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*Missouri  
Public Service Commission*

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

**TRANSCRIPT OF PROCEEDINGS**

**HEARING**

**September 16, 2005**

**Jefferson City, Missouri**

**Volume 1**

<b>In the Matter of the Request of</b>	<b>)</b>
<b>Southwestern Bell Telephone, L.P. d/b/a</b>	<b>) Case No.</b>
<b>SBC Missouri, for Competitive</b>	<b>) TO-2006-0093</b>
<b>Classification Pursuant to Section</b>	<b>)</b>
<b>392.245.6, RSMo 2005 30-Day Petition</b>	<b>)</b>

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VICKY RUTH,  
SENIOR REGULATORY LAW JUDGE.  
JEFF DAVIS, Chairman  
CONNIE MURRAY,  
STEVE GAW  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

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REPORTED BY:  
TRACY L. THORPE, CSR, CCR  
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FOR: Staff of the Missouri Public Service Commission

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

2 JUDGE RUTH: We are going to go ahead and begin  
3 the hearing in TO-2006-0093 in the matter of the request of  
4 Southwestern Bell Telephone, LP d/b/a SBC Missouri for  
5 competitive classification pursuant to Section 392.245.6  
6 Revised Statutes of Missouri 2005, the 30-day petition case.

7 Today's date is Friday, September 16th, 2005.  
8 And my name is Vicky Ruth and I'm the regulatory law judge  
9 assigned to this case.

10 Let me remind all the parties that if you have  
11 cell phones or Blackberry devices, you need to turn them off  
12 now. They can interfere with our video streaming equipment.

13 And if you intend to get a copy -- an  
14 electronic copy of the transcript, you need to talk to the  
15 court reporter today before we leave. The transcript has been  
16 expedited and I anticipate that it will be submitted Monday.  
17 It might be Tuesday, however, before it is copied and put onto  
18 EFIS. It depends on what time the court reporter gets the  
19 transcript to us.

20 I'd like to begin with entries of appearance.  
21 SBC, would you please start?

22 MR. LANE: Thank you, your Honor. Paul Lane  
23 and Leo Bub on behalf of Southwestern Bell Telephone, LP doing  
24 business as SBC Missouri. Our address is One SBC Center, Room  
25 3520, St. Louis, Missouri 63101.

1 JUDGE RUTH: Thank you.

2 And Staff. And, Staff, try to make sure the  
3 microphone's on.

4 MR. HAAS: William K. Haas appearing on behalf  
5 of the Staff of the Public Service Commission. My address is  
6 Post Office Box 360, Jefferson City, Missouri.

7 JUDGE RUTH: Thank you.

8 Public Counsel.

9 MR. DANDINO: Michael Dandino, Office of the  
10 Public Counsel, Post Office Box 2230, Jefferson City, Missouri  
11 65102, representing the Office of Public Counsel and the  
12 public.

13 JUDGE RUTH: Thank you.

14 Today's procedure will be we will start with  
15 brief opening statements. SBC Missouri will start, followed  
16 by Staff and then Public Counsel. It's my understanding that  
17 the parties have brought two witnesses, SBC's witness Craig  
18 Unruh and Staff's witness John Van Eschen. At the end of the  
19 hearing the parties will have an opportunity for closing  
20 arguments.

21 Are there any preliminary matters that need to  
22 be addressed before we begin?

23 Okay. Seeing none, let's move to opening  
24 statements. SBC Missouri.

25 MR. LANE: Thank you, your Honor. Along with

1 the Sprint matter that was heard yesterday, these will be the  
2 Commission's first opportunities to implement the new  
3 legislative directives that are part of Senate Bill 237.  
4 As it pertains to competitive classification, SB 237 makes  
5 clear the legislature's policy determination that the  
6 competitive market should be allowed to function.

7 This particular case involves SBC Missouri's  
8 request for competitive classification under the 30-day track  
9 of Section 392.245.5. Under that provision of the statute,  
10 competitive classification must be granted where two  
11 non-affiliated companies, one of which may be a wireless  
12 provider, are providing local voice service in an exchange in  
13 whole or in part over facilities in which that entity or an  
14 affiliate has an ownership interest. Business and residential  
15 services are to be examined separately.

16 In its petition and its testimony, SBC Missouri  
17 provided evidence that this standard was met in 28 of 160 of  
18 its exchanges for residential services. We also provided  
19 evidence that this standard was met in 51 of 160 exchanges for  
20 business services.

21 We have advised the Staff, and Mr. Unruh will  
22 cover this when he is called to testify, that we're  
23 withdrawing our request for competitive classification for  
24 business services in five exchanges. Those are Advance, Bell  
25 City, Delta, Pocohontas and Wyatt. We intend to re-look at

1 those and try to gain additional evidence that will eliminate  
2 any controversy about those, so we're going to withdraw them  
3 for now.

4 The evidence that we have presented consists  
5 primarily of information gleaned from the LERG or Local  
6 Exchange Routing Guide, where carriers must identify their  
7 switches in their associated NPA NXX service areas so that  
8 calls can be routed to them -- to their customers by other  
9 carriers and their customers.

10 That information we've presented is also  
11 combined with E-911 listings, directory listings and migration  
12 data to establish where CLECs are providing service using  
13 their own facilities in whole or in part.

14 For the most part, Staff agrees with SBC  
15 Missouri's request. In their pre-filed testimony, Staff  
16 agreed with regard to 15 exchanges for residential services.  
17 Based on discussions that we've had with the Staff since the  
18 testimony was filed, we understand that they will now be  
19 filing revised testimony and revised recommendation that  
20 agrees with SBC's request for 24 of the 28 residential  
21 exchanges that we identified in our petition.

22 With regard to business services, in their  
23 pre-filed testimony Staff agreed with SBC Missouri's position  
24 on 34 exchanges. And as we understand their revised testimony  
25 and recommendation that will be filed, Staff now agrees on

1 43 of the 46 exchanges where we specifically identified in the  
2 petition. There's no evidence to the contrary on these 24  
3 residential and 43 business exchanges and these can and should  
4 be designated by the Commission as competitive.

5 So what's left in dispute? There's two areas.  
6 First area involves the 4 exchanges for residential services  
7 and 3 exchanges for business services where the Staff does not  
8 concur with our position. The second area involves  
9 15 exchanges for business services and 1 exchange for  
10 residential service identified by Staff as meeting the 30-day  
11 requirement but which were not specifically identified in SBC  
12 Missouri's petition because that information wasn't available  
13 to us.

14 COMMISSIONER MURRAY: Excuse me, Mr. Lane. How  
15 many did you say?

16 MR. LANE: In the second group it's  
17 15 exchanges for business service and 1 exchange for  
18 residential service.

19 COMMISSIONER MURRAY: Thank you.

20 MR. LANE: With regard to the first group,  
21 which is the 4 exchanges for residential and 3 exchanges for  
22 business where Staff doesn't concur with our recommendation,  
23 the primary difference is in the methodology that was used.

24 Staff did an independent verification in which  
25 it examined Commission records and obtained information that



1 was not available to SBC Missouri. Certainly not wrong for  
2 Staff to have done an independent verification. We supported  
3 it's good practice and we believe it's also required by the  
4 statute.

5 But the problem arises when the data available  
6 to Staff is either not up to date or not complete. In those  
7 exchanges, Staff takes the position that it wasn't able to  
8 confirm our data and so it recommends that competitive  
9 classification not be granted.

10 What should the Staff have done here? I think  
11 the Staff should have done what this Commission is required to  
12 do and that is to evaluate and consider the evidence that we  
13 presented. And had they done so, I believe they would have  
14 come to the same conclusion that we did.

15 Staff doesn't offer any criticism of our data  
16 and, in fact, never asked for any back-up information in  
17 regard to it. Instead, they conducted their own independent  
18 evaluation, which again is fine for them and appropriate for  
19 them. But they should, when they weren't able to get  
20 confirmation from the CLECs or from Annual Reports, they  
21 should have evaluated the data we submitted.

22 You might ask why Staff's data doesn't conform  
23 to ours in all respects, although it does obviously in most of  
24 the situations. And that's because of two things. One, is  
25 the Annual Reports that they looked at in many cases those

1 things are not obviously up to date because those were based  
2 on the status of competition in exchanges as of December 31st  
3 of 2004; whereas, the data that we submitted took us through  
4 most of August of 2005.

5 And CLECs continue to expand their service  
6 area, particularly CLECs that are facilities based. And so  
7 it's understandable that there's going to be more CLECs  
8 providing service using their own facilities in August of 2005  
9 than there was back on December 31st of 2004.

10 Second is that -- second reason is that the  
11 CLECs don't always cooperate with the Staff. And obviously  
12 they have an incentive not to do so in some respects because  
13 they have an advantage right now in being classified as  
14 competitive, whereas, we're not in most exchanges. And I  
15 would think that from incentive perspective, the CLECs would  
16 prefer to maintain the status quo with the advantage that they  
17 have.

18 We look specifically at the exchanges that are  
19 still at issue in this group. There's one business exchange,  
20 which is Excelsior Springs, where NuVox we've identified as a  
21 CLEC utilizing its own facilities. NuVox apparently hasn't  
22 cooperated with Staff, although I guess we'll hear more about  
23 that when Mr. Van Eschen testifies. So Staff wasn't able to  
24 independently verify. Nevertheless, the data that we submitted  
25 does establish that NuVox is providing service using its own

1 facilities in that Excelsior Springs exchange.

2 There's also two exchanges with business  
3 services, Sikeston and Farmington, and two exchanges for  
4 residential service, Marble Hill and Bonne Terre, where Big  
5 River apparently didn't confirm to Staff that it was providing  
6 service utilizing its own facilities. Again, however, our  
7 data is correct and does establish that Big River is providing  
8 service in those exchanges utilizing its own facilities and  
9 that competitive classification request should be granted  
10 there.

11 There's also two exchanges for residential  
12 services, St. Joseph and San Antonio, where Sprint didn't  
13 confirm for Staff. I don't know all the details yet, but I  
14 have a general understanding that Sprint didn't confirm that  
15 it was providing service because it claimed to be a wholesaler  
16 for the St. Joseph cable company and that St. Joseph cable  
17 company was the actual provider.

18 Even assuming that's true, St. Joseph then  
19 would be a facilities based provider using its own loops and  
20 that obviously meets the requirements of the statute and  
21 competitive classification should be granted.

22 The second area of general dispute with Staff  
23 is with regard to those exchanges where Staff's independent  
24 analysis identified 15 additional exchanges for business  
25 services and 1 additional exchange for residential service.

1 That information is based on information that has been  
2 available to Staff, but is not available to us. Many of the  
3 Annual Reports that are filed with the Commission that Staff  
4 reviews are marked as highly confidential with regard to  
5 providing service in a particular exchange and so it's not  
6 available to us to review, but it is available to Staff.

7 Staff's position that these should not be  
8 granted under the 30-day statute -- or under the 30-day track  
9 is based upon its assertion that SBC Missouri didn't  
10 specifically request competitive classification for these  
11 exchanges. But that's not really correct.

12 We did ask in our petition in paragraph 21 for  
13 the Commission to grant competitive classification in those  
14 additional exchanges where evidence available to the  
15 Commission but not to us established that the criteria was  
16 met. And I would also point out that the statute requires the  
17 Commission to consider these additional -- this additional  
18 information.

19 The statute specifically requires the  
20 Commission to review its own records and to make necessary and  
21 appropriate inquiries of regulated providers in evaluating  
22 competitive classification requests. The legislature  
23 understood that the Commission had access to information that  
24 the incumbent local exchange company may not have access to  
25 and that's why this provision exists.

1           Apart from the legal requirement, in our view,  
2   to consider this and to grant competitive classification, the  
3   Commission should also evaluate this from a practical  
4   standpoint.

5           If competitive classification under the 30-day  
6   track isn't granted here, Southwestern Bell, SBC Missouri, is  
7   simply incented to go ahead and refile another 30-day petition  
8   to identify these same 15 business exchanges and 1 residential  
9   exchange, point to the fact that Staff has found that these  
10   things do meet the 30-day track. Staff would then evaluate  
11   and would confirm, yes, they meet the 30-day track and would  
12   recommend to the Commission that competitive classification be  
13   granted.

14           It doesn't make a lot of sense for the  
15   Commission to wind up causing a separate proceeding to be  
16   established to hear the same evidence that's already present  
17   in this case. It would be a waste of administrative resources  
18   for both the Commission and the parties to do so.

19           Finally, from a legal perspective, we have a  
20   difference of opinion with Staff as to how competitive  
21   classification is to be analyzed. The Staff is of the view  
22   that competitive classification requires full facilities based  
23   or the use of UNE loop as a minimum threshold.

