

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7  
8 ON-THE-RECORD PRESENTATION  
9  
10 April 27, 2005  
11 Jefferson City, Missouri  
12 Volume 1  
13  
14 In the Matter of a )  
Recommendation Concerning the )  
15 Surcharge for Deaf Relay ) Case No. TO-2005-0308  
Service and Equipment )  
16 Distribution Program Fund )  
)  
17  
18 VICKY RUTH, Presiding,  
SENIOR REGULATORY LAW JUDGE.  
19  
20 STEVE GAW,  
ROBERT M. CLAYTON,  
21 LINWARD "LIN" APPLING,  
COMMISSIONERS.  
22  
23 REPORTED BY:  
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1 P R O C E E D I N G S

2 JUDGE RUTH: Good morning. My name is Vicky Ruth,  
3 and I am the Judge assigned to this case. Today is Monday,  
4 April -- I'm sorry. It is Wednesday, April 27th, and it is a  
5 few minutes -- let's see -- we'll say 10:40, past our original  
6 starting time.

7 We're here for Case TA -- I'm sorry --  
8 TO-2005-0308, in the matter of a recommendation concerning the  
9 surcharge for Deaf Relay Service and Equipment Distribution  
10 Program Fund.

11 I'd like to begin with entries of appearance. And,  
12 Staff, we'll start with you, please.

13 MR. HAAS: Good morning. My name is William Haas.  
14 I represent the Staff of the Public Service Commission in this  
15 matter. My address is Post Office Box 360, Jefferson City,  
16 Missouri.

17 JUDGE RUTH: You'll have to use the microphone in  
18 the future, Mr. Haas. Thank you.

19 Public Counsel?

20 MR. DANDINO: Thank you, Your Honor. Michael  
21 Dandino, Office of the Public Counsel, Post Office Box 2230,  
22 Jefferson City, Missouri 65102, representing the Office of  
23 Public Counsel and the Public.

24 JUDGE RUTH: Thank you.

25 SBC Missouri?

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1                   MR. GRYZMALA: Good morning, Your Honor. Bob  
2 Gryzmala for Southwestern Bell Telephone, L.P., doing business  
3 as SBC Missouri.

4                   JUDGE RUTH: Is -- is your microphone on?

5                   MR. GRYZMALA: I'm not hearing -- does that work?

6                   JUDGE RUTH: Much better. Thank you. I'm sorry.  
7 Can I get you to start over?

8                   MR. GRYZMALA: Yes. I'm sorry, Your Honor. I  
9 didn't have the microphone on.

10                  It's Bob Gryzmala for Southwestern Bell Telephone,  
11 doing business as SBC Missouri. My office is One Bell Center,  
12 Room 3516, St. Louis, Missouri 63101.

13                  JUDGE RUTH: Okay. Thank you.

14                  And Big River?

15                  MR. CURTIS: Yes. My name is Leland Curtis,  
16 representing Big River Telecommunications. My law firm is  
17 Curtis, Oetting, Heinz, Garrett & O'Keefe, 130 South Bemiston,  
18 Suite 200, St. Louis, Missouri 63105.

19                  JUDGE RUTH: Okay. Thank you.

20                  Today's hearing was scheduled to give the  
21 Commissioners an opportunity to ask questions about Staff's  
22 recommendation that the Commission raise the deaf relay  
23 surcharge from 10 cents per access line per month to 15 cents.

24                  We're going to begin with brief opening statements,  
25 and then we'll have questions from the Bench. The

1 Commissioners will generally direct their questions to  
2 counsel. However, if the question calls for an ans-- an  
3 answer which is evidentiary in nature, counsel may call a  
4 witness. We'll bring them up to the witness stand, swear them  
5 in and they may testify.

6 At the end of today's proceeding, we will have  
7 closing statements or closing arguments instead of briefs.

8 The transcript has been expedited, and should be  
9 submitted tomorrow, which means it will be on EFIS either  
10 Friday or Monday. If you want your own copy directly from the  
11 court reporter, you'll need to see her before today's  
12 proceeding is over.

13 Okay. We're going to start with opening  
14 statements. And before we went on the record, I asked the  
15 parties if they had any preference for the order, and they  
16 indicated they did not. So we will start with Staff.

17 And, Mr. Haas, will you make sure that that  
18 microphone is on when you come up?

19 MR. HAAS: Good morning. In the Order scheduling  
20 the on-the-record presentation, the Commission directed the  
21 Staff to be prepared to discuss two questions.

22 The first of those questions was whether the  
23 Commission has the authority to place limits on the amount of  
24 minutes that may be used by a participant of the Relay  
25 Missouri Program. The answer to that question is, maybe under

1 state law, and no under federal law.

2 Missouri Statute 209.253.1 provides that the  
3 Commission shall provide for a relay service that shall  
4 provide reasonable access to telephone service. Whether a  
5 limit on minutes is consistent with reasonable access would be  
6 a fact question.

7 Federal Statute 47 USC 225A3 provides that the  
8 relay system shall be functionally equivalent to  
9 telecommunication service.

10 Federal Statute 47 USC 225D directs the Federal  
11 Communications Commission to prescribe mandatory regulations  
12 that include a requirement that telecommunications relay  
13 service be available 24 hours a day. And that would prohibit  
14 relay operators from refusing calls or limiting the length of  
15 calls.

16 The FCC did adopt such regulations at 47 CFR 64.  
17 Regulation 47 CFR 64.604A31 provides that communications  
18 assistants are prohibited from refusing single or sequential  
19 calls or from limiting the length of calls.

20 Federal Regulation 47 CFR 64.604B41 provides that  
21 telecommunications relay services shall operate every day,  
22 24 hours a day.

23 The second question that the Staff was directed to  
24 address is whether the Commission could order that the amount  
25 of the relay surcharge be changed effective August 1, rather

1 than July 1, 2005.

2           The question stems from the requirement in  
3 Section 209.259.1 that the Commission shall review such  
4 surcharges no less frequently than every two years, but no  
5 more than annually.

6           So the question is, what are the consequences if  
7 the Commission finishes its review following the end of that  
8 two-year window?

9           The Supreme Court of Missouri addressed a similar  
10 situation in the case of Farmers and Merchants Bank versus  
11 Director of Revenue at 896 Southwest 2nd 30. In that case  
12 Farmers Bank sought a tax refund from the Director of Revenue.

13           The applicable statute, Section 143.831 RSMo  
14 states, the Director of Revenue shall mail notice of action on  
15 the claim for refund within 120 days of the mailing of such  
16 claim. The Director of Revenue had failed to answer that  
17 claim within 120 days.

18           Farmers Bank claimed that the Director's failure to  
19 deny its claim for refund within 120 days has stopped the  
20 Director from denying refund after the expiration of that  
21 time.

22           The Supreme Court began its analysis by looking at  
23 the meaning of the word "shall." The Court quoted from  
24 several other cases.

25           Whether the statutory word "shall" is mandatory or

1 directory is a function of context. Where the Legislature  
2 fails to include a sanction for failure to do that which shall  
3 be done, courts have said that shall is directory and not  
4 mandatory.

5           Moreover, courts have concluded that statutes  
6 directing the performance of an act by a public official  
7 within a specified time, or directory, is not mandatory.

8           The Court then turns its attention to the facts in  
9 the bank case. The Court said that Section 143.838 -- 831  
10 creates a duty in the Director to respond to claims for  
11 refunds. The Legislature did not include any statutory  
12 penalty for the Director's failure to respond within the time  
13 established.

14           Thus the Director's failure to respond to a claim  
15 for refund within 120 days does little more than establish a  
16 time after which an action for mandamus will lie against the  
17 Director to compel a decision on a refund claim.

18           By analogy the failure of the Commission to  
19 complete its investigation of the surcharge within the  
20 two-year timeframe would not preclude it from continuing that  
21 review or from issuing an order establishing a new surcharge.

22           The failure to act within that two-year window  
23 might establish a time after which an action for mandamus  
24 would lie, which would require the Commission to perform its  
25 review.



1           The Commission's notice stated that it would have  
2 some evidentiary or factual questions. Tom Solt, a Staff  
3 member who prepared the Staff's 2004 memoranda, is available  
4 to answer questions. Walter Cecil, the Staff member who  
5 prepared the Staff's 2005 memoranda, is also available to  
6 answer Commission questions.

7           Mat Gwinn (phonetic sp.), who is the relay account  
8 manager with Sprint TRS, is available to answer questions from  
9 the Commission concerning traditional relay services. Dennis  
10 Selznik (phonetic sp.), who is the CapTel account manager with  
11 Sprint TRS, is available to answer questions from the  
12 Commission concerning CapTel.

13           The Scheduling Order also mentioned that the  
14 parties would -- would have the opportunity to present  
15 exhibits. I do have one exhibit that I would like to have  
16 marked.

17           The appendix to the supplemental Staff  
18 recommendation that was filed on April 26th is black and  
19 white. I would like to have marked an exhibit that is in  
20 color. And I have sufficient copies.

21           JUDGE RUTH: We'll go ahead and pass that out. For  
22 identification purposes, at this point, I'll mark it as  
23 Exhibit 1.

24           (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION BY THE  
25 COURT REPORTER.)

1 JUDGE RUTH: So the only difference is this is in  
2 color; did I understand correctly?  
3 MR. HAAS: Yes, that's correct.  
4 JUDGE RUTH: Thank you.  
5 I need one more for Commissioner Murray. I kept  
6 one for me. Sorry.  
7 Mr. Haas, did you intend to just provide this and  
8 have me mark it as Exhibit 1 for identification purposes or  
9 were you actually wanting to admit it on to the record -- or  
10 into the record?  
11 MR. HAAS: I would like to have it admitted into  
12 the record, Your Honor.  
13 JUDGE RUTH: Then let me ask if there are any  
14 objections to this document being received into the record.  
15 Start with you, Mr. Dandino?  
16 MR. DANDINO: No objection, Your Honor.  
17 JUDGE RUTH: SBC?  
18 MR. GRYZMALA: No, Your Honor.  
19 JUDGE RUTH: And Big River?  
20 MR. CURTIS: No objection.  
21 JUDGE RUTH: Okay. Exhibit 1 is received into the  
22 record.  
23 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)  
24 JUDGE RUTH: Did you have anything further,  
25 Mr. Haas?

1           MR. HAAS: In conclusion, the Staff supports a  
2 relay surcharge of 15 cents, as explained in the two  
3 memoranda, which we have filed in this case.

4           Thank you.

5           JUDGE RUTH: Okay. Mr. Dandino?

6           MR. DANDINO: Thank you, Your Honor. May it please  
7 the Commission, the Office of the Public Counsel strongly  
8 supports the Missouri relay program.

9           To address one of the points about any limitation  
10 or restriction on the number of hours or minutes of use by  
11 individuals using the Missouri relay, the Office of Public  
12 Counsel would be opposed to that, in the fact that it -- we  
13 think that this is a primary way for many of Missourians to  
14 communicate.

15           And if we're interested in -- in providing  
16 telecommunications services to all our citizens at the best  
17 level of parity, we could -- we could provide a reasonable  
18 level of parity that could support and could maintain the  
19 program as it -- as it is. I think the Missouri relay program  
20 has been successful and is useful to the citizens of the  
21 State.

22           In addition, when we talk about the ability of the  
23 Commission to review -- to review and -- and set the surcharge  
24 levy at a -- at a different time of -- of -- of the year, as  
25 in August, the Office of the Public Counsel, we agree with the

1 Staff in their interpretation of 209.259.1.

2           Especially I think if you look at the last section  
3 of the -- or the last phrase of that sentence where it says  
4 that, and shall order changes in the amount of the surcharge  
5 as necessary to assure available funds for the provision of  
6 the programs established in 209.53.

7           I believe the limitation -- as -- as Mr. Haas  
8 pointed out, the limitation that -- that the surcharge be  
9 reviewed not less than frequently than every two years, but  
10 not more than annually, is more just to set a timeframe of --  
11 of which the Commission is -- is literally forced to look at  
12 the sur-- the surcharge.

13           I don't believe that is a limitation where it takes  
14 away their power to -- to look at the surcharge and to -- and  
15 to -- more importantly to order changes in the surcharge as  
16 necessary and as determined by the facts to assure available  
17 funds.

18           I think that's the whole purpose of the -- of the  
19 Commission is to act on facts within their -- in their  
20 discretion, and to make sure that programs authorized by the  
21 General Assembly are, in fact, provided for and funded.

22           I think as far as the Staff's recommendation of --  
23 of increasing the fund to 5 cents to 15 cents, yes, the Public  
24 Counsel is a little reluctant to concur with that.

25           We -- we're looking -- in our review of the figures

1 and the -- and the amount, it looks like the historical -- we  
2 don't think the historical trend has necessarily supported  
3 that much of an increase.

4           The precipitous I guess fall -- in the last few  
5 months of \$600,000 -- or I'm not even gonna get into the  
6 figures because I'll get them wrong. But of the amount since  
7 January to March is -- wa-- is unusual. And I think a  
8 prudence would require us -- would require the Commission to  
9 take a hard look at that, and make sure that that isn't the  
10 start of a -- of a -- of a -- of a spiral downward -- a  
11 steeper spiral downward.

12           So the Office of the Public Counsel would suggest  
13 that maybe 2 cents, perhaps 3 cents at the -- at the maximum  
14 would be the biggest increase that they should allow in this.

15           If I were to recall right, 13 cents was the limit  
16 on it a few years ago. And I think that's the maximum it has  
17 been at. And I think it's -- I think it's important to -- if  
18 possible, to keep it under that limit.

19           Also I think we have to look at it that the -- the  
20 funds should not be intended to create a reserve. This should  
21 be almost a pay-as-you-go program with a slight -- a slight  
22 cushion. But we don't want, you know, many millions of  
23 dollars in this fund.

24           I think, you know, given the -- the budget  
25 situation and given the economy, I think it would be

1 inappropriate for the -- for us to just have a tax to --  
2 to -- to -- with a large reserve on it. I think it is  
3 important, especially given the surcharge. And the Office of  
4 Public Counsel has opposed surcharge in the past, even though  
5 we -- we support this surcharge for this purpose.

6           If we had our way, there'd be a different way to  
7 fund this. But certainly a surcharge per line, if we're --  
8 we're gonna have it, I think it should be no more than  
9 absolutely necessary to fund it, since it does impose a  
10 greater burden on the -- on the low income and the fixed  
11 income, and -- and just the wire line customers than -- than  
12 some other measures -- than some other funding measures.

13           With that, the Office of the Public Counsel  
14 recommends that the Commission approve a -- an increase in the  
15 amount -- or -- or consider an increase in the amount, but not  
16 more than 3 cents.

17           Thank you.

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

19           Mr. Gryzmala?

20           MR. GRYZMALA: Thank you, Your Honor,  
21 Mr. Commissioners. Our interest in the matter -- that is  
22 SBC Missouri's interest in the matter is fairly limited,  
23 fairly focused. We, too, support the Missouri relay program.

24           We do believe that the Commission, however, should  
25 satisfy itself that the purposes of the program are being

1 furthered, and that amounts that are collected by virtue of  
2 the surcharges are being properly and wisely spent.

3 Our interest primarily has to do with regard to  
4 the -- the period which our company would need to have in  
5 order to effectively implement any increase that might be  
6 ordered by the Commission.

7 With that in mind, I'll refer to the pleading that  
8 we filed earlier in the case dated April 12, which remains the  
9 case today insofar as our position is concerned.

10 SBC Missouri submits that in the event of the  
11 Commission determines to increase the monthly re-- relay  
12 Missouri surcharge from 10 to 15 cents effective July 1, the  
13 Commission should issue its Order doing so not less than  
14 approximately 60 days prior to that time; in other words,  
15 April 29 or thereabouts.

16 Though the -- the reasons that we have for  
17 advancing that roughly 60-day period have to do with  
18 IT considerations, information technology considerations, and  
19 consumer considerations.

20 With regard to information technology, that is code  
21 programming, the updating of rate tables that would physically  
22 alter the amount that, if I recall, currently says today relay  
23 Missouri surcharge 10 cents, would say later relay Missouri  
24 surcharge 15 cents. Those rate table updates and changes, and  
25 including important testing, would have to be accounted for.

1           Similarly on the bill message front, as a company  
2 our practice generally is to give customer notice of changes  
3 that we -- that they will see on their bills. Our custom, our  
4 preference is likewise that we do so in advance.

5           In other words, in lieu of providing a billed  
6 message to the customer on the very same bill that an increase  
7 might appear for relay Missouri, we would like to -- our  
8 preference is to do that on the prior series of bill cycles.

9           So that if, for example, a customer's bill was  
10 dated on July 7, and that increase appeared on that bill, our  
11 preference would be that we would have liked to have given  
12 customer notice -- that customer notice on the June 7 bill.  
13 So that's likewise a consideration.

14           Bottom line is that, while I observe that there  
15 were various ranges given to the Staff's inquiry among the  
16 local exchange carriers of -- as little as 3 days up to  
17 90 days, our bottom line is 45 days to 60 days. 45 days cuts  
18 it close, Your Honor. We would feel quite comfortable with  
19 60 days in advance.

20           I would also make one last point that this may be  
21 quite acceptable insofar as the Staff is concerned. I have  
22 tried to keep up on the reading. But it just occurred to me,  
23 if I recall, that in a pleading recently filed -- this would  
24 be the supplemental Staff recommendation filed just yesterday.

25           I noticed that in the memorandum from Mr. Cecil at



1 page 5 the statement is made that Staff recommends the  
2 Commission increase the surcharge to 15 cents effective  
3 October 1, 2005.

4           If that'd be the Commission's decision,  
5 SBC Missouri is very comfortable at giving 60 days prior to  
6 that, which is a little bit of time from today. We could --  
7 we could quite take care of that matter.

8           That's all I have.

9           JUDGE RUTH: Thank you.

10          And Mr. Curtis?

11          MR. CURTIS: Judge Ruth, Commissioners, my name is  
12 Lee Curtis. I represent Big River. Big River certainly does  
13 support the Missouri relay program. Our intervention here is  
14 not to advance a particular position. We have no position on  
15 the sta-- on the increase proposed by the Staff.

16          We have not had time to get into the particulars.  
17 We trust the Commission will review those carefully. We take  
18 no position on the limitation of minutes of use, and recognize  
19 the statutes that have been cited by Mr. Haas, and recognize  
20 the duty the Commission has there.

21          With regard to the effective date, we concur with  
22 SBC and Staff's recommendation of an October 1 greater lead  
23 time we are given. 60 days would be better.

24          Having said we have no position on the 50 percent  
25 increase, Big River would -- would simply note -- and we are

1 interested in understanding more about this.

2           It -- it seems to us somewhat counterintuitive that  
3 a 50 percent increase in this program would be needed at a  
4 time when all technology in this area is driving costs down  
5 in -- in virtually every other area.

6           We would expect to see, perhaps, on some uses that  
7 were not completely up to date on all the -- all the  
8 technology, and we are interested in hearing from the people  
9 who are here who are (sic) more expertise in that area.

10           It also appears that there might be some declining  
11 usage in the program, and that also led to our feelings of it  
12 being counterintuitive to have a 50 percent increase.

13           Thank you.

14           JUDGE RUTH: Okay. Thank you for those comments.

15           We're going to proceed now with questions from the  
16 Bench. We may gain some more Commissioners later. And I have  
17 been given a few questions from some of the Commissioners not  
18 here.

19           But I'll start with you, Commissioner Gaw. Do you  
20 have any --

21           COMMISSIONER GAW: Let Commissioner Appling go  
22 first, because he always has to wait.

23           JUDGE RUTH: That's kind of you.

24           Commissioner Appling?

25           COMMISSIONER APPLING: Yeah, I was waiting because

1 I thought I had some extra time to get prepared, but -- and  
2 now you've done changed the scenario here.

3 I don't -- I have a couple of questions on CapTel,  
4 and I have -- and I'm not sure exactly who is the best to --  
5 to answer that question. But I reckon I'll start off with the  
6 Staff.

7 Staff, you provided various scenarios on the -- the  
8 amount of money that it would cost in order to keep this in  
9 place on the surcharge. The number of phones distributed each  
10 month and the number of minutes used per month -- each month,  
11 why did you select only certain scenarios and not kind of give  
12 us figures on all of the scenarios?

13 Do you -- do you recall what I'm talking  
14 about? You came up with the cost, remember? And you only  
15 filled in a few of the blanks?

16 MR. HAAS: Commissioner, I would like to call  
17 Walter Cecil to answer those fact questions.

18 COMMISSIONER APPLING: Okay.

19 JUDGE RUTH: Mr. Cecil, I'll need you to move up to  
20 the witness stand.

21 Could I get you to raise your right hand?

22 (WITNESS SWORN.)

23 JUDGE RUTH: Okay. And while I have you here,  
24 would you clarify your name and -- and your position?

25 THE WITNESS: Yes, ma'am. My name is Walt Cecil.

1 Last name is spelled C-E-C-I-L. I am an Economist II in the  
2 Telecommunication Department on the Commission Staff. My --  
3 my business office is 200 Madison Street, Fifth Floor,  
4 Jefferson City, Missouri.

5 JUDGE RUTH: Thank you.

6 And before I allow him to answer the questions,  
7 Mr. Haas, was there anything else you needed to ask of this  
8 witness?

