

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3 _____

4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 January 31, 2005

7 Jefferson City, Missouri

8 Volume 2

9 _____

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

14

15

16 _____

17 VICKY RUTH, Presiding
18 SENIOR REGULATORY LAW JUDGE.
19 STEVE GAW,
20 CONNIE MURRAY,
21 ROBERT CLAYTON, III,
22 LINWARD "LIN" APPLING,
23 COMMISSIONERS.

24 _____

21

22

23 REPORTED BY:
24 TRACY L. THORPE, CSR, CCR
25 MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

PAUL G. LANE, General Counsel-Missouri

LEO J. BUB, Senior Counsel

One SBC Center, Room 3520

St. Louis, Missouri 63101

314-235-4300

FOR: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri

CARL J. LUMLEY, Attorney at Law

Curtis, Oetting, Heinz, Garrett & O'Keefe

130 S. Bemiston, Suite 200

Clayton, Missouri 63105-1913

314-725-8788

FOR: Big River Telephone,

MCI Metro Access Transmission Services, LLC

Intermedia Communications,

MCI WorldCom,

NuVox Communications of Missouri

XO Communications

Socket Telecom

MICHAEL F. DANDINO, Senior Public Counsel

P.O. Box 2230

Jefferson City, Missouri 65102

573-751-5559

FOR: Office of Public Counsel and the Public

WILLIAM K. HAAS, Deputy General Counsel

P.O. Box 360

Jefferson City, Missouri 65102

573-751-6651

FOR: Staff of the Missouri Public Service Commission

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

2 JUDGE RUTH: I anticipate that the
3 Commissioners will be joining us shortly for the opening
4 statements. If they're not here when we're ready for them, We
5 may have to take a short break while they come down.

6 As I mentioned earlier, you need to talk to the
7 court reporter if you want an electronic copy of the
8 transcript.

9 I also noted that I sent out a list of the
10 exhibit numbers as they should be premarked and there have
11 been a couple of changes. I neglected to include the
12 proprietary version for Fernandez offered by SBC Missouri, so
13 that one is now 34. And No. 31 was a duplicate and can be
14 deleted. There will not be a No. 31 then.

15 Are there any other changes at this time to
16 that exhibit list?

17 Then let me say that we are here for the
18 hearing in Case No. TO-2005-0035 in the matter of the second
19 investigation into the state of competition in the exchanges
20 of Southwestern Bell Telephone d/b/a SBC Missouri.

21 Let's begin with entries of appearance. SBC
22 Missouri?

23 MR. LANE: Morning, your Honor. Paul Lane and
24 Leo Bub on behalf of Southwestern Bell Telephone, LP, doing
25 business as SBC Missouri. Our address is One SBC Center, Room

1 3520, St. Louis, Missouri 63101.

2 JUDGE RUTH: Thank you.

3 Staff?

4 MR. HAAS: Good morning. William K. Haas
5 appearing on behalf of the Staff of the Public Service
6 Commission. My address is Post Office Box 300, Jefferson
7 City, Missouri 65102.

8 JUDGE RUTH: Thank you.

9 Public Counsel?

10 MR. DANDINO: Good morning, your Honor. My
11 name is Michael Dandino, Office of the Public Counsel, Post
12 Office Box 2230, Jefferson City, Missouri 65102, and
13 representing the Office of Public Counsel and the public.

14 JUDGE RUTH: Thank you.

15 And the CLECs?

16 MR. LUMLEY: Good morning, your Honor. Carl
17 Lumley appearing on behalf of MCI Metro Access Transmission
18 Services, LLC, which is also, as the Commission's aware from
19 other proceedings, the successor interest to Intermedia
20 Communications, Inc., which is still officially a party of
21 record, but that merger has been completed through the
22 Commission's approval; MCI WorldCom Communications, Inc.;
23 NuVox Communications of Missouri, Inc.; XO Communications,
24 which is the successor to XO Missouri and Allegiance Telecom,
25 again, a merger approved by the Commission recently; Big River

1 Telephone Company, LLC; and Socket Telecom, LLC.

2 JUDGE RUTH: Thank you.

3 Okay. Briefly, I'll just go over the expected
4 procedure for today. We're going to start with opening
5 statements, then we'll have the witnesses. And at the end of
6 the hearing, I have a question for you you can be thinking
7 about and we'll discuss later today.

8 Do the parties want to offer closing argument?
9 You'll only be given one round of briefs whether you have
10 closing arguments or not, so you need to be thinking about
11 whether you want those -- that one more chance with the
12 closing arguments.

13 And I have a preliminary matter to address.
14 Some time ago the CLECs filed a motion to declassify portions
15 of SBC's pre-filed testimony and that is denied. And I'll
16 issue a notice to that effect probably tomorrow.

17 We're now ready for the Commissioners, so we're
18 going to take a five-minute break.

19 (A recess was taken.)

20 JUDGE RUTH: As I mentioned, we're now ready
21 for opening statements, and SBC Missouri, would you please
22 begin by coming up to the podium? You may have to adjust that
23 mic.

24 MR. LANE: Okay. Ready?

25 JUDGE RUTH: Thank you.

1 MR. LANE: Good morning. My name's Paul Lane.
2 And along with Leo Bub, I represent SBC Missouri in this case.

3 This is a critical case for SBC Missouri.
4 Probably the two items that are of most interest to us when in
5 front of the Commission are our retail prices and our
6 wholesale prices. This case involves only our retail prices.
7 Whatever you decide here won't impact your ability to maintain
8 control over wholesale prices, which are set in arbitrations
9 under the Federal Act.

10 What are we asking for here? We're looking to
11 be treated just like the CLECs or competitive local exchange
12 companies with whom we compete. We want to have our services
13 classified as competitive. If we're given that designation,
14 we'll be able to change prices on 7- to 10-days notice in
15 response to market conditions, just like CLECs do today.

16 In our view, it's long past time for
17 competitive classification. It's harmful to SBC Missouri and
18 to consumers to continue on the current path. And Dr. Aron,
19 our first witness, addresses some of those issues.

20 It's time for the regulatory policy in Missouri
21 to reflect what's actually occurring in the market and it's
22 time to recognize that the market has in some cases passed
23 regulation by.

24 What we'd ask is that the Commission step back
25 and look at the market. Not the piece part of the market that

1 you have the ability to regulate, but the entire market. This
2 Commission regulates wireline circuit switched telephone
3 service, offered either by incumbent local exchange companies,
4 ILECs, or by CLECs. But that's not the entirety of the
5 market.

6 Basic local exchange service today is also
7 provided by wireless providers and by Voiceover Internet
8 Protocol, or VoIP providers, in addition to by ILECs and CLECs
9 that you regulate. The Commission must recognize, in our
10 view, the existence of this competition even though it doesn't
11 regulate those other providers.

12 On the wireless side there are more than
13 10 companies providing wireless service in SBC's Missouri
14 territory. 96 percent of our customers have access to at
15 least two wireless carriers, and that's excluding Cingular,
16 which is affiliated with SBC and partially owned by SBC. So
17 excluding them, 96 percent of our customers have access to at
18 least two other wireless providers.

19 There are more wireless access lines in
20 Missouri today than SBC Missouri has wireline lines. And
21 that's an astounding fact that the Commission needs to reflect
22 on.

23 Customers spend as much or more today on
24 wireless service on average than they do on wireline service.
25 Again, a significant fact. On the VoIP, Voiceover Internet

1 Protocol side, companies are leaping into the market to
2 provide service today. Companies like Time Warner in Kansas
3 City and Charter in St. Louis are offering VoIP over their
4 cable systems. Companies like Vonage and Nuvio, which is a
5 Missouri-based company, are offering broadband services and
6 VoIP. ZTel and other CLECs are shifting customers from
7 circuit switched wireline to VoIP. Verizon, SBC and others
8 are entering the market.

9 With regard to VoIP, the cost is right, it
10 offers features and functions that aren't available over the
11 circuit switched network and the quality is very good. I know
12 that OPC's witness in this case claims that the quality of
13 VoIP service isn't good. I think the Commission should rely
14 on the market and not on OPC's opinion for that.

15 If you look and see those that are in the
16 market, large and well-known companies like Time Warner,
17 Charter and Verizon, they wouldn't invest their money and they
18 wouldn't stake their reputation in providing a service that
19 didn't have high quality.

20 Wireless and VoIP are now competing with CLECs.
21 But even if we looked only at CLEC competition, it's very
22 significant. There's more than 65 CLECs that are currently
23 actively providing service in SBC Missouri's territory today.

24 And this is Schedule 4 from Mr. Unruh's Direct
25 Testimony. It shows SBC Missouri's retail access lines. And

1 you can see moving from the second quarter of 2001 where we
2 had over 2.6 million lines down to second quarter of 2004
3 where we're slightly above 2.1 million lines, that there's
4 been a significant drop in our access lines.

5 Now, not all of these is a one-for-one
6 correlation with moving over to a competitor, but it shows
7 that we've had a significant drop in lines while others have
8 been increasing, as I'll show you a minute.

9 The CLECs with whom we compete have more than
10 21 percent of the market in Missouri in our territory on a
11 statewide basis. And, again, I'm just talking wireline
12 circuit switched market. I'm not talking wireless, I'm not
13 talking VoIP. They have more than 36 percent of the business
14 market today across our -- across the state in our territory.
15 They have almost double the number of lines served that they
16 had back in 2001 when you last looked at this.

17 The majority of the competition from CLECs is
18 from CLECs where they provide their own switching and SBC
19 Missouri isn't used. This is Exhibit 3 from Mr. Unruh's
20 Direct Testimony. Again, it's on a statewide basis. If we
21 take a look from the second quarter of 2001, when you last
22 looked at this, until today, you'll see first that the number
23 of resold lines has decreased. At the same time, the number
24 of lines being provided by CLECs via UNE-P has grown.
25 Probably most significantly, you'll see the number of lines

1 where CLECs utilize their own switching facilities has grown
2 very significantly and is the largest method by which they
3 provide service today.

4 Mr. Unruh explains in his testimony that
5 there's more than 30 circuit switches in Missouri that are
6 used by CLECs to provide service today. And there's an
7 additional at least 38 either soft switches or other equipment
8 that's utilized by CLECs to have calls routed to them.

9 These are all reported by the CLECs in the
10 Local Exchange Routing Guide, which is the device used by the
11 industry across the country to ensure that calls get directed
12 to the customers of the particular carriers involved. So they
13 report that they own a switch, they report that they own a
14 soft switch, they report they have equipment and they tell the
15 rest of the industry, When one of your customers calls one of
16 mine, here's how to get it to them. They can serve any area
17 of the state with these switches, regardless of where the
18 switches themselves are located.

19 In addition, Mr. Unruh explains that CLECs are
20 collocated in many of SBC Missouri's central offices. It's
21 significant because, one, it shows that they are committed to
22 Missouri, they've made an investment, they're here to stay;
23 and, two, it shows the intent to provide that service with
24 their own facilities.

25 Having told you about the 65 CLECs that are

1 actively providing service, the 10 wireless companies,
2 excluding Cingular, that are providing service to our
3 customers and the numerous VoIP providers, the Commission
4 should also look to see who is not in this case today.

5 There's not a single wireless provider in front
6 of you. There's not a single VoIP provider that has offered a
7 witness in this case. And of the 65 CLECs that are competing
8 actively in our territory today, there's a witness from only
9 two of those here. Most of the CLECs aren't even in the case.
10 And that speaks volumes.

11 One who is in, MCI, has made a nationwide plea
12 for deregulatory treatment of CLECs and ILECs alike on an
13 equal basis so that they can compete with wireless and VoIP
14 providers. That speaks volumes as well.

15 Let me speak to something else that I think
16 also explains how things have changed since you last looked at
17 this case. In 2001, the Commission granted competitive
18 classification to SBC Missouri for business services in
19 St. Louis and Kansas City and for residential services in
20 Harvester and St. Charles.

21 This is a chart from information that's
22 presented on pages 21 and 22 of Mr. Unruh's Direct Testimony.
23 And it demonstrates what's happened in the three years since
24 you've looked at it. This column of June and July of 2001,
25 the next column is what it is in June 2004, the data point

1 that we utilized to prepare our information for this case, and
2 the change that's taken place.

3 You can see with regard to the minimum number
4 of CLEC lines increased from 288,000 to 561,000, almost
5 doubled. Business lines from 230,000 to 383,000, a very
6 significant increase. Residential lines from 57,000 to
7 178,000, very significant increase. And these other
8 indicators of competition also support our evidence that shows
9 that competition is alive and well from CLECs in Missouri.

10 Competition in all the markets remains strong.
11 No one has suggested a competitive classification where you
12 granted it previously has harmed competition. You should
13 consider that when you consider the claims from Socket, NuVox
14 and others that allowing us to have competitive classification
15 is going to work great harm in the market. You've seen what's
16 happened with your decision so far. It has not caused great
17 harm. It's enhanced competition.

18 Let's look at the standard the Commission is
19 supposed to apply in this case. Under Section 392.245.5,
20 competitive classification depends upon a finding of effective
21 competition. Effective competition, in turn, is evaluated
22 pursuant Section 386.020.13 and there's five factors that are
23 listed.

24 The first is the extent to which services are
25 available from alternate providers; second is the extent to

1 which these services are functionally equivalent or
2 substitutable at comparable rates, terms and conditions; the
3 third is the extent to which purposes and policies of the
4 chapter are being advanced; the fourth is whether there's
5 existing economic or regulatory barriers to entry; and the
6 fifth is any other factors deemed relevant by the Commission
7 so long as they're necessary to implement the purposes and
8 policies of the chapter.

9 Our testimony in this case follows these
10 criteria and demonstrates how we've met them. I wish the
11 other parties in the case had done the same, but they have
12 not.

13 Staff's testimony in particular in this case is
14 very disappointing. In our view, it's not a neutral
15 evaluation of the factors that are set out in the statute.
16 Instead, Staff's recommendations are based almost exclusively
17 upon whether SBC Missouri met a market share loss threshold of
18 9 percent. You can look at the statute for yourselves.
19 There's no discussion in there of any kind of metric analysis
20 or market share loss analysis. Had the legislature intended
21 to do that, they would have done so.

22 You can also look through Staff's testimony for
23 an explanation of where they came up with the 9 percent market
24 threshold, but you won't find any discussion of it whatsoever.
25 It appears to have been pulled from the air and because no

1 explanation was provided for it, I think a fair interpretation
2 is that it was a results driven approach. They looked at the
3 data and they picked a market share loss threshold that would
4 result in giving SBC Missouri no relief at all for residential
5 service and only marginal release for businesses services. In
6 any event, it's not supported by the terms of the statute nor
7 accepted economic theory, again, as Dr. Aron will demonstrate
8 in her testimony.

9 When Staff did its 9 percent market share
10 analysis, it did exclude wireless, it did exclude VoIP, but
11 more than that, it even excluded some wireline circuit
12 switched services from CLECs. It ignored all UNE-P or
13 unbundled network element platform competition. Again, that
14 exclusion appears designed to yield a predetermined result as
15 well. But in any event, it's a radical departure from the
16 statute.

17 It's also a departure from the Commission's
18 analysis in the last case with regard to market share loss.
19 The Commission said in TO-2001-467 on page 11, quote, Neither
20 Section 392.245.5 nor Section 386.020.13 require any
21 quantitative market share loss test to determine whether
22 effective competition exists for SWB services in Missouri,
23 unquote. Instead, the Commission properly treated it as one
24 factor showing the extent to which services are available from
25 alternate providers.

1 In the prior case, the Commission also noted
2 that it should consider wireless and other providers in
3 evaluating competition, but the Commission found in that case
4 that sufficient facts on the -- specific to Missouri had not
5 been presented. That has been corrected here. Mr. Unruh
6 identifies the wireless providers in every SWB exchange. And
7 as I mentioned earlier, there's at least two in almost all the
8 exchanges, comprising 96 percent of our customer base has at
9 least two choices besides Cingular.

10 Mr. Unruh also provides maps showing the
11 availability of cable and VoIP services throughout Missouri
12 and primarily in the metropolitan areas, St. Louis, Kansas
13 City and Springfield.

14 And Mr. Shooshan presents a survey of wireless
15 and wireline customers in Missouri that demonstrates that
16 wireless is a substitute in Missouri for wireline services.
17 In fact, he noted in there that 18 percent of the wireless
18 users that were surveyed don't even have a wireline phone.

19 What we can't show to you now or ever is a
20 market share loss by exchange from wireless or from VoIP
21 providers. Those companies aren't regulated, they don't file
22 reports with this Commission, they don't show up and
23 participate in cases like this. That information isn't
24 available. Even if we could get it from them, we would not be
25 able, in all likelihood, to have it on an exchange-specific

1 basis because wireless doesn't maintain and doesn't offer
2 services on the same basis as do wireline companies.

3 But what we have shown is that it's available
4 widely throughout all of our exchanges in Missouri and is a
5 substitute and is an alternative for customers at comparable
6 rates, terms and conditions.

7 Staff's refusal to consider UNE-P in its
8 analysis of the market share is clearly wrong. Staff's
9 position is that since UNE-P is going away, it shouldn't be
10 counted. But that position doesn't square with either the
11 facts or the law.

12 The unbundled network platform is going away.
13 The FCC has ruled that one element of that platform, unbundled
14 local switching, in an order they have not yet released but a
15 press release is available, is going away. But it's going
16 away because the FCC has made a binding determination that
17 CLECs are not impaired without access to it. They don't need
18 it to compete. And in Missouri, you can see that's true.

19 As we demonstrated earlier, most of them are
20 using their own switching to provide the bulk of services in
21 Missouri. There are over 30 switches in Missouri. There are
22 over 38 soft switches or other equipment in Missouri today.
23 So they can use their own switches. They can also use
24 switches from another CLEC. XO in Missouri and McLeod in
25 Missouri have both announced their willingness to provide

1 switching services to any CLEC that wants them. SBC Missouri
2 has said it's willing to continue to provide switching
3 services in Missouri. Not on a TELRIC basis, but on a
4 market-based pricing basis.

5 So Staff's assumption is contrary to the FCC's
6 determination and contrary to the facts. Staff ignores the
7 FCC's non-impairment decision and the alternatives available
8 to CLECs. They don't even discuss them anywhere in their
9 testimony. They simply assume that that competition is going
10 away, presumably because those facts don't fit with their view
11 of what they want to see happen.

12 I won't spend much time with the CLECs.
13 There's two in this case. They advance arguments that were
14 advanced in the last case. We've demonstrated in our
15 Rebuttal -- Surrebuttal Testimony how their claims are wrong
16 and the Commission rejected many of them last time. The
17 interest of these companies in trying to maintain an
18 artificial regulatory advantage is clear and should be
19 rejected.

20 Let me close with a quote from MCI's open
21 letter to state commissions that's attached as Schedule 5 to
22 Mr. Unruh's Surrebuttal. MCI noted there that the convergence
23 of new technologies like wireless and VoIP were radically
24 transforming the competitive landscape and needed to be
25 reflected in regulatory policy.

1 They said, quote, It is MCI's view that states
2 should have less of a role in regulating retail
3 telecommunications services and service providers. Simply
4 put, convergence means that telecommunications can no longer
5 be thought of as a traditional state-regulated utility
6 anymore. Attempts to keep such regulation on traditional
7 providers such as MCI or the ILECs simply skew the marketplace
8 by creating an asymmetry of regulation.

9 While MCI doesn't advance that position here,
10 at least according to its position statement in the case, I
11 think Missouri's like the rest of the states. An asymmetry of
12 regulation as exists here does skew the marketplace and should
13 be eliminated. SBC Missouri asks the Commission to recognize
14 that and to grant us competitive classification in all of our
15 exchanges for the business and residential services that are
16 identified in Mr. Unruh's testimony. Thank you very much.

17 JUDGE RUTH: Okay. We'll move to Staff.

18 MR. HAAS: Good morning. My name is William
19 Haas and I represent the Staff in this week's hearing.

20 As you've been told, SBC Missouri is an
21 incumbent local exchange telecommunications company operating
22 under the price cap statute, Section 392.245 of the Missouri
23 Revised Statutes. Subsection 5 of the price cap statute will
24 allow SBC to adjust its rates upward or downward as it
25 determines appropriate for those services in those exchanges

1 where the Commission determines effective competition exists.
2 SBC provides service in 160 exchanges.

3 In Case No. TO-2001-467 the Commission found
4 that SBC's residential services faced effective competition in
5 the Harvester and St. Charles exchanges and that its business
6 services faced effective competition in the Kansas City and
7 St. Louis exchanges.

8 SBC points out that it's not aware of any
9 problems that have arisen from that previous classification,
10 but SBC has taken little or no action based upon that previous
11 classification, so there's really nothing to test it against.

12 However, the big issue in this case is whether
13 the Commission should grant SBC's request to have its
14 residential services and its business services classified as
15 competitive in all of the remaining exchanges. Testimony from
16 SBC's witnesses repeat the mantra that if SBC receives the
17 requested pricing flexibility, then it will respond to
18 competition by raising and lowering prices and by introducing
19 bundles of services and by introducing new services.

20 Implicit in this testimony is the unspoken
21 premise that price cap regulation prevents it from doing those
22 things today. The premise remains unspoken because it is
23 largely incorrect. SBC can, as a price cap regulated company,
24 lower prices. SBC can, as a price cap regulated company,
25 introduce bundles. SBC can, as a price cap regulated company,

1 introduce new services. What it cannot do is lower -- pardon
2 me, is raise its rates to whatever level it chooses.

3 Whether SBC perceives price cap regulation as
4 good or bad for it is beside the point. Before SBC can
5 receive pricing flexibility for its services, those services
6 must face effective competition. SBC witnesses suggest that
7 potential competition is sufficient for efficient
8 competition -- or effective competition, but that is not what
9 the statute says.

10 Section 386.020 of the Missouri statutes
11 provides that effective competition shall be determined by the
12 Commission based on, A, the extent to which services are
13 available from alternative providers in the relevant market.
14 And I'd like to hit upon that word "are" -- to the extent that
15 services are available.

16 Subsection B, the extent to which the services
17 of alternative providers are functionally equivalent or
18 substitutable at comparable rates, terms and conditions. C,
19 extent to which the purposes and policies of Chapter 392 RSMo,
20 including the reasonableness of rates as set out in Section
21 392.185 are being advanced. D, existing economic or
22 regulatory barriers to entry. And E, any other factors deemed
23 relevant by the Commission and necessary to implement the
24 purposes and policies of Chapter 392 RSMo.

25 SBC has asked the Commission to consider the

1 unregulated services. And, yes, it may consider those
2 unregulated services under this fifth criteria, any other
3 factors deemed relevant by the Commission. And that is where
4 those factors -- where those unregulated providers were
5 considered in previous cases.

6 The Staff applied all five statutory factors in
7 conducting its exchange-by-exchange analysis of which SBC
8 services faced effective competition. The Staff discounted
9 resold and UNE-P services because SBC is the underlying
10 provider of those services. But this is not a change in the
11 Staff position. The Staff also discounted UNE-P in the
12 previous SBC and Sprint cases.

13 The Staff considers evidence of significant
14 facilities-based market penetration along with information on
15 the availability of wireless, cable and Voiceover Internet
16 Protocol services to demonstrate that SBC's business services
17 face effective competition in 13 additional exchanges. Those
18 are Harvester, Fenton, Chesterfield, Springfield, Valley Park,
19 Manchester, St. Charles, Marionville, Pond, Eureka, Imperial,
20 High Ridge and Maxville exchanges. So we can see that there
21 is a development of competition.

22 Staff does not have a 9 percent threshold as
23 some witnesses have suggested. That 9 percent is merely the
24 market share held by CLEC competitors in the exchange that had
25 the lowest market share that Staff found to have effective

1 competition. But remember, Staff looked at all of the
2 factors. When the Staff looked at residential exchanges, it
3 did not find that effective competition had developed in any
4 additional exchanges.

5 Finally, the Staff does agree with SBC that its
6 directory assistance and plexor services face effective
7 competition and should be classified as competitive throughout
8 all of its exchanges. Thank you.

9 JUDGE RUTH: Thank you.
10 Public Counsel?

11 MR. DANDINO: Thank you, your Honor. May it
12 please the Commission. My name is Michael Dandino and I
13 represent, among others, the customers -- residential and
14 business customers within the Southwestern Bell territories,
15 also represent the public at large.

16 The Office of Public Counsel asks the Public
17 Service Commission to deny Southwestern Bell's petition to
18 reclassify its remaining price cap regulated services in each
19 of the Southwestern Bell exchanges.

20 While SBC has produced some general information
21 that there is some degree of competition at work and for some
22 services and some exchanges, Southwestern Bell has not
23 demonstrated that all services in each and every exchange is
24 subject to effective competition. They present some data on
25 some which shows a significant level of competition, but then

1 they try to steamroll the Commission, steamroll this to each
2 and every exchange. Public Counsel believes that's unfair to
3 the people who -- customers who live in those exchanges and
4 who could end up with a very limited market without
5 substantial and competent evidence that effective competition
6 exists.

7 FCC -- SBC fails to meet the statutory standard
8 set out in the price cap statute that would allow the Public
9 Service Commission to make that factual finding and grant
10 reclassification.

11 PSC must make an exchange-by-exchange analysis
12 for effective competition. It's clear in the statute. They
13 must make that analysis for each telecommunications service.
14 Although the statute does not define what effective
15 competition is, it does set out several criteria that the
16 Public Service Commission may take into consideration.

17 Commission has in these -- at least in
18 subsection E of what effective competition is, has broad
19 discretion to consider other factors it believes appropriate.
20 These criteria are not sharply defined, but touch necessarily
21 on essential elements the Public Service Commission must
22 consider and decide before finding the existence of effective
23 competition.

24 Now, the Commission must, by law, base its
25 decision on competent and substantial evidence. This means

1 that quality and quantity of evidence of relevant information
2 which is probative to establish the facts at issue. It cannot
3 be information that leaves the Commission -- I think the
4 Supreme Court of Missouri once said in the twilight of whim,
5 conjecture and speculation. When you look at this evidence,
6 you need to assure yourself that this demonstrates effective
7 competition.

8 SBC's information does not rise to the level of
9 competent substantial evidence of effective competition. And
10 this is important because they have the burden -- Southwestern
11 Bell, SBC has the burden of coming forward with that evidence
12 to convince this Commission.

13 SBC's evidence, especially of wireline
14 competition, lacks the identification of the competitors and
15 their relative strength in addition to their activity in
16 exchanges. It does provide evidence of alternative
17 technologies in a general way. Sometimes lacking
18 Missouri-specific data and sometimes -- and definitely
19 exchange-specific data.

20 Most of it involves -- most of it -- on these
21 alternative technologies you must keep in mind that the focus
22 of this still should be on telecommunications services.
23 That's what Section 392.185 -- the purpose of the
24 Telecommunications Act or of the chapter is about
25 telecommunications service. That does not include all these

1 alternative technologies. Of course, you can consider their
2 impact, but still see what the impact is on telecommunications
3 services and see to what extent other telecommunications
4 services are competing.

5 Some of the information Southwestern Bell, SBC,
6 presents involves peripheral information such as advertising
7 and media dollars spent and replacement of listings in white
8 pages, directories and information to that -- to that. A lot
9 of it goes to information about the potential for some of the
10 alternative technologies, such as Voiceover Internet and
11 wireless.

12 Well, we're not just concerned about the
13 potential. We're concerned about today. And these
14 technologies, as they are being introduced and they do offer
15 some competition with wireline, you know, they're not at the
16 level now to be considered effective -- in effective
17 competition with Southwestern Bell.

18 When we look at all the data and how SBC puts
19 the spin to it, I'm reminded of a conversation I once had with
20 an attorney in the North Carolina Attorney General's office.
21 And she said -- we were talking about how difficult a case was
22 and she said to me, You know, honey, I've spent my whole
23 professional life dressing up the ugly truth in its Sunday
24 best.

25 Well, SBC has dressed up the ugly truth that

1 there isn't effective competition in each and every one of its
2 exchanges. The plain and simple truth is that in many of the
3 exchanges there is not effective competition.

4 In particular, SBC wants to talk about the why.
5 Why they need reclassification, why the CLECs are permitted a
6 different level of regulation than they are. Why isn't the
7 question here. What we need to look at is the who. Exactly
8 who are the competitors in each exchange and what's their
9 relative power and prospects for viability, which goes to the
10 long-term ability of these companies to offer these services.

11 Mr. Lane talks about the absence of some of the
12 CLECs Here. I don't believe that that's a vote of confidence
13 for SBC, but more maybe a resignation that they won't be
14 able -- that they're not going to be able to stop SBC.

15 You have to look at the what. And the what is
16 also what services, what specific services? Especially with
17 the residential. You can't make the broad classification that
18 just because there's wireless customers or wireless companies
19 providing service in there, that it is providing that service
20 to all the residential customers at comparable rates and
21 prices, terms and conditions.

22 You have to look at when. And this is very
23 important because the when is, is there effective competition
24 now and not just in the future or the potential? And I think
25 much of SBC's evidence goes to the potential for competition.

1 And, of course, the big question of where.

2 And, of course, where -- and that's why this is supposed to be
3 a granular exchange-by-exchange consideration.

4 When we get down to the why question and why
5 this is a -- why that is not the ultimate question, remember
6 in the movie The Fugitive, Harrison Ford, Dr. Kimble is
7 arrested, tried and convicted and sentenced to death for the
8 murder of his wife. On the way to the penitentiary, accident,
9 and he escapes. Tommy Lee Jones, as the US Marshall's job, is
10 to track him down. They meet in the hydroelectric dam in a
11 pipeway -- in a pipe and Dr. Kimble says to the Marshall, I
12 didn't kill my wife. Tommy Lee Jones, the US Marshall, says,
13 I don't care.

14 And I don't care is what this Commission should
15 say, because that's not your job. Just like the US Marshall's
16 job was to bring the man back, notwithstanding the reasons
17 why, this Commission is supposed to carry out the law the same
18 way as the US Marshall is to carry out the law.