24           In our view, the Commission can't adopt a  
25   standard like that that is contrary to the express provisions

1 of the statute, which identifies telecommunications facilities  
2 or other facilities used in whole or in part by a competitor.  
3 Telecommunications facilities is defined in the statute and  
4 that's the definition that needs to control here.

5 I don't think it's an issue in this case -- I  
6 don't think that there's going to be a dispute between  
7 ourselves and Staff that the exchanges where we're requesting  
8 competitive classification meet Staff's own test. And that's  
9 not the basis for their disagreement with us on the exchanges  
10 that are out there. So I don't think the Commission needs to  
11 address the issue, but to the extent it chooses to do so, it  
12 needs to follow the statute and can adopt that standard.

13 In summary, while by necessity I focused on the  
14 areas of disagreement, I'd note that as to the result sought,  
15 both SBC and Staff are in agreement as to the vast majority of  
16 exchanges where we've requested competitive classification.

17 Where we agree, there is no contrary evidence  
18 and the Commission should grant competitive classification.  
19 Where we disagree, the Commission should review the evidence  
20 that we presented and make the determination that we do  
21 qualify for competitive classification of those exchanges.

22 Thank you.

23 COMMISSIONER MURRAY: Mr. Lane, I just have --

24 JUDGE RUTH: Would you turn your microphone on,  
25 Commissioner? Thank you.

1 COMMISSIONER MURRAY: Can I just ask Mr. Lane a  
2 question?

3 JUDGE RUTH: Yes.

4 COMMISSIONER MURRAY: Mr. Lane, do you see any  
5 reason why the Commission should not subpoena the carriers  
6 that have not responded to Staff?

7 MR. LANE: That's certainly a remedy that's  
8 open to the Commission and if we need to go that route, we can  
9 and should do so. I would say though that what we're dealing  
10 with here is four exchanges for residential services and three  
11 exchanges for business services where there's a difference of  
12 opinion.

13 And the difference of opinion really is SBC  
14 Missouri has presented appropriate, competent and substantial  
15 evidence that these CLECs are utilizing their own facilities  
16 to provide service. And the Commission, in my view, can rely  
17 on that and grant competitive classification on that basis.

18 The fact that it hasn't been confirmed in  
19 discussions between Staff and these CLECs doesn't make it --  
20 doesn't make the Commission unable to grant competitive  
21 classification.

22 COMMISSIONER MURRAY: Okay. But if the  
23 Commission were to find that that was necessary, then I would  
24 think that in following the statute, that we shall consider  
25 our own records and shall make all inquiries as are necessary

1 and appropriate from regulated providers, that that would  
2 require us to go that extra step and subpoena anyone who did  
3 not respond to our appropriate inquiries. Would you not?

4 MR. LANE: I would agree that that would be the  
5 appropriate step if the Commission were not otherwise inclined  
6 to grant competitive classification based on the evidence  
7 actually submitted. If you agree with us that the evidence is  
8 sufficient, then you don't need to go there. But if you  
9 don't, you should.

10 COMMISSIONER MURRAY: And there are two  
11 carriers involved?

12 MR. LANE: I think three.

13 COMMISSIONER MURRAY: Three carriers.

14 MR. LANE: There is Sprint with regard to two  
15 exchanges for residential services; Big River, two exchanges  
16 for res, residential, and two exchange for business; and then  
17 NuVox, one exchange for business.

18 COMMISSIONER MURRAY: Now I'm going to ask you  
19 another legal question regarding the burden under this new  
20 statute. I've been carefully reading the language and the  
21 language provides that upon request of an incumbent, the  
22 Commission shall, if it makes -- well, the Commission shall  
23 determine whether the requisite number of entities are  
24 providing; and if so, shall approve tariffs.

25 It appears to me that this is not setting out



1 the ordinary burden that a petitioner would have to come  
2 forward with the burden of proof. It appears to me that a  
3 request requires the Commission to examine its own records and  
4 determine, and if it determines that these carriers are  
5 providing service in these exchanges, then it must -- it shall  
6 approve the tariffs.

7 How do you read the burden under this statute?

8 MR. LANE: I agree with that. It's an  
9 obligation that the Commission has to do the evaluation based  
10 on the statute. And, in particular, given the requirement  
11 imposed by the statute that the Commission affirmatively go  
12 out and consult its own records and affirmatively make  
13 necessary and appropriate inquiries, I agree with what you're  
14 saying.

15 Obviously it's in our interest to try to  
16 present the information ourselves when we have it available to  
17 us and so we've done so. But I agree with your analysis.

18 COMMISSIONER MURRAY: Thank you.

19 Thank you, Judge.

20 JUDGE RUTH: Thank you.

21 We'll move to Staff. I'm sorry, no. I need  
22 you to step back up here, please. Thank you.

23 COMMISSIONER GAW: Mr. Lane, is this Commission  
24 sitting as a tribunal in this case or as something different  
25 than that?

1 MR. LANE: I guess I'm not sure what you mean  
2 by "tribunal."

3 COMMISSIONER GAW: Are we here -- are we here  
4 to hear evidence and make determinations of fact based upon  
5 the statute?

6 MR. LANE: Yes. I don't think you have to have  
7 a hearing to do this, but I think it's appropriate and fine  
8 that you're doing so. I'm not sure exactly, you know, what  
9 you take the import of that to be. I might disagree with  
10 where that leads from there, but I don't disagree that it's  
11 appropriate for you to have a hearing.

12 COMMISSIONER GAW: Well, I guess what I'm  
13 asking you is whether or not we are sitting as a tribunal to  
14 hear evidence presented by the parties?

15 MR. LANE: You're to hear --

16 COMMISSIONER GAW: Are we to make a decision in  
17 this case based upon evidence presented?

18 MR. LANE: And the evidence that's presented  
19 has to also include --

20 COMMISSIONER GAW: Just -- could you answer my  
21 first question?

22 MR. LANE: Yes, I think you're going to make  
23 determinations based upon evidence submitted, but not only by  
24 the parties.

25 COMMISSIONER GAW: Okay. That's --

1 MR. LANE: That's where I'm going to disagree.

2 COMMISSIONER GAW: Disagree? Okay. Go ahead  
3 and disagree. What is it that you disagree with?

4 MR. LANE: Well, when you're considering the  
5 evidence, you also have to consider the evidence that the  
6 Commission acquires as a result of following the statute that  
7 says you've got to consult your own records and make necessary  
8 and appropriate inquiries. And if you do that through your  
9 Staff, that's fine.

10 COMMISSIONER GAW: Is this Commission acting as  
11 something other than a tribunal under this statute?

12 MR. LANE: I guess I just don't know what you  
13 mean by "tribunal," but I agree with you that they're acting  
14 and they're going to make a decision here based on the  
15 statutory requirements and they're going -- you're going to  
16 listen to evidence and consider it and you're going to make a  
17 decision. And I guess if somebody wants to appeal it, they  
18 can. So all of the things that go along with that, yes.

19 COMMISSIONER GAW: Okay. Thank you.

20 JUDGE RUTH: Staff, now would you come up,  
21 please?

22 MR. HAAS: May it please the Commission. As  
23 you've heard, this case involves SBC Missouri's petition for  
24 competitive classification of exchanges under the 30-day track  
25 of Section 392.245 Revised Statutes of Missouri as amended by

1 Senate Bill 237.

2 Under that statute, business services or  
3 residential services or both of a price cap regulated  
4 incumbent local exchange telecommunications company may be  
5 classified as competitive in an exchange where two  
6 non-affiliated entities are providing basic local  
7 telecommunications service to the respective customer class.

8 Only one of the entities may be a wireless  
9 company. The other entity shall be a wireline company  
10 providing local voice service in whole or in part over  
11 telecommunications facilities or other facilities in which it  
12 or an affiliate have an ownership interest.

13 SBC Missouri's application requests a  
14 competitive classification for residential services in  
15 28 listed exchanges and for business services in 51 listed  
16 exchanges. In its opening statement, SBC removed 5 exchanges  
17 from its request for competitive classification for business  
18 service.

19 As was explained in the pre-filed Direct  
20 Testimony of Staff witness Mr. Van Eschen, the Staff was  
21 continuing its efforts to confirm the presence of a qualifying  
22 competitor in requested exchanges. The Staff, as explained in  
23 the revised testimony of Mr. Van Eschen, has been able in all  
24 but 7 instances to confirm the presence of qualifying entities  
25 providing service to the customer class for which SBC Missouri

1 seeks competitive classification.

2           The Staff was unable to confirm the presence of  
3 a qualifying wireline company providing residential service in  
4 four requested exchanges, Farmington, San Antonio, Sikeston  
5 and St. Joseph exchanges. Also, the Staff was unable to  
6 confirm the presence of a qualifying wireline company  
7 providing business service in three requested exchanges, Bonne  
8 Terre, Excelsior Springs and Marble Hill exchanges.

9           The Staff has prepared two maps as illustrative  
10 aids. The one map labeled Residential lists the exchanges  
11 where SBC has requested competitive classification. The blue  
12 exchanges are those where the Staff is recommending approval  
13 and the exchanges shown in pink are the exchanges that are  
14 being disputed.

15           On the other map labeled Business, the  
16 exchanges in blue are those where the Staff is recommending  
17 approval of a competitive classification. The exchanges in  
18 pink are the exchanges where there is a contest about whether  
19 it should be granted competitive classification. And those  
20 five exchanges that are in pink but have a black hash mark are  
21 those that SBC removed from the case this morning.

22           JUDGE RUTH: Now, which ones are the ones that  
23 were removed?

24           MR. HAAS: On the business map, the five pink  
25 exchanges with blue lines through them.

1 JUDGE RUTH: Thanks.

2 MR. HAAS: As noted in SBC's opening statement,  
3 SBC is asking the Commission to grant it competitive  
4 classification under the 30-day track for exchanges that were  
5 not listed in its petition but where the Staff was able to  
6 confirm the presence of the qualifying competitors.

7 The Staff disagrees with this request. The  
8 statute in two places refers to the Commission reviewing the  
9 request for competitive classification in an exchange.  
10 Potentially interested parties were not given notice that  
11 these other unnamed exchanges were in play.

12 The Staff requests the Commission to deny  
13 competitive classification in these few limited instances and  
14 to grant competitive classification for residential services  
15 in 24 of 28 requested exchanges and for business service in  
16 43 of 46 requested exchanges. Thank you.

17 JUDGE RUTH: Thank you, Mr. Haas.

18 COMMISSIONER MURRAY: Mr. Haas, in terms of the  
19 exchanges in which Staff independently found that there were  
20 the qualifying competitors, what is your reasoning that this  
21 needs to -- the granting of that competitive status, after the  
22 Commission has found that there is competition there in  
23 accordance with the statute, that we should delay?

24 MR. HAAS: I think that the statute itself  
25 requires that the annex change be specifically listed in the

1 petition. I realize that that may lead to redundant cases.

2 The -- the two places --

3 COMMISSIONER MURRAY: And you're looking at the  
4 language in the statute where -- well, I see the two places  
5 where it says in an exchange. So your position would be then  
6 that the request has to be specific to an exchange, that a  
7 carrier can't come in and say, We request that you examine  
8 your own records and determine where we meet the competitive  
9 standard and then grant us competitive status in those  
10 exchanges; is that correct?

11 MR. HAAS: Yes.

12 COMMISSIONER MURRAY: Okay. Thank you.

13 JUDGE RUTH: Additional questions?

14 COMMISSIONER CLAYTON: Clarifying, yeah. Bill,  
15 I just want to ask some clarifying questions. We've had a  
16 number of these cases and a lot of things on our plate the  
17 last couple of days and cases are kind of flowing together and  
18 I want to get clear before we get started.

19 Looking at the residential map, Staff is in  
20 agreement on the entirety with the SBC request with the  
21 exception of four exchanges?

22 MR. HAAS: Yes, sir.

23 COMMISSIONER CLAYTON: Okay. And on the  
24 business map, Staff is in agreement with the entirety of SBC's  
25 request for competitive classification except for two

1 exchanges?

2 MR. HAAS: Three. Marble Hill, Bonne Terre and  
3 Excelsior Springs.

4 COMMISSIONER CLAYTON: Three exchanges. Thank  
5 you. Okay.

6 Okay. And can you clarify -- and I know this  
7 is going to be mostly Mr. Van Eschen's testimony -- but the  
8 character of the evidence that Staff is using to complete its  
9 analysis? What type of evidence is it from a legal  
10 standpoint? Is it direct evidence? Is it Annual Report  
11 reviews?

12 MR. HAAS: We looked at Annual Reports, we  
13 contacted companies to ask, Are you out there providing  
14 service?

15 COMMISSIONER CLAYTON: That's it? I mean, I'm  
16 not saying is that it? I'm just -- is that it? Kind of  
17 sounded bad.

