

1 instances you are able to access reports and in some instances
2 you're not?

3 A. Some of the carriers did not label their --
4 their Annual Reports as highly confidential so they were
5 publicly available. So wherever possible, we looked at those
6 and used that -- that data.

7 Q. Okay. You would agree that the Annual Report
8 data are for a period ending December 31, 2004?

9 A. That's correct.

10 Q. Okay. Did SBC take any additional steps to
11 verify the information in that report considering nine months
12 have passed?

13 A. I would say that there -- there may have
14 otherwise been information that we had that -- that I guess
15 would have been additional evidence beyond the Annual Report,
16 but we used the Annual Report as -- as being -- since that's
17 the carrier reporting its own lines, felt like that was pretty
18 good information.

19 Q. Forgive me. Is that a yes or a no?

20 A. I -- I think it's yes. We didn't --

21 Q. You did additional steps or --

22 A. Yes. The --

23 Q. Okay.

24 A. You know, again looking at things like the
25 migration reports and the 911 listings and the directory

1 listings and those sorts of things that -- so there's --
2 there's probably additional information that -- that would I
3 guess link with this information presented in the Annual
4 Report. But in terms of what we've presented, you know,
5 obviously on this schedule was that the Annual Report is -- is
6 what we relied on.

7 Q. Let me give you an example to try to nail this
8 down. Line 8, Cape Girardeau, competitor 1, Big River, source
9 of data, Annual Report. Is it your testimony that there could
10 be other sources of data that support that or there are other
11 sources of data that are just not listed? And I just used
12 that as one example in the chart that you all prepared.

13 A. I think it will vary by -- by exchange, but --

14 Q. That's why I picked one exchange, Cape
15 Girardeau.

16 A. Yeah. So there may be additional information
17 for some exchanges and maybe not for others. So, for example,
18 like the migration data we looked at, we just did a six-month
19 snapshot. So to the extent a carrier already had lines, you
20 know, last year that they still have now, we wouldn't have
21 captured that in our migration data, as an example of why you
22 would see something in an Annual Report and wouldn't
23 necessarily show up in our -- what we otherwise looked at in
24 terms of migration data.

25 Q. In the evidence that SBC is putting forward in

1 this case, is there another place in your filed testimony or
2 in the briefing that show any other sources of data for proof
3 of an alternative carrier in an exchange? And I'll use the
4 example line 8, Cape Girardeau, Big River, it says Annual
5 Report. Is there somewhere else where it would indicate that
6 SBC proposes any other source of data in your evidence?

7 A. No.

8 Q. Okay. Okay. So basically all we got is what's
9 on this list? We got to focus in on these reasons that are
10 listed in these sources of data?

11 A. I would -- just my only caveat would be -- to
12 that would be what we discussed with Mr. Haas earlier about
13 additional information on the exchanges where Staff and SBC
14 continue to disagree.

15 Q. And I'll revise that. What you've listed and
16 then supplemented --

17 A. Yes.

18 Q. -- by Mr. Van Eschen?

19 A. Yes.

20 Q. Okay. Okay. Directory listings, who maintains
21 directory listings?

22 A. We have the directory database. Again, we
23 would administer it. The CLECs, when they're issuing orders,
24 would -- would put information in about directly listing
25 information like do they want it in a directory and that sort

1 of thing.

2 Q. So SBC maintains the directory -- or at least
3 the directory that's referenced here?

4 A. Correct.

5 Q. And the information comes from competitors or
6 does it come from SBC? Where does the information come from?

7 A. The information would come from the
8 competitors. The information we're relying on here. We would
9 have our own information.

10 Q. Okay. What type of information -- I mean, I
11 think of a directory listing, I think -- I call up, I'm
12 looking for the name Clayton, first name Robert, lives on
13 West.

14 A. Uh-huh.

15 Q. What other information is included in a
16 directory listing, especially in regard to the existence of a
17 competitor?

18 A. The -- the carrier that is serving that
19 customer. So along with the record that would say Mr. Clayton
20 would be information that would identify who your service
21 provider is, who put that directory listing into the database.

22 Q. So I could use directory assistance to call up
23 and find out not only where someone lives, what their phone
24 number is, but also who provides their phone service?

25 A. No.

1 Q. That would be helpful information.

2 A. That would not be part of the directory
3 information that would be available to --

4 Q. Why is that supplied for directory listing?
5 Since it's not something used for the general public, it's not
6 part of the service, why is that information conveyed by the
7 competitor?

8 A. It's the way that the competitor gets that
9 directory listing into the directory database for directory
10 assistance calls and for developing white page books. If they
11 didn't put that information in, it won't -- won't be in the
12 database and it won't show up in the phonebook.

13 Q. What gives one a right to get into a phonebook
14 for a directory listing as a competitor? Like, I'll try to
15 set up some contrast here. If you've got -- if you've got,
16 say, my cellular phone, which is not included in a directory,
17 and I don't think -- for other reasons a cell bill wouldn't,
18 but could the same directory listing receive submissions for
19 cellular telephones to be placed in the white pages?

20 A. I don't know -- I'm not certain. I'm not
21 certain if wireless carrier have access to put records in the
22 database or not. I don't know.

23 Q. So a competitor -- a CLEC has automatic access
24 to the directory?

25 A. As -- as part of the overall interconnection

1 agreement process, yeah, all of that gets worked out.

2 Q. So SBC cannot deny a competitor access to the
3 directory?

4 A. That's correct.

5 Q. That's part of either the federal act or -- I'm
6 sure somebody can give me some history on that.

7 A. That's correct.

8 Q. Okay. So is there a document that they have to
9 file with SBC that -- that would establish that they have a
10 line or that they have -- that there's an entry that should go
11 in, that it fits within this particular exchange? And I think
12 phonebook I think smaller, but directory assistance could be
13 really anywhere. Is there a document? Is there something
14 that's verified by SBC to make sure of that? How do you know
15 that this Socket directory listing is not a cell phone bill?
16 I mean, other than the fact that Socket doesn't provide
17 wireless service.

18 A. Well, I would offer that first.

19 Q. I knew you would come back with that so I'm
20 cutting that one off at the pass.

21 A. I mean, it's -- it's -- it's all sort of linked
22 together as part of the ordering process for the CLEC. So
23 let's say the -- the customer served by SBC, the CLEC wins the
24 customer, the CLEC -- there may be multiple things going on in
25 the service order. They may port the phone number, for

1 example.

2 And as part of that ordering process, they
3 identify what they want to do as it relates to directory
4 listings. Is this an unlisted number, an unpublished number,
5 does it go in the white pages? All that gets specified on the
6 service order that the CLEC issues to us. And it's all done
7 electronically.

8 Q. So the service order -- SBC would have a
9 document indicating a -- either an electronic document or a
10 paper document that would indicate action on a service order?

11 A. Correct.

12 Q. So that would be an example perhaps of
13 first-hand knowledge?

14 A. Exactly. And that's what we looked at -- and
15 that is what we looked at to derive where these carriers were
16 serving.

17 Q. How current are directory listings? Are they
18 disconnective? If I call up and cancel my wireline telephone
19 service, how quickly will I be removed, or is there a chance
20 that I wouldn't be removed from the directory listing?

21 A. I don't know exactly how that works. The --
22 the customer -- the carrier that -- that -- that you're being
23 served by would go through a disconnection process, whatever
24 that might entail. Obviously they have to quit providing you
25 service. And I believe part of that would -- would, you know,

1 flow through that -- that directory listing is no longer
2 identified with that carrier.

3 Q. How do we verify that the directory listings
4 are accurate as proof of a competitor in this instance? And I
5 think there's only one listed on here so don't --

6 A. Yeah. I don't --

7 Q. Well, there are a few, but not many.

8 A. I mean, I guess -- I guess I would offer, first
9 of all, that carriers are -- are generally responsible about
10 entering information, you know, correctly and it's kind of
11 everyone's best interest that this stuff all be accurate. And
12 it -- it wouldn't behove a carrier to, I guess, try and fake
13 lines or something to -- to kind of make up entries in a -- in
14 a directory. I don't know why a carrier would be incented to
15 do that.

16 But other than that, I suppose if the -- I
17 guess maybe back to the subpoena discussion we've had, if the
18 Commission wanted to subpoena those companies that had been
19 identified to explain -- if it's an area of dispute, why --
20 why we're showing that they have those directory listings and
21 why they might argue that they don't serve customers in that
22 exchange.