19 You're looking at the price cap regulations,
20 the price cap statutes and apply them to the facts but you
21 can't ask why do we need price cap regulation, why shouldn't
22 Southwestern Bell be treated the same as CLECs.

23 General Assembly down the street answered that
24 question. They said that's the way it is. And here's your
25 job and your job is to do it. And you should tell

1 Southwestern Bell that you don't care and that you are going
2 to do your job under the statute to determine whether there's
3 effective competition or not and not base your decision on
4 economic theories or why Southwestern Bell feels they need
5 reclassification. Thank you.

6 JUDGE RUTH: Okay. Thank you, Mr. Dandino.

7 And now we'll hear from the Intervenors.

8 MR. LUMLEY: Good morning, Judge,
9 Commissioners. Carl Lumley appearing on behalf of the CLEC
10 Intervenors, Big River, MCI, NuVox, Socket and XO.

11 As we indicated in our filed position
12 statement, the CLECs maintain that SBC has failed to meet its
13 burden of proof to demonstrate that its services are subject
14 to effective competition in the exchanges at issue. And
15 that's because they're not subject to effective competition.

16 We also -- in addition to taking that position
17 with regard to business and residential services, we support
18 Public Counsel's assertion that regulated directory assistance
19 services are still inextricably linked to the access line and
20 we do not take a position regarding plexor services.

21 SBC chose to present this case in four basic
22 categories of service on an all or nothing basis to you. And
23 when you look at the record, there's no discreet proof
24 regarding the various segments of business service, how are
25 things in small versus medium versus large business markets.

1 Instead, they're all lumped together. And SBC must prove to
2 you that in all those segments of the business market, that
3 there's effective competition. And as I've indicated, they
4 fail to do so because it's not there yet.

5 Staff and Public Counsel have already described
6 their evidence, which in large part, opposes SBC's request for
7 relief. And additionally, NuVox and Socket have provided
8 testimony for you. As you know from prior cases, NuVox is a
9 facility-based CLEC serving small- and medium-sized businesses
10 primarily in St. Louis, Kansas City and Springfield. And
11 NuVox presents the testimony of Ed Cadieux.

12 Mr. Cadieux describes the substantial barriers
13 to entry that still confront CLECs today as they try to serve
14 the small- and medium-sized business customer. There's
15 continued dependence upon SBC facilities, loop and transport
16 facilities particularly, in order to connect the CLEC's switch
17 to the business customer.

18 And today we face tremendous uncertainty as to
19 the continued availability of these facilities as we await the
20 issuance of the FCC's final rules and then implementation of
21 those rules, which based on the press release, indicate that
22 in certain central offices, access to transport and even
23 potentially DS1-level loops to serve businesses will go away.

24 Mr. Cadieux also indicates that the only
25 meaningful competition presented to SBC is that presented by

1 UNE-based CLECs. And that competition right now, at least for
2 the near term, is on the decline. There's not going to be any
3 unbundling of next generation facilities. The FCC has told us
4 that. There's not going to be any further UNE-P or UNE
5 platform available. No more local -- unbundled local
6 switching. And the transition process and how that's going to
7 work out is unclear, particularly in the near term.

8 And as I mentioned, there's tremendous
9 uncertainty as to the extent of the availability of DS1 and
10 higher level loops and transport facilities.

11 Now, the FCC has recently found that intermodal
12 competition is not fully substitutable yet. And that's been
13 NuVox's experience as well and Mr. Cadieux discusses that.
14 And additionally, the FCC has continued to recognize that the
15 incumbent, SBC, still benefits from significant first move
16 advantages that give it the advantage and deter competition
17 and its preferential access to building and right-of-way, the
18 overall existing capacity extending from their monopoly
19 history, their operational experience, the inertia of
20 customers that remains and their brand recognition.

21 Socket is also a facilities-based CLEC that
22 provides voice and data services to small- and medium-sized
23 businesses, but primarily in rural markets in the state. And
24 it presents the testimony of Matt Kohly. He supports
25 Mr. Cadieux's description of the barriers of entry that face

1 CLECs. Like Mr. Cadieux, he points out that wireline
2 competition is headed into a period of decline due to FCC rule
3 changes. And he notes that based on SBC's own evidence,
4 41 percent of the CLEC market share that they're touting is
5 based on UNE platforms that's going away.

6 The impact here is greatest at the smaller end
7 of the market. That's where reliance on these facilities has
8 been the greatest. And, again, the ability of CLECs to adapt
9 to these major changes is an unknown factor and it injects
10 tremendous uncertainty into the marketplace.

11 Mr. Kohly also demonstrates that the figures
12 that SBC presents to you regarding market share are
13 overstated. That there are inaccuracies in trying to
14 translate E-911 data directly to a market share figure. And
15 he notes for you that SBC prevented us from doing any analysis
16 to get into the accuracy of that information.

17 Further, E-911 data does not give you
18 information on the size of customers served. Again,
19 preventing you from making a discreet analysis between small,
20 medium and large businesses and how the market is working.

21 Like Mr. Cadieux, Mr. Kohly shows you that
22 wireless is not a substitute for wireline services yet. In
23 fact, he quotes SBC Chairman Whitaker as saying, That's never
24 going to happen. And he also reminds the Commission that in a
25 Universal Service Funding case, you found that wireless

1 companies are not substitutable and are not qualified to
2 receive those funds.

3 Likewise, Mr. Kohly discusses the VoIP and
4 demonstrates what you already know. It's too new, it's
5 dependent on broadband access that generally comes from SBC
6 especially where cable modem service is not available, which,
7 again, impacts the business market because many businesses do
8 not have access to cable modem service.

9 Mr. Kohly discusses how all this regulatory
10 uncertainty translates into investment uncertainty and how the
11 new capital required for new facilities is not there yet. He
12 describes for you how intransigence by SBC continues to create
13 an imbalance in the market as they impose unnecessary costs
14 and delays and obstruct the interconnection process.

15 Mr. Lane referenced the MCI letter that is
16 attached to Mr. Unruh's testimony. I would just encourage you
17 to read the letter in full. What the letter says is, first,
18 competitive forces must have taken hold so that regulation is
19 unnecessary; second, access reform must have occurred; third,
20 universal service reform must have occurred; and then retail
21 market participants should simultaneously be deregulated, not
22 one at a time as SBC seeks to accomplish.

23 So for them to try and twist that letter by
24 quoting from parts of it as if MCI has given up the ghost is
25 not a fair characterization of their position and obviously I

1 wouldn't be here today speaking on their behalf if it was.

2 In total, the record reflects that the time is
3 not right to further release SBC from price cap regulation.
4 Whether it's a matter of bad timing on their part or they're
5 trying to slip by before the numbers start to get worse again,
6 I'm not sure. But clearly it's better for the Commission to
7 be prudent and take a wait and see approach and see how things
8 shake out. How will CLECs adapt to the loss of UNE-P and the
9 other changes in FCC unbundling rules?

10 And I'm kind of surprised that I'm the first
11 one to mention it today, it's also important for the
12 Commission to see what shakes out from SBC's announced
13 acquisition of AT&T. If you look at SBC's testimony,
14 throughout their testimony they identify AT&T as their poster
15 child for the success of CLECs and how they're going to
16 transition from UNE-P to Voiceover Internet Protocol. Every
17 witness, the first one they mention is AT&T, look how well
18 they're doing.

19 Well, AT&T is about to become SBC. And none of
20 us knows what the impact is going to be of that. And I think
21 the Commission's also aware that a number of other
22 transactions are being banted about. It's a time of
23 tremendous uncertainty in the market and this kind of
24 uncertainty should preclude you from jumping into releasing
25 SBC from further price cap regulation.

1 What the uncertainty says is -- going back to
2 your definition of effective competition, it's not likely yet
3 that we have sustainable price discipline in the market that
4 will justify the release of this company from price cap
5 regulation.

6 Mr. Kohly, in particular, identifies some of
7 the risks of premature deregulation. There are competitive
8 segments of the marketplace. There's reason why's SBC's
9 buying AT&T because it's done so well with large businesses.
10 It's less true in the small- and medium-sized market where
11 NuVox and Socket compete. And they're very concerned about
12 being abused in the marketplace if this company is deregulated
13 prematurely.

14 SBC tries to assure the Commission that it's
15 okay if you make a mistake, you can always re-impose price cap
16 under the statute. But as we all know, there would be
17 protected litigation before any such relief could be granted,
18 and in all likelihood, it would be too late. SBC still
19 dictates price in the market and the Commission still needs to
20 control them. Thank you.

21 COMMISSIONER CLAYTON: Can I ask one question?

22 MR. LUMLEY: Yes, sir.

23 COMMISSIONER CLAYTON: In your list of clients,
24 do you represent any companies that would be considered cable
25 company CLECs or companies offering VoIP services in your list

1 of clients?

2 MR. LUMLEY: None of them would be considered
3 cable. They don't start from the position of having video
4 services or that kind of a background. Several of them are
5 looking at Voiceover Internet as alternative and Big River has
6 been somewhat aggressive in working with power companies and
7 things like that.

8 COMMISSIONER CLAYTON: Okay. Thank you.

9 JUDGE RUTH: Okay. Then we will move onto
10 South-- or SBC calling its first witness. And I have down is
11 that Aron -- how do you pronounce that, Doctor --

12 MR. LANE: Dr. Aron, yes.

13 JUDGE RUTH: Dr. Aron.

14 (Witness sworn.)

15 JUDGE RUTH: Okay. You may be seated.

16 THE WITNESS: Thank you.

17 JUDGE RUTH: And please proceed, Mr. Lane.

18 DEBRA J. ARON testified as follows:

19 DIRECT EXAMINATION BY MR. LANE:

20 Q. Good morning.

21 A. Good morning.

22 Q. Could you state your name for the record,
23 please?

24 A. Debra J. Aron, A-r-o-n.

25 Q. And by whom are you employed?

1 A. I'm employed by LECG, which is an economic
2 consulting firm.

3 Q. And you hold a doctorate in economics?

4 A. Yes, I do.

5 Q. And, Dr. Aron, did you prepare testimony in
6 this case, Direct Testimony that's been marked as Exhibit 1?

7 A. I did.

8 Q. Do you have any changes to that pre-filed
9 testimony?

10 A. I have two changes, please.

11 Q. Okay. What's the first one?

12 A. On page 38 in footnote 74 the sentence --
13 there's a sentence that begins, I understand that Cox
14 Communications does not offer telephone service in Missouri.
15 I would like to insert the words -- excuse me, I understand
16 that Cox Communications does not offer service in Missouri.
17 I'd like to insert the words "voice telephone" before the word
18 "service" so that that sentence would read, I understand that
19 Cox Communications does not offer voice telephone service in
20 Missouri.

21 And then in the following sentence in the same
22 footnote, the word "other" before "cable carriers," please
23 delete. And the words "that do operate" please delete. So
24 that that second -- that final sentence in the footnote would
25 read, However, Cox's analyses in the area of circuit and

1 packet switched telephony provide an insight into the
2 economics of this technology that is available to cable
3 carriers in Missouri.

4 Q. Do you have any other changes to your Direct
5 Testimony?

6 A. Yes. The other one would be at page 38,
7 footnote 53.

8 Q. I'm sorry. What page would that be?

9 A. Page 32, footnote 53.

10 Q. What change would you make there?

11 A. The publication "News Weekly" please cross out
12 and replace that with the publication "Thedeal.com." That's
13 Thedeal, one word, dot com.

14 Q. Does that complete the changes to your Direct
15 Testimony?

16 A. It does.

17 Q. And, Dr. Aron, did you also prepare Surrebuttal
18 Testimony that's been marked as Exhibit 2-NP and 3-HC in this
19 case?

20 A. I did.

21 Q. Do you have any changes to those testimonies?

22 A. Yes. At page 41, line 1, please delete the
23 word "app," a-p-p.

24 Q. Any other changes to your Surrebuttal
25 Testimony?

1 A. At page 47, the sentence beginning on line 9, I
2 understand that Cox does not operate in Missouri, please
3 delete the word "operate" and insert the words "offer voice
4 telephone service." And then the words "major cable companies
5 such as," please delete those. Those are on lines 9 and 10.
6 And change the word "do" to "does" and delete the words
7 "operate in Missouri." And on page -- pardon me, on line 11,
8 please delete the word "these."

9 So I'll read how that would read. I understand
10 that Cox does not offer voice telephone service in Missouri,
11 but Time Warner does. And based on my reading of investment
12 analyst reports, there appears to be no reason that other
13 carriers could not enjoy the same level of quality.

14 And then one final correction. On page 66,
15 line 21, the reference to a page number in Mr. Kohly's
16 testimony should not be 78. It should be 27.

17 Q. With those changes in mind to your Direct and
18 Surrebuttal Testimony, if I asked you the same questions today
19 that are in those testimonies, would your answers be the same?

20 A. Yes.

21 Q. And are those answers true and correct to the
22 best of your knowledge?

23 A. Yes, they are.

24 MR. LANE: Your Honor, at this time we would
25 offer Exhibits 1, 2 and 3 and tender Dr. Aron for cross.

1 JUDGE RUTH: Okay. Thank you. Exhibit 1,
2 Dr. Aron's Direct; Exhibit 2, her NP Surrebuttal; and
3 Exhibit 3, the HC Surrebuttal, have been offered into evidence
4 and there have been a few corrections to those pre-filed
5 testimonies. Are there any objections at this time to the
6 Exhibits 1, 2 and 3 being admitted into the record? I'll
7 start with Staff.

8 MR. HAAS: No objections.

9 JUDGE RUTH: Public Counsel?

10 MR. DANDINO: No objection, your Honor.

11 JUDGE RUTH: Intervenors?

12 MR. LUMLEY: No, your Honor.

13 JUDGE RUTH: Then Exhibits 1, 2 and 3 are
14 received into the record.

15 (Exhibit Nos. 1, 2 and 3 were received into
16 evidence.)

17 JUDGE RUTH: Okay. My notes indicate that for
18 cross-examination the parties proposed that the order be
19 Staff, Public Counsel and then the Intervenors. Correct?

20 Okay. Then Staff proceed.

21 CROSS-EXAMINATION BY MR. HAAS:

22 Q. Good morning, Dr. Aron.

23 A. Morning, sir.

24 Q. I will be asking you several questions that
25 will follow through your testimony, so if you have your

1 testimony in front of you, that would be helpful.

2 A. I do.

3 Q. All right. In your Direct Testimony at page 22
4 you have referred to the Commission's prior decision in the
5 Sprint case. Do you have that decision with you today?

6 A. No, I don't.

7 MR. HAAS: Permission to approach.

8 JUDGE RUTH: Yes. Did you show that to counsel
9 first?

10 BY MR. HAAS:

11 Q. I'm handing you a copy of the Commission's
12 Report and Order in Case No. IO-2003-0281. Would you please
13 turn to page 35?

14 A. Yes, I'm there.

15 Q. And in its discussion under the heading Platte
16 City, the Commission states, The Commission must decide
17 whether there is effective competition now, not whether there
18 will be some day.

19 Do you agree or disagree that the Commission
20 must decide if there is competition now?

21 A. I do agree with that. I think that the
22 criteria established in the Missouri law set out the
23 guidelines for which the Commission is to determine whether
24 there is competition now. And as I discuss at length in my
25 testimony, those are appropriate criteria for determining

1 whether there is effective competition. And those criteria
2 include assessment of a variety of factors, including factors
3 such as entry barriers, which I believe is what the Commission
4 is addressing in this particular paragraph.

5 Q. Turning back to page 20 of your Direct
6 Testimony, on line 7 you state that, What is critical from an
7 economic standpoint and what the courts have recognized is
8 that the ultimate determinant of whether products are
9 competitive substitutes is whether they have the ability,
10 actual or potential, to take significant amounts of business
11 away from each other.

12 Using the word "potential," isn't that just
13 another way of saying there may be competition some day?

14 A. No. Not at all. For example, I think I used
15 the example in my testimony of Honda as a competitor in the
16 automobile industry. Honda has about an 8 percent market
17 share in the United States. Most people don't own a Honda,
18 but clearly Honda has a very powerful potential ability to
19 take business away from its competitors. And that is key to
20 understanding its competitive pressure that it applies on
21 other competitors in that market.

22 Q. Does Honda only offer its cars in certain areas
23 or exchanges in the way that SBC offers its basic local in
24 certain areas?

25 A. Well, I suspect that there is not a Honda

1 dealer in every exchange in the state of Missouri, but I would
2 also say that any consumer in the state of Missouri could
3 purchase a Honda.

4 Q. Part of the quoted sentence that I read you
5 earlier included, To take significant amounts of business away
6 from each other.

7 Do you have evidence of local wireline
8 companies taking business away from wireless companies?

9 A. I believe that there is an interchange between
10 wireless and wireline service, but because of the history of
11 telephony, the direction of customers migrating from one
12 technology to another is from wireline to wireless primarily,
13 as opposed to moving in the other direction these days.

14 Q. For services to be substitutes, does the
15 migration only go one direction?

16 A. I think that the concern before this Commission
17 is precisely the concern of whether wireless has the ability
18 to take customers away from or exert competitive pressure on
19 the prices of wireline services. So that's clearly the
20 direction of interest before this Commission, I think.

21 Q. Please turn to page 25. At line 1 you say, All
22 that is necessary is that a sufficient number of customers
23 over time would be willing to switch between the services so
24 that the producers potentially exert competitive pressure on
25 one another.

1 What is a sufficient number of customers?

2 A. In competition analysis, a sufficient number of
3 customers is generally understood to be enough customers so
4 that it would be unadvisable for the competitor at issue to
5 raise its price above a competitive level for a significant,
6 sustained amount of time.

7 Q. And what is that period of time?

8 A. That's generally taken to be one to two years,
9 but that time frame varies depending on the specifics of the
10 market. It's a -- it's a matter of analysis. It's not a
11 formulaic analysis.

12 Q. Well, in the local telecommunications market,
13 what would be the period of time?

14 A. I think that in the telecommunications market
15 one would view the market as being rapidly changing. At the
16 same time, I think one would recognize that facilities-based
17 entry involves investment so it's not instantaneous. So I
18 would say one to two years, the general economic guidelines,
19 are reasonable.

20 Q. Still on page 25 at line 8 you say, It is an
21 explicit goal of the RSMo to promote diversity in the supply
22 of telecommunications services and products throughout the
23 state of Missouri.

24 Will granting competitive classification to SBC
25 services throughout all of its exchanges promote the diversity

1 in the supply of telecommunications supplies and products
2 throughout the state of Missouri?

3 A. Absolutely it will. For a couple of reasons.
4 Promoting diversity in supply requires that competitors have
5 an incentive to invest in that market. And the incentive to
6 invest in a market depends on the ability of prices to adjust
7 to market conditions.

8 It's especially true that if prices are
9 artificially held at below-cost rates, which I believe this
10 Commission has recognized to be the case in this state for
11 residential services, at least in some parts of the state,
12 that discourages investment and it discourages entry into
13 those markets. Competitors are not interested in making
14 investment, especially irreversible investments in markets,
15 where prices aren't compensatory.

16 Permitting pricing flexibility so that prices
17 can adjust to market conditions opens the door for competition
18 for those customers who are not really open to competition
19 under prices that are held artificially low. So that's one
20 reason.

21 And then the other is, I believe that
22 permitting pricing flexibility permits a competitive interplay
23 between carriers that enhances consumers' variety of choices
24 of pricing plans as well as service providers. And that's
25 part of the natural competitive interplay in the market. It's

1 a benefit of competition and it's in the public interest.

2 Q. If SBC Missouri, as a price cap regulated
3 company, were to introduce a new service, how would it set the
4 rate for that new service?

5 A. I think that would be a question you should ask
6 one of the marketing witnesses how they would assess the
7 market, what kind of research they would do to try to figure
8 out a good price to come to market with.

9 I would say as an economist, the way that, as a
10 general matter, that problem is approached is that it's a
11 difficult problem. You know, companies come to market with a
12 new product, they don't know what the price should be because
13 they haven't experienced demand for it yet.

14 And so you come in with the best estimate you
15 can make doing, you know, market research with a variety of
16 types, but if you can't then vary that price later -- let's
17 say you decided you came in too low because your costs are
18 higher than you anticipated or because demand is different
19 from what you anticipated. Normally a firm would have the
20 opportunity to modify that price, raise it or lower it.

21 Under the current price cap statute, there is
22 not that flexibility. Once that price is set, that creates
23 constraints for later adjustment on a new service. And
24 that's -- that's really an extraordinary risk that
25 non-regulated companies don't face bringing in new services to

1 market.

2 Q. Well, does a company, whether in a regulated or
3 unregulated market, not figure out its costs before setting
4 the price?

5 A. They try to, of course. But it's naive to
6 think that any company has a perfect handle on what its costs
7 are going to be when it comes to market with a new service
8 without having the experience of actually serving customers
9 and bringing it to market, responding to customers' reactions
10 to it, making modifications, learning the process, improving
11 it, modifying it. It's not like looking up a number in a
12 book.

13 Q. Well, how long has SBC been offering services
14 in Missouri?

15 A. I don't know the answer to that, but I thought
16 we were talking about new services.

17 Q. Well, wouldn't they have experience in setting
18 rates for their -- or determining the cost for their services,
19 understanding what their customers are willing to pay?

20 A. SBC has a long history of providing services
21 and studying the costs of doing so. And as this Commission
22 well knows, studying the costs of providing even basic
23 services is not a trivial matter.

24 But my point is, you asked me about new
25 services and new services are new. The costs are not the same

1 as the costs of providing old services.

2 Q. Please turn to page 33. At line 10 you say,
3 This means that there is a measurable and statistically
4 significant degree of substitutability between wireless and
5 wireline long-distance service.

6 Is a competitive classification for wireline
7 long distance an issue in this case?

8 A. No. This is one piece of many pieces of
9 empirical econometric evidence that I was offering for the
10 Commission's consideration as it assesses a variety of kinds
11 of evidence with respect to the question of wireless and
12 wireline substitution.

13 Q. Please turn to page 53. At line 10 you state,
14 The relative absence of CLECs does not preclude the existence
15 of effective competition.

16 A. I'm sorry. Could you tell me where I'm looking
17 again? I missed it.

18 Q. Page 53, line 10.

19 A. Okay. Thank you.

20 Q. Does this statement imply that there must be a
21 CLEC presence for effective competition?

22 A. I think that the criteria articulated in
23 Missouri statute asks the Commission to assess availability of
24 services. And so I would say that requires looking at the
25 presence of competitors. And I believe Mr. Unruh has

1 demonstrated that there are wireline CLECs in every exchange
2 in SBC's territory in Missouri and that there are at least two
3 wireline carriers not affiliated with SBC in every exchange --
4 in almost every exchange, I believe, in SBC Missouri's
5 territory. So I think that that's a reasonable metric to look
6 at and that it had been satisfied here.

7 Q. Please turn to page 59. At line 16 you state
8 that, An incumbent that prices competitively need not lose
9 customers to competitors.

10 Does it follow that an incumbent that
11 overprices its services, will lose its customers to
12 competitors?

13 A. I think that's a true statement, that a cus--
14 that a provider that overprices its services will lose some
15 customers to competitors, yes.

16 Q. Does brand loyalty fit into that?

17 A. Brand loyalty would be one factor that would
18 determine how quickly and how -- to what magnitude customers
19 respond to prices by moving to competitors.

20 Q. Would customer inertia be another factor?

21 A. Well, customer inertia is sort of a descriptive
22 term that only has economic meaning if it's -- if it's a fact
23 that's related to something like brand -- brand loyalty or
24 some other factor that would rationally keep consumers with
25 their current provider. So it's a phenomenon that might or

1 might not appear in the responsive consumers to price
2 differences.

3 Q. Please turn to page 63. At line 5 you begin a
4 quote from AT&T reply comments in a 1990 FCC proceeding. You
5 quote, The expert submissions made in this proceeding further
6 acknowledge that market share statistics standing alone do not
7 demonstrate the presence or absence of market power and that
8 other factors must, therefore, be examined.

9 From that quoted material or maybe the rest of
10 the quoted material also, how do you make the conclusion in
11 line 3 that AT&T has observed that market share is a
12 non-essential ingredient in demonstrating a market's
13 competitiveness?

14 A. Well, I think the quote speaks for itself. It
15 says -- and the paragraph following it is quoted from the
16 economist's statement itself also says, Market share is not
17 deterministic of whether a market is competitive or not, that
18 whatever the market share is, how high or how low, a market
19 may be found to be highly competitive or competitive on the
20 basis of other economic factors that in appropriate
21 circumstances outweigh any particular observation of market
22 share.

23 So if it's possible to find, and it is, that
24 even a firm with 100 percent market share does not have market
25 power, then market share clearly is not determinative of

1 market power or of competitiveness.

2 Q. How did you reach the conclusion that -- from
3 the statement that market share statistics standing alone do
4 not demonstrate it, to reach your conclusion that market share
5 is a non-essential ingredient?

6 A. Well, I think it's what I just said. The fact
7 is that markets may well be competitive and firms have been
8 found to be non-dominant in telecom terms or do not have
9 market power when they have very high -- up to 100 percent
10 market share.

11 The way I put it elsewhere in my testimony is
12 that economists and the courts recognize that entry conditions
13 trump market share; that is, if the entry conditions are
14 sufficiently open, then that is sufficient to make a
15 determination that the market is competitive, that the carrier
16 at issue does not have market power. And if that's
17 sufficient, then the market power -- market share analysis is
18 not essential. In fact, it's not -- wouldn't play a role in
19 that determination.

20 Q. Please turn to page 72. Beginning at line 9
21 you state that, By preventing or hindering providers from
22 quickly raising, lowering, restructuring, targeting, bundling
23 or otherwise changing prices, providers are impeded in their
24 ability to respond to competition, to differential cost
25 conditions, to customer specific demands and preferences and

1 changing market conditions to the detriment of social welfare
2 and economic efficiency.

3 Are you suggesting through that testimony that
4 price cap regulation prevents or hinders SBC from quickly
5 lowering prices?

6 A. I'd have to go back and look at the -- the
7 language. SBC faces a requirement to provide to the
8 Commission and, therefore, preannounce I believe price changes
9 30 days in advance of them taking effect.

10 Yes. So looking at 392.245.45, if I've
11 found -- if I've given you the numbers correct, the incumbent
12 local exchange telecommunications company may change the rates
13 for its services consistent with the provisions of Section
14 392.200 but not to exceed the maximum allowable prices by
15 filing tariffs which shall be approved by the Commission
16 within 30 days. That I was referring to by quickly. 30 days
17 is not quickly.

18 Q. By the quoted sentence are you suggesting that
19 price cap regulation prevents or hinders SBC from bundling?

20 A. My testimony in the sentence that we're talking
21 about really focuses on the word "quickly." It's very
22 important in competitive markets that competitors have the
23 ability to respond to market conditions, to do so without a
24 30-day or an undue delay, and, in particular, that they
25 have -- have to preannounce those changes to their competitors

1 well in advance of those changes taking place.

2 Doing so permits the competitor to respond even
3 before that price hits the market. And that, in turn,
4 discourages the first company from making that change to begin
5 with. If you know that by, let's say, lowering your price you
6 are going to be preempted in the market with a competitor's
7 price decrease targeting those same customers or the same area
8 or the same service, it dampens the effectiveness of that
9 change and undermines the incentive to do it. So that's
10 contrary to the interest of consumers and it's contrary to the
11 furtherment of competition itself.

12 Q. Is it your understanding that a CLEC would have
13 a different filing requirement for introducing a new service
14 or new bundle than SBC would have?

15 A. I don't know the answer to that. It's not
16 really relevant to the testimony that I'm giving here.

17 Q. If neither a CLEC nor SBC may quickly introduce
18 a bundle, isn't that a fair playing field then?

19 A. No. For two reasons. One is, I think that
20 CLECs do not have a 30-day requirement with respect to price
21 changes on existing competitive services. But in addition,
22 CLECs are not the only competitors in this market. There are
23 other competitors who are not regulated at all by this
24 Commission, such as wireless and Voiceover Internet providers.
25 And a competitive reclassification for SBC is still not going

1 to create parity with respect to those very important
2 competitors.

3 Q. Dr. Aron, what is first degree price
4 discrimination?

5 A. Can you point that -- me to that in your
6 testimony?

7 Q. You didn't use that term, but I was going to
8 ask if your suggestion that responding to customers' specific
9 demands and preferences would be first degree price
10 discrimination?

11 A. No. Responding to consumer preferences and
12 demands is part of a normal function of a competitive firm.
13 In fact, it's what, you know, firms try to do in order to meet
14 the -- the interests and demands of their consumers so that
15 they can attract business away from their competitors. That
16 doesn't necessarily imply any sort of price discrimination
17 behavior.

18 Q. Is there a distinction between a company
19 offering a service in response to the demand of the broader
20 group of its customers or potential customers versus offering
21 that service to just one of its customers or potential
22 customers?

23 A. Are you asking me is there a difference?

24 Q. In economic theory, does -- is it okay to offer
25 a better deal to just one customer than you offer to all the

1 rest of your customers?

2 A. I'm going to understand your question to be is
3 that consistent with enhancing social welfare.

4 Q. Yes. Good enough.

5 A. And the answer is, yes, it can be.

6 Q. And how is that?

7 A. Well, it can be in a number of different ways.
8 One is that may be a customer that would not be served at all
9 but for the targeted price. And so if the ability to target a
10 price to that customer results in an outcome in which that
11 customer is served and would not otherwise have been and is
12 served at a price that at the -- at the margin, at the
13 increment covers the incremental cost of providing it, that
14 enhances social welfare. It doesn't hurt anyone else and it
15 brings benefits to that customer.