18 MR. HAAS: Yes, those were the steps we took.

19 COMMISSIONER CLAYTON: Okay. On the Annual  
20 Report analysis, did you make a determination if the  
21 information was accurate considering we're nine months out  
22 from the data that was included in the report?

23 MR. HAAS: No, we did not update the numbers in  
24 the Annual Reports. But if we did have a question about  
25 whether a company had accurately filled out its Annual Report,



1 we did contact that company and say, Are you really providing  
2 this type of service? We thought you were in a different  
3 business.

4 COMMISSIONER CLAYTON: Okay. Well, did you  
5 ask, Are you still offering the service, I guess? Do you  
6 still have the lines in place? I can ask Mr. Van Eschen that  
7 if it would make you -- okay.

8 Okay. I don't think I have any other questions  
9 for Mr. Haas.

10 JUDGE RUTH: Thank you.

11 Public Counsel.

12 MR. DANDINO: Thank you, your Honor. May it  
13 please the Commission. It's probably no secret that the  
14 Office of Public Counsel does not like Senate Bill 237 or the  
15 changes made to 392.245, but that's not the point. The law is  
16 what it is and certainly the Public Counsel, as an officer of  
17 the state and our office as officers of the court, strongly  
18 urge this Commission to follow the law.

19 But we also ask you to follow all the law. And  
20 I think that the process that we're here for does not require  
21 us to just throw away such things as burden of proof, such  
22 things as findings of fact, that there are such things as  
23 hearing the evidence in a hearing that you've got -- that  
24 you've convened for the purpose of taking evidence and just  
25 say, Well, somewhere our records show that it's -- you know,

1 that the information is there.

2 I think it's kind of a basic premise of  
3 regulatory law that you don't give the company more than it's  
4 asked for. And I don't think that if they didn't -- if SBC  
5 did not ask for certain exchanges, certain classifications in  
6 this 30-day petition, they shouldn't get them.

7 The statute provides a very low threshold, a  
8 frustratingly low threshold, but nevertheless, it's a low  
9 threshold. But once again, I think if you look at the quality  
10 of evidence presented, especially by SBC, it is shockingly  
11 low. I think the evidence there, the record, does not show  
12 that that information is accurate, it does not show that  
13 it's -- that it's reliable.

14 And I want this -- I ask this Commission to  
15 make sure that whatever evidence you decide on and the  
16 evidence of competition, that you make sure that you feel  
17 comfortable with that that it's reliable and accurate.

18 Also want to point out that we're taking a very  
19 quick -- I hesitate to say a rush to judgment, but we're  
20 working on a 30-day timetable. And I would suggest to the  
21 Commission that since this basically involves the ability -- a  
22 tariff, that the Commission still has the ability to suspend a  
23 tariff. I don't see anything in Section 392.245, as amended  
24 by Senate Bill 237, that extinguishes the Commission's right  
25 to suspend a tariff in order to complete its investigation.

1           This is -- once again, goes back to all the  
2 law. This Commission has a jurisdiction, has a duty to  
3 investigate compliance with the law. And I think you need to  
4 do that until you're satisfied that the requirements --  
5 statutory requirements have been met.

6           Also, wish you'd look at 392.185, the purposes  
7 of the chapter. And once again, looking at -- you satisfy  
8 yourself that this promotes competition and protects the  
9 ratepayers.

10           And, finally, I'm disturbed by the comments  
11 that SBC says, Well, even though the Staff hasn't confirmed  
12 it, you should go ahead and approve it. And this seems  
13 completely contrary to anything that this Commission should  
14 counter.

15           This Commission should base it on facts --  
16 reliable facts and make sure that these items have been  
17 confirmed. I don't think that you have to rely upon the  
18 information provided by SBC. Proper procedure would say that  
19 the -- that you listen to your Staff and make sure that  
20 they've verified the information. That's all I have, your  
21 Honor. Thank you.

22           JUDGE RUTH: Thank you. I believe there may be  
23 some questions from the Bench.

24           COMMISSIONER MURRAY: Mr. Dandino, do you have  
25 any evidence that the three carriers that have refused to

1 respond to Staff are not providing service in whole or in part  
2 over their own facilities within those specific exchanges?

3 MR. DANDINO: I have no evidence one way or the  
4 other.

5 COMMISSIONER MURRAY: Do you see any reason  
6 that we shouldn't subpoena them to answer those questions?

7 MR. DANDINO: I see no reason not to subpoena  
8 them. I think it's incumbent upon them to provide information  
9 when the Staff of the Commission requests it.

10 COMMISSIONER MURRAY: I think that's all.  
11 Thank you.

12 JUDGE RUTH: Any other questions from the  
13 Bench? Commissioner Gaw?

14 COMMISSIONER GAW: Mr. Dandino, I'm going to  
15 ask you the same question I asked Mr. Lane. Are we sitting as  
16 a tribunal in this case or something else under this statute?

17 MR. DANDINO: I see that you're sitting as a  
18 tribunal as you do in every case.

19 COMMISSIONER GAW: All right. I'm trying to  
20 understand if we're not sitting as a tribunal, what it is we  
21 are. And especially if there's some sort of a concept being  
22 forwarded that this Commission, the five of us, have some sort  
23 of a burden of proof ourselves in regard to a determination in  
24 this case, which is a foreign concept to me.

25 MR. DANDINO: It is very foreign to me. I

1 think that the -- this Commission is a decider of the facts.  
2 It is not functioning as a party in this case.

3 COMMISSIONER GAW: All right. Who has the  
4 burden of demonstrating the requisite requirements or elements  
5 of finding competition under the 30-day provision, in your  
6 opinion?

7 MR. DANDINO: In my opinion -- and the statute  
8 talks about requests, the company shall request, and I think  
9 the body of law supports that. Those who ask for relief from  
10 the -- from an administrative body from government bear the  
11 burden of proof.

12 COMMISSIONER GAW: All right. I think that's  
13 all I have. Thank you.

14 JUDGE RUTH: Thank you, Mr. Dandino.

15 Okay. We'll move to SBC calling its first  
16 witness, please.

17 MR. LANE: We call Mr. Unruh, your Honor.

18 JUDGE RUTH: Could you use your microphone?  
19 I'm sorry.

20 Sir, let me start off by swearing you in.

21 (Witness sworn.)

22 JUDGE RUTH: Okay. And state your name for the  
23 record.

24 THE WITNESS: Craig A. Unruh.

25 JUDGE RUTH: Thank you.

1 Mr. Lane, you may proceed.

2 MR. LANE: Have we marked any of the --

3 JUDGE RUTH: We have not pre-marked any  
4 exhibits.

5 (Exhibit No. 1 was marked for identification.)

6 MR. LANE: Your Honor, I'd ask if we could mark  
7 Mr. Unruh's pre-filed Direct Testimony as Exhibit 1?

8 JUDGE RUTH: Okay. For identification  
9 purposes, I'm marking Mr. Unruh's Direct Testimony as  
10 Exhibit 1. SBC has offered it into the record. Are there any  
11 objections to it being received? Staff?

12 MR. HAAS: No, your Honor.

13 JUDGE RUTH: Public Counsel?

14 MR. DANDINO: Yes, your Honor. May I voir dire  
15 the witness preliminary to any objection?

16 JUDGE RUTH: Yes, you may. I don't think your  
17 microphone is on.

18 MR. DANDINO: Has the witness been sworn?

19 JUDGE RUTH: Yes.

20 MR. DANDINO: Mr. Unruh, are you an attorney  
21 licensed in Missouri?

22 THE WITNESS: I'm not.

23 MR. DANDINO: Are you an attorney licensed in  
24 any other state?

25 THE WITNESS: No.

1 MR. DANDINO: Your Honor, at this point I'd  
2 like to object to the following testimony in Exhibit 1 in  
3 Mr. Craig Unruh's Direct Testimony for the reason that it  
4 expresses a legal opinion -- it expresses a legal opinion,  
5 legal conclusions regarding 392.245 statute as amended by  
6 Senate Bill 237 and what the intent of the legislature is.

7 These are the following areas -- the following  
8 testimony of Exhibit 1 that we object to. Page 5, lines 6  
9 through 11.

10 JUDGE RUTH: Okay. Go slow for me. Thanks.  
11 Page 5, lines 6 through 11.

12 MR. DANDINO: Page 5, line 28 through 29.

13 JUDGE RUTH: Okay.

14 MR. DANDINO: Page 6, line 1 through 4.

15 JUDGE RUTH: Yes.

16 MR. DANDINO: Page 6, lines 6 through 9.

17 JUDGE RUTH: Okay.

18 MR. DANDINO: Page, line 15 through 20.

19 JUDGE RUTH: Okay.

20 MR. DANDINO: Page 7, line 1 through 10.

21 JUDGE RUTH: Yes.

22 MR. DANDINO: Page 11, line 7 through 12.

23 MR. LANE: What was the last one, Mike? I'm  
24 sorry.

25 JUDGE RUTH: Page 11, line 7 through 12.

1 MR. DANDINO: That's right. Page 11, line 19  
2 through 23; page 12, line 1 through 6; page 12, line 10  
3 starting with the word "while" and ending with the word  
4 "criteria"; page 19, line 12 through 19.

5 JUDGE RUTH: Page 19, lines --

6 MR. DANDINO: 12 through 19.

7 JUDGE RUTH: Thank you.

8 MR. DANDINO: Page 20, lines 6 through 19.

9 MR. LANE: I'm sorry. What was the last one,  
10 Mike?

11 MR. DANDINO: Page 20, line 6 through 19.

12 And that is all on that issue, your Honor.

13 JUDGE RUTH: Okay. Mr. Lane, I assume you've  
14 been following the objections of Public Counsel. Would you  
15 please respond?

16 MR. LANE: Yeah. I would disagree, your Honor,  
17 that Mr. Unruh is providing legal conclusions. But to the  
18 extent that they can be interpreted as that, that would go to  
19 the weight of the evidence, not the admissibility.

20 Many of the items that are cited by Mr. Dandino  
21 are clearly not legal conclusions. I'll pick one. Page 11,  
22 lines 7 through 12 recites a request that the Commission grant  
23 competitive classification by a date certain and refers to our  
24 petition and asks the Commission to grant competitive  
25 classification where the Commission's records or inquiries



1 indicate the statutory criteria have been met. It's pretty  
2 clearly not a legal conclusion. It's a request to the  
3 Commission.

4 And many of the items Mr. Dandino has cited go  
5 to the same issue. I can go through them one by one, if you  
6 want.

7 JUDGE RUTH: Yes. Page 5 is where we'll start.

8 MR. LANE: That simply grounds the Commission  
9 and tells what this case is about. It's a 30-day competitive  
10 trigger and it identifies that which SBC Missouri intends to  
11 show to qualify for competitive classification. It's not a  
12 legal conclusion.

13 Lines 28 on page 5, through line 4 on page 6  
14 simply is an identification of what the statute requires the  
15 Commission to consider. The CMRS provider is one that has to  
16 be considered as providing local service. It's not a legal  
17 conclusion. It's a citation to the statute and what it  
18 requires. In fact, I don't really know how the Commission  
19 could possibly conduct the proceeding without this kind of  
20 information.

21 The next one is page 6, lines 6 through 9.  
22 It's an identification of what SBC Missouri is going to do to  
23 identify these things for the Commission and identifies what  
24 the legislature has done. To the extent that's considered a  
25 legal conclusion, that would go to the weight.

1           Next one is on page 6, line 15 through page 7,  
2 line 10. Again, it identifies the specific requirements of  
3 the statute, something that's necessary for the Commission to  
4 be grounded in order to address the evidence in the  
5 proceeding. It's not a legal conclusion. To the extent it's  
6 considered a legal conclusion, that would go to the weight,  
7 not its admissibility.

8           The next is on page 11, lines 7 through 12. I  
9 believe I've addressed those. That identifies what SBC  
10 Missouri's requesting. It contains no legal conclusion  
11 whatsoever.

12           The next is on page 11, line 19 through  
13 page 12, line 6. Again, it identifies what information SBC  
14 Missouri is providing to the Commission and doesn't state any  
15 legal conclusion. It states what the statute provides and  
16 what we're doing to request as the statute contemplates. It's  
17 not a legal conclusion.

18           Page 12, line 10, first few words of that,  
19 Mr. Unruh's expressing his opinion that SBC Missouri has  
20 demonstrated compliance. It's not a legal conclusion. It's  
21 demonstrating his belief of what the facts establish.  
22 Obviously the facts will ultimately be determined by the  
23 Commission, but he's not stated a legal conclusion there.

