enterprise switches. They talked about it
21 multiple times in the order.

22 Q. On page 7 of your rebuttal you criticize
23 Staff's exchange based proposal on the basis that most of
24 the exchanges are served by a single wire center. Do you
25 recall that in your testimony?

1 A. Yes.

2 Q. And is it your view that single wire center
3 exchanges are typically not of sufficient size to yield the
4 scale and scope economies that the FCC said should be
5 considered in setting a geographic market?

6 A. That would be my view in the typical
7 deployment, yes.

8 Q. With regard to the multi-wire center exchanges
9 like St. Louis, Kansas City and Springfield, do you believe
10 that the surrounding exchanges should also be considered,
11 should be considered to determine whether they ought to be
12 considered in the same geographic market as the metro
13 exchange?

14 A. You'll have to try it again, Paul. I lost you
15 in the question.

16 Q. Probably wasn't phrased very well. Do you
17 believe it would be appropriate for the Commission, if they
18 are otherwise inclined to look at the Staff's exchange-based
19 proposal, to also consider the MCA areas in St. Louis,
20 Kansas City and Springfield as being part of the same
21 market?

22 A. If that's the direction they go, I'd heavily
23 encourage that, yes.

24 Q. And why would you encourage that?

25 A. Because the exchanges -- for example, just

1 looking at the St. Louis map, the exchanges like Harvester,
2 St. Charles, Chesterfield, it's unlikely that they alone
3 would be sufficient to draw a UNE-L-based competitor without
4 the size and scope of the metro exchange, which then
5 suggests that it's a market, as opposed to a separate
6 distinguishable place. It's a market as you add. I think
7 that same argument can be made as you go further and further
8 out.

9 Q. Do you believe that MCAs reflect a community
10 of interest between the outlying areas and the inner metro
11 exchanges?

12 A. I only smile because of all the testimony that
13 went into that, but I would tend to agree that was the
14 conclusion in the creation of them, yes.

15 Q. That was the attempt to find out what a --
16 what an expanded local calling scope ought to include for
17 those customers within the areas that the Commission back in
18 '92 identified as forming a
19 market --

20 A. At that time, yes.

21 Q. -- in each of those three areas, right?

22 A. Yes, at that time.

23 Q. And some think it should be broader now,
24 right?

25 A. Pardon me?

1 Q. Some think it should be broader now, the MCA?
2 A. Certainly the customers in Lexington do.
3 MR. LANE: I have a couple exhibits to mark if
4 I may.
5 JUDGE MILLS: All right. I believe we're up
6 to No. 30.
7 MR. LANE: Your Honor, if it's all right, I'm
8 just trying to make sure that this is not HC.
9 JUDGE MILLS: Okay.
10 (EXHIBIT NO. 30P AND 31HC WERE MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)
12 JUDGE MILLS: Mr. Lane, with respect to highly
13 confidential and proprietary public, what's the verdict?
14 MR. LANE: I believe, your Honor, that
15 Sprint's counsel has asked that Exhibit 30 be marked as
16 proprietary, and then 31 is HC.
17 JUDGE MILLS: HC. Okay.
18 BY MR. LANE:
19 Q. Mr. Harper, are you ready?
20 A. Yes.
21 Q. With regard to Exhibit 30 proprietary, would
22 you be able to identify this for me as a copy of a Sprint
23 Data Request response to the Staff that's entitled to be a
24 supplemental response to Missouri Staff Data Request
25 No. 2501?

1 A. Yes.

2 Q. And are you generally familiar with some of
3 the information in there?

4 A. Yes, I am.

5 MR. LANE: I'm going to ask some specifics.
6 I'm not sure what's considered -- which parts of this you
7 considered proprietary, so, your Honor, if there's somebody
8 in the room that isn't entitled to listen to proprietary
9 information, then they should probably depart.

10 JUDGE MILLS: We're going to also have to mark
11 this portion of the transcript as proprietary as well. So
12 if you can -- if you can determine ahead of time.

13 MR. LANE: Let me do this. I'll ask the
14 questions, and if Mr. Harper thinks that the answer is
15 proprietary, then he can tell me.

16 JUDGE MILLS: Okay.

17 BY MR. LANE:

18 Q. Mr. Harper, Exhibit 30 proprietary identifies
19 the fact that Sprint has a switch that it uses for its CLEC
20 operations in the Kansas City area, correct?

21 A. Yes, it does.

22 Q. And the type of switch and the area that
23 you're serving with it, I take it that those things are
24 nonproprietary? Can we discuss those?

25 A. Yes.

1 Q. And the type of switch that you utilize is a
2 Nortel MG 4000, MG 9000 Passport 15000?

3 A. Yes, packet switching equipment.

4 Q. Okay. And the area that you intend to serve
5 is outlined as being many of the areas in the Kansas City
6 exchange, right?

7 A. Yes, they are.

8 MR. LANE: Then Exhibit 31 -- I guess, your
9 Honor, at this time I'd like to offer Exhibit 30 proprietary
10 into evidence.

11 JUDGE MILLS: Are there any objections to the
12 admission of 30P into the record?

13 (No response.)

14 JUDGE MILLS: Hearing none, it will be
15 admitted.

16 (EXHIBIT NO. 30P WAS RECEIVED INTO EVIDENCE.)

17 BY MR. LANE:

18 Q. Mr. Harper, you also have in front of you
19 Exhibit 31HC, which is -- has a cover page to it, December
20 15, 2003, a letter from Ms. Creighton Hendricks to
21 Mr. Gryzmala of SBC providing supplemental responses to Data
22 Requests that SBC Missouri sent to Sprint, correct?

23 A. Right.

24 Q. Are you generally familiar with the
25 information in there?

1 A. Yes.

2 Q. And would you agree that this shows that
3 Sprint plans to provide unbundled local switching to its own
4 customers in the St. Louis area utilizing the switching
5 facilities of another CLEC?

6 A. Sprint plans to provide local service to
7 business customers, primarily enterprise, in the
8 St. Louis area, using the wholesaling switching from another
9 CLEC, yes.

10 Q. And the page 3 of that Exhibit 31HC contains a
11 list of the areas where Sprint currently intends to market
12 its retail services, correct?

13 A. Right.

14 Q. And the area that you've identified there
15 would be broader than the St. Louis exchange, correct?

16 A. Yes, includes the St. Louis exchange and
17 several other exchanges beyond that, yes.

18 Q. And many of the exchanges are in the MCA in
19 St. Louis, correct?

20 A. Correct.

21 Q. And they'd also be part of the MSA in
22 St. Louis, too, right?

23 A. Yes, they are.

24 Q. And would you agree that the switches in
25 Kansas City and St. Louis have sufficient capacity to serve

1 the business customers that Sprint today serves via UNE-P
2 arrangements?

3 A. I can't, because I haven't even looked at that
4 structure. And beyond that, the one in St. Louis is not
5 ours. I mean, I don't know what capacity -- I wasn't part
6 of the contract negotiations. I don't know what capacity
7 that vendor has, but I have not done any kind of comparison
8 of the value of UNE-P business lines to the capacity of the
9 switch --

10 Q. Okay.

11 A. -- in Kansas City.

12 Q. Page 23 of Exhibit 3HC (sic) states the
13 capacity of the switch in the Kansas City market, right?

14 A. Page 3?

15 Q. Yes. It would be the response to Question
16 1.05.

17 A. I -- it must be on the other one. 1.05.
18 There it is.

19 Q. Let's use Exhibit 30 and I'll ask the question
20 again. Would you agree that Exhibit 30 proprietary, in the
21 first -- or the second page of that exhibit under paragraph
22 numbered 5, that that identifies the current equipped
23 capacity of the switch?

24 A. Yes, it does.

25 Q. And on page 3 of the exhibit, under No. 8,

1 that identifies the number of UNE loop lines that Sprint is
2 serving throughout all of Missouri as of October 31 of 2003?