9 MR. HAAS: No, Your Honor.

10 JUDGE RUTH: Thank you.

11 Please answer the Commissioner's question then.

12 WALTER CECIL testified as follows:

13 QUESTIONS BY COMMISSIONER APPLING:

14 Q. Let me -- let me -- let me try to clarify exactly  
15 what I was asking. You -- you gave, I think, four scenarios,  
16 one with 11 phones and with 106 minutes, and then 11 phones  
17 with 200 minutes, and then 50 phones with 106 minutes per  
18 month, then 50 phones with 200.

19 So would you expound on that a little bit, if you  
20 don't mind -- if you can?

21 A. I would be -- I would be pleased to, sir. I -- I  
22 don't believe I created any scenarios with 11 phones. Those  
23 would be Mr. Solt's scenarios.

24 Q. Okay.

25 A. But his scenarios were also based on --

1 approximately on 100 minutes. The scenarios that I created  
2 were based on 20 phones per month being distributed with the  
3 idea that there would be 153 minutes, 175 minutes and  
4 200 minutes.

5 The reason that we selected 20 phones a month is  
6 that appears to be what is occurring in the distribution  
7 program now. We consulted with Dr. Golden of the distribution  
8 program, and she felt that that figure was a reliable figure  
9 going forward.

10 The reason that we chose the quantities of minutes  
11 that we did was that the 153-minute scenario appeared to  
12 reflect what was being consumed at the time of the first Staff  
13 recommendation.

14 At that time I had what appeared to be about  
15 4 months worth of usage data that we could depend upon. And  
16 the average looked to be about 152 minutes and some change.  
17 So we rounded that to 153 minutes.

18 In January, if I recall correctly, the usage had  
19 spiked. It had gone up to around 167 minutes. When I looked  
20 at the historical behavior of those minutes, it appeared to me  
21 that we were still going upward.

22 The idea behind CapTel was that it would appeal to  
23 an audience therefore not served. And so it seemed reasonable  
24 to me to assume that we would see a continuation of the upward  
25 utilization of minutes.

1 Q. Uh-huh.

2 A. That being the case, we prepared a scenario for  
3 200 minutes, with the idea that if that was too much, we could  
4 provide another recommendation at some time in the future for  
5 an adjustment. And if that turned out to be right, well and  
6 good.

7 The reason that we then prepared the 175-minute  
8 scenario was that we had a couple more relay bills come  
9 through. We have a little more information, and it appeared  
10 that the 167-minute activity was a spike. It appears to me  
11 that -- if you'll look at -- pardon me for a moment, please.

12 If you just observe Appendix 1-6, it represents  
13 CapTel usage.

14 Q. Uh-huh.

15 A. And the more or less horizontal line represents the  
16 usage of that service under the trial that ended last June.

17 The dip represents the transition in that service.  
18 And then going from the dip upward, it appears to me that we  
19 might have more utilization at the moment than we're  
20 anticipating.

21 We really don't have enough information to say for  
22 certain what's going to happen. And any kind of forecast is a  
23 guess. So we've decided that 153 minutes, 175 minutes and  
24 200 minutes appeared reasonable.

25 We did do a -- a set of scenarios on 50 phones, but

1 that was the worst-case scenario that we're not working --  
2 that we just don't believe is likely to occur.

3 Q. Okay. I wasn't clear on whether we can set the  
4 limits with the number of minutes. What are your thoughts on  
5 that?

6 A. Well, I'll be glad to respond to your question, but  
7 I -- I am not an attorney, and so I -- I -- but I'm sure that  
8 someone would --

9 Q. That might be helpful.

10 A. Okay.

11 Q. Go ahead.

12 JUDGE RUTH: I'm sorry. Were you wanting him to  
13 answer the question or his counsel?

14 COMMISSIONER APPLING: Whichever one is fine with  
15 me.

16 THE WITNESS: I'll be glad to respond.

17 I don't think from a plain reading of the statutes,  
18 the Americans with Disabilities Act is specific, but the FCC's  
19 rules as well, that that would be possible under federal law.  
20 I do read the state statutes to give the Commission some room.

21 From a practical standpoint, if you were to call  
22 Mr. Selznik's, Sprint's representative, using CapTel or any  
23 relay form whatsoever and he had used up his allotment of  
24 minutes, assuming one had been in place, you couldn't complete  
25 your call.

1           So the burden would not only be on Mr. Selznik, it  
2 would be on you as well.

3 BY COMMISSIONER APPLING:

4           Q.    Uh-huh.

5           A.    So by limiting the service, you're limiting the  
6 ability of someone to use the phones, and not necessarily a  
7 person that's in possession of a TTY or of a CapTel phone or  
8 of some other facility.

9           And second, the relay does not purchase the basic  
10 telephone service. It does purchase the service in between.  
11 So if I were speech or hearing disabled, I would still have to  
12 buy my own telephone line with Sprint or my own DSL service  
13 for high-speed access for the other kinds of relay. I -- I  
14 would still have to pay for that.

15           What I would be getting through the relay is an  
16 intermediary that can complete my call for me where I am  
17 disabled. So if you were to limit my minutes, you would also  
18 limit my purchasing, something that a person who is not in  
19 some way impaired would not experience.

20           Q.    Another question. Is there enough accountability  
21 in the relay program?

22           A.    I -- I'm not certain that I -- I understand your  
23 question. Would you mind rephrasing that?

24           Q.    What I'm saying is -- I'm asking, is there enough  
25 accountability? Is there -- is there things in place that



1 maybe show that we -- that this is being run accurately and  
2 appropriately to make sure that we're not -- that this program  
3 is not being abused?

4           And that's a tough question, I know. But I'm  
5 putting you on the spot here.

6           A. Well, no, I -- I can respond. It's just not a very  
7 pleasant answer.

8           Federal statutes require functional equivalents.  
9 If I wanted to use the relay to -- to perform an illegal act,  
10 I could. And federal law requires that you pay for that in  
11 the relay. If I wanted to call a 900 number, I could. That  
12 would be required.

13           The operators at the relay center are at times  
14 offended by what they hear, but they have to tolerate that.  
15 They can't talk about it. They have to go on.

16           So in terms of usage, federal law requires  
17 functional equivalents, whatever that means. Whatever you or  
18 I could do on a phone, the people who use the relay from the  
19 initiating it would also have to be allowed to do.

20           So in that respect, if there is any accountability,  
21 it is that we can't watch someone's usage. That's just simply  
22 not --

23           Q. Appropriate?

24           A. -- allowed. Although I -- I think it would be  
25 appropriate, I -- I find it at times difficult to accept the

1 fact that we pay a surcharge and someone can make an obscene  
2 phone call. But that's the necessary evil here.

3 On the other hand, there are other laws that would  
4 apply to me if I made an obscene phone call, and they would  
5 still apply. So there are other avenues to deal with those  
6 sorts of issues.

7 In terms of the minutes re-- charged by Sprint for  
8 CapTel or for traditional relay services, they provide a very,  
9 very large document every month detailing the numbers of  
10 minutes used, how they're used, the quality of service that  
11 they provide, the time it takes to get an answer, how many of  
12 those minutes are reimbursed through the federal program, how  
13 many are reimbursed through the state program.

14 And then when I receive the bill, I verify that.  
15 And then we send the bill forward through budget and fiscal  
16 services. And it goes to the Treasury Department, and the  
17 check is eventually cut.

18 So I think in terms of fiscal oversight, yes, I --  
19 I do think there is ample.

20 Q. The 50 percent increase in this -- in this  
21 surcharge is -- is -- it kind of just raises your eyebrows a  
22 little bit. But do you feel that it's necessary to do that in  
23 order to keep this fund going?

24 A. Yes, I do. But I want to remind you that  
25 50 percent in this case is a nickel. 5 cents is 50 percent of

1 a dime, but it's not 50 percent of \$10.

2 If -- if we were asking for 50 percent of a large  
3 sum of money, I think that we would be concerned. But we're  
4 not. We're asking for a small sum.

5 But to be very specific here, we think that, given  
6 our scenarios, that the program will exhaust the fund balance  
7 in the not-too-distant future. And this is an appropriate  
8 time to deal with that.

9 I might point out that several years ago the  
10 surcharge was 13 cents. And it was reduced to 9 cents,  
11 because at that time the fund balance exceeded \$5 million, and  
12 the Commission felt that it was inappropriate to have it that  
13 large.

14 Q. Uh-huh.

15 A. And they knew at some time that another surcharge  
16 would be necessary, but under different circumstances. And I  
17 believe we're facing different circumstances now, and it's  
18 time to re-evaluate.

19 Q. I think I'm down to near my last question. What is  
20 the most important factor to look at in the fund balance,  
21 monthly income or com-- compared to the monthly expenses,  
22 which is -- which is the most important?

23 A. I don't think I could rank one over the other. The  
24 revenue that the fund receives is -- it comes in on an  
25 irregular basis.

1 Q. Uh-huh.

2 A. I believe just the graph that I've provided in  
3 Appendix -- Appendix 1-9 indicates -- indicates how  
4 irregularly the funds can be received.

5 And -- and just to point out that typically we  
6 receive in the neighborhood of \$300,000 a month. Last month  
7 we received 110. So it's very important to monitor what's  
8 coming in.

9 But equally traditional relay minutes are  
10 declining. I think last month's bill was in the neighborhood  
11 of \$230 or \$240,000. We can verify that exactly, but that's  
12 off the top of my head.

13 When you add CapTel into that, there's another  
14 45,000. But then the equipment distribution program has a  
15 claim to the fund balance. And we -- we don't know how much  
16 they're going to spend.

17 My position on that is that we have to have ample  
18 funds for them to spend their full appropriation. So we need  
19 to collect funds with the idea that they're going to spend  
20 their full appropriation, should they need to.

21 And then a relatively small amount comes out of  
22 fund once a quarter -- about \$16,000, \$17,000 for various  
23 activities in the state government.

24 If the fund is insufficient to handle any of those,  
25 I -- I -- I think that it -- it would be a travesty, at least

1 to the users of the relay. So honestly I think we need to  
2 monitor both of those.

3 Q. Last question. If there's no CapTel -- if there's  
4 no CapTel, who will be hurting?

5 A. At least two different groups of users. There is  
6 a -- a traditional relay service called voice carryover. And  
7 that allows a person to speak, but they tend not to be able to  
8 hear.

9 They might be a older person whose hearing is  
10 diminished.

11 Q. Uh-huh.

12 A. Or a person who just has the good fortune of being  
13 able to speak well and never having heard a sound. But they  
14 could use a TTY system. And they pick up the phone and they  
15 talk. And then they put the phone back into the TTY and they  
16 use the TTY to read what is being said by the other party.

17 You would see inefficiency from someone using this  
18 voice carryover lost. Equally there are elderly people -- and  
19 I believe that's the group that CapTel was initially designed  
20 to satisfy. People who have lost their hearing, they've never  
21 used a TTY system. They'd be offended by using a TTY system.  
22 And they see this -- this thing that looks very much like a  
23 regular telephone, except it's got a little digital pad on it  
24 that sends text.

25 And with that system they can moni-- read what is

1 being said to them. So we have a group of people that perhaps  
2 have never used the relay system, but can have needs satisfied  
3 with it. But if CapTel is no longer provided, that group of  
4 people will have a need that will remain unsatisfied.

5 And they may stop using the phone system. They may  
6 not have used the phone system for several years.

7 COMMISSIONER APPLING: Thank you, Walt.

8 JUDGE RUTH: Commissioner Gaw?

9 COMMISSIONER GAW: Thank you, Judge.

10 QUESTIONS BY COMMISSIONER GAW:

11 Q. Mr. Cecil, in -- in your Exhibit No. 1 could you  
12 tell me what -- what are the -- first of all, have the -- have  
13 the costs of the -- the program been going up or down or  
14 stayed the same -- the costs of the program, the ongoing --

15 A. I -- I understand that. I'm not sure what part of  
16 exhibit -- of the --

17 Q. I don't care what --

18 A. Okay.

19 Q. -- what you look at.

20 A. All right.

21 Q. You can tell me where it is if you want to.

22 A. I'll be glad to. Traditional relay services,  
23 meaning the service where telecommunications provides for the  
24 deaf is used or speech-to-speech services are used tend to be  
25 declining. The minutes are reducing.

1           There's some evidence that that's going to the  
2 federal fund. There's some indication it's to CapTel. But  
3 traditional relay that is paid for by the State seems to be  
4 declining in minutes, and therefore, an expense.

5           JUDGE RUTH: Could you make sure your microphone is  
6 close to you?

7           THE WITNESS: Thank you.

8 BY COMMISSIONER GAW:

9           Q. Okay. Now, you said that you -- there's a question  
10 why that's being reduced. And you said two things, one  
11 CapTel, the other is federal funds.

12           I want you to tell me -- I want you to tell me  
13 three things. First I want you to describe for me what deaf  
14 relay is. I then want you to tell me what you mean when  
15 you're talking about the federal funds, and then I want  
16 to -- or whatever, the federal --

17           A. Program.

18           Q. -- program.

19           And then I -- I want you to tell -- to give me a  
20 specific description of CapTel. Thank you.

21           A. Yes, sir. The relay system is essentially an  
22 intermediary system that allows either a hearing or a  
23 speech-impaired person to use the telephone network, and  
24 allows them to complete telephone calls.

25           There are several ways that this intermediary

1 functions. What we tend to think of as traditional relay  
2 requires the use of a telecommunications device for the deaf,  
3 which is plugged into a typical phone jack, acts as a  
4 telephone.

5           The user would turn it on. They would send a  
6 message to the relay center. There is an operator at the  
7 relay center who would read the text that is typed into the  
8 user's TDD.

9           And that operator would then say, hold on for a  
10 moment, please. And they would use the phones -- telephone  
11 system, as you or I would, dial a phone call, complete it.  
12 You or I would answer the phone, and then this person would  
13 simply read what is typed in over the caller's TDD and voice  
14 that to the called party. The called party then hears,  
15 responds back with voice.

16           The operator or the calling assistant will then  
17 enter on to her -- his or her keyboard the text. And the  
18 calling party will read that over the telecommunications  
19 device for the deaf.

20           Essentially that's what the relay is. It is a  
21 system where there's an intermediary that just allows the  
22 phone call to be completed. There are -- there are technical  
23 ways to -- to alter that.

24           There's something called video relay now where a  
25 person with high-speed broadband access and a computer and a



1 video camera can use sign language. And they'll sign, be  
2 picked up by the camcorder or -- or the video camera. The  
3 signal will be sent to a call center, an interpreter, a  
4 real-life person. Looks like the one we have here. Will read  
5 that and will pick up the telephone and call you, call me and  
6 voice the conversation.

7           They will then accept -- take our responses and  
8 sign them into their web cam. And on the monitor the deaf  
9 person will see it, and the conversation will be facil--  
10 facilitated.

11           Not all relay systems -- or calls, pardon me, are  
12 intra-state in nature. There is a federal relay that picks up  
13 interstate calls. And there's also -- it also serves the  
14 federal government in its need for relay services.

15           When you can't identify the origination point of a  
16 phone call, then it goes to the federal fund. If I were to  
17 use the video relay service that I have described, it would be  
18 an internet call. And the relay wouldn't know where I am. I  
19 could be in Alaska or -- or I could be in Bangkok or -- or I  
20 could be in Mexico, Missouri.

21           So given that they don't know where it begins, it  
22 would be funded from the federal funds as well.

23       Q.   Okay. All right. So you think all of the video  
24 technology that you're describing is running through  
25 interstate and -- and being paid for under the federal

1 program?

2 A. Yes.

3 Q. Okay. So that's -- it's a possibility that -- that  
4 that program has become more popular?

5 A. Oh, there's no question.

6 Q. And -- and because of that, that would -- that  
7 would relieve the expenditures of the Missouri fund, to some  
8 extent?

9 A. To some extent. But as I said, it does require the  
10 user to have a broadband connection, cable modem DSL, and  
11 that's --

12 Q. I -- I'm just trying to --

13 A. Yes.

14 Q. -- identify the reason for the -- the -- the -- the  
15 lowering of the amount being expended under the deaf relay  
16 right now.

17 A. That is -- that is one. There -- there is another.

18 Q. Is there another possibility that -- we're not to  
19 CapTel yet.

20 A. Correct. Yes. Without necessarily needing  
21 broadband, I could enter -- or I could access IP relay,  
22 internet protocol relay. I could use my computer at home with  
23 a dial-up modem.

24 Q. Right.

25 A. I could type in Sprint relay online, their address,

1 and it would be as though I were deaf and I was using my TTY  
2 at home, except that I'm using dial up or broadband.

3 And if I'm using broadband especially, you still  
4 can't identify where I'm originating the call from.

5 Q. Uh-huh.

6 A. The operator in between still says, oh, here comes  
7 an internet call. It's text. I pick up my phone. I dial. I  
8 terminate the call. I act as the intermediary, as I've  
9 described before, except I don't know where you are.

10 So -- so the federal funds -- or the federal relay  
11 program, the interstate program, picks up that expense as  
12 well. And that is a much more likely scenario. It's much  
13 less expensive.

14 Q. It's less expensive under the federal program?

15 A. It's less expensive for a user to get the  
16 equipment. They already have the computer, so --

17 Q. I see. I'm with you now.

18 So would -- would Missouri funds provide any of the  
19 equipment for -- for those services?

20 A. I think that's a question better directed at  
21 Dr. Golden.

22 Q. Sure.

23 A. I --

24 Q. You don't know the answer?

25 A. I really don't know the answer to that.

1           Q.   All right.  Then in regard to the -- the CapTel  
2   portion, you said some of the decr-- decreased usage and  
3   traditional deaf relay may be because of CapTel?

4           A.   Yes, sir.

5           Q.   All right.  Now, I want you to tell me -- I don't  
6   know -- for the record, what is CapTel?  And -- and describe  
7   it for me.

8           A.   CapTel is -- it's a third-party relay system.  It  
9   behaves very -- it behaves in a similar manner.  But rather  
10  than initiating a phone call with a TTY, you have a very  
11  special CapTel phone.  And I -- I believe we have one here  
12  today if you'd like to see one.

13                   The phone is designed to access a very special call  
14  center.  When you place a CapTel call -- when a user places a  
15  CapTel call, they dial a number and the phone dials a  
16  different number.  The call center recognizes that this number  
17  isn't terminating there, so the -- the call is completed to  
18  the destination that's desired.

19                   The calling party then speaks into the phone.  And  
20  as the call party, you hear their voice.  But the CapTel user  
21  has hearing difficulty of some degree.  So the called party,  
22  when they respond, has their voice transmitted to two places.

23                   It goes into the CapTel phone.  It -- It's  
24  broadcast through the -- the handset.  But it also goes to a  
25  call center where a calling assistant hears the message word

1 for word and mimics the call -- speaks into a computer with  
2 voice recognition software.

3           The computer then translates that to text and  
4 broadcasts the text back to the CapTel phone over a display  
5 unit where the calling party then can read what's being said  
6 as well. There's only --

7       Q.    Go ahead.

8       A.    I was just going to say that the technology is  
9 still relatively new. And there's only one company producing  
10 the equipment at the time. And I believe it's Ultratech.

11      Q.    All right. And so -- so if -- if you were unable  
12 to -- if you -- if you had speech impairment to the extent  
13 that you wouldn't be able to be understood by some people or  
14 most people, would you be able to use a CapTel phone --

15      A.    Oh, no.

16      Q.    -- or would you have limitations?

17            You -- you have to be able to speak --

18      A.    Yes.

19      Q.    -- in a -- in a way that others can understand in  
20 order to use that -- that technology?

21      A.    Well, I -- yes, sir. It -- it's -- it's part of  
22 the voice carryover service. You really do need to be able to  
23 speak so someone else can hear you. Otherwise it does you no  
24 good.

25      Q.    Yeah. So it has -- it has, in essence -- it

1 provides a mechanism for -- for some -- for some individuals  
2 it can be very beneficial if -- if they have some -- if they  
3 have the ability to -- to -- to enunciate and speak,  
4 and -- and they can also -- but they have a -- but they have a  
5 hearing issue that causes them not to be able to necessarily  
6 pick up everything that comes back; is that --

7 A. Yes, sir.

8 Q. Is that accurate?

9 A. Yes, it is.

10 Q. All right. And is the CapTel -- the CapTel phone,  
11 has it proven to be a popular item?

12 A. My understanding is that it isn't as popular as we  
13 thought it was going to be. The stories that I'm hearing are  
14 that when it first came out, people thought, good heavens,  
15 this is going to fix my hearing. I'm going to be able to use  
16 a telephone just like I could when I was 20.

17 Q. Yeah.

18 A. And discovered, gee whiz, my ears still don't work,  
19 this phone doesn't give me back my hearing, I'm not sure I  
20 want to use it or it might be a little too complicated.

21 Q. And what do you base that on?

22 A. Conversations with Mr. Gwinn and Mr. Selznik and  
23 Dr. Golden. Doc-- Mr. Selznik is Sprint's CapTel  
24 representative. And Mr. Gwinn is -- was also their  
25 representative, but he found it more difficult to represent

1 Sprint to groups of people who were saying, I don't need  
2 TTY service -- or I don't need relay. I'm not deaf. I don't  
3 need this.

4 Q. Yeah. All right. So -- so in -- in -- are -- are  
5 there some individuals that do find great benefit to the  
6 CapTel phone?

7 A. Yes. Yes, there are.

8 Q. All right. So some people have tried it don't find  
9 it meets their needs; some people have tried it and -- and  
10 feel it's very important to -- to their -- to their ability to  
11 communicate, would that be fair?