24           The next is on page 19, lines 12 through 19.  
25 Expresses SBC Missouri's position with regard to what evidence

1 can be considered by the Commission. To the extent it's  
2 considered a legal conclusion, that would go to the weight,  
3 not to the admissibility of it. It identifies specifically  
4 what SBC Missouri has shown or believes to be consistent with  
5 the requirements of the statute. It's not a legal conclusion.

6 The last is on page 20, lines 6 through 20.  
7 It's a summary of the testimony that Mr. Unruh has provided.  
8 It's not a legal conclusion. It's an explanation of what  
9 we're requesting and what he has shown in his testimony. To  
10 the extent it's considered to be a legal conclusion, that  
11 would go to its weight, not to its admissibility.

12 JUDGE RUTH: Thank you.

13 Mr. Dandino, do you have a general response to  
14 Mr. Lane's comments?

15 MR. DANDINO: Yes, your Honor. In these  
16 sections that I cited, Mr. Unruh is reporting to the  
17 Commission, advising the Commission what he believes the  
18 statute requires, what type of evidence is required. This is,  
19 you know -- the statute itself is the vehicle -- is the best  
20 evidence and is the authoritative source.

21 You know, this doesn't just necessarily go to  
22 the weight, but by Section 490.065, Mr. Unruh has to have the  
23 necessary training in order to offer an expert opinion as to  
24 what the law says, you know, what the law requires of this  
25 Commission. And I think that it's -- this steps beyond that

1 requirement.

2 He's describing the intent of the legislature  
3 in many points and in many points what is required of this  
4 Commission. I think the statute speaks for itself and  
5 Mr. Unruh is not competent under the law to render an opinion  
6 or advise this Commission of what their duty is.

7 JUDGE RUTH: Okay. Thank you, Mr. Dandino.  
8 Your concerns are noted on the record.

9 As we've gone through these, I've reviewed  
10 them. I am going to allow the exhibit in. I believe in  
11 several cases there is no question but that it is admissible  
12 and in other cases if there is a question, I believe that it  
13 does -- that the Commission is capable of separating and  
14 giving it the weight to which it is due.

15 So Exhibit 1 is received into the record.

16 (Exhibit No. 1 was received into evidence.)

17 JUDGE RUTH: Mr. Lane, did you have any other  
18 exhibits at this time?

19 MR. LANE: Yes, your Honor. I need to ask a  
20 couple of clarifying questions to Mr. Unruh, if I may still.  
21 CRAIG A. UNRUH testified as follows:

22 DIRECT EXAMINATION BY MR. LANE:

23 Q. Mr. Unruh, has SBC Missouri determined to  
24 revise its request for competitive classification with regard  
25 to any of the exchanges that you've identified in your

1 testimony?

2 A. Yes, we have.

3 Q. And would you describe what that change is?

4 A. Certainly. We have at this time chosen to  
5 withdraw our request for five exchanges that we've asked for  
6 for business services. Those exchanges are the exchanges that  
7 have been identified on the various exhibits and one of which  
8 we will present which are identified -- where SBC Missouri has  
9 identified those -- one of the competitors as SEMO  
10 Communications. The five exchanges are Advance, Bell City,  
11 Delta, Pocohontas-New Wells and Wyatt.

12 Q. And, Mr. Unruh, did you also review Mr. Van  
13 Eschen's testimony in this case?

14 A. Yes, I have.

15 Q. Okay. And you've had discussions with Mr. Van  
16 Eschen and recognize that he's modified his proposal based on  
17 new information and that he will be presenting revised  
18 testimony today?

19 A. That's correct.

20 Q. And in light of that, have you prepared an  
21 exhibit which more specifically identifies the exchanges where  
22 SBC Missouri is seeking competitive classification under this  
23 30-day track for residential and business services?

24 A. Yes. We have two exhibits, one for  
25 residential, which would reflect the exchanges we are seeking

1 in a competitive classification for, and one for business.

2 MR. LANE: Your Honor, I'd like to mark an  
3 exhibit -- two of them, if I may.

4 JUDGE RUTH: Exhibit 2 would be the first one.  
5 Is that the residential or --

6 MR. LANE: Yes.

7 JUDGE RUTH: And Exhibit 3 would be the  
8 business.

9 (Exhibit Nos. 2 and 3 were marked for  
10 identification.)

11 MR. DANDINO: Is residential 2?

12 THE WITNESS: Yes.

13 JUDGE RUTH: I marked them as the residential  
14 2, the business 3.

15 MR. DANDINO: Thank you.

16 BY MR. LANE:

17 Q. Mr. Unruh, showing you what's been marked as  
18 Exhibit 2, does that identify the exchanges where SBC Missouri  
19 is requesting competitive classification for residential  
20 services?

21 A. Yes, it does.

22 Q. And does Exhibit 3 identify the exchanges where  
23 SBC Missouri is seeking competitive classification for its  
24 business services?

25 A. Yes, it does.

1 MR. LANE: Your Honor, at this time I would  
2 offer Exhibits 2 and 3 into evidence.

3 JUDGE RUTH: Thank you. Let me clarify. So  
4 this would -- Exhibit 2 is an updated version of what had  
5 previously been filed as Exhibit A-1 to testimony with the  
6 application?

7 MR. LANE: That is correct, your Honor.

8 JUDGE RUTH: And Exhibit 3 then is the same,  
9 only I guess that was Exhibit A-2?

10 MR. LANE: That is correct, your Honor.

11 JUDGE RUTH: Okay. We'll address Exhibit 2,  
12 first. Exhibit 2 has been offered into the record. Are there  
13 any objections to it being received? Staff?

14 MR. HAAS: No objection.

15 JUDGE RUTH: Public Counsel?

16 MR. DANDINO: No objection.

17 COMMISSIONER GAW: Judge, I have a question --

18 JUDGE RUTH: Yes, I'm sorry.

19 COMMISSIONER GAW: -- of Mr. Lane.

20 Mr. Lane, are you -- this Exhibit 3, are you  
21 adding exchanges into your request?

22 MR. LANE: Exhibit 3 includes those exchanges  
23 that were identified by Staff in Mr. Van Eschen's testimony  
24 that was filed in this case, 15 exchanges for business  
25 services that Staff found based on its analysis, we're adding

1     them to the list.  It's what we requested in paragraph 21 of  
2     our petition.

3                 COMMISSIONER GAW:  So are you adding -- are you  
4     adding exchanges to your request?

5                 MR. LANE:  This is what we asked for in  
6     paragraph 21 of the petition.

7                 COMMISSIONER GAW:  You asked for all of these  
8     exchanges?

9                 MR. LANE:  We asked for the exchanges where the  
10    Commission, after conducting its analysis of its own records  
11    and making the necessary and appropriate inquiries of  
12    regulated providers, as the statute calls for, to be granted  
13    competitive classification.

14                COMMISSIONER GAW:  You did not list some of  
15    these exchanges as specifically requested by name of exchange  
16    in your original request.

17                MR. LANE:  That is correct.  And clearly we  
18    couldn't because the information that was available to the  
19    Commission to make those inquiries was not available to us in  
20    those cases.  So where we did not have the information, we  
21    didn't request it.

22                When we reviewed Mr. Van Eschen's testimony,  
23    this is responsive to that and is consistent with what we  
24    asked for in paragraph 21 of our petition.

25                JUDGE RUTH:  So on Exhibit 2, the one we're



1 looking at right now, the additional exchange would be Joplin;  
2 is that correct?

3 MR. LANE: Yes, your Honor.

4 JUDGE RUTH: And, otherwise, the other 28 are  
5 the same as what was in the original request? Joplin's been  
6 added?

7 MR. LANE: Yes, your Honor.

8 JUDGE RUTH: Then I just want to back up to  
9 make sure we understand. Exhibit 2 has been offered. I had  
10 stated it's the same as the original exhibit, but it's been  
11 clarified that it includes the original exhibit information,  
12 but adds Joplin as an exchange. And this is Exhibit 2. Are  
13 there any objections to it being received into the record?  
14 Staff?

15 MR. HAAS: No objection.

16 JUDGE RUTH: Public Counsel?

17 MR. DANDINO: This is Exhibit 2, your Honor?

18 JUDGE RUTH: Yes. Exhibit 2 is the  
19 residential.

20 MR. DANDINO: No objection.

21 JUDGE RUTH: I'm going to receive Exhibit 2  
22 into the record.

23 (Exhibit No. 2 was received into evidence.)

24 JUDGE RUTH: Did you have a comment? I'm  
25 sorry, Mr. Lane.

1 MR. LANE: No, I did not, your Honor.

2 JUDGE RUTH: And you've also offered Exhibit 3;  
3 is that correct?

4 MR. LANE: Yes, your Honor.

5 JUDGE RUTH: Okay. Exhibit 3 then is the chart  
6 of the SBC exchanges that they're requesting competitive  
7 classification for for business.

8 And remind me then of which one of these 55  
9 were actually not on -- or is it more than 55 -- sorry, 61  
10 were not on the original chart.

11 MR. LANE: There are two groups of revisions,  
12 so it's clear. Those 5 exchanges that Mr. Unruh identified as  
13 being withdrawn from our original request do not show up on  
14 here because they're withdrawn. And added to it are those  
15 that you will find under the category source of data where it  
16 says Staff evidence. Those 15 exchanges are in addition to  
17 those that were identified in our petition and Mr. Unruh's  
18 pre-filed testimony.

19 JUDGE RUTH: I apologize, but I want you to  
20 tell me exactly where are the 15 that are new.

21 MR. LANE: Sure.

22 JUDGE RUTH: And I'm going to mark my chart as  
23 we go through, so give me time.

24 COMMISSIONER CLAYTON: We're on Exhibit 3 now?

25 JUDGE RUTH: Yes.

1 MR. LANE: Line 2, Archie; line 3, Ash Grove;  
2 line 4, Billings; line 6, Boonville; line 8 -- I'm sorry, 9,  
3 Carthage; line 10, Cedar Hill; line 11, Chaffee, line 17,  
4 Farley; line 38 -- excuse me, line 35, Linn; line 38,  
5 Marshall; line 40, Mexico; line 41, Moberly; line 43,  
6 Montgomery City; line 58, St. Clair; line 59, Union. I  
7 believe that's -- that should be 15. If you marked 15, your  
8 Honor, those are the 15.

9 JUDGE RUTH: Okay. Thank you. Exhibit 3,  
10 which addresses the business exchanges, has been offered into  
11 the record. Are there objections to it being received?  
12 Staff?

13 MR. HAAS: No objection.

14 JUDGE RUTH: Public Counsel?

15 MR. DANDINO: Yes, your Honor. On terms of  
16 these 15 that are supported solely by the Staff evidence and  
17 the company did not submit evidence on that and did not  
18 specifically request these, I would object to that. If the  
19 company wants to have this considered under the 30 days, they  
20 should have amended their -- included this in their petition  
21 specifically for this.

22 JUDGE RUTH: Mr. Dandino, I note your concerns.  
23 I'm going to overrule it, but by overruling it, I'm simply  
24 acknowledging that this is a chart of the current request of  
25 SBC. The Commission will address in its order whether or not

1 those additional 15 exchanges should be included in the  
2 request. But this chart does provide the Commission with an  
3 updated record of what it is SBC is now requesting.

4 So Exhibit 3 is received into the record.

5 (Exhibit No. 3 was received into evidence.)

6 JUDGE RUTH: Mr. Lane?

7 MR. LANE: That's all except one more  
8 clarifying question for Mr. Unruh.

9 BY MR. LANE:

10 Q. Mr. Unruh, to the extent that your original  
11 pre-filed testimony discusses or identifies the five exchanges  
12 that you have announced that we are withdrawing, you're  
13 withdrawing the petition for competitive classification, those  
14 should not be considered as part of the request still. Right?

15 A. That's correct.

16 MR. LANE: Okay. That's all I have. Thank  
17 you, your Honor.

18 JUDGE RUTH: Thank you.

19 QUESTIONS BY JUDGE RUTH:

20 Q. I'm going to ask you, Mr. Unruh -- is that  
21 correct?

22 A. Yes.

23 Q. You may not know, but can you specifically  
24 point out anywhere in your testimony then where it would need  
25 to be amended? And one reason I ask, it's my understanding

1 that Staff will be providing some revised testimony. You are  
2 not. So to help me, can you clarify which pages then would be  
3 amended?

4 A. The exhibits will be easier. We may need to go  
5 through the testimony.

6 Q. Well, I understand on the exhibits.

7 A. Well, just to add one we have not discussed, we  
8 do have maps, so it would be Exhibit A-3, page 1. Those maps  
9 would be adjusted to reflect the five exchanges that we are no  
10 longer seeking the competitive classification for.

11 Q. Okay.

12 A. I guess we would -- there's a few occurrences  
13 where we've quantified the specific number -- or the number of  
14 exchanges that we specifically identified so we would revise  
15 those. One is on page 4, line 13.