3 A. Yes, it does.

4 Q. And then back to my original question, the
5 capacity of the switch that Sprint has utilized in Kansas
6 City is sufficient to cover all of the UNE loop lines that
7 Sprint is serving throughout Missouri as of October 31st,
8 right?

9 A. First off, it's difficult to make a logical
10 connection between lines served all over the state and the
11 Kansas City switch.

12 Q. Right. The Kansas City switch doesn't need to
13 serve all of those because --

14 A. But beyond that, again, I said I wasn't in
15 here, and this is where my struggle is. The number, if you
16 notice, in No. 5 is identified as a fairly large number of
17 DS0 trunks and a much smaller number of DS0 lines, which is
18 much smaller than the customer count. I don't know how to
19 correlate those two. I really don't.

20 Q. Just because of your lack of engineering?

21 A. Well, I would tend to view this as the number
22 of DS0 lines it has the capability of doing is much smaller
23 than the UNE-P number.

24 Q. But you're not sure because you're not an
25 engineer, I take it?

1 A. I'm not sure. Have to leave it at that.

2 Q. And are you familiar enough with switches to
3 know whether those are expandable in terms of the capacity
4 of them in general?

5 A. In general, they are, yes.

6 Q. And do you know whether these can be --
7 whether the switch that you have in Kansas City is a full
8 expansion or has room for more expansion?

9 A. I do not know.

10 MR. LANE: Okay. That's all I have. Thanks,
11 Mr. Harper.

12 JUDGE MILLS: CenturyTel?

13 MR. DORITY: No questions, Judge.

14 JUDGE MILLS: Questions from the Bench,
15 Commissioner Murray?

16 MR. LANE: I'm sorry. I may not have offered
17 Exhibit 31HC. If I did not, I apologize, your Honor. I'd
18 like to offer it at this time.

19 JUDGE MILLS: Are there any objections to the
20 admission of Exhibit 31HC?

21 MS. HENDRICKS: Your Honor, I don't have
22 objection, but by way of clarification, there's portions of
23 31HC that are specifically marked confidential, but there
24 are other answers within 31HC that are proprietary. So I
25 want to ensure that the entire exhibit gets the appropriate

1 treatment, and I think it has now.

2 I just want to clarify it's not specifically
3 that portion that's marked, as far as getting the additional
4 confidential treatment.

5 JUDGE MILLS: The way it stands now, unless we
6 do something further, the entire document, line 1 to the end
7 of it, is considered highly confidential.

8 MS. HENDRICKS: Thank you.

9 JUDGE MILLS: Hearing no objections, Exhibit
10 31HC will be admitted.

11 (EXHIBIT NO. 31HC WAS RECEIVED INTO EVIDENCE.)

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Mr. Harper, is there any technological
16 difference in serving mass market customers with a switch
17 than there is to serve enterprise customers with a switch?

18 A. I may be able to get a little bit with that, but
19 I can't -- it asks for technical information I'm not
20 prepared to discuss. I believe there are some differences,
21 but I just -- I'm not trained in that area to go through the
22 detail.

23 Q. Do you know if it costs any more to serve mass
24 market customers than to serve enterprise customers?

25 A. Well, on a unit cost, simply because you're

1 serving one or two lines per location, your unit costs are
2 generally going to be higher, and your enterprise location
3 you're going to have multiple lines you can spread your
4 fixed costs over.

5 Q. And that would be whether you were serving
6 with your own switch or an ILEC's leased switch; is that
7 right?

8 A. Well, certainly the economies are there with
9 your own switch, and if you think about it, the -- I mean,
10 at this point we're not going to be able to get ILEC
11 switching for DS1 enterprise customers anyway.

12 COMMISSIONER MURRAY: I think that's all I
13 have. Thank you.

14 JUDGE MILLS: Is there any cross-examination
15 based on the questions from the Bench?

16 MS. HENDRICKS: No, your Honor.

17 JUDGE MILLS: Is there any?

18 MS. HENDRICKS: Sorry.

19 JUDGE MILLS: That would be everyone but you?

20 MS. HENDRICKS: Right.

21 JUDGE MILLS: Redirect?

22 MS. HENDRICKS: No, your Honor.

23 JUDGE MILLS: And that's for all the
24 cross-examination, as well as the questions from the Bench?

25 MS. HENDRICKS: Correct.

1 JUDGE MILLS: Mr. Harper, you may be excused.
2 (Witness excused.)
3 MS. HENDRICKS: Sprint calls Mr. Maples to the
4 stand.
5 JUDGE MILLS: Could you raise your right hand,
6 please.
7 (Witness sworn.)
8 JUDGE MILLS: Thank you. You may proceed.
9 JAMES M. MAPLES testified as follows:
10 DIRECT EXAMINATION BY MS. HENDRICKS:
11 Q. Mr. Maples, could you state your full name for
12 the record?
13 A. My name is James M. Maples.
14 Q. And on whose behalf are you testifying today?
15 A. I'm testifying on behalf of Sprint Missouri,
16 Incorporated and Sprint Corporation, LP.
17 Q. Are you the same James Maples who filed both
18 direct and rebuttal testimony in this case?
19 A. Yes, I am.
20 Q. I'd like to direct you to your direct
21 testimony, which I believe has been marked Exhibit 9. If I
22 were to ask you the same questions that appear in your
23 prefiled direct testimony, would you provide the same
24 answers?
25 A. Yes, I would.

1 Q. And are those answers true and correct to the
2 best of your knowledge?

3 A. Yes, they are.

4 MS. HENDRICKS: Your Honor, Sprint moves for
5 the admission into the record of Mr. Maples' direct
6 testimony, I believe to be marked Exhibit 9.

7 JUDGE MILLS: It is marked Exhibit 9. Are
8 there any objections to Exhibit 9?

9 (No response.)

10 JUDGE MILLS: Hearing none, it will be
11 admitted.

12 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

13 BY MS. HENDRICKS:

14 Q. Mr. Maples, I'd like to direct you to your
15 rebuttal. If I were to ask you the same questions that
16 appear in your prefiled rebuttal testimony, would you
17 provide the same answers today?

18 A. Yes, I would.

19 Q. And are those answers true and correct to the
20 best of your knowledge?

21 A. Yes, they are.

22 MS. HENDRICKS: Your Honor, Sprint moves for
23 admission into the record of Exhibit 10, the rebuttal
24 testimony of Mr. Maples.

25 JUDGE MILLS: Are there any objections to

1 Exhibit 10?

2 (No response.)

3 JUDGE MILLS: Hearing none, it will be

4 admitted.

5 (EXHIBIT NO. 10 WAS RECEIVED INTO EVIDENCE.)

6 MS. HENDRICKS: Sprint presents Mr. Maples for

7 cross-examination.

8 JUDGE MILLS: Thank you. Staff?

9 MR. WILLIAMS: Thank you, Judge.

10 CROSS-EXAMINATION BY MR. WILLIAMS:

11 Q. Mr. Maples, would you provide a definition for

12 DS0?

13 A. A DS0 loop -- I believe I have DS0s in my

14 direct testimony. Basically in my direct testimony, I

15 describe it as generally a loop that provides voice grade

16 service to a mass market customer.

17 Q. And could you compare a DS0 loop to a DS1

18 loop?

19 A. In my testimony I basically say that DS1 loop

20 can provide up to 24 DS0s, so a DS1 is a digital loop. I'd

21 vary a little bit. I think that's from what has been said

22 earlier. I'm using DS0 there more in the context of a

23 single channel which could be, like, a 64 kilobit channel.

24 I think it's used interchangeably, frankly.

25 Q. So is a DS0 a digital or analog loop, as you

1 use the term?