23 Q. This is a legal question, which may draw an
24 objection and if you don't feel comfortable answering it,
25 don't answer it. I can direct it to Mr. Lane.

1 But, in your opinion, does SBC have the burden
2 to prove or burden to establish the existence of competitors
3 in each of these exchanges for a finding of competitive
4 status?

5 A. While I've certainly given legal opinions in
6 the past, I would probably ask that you -- I would feel more
7 comfortable if you asked that of Mr. Lane, particularly since
8 this is a new statute and we haven't been through a lot of
9 these legal arguments. Once we get through them and I hear
10 them a few times, then I'll probably be more than willing to
11 offer an opinion, but I'd prefer if you'd ask Mr. Lane that.

12 Q. I understand. Mr. Unruh, has SBC done an
13 analysis, either throughout the entirety of these exchanges or
14 on an exchange-by-exchange basis, to determine what percentage
15 of SBC customers will not have access to choice for voice
16 grade wireline service I guess today? I mean, there's nothing
17 that will change tomorrow once this case is over, but has
18 there been any analysis of how many customers are stranded,
19 that they don't have a choice and they're not going to receive
20 the benefits of competition?

21 A. I would -- would say that, yes, to the extent
22 that all of these exchanges that we've identified have
23 multiple competitors. And they vary from wireless carriers --
24 or generally wireless carriers, you know, obviously serve very
25 broad areas. They also have multiple CLECs competing in them.

1 And CLECs, you know, generally serve broad areas as well, so I
2 don't think there's really an issue there.

3 The one area where, you know, service
4 territories, if you will, don't necessarily align is when you
5 start talking about cable companies. You know, they have kind
6 of a defined footprint where they provide cable TV service and
7 that's typically where they would start providing phone
8 service. So there could be an issue there.

9 I've looked at some cable maps and our exchange
10 maps and I would say the vast majority of exchanges where
11 there's a cable company are -- you know, their footprint
12 appears to cover the whole exchange. There may be a couple
13 where it doesn't necessarily cover the whole exchange, but
14 again, there would be multiple CLECs in those exchanges.

15 Q. You're saying a lot there.

16 A. Yeah.

17 Q. That's a lot of information.

18 A. I think the vast majority of customers --

19 Q. If we're talking about a exchange that has
20 competition from a cable carrier, is it your experience that a
21 cable company provides telephone service throughout its
22 footprint or does a cable company only provide service in
23 certain -- and that's a general question.

24 A. Yeah. And the distinction I might draw is --
25 let's talk about Charter maybe. Charter has a lot of

1 franchise area where they provide cable service like in
2 south -- kind of eastern Missouri down into southeast
3 Missouri. And so they will have, you know, very large areas,
4 probably multiple franchises.

5 And what Charter is doing is they essentially
6 started in the St. Louis area and are kind of expanding
7 outward. And so where we've identified -- the exchanges where
8 we've identified Charter, their -- their service area does
9 cover all of the exchanges. There would be other areas that
10 Charter provides cable service --

11 Q. But my question --

12 A. -- where they're not providing phone service.

13 Q. So whether or not they're providing phone
14 service?

15 A. Yeah. In other exchanges that we haven't asked
16 for here.

17 Q. If you have a full facilities bas-- for lack --
18 whatever term, of someone that has I guess full facilities
19 other than cable -- do we have any other full facilities
20 carriers that own their entire facilities other than cable?
21 Anyone else on this list?

22 A. Yeah. Let's -- we might want to be a little
23 more specific about full facilities. There are carriers who
24 are using their own loops and own switches.

25 Q. Beyond cable companies?

1 A. Right.

2 Q. What would be an example?

3 A. Like MCI, for example.

4 Q. Okay. That would be for business?

5 A. Yes.

6 Q. Generally their model is a business customer
7 plan?

8 A. Certainly the examples I'm looking at at the
9 moment are business.

10 Q. Okay. A company that has its facilities except
11 for the loop, generally are they serving the entirety of the
12 Bell footprint in a given exchange?

13 A. Yeah, I think so. They hold themselves out to
14 provide service. Their tariffs all indicate generally
15 available service. You know, to my knowledge, nobody's
16 limited their service territory to, you know, only downtown or
17 whatever, in the exchanges.

18 Q. Okay. It comes back -- it comes back to my
19 original question, which is, has SBC done a study to determine
20 what percentage of SBC customers do not have a choice when it
21 comes to wireline service? You've given me a lot of analysis,
22 but I don't know if SBC has determined how many people don't
23 have wireline choice. And I know you want to talk about
24 wireless. Set that aside for a moment.

25 A. Okay.

1 Q. Is there any study -- do you have any idea how
2 many people don't have a choice?

3 A. I would say zero on these exchanges because
4 there are multiple CLECs serving these exchanges, landline
5 only. So I think every customer would be able to get service
6 from a CLEC.

7 Q. Zero. 0 percent.

8 COMMISSIONER CLAYTON: Zero, Mr. Van Eschen.
9 Be thinking about that.

10 Could you give me just a moment here and I
11 think I'm --

12 BY COMMISSIONER CLAYTON:

13 Q. I think I asked you this question before, but I
14 may have to ask it again because I don't remember the answer
15 if I did ask it. Each of the competitors on Exhibit 2 and 3
16 listed in column -- I guess it's column 3 marked Competitor 1,
17 is it your testimony that each of those competitors in each of
18 those exchanges is serving more than one or two customers?
19 And if you don't know, say you don't know.

20 A. Yeah, I don't know. I would say in general
21 the -- the -- particularly like the Staff evidence, I don't --
22 I don't know that.

23 Q. I'm going to ask -- I'll ask Staff those
24 questions. But from your perspective, can you say with
25 certainty and with full knowledge whether each of the

1 competitors listed are serving more than one or two
2 competitors in each of those exchanges?

3 A. I don't know for certain there's multiple
4 customers. I believe there's certainly multiple lines being
5 served. I don't know if that translates -- I don't know how
6 the lines translate into customers.

7 Q. That's a relevant statement. But you know that
8 there are more than a couple of lines, but you can't -- you
9 don't know whether there are more than one or two customers?

10 A. Correct.

11 COMMISSIONER CLAYTON: Okay. I don't have
12 other questions. Thank you, Judge.

13 Thank you, Mr. Unruh.

14 JUDGE RUTH: Okay. Mr. Unruh, and everyone
15 else in the hearing room, it's almost noon. I think this
16 would be a good time to break for lunch. We will go off the
17 record and come back at one o'clock.

18 (A recess was taken.)

19 JUDGE RUTH: I believe Public Counsel had
20 finished -- I'm sorry, I believe the Commissioners had
21 finished their questions so now we're up to recross based on
22 questions from the Bench. Staff, are you ready to begin?

23 MR. HAAS: Yes, your Honor.

24 RECROSS-EXAMINATION BY MR. HAAS:

25 Q. Hello, Mr. Unruh.

1 A. Good afternoon.

2 Q. Can SBC tell from its own records if it is
3 exchanging local traffic with a CLEC in an exchange?

4 A. Yes. I believe generally so, because that's
5 necessary for intercompany compensation purposes.

6 Q. When you answered that 0 percent of the
7 customers in these exchanges do not have -- or do not have a
8 choice of CLECs, were you including all forms of CLECs in
9 there?

10 A. Yes.

11 Q. So it may be that their choice is a UNE-P
12 provider or reseller?

13 A. And I'll clarify that answer by saying that we
14 know there are multiple providers in each exchange either
15 using commercial agreements or UNE-P. I excluded resale and
16 prepay providers from that statement.

17 MR. HAAS: Thank you. Those are all my
18 questions.

19 JUDGE RUTH: Thank you.

20 MR. DANDINO: I have no questions.

21 JUDGE RUTH: Are you sure, Mr. Dandino? I will
22 give you a minute.

23 MR. DANDINO: No, no. I don't.

24 JUDGE RUTH: Redirect?

25 This will be No. 4.

1 (Exhibit No. 4 was marked for identification.)

2 REDIRECT EXAMINATION BY MR. LANE:

3 Q. Mr. Unruh, in response to questions I believe
4 from Mr. Haas concerning provision of service in the San
5 Antonio and St. Joseph exchanges, you indicated that you were
6 aware of provision of service by St. Joseph Cable Vision based
7 on an advertisement that you had reviewed. I've given you
8 Exhibit 4. Is that the advertisement to which you referred in
9 your answers to Mr. Haas?