16 Q. So the 28 and the 51 would be revised?

17 A. Well, the 28 would be the same. The 51 would  
18 be revised to say 46. That same occurrence occurs on page 7,  
19 line 16. We would change 51 to 46. And I believe that would  
20 be it.

21 JUDGE RUTH: Okay. Thank you. I want to note  
22 for the record then that there have been a few slight  
23 amendments to Mr. Unruh's Direct and I will offer the parties  
24 an opportunity to express any objections then if they have any  
25 now. I had previously admitted it, but if this changes your

1 opinion, I'll allow you to say so.

2 Staff, do you object to Exhibit 1 as revised  
3 right now by Mr. Unruh being admitted?

4 MR. HAAS: No, your Honor.

5 JUDGE RUTH: Public Counsel?

6 MR. DANDINO: No, your Honor.

7 JUDGE RUTH: It is received into the record.

8 (Exhibit No. 1 was received into evidence.)

9 JUDGE RUTH: Mr. Lane, I may have interrupted.  
10 Did you have any more questions for your --

11 MR. LANE: No, your Honor. I had one request.  
12 I think in the order here the Commission indicated that it  
13 would permit rebuttal as appropriate given the short time  
14 frame in which the Commission has to decide the procedural  
15 schedule set by the Commission didn't call for rebuttal.

16 We did try to respond to Mr. Van Eschen's  
17 testimony that was filed a little bit earlier so we did try to  
18 respond to it. But to the extent that he's revised his  
19 testimony here, we would ask for the opportunity to -- after  
20 his cross-examination, if necessary, to do any further  
21 rebuttal with Mr. Unruh live. I hope not to do that, but I  
22 would ask for that if we need to.

23 JUDGE RUTH: Okay. So after Mr. Van Eschen's  
24 direct testimony, you may be calling rebuttal witness --  
25 Mr. Unruh for rebuttal; is that correct?

1 MR. LANE: It's possible, your Honor, yes.

2 JUDGE RUTH: Thank you.

3 MR. LANE: Thank you very much.

4 JUDGE RUTH: All right. We'll move to cross.

5 Staff, do you have cross for this witness?

6 MR. HAAS: Yes, your Honor.

7 CROSS-EXAMINATION BY MR. HAAS:

8 Q. Good morning, Mr. Unruh.

9 A. Good morning.

10 Q. I will begin with questions about SBC support  
11 for competitive classification for residential services in the  
12 four exchanges that are remaining at issue and the business  
13 services in three exchanges. I will be working off of  
14 Exhibit A-2 attached to your testimony, so if you want to  
15 refer to that, you may, but don't limit your answers to that  
16 chart.

17 What support did you provide in your testimony  
18 for a competitive classification for residential services in  
19 the San Antonio exchange?

20 A. We showed that -- that -- we identified the two  
21 competitors that we believed were the trigger companies.  
22 Sprint being one of them and we have evidence that they have  
23 911 listings in the 911 database which reflects that they  
24 would be using their switch in that exchange to serve  
25 customers. And then we identified Verizon as a wireless

1 carrier serving in that exchange.

2 Q. What is the E-911 database?

3 A. It's -- it's the database that identifies the  
4 customers and where they reside, addresses, phone numbers,  
5 that sort of thing, which provider is serving that customer.  
6 And it's what is used to properly route 911 calls to the  
7 correct PSAPs and to send information to those PSAPs relating  
8 to who's calling them via 911.

9 Q. Who maintains the E-911 database?

10 A. All of the carriers input their own data into  
11 the database. So every carrier would have responsibility for  
12 that piece of it. The overall database itself is managed by  
13 SBC Missouri.

14 Q. Does the E-911 database show whether a customer  
15 is a business customer or a residential customer?

16 A. Yes, it does.

17 Q. Did you check with Sprint as to whether it  
18 served residential customers in the San Antonio exchange?

19 A. We did not since we had the evidence that  
20 showed that they -- they were providing service with their own  
21 switch.

22 Q. Is SBC exchanging local calls with Sprint in  
23 the San Antonio exchange?

24 A. I don't have specific evidence to that, but to  
25 the extent they have customers -- you know, that there's



1 customers being served with their switch, as reflected by  
2 these E-911 listings, there presumably would be calls going  
3 back and forth between customers served out of that switch and  
4 our customers.

5 Q. Do you have any additional support for a  
6 wireline competitor -- a qualifying wireline competitor in the  
7 San Antonio exchange?

8 A. I -- I think subsequent to the submission of  
9 this information, it's -- and Mr. Van Eschen will probably  
10 clarify this, but it's my understanding and it's our belief  
11 now that Sprint is acting as a wholesale switching provider  
12 for St. Joe Cable Vision. And St. Joe Cable Vision is  
13 providing telephone service in St. Joe as -- we haven't got to  
14 San Antonio yet, but San Antonio as well.

15 We have -- we called St. Joe Cable Vision, they  
16 said they were providing service in those two exchanges, that  
17 being St. Joe and San Antonio. We found an ad in a  
18 newspaper -- in a St. Joe newspaper that showed St. Joe Cable  
19 Vision. It was an ad for St. Joe Cable Vision for a telephone  
20 package that they were offering service.

21 And I've also looked at some recent competitive  
22 disconnect surveys that our company conducts where we look at  
23 customers who have disconnected from us and we do certain --  
24 we conduct surveys on some of those customers to try to figure  
25 out why they left us and where they went. And that

1 information has shown that the customers -- those former  
2 customers have indicated to us that they moved to St. Joe  
3 Cable Vision.

4 Q. Do you know what type of service St. Joe Cable  
5 Vision provides? In particular, is it a Voiceover Internet  
6 Protocol service?

7 A. I don't know the particulars of their service,  
8 other than I believe St. Joe would be using their -- their  
9 coax loops that go into the house that they provide cable TV  
10 service over and then they've apparently hired Sprint -- at  
11 least Sprint, maybe other carriers, to help them with  
12 switching functions and -- and possibly other back office  
13 functions.

14 Q. You had already begun to refer to St. Joseph,  
15 but what support did you provide for competitive  
16 classification for residential services in the St. Joseph  
17 exchange?

18 A. I'm going to clarify that. I believe you meant  
19 San Antonio in your question. You said St. Joe.

20 Q. Yes, I want to move on to St. Joseph now.

21 A. I think we were just discussing St. Joe,  
22 weren't we?

23 Q. We were just discussing San Antonio.

24 A. Okay. My apologies. I was answering for  
25 St. Joe, although the general information remains the same.

1 San Antonio -- Sprint -- we have evidence that Sprint has 911  
2 listings, which again indicates they're using their switch to  
3 provide service in that exchange. Our second competitor again  
4 was Verizon.

5 Q. And in St. Joe you're relying upon the E-911  
6 database also?

7 A. Correct.

8 Q. To your knowledge, have there ever been any  
9 errors discovered in the E-911 database?

10 A. Well, it's certainly a very large database  
11 with, you know, a lot of moving parts. So there can be  
12 mistakes from time to time, people get the wrong address put  
13 in or things of those nature. But generally people are  
14 incented to try to make sure that's accurate since we are  
15 talking about 911 service, which is obviously critically  
16 important to people.

17 Q. If a carrier is providing only data service to  
18 a customer, would that customer be listed in the E-911  
19 database?

20 A. No.

21 Q. Now, you answered that with certainty. Are you  
22 saying they should not be or they absolutely will not be  
23 listed?

24 A. I don't know why they would be. It's -- it's  
25 not -- you don't have telephone numbers, there's no way to

1 route -- no way to route calls. I mean, you're not -- you're  
2 not routing calls, not over a data service.

3 Q. Let's move on to Farmington. What support did  
4 you provide for competitive classification for residential  
5 services in the Farmington exchange?

6 A. We identified the first competitor being  
7 Sprint, the -- we've labeled it Sprint/Nextel. Obviously  
8 they've just merged, so that's one wireless carrier. We've  
9 also identified Big River as being a carrier there.

10 And what we have for -- to show Big River is  
11 operating in Farmington is they have issued -- Big River has  
12 issued migration orders where they have taken a customer that  
13 was previously served by UNE-P and they have ported that phone  
14 number. And so, again, porting the phone number would mean  
15 that they are using their own switch to serve those customers.

16 Q. Have those migration orders been worked?

17 A. Yes. I believe they have.

18 Q. Did you do any additional checks with Big River  
19 as to whether it is providing service to residential customers  
20 in Farmington?

21 A. No. Again, the -- the orders that they've  
22 placed with us to port those phone numbers is pretty solid  
23 evidence that they're using their switch to provide service.

24 Q. And does the migration order specify whether  
25 it's a residential or business customer?

1           A.       Yes, it does. In these cases, it was for  
2 residential.

3           Q.       Do you know whether SBC has been exchanging  
4 local calls with Big River in the Farmington exchange?

5           A.       I don't know specifically, but, again, if  
6 they're serving customers with their own switch, it's highly  
7 likely that calls are traversing between their switch and  
8 ours.

9           Q.       Do you have any additional information or  
10 support for the Farmington exchange?

11                   (Reporter's Note: At this time, an in-camera  
12 session was held, which is contained in Volume No. 2, pages 53  
13 through 55 of the transcript.)  
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1 JUDGE RUTH: You may proceed, Mr. Haas.

2 BY MR. HAAS:

3 Q. Yes. Mr. Unruh, what support did you provide  
4 for a competitive classification for residential services in  
5 the Sikeston exchange?

6 A. In our testimony, again, we used Verizon as one  
7 of the trigger companies and we used Big River as the second  
8 trigger company. We based -- the evidence we presented for  
9 Big River was based on directory listings that had been placed  
10 in -- in the white page directories.

11 These are listings where Big River owns the  
12 listing and the listing is served -- or is a -- represents a  
13 customer out of their own NPA NXX. And I should add that we  
14 also -- one of the things that we looked at was to make sure  
15 that Big River had its own switch as a basis for looking at  
16 them.

17 Q. Mr. Unruh, at page 10 of your testimony you  
18 refer to directory listings and you say that SBC looked at  
19 directory listing database. Now, is that something different  
20 than looking at the actual white pages?

21 A. Yes. It would be the underlying database that  
22 is used to create the white pages.

23 Q. Now, did you look at both the underlying  
24 database and the white pages?

25 A. No. Because the white pages don't tell you who

1 the customer is served by. The underlying database that  
2 produces the white pages is where you would have to go to  
3 discover who the underlying carrier is that -- that owns that  
4 directory listing.

5 Q. Does the directory listing database identify a  
6 customer as being either business or residential customer?

7 A. Yes.

8 Q. Did you check with Big River as to whether it  
9 is providing service to residential customers in the Sikeston  
10 exchange?

11 A. No. Again, with the information we were able  
12 to discover, we didn't feel it necessary to talk with them.  
13 We felt our information was more than sufficient to  
14 demonstrate that they were providing customers in that  
15 exchange -- providing service to customers in that exchange.

16 Q. Is SBC exchanging local calls with Big River in  
17 the Sikeston exchange?

18 A. Again, I don't have specific knowledge of that,  
19 but to the extent we've demonstrated that they're providing  
20 service to customers in that exchange, it's highly likely that  
21 calls would be traversing between their switch and ours.

22 Q. Mr. Unruh, I'm now going to move to SBC's  
23 request for competitive classification for business services.  
24 And I'm going to be working off of Exhibit A-1 to your  
25 testimony. What support did you provide for a competitive

1 classification for business services in the Bonne Terre  
2 exchange?

3 A. In Bonne Terre, we identified Sprint/Nextel as  
4 one of the carriers, obviously the wireless carrier. And then  
5 we identified Big River as the other competitor. And we  
6 identified Big River as having issued migration orders where  
7 they have transferred customers that were previously served by  
8 UNE-P, they have ported the phone numbers that were used to  
9 serve those customers to their own switch.

10 Q. Have those migration orders been worked?

11 A. To my knowledge, yes.

12 Q. And what would be the basis of your knowledge?

13 A. One of the things that we looked at, we looked  
14 for cancellation orders just to make sure the order hadn't  
15 been issued and then -- and then subsequently canceled for  
16 whatever reason. And -- and so that was a crosscheck to use  
17 to make sure we didn't mistakenly identify orders that -- that  
18 were then otherwise canceled.

19 Q. Would you be able to tell if such a business  
20 customer was an Internet service provider?

21 A. It might -- not necessarily directly. It might  
22 depend on -- there may be some information in the -- in the  
23 migration order itself that -- that might identify the  
24 end-user customer and you might be able to glean some  
25 knowledge from that. But other than that, there's no specific

1 way to tell.