16 Q. Why wouldn't it enhance social welfare to give
17 that same deal to all the customers?

18 A. It may not be feasible to bring that same deal
19 to other customers. Moreover, if you're suggesting that it
20 would be a requirement to do so, if a firm is faced with the
21 choice of having to offer that, quote, deal to everyone or not
22 at all, it may well rationally choose to not offer it at all.
23 And that is, in fact, the risk of imposing those kinds of
24 constraints on firms rather than providing pricing
25 flexibility.

1 But just to be clear, the kind of pricing
2 flexibility that I'm talking about is not limited to the
3 scenarios that you're describing. Carriers in this market
4 offer a whole menu of bundles and services, all of which are
5 available to everyone, but each of which may be targeted to
6 the needs of some subset of customers who then have the
7 opportunity to purchase that.

8 It's not that it's only constrained to certain
9 customers, but rather, gee, if I can offer this kind of bundle
10 that appeals to this group, let me get it out to the market
11 and whoever raises their hand and wants that, can take it.
12 That better meets the needs of customers.

13 Q. Are you suggesting that a price cap regulated
14 company is unable to offer bundles?

15 A. No.

16 Q. Please turn to your Surrebuttal Testimony. At
17 page 3, line 4, you state that, Unbundled switching, and
18 therefore, UNE-P can only be removed from the list of required
19 unbundled network elements because reasonably efficient CLECs
20 are not impaired without it.

21 Is impairment analysis the same as effective
22 competition analysis?

23 A. No. Impairment analysis is an analysis
24 conducted under the Telecommunications Act of 1996 to assess
25 whether competitors can -- who are reasonably efficient can

1 offer service without the element in question.

2 So that directly goes to one of the criteria
3 under the Missouri statute, which is the criterion for
4 effective competition by which the Commission must look at
5 barriers to entry. So it's one component of the efficient
6 competition analysis as established in Missouri statute.

7 Q. Please turn to page 15. At line 15, you state,
8 I would also observe that Staff's implicit assumption that
9 UNE-P is going to disappear immediately and completely is not
10 consistent with the FCC's recent announcements.

11 How did you conclude that the Staff had drawn
12 such an assumption?

13 A. I draw that conclusion from the analysis
14 performed by Staff, which is Staff took the -- tried to
15 calculate exchange-by-exchange, quote, market shares by
16 removing from each exchange the number of lines that are
17 served by UNE-P and then interpret that number -- that
18 remaining -- what they call market share as somehow being
19 meaningful as to a competitive assessment today and going
20 forward in those exchanges.

21 Q. How did the Staff treat UNE-P lines in the
22 previous SBC competition case?

23 A. I don't recall. If you'd like to put something
24 in front of me to refresh my memory, I could look at it.

25 Q. I didn't bring that testimony with me.

1 Please turn to page 16. In the middle of
2 line 17 you start a clause that reads, There should be no
3 question that wireless service is an important substitute for
4 second lines.

5 Well, I am going to ask the question. What is
6 the support for that statement?

7 A. Well, there is, I think, ample support for that
8 statement. Let me begin by saying simply as -- as a matter of
9 observation of the market, I think it's well understood that
10 carriers such as SBC are losing lines. That's well documented
11 in this case. And are losing and have been losing second
12 lines very rapidly.

13 Where are they going? Well, it's also clear
14 that one of the demand drivers for second lines has been teen
15 lines, lines for family members in households. And anyone,
16 such as myself, with teenage children is well aware that
17 teenage children and younger children and older children don't
18 have second lines anymore. They all have cell phones.

19 In addition to that sort of observational
20 evidence in the market, analyst reports -- analyst firms who
21 study the telecom industry have looked at wireless/wireline
22 substitution. And have concluded that a significant amount of
23 the line loss being experienced by the incumbents today is due
24 to wireless substitution, primary and secondary line wireless
25 substitution.

1 I believe it's Deutsche Bank in its most recent
2 report that I've footnoted in my testimony here, the November
3 2004 report concluded that of primary line loss from incumbent
4 carriers, 40 percent of those lines are going to wireless.
5 And that of total line loss, including second lines, 26
6 percent is going to wireless.

7 All of the other -- and the third piece of
8 evidence or the third factor that I think weighs into my
9 thinking on this is that all of the arguments that one hears,
10 including the arguments made by Staff and the CLECs in this
11 proceeding about why wireless should not be viewed as a
12 competitor to wireline or as a substitute, really focus on
13 issues that are primarily related to the primary line, like
14 does it provide 911 or does it have primary line quality of
15 service such as its ability to make calls during a power
16 outage. Those are issues that really relate primarily to the
17 primary line and not secondary lines.

18 So all of those factors I think together lead
19 one to conclude pretty convincingly that wireless is clearly a
20 well-exercised alternative and a competitive substitute to
21 secondary wireline lines.

22 Q. Has SBC Missouri requested a competitive
23 classification for only second lines?

24 A. No. I think that SBC Missouri has asked for
25 competitive reclassification regardless of whether the line is

1 primary or secondary.

2 Q. Please turn to page 17. At line 13 you state,
3 Any market share analysis of an exchange must be conducted in
4 light of surrounding exchanges and the likelihood a carrier
5 will serve or expand into its geographically contiguous area.

6 And then at the bottom of page 17 and going
7 on to page 18 you note that Staff has performed no such
8 analysis in this case.

9 Please direct me to SBC's analysis of
10 geographically contiguous exchanges.

11 A. Well, I think one could look, for example, at
12 the variety of maps provided by Mr. Unruh that show visually,
13 for example, where is collocation? There is collocation -- I
14 believe this is a -- not a confidential number.

15 Mr. Unruh says in his testimony that I think
16 86 percent of wireline lines in SBC's territory in Missouri
17 are in exchanges in which there is collocation. But if you
18 look at the map, it's not limited to one or a few geographic
19 areas in the state. You can look at it visually and see
20 collocation is spread out around the whole state.

21 There -- if you think about exchanges in
22 clusters, pretty much you don't see clusters of exchanges
23 without some collocation somewhere. You can look at the maps
24 with -- that show cable broadband providers in the same light;
25 that is, there are cable broadband providers around the state.

1 And, again, one can look at those and -- and
2 assess the extent to which service is being provided not just
3 in a given exchange, but in geographically nearby exchanges.
4 There are also maps, I believe, that show numbering services,
5 locations of switches. All of those maps are important and
6 give information beyond just a table that doesn't show the
7 geographic dispersion precisely for the reasons that I'm
8 addressing in this testimony that you've pointed to.

9 Q. Do you draw a distinction between a competitor
10 saying that it would offer services in an area versus that
11 competitor having customers in that area?

12 A. Well, I think they're both important and I
13 think evidence on both has been provided. I think that the
14 criteria established in the Missouri Revised Statute requires
15 or at least invites assessment of both.

16 Q. Please turn to page 19. At page -- pardon me,
17 line 10 you state, Revenue-based measures of market share
18 would be more likely to capture the competitive significance
19 of CLECs due to this effect.

20 I don't recall what the effect was, but in a
21 revenue-based measure of market share, would you include the
22 revenues of resale CLECs?

23 A. Well, I have to say that I have not articulated
24 in my testimony or fully thought through how I would construct
25 such a market share because, as I have testified, I don't

1 think that that's the best way of assessing competition in
2 this case.

3 But I have testified here and in the earlier
4 case that resale is a legitimate form of competition, it
5 provides -- it provides pricing discipline to some extent.
6 And so given that -- and given the fact that, in general,
7 carriers who are doing resale are not just doing resale,
8 they're also doing facilities-based service, I think it would
9 be appropriate to include those revenues.

10 Q. So if we identified a CLEC that was doing just
11 resale, would you exclude those revenues?

12 A. No. I don't think it would be appropriate to
13 exclude those revenues unless there were some reason to
14 believe that that particular carrier was not intending to or
15 had announced that it did not continue serving that market and
16 growing in that market.

17 Q. Please turn to page 20. And we will be, I
18 guess, returning to a subject we touched upon earlier. At
19 line 13 you say, As I explained in my Direct Testimony, retail
20 price regulation that requires pre-filed tariff provides an
21 early warning system to competitors of possible upcoming price
22 changes.

23 What was wrong with such an early warning
24 system?

25 A. The problem with such an early warning system

1 is that it discourages the very kinds of price changes that,
2 as a matter of public policy, the Commission should want to
3 encourage. When a competitor has to not only wait for 30 days
4 to implement a price change, which is a long time in a rapidly
5 changing market, but also announce that, that it's coming to
6 its competitors and give them the opportunity to respond to
7 that, that undermines the value of making the price change
8 and, therefore, discourages the company from making that price
9 change.

10 Q. But doesn't it benefit social welfare if both
11 or all competitors are out there offering these new programs,
12 new prices, new bundles in response to what the other
13 competitors are doing?

14 A. Yes, it is. And that's -- that's the problem
15 is that if you discourage competitors from doing so, you won't
16 have as much of that going on. If I know that by offering a
17 price decrease, that I have to preannounce to my competitors
18 so that they've got a 30-day headstart at coming up with a
19 response, I'm going to have less bang for the buck, you might
20 say, in making that price decrease.

21 The reason that I decrease prices is so that I
22 can attract customers away from my competitors. And if they
23 can have a headstart on responding to that, then the benefit
24 to me of offering that price decrease is dampened and the
25 incentive to proceed with it is dampened and that competitive

1 interplay that you just described that is beneficial to
2 consumers is limited.

3 There's no reason to limit that. Part of the
4 competitive interplay is the ability to make price changes and
5 then let competitors respond to it.

6 Q. Please turn to page 22. At line 17 you state,
7 First, it would be difficult for SBC to drive from the field a
8 facilities-based carrier such as a cable company or a wireless
9 company by reducing retail prices because, like SBC, they have
10 sunk investments.

11 Doesn't this statement support the Staff's
12 position to look for facilities-based CLECs in determining
13 where effective competition exists?

14 A. I don't dispute nor have I ever disputed that
15 facilities-based competition is the most beneficial form of
16 competition. I think I've always said that. That does not
17 imply that non-facilities-based competition, UNE-P and resale,
18 is not competition. It is. It's real competition.

19 It doesn't have the same array of public policy
20 benefits, social welfare benefits that facilities-based
21 competition from wireline or other technologies provides to
22 the market, but that's not a justification for ignoring those
23 forms of competition either. And that's the mistake that
24 Staff has made. They've ignored or eliminated from their
25 analysis legitimate forms of competition that are part of the

1 market today.

2 Q. In both UNE-P and resale, isn't SBC paid for
3 the use of its equipment and services?

4 A. It's paid something. It's not necessarily paid
5 a compensatory rate, but it's paid something.

6 Q. Please turn to page 24. In the middle of the
7 sentence, I'll start at the end of line 13, They, meaning
8 CLECs, do not sell many or any service packages comprised
9 solely of basic service.

10 Wouldn't that fact give SBC free reign to raise
11 rates for basic local service if it were not constrained by
12 price cap regulation?

13 A. No. CLECs have the flexibility to offer
14 stand-alone basic local service and they could do so in
15 response to price changes attempted by SBC. They choose not
16 to today because it's not a winning proposition for them.

17 Their objective and their incentive is to go
18 after the high-revenue bundled customers who are willing to
19 purchase those, because customers who are purchasing nothing
20 but basic local service at current regulated rates are not
21 attractive prospects. They could be if they were being priced
22 appropriately, but the evidence in the market today is that
23 they're not.

24 Q. Please turn to page 37. At line 14, you note
25 that Packet 8, a VoIP provider, provides phone numbers

1 associated with 45 rate centers in Missouri. In how many SBC
2 exchanges does Packet 8 offer numbers?

3 A. I believe I say elsewhere that they provide
4 numbers in every area code in SBC Missouri's territory.

5 Q. But do you know where those 45 rate centers are
6 located?

7 A. Well, what I know is what I said. They offer
8 phone numbers associated with every area code in the state --
9 in the SBC territory in the state.

10 Keep in mind that when you're a customer of a
11 VoIP provider, you can choose any area code you want. If you
12 live in St. Louis but your mother lives in New York City, you
13 can choose a New York City phone number and then all of her
14 calls to you will be local calls.

15 So the VoIP provider gives you the option of
16 choosing the phone number area code that you -- that best
17 suits your needs. And in this state, Packet 8 provides area
18 codes in every area -- provides numbers in every area code
19 here.

20 Q. And will a call from a neighbor be a
21 long-distance call?

22 A. In the scenario I just gave --

23 Q. Yes.

24 A. -- where you choose a New York number, if your
25 neighbor in St. Louis were to call the New York number, that

1 would be a toll call. But with many of these services, you
2 could have multiple numbers. So you could choose that New
3 York number and you can have a St. Louis number as well. It's
4 incredible the flexibility that these providers are offering
5 that -- you know, options that just aren't available on the
6 current, you know, offerings from wireline traditional
7 providers.

8 Q. At page 40, you refer to Vonage as a second
9 party VoIP provider. Please define first party and second
10 party providers.

11 A. What I meant by that is that -- I was drawing a
12 distinction between carriers who own the underlying network,
13 and there I'm really talking about the cable providers, Time
14 Warner, Comcast, Cox, etc., who own the -- the connection to
15 the customer's network, the broadband connection, as well as
16 the network for which the -- the service's traversing.

17 Vonage does not own the underlying network. It
18 contracts with others for the underlying facilities. And the
19 customer does not have to be affiliated with any particular
20 broadband service provider. So if you have cable modem
21 service from Cox, you can use that cable modem service to have
22 VoIP telephone service from Vonage, as an example. You can
23 use Vonage with any broadband connection provider.

24 Q. In your opinion --

25 JUDGE RUTH: Mr. Haas, I am going to have to

1 stop you pretty soon for a break. I don't know -- if you have
2 one more question, you can proceed; otherwise, this is as good
3 a time as any to take a 10-minute break.

4 MR. HAAS: I am about to wrap things up.

5 JUDGE RUTH: Does about mean more than one
6 question?

7 MR. HAAS: It may mean two.

8 JUDGE RUTH: I'll give you two.

9 BY MR. HAAS:

10 Q. In your opinion, should both first party and
11 second party VoIP providers be given the same weight in an
12 effective competition analysis under the Missouri price cap
13 statute?

14 A. Absolutely. I don't think that first versus
15 second party is a relevant or necessary distinction for
16 purposes of making a competitive assessment. They both
17 have -- have -- provide alternatives to consumers that are
18 important for the Commission to consider.

19 Q. Does it matter for your analysis if SBC owns
20 that broadband connection?

21 A. No. When a customer purchases telephone
22 service from Vonage, Vonage gets the revenue for the telephone
23 service and Vonage is providing the telephone service. So
24 Vonage should be considered the telephone service provider
25 whether or not the underlying broadband connection is provided

1 by SBC or Comcast or Cox or Time Warner or any -- ZTel or
2 anyone else.

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

4 JUDGE RUTH: Okay. It's appropriate for us now
5 to take a break. We will back at five minutes until 11:00 by
6 the clock at the back of the room.

7 (A recess was taken.)

8 JUDGE RUTH: It's my understanding that
9 Mr. Haas was finished with his cross-examination and he is not
10 in the room, so we will move on to Mr. Dandino.

11 MR. DANDINO: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. DANDINO:

13 Q. Morning, Dr. Aron.

14 A. Morning, Mr. Dandino.

15 Q. Welcome back to Missouri.

16 A. Thank you very much. I'm happy to be here.

17 Q. I'm always glad to see you.

18 A. Except it's colder here than in Chicago.

19 Q. That's part of the plan. Missouri is under a
20 budget crunch.

21 What is the organization that -- was it LERG?

22 Is that it, LECK?

23 A. LECG.

24 Q. G. What is that? Could you describe that in a
25 little more detail, please?

1 A. LECG originally stood for Law and Economics
2 Consulting Group. We are an international consulting firm
3 focusing on economic analysis and finance analysis for
4 litigation and regulatory matters, primarily focused in the
5 regulatory arena in telephony, utilities, airlines, but then a
6 variety of practice areas in litigation, antitrust, finance
7 and so forth.

8 Q. So if someone needs an expert witness, they
9 contact your organization and retain one of the members of the
10 organization?

11 A. If they need an expert on some particular area
12 of economics or finance, they will call us.

13 Q. Okay. And I've noticed in your resume, most of
14 the testimonies you've given to regulatory agencies in the
15 telecommunications area has been mostly on behalf of SBC and
16 other regional Bell operating companies; is that correct?

17 A. That's roughly correct, yes. My opinions are
18 what they are and the CLECs are not as interested in my
19 speaking on their behalf.

20 Q. I understand.

21 Now, in the previous case that you testified
22 in, in 2001-467, you gave the Commission -- I don't know if
23 you want to call it a definition of what effective competition
24 was involving price discipline. Do you recall that?

25 A. I do. I wouldn't -- what I would say is that I

1 described the four criteria established in the Missouri
2 statute as being consistent with the economic view of
3 effective competition, which I described in terms of price
4 discipline.

5 Q. And do you still believe that's true today?

6 A. Yes.

7 Q. Same definition?

8 A. Yes. Except I wouldn't necessarily use the
9 word "definition." It's what I just described.

10 Q. Okay. If I understand your testimony, you're
11 saying that there's probably no one factor, whether it's
12 market forces, whether it's -- or market share, maybe even
13 market forces or line count or number of CLECs or the type of
14 technology, not one of those is a determinant factor for
15 finding effective competition; is that right?

16 A. My testimony is that none of the factors that
17 you've mentioned are determinative, but that economists
18 recognize that perhaps the most important factor of analysis
19 for assessing competition is entry barriers and ease of entry.

20 Q. So if you were to establish a hierarchy of all
21 these factors, your number one -- absolute number one would be
22 ease of entry, lack of barriers? How would you say it?

23 A. I think that an assessment of ease of entry and
24 entry barriers would probably be most important, yes, not to
25 the exclusion of the other factors. Obviously it cannot be to

1 the exclusion of the other factors in the context of the
2 Missouri statute which articulates the four factors that are
3 to be assessed. But in any economic assessment of
4 competition, you would assess a variety of factors, not just
5 entry barriers to the exclusion of others.

6 Q. Well, without excluding any, you'd still say
7 that that's the number one, the most heavily weighted
8 consideration?

9 A. I can't say that in every case that would be
10 true. For example, in conducting antitrust analysis, a common
11 expedient for assessing competition would be to use market
12 share as a -- you might say a gating factor, by which I mean
13 if the company who allegedly has significant market power has
14 a sufficiently low market share, then sometimes the courts,
15 for example, will say, we don't need to go further to an entry
16 barrier analysis because that's sufficient.

17 On the other hand, if the market share is
18 sufficiently high, that would not be sufficient to find that
19 there is market power, but rather that would indicate that the
20 entry analysis is necessary to conduct.

21 Q. But we're not talking about antitrust analysis
22 at this point. Aren't we talking about telecommunications,
23 establishing whether there's effective competition or not
24 under Missouri statutes? And in that case, you know, is it
25 still going to be heavily weighted or not?

1 A. I think it would be heavily weighted, yes.

2 Q. Okay. Would it be the primary concern in this
3 analysis that this Commission's task is?

4 A. I'm not sure exactly what that means, to say
5 it's the primary concern. I think it would be heavily
6 weighted and I think it's of fundamental importance.

7 Q. Is it twice as important as the next one?

8 A. I can't say.

9 Q. Is it one and a half times?

10 A. I can't quantify it as being some numerical
11 measure more important or less.

12 Q. Okay. You know it when you see it?

13 A. It's not -- as I said earlier, it's not a
14 formulaic analysis. To assess market power and competition is
15 not a formulaic analysis. It requires an assessment of a
16 variety of relevant factors. And those factors that are
17 identified in the Missouri statute are relevant factors, as
18 I've testified in this proceeding.

19 Q. Now, if this Commission is trying to figure out
20 whether there's effective competition and they have the fact
21 or -- fact or allegation or representation that there are
22 entries of barrier, they're going to have to make some type of
23 a judgment of how much importance to give to that. Are you
24 going to give them any guidance on where to place that?

25 A. The Missouri statute requires an assessment of

1 whether services are available, whether they are reasonable
2 substitutes, whether the reclassification is in the public
3 interest and whether there are entry barriers. I think that
4 the evidence provided in this case is ample in -- on each of
5 those factors. So I don't think that -- I think you're
6 proposing a hypothetical that isn't effective in this case.

7 Q. Well, Doctor, you're, in a way, advising the
8 Commission on economic theory of what to use. And I'm trying
9 to get -- without looking at exactly what the facts were, but
10 establishing some type of a guideline for them. Are they
11 supposed to look at those four criteria that are in those
12 statutes as of equal weight or, as you said prior to this when
13 we first began this discussion, that barriers to entry was
14 very significant or most important?

15 A. The fundamental guideline with respect to entry
16 barriers that would provide guidance on how much weight to
17 give it would be if the Commission believed that there are
18 entry barriers, are they sufficient to overcome the ability of
19 the providers already in the market to expand their services
20 and respond to competitive activities by others so that they
21 can over time -- and we talked earlier about what that means,
22 over time -- create pricing discipline for one another.

23 Q. Okay. And let's move to the question of what
24 are -- could you give us some specific examples of entry
25 barriers?

1 A. I think I went into some in my testimony.

2 Q. Could you repeat those here --

3 A. Sure.

4 Q. -- or at least if not repeat them, at least
5 describe what you feel?

6 A. Certainly, for example, before the provisions
7 of the Telecommunications Act of 1996, there were a number of
8 very significant entry barriers in the local exchange market.
9 If, for example, a -- an incumbent is not required to
10 interconnect with competitors, that would be, I believe, an
11 entry barrier. I think interconnection is an important market
12 opening requirement.

13 It is generally thought that to the extent that
14 there are significant sunk costs associated with entry into a
15 market, that can -- does not necessarily, but that can create
16 entry barriers. This Commission has also noted that where
17 there are entry barriers, they are not necessarily
18 insurmountable.

19 So it's not sufficient to identify that there
20 are entry barriers. In any market, there are potentially some
21 entry barriers. The question is whether those barriers are
22 sufficient to prevent competitors from entering the market or
23 to prevent those who are in the market from expanding and
24 responding to competitive activity in a way that they can
25 provide competitive discipline to one another.

1 Q. Going back to the question of which are -- or
2 give me examples and you gave me interconnection and sunk
3 costs. Are there any other others?

4 A. There are a variety of government-imposed entry
5 barriers in -- as a general matter.

6 Q. Which are?

7 A. Patents, for example, are an officially
8 sanctioned version of entry barriers. And they are granted
9 for good reason in -- in the public interest, but they are an
10 attempt to constrain entry into a provision of a gooder
11 service for which someone has made a significant investment in
12 its invention.

13 Q. So now we have three, patents. What's the next
14 one?

15 A. I'm probably not going to be able to give an
16 exhaustive list of factors that might be considered entry
17 barriers.

18 Q. Well, I just wanted you to give me as -- you
19 know, enough where we can talk about these.

20 A. All right. That's not enough?

21 Q. No.

22 Well, let's move on. Let's move on to
23 something. Let me go back. There's regulatory barriers to
24 entry and what's the other classification of barriers to
25 entry?

1 A. Economic.

2 Q. Economic. Okay. And let's see here. Now,
3 let's go back to the interconnection as a barrier to entry.
4 Now, the interconnection was required by the incumbent under
5 the Telecommunications Act of 1996; is that correct?

6 A. Yes.

7 Q. And there is a process that the companies go
8 through in order to obtain this interconnection agreement.
9 Right?

10 A. Yes.

11 Q. And that involves negotiating with the
12 incumbent and -- negotiation between the incumbent and the
13 CLECs, the competitive companies; is that correct?

14 A. Yes.

15 Q. And if they fail to meet -- come to a meeting
16 of the minds of what the terms, prices and conditions are of
17 that interconnection agreement, then they go to an
18 arbitration; isn't that correct?

19 A. It is.

20 Q. And that arbitration is similar to a hearing
21 type evidentiary hearing before -- in Missouri before the
22 Missouri Public Service Commission; isn't that correct?

23 A. I believe so, yes.

24 Q. And, thereafter, if either party is
25 dissatisfied with the outcome of the arbitration, then they

1 can take it to the US District Court and further litigate it;
2 is that correct?

3 A. I believe that's right.

4 Q. And on up to the United States Supreme Court;
5 is that right?

6 A. I don't know. Probably.

7 Q. Okay. You're not an attorney, are you?

8 A. I'm not.

9 Q. Are you familiar with any of the experiences
10 that Southwestern Bell has had with CLECs in the process of
11 interconnection in Missouri?

12 A. I believe that SBC Missouri has a number of
13 interconnection agreements with CLECs.

14 Q. But you don't know how those came about,
15 whether they were through amicable negotiation or hard-fought
16 arbitration?

17 A. With respect to prices of unbundled network
18 elements, I believe that they were in the context of
19 arbitration. I am aware in other states, but I don't know one
20 way or the other about Missouri, that a number of
21 interconnection agreements have been determined without
22 arbitration.

23 Q. If the process here in Missouri -- and I'm
24 saying if the process here in Missouri was an arduous process
25 for a CLEC, would you consider that a barrier to entry?

1 A. No. The evidence is that a number of carriers
2 have undergone that process, arduous though it may or may not
3 be, and arrived at interconnection agreements and are
4 functioning and growing in the market here today.

5 Q. So as long as they get an interconnection
6 agreement, how they got there is of no importance to you?

7 A. In light of the evidence that the agreements
8 were achieved and today the market is growing as well as the
9 fact that this Commission did find that the market here is
10 open to competition in the context of the 271 proceeding, I
11 would say, no, I don't think that's a -- an important factor
12 for determination in this case.

13 Q. Dr. Aron, do you know what the M2A is?

14 A. Yes, I believe so.

15 Q. What is that?

16 A. That is a -- an arbitration -- pardon me.
17 That's an interconnection agreement that I believe can be
18 adopted or is applied to a number of carriers.

19 Q. And was that an interconnection agreement that
20 was agreed upon by SBC as one of the conditions to obtain 271
21 approval by this Commission, or do you know?

22 A. My recollection is that some terms in there may
23 have been associated with the 271 process.

24 Q. Do you know when that M2A agreement expires?

25 A. No.

1 Q. If it would expire within the next six months
2 or so, would that have any impact on your opinion of whether
3 or not that expiration would cause a entry to barrier -- or
4 barrier to entry?

5 A. No. Because I haven't heard any of the parties
6 in this proceeding identify that as a problem for them.

7 Q. The regulatory landscape has changed since we
8 last assembled here for the 2001-467 case; is that correct?

9 A. Yes. And in my testimony I detail some of the
10 ways in which it has changed.

11 Q. Sure. Now, one of the ways, at least in the
12 regulatory, is at one time the RBOCs, the Regional Bell
13 Operating Companies, if they were to offer other services,
14 they were required to do it through an affiliate; is that
15 correct?

16 A. You're getting into an area that I'm not very
17 expert on, so I believe that's correct, but I haven't studied
18 that.

19 Q. Well, I'm not going into complete detail.

20 Are you aware that the FCC has rescinded that
21 requirement in June of 2004, thereabouts?

22 A. No.

23 Q. So you're unaware of that?

24 A. Not enough to -- to testify about it, no.

25 Q. I mean, even the fact one way or the other, you

1 don't know what the FCC did on that issue at all?

2 A. No. Not really.

3 Q. Okay. Now, the FCC has also come down with a
4 decision subsequent to -- decision by the US Court of Appeals
5 concerning the availability of the UNE-P; is that correct?

6 A. Yes.

7 Q. And you made extensive comment on that. And,
8 in your opinion, the change in the requirement to offer the
9 UNE-P, does that -- I understand from your testimony that you
10 were saying that that eliminates a barrier to entry?

11 A. Do you want to point me to my testimony?

12 Q. Well, I'm just asking you if that's what it
13 was. Maybe I'm mistaken. It's my recollection -- let me just
14 ask it this way then. Is the removal of the requirement that
15 the RBOCs have to provide a UNE-P, does that create a barrier
16 to entry into local service?

17 A. No. And the reason that it doesn't is because,
18 as I explained in my testimony, the FCC cannot remove an
19 element from the list of required unbundled network elements
20 unless competitors who are reasonably efficient are not
21 impaired in their ability to provide service without it.

22 What you may have been referring to earlier in
23 your earlier question is the fact that the provision of
24 unbundled network elements at regulated prices that are not
25 compensatory can create a barrier to entry or discourage

1 investment in alternative facilities. And so it does create a
2 dampening effect on the investment in facilities-based
3 alternatives, both traditional wireline and other
4 technologies.

5 Q. But if a company wanted to come in and take
6 advantage -- come in to Missouri, start doing business in
7 Missouri in direct competition with Southwestern Bell on a
8 local level and they were denied access to the UNE-P, what
9 would be their option?

10 A. Well, they could do what MCI has announced it's
11 going to do, which is purchase essentially, as I understand,
12 UNE-P from McLeod, which is an alternative provider here in
13 the state of Missouri and is going to provide those
14 facilities, as I understand it, using McLeod's switching and
15 unbundled local loops from SBC.

16 Q. Let me ask a question. Does McLeod have
17 ubiquitous local loops throughout all of Southwestern Bell
18 territory and switching capability?

19 A. Well, as I just said, my understanding, based
20 on McLeod's pronouncements, is that they are going to provide
21 the loop through SBC's unbundled local loop offering and
22 combine that with their own switching. And apparently they
23 believe that they do have the ability to serve the entire
24 state, at least to the extent MCI is interested because that's
25 what MCI's planning to do.

1 Q. So McLeod's going to obtain UNEs from
2 Southwestern Bell and then in turn, combine it into a platform
3 and provide that to MCI; is that right?

4 A. That's my understanding of the press releases.
5 There is quite a lot of competitive switching in the state of
6 Missouri as Mr. Unruh details. So I don't know which of those
7 switches belong to McLeod, but switching capacity is available
8 on the market and I believe that by virtue of what they have
9 announced to the public, that is their intention is to provide
10 that to MCI. So that's one way that a competitor could serve
11 the market.