10 A. Yes, it is.

11 MR. LANE: Your Honor, at this time I'd offer
12 Exhibit 4.

13 JUDGE RUTH: Okay. Exhibit 4 has been offered.
14 It's the Plus EZ-Index advertisement. Are there any
15 objections to it being received into the record? Staff?

16 MR. HAAS: No objection.

17 JUDGE RUTH: Public Counsel?

18 MR. DANDINO: No objection, your Honor.

19 JUDGE RUTH: Okay. Exhibit 4 is received.

20 (Exhibit No. 4 was received into evidence.)

21 BY MR. LANE:

22 Q. And, Mr. Unruh, in response to some questions
23 that were asked of you by Mr. Dandino concerning the
24 information that's contained in Exhibits 2 and 3 that refer
25 specifically to E-911 listings, directory listings and

1 migration data, you gave information about how that was put
2 together. Do you recall that?

3 A. I do.

4 Q. And were the people that worked with you on
5 that compilation of that information people that work for you
6 in the regular course of business?

7 A. Yes, they do.

8 Q. Part of your staff?

9 A. Yes, they are.

10 Q. And you directly supervised them in compilation
11 of that data?

12 A. Yes, I did.

13 Q. And did you set the parameters for what you
14 were looking for and had them gather on your behalf?

15 A. Yes, I did.

16 Q. And did you work with them during the process
17 to ensure that the information being gathered was correct, to
18 the best of your knowledge and belief?

19 A. Yes, I did.

20 Q. With regard to the Annual Report, you were
21 asked some questions about verification of the Annual Report.
22 Do you recall that?

23 A. I do.

24 Q. And does SBC Missouri file an Annual Report
25 with the Commission?

1 A. Yes, we do.

2 Q. Are you generally familiar with the process of
3 what's required in the filing of an Annual Report?

4 A. Yes, I am.

5 Q. And are Annual Reports filed with the
6 Commission required to be verified by an officer of the
7 company?

8 A. Yes, they are.

9 Q. Okay. And are you aware of any statutory
10 provisions in that regard?

11 A. I have reviewed a statute that discusses what
12 company -- how companies -- the responsibility of companies to
13 have an officer attest to the information in the Annual
14 Report.

15 MR. LANE: Your Honor, may I approach the
16 witness?

17 JUDGE RUTH: Yes, you may. But you should show
18 the other counsel exactly --

19 BY MR. LANE:

20 Q. And showing you, Mr. Unruh, a copy of the
21 Revised Statutes of Missouri and with specific reference to
22 Section 392.210, is that the statutory section concerning
23 verification of Annual Reports to which you referred?

24 A. Yes, it is.

25 Q. You were also asked questions concerning the

1 15 exchanges for business and 1 exchange for residential
2 service that Staff had identified in its testimony of Mr. Van
3 Eschen. Do you recall those questions?

4 A. Yes.

5 Q. And there were questions to the effect of did
6 everyone have knowledge of the request. And I believe you
7 referred to paragraph 21 of the petition filed by SBC
8 Missouri?

9 A. That's correct, I did.

10 Q. And are you also aware of any notice that was
11 given in this case pursuant to Commission orders?

12 A. Yes. The Commission's order providing notice
13 of this case was sent to all certificated carriers in the
14 state as well as distribution to the media.

15 MR. LANE: And, your Honor, I'd ask if the
16 Commission would take administrative notice of the order
17 directing notice, establishing procedural schedule regarding
18 hearing date and granting protective order that was issued on
19 September 2, 2005 in this case.

20 JUDGE RUTH: That's noted for the record.
21 Thank you.

22 MR. LANE: I believe that's all I have.
23 Thank you, Mr. Unruh.

24 JUDGE RUTH: Mr. Unruh, you may step down, but
25 it is possible that there will be additional questions for you

1 so please remain in the room or close by.

2 THE WITNESS: Okay.

3 JUDGE RUTH: First thing this morning we had
4 mentioned the possibility that there would be rebuttal
5 witnesses. I'll ask Staff and Public Counsel if you plan to
6 call a rebuttal witness at this time or if Staff would prefer
7 to move onto its own witness?

8 MR. HAAS: We prefer to go to our own witness
9 now.

10 MR. DANDINO: Public Counsel has no rebuttal
11 witnesses.

12 JUDGE RUTH: Thank you.

13 MR. HAAS: Your Honor, the Staff calls Mr. Van
14 Eschen.

15 JUDGE RUTH: Thank you. Mr. Van Eschen,
16 (Witness sworn.)

17 JUDGE RUTH: Okay. Thank you. You may be
18 seated.

19 MR. HAAS: Your Honor, at this time I'd like to
20 have two exhibits marked. The first exhibit would be the
21 pre-filed Direct Testimony of Mr. Van Eschen. The second
22 exhibit would be the amended Direct Testimony of Mr. Van
23 Eschen that I handed out this morning. The word "amended"
24 does not appear on the document. Perhaps you could note it
25 that way.

1 JUDGE RUTH: I'd ask the court reporter if she
2 would please put up in the right-hand corner the word
3 "amended."

4 Exhibit 5 will be the pre-filed Direct
5 Testimony and Exhibit 6 will be the amended and that's the one
6 that someone will need to write the word "amended" on.

7 (Exhibit Nos. 5 and 6 were marked for
8 identification.)

9 JOHN VAN ESCHEN testified as follows:

10 DIRECT EXAMINATION BY MR. HAAS:

11 Q. Mr. Van Eschen, would you state your name for
12 the record?

13 A. My name is John Van Eschen.

14 Q. Where are you employed?

15 A. I'm employed by the Missouri Public Service
16 Commission. I'm the manager of the telecommunications
17 department.

18 Q. Did you prepare Exhibit 5, the Direct Testimony
19 of John Van Eschen?

20 A. Yes, I did.

21 Q. Do you have any changes or corrections to that
22 exhibit beyond those changes or corrections that you have made
23 in Exhibit 6?

24 A. No, I do not. I -- there are -- I made some
25 significant changes in my amended testimony.

1 Q. Now, let's turn to Exhibit 6, the amended
2 testimony. Would you please generally describe the reasons
3 that you have revised your testimony?

4 A. General reason I have revised the testimony is
5 through additional work on our part, we feel additional
6 exchanges qualify for competitive status and that is the
7 primary reason for the amended testimony.

8 Q. Mr. Van Eschen, on page 7 you also added a
9 sentence that discusses the threshold for competitive
10 classification. Would you please explain why you've added
11 that sentence?

12 A. Well, I basically tried to further clarify what
13 I referred to as UNE-L. It perhaps technically is not
14 referred to as UNE-L by a number of other people, but from my
15 perspective, I would also use the UNE-L label to describe any
16 situation where the company may own their own switching
17 facilities to provide local voice service, but they lease a
18 line or loop from a unaffiliated company.

19 Q. Did you have any additional revisions or
20 corrections to Exhibit 6?

21 A. Yes, I do. On page 2, line 13, I list 25
22 exchanges for the provisioning of residential services.
23 That's in the 30-day proceeding. That number should actually
24 read 24.

25 Q. Do you have any other additions or corrections

1 to Exhibit 6?

2 A. No, I do not.

3 MR. HAAS: Your Honor, I would note that
4 Exhibit 6 does not have an affidavit.

5 BY MR. HAAS:

6 Q. So I'm going to ask Mr. Van Eschen, if I were
7 to ask you the questions that were posed in Exhibit 6, would
8 you give those answers that are provided in Exhibit 6?

9 A. Yes.

10 Q. And are those answers true, to the best of your
11 knowledge, information and belief?

12 A. Yes, they are.

13 MR. HAAS: Your Honor, I move for the admission
14 of Exhibit Nos. 4 and 5.

15 JUDGE RUTH: You mean 5 and 6?

16 MR. HAAS: Pardon me, 5 and 6.

17 JUDGE RUTH: Okay. First, Exhibit 5 has been
18 offered into the record. It's the pre-filed Direct Testimony
19 of John Van Eschen. Are there any objections to it being
20 received into the record? Staff? I'm sorry, Mr. Lane?