2 A. DS0 in the context of my testimony with the
3 crossover, I would call it, I would say it's an analog loop
4 used to provide voice grade service.

5 Q. Thank you. I want to direct your attention to
6 -- I believe it's been marked as Exhibit No. 9, your direct
7 testimony, at page 10. There at lines 1 through 6 you
8 discuss the monthly cost of the channel bank at a DS1
9 customer premise.

10 A. Yes.

11 Q. What inputs did you use in arriving at the
12 total material cost of a channel bank over the life of the
13 asset and what were your sources for those inputs?

14 A. The individual component basically has to do
15 with the actual channel bank chassis, the cards that go into
16 the channel bank, such as the FXO card. You have power
17 supplies. So it's all the components which basically add up
18 to make a complete unit, which would in the context of we
19 model and add trans 750 unit. As far as the source of the
20 information, the source of the information, we got it from
21 our equipment supplier, which effectively is where we buy
22 all of our equipment from which would be North Supply.

23 Q. Did you put any of that information in the
24 record?

25 A. Did I put any of that -- none of that is in my

1 testimony, no.

2 Q. Turn your attention to your rebuttal
3 testimony, which I believe has been marked as Exhibit
4 No. 10. Direct your attention to page 3, and in particular
5 lines 7 through 11. At that point in your testimony, you
6 point out that SBC's -- SBC Missouri's model for determining
7 the appropriate multi-line DS0 mass market enterprise
8 customer crossover point does not include cost from ILECs
9 other than SBC Missouri. Are you familiar with
10 Mr. Finnegan's testimony?

11 A. Mr. Finnegan's testimony? I've probably read
12 it. I don't have -- I know I've read through the
13 testimonies. I do not have it committed to memory.

14 Q. Do you recall whether Mr. Finnegan considered
15 costs from ILECs other than SBC Missouri when he prepared
16 his analysis of the appropriate multi-line DSL mass customer
17 enterprise market customer crossover point?

18 A. I do not recall without looking at the
19 testimony.

20 Q. Would it help you if I were to provide you a
21 copy of Mr. Finnegan's testimony?

22 A. I have his testimony here I'm sure. If you'll
23 point me to the direct, I have his testimony, his direct
24 here.

25 Q. Would you turn to page 13 of Mr. Finnegan's

1 testimony, which has been marked as Exhibit 13, his direct
2 testimony.

3 A. You're asking me if he included other ILEC
4 costs?

5 Q. Yes, if you recall.

6 A. On the citation that you've directed, it says
7 nothing about specifically whose cost is included there.

8 Q. Let me just go on to another question. Turn
9 your attention to page 6 of your rebuttal testimony. There
10 you address SBC Missouri's use of the impact of sale of data
11 services in its analysis of the appropriate crossover point
12 for DS0 and DS1 mass market enterprise customers.

13 Do you agree that for both mass market and
14 enterprise customers demand is more sensitive to cost of
15 service than the technology that is used to provide that
16 service?

17 A. Yes, I agree with that. That's essentially
18 the point of my testimony, and basically saying that the
19 CLEC would determine whether or not to utilize multiple DS0s
20 or a DS1 in providing the service to the customer, based on
21 the efficient choices, yes.

22 Q. Do you agree that the parties disagree over
23 how much data revenue is available from
24 carriers -- available to carriers from their small business
25 customers?

1 A. Yes, that's exactly the point that I've made
2 in my testimony is that I believe that the dispute is
3 whether or not there is a market for small business
4 customers that want voice-only services and whether or not
5 all of them want data services, and if they do, how much.

6 Q. And is it reasonable to exclude those such --
7 uncertainties such as those from an appropriate analysis of
8 the crossover point?

9 A. It is Sprint's testimony that we believe that
10 the thing that we know for certain is that there is a market
11 for voice-only services and that revenues do increase with
12 the number of voice lines, and we know that for certain and
13 we know what the costs are.

14 MR. WILLIAMS: No further questions at this
15 time.

16 JUDGE MILLS: Thank you. Mr. Magness?

17 MR. MAGNESS: No questions, your Honor.

18 JUDGE MILLS: Mr. Lumley?

19 MR. LUMLEY: No questions.

20 JUDGE MILLS: Ms. Mudge?

21 MS. MUDGE: No questions. Thank you for
22 asking, Judge.

23 JUDGE MILLS: SBC, Mr. Bub, Mr. Lane?

24 CROSS-EXAMINATION BY MR. LANE:

25 Q. Good afternoon, Mr. Maples.

1 A. Yes, good afternoon.

2 Q. On page 2 of your direct you state that you
3 were manager of competitive markets for Sprint?

4 A. Yes.

5 Q. What did that position entail?

6 A. That position, basically I managed a staff of
7 several people, and we developed -- worked intimately with
8 the costing group to develop the TELRIC cost, and we
9 basically developed TELRIC pricing for unbundled network
10 elements and for interconnection. And basically it was
11 product management and product development for unbundled
12 network elements and interconnection.

13 Q. Did your geographic area include Missouri?

14 A. Yes, it was for all of the Sprint operating
15 territories.

16 Q. And did any CLECs negotiate an interconnection
17 agreement with Sprint that called for them to serve only a
18 single exchange in Sprint territory?

19 A. No. Generally the agreements were negotiated
20 on a statewide basis, and the rates were for the state
21 basically. There may have been zones, but they were for the
22 state.

23 Q. And are you aware of any CLECs that chose to
24 operate in Sprint's territory serving only a single
25 exchange?

1 A. The only reason I'm hesitating is because I
2 haven't examined all the data. I do know of certain
3 carriers that have focused on single exchanges that have
4 statewide contracts, but I don't know for a fact whether or
5 not they hedged out or they've gone into other territories.
6 I would say it's very possible, but I don't know that for a
7 fact.

8 Q. All right. But the contracts then are to
9 permit them to provide service throughout all of Sprint's
10 exchanges, not just on an exchange-by-exchange basis; is
11 that right?

12 A. Yes, that's true.

13 Q. The purpose of your testimony is to present
14 Sprint's position on the multi-line crossover point for the
15 DS1, right?

16 A. Yes.

17 Q. And conceptually would you agree that the FCC
18 Triennial Review Order divided the market for switching
19 between mass market and enterprise customers?

20 A. Yes, conceptually I agree.

21 Q. And the FCC defined mass market as residential
22 and very small business customers, right?

23 A. I'm just thinking back, and the paragraph we
24 all love, 497 talks about them as -- yes, uses that
25 terminology with respect to providing voice grade analog

1 lines, yes.

2 Q. Referring specifically to footnote 1402 on
3 page 286 of the TRO, are you there?

4 A. 1406? Did you say 1406?

5 Q. No. 1402 on page 286. Footnote 1402 on page
6 286.

7 A. There's -- it's a long definition and includes
8 multiple things.

9 Q. Residential and very small business customers,
10 right?

11 A. That is the -- that is the wording used here.

12 Q. And by very small, the FCC goes on to identify
13 them as those that typically take service on a
14 month-to-month basis and not pursuant to annual contracts,
15 correct?

16 A. It says they tend to be that way, yes.

17 Q. Okay. And do you agree that for those
18 enterprise customers, those that are above whatever default,
19 whatever crossover point this Commission sets, that they are
20 to be considered enterprise customers and the CLEC is not
21 entitled to get unbundled local switching from the ILEC at
22 TELRIC rates?

23 A. That's what makes the crossover so important,
24 is that UNE-P will not be available for enterprise
25 customers.

1 Q. Let's talk about the effect of that DS1
2 crossover point, if we can, for a minute. Would you agree
3 that the FCC has made it clear that the higher the crossover
4 point, the more likely it is that non-impairment will be
5 found in the mass market?

6 A. I'm trying to remember a specific cite. I
7 don't remember a specific cite. It sounds familiar, but I
8 don't remember a specific citation to that.