12 McLeod's not the only carrier that has
13 announced it's standing ready to provide services to its
14 competitors. XO is another one that operates in this state.
15 I heard Mr. Lane say that SBC itself stands ready to provide
16 an equivalent of the unbundled network element platform at
17 commercial rates. And, of course, what McLeod is providing is
18 at commercial rates. Those are not regulated rates.

19 In addition to that, a carrier could provide
20 its own switching, as McLeod does. It could provide service
21 through alternative technologies such as VoIP or it could
22 provide some or all of its service through resale.

23 Q. Okay. And if they were going to do
24 facilities-based, would that require a capital investment?

25 A. It would.

1 Q. And you identified phone costs in capital
2 investment as one of the barriers to entry for getting into
3 the marketplace; is that correct?

4 A. No. Capital investment is not the same thing
5 as a sunk cost. There may be very substantial necessary
6 investment to enter a market. And I would say that in any
7 market that involves, you know, facilities, there are
8 necessary capital investments.

9 That is not an entry barrier in the economic
10 sense. That's part of doing business, that's part of the --
11 the input that one provides in entering a market or starting a
12 business. Some costs associated with switching are sunk, but
13 switches are actually pretty mobile resources. There's a
14 secondary market for them, they're physically mobile. They
15 are not sunk in the -- to the same extent that the cable
16 provider's facilities in the ground are literally sunk
17 costs --

18 Q. I guess --

19 A. -- literally.

20 Q. Literally. Secondary markets, you're saying --
21 would you buy a used switch from this company?

22 A. There are markets for used switches,
23 absolutely. And during the 2001/2002 time frame when CLECs
24 were -- there were a number of CLECs going under, those
25 switches were on the market.

1 Q. And while I'm there, that brings us to another
2 topic. You said that there's a number of CLECs that have gone
3 under and filed bankruptcy, gone out of business. What do you
4 see as Southwestern Bell's relative position in the
5 marketplace as a telecommunications provider? Is it a strong
6 competitor, a very strong competitor, a moderate competitor?
7 How would you identify them?

8 A. I would say that SBC has a number of assets and
9 a number of weaknesses in the market. Clearly -- and I
10 believe I testified to this in 2001 as well -- among the
11 assets that it has would include its physical network
12 obviously, although that's also, to some extent, a liability
13 in that it's an aging network, it's not a state-of-the-art
14 network and SBC is investing huge sums of money now to try to
15 upgrade that network to be a modern network.

16 Other assets would include the fact that it has
17 an installed base of customers. But as is seen on that chart
18 behind you, Mr. Dandino, that customer base is eroding pretty
19 rapidly. Analysts are predicting 4 to 6 percent continued
20 loss of lines per year for the ILECs and that kind of trend is
21 what's borne out in that chart as well.

22 And it's not just that the incumbents are
23 losing their customers, but they're losing their best
24 customers. They're losing the ones that are providing the
25 most revenue and the most profit. And so that's another

1 weakness is that these are companies that have a lot of
2 customers that are not likely to be very, at the moment,
3 profitable customers and yet, you know, SBC has an obligation
4 to serve them right now at regulated rates.

5 Q. And if they had -- if everything would --
6 Southwestern Bell would be a much stronger competitor and be
7 able to stop this loss of market share if they were granted
8 competitive status?

9 A. I don't think that, frankly, SBC Missouri or
10 any other incumbent will be able to fully stop the loss of
11 market share or perhaps stop it at all if given pricing
12 flexibility. I think that they will have more of an
13 opportunity to compete and try to retain customers and attract
14 new customers more effectively than they are able to now in a
15 way that will be beneficial to consumers, but I do not think
16 that the trend of line loss is going to reverse.

17 Q. If all the RBOCs were a monopoly, local
18 exchange companies like in 1996, had virtually 100 percent of
19 the market, wasn't it the goal of the Telecommunications Act
20 and wasn't it expected that they would lose customers, lose
21 lines to competitors?

22 A. Yes.

23 Q. So what we're seeing here isn't something that
24 was not unexpected?

25 A. No. What we're seeing here is evidence of

1 competition.

2 Q. But then so just -- just this is evidence of
3 competition. We'd have to look much deeper to find out what
4 is effective competition; is that correct? This alone does
5 not give us an indication of effective competition, does it?

6 A. No, that's right. This alone does not. This
7 combined with the array of evidence that's been provided on
8 the availability, the presence of competitors in every
9 exchange in this market. I won't -- I won't list all of the
10 evidence that's been provided here. It's quite --

11 Q. Sure.

12 A. -- extensive and ample.

13 Q. Commission can read it for themselves.

14 A. Absolutely. And I'm sure they will.

15 It would certainly be a misstatement to imply
16 that the chart behind you is the only evidence provided in
17 this case for effective competition.

18 Q. Oh, I didn't say that. What I said was this
19 alone doesn't prove effective competition.

20 A. I agree with you. And it's not intended to.

21 Q. Right.

22 Now -- excuse me. I'm trying to find a note
23 here that I had. I apologize.

24 Oh, the AT&T -- or the potential or the talk of
25 a merger or acquisition really by SBC of AT&T, how would that

1 affect SBC's competitive advantage or its competitive
2 position?

3 A. Speaking now just on the basis of, you know, my
4 general reading in the industry, my knowledge of this market
5 in particular, I think that AT&T is considered to be strongest
6 in the large enterprise market. By that I mean the -- the
7 market for big business customers.

8 Q. The best customers?

9 A. Big business customers is what I said.

10 Q. Yes, but those are the best customers to have?

11 A. One would have to assess the profitability of
12 serving them. There's a lot of competition. I don't know if
13 they're the most profitable.

14 Q. Okay. Go ahead. I'm sorry.

15 A. They're certainly desirable customers. And I
16 believe that acquiring that expertise associated with serving
17 those customers would strengthen the combined companies'
18 ability to serve that market or at least strengthen SBC's
19 ability to serve that market.

20 With respect to the consumer market, I'm not
21 sure that it has any effect on my analysis because as -- AT&T
22 is only one of many providers in this market here -- consumer
23 market in Missouri. AT&T is moving from a UNE-P platform to a
24 VoIP platform, but it's not the strongest VoIP provider. It's
25 not considered to have the best quality of service as a VoIP

1 provider. And there are just so many other alternatives. You
2 know, as I said MCI partnering with McLeod, all of the
3 wireless competition that we've talked about, the cable
4 companies providing VoIP. There's a lot of competition.

5 Q. So to kind of boil it down then, an SBC
6 acquisition of AT&T, it's just a bump on the screen for the
7 competitive status situation in Missouri?

8 A. I'm sure that the antitrust regulators in
9 Washington will carefully assess whether there are adverse
10 competitive implications of the merger should it proceed to
11 merger review, looks like it probably will. And if there are
12 problems, the Department of Justice or the FTC as well as the
13 FCC, can require that changes be made, divestitures or some
14 other changes to address those problems.

15 From our perspective, therefore, I don't see
16 that the acquisition of AT&T, should it happen, should be an
17 issue for this proceeding for this Commission.

18 Q. Even though it eliminates a competitor, a major
19 competitor in Missouri?

20 A. AT&T is one of many competitors in Missouri. I
21 don't think it's a key competitor, it's not clear it's a major
22 competitor at this point in the consumer market, small
23 business market. I don't think that would -- it would be
24 consistent with the evidence to say they were.

25 Q. Who are the key competitors in the state of

1 Missouri for Southwestern Bell's local business? Just give me
2 like maybe the top three.

3 A. Wireless is a key --

4 Q. No.

5 A. -- competitor.

6 Q. I'm sorry. Let's talk about wireline.

7 A. Charter has clearly been a clear competitor in
8 certain exchanges. The Commission has already recognized
9 that, I believe.

10 Q. And those exchanges are only in the St. Louis
11 area?

12 A. Well, the ones that were previously
13 acknowledged were Harvester and St. Charles, yes.

14 Q. Does Charter provide telephone services outside
15 of the St. Louis metropolitan area?

16 A. I'd have to look at Mr. Unruh's map to
17 determine that. I don't think so.

18 Q. You don't know. Okay.

19 A. But many other cable providers do operate in
20 the state of Missouri.

21 Q. Which other ones would be a major -- the top
22 three? Let's go to the top three. Not necessarily cable, but
23 wireline providers.

24 A. Well, I haven't really looked at them that way
25 to identify which would be the -- the, you know -- could be

1 identified as key competitors. Time Warner, ComCast, I think
2 Cox is in this market. They are all cable providers who are
3 providing broadband service and have announced that they are
4 going to provide broadband telephony and are rolling that out
5 or providing it today.

6 Q. What about CLEC non-cable company, top three
7 competitors?

8 A. I haven't done a quantitative analysis when
9 looking at the list of CLECs, for example, that appear on
10 Staff's exhibits --

11 Q. Okay.

12 A. -- to tell you which ones are key or more
13 important than others.

14 Q. Okay. Fair enough. Fair enough.

15 Are there any Regional Bell Operating Companies
16 from out of this region in this region now competing for
17 Southwestern Bell's services --

18 A. I don't know.

19 Q. -- local services?

20 You don't know?

21 A. I didn't see them named on Staff's exhibits
22 that identify carriers who are filing Annual Reports, but that
23 list of carriers is very incomplete. So I can't say who might
24 not be on there.

25 Q. Did you have occasion to examine any of the

1 Annual Reports?

2 A. I had occasion to examine the highly
3 confidential exhibits that summarized some of that information
4 provided by Mr. Peters and some of the materials produced in
5 discovery that include parts of those Annual Reports.

6 Q. Okay. Now, if you'll look at page 83 of your
7 Direct Testimony, let's see here, and if you'd look at line 17
8 through 21, I notice you had here that -- you say, A more
9 lethargic, backward-looking, heavy-handed approach to price
10 deregulation not only fails to recognize the social costs of
11 delaying the removal of price controls and not only fails to
12 acknowledge the catch-22 characteristic approach, but in my
13 judgment, is also a direct violation of the philosophy clearly
14 established in the RSMo.

15 Is this Commission acting in a lethargic,
16 backward-looking, heavy-handed approach to regulation?

17 A. This Commission has not issued an order in this
18 proceeding yet. I think the Commission is going to assess the
19 evidence and make a determination. My testimony is that I
20 would encourage the Commission to recognize that, as I said
21 here, the catch-22 nature of the Staff's urgings that rely on
22 an exchange-by-exchange analysis of a line count of
23 facilities-based providers without accounting for all of the
24 other evidence or accounting for the effect that regulated
25 prices has on the competitive activity in the market would be

1 backward looking.

2 Q. You feel that this Commission has been fair and
3 partial in regulating Southwestern Bell and the other price
4 cap companies in Missouri?

5 A. I would not -- I would not criticize this
6 Commission. I certainly have no basis -- I haven't studied
7 this Commission's decisions with respect to all of its
8 regulatory -- its application of regulatory law in this state.

9 Q. So price cap regulation -- strike that.

10 I take it it's your opinion that if you had
11 your preferences, that price cap regulation would be
12 eliminated and there would only be competitive -- a
13 competitive deregulation?

14 A. I think that it's fair to say that in light of
15 the wholesale obligations that incumbent carriers have and in
16 light of the dramatic changes that have occurred in the market
17 in the last few years, in the last six months in particular,
18 that the time has definitely come that retail rate regulations
19 probably does more harm than good.

20 MR. DANDINO: That's all I have your Honor.

21 Thank you.

22 Thank you, Dr. Aron.

23 THE WITNESS: Thank you.

24 JUDGE RUTH: Okay. We'll move on to cross by
25 the Intervenors.

1 CROSS-EXAMINATION BY MR. LUMLEY:

2 Q. Dr. Aron, I'd like to start at page 8 of your
3 Direct Testimony. I'm following up on some of the initial
4 questions that Mr. Dandino had for you. You say at line 2
5 that, Modern economic theory and antitrust practice views the
6 assessment of entry barriers to be of utmost importance.

7 Correct?

8 A. Yes.

9 Q. And greater than a quantification of market
10 share or other static measures?

11 A. Yes.

12 Q. Further down, lines 14 and 15, you also
13 indicate that trends in competition are more important factors
14 to consider than any static measure. Correct?

15 A. Right.

16 Q. And you go into some additional detail into
17 that line of thought later in your testimony?

18 A. I do.

19 Q. And as an aside also on the issue of barriers
20 to entry and your discussion with Mr. Dandino, he was talking
21 to you about the M2A and you had indicated that you didn't
22 feel that the CLEC witnesses had expressed concern about that.
23 And I'm certainly not holding you to task for not remembering
24 every single line of testimony, but to try and refresh your
25 recollection, do you recall Mr. Kohly in his Rebuttal

1 expressing concern that the M2A was expiring and that
2 dedicated transport and high-capacity loops were not in the
3 current proposal to replace it? Or if you don't recall, I'd
4 refer you to page 16 of his Rebuttal.

5 A. If you have it -- I don't have it in front of
6 me.

7 Q. Do you see that testimony at the top of page 16
8 of his Rebuttal?

9 A. I see now why I didn't recall it. It's one
10 line that hardly qualifies as a -- as raising a significant
11 concern. May I read it?

12 Q. Certainly.

13 A. The Commission should be aware that SBC's
14 proposed replacement for the M2A, which is set to expire in
15 March 2005, has no provisions for any dedicated interoffice
16 transport or high-capacity looped.

17 He does not go on to say that he feels this
18 would create an entry barrier or be -- that there are no
19 opportunities for addressing that issue in some way.

20 Q. In your reading of his testimony?

21 A. I'm just saying what's here in the testimony.

22 Q. So it's your understanding of Mr. Kohly's
23 testimony that he was not expressing concerns about barriers
24 to entry? That's your recollection of his testimony?

25 A. Well, I read what you pointed me to, which I

1 take to be everything he said about it. And he pointed the
2 Commission to that fact, but he did not articulate why that
3 should be of concern to the Commission nor did he argue that
4 this is a problem that he or his company feel they can't
5 overcome.

6 Q. That's your reading of his testimony?

7 A. I'm just saying what his testimony says and
8 does not say.

9 Q. Okay. As you understand it?

10 A. Right.

11 Q. Still on page 8 of your Direct, starting at
12 line 16, you have the reference that you're explaining later
13 in your testimony why lifting price cap constraints when the
14 criteria are met, advances the purposes of the statutes.

15 Do you see that?

16 A. Yes.

17 Q. Do you agree with me that the reverse
18 statement, that lifting price cap constraints when the
19 criteria are not met, does not advance the purposes of the
20 statutes?

21 A. Well, I think that lifting price cap regulation
22 if there is not effective competition -- and by that I mean if
23 there is not the opportunity for competitors to come in and
24 provide pricing discipline in some way -- would not be in the
25 public interest. I'm not saying that these are the only

1 criteria by which one could arrive at an assessment of
2 effective competition.

3 Q. But they are the criteria prescribed for this
4 state?

5 A. Right.

6 Q. On page 11, you're discussing your
7 understanding of how the price cap statute works in terms of
8 changing prices; is that correct?

9 A. Yes.

10 Q. And do you agree with me that the price cap
11 statute expressly allows the incumbent local exchange carrier
12 to introduce new services?

13 A. It does.

14 Q. And do you agree with me that there is no
15 express statement in the statute as to how to establish a
16 capped price for a new service?

17 A. I would agree with that.

18 Q. Turning to page 58 --

19 A. Speaking as a non-lawyer, by the way.

20 Q. That's why I said express statement, didn't ask
21 you to interpret.

22 At the bottom of page 58, you make the
23 statement that, Market share data can mask the true
24 competitive situation. Correct?

25 A. Right.

1 Q. And then you provide explanations?

2 A. Yes.

3 Q. On page 62, line 7, you indicate that what is
4 of primary importance -- and I'll paraphrase a little bit --
5 in assessing competitor pressure is not the market share, but
6 whether there are significant barriers to competitor's ability
7 to expand. Correct?

8 A. Right.

9 Q. Looking at page 72, you had a discussion
10 with --

11 A. Let me just clarify on the previous sentence.

12 Q. Certainly.

13 A. I think you omitted some words there. What is
14 of primary importance in assessing the competitor pressure
15 created by existing competitors is not how much of the market
16 the carrier has, but whether there are significant barriers to
17 those competitors' ability to expand.

18 Q. Thank you.

19 On page 72, following up on a discussion that
20 you had with Mr. Haas, would you agree with me that the price
21 cap statute allows the Commission to approve rate changes
22 faster than on a 30-day basis?

23 A. Yes. I think it allows them to do so, but it
24 gives them 30 days.

25 Q. And are you familiar with procedures before

1 this Commission that would allow SBC to expressly ask the
2 Commission to approve rate changes on a faster than 30-day
3 basis?

4 A. I'm neither -- I can't say one way or the
5 other. It wouldn't change my opinion. I don't think that in
6 the process of competitive interplay a competitor should have
7 to come in and hope to get a faster decision about a price
8 that it wishes to charge and possibly bear the uncertainty
9 that would or would not be complied with.

10 Q. And as you sit here today, are you certain that
11 SBC does not have the prerogative of filing a tariff that
12 would establish a range of rates and a process for changing
13 within that rate -- that range on a faster than 30-day basis?

14 A. I think you'd have to give me more information
15 to be able to respond to that.

16 Q. Well, I'm just trying to test your familiarity
17 with other statutes that might apply. Are you aware of
18 statutes that allow companies, under certain circumstances, to
19 establish ranges of rates and change within the ranges on a
20 faster basis?

21 A. No, I'm not. But, again, the process of
22 preestablishing those -- if that is a possibility, and you're
23 suggesting that it is, I don't know, the process of filing and
24 predetermining what those changes might be is fundamentally
25 different from what providers in a market normally do.

1 They -- they don't know what their pricing is going to be in
2 the future.

3 And the pricing differences may not be that the
4 price goes up or it goes down, but rather that the price
5 changes are to the whole structure of the prices themselves.
6 Some go up, some go down. They become simplified or unified
7 geographically, for example. Those are more complex and
8 subtle differences than I would think would be easily captured
9 in some pre-specified tariff provisions.

10 Q. And are you aware that if any company, whether
11 it's Southwestern Bell or a CLEC, wants to change the written
12 terms and conditions of service as opposed to just the numeric
13 rate, that the 30-day period applies to all equally?

14 A. No. My focus was on rates.

15 Q. You also spoke with Mr. Haas about the bundling
16 of services. Do you recall that?

17 A. Yes.

18 Q. Would you agree with me that there's an
19 inherent degree of flexibility in bundling when you combine
20 regulated and unregulated services?

21 A. I'm not sure what you mean.

22 Q. Well, to give you an example, if I'm a price
23 cap company and I can't charge more than \$25 for a service, I
24 can charge \$25 for that service in a bundle and give away
25 something free that might otherwise have a rate applied to it,

1 can't I?

2 A. Maybe. I'm not sure -- I know that's true in
3 some states. I can't say for sure that that's true here.

4 Q. I think I can -- given the level of
5 disagreement we have in the case, I think I can certainly live
6 with maybe.

7 On page 75, you refer to a discussion out of
8 the Sprint price cap case and the statute that applies to
9 geographic de-averaging. Do you see that testimony?

10 A. Yes.

11 Q. Okay. Do you agree with me that the statute on
12 geographic de-averaging applying to all carriers, including an
13 incumbent after it's been released from price cap regulations,
14 and the one feature that changes for the price cap company is
15 the elimination of the price floor?

16 A. On this issue, I believe that there's dispute
17 about how that part of the statute is interpreted. I'm going
18 only by what the Commission said in the Sprint order. I've
19 quoted it here and it says what it says. And I -- I really
20 don't feel that I can comment beyond that on the
21 interpretation of the provisions of that Section 4.

22 Q. All right. That's fair enough.

23 Turning to your Surrebuttal Testimony, on
24 page 4, line 5, you make the statement, In fact, it is no
25 secret that capital spending in the entire telecommunications

1 industry has plummeted during the past few years.

2 Correct?

3 A. Yes.

4 Q. At page 12, line 13, you describe this as a
5 time of substantial market upheaval. Correct?

6 A. Yes.

7 Q. At line -- I'm sorry, at page -- well, the
8 bottom of page 15 and carrying over to the top of page 16, you
9 refer to a transition period regarding UNE-P. Correct?

10 A. Yes.

11 Q. You would agree with me that during that
12 transition period, customers may revert back to SBC that were
13 previously served by someone else via UNE-P?

14 A. Some might.

15 Q. And quite a few might if SBC buys AT&T?

16 A. Those customers are still free to do what they
17 would like to do. Some might and others won't.

18 Q. It could certainly expedite the reversion
19 process to buy them as a group as opposed to win them over one
20 at a time?

21 A. It could. I -- I note that analysts who have
22 looked at this have concluded -- and I'm referring here
23 specifically to the Deutsche Bank report I mentioned
24 earlier -- that even if incumbent carriers win back 75 or 80
25 percent of the UNE-P customers on their networks, which is the

1 number that Mr. Kohly quoted I believe, that that's going to
2 be outweighed by the continued competitive line losses that
3 are projected for these companies losing lines to the market
4 generally, wireless, VoIP and so forth.

5 So that is not viewed by -- as -- by these
6 observers anyway, these analysts, as reversing the trend of
7 line losses that we were talking about earlier.

8 Q. Are you familiar with projections recently
9 issued by SBC saying that, in fact, it believes that there
10 will be a reversal in the trend of line losses due to the
11 UNE-P situation?

12 A. I haven't seen that. You could show it to me.
13 I have seen the most recent investor briefing that shows a
14 significant number of UNE-P losses but a continued net line
15 loss for total switched access lines for SBC.

16 JUDGE RUTH: Could you state for the record
17 what you've passed out at this time, Mr. Lumley?

18 MR. LUMLEY: This is an excerpt from the
19 TR Daily of January 27th.

20 THE WITNESS: I've read it. I don't see where
21 it says what you said.

22 BY MR. LUMLEY:

23 Q. You don't see a statement, Mr. Stevenson also
24 cited an easing in access lines losses from UNE-P competitors
25 during the fourth quarter?

1 A. Right. They're still losing lines, but not as
2 fast.

3 Q. My question was -- that was exactly my
4 question, that they expected to see the trend change. That
5 instead of losses growing, they would be backing down? There
6 would still be losses, but the trend would change. That's
7 what I was asking you.

8 A. I thought you were asking me whether -- wasn't
9 SBC predicting that they were going to start gaining lines
10 again.

11 Q. No, I wasn't asking that.

12 A. Okay. I don't think --

13 Q. And it makes the statement, SBC expect a
14 continued improvement in access line loss trends in 2005,
15 towards the bottom?

16 A. And so that means SBC is predicting that they
17 are going to continue losing lines. Maybe not as fast as
18 before, but they're going to continue losing lines.

19 Q. That was my question.

20 A. Right. And that's consistent with the fourth
21 quarter investor briefing. In fact, I believe these came out
22 of the investor briefing that I mentioned a moment ago, which
23 shows quantitatively -- well, here are the numbers as well --
24 that SBC did lose a number of UNE-P lines, meaning those UNE-P
25 lines were dropped. But even taking that into account, total

1 lines -- total switched access lines went down significantly.
2 I don't see SBC saying here they're going to start gaining
3 lines again. Rather, we're hoping we lose lines not quite as
4 fast.

5 Q. Okay. So the answer to my question was yes.

6 Since you referred to it, why don't you go
7 ahead and read that paragraph with the numbers so the record
8 is clear?

9 A. The paragraph beginning, Mr. Stevenson also
10 cited?

11 Q. Correct.

12 A. Mr. Stevenson also cited an easing in access
13 line losses from UNE-P competitors during the fourth quarter.
14 SBC's count of total switched access lines declined by 580,000
15 in the quarter and UNE-P wholesale lines dropped by 283,000 in
16 the fourth quarter, totalling a 192,000 line drop in the third
17 quarter of last year. I would expect as FCC rules phasing out
18 UNE-P regulations take effect, we will see further
19 improvements in these totals, the COO said.

20 Q. And those would, of course, be national
21 numbers, not Missouri numbers. Correct?

22 A. That's correct.

23 Q. Thanks.

24 A. I can't keep it?

25 Q. You can keep it, if you want.

1 On page 26, line 4 you referred to Section
2 392.370 as the basis for the Commission restoring the pricing
3 constraints. And I was curious why you referred to that
4 section instead of 392.245?

5 A. Would you -- I'm sorry. Would you point me to
6 that again? I'm sorry.

7 Q. Sure. Page 26 still in your -- still in your
8 Surrebuttal, page 26, line 4.

9 A. And you're asking me why did I not cite to --

10 Q. The price cap statute.

11 A. Perhaps if I were to do it again, I would. I
12 think that's actually what I had in mind, although there is
13 language in this section to the same effect.

14 Q. All right. Page 30, line 5 you have the
15 reference that as a result of the UNE-P decision -- and I mean
16 that whole decision, I'm not trying to categorize it, but this
17 most recent press release and the rules that are
18 anticipated -- that one might expect some restoration in the
19 role of resale. Correct?

20 A. Yes.

21 Q. And when you say one might expect, you are
22 admitting a degree of uncertainty as to what will happen?

23 A. Of course.

24 Q. Page 34, you indicate that some of SBC's line
25 losses are likely due to Missouri's economic downturn. Do you

1 see that?

2 A. Yes.

3 Q. Can you quantify that?

4 A. No. I can't quantify it, but the line losses
5 appear to be sustained and continuing sort of independent of
6 business cycles. So while I would say there's -- generally
7 over long trends, there's been a relationship between economic
8 growth, housing starts, things like that and line growth,
9 that's not true anymore. And it is not expected to be true
10 going forward either.

11 Q. Looking at page 50, line 7 -- or starting at
12 line 7, you indicate in part that MCI has not voiced an
13 opinion in this case.

14 Do you understand that that's an inaccurate
15 statement now?

16 A. I know that MCI has now participated in the
17 position statement brief. MCI has not filed testimony in this
18 case.

19 Q. And when you indicate or interpret the varying
20 degrees of participation by CLECs, you're speculating as to
21 what their motivations are, aren't you?

22 A. MCI has been an active participant in these
23 proceedings for a long time. MCI has recently made statements
24 that were alluded to in the opening statements and that I've
25 quoted in my testimony that are very much different from the

1 position paper that MCI has signed in this case. So I think
2 MCI's position is sort of mysterious, frankly.

3 Q. When you say that the actions of the
4 14 facility-based carriers that have chosen not to offer
5 testimony challenging a competitive reclassification
6 proceeding speaks to their lack of concern that any
7 competitive behavior will result, aren't you speculating as to
8 their motivations?

9 For example, couldn't it be that some of them
10 don't have the resources to participate given personnel cuts
11 and budget cuts? You don't know for sure -- I mean, you
12 haven't sat in on their planning sessions and you don't know
13 what their decisions were, do you?

14 A. It's true that I have not sat in on their
15 planning meetings. I do think that where they put their
16 resources, limited though they may be, depends on what they
17 think is most important. So if this were of high importance
18 to them, that would encourage them to devote their resources
19 here rather than devoting them elsewhere.

20 Q. That's the guideline you're using to interpret
21 their behavior?

22 A. That's right. I'm -- I'm presuming that
23 they're rational in the allocation of their scarce resources.

24 Q. And sometimes the elimination of resources
25 loses a degree of rationality, doesn't it? For example,

1 people can be a company's most valuable resources. In the
2 short term gain of losing, the salary may actually be short
3 sighted, wouldn't you agree?

4 A. Try me again. I don't think I understood the
5 question. I'm sorry.

6 Q. These kind of decisions which you're trying to
7 characterize as rational or irrational, sometimes the
8 short-term judgment actually can lead to the long-term
9 detriment? Eliminating the valuable employee may save \$75,000
10 in salary this year, but next year you may have a glaring hole
11 in your ability to deal with a problem?

12 A. That's true. I would not say that all
13 decisions made by any company are good ones. I do think that
14 companies who have a prospect of success overall are going to
15 make rational decisions as best they can given the limited
16 information that any company has at the time it makes its
17 decisions.

18 Q. So then you would agree that MCI joining in the
19 statement of position must have been rational? I'll withdraw
20 the question.

21 Page 51, you were already referring to this,
22 you quote from the MCI letter. You would agree with me that
23 Mr. Unruh has provided a complete copy of that letter with his
24 testimony?

25 A. Yes. That letter is further elaborated at

1 greater length in a brief that MCI filed in the state of
2 California, which I believe supports both my and Mr. Unruh's
3 interpretation of that letter.

4 Q. At page 66 of your Surrebuttal, and I think you
5 make this point in a couple other places as well -- and I'm
6 going to paraphrase it, but if you feel like I'm not being
7 fair about it, let me know and I'll restate it.

8 Essentially what I take you to be saying here
9 in part is that because the FCC has determined that there is a
10 lack of impairment, there is, in fact, a lack of impairment.
11 Isn't that basically the point that you're making -- one of
12 the points you're making?

13 A. That's right. My point really is that the
14 specific criterion upon which the FCC must make the judgment
15 about whether it can remove an element from the list of
16 required unbundled network elements is precisely the criterion
17 that is relevant here; that is, can competitors who are
18 reasonably efficient provide service with -- without access to
19 those unbundled elements.

20 Q. And you would agree with me that
21 notwithstanding the FCC's making such a determination, there
22 might be CLECs that think that they're wrong?

23 A. Yes. There might be. And, in fact, for some
24 CLECs, the removal of unbundled switching may impair them, but
25 that's not the requirement -- that's not the criterion in the

1 Federal Act nor should it be.

2 It's not whether every CLEC who wants to can
3 compete, but rather whether reasonably efficient CLECs could
4 compete without access to that element. And those CLECs who
5 are not reasonably efficient or don't have the resources for
6 other reasons to compete -- and by resources I mean expertise
7 and so forth -- to compete on a facilities basis will be
8 disadvantaged and potentially excluded by that decision.

9 Q. And, likewise, on review, a court might find
10 that the FCC was wrong?

11 A. It could. It certainly has found the FCC to be
12 wrong in the other direction for the last eight years when
13 they found that switching should be an unbundled network
14 element. So I think it's rather unlikely that they will find
15 them wrong again when they've finally tried to adhere to the
16 court's instructions.