21 MR. LANE: No, your Honor.

22 JUDGE RUTH: And Public Counsel?

23 MR. DANDINO: No objections, your Honor.

24 JUDGE RUTH: Okay. 5 is received into the
25 record.

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

2 JUDGE RUTH: Exhibit 6 has also been offered.
3 It's the Amended Direct Testimony of John Van Eschen. Are
4 there any objections to it being received into the
5 record? Mr. Lane?

6 MR. LANE: No, your Honor.

7 JUDGE RUTH: And Public Counsel?

8 MR. DANDINO: No objections, your Honor.

9 JUDGE RUTH: Exhibit 6 is also received.
10 (Exhibit No. 6 was received into evidence.)

11 MR. HAAS: Your Honor, I tender the witness for
12 cross-examination.

13 JUDGE RUTH: Mr. Lane, you may proceed.

14 CROSS-EXAMINATION BY MR. LANE:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. I'm going to ask you some questions, Mr. Van
18 Eschen, I've prepared these based on your pre-filed testimony
19 and haven't had the opportunity to closely examine what's now
20 Exhibit 6, your amended testimony. So if there's some page
21 numbers or whatever that miss, then that will be --

22 A. I understand.

23 Q. -- the rationale for that.

24 Okay. Now, on page 5 of your testimony, you
25 describe the criteria for competitive classification in the

1 30-day track. Right?

2 A. Yes.

3 Q. And generally what we're looking at is whether
4 there are two non-affiliated entities providing basic local
5 service using their facilities in whole or in part. Right?

6 A. That is correct.

7 Q. And if that criteria -- those criteria are met,
8 then Staff recommends the competitive classification be
9 granted. Right?

10 A. Yes. We -- my testimony talks about the UNE-L
11 arrangement and full facility based arrangement.

12 Q. With regard to SBC Missouri's request for
13 competitive classification for residential services in certain
14 exchanges, it's my understanding that you recommend that in
15 24 of the 28 exchanges that were identified by SBC Missouri in
16 its petition; is that correct?

17 A. That's correct.

18 Q. And with regard to SBC Missouri's request for
19 competitive classification for business services, of the
20 46 exchanges that SBC Missouri identified in Mr. Unruh's
21 testimony today, Staff now recommends competitive
22 classification in 43 of those. Right?

23 A. That is correct.

24 Q. Okay. And is it fair to say that Staff based
25 its recommendation for those 24 residential and 43 business

1 exchanges based upon Staff's independent analysis of whether
2 the criteria were met?

3 A. Yes.

4 Q. And that was done by reviewing Annual Reports
5 and, as appropriate, contacting CLECs; is that right?

6 A. That's correct.

7 Q. And any other steps involved?

8 A. We did a significant amount of follow-up work
9 with the companies. I did have several discussions with
10 Mr. Unruh and talked to him about what we had found out or in
11 some cases have not found out yet. And in certain instances
12 he's, you know, brought up some information that I have to
13 admit we're still evaluating.

14 Q. Okay. With regard to your review of the Annual
15 Report, in Schedule 2.6 of your original pre-filed testimony,
16 which I believe is Exhibit 5, is that where that -- a sample
17 of that report is contained?

18 A. Yes.

19 Q. And that Annual Report requires the CLEC to
20 identify the exchanges where service is provided, whether
21 business and/or residential customers are served in that
22 exchange and the method by which service is provided.
23 Correct?

24 A. Yes.

25 Q. Where the CLEC said it was serving customers by

1 a full facilities basis or on a UNE-L basis, that met the
2 statutory criteria in the eyes of the Staff. Right?

3 A. We didn't solely look at the Annual Report
4 information. I mean, we used that as an initial starting
5 point. We did do some follow-up work with the companies to
6 make sure that they were tabulated correctly, that there were
7 certain instances where, you know, clarifications needed to be
8 made. But we also had some follow-up questions with the
9 companies themselves.

10 Q. All right. And I guess my question goes to
11 whether, in your view then, you verified the information
12 contained in the Annual Report by discussing it with the CLEC
13 to ensure that they were currently providing service in that
14 exchange on a facilities basis or a UNE-L basis as the Annual
15 Report describes; is that right?

16 A. That, as well as, you know, are there any
17 situations where they're solely providing service to, say, an
18 Internet service provider or solely providing service for
19 data --

20 Q. All right.

21 A. -- purposes.

22 Q. And with regard to those two items, data
23 services and services to an ISP, that would have served, in
24 your mind, to eliminate those companies from being considered
25 a facilities-based provider in that exchange. Right?

1 A. Yes. We would exclude those exchanges that
2 would fall into that category.

3 Q. All right. So what you were left with in the
4 review of the Annual Report was verification with the CLEC
5 that the information in the Annual Report was correct and
6 current and described service in that exchange utilizing their
7 own facilities in whole or in part --

8 A. That is correct.

9 Q. -- where you made the positive recommendation?

10 A. That's correct.

11 Q. Okay.

12 A. We also tried to ensure that -- you know, what
13 facilities the carrier did have and tried to get that sort of
14 information as well.

15 Q. All right. And were there also instances where
16 information was not included on the Annual Report that would
17 identify the CLEC as providing service in that exchange using
18 its own facilities but that you had subsequent investigations
19 with that company to determine whether they were, in fact,
20 using their own facilities to provide service? I may not have
21 asked that well. Would you like me to try it again?

22 A. Well --

23 Q. Let me ask it this way. Were there any
24 situations where SBC Missouri had identified an exchange in a
25 competitor as providing service and when you reviewed the

1 Annual Report, that company had not identified itself, as of
2 December 31st of 2004, as being a provider in that exchange
3 using its own facilities in whole or in part?

4 A. There may be.

5 Q. Is that something you have ready access to or
6 not?

7 A. If you'd give me a minute, let me just --

8 Q. Okay.

9 A. I'm not sure if I have ready access to it or
10 not.

11 Yes.

12 Q. Yes, there were --

13 A. Yes.

14 Q. -- some situations like that?

15 A. Yes.

16 Q. And can you identify which CLECs we're talking
17 about?

18 A. The one that comes to my mind is St. Joseph.

19 Q. Any others?

20 A. That's the one -- the only one I can think of
21 right now. There may be others.

22 Q. Okay. But as you sit here now, all of the ones
23 that Staff identified and recommended for approval, other than
24 possibly St. Joe where you didn't recommend approval. Right?
25 Let me step back and try that again.

1 Where Staff recommended approval, with the
2 possible exception of St. Joe, that was based upon the Annual
3 Report from that CLEC as of 12/31/2004 and verified by you by
4 conversations with them to ensure that service was being
5 provided currently and using their own facilities?

6 A. I guess I'm not sure I still follow the
7 question. You're asking if there are other situations --

8 Q. Yeah. I'm just -- in general, I was trying to
9 make sure that I understood that your recommendation in all of
10 the cases except maybe St. Joe, these companies had identified
11 themselves as being a facilities-based provider in that
12 exchange in their Annual Report?

13 A. Right.

14 Q. Okay. And then you went on to do some
15 verification thereafter. Right?

16 A. Uh-huh.

17 Q. Okay.

18 A. And then I would say that for those exchanges
19 that Southwestern Bell had specifically identified, those are
20 the ones that we tried to pinpoint and have further
21 discussions with the CLEC as well as with Southwestern Bell --

22 Q. All right.

23 A. -- in terms of --

24 Q. And that's what I'd like to turn to next is the
25 area where there's some disagreement between the Staff and SBC

1 Missouri. And we're dealing now with four residential
2 exchanges and three business exchanges. Right?

3 A. I believe so, yes.

4 Q. Okay. And the first one that I'll start with
5 is NuVox, which SBC Missouri identified as being a provider of
6 business service in Excelsior Springs?

7 A. That's correct.

8 Q. Okay. And did you attempt to verify with NuVox
9 whether they were providing business service in the Excelsior
10 Springs exchange using their own facilities in whole or in
11 part?

12 A. Yes.

13 Q. And did NuVox not respond adequately to you?

14 A. They did respond this morning. And I included
15 their response in my amended testimony.

16 Q. All right. And I have not had a chance to
17 review that, so could you share with me what their response
18 was?

19 A. Their response is, and I'm quoting, To the best
20 of our knowledge, NuVox does not have any customers in the
21 Excelsior Springs exchange. We do have some customers in
22 nearby areas, for example, Kearney, but as far as we can tell,
23 none in the Excelsior Springs area.