9 Q. Would you take a look at footnote 1546 on page
10 317, and I want to refer you specifically to that part of
11 the footnote that says, quote, if on the other hand, a state
12 finds, based on record evidence, that a cutoff of more than
13 four lines is appropriate, more multi-line customers will be
14 treated as mass market customers, but in no way will this
15 result in an expansion of unbundled switching.

16 To the contrary, as Commissioner Abernathie
17 points out, dozens of CLECs serve business customers of such
18 size using their own switches. Such widespread deployment
19 of competitive switches would be considered one of the mass
20 market triggers. In such markets, then, it is more likely
21 that there would be a finding of no impairment for the
22 entire market, leading to significantly less unbundled
23 switching that was available -- than was available under the
24 previous four-line carveout.

25 Do you see that discussion?

1 A. That's -- you read basically the last sentence
2 there, yes. That's what it says.

3 Q. That means that if the crossover is set at ten
4 DSOs, as I believe you propose, it's more likely that the
5 Commission will find no impairment for mass market defined
6 as nine or fewer DSOs, correct?

7 A. You're making an assumption based on the
8 distribution of lines. You know, basically it says that
9 you're basically saying that -- what I'm hearing you say is
10 that the number of lines, if you have -- the cutoff is at
11 ten, you'll have basically SBC saying four, so you'll have
12 more lines in the mass market than four to nine.

13 Don't really know how big that market is and
14 if it will make a substantial difference in the bundling or
15 the impairment analysis. I mean, the consequences of that,
16 that stands to reason that that might occur, but without
17 seeing the numbers, we don't really know what the impact is.

18 Q. And isn't that what the FCC said would occur
19 in footnote 1546 on page 317?

20 A. It basically draws the conclusion, but without
21 seeing the data, there's no absolute way of knowing what
22 would actually occur.

23 Q. Makes it more likely, doesn't it, that there
24 will be CLECs utilizing their own switch to serve customers
25 of nine lines and below in my example than it would if we

1 utilize the four line and below crossover?

2 A. No. I think the point of crossover is where
3 does it make economic sense to do that, and --

4 Q. No. We're already at the point. You're maybe
5 not following my question.

6 A. I'm not following you, yeah.

7 Q. I'm saying the Commission agrees with you,
8 Sprint, and sets the crossover point at ten DS0s. At that
9 point we'll have more CLECs utilizing their own switches to
10 provide service to customers with nine or fewer lines than
11 we would if the Commission adopted a crossover of four and
12 we were trying to analyze the number of CLECs utilizing
13 switches to serve customers of one to three lines. Do you
14 agree with that?

15 A. You're basically saying there'll be more CLECs
16 utilizing their switches to provide service -- service to
17 customers? I mean, that assumes that it's economic for them
18 to provide service to a customer with eight lines with their
19 switch, and I'm not sure I would agree with that.

20 Q. Okay. But the FCC has said that, did they
21 not, in footnote --

22 A. The footnote says --

23 Q. -- 1546?

24 A. The footnote says what it says. We read it.

25 Q. And I'm trying to understand how it could be

1 read differently than I'm -- than I'm reading it to you.
2 The higher the cutoff, the more likely it is that you're
3 going to have CLECs utilizing their own switch to what is
4 now a larger group of mass market customers, right?

5 A. Basically is saying that there will be more
6 multi-line customers treated as mass market customers and it
7 will not result in the expansion of unbundled switching, is
8 what they're saying here, and --

9 Q. Was that a yes to my question?

10 A. Yes.

11 Q. I'm going to switch over and talk about the
12 rule itself and the reference in the rule to increased
13 revenue opportunities. You would agree that the FCC's rule
14 with regard to the DS1 crossover requires the consideration
15 of increased revenue opportunities from serving customers
16 above that crossover point, right?

17 A. Your exact wording that requires the
18 consideration of revenues for use -- providing service to
19 customers above the crossover point, was that your wording
20 of your question?

21 Q. Yes. Take a look at page 22 of
22 Appendix B of the TRO, paragraph 51.319 D2 (iii) B4. Are
23 you there?

24 A. Yes.

25 Q. And the last sentence on that page, carrying

1 over into the next page says, specifically in establishing
2 this cutoff, state commissions shall take into account the
3 point at which the increased revenue opportunity at a single
4 location is sufficient to overcome impairment and the point
5 at which multi-line end users could be served in an economic
6 fashion by higher capacity loops and the carrier's own
7 switching, and thus be considered part of the DS1 enterprise
8 market.

9 Have I read that correctly?

10 A. Yes. You've read it correctly. The rule
11 talks about --

12 Q. There's two things you're supposed to
13 consider. First is increased revenue opportunity, whether
14 that's sufficient to overcome impairment. And the second is
15 the point at which it's economic to serve multi-line end
16 users via higher capacity loops, right?

17 A. Sprint believes that it is the -- basically
18 the analysis you basically do, you do it at the same time.
19 It is not two separate analyses. Basically it is one
20 analysis.

21 Q. Right. I agree that's how you looked at it.
22 And it's fair to say that you have not done an analysis that
23 found any increased revenue opportunity related to this
24 crossover, right?

25 A. We have not done any analysis, no. When we

1 developed our model, we made the assumption that for each
2 increased voice line there is an increased revenue. And
3 basically we focused on the voice revenues, and we said
4 that, if I had ten lines, basically our result came out with
5 ten lines, we would have ten lines times a certain unit
6 revenue, whether we did it with -- via DS0 analog lines or
7 DS1.

8 So we basically said the revenues increased
9 with the number of lines is the same for both types of
10 provisioning so therefore, we didn't enter it into our
11 model, because it would not have affected the results.

12 Q. Right. You assumed that you'd have the same
13 revenues serving them whether they were a DS1 type customer
14 or DS0 type customer, right?

15 A. Yes.

16 Q. And so there is no increased revenue
17 opportunities in your analysis, correct?

18 A. No, the increased revenue opportunity is the
19 increase -- the incremental increase in revenues by adding
20 voice grade lines.

21 Q. All right. Would you agree with me that the
22 FCC has made it clear that data revenues are to be
23 considered in establishing the geographic market in this
24 case?

25 A. I would agree that when you do a potential

1 deployment case and you can do the economic analysis which
2 is part of the potential deployment, it says you include all
3 revenues and all costs in that economic analysis.

4 Q. Okay. And my question -- I'm going to get to
5 that, but with regard to the setting of geographic market,
6 the FCC specifically referenced data revenues as something
7 to be considered in setting the geographic market, correct?

8 A. That's -- that's the context of the citation I
9 know it is in setting the markets is setting the potential
10 deployment.

11 Q. Okay. And I want to focus on the geographic
12 market and ask you to look at footnote 1541 on page 316.
13 And that section is dealing with setting the geographic
14 market, correct?

15 A. Footnote 1541? Yes, it's in the section with
16 respect to talking about setting the market.

17 Q. Okay. And it specifically requires
18 consideration of data and voicemail service revenues,
19 correct?

20 A. It is effectively talking about how the
21 Commission should define the markets geographically, and I
22 believe that's also in the context of the potential
23 deployment.

24 Q. I'm not disagreeing with you about potential
25 deployment, but with regard to setting the market, data

1 revenues are to be considered, right?

2 A. It basically says that business customers, as
3 well as residential customers, are likely to take virtual --
4 vertical features and ancillary services such as data and
5 voicemail, so it basically attributes residential customers,
6 which is mass market customers, to also using data and
7 voicemail and ancillary services.

8 Q. Is that a yes to my question, you're supposed
9 to look at data revenues?

10 A. For both mass market and enterprise.

11 Q. And specifically it's referencing -- the
12 footnote references high revenue customers, correct? That's
13 where the footnote comes in?