17 Q. And going back to one of your conversations
18 earlier today, when this Commission sets wholesale rates, they
19 are required by law to do so at a compensatory level.
20 Correct?

21 A. They're required to do so at TELRIC, which is
22 forward-looking, long-run incremental costs, plus some markup
23 for sharing common costs. That may or may not be
24 compensatory.

25 Q. And even when they do that, the incumbent may

1 think that they're wrong?

2 A. With respect to whether they've come up with a
3 compensatory rate?

4 Q. Whether they've set the rate correctly under
5 the law.

6 A. Yes.

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

8 JUDGE RUTH: Okay. I think this is a good time
9 to break for lunch then. It is almost 20 after 12:00
10 according to the clock in the back of the room. We will break
11 for lunch then until 1:30. We'll start back up with questions
12 from the Bench. You may step down and we're off the record.
13 Thank you.

14 (A recess was taken.)

15 JUDGE RUTH: Okay. We're back on the record
16 for the hearing in TO-2005-0035.

17 We're ready for questions from the
18 Commissioners for Dr. Aron; however, the Commissioners are not
19 going to be here at this time so I'm going to ask you to step
20 down. We'll move forward to some preliminary questions for
21 the next witness and as soon as I get some Commissioners here,
22 we'll bring you back up, Dr. Aron.

23 So SBC, would you please call your next
24 witness?

25 MR. BUB: Thank you, your Honor. We'll call

1 Sylvia Fernandez.

2 JUDGE RUTH: Thank you.

3 (Witness sworn.)

4 JUDGE RUTH: Okay. Thank you.

5 You may proceed, Mr. Bub.

6 MR. BUB: Thank you, your Honor.

7 SYLVIA FERNANDEZ testified as follows:

8 DIRECT EXAMINATION BY MR. BUB:

9 Q. Ms. Fernandez, could you please state your name
10 for the record?

11 A. It's Sylvia -- Sylvia Acosta Fernandez.

12 Q. You might want to bend it around a little bit.
13 There you go.

14 And you're employed by SBC Operations; is that
15 correct?

16 A. That's correct.

17 Q. And you're here today to testify about SBC's
18 business services from a retail marketing perspective; is that
19 correct?

20 A. That's correct.

21 Q. Okay. Are you the same Sylvia Acosta Fernandez
22 that caused to be filed Exhibit 4-NP, which is the Direct
23 Testimony?

24 A. Yes, I am.

25 Q. Okay. And Exhibit 5, which is the HC version

1 of that Direct Testimony?

2 A. Yes.

3 Q. And Exhibit 34-P, which is the proprietary
4 version of that Direct Testimony?

5 A. That's correct.

6 Q. And then Exhibit 6, which is Surrebuttal
7 Testimony?

8 A. Yes.

9 Q. Okay. Are there any changes that you need to
10 make to any of your pre-filed testimony?

11 A. There are a few.

12 Q. Okay.

13 A. The first change would be on Direct,
14 Schedule 1. And that would be a change to my title.

15 Q. Okay. What's your new title?

16 A. My new title is director, customer marketing
17 and experience.

18 Q. Under this new title do you still have
19 marketing responsibilities for SBC's business services?

20 A. Yes, I do.

21 Q. Okay. What's your next change?

22 A. Next change would be on Schedule 9. There
23 is --

24 Q. And that's also on your Direct Testimony?

25 A. I'm sorry, yes. On my Direct Testimony.

1 Schedule 9 reflects Birch's offer at a \$53 price point. That
2 should be changed to \$38 now.

3 JUDGE RUTH: Could you slow down?

4 Okay. I found Schedule 9. Tell me again the
5 change.

6 THE WITNESS: If you look at the column that's
7 headed by Birch, at the very bottom under Missouri there's a
8 \$53 a month price point. That should be changed to \$38 a
9 month.

10 BY MR. BUB:

11 Q. And what's the reason for that change?

12 A. That reflects the recalibration of their rates
13 given the Freedom Pack and Freedom --

14 Q. They lowered their rates?

15 A. Uh-huh. They lowered their bundled rates.

16 Q. Okay. What's your next change?

17 A. The next change is on the next schedule on
18 Direct, Schedule 10. Under AT&T's All-in-One Advantage No
19 Plan Calls which says 55.95, that new price point is 57.95.
20 And that reflects their \$2 increase that was recently
21 announced.

22 Q. Any other changes besides those two?

23 A. No, I do not.

24 Q. Okay. With those changes noted, if I were to
25 ask you the same questions in Exhibits 4, 5, 6 and 34 today,

1 would your answers be the same?

2 A. Yes, they would.

3 Q. And are those answers true and correct to the
4 best of your knowledge?

5 A. Yes, they are.

6 MR. BUB: With that, your Honor, we'd like to
7 offer Exhibits 4-NP, 5-HC, 6 and 34-P into evidence. Did I
8 get those numbers correct?

9 JUDGE RUTH: 34 was the proprietary version.
10 Correct?

11 MR. BUB: Yes, your Honor.

12 JUDGE RUTH: So we have offered Exhibits 4, 5,
13 6 and 34. Are there any objections to these documents being
14 received into the record? Staff?

15 MR. HAAS: No objection.

16 JUDGE RUTH: Public Counsel?

17 MR. DANDINO: No objections, your Honor.

18 JUDGE RUTH: Intervenors?

19 MR. LUMLEY: No, your Honor.

20 JUDGE RUTH: Okay. Exhibits 4, 5, 6 and 34 are
21 received.

22 (Exhibit Nos. 4, 5, 6 and 34 were received into
23 evidence.)

24 MR. BUB: Thank you, your Honor. With that,
25 we'd like to tender Ms. Fernandez for cross-examination.

1 JUDGE RUTH: Okay. Staff, I'm going to warn
2 you ahead of time, as soon as the Commissioners come down, I'm
3 going to interrupt your cross. So you might want to look
4 ahead for a breaking point. And if you just have the first
5 section of 5 or 10 questions, if you want to do that and let
6 me know, we can take a break and see where the Commissioners
7 are.

8 MR. HAAS: We'll see where we end up.

9 JUDGE RUTH: Go ahead.

10 CROSS-EXAMINATION BY MR. HAAS:

11 Q. Ms. Fernandez, do you have your Direct
12 Testimony in front of you?

13 A. I do.

14 Q. Would you please turn to page 4?

15 A. Okay.

16 Q. At line 15 you refer to a 17 percent decline in
17 our access lines in service. Was this decline in one
18 exchange, several exchanges or uniform across all exchanges?

19 A. It represents a decline of the total state in
20 service.

21 Q. And do you have those numbers by exchange?

22 A. No, I do not.

23 Q. Isn't the Commission to do an
24 exchange-by-exchange review of the status of competition?

25 A. It is.

1 Q. Then at line 17 you state, This decline does
2 not reflect losses of new customers that SBC Missouri doesn't
3 ever have an opportunity to compete to win.

4 Please explain what you mean by saying that
5 there are new customers that SBC Missouri doesn't ever have an
6 opportunity to compete to win.

7 A. What I meant by that statement was the
8 17 percent decline in service is only one piece of the
9 picture. The reality is that there are many business
10 customers that recognize that SBC is not the only provider out
11 there for local service. And they also recognize that they
12 don't have to buy traditional circuit switched service. So we
13 may never have an opportunity to discuss our offers with that
14 customer.

15 An example would be a business start-up, a new
16 connect would not have to call SBC to inquire about rates.
17 They could call and set up wireless service and not have
18 traditional circuit switched service. They could go with a
19 variety of CLECs as well. So the point was to represent a
20 decline is merely one piece of the entire picture.

21 Q. Please turn to page 10. At the bottom of that
22 page you state that, Typical competitive monthly rates for PRI
23 services are around \$540 to \$850 and that the equivalent
24 pricing for SBC is typically over \$1,000 per month.

25 Is it your opinion that SBC faces statewide

1 competition for PRI services?

2 A. Yes, it is.

3 Q. Then why doesn't SBC lower its prices statewide
4 for PRI?

5 A. What we've done since 2001 is we've -- we've
6 run promotional tariff filings. We have went out there
7 today -- and that tariff is provided in my testimony. We
8 refer to it as a Missouri Mayday Promotion.

9 And that does offer our customers on a new
10 connect a rate that's lower than \$1,000 a month. That rate
11 represents 23 B channels. We also have a renewal promotional
12 rate as well that's below \$1,000 a month. And this aggressive
13 pricing is directly in response to competitive pressures.

14 Q. And what is the price in the Mayday Promotion?

15 A. It's -- it's about \$968 on a new connect for
16 23 B channels. It's obviously less if you don't get all 23 B
17 channels. And it's somewhere south of that on a renewal. Our
18 tariffs have a discount for a customer who's renewing a PRI on
19 term. And that should be -- if you look at page 11, that's
20 the rate represented there, \$968.00 on a three-year term.

21 Q. At the bottom of page 18 of your testimony and
22 going on to page 19, you state that, From information on the
23 Commission's website, there are an average of about
24 30 certified CLECs certified to offer business services in SBC
25 Missouri exchanges.

1 Do you know how many of those certified CLECs
2 are actually providing -- or actually serving customers in SBC
3 exchanges?

4 A. I don't have that information.

5 Q. Does the website information indicate how these
6 CLECs provide service, if by resale, by UNE-P or by their own
7 facilities?

8 A. I don't know if it does. My understanding is
9 the majority of our competition is facilities-based; that is,
10 competition in circuit switched. Sorry.

11 Q. Do you have evidence that you can point us to
12 to support your belief?

13 A. Not that I can point to. I'm not sure where
14 the reference is.

15 Q. On page 19 -- are you looking for that?

16 A. Yeah. I don't really have a lot of notes up
17 here, but I thought I might have jotted it down. I didn't.

18 Q. On page 19, you provide an estimate of annual
19 telecommunications advertising expenditures for Missouri.
20 What services were these carriers advertising?

21 A. A variety of services. What I did was -- our
22 agency can look at any service these competitors can market,
23 including long distance, for example, or Internet-only
24 services. And what I did was I took the most narrow approach
25 I could to estimating their expenditures.

1 So what I asked for were advertising associated
2 with business services and that would be local service as well
3 as bundled local service. So a bundle that may have been
4 advertised, for example, by MCI that included local and long
5 distance would be included in here. But if it was clearly not
6 a bundle with local service, I did not include it.

7 Q. Would the amount that you report that
8 CenturyTel spent include expenditures for its business local
9 and business bundles in its exchanges?

10 A. In its exchanges?

11 Q. CenturyTel is also an incumbent local exchange
12 carrier with exchanges in Missouri. Would your total have
13 included that advertising?

14 A. It would be any dollar that was spent by
15 CenturyTel, for example, in mass media or online. And when
16 you think about online advertising, it's not -- it doesn't
17 equate to or associate with an exchange or a geography. And
18 mass media can work that way as well. If you're advertising,
19 for example, in St. Louis, the advertising reach may be past
20 an exchange.

21 So the dollars in here represent only mass
22 media and online better advertising. It does not include more
23 targeting advertising dollars like direct mail. So this
24 estimate for all these competitors is really -- is
25 conservative.

1 Q. If CenturyTel did a mass market advertising for
2 a business service that is available only to its customers in
3 its exchanges, would that amount be reflected in your total?

4 A. Yes, it would.

5 JUDGE RUTH: Mr. Haas, I apologize, but we are
6 going to stop with this witness and move back to Dr. Aron.
7 We're ready for Commission questions for Dr. Aron. And I
8 apologize, Ms. Fernandez, but if you would step down, we will
9 recall you in a bit.

10 And I should have made it more clear. The
11 Commissioners had another meeting is why they were not able to
12 be here and it went on a little long.

13 But I'll remind you, Dr. Aron, that you are
14 still under oath and we'll --

15 THE WITNESS: Yes, your Honor.

16 JUDGE RUTH: -- we'll start with questions from
17 Commissioner Clayton at this time.

18 DEBRA J. ARON, having been previously sworn, testified as
19 follows:

20 QUESTIONS BY COMMISSIONER CLAYTON:

21 Q. Doctor, I appreciate you coming back and I
22 apologize for being late. We were talking about another topic
23 upstairs and it ran late and the judge, in her usual zealous
24 manner, wanted to proceed without allowing us to get back
25 downstairs.

1 I just had a few questions. I first wanted to
2 start off -- I know that SBC has several witnesses and I've
3 reviewed most of the testimony. And I want to make sure that
4 I don't ask you questions that perhaps should be reserved for
5 someone else.

6 A. All right.

7 Q. You did an assessment of the nature or level of
8 competitiveness of SBC and its competitors in the state of
9 Missouri; is that accurate?

10 A. I actually am not the witness who did the --
11 who is putting into the records and sponsoring the factual
12 analysis of who's providing what in which exchange and so
13 forth. Mr. Unruh has provided in his testimony, his Direct
14 and his Surrebuttal, quite a number of exhibits and tables and
15 numbers in his testimony that quantify competition in --

16 Q. Well --

17 A. -- Missouri.

18 Q. -- tell me -- help me summarize so I don't --
19 what are you testifying to as it relates to competition?
20 Summarize that for me.

21 A. Sure. My testimony looks at the criteria for
22 competitive reclassification in the state of Missouri under
23 Missouri law. And what I'm doing is explaining from an
24 economic perspective how those criteria are consistent with
25 economic principles of competition and how they should be

1 interpreted from an economic perspective to understand the
2 relevance of the evidence that's being provided here.

3 Q. How do you -- how do you provide that theory
4 and that analysis without looking at the specific
5 circumstances either in an exchange-by-exchange basis or on a
6 statewide basis? How do you -- how do you do your analysis
7 without actually looking at specific numbers?

8 A. Well, I have looked at the evidence provided by
9 SBC, but some of my testimony --

10 Q. What -- let me stop you there. What evidence
11 have you looked at? Let me start right there.

12 A. Sure. I've looked at the evidence provided in
13 the testimonies of the other SBC witnesses as well as the
14 analyses provided by Staff as well as the wireless survey
15 conducted and provided by Mr. Shooshan on behalf of SBC. But
16 what I was going -- should I continue or --

17 Q. Please. Please.

18 A. What I was going to say before was that some of
19 my testimony goes to issues like when is it appropriate and
20 when is it not appropriate to rely on market share as a
21 competitive metric or as a way of assessing whether a market
22 is competitive. And for that I'm not speaking specifically to
23 the Missouri market, the facts of the Missouri market, but
24 rather to the economic principles that ought to govern an
25 assessment of the information provided by the other witnesses.

1 Q. Could you summarize those principles?

2 A. Uh-huh. Sure. The Missouri statute provides
3 four criteria by which the Commission is to assess whether
4 there is effective competition. One of them is whether
5 services are available; another is whether those services that
6 are available are reasonable substitutes for the incumbent
7 services; the third is whether I think reclassification is
8 consistent with the goals and objectives of the statute; and
9 the fourth is whether there are entry barriers, or put
10 differently, whether the market is open to competition.

11 Q. Could you give me an example of a barrier to
12 entry into a market?

13 A. Sure. I believe I talked about this a little
14 bit earlier with Mr. Dandino. Some examples of entry barriers
15 are regulatory barriers. Like the inability to interconnect
16 with the incumbent would certainly be considered by me and by
17 most economists to be an entry barrier to others. If -- you
18 know, if the customers of a competitor could not call or
19 receive calls from the incumbent's customers, that would make
20 it very difficult to compete.

21 Other entry barriers might include substantial
22 sunk costs, as I was discussing earlier. If -- in order to
23 enter a market, the necessary investment is not only
24 significant -- that in itself would not be considered an entry
25 barrier, but if that investment is also sunk, meaning if there

1 is -- if the investor would be unable to recover those
2 investments if it chose to exit, that can, although does not
3 always, serve as an entry barrier.

4 It also, by the way, serves as -- you know, to
5 make carriers that are in the market and have already sunk
6 those costs more likely to stay in the market. So it makes
7 them more vigorous competitors once they're in.

8 Another barrier can be if the existing prices
9 in the market are held artificially low, that -- by
10 regulation, that can render the customers who are facing those
11 low prices non-profitable, non-compensatory and that is a
12 barrier to other competitors who might otherwise want to come
13 in and serve them.

14 Q. On that last issue, the last barrier to entry,
15 as you mentioned, prices being low would suggest that
16 competition would not keep prices low, but that competition
17 would actually lead to higher prices. Is that accurate in
18 your interpretation?

19 A. Well, competition would not lead to
20 non-compensatory prices. If prices are not compensatory in a
21 market, competition would --

22 Q. What does not compensatory mean?

23 A. I mean that they are not covering costs.

24 Q. Okay.

25 A. So that in -- you know, as a long-run prospect,

1 you couldn't -- you couldn't make money, you couldn't survive
2 in that -- in that market at those prices for those customers.
3 That would not be consistent with the functioning of
4 competition. And competition prices ultimately have to
5 compensate the provider for the cost that it incurs.

6 Q. Okay. Well, let me be clear on this, because I
7 think I've heard it several times. It seems that you're
8 suggesting that the rates as they're now set are
9 non-compensatory, that they do not encourage competition or
10 any investment and that any steps that we take to increasing
11 competition are automatically going to mean higher prices, is
12 what I hear you saying. And if that's not accurate, could you
13 explain why?

14 A. That -- that is not what I'm saying.

15 Q. Okay.

16 A. I'm saying, however, that some prices I believe
17 are not compensatory. And I base that on a number of factors.
18 One is that I know that in this state retail consumer prices
19 for basic line services were set at sort of a residual basis,
20 meaning, you know, prices were set for other services on the
21 basis of costs and other factors and then sort of what revenue
22 requirement was left over was attributed to the residential
23 services. This was many years ago under rate of return, but
24 there's still a legacy of that here. And that was
25 acknowledged in a more recent order by this Commission.

1 That's not to say that all residential rates
2 are below cost or not compensatory. Clearly, many residential
3 customers are profitable and competitors are going after them.
4 But those customers who buy essentially only a basic line and
5 are in geographic areas where rates are being held at a -- you
6 know -- you know, a level that's below cost, those are going
7 to be areas and customers that are not going to be seeing much
8 of the benefits of competition until that condition changes.

9 Q. Areas that have non-compensatory rates have to
10 have compensatory rates before those areas will have any
11 competition is what you just said, I think?

12 A. Customers in those areas who are purchasing
13 minimal services so that they're not profitable to serve.
14 That's not to say that there aren't other customers in those
15 areas where a competitor could come in, offer them a bundle of
16 services that includes a variety of vertical features, perhaps
17 a bundle with voicemail, DSL, you know, there are -- there are
18 ways to attract those customers that are both profitable to
19 the provider and appealing to the customer. And for those
20 customers you would and have seen competition.

21 Q. Do we regulate the price of DSL?

22 A. I don't think so.

23 Q. Okay. Okay. Well, it just -- and maybe I'm
24 picking this up. It just seems that -- that any action to
25 increase competition in smaller communities where there are

1 fewer customers, or perhaps we're talking basic rates, that
2 this move towards competition is actually going to increase
3 those rates for those small area customers.

4 A. I would say that it -- it's possible. And in
5 some cases, that's probably ultimately necessary in order to
6 be consistent with competition. But at the same time, I
7 wouldn't -- I wouldn't expect a wholesale -- by that I mean a
8 widespread readjustment of those rates for a couple of
9 reasons.

10 One is, I think that what carriers are trying
11 to do now is look broadly at their market and see how they can
12 modify their rates to appeal to a broad array of customers,
13 encourage customers to purchase more services if -- if they
14 can encourage them to do that by providing them good value.

15 Q. If in those small areas that perhaps are paying
16 non-compensatory rates, if we need to allow for deregulation
17 to increase rates to encourage competition, doesn't that imply
18 that there's no competition there right now?

19 A. This is the catch-22 that I was referring to in
20 my testimony when I said it would be -- it would -- you would
21 hold the market up to an impossible standard if you require a
22 level of activity in a market -- a certain level of activity
23 in a market in order to determine that the market faces
24 effective competition when you cannot expect to see that level
25 of competition without first offering pricing flexibility.

1 Because if the prices are held artificially low, the market
2 may be so unattractive to competitors, that you won't see the
3 entry and activity until you provide the flexibility.

4 Now, in the end, once that flexibility is
5 provided, the kind of activity you may see there may be
6 alternative technologies, it may be traditional technologies,
7 it may be all of those things. And that would enhance the
8 choices and options available to those consumers.

9 They're going to see, one would expect,
10 increased diversity in the opportunities they have, which is
11 one of the goals of the -- of the Missouri statute, increased
12 attention to offering services and bundles to them that are
13 attractive to them and a wider variety and array of
14 competitive benefits.

15 Q. Did you do an analysis of the first principle
16 that you suggested, the available services in a particular
17 exchange or even statewide? Does your analysis in this case
18 include that provision specifically or --

19 A. I examined the evidence provided by Mr. Unruh,
20 who has shown both in his maps and I think in other exhibits
21 as well the presence of competitors throughout the exchanges
22 in the state -- in the SBC territory in the state of Missouri
23 as well as the presence and, therefore, availability of
24 services from wireless competitors not including the SBC
25 affiliate, as well as his evidence on cable broadband

1 providers. So he's provided an array of evidence on
2 exchange-specific availability that I reviewed.

3 Q. If a -- if a competitive local exchange carrier
4 were to start serving a particular exchange using the UNE-P,
5 the unbundled network element platform, what would be the
6 difference in how that company would go about getting started
7 between today versus, say, January of 2004, a year ago, in a
8 particular area?

9 A. You're asking if a CLEC were to begin offering
10 service using UNE-P today?

11 Q. Yes. Is there a difference? And I suppose I
12 ask that in light of the discussion about barriers to entry
13 and the services that that company would offer to a particular
14 exchange. Are you aware if there are any differences between
15 starting up now and a year ago?

16 A. Well, the main difference is that now the FCC
17 has announced that UNE-P will not be made available to new
18 customers and there will be a transition period during which
19 they're expected to move the customers off of UNE-P.

20 Q. Would you consider that a barrier to entry in
21 the market?

22 A. No. I believe that, as we discussed earlier,
23 unbundled local switching can only be removed as an unbundled
24 network element from the list of mandatory elements if it's
25 determined, and apparently it has been determined, that

1 carriers are not impaired without access to local switching as
2 an unbundled network element if they're reasonably efficient
3 carriers.

4 Q. So you're saying it's not a barrier that UNE-Ps
5 are no longer available for a CLEC?

6 A. It's not a barrier -- barrier to entry to the
7 market. That's not to say it's not a barrier for a given
8 CLEC. Some CLECs, as I mentioned earlier, may indeed not have
9 the expertise or facilities to provide service using
10 facilities.

11 Q. What facilities does a CLEC need to begin
12 offering basic local telecommunications service?

13 A. It either needs or needs access to some sort of
14 transmission path from its switching facilities to the -- to
15 the customer. That could be a traditional wireline facility
16 or a cable facility or a wireless facility.

17 They need some means of switching or routing
18 that traffic. That could be a traditional circuit switch or
19 it could be an Internet protocol packet kind of switch, soft
20 switch. And then they need some way of transporting that
21 traffic between routing or switching centers.

22 Those components of service don't have to be
23 self provided. And as we were discussing earlier, MCI has
24 contracted with McLeod to provide all of those services to
25 them.

1 Q. Okay. If a CLEC is not a cable company, they
2 don't -- they're not using the cable line to get into a house,
3 they have to have a wireline to get into somebody's house, how
4 does that CLEC -- without going through and hooking up a wire
5 to every house that's out on the block, how would they
6 provision that line into a home?

7 A. If they're not going to use a wireless
8 approach, I think your question was focused on the wireline
9 approach, they could purchase unbundled UNE loops from SBC,
10 they could purchase that same service from another carrier
11 such as I mentioned a moment ago, McLeod is offering that.
12 And my understanding is that McLeod is providing that service
13 by purchasing unbundled loops from SBC and then combining them
14 with its own switching and providing a service platform to
15 other competitors.

16 It could also build its own facilities and in
17 some geographies and for some customers, that's an economic
18 thing to do and some carriers have done that and are doing
19 that.

20 Q. Do you see cable CLECs or cable company CLECs
21 or -- or perhaps CLECs that are using UNE-L or the arrangement
22 with McLeod being -- as the greatest competition to an
23 incumbent, or can you rate one more competitive than another?

24 A. I think they all provide competitive pressure
25 to the incumbent. Providing alternative facilities such as

1 cable providers are doing, wireless is doing provides a level
2 of redundancy to the network that offers additional security
3 to -- to the telecommunications system as a whole. But from a
4 competitive standpoint, I think that SBC and other incumbents
5 are concerned about losing customers to all of those avenues
6 and significantly so. I don't know that I could rank them
7 beyond that.

8 Q. In your analysis, did you take a different look
9 at urban areas, suburban areas or rural areas or small town
10 areas? Did you break your analysis out by region?

11 A. Well, again, I'm not sponsoring the analysis.
12 My -- my testimony is really about the economic principles for
13 assessing the evidence.

14 Q. Are those economic principles any different in
15 an urban area or a suburban area or a rural area or are they
16 all one and the same?

17 A. I think the economic principles are the same.
18 One has to, under your statute, assess the four criteria that
19 are laid out and one assesses them in the appropriate
20 geographic market.

21 Q. But you did not break it out by geographic
22 market in applying those principles?

23 A. Well, I did look at the evidence from a
24 geographic perspective. And by that I mean, as I was talking
25 about earlier, if you look at the maps that were provided,

1 they give you a perspective on the geographic dispersion of
2 the competitive activity.

3 For example, if you look at collocation,
4 collocation is not concentrated just in one -- you know, just
5 in St. Louis or Kansas City or any other particular area.
6 It's spread out throughout the whole SBC Missouri territory.
7 If you look at the exchanges as clusters and you ask yourself
8 is there activity in all of these clusters, there is. You
9 know, if you look at collocation, numbering resources, cable,
10 broadband activity, the activity is geographically dispersed.

11 Q. Which means you looked at it on a geographic
12 basis?

13 A. Yes.

14 Q. Which schedule -- when you make reference to
15 Mr. Unruh's schedules, which schedules -- you made several
16 references to those. Which ones are you talking about?

17 A. Schedule 9 is the map of collocation.
18 Schedule 5 are his maps of the geographic location of
19 competitive switches as well as other competitive facilities.
20 And also on Exhibit 5 he has the geographic location of CLECs
21 with numbering resources for exchanges in which CLECs have
22 numbering resources. Then Schedule 17 shows the geographic
23 location of cable providers offering cable modem service. I
24 think those were the schedules that I was referring to.

25 Q. Would you say that last one -- that last

1 schedule?

2 A. 17.

3 Q. 17.

4 A. Did you want me to describe it again or just

5 give you the number?

6 Q. Hang on. I was on the last schedule. You were

7 moving kind of quickly there.

8 A. I'm sorry.

9 Q. I've been talking about water the last two

10 hours.

11 A. I'm sorry.

12 Q. It's a utility that we regulate. It's

13 different. Just kidding.

14 Okay. Number 17. Now, please go ahead and --

15 A. Schedule 17 is -- are the maps that identify

16 the location of cable providers offering cable modem service.

17 Q. Now, on that schedule they're just offering

18 cable modem service. Is that a telephone service through the

19 cable system or is that just they're offering broadband

20 service?

21 A. They're offering broadband service. And the

22 importance of that is that anyone who has broadband cable

23 modem service can purchase Voiceover Internet Protocol service

24 from, for example, Vonage or other Packet 8 or other VoIP

25 providers.

1 Q. Okay. Does that make a difference whether they
2 can get a local telephone number or not, in your opinion?

3 A. Well --

4 Q. I mean, yeah, I can get Vonage in Hannibal, but
5 if I wanted a New York telephone number -- I guess is that --
6 is that considered an available service or reasonable
7 substitute, in your opinion?

8 A. Packet 8 offers telephone numbers in every area
9 code in Missouri. So --

10 Q. Who's that?

11 A. Packet 8.

12 Q. Packet 8. Okay. So on that instance the
13 answer's yes?

14 A. Well, I think it's a reasonable question to
15 ask. I --

16 Q. Well, I'm asking you a reasonable answer, not
17 just the question.

18 A. I think that Vonage is a relevant competitor in
19 the market, but I would say that Packet 8 is perhaps a more
20 attractive or more important competitor insofar as numbering
21 is important to consumers. Having a local number isn't the
22 only important factor to consumers, but I wouldn't dismiss it
23 as one factor of relevance.

24 Q. You wouldn't dismiss it as one factor of
25 relevance.

1 Okay. I was not on the Commission when you
2 testified last before the Commission. What year was that?

3 A. I think it was 2001.

4 Q. 2001. So you've testified for SBC before in
5 competitive cases?

6 A. Yes.

7 Q. How many times have you testified to -- before
8 any state or federal commission relating to SBC's competitive
9 analysis?

10 A. I'd have to examine my CV, but I would say four
11 times, something like that.

12 Q. Four times?

13 A. Something like that.

14 Q. That's it. So you testified once here in 2001
15 and this year is two and then just two other times?

16 A. I testified in Illinois. I'd have to look.
17 I -- I'm not thinking of another state at the moment.

18 Q. Well, if it's only four times -- okay. But
19 you're for sure it's no -- four or five times and that's about
20 it?

21 A. Yes.

22 Q. Have you ever testified on behalf of a CLEC or
23 a competitor or an intervenor or a public advocate or a staff
24 commission on issues of this nature?

25 A. No.

1 Q. Okay. How long have you been affiliated with
2 your firm?

3 A. Almost 10 years.

4 Q. 10 years. Do you testify on other
5 telecommunications issues?

6 A. I do.

7 Q. And have you testified on behalf of SBC on
8 other telecommunications issues other than the four times that
9 you mentioned --

10 A. Yes.

11 Q. -- before?

12 On what types of issues have you testified?
13 Like rate of return issues? Are we talking rate regulation?
14 Competitiveness? I guess just generally. I don't want you
15 to --

16 A. Generally issues of assessing competition,
17 establishing prices for unbundled network elements, assessing
18 the criteria for what sorts of elements should be unbundled.
19 Generally issues in which an economist can offer insights into
20 how to assess competition.