24 Q. Okay. And you're aware that SBC Missouri
25 identified NuVox as a facilities-based provider in that

1 Excelsior Springs exchange based on E-911 listings. Correct?

2 A. I don't know if they were listed as a
3 facilities-based provider.

4 Q. By SBC Missouri?

5 A. Yeah, I'm aware that you identified NuVox
6 through E-911 listings.

7 Q. All right. And my question then, Mr. Van
8 Eschen, is did you ask NuVox specifically with regard to
9 whether it had E-911 listings in the Excelsior Springs
10 exchange?

11 A. No. That is something I'd like to follow up
12 with NuVox.

13 Q. Okay. And do you have any reason to doubt the
14 accuracy of SBC Missouri's representation that NuVox does have
15 E-911 listings in the Excelsior Springs exchange other than
16 NuVox's response to you this morning?

17 A. Well, I -- I think it's fair to say that I --
18 that Southwestern Bell has found that NuVox has E-911 listings
19 for Excelsior Springs. I don't know if the accuracy of that
20 database is something that we need to look into further. I
21 also don't know if NuVox is only providing service to, say,
22 for example, an Internet service provider in Excelsior
23 Springs, if it's providing service at all.

24 Q. All right. But my question, I guess, is, you
25 don't have any knowledge today that the database is inaccurate

1 in describing NuVox as having E-911 facilities in the -- or
2 E-911 listings in the Excelsior --

3 A. No, I do not.

4 Q. -- Springs exchange?

5 Okay. And it's fair to say that you didn't do
6 any checking with SBC Missouri that was designed to establish
7 whether those E-911 listings were actually there or not; is
8 that right?

9 A. We did not, no.

10 Q. Okay. Your job, as you saw it, was to try to
11 find independent verification completely apart from what SBC
12 Missouri had provided as evidence in the case. Is that a fair
13 statement?

14 A. I think that's our initial approach. And I
15 think that in those exchanges where we could not independently
16 verify that these competitors are providing service in -- on a
17 full facility basis or a UNE-L basis, those are the ones that
18 we have still left as a no in terms of recommend--
19 recommendation to the Commission as to whether they ought to
20 receive competitive status or not.

21 Q. Okay. And let me turn then and talk about Big
22 River, which we deal there with two exchanges for business and
23 two exchanges for residential customers. Is that --

24 A. Yeah.

25 Q. That's a fair statement of what's at issue?

1 A. Uh-huh.

2 Q. And could you identify those particular
3 exchanges for the business customers?

4 A. For business, Bonne Terre and Marble Hill.

5 Q. And for residential?

6 A. And for residential, Farmington and Sikeston.

7 Q. And, again, I haven't had an opportunity to
8 review your testimony, but it's fair to say that you're
9 familiar with Big River as being a CLEC operating in the
10 southeast Missouri portion of the state. Right?

11 A. Yes.

12 Q. And up into the St. Louis area as well. Right?

13 A. I believe so.

14 Q. Okay. And it's fair to say generally that
15 you're aware that Big River is a facilities-based carrier.
16 Right?

17 A. I don't know if I'd classify them as a
18 facility-based carrier. I will say that they provide service
19 under UNE-P as well as a UNE-L basis.

20 Q. That's what I was trying to get to. On a UNE-L
21 basis you're aware that Big River provides service utilizing
22 its own switching facilities. Right?

23 A. In serving a number of exchanges, yes.

24 Q. And when I asked that, I wasn't asking
25 specifically about the four exchanges that are at issue, but

1 in general, you're aware that they utilize their own switch --

2 A. Yes.

3 Q. -- to serve customers in some exchanges?

4 A. Yes.

5 Q. Okay. And with regard to the four exchanges,
6 two business and two res that we're dealing with here, is it
7 fair to say that you -- that Big River was not able to confirm
8 for you that it was utilizing its own switching facilities to
9 serve customers in those four exchanges?

10 A. Yeah. Based on our contact with Big River,
11 they indicated that they were serving those exchanges on a
12 UNE-P basis.

13 Q. Okay. And you're aware that SBC Missouri
14 identified Big River in the Bonne Terre and in the Marble Hill
15 exchanges as a facilities-based provider based on migration
16 orders from UNE-P to CLEC facilities. Right?

17 A. Yes.

18 Q. That's what we presented. Right?

19 And is it fair to say that other than what Big
20 River said to you, you don't have any independent reason to
21 doubt the accuracy of the data that SBC Missouri presented on
22 that score?

23 A. Well, I -- what I understand about the
24 situation, Big River, according to Southwestern Bell, has
25 submitted migration orders to -- to move from UNE-P to another

1 arrangement. And it wasn't -- it's not real clear to me as to
2 whether those orders have actually been completed. I think
3 there was some discussion about that this morning, but I just
4 don't know if -- if they have actually taken place or not.

5 Q. All right. And did you inquire of SBC Missouri
6 to try to verify, in your mind, whether those orders had been
7 completed or not?

8 A. No, not yet.

9 Q. Okay. You would agree with me that if those
10 orders have been worked, that that does represent a situation
11 where Big River would be a provider of business services in
12 the Bonne Terre and Marble Hill's exchanges utilizing its own
13 facilities, at least in part?

14 A. I would tend to agree with that.

15 Q. The last group of exchanges where there's a
16 difference between you and Staff, based on SBC Missouri's
17 petition, would be the Sprint exchanges in San Antonio and
18 St. Joseph. Right?

19 A. Right.

20 Q. And, again, I haven't had the opportunity to
21 review your testimony. Would you describe what you learned in
22 your investigation?

23 A. Well, we contacted Sprint and Sprint asked to
24 submit our inquiry through a data request, so we did that.
25 And in their data request response they indicated that they

1 were not providing service in those two exchanges.

2 Q. Did Sprint indicate to you that they were
3 operating as a wholesale provider of service to St. Joe Cable
4 Vision?

5 A. No, they did not.

6 Q. Did you ask them whether they were?

7 A. I'm not sure if we did or not. I know that in
8 my discussions with Mr. Unruh, he had suggested that we look
9 at other providers such as St. Joseph Cable Vision. And we
10 have tried to do that.

11 Q. And you have not been able to get a response
12 back from St. Joe Cable Vision?

13 A. Nothing that would allow me to conclude that,
14 yes, the -- this exchange should qualify for competitive
15 status.

16 Q. Okay. And I'm going to ask you two
17 hypotheticals then that are based on Mr. Unruh's testimony
18 here. If the situation is that Big River is providing service
19 to residential customers in those two exchanges --

20 A. Are we talking about Sprint here?

21 Q. I'm sorry. Yes. Did I misspeak? I'll start
22 over.

23 If the Commission determines that Sprint is the
24 provider of residential service in St. Joseph and San Antonio
25 utilizing its own switching facilities plus the loop

1 facilities of St. Joe Cable Vision, would you agree that if
2 those facts are correct, that that would constitute the
3 provision of facilities-based service by Sprint?

4 A. I believe so. I -- I'd want to, again, just
5 double check as to whether -- as to their responses to
6 questions such as are they only serving ISPs, but I realize
7 that this is only for residential services. In general, I
8 could probably agree with that.

9 Q. All right. And, conversely, if the facts were
10 that St. Joseph Cable Vision were the provider of service to
11 residential customers in St. Joe utilizing their own cable
12 coax loops plus switching facilities from Sprint, if those
13 were the facts, would you agree that that would also
14 constitute the provision of service by St. Joe utilizing its
15 own facilities, at least in part?

16 A. I don't know. I don't know enough about
17 St. Joe Cable Vision at this time. They're a company that is
18 not certified by this Commission to provide basic local
19 service. I just don't have a good understanding at this point
20 as to what -- what sort of service that they're providing,
21 whether it's some sort of VoIP service or something like that.
22 I just don't know.

23 Q. All right. And let me try to make sure I'm
24 understanding the reasons for your hesitation. If the facts
25 are that St. Joe Cable Vision is providing basic local service

1 to residential customers utilizing its own loops plus
2 switching facilities from Sprint, would that constitute
3 meeting the criteria of the statute for the 30-day track?

4 A. If the Commission would agree that the type of
5 service that St. Joe Cable Vision is basic local telephone
6 service and it's local voice service to these customers, I
7 believe -- and they would also find it acceptable to grant
8 competitive status, perhaps in a situation where the carrier
9 ought to be certified but is not authorized to provide that
10 service, then yes.