12 A. I think that's a very accurate characterization.

13 Q. So do you recall what the predictions were last  
14 year in regard to CapTel usage when the PSC was looking at  
15 whether or not to make that offer more than just a trial?

16 A. Oh, I -- I've read some of the -- the paperwork.  
17 But it seems that they were projecting somewhere along the  
18 lines of 11 phones a month at roughly 100 -- 100 minutes a  
19 month. Maybe a little more than that.

20 Q. Okay. And -- and so what was the -- what has the  
21 actual usage been again?

22 A. Most recently we're up to around 20 phones  
23 distributed a month. The last figure I had is that there are  
24 a total of 253 phones that are in the hands of the public.  
25 And the usage is somewhere in the neighborhood of 150 minutes.

1 Q. All right. So the usage is -- is somewhat more?  
2 A. It's about a third --  
3 Q. -- than what was predicted?  
4 A. It's about 50 percent higher than what was  
5 expected.  
6 Q. Okay. And the number of phones issued is -- is  
7 more or less?  
8 A. It's about double.  
9 Q. Double what was predicted.  
10 Now, is there any indication that that is a trend  
11 that's changing in the -- in the last -- in the last two or  
12 three months or does it seem to be moving in any particular  
13 direction, increasing, decreasing, staying the same, on phone  
14 demand?  
15 A. It appears to me that phone demand is hovering in  
16 the neighborhood of 20 phones a month. But sometimes a little  
17 more, sometimes a little less. 20 is good figure.  
18 Q. Okay.  
19 A. In terms of usage, we're still shooting in the  
20 dark. It looks to me like it's still going to increase, but  
21 at a slower rate than we first thought.  
22 Q. All right. Now, earlier you -- you were in a  
23 discussion with Commissioner Appling in regard to what an  
24 individual has to -- to -- to pay for if they qualify  
25 for -- or in this case let's say CapTel.



1           I want you to tell me what it is that is provided  
2 and -- and what it -- what an individual that's making a phone  
3 call using the CapTel service pays for.

4           A.    I can't speak to whether they receive the CapTel  
5 phone at a reduced rate or whether it's given to them or not.  
6 I don't know what -- what those terms are. In terms of the  
7 usage of the --

8           Q.    Who know that?

9           A.    In terms of the usage of the system --

10          Q.    Who knows -- who knows that?

11          A.    Dr. Golden would.

12          Q.    All right. All right.

13          A.    In terms of the usage of the system, the CapTel  
14 user has to provide his or her own basic local access, their  
15 own long distance service, as anyone does.

16          Q.    So they pay the same thing as -- as -- as any --  
17 anyone else in this room who -- well, of course, that can vary  
18 according to provider. But they -- they pay according to  
19 whatever contract they have with whatever phone company is  
20 providing their long distance service and their local  
21 telephone service?

22          A.    That's right.

23          Q.    All right. So what it -- so what's being provided,  
24 then, would be the ability to communicate in a way that's more  
25 similar to those who are not hearing impaired?

1           A.    That's right.

2           Q.    Now, if you're looking at -- at the current --

3   at -- at this last year, you said deaf re-- relay was going

4   down.  Are the overall expenses, including other expenses to

5   the -- to the -- to the fund increasing, decreasing or staying

6   the same?

7           A.    I think it's increasing.

8           Q.    Well, why do you say I think?

9           A.    I say I think, because I don't know what CapTel is

10  going to do.  I do know that we are paying more for CapTel.

11  When you look at this as a layer cake graphically, you -- you

12  see a decrease in relay usage.

13          Q.    Yes.

14          A.    Right now I see an increase in CapTel usage.  When

15  I add the two together, I see the graph turning upward.  If --

16          Q.    Is there any other driver in that besides those

17  two things?

18          A.    Yes, there's --

19          Q.    What's the other thing?

20          A.    -- the equipment distribution program and the

21  central services cost allocation.

22          Q.    All right.  Did you break those out?

23          A.    I did.  We are paying roughly \$175,000 a month into

24  the program.

25                JUDGE RUTH:  I'm sorry?

1 MR. CURTIS: Go ahead, Judge. I'm --

2 JUDGE RUTH: You said you did break it out. Is it

3 in one of the documents that we can look at while you're

4 talking? If not, fine.

5 THE WITNESS: I -- I believe it's in my Staff -- my

6 memorandum on --

7 JUDGE RUTH: The original or the supplement?

8 THE WITNESS: The -- the updated one.

9 JUDGE RUTH: Okay.

10 THE WITNESS: On page 3, Item D, the deaf and

11 central services cost allocation.

12 JUDGE RUTH: Thank you.

13 BY COMMISSIONER GAW:

14 Q. Why don't -- why don't you tell me, Mr. Cecil, what

15 it shows -- the calculations.

16 A. On a monthly basis, we have allowed an

17 expenditure -- a revenue collection and expenditure for the

18 equipment distribution program through the balance of this

19 fiscal year of \$175,000. And then based on their

20 appropriation, we allowed 1/12th of that per month for the

21 next 2 fiscal years.

22 Q. Now, that -- that's for what again?

23 A. \$175,000.

24 Q. No. What is that?

25 A. Their expenditure -- their -- their allocation.

1           Q.    For what purpose? For what purpose? That was  
2 their allocation. What was -- their --  
3           A.    That's -- that's their appropriation.  
4           Q.    -- allocation to do what?  
5           A.    To provide equipment to qualified users. Amplified  
6 telephones, TTYs, CapTel and other equipment. It also pays  
7 for the staff's salaries and fringe benefits.  
8           Q.    All right. Now, how does that compare with what it  
9 has been in the past?  
10          A.    I don't get those numbers broken out.  
11          Q.    Why not?  
12          A.    We do get them on a monthly basis when we get the  
13 treasurer's report. They just don't identify to whom the  
14 figures belong --  
15          Q.    Well --  
16          A.    -- so we have to make certain assumptions.  
17          Q.    Well, what I want to know is whether or not  
18 those -- those -- those amounts over the course of the last  
19 year, in regard to equipment expenditures and those expenses  
20 that go along with that are about the same as they have been  
21 in the past or they're more or they're less.  
22                I'm trying to understand how this -- all this  
23 layered cake you're talking about fits together and which  
24 slices -- portions are getting bigger and which are getting  
25 smaller.

1           A.    The perspective that we treated the equipment  
2   distribution program from was that they have an allocation  
3   from the Legislature of about \$2,100,000, and that the fund is  
4   obligated to support whatever their expenditures are up to  
5   \$2,100,000.

6                    So we built into our models that they would -- we  
7   would collect and they would expend \$175,000 in this fiscal  
8   year and -- per month, and 186,000 on whatever change that  
9   turns into next fiscal year. And for Fiscal Year 2007, we  
10   don't really know where that's going, so used Fiscal Year 2006  
11   numbers.

12          Q.    What were the actual expenditures --

13          A.    I don't know.

14          Q.    -- from past years?

15          A.    I do not know.

16          Q.    And can you find that out?

17          A.    I can find that out.

18          Q.    Now, did you build the rest of your model based  
19   upon the assumption that everything that was appropriated  
20   would be spent out of this fund?

21          A.    Well, no, Commissioner, I did not.

22          Q.    No. Because if you did that, the fund would be  
23   completely dem-- out of money within a short period of time,  
24   wouldn't it?

25          A.    Yes. Yes, it would.

1           Q.    Because the fund -- the amount appropriated has not  
2   been fully expended in -- in the last -- well, ever since it  
3   began probably?

4           A.    That's true.

5           Q.    So why did you decide on this one to take the full  
6   amount that had been appropriated, and assume that it would  
7   all be spent and not the rest of it?

8           A.    Because we have intimate contact with the  
9   expenditure figures, and we're in contact with the TRS vendor.  
10   We know what the minutes are going to do.  We don't know what  
11   the equipment program is going to do.

12                I don't know if they're going to run into 6,000  
13   qualified users who are suddenly going to say -- require a  
14   TTY or a CapTel.  So we felt that we needed to err  
15   conservatively.

16                We felt that it was appropriate to ensure that the  
17   fund had sufficient monies in it to allow them to do whatever  
18   their mission is to the full extent of their appropriation.

19           Q.    Did you talk to Dr. Golden about what she talked --  
20   and the -- the -- with be expending?

21           A.    She has -- not exactly.  She has said that they  
22   tend not to expend their full appropriation, and that they've  
23   done so for some time.

24           Q.    Did you ask her what she thought would be the  
25   appropriate amount to -- to forecast --

1           A.    No, I did not.

2           Q.    -- as an expenditure?

3           A.    No, I did not.

4           Q.    But you did with the minutes of usage from the

5 vendors that are supplying that?

6           A.    Yes, sir.

7                    COMMISSIONER GAW:   Okay.

8                    MR. HAAS:   Your Honor, if I might inter-- Your

9 Honor, if I might interrupt here.  I've been asked to let the

10 Commission know that there are two other people in the

11 audience who would be willing to answer Commissioner

12 questions.

13                   Those are Tracy Mishler with the Relay Missouri

14 Advisory Committee, and Diane Golden with the Missouri

15 Assistive Technology Advisory Council.

16                   I've been also -- I've also been asked to let the

17 Commission know that Mr. Gwinn and Mr. Selznik have brought

18 equipment with them, which they can show to the Commission.

19                   JUDGE RUTH:   Mr. Haas, I was trying to get that

20 down.  Tracy Mishler is with who, which group?

21                   MR. HAAS:   Relay Missouri Advisory Committee.

22                   JUDGE RUTH:   And Ms. Golden, again, is with?

23                   MR. HAAS:   Missouri Assistive Technology Advisory

24 Council.

25                   JUDGE RUTH:   Thank you.

1 BY COMMISSIONER GAW:

2 Q. So if I look at this, then, Mr. Cecil, in your  
3 layered cake that you -- that you have, overall the  
4 expenditures for the last year have been going up somewhat, in  
5 comparison to the last -- to the last few years?

6 A. There's an upturn.

7 Q. How much of one?

8 A. It just occurred -- the CapTel program was -- was a  
9 constant. And with the relay minutes declining, I think that  
10 it probably leveled out. Now that we're spending in the  
11 neighborhood of \$45 and \$50,000 a month, I think that we're  
12 seeing -- we've gone around the bend a little bit.

13 I really can't respond to that very well. I can't  
14 give you a very good answer at all, other than to say we just  
15 turned the corner.

16 Q. Okay. But -- but in comparison to -- with what you  
17 have since last year when CapTel was -- was put into effect  
18 and not into trial any more, and adding up the other changes,  
19 how did -- how much difference is there in those expenditures  
20 over the experience of the last 10 months or so compared to  
21 what it was prior to that?

22 A. I would really need to look at the numbers. But  
23 it's in the neighborhood of about \$45,000.

24 Q. \$45,000 on an annual --

25 A. A month.



1 Q. -- basis?  
2 A month.  
3 A. A month.  
4 Q. Increase?  
5 A. Increase.  
6 Q. Now, is that -- is that an increase -- just to be  
7 clear. When you say \$45,000 a month, you mean an average of  
8 \$45,000 of -- of increase on expenditures, not per month,  
9 increasing 45,000 each month, but over and above a month  
10 comparison from a year prior to that month?  
11 A. That is correct. The rate of increase now would be  
12 maybe 5 -- \$4 or \$5,000 a month.  
13 Q. Okay. Now, let's go to the other side. On the  
14 revenue side, what are you seeing?  
15 A. We forecasted line -- a line count.  
16 Q. Now, I don't want to know forecast right now. I  
17 want to know what you're seeing historically.  
18 A. Typically we've seen revenues in the neighborhood  
19 of \$300 to \$310,000, but they have been --  
20 Q. Per month?  
21 A. Per month. But they are received irregularly.  
22 We've had revenues as low as \$79,000. Last month we collected  
23 \$110,000. A couple of years ago we collected  
24 \$720-some-thousand. It's -- it's --  
25 Q. Why do you think that is, Mr. Cecil?

1           A.    Well, I think several things could be happening.  
2 I'm beginning to do a survey to find out exactly what it is  
3 happening at the moment. I -- I'm just guessing.  
4           But if a phone company should typically pay their  
5 assessment or -- or their surcharge revenues on the 25th and  
6 they slip up and they pay it on the 1st, it's going to show up  
7 as a double payment in -- in the next month and a zero payment  
8 in the first month.  
9           Q.    Do they -- so do they pay a late fee when they  
10 don't pay on time like some of us have to do?  
11          A.    No, sir.  
12          Q.    I just thought I'd check.  
13                So what -- what occurs, then, so some of them may  
14 not be paying on time; that may be one explanation?  
15          A.    Yes, that's one explanation.  
16          Q.    Anything else that you can think of?  
17          A.    There are some companies that just pay every  
18 two months.  
19          Q.    Just because they choose to or because the rules  
20 allow it or why?  
21          A.    Well, the rules don't specify how frequently a  
22 company has to pay.  
23          Q.    I see. They just say what? What -- what do the  
24 rules say in regard to --  
25          A.    I'd have to read them. But as I recall, you just

1 pay --

2 Q. You just pay.

3 A. -- the Commission.

4 Q. Could you pay every two years?

5 A. Well, you could.

6 Q. Really.

7 A. The context of the rule is --

8 Q. How often do they collect it --

9 A. Monthly.

10 Q. -- Mr. Cecil?

11 A. Monthly. And that's the context of the -- the

12 discussion. I think the understanding was that they should

13 pay monthly. But there isn't a requirement to do so.

14 Q. Interesting.

15 Would we have to do that by rule or could we do

16 that by order? You don't -- don't answer that.

17 All right. So you're seeing -- you're -- you're

18 seeing what in regard to revenues, decreasing revenues, don't

19 know?

20 A. In the very, very long term it will decrease, but

21 we think it's decreasing very slightly. Frankly, I'd be

22 comfortable in believing that they're holding steady for the

23 near term. Around \$300 to \$310,000 a month.

24 Q. Okay. And what'd you tell me your expenditures

25 were a month today?

1           A.    For TRS the -- the relay bill around \$300,000.

2           Q.    This is -- I'm talking about everything now.

3           A.    Now, everything --

4           Q.    I want everything in there that's coming out of

5   that.

6           A.    Let me refer here.  The disbursement coming out of

7   the fund, on average, just for this part of the Fiscal Year

8   2005 is around \$417,000, on average, per month.

9           Q.    All right.  So 117 -- I realize this -- these

10   numbers have got to be very, very loose.  But about 117,000 in

11   the red every month?

12          A.    Somewhere in that ballpark, yes, sir.

13          Q.    And how much -- how much is in the account now?

14          A.    The last figure I had was \$2,202,000.

15                COMMISSIONER APPLING:  Say that again.

16                THE WITNESS:  \$2,202,000.

17   BY COMMISSIONER GAW:

18          Q.    What am I missing here?  You -- you're running out

19   of money sooner than in your -- in you documentation than if I

20   just take 120 and multiply it times 12.

21                What am I missing?

22          A.    We're expecting an increased utilization in CapTel.

23          Q.    So you built -- that's what's built in as --

24          A.    That is built in.

25          Q.    -- an added expense?

1           A.    That is built in.

2           Q.    Is that the only thing?

3           A.    That is.  We're treating the equipment distribution  
4 program and the central services allocation as a constant.

5           Q.    Well, the constant was -- that you're using on the  
6 one at least, you're using the appropriated amount?

7           A.    Yes, sir, that's right.  There are  
8 four expenditures taking place.

9                   COMMISSIONER GAW:  Okay.  Why don't I -- why don't  
10 I stop right now, Judge.  And Commissioner Appling has some  
11 questions.  And I think that Dr. Golden and maybe Tracy  
12 Mishler might be able to help me with that.

13                   COMMISSIONER APPLING:  Judge, one more question, if  
14 you don't mind.

15                   JUDGE RUTH:  Okay.  We'll probably take a break  
16 around noon, at least for our court reporter.  And then we'll  
17 come back on the record if -- if it looks like we're going to  
18 have lots of questions.

19                   COMMISSIONER APPLING:  Are you doing something for  
20 lunch?

21                   JUDGE RUTH:  I don't have any lunch plans.  We can  
22 break for 5 for 10 minutes.  But we'll probably give the court  
23 reporter a break around noon.

24                   COMMISSIONER APPLING:  Maybe we ought to give you  
25 some instruction on the lunch break, too.  No, I'm just

1 joking.

2 FURTHER QUESTIONS BY COMMISSIONER APPLING:

3 Q. But anyway, Walt, do you have an analogy of other  
4 states ending CapTel because of cost? Do you know of any  
5 other states that has ended that program?

6 A. I'm not aware of any. That does not mean that  
7 there are not.

8 Q. Uh-huh.

9 A. But I have no firsthand knowledge of it.

10 Q. I thought I read something in the last couple of  
11 days about the State of Washington that ended their pro--  
12 CapTel program because of the cost. Just checking.

13 Maybe -- maybe Dr. Golden can answer that question  
14 later.

15 A. Perhaps so. I believe Mr. Solt referenced the  
16 State of Washington in his memorandum from last year as well.

17 COMMISSIONER APPLING: Okay. Thank you.

18 JUDGE RUTH: Commissioner Gaw, do you have just a  
19 few questions now, or shall we take our 10-minute break?

20 COMMISSIONER GAW: Might take a break.

21 JUDGE RUTH: Okay. We're going to go off the  
22 record until 5 after 12. So stick by, cuz we'll be back on in  
23 a few minutes.

24 I -- I, yes, we'll be at least on for a while.

25 We are now off the record.

1 (A RECESS WAS TAKEN.)

2 JUDGE RUTH: We are back on the record after a

3 short break. It was discussed on our break whether or not we

4 would be able to use the Commission's network to have a

5 demonstration of the CapTel line.

6 We weren't able to get that working during break,

7 so instead later on in the afternoon, I believe there's going

8 to be a video demonstration.

9 We have a few more questions that we'll have from

10 the Bench now. Then we will break for lunch while they get

11 that video demonstration going, and come back later this

12 afternoon.

13 We were with Commissioner Gaw's questions. Do you

14 have any more questions for Mr. Cecil at this time?

15 COMMISSIONER GAW: Not right now.

16 JUDGE RUTH: Commissioner Clayton, do you have

17 questions for this witness at this time?

18 COMMISSIONER CLAYTON: Will he be back?

19 JUDGE RUTH: He will be back.

20 COMMISSIONER CLAYTON: Good. Then I will have

21 questions.

22 COMMISSIONER APPLING: He was hoping not maybe.

23 JUDGE RUTH: Commissioner Appling?

24 COMMISSIONER APPLING: No more questions.

25 JUDGE RUTH: Okay. You may step down. You are not

1 excused, Mr. Cecil, so remain close by.

2 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

3 JUDGE RUTH: And at this time we are going to call

4 Ms. Golden to the stand -- Dr. Golden. Excuse me. I'm sorry.

5 Dr. Golden, would you raise your right hand,

6 please?

7 (WITNESS SWORN.)

8 JUDGE RUTH: And would you state your name for the

9 record and your position?

10 THE WITNESS: Diane Golden, and I am the director

11 of Missouri's assistive technology. We're the unit of State

12 government that runs the equipment distribution program.

13 JUDGE RUTH: Thank you. And I'll have to remind

14 you to speak into the microphone, lean forward, otherwise it

15 doesn't pick it up and stream it on our video.

16 Thank you.

17 Commissioner Gaw, would you like to start the

18 questions?

19 COMMISSIONER GAW: Sure. Thank you.

20 DIANE GOLDEN testified as follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Dr. Golden, thank you for coming. I would like

23 to -- to get your perspective on how your program has been

24 going since last summer, particularly in regard to -- to what

25 you're seeing with CapTel.



1           A.    Actually it's proceeding about as we expected.  I  
2   have numbers if you're interested, in terms of --

3           Q.    Sure.

4           A.    -- monthly usage.

5           Q.    Yeah, sure.  That'd be great.

6           A.    And the -- the projections of 20 phones a month is  
7   based on our current numbers.  But I will give you a caveat  
8   that that's gonna be the high end.

9                   And I think when we talked last, whenever that was  
10   when we were discussing this whole issue, we were looking at  
11   maybe 12, 15 phones a month as being average, which is what we  
12   were -- were distributing for traditional voice carryover.

13                   And when you exclude the conversion of all the  
14   trial applicants over to permanent -- I'll just go down month  
15   by month and read you the numbers.

16                   September was 19; October was 22; November was 14;  
17   December was 21; January, 23; February, 19; March, 18; and  
18   April is 13 through today, so --

19           Q.    Okay.

20           A.    I mean, we could have a couple more phones.  
21   There's a couple more days left in April.

22                   It's -- it's really difficult to project trends  
23   given, you know, you have less than a year's worth of data.  
24   But you can kind of see by the numbers, clearly it looks like  
25   it's -- it's, if anything, declining and levelling off.

1           And I mean the -- the 20 number that was used is  
2   certainly an appropriate projection. It's -- my opinion is  
3   it'll be at the upper end. It'll be very safe using 20.

4           Q.   Okay. What -- what are you -- are you getting  
5   feedback in regard to the -- to the phones and the program?

6           A.   Yes. In fact, we did a -- a survey of all of the  
7   CapTel users in late January. And again, I have copies of  
8   that information. There's a lot of data here.

9           In general, folks were overall happy with the  
10   equipment. The -- the overall positive rating was 86. When  
11   we asked them, is the captioning service effective, that  
12   number was 71.