21 Q. Has anyone in your firm, to the best of your
22 knowledge, ever testified on behalf of a CLEC or consumer
23 advocate or a staff commission?

24 A. Probably. I -- I'm not sure.

25 Q. You don't know.

1 Okay. And on the other -- the other cases that
2 you've testified, what number would you say you've testified
3 for Southwestern Bell? You said there were four for
4 competitiveness analysis and then for UNEs, criteria for
5 unbundled network elements, etc.

6 A. Many proceedings over the years.

7 Q. Many. 10, 15?

8 A. More than 10.

9 Q. More than 20?

10 A. It's possible.

11 Q. Okay. Have you ever testified for any other
12 telecommunications company --

13 A. Yes.

14 Q. -- with regard to -- you have.

15 What companies have you testified on behalf of?

16 A. BellSouth, Verizon. I've been involved in
17 litigation for international companies that don't do business
18 in this country.

19 Q. I want to ask you where you've been, but I'm
20 not going to do that. Not going to do that.

21 Does your firm -- has your firm -- well, I
22 guess let me ask you this. Does your firm primarily do
23 consulting work for RBOCs?

24 A. My firm does not primarily do
25 telecommunications work. We are involved in litigation in a

1 number of different areas --

2 Q. Okay.

3 A. -- that -- in which telecommunications firms
4 might be parties.

5 Q. Okay. What is your -- what is your firm's fee
6 for your testimony in a case like this?

7 A. We bill by the hour for myself and my staff.

8 Q. Okay. And do you know what to date that amount
9 has been in this case?

10 A. My rate is \$415 an hour. I don't know what the
11 total billings are.

12 Q. Okay. Would you say in excess of 10 hours?

13 A. Oh, yes.

14 Q. 20 hours? 100 hours?

15 A. Of my personal time?

16 Q. Well, we can start with that and -- I mean, I
17 don't want to -- I don't need a specific amount. I just want
18 a general idea of the amount of time that you and your firm
19 have placed in the case and the amount that you're paid.

20 A. Sure. I've, I'm sure, spent over 50 hours over
21 the several months of the case. I -- I'd have to look to see
22 how many.

23 Q. Okay.

24 A. And then my staff has also worked considerably
25 on the -- on this matter.

1 COMMISSIONER CLAYTON: Okay. Thank you very
2 much for your time, Doctor.

3 JUDGE RUTH: Okay. Let me move back to
4 Commissioner Murray. Do you have questions of the witness at
5 this time?

6 COMMISSIONER MURRAY: I have a couple of
7 questions, Judge, but since I wasn't here, I'm willing to
8 allow Commissioner Appling to go first if he's ready.
9 Commissioner Appling, would you like to --

10 JUDGE RUTH: And actually Commissioner Gaw
11 hasn't had a chance to go either, so --

12 COMMISSIONER GAW: Go.

13 COMMISSIONER APPLING: Why are the old guys
14 running from me today? You put me at the end of the task.
15 Sure, I have a couple of teeny-weeny questions I'm sure the
16 doctor can answer without a problem.

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Doctor, are you familiar with other states that
19 have declared that all ILECs' services are competitive? What
20 other states have you dealt with? Have you dealt with any
21 other states that -- and if so, what states are they?

22 A. I believe that Illinois has established all
23 business services competitive by statute, not by -- by the
24 Commission. I believe that Arkansas has -- I'd have to
25 check -- verify this, but I believe that Arkansas has declared

1 its services competitive.

2 Q. Do you have any knowledge of what the
3 customer's reaction to that has been?

4 A. In my state, Illinois, I'm not aware of there
5 being any adverse customer reaction to that. I have not heard
6 of adverse customer reactions in Arkansas either.

7 Q. Okay. Second question, state law allows the
8 Commission to consider other factors -- and Commissioner
9 Clayton might have asked this question. I was just a little
10 distracted and didn't hear the answer.

11 Going back, state law allows the Commission to
12 consider other factors when deciding if a service is
13 competitive. What other factors would you recommend?

14 A. I addressed this a bit in my testimony. I
15 think that one factor one might look at that I would advise
16 looking at is not just a static picture of the market today,
17 but the trends, the -- what's happening to those -- those
18 factors and measures overtime.

19 So, for example, the trend that's exhibited on
20 that chart I think is relevant, not just the levels. The fact
21 that SBC and incumbents in general around the country are
22 losing lines at an impressive rate and are expected to
23 continue to do so, that competitors' activity and line counts
24 are growing and have grown since the last assessment and are
25 expected to continue to grow. I think those are relevant

1 factors -- additional factors to consider.

2 Q. Okay. Last question. We, as the Commissioners
3 have to make facts based on decisions supported by the record.
4 Where would you draw the line in identifying a competitive
5 force? Does the competition have to exist? Does it have to
6 provide services or can it just be an interesting item?

7 A. I think it has to exist.

8 Q. Okay.

9 A. I think that what the statute requires is that
10 services be available. And so I think you have to look at the
11 evidence provided on the availability of services, the fact
12 that there are competitors active in every exchange, that
13 there is competitive collocation in effect today throughout
14 the territory, that CLECs have numbering resources throughout
15 the territory today, that wireless is in 70 percent of the
16 homes, that customers are disconnecting from SBC's retail
17 service and they're going somewhere, they're clearly partly
18 going to wireless as well as going to wireline competitors and
19 broadband, that VoIP is not speculative anymore, it's really
20 here, it's really -- has been rolled out and is being provided
21 and will be this year in -- you know, continue to grow.

22 I think that the trends are important, but I
23 think the reality today is important too and that's what you
24 should be looking at, in my opinion.

25 Q. What do you see for the future of price cap?

1 A. Future of price cap regulation?

2 Q. Yes. It seems with all the changes that's
3 taking place in telecommunications today, you know, it's just
4 a real run for your money today. It's very competitive out
5 there. And it's taking a lot for companies just to stay in
6 the mix here. So where do you see us going to?

7 A. Well, I think price cap regulation was a very
8 important innovation when it was brought into the market
9 10 years ago around the country.

10 Today the market has advanced beyond that and
11 the needs of competitors to be free of those constraints that
12 do constrain their abilities to respond quickly, respond
13 effectively to one another and bring benefits to consumers,
14 those are not consistent with this detailed and complicated
15 set of pricing regulations and constraints that we spent the
16 morning parsing through a little bit.

17 What are the various possible ways that
18 incumbents can get around this or that constraint and aren't
19 there other ways to file and aren't there other ways to
20 provide flexibility? They're all very artificial and
21 cumbersome and ultimately probably ineffective attempts to
22 achieve what the market can much more effectively achieve if
23 carriers have the flexibility that -- that's consistent with
24 the degree of competition we see today.

25 Q. Do I hear you saying that it's probably served

1 its purpose?

2 A. I think it's served its purpose. I think it's
3 past having served its purpose.

4 COMMISSIONER APPLING: Doctor, thank you.

5 QUESTIONS BY JUDGE RUTH:

6 Q. Dr. Aron, I want to ask you a question. In
7 response to one of Commissioner Appling's questions, you
8 referred to that chart. Just for the record, can you specify
9 which chart you were referring to?

10 A. I was referring to the poster chart that is on
11 the easel behind the attorney's podium called CLEC competition
12 in SBC Missouri areas.

13 Q. And is that attached to -- is it Mr. Unruh's
14 testimony or do you remember?

15 A. I believe that it's not an attachment. It's
16 part of the Mr. Unruh's Direct Testimony.

17 JUDGE RUTH: Okay. Thank you.

18 Commissioner Gaw, do you have questions at this
19 time? Commissioner Murray, back to you.

20 COMMISSIONER MURRAY: We're all so polite
21 today. And Commissioner Appling asked a couple of the
22 questions that I was going to ask. He usually has to wait
23 until the tail end so everyone's already asked his questions.

24 COMMISSIONER APPLING: I was just reading your
25 notes.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Just as a light question here to begin with, on
3 page 48 of your Direct Testimony, on line 8, the sentence
4 beginning with, Just -- or such creative joint marketing
5 efforts. Do you really mean a virtuous cycle?

6 A. I do.

7 Q. You do?

8 A. And what I mean by that is that these marketing
9 efforts that I'm talking about are the combination of AT&T and
10 the cable providers where AT&T -- if customers call and ask
11 for Voiceover Internet Protocol service, AT&T will direct them
12 to get a broadband connection with the cable provider that's
13 in their area, in the consumer's area.

14 That will encourage more facilities use for the
15 cable provider's facilities, which will encourage them to
16 invest more in cable facilities and broadband upgrades, which
17 will then encourage more customers to use VoIP. And that's
18 the positively reinforcing cycle that has the effect of
19 encouraging investment in broadband and creating an
20 increasingly important and viable alternative to the circuit
21 switched wireline network.

22 Q. Okay. Thank you. I don't have many questions
23 for you, Dr. Aron. We've been here, as you say, before
24 looking at whether markets are effectively competitive.

25 And I think in answer to one of Commissioner

1 Appling's questions you indicated that on a statewide basis
2 that SBC had been declared competitive you think in Arkansas
3 and Illinois?

4 A. Illinois.

5 Q. It's not --

6 A. For business. And I -- it could be for
7 business over a certain number of lines, three or four lines
8 or something like that. I'm not -- I haven't looked at that
9 for a while. I'm sorry.

10 Q. Okay. That's all right.

11 A. Oh, and as I said, that was in legislation, not
12 a declaration by the Commission.

13 Q. Okay. When you have viewed this issue in the
14 past or in this case and you have reviewed the testimony of
15 others regarding competition, the state of competition, does
16 it appear to you that there is a great reluctance to remove
17 the -- or to declare an ILEC, an RBOC competitive because of
18 the fear of prices increasing in those places where they have
19 been kept artificially low by regulation? Is that a big part
20 of the opposition, in your opinion?

21 A. That is my impression, that there is a fear
22 that removing price cap constraints will lead to price
23 increases, particularly in those areas where rates have been
24 kept artificially low, yes.

25 Q. And competition does tend to drive prices to

1 cost, does it not?

2 A. That's right.

3 Q. Or close to cost?

4 A. It tends to drive prices to cost, that's right.

5 Q. So that if we buy into the argument that we
6 should not ever declare a market competitive if the result
7 might be increases in price in some -- for some customers or
8 in some locations, then we have truly bought into the argument
9 that we're not in favor of competition, have we not?

10 A. That's right. One can't accept the view that
11 we will not -- we will not permit a competitive
12 reclassification in areas where prices are below cost out of
13 fear that competition will cause them to rise without
14 essentially rejecting the idea of competition at least in
15 those areas.

16 Q. And yet the legislature did tell us to move
17 toward -- direct us to move toward competition. Is that your
18 understanding?

19 A. It did. And among the goals of the legislation
20 are to promote diversity in the provision of services, which I
21 believe means promote the opportunity for other companies to
22 come in and profitably compete. It includes promotion of
23 investment. Investment is not viable in markets in which
24 prices don't compensate for that investment. And it seeks to
25 promote reasonable prices. But prices that are consistent

1 with cost are reasonable prices, in my view, even if they are
2 higher than prices that are held at uncompensatory rates.

3 Q. And prices held below compensatory rates, in
4 fact, discourage a competitor from being willing to offer
5 service; is that true?

6 A. That's correct. Either discourage or in the
7 extreme, prevent.

8 Q. And does that also tend to deny to those
9 customers the opportunity to experience not only different
10 suppliers or different providers of that service, but also the
11 opportunity to gain from diversity of services through
12 competition?

13 A. That's right. What -- what consumers are
14 protected from, if you want to put it that way, with those
15 artificially low constrained prices is the opportunity to have
16 the choice of providers, have the benefit of new services that
17 can be brought to market in a -- in a more competitive and
18 viably competitive market environment.

19 Q. If SBC is granted competitive status on a
20 statewide basis, would SBC still continue to serve all of the
21 customers in the state of Missouri that requested service from
22 SBC, or do you know?

23 A. I don't know the answer to that. My
24 understanding is that SBC might have an obligation to do so,
25 but I would also say that with competition and pricing

1 flexibility, they would have much more of an incentive to do
2 so.

3 Q. And in terms of the UNE-P that we've heard
4 discussed a little bit today, I believe you characterized the
5 FCC's recent statements as declaring that UNE-P would no
6 longer be provided to new entrants. Did I hear you correctly?

7 A. I think that the provisions will be they will
8 no longer be available for competitors to provide them to new
9 customers and that existing UNE-P arrangements would be phased
10 out.

11 Q. Okay. But that doesn't mean that a CLEC can no
12 longer purchase switching, does it?

13 A. A CLEC would be able to purchase switching in a
14 variety of ways. I'm not sure exactly what you're asking,
15 but --

16 Q. Okay. Well, and maybe I'm -- maybe I'm not
17 real clear on -- and I should be and I apologize for this.
18 But the exact makeup of UNE-P, it's my understanding that it's
19 bundled elements including switching; is that right?

20 A. Right. It's a loop, the switching and the
21 switched transport. So it's essentially end-to-end service as
22 a combination of unbundled network elements.

23 Q. And the ILECs, according to what the FCC is
24 supposedly going to issue any day now, is that they will no
25 longer have to require those bundled elements together with

1 switching. Is that accurate?

2 A. The FCC will no longer require the incumbents
3 to provide unbundled local switching as a -- an unbundled
4 network element. Incumbent carriers may offer unbundled local
5 switching at market rates, and I've heard SBC today say that
6 they are intending to do so.

7 Q. Okay. And wouldn't it be to SBC's advantage to
8 offer switching and to offer it at a level to CLECs that
9 would -- a pricing level that would be attractive? In other
10 words, let me just tell you what I'm driving at here because
11 it seems to me that it would be detrimental to SBC to lose all
12 of its UNE-P subscribers and that it might result in the
13 network being under-utilized. Is that a possibility?

14 A. Very much so. I think that the prospect for
15 incumbent carriers today, given the kinds of line losses that
16 they're all experiencing, is that they will have stranded
17 investments, stranded capital that they can make some money
18 off of if they can sell some unbundled network element
19 platform-like services at commercially reasonable rates.

20 So I would expect that that will happen. And I
21 agree with you that it's in their interest, even more so in
22 light of the announcements of competitors like McLeod who
23 stand ready to provide that service in competition with SBC.
24 So if they don't provide it, someone else will.

25 COMMISSIONER MURRAY: I think that's all my

1 questions unless Commissioner Gaw's questions stir something
2 up. Thank you.

3 JUDGE RUTH: Commissioner Gaw.

4 COMMISSIONER GAW: There is no doubt but that
5 my questions will stir something up.

6 BY COMMISSIONER GAW:

7 Q. Doctor, you've stated several times, if I'm not
8 correct and I'm sure you'll tell me, that you relied heavily
9 on Craig Unruh's testimony in regard to the testimony that you
10 have provided for us?

11 A. Well, most of my testimony really pertains to
12 the economic principles that ought to guide the Commission in
13 assessing Mr. Unruh's evidence and the evidence provided by
14 other witnesses. So, for example, you know, my testimony on
15 the role of entry barriers in a competitive assessment --

16 Q. That doesn't depend on his testimony then --

17 A. Right.

18 Q. -- that portion?

19 And is that testimony any different today than
20 it was when you testified here in 2001?

21 A. No. In --

22 Q. All right.

23 A. -- in substance it's the same.

24 Q. No difference. What else is not dependent on
25 his testimony?

1 A. The discussion of how to assess whether
2 services are substitute and what does alternative mean.

3 Q. All right. And is that testimony any different
4 than what it was in 2001?

5 A. As far as the economic principles, no.

6 Q. All right. And what else is not dependent on
7 his testimony in your testimony?

8 A. Well, if I could go through the sections. I
9 begin by talking about the purposes and goals of the statute
10 and the criteria for effective competition. That's, of
11 course, not contingent in any way on anyone else's testimony.

12 Q. All right. And that's your interpretation of,
13 what, legislative intent of the '96 Missouri
14 Telecommunications Act?

15 A. I don't know if it's an interpretation of
16 legislative intent, but rather an articulation of what the
17 competitive criteria are and how, from an economic
18 perspective, they are consistent with the leg-- the objectives
19 laid out in the statute. So then I --

20 Q. What else? What else?

21 A. Okay. Then I talk about what does functionally
22 equivalent and substitutable mean. Again, those are terms
23 used in the statute and they have economic meaning. So my
24 testimony goes to what's the proper interpretation, how does
25 one identify whether services are reasonable substitutes.

1 Q. And that interpretation is based upon your
2 assumption that the legislature intended those words to have
3 the economic meaning that you say that you're giving to them.
4 Would that not be correct?

5 A. Well, in -- yes, in the sense that in this
6 context --

7 Q. Okay. And as you move forward then, what else
8 is there that would not depend upon Mr. Unruh's facts or other
9 witnesses' facts that you might have relied upon?

10 A. Let me say overall, virtually nothing in my
11 testimony relies on anyone else's testimony. What I said
12 earlier is that I've reviewed the other testimony and have
13 incorporated that into my -- you know, my understanding of the
14 situation in this state and my views, but --

15 Q. So could I interpret that to mean that
16 Mr. Unruh's facts are not important to your testimony?

17 A. The way I'd say it is that my testimony is
18 important to understanding Mr. Unruh's facts.

19 Q. So, in other words, your economic principles
20 and conclusions trump Mr. Unruh's facts?

21 A. No, they don't trump them. They provide the
22 framework within which to assess them.

23 Q. Do you assess his facts in your testimony?

24 A. I have assessed them in my testimony here
25 today.

1 Q. You didn't do that in your written testimony,
2 or is that what you're telling me when you say you have
3 assessed them today, so I'm following what you're saying?

4 A. Some of the facts that I discuss in my
5 testimony, like is wireless a relevant substitute for wireline
6 service, is a matter of -- that's not necessarily constrained
7 just to the facts in Missouri. And so I have provided some
8 analysis of that question.

9 I've also provided some analysis of what other
10 services can be considered reasonable substitutes and what
11 role resale should play as a service because of the extent to
12 which it does or does not provide discipline on an incumbent
13 in a market. What I say at the end of my Direct Testimony --

14 Q. Did you say that you did assess Mr. Unruh's
15 testimony in your written testimony, the facts that he has in
16 his testimony? That was my question.

17 A. I have assessed them in the sense that I have
18 reviewed them and incorporated them into my bottom line
19 opinion, but I don't have written testimony in which I discuss
20 or interpret the -- the specific exhibits or analysis that
21 he's performed.

22 Q. Does that mean that his facts are irrelevant to
23 the conclusions in your testimony?

24 A. No. They're not irrelevant to the conclusions
25 in my testimony, but again, many of the conclusions in my

1 testimony pertain to providing a framework or guidance as to
2 how to under-- how to interpret that -- that evidence.

3 For example, is it -- is it appropriate to
4 require that two services be functionally identical before
5 identifying them as substitutes? The answer is, no, it's not.
6 And that is part of the purpose of my testimony, to explain
7 that.

8 Therefore, the Commission can look at the
9 evidence provided by Mr. Unruh and others and use that as
10 guidance to assess whether services whose presence is being
11 documented there can properly be understood to be substituted.

12 Q. Did you assess his facts in drawing any
13 conclusions in your testimony?

14 A. I did.

15 Q. And to what degree and what did you do in
16 assessing those facts?

17 A. In my conclusion in my Direct Testimony where I
18 say, The other witnesses sponsored detailed testimony about
19 the state of competition in Missouri, which I believe is
20 important to evaluate. However, given that, one, consumers
21 benefit most when the market dictates the prices and services
22 brought to them; two, the growth and development of new
23 technologies has created significant new opportunities for
24 competitors to discipline the incumbent provider and bring new
25 services to the market; three, TA96 itself imposes

1 extraordinary market opening obligations; and four, SWBT has
2 met these obligations, economic principles would dictate that
3 the Commission be strongly predisposed to a determination that
4 the market in Missouri is effectively competitive.

5 So, yes, I did review and assess the evidence
6 that he provided in making that statement, but I also am
7 saying there I'm providing you the framework and the
8 background for assessing that evidence. I'm not assessing it
9 for you.

10 Q. Well, in reaching your conclusion that the
11 market is competitive in Missouri, did you not rely on
12 Mr. Unruh's facts laid out in his testimony?

13 A. I did.

14 Q. And what did you do to verify whether or not
15 that testimony was true and accurate, independent of reading
16 it?

17 A. The purpose of my testimony is not to tell you
18 that --

19 Q. I'm just asking a simple question, Doctor. If
20 you can answer it, please do; if you cannot, I understand. I
21 think it just requires a yes or no.

22 A. Well, it's just that I think you've a little
23 bit mischaracterized my testimony so I just wanted to have --

24 COMMISSIONER GAW: Would the reporter please
25 read my question back

1 THE COURT REPORTER: "Question: And what did
2 you do to verify whether or not that testimony was true and
3 accurate, independent of reading it?"

4 BY COMMISSIONER GAW:

5 Q. And if you wish to explain how that question
6 mischaracterizes your testimony, Dr. Aron, you may please do
7 so for the record.

8 A. It was your previous question.

9 Q. All right. Will you answer this question for
10 me, Dr. Aron?

11 A. I discussed it with Mr. Unruh, I discussed it
12 with other analysts at SBC, I did some independent
13 investigation of some of the data issues that arose in the
14 case.

15 Q. And what did you do?

16 A. There was an issues that arose with respect to
17 the use of E-911 data as a way of estimating how many lines
18 are provided over their own facilities by competitors. And so
19 one of the CLECs raised the issue that the way that lines are
20 being reported to the E-911 database by competitors is not
21 consistent with the description provided by Mr. Unruh in, you
22 know, what those counts mean.

23 So I interviewed the -- the director of public
24 safety services to find out if that was true and if there were
25 differences in the way that 911 numbers are reported than what

1 my understanding was and the documentation that I had -- had
2 read.

3 Q. And what did you find out?

4 A. I found out that what I had understood to be
5 true was, in fact, the way competitors are and incumbents are
6 instructed to report numbers to the E-911 database. The issue
7 pertained to whether inward-bound lines, lines that are not
8 capable of dialing out, the numbers associated with those
9 lines are reported to the 911 database.

10 And what I found was that, as I explained in my
11 Surrebuttal, while it's possible for competitors to report
12 those numbers, the E-911 guidelines provided nationally are
13 that they are not supposed to.

14 Q. All right. So you determined that there's some
15 guidelines according to some -- this is all from SBC personnel
16 telling you this, I take it, first; is that correct?

17 A. I have the National Emergency Network Numbering
18 Administrator, NENA guidelines.

19 Q. Yes. And they --

20 A. I have that document.

21 Q. And you verified that that's the guideline,
22 that you're not supposed to report them in a different
23 fashion?

24 A. Well, I investigated that issue with the
25 administrator to understand it better beyond what it just says

1 in the guidelines.

2 Q. All right. All right. But guidelines are --
3 are they in evidence or in the record in your testimony?

4 A. I've quoted the relevant section in my
5 testimony. I did not attach them as an exhibit.

6 Q. All right. Do you know whether SBC, in
7 determining its loss of lines, used the 911 count?

8 A. No, I believe it did not.

9 Q. And do you know why they didn't use the same
10 mechanism for determining line loss as they did attribute
11 lines to CLECs?

12 A. Because -- I would -- I didn't do the analysis,
13 but I would presume it's because the E-91-- E-911 database is
14 a way of estimating facilities-based lines for competitors.
15 It's not perfect. There's no -- there is no perfect way of
16 finding that out. So as in any industry, one has to find ways
17 to estimate it. But with respect to its own line counts, SBC
18 has actual counts of those and it can could rely on better
19 data.

20 Q. What else did you do in regard to verifying
21 independently the facts that were in SBC's testimony that was
22 pre-filed?

23 A. I looked at the websites of some of the
24 providers in the area and identified whether cable providers,
25 for example, are active in the area, where -- what kinds of

1 numbering resources they have. I didn't replicate his work.

2 It wasn't -- it wasn't really what I was testifying about.

3 Q. I understand.

4 Do you recall whether the last effective
5 competition case that you were involved in with SBC in
6 Missouri, whether or not AT&T was a party?

7 A. Yes, I believe they were.

8 Q. Did they file testimony, do you recall?

9 A. I believe Mr. Kohly was their witness.

10 Q. And they had counsel, of course?

11 A. Yes.

12 Q. Do you know how long the discussions have been
13 ongoing between AT&T and SBC in regard to possible acquisition
14 of AT&T by SBC?

15 A. I have no idea.

16 Q. Would it be safe to say that it's been going on
17 longer than a week?

18 A. I only know the same as you, sir, what I've
19 read in the papers.

20 Q. Would you expect, knowing your experience in
21 the economic world, that discussions of this sort would have
22 matured over a period of many weeks or months, or is that even
23 predictable?

24 A. I think it's not predictable. There seems to
25 be a big variation in how these matters proceed.

1 Q. Do you know whether AT&T was being analyzed as
2 moving toward better economic or worse economic or financial
3 times as the -- as time goes on before this acquisition
4 announcement was made? What were the analysts saying, if you
5 know?

6 A. I don't think I can say as an overall firm-wide
7 matter. I think that, as I said before, AT&T was recognized
8 or is recognized as being strong in the large enterprise
9 market and was, is moving towards VoIP in the
10 consumer-oriented market.

11 Q. Would you say that they were a competitor of
12 SBC?

13 A. Yes, I would say they are.

14 Q. And removal of -- purchase of AT&T by SBC, if
15 that were to be approved, that would then reduce them as a
16 competitor from the marketplace. Correct?

17 A. Possibly. As I mentioned earlier, I am sure
18 that either the Department of Justice or the FTC as well as
19 the FCC, will carefully examine the potential merger and
20 impose conditions if there are geographic areas or services or
21 both where competition is significantly harmed or diminished
22 by the combination.

23 Q. Is an analysis of a company's financial
24 well-being in the telecommunications business something that
25 you normally don't pay attention to in your role as an expert

1 witness on telecommunications issues?

2 A. I do pay attention to it.

3 Q. But you don't have an opinion as to what the
4 future of what AT&T was according to financial experts before
5 this announcement was made about potential acquisition of AT&T
6 by SBC?

7 A. There are different opinions. Some people
8 believe that AT&T is close to being a failing firm. Others
9 take a very different view.

10 Q. Did you have one?

11 A. I'm not an investment analyst, but my view is
12 that AT&T is, as I said, strong in some areas and its success
13 in its consumer activities in the past has not been very good,
14 they haven't shown a lot of skill in the local market in a
15 variety of areas. And so I think they were very much an open
16 question and are very much an open question in that area.

17 Q. The financial outlook for SBC before the
18 acquisition announcement of AT&T, what would you gauge it to
19 have been?

20 A. Analysts are saying that as a company, there
21 are -- there are areas of the business that are looking good,
22 wireless, some of the broadband areas. There are others that
23 are looking less good, local being one of them with the
24 expectation of significant pressure on the local side of the
25 business. And so as a package, it's a combination of all

1 those factors.

2 Q. When the Commission is assessing competition in
3 Missouri, you believe that we should assess the presence of
4 wireless, if I'm not mistaken. Is that accurate?

5 A. I do.

6 Q. And how do we -- in doing that, how do we
7 discount, if at all, the presence of Cingular Wireless in that
8 mix?

9 A. Well, I think the evidence that's been provided
10 to you excludes Cingular Wireless. And I think that was done
11 to avoid controversy over the question of whether Cingular
12 Wireless should be incorporated into the competitive analysis
13 or not. And so I think that is a -- a good expedient.

14 Q. Do you know when that was done, when those
15 numbers were done?

16 A. Which numbers?

17 Q. On the exclusion of Cingular Wireless.

18 A. The only analysis I've seen is analysis that
19 excludes Cingular Wireless.

20 Q. Do you know when that number was determined?

21 A. When you say "that number," you mean the whole
22 analysis that --

23 Q. Well --

24 A. -- looks exchange by exchange?

25 Q. -- when you're saying excluded those, excluded

1 those from the list of -- Cingular Wireless numbers from the
2 list, I'm just curious about when that exclusion date would
3 have been.

4 A. You'd have to ask Mr. Unruh that question.

5 Q. You don't know the answer?

6 A. I don't know.

7 Q. Okay. I think earlier did you say that there
8 were four factors in the Missouri statutes to look at in
9 evaluating effective competition?

10 A. There are four explicit criteria.

11 Q. Yeah. And there are actually -- that is
12 actually not an exclusive list, is it?

13 A. Then the Commission also -- I mean, the law
14 also invites the Commission to consider other factors that
15 might be appropriate.

16 Q. I think -- aren't the exact words any other
17 factors deemed relevant by the Commission and necessary to
18 implement the purposes and policies of Chapter 392 RS
19 Missouri?

20 A. That sounds right.

21 Q. Okay. You mentioned earlier something about
22 Illinois -- I think you were asked about reaction to more
23 competitive environment in certain states and you brought
24 Illinois up specifically. Do you remember that?

25 A. I did, yes. I have not done a systematic study

1 to identify every state in response to the question that has
2 had competitive reclassification of services. That is my
3 state I live in so I happen to know a little bit about it.

4 Q. Yes. And did you say that the actual change
5 there was done statutorily to create -- was it business
6 customers over certain lines to be deemed to be competitive?

7 A. Yes. That's what I said.

8 Q. Do you know whether or not there is any
9 legislation being proposed currently by legislative leadership
10 in Illinois that would impose any additional requirements on
11 SBC in regard to whether or not it would operate separately as
12 a wholesale company?