11 Q. Okay. And so those are really the two
12 qualifications that you have, is that under that -- those
13 assumed state of facts, the fact of St. Joe might not be
14 certified is an issue to you and the fact that it might be
15 providing a VoIP-type service might be an issue to you?

16 A. Yes.

17 Q. Okay. And with regard to the first one,
18 whether the company -- whether St. Joe Cable Vision would be
19 certified, would you agree with me that under the statute,
20 SB 237, that the Commission is to consider providers of basic
21 local service whether or not they're regulated by the
22 Commission?

23 A. I would agree with that.

24 Q. Okay. So that really isn't a reason to find
25 that they're not sufficient to meet the criteria of the

1 statute. Right?

2 A. Oh, there may be a situation if the Commission
3 feels that this company needs to be certified and file
4 tariffs. The company, based on that information, may decide
5 that it really doesn't want to provide service in that
6 exchange.

7 I don't know how many customers, if any, St.
8 Joe Cable Vision is actually providing in these exchanges. It
9 might be a situation that if push comes to shove, until the
10 company is certified and has tariffs on file just like any
11 other basic local provider, that they may decide whatever
12 they're doing in those exchanges, that they no longer want to
13 continue doing that.

14 Q. All right. And if that's the case, isn't the
15 appropriate response for the Commission to then review whether
16 SBC Missouri continues to meet the criteria required by the
17 statute for competitive classification?

18 A. That's one option for the Commission.

19 Q. As opposed to denying competitive
20 classification up front on the basis that they're not
21 regulated?

22 A. Again, we're -- we're talking about some steps
23 down the road. I mean, that -- that's an option that the
24 Commission could take.

25 Q. All right. You're also familiar with the

1 definition of local voice service or the description of it in
2 the statute. Right?

3 A. Yes.

4 Q. And it generally means local voice service is
5 two-way voice service capable of receiving calls from a
6 provider of basic local telecommunications service as defined
7 in the statute. Is that a correct statement?

8 A. I believe so.

9 Q. So that if a company were a VoIP-type provider,
10 they would still be considered to be provider of local voice
11 service if those customers can receive calls from customers of
12 other companies like SBC Missouri. Right?

13 A. I guess I'm still thinking about your
14 definition for local voice service. Is there a cite in --

15 Q. Yes. Do you have the statute in front of
16 you --

17 A. Yes, I do.

18 Q. -- HB 237?

19 It's Section 392.245.5, subdivision 3. And if
20 you have the same version that I have --

21 A. Right.

22 Q. -- it's on page 30.

23 A. Yeah.

24 Q. Do you see that?

25 A. Yes, I do.

1 Q. Okay. And so if a company's a VoIP provider,
2 that doesn't mean they're not a local voice provider if their
3 customers can receive calls from companies like SBC Missouri.
4 Right?

5 A. Again, I'm not quite sure what the serving
6 arrangement is for St. Joe.

7 Q. Right. And that's what I'm trying to get to
8 though. You were saying one of your concerns was they might
9 be a VoIP provider. And I'm trying to get you to agree that
10 even if they are a VoIP provider, that they still meet the
11 definition of being a local voice provider if they're capable
12 of -- if their customers are capable of receiving calls from
13 SBC Missouri customers?

14 A. Could you state your question again?

15 Q. Yes. Would you agree with me that a VoIP
16 provider would be considered a provider of local voice service
17 under the statute if the customers of the VoIP provider are
18 capable of receiving local calls from other companies such as
19 SBC Missouri?

20 A. I don't know. In the section right before that
21 it -- it has a sentence in there that talks about a provider
22 of local voice service that requires the use of a third-party
23 unaffiliated broadband network or dial-up Internet network for
24 the origination of local voice service shall not be considered
25 a basic local telecommunications service provider. And I

1 realize that it has the phrase "third party" in there, but
2 I -- I guess -- I'm not sure. When I look at that sentence,
3 it seems to suggest VoIP providers wouldn't count.

4 Q. All right. And that's, in your view,
5 regardless of whether they're the direct provider using their
6 own local loops to provide the service to the customers?

7 A. If they have their own local loops and that's
8 how they're providing it, possibly not. I guess I'd like to
9 get legal counsel on that as well as talk to some other folks
10 on the Staff about it.

11 Q. All right. When you contacted Sprint and
12 discussed this with them, did you ask them to explain how they
13 had E-911 listings and migration orders for the two exchanges
14 that we're talking about, St. Joseph and San Antonio?

15 A. Not to my knowledge.

16 Q. Were you aware when you talked to them, that
17 that was the basis on which SBC Missouri had identified them
18 as being --

19 A. Yes.

20 Q. And why didn't you ask them that?

21 A. We simply asked them if they were providing
22 local voice service in these exchanges.

23 Q. Did you have any information that led you to
24 believe that SBC Missouri's information that they had E-911
25 listings and had issued migration orders was inaccurate or

1 incorrect?

2 A. I don't know if that was an issue with Sprint.
3 To my knowledge, they -- there was not any indication that I
4 received from Southwestern Bell that there were migration
5 reports involved for these two Sprint exchanges. In my
6 understanding, Southwestern Bell's evidence that Sprint is
7 operating in these exchanges is based solely on E-911 records.

8 Q. All right. In St. Joseph, SBC Missouri
9 identified that it was -- identified Sprint was a provider of
10 basic local service based on E-911 listings. Right?

11 A. Yes.

12 Q. And you had no reason to doubt the accuracy of
13 SBC Missouri's information in that regard when you talked to
14 Sprint, did you?

15 A. Perhaps not. I guess I hesitate a little bit
16 because I think -- I know internally when we've talked about
17 the 911 database, I don't know if -- how accurate those
18 databases are. I simply don't have enough information --

19 Q. Okay.

20 A. -- to say one way or another.

21 Q. But you didn't do any investigation, at least
22 through SBC Missouri, of the accuracy of the E-911 database,
23 did you?

24 A. No. Not at this time.

25 Q. And with regard to the San Antonio exchange,

1 the same is true, you were aware that SBC Missouri had
2 identified Sprint as a provider of service based on E-911
3 listings there too. Correct?

4 A. That's correct.

5 Q. And, again, you didn't have any indication
6 based on investigation that you'd performed in this case that
7 SBC Missouri's report was inaccurate when you talked to
8 Sprint. Right?

9 A. No. I -- I guess we -- we approached it from
10 the standpoint that we were just simply trying to get
11 independent verification that the company was actually
12 providing local voice service on a UNE-L or a full facilities
13 basis in these exchanges and they weren't solely providing an
14 Internet service provider or anything like that. And --

15 Q. Other than identification of the exchanges, you
16 really didn't consider SBC Missouri's evidence in making your
17 evaluation. Right?

18 A. Well, I don't know if that's necessarily true.
19 You know, I talked to Mr. Unruh about what we had found and he
20 said -- and, again, this is just a matter of, you know, a day
21 or two ago.

22 Q. Sure.

23 A. He said, Well, if that's what you found out,
24 you really ought to, you know, look at St. Joe Cable Vision.
25 And so we attempted to do that. But I've been unable to

1 conclude anything at this time.

2 Q. Okay. Let me shift over and talk about the
3 exchanges where Staff determined that the 30-day criteria were
4 met, but SBC Missouri hadn't specifically identified those
5 exchanges in its petition. Would you agree there's 15 of
6 those that you identified?

7 A. I believe that's the correct number.

8 Q. And if we look on Schedule 1.2 of Exhibit 6,
9 your new testimony, would we find those identified with either
10 two or three asterisks?

11 A. Yes.

12 Q. And those that are identified with two
13 asterisks, SBC Missouri requested competitive classification
14 under the 60-day track and where there's three asterisks, SBC
15 Missouri didn't specifically identify that exchange. Right?

16 A. That's correct.

17 Q. And where SBC Missouri had requested
18 competitive classification under the 60-day track, that's
19 ultimately your recommendation to the Commission. Right?

20 A. Right.

21 Q. And where SBC Missouri didn't specifically
22 request competitive status under either the 30-day or 60-day,
23 then you don't recommend competitive classification at all.
24 Right?

25 A. That's correct.

1 Q. And with regard to residential services,
2 there's one exchange that you found met the 30-day criteria,
3 but SBC Missouri hadn't requested competitive classification
4 for that. Right?