2 Q. Is SBC exchanging local traffic with Big River  
3 in the Bonne Terre exchange?

4 A. As with my answer to the other exchanges, I  
5 have no specific knowledge of that, but to the extent we've  
6 demonstrated that we have ported telephone numbers that  
7 they're using out of their own switch, then I would presume  
8 that traffic is flowing between their switch and ours in that  
9 exchange.

10 Q. Did you check with Big River as to whether it  
11 is providing service to business customers in the Bonne Terre  
12 exchange?

13 A. No, we didn't. Again, we felt our evidence was  
14 sufficient to demonstrate that they are providing service to  
15 customers in that exchange using their own facilities in whole  
16 or in part.

17 Q. Do you have any additional support for the  
18 Bonne Terre exchange?

19 MR. LANE: Your Honor, let me --

20 JUDGE RUTH: Use your microphone, please,  
21 Mr. Lane.

22 MR. LANE: It's the same kind of question we  
23 had before. I just want to make sure that if we're getting  
24 into highly confidential information, that Mr. Unruh  
25 identifies it as such.

1 JUDGE RUTH: Mr. Unruh, take a moment. Do you  
2 think your answer is going to involve HC information?

3 THE WITNESS: Yes, it will.

4 JUDGE RUTH: I am going to go in-camera. Give  
5 me just a second.

6 (Reporter's Note: At this time, an in-camera  
7 session was held, which is contained in Volume No. 2, pages 61  
8 through 62 of the transcript.)  
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1 JUDGE RUTH: You may proceed.

2 BY MR. HAAS:

3 Q. Mr. Unruh, let's move on to the Marble Hill  
4 exchange. What support did you provide for competitive  
5 classification in business services in the Marble Hill  
6 exchange?

7 A. We identified Verizon as one of the competitors  
8 as the wireless carrier and then the second competitor was Big  
9 River. Again, they have orders to migrate great business  
10 customers from a UNE-P arrangement to where they have ported  
11 the phone number to their own switch.

12 Q. Mr. Unruh, if I asked you the same questions  
13 about the Marble Hill exchange as I asked about the Bonne  
14 Terre exchange, would your -- first, would your public answers  
15 be the same?

16 A. Yes, they would.

17 Q. And do you have any additional support for the  
18 Marble Hill exchange?

19 A. I do. And it would be highly confidential.

20 Q. Would it be the same answer as you provided for  
21 the Bonne Terre exchange?

22 A. There's two pieces. One would be yes and then  
23 I would add one additional item.

24 JUDGE RUTH: We will go back into in-camera.  
25 Just a moment.



1 (Reporter's Note: At this time, an in-camera  
2 session was held, which is contained in Volume No. 2, page 65  
3 of the transcript.)  
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1 JUDGE RUTH: We're back into the public  
2 session.

3 BY MR. HAAS:

4 Q. Let's move on to Excelsior Springs. What  
5 support did you provide for competitive classification for  
6 business services in the Excelsior Springs exchanges?

7 A. We used Verizon as competitor -- as one of the  
8 competitors, the wireless carrier. And then we also  
9 identified NuVox as having 911 listings in that -- in that  
10 exchange demonstrating that they are using their switch to  
11 serve customers in that exchange.

12 Q. From the 911 listings can you tell if a  
13 customer is an Internet service provider?

14 A. Probably -- probably not directly unless you  
15 maybe looked at the names, you know, associated with the  
16 address and that might give you some indication. But  
17 typically an Internet service provider wouldn't have -- for --  
18 for providing Internet services -- you know, if a CLEC was  
19 selling services to an Internet service provider to allow them  
20 to provide Internet service to their end-users, there wouldn't  
21 be any telephone numbers associated with that.

22 So any telephone numbers that would be  
23 associated with an Internet service provider I believe would  
24 be showing that it's where the CLEC's actually providing voice  
25 service to that Internet service provider just like any other

1 business.

2 Q. Did you check with NuVox as to whether it is  
3 providing service to business customers in the Excelsior  
4 Springs exchange?

5 A. We did not. Again, we felt the -- or the 911  
6 listing information is -- is substantial evidence that they  
7 are using their own switch to provide service in that  
8 exchange.

9 Q. Do you have any additional support for the  
10 Excelsior Springs exchange?

11 A. I do. And it -- and -- and we should treat it  
12 as highly confidential.

13 JUDGE RUTH: Okay. Just a moment, please.

14 (Reporter's Note: At this time, an in-camera  
15 session was held, which is contained in Volume No. 2, pages 68  
16 through 69 of the transcript.)  
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1 JUDGE RUTH: Okay. We just concluded a closed  
2 session portion of the hearing, but we are now going to take a  
3 15-minute break. Based on the clock at the back of the room,  
4 that means we will reconvene at a quarter 'til 11:00. We're  
5 off the record.

6 (A recess was taken.)

7 JUDGE RUTH: We are back on the record after a  
8 short break.

9 Staff, I believe you were asking questions when  
10 we took our break.

11 MR. HAAS: Your Honor, I have concluded my  
12 cross-examination of Mr. Unruh.

13 JUDGE RUTH: Okay. Thank you.

14 Public Counsel?

15 MR. DANDINO: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. DANDINO:

17 Q. Good morning, Mr. Unruh.

18 A. Good morning.

19 Q. Turn your attention to Exhibits 2 and 3. Be  
20 fair to characterize those as a compilation of information  
21 concerning competition in the SBC exchanges?

22 A. I guess I would say that it doesn't identify  
23 all the competition in the exchanges, but it points to the two  
24 companies we've identified as the trigger companies.

25 Q. Okay. Just in these limited exchanges; is that

1 correct?

2 A. Correct.

3 Q. Okay. Now, do you personally conduct this --  
4 you know, this survey and prepare these exhibits?

5 A. I'm going to ask you to clarify what you mean  
6 by "this survey."

7 Q. Well, Exhibits 2 and 3. Did you personally  
8 prepare these?

9 A. A member of my team prepared them.

10 Q. Okay. And was that person under your  
11 supervision and control?

12 A. Yes.

13 Q. Direct supervision?

14 A. Yes.

15 Q. And who was that?

16 A. Mr. Alan Kern.

17 Q. Okay. What instructions did you give him to  
18 prepare this?

19 A. Well, what we wanted to do was identify the  
20 list of exchanges. Since this has been kind of a -- somewhat  
21 of a moving target with Staff's early recommendation and later  
22 recommendations, what we felt would be helpful is to have sort  
23 of a complete list of exchanges with the trigger companies  
24 identified to make it easier for the Commission to try to  
25 understand what it was we were seeking in this case.



1 Q. Did you design the -- I guess you could call it  
2 the methodology that he employed to develop this?

3 A. Well, maybe I should clarify my answer based on  
4 where you're going. Mr. Kern prepared this exhibit, but he  
5 was not responsible for gathering all of the underlying data  
6 and investigation that -- that leads to this document  
7 identifying what the trigger companies are. The rest of my  
8 team also played a role in gathering information and analyzing  
9 records and reviewing the data.

10 Q. There were a number of people involved in this?

11 A. Correct.

12 Q. Was there any process or procedure used to  
13 crosscheck or verify the information obtained?

14 A. I suppose -- you know, depends on what the --  
15 you know, there's a lot of different kinds of data that we  
16 looked at. So to the extent there's just a variety of data,  
17 that's kind of an inherent crosscheck, but we also did things  
18 like we -- we looked at, you know, migration orders, for  
19 example, we looked to make sure those orders hadn't been  
20 canceled or there weren't duplicate orders or things like  
21 that. So there was cross-checking, you know, along those  
22 lines.

23 Q. Did this occur in every instance?

24 A. Well, I'm not sure what you mean by "every  
25 instance," but, for example, if -- you know, we looked at

1 Annual Reports, for example, that are filed with the  
2 Commission. And if those Annual Reports were public, you  
3 know, we looked at that and we used that as -- as the evidence  
4 in this case. Not exactly sure what you would do to  
5 crosscheck an Annual Report. I mean, the carriers identify  
6 where they're providing lines and how many lines and --

7 Q. Well, did you make any independent verification  
8 of the information provided in the Annual Report on the number  
9 of lines?

10 A. Probably for the -- the -- for example, one of  
11 the things that we do was we look at where there are 911  
12 listings, as an example. And so we kind of poll the universe  
13 of 911 listings and boil that down to where are CLECs are  
14 providing service, you know, as indicated by those 911  
15 listings.

16 So I mean, I guess there's sort of an -- we  
17 looked at a variety of sources so there's kind of an inherent  
18 cross-checking that's going on when all that data is pulled  
19 together in kind of one piece of information that's been  
20 presented here.

21 Q. But you don't know specifically whether, say,  
22 the City of Manchester exchange served by Charter relying upon  
23 the information in the Annual Report, you don't know if that  
24 was verified or not against any other data?

25 A. Yes, it would be. You know, Charter -- we

1 would have 911 listings, for example, that would show Charter  
2 has lines in the Manchester exchange.

3 Q. And do you know for a fact that that was done?

4 A. Yes.

5 Q. In each example on Exhibit 2, each entry on  
6 Exhibit 2, was there a crosscheck performed? Do you know that  
7 for certain?

8 A. I guess probably the one area where I probably  
9 wouldn't be able to point to a specific crosscheck other than  
10 what Staff has confirmed has, you know, independently  
11 confirmed would be the examples where we are using the -- the  
12 cable company, SEMO Communications. We contacted them by  
13 phone and asked them if they were providing service in those  
14 exchanges, they indicated that they were.

15 Staff has subsequently independently verified  
16 that Big River is the one providing -- you know, helping SEMO  
17 Communications provide services in those exchanges. And then  
18 to the extent there might have been information on Big River,  
19 things like 911 listings or migration orders that might show  
20 up.

21 Q. You keep using the word might have shown up.  
22 Do you know for sure one way or the other?

23 A. I don't -- I don't necessarily know for the  
24 SEMO exchanges whether or not that's correct But, again, we  
25 contacted the company, the company said, yes, we provide

1 service. It's my understanding that Mr. Van Eschen will  
2 testify that Big River has confirmed, that, yes, indeed they  
3 are providing service in those exchanges.

4 Q. But you don't know that for sure? You're  
5 anticipating that he's going to say that?

6 A. That is my understanding. Well, I -- I believe  
7 that -- well, it's not submitted yet, but it's my  
8 understanding the testimony that he's handed out  
9 preliminarily, obviously hasn't been introduced as evidence,  
10 indicates that -- that they recommend approval of those  
11 exchanges based on conversations with SEMO and Big River.

12 Q. Is the information contained in a CLEC's Annual  
13 Report accurate and correct?

14 A. I think as a starting point, the information is  
15 typically, you know, a good starting point. I think it would  
16 be under-inclusive of information because it's -- it's dated  
17 and so carriers may have entered new exchanges in -- so that  
18 new competition, if you will, wouldn't be reflected in their  
19 Annual Report.

20 Q. So it might not be correct?

21 A. I think to that extent, it may be, again,  
22 under-- under-reporting what's going on in the marketplace.

23 Q. What about misreporting?

24 A. I -- I think there certainly could be  
25 misreporting. It's my understanding Staff has testified that

1 they contact any -- they've contacted the CLECs who have  
2 submitted information that shows that they're providing  
3 service utilizing their own facilities in whole or in part.  
4 They've contacted those companies to make sure that what  
5 they've identified in their Annual Report is indeed correct.

6 Q. But that's what the Staff did?

7 A. Correct.

8 Q. Now, you used the E-911 database. What's the  
9 purpose of the E-911 database?

10 A. It's a database that all of the carriers use to  
11 identify the customers they are serving to facilitate proper  
12 routing of 911 calls to the correct PSAP agency along with  
13 helpful information that's conveyed to those agencies.

14 Q. So I believe you called it critical emergency  
15 information --

16 A. Yes.

17 Q. -- is that correct?

18 Do you think it's a -- do you think it's proper  
19 to use critical emergency information in a database for  
20 competitive purposes?

21 A. I think it's a very reliable source to  
22 demonstrate where carriers are providing service and certainly  
23 one this Commission's relied on in the past.

24 Q. Has the Staff criticized SBC for using E-911  
25 database information as evidence to support their competitive

1 classification in prior cases?

2 A. I don't recall that they have.

3 Q. I believe you told Mr. Haas that all the -- the  
4 carriers themselves, the CLECs, enter the data into the E-911  
5 database; is that correct?

6 A. Yes. With the caveat that in a lot of cases  
7 the underlying information may already be in the database. It  
8 depends on whether they've won an existing customer or are  
9 entering a new customer. So if they've won an existing  
10 customer, they, you know, move from one carrier to another,  
11 the underlying information would be in the database, the  
12 carrier providing the service would be responsible for  
13 updating the record that they are now the service provider.