14 A. It uses the term "high revenue," which is
15 relative.

16 Q. It's defining what they mean by high revenue
17 customers there, correct?

18 A. Yes.

19 Q. Would you agree with me that business
20 customers are generally higher revenue customers than
21 residential customers?

22 A. From my experience with local rates, I would
23 say yeah.

24 Q. And would you agree with me that the larger
25 the business customers, the more likely it is to generate

1 data revenues, a higher level of data revenues?

2 A. I think that's really the TRO talking about
3 enterprise. Distinguishing enterprise customers is their
4 use of more complex, more datacentric revenues.

5 Q. Is that a yes?

6 A. Centric services, yes.

7 Q. Is that a yes to my question?

8 A. Yes, sir.

9 Q. Then with regard to potential deployment
10 analysis, would you agree, as I believe you indicated
11 earlier, that the FCC there has specifically said that data
12 revenues from business customers are to be considered?

13 A. In the context of the potential deployment,
14 which is not what we're doing here, yes.

15 Q. So both in setting the geographic market and
16 in the potential deployment test, the FCC has specifically
17 said utilize data revenues, and in the crossover analysis,
18 the FCC specifically said, look at increased revenue
19 opportunities, but you understand that to exclude data
20 revenues, right?

21 A. Absolutely. By looking at the definition in
22 my rebuttal on 1296, it's basically talking about where it's
23 efficient to provide voice services.

24 Q. Now, if you had used data revenues in your
25 analysis, that would have led to a lower crossover point,

1 correct?

2 A. Not necessarily, because basically, if I'm
3 going -- if you're going to talk about -- that was my point.
4 If you're going to talk about data revenues and look at the
5 revenues, then you would look at revenues with respect to
6 mass market. Mass market customers buy DSL services all the
7 time. So, I mean, you can't just say data just goes on the
8 enterprise side of the equation. You would have to consider
9 it for both sides basically.

10 Q. The higher the volume of customer, the larger
11 the customer, the more likely it is that they are going to
12 pay for data service that is a higher speed and a bigger
13 capacity than a single-line residential customer, correct,
14 and that costs more, right?

15 A. The reason I'm hesitating is that -- because
16 for many of the business customers that we provide service
17 to, typically buy low speed. So I haven't seen an analysis
18 of -- I think that's intuitive. But I haven't seen an
19 analysis of that.

20 Q. It's intuitive that they would spend more for
21 data than --

22 A. Yeah, the larger the customer. It's
23 intuitive, but I haven't seen any facts to prove it.

24 Q. Okay. And would you agree with me that Sprint
25 itself has offerings to customers that are designed for six

1 lines and above, taking a T1 or DS1 type service?

2 MR. LANE: And if I may, I'll mark an exhibit,
3 your Honor.

4 JUDGE MILLS: Okay. We're up to 32.

5 (EXHIBIT NO. 32 WAS MARKED FOR IDENTIFICATION
6 BY THE REPORTER.)

7 BY MR. LANE:

8 Q. Mr. Maples, have you had an opportunity to
9 look at Exhibit 32?

10 A. Yes.

11 Q. And would you agree with me that it appears to
12 be a copy from Sprint's website that identifies a bundled
13 service that includes local lines of 6 to 20 voice channels
14 plus long distance, plus data over a T1 line?

15 A. It -- it's got Sprint's logo and a copyright
16 on it, and it is one of the ways that we enter the market.
17 We also provide UNE-P services.

18 Q. Okay. And this is for customers that would
19 want to take what Mr. Fleming has described as a combination
20 of voice and data services, right?

21 A. This is -- this is an offering to an
22 enterprise customer that if they buy this offering, it would
23 be provisioned with a T1. That's the point of my testimony,
24 if we actually sell this service, it will be provisioned on
25 a T1, and it will be an enterprise service customer, no

1 question. We don't provide every business customer, they
2 don't buy -- they don't all buy this. This is what --
3 excuse me.

4 Q. But a customer that has need for only six DS0s
5 would be eligible for this service and utilize it for six
6 voice channels and the rest for data, correct?

7 A. If we bought the data services that were sold
8 here, we have customers with over six lines that don't buy
9 data services that are served with UNE-P.

10 Q. But I assume -- and correct me if I'm wrong --
11 that Sprint developed this offering because there were
12 customers in the marketplace that were seeking a combination
13 of data, voice and local over a single channel, right?

14 A. Yes. This is an offering to enterprise
15 customers, yes.

16 Q. And do you know what Sprint charges for this?

17 A. No, I do not know.

18 MR. LANE: Your Honor, I'd offer
19 Exhibit 32 at this time.

20 JUDGE MILLS: Exhibit 32 has been offered.
21 Are there any objections?

22 (No response.)

23 JUDGE MILLS: Hearing none, it will be
24 admitted.

25 (EXHIBIT NO. 32 WAS RECEIVED INTO EVIDENCE.)

1 BY MR. LANE:

2 Q. I want to shift gears and talk about the

3 inputs to your cost model. Essentially you've presented a

4 cost model here that tries to identify what it costs to

5 provide a DS1 service and compare that to the cost of

6 providing DS0 service and then determining from dividing the

7 former by the latter what the crossover is, right?

8 A. Yes.

9 Q. That's reflected on your schedule JMM-1 and 2,

10 correct?

11 A. Yes, it is.

12 Q. Okay. And in your schedule JMM-1, when you

13 determine what the cost is of DS1 and a channel bank, you

14 utilized the inputs that you have listed on schedule 2-1,

15 right?

16 A. Yes, I did.

17 Q. And one of the significant costs of the DS1 is

18 what it cost to buy the DS1 loop itself, correct?

19 A. Yes.

20 Q. And you utilized on your schedule JMM-2-1 a

21 weighted average of \$157.45, correct?

22 A. Yes.

23 Q. But if we look under the Southwestern Bell

24 column of Schedule JMM-2 for the UNE DS1 loop MRC monthly

25 recurring charge rates, those range from \$91.06 to \$97.10,

1 correct?

2 A. Yes.

3 Q. The weighted average that you use is more than

4 50 percent higher than what it would cost a CLEC to buy that

5 DS1 loop from Southwestern Bell -- to lease it from

6 Southwestern Bell, correct?

7 A. The difference as it includes the channel bank

8 cost down below of the -- let me make sure. It includes the

9 channel bank cost for the installation of the channel bank,

10 I believe.

11 Q. Well, let's look at that again. I'm not sure

12 that's right. Isn't what you first did to come up with a

13 weighted average for UNE DS1 loop monthly recurring charges

14 and then you added to that carrying charges associated with

15 the channel bank equipment?

16 A. If -- the weighted average of 157.45 has an

17 asterisk and right below that it says includes channel bank,

18 so that means it's a monthly recurring rate so, therefore,

19 it includes the -- it includes the recurring cost of

20 carrying charges, if you will, of the channel bank, which

21 would have been purchased and installed by the CLEC. So

22 it's not just the recurring rate from the -- the monthly

23 recurring rate from the loops.

24 Q. All right.

25 A. So it has the \$91, has \$50, \$51 added to it,

1 plus this is a statewide average, so it has CenturyTel and
2 Sprint's rates averaged in, which are higher.

3 Q. That's the point that I want to get to. If we
4 look in the Century column, in all zones the price that they
5 charge for DS1 loop is 160.31, right?

6 A. Yes.

7 Q. And for Sprint, which only has three zones, it
8 ranges from \$127.90 to \$266.23, right?

9 A. Yes.

10 Q. And all of those purport to be TELRIC prices,
11 correct?

12 A. They're TELRIC prices from various contracts
13 and sources that are being offered to CLECs, yes.

14 Q. And the Commission set SBC's UNE DS1 loop rate
15 substantially lower than what the UNE loop rates or DS1 are
16 for Century or for Sprint, correct?