5 A. In the 30-day track?

6 Q. Yes.

7 A. I believe you did request it in the 60-day
8 track.

9 Q. That is Joplin; is that correct?

10 A. That's correct.

11 Q. And in Joplin you recommend that the Commission
12 grant competitive classification in the 60-day proceeding, but
13 not in the 30-day proceeding; is that right?

14 A. That's correct.

15 Q. Okay. And you understand that SBC Missouri's
16 position is that the statute requires competitive
17 classification to be given even if we didn't specifically
18 identify that exchange in the petition. Right?

19 A. Our position is that you need to specifically
20 request the exchange.

21 Q. Okay. You're aware that the statute, SB 237,
22 requires the Commission to consider its own records in a
23 competitive classification case. Right?

24 A. Yes.

25 Q. And also that the Commission is to make all

1 necessary and appropriate inquiries of regulated providers.

2 Correct?

3 A. Yes.

4 Q. And don't you think the reason for that is to
5 ensure that competitive classification is granted for those
6 exchanges where the Commission's records indicate criteria is
7 met, even if the company doesn't have access to that
8 information?

9 A. Well, I think it's maybe more of an issue of
10 providing notice to other parties that this exchange is being
11 considered for competitive status.

12 Q. Okay. And --

13 A. There may be situations where the Commission
14 may have notified companies that Southwestern Bell has made
15 this request for competitive status and they see the list of
16 specific exchanges and they don't see certain other exchanges.
17 I think that other companies may want to see if certain
18 exchanges might be in play.

19 Q. Okay. You're aware that SBC Missouri in
20 paragraph 21 of its petition specifically asks the Commission
21 to grant competitive classification in those exchanges where
22 the Commission's inquiry indicated the statutory criteria was
23 met. Correct?

24 A. Yes.

25 Q. And you're also aware that the Commission, in

1 its order directing notice in this case, specifically provided
2 for a copy of that petition to be sent to all certificated
3 carriers in Missouri. Right?

4 A. Yes.

5 Q. And also to publish to its publications armed
6 to publish in general media to make them aware that the
7 petition had been filed. Right?

8 A. Yes, I am.

9 Q. Okay. And then from a practical standpoint, if
10 Staff's view of how this should be handled is accepted by the
11 Commission, then wouldn't you expect SBC Missouri to simply
12 refile a request under the 30-day track for these 15 business
13 and 1 residential exchanges citing to the evidence presented
14 by Staff in this case?

15 A. Yes, I would expect that. And I would expect
16 the Commission to send out a notice that would specifically
17 identify these exchanges. And I would also expect it to be a
18 fairly streamlined process where there really shouldn't be any
19 questions about those exchanges.

20 Q. All right. It would require an administrative
21 burden for both the Commission and the parties. Right?

22 A. I guess it depends on your definition of
23 burden.

24 Q. Okay. With the same evidence that the
25 Commission would be considering today. Right?

1 A. Perhaps.

2 MR. LANE: Okay. That's all I have. Thank
3 you, Mr. Van Eschen.

4 JUDGE RUTH: Mr. Dandino?

5 MR. DANDINO: I have no questions of Mr. Van
6 Eschen. Thank you.

7 JUDGE RUTH: Okay. We will move to questions
8 from the Bench. I'll ask you first, Commissioner Murray. Do
9 you have questions?

10 COMMISSIONER MURRAY: Thank you. Yes, I do.
11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Good afternoon, Mr. Van Eschen.

13 A. Good afternoon.

14 Q. Let's talk for a minute about the exchanges
15 where SBC did not have the information when they filed their
16 petition that they did meet the competitive status burden in
17 those exchanges but that information was available to Staff.

18 If we follow Staff's recommendation here and do
19 not grant competitive status based on Staff's findings in this
20 proceeding, in your opinion, what is a carrier to do who does
21 not have knowledge that the competitive classification
22 exists -- or the right to the competitive classification
23 exists in certain exchanges because that information is only
24 available to the Commission?

25 A. Well, I'm not quite sure how to respond. I

1 think we're -- we identified, I think, three exchanges that
2 were not specifically identified by Southwestern Bell in their
3 initial request. And we feel that these three additional
4 exchanges meet the competitive test.

5 Our recommendation that they not be granted at
6 this time is -- is really a -- you know, a decision that --
7 that's based on, you know, providing notice to other parties.
8 There may issues in these other exchanges that perhaps Staff
9 is unaware of that would allow the Commission perhaps to have
10 second thoughts about whether competitive status ought to be
11 granted in those exchanges.

12 Q. In those that you identified?

13 A. Yes.

14 Q. And I thought you identified that there were
15 competing carriers that met the definition of the statute
16 within those exchanges?

17 A. Yes. And it's difficult for me to really say,
18 you know, well, what might happen. But, you know, I guess I'm
19 struck by, you know, the situation in the Sprint case, I
20 think, where a CLEC looked at the request and there were some
21 issues that I think that CLEC brought up that ultimately
22 caused Sprint to withdraw that exchange from its request.

23 And I'm not sure if something similar would
24 happen with these three exchanges, maybe not, but I guess, you
25 know, from our point of view, the -- the company needs to

1 request these exchanges. And there may be legal reasons. I
2 know in our discussions with -- internal discussions with
3 general counsel, there's the belief that -- and maybe I'm
4 misstating it, that the company has to make its request and --
5 and make its case that these exchanges meet the competitive
6 criteria.

7 Q. Okay. Let's talk about the notice that was
8 sent in this proceeding. Did that notice identify the
9 specific exchanges in which the petition was seeking
10 competitive classification?

11 A. It notified the parties of the specific
12 exchanges that Southwestern Bell had requested, I do believe.

13 Q. And --

14 A. But I'm not sure.

15 Q. -- the media notice?

16 A. I don't have that notice in front of me, but --

17 Q. I don't believe I have it in front of me
18 either, but I'd like to know the answer to that question. I'd
19 like to know if the exchanges were identified in the notice.

20 And it's my understanding that all of the CLECs
21 in the state were sent a copy of -- were notified of the
22 petition, whether or not they were in those exchanges; is that
23 correct?

24 A. I believe that's correct.

25 Q. I hope someone will work on getting the answer

1 to that question.

2 Mr. Unruh had talked earlier about Staff's
3 response to the E-911 database information. And my question
4 to you, is it your position that the E-911 database is
5 unreliable?

6 A. There may be issues about the accuracy of that
7 database. I don't know. You know, as testified by Mr. Unruh,
8 it appears the companies themselves update that database. I
9 guess I -- I would like to assume that the database is
10 accurate, but I don't know. There may be, you know,
11 situations that perhaps are not shown by that E-911 database
12 as to whether, you know, service is only being provided to an
13 ISP or something of that nature.

14 Q. Okay. I want to ask you about your
15 definitions. You were speaking earlier about your use of the
16 term "UNE-L" and what you consider that to mean. And I
17 believe you said that if a CLEC owns a switch but leases a
18 line or a loop from an unaffiliated company, that you would
19 consider that CLEC to be providing UNE-L service. Is that
20 what you said here today?

21 A. Yes.

22 Q. Okay. Now, you and I had an exchange yesterday
23 in another case in which I believe you identified that same
24 situation as what you would classify as full facilities based.

25 A. I don't know if I said that. I know that when

1 I was asked would Staff think that this exchange qualifies if
2 a company owns its own switching facilities but leases a line
3 or loop from an unaffiliated company, and my answer was yes
4 for some -- essentially yes. And --

5 Q. We'll both have to read the transcript, but I
6 recall you saying a couple -- more than once that you would
7 consider that full facilities based.

8 A. I -- I would consider full facilities based
9 service to be where the company has -- is providing local
10 voice service and it has its own switch and it has its own
11 local loops.

12 Q. That's what I would have assumed, but let's
13 look at the transcript.

14 A. Okay.

15 Q. Okay. Yesterday in the Sprint case we also
16 discussed a situation -- a hypothetical where a CLEC owns some
17 of its own facilities and leases facilities from a
18 non-affiliated ILEC -- never mind. That's part of my same
19 question.

20 I'd like for you to think of a hypothetical
21 carrier that leases the switch -- the switch from a non-ILEC
22 but owns the loop. Now, your situation was owns the switch
23 but leases the loop. Reverse that.