14 Q. But you don't know if that information is  
15 accurate or not?

16 A. Identifying the proper carrier?

17 Q. Right.

18 A. It's my understanding that there are examples  
19 of carriers who aren't necessarily that good at updating the  
20 records. So those 911 data would actually understate the  
21 amount of lines served by CLECs because it might still show up  
22 as being our line and not theirs.

23 Q. On this LetsTalk.com, what is the purpose of  
24 that, LetsTalk.com website?

25 A. It's to help people choose wireless carriers

1 and plans for their service areas.

2 Q. And who sponsors that website?

3 A. I don't know.

4 Q. Do you know how accurate that information is?

5 A. Well, I believe it would be pretty accurate to  
6 the extent that -- I mean, certainly it might -- you know,  
7 there might be a timing issue for the website getting updated  
8 information, but generally it's in their interest to be  
9 providing accurate information to customers so customers will  
10 use the website.

11 Q. You don't know who operates it, but you're  
12 willing to trust them; is that correct?

13 A. I'm not sure who -- who sponsors the website or  
14 who operates the website. I know it's been quoted as being a  
15 good place to go to look at wireless plans and wireless  
16 carriers.

17 Q. I notice you use the word it's publicly  
18 available information?

19 A. Yes.

20 Q. National Enquirer is publicly available also,  
21 isn't it? I wouldn't call that reliable. Would you?

22 A. I would point out that wireless carriers serve  
23 in all of our exchanges, so I don't know that there would be  
24 an issue of wireless carriers being one of the trigger  
25 companies. I would also point out that Staff has not raised

1 any objection to our wireless -- wireless carriers we've  
2 identified.

3 Q. But the information that you're relying on in  
4 this comes solely from the LetsTalk.com; is that right?

5 A. Yeah. I would say generally. I would say that  
6 we've also examined from time to time, just in the analysis of  
7 general data, wireless carriers and -- and whether they have  
8 NPA NXX. So, I mean, there's other information that -- that's  
9 been reviewed, but -- but our primary source for this case is  
10 this LetsTalk.com.

11 Q. And you haven't presented any other source to  
12 this Commission as the source of information you're relying on  
13 for competitor No. 2?

14 A. That's correct.

15 Q. Now, in Exhibits 2 and 3 and in your testimony  
16 you don't provide any information as to the number of  
17 customers that a CLEC serves in an SBC exchange. Is there any  
18 reason why the Public Service Commission should not have this  
19 information?

20 A. I don't believe it's necessary under the  
21 statute. The statute speaks to providing service and it's --  
22 it's not an evaluation of the extent of competition or how  
23 many lines carriers serve. It simply speaks to is that  
24 carrier providing service and if they are, that counts.

25 Q. And so the basis is you don't think they ought



1 to have that information because it's not required by the  
2 statute. Is that your answer?

3 A. Yeah. I don't think it -- I don't believe it's  
4 relevant under the law. And certainly wouldn't reflect --  
5 necessarily reflect the overall level of competition in that  
6 exchange because there might be numerous other CLECs and  
7 wireless carriers.

8 Q. Now, in Exhibits 2 and 3 you only identify one  
9 CLEC and one wireless carrier in any other exchanges; is that  
10 correct?

11 A. Did you say in any other exchanges?

12 Q. In these exchanges. Excuse me.

13 A. That's correct. As required under the law,  
14 we're to show -- or, you know, the review is to demonstrate  
15 that there is two competitors.

16 Q. Is there any reason why the Public Service  
17 Commission should not know why -- or who the other CLECs are  
18 operating in that exchange?

19 A. Again, I don't believe it's relevant under the  
20 law. And the law speaks to having -- identifying the two  
21 carriers that meet the statutory criteria.

22 Q. So they don't need to know -- the Commission  
23 does not need to know?

24 A. To take -- sorry. To make a determination  
25 under the law, no.

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

2 JUDGE RUTH: Okay. Thank you.

3 We will move to questions from the Bench.  
4 Commissioner Murray, do you have questions at this time?

5 COMMISSIONER MURRAY: Not many, Judge, but  
6 maybe a few.

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Good morning, Mr. Unruh.

9 A. Good morning.

10 Q. Do any of the exchanges involved in this  
11 petition require the use of the minimum threshold that Staff  
12 has mentioned in its testimony?

13 A. Staff originally identified their minimum  
14 threshold as being what they would call full facilities based  
15 and UNE-L, meaning unbundled network loops that would be  
16 purchased from SBC Missouri. As I've pointed out in our  
17 testimony, we don't agree with that interpretation of the  
18 statute. The statute does not limit the criteria to those  
19 criteria so we would not agree with that.

20 It's my understanding that based on the  
21 preliminary testimony that I've seen from Mr. Van Eschen that  
22 I believe he will submit later today, that he may be modifying  
23 what -- what they are -- sort of maybe their minimum threshold  
24 might be the way to characterize it.

25 And if I understand correctly, I believe he may

1 testify that they would also include an example of where a  
2 carrier is using its own switch, but somebody else's loop, not  
3 the ILEC's loop. And under that definition, if you will, I  
4 believe Staff will support a competitive classification for  
5 five of our residential exchanges where Big River is --  
6 according to Staff's research, Big River is providing service  
7 to residential customers and they are using SEMO  
8 Communication's cable loops. So I don't believe that will be  
9 an issue in this case.

10 Q. Okay. And I'm still trying to figure out where  
11 this analysis of a minimum threshold might come into play in  
12 that it's been proposed to us in two cases now in which there  
13 are no reason to even look at the issue. Do you know if the  
14 Staff's, quote, minimum threshold is modified as you just  
15 suggested, what would that eliminate?

16 A. I --

17 Q. Do you know?

18 A. I'm sorry. I still believe that this  
19 Commission is -- is not confronted with this issue, certainly  
20 not in our case and -- nor do I believe in Sprint's case. So  
21 I don't believe the Commission should deal with it.

22 Certainly shouldn't find that there's a minimum  
23 threshold that differs from what the statute lays out. I  
24 believe, just as an example of something that -- that might  
25 not fit under -- well, I don't know what -- necessarily what

1 Staff -- how they're going to interpret their minimum  
2 threshold concept, but one of the things that we haven't  
3 discussed, and is not the case with any of our exchanges or  
4 competitors, but there may be the case where a CLEC, for  
5 example, would use its own loops, but choose to purchase our  
6 switching.

7 And so that's sort of the -- you know, it's  
8 different than using UNE loops. They would actually be using  
9 our commercial switching. So I think there's just any number  
10 of combinations of things that -- that might go on in the  
11 marketplace that -- that, you know, we'll have to examine on a  
12 case-by-case basis and it may make perfect sense under the  
13 statute. And so trying to limit it today to some threshold  
14 that certainly doesn't make sense and is certainly  
15 inconsistent with the statute would be a mistake, in my  
16 opinion.

17 Q. And if a CLEC were to use its own loop, is that  
18 what you said, it's own loop and purchase the switching from  
19 the ILEC, that would still be providing service in whole or in  
20 part over its own facilities, would it not?

21 A. Yes. It definitely would. It would still  
22 qualify under the 30-day criteria.

23 Q. I'd like to ask your opinion on what an ILEC  
24 should do if Staff is correct that a carrier must first name  
25 an exchange in the petition before competitive status can be

1 granted.

2 In a situation where only the Staff has access  
3 to the information that there are, in fact, the requisite  
4 competitors within certain exchanges and the ILEC has no way  
5 of knowing which exchanges those are, would it be reasonable  
6 then for the ILEC to petition the Commission to find  
7 competitive status in every exchange with supporting  
8 information for certain number of the exchanges and with the  
9 request that the Commission examine its own records for  
10 support for the remainder of the exchanges?

11 I mean, would it require that kind of a shotgun  
12 approach for an ILEC to actually receive competitive  
13 classification in the exchanges in which it doesn't have the  
14 information available to it?

15 A. Yeah, it certainly could. For the very reason  
16 you've -- you've outlined, the Commission -- the Staff has  
17 access to information that's not publicly available so  
18 companies like SBC Missouri are not able to see that data. So  
19 we would not know that -- whether carriers are using their own  
20 facilities in whole or in part in those exchanges.

21 And I believe that's what the legislature  
22 intended in that it explained, via SB 237, that the Commission  
23 is to use its own records and to make inquiries as are  
24 necessary and appropriate to -- to identify the information  
25 that would otherwise meet the 30-day criteria.

1           Q.       Now, would it be your position that, in effect,  
2       that's what SBC did by reading paragraph 21 of the petition,  
3       in which it said, If the Commission determines that there are  
4       additional exchanges in which SBC Missouri's business or  
5       residential services qualify for competitive classification  
6       under this section of the statute based on data unavailable to  
7       SBC Missouri, that is, the Commission's review of its own  
8       records as is required by HB 237, SBC Missouri respectively  
9       requests the Commission also to classify the services in those  
10      exchanges as competitive?

11           A.       That is what we have -- have asked for, yes.

12           Q.       Now, in your opinion, does that provide notice  
13      to the competitors in every exchange that you are seeking  
14      classification wherever there is competition?

15           A.       It does. This petition was filed publicly, it  
16      was not treated -- you know, at least that paragraph was not  
17      highly confidential. So any-- really anybody could have  
18      reviewed that petition to see that that's what we were  
19      seeking.

20                   In addition, when Staff identified the extra  
21      exchanges that specifically meet the 30-day criteria, that  
22      information was filed publicly so that would have been  
23      available to any party interested in looking at it. And so  
24      parties would have been free to complain, I guess, if they  
25      wanted to.

1 Q. Mr. Unruh, the exchanges that are -- that you  
2 had initially named and that are currently in dispute because  
3 Staff has not spoken to the named CLECs, were you -- did SBC  
4 speak to those CLECs? And that would be Sprint, NuVox and Big  
5 River, as I understand it.

6 A. Yeah. I would say Big River and NuVox we did  
7 not. We did have some general conversations with Sprint that  
8 helped lead us to the information that St. Joe Cable Vision is  
9 who they -- Sprint is partnering with to provide service in  
10 San Antonio and St. Joseph.

11 Q. Okay. And let me ask you about that Cable  
12 Vision provider. Your position that that would qualify under  
13 the 30-day track is that the voice service would be  
14 provided -- well, give me your explanation again, please, as  
15 to why that would qualify within the 30-day --

16 A. Sure. I think it could qualify in either way  
17 you want to look at it. Either is Sprint is providing -- is  
18 using its own switch to provide service in that exchange,  
19 which obviously would be their own facilities in whole or in  
20 part, and so that would qualify.

21 Or if you want to look at St. Joseph Cable  
22 Vision, they would be using their own loops in that exchange  
23 combined with Sprint's switching function. So they obviously  
24 would be using their own facilities in whole or in part. So  
25 whichever way you want to look at it, I believe it clearly

1 meets the 30-day criteria.

2 Q. And is St. Joseph Cable Vision a certificated  
3 telecommunications carrier?

4 A. I -- I heard information this morning that  
5 perhaps their certificate was canceled some time back. I  
6 would offer that it's not a requirement of the statute that  
7 the competitor be certificated. I think the legislature  
8 recognized that there would be competition from entities that  
9 might not otherwise be regulated by the Commission and those  
10 entities should still count.

11 Q. Under the 30-day or under the 60-day?

12 A. Both.

13 Q. Both?

14 A. Yes.

15 Q. All right. Under the 60-day track, there is  
16 the ability to consider competition from other types of  
17 carriers; is that correct?

18 A. I would probably say that the Commission  
19 must -- must consider other competition that's been presented.

20 Q. Do you have any reason to think that it would  
21 not be appropriate for this Commission to subpoena Sprint,  
22 NuVox and Big River to answer the inquiry as to whether they  
23 are providing local voice service within the exchanges for  
24 which you have petitioned?

25 A. I believe there's sufficient evidence in the



1 present case that would allow the Commission to make the  
2 determination that we have met -- or that the exchanges we've  
3 requested meet the 30-day criteria. I would suggest though to  
4 the extent the Commission disagrees with that opinion, I  
5 guess, that -- and would want to seek more information, that  
6 that's certainly a remedy available to you.

7 COMMISSIONER MURRAY: Thank you.

8 JUDGE RUTH: Mr. Unruh, I'm just going to warn  
9 you and all the parties that we're going to go ahead and move  
10 on to the recross based on questions from the Bench.

11 Oh, do you have any questions for this witness?

12 COMMISSIONER CLAYTON: Absolutely. Is  
13 everybody on the Bench done?

14 JUDGE RUTH: Yes.

15 COMMISSIONER CLAYTON: Did they cross-examine?

16 JUDGE RUTH: No. It's a perfect time.

17 COMMISSIONER CLAYTON: I don't think my  
18 questions are going to be that long. I know Craig disagrees.  
19 May I proceed, Judge?