13 A. I'm not aware of that, no.

14 Q. Are you aware of any legislation being proposed
15 by the Speaker of the House in Illinois this session?

16 A. No.

17 Q. Okay. Earlier when you were talking about
18 compensatory pricing, you went into a little bit about that
19 one example where you thought that the prices were not
20 compensatory, I think. Do you have a list of those prices
21 that you feel in Missouri are currently not compensatory when
22 you're discussing that or is it just a general statement that
23 you were making earlier?

24 A. It's a general statement based on, as I
25 mentioned, this Commission's finding.

1 Q. So that's not something accept-- that you've
2 done a separate analysis on yourself?

3 A. No. I mean, it's generally well understood in
4 the industry that around the country residential retail rates
5 for basic access line services are often below cost. But my
6 statement with respect to Missouri was relying on the
7 Commission's finding.

8 Q. All right. All right. That's enough, I think,
9 on that.

10 In order to get VoIP access, is it necessary
11 that you have broadband access? Is that accurate?

12 A. Yes. You need a broadband connection of some
13 sort.

14 Q. If I am an SBC customer, can I get DSL service
15 if it's provided in that exchange and if I'm close enough to
16 the wire center?

17 A. Yes. I believe so.

18 Q. If I am a customer of SBC and have DSL service,
19 I have access to broadband. Correct?

20 A. Yes.

21 Q. Telephone. Correct?

22 A. Yes.

23 Q. Okay. If I want to in addition to that, sign
24 up for service from Vonage -- or Vonage, I'm not sure which is
25 the right way to pronounce is, so I'll let you dictate that,

1 whatever it is. I've pronounced it a third way a few times
2 and no one knows what I'm talking about so I know that's not
3 the right --

4 A. Let's hear your way.

5 Q. I've eliminated it from my memory.

6 But I would have to -- I'm going to have to
7 pay -- I guess what I'm trying to get here, I'm going to have
8 to pay for my DSL service from SBC in order to then pay to get
9 Vonage to allow me to have access to their VoIP service.
10 Would that be accurate?

11 A. Yes. Of course, you have access to a lot more
12 than just phone service when you have a DSL connection.

13 Q. Okay. Like such as -- go ahead. I'll --

14 A. Broadband Internet access.

15 Q. Does Vonage do any hard wire to the home other
16 than providing the phone itself or whatever you call it to
17 utilize?

18 A. No.

19 Q. Do they run fiber or anything, cable or
20 anything like that?

21 A. No. That -- Vonage doesn't.

22 Q. Now, some other companies provide Voiceover IP
23 too. That would be accurate, wouldn't it?

24 A. Yes.

25 Q. Such as -- give me some examples.

1 A. Time Warner, Comcast, Cox. The cable
2 providers, in other words.

3 Q. All right. If I'm on cable and on Time
4 Warner's system, I can get VoIP system from Time Warner?

5 A. Yes.

6 Q. Do you know how the pricing works with cable?
7 Does it make financial sense for me to have Time Warner be my
8 cable provider and get my VoIP service from Vonage? Have you
9 ever looked into that?

10 A. That's an interesting question. I have not
11 looked into that. I think it would be in Time Warner's
12 interest to make it in your interest to buy their package with
13 their telephone service.

14 Q. Yeah.

15 A. And it would be my expectation that they try to
16 do that.

17 Q. So it would probably look -- do you think that
18 it would be unusual to see it be financially attractive to
19 have Time Warner cable and it be financially attractive to
20 sign up with Vonage for VoIP? I know that's an awkward
21 question.

22 A. I understand the question. I have to say that
23 would -- that's what my expectation would be sort of on
24 principle, but I haven't looked at the numbers. So I really
25 don't know what the fact is there.

1 Q. Okay. Does SBC still have -- is there still
2 line sharing, line splitting with SBC, do you know?

3 A. My understanding is that it's not provided as
4 an unbundled network element. Whether SBC is providing it on
5 a commercial basis, I don't know.

6 Q. Okay. Does SBC offer or does one of SBC's
7 affiliates offer VoIP service?

8 A. I think they do or they're going to be soon.

9 Q. Okay. Would you expect that to be offered in a
10 bundle with other SBC services when it is available?

11 A. It could be. I really -- I don't know. VoIP
12 is generally offered in a bundle with a lot of features that
13 are part of the telephone service, but whether it's offered
14 with other kinds of services, I have no idea what their
15 marketing plans are.

16 Q. Okay. You referred to earlier this term, and
17 you're not the only one that uses it, but that there would be
18 the ability for companies to get switching with commercial
19 agreements, right, commercial prices? And I'm sorry if I'm
20 not saying that exactly like you did, but I'm curious about
21 how those -- if you know, how those prices would be set in a
22 commercial agreement.

23 A. I believe they'd be set by negotiation.

24 Q. Okay. Now, if I'm a company like SBC and I'm
25 trying to determine what the right price is for that switch

1 and I know that this entity is going to be competing with me
2 for retail customers, but I also know that I may have some
3 excess capacity, what's the math in determining what that
4 right price is going to be? And is it mathematical or can it
5 be -- in some cases can it be more than that?

6 A. Well, it's not formulaic. It's -- it -- it's a
7 judgment that would incorporate the factors that you mentioned
8 as well as the -- the fact that there are other carriers
9 offering unbundled switching, as well as the fact that the
10 buyer would be thinking about their business case of what
11 their alternatives are in putting in their own switching.

12 And then, you know, it would be like any other
13 pricing decision. It would involve trying to assess what the
14 costs are and what the demand would be at different price
15 points and then trying to make an assessment that will offer a
16 price that is to your advantage but gets the customer.

17 Q. So if it's not for-- formulaic, pardon me, some
18 of it -- would you also be looking at the advantage or
19 disadvantage of having that competitor out there in your work
20 looking for the same customers that you are as a factor?

21 A. It could, except that if the reality is that
22 that competitor's going to be out there either way because if
23 they're not on your network, they're going to be on XO's or
24 they're going to be on McLeod's, then you're not going to be
25 able to keep them from the market by trying to refuse to sell

1 them unbundled switching.

2 Q. And I know you've referred to these press
3 statements and other things. Do we have any hard evidence of
4 switches being available today from these other -- couple of
5 other carriers that you mentioned? And do we know what areas
6 they can serve?

7 A. MCI has a data request response in which they
8 say that their agreement with McLeod is effective in Missouri.
9 Mr. Unruh's exhibits --

10 Q. Before you keep going there, when you say
11 "effective in Missouri," does that mean in every exchange in
12 Missouri?

13 A. The wording on the response I think is that it
14 covers Missouri.

15 Q. So we don't know what that -- it could be
16 interpreted either way, the way I'm hearing you say it. I
17 don't know whether there's anything that enlightens you on
18 what you've seen or not, but --

19 A. Well, I think it's a reasonable question to
20 ask. And so when I was thinking about that question, what I
21 thought is that McLeod apparently is purchasing unbundled UNE
22 loops in order to provide the loop piece of it. Clearly
23 that's available in every exchange. McLeod, we know, has
24 switches and my understanding is that it's feasible, it's
25 relatively economic to bring that switching through var--

1 through ELLs or other means to a variety of central offices to
2 reach those unbundled loops.

3 And that McLeod is a capable facilities-based
4 provider, switching is available in the market, you know,
5 switching equipment. It's hard to see why McLeod would not be
6 able to provide that throughout the SBC service territory, if
7 that's what MCI wants.

8 Q. We just don't know other than the assumptions
9 that you're making at this point. Would that be true?

10 A. That's right. I mean, that's my analysis of
11 it. I told you the wording of the --

12 Q. Sure.

13 A. -- of the data request.

14 Q. And I stopped you. You were going to a second
15 point and I -- I'm sorry. I can't tell you what it was
16 because I stopped you before you got too far.

17 A. Thank you for the opportunity to complete it,
18 but I can't remember what it was either.

19 Q. Okay. Someone else might remind you on cross
20 if it was important, I would imagine. I think just one or two
21 more things.

22 Would you say that economists are all in
23 agreement or is there some disagreement in regard to the
24 importance of market share in analyzing the state of
25 competition in any industry?

1 A. I think that at the level that I have described
2 it, the importance of entry barriers, the fact that entry
3 barriers can trump market share, the defects and weaknesses of
4 market share, I think those are reasonably non-controversial
5 among economists.

6 Q. Would it be fair to say that some economists
7 might say that market share can be an indication of barriers
8 to entry?

9 A. Yes. I think that one could say that entry --
10 that market share could be an indication. I think that's why
11 it resolves -- it requires an analysis.

12 Q. Sure.

13 A. It's not a mechanical exercise.

14 Q. And just one other thing. Commissioner Clayton
15 had asked you a bunch of questions, several questions anyway
16 about the company that you work for. I'm curious about how
17 long you have been testifying -- when you started testifying
18 about telecommunications issues, in particular. At what point
19 in your career?

20 A. Almost 10 years ago.

21 Q. Was it fairly quickly after you came to the
22 company that you work for now?

23 A. That's right. I was an academic for many years
24 before that. I was full-time on the faculty at the Business
25 School at Northwestern University.

1 Q. Did you do telecommunications in particular
2 while you were there?

3 A. I was doing some, yes.

4 Q. Okay. And then you had an opportunity to go to
5 work for the LECG, LLC?

6 A. Correct.

7 Q. All right. What does LECG stand for, if
8 anything?

9 A. It used to stand for Law and Economics
10 Consulting Group. Now it really is just LECG.

11 Q. I understand. Okay.

12 A. But I often have to pretend that it stands for
13 Law and Economics Consulting Group or it's really hard to
14 understand what it means.

15 Q. Yes, I understand.

16 COMMISSIONER GAW: Okay. That's all I have.
17 Thank you, Judge.

18 JUDGE RUTH: Okay.

19 COMMISSIONER MURRAY: It stirred one question
20 for me, just one.

21 JUDGE RUTH: Then we do need to take a break
22 because our court reporter's going for two hours.

23 COMMISSIONER MURRAY: Thank you.

24 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

25 Q. I realized I had not turned my mic off. I hope

1 my pages were not making noise over here. I apologize.

2 Dr. Aron, can regulation itself be a barrier to
3 entry?

4 A. Yes, it can. I think -- I actually quoted
5 Professor Alfred Cann in my testimony in which he said that
6 the only truly insurmountable entry barriers are those that
7 are imposed by a government entity.

8 Q. And an example of that would be where
9 regulation keeps prices artificially low, would it not?

10 A. Yes, it would.

11 COMMISSIONER MURRAY: Okay. Thank you.

12 JUDGE RUTH: Okay. We will take a break until
13 3:45 based on the clock at the back of the room. It's
14 approximately 15 minutes. We're off the record now. Thank
15 you.

16 (A recess was taken.)

17 JUDGE RUTH: Okay. We're going to go back on
18 the record.

19 Okay. Before a break, we had just finished
20 with Commissioner questions. We are ready for recross based
21 on questions from the Bench, but I'll just give the parties a
22 warning that at the end of the hearing today, I'm going to be
23 asking you your opinions on whether or not you want the
24 closing arguments. I mentioned that this morning.

25 And then also I want to talk a little bit about

1 scheduling or a timetable for the remaining witnesses. And
2 it's my understanding that we may need to switch at least one
3 of the witnesses around. So that's what we'll pick up at the
4 end of today.

5 And we're ready for recross based on questions
6 from the Bench. Start with Staff.

7 RECROSS-EXAMINATION BY MR. HAAS:

8 Q. You were asked some questions by Commissioner
9 Clayton and Gaw about alternative UNE providers, in
10 particular, McLeod?

11 A. Yes.

12 Q. Has McLeod already reached an agreement with
13 SBC Missouri for SBC Missouri to provide it loops in Missouri?

14 A. I don't know the answer to that. You could
15 probably -- one of the other witnesses may know.

16 Q. And then a question from Commissioner Murray,
17 you said that there were three parts to UNEs, the loop, the
18 switch and transport?

19 A. Yes.

20 Q. What, if anything, is happening to transport
21 vis-a-vis the FCC ruling?

22 A. I believe that transport will continue to be
23 provided at the DS1 and DS3 levels with some possible
24 exceptions that I don't know if they apply to Missouri. They
25 are exceptions that are based on the density of -- of certain

1 exchanges.

2 Q. And what are DS1 and DS3 levels?

3 A. Those are a reference to the capacity level of
4 the high-capacity facilities. So DS1 is I think 24 voice
5 grade equivalent lines and DS3 is a multiple of that.

6 MR. HAAS: Thank you. That's all the questions
7 I have.

8 JUDGE RUTH: Public Counsel?

9 MR. DANDINO: Thank you, your Honor.

10 RE-CROSS-EXAMINATION BY MR. DANDINO:

11 Q. Good afternoon, Dr. Aron.

12 A. Good afternoon.

13 Q. Commissioner Appling asked you about the ILECs
14 that were declared competitive in Illinois. Do you recall
15 that?

16 A. Yes.

17 Q. And I believe you said it was done by statute;
18 is that correct?

19 A. That's my recollection, yes.

20 Q. And if it's by statute, it's kind of a
21 different procedure than the Public Service Commission here
22 who has to make decisions based upon evidence?

23 A. It's a different procedure, I would agree with
24 that.

25 Q. Sure. And Commissioner Appling also asked you

1 if there was any adverse customer reaction to the
2 classification of local service to the extent it was
3 reclassified in Illinois and I believe you said Arkansas; is
4 that right?

5 A. That's what I said, yes.

6 Q. Okay. How would the adverse reaction --
7 customer reaction be demonstrated or how would it be
8 evidenced? What would consumers do, call up and say, We don't
9 like competition?

10 A. They could complain to the Public Service
11 Commission, they could complain to the FCC, although the FCC
12 doesn't really have control over that. They could complain to
13 the state Attorney General Consumer Protection.

14 Q. What would be the nature of their complaint?
15 Would they say, Well, prices are too high or my service is no
16 good anymore?

17 A. Any of those.

18 Q. Okay. And that would be a reflection of
19 adverse customer reaction?

20 A. Yes. Or they could complain to the carrier
21 itself.

22 Q. Okay. Do you know of any positive customer
23 reaction to reclassifying it in Illinois, Arkansas? And we'll
24 just use those two right now.

25 A. I believe that competition has increased in

1 Illinois. I haven't looked at that in Arkansas.

2 Q. But there wasn't any letters sent to the Public
3 Service Commission, FCC, Attorney General saying, Boy, this is
4 great?

5 A. No. Nor would one expect that. If competition
6 is doing its job, consumers don't normally thank regulators
7 for it, I don't think.

8 Q. Sure. And they should as the -- never mind.

9 Commissioner Appling also talked to you about
10 wireless -- about the statewide number of wireless customers.
11 And I believe in response you said something about 70 percent
12 of the homes now have wireless. Was that something you
13 testified to?

14 A. Let me check that number. I'm referring now to
15 Mr. Shooshan's wireline survey in Missouri. And reading off
16 of his Schedule 3 on page 7, this is the wireline user
17 questionnaire. If you'll recall, he surveyed wireline
18 customers and he surveyed wireless customers and this is the
19 survey where wireline customers were approached. And the
20 question was, Do you or does anyone in your household have a
21 cell phone? And 70 percent answered yes. So that was the
22 number I was referring to.

23 Q. So it's based on his survey. That's right?

24 A. Right. Because that's a Missouri-specific
25 number.

1 Q. Do you know of any other statistics Missouri
2 specific that would show a different number than 70 percent?

3 A. I don't know of any, no.

4 Q. And do you know how many Voiceover Internet
5 customers there are in Missouri?

6 A. No. The number of Voiceover Internet customers
7 is very difficult to quantify, particularly in a geographic
8 location because customers don't have to live in the location
9 of the phone number that they pick. So I'm aware of some
10 national VoIP numbers, but not specific to Missouri.

11 Q. You say that they can pick a number other than
12 their area code -- their local area code?

13 A. Sure. They could pick a number anywhere in the
14 country.

15 Q. Why would a customer pick a different area
16 code?

17 A. Well, let's say I live in -- as I think -- I
18 think the example I gave earlier was if I live in St. Louis
19 but my mom lives in New York City, I might want to have as one
20 of my numbers, because you can have multiple numbers, a New
21 York City number so she can call me as a local call.

22 Q. So that number using a different area code is
23 more as a substitute for toll rather than as a substitute for
24 basic service; is that correct?

25 A. I could also have a phone number that is in my

1 local area code and the same line. I'd be using that for all
2 my local calling.

3 Q. Sure. Does it cost to have more than one
4 number?

5 A. I -- each carrier has a different structure and
6 they seem to change as they evolve. So I -- some do charge
7 for extra numbers. I don't know if they all do.

8 Q. So if you were using it for a different area
9 code for New York or whatever -- I keep wanting to say 202, I
10 guess that's Washington. So if you have that as an area code,
11 you're using that number as a substitute for toll and then if
12 you get a local area code, then you're using it as a
13 substitute for local service. Would that be a fair
14 characterization?

15 A. Well, no. Not really. I think maybe I -- what
16 I said was a little bit misleading. Most of these carriers
17 have unlimited local and long distance, the VoIP carriers. So
18 if I have a New York, which I think is 212 area code, I can
19 call my next-door neighbor in St. Louis or Joplin or Kansas
20 City and it's still included. It's unlimited local and long
21 distance.

22 Q. So it wouldn't make any difference whether you
23 had a different area code or not?

24 A. Well, it would make a difference to my mom in
25 New York City to call me.

1 Q. For the call back -- or to call you?

2 A. To call me, right.

3 Q. So I guess you're substituting for her toll?

4 A. The phone world is getting very complicated and
5 interesting with all these different service offerings.

6 Q. Boy, is that the understatement of the day.

7 A. Creates many opportunities that we didn't have
8 before.

9 Q. Right.

10 Now, I understand once again in response to --
11 oh, wait a minute. As I'm talking about the VoIP, for local
12 service does that handle 911 calls?

13 A. Yes, some do. The cable providers have E-911,
14 Vonage has E-911. I'm going to check on Packet 8. I think I
15 have in my testimony, but I'm not finding it right in front of
16 me, that Packet 8 also has 911.

17 Q. Okay.

18 A. Some do not.

19 Q. And they're not required by any regulation or
20 definition of basic local service to offer 911 service; is
21 that right?

22 A. I think that's right. I believe that this is
23 an industry effort though that the VoIP community is working
24 hard on to make sure that VoIP does have emergency E-911
25 capability.

1 Q. Can all VoIP calls be -- well, can they talk --
2 do they all have the same protocol where no matter who you're
3 calling, no matter where you're calling, the call will go
4 through, or do you know?

5 A. Well, some services such as SCIPE, as I discuss
6 in my testimony, is really more of a peer-to-peer kind of
7 technology. The free service, you can't even call someone on
8 the PSTN, the Public Switch Telephone Network. But on the
9 VoIP services that I've been talking about, Vonage, the cable
10 companies, those are, to my knowledge, completely
11 interconnected services with which one can make and receive
12 calls as you would on the PSTN.

13 Q. But there may be some out there that do not
14 have interconnection protocols?

15 A. Yes. And some of those are free. No one would
16 mistake those for a service like Vonage, which is a primary
17 line replacement type service that has the normal capabilities
18 associated with that.

19 Q. If I had Southwestern Bell local service -- do
20 I need Southwestern Bell local service in order to get DSL?

21 A. I believe you need Southwestern Bell local
22 service to get DSL from Southwestern Bell.

23 Q. That's what I'm asking. So you couldn't elect
24 to use Vonage with Southwestern Bell's DSL service?

25 A. Yes, you could.

1 Q. But you'd be paying for local service twice?

2 A. Well, you may choose it as a second line in
3 that case. But just to clarify, that doesn't mean that you
4 have to get DSL from Southwestern Bell. And if -- if you get
5 it from another provider, the restrictions that you just
6 talked about don't necessarily apply.

7 Q. Also, when you were talking to Commissioner
8 Appling, you talked about -- you talk about detailed and
9 complicated pricing steps under price cap regulation. Could
10 you identify what those detailed and complicated pricing steps
11 are that are cumbersome?

12 A. Well, I think what I was referring to -- I'm
13 not sure those were the words I used, but what I was referring
14 to was discussion that I believe I had with Mr. Lumley about
15 whether there aren't various ways that an incumbent could
16 achieve certain kinds of pricing flexibility within the price
17 cap statute today.

18 And my point is that there may or may not be in
19 var-- in certain circumstances opportunities to do so, but
20 that the process of filing for specific tariffs for specific
21 price changes in the context of a competitive market is not
22 consistent with the objectives of competition or the
23 objectives of the act to promote competition.

24 Q. Commissioner Gaw asked you a question basically
25 asking you what a commercial -- is it a commercial rate -- is

1 that the right term I'm using?

2 A. That was the term he used, yeah.

3 Q. Okay. Well, didn't you talk about that rather
4 than as a -- for UNE prices?

5 A. Yes.

6 Q. And that's a negotiated rate between the
7 company -- Southwestern Bell and the company?

8 A. Right. I think he asked me how would that be
9 determined, and I said I think it would be determined by
10 negotiation.

11 Q. Okay. And as what you were just discussing
12 about having to file a tariff and that, would you prefer that
13 rather than filing tariffs for products, that the company just
14 enter into commercially negotiated prices?

15 A. I think we're talking about two different
16 things. The consumer mass market is one kind of pric--
17 pricing arena and setting prices for very large business
18 customers such as setting a price for network services to
19 another carrier -- or such as AT&T or SBC or many other
20 carriers today set prices for large retail business customers.
21 Those are very often typically done under negotiation and
22 under contract. They co-exist in the market because the
23 different customers have different needs

24 MR. DANDINO: That's all I have, your Honor.

25 Thank you, Doctor.

1 THE WITNESS: Thank you, sir.

2 JUDGE RUTH: The Intervenors?

3 RECROSS-EXAMINATION BY MR. LUMLEY:

4 Q. Doctor, I'd like to take you back to your
5 discussions with Commissioners Gaw and Clayton about the -- I
6 think at one point you referred to your bottom line opinion in
7 the case and you were trying to explain, you know, kind of
8 where you took things with your testimony. And, in
9 particular, you read the end of your testimony on page 85 of
10 your Direct piece. Do you recall that?

11 A. I do.

12 Q. And at the end of that you say that economic
13 principles would dictate that the Commission be strongly
14 predisposed to a determination that the market in Missouri is
15 effectively competitive. Do you recall that being your
16 concluding thought there?

17 A. Yes.

18 Q. And is that your bottom line opinion in the
19 case?

20 A. That's the recommendation -- recommendation I'm
21 making to the Commission. In fact, upon my review of the
22 evidence in this case, I believe that the market it
23 effectively competitive.

24 Q. So in your pre-filed testimony did you express
25 an opinion that specific services in specific exchanges were

1 subject to effective competition?

2 A. No. I expressed the opinion that you alluded
3 to that I read earlier.

4 MR. LUMLEY: Thank you.

5 JUDGE RUTH: Okay. And redirect?

6 REDIRECT EXAMINATION BY MR. LANE:

7 Q. I'm going to try and work in reverse order
8 here, Dr. Aron. You were asked on recross by Mr. Haas on
9 behalf of the Staff about McLeod and whether they had an
10 interconnection agreement with SBC Missouri. Do you recall
11 that?

12 A. Well, I think he asked me have they agreed with
13 or gotten terms with SBC for the specific -- for providing the
14 services under the agreement with MCI.

15 Q. And with regard to McLeod's operations in
16 Missouri, did you review Mr. Peters' testimony in the case?

17 A. I did.

18 Q. Okay. And does it reflect whether McLeod
19 currently operates in Missouri and currently acquires any
20 loops from SBC?

21 A. They do. I did and, yes, they do.

22 Q. You were asked by Commissioner Gaw about the
23 work that you had done to verify some statements regarding
24 E-911 services. Do you recall those questions?

25 A. I do.

1 Q. And focusing specifically on his questions
2 about the CLEC that had indicated that it didn't necessarily
3 follow the requirements of the NENA with regard to how it
4 reported numbers into the E-911 database, is that Socket that
5 you were referring to there?

6 A. Socket's witness was the witness who indicated
7 that his employer apparently did not follow those guidelines,
8 yes.

9 Q. And did you undertake some investigation based
10 upon the evidence submitted in this case to determine whether
11 the E91-- E-911 listings reported by Socket were or were not
12 consistent with that claim?

13 A. Yes, I have. And --

14 Q. Without getting into numbers, because I want to
15 stay away from the highly confidential, did you form an
16 opinion as to whether the Socket numbers in the case reflected
17 an over-reporting of numbers based upon -- in comparison to
18 the number of access lines?

19 A. I did, yes.

20 Q. And what was your opinion?

21 A. My conclusion was that on the contrary,
22 Socket's numbers were very significantly under-counted by
23 relying on the 911 database.

24 Q. And is that consistent with the testimony
25 that's been given on behalf of the SBC witnesses that the

1 E-911 data is a minimum statement of CLEC market share?

2 A. Yes, it is. As well as my own testimony saying
3 the same thing.

4 Q. And you were asked by Commissioner Clayton, in
5 particular, about schedules in Mr. Unruh's testimony that you
6 had relied upon. I guess, first, is it fair to say that you
7 had reviewed and looked at all of the exhibits that are in
8 Mr. Unruh's testimony?

9 A. Yes, I have. As well as all the other
10 witnesses' testimony.

11 Q. And you listed some of them, but to make sure
12 that we have them all in the record, Mr. Unruh's Schedule 9
13 that reflects all of the number of collocations in each
14 exchange, was that something that you reviewed and took into
15 account in reaching your opinions in the case?

16 A. Yes.

17 Q. And Exhibits 10, 11 and 12-HC that provide
18 exchange-specific information on CLEC provision of business
19 and residential service to each exchange in the state and the
20 market share for each of those exchanges, is that something
21 that you took into account in reaching your conclusions in the
22 case?

23 A. Yes. He provides a minimum estimated CLEC
24 market share of the traditional landline market for each
25 exchange in that exhibit.

1 Q. And provides the number of CLECs that are
2 serving each of those exchanges. Correct?

3 A. He does, yes.

4 Q. And then Exhibit 17 you discussed, which refers
5 to the cable modem providers in Missouri. Did you also review
6 Exhibit 16 in Mr. Unruh's testimony which analyzes the VoIP
7 providers in the state?

8 A. I did, yes.

9 Q. You had some discussions with Commissioner
10 Clayton about services that are priced below cost in some
11 exchanges. Do you recall those questions, generally?

12 A. Yes.

13 Q. Okay. And within an exchange you had indicated
14 that if services were priced below cost, that someone taking a
15 basic local exchange service only might not be attractive to a
16 CLEC. Do you recall that?

17 A. That's right.

18 Q. Would that be true of all of the customers in
19 the exchange or there's those that might be attractive even
20 though basic local service is priced below cost?

21 A. In an exchange there -- in which basic local
22 service is priced below cost, there may very well be other
23 customers who are purchasing an array of services that are
24 attractive to customers.

25 And as I think I talked about earlier,

1 competitors go after those customers by offering bundles of
2 services at price points that are not necessarily attractive
3 to the customers who only buy a basic line but that would
4 attract those higher revenue, higher service intensive
5 customers. And so that's the kind of competition that we see
6 in the market today in many areas.

7 Q. And would expect that to continue?

8 A. I would expect that to continue if -- if price
9 constraints are not relaxed so that prices can adjust in a way
10 that all customers are more attractive to carriers.

11 Q. Mr. Lumley asked you questions pertaining to
12 the MCI open letter to state commissions that Mr. Unruh
13 attaches to his Surrebuttal Testimony. Do you recall those
14 questions?

15 A. Yes.

16 Q. And you indicated that you had reviewed a
17 California filing by MCI that was consistent with your
18 interpretation and understanding of that exhibit attached to
19 Mr. Unruh's testimony. Do you recall that?

20 A. Yes.

21 (Exhibit No. 35 was marked for identification.)

22 BY MR. LANE:

23 Q. Doctor, in showing you what's been marked as
24 Exhibit 35 in the case, I would ask if that's the comments
25 that MCI submitted in a regulatory proceeding in California to

1 which you referred in response to your -- in response to the
2 question from Mr. Lumley?

3 A. Yes, this is it.

4 MR. LANE: Your Honor, I'd offer Exhibit 35.

5 JUDGE RUTH: Okay. Exhibit 35 has been offered
6 into the record. Are there any objections to it being
7 received? Staff?

8 MR. HAAS: No objection.

9 JUDGE RUTH: Public Counsel?

10 MR. DANDINO: No, your Honor.

11 JUDGE RUTH: Intervenors?

12 MR. LUMLEY: No.

13 JUDGE RUTH: Okay. Exhibit 35 is received into
14 the record.

15 (Exhibit No. 35 was received into evidence.)

16 BY MR. LANE:

17 Q. Mr. Lumley also asked you whether you were
18 familiar with any provision in the statutes in Missouri that
19 would allow a price cap carrier like SBC Missouri to have a
20 range of rates that were on file in Missouri and could
21 subsequently change rates within that range on short notice.
22 Do you recall those questions?

23 A. I do.

24 Q. And subsequent to a break in the case, did you
25 have an opportunity to review the Missouri statutes that might

1 pertain to that?

2 A. I did, yes.

3 Q. Could you tell me what you found?

4 A. I found that --

5 Q. Go ahead.

6 A. -- the provisions that address that -- that
7 opportunity pertain only to transitionally competitive -- or
8 competitive services, not to the services at issue here.

9 Q. Okay. Not for services that are currently
10 under price caps?

11 A. That's right.

12 Q. And is the section of the statutes to which you
13 refer 392.510?

14 A. That's correct.

15 Q. You were also asked a question by I believe
16 Mr. Dandino concerning Charter's operations in Missouri. Do
17 you recall that?

18 A. Yes.

19 Q. And you'd indicated --

20 A. It was a long time ago.

21 Q. Yeah. You had indicated that you weren't
22 familiar with the exact places that Charter was operating; is
23 that right?

24 A. Yes.

25 Q. And in reviewing Mr. Unruh's Exhibit No. 17,

1 does that provide information on where Charter provides cable
2 modem services in the state of Missouri?