17 A. You said the Commission set them. I'm not
18 familiar with all the regulatory proceedings. The rates are
19 definitely different.

20 Q. Okay. But your analysis doesn't attempt to
21 look at Southwestern Bell separately. It lumps it in with
22 Sprint and CenturyTel in determining an overall statewide
23 average, correct?

24 A. Determines the statewide average based on the
25 number of access lines per exchange or per exchange and

1 which zone it falls in here, yes.

2 Q. And had you utilized the actual DS1 loop rates
3 that Bell is permitted to charge under the Commission's UNE
4 decision, you would have come to a lower crossover point
5 than you did by using a statewide average, correct?

6 A. I think it's effectively what I did on my
7 rebuttal on page 3 where I used SBC-only information, taking
8 the costs that were developed by Mr. Fleming and I got
9 crossovers from Zone 1 of 12, based on the cost of providing
10 service, Zone 2 of 9, Zone 3 9 and Zone 4 10. Sprint is
11 recommending 10. So two zones it's -- I wouldn't
12 necessarily draw the same conclusion. If we input only
13 SBC's numbers, we would get lower crossover.

14 Q. All right. My first question is, if we
15 utilize Southwestern Bell's DS1 UNE loop rates that are
16 substantially lower than Century or Sprint and change
17 nothing else, that would lower the crossover point for
18 Southwestern Bell, correct?

19 A. Let me rephrase, because what I think I'm
20 hearing you say is that if we use the monthly recurring
21 rates and did not put in the channel bank, which is a
22 legitimate cost that the CLEC incurs --

23 Q. No. I'm saying everything else remains the
24 same. Everything else in your analysis remains the same,
25 but instead of utilizing a statewide average UNE DS1 loop

1 rate, you utilize Southwestern Bell's actual DS1 UNE loop
2 rate.

3 A. The reason it's confusing me is the model uses
4 these actual rates in there, so basically it looks for
5 particular exchange, what zone it's in. It uses this rate.
6 So . . .

7 Q. I guess I'm not communicating. Let me try
8 again.

9 A. Because I'm hearing you say, we didn't use --

10 Q. You did not in your Schedule JMM-2 and JMM-1,
11 you did not compute a Southwestern Bell-specific crossover
12 point, correct?

13 A. No, I did not.

14 Q. What you did was you utilized an average of
15 Southwestern Bell's DS1 rates and Century's and Sprint's as
16 part of your analysis, correct?

17 A. We effectively developed -- we developed the
18 cost for each Southwestern Bell exchange and then rolled
19 them all up and developed the statewide average. So we
20 didn't take an average cost for Southwestern Bell and use it
21 for Exchange A and Exchange B. We used the actual cost for
22 each exchange and then developed the statewide average.

23 Q. My question is, you -- your analysis of a
24 crossover point is a weighted average of Southwestern Bell
25 plus Century plus Sprint?

1 A. Yes, that's accurate.

2 Q. And had you used Southwestern Bell's UNE DS1
3 loop rates, everything else remaining the same, you would
4 have had a lower crossover point, correct?

5 A. Are you asking me had I used Southwestern
6 Bell's rates for CenturyTel and Sprint? Or had I excluded
7 CenturyTel and Sprint's exchanges? I'm not trying to be
8 difficult. I'm just --

9 Q. Okay.

10 A. I'm really not. Because you're basically
11 saying had I not used these rates, and I'm saying, I used
12 these rates. So I'm confused.

13 Q. You have a model that --

14 A. I'm sorry.

15 Q. -- that computed a DS1 cost and you divided
16 that by DS0 cost?

17 A. Yes.

18 Q. And it yielded a crossover?

19 A. Yes.

20 Q. And in the numerator, the DS1 cost,
21 you used a weighted average of Southwestern Bell, Century --

22 A. Yes.

23 Q. -- and Sprint all rolled in together.

24 A. Right.

25 Q. And my question is, is instead of doing that,

1 if you had just used the Southwestern Bell DS1 UNE rates,
2 everything else remained the same, you would have come up
3 with a different crossover point that would have been lower?

4 A. Wouldn't you have used the Southwestern Bell
5 rates for the DS0, too?

6 Q. I'll get to that. Yes, I would have, but I'm
7 asking you.

8 A. I --

9 Q. Mathematically what I said is true, correct?

10 A. Not knowing -- I mean, knowing how the model
11 works, our model uses Southwestern Bell DS1 rates.

12 Q. Mr. Maples --

13 A. It doesn't -- I mean --

14 Q. You determined a single crossover for all the
15 state for all the people, whether they're Century, whether
16 they're Sprint, whether Southwestern Bell, right?

17 A. Yes.

18 Q. And I can't tell you what your results would
19 have been had you done it differently, but I'm trying to
20 show that in the first instance, you would have had a lower
21 numerator if you'd used Southwestern Bell UNE DS1 rates, and
22 a lower numerator means you have a lower crossover point,
23 everything else remaining equal. It's a mathematical
24 statement, right? Everything else stays the same.

25 A. The only way I could have done that would have

1 been to exclude Century and Sprint's and just developed a
2 crossover for Southwestern Bell.

3 Q. Okay. And I'm asking, in the DS1, the
4 numerator, if you'd done that and you left the denominator
5 the same, you would have come to a lower crossover, right?
6 Whether you agree it's a smart thing or a wise thing, it's a
7 mathematical equation, isn't it?

8 A. If you changed the numerator to include only
9 Southwestern Bell and did not change the denominator, which
10 would include a statewide average, yeah, you would get a
11 different number, but that's an inappropriate calculation.

12 Q. All right.

13 A. It would be lower.

14 Q. And when you're a CLEC and you're faced with
15 this economic decision of when to utilize DS0s and when to
16 utilize a DS1, you're making that decision with regard to a
17 specific customer and a specific location, correct?

18 A. Yes, based on the services that we're selling
19 the customer.

20 Q. And if that customer is located in SBC
21 Missouri's territory, that economical calculation is going
22 to be based on SBC Missouri's DS1 costs and our DS0 costs,
23 right?

24 A. Among other things, it will be based on
25 where our switches are, on the products, a variety of

1 things, yes.

2 Q. That decision would be based on the cost in
3 Southwestern Bell Missouri's territory, as opposed to what
4 it might cost for the same DS1 and DS0 loops in Century or
5 Sprint, right?

6 A. The economics vary, yes.

7 Q. Okay. And now, another area of cost that you
8 included is the cost of the channel bank, correct?

9 A. Yes, sir.

10 Q. And that cost isn't set by the Commission, is
11 it?

12 A. No, it is not set by the Commission.

13 Q. It's not included in any interconnection
14 agreement, is it?

15 A. No. This is the cost of the equipment that
16 the CLEC purchases and installs at the customer premises.

17 Q. And for purposes of your cost model, the
18 higher the channel bank costs, the higher the crossover
19 point, correct? It's mathematical?

20 A. Mathematical, yes.

21 Q. And does Sprint the ILEC actually provide
22 channel bank equipment to its DS1 customers?

23 A. Does Sprint the ILEC?

24 Q. Uh-huh.

25 A. I assume so, yes.

1 Q. And how about Sprint the CLEC?

2 A. Yes.

3 Q. Okay. And did you review the contract between

4 Sprint and the manufacturer of the channel bank equipment to

5 get the actual price that Sprint the ILEC and Sprint the

6 CLEC paid?

7 A. No. The price was basically provided by our

8 supplier to our costing group, which is the -- we have one

9 supplier for both the CLEC and the ILEC.

10 Q. So you didn't look at the contract itself to

11 know --

12 A. No.

13 Q. -- whether Sprint was actually paying that

14 cost or not?

15 A. Where Sprint was paying, are you talking about

16 money changing hands? I mean, I'm not understanding what

17 you're saying. Is that the actual price that we pay for it?