13           The -- one of the main differences between CapTel  
14   and regular voice carryover is CapTel allows the person to  
15   hear and read text at the same time. And I think clearly  
16   that's something that people see as an advantage.

17           If I have some residual hearing, but it's not great  
18   and my discrimination is very poor, the addition of the text  
19   is extremely helpful. But the text alone without the speech  
20   is very difficult for older people to deal with. So I think  
21   people are overall very happy with the equipment and the  
22   concept.

23           The service continues to have some issues. And --  
24   and the big issues are the disconnects, the line's busy,  
25   garbled text messages. And all of those are things that just

1 come with the captioning service. When you're trying to do  
2 live captioning, if you've watched live captioning on  
3 television and a football game, you see all the  
4 mistranslations. That's kind of similar to what people are  
5 getting over this service.

6 So until our technology and voice recognition  
7 software improves to a point where you don't get some of that,  
8 that's -- those are always gonna to be issues.

9 Q. Okay.

10 A. So --

11 Q. So you -- you distribute other equipment through  
12 your program, correct?

13 A. Correct.

14 Q. Give me some -- just a few examples, maybe.

15 A. We distribute amplified phones for people who do  
16 have enough residual hearing to use the phone effectively in  
17 an amplified form. We distribute hands-free phones for people  
18 who -- who have quadriplegia, for example, and have no way of  
19 picking up a handset and dialing.

20 We provide phones with large key pads and  
21 voice-backed features so that people who have vision  
22 difficulties when they hit a key, it actually speaks it, and  
23 know they've actually dialed the right number.

24 Q. Yes.

25 A. Yeah, a whole range of adaptive telephone

1 equipment.

2 Q. And in regard to this addition, the CapTel phone,  
3 to your line of -- of offerings, would you say that -- that it  
4 has been received as well as other things that you offer?

5 A. Yes.

6 Q. All right. So you believe it's important to  
7 have -- to have this -- this equipment available to  
8 individuals in Missouri that -- that -- that want it and need  
9 it?

10 A. Yes. It -- it definitely improves over traditional  
11 voice carryover. Traditional voice carryover you don't get  
12 the simultaneous hear and read. All you're doing is reading.  
13 And you don't get the speed of translation.

14 It's a traditional communication assistant typing.  
15 So you get a lot of delays. You get a lot of -- of, you  
16 know -- you get mistranslations still, but it's still just a  
17 much slower process.

18 Q. Okay. Tell me a little bit about the appropriation  
19 that -- that your group receives -- how that fits into this  
20 whole picture, if -- if you could?

21 A. Sure. We began operating this program in Fiscal  
22 Year '01. And our appropriation request that year was  
23 2.6 million. And I can tell you, that was our appropriation  
24 request because that's what the fiscal note was based on when  
25 the statute was changed.

1 Q. Yeah.

2 A. And it was as good as anything. We left the  
3 appropriation at 2.6 in '02 and '03, but our actual  
4 expenditures were hovering around 1.3, 1.4 million.

5 Q. Uh-huh.

6 A. So in '04 we reduced the appropri-- appropriation  
7 request by 500,000 -- by half a million. So it dropped to  
8 2.1.

9 Q. Okay.

10 A. And we left it at 2.1 for '04, '05, and that's  
11 what's in the '06 budget. Our expenditures for those years  
12 have been running about 1.5 million.

13 Q. Okay.

14 A. So clearly we can probably take another stab at  
15 dropping our appropriation request maybe 250,000. The dilemma  
16 is I can't get a need.

17 Q. Okay. I see.

18 A. So -- so I have to have enough appropriation to  
19 cover potential expenditures.

20 Q. Right.

21 A. And going back and asking for a supplemental is a  
22 major problem.

23 Q. I understand.

24 A. So --

25 Q. What -- what happens when you have -- when you

1 don't spend your full appropriation? Where does -- where does  
2 that money reside?

3 A. It stays in the fund.

4 Q. Yeah, in the -- in the -- in the main fund or --

5 A. Right.

6 Q. Yeah. So it doesn't actually get transferred to  
7 you, is that -- if -- if you --

8 A. No. We -- no. We actually spend against that  
9 fund -- fund code through an appropriation. So we don't --

10 Q. I see.

11 A. -- draw anything down or move it out of that fund.

12 Q. So some of the money that sort -- that -- that  
13 exists in the fund today is as a result of you not spending  
14 your full appropriation?

15 A. Correct.

16 Q. If Mr. Cecil is using your full appropriated amount  
17 in determining how much he's anticipating spending for the  
18 next year, would you say that -- that -- let's see here, two,  
19 one -- would you say that there's maybe an extra half million  
20 built into it --

21 A. Yeah, assuming --

22 Q. -- just from your experience?

23 A. Yes. Assuming something unanticipated doesn't  
24 happen, I anticipate our spending to be pretty level.

25 Q. Okay. But even -- even with the increased -- even

1    though you have the CapTel phones going out at this point?

2           A.    Yeah.  The -- the CapTel expenditures were

3    minuscule.

4           Q.    In comparison to the other things you had, correct?

5           A.    Yes.  And we would have been purchasing traditional

6    voice carryover phones for probably most of those clients.  So

7    we're only talking, you know, less than \$100 a person

8    difference.  You know, so --

9           Q.    Now, how do you get -- why don't you -- why don't

10   you tell us how much those phones cost when you -- when you

11   give a CapTel phone out --

12          A.    They cost --

13          Q.    -- equipment-wise.

14          A.    Yeah.  They cost us \$395, about, a piece.

15          Q.    All right.  And -- and what about the other phone

16   that you described?

17          A.    A traditional voice carryover --

18          Q.    Yes.

19          A.    -- phone?  It's about 275.

20          Q.    Okay.

21          A.    So --

22                COMMISSIONER GAW:  I think that's all.

23   BY COMMISSIONER GAW:

24          Q.    Did -- did -- re-- remind me, Dr. Golden, about

25   your involvement in the -- in the -- in the contract for the

1 service. Can you refresh my memory on how -- how you  
2 were -- how that works in -- in regards to your -- your  
3 involvement on -- on the provision of the service and the  
4 provi-- provision of the phones?

5 A. We competitively bid contracts for all of the  
6 adaptive equipment that we provide through purchasing --  
7 OA purchasing.

8 What we did when you all decided to add the CapTel  
9 service, we amended our existing contract with a vendor that  
10 we had a contract with, who is the sole source provider for  
11 this telephone.

12 And there wasn't any negotiation involved, because  
13 they're a single, feasible source, and the price for a state  
14 program is \$395. So we just amended the existing contract we  
15 had with that vendor and added this piece of equipment in.

16 So literally we were already getting a monthly bill  
17 from that company for -- for the other pieces of equipment for  
18 which they had bid and -- and gotten part of our contract. So  
19 that's --

20 Q. Okay.

21 A. -- that's working.

22 COMMISSIONER GAW: Okay. That's -- that's what I  
23 was trying to recall.

24 That's all I have, Judge.

25 Thank you, Dr. Golden.



1 THE WITNESS: Sure.

2 COMMISSIONER GAW: I appreciate your help.

3 JUDGE RUTH: Commissioner Clayton, do you have any  
4 questions of this witness?

5 COMMISSIONER CLAYTON: No questions.

6 COMMISSIONER APPLING: No questions. I'll let you  
7 off easy today.

8 THE WITNESS: Thank you very much.

9 JUDGE RUTH: Okay. We are actually going to take a  
10 lunch break now. But, Ms. Golden, will you please remain  
11 available for this afternoon?

12 THE WITNESS: Yes.

13 JUDGE RUTH: There may be more questions of you or  
14 some cross-examination.

15 THE WITNESS: Certainly.

16 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

17 JUDGE RUTH: It is approximately 12:30. We will  
18 break until 1:15.

19 We're off the record now. Thank you.

20 (A RECESS WAS TAKEN.)

21 JUDGE RUTH: We are back on the record now. We had  
22 a short break for lunch. And as I mentioned before, I think  
23 we will now go to a CapTel demonstration.

24 Mr. Cecil, do you -- are you going to be the person  
25 turning on the video?

1 MR. CECIL: Yes, ma'am.

2 JUDGE RUTH: Then please proceed.

3 (PLAYING OF CAPTEL DEMONSTRATION ON DVD.)

4 VIDEO SPEAKER: Carlson Travel. This is Jamie.

5 How may I help you?

6 VIDEO SPEAKER: Hi, Jamie. This is Robert calling.

7 I'd like to book that trip to Phoenix we talked about last

8 time.

9 VIDEO SPEAKER: Oh, yes. Hi, Robert. Great.

10 Well, let me get some of the details from you.

11 Now, when were you thinking about going?

12 VIDEO SPEAKER: When were you thinking about going,

13 question mark?

14 VIDEO SPEAKER: I'd like to leave sometime in the

15 morning on Tuesday the 10th, and will be coming back late in

16 the afternoon on Sunday, the 15th.

17 VIDEO SPEAKER: Okay. So looking at Tuesday, I

18 have a flight that leaves at 9:20 arriving in Phoenix at 1:50

19 in the afternoon. Coming back there is a direct flight at

20 3:30. That arrives here at 6.

21 How does that sound?

22 VIDEO SPEAKER: That should be fine. Go ahead and

23 book it. Can you also fax me a copy of the itinerary? I

24 believe you would have --

25 (CAPTEL DEMONSTRATION CONCLUDED.)

1 JUDGE RUTH: Okay. Mr. Cecil, I'll need you -- I  
2 assume it's over; is that correct?  
3 MR. CECIL: I think so.  
4 JUDGE RUTH: Yes, I'll need you to turn it off.  
5 MR. CECIL: (Complied.)  
6 JUDGE RUTH: Okay. I believe that will conclude  
7 the demonstration.  
8 Mr. Haas, was there something you wanted to tell me  
9 about the disk?  
10 MR. HAAS: The -- the Commission may keep that disk  
11 for its record.  
12 JUDGE RUTH: Okay. I'm going to mark the disk as  
13 Exhibit 2.  
14 (EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION BY  
15 JUDGE RUTH.)  
16 JUDGE RUTH: Are there any objections from any of  
17 the parties to this doc-- not document -- to this item being  
18 received into the record?  
19 Staff?  
20 MR. HAAS: No objection.  
21 JUDGE RUTH: Public Counsel?  
22 MR. DANDINO: No objection, Your Honor.  
23 JUDGE RUTH: SBC?  
24 MR. GRYZMALA: No objection, Your Honor.  
25 JUDGE RUTH: Big River?

1 MR. CURTIS: No, Your Honor.

2 JUDGE RUTH: Okay. It is received into the record.

3 And thank you very much for sharing that disk with us.

4 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

5 COMMISSIONER GAW: Is that the only copy?

6 JUDGE RUTH: I assumed that was not the only copy;

7 is that correct?

8 MR. HAAS: That's correct. It is not the only

9 copy.

10 COMMISSIONER GAW: Okay.

11 JUDGE RUTH: Okay. We'll move back to questions

12 from the Bench. When we left, we had some questions for

13 Ms. Golden. I'll ask you, Commissioner Gaw, if you wanted to

14 recall Ms. Golden or if you had questions for a different

15 witness.

16 COMMISSIONER GAW: I -- I want to ask Tracy Mishler

17 some questions.

18 JUDGE RUTH: Okay. Let's call Ms. Mich-- Mishler

19 to the stand.

20 COMMISSIONER GAW: Uh-oh. Was that the fire alarm

21 going off?

22 JUDGE RUTH: I don't know why it flashed. They're

23 doing testing today, don't you remember?

24 COMMISSIONER GAW: Oh.

25 JUDGE RUTH: They're doing testing.

1 COMMISSIONER GAW: I guess I should read our email.  
2 JUDGE RUTH: I do.  
3 Ms. Mishler, would you please raise your right  
4 hand?  
5 (WITNESS SWORN.)  
6 JUDGE RUTH: Okay. And would you state, for the  
7 record, your full name and identify yourself -- what group  
8 you're here with?  
9 THE WITNESS: My name is Tracy Mishler, and I'm  
10 Chair of the Advisory Committee for Missouri Relay.  
11 JUDGE RUTH: And do you have questions for this  
12 witness?  
13 COMMISSIONER GAW: Yes.  
14 TRACY MISHLER testified as follows:  
15 QUESTIONS BY COMMISSIONER GAW:  
16 Q. Good afternoon. You were very involved in -- in  
17 getting CapTel placed into a -- a more permanent status from  
18 its trial status last year, weren't you?  
19 A. Yes.  
20 Q. And can you -- can you tell me a little bit about  
21 how you got involved in it, in general -- just -- just fairly  
22 briefly, Ms. Mishler, how you got involved and -- and your  
23 interest?  
24 A. I got involved primarily because I have a  
25 hearing-impaired daughter, and we had no telephone service

1 that she could learn use or I could use efficiently. And so I  
2 was looking for something to try. And I heard that CapTel was  
3 in trial in Missouri. And so I --

4 Q. When was that about, approximately?

5 A. That was sometime in '03, I guess. I contacted  
6 Matt Gwinn, I believe it was.

7 Q. And who is Matt Gwinn?

8 A. Matt Gwinn is the Missouri relay account manager.

9 Q. Okay. And did you get a phone in your home?

10 A. I did get a trial phone in my home.

11 Q. All right. And what was your -- you and your  
12 daughter's experience with it?

13 A. My -- my experience --

14 Q. Pardon me?

15 A. -- was that it was finally a way to have a  
16 communicative abilities with her when I wasn't home. And it  
17 was finally a way for her to communicate with the hearing  
18 community.

19 Q. Okay. Tell me what -- what she had utilized before  
20 that.

21 A. We had tried a TTY, we had tried voice carryover  
22 and traditional relay service.

23 Q. All right. And what was your experience compared  
24 to what your experience was with the CapTel?

25 A. Compared to CapTel -- and -- and I -- I should also

1 say that I am an audiologist, and so I deal with the  
2 hearing-impaired community and the deaf community as well.

3 Compared to traditional relay and VCO, it was light  
4 years improvement. Some of the traditional relay services  
5 require two phone lines, and calling one line and hanging up  
6 and calling another.

7 And -- and it was too cumbersome to really learn  
8 how to use effectively -- making outgoing calls, No. 1.

9 No. 2, for a hearing person to call into  
10 traditional relay, it was extremely slow, extremely  
11 cumbersome. And just as the traditional relay service  
12 initiated a campaign, I believe about a year ago, which was  
13 don't hang up on relay, people constantly hang up on you,  
14 because it's so slow and they don't know you're calling.

15 Q. All right. So you -- you and your daughter found  
16 that this new system -- the CapTel system to be very  
17 beneficial; is that correct?

18 A. Very beneficial. And allowing functional  
19 equivalency, and allowing us to be able to communicate with  
20 the hearing community.

21 Q. All right. Did -- were you involved -- when did  
22 you become involved with the advisory committee?

23 A. I believe it was in 2004 -- or 2004.

24 Q. Last year?

25 A. Maybe a year and a half ago.

1 Q. Could have been a little bit into '03 --  
2 A. Right.  
3 Q. -- perhaps?  
4 All right. And -- and so you -- have you been on  
5 the committee since -- since about late '03, early '04?  
6 A. Correct.  
7 Q. All right. And you're currently chair?  
8 A. Yes, I am.  
9 Q. Describe the -- can you give me a general  
10 understanding of the duties of that committee?  
11 A. The duties of that committee are to review --  
12 actually I have the bylaws with me if you'd like me to get  
13 them.  
14 Q. Just in general.  
15 A. To review services, look at the efficiency, make  
16 recommendations to the Public Service Commission regarding  
17 activities of relay services in Missouri.  
18 Q. Okay. And how many people serve on the committee  
19 approximately?  
20 A. Approximately 10 -- 8 to 10.  
21 Q. Okay. And do you know the -- do you have a sense  
22 of -- of the committee's view in regard to -- to -- to CapTel?  
23 A. The committee's view with regard to CapTel, as was  
24 written in a letter to the PSC, I believe last year, is that  
25 they're very much in support of implementation and



1 continuation of the service.

2 Q. All right. Now, since the -- the service went from  
3 trial to being a program that was -- that was offered as it is  
4 currently, can you tell me how it's been going?

5 A. From a consumer standpoint, it's been going very  
6 well.

7 Q. Okay.

8 A. From an advisory committee membership viewpoint, I  
9 believe that the distribution of the CapTel phones should have  
10 been limited to 10 per month, which is what we kept repeating  
11 in the budget when we discussed it with you.

12 Q. Why do you -- why do you say that?

13 A. Because we wanted control over expenses.

14 Q. Uh-huh.

15 A. I actually was surprised to see the distribution --  
16 in the advisory committee meeting, I was actually surprised to  
17 see the amount of distribution that was going on.

18 Q. Okay. Because you did not think it was going to be  
19 that -- that much or --

20 A. Because I thought that we were going to try to  
21 limit it to 10 per month. And I remember in our last  
22 discussion with you, there was discussion between the parties  
23 about whether or not it would be -- and I'm sorry. I'm  
24 forgetting the word -- would be discriminatory to limit the  
25 distribution.

1           But I -- I remember repeatedly saying that all  
2 states that have CapTel limit the distribution, except for  
3 Texas and then Missouri.

4           Q.    Okay.

5           A.    That being said --

6           Q.    Go ahead.

7           A.    That being said, I think the equipment distribution  
8 program has done a very thorough and good job of screening  
9 people and referring them to other services if they're  
10 appropriate.  So --

11          Q.    So you think the phones are going to the people  
12 who -- who will use them?

13          A.    That's my --

14          Q.    Is that what you're saying?

15          A.    That's my impression.

16          Q.    You have some concern regard to the -- to the  
17 impact on -- on the budget?

18          A.    I have some regards with regard to the volume, yes.

19          Q.    Okay.  And do you -- have you been -- have you  
20 looked at some of the data about the phones that have been  
21 distributed and the -- and its -- and their -- the number that  
22 are out there?  Have you -- have you seen that data?

23          A.    I've actually looked at a lot of data, and I  
24 actually have -- I -- hopefully some suggestions to apply in  
25 the future.

1 Q. Okay.

2 A. But the data with regard to percentage of phone use  
3 does show a higher average minutes than what we estimated in  
4 the budget.

5 Q. Do you have an idea about -- do you -- do you know  
6 why that is or have you seen any indication of why that might  
7 be?

8 A. Well, I've compared it to other states, and  
9 Missouri is higher than the other states. And part of the  
10 reason people believe that is because we have such a large  
11 oral deaf community.

12 We do have several major institutions: St. Joseph  
13 Institute for the Deaf, Central Institute for the Deaf, Mood  
14 (phonetic sp.) School or R-III in St. Louis. So we do have a  
15 very high oral deaf population in Missouri. And that might  
16 account for some of the increase in minutes.

17 But it -- it -- I think it also suggests the  
18 importance of the need in Missouri.

19 Q. Sure.

20 Okay. So -- so as far as -- as identifying factors  
21 and concerns and comparing the minutes of usage, you think it  
22 really has to do with the population itself, and not with any  
23 other factor with regard to how the program is run or anything  
24 else?

25 A. No, I think -- I think there's a few other factors.

1 Q. Okay. What else?

2 A. And one of the pieces of information that I -- I've

3 been reviewing is -- are the minutes per user.

4 Q. Okay.

5 A. And -- and when you look at the minutes per user,

6 we've got a couple of very high-end users.

7 Q. All right. Can you -- can you tell me a little bit

8 more about that? And -- and if there are particular names

9 affiliated with them, I need to find out probably whether

10 there's any problem talking about that.

11 A. I don't know the names, so --

12 Q. So it doesn't matter?

13 A. It doesn't matter.

14 Q. So go ahead.

15 A. What the data actually shows is that very

16 unfortunately there are 14 CapTel users in Missouri that are

17 using almost 45 percent of the minutes.

18 Q. Okay.

19 A. So --

20 Q. Do we know why that might be?

21 A. We don't know why that might be. There's a couple

22 different possible sol-- scenarios. One is that the phone is

23 not being used correctly. One is that the pho-- phone is

24 being used for work.

25 Q. Uh-huh.

1           A.    And one is that the phone is just being overused,  
2   in my opinion, by the user.  But out of 100 -- there are  
3   253 phones out in Missouri.

4           Q.    All right.

5           A.    We have about 75 percent usage of the phone, which  
6   means 184 individuals are using the phone on a regular basis.  
7   Out of those 184, 14 are using almost half of the minutes.

8           Q.    All --

9           A.    Now --

10          Q.    -- right.

11          A.    I'm sorry.

12          Q.    Go ahead.  Go ahead.

13          A.    I lost my train of thought.  But most of the CapTel  
14   users are using it as we had predicted.  Our predictions, if  
15   we take out that small subset --

16          Q.    14?

17          A.    -- our predictions are -- are pretty on target.

18          Q.    Okay.  Tell me -- tell me what that number would be  
19   if you take the 14 out.  Do you know?

20          A.    You know, I think Walt and I talked about if we  
21   took the high-end users out, what the average minutes would  
22   be.  And I don't remember that.  Walt, do you have -- I don't  
23   know if I can ask him.

24                COMMISSIONER GAW:  Well, actually if the Judge  
25   doesn't mind, he's still under oath if he has that

1 information. Do you want to wait until we come back?

2 JUDGE RUTH: Do you want it now?

3 THE WITNESS: I can -- I can give you some

4 percentages that I have in front of me.