20 JUDGE RUTH: Please do.

21 QUESTIONS BY COMMISSIONER CLAYTON:

22 Q. Craig, I apologize for not being down here. I  
23 had a phone call and I got stuck.

24 The nature of my questions is going to be, I  
25 think, strictly relating to the evidence that's being supplied

1 by you through your testimony through -- by SBC. Okay?

2 A. Okay.

3 Q. And I guess I have a concern in listening to  
4 the discussion that's going on among attorneys and the parties  
5 here about what type of investigation was done in looking at  
6 each of these different exchanges. I hear a lot of, Well, we  
7 made a phone call to so and so and they told me this, which is  
8 a hearsay type -- well, it is hearsay evidence that's being  
9 presented. Now, I was scolded by the judge saying, well,  
10 hearsay's allowed in certain circumstances or if there are no  
11 objections.

12 My question to you primarily is, can you point  
13 to me on Exhibits 2 and Exhibits 3, the new listings that you  
14 all have given me, in the column which is listed as Source of  
15 Data and can you identify in that Source of Data where you  
16 were able to achieve first-hand knowledge of whether or not  
17 competitive services as stated by the statute are being  
18 provided?

19 So can you look at your listing and tell me  
20 whether you can profess to have first-hand knowledge of the  
21 existence of a competitive provider in a particular exchange?  
22 And if you don't understand the question, I --

23 A. I might ask you if -- if you -- if you choose  
24 to maybe clarify what you mean by first-hand knowledge.

25 Q. I guess the easiest way to explain first-hand

1 knowledge is to explain what is not first-hand knowledge.

2 A. Okay.

3 Q. You getting on the phone and calling someone  
4 and someone said this is second-hand hearsay information.

5 A. Gotcha. Okay.

6 Q. In a court of law it would be arguably  
7 inadmissible. Here, who knows?

8 My question to you is, can you point to the  
9 exchanges where you are able to tell me with first-hand  
10 knowledge that a competitive provider is offering service in  
11 an exchange?

12 A. The -- the places where we would have contacted  
13 the company by phone and then relied upon that information  
14 would have been -- and I'm looking at Exhibit 2 for  
15 residential service -- generally it would be the places  
16 identified by SEMO Communications and so the source of data  
17 would say, Contacted company by phone.

18 So it would be the five exchanges Advance, Bell  
19 City, Delta, Pocohontas-New Wells and Wyatt where -- where the  
20 information that we relied upon was a phone call to them  
21 walking through those exchanges where they said, Yes, we do  
22 provide service there.

23 Q. Okay. See, I would not consider that  
24 first-hand knowledge. And maybe I didn't clarify that.

25 A. That's -- maybe I didn't answer clearly. That

1 is where -- under what you've described would be the places  
2 where we didn't have first-hand knowledge.

3 Q. Okay. So everything else would be first-hand  
4 knowledge on your part?

5 A. Yes.

6 Q. Okay. And I want to set aside -- I'm going to  
7 have different questions for Mr. Van Eschen. They have  
8 provided additional information and certainly the information  
9 provided in Annual Reports, which is now a record of the  
10 Commission, is something that would be treated differently  
11 under the rules of evidence, but I want to focus on what you  
12 know, what SBC knows in terms of competitors in the  
13 marketplace.

14 Looking at Exhibit 3, which is the 30-day  
15 trigger for business exhibit that you've provided, I look at  
16 line 5, Bonne Terre, as an example of what may be an example  
17 of first-hand knowledge of you or SBC or an SBC witness as to  
18 the existence of a competitor. Because from the discussion  
19 today, there was talk about migration orders or orders that  
20 came through SBC that transitioned lines from you to a  
21 competitor.

22 A. Correct.

23 Q. You follow me so far?

24 A. Yes.

25 Q. Okay. So you had a discussion with Mr. Haas

1 earlier today about these migration orders. Has SBC provided  
2 copies of these migration orders where you have a migration  
3 from UNE-P to CLEC facility status for these companies  
4 where -- in each locations where it's listed?

5 A. Provided copies to Staff?

6 Q. Of those orders. Well, to be part of the  
7 record in this proceeding.

8 A. No, we have not.

9 Q. Okay. Is that something that could be  
10 provided?

11 A. Yes.

12 Q. Is it your testimony that the existing -- the  
13 existence of a migration order would be first-hand knowledge  
14 of SBC of the existence of a -- of some sort of competitor?

15 A. And I would take it one step further to say  
16 it's an -- it's evidence of a competitor using its own  
17 facilities in whole or in part, because you wouldn't migrate  
18 an order from UNE-P if you weren't using your own switch.  
19 It's a number port basically.

20 Q. I guess what I'm trying to figure out is, is  
21 the existence of that migration order -- as long as it hasn't  
22 been rescinded or canceled, the existence of that executed  
23 document, is that first-hand knowledge of SBC that a  
24 competitor's providing that type of service in that particular  
25 exchange?

1           A.       I believe it is. I mean, that's -- that's how  
2 carriers use their own switch. You know, that would  
3 demonstrate that a carrier's using its own switch to serve  
4 customers in that exchange.

5           Q.       Can you -- and I hope this is not HC, it's  
6 going to be a very basic general question. But in each of  
7 the -- each of the lines on Exhibit 3 where the source of data  
8 entry says, Migration from UNE-P to CLEC facilities, is it --  
9 is it your testimony that in each of those circumstances that  
10 there is more than one migration order or more than one  
11 customer, which is -- who is the subject of the migration  
12 order?

13                   I'm not sure how to phrase the question. Is it  
14 your testimony that that's more than one customer that are  
15 subject to those migration orders?

16           A.       I -- I -- I believe there is more than one  
17 migration order. What I couldn't speak to exactly is if it's  
18 more than one customer.

19           Q.       So it is possible that the existence of a  
20 migration order, as referenced in this exhibit, it could  
21 account for just one customer?

22           A.       Potentially. I would add that there was --  
23 this is sort of a subset of activity. This is only where a  
24 CLEC migrated from UNE-P. So there may be other pieces of  
25 information -- for example, if a CLEC just ported a number

1 from SBC or ported a number from some other carrier, that kind  
2 of -- there could be those lines out there as well. This --  
3 this simply identified where carriers migrated a customer from  
4 UNE-P.

5 Q. Is a migration order done per customer or is it  
6 just one migration order whenever a competitor is doing  
7 business in an exchange? Help me understand what a migration  
8 order is.

9 A. It would be done per line. Because essentially  
10 it's porting a phone number and so for every phone number that  
11 you're trying to move to the new carrier, you'd issue an order  
12 to make that happen.

13 Q. Okay. Would you agree with me that the  
14 existence of a migration order that hasn't been canceled, SBC  
15 could testify to having first-hand knowledge that there is an  
16 existing competitor in that exchange?

17 A. Yeah. That's how I would interpret it.

18 Q. Okay. Now, beyond the migration orders,  
19 looking at the other sources of data on your exhibit, I'm  
20 trying to find another example that would show where you or  
21 SBC or an SBC witness has first-hand knowledge of the  
22 existence of a competitor.

23 A. I would add the E-911 listings and the  
24 directory listings into that same category.

25 Q. The E-911 listings, who prepares those

1 listings, that document?

2 A. Well, it's a database that the carriers would  
3 use for 911 routing.

4 Q. Who manages it? Who monitors it? Who puts it  
5 together?

6 A. The database is -- the overall administration  
7 of the database is done by SBC. Each of the carriers are  
8 responsible for their own records within the database.

9 Q. So the E-911 listing is an SBC list? You all  
10 manage it? You're responsible for --

11 A. Yes.

12 Q. -- the accuracy of the list?

13 A. Each carrier would be responsible for their own  
14 entry in the database.

15 Q. Okay. So how would one verify the accuracy of  
16 the information in that list?

17 A. As far as -- well, I suppose maybe it depends  
18 on what you were trying to verify, you know. The -- the  
19 information would have, like, addresses and names and phone  
20 numbers and all that kind of stuff. So you'd ultimately  
21 probably have to contact a customer, you know, retail  
22 customer, verify that that's correct.

23 Q. Well, I suppose when I saw E-911 -- and I'll  
24 perhaps show that I know less about this than I should, but I  
25 thought maybe the E-911 listing was maintained by a



1 governmental agency. And that's not the case?

2 A. That is correct, that is not the case.

3 Q. E-911 listings are not maintained by the  
4 Commission?

5 A. That's correct. We're -- there's maybe an  
6 interplay with government in its PSAPs in that they use the  
7 information out of the database. So there's kind of a -- a  
8 relationship there, if you will, of when they find information  
9 that's incorrect, they will contact the companies to -- to  
10 make -- you know, to get it corrected in the database. So  
11 there's an ongoing dialogue to try to make sure that database  
12 is as accurate as possible.

13 Q. But the database is maintained -- I guess to  
14 simplify, I mean, you all hold the master list at SBC?

15 A. Yes.

16 Q. Okay. But SBC doesn't have a responsibility to  
17 verify the information that's within the list?

18 A. That's correct. We -- we would be responsible  
19 for our own listings --

20 Q. Your own data --

21 A. -- in the data.

22 Q. -- that you supply for the list?

23 A. Right.

24 Q. But your own data is going to be separate and  
25 different than what data's being relied on in this case?

1           A.       Correct.

2           Q.       Okay. So it kind of comes back to the original  
3 question is, well, how do we know the information -- since you  
4 all don't verify it, no governmental agency verifies it, how  
5 do we know that it's accurate?

6           A.       I don't know why a CLEC would enter -- well,  
7 two things really. One is, that the owner of the record --  
8 the record is locked by the owner of the record. And so  
9 somebody else can't go in and change that record unless the  
10 owner of the record unlocks it. So the CLEC whose name is on  
11 that record owns the record and it's locked and -- and no one  
12 can mess with it until they unlock it.

13          Q.       What happens if a CLEC were to, say, go out of  
14 business and just didn't follow up with all the loose ends of  
15 closing up a business? Could a CLEC that went out of business  
16 still have E-911 listings if they're no longer providing  
17 service?

18          A.       I suppose in theory that could happen, but  
19 there may be some kind of a -- possibly as part of our  
20 administration of the database, there may be some check and  
21 balances as to, you know, figuring out what happens to those  
22 customers.

23                   And so like in the case of resale, if a CLEC  
24 goes out of business, those customers -- it's called a  
25 snapback rule, those customers come back to SBC. And as a

1 part of that process, those records would be adjusted to  
2 reflect that we're now the owner of the record.

3 Q. So in that instance, SBC would verify and would  
4 actually remove the snapback customers? They would remove the  
5 entries of the CLEC after a snapback?

6 A. I'm not certain of that, but I could see where  
7 that could exist. I would also point out that the companies  
8 we've identified, via the 911 listings, are all in business,  
9 you know. None of them are bankrupt or out of business.

10 Q. I'm sorry. Would you repeat that?

11 A. I'm sorry. None of those carriers are out of  
12 business that we've identified.

13 Q. Oh, none of the carriers in this instance are  
14 out of business?

15 A. Correct.

16 Q. Okay. In each of the instances where you've  
17 listed E-911 listings as the source of data, is it your  
18 testimony that in each of those instances there is more than  
19 one -- one number listed for each of those competitors or  
20 could there be circumstances where, say, in line No. 1,  
21 Antonio -- Antonia competitor 1 would be NuVox. Could there  
22 be just one listing for NuVox in that exchange?

23 A. I don't believe we had any examples of where  
24 there was just one -- you know, where we've identified the 911  
25 listing as the source of the data, that there was just one

1 listing.

2 Q. In the instances where you reference Staff  
3 evidence, in those instances on this exhibit -- or these two  
4 exhibits, does that mean that SBC has no other evidence on its  
5 own to support the reclassification as competitive for those  
6 exchanges?

7 A. I don't -- I don't believe that we have any  
8 additional evidence on any of those exchanges. Typically, if  
9 I recall Mr. Van Eschen's schedule, it looked like for the  
10 most part they were carriers -- I'll use the term using their  
11 facilities in whole, you know, their own loops and their own  
12 switches. And -- and typically I believe reported that  
13 through their -- through the Annual Report in a highly -- and  
14 labeled it highly confidential. So we wouldn't have seen  
15 that.

16 Q. I understand. I understand what you're relying  
17 on. I just want to know if there's anything else. I mean,  
18 Van Eschen's going to get his when it's his turn up here, but  
19 is there anything else -- I mean, on the sections where you  
20 list Staff evidence, is there anything additional or is that  
21 an exclusive basis for the classification?

22 A. We have not presented any additional evidence  
23 for those exchanges, yeah.

24 Q. Okay. Okay. Where you have listed Annual  
25 Report as source of data, could you explain why in some