18 I believe, yes.

19 Q. Okay. And did you look at the contract to

20 verify that?

21 A. No, I did not.

22 Q. Okay. Most telephone equipment is offered at

23 a substantial discount these days, is it not?

24 A. I understand that some is, yes.

25 Q. The larger the customer, the bigger the

1 discount, right?

2 A. You can usually negotiate a bigger discount if
3 you buy more, yes.

4 Q. You don't know what SBC Missouri pays for DS1
5 channel bank equipment, do you?

6 A. No, I don't.

7 Q. Don't know what CenturyTel pays either, do
8 you?

9 A. No.

10 Q. Did you conduct any discovery on that issue?

11 A. No, we did not.

12 Q. And then next you had to convert the cost of
13 the channel bank equipment to a monthly recurring rate for
14 purposes of your analysis, correct?

15 A. Yes.

16 Q. That requires the termination of cost of
17 capital and depreciation lives, among other things, right?

18 A. Yes.

19 Q. Let's start with the depreciation life. Did
20 you use a weighted average Sprint, CenturyTel and SBC
21 Missouri's depreciation lives?

22 A. No. Basically, as my testimony says, we used
23 -- it talks about using -- the depreciation life was
24 specifically 11-year depreciation life. Basically we
25 utilized Sprint ILEC's carrying charges, if you will, that

1 was used to develop Sprint ILEC's TELRIC charges.

2 Q. And do you know what the depreciation life
3 that CenturyTel or SBC utilize for similar channel bank
4 equipment?

5 A. No. But I would say this is quite
6 conservative, since it's supposed to reflect the life of a
7 channel bank for a CLEC, and I would view 11 years as fairly
8 long.

9 Q. Let's turn to the cost of capital. You
10 utilized a 12.56 percent cost of capital, correct?

11 A. Yes.

12 Q. Is that a weighted average of Sprint,
13 CenturyTel and SBC Missouri's cost of capital?

14 A. I believe my testimony's clear, it was basi--
15 it was the cost of capital that is Sprint's cost of capital
16 that was used in the development of its TELRIC rates, and we
17 used that.

18 I believe also, as I pointed out in my
19 testimony, that if you were to put in the cost of capital
20 it's not -- it's not -- if you look at the sensitivity
21 analysis on the model, it doesn't make a significant change
22 to the crossover.

23 Q. You haven't presented a sensitivity analysis?

24 A. No, I have not.

25 Q. And you didn't provide exactly what that level

1 would be if you utilized the cost of capital that this
2 Commission set for SBC Missouri, for example?

3 A. No, we did not.

4 Q. And are you aware that SBC Missouri utilized
5 -- excuse me -- the Commission utilized a 10.32 percent cost
6 of capital for SBC Missouri in the last time it analyzed UNE
7 rates for us?

8 A. No, I was not aware. So Mr. Fleming used over
9 16 percent, I believe, in his model.

10 Q. Whatever the impact of that would be, whether
11 it's significant or not in your opinion, utilizing a 10.32
12 percent cost of capital would have the effect directionally
13 of making the crossover point lower, correct?

14 A. It lowers both sides of the equation, because
15 you use the cost of capital in nonrecurring aspects of the
16 DS0, but it might lower it a little bit.

17 Q. Because you have more nonrecurring costs in
18 the numerator than you do in the denominator --

19 A. Yes.

20 Q. -- that you're applying the capital charge to,
21 right?

22 A. Yes.

23 Q. You also utilize a two-year recovery period
24 for the nonrecurring charge, right?

25 A. For the -- for -- yes, the nonrecurring

1 charges for the UNEs and also the installation charges for
2 the channel bank, yes, sir.

3 Q. And the theory behind that is the customer
4 will be gone at the end of two years and so you need to
5 collect it all within the two-year period, correct?

6 A. Basically, yes, the two-year is -- reflects
7 the life of the customer, yes, sir.

8 Q. And that equates to a churn rate of something
9 in excess of 4 percent a month, right?

10 A. I haven't done the calculations frankly.

11 Q. 24 times 4 is 96, right?

12 A. Yeah. I'm running through it. It's late in
13 the day.

14 Q. Something in excess of 4 percent --

15 A. Yes, sir.

16 Q. -- right?

17 Mr. Fleming provided some citations to
18 financial analysts who were looking at churn rates for CLECs
19 that were in the 1 percent range. Do you recall his
20 testimony on that?

21 A. No. I don't remember, don't have his
22 testimony committed to memory.

23 Q. Did you present anything in your testimony
24 from financial analysts or others with regard to actual
25 churn rate that was in excess of 4 percent a month?

1 A. No. Sprint's -- the two years that Sprint has
2 used was basically taken from our own personal experience
3 and from business plans and, I believe, our premise that
4 these customers are basically on the cusp of being
5 enterprise customers, and so there's going to be a higher
6 churn rate and it would be more reflective of the mass
7 market. There's a lot of discussion of that in the TRO
8 around, I think, paragraph 470, with the hot cuts about the
9 levels of churn rates for the mass market. That's basically
10 where Sprint got its number.

11 Q. Okay. And the churn rate as it applies in the
12 denominator of your equation relates to how long you have to
13 recover the cost of the equipment and the other costs,
14 correct?

15 A. Yes. It would basically spread the cost of
16 the recovery from two years over whatever the life of the
17 customer you choose. We certainly don't agree with eight or
18 ten-year life.

19 Q. Okay. And with regard to the churn rate that
20 you've chosen, that's what applies in the numerator to
21 enterprise customers as determined by the Commission, based
22 on the crossover analysis, correct?

23 A. The churn applies to the -- yes, the DS1
24 basically, the recovery of the -- of the nonrecurring
25 charges.

1 Q. And the DS1 customer, by definition, is not a
2 mass market customer, correct?

3 A. The DS1 customer, basically we're considering
4 these customers -- the only reason we're considering these
5 customers is because they have a lot of voice grade lines
6 and it may be more efficient to provide them a DS1 versus a
7 DS -- several DS0s. We did not see them as -- in the same
8 line as an enterprise customer that's buying the T1
9 packages, no. We don't view them on the same basis.

10 Q. It would be inappropriate, wouldn't it, to
11 utilize a churn rate from whatever source that involves the
12 mass market when you're applying it to the enterprise market
13 when trying to determine the carrying charge for channel
14 banks to serve that customer, correct?

15 A. The mass market has actually -- I believe we
16 go to the TRO higher churn rates than two years. And basi--
17 and as I said in my previous response, we're using this
18 based on our own market experience. So basically you're
19 saying, do we have some customers that buy T1 bundles that
20 sign a two-year contract? Absolutely, yes.

21 Q. Or longer, right?

22 A. Or longer. They have a choice, yes.

23 Q. And they can take up to, what, five years?

24 A. There are multiple. Five years is one of the
25 options, I believe. Two years, three years, five years, I

1 think is what the options are.

2 Q. And if they take a two-year, they can renew at
3 the end of two years, correct? Any customer can, right?

4 A. Yes.

5 Q. The churn rate that you've adopted is a pretty
6 significant factor in the difference between your analysis
7 and that that SBC Missouri presents, right?

8 A. It's a difference. It does not impact the
9 crossover significantly.

10 Q. It's four times greater, isn't it?

11 A. It's four times greater, but in looking at the
12 cost analysis, since you're spreading it, it doesn't affect
13 it significantly.

14 Q. Have you presented a sensitivity analysis to
15 show that?

16 A. No, I have not. I've done it personally and
17 I've looked at it, but I have not presented it, no.

18 Q. Let me ask you to turn to your rebuttal at
19 page 8, if you would. There you discuss the impact of a
20 crossover of ten lines versus four lines. Do you see that,
21 beginning on line 11 and carrying through to
22 line 20?