5 BY COMMISSIONER GAW:

6 Q. That's fine.

7 A. 9 -- okay. Let's see. Break down of users per

8 group. Let's see. About 50 percent of the -- 27 percent

9 aren't using the phones. And I -- well, 50 percent are using

10 it 200 minutes or less.

11 Q. What was the prediction, 153 minutes?

12 A. That was one of the scenarios that Walt did draw

13 up.

14 Q. What -- what was the prediction last year?

15 A. We had talked about 10 phones a month at an average

16 of 100 minutes per phone.

17 Q. Okay. Now, give me the numbers, again, that you

18 have.

19 A. Well, we have greater than 500 minutes or

20 45 percent of the users or 14 people.

21 Q. Right.

22 A. 200 to high -- 400 is 28 percent, and less than 200

23 is 27, and 23 percent are not using it.

24 Q. Okay. So even if I'd throw those 14 out, you're

25 still above the 100 that we --

1           A.    We are.

2           Q.    -- we were looking at last year?

3           A.    We are.

4                    But if you take those 14 individuals --

5           Q.    Yes.

6           A.    -- out, it does really change the picture

7   drastically.

8           Q.    Okay.  Do you believe that -- is there something

9   that we ought to be looking at in regard to -- to

10   high -- high-minute usage that other states have done

11   differently than we are doing?

12          A.    I don't know what other states have done.

13          Q.    Okay.

14          A.    But -- and I've talked to Dan Joyce several times

15   about this over the last week or so.  But the first thing that

16   I think needs to be done is some education.  I think we need

17   to send a letter to all 100 -- 253 CapTel phone users, and let

18   them know that there's concerns about CapTel expenses, and

19   that we should try to keep the minutes under 200.

20                   That should have some effect.  Because I believe

21   most of the consumers have no idea that these conversations

22   were going on, as I would not if I hadn't gotten involved

23   myself a year and a half ago.

24          Q.    Yes.

25          A.    So that -- that's one thing that I think we should

1 address. And I think we also should -- and I don't know if  
2 it's possible because of our fund balance, but I think we  
3 should address bulk purchases of CapTel, which is what some  
4 other states do; for example, Illinois.

5 Purchases bulk minutes of CapTel at a discounted  
6 rate. And once those minutes are used up, then they're at the  
7 rates that we're working at right now. I did talk to a Sprint  
8 representative yesterday, and she said that she didn't -- she  
9 couldn't quote any discount, but she would be happy to put  
10 something together for us.

11 Q. Okay.

12 A. In order to do that, which she did not believe we  
13 were in a position to do that -- in order to do that, we'd  
14 have to have some sort of a surplus.

15 Q. A surplus?

16 A. Well, we'd have to have some funds to pay for the  
17 bulk minutes in advance.

18 Q. Okay.

19 A. And Illinois is in that position. Unfortunately  
20 because of some decisions that were made several years ago, I  
21 don't believe that we're -- and we might not be in that kind  
22 of a position today.

23 Q. Okay. Anything else on that issue?

24 A. The issue of the 14 individuals?

25 Q. Well, in -- in particular, if they're -- if we



1 ought to be investigating doing something differently than we  
2 are now to address usage of -- of minutes of usage?

3 A. Those two -- those two things immediately. But  
4 I -- I -- I -- I think we ought to see what we can do with  
5 that subset of individuals.

6 I think we also should look into what you do if  
7 someone's using this type of service totally for work purposes  
8 or non-work purposes.

9 So I don't know the legal limits or ramifications  
10 of looking into that. But we're talking about a very small  
11 subset of people that I think need to be addressed.

12 Q. Okay. On the revenue side of the equation here, do  
13 you know if -- do you know if there are any discussions going  
14 on about broadening out the number of entities that actually  
15 help pay for this -- for -- for the funding stream?

16 A. Uh-huh. Actually that's one of the listings in a  
17 national plan to try to address some of these funding issues.  
18 And, yes, there is a lot of discussion currently going on  
19 about possible legislative changes that should address the  
20 changes in technology that we've been dealing with over the  
21 years.

22 There's a bill that's being discussed this  
23 afternoon, actually, that addresses this very same thing. But  
24 we are not -- the Missouri relay funding issue is not an  
25 addendum on that bill for several reasons.

1           But there is much discussion with regard to  
2   broadening the base of those that contribute to the Missouri  
3   relay fund so that it's not a small subset of the public  
4   that's providing services that are mandated by the State.  
5           There are actually -- I have data on 31 states.  
6   And out of those 31 states, 20 percent apply a surcharge to  
7   wireless phones, as well as land-line phones.  
8           Q.   And -- and you say that the -- there is no -- there  
9   is not going to be any amendment to the telecommunications  
10  bill this session to try to address the issue of funding?  
11          A.   It's still a possibility.  It's still a --  
12               (PROCEEDINGS INTERRUPTED BY INTERCOM.)  
13          JUDGE RUTH:  I apologize for that.  I -- it's my  
14   understanding they're testing the fire system.  And if there's  
15   an actual fire or other emergency, they'll come on over the  
16   PA system.  
17               So the flashing light in the back and the short  
18   little announcement can be ignored.  
19          THE WITNESS:  We are near the front door.  
20          JUDGE RUTH:  Yes, we are.  
21          THE WITNESS:  It is still a possibility that it  
22   will be an addendum in this year's session.  It is a strong  
23   probability that it will be next year.  
24  BY COMMISSIONER GAW:  
25          Q.   Okay.  So you don't -- you don't believe it's

1 something that at this point -- at this point is likely to  
2 happen this session. Is that because of lack of support or  
3 unwillingness for -- for -- for individuals to -- to -- to  
4 work on it on this legislation or what is this? Do you know?

5 A. It's not -- it's not because of lack of support.

6 Q. Okay.

7 A. However, the sponsor of one vehicle this year  
8 thought that that -- that bill was so highly debated that he  
9 didn't want to risk the chances of it failing because of an  
10 addendum at this time.

11 Q. Which bill is that --

12 A. 20--

13 Q. -- do you know?

14 A. --9.

15 209 addresses taxes on land-line phones, as well as  
16 cellphones. I can say that last -- about 9 months ago I  
17 started this type of discussion. And at the time I was looked  
18 at like I was from another planet.

19 But the fact that the bill is being debated this  
20 afternoon across the street is great news for trying to  
21 address the overall issue with the surcharge, which is that  
22 there's a subset paid into the surcharge, not the entire group  
23 of phone users.

24 Q. Okay.

25 A. So the fact that it's being -- that issue is being

1 discussed today, I think, is terrific progress on the issue.

2 Q. Okay. Anything else, Ms. Mishler, that you'd like  
3 to add?

4 A. Yeah. There's a -- you know, if we could -- you  
5 know, I -- I do plan on being successful. And I know it  
6 sounds like a Herculean task, and it is. But I do plan on  
7 being successful in this.

8 And if we could, then what we'd be able to do is by  
9 my estimates take a 10-cent surcharge and reduce it overall to  
10 approximately 5 cents if the base were broadened to include  
11 all consumers.

12 So, you know, just -- just in thinking about  
13 planning and those numbers, I think that, you know, that's an  
14 important point to make.

15 I also think that we should keep in mind that we're  
16 talking about a surcharge today of 10 cents. And I believe  
17 back in 1992 it was 13 cents.

18 And if I would do some conversion of 13 cents to  
19 dollars in 2005, I think we're getting an awful lot of  
20 service. I think we're providing better service to Missouri  
21 citizens. I think we're providing more functional equiv--  
22 equivalency at a more efficient rate.

23 So when I look at the surcharge in the situation  
24 that we have now, if I look at a consideration of in--  
25 increasing it to 1992 rates and providing the extensive

1 services that we're doing, I think that -- that the  
2 individuals involved should probably be very commended.

3 Q. Okay. Anything else?

4 A. Well, I have to address the issue of the Washington  
5 information. But I don't know if that's your issue or not,  
6 so --

7 Q. I -- I will -- was that something the Commissioner  
8 Appling had -- had asked about?

9 A. (Witness nodding.)

10 COMMISSIONER APPLING: I don't think so.

11 THE WITNESS: There was a --

12 BY COMMISSIONER GAW:

13 Q. Just -- just go ahead if you want to.

14 A. Okay. There was a --

15 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

16 JUDGE RUTH: Please proceed. Thank you.

17 THE WITNESS: Okay. You know, I also just in  
18 looking at my notes, I really need to clarify that no state  
19 that has initiated CapTel has dropped CapTel.

20 BY COMMISSIONER GAW:

21 Q. Okay.

22 A. Washington State was a different story. And I have  
23 a memo from February 23rd, 2004. And I remember when we were  
24 discussing the CapTel issue, this memo came out. And it was  
25 rather frightening, because it said that 450,000 Washington

1 residents were deaf and hard of hearing and candidates for  
2 CapTel, and they predicted that 200 people per year would cost  
3 \$1.5 million.

4 Obviously our CapTel program in Missouri, we have  
5 253 phones out, and it's gonna cost less than \$400,000. This  
6 was very erroneous information that was consequently  
7 withdrawn.

8 Washington was in the pilot phase of the program,  
9 and now they're under discussions with Sprint to initiate the  
10 CapTel program. So this was an unfortunate piece of  
11 information that -- that I believe the numbers are inaccurate.

12 I'd also like to point out that, you know, from  
13 a -- or a lot of our predictions about CapTel were correct.  
14 Our minutes per usage were not correct. I think we  
15 distributed too many phones, but we can get that under  
16 control. We can distribute 10 a month to make sure we keep  
17 things under control and get that balance in line.

18 We did see a migration of TRS minutes from TRS to  
19 CapTel, and we did predict that. And that is partly  
20 responsible for the reduction in the TRS costs. So a lot of  
21 our predictions were correct.

22 Just so that we understand, we talk about un--  
23 communicating with individuals and people, and the  
24 demonstration reviewed listening to the person, as well as  
25 reading the text. And I don't know if we understand that

1 about 40 percent of how we communicate is in our body  
2 language, in our tone and in our expression.

3 And that is so important for all the 500,000  
4 hearing impaired and deaf people of -- of Missouri. And when  
5 we have technology that provides that, it certainly is  
6 appropriate for us to afford that.

7 Another thing just to remember in -- in -- in -- in  
8 what I know about the discussions that I'm having --  
9 sorry -- is that 10 percent of calls into traditional re--  
10 relay service nationally come from cellphones.

11 So when I -- I initially started discussion about  
12 this whole issue, the response was that cellphones don't use  
13 relay. And that is not true. Cellphones use relay. I will  
14 use it on my way home.

15 I also wanted to tell you that, you know, the goal  
16 of all these programs and why we spend so much money in  
17 different areas mainstreaming children, infant hearing  
18 screening, et cetera, is to try to integrate those with  
19 disabilities into our society.

20 And advances that we see now like CapTel have been  
21 able to do that. And it's been shown that TRS calls -- or  
22 calls initiated into TRS are initiated only by 20 percent of  
23 the hearing community, and calls into the CapTel service are  
24 initiated by 50 percent of the hearing community. So we're  
25 really getting what we're paying for with -- with services

1 like that.

2 Other than that, I -- I -- I just appreciate the  
3 time to speak with you today. And if there's anything else I  
4 can add, please let me know.

5 COMMISSIONER GAW: Okay. Thank you very much for  
6 your help, Ms. Mishler.

7 THE WITNESS: All right. Thank you.

8 JUDGE RUTH: Commissioner Appling, did you have any  
9 questions for this witness?

10 COMMISSIONER APPLING: Yeah, I think she's answered  
11 the questions already.

12 COMMISSIONER APPLING: But I will ask this  
13 question. I think I already have the answer from you.

14 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

15 BY COMMISSIONER APPLING:

16 Q. Should the Commission continue the CapTel service?

17 A. The Commission should continue the CapTel service.  
18 It's the most efficient way to spend our money in trying to  
19 provide functionally equivalency for the hearing impaired  
20 community.

21 Q. And I'm sure you would say that you think we should  
22 continue to pay for it for the deaf relay fund?

23 A. I think we should pay for it through the deaf relay  
24 fund. But I think while we're continuing to develop and  
25 provide these services, we should also work on appropriate



1 changes in generating revenue for that fund.

2 Q. What are you recommending or what's your thoughts  
3 on the increase for the surcharge? Should it be 10, 13 or 15?

4 A. Well, my thought all along, as we discussed last  
5 year, is that without addressing the root of the problem  
6 whatever surcharge you do is a Band-Aid for the next couple of  
7 years -- or next year. So that's -- that -- I think I should  
8 say that at the start.

9 That being said, I think all things considered,  
10 that -- and I understand, I believe, your feelings about  
11 increases in surcharges, and I understand reluctance to do  
12 that.

13 However, I think that if we could take ourselves  
14 back to the '92 surcharge level, that knowing in our  
15 conscience that we're going back to something that was 14 --  
16 13 years ago to provide much greater and better services,  
17 I -- I could probably and I -- I would hope that other people  
18 could sleep with that -- that amount as well.

19 Q. Okay. I remember you being here less than a year  
20 ago, because I've only been here a year. You was here before  
21 Commissioner Gaw and myself, and talking about how many phones  
22 you would release per month, and what your prediction was.

23 First of all, thank you for reminding me of what  
24 you said less than a year ago. And what changed in the -- the  
25 number of phones that -- is it a need? And I think you

1 covered that Commissioner Gaw. But is it there a need out  
2 there for that number of people? If we just dispensed 10,  
3 would that be adequate or is there a greater need for -- for  
4 that phone?

5 But when you tell me that 14 of the people are  
6 using half of the minutes -- and I suppose it's probably  
7 100 percent, but that's -- that's concerning to me.

8 A. It's very concerning to me as well. And -- and I  
9 think that we need to address that by addressing all users  
10 with informing them about our minutes budget or the cost of  
11 the minutes, et cetera, so that we're not discriminating  
12 against any of the users, No. 1.

13 But, No. 2, I think while we're doing that, we need  
14 to con-- or do -- work with legal entities to figure out how  
15 we might be able to address that subset.

16 COMMISSIONER APPLING: Thank you very much.

17 JUDGE RUTH: Okay. Ms. Mishler -- Mishler. Excuse  
18 me. You may --

19 THE WITNESS: Mishler.

20 JUDGE RUTH: Mishler.

21 THE WITNESS: Like fish.

22 JUDGE RUTH: Mishler?

23 THE WITNESS: Yes.

24 JUDGE RUTH: Okay. You may step down, but please  
25 don't leave. We may need to recall you.

1 THE WITNESS: Thank you.

2 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

3 JUDGE RUTH: Did you want to call another witness,  
4 Commissioner Gaw? I need to before we close the hearing. I  
5 know the other parties want to ask questions, so whenever  
6 you're done asking questions, we'll go to that.

7 COMMISSIONER GAW: I want to ask the Staff witness  
8 a couple -- a couple more questions.

9 JUDGE RUTH: Mr. Cecil, would you please come up to  
10 the witness stand? I'll remind you that you are still under  
11 oath.

12 And you may proceed, Commissioner Gaw.

13 WALTER CECIL, having been previously sworn, testified as  
14 follows:

15 FURTHER QUESTIONS BY COMMISSIONER GAW:

16 Q. Mr. Cecil, the -- the surcharge that's set  
17 currently on a per-user basis, is that statutory? Could it be  
18 done that way?

19 A. I believe the statute refers to a percentage, and  
20 that it is to be applied uniformly across companies and  
21 classes of users.

22 Q. So -- okay. It refers to a percentage. Percentage  
23 based on what?

24 A. I don't know.

25 Q. That's all right. We can -- we can look it up.

1           But how did it -- how did it go from what's in the  
2 statute to being a surcharge that was done per user at a set  
3 amount of money in this now a 10 cents or whatever it is per  
4 month?

5           How did we -- how did it get to that point? If you  
6 don't know, I'll ask Public Counsel.

7           A. I don't know.

8           (PROCEEDINGS INTERRUPTED BY INTERCOM.)

9           COMMISSIONER GAW: Let me ask -- may I ask Public  
10 Counsel that question?

11          JUDGE RUTH: Certainly.

12          COMMISSIONER GAW: Public Counsel, tell me how we  
13 got to a per-user charge instead of some sort of percentage  
14 off of the end -- or whatever -- whatever the history is.

15          MR. DANDINO: You know, I -- I really don't know  
16 on -- on that point.

17          COMMISSIONER GAW: Okay. Well, do I have to look  
18 behind you to find the answer to that maybe?

19          MR. DANDINO: It -- it -- it -- the statute says  
20 per line shall be a rate recovery mechanism, that's all it  
21 says, to recover the cost of implementing. And the system --  
22 the programs provided for in this section which shall be  
23 applied to each basic telephone access line.

24          And -- and not more than 100. Should not be  
25 imposed on more than 100 basic telephone lines per subscriber.

1 So it doesn't -- it doesn't necessarily set the mechanism,  
2 whether there's a percentage. It's just on each access line.

3 COMMISSIONER GAW: So -- so is it -- is it -- does  
4 that mean to you that it needs to be a set amount per line,  
5 rather than some sort of percentage based on usage?

6 MR. DANDINO: I -- to me as long as it's applied on  
7 each line, it could be a percentage. Maybe a percentage of  
8 the --

9 COMMISSIONER GAW: Okay.

10 MR. DANDINO: -- basic access line charge.

11 COMMISSIONER GAW: That's what I'm talking about.  
12 Yeah, when I -- I'm asking -- I'm not asking about users of  
13 deaf relay. I'm asking about users of phones in general  
14 that -- so it's -- it's done -- it's done on a per-line basis  
15 as it is today.

16 And you -- you think it might be -- there might be  
17 some flexibility so that -- so that telephone -- telephone  
18 bills could be -- have that assessment on a percentage of  
19 their total usage or not?

20 MR. DANDINO: It -- it -- I think it -- it probably  
21 could, just reading the statute. I don't know how they  
22 developed, whether they -- they want a flat charge versus any  
23 other cost-recovery mechanism. I don't know how that --

24 COMMISSIONER GAW: Public Counsel doesn't have a  
25 position on that one way or the other?

1           MR. DANDINO: Well, if we had a -- if we had our  
2 choice, I think we'd like to have it funded out of general  
3 revenue.

4           COMMISSIONER GAW: Sure.

5           MR. DANDINO: And not -- and as a surcharge on  
6 local telephone customers.

7           COMMISSIONER GAW: But if it is a surcharge on  
8 local phones, does it matter whether it's a flat charge per  
9 line charge to you or --

10          MR. DANDINO: It would --

11          COMMISSIONER GAW: -- everyone that paid --

12          MR. DANDINO: -- equitable -- more equitable to be  
13 a percentage of -- of a bill, as far as from our point of  
14 view. A flat rate charge, I think, is a regressive.

15          MR. HAAS: Commissioner Gaw, if I may?

16          COMMISSIONER GAW: Yes, go ahead.

17          MR. HAAS: Mr. Dandino was reading from  
18 Section 209.255. A later sentence in that same section reads,  
19 the Commission shall not vary the amount of the surcharge  
20 between telephone companies nor between the class or grade of  
21 customers of any telephone company.

22          And I just wanted to point out that statute uses  
23 the word "amount."

24          COMMISSIONER GAW: Does -- does Staff -- Staff  
25 believes it needs to be done the way it is as a flat amount

1 per line?

2 MR. HAAS: I'm going to answer yes, since that's

3 the way it's been done since the beginning.

4 COMMISSIONER GAW: Okay.

5 MR. DANDINO: And your -- Commissioner, can I -- by

6 amount I -- I think if you're putting a percentage as the

7 amount, I -- I could -- I could argue that. That --

8 COMMISSIONER GAW: Sure.

9 MR. DANDINO: That within a class and customers use

10 a certain percent for commercial, a certain percent for

11 residential. And as long as you have the same for a local

12 and -- and long distance company, it'd be the same.

13 COMMISSIONER GAW: Okay. I think that's all I

14 have.

15 JUDGE RUTH: Commissioner Appling, did you want to

16 ask Mr. Cecil any additional questions?

17 COMMISSIONER APPLING: I don't think it's --

18 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

19 JUDGE RUTH: No.

20 QUESTIONS BY JUDGE RUTH:

21 Q. Mr. Cecil, I have a couple of questions for you.

22 Give me just a moment.

23 My questions have to do with the retention amount.

24 And I'm going to look at your corrected Staff memorandum filed

25 3/17/05. It is the last page of your -- I guess it'd be

1 page 4 of the memorandum that's attached to that.

2           Next-to-the-last paragraph the memo states, Staff  
3 also recommends the Commission maintain the current retention  
4 amount for local telephone companies. This retention amount  
5 is conceptually money used to reimburse local telephone  
6 companies for billing and collecting the relay Missouri  
7 surcharge.

8           Currently local telephone companies are allowed to  
9 retain \$30 or 1 percent of the amount collected from the relay  
10 Missouri surcharge, whichever is greater.

11           However, it goes on to state, if a carrier collects  
12 a monthly surcharge amount under \$30, the carrier will retain  
13 the amount under \$30 as its full payment for recovery of the  
14 billing.

15           It's my understanding that last part is clarifying  
16 that if a carrier collects, say, only \$20 as its sur-- from  
17 its customers as the surcharge, it only keeps the \$20 instead  
18 of being reimbursed on how -- up to the amount of 30; is that  
19 correct?

20           A. That is correct.

21           Q. Then let me ask you -- I understand what's  
22 happening. I'm having a hard time reconciling that with the  
23 wording.

24           And, I mean, I understand that this came up in  
25 Case TO-2003-171 last time we looked at changing the surcharge



1 amount -- this same issue came up.