3 A. Yes. I should have just pulled it out when he
4 asked me that question.

5 Q. Can you generally state where those are?

6 A. Mr. Unruh shows a map of eastern Missouri and
7 western Missouri, two separate maps. On the Missouri west map
8 Charter, which is indicated in pink, is located in a variety
9 of exchanges east of Kansas City and southeast of Kansas City,
10 including Sedalia, Knob Noster, La Monte, Eldon and Lake
11 Ozark, Tuscumbia, Camdenton and part of Climax Springs. And
12 then on the eastern Missouri --

13 Q. How about Nevada? Did you indicate Nevada?

14 A. Oh, excuse me. Is it Nevada?

15 Q. Yes, it is.

16 A. I would have erroneously said Nevada.

17 Q. Yes, you would have.

18 A. I also neglected to point out that Charter also
19 operates in parts of Kansas City itself.

20 Q. Okay. I'm sorry. Go ahead then with the
21 eastern side of the state.

22 A. The eastern side, Charter covers quite a large
23 number of exchanges not just in the St. Louis MCA, but
24 northwest and south of St. Louis. Would you like me to read
25 off some of those names or --

1 Q. No, that's okay.

2 A. Okay.

3 Q. You were also asked by Mr. Dandino about
4 information that was contained on Mr. Peters' schedules to his
5 testimony, Schedule 12 to his Surrebuttal which was the
6 summary of Annual Reports filed by CLECs with the Commission.
7 And you had indicated in your response that you looked at it,
8 but you believed that it was an incomplete listing of the
9 nature of competition in Missouri. Could you explain the
10 basis for that statement?

11 A. In that exhibit Mr. Peters identifies, I'd have
12 to go back and look, something like 17 carriers. If one looks
13 at Mr. Unruh's exhibits, which are based on information from
14 the wholesale side of the business, so it incorporates not
15 just those carriers that have listings in the 911 database but
16 those carriers that are actively providing service over
17 unbundled network elements or resale, there are many, many
18 more carriers identified there.

19 And if one looks exchange by exchange, one can
20 compare and see that the number of unique carriers identified
21 in Mr. Peters' exhibit is, at least in the spot check that I
22 did, consistently smaller than the number of carriers in those
23 same exchanges identified as actively providing service by
24 Mr. Unruh.

25 Q. You were asked by Staff some questions

1 concerning provision of DSL service and whether that was a
2 requirement to acquire VoIP service in general. Do you recall
3 that?

4 A. I think he asked me if one has DSL service, can
5 one get VoIP. And I said yes.

6 Q. Okay. And are there other methods by which
7 customers that wanted VoIP service could get that service
8 without subscribing to DSL service from an SBC Missouri
9 affiliate?

10 A. Yes. They could get cable modem service from
11 one of those cable broadband providers that are identified on
12 Mr. Unruh's exhibit.

13 Q. Okay. And --

14 MR. LANE: May I approach the witness, your
15 Honor?

16 JUDGE RUTH: Yes.

17 BY MR. LANE:

18 Q. Did you review Ms. Stoia's testimony in this
19 case?

20 A. Yes.

21 Q. And without giving the number, which is listed
22 on Schedule 4-P that's proprietary, does that schedule
23 indicate DSL availability and cable modem availability in the
24 state based on percentage of SBC Missouri customers reached?

25 A. Yes.

1 Q. And is the cable modem availability percentage
2 even greater than the availability of DSL in Missouri in terms
3 of reaching SBC Missouri customers?

4 A. Yes, it is. And that's generally true around
5 the country as well.

6 Q. And it's a substantial percentage of the
7 customers that have cable modem available to them? Without
8 giving the number, would you classify it as substantial?

9 A. Yes, I would.

10 Q. Okay.

11 A. It's very substantial.

12 Q. You were asked some questions by Staff about
13 carriers that were maybe providing only resold services in the
14 state. Do you recall a series of questions on that?

15 A. Yes.

16 Q. Did you do a review to determine whether there
17 are carriers that provide a combination of their own
18 facilities-based service, UNE-P and resale to different
19 customers in different areas of the state?

20 A. I did an analysis to assess whether resale
21 car-- carriers were providing service over resale are also
22 providing service over UNE loops or facilities of their own.

23 Q. And as a general statement with regard to the
24 carriers that are operating in Missouri, is it fair to say
25 that many of the carriers that are providing either resale or

1 UNE-P or both are also providing their own facilities-based
2 service here in the state?

3 A. Yes, it is. And when I said I analyzed the
4 carriers providing service over resale, I also analyzed the
5 carriers providing service over UNE-P based on the evidence
6 provided in this case to determine which of those or how many
7 of those are also providing service over UNE loops or their
8 own facilities. And your statement is accurate.

9 Q. That it's a substantial number of them?

10 A. Yes.

11 Q. And, in your opinion, if a carrier is already
12 providing its own facilities and, in particular, switching
13 services itself and also providing either UNE-P or resale,
14 would it be your view that it would be relatively easy for
15 that carrier to move customers off of UNE-P onto its own
16 switch because it already has one?

17 A. Yes. I think that's generally a fair
18 statement. Carriers who already are providing service over
19 UNE loops or their own facilities have established facilities
20 in the state, have proper interconnection agreements to
21 provide facilities-based service in the state, have the
22 expertise to provide it. And on those grounds, I think one
23 could say they could migrate other customers to their own
24 facilities. That's a reasonable expectation.

25 Q. Final area was a Staff question in the

1 beginning that essentially dealt with what can SBC Missouri do
2 today under price caps -- what can't it do today under price
3 caps that it can do under competitive classification. And the
4 implication was the only thing that's different is the ability
5 to raise rates. Would you agree with that characterization or
6 disagree with that?

7 A. No. I would disagree with that. I think that
8 that very much misrepresents what competitive pricing and what
9 pricing flexibility is about. I think that what carriers can
10 do encompasses much more than that, including things like
11 simplifying rate structures so that if the carrier wants to
12 have a statewide rate that today would involve raising some
13 rates and lowering others, that's something that could be
14 done.

15 If they wanted to have a simplified rate that
16 might not involve individual rate elements at the current
17 levels but some being higher and some being lower, those could
18 be revenue neutral price changes. So in that sense would not
19 be an overall price increase or price decrease, but would not
20 be permissible under the statute, under the price cap part of
21 the statute.

22 Those are all legitimate competitive pricing
23 endeavors that bring benefits to consumers, that enhance the
24 competitive interplay and that are constrained under the
25 current policy.

1 MR. LANE: Thank you. That's all I have,
2 Dr. Aron.

3 JUDGE RUTH: Okay. Dr. Aron, at this point I'm
4 not going to be able to excuse you. I'm going to tell you you
5 can step down, but I'm waiting to hear back from a
6 Commissioner as to whether or not you'll need be to be
7 recalled. So at this point you may need to come back
8 tomorrow. Hopefully we'll find out in the next few minutes.

9 MR. LANE: I would ask that if we could find
10 out, that would be great.

11 JUDGE RUTH: Someone's trying to find out for
12 me.

13 MR. LANE: Thank you.

14 JUDGE RUTH: Before we move on, I want to
15 mention that it's my understanding there may need to be a
16 change in the schedule of witnesses. Mr. Bub, would you
17 clarify that, please?

18 MR. BUB: Yes, your Honor. We have one
19 witness, Harry Shooshan, that we would need to move up because
20 he's going -- he has other commitments that he's going to need
21 to leave town tomorrow, so we need to get him on and off the
22 stand. So our proposal would be to have him testify following
23 SBC Witness Sylvia Fernandez. So we would complete her as
24 much as we can today, finish her tomorrow morning and then we
25 would put on Mr. Shooshan.

1 JUDGE RUTH: So he would become witness No. 3
2 instead of witness No. 6?

3 MR. BUB: Instead of 5. Isn't he No. 5
4 currently? Because Mr. Unruh I thought was 6.

5 JUDGE RUTH: You're probably right.

6 MR. BUB: We would need to jump him ahead of
7 Moore and --

8 JUDGE RUTH: Are there any objections -- he was
9 5, sorry, so he'll move up to No. 3. Are there any objections
10 to the change in schedule?

11 Okay. Seeing none, we'll just plan on that for
12 tomorrow.

13 And have the parties had a chance to think
14 about my question? I had asked whether you wanted the
15 opportunity for closing arguments. There will be only one
16 round of briefs and I haven't yet set a deadline for that.
17 We'll do that at the end of the hearing. But there will not
18 be briefs and reply briefs. It will be one round of
19 simultaneous briefs.

20 MR. DANDINO: I --

21 JUDGE RUTH: Mr. Dandino, could you speak up or
22 turn your microphone on?

23 MR. DANDINO: I'm sorry. Yes, your Honor. My
24 recollection was that on the procedural schedule that there
25 was a filing of proposed findings of facts and conclusions of

1 law on the 11th.

2 JUDGE RUTH: I think it's the 16th.

3 JUDGE RUTH: Or the 16th. Is that going to be
4 the round of briefs or --

5 JUDGE RUTH: The what?

6 MR. DANDINO: Is that going to be the briefing?

7 JUDGE RUTH: No. The briefs will be in
8 addition to it and we've not set a date. I thought -- the
9 16th was a Wednesday. I thought perhaps the following Friday,
10 a few days later, but we've not set that date. If we do that
11 Friday, it would be two weeks following the end of hearing,
12 assuming the hearing ends this Friday.

13 But at this point I'm not telling you that you
14 have to do closing arguments. The Commissioners simply
15 discussed in agenda during the prehearing briefing last
16 Thursday whether or not the parties would want that
17 opportunity since you're not going to have two rounds of
18 briefs, you're only having one.

19 So if you're content with only one round of
20 briefs and no closing statements -- or closing arguments,
21 that's fine, but this is where I want you to tell me what your
22 preference is. And I'm going to start with SBC.

23 MR. LANE: Your Honor, we don't need to have a
24 round of closing arguments unless the Commissioners want us
25 to. If they do, I'm more than happy to do it; if not, we can

1 simply file the briefs that we've submitted -- that we will
2 submit.

3 JUDGE RUTH: Thank you.

4 And Staff?

5 MR. HAAS: Staff agrees with Mr. Lane.

6 JUDGE RUTH: Mr. Dandino?

7 MR. LANE: I'll have to change my mind then.

8 MR. DANDINO: Now you'll really change your
9 mind. I agree with Mr. Lane too.

10 JUDGE RUTH: Mr. Lumley?

11 MR. LUMLEY: So he doesn't change his mind, I
12 guess I'll have to say I disagree -- no, I agree.

13 JUDGE RUTH: I will take that back to the
14 Commissioners and let you know tomorrow if they have any
15 comment on that. I don't expect that they'll have a problem
16 with that. It was my understanding they just wanted to give
17 you the option, but I'll clarify that and get back to you
18 tomorrow.

19 And now I would like to proceed with Witness
20 Sylvia Fernandez. We had started her before. And I would
21 anticipate we'll probably only go about 15, maybe 20 minutes
22 at most on her, but we might as well get started.

23 Mr. Haas, we were in the middle of your
24 cross-examination on her before. And I'll just remind you,
25 Ms. Fernandez, that you are still under oath. Thank you.

1 CROSS-EXAMINATION (CONT'D) BY MR. HAAS:

2 Q. Ms. Fernandez, when we broke, we were talking
3 about your testimony concerning advertising for
4 telecommunications services --

5 A. Sorry about that.

6 Q. Do you know what sorts of services are included
7 in Verizon's spending for advertising?

8 A. For all the competitors that are shown on
9 page 19, the request made is the same. It would be local
10 access services and that could include bundled with long
11 distance or vertical features or Internet access. It would
12 not include advertising for PBXs, stand-alone broadband. So I
13 took a conservative approach to getting that information so
14 that it would not appear as though it's a loaded number.

15 Q. Does it include wireless services?

16 A. Only if wireless was a component of a local
17 access bundle. It would not include advertising for
18 stand-alone wireless service.

19 Q. On page 21 you refer to the amount that SBC
20 Missouri spent for its advertising. What areas did that
21 cover? What types of services?

22 A. It would be the same. I wanted an apples to
23 apples comparison with regard to our expenditures compared to
24 our competitors.

25 Q. Was that advertising -- was SBC's advertising

1 more or less equally distributed throughout its Missouri
2 exchanges?

3 A. I would say it's -- it would be fair to
4 characterize our advertising as covering the entire state to
5 the best of our ability. We are -- obviously we're managing
6 our budget, but when you think about our expenditures, it's
7 not just radio or TV or things that you might normally think
8 of. It includes online advertising, which as I said before,
9 is geographic neutral.

10 Q. Well, looking at -- you mentioned radio and
11 what else?

12 A. When we think of mass media advertising, we
13 think traditionally of TV, print ads in newspapers and radio
14 ads.

15 Q. Would a customer in, let's say -- I believe
16 Bell has an exchange in Argyle -- be as likely to see an SBC
17 advertisement as one in, say, St. Louis?

18 A. We do look at our advertising budget based on
19 what we call tier 1, tier 2 markets. We -- I would say
20 with -- with rare exception, the vast majority of advertising
21 would be in major metropolitan areas where you have a greater
22 reach. But I would not say that our advertising doesn't reach
23 out past non-major metro tier 2 cities.

24 Q. Can you tell me the definition between tier 1
25 and tier 2?

1 A. Yeah. A tier 1 city would be -- and
2 advertising definitions aren't going to line up with
3 exchanges, but St. Louis would clearly be a tier 1 city as
4 would Kansas City. Neosho would not be, as an example.

5 Q. All right. I'm still on page 21. And at
6 line 20 you say, Increasingly, the business customer is
7 choosing to reduce the number of wireline business access
8 lines and instead utilizing wireless services.

9 What support do you have for that statement?

10 A. It would be a combination of my own
11 observations, my direct conversations with our customers. In
12 my role in marketing, I have a great deal of exposure and
13 direct contact with customers, both very small business
14 customers as well as very large customers.

15 And as I'm speaking with customers, it's really
16 so much more about making it easier for them to do business
17 with us. And some of the things that we're looking for,
18 frankly, are how we can change the mindset of what we sell as
19 a product to a solution for them.

20 And one of the areas that they're very
21 interested in is enabling their mobile sales force or their
22 mobile employees to be available to their own customers and
23 improve their own customer service. So in those conversations
24 we've had, it's very much their interest to find out about
25 bundling capabilities we have, to take wireless with wireline.

1 And some of the really exciting things we're
2 doing now are in the area of unified communications. What
3 you'll see when you look at Voiceover IP -- what's very
4 attractive about it is some of the find-me/follow-me features.
5 We have the same sort of capability when you look at unified
6 communications, which is the idea of marrying your landline
7 service with your wireless service.

8 So my observations, my direct contact with
9 customers and that's supported by direct contact with our
10 sales force, regardless of what size customer we're talking
11 about.

12 Q. At page 23, line 9, you state, Further evidence
13 of a fully competitive market is the evolution of the product
14 offer strategy toward bundling to deliver savings.

15 What is the connection between competition and
16 bundling?

17 A. I think it was Dr. Aron that said earlier and
18 it would be hard, I think, to imagine if you read anything in
19 our industry today, that the bundling piece doesn't come out
20 in, whether it's analyst discussions of our business or
21 newspaper articles.

22 The connection to bundling with competition is
23 very simple and straightforward. Their desire is to meet
24 customer needs and customers are so passed buying just local
25 access services. What they really want is simplification.

1 They're interested in reducing the number of providers they
2 have to do business with in many cases, simplified billing.

3 And some of the things that we're hearing, and
4 I know our competitors hear this too is, they want recognition
5 and reward for their total spend with the company.

6 As an example, a small business may have
7 decided to purchase local service from us, but they have a
8 different broadband provider. So they have two relationships
9 to manage. And then you add another layer called wireless to
10 that.

11 They look at their total expenditures and they
12 are desiring to reduce them and they're desiring to simplify
13 what they have to manage, because they don't have the staff to
14 analyze whether their rates are going up or down, whether they
15 did or did not make all the long-distance calls on a local
16 bill or a long-distance bill. So that's the idea behind
17 bundling. It's making it easier for customers to get their
18 telecom service and giving them a reward for buying more from
19 you.

20 Q. Everyone may assume that they know what the
21 term "bundling" means, but would you tell us what you mean by
22 the term "bundling"?

23 A. Sure. Bundling is really just the combination
24 of services. It could mean a very simple bundle that would
25 include local access and long distance. It could mean local

1 access in a vertical feature or group of features like
2 Caller ID. A bundle could include local access and wireless
3 or broadband. So bundling is just a combination of services.

4 Q. SBC Missouri is an affiliate or a part of a
5 larger organization, isn't it?

6 A. It's part of SBC.

7 Q. And does SBC or an SBC affiliate provide these
8 different services like long distance?

9 A. Yes.

10 Q. And broadband?

11 A. Yes.

12 Q. And wireless?

13 A. Yes.

14 Q. And can a customer obtain today a bundle of
15 these various services from an SBC affiliate?

16 A. Let me get -- let me see if I got -- I think
17 the answer would be -- can a customer walk into the wireless
18 company and buy local service? Would that be your question?

19 Q. Or can they walk into the wireless store and
20 get a discount if they already have maybe a Bell landline?

21 A. A customer can definitely get rewarded if
22 they're a local -- if they're a customer of ours for local
23 service and they want to activate a wireless package with the
24 Cingular. Let me think of other bundling situations.

25 I would -- I would tell you that the way we

1 look at our business's needs spans local service. We look at
2 customers total spend with SBC.

3 Q. On page 26 of your testimony at line 18, you
4 say that, Giving SBC Missouri this flexibility will benefit
5 all Missouri businesses because it will lead to more choices
6 for these customers wherever they do business.

7 Can you explain how or why SBC Missouri needs
8 this pricing flexibility to offer its customers choices?

9 A. The idea is that what -- what SBC desires in
10 Missouri is to have the same opportunity to compete as our
11 CLECs do. And our CLECs are very unique from us -- or our
12 competitors are unique in that they don't have the history
13 that we have and the rate structures that we have currently in
14 place to navigate through as we're trying to meet customer
15 needs.

16 So while I don't have a list of marketing plans
17 that I'm ready to implement with competitive classification, I
18 can tell you what I have been told by my customers. And what
19 I'm being told by my business customers is what I said earlier
20 today, and that would be we -- we really want to meet their
21 needs for simplicity and having many rates to manage through
22 across the state of Missouri is -- it becomes onerous for my
23 customer.

24 My customer may have a manufacturing plant in
25 Neosho and a sales office in St. Louis. And that customer

1 doesn't want to have to watch and see what the rate
2 differences are in those locations, in addition to perhaps
3 having to keep track of what their rates might be in Oklahoma.

4 Their desire is to have a simple monthly
5 recurring bill that gives them value and that doesn't change
6 over time. They don't want to have to watch their bill every
7 month to see if the rate's changed. And they don't understand
8 the differences for the rates, quite frankly.

9 So giving us competitive classification will
10 allow us to take a look at what the customers are saying their
11 needs are against what we have today in terms of rate
12 structures and caps on what we can do with those rates.

13 Q. So it would be your opinion that price cap
14 regulation is preventing you from meeting that customer's need
15 of offering them this one flat rate that they're going to see
16 every month?

17 A. I'm hampered across a variety of products in
18 meeting that simplicity -- that need for simplicity. The need
19 for simplicity is not just for the very simple small business
20 customer. It's also for a very large business customer who
21 may have PBXs desiring to move into an IPPBX. So it really --
22 customers, they're all looking for the same thing regardless
23 of size or product.

24 And we're hampered in our ability to respond
25 quickly to the market and the rates that are charged by our

1 competitors and the bundles that they're offering.

2 Q. How is it that SBC is hampered in offering the
3 customer what it's looking for?

4 A. Because of the restrictions we have on what we
5 can do to raise and lower rates. I'm not like a CLEC. I
6 can't -- I can't drop my rates in one particular area and --
7 and have it happen with no impact at all to my total business.
8 I've got to look at the impact across many products. And I'm
9 restricted to freely move up and down in the market.

10 The other thing that I -- I cannot do is I
11 cannot respond rapidly to what a competitor's doing in the
12 marketplace because of the need I have to give my competitors
13 notice, which gives them time to react quickly, which gets
14 them to my customers faster than I can, which hampers my
15 ability to be competitive.

16 Q. Why is it that you think the CLEC is able to
17 respond quicker than you are?

18 A. Because they can adjust their rates as they
19 need to very quickly. They can essentially meet me in the
20 marketplace before I can get there.

21 Q. Your CLEC competitors can do that?

22 A. Uh-huh.

23 Q. At page 27, line 6, you make a sentence -- or
24 state a sentence that I think you said before and that's,
25 Businesses don't want to have to take the time to analyze

1 their telecommunications bills on the basis of the exchange on
2 which the location exists.

3 Are you suggesting that if SBC were to achieve
4 competitive classification for its business services in all
5 exchanges, that the rates will be identical in all exchanges?

6 A. I don't know if that's what we're -- what would
7 happen. I'm telling you that -- that our business customers
8 don't want to have to analyze every element of the bill that
9 they get from their provider, which includes having to analyze
10 rates that are variable.

11 Q. At page 28, line 3, along the same lines, you
12 say, In my experience, business customers prefer uniform
13 pricing throughout the state.

14 Then why doesn't SBC today offer uniform
15 pricing that business customers prefer?

16 A. Well, what we did do is we have taken steps to
17 move in that direction. In the case where we have the
18 ability -- when we were granted competitive classification in
19 St. Louis, for example, we looked at single-line and
20 multi-line rates and we've -- we've analyzed those rates and
21 adjusted them to bring them more in line.

22 And as I said before, I don't have a marketing
23 plan that I can tell you I'm ready to implement, but I -- I
24 have a very strong desire to address that particular issue.

25 Another way we have addressed that issue is we

1 filed for a promotional tariff. It's referred to in our
2 company as The Big Easy. The idea of The Big Easy is make it
3 easy for customers to get nationwide pricing. And what we did
4 in that regard was we -- we have a promotional tariff out
5 there. It gives the customer the same access line rate
6 regardless of what state they're in. And we filed that tariff
7 in Missouri as well as our other in-region locations.
8 The only exception of that was -- was in Connecticut. So we
9 are taking steps to meet our customer needs in that regard.

10 Q. When I asked Dr. Aron how SBC prices new
11 services, she said I should probably ask a different witness.
12 So I'm asking, are you the witness to ask and can you answer
13 how does SBC price new services?

14 A. Yes, I am the witness for the business side.
15 From a retail perspective, yes, Dr. Aron tried to allude to,
16 and I think she did a good job of alluding to how we could do
17 it. She can't speak for what SBC marketing will do, but I
18 can.

19 What we -- it's fairly complicated what we have
20 to do to analyze the marketplace to develop a pricing strategy
21 for a new product, for instance. And we do that on a regular
22 basis. We have a market research that we perform that asks
23 customers about the business problem they have and how the
24 product can solve to that business problem. We have a human
25 factors lab in Austin where we can actually put customers

1 through the rigor of determining whether that feature or
2 product or service is meeting their requirements.

3 So it's a combination of looking at the cost of
4 the product from a pure delivery perspective to what the
5 customer is willing to pay for it to the costs associated with
6 actually launching the product, educating the customer about
7 the product, post-sale customer care cost associated with the
8 product, enhancements that would be associated with the
9 product later on.

10 And then, finally, we don't launch a product
11 thinking only of the product itself. I would submit to you
12 that the way we launch products today is so vastly more
13 complicated that what we did before. We used to launch
14 products like Caller ID and there was nothing more to it than
15 launching a vertical feature.

16 Today the products that we are launching, we
17 have to consider the complexity that they're -- they're going
18 to be associated with, like IP services as an example. So
19 when we launch our product, some of the research we have to do
20 gives consideration to how will the product actually be
21 marketed.

22 Often, some of our products are not sold just
23 by our channels. An example would be systems integrators
24 where we would launch a product that we need to consider the
25 channel costs and the customer care associated with a product

1 that a systems integrator actually sells and not us.

2 So it's so much different than when we used to
3 launch things like Caller ID or Privacy Manager. So when we
4 determine the price point going to the marketplace, it's so
5 much more than just determining the cost associated with the
6 network provisioning of that product. We have to analyze
7 post-sale costs and balance that with the customer's
8 willingness to pay in a very competitive environment

9 MR. HAAS: Thank you. That's all the questions
10 I had.

11 JUDGE RUTH: All right. Well, I have heard
12 from the chairman and the first witness, Dr. Aron, may be
13 excused. So let me say that right off the bat.

14 And we will then start up tomorrow with more
15 cross for Ms. Fernandez. Do the parties have any questions
16 before we take a break today?

17 Okay. Then we are adjourned for the day. Off
18 the record. Thank you very much.

19 WHEREUPON, the hearing was adjourned until
20 February 1, 2005 at 8:30 a.m.

21

22

23

24

25

1	I N D E X	
2	Opening Statement by Mr. Lane	11
3	Opening Statement by Mr. Haas	24
4	Opening Statement by Mr. Dandino	28
5	Opening Statement by Mr. Lumley	34
6		
7	SBC MISSOURI'S EVIDENCE	
8	DEBRA J. ARON	
9	Direct Examination by Mr. Lane	41
10	Cross-Examination by Mr. Haas	45
11	Cross-Examination by Mr. Dandino	74
12	Cross-Examination by Mr. Lumley	99
13	DEBRA J. ARON (Recalled)	
14	Questions by Commissioner Clayton	127
15	Questions by Commissioner Appling	147
16	Questions by Judge Ruth	151
17	Questions by Commissioner Murray	152
18	Questions by Commissioner Gaw	158
19	Further Questions by Commissioner Murray	182
20	Recross-Examination by Mr. Haas	183
21	Recross-Examination by Mr. Dandino	184
22	Recross-Examination by Mr. Lumley	193
23	Redirect Examination by Mr. Lane	194
24		
25		

1	I N D E X (CONT'D)	
2	SYLVIA ACOSTA FERNANDEZ	
3	Direct Examination by Mr. Bub	118
4	Cross-Examination by Mr. Haas	122
5	Cross-Examination (Cont'd) by Mr. Haas	211
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX		
2		Marked	Rec'd
3	Exhibit No. 1		
4	Direct Testimony of Debra J. Aron	*	45
5	Exhibit No. 2		
6	Surrebuttal Testimony of Debra J. Aron	*	45
7	Exhibit No. 3-HC		
8	Surrebuttal Testimony of Debra J. Aron,		
9	Highly Confidential	*	45
10	Exhibit No. 4-NP		
11	Direct Testimony of Sylvia Acosta Fernandez	*	121
12	Exhibit No. 5-HC		
13	Direct Testimony of Sylvia Acosta Fernandez,		
14	Highly Confidential	*	121
15	Exhibit No. 6		
16	Surrebuttal Testimony of Sylvia Acosta		
17	Fernandez	*	121
18	Exhibit No. 7-NP		
19	Direct Testimony of Sandy Moore	*	
20	Exhibit No. 8-HC		
21	Direct Testimony of Sandy Moore,		
22	Highly Confidential	*	
23	Exhibit No. 9		
24	Surrebuttal Testimony of Sandy Moore	*	
25			

1	Exhibit No. 10-NP	
2	Direct Testimony of Elizabeth Stoia	*
3	Exhibit No. 11-HC	
4	Direct Testimony of Elizabeth Stoia,	
5	Highly Confidential	*
6	Exhibit No. 12	
7	Surrebuttal Testimony of Elizabeth Stoia	*
8	Exhibit No. 13	
9	Direct Testimony of Harry M. Shooshan	*
10	Exhibit No. 14	
11	Surrebuttal Testimony of Harry H. Shooshan	*
12	Exhibit No. 15-NP	
13	Direct Testimony of Craig A. Unruh	*
14	Exhibit No. 16-HC	
15	Direct Testimony of Craig A. Unruh,	
16	Highly Confidential	*
17	Exhibit No. 17	
18	Surrebuttal Testimony of Craig A. Unruh	*
19	Exhibit No. 18-NP	
20	Rebuttal Testimony of Walter Cecil	*
21	Exhibit No. 19-HC	
22	Rebuttal Testimony of Walter Cecil,	
23	Highly Confidential	*
24	Exhibit No. 20	
25	Rebuttal Testimony of Adam McKinnie	*

1	Exhibit No. 21	
2	Surrebuttal Testimony of Adam McKinnie	*
3	Exhibit No. 22-NP	
4	Rebuttal Testimony of Bill Peters	*
5	Exhibit No. 23-HC	
6	Rebuttal Testimony of Bill Peters,	
7	Highly Confidential	*
8	Exhibit No. 24-NP	
9	Surrebuttal Testimony of Bill Peters	*
10	Exhibit No. 25-HC	
11	Surrebuttal Testimony of Bill Peters,	
12	Highly Confidential	*
13	Exhibit No. 26-NP	
14	Rebuttal Testimony of Barbara Meisenheimer	*
15	Exhibit No. 27-HC	
16	Rebuttal Testimony of Barbara Meisenheimer,	
17	Highly Confidential	*
18	Exhibit No. 28-NP	
19	Surrebuttal Testimony of Barbara Meisenheimer	*
20	Exhibit No. 29-HC	
21	Surrebuttal Testimony of Barbara Meisenheimer,	
22	Highly Confidential	*
23	Exhibit No. 30	
24	Rebuttal Testimony of Edward Cadieux	*
25		

1 Exhibit No. 32
2 Amended Rebuttal Testimony of
3 R. Matthew Kohly *

4 Exhibit No. 33
5 Surrebuttal Testimony of R. Matthew Kohly *

6 Exhibit No. 34-P
7 Direct Testimony of Sylvia Acosta Fernandez,
8 Proprietary *

9 Exhibit No. 35
10 Comments MCI submitted in California
11 regulatory proceeding 198 199

12

13 * Exhibits premarked.

14
15
16
17
18
19
20
21
22
23
24
25