23 A. Yes, sir.

24 Q. The crossover determines whether the customer
25 is considered mass market or enterprise, correct?

1 A. Yes, sir.

2 Q. If it's an enterprise customer, the FCC has

3 already found that there is no impairment for CLECs if they

4 don't have access to unbundled local switching, right?

5 A. Yes.

6 Q. And then a CLEC -- if it's below that

7 crossover point, a CLEC would have to serve the customer

8 with its own switch unless it's operating in a territory

9 where the ILEC has Section 271 obligations to provide

10 unbundled local switches, right?

11 A. I think you've added -- basically if above the

12 crossover is an enterprise customer, the CLEC has to provide

13 service using their own switch and their facilities. Below

14 that, to move to 271 would mean that the Commission has

15 basically removed UNE-P as an option below the crossover,

16 and I don't recollect you saying that.

17 Q. Okay. And I may have missed it in my

18 question.

19 A. I don't really -- yeah, basically, I really --

20 below that if the Commission has not --

21 Q. If the Commission finds non-impairment with

22 regard to the mass market customers in a particular

23 geographic area, then the CLEC can either utilize its own

24 switch to provide service or if they're operating in SBC

25 Missouri's territory, then SBC Missouri would have a 271

1 obligation to continue to provide unbundled local switching,
2 right?

3 A. They would have those options or the option
4 not to serve at all.

5 Q. Okay. But whether the CLEC chooses to utilize
6 its own switch or obtain switching from SBC Missouri under
7 Section 271, the CLEC in any event has the option to
8 purchase as many DS0s as it wants at the TELRIC rate,
9 regardless of what the crossover point is, correct?

10 A. I think that assumes that it's economic for
11 them to do so, based on the customer, and I think what this
12 crossover is showing is that at some point it doesn't make
13 economic sense to continue buying DS0s. I mean, Sprint's
14 testimony is at ten or above, it makes economic sense to buy
15 a DS1. Why you would keep buying DS0s?

16 Q. That's not my question.

17 A. I was hearing you basically saying that Sprint
18 has the -- or that the CLEC has the option of buying however
19 many DS0s they want. Sure. Yes. Doesn't mean it's
20 economic, but they can.

21 Q. It's their choice whether they want to buy six
22 DS0s to serve a particular customer at a single location,
23 even if the Commission sets the crossover point at four
24 lines, correct? For example?

25 A. It's their choice. It doesn't mean that they

1 would choose to do so or that it's economic to do so.

2 MR. LANE: All right. That's all I have.

3 Thank you, Mr. Maples.

4 JUDGE MILLS: Mr. Dority, if you're very

5 quick, we'll let you get finished today.

6 MR. DORITY: I have nothing further.

7 JUDGE MILLS: There are no questions from the

8 Bench for this witness.

9 MS. HENDRICKS: I can do cross very quickly.

10 JUDGE MILLS: Your redirect?

11 MS. HENDRICKS: Redirect. I keep forgetting

12 who I am.

13 JUDGE MILLS: If you can do it within five or

14 ten minutes, why don't we go ahead, and we'll finish.

15 MS. HENDRICKS: Somehow I sense my witness

16 would prefer that I do it right now.

17 THE WITNESS: Yes, please do. I'm fading

18 fast.

19 REDIRECT EXAMINATION BY MS. HENDRICKS:

20 Q. Okay. I want to talk to you briefly about the

21 economic analysis that you've done and the questions that

22 SBC asked pertaining to considering data and not considering

23 data. First of all, I think you have testified that Sprint

24 believes that it's the voice service revenue that counts; is

25 that correct?

1 A. Yes, that is my testimony.

2 Q. And are there portions in the TRO that support
3 that position?

4 A. Yes. It's in my direct and rebuttal
5 testimony, the -- specifically I think you can begin in my
6 rebuttal testimony where I talk about the definition itself.
7 Basically, on page 7 of my rebuttal testimony, I basically
8 say -- which is a quote from Footnote 1296, we define DS1
9 enterprise customers for our impairment analysis as
10 customers for which it is economically feasible for a
11 competing carrier to provide voice service with its own
12 switch, using a DS1 or above loop. And we find that this
13 includes all customers that are served by the competing
14 carrier using the DS1 or above loop.

15 In addition, in paragraph 497, in the middle
16 of the paragraph it talks specifically about providing voice
17 grade services. In the rule that we've cited multiple
18 times, it does talk about -- it does talk about providing
19 the -- where it does use the term additional revenues, but
20 it does talk about the CLEC providing services via their
21 switch. And Sprint interprets that to be switched voice
22 services, and that's why we believe that that should be the
23 focus.

24 Q. And is that focus on the voice service also
25 repeated in Footnote 1376?

1 A. Yes, I mentioned 1376 in my rebuttal. It
2 reiterates the -- it reiterates the definition, I believe,
3 that's in 1296 that talks about DS -- about these customers
4 as CLECs providing voice grade services to them.

5 Q. Now I'd like to direct your attention to
6 Exhibit 32 that was put in the record by SBC. The customers
7 that are served by Exhibit 32 are not the customers that
8 this Commission is seeking to identify, are they, in the
9 crossover analysis?

10 A. I don't have Exhibit 32. I'm not sure which
11 one 32 is.

12 Q. The Sprint integrated T1 bundle.

13 A. Oh, I'm sorry. Excuse me. Would you repeat
14 your question?

15 Q. The customers that are being served by the
16 offering in Exhibit 32 are not the customers that this
17 Commission is seeking to identify by the crossover, are
18 they?

19 A. That's the -- no, they're not. I think that's
20 the point -- the point that we're basically saying. I think
21 one of the critical questions, is there a market for
22 business customers or residential, for that matter, buying
23 multiple voice grade lines for voice-only bundles? And is
24 it four or ten or whatever, and we have customers that are
25 buying multiple lines of well above four with just -- for

1 just voice only bundles, and that's not what these customers
2 are.

3 Q. These customers are already in the enterprise
4 market; is that correct?

5 A. Absolutely. That's the point of my testimony.
6 If we serve them like this, they are enterprise customers
7 and we serve them with our facilities or facilities leased
8 from someone else.

9 Q. So is the Commission concentrating on those
10 customers, for example, that are served by what's been
11 marked Exhibit 23, which is SBC's voice only up to ten
12 lines? Is that the type of market that this Commission's
13 seeking to draw the line in to say, this side's enterprise,
14 this side's residential or mass market?

15 A. Okay. The exhibit you're talking about is the
16 -- is the SBC bundle which voice only -- yes, that's the
17 line.

18 Q. One other question I want to ask: There was
19 some discussion about the churn and a reference to
20 Southwestern Bell that they had relied on a financial
21 analyst to identify their churn number. Do you recall that?

22 A. Yes, I remember the line of questioning.

23 MS. HENDRICKS: If I may approach the witness?

24 JUDGE MILLS: Yes, you may.

25 MS. HENDRICKS: I am putting in front of the

1 witness a copy of Schedule GAF-6.

2 BY MS. HENDRICKS:

3 Q. Mr. Maples, at Footnote 11 is the identity of

4 the source of the financial -- or of the churn information.

5 Could you read it into the record?

6 A. It says, see Kelly Schaefer,

7 finding the leaks, downloaded from

8 www.fatpipeonline.com/sep2003water.asb on 9/19/03.

9 Q. Thank you. Now, Mr. Maples, is that a

10 financial analyst that is well known in the field?

11 A. I'm not familiar with them.

12 MS. HENDRICKS: Okay. Thank you very much.

13 JUDGE MILLS: I think we'll wrap it up there

14 today. We'll begin tomorrow morning with AT&T Witness

15 Finnegan. We're off the record.

16 WHEREUPON, the hearing of the case was

17 recessed until February 3, 2004.

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