2           And at that point Staff had some recommended  
3 wording for the Commission to use, which is pretty much  
4 identical to what I read here.

5           My question is: Should this phrasing be changed to  
6 react to -- to reflect what it is we're doing? When I read  
7 this, it says retain \$30 or 1 percent of the amount collected,  
8 whichever is greater.

9           When I read that and I think, okay, in my example  
10 they're collecting \$20, when it says whichever is greater,  
11 that would mean they would be reimbursed up to 30.

12           So why is the phrase "whichever is greater" there,  
13 or perhaps should the wording actually be changed just to say  
14 they'll be allowed to collect 1 percent of the amount -- I'm  
15 sorry -- they'll be allowed to keep 1 percent of the amount  
16 collected, in which case in my example the company collecting  
17 \$20 would keep the 20, but a company who collects a far  
18 greater amount would still keep their 1 percent?

19           I'm not sure if you followed my question. But my  
20 question has to do with, it doesn't seem -- the wording seems  
21 to be confusing -- that whichever is greater conflicts with  
22 the phrase that comes before, and what we're actually doing.

23       A.   I believe I understand what it is that you're  
24 asking. I don't believe I can give you a good answer. I have  
25 been thinking about how one would phrase that since yesterday

1 when I became aware of the question.

2 The intent is that -- to recognize that 1 percent  
3 of some amount collected by a company may be such is small  
4 amount that it becomes a burden to the company. And,  
5 therefore, some minimum amount determined -- I think it was in  
6 1992 or 1993 to be \$30. But to recognize that a floor amount  
7 would be fair to compensate the companies.

8 Q. Let me interrupt you. Are you saying that \$30 is a  
9 floor --

10 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

11 BY JUDGE RUTH:

12 Q. Because I thought --

13 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

14 BY JUDGE RUTH:

15 Q. Okay. It was my understanding that it's not a  
16 floor if a company collects less than \$30.

17 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

18 BY JUDGE RUTH:

19 Q. They only keep what they actually collect; they  
20 collect \$20, they keep \$20? They are not reimbursed up to a  
21 floor of 30; is that true?

22 A. That is true.

23 Q. Okay. So explain to me what this means, this  
24 phrasing mean -- means. How can it say \$30 or 1 percent,  
25 whichever is greater, but yet it's not --

1           A.    I don't --

2           Q.    -- whichever -- whichever is greater?  Because if

3 in my example, if that were true, they would get 30 instead of

4 \$20?

5           A.    I -- I think perhaps we should compensate the

6 companies a flat amount of 1 percent.  But I recognize that

7 there -- there is a minimal cost to doing business, and that

8 they should be compensated.

9                   Having said that, I think that perhaps we are being

10 inconsistent with what is being done, and allowing companies

11 to keep less than the \$30.  I -- I don't have a good --

12          Q.    Well, let me ask you this:  Instead of saying that

13 the reimbursement amount is \$30 or 1 percent, whichever is

14 greater, wouldn't we get the -- the result that we're actually

15 doing now if we said that the compensation amount was

16 1 percent of the amount collected from the relay Missouri

17 fund -- I'm sorry -- surcharge?

18                   One -- if we just left it at that, it would give

19 the small companies -- if -- in my example they're collecting

20 \$20.  They keep the \$20.  But if they're collecting more, they

21 would get the larger amount?

22          A.    I would really like to have a line figure.  But

23 there -- there's --

24          Q.    I'm sorry?  You have a what?

25          A.    A number to work with.  A line count from some

1 company to work with a small one. But there -- there's  
2 something in the back of my mind that is saying that 1 percent  
3 collected by some of the smaller companies may be so small  
4 that that would not compensate them. For the larger  
5 companies, absolutely it compensates them.

6 Q. Okay. I don't think I made my question clear. I'm  
7 not at this point asking you whether we should change how we  
8 do the retention amount. I'm asking for accurate wording that  
9 describes what we do now.

10 And it's my understanding what we do now is if it  
11 is a small telephone company that perhaps does not have very  
12 many lines at all and only collects \$20 a month in surcharge,  
13 they keep \$20 a month, and that's the end of it; is that true?

14 A. That is true.

15 Q. And currently what we do, if it's a very large  
16 company -- and I'll say -- I'm making this figure up -- okay.  
17 I'll say this large company collects 500 -- their percentage  
18 is \$500, the --

19 A. Their 1 percent retention.

20 Q. Their 1 percent retention is \$500. We don't tell  
21 them, you only get 30; we tell them, you get to keep your  
22 percent, which is \$500?

23 A. Right. Yes.

24 Q. Okay. If that's what we're doing, I would like  
25 wording that's simple and accurate that describes that, so

1 that we would say the retention amount is, and I want phrasing  
2 that's -- that does just what I said.

3 And my question to you was: Would it be accurate,  
4 then, to describe what we're actually doing -- that the  
5 retention amount for local telephone companies shall be  
6 1 percent of the amount collected from the relay Missouri  
7 surcharge, period?

8 Did you have a suggestion?

9 A. I don't have a suggestion. And -- and I -- I think  
10 the reason I'm confused is that, as I understand it, if a  
11 small company collects \$20, they're allowed to keep 1 percent  
12 of \$20.

13 Q. Right. Which would be --

14 A. And that would be a burden to the company. So  
15 I -- I think leaving it at 1 percent will create a hardship.  
16 I think -- I think somehow we have to craft very clear  
17 language that creates a more minimum level.

18 And I don't have anything to offer at this moment  
19 to respond to you.

20 Q. Well, let me ask if it would be more clear to  
21 reflect what we're currently doing -- not trying to change  
22 anything. If the phrase was changed to local telephone  
23 companies are allowed to retain up to \$30 or 1 percent of the  
24 amount collected from the relay Missouri surcharge, whichever  
25 is greater -- greater?

1           A.    I'm certain that I'm missing something here.  I'm  
2 absolutely certain that I am.  I don't see what it is, but  
3 I -- I'm reluctant to agree with that statement.

4           Q.    Okay.  Well, let me ask you this, and -- and answer  
5 honestly.  You're under oath.  Do you see my concern that the  
6 wording is not as clear as it should be?  If you don't see my  
7 concern, it just simply means that I haven't explained it well  
8 enough.

9           A.    I understand your concern.  And I think -- and I  
10 think that it's a proper concern.  I -- I think we're going to  
11 have to spend some time parsing some language out to address  
12 that.  I don't think that I'm going to --

13                JUDGE RUTH:  Well, the answer may be it's as --  
14 it's as clear as it needs to be.  The question has been  
15 discussed; however, the fact that there was some confusion  
16 came out in a prior case, we've got the same language here.  
17 So it's -- it's being looked at again.

18                If there is a more clear way to state exactly what  
19 it is we're doing, I would prefer that we're as clear as  
20 possible.

21                If this is the best we can do to reflect what it  
22 is -- how the retention amount works, then we'll leave it.  
23 But I'm going to ask that following the hearing, Staff review  
24 the issue.  And if Staff believes that the phrasing is clear  
25 and accurate and does not need to be changed, then Staff

1 should so -- so state.

2           However, if Staff believes that it can be improved  
3 upon or made more clear, then I'll expect a pleading to that  
4 effect. So --

5           COMMISSIONER GAW: Judge, may I ask a question  
6 while you're on that topic?

7           JUDGE RUTH: Of course.

8 FURTHER QUESTIONS BY COMMISSIONER GAW:

9           Q. Mr. Cecil, since you -- since the Judge is asking  
10 you for that information, I want to know how you reconcile  
11 giving a minimum flat fee to the company when the statute  
12 specifically only refers to a percentage.

13           And I -- and if you don't have the answer now,  
14 that's fine. But I want to know how you reconcile that with  
15 the statute when you're providing the other information.

16           A. Un-- until yesterday I had not given that any  
17 thought at all. And I still don't have a good answer for you.

18           COMMISSIONER GAW: Okay.

19           JUDGE RUTH: Do you have a question? I -- I have.

20 FURTHER QUESTIONS BY JUDGE RUTH:

21           Q. Okay. Mr. Cecil, this may be in one of the  
22 supplemental pleadings. If so, perhaps you can direct me to  
23 it.

24           Has Staff calculated out how much you think there  
25 would be in the fund in approximately 1 year if the surcharge

1 amount were rela-- were raised to either 12 or  
2 13 cents not imposing any of the CapTel limits, et cetera?  
3 A. I did the work. It's not in any of my pleadings.  
4 Q. Well, I saw some other amounts. But I wanted to  
5 know if I was missing 12 or 13 cents -- if those were in there  
6 also.  
7 A. In --  
8 Q. They're --  
9 A. In -- in the review of this -- my plea-- my -- in  
10 order to cover every possible scenario, it would be  
11 cumbersome.  
12 JUDGE RUTH: I don't have any questions for you.  
13 Let me see if there's any more from the Bench.  
14 COMMISSIONER GAW: Not for Mr. Cecil.  
15 JUDGE RUTH: Commissioner Appling?  
16 COMMISSIONER APPLING: My cup is full.  
17 JUDGE RUTH: Then I want to offer the other parties  
18 the chance to ask any questions of Mr. Cecil that they might  
19 have. These questions could relate to any of the previous  
20 topics that we have been discussing with Mr. Cecil.  
21 And I will start with Mr. Dandino.  
22 MR. DANDINO: Thank you, Your Honor.  
23 QUESTIONS BY MR. DANDINO:  
24 Q. Mr. Cecil, I just had a -- have a couple questions.  
25 When the companies send in their payment to the -- to the



1 fund, do they indicate or certify how many lines this payment  
2 represents payment from?

3 A. I -- I see that form when it comes in. There is a  
4 form they're supposed to use and to fill out -- and --

5 (PROCEEDINGS INTERRUPTED BY INTERCOM.)

6 THE WITNESS: -- at this moment I'm drawing a  
7 blank. I don't think they do.

8 BY MR. DANDINO:

9 Q. Okay.

10 A. I think they indicate an amount.

11 Q. Because I was wondering on the -- one of your  
12 exhibits, I believe it shows the amount of money and -- and  
13 the estimated number of lines, it looks like. And -- and I  
14 was just wondering how, you know, the number of lines backed  
15 out from the --

16 A. It is backed out.

17 Q. -- From that?

18 A. The reason that it's an estimated amount is that if  
19 you take a large company who serves large customers, say a  
20 hospital or something like Monsanto in St. Louis, not all the  
21 extensions or lines that serve that company will have  
22 obligations to support the surcharge.

23 There's a cap of 100 lines. Anything above  
24 100 lines is not charged the surcharge amount. So while I  
25 receive an amount, that isn't necessarily what the company

1 will serve. But by taking the amount that they pay, I divide  
2 that by the current surcharge, and that's the number of lines  
3 supporting the surcharge.

4 Q. Do you know if -- if the PSC or the if the State  
5 auditor has ever audited, you know, the companies to see if  
6 the companies were paying their -- the correct amount?

7 A. I'm unaware if the State has. I know that recently  
8 there was an internal audit.

9 Q. Internal audit by --

10 A. I believe by physical services. That was before I  
11 had more active involvement with the surcharge. So I really  
12 have very limited knowledge of what happened.

13 Q. That's a PSC --

14 A. But it was --

15 Q. -- budget?

16 A. -- PSC.

17 MR. DANDINO: Okay. That's all I have. Thank you.

18 JUDGE RUTH: Thank you.

19 Then I'll ask SBC if you have any questions for  
20 this witness.

21 MR. GRYZMALA: Just have a couple of questions.

22 JUDGE RUTH: That's fine. But make sure your  
23 microphone is on and turn it towards you.

24 MR. GRYZMALA: Thank you, Your Honor. I just have  
25 a couple questions.

1 QUESTIONS BY MR. GRYZMALA:

2 Q. In the supplemental Staff recommendation,  
3 Mr. Cecil, it caught my eye on page 2 of the memorandum that  
4 there is a CapTel user. And I'll quote, one CapTel user  
5 consumed 5,529 minutes in January 2005, end quote.

6 Would it be Staff's position that there is some  
7 outer limit to the number of minutes which would be  
8 reasonable?

9 A. One would think so. My position is no. I believe  
10 that the federal statutes require functional equivalents.

11 And if a person can use their phone 18 hours a day  
12 without any limitations, then I -- I believe that the -- the  
13 relay needs to allow that.

14 Having said that, I think there are some physical  
15 constraints that need to be brought in line, so there's a  
16 conflict there that I can't resolve.

17 Q. Putting aside the application of federal law, would  
18 you believe that constraints to limit minutes of use would be  
19 wise from an expense point of view?

20 A. Yes, I -- I would. There's a limited revenue  
21 source, and we really don't want to go to the well too many  
22 times.

23 Q. Putting aside, again, considerations of what  
24 federal law may or may not require, does the Staff have an --  
25 an opinion as to whether work is an appropriate use; and if

1 so, to what extent?

2 A. Yes, it is an appropriate use. And I believe that  
3 if you mean limiting it to 8 hours a day for work, it -- I  
4 would find it very difficult to place a limit there. If -- if  
5 you had someone who was a salesman, they might need to be on  
6 the phone to do their business 8 hours a day, 5 days a week,  
7 4 weeks a month.

8 That 5,000 minute user was on the phone, I believe,  
9 it was a little over 3 hours a day. And I believe that's a  
10 20-day month -- a work month.

11 Q. I want to direct your attention, if I may, to the  
12 same supplemental Staff recommendation to Appendix 1-7, which  
13 is entitled CapTel data.

14 JUDGE RUTH: Mr. Gryzmala, can you say again where  
15 you're referring us to?

16 MR. GRYZMALA: Yes, ma'am. The supplemental Staff  
17 recommendation that was filed yesterday afternoon, I believe.  
18 And attached to that is a memorandum from Mr. Cecil. And  
19 attached to the memorandum is an appendix that goes from 1-1  
20 through 1-18 or 20 or so. And I am just looking at the sheet  
21 that's marked 1-7 on CapTel. It says at the top, CapTel data.

22 JUDGE RUTH: Thank you.

23 MR. GRYZMALA: You're welcome.

24 BY MR. GRYZMALA:

25 Q. Just a brief question. Mr. Cecil, if I recall your

1 prior testimony, that testimony was to the effect that -- if I  
2 recall, the number of phones actually -- the number of CapTel  
3 telephones actually distributed have been decreasing.

4 I wrote down numbers, if you recall conveying them,  
5 from September '04 through April of '05, and March was 18, for  
6 example; April was 13; is that correct?

7 A. I --

8 Q. I'm sorry.

9 A. -- I believe that was Dr. Golden.

10 Q. That's my mistake. That's Dr. Golden.

11 Let's assume for purposes of the question that  
12 that's accurate -- that the number of phones actually being  
13 distributed are decreasing.

14 Let me direct your attention to the CapTel  
15 expenditures. You would agree that those are increasing?

16 A. Yes, the -- the expenditures until last month in  
17 March they are increasing. If you'll notice the change from  
18 February until March, there's a reduction -- or pardon me.  
19 I'm looking at the wrong figure.

20 Q. And -- and trying to cut to the chase, if I may,  
21 would you agree that given all of the data on this sheet, that  
22 virtually everything is either constant or decreasing,  
23 excepting one item, and that has to do with the -- with the  
24 high-user minutes and expenditures -- I'm sorry -- to which  
25 you just discussed?

1           A.    Yes.  Well, the minutes of usage are increasing.  
2   The -- correspondingly the expenditure is increasing.

3           Q.    And -- and I apologize for interrupting, but you  
4   would agree that the average usage, if you back out high-user  
5   minutes, is relatively constant, 120s and 130s?

6           A.    It's in that ballpark, yes.

7           Q.    Okay.  Mr. Cecil, you had heard, might I assume,  
8   SBC's opening statement to the effect that we would believe  
9   that 60 days advanced notice is appropriate and needed in  
10  order for the Local Exchange Company, that is SBC, to bill its  
11  customers effectively to get the surcharge in place and to  
12  bill its customers -- you heard that?

13          A.    Yes, sir.

14          Q.    Do you support that timeframe?

15          A.    I -- I don't know why -- I -- I don't have a  
16  problem with it, if that's what you're asking.  If you're --  
17  if you're asking me if I think it should be less, certainly if  
18  it's possible.

19                I recognize that there's a minimum time required,  
20  and that the companies each should know uniquely their  
21  circumstances.

22          Q.    But 60 days, as you sit, doesn't shock you or take  
23  you by surprise or offend?

24          A.    Other companies have also asked for figures in that  
25  ballpark.  That --

1 Q. Very good.

2 A. So --

3 MR. GRZYMALA: Very good. Thank you.

4 Thank you, Mr. Cecil.

5 JUDGE RUTH: Thank you.

6 Mr. Curtis, do you have questions for this witness?

7 MR. CURTIS: Yes, just a couple.

8 QUESTIONS BY MR. CURTIS:

9 Q. Mr. Cecil, I -- I think it was you, but I -- I'm

10 not sure that -- did you testify earlier that CapTel is not

11 a -- a system that is suitable for everybody in the hearing

12 impaired community?

13 A. I did say that.

14 Q. Okay. Do you -- and that some actually prefer the

15 traditional relay systems?

16 A. Yes.

17 Q. Can you give a -- us -- and maybe Ms. Mishler

18 could -- a profile of the CapTel user by age, by education, by

19 severity of impairment?

20 A. I don't have any information along those lines.

21 Perhaps the relay account managers might have that or

22 Dr. Golden might definitely have that. I'm -- I'm sure she

23 might have that information collected, as she determines how

24 she distributes the various pieces of equipment that she does.

25 Q. I'm just curious if -- if we're -- you're seeing a

1 younger cohort of the hearing impaired community using CapTel  
2 because of certain education they're receiving, you know,  
3 enunciation and things of that type -- techniques that allow  
4 that -- that system to be more adaptable for them, as opposed  
5 to an older cohort of the population?

6 A. I don't know.

7 Q. You don't know.

8 A. I don't.

9 Q. Do you have any evidence as to the cost  
10 effectiveness on a minute by use basis between CapTel and the  
11 other traditional relay systems or is there enough data yet  
12 available?

13 A. I'm just trying to get my -- I don't think I  
14 understand what you mean by cost effectiveness. Do you mean  
15 minutes of conversation?

16 Q. Comparing systems --

17 A. I -- I --

18 Q. -- traditional relay systems to CapTel. Is it --  
19 is it cheaper today to use a CapTel system on a  
20 minute-per-minute use?

21 A. Is it cheap -- we have a contracted amount. I  
22 don't know what the company's costs are to produce that  
23 under -- I don't know what the company's costs are to produce  
24 that.

25 We have a -- a contract that specifies \$1.45 a



1 minute for CapTel, and 94 cents a minute or all of forms of  
2 relay.

3 Q. I guess my question is, as CapTel is an emerging  
4 technology, do we see that they will be inherent cost  
5 effectiveness to be gained from that as it is more used,  
6 and -- and -- and can you say right now that it is a more  
7 efficient cost-wise system than the traditional relay systems  
8 with a live operator?

9 A. Well, I don't believe I could say that. One of the  
10 points that was supposed to make CapTel so attractive is that  
11 you were supposed to be able to communicate more closely to a  
12 normal speaking pace.

13 And having put it that way, I would think that if  
14 you weren't using a phone for sometime, and then you had this  
15 technology that allowed you to, that you might have some  
16 built-up demand and you might spend more time on the phone.

17 So I -- I really don't know how to give you an  
18 answer.

19 Q. Well, I mean, comparing apples to apples. An hour  
20 of CapTel use cost versus an hour of a live operator relay?

21 A. Well, CapTel is sold at a -- well, the State pays  
22 \$1.45 a minute for CapTel. So if nothing else, the difference  
23 between CapTel and regular relay is about 51 cents.

24 So you would probably be paying about 50 percent  
25 more for CapTel for an hour's time.

1           Q.    Is -- is that a constant or would that be a  
2 declining cost going forward? Do you have an opinion?

3           A.    Until the contract expires, regardless of the  
4 number of minutes, CapTel is billed at \$1.45 a minute. So  
5 I -- I would say that's a constant.

6           MR. CURTIS: Thank you. I have nothing further.

7           JUDGE RUTH: Mr. Haas, did you have any questions  
8 to follow up with Mr. Cecil?

9           MR. HAAS: Yes, Your Honor.

10          JUDGE RUTH: Okay. Please proceed.

11         QUESTIONS BY MR. HAAS:

12          Q.    Hello, Mr. Cecil. In his opening statement,  
13 Mr. Dandino suggested that the office of Public Counsel might  
14 be all right with a 12- or 13-cent surcharge. Have you done  
15 any calculations on 12- or 13-cent surcharges?

16          A.    I have. There they are.

17          Q.    And -- and have you done one on both of those?

18          A.    Both?

19          Q.    On 12 -- 12 and 13 --

20          A.    Yes.

21          Q.    -- cents?

22          A.    Yes, I have. I don't have all of the scenarios. I  
23 only have the scenario in which 20 phones at 153 minutes and  
24 20 CapTel phones at 175 minutes are utilized with me.

25          Q.    And -- and where are those? Are those pages

1 Appendix 1-16?

2 A. They are -- they are not. Not at 12 and 13 cents.

3 Q. Please explain to me what is on Appendix 1-16 where  
4 it refers to 12 cents.

5 A. 12 cents -- pardon me. Not at 13 cents. My  
6 appendix covers 12 cents, but not 13 cents.

7 Q. And at what different scenarios?

8 A. I prepared the scenarios at 10 cents, 12 cents,  
9 15 cents and 18 cents based on the 20 minutes of CapTel phone  
10 distribution for 153 minutes, 175 minutes and 200 minutes.

11 Q. Okay. And -- and those are all presented in your  
12 appendices?

13 A. Yes, they are.

14 MR. HAAS: Those were all the questions I had.

15 JUDGE RUTH: Okay. Mr. Cecil, you may step down,  
16 but you're -- no, I take that back. We have questions from  
17 the Bench.

18 COMMISSIONER GAW: Well, just real quick.

19 FURTHER QUESTIONS BY COMMISSIONER GAW:

20 Q. Mr. Cecil, would you prepare us something for  
21 13 cent, please?

22 A. Yes, sir.

23 Q. And would you also prepare another page for us that  
24 would set -- that would have a scenario based upon a -- not  
25 the appropriated amount, but the historical amount of

1 expenditure?

2           And if you want to give that some -- a couple of  
3 hundred thousand dollar leeway from Diane Golden's group,  
4 instead of the appropriate amount so I could see what those  
5 numbers look like.

6           I'm not suggesting that I want to follow those. I  
7 just want to see what that does. And give me another scenario  
8 that -- that drops the -- the phone distribution down to 10 a  
9 month.

10          A.    Yes, sir.

11           COMMISSIONER GAW:  Thanks.

12           That's all, Judge.

13           JUDGE RUTH:  Thank you.

14           I'm marking that as Late-Filed Exhibit 3.

15           (LATE-FILED EXHIBIT NO. 3 WAS MARKED FOR  
16 IDENTIFICATION BY JUDGE RUTH.)

17           JUDGE RUTH:  And it is my understanding that there  
18 are at least 3 parts to it regarding 13 cents, not the  
19 appropriated amount, but the historical data amount  
20 for -- Part B and C would be dropping the phone distribution  
21 down to 10 per month.

22           And I want to provide adequate amount of time for  
23 you to get this in, but the Commission wants it fairly  
24 quickly.

25           Can you give me an estimate of when you'd be able

1 to have it in? Like next Monday, would that be adequate? Do  
2 you need more time?

3 THE WITNESS: No, I -- I believe I can do the work  
4 by next Monday. Yes, I -- I believe I can.

5 COMMISSIONER GAW: Before I -- before he takes that  
6 as his assignment, I -- I -- I do need to inquire of  
7 Dr. Golden about the -- the -- whether or not that's realistic  
8 on the phone distribution at 10 a month. So --

9 JUDGE RUTH: What I'll do is I'm -- for our notes  
10 and for the record I'll mark these as what is coming in for  
11 Exhibit 3. And if we need to amend that later, we'll come  
12 back and change it.

13 COMMISSIONER GAW: Yeah, that's fine. I just want  
14 to clear that up.

15 JUDGE RUTH: And I'm gonna note that the Commission  
16 will expect your filing on Monday, May 2nd, unless Staff files  
17 a pleading indicating that additional time is necessary.

18 Okay. When -- once the document is filed, all  
19 parties will have two bus-- a maximum of two business days to  
20 file any objections.

21 So that the Commission can proceed quickly, what  
22 I'll ask is if you have no objections, you file a notice to  
23 that effect, so that it's possible the Commission would be  
24 able to move more quickly.

25 So once -- do you understand what I'm saying? Once

1 Late-Filed Exhibit 3 is submitted to the Commission, all  
2 parties will have two business days to respond. But if you  
3 need less time, do so. And if you have no objection, I expect  
4 a notice saying that, so that I'll know that when I have  
5 everyone's response.

6 All right. You may step down, Mr. Cecil. Please  
7 remain in the room.

8 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

9 JUDGE RUTH: Ms. Golden?

10 COMMISSIONER GAW: Yeah, just briefly. I just want  
11 to ask her about that.

12 JUDGE RUTH: Dr. Golden, would you please come back  
13 to the stand?

14 And, Dr. Golden, I'll remind you that you are still  
15 under oath. And I believe we may have a few more questions  
16 for you from the Bench.

17 DIANE GOLDEN, having been previously sworn, testified as  
18 follows:

19 FURTHER QUESTION BY COMMISSIONER GAW:

20 Q. Dr. Golden, there was some discussions earlier  
21 that -- there was some reference to the poss-- discussion last  
22 year about trying to limit the phone distribution to 10 a  
23 month.

24 And -- and I -- I don't know that I need to rehash  
25 whether we were supposed to do 10 a month or not. I --

1 looking forward at this point, what -- tell me what -- what do  
2 we have in regard to discretion on how many phones would be  
3 distributed, and can we -- can we do something that would  
4 limit those phones in order to -- I know that's -- it's not  
5 necessarily gonna control your costs from your part of the  
6 equation in -- in the formula that we're looking for here, but  
7 it does on -- perhaps on the usage.

8 A. Yeah.

9 Q. Can you help me with that?

10 A. Obviously a couple of issues. One, even if we did  
11 some sort of per capita of 10 per month, if we just give it to  
12 one of those 10 as the high-end user, you've blown your -- you  
13 know, trying to use the number of end units to control  
14 minutes.

15 Q. I understand that.

16 A. The -- yeah. the Distribution that I saw, the  
17 first thing I realized was it's not a normal distribution.  
18 It's not a nice bell curve.

19 Q. Right.

20 A. You know, and if it were a nice bell curve,  
21 logically then if you limited the numbers, you would -- you  
22 know, if people were following one standard deviation or  
23 whatever -- the mean, it would -- might work.

24 Outside of that, the statute obligates us to  
25 provide adaptive telephone equipment to provide basic

1 telephone access. That's very comparable to the statutory  
2 requirement for the service.

3 Our rules are set up so that the discriminating  
4 factor in terms of us discrim-- discriminating equipment is a  
5 financial eligibility criteria. We do have financial  
6 eligibility criteria. Most states do not. Quite frankly,  
7 their equipment distribution programs do not have any kind of  
8 financial eligibility criteria.

9 Q. Thank you.

10 A. We do. And that would be one way we could try to  
11 control numbers.

12 Q. Has that not been utilized up to this point?

13 A. We do have financial eligibility criteria, but we  
14 apply it consistently across all categories of equipment.

15 Q. Okay.

16 A. If we were going to use that as a way of  
17 controlling the number of CapTel units distributed, then we  
18 would have a lower financial eligibility --

19 Q. Oh, I see.

20 A. -- criteria.

21 Q. Yeah. Okay.

22 A. And, you know, what -- okay. Well, you know what  
23 kind of position that would put us in. And deal with  
24 consumers and trying to --

25 Q. I don't -- I don't --



1           A.    Yeah.

2           Q.    I don't see that as vital for me personally.  Go  
3 ahead.

4           A.    Okay.  The only other way -- we would only have  
5 two other ways of doing it.  One would be for us to  
6 arbitrarily decide which of the two groups that typically use  
7 the CapTel phone are more deserving.

8                   One group that uses the CapTel phone are people who  
9 would use traditional voice carryover.  They really have very  
10 little residual hearing, so they're primarily using the text  
11 to read, and then they are speaking.

12                  The other group that uses the CapTel system are  
13 people with residual hearing, and they're using both --

14          Q.    Yes.

15          A.    -- the text and what they're hearing.  Quite  
16 frankly, if we were to prioritize that way, what we would  
17 probably have to do is say those people who can use  
18 traditional voice carryover, we will set them up in  
19 traditional voice carryover, not CapTel.

20                  We will give them a traditional VCO phone.  So the  
21 folks who are not getting access to CapTel are gonna be your  
22 late deafened oral deaf community.

23                  The people who would be getting it would be those  
24 with residual hearing, but poor discrimination, et cetera, who  
25 have never had to use voice carryover or the relay service.

1 They are people who would have been using amplified phones  
2 effectively, but now their discrimination is so poor -- their  
3 residual hearing.

4           Unfortunately -- I mean, very nervous about doing  
5 that. Because what it sets us up as is a -- discriminating  
6 based on the type of combination of disabilities they have a  
7 who we give it to and who we don't.

8           Our only other option would be a wait list. And,  
9 quite frankly, given our statutes, it says we shall provide  
10 basic access to telephone. I don't know how we get around --  
11 how we set up a wait list and say you can't have anything.

12           I guess we could offer them, again -- if we'd  
13 already done 10 that month, we could offer them traditional  
14 VCO or a traditional amplified phone knowing that the  
15 traditional amplified phone really isn't providing basic  
16 access, because their discrimination is so poor.

17           It -- it's gonna be a very awkward situation for  
18 us. And -- and we would have to, A, get with our consumer  
19 counsel to try to decide what's least offensive to the  
20 community. We'd have to revise our rules and put something in  
21 place, and basically try to sell it without really angering  
22 the community.

23       Q.    So what is the wait time now?

24       A.    Wait time?

25       Q.    Uh-huh. Yes.

1           A.    Zero.  I mean, we process applications in about  
2  48 hours after we receive them, typically.  And because --

3           Q.    Do you -- do you ever turn somebody down for a  
4  CapTel phone because you don't think it's -- they can utilize  
5  it at all because -- because this -- because they -- they do  
6  not -- if -- if you had somebody come in that was unable to  
7  speak --

8           A.    Yes, absolutely.  We --

9           Q.    -- would you say, no, this isn't the right  
10 mechanism for you?  I don't know how that works.

11          A.    Every person that gets a CapTel phone from us, A,  
12 they go through the application process.  But they have to go  
13 to one of our resource centers and actually try out the  
14 system.

15                  And -- and not only a CapTel system, but try out  
16 our high-end amplified phone and make sure that won't work for  
17 them.

18                  So, yes, we turn down a lot of folks who come in  
19 the door and say, I think I need that caption telephone.  And  
20 that's not at all what we end up providing.

21          Q.    For someone who -- who can -- who can speak, but  
22 who is relying on the text entirely, compare their usage of  
23 the CapTel phone to something else.  What -- what is different  
24 in the communication that occurs?

25          A.    The comparison is back to traditional voice

1 carryover. And the difference is the -- the communication  
2 assistant using voice recognition software, speeding up the  
3 translation versus someone keyboarding, so it's much slower.

4 Other than that, if they have no residual hearing,  
5 they're not getting the -- you know, the dual input advantage,  
6 they do get the direct dial-out advantage, you know, CapTel.

7 Q. Can the caller on the -- can the individual on the  
8 other end of the line hear the speaking that they're --  
9 that -- that goes through on the voice carryover?

10 A. That goes through on both CapTel and traditional  
11 voice carryover the same way, yes.

12 COMMISSIONER GAW: So we have a new Commissioner,  
13 it looks like.

14 BY COMMISSIONER GAW:

15 Q. So if -- if -- if that's the case, then, it is just  
16 about the delay --

17 A. It's --

18 Q. -- in that -- in that scenario, it's about the  
19 scenario?

20 A. It's a timing difference and the -- the call-out  
21 difference. The fact that on CapTel you have -- you just dial  
22 one number, rather to the relay and you have to do the -- you  
23 know, a third-party link.

24 COMMISSIONER GAW: I see.

25 THE WITNESS: Yeah.

1                   COMMISSIONER GAW: Thank you. That's all I have.  
2 I'm -- I'm not sure whether I -- I -- I need the scenario on  
3 the 10 phones. I don't know what the other Commissioners will  
4 want to do on that.

5                   JUDGE RUTH: Okay. I'll ask Commissioner Appling.  
6 Do you still want -- or do you want the scenario that  
7 Commissioner Gaw gave Mr. Cecil to prepare dropping the phone  
8 distribution down to 2 -- or 10 per month?

9                   COMMISSIONER APPLING: I -- I don't think so. But,  
10 Dr. Golden, the only thing that is concerning for me at this  
11 moment is -- is the 14 people and their large number.

12                   And I don't know what the answer is to that. And I  
13 don't want you to -- or anybody else in this room to go away  
14 with the impression that I don't fully support this program.  
15 And I don't know whether there is a legitimate reason for  
16 that.

17                   And I certainly I don't want to be accused of  
18 misleading in the area saying that I'm discriminating against  
19 someone. But we need to take a look at that.

20                   THE WITNESS: Absolutely. And I'll -- I would  
21 plead if there is -- I know there's confidentiality issues.  
22 But we provide training to every person that gets a CapTel  
23 phone.

24                   And obviously, I mean I'll be the first to say it.  
25 We've -- I'm guessing that there are some issues happening

1 that are not all legitimate uses. and I would love to be able  
2 to address those.

3 And absent, you know, following up with all people  
4 that we have distributed an end unit to, if there is any way I  
5 could just be given a hint -- geographic hint without it being  
6 personally identifiable, you know, our staff would follow up.

7 We'd -- we'd go into the home and ask people to log  
8 their minutes, and let us know just so that they get a feel  
9 for how many minutes we're using -- they are using.

10 And, you know, this is a very small population of  
11 people that we serve. And we have data on all of them, know  
12 all of them. So I would really like to address those high-end  
13 users.

14 As I said to someone earlier, if it's legitimate  
15 high-end use, that's one thing. If it's unintentional use by  
16 another family member and the captioning is on, we need to do  
17 something about that.

18 And I just don't know how to approach it without  
19 knowing who those people are.

20 COMMISSIONER APPLING: Okay. Thank you very much,  
21 and we look forward to working with you in the future.

22 COMMISSIONER CLAYTON: I've been listening  
23 upstairs, and I want to thank you -- you and all of the other  
24 participants for their involvement today. I came down solely  
25 for the purpose making sure that Commissioner Gaw stopped

1 asking questions.

2 JUDGE RUTH: I have a question, too, for you.

3 THE WITNESS: Sure.

4 QUESTIONS BY JUDGE RUTH:

5 Q. The CapTel users, are they sent a statement every  
6 month? Are they told how many minutes they use?

7 A. No.

8 Q. Okay.

9 A. I'm -- I'm saying that, but other relay -- no relay  
10 users get a statement about minutes used.

11 JUDGE RUTH: Okay. Thank you.

12 Any other questions from the Bench for this  
13 witness?

14 (NO RESPONSE.)

15 JUDGE RUTH: Then we're gonna have an opportunity  
16 for questions from the other parties of Dr. Golden, and I'll  
17 start with you, Public Counsel?

18 MR. DANDINO: No questions, Your Honor. Thank you.

19 JUDGE RUTH: And SBC Missouri?

20 MR. GRYZMALA: Nothing, Your Honor. Thank you.

21 JUDGE RUTH: Big River?

22 QUESTIONS BY MR. CURTIS:

23 Q. I'd like to ask you a question on the profile of  
24 the CapTel. You -- you -- you started to tell us a little bit  
25 about that. I'd like to hear a little bit more.

1           A.    The -- the CapTel users fall in three distinctive  
2 groups. One is the group you're talking about, the -- the  
3 younger oral deaf, those people in particular. I can let you  
4 know that the breakout of CapTel users, about 22 percent of  
5 them are cochlear implant users.

6                   And that's a fairly new phenomenon. And a lot of  
7 those people are considered oral deaf adults. So part of the  
8 population is -- is that group.

9                   Another population is the -- the employment age,  
10 regular adults who are -- see CapTel as a much more efficient  
11 way of using voice carryover. Many of these people have been  
12 voice carryover users for a long time. And they are -- they  
13 switched to CapTel because it is -- the speed of translation  
14 is so much faster and more efficient.

15                  The last group is by far the most difficult group  
16 for us to distribute the equipment to and to provide  
17 appropriate training. And those are older elders who are  
18 losing their hearing to the typical aging process or -- or  
19 other compounding factors whose discrimination -- speech  
20 discrimination is plummeting.

21                  So they may have quite a bit of residual hearing,  
22 but it's the classic I hear you talking and see your lips  
23 moving, but I did not understand what you're saying.

24                  And that group of people, typically we get them  
25 through our program first as an amplified phone user. And we



1 can even watch some these people start with an amplified  
2 phone with 30 or 40 decibels of gain, and then watch them to a  
3 high-end amplified phone. And then at some point in time  
4 their discrimination is so poor, it just doesn't matter what  
5 kind of amplification you provide, they cannot understand what  
6 the person on the other end of the phone is saying.

7           Those are -- are the last group of people who are  
8 potential CapTel users. And some of them adapt very well and  
9 become good CapTel users.

10           I would be willing to bet that they are way at the  
11 low-end usage, however. They become effective users, but  
12 they're never really completely satisfied with the fact that  
13 their hearing still stinks, and they have to use that text.  
14 So I'm guessing those people are on the -- the low end of use.

15           And -- and we have had a good number of those folks  
16 that have just said, no, I can't -- I can't do this. I can't  
17 listen and read at the same time. It's too confusing.  
18 That -- that millisecond or two delay is just too much for me  
19 from what I'm hearing and what I'm reading. I'll just not use  
20 the phone.

21           Q.   Everybody in the Missouri relay program you -- you  
22 test out at one of your centers before you assign them the --  
23 a particular system or equipment?

24           A.   For the CapTel phone, yes.

25           Q.   Uh-huh.

1           A.    It depends on the piece of equipment.  CapTel is  
2 one of the more restrictive in terms of -- of our  
3 distribution, yes.  They must go to one of our distribution  
4 centers.  They must try out the phone.

5                   We actually require them to send us an audiogram,  
6 because we look at that and speech discrimination, et cetera,  
7 yes.

8                   MR. CURTIS:  Okay.  Thank you.

9                   JUDGE RUTH:  Mr. Haas, did you have any questions  
10 for this witness?

11                  MR. HAAS:  Yes, I have a question.

12                  QUESTIONS BY MR. HAAS:

13                Q.    Good afternoon.  Does your program charge those  
14 people to whom it distributes equipment?

15                A.    No.  The equipment is provided at no cost to the  
16 program participant.  There are limitations in the program.  
17 There are financial eligibility criteria.  The person has to  
18 be a Missouri resident obviously.  Those kinds of criteria.

19                   We provide one piece of adaptive telephone  
20 equipment every four years, so these folks are on a  
21 replacement cycle, so to speak.  Unless their disability  
22 changes and they need to go from an amplified phone to a -- a  
23 caption phone, because they just can't use the amplified phone  
24 any longer.

25                   But, no, there is -- is no charge.  Now, we only

1 provide one phone, and it's for home use. People buy  
2 additional phones for themselves for other uses.

3 MR. HAAS: Thank you.

4 JUDGE RUTH: Okay. Thank you, Dr. Golden. You may  
5 step down. I don't anticipate we'll have additional  
6 questions, but please stick by if you can.

7 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

8 JUDGE RUTH: Last I need to recall Ms. Mishner  
9 (sic). No? Okay. That's it. I need you to spell it for me.  
10 Mr. Cecil?

11 MR. CECIL: M-I-S-H-L-E-R.

12 JUDGE RUTH: L-E-R? Mishler?

13 MS. MISHLER: Yes.

14 JUDGE RUTH: Okay. Is -- is she still in the  
15 audience?

16 MS. MISHLER: I'm right back here.

17 JUDGE RUTH: Okay. I need to -- okay. I need you  
18 to come forward.

19 I'll remind you that you are still under oath. And  
20 let's see if we have any additional questions from the Bench  
21 for this witness besides me.

22 COMMISSIONER CLAYTON: No questions. No questions.

23 JUDGE RUTH: Okay. Actually I just want to give  
24 the other parties another opportunity to ask questions of you,  
25 based on your testimony from earlier in the day. And I'm

1 going to start with Public Counsel?

2 MR. DANDINO: No questions, Your Honor. Thank you.

3 JUDGE RUTH: And SBC Missouri?

4 MR. GRYZMALA: No questions, Your Honor.

5 JUDGE RUTH: And Big River Telephone?

6 TRACY MISHLER, having been previously sworn, testified as

7 follows:

8 QUESTIONS BY MR. CURTIS:

9 Q. Regarding the question I asked Dr. Golden about the

10 profile of -- or profiles of a CapTel user, did you have

11 anything to add to what she ably described?

12 A. I thought audilogically the description was pretty

13 accurate. I'd like to define there's -- there's differences

14 in measuring hearing. You measure thresholds, and then as

15 Diane said, your ability to hear different pitches of sounds.

16 And then you measure discrimination ability in all

17 different situations. So, although you might be able to hear

18 sounds at a certain level, because of different

19 characteristics of your hearing, well, she might not be able

20 to understand speech. So that was discrimination ability.

21 But I also wanted to say that when -- when you look

22 at a user of any product that is utilized for the hearing

23 impaired or -- or other impairments, there's always not a -- a

24 selection process that you go through.

25 And the selection process with CapTel, No. 1, means

1 you need to have normal speech and language. And, No. 2, your  
2 discrimination has to be beyond the point that amplifying and  
3 creating redundancy in the signal or in the speech message is  
4 not enough for you to understand.

5 Q. Is any of this being taught in schools for the  
6 hearing impaired now that maybe wasn't being taught 10,  
7 15 years ago; that is, better speech enunciation that would  
8 allow them to adapt and utilize CapTel?

9 A. Well, you can't really teach speech understanding.  
10 You can certainly spea-- teach oral communication. But what  
11 is changing in the entire hearing impaired and deaf community  
12 is that the State very wisely, as well as I think 48 other  
13 states, have implemented programs like infant hearing  
14 screening programs.

15 So now all infants that are born in Missouri are  
16 screened for hearing loss prior to discharge, as mandated by  
17 Missouri law. And if a hearing loss is identified, diagnosis  
18 and amplification have to be implemented by six months of age.  
19 And the State does pay for actually the first set of hearing  
20 aids.

21 So that means our average age of identification,  
22 which used to be two-and-a-half to three years of age  
23 five years ago is dropping rapidly, which means that those  
24 children will develop normal speech and language and will go  
25 to normal schools, and the existence in growth of deaf

1 education will -- will drop off markedly.

2 MR. CURTIS: Thank you. I have nothing further.

3 JUDGE RUTH: And Staff?

4 MR. HAAS: No questions, Your Honor.

5 JUDGE RUTH: Okay. Thank you. And you may step

6 down --

7 THE WITNESS: Thank you.

8 JUDGE RUTH: -- but please remain in the room, if

9 you can.

10 (THE WITNESS WAS EXCUSED FROM TESTIFYING.)

11 JUDGE RUTH: I'll ask the Commissioners if you have

12 any other questions that you want to ask of any witness. It's

13 my understanding that there are some people here from Sprint.

14 Staff told us Matt Gwinn and Dennis Selznik.

15 COMMISSIONER GAW: I have a question that -- that

16 Staff may be able to answer. If they can't, then -- I just

17 want to know when the current contract with -- in regard to

18 the provisioning of -- of services expires.

19 MR. HAAS: I -- I am told we have 2 years left on

20 the existing contract, and then there are extensions that are

21 available after that time period.

22 COMMISSIONER GAW: So 2 years.

23 COMMISSIONER APPLING: 3 years.

24 COMMISSIONER GAW: 2 years or 3 years.

25 When does the current contract on provisioning

1 of -- of service for CapTel expire?

2 MR. HAAS: Commissioner, I don't have that date.

3 I'll just have to get that to you.

4 COMMISSIONER GAW: How about deaf relay and those

5 things, is that the same contract or a different

6 contract? CapTel and deaf relay, what else?

7 MR. HAAS: Well, traditional relay and CapTel are

8 on -- are on the same contract.

9 COMMISSIONER GAW: That's the same contract. So

10 that would rotate. Is there anything else that's coming out

11 of this fund on service?

12 No. The answer is no. I know the person who knows

13 the answer to that says no, but he's not sworn in and he's not

14 under oath. I was hoping someone else would be able to

15 confirm that.

16 Well, I think Staff can probably provide that

17 information. But I'm satisfied that the answer to that is no.

18 But if Staff could confirm that for me --

19 JUDGE RUTH: I --

20 COMMISSIONER GAW: -- so it'd be in the record,

21 that would be helpful.

22 And then in regard to the -- to the providing of

23 the phones themselves, when is that -- is that a contract and

24 is it -- who is it with?

25 Dr. Golden?

1 MS. GOLDEN: Can I answer from back here?

2 JUDGE RUTH: No. I need to bring her up to front.

3 COMMISSIONER CLAYTON: For heaven sakes.

4 JUDGE RUTH: Dr. Golden, please --

5 MS. GOLDEN: Can I do it here?

6 COMMISSIONER GAW: Can she just stand up here,  
7 please?

8 MS. GOLDEN: I'll do it here.

9 We competitively bid the equipment on a rotating  
10 basis. And our -- and we have multiple vendors. We group it  
11 by TTYs and amplified phones. So we have a different vendor  
12 for classes of equipment. Those contracts are up July 1 of  
13 2006. So we will be rebidding --

14 COMMISSIONER GAW: Okay.

15 MS. GOLDEN: -- those contracts in the next few  
16 months.

17 COMMISSIONER GAW: All right.

18 MS. GOLDEN: However, I have to tell you, there's  
19 no bid to CapTel because it's a proprietary piece of  
20 informati-- piece of, you know, technology. So it's not as if  
21 we have a lot negotiating power on that front.

22 COMMISSIONER GAW: No, but you may not have. I --  
23 I -- there's -- there's no one else -- I know we said that  
24 last year, there's still no one else providing that kind of a  
25 phone.



1 MS. GOLDEN: Correct.

2 COMMISSIONER GAW: All right.

3 JUDGE RUTH: Okay. I want to --

4 COMMISSIONER GAW: Thank you, Judge.

5 JUDGE RUTH: Okay. I want to reserve Late-Filed

6 Exhibit No. 4 for Staff to file something that answers

7 Commissioner Gaw's questions about the

8 Contract. Again, Staff, I will ask you to file

9 this exhibit by Monday, May 2nd. If you need additional time,

10 I'll expect a pleading stating that.

11 Once the document is filed, other parties may have

12 2 days -- 2 business days to object. Again, if you have no

13 objection, please file a notice to that effect.

14 And when you provide that document, I'll ask that

15 you clarify the term of the contract, whatever it is, with the

16 information that is provided in Staff's -- corrected Staff

17 recommendation, Appendix A, page 2, where it talks about

18 certain State contracts with Sprint.

19 In other words, explain if those are a different

20 type of contract or what have you.

21 Again, I am in Staff's -- it's the corrected Staff

22 recommendation, Appendix A. It is Mr. Cecil's memo. And

23 page 2 talks about some state contracts with Sprint. So just

24 explain about the different contracts or what have you.

25 Mr. Haas, do you see where I'm talking about? The

1 reason I bring that out is there Staff is indicating there's  
2 8 years. So if it were a different contract and it's not an  
3 8-year term, I wanted them to -- someone to explain it. If  
4 the answer is it's 8 years, and that's what Staff's referring  
5 to here, then fine.

6 COMMISSIONER GAW: Judge, you might explain to me  
7 how they got by the constitutional restriction on 1-year  
8 contracts with the State.

9 JUDGE RUTH: I'll ask them to include that. It may  
10 be such that they're 1-year contracts with extensions --

11 COMMISSIONER GAW: That's what I --

12 JUDGE RUTH: -- up to a year.

13 COMMISSIONER GAW: -- suspect. But I -- somebody  
14 said that there was a 2-year pro-- provision with renewals.  
15 And I didn't know how they -- how they got to the 2 years.  
16 So --

17 JUDGE RUTH: I believe the Staff's Late-Filed  
18 Exhibit 4 is going to go into contracts and answer that  
19 question.

20 COMMISSIONER GAW: Yeah, I don't need a lot of  
21 detail. I just --

22 JUDGE RUTH: Okay. Then that will conclude all the  
23 questions from the Bench. The parties are going to have an  
24 opportunity for closing arguments; however, we've been going  
25 for quite a while. We're going to give our court reporter a

1 short break until 3:15.

2 When we come back, we'll have the closings. And  
3 I'm actually going to do them in pretty much the same order as  
4 before, Staff, Public Counsel, SBC and then Big River.

5 If the parties propose a different order and  
6 jointly want to offer something else, you can do that when we  
7 come back on the record. Otherwise we're on intermission for  
8 10 minutes. Back on at 3:15.

9 Thank you.

10 (A RECESS WAS TAKEN.)

11 JUDGE RUTH: Okay. We are back on the record after  
12 a short break. I was wrong. I told you we were going to do  
13 closing arguments, but actually we're going to recall a  
14 witness; Ms. Mishler. And you may stand here at the closer  
15 podium.

16 And please proceed.

17 MS. MISHLER: Thank you. I would just like to ask  
18 Staff and the Commissioners to re-evaluate the ability to  
19 limit distribution of CapTel phones. And the reason for this  
20 is it's a way to control costs. It's also a way to provide  
21 new candidates the ability to try out other equipment first,  
22 and then get in line for the CapTel phone.

23 And every other state that has CapTel implemented  
24 ex-- with the exception of Texas limits distribution of CapTel  
25 phones. That includes the federal government.

1           So I would like to ask that we revisit that and  
2 see -- try to define the reasons why Missouri would be  
3 different than all other states and the federal government on  
4 that topic.

5           JUDGE RUTH: Thank you. I'm going to go ahead and  
6 allow the parties to ask you any questions on that topic. So  
7 if you'll stay here by the microphone, please.

8           Public Counsel?

9           MR. DANDINO: No questions, Your Honor. Thank you.

10          JUDGE RUTH: SBC Missouri?

11          MR. GRYZMALA: No, Your Honor.

12          JUDGE RUTH: Big River Telephone?

13          MR. CURTIS: No questions. Thank you.

14          JUDGE RUTH: And Staff.

15          MR. HAAS: No questions. Thank you.

16          JUDGE RUTH: Okay. Thank you very much.

17          MS. MISHLER: Thank you.

18          JUDGE RUTH: And you may step down.

19          COMMISSIONER GAW: And maybe Staff will do that for  
20 the Commission as well. And -- and -- and you might as well  
21 go ahead and throw that number in, too.

22          JUDGE RUTH: I'm sorry. Throw the number -- all  
23 right. We're having a few more changes. Back to Late-Filed  
24 Exhibit 3.

25          COMMISSIONER GAW: I'm leaving.

1 JUDGE RUTH: Okay. Thank you.

2 COMMISSIONER GAW: No, I'm kidding.

3 JUDGE RUTH: Late-Filed Exhibit 3 I've asked Staff  
4 to provide some information in response to Commissioner Gaw's  
5 question. And I need to reinstate Part C for that, which was  
6 limiting the CapTel distribution to 10 per month.

7 So put that back in, and include that in your  
8 figures. And just a moment, please.

9 Okay. Staff, I'm going to direct you to make a  
10 supplemental pleading. I'm not going to give it an exhibit  
11 number. But I want you to briefly brief the issue again of  
12 why Staff believes the Commission cannot limit CapTel phone  
13 distribution to any number, whether it's 10 per month or what  
14 have you. Or if you believe the Commission can, explain your  
15 reasoning for that.

16 COMMISSIONER GAW: The other -- what these other  
17 states are doing and the federal government is doing.

18 JUDGE RUTH: And I would like you to look and do  
19 your own research on what other states are doing on whether or  
20 not they limit CapTel distribution.

21 COMMISSIONER GAW: And may I ask, did -- did Staff  
22 not do that last year? Wasn't -- isn't that information that  
23 we already have, work that's already been done?

24 MR. HAAS: I'm told, no, we didn't.

25 COMMISSIONER GAW: Oh, okay. Thank you.

1 JUDGE RUTH: Staff, I'm setting a tentative  
2 deadline at least of May 4th. If you need additional time to  
3 do this research or file your brief, then file a notice on the  
4 4th that you're still working on it, and give me an  
5 anticipated date of when you'll file it.

6 I understand that May 4th may not be adequate, but  
7 I'm gonna to state that -- I'm going to set that at least for  
8 a status update.

9 Once Staff files its pleading on this issue, any  
10 other party shall have 2 business days to file a response, if  
11 you wish. So if Staff actually files its pleading on May 4th,  
12 responses are due May 6th.

13 Now, if they only file a notice on May 4th saying  
14 something's coming later, then hold off. You won't file your  
15 responses yet.

16 Now, if -- but what I am asking, again, same as on  
17 the others, go ahead and file a notice and tell me that you  
18 have no response, as opposed to just filing nothing.

19 Anything further from the Bench?

20 (NO RESPONSE.)

21 JUDGE RUTH: No. Then we'll go ahead and move to  
22 the closing arguments. I haven't heard anyone propose an  
23 order, so we'll start with Staff.

24 MR. HAAS: Good afternoon. This morning there were  
25 some questions about the regularity of the payments received

1 from the telephone companies.

2           Section 209.257 states that the local exchange  
3 telephone company shall deduct and retain a percentage of the  
4 total surcharge amount collected each month. And then  
5 Section 209.258.1, the first sentence, all remaining deaf  
6 relay service and equipment distribution program fund  
7 surcharge money collected by local exchange telephone  
8 companies shall be paid to the Director of Revenue in a manner  
9 prescribed by the Public Service Commission.

10           At this point the Commission has not prescribed a  
11 manner for making those payments. At this point we do not  
12 have a relay rule.

13           Moving on to the -- to the -- to the question of  
14 what the appropriate surcharge would be. As shown by  
15 Appendix 1-1 in Staff's Exhibit No. 1, the fund balance is  
16 declining.

17           The Office of Public Counsel has suggested perhaps  
18 a 12- or 13-cent surcharge. If you look at Staff  
19 Appendices 1-16 and 1-17, they show that the projected balance  
20 would be at zero in either July or August of 2006 if the  
21 Commission were to go with a 12-cent surcharge.

22           Based on the entirety of its review, the Staff  
23 continues to recommend that the Commission implement a 15-cent  
24 surcharge per line to maintain the fund and to adequately fund  
25 it.

1           Thank you.

2           JUDGE RUTH: Thank you, Mr. Haas.

3           And Public Counsel?

4           MR. DANDINO: Thank you, Your Honor.

5           May it please the Commission. I think it's very

6 important for the Commission to look at these scenarios that

7 the Staff will generate, and look at what each -- at the

8 funding level at 12 cents, 13 cents. You can compare it to

9 the 15 cents to the various scenarios.

10           Because that gives you a -- a much better idea

11 of what you're doing. And once again, I urge you to not

12 retain a -- an unneeded surplus or -- or unnecessary surplus.

13 But keep this as close as it can to a pay-as-you-go program.

14           Now, the one thing that I am -- that was a comment

15 on some of the -- the testimony and -- and some of the

16 questioning here is that we're kind of being fixed on this

17 CapTel program, and the -- and the numbers being provided.

18           And I didn't hear anything that said that the

19 numbers being provided are not enough or are too many. I

20 think it's meeting the need. Whatever need has been there,

21 it's meeting the need and still having a half-a-million-dollar

22 surplus with that.

23           So I -- so I think that the issue shouldn't

24 necessarily focus on why we should restrict that. The whole

25 purpose of such a program is for people to use it. And if



1 it -- and if they're -- if they're able to use it and still  
2 fall within -- not -- not only the appropriation, but also  
3 the -- or within the appropriation, I think that  
4 that's -- that adds something important to consider.

5           Also a little bit concerned about the emphasis on  
6 the high users. Of course, whenever you see something out of  
7 line, out of the norm, it always calls into question and you  
8 want to look at it.

9           But once again, if the system works or if -- if  
10 this -- if this CapTel system works and it is useful, then the  
11 person will use it. And I think that's what you have to use.  
12 If it's useful and usable, they're gonna use it. And I -- I  
13 think that's something to consider.

14           It's almost taken a -- and I don't want to be  
15 accusatory, but I don't want it to turn into a witch hunt on  
16 who these people are and what they're doing with this -- with  
17 this -- the CapTel system.

18           I think that the testimony here was that the  
19 customers are screened for income level and for that -- the --  
20 their the appropriate use of it, whether the equipment is  
21 fine -- is adaptable or -- or meets their -- their disability  
22 level.

23           And -- and it also appears that they are -- there  
24 is some training -- that they are trained on it and become  
25 used to it. So I think -- I wouldn't want the Commission to

1 focus on that, let alone to the exclusion or to the -- or --  
2 or and reduce the idea of -- of what we're looking at -- what  
3 the real question is. And I think it's how much money we're  
4 getting in.

5           And I think that another question is that it  
6 bar -- is the surcharge generating all of the money that it's  
7 supposed to at those levels? And once again, Public Counsel  
8 had raised a couple of years ago that there should be an  
9 audit -- at least an audit provision where the companies  
10 certify the number of lines they have to match the payment  
11 that they're sending in.

12           And I think it's very important that you have  
13 that -- that -- that check on it. Because otherwise we're  
14 taking the -- the revenue and then we're backing out the line  
15 number. Which if you'd look at Appendix 1-0 in the Staff's  
16 supplemental recommendation, in October of -- of '03 it shows  
17 an estimated line count of 2.9 million, for November of -- of  
18 '03 it's 7.1, and then December of '03 it's 2.8.

19           Now, that -- you know, it doesn't -- it doesn't  
20 make sense using that if -- if you back it out. I think it's  
21 more important for the companies -- to force the companies to  
22 come forward and say, we are paying this amount based on this  
23 line -- number of lines so that the State auditor or this  
24 Commission can audit it. I think that's a significant  
25 question.

1           Also the question of the timely payment. From what  
2 Mr. Hobbes read, it seems like -- like it's -- it's fairly  
3 straightforward that they're collecting it monthly. They need  
4 to re-- and retaining their colle-- their collection -- either  
5 their collection -- their percentage, then they ought to turn  
6 it over to the -- to the State on a monthly basis.

7           It's the same issue that comes up in -- in sales  
8 tax issues, and even with some -- or, you know, cigarette  
9 taxes. Whoever -- if the -- if the retailer collects it,  
10 there are -- they're allowed to retain a certain measure. But  
11 they have to remit the taxes owed to the -- to the government  
12 within a certain timeframe.

13           And I think it's important that if they're -- if  
14 the Commission sees an enforcement problem by not having a  
15 rule or a regulation or an order setting in a monthly time  
16 period, then it should be done forth haste (sic).

17           And I think as far as what the level -- the level  
18 is, you know, once you look at the scenarios, you have a much  
19 better idea.

20           Ms. Mishler had talked about going back to the  
21 November of 1992, and at that time the rate was 13 cents. And  
22 at that time there was no equipment distribution program.

23           That's all I have, Your Honor. Thank you.

24           JUDGE RUTH: Thank you.

25           SBC Missouri?

1 MR. GRYZMALA: Thank you, Your Honor.

2 I would simply first like to start by telling you  
3 that I, on behalf of SBC, sincerely appreciate the opportunity  
4 to par-- to participate in the proceeding today. Particularly  
5 in my first appearance before a couple of Commissioners.

6 I found, on behalf of SBC, the information provided  
7 by Mr. Cecil, by Ms. Mishler and Dr. Golden highly  
8 illuminating and very informative.

9 And as I heard it come in, I found that  
10 Ms. Mishler's specific recommendations warrant consideration  
11 by the Commission. It is apparent that there are only a few  
12 buckets involved; that is, to my recollection, traditional  
13 relay.

14 The money appropriated for equipment, the cost  
15 allocation, the CapTel expenditures. And there are definite  
16 trends associated with each of them. And they were all  
17 identified. And I think Ms. Mishler's recommendations with  
18 respect to one of those buckets deserves some serious  
19 consideration.

20 Apart from that, again, I wish to reiterate our  
21 appreciation for having had the opportunity to appear. I  
22 would remind the Commission that from our perspective, we  
23 heard no resistance to the notion that our company, in  
24 particular, would appreciate and need an order not later than  
25 60 days before that order would require that we implement the

1 surcharge so that we can do our IT programming work and our  
2 customer notifications.

3 Thank you again for the opportunity.

4 JUDGE RUTH: Thank you.

5 And Big River Telephone?

6 MR. CURTIS: Thank you, Your Honor.

7 Big River has no closing statement. But it does  
8 want to join SBC in thanking the Commission and the Staff and  
9 all of the witnesses for excellent presentations. And we  
10 appreciate the opportunity to participate here.

11 Thank you.

12 JUDGE RUTH: Okay. Thank you. I want to go over  
13 just a quick housekeeping issue. My record -- records  
14 indicate that Staff's Exhibit 1 was received into the record,  
15 as was Exhibit 2.

16 We have Late-Filed Exhibit 3 and Exhibit 4 coming  
17 in from Staff -- next week is the anticipated date, Monday the  
18 2nd. And then the Commission is also expecting Staff to  
19 address possible wording changes, if necessary, to that  
20 retention amount clause or description, and then also to  
21 submit to Commissioner Gaw's questions about the CapTel.

22 Do the -- I'm sorry. Mr. Gryzmala, did you have  
23 something?

24 MR. GRYZMALA: After your business is concluded.

25 JUDGE RUTH: I was going to ask if the parties had

1 anything else procedurally that needed to be addressed.

2 MR. GRYZMALA: Your Honor, on behalf of SBC, I  
3 would just ask if maybe we can consider a slight modification  
4 to the filings. I had two phases effectively, one of which  
5 had to do with late-filed exhibits filed on Monday by Staff  
6 with we and Big River to file by Wednesday.

7 And then another pleading or brief by Staff on the  
8 4th. That is next Wednesday. And then SBC and Big River or  
9 the other parties as well come in on the 6th on Friday.

10 I wonder if we can meld if at all possible in  
11 consideration for Staff filing of all matters by Wednesday,  
12 and then 2-day turnaround by the parties.

13 MR. CURTIS: We'll join in that.

14 MR. DANDINO: I'll join in that also.

15 JUDGE RUTH: What I'm going to do, then, is I'm  
16 agreeable to changing the date with the understanding that  
17 Staff is to work diligently. And if Staff has it all ready by  
18 Monday, Staff -- and Staff should be attempting to file  
19 quickly, then Staff will file all documents by Monday or  
20 Tuesday as opposed to waiting until Wednesday.

21 And so whichever day they're filed, the other  
22 parties will have 2 days for responses. If, by chance, Staff  
23 files such a voluminous amount of materials that the other  
24 parties felt they need more than 2 days for a response, you  
25 can file a motion to that effect.

1           but I'll expect something from each party on  
2 that -- that 2 days, either saying you have no comment, filing  
3 your response or asking for more time.

4           So I will change those dates so that all of Staff's  
5 filings will be due no later than Wednesday. Again, you  
6 understand that if you can get it ready sooner, do so. And  
7 responses 2 days after that.

8           MR. GRYZMALA: Thank you, Your Honor, very much.

9           JUDGE RUTH: Any other comments or procedural  
10 matters that need to be addressed at this time?

11           (NO RESPONSE.)

12           JUDGE RUTH: Okay. Then we are off the record.  
13 Thank you very much.

14           WHEREUPON, the on-the-record presentation was  
15 concluded.

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