24 A. We would still consider that situation to
25 qualify for competitive status.

1 Q. As a UNE-L or a full facility?

2 A. It may be stretching the, I guess, use of the
3 term "UNE-L." It may need some other term, but I don't know.

4 Q. But in your analysis of a minimum standard,
5 you're saying it has to be either full facility based or
6 UNE-L. So if it didn't qualify under either of those
7 definitions, would you not be eliminating it under what you
8 would consider the minimum requirement for --

9 A. Maybe -- maybe if we tried to get away from
10 those terms entirely and simply state if a competitor has its
11 own switch and/or local loops, then it qualifies for
12 competitive status.

13 Q. And that's what truly I am wondering, why -- I
14 just can't understand why Staff has this language in its
15 recommendations --

16 A. Yeah.

17 Q. -- and in its testimony about that a minimum
18 standard has to be either full facility based or UNE-L. It
19 seems to me to be confusing the issue.

20 A. And in hindsight, I would tend to agree with
21 that. I think we used those terms primarily because those
22 were the terms that are identified in the Commission's Annual
23 Report, those are the types of categories that companies
24 identify their lines being served under.

25 And -- and maybe -- maybe the next Annual

1 Report we need to -- to re-evaluate the use of those terms
2 somehow. But I guess going into it, we looked at it as --
3 perhaps too simply and just used the terms "UNE-L" and "full
4 facilities basis" without maybe thinking of the full
5 ramifications of that, but --

6 Q. So it's not really your intent to establish a
7 threshold of full facility based or a UNE-L as those
8 definitions may be interpreted? It's your -- let me go on.

9 A. And -- I guess what -- what we were trying to
10 do is just simply try and explain our rationale for
11 determining our recommendation as to whether we felt that an
12 exchange should qualify for competitive status or not. And I
13 think we looked for ownership of certain facilities. And
14 specifically the types of facilities that we looked at were
15 situations where the company was providing local voice service
16 and it either had its own switching facilities and was using
17 them and/or also has its own local loop facilities.

18 Q. Okay. And within that group I'm assuming you
19 would include a CLEC that owns either a switch or the local
20 loop and rather than leasing the other facilities either from
21 an ILEC or an IXC or another CLEC, that they would be
22 purchasing them on a month-to-month basis?

23 A. Well, if I understood your question correctly,
24 you described a situation where the CLEC has its own switch
25 and has -- also has its own local loops.

1 Q. No. Either/or. But at least -- I mean, rather
2 than have a lease agreement for the rest of the facilities,
3 it's purchasing them on something other than a lease basis.
4 Could be a month-to-month, for example.

5 A. Yeah, it could be. Yeah, we would count that.

6 Q. Okay. Okay. And I just received a copy of the
7 order directing notice and establishing the procedural
8 schedule. And it appears that the order and notice did not
9 list all the exchanges, it just referred to the application.

10 So how would your notice argument go now in
11 terms of you wouldn't grant the status because the specific --

12 A. Well --

13 Q. -- specific exchanges were not notified?

14 A. -- regardless of whether they were specifically
15 identified or not, the notice -- if there is a CLEC that's out
16 there and he's interested in these proceedings, what they
17 would do is look at Southwestern Bell's application. And I
18 would suspect that they would zero in on the specific
19 exchanges that they have asked competitive status for. unless
20 they're following the case after that, it would be difficult
21 for them to know certain other exchanges might be in play.

22 Q. So it is your position that notice to all the
23 certificated carriers in the state, even though the exchanges
24 are not listed, is not sufficient?

25 A. Well, I think -- there may be a situation where

1 a CLEC, you know, upon receiving the notice, takes a look at
2 Southwestern Bell's application and decides they didn't
3 identify an exchange that we're operating in so I have no real
4 concerns or interest about the application.

5 I just think that there ought to be some way
6 for other parties that have an interest here to -- to be able
7 to know what exchanges are on the table in terms of being
8 considered for competitive status.

9 Q. Okay. I understand. I want to pursue a couple
10 of other things here. With your responses that you received
11 from NuVox and from Big River, were you able to verify that
12 NuVox's response that it had -- does not think it has any
13 customers in the Excelsior Springs area was accurate or not?
14 I mean, is there a way that you can verify whether they have
15 customers or not?

16 A. Yeah. I -- I think, you know, there's
17 obviously some follow-up work that we need to do in order to
18 get to the bottom of -- of, you know, are you or are you not
19 providing service in these exchanges. I guess where we're at
20 right now is that Southwestern Bell has evidence that they
21 feel that shows this company is providing service in this
22 exchange.

23 We -- we've simply contacted the company to
24 verify are you actually providing service in these exchanges
25 and, if so, how are you doing it. And we asked them a few

1 more questions as well. And right now it appears we have some
2 conflicting information between what Southwestern Bell is
3 saying versus what the CLEC is saying. And I don't know what
4 is exactly going on without doing some further investigation.

5 Q. And --

6 A. We've simply been unable to confirm that -- at
7 least from our point of view, that certain exchanges meet
8 or -- meet our criteria for competitive classification.

9 Q. And do our records, whether they be highly
10 confidential or nonproprietary, do the records that we have
11 here at the Commission show what carriers serve in which --
12 are actively serving in which exchanges?

13 A. Yes. Well, the Annual Reports show, you know,
14 lines served on an exchange-specific basis. And that is
15 broken down by whether service is being provided on a resale
16 basis, UNE-P basis, UNE-L basis or a full facility basis. We
17 have --

18 Q. Is that the only document that we have?
19 Because those are obviously eight months outdated -- nine
20 months outdated today.

21 A. Yeah. Yeah. And we recognize that, but, you
22 know, those are really the records that we relied on and --

23 Q. Are they the only records we have here that
24 show what exchanges each carrier is actually offering service
25 in -- providing service in?

1 A. Well, the company's tariff would -- would
2 certainly identify the exchanges where they may offer service.
3 Now, whether they are actually providing service, that's
4 another question.

5 Q. The statute said providing.

6 A. I believe it does.

7 Q. Yes, it does. Okay. So in terms of knowing
8 which carriers are actually providing service within an
9 exchange, the most accurate data we have here is the Annual
10 Report?

11 A. That's where we started, yes.

12 Q. Well, okay. And I know you said you've talked
13 to the companies, there's another avenue. But what do we have
14 here within these records of this Commission other than an
15 Annual Report that actually gives information about which
16 carrier is providing service within an exchange?

17 A. There were situations where a company's
18 statement of revenue indicated that they were generating
19 intrastate revenue, yet they showed zero lines. That was
20 another source that we looked at just to make sure we
21 understood what that company was doing.

22 Q. So a company's statement of revenue, is it
23 broken down by exchange?

24 A. No, it's not. But those are situations where a
25 company may have showed that it was generating revenue from

1 intrastate telecommunication services during the past year,
2 that their Annual Report reflects zero lines served. In those
3 situations, we contacted the companies to see what was
4 happening.

5 Q. Is there anything else?

6 A. I'd say in some instances we relied on the
7 prior Southwestern Bell case, information that was submitted.

8 Q. The evidence in that case?

9 A. Yes.

10 Q. And that would have been evidence supplied by
11 various carriers; is that correct?

12 A. That's correct. That's all that comes to mind
13 right now in terms of other sources that we relied upon.

14 Q. Do we need to establish something that provides
15 the Commission with ongoing information about carriers, about
16 exchanges in which carriers are actually providing service?
17 It seems like that's something that we ought to be able to put
18 our hands on.

19 A. Perhaps. I mean, we're aware that, you know,
20 the Annual Report information only reflects line counts as of,
21 in this case, December 31st, 2004. And so that information
22 may be considered somewhat dated. Whether it's -- they need
23 to submit that information on a more frequent basis, I don't
24 know.

25 I guess my own opinion is that it's -- it's

1 quite a bit of work just trying to verify the Annual Reports
2 once a year. And I really haven't thought that entirely
3 through as to whether it would be helpful or not. I think the
4 Annual Reports get most of the lines that are served in most
5 of the exchanges. There may be certain situations where a
6 company is expanding service and we just don't have
7 information on that. And in those cases, yeah, we definitely
8 contact -- try to contact the companies.

9 Q. And if we tried to keep it current, it seems
10 like it would be very burdensome for the carriers and the
11 Staff because I would think those line counts change
12 continually so that there would be constant --

13 A. Yes.

14 Q. -- recalculations and re-recordings?

15 A. Yes. You know, I don't know if I'm -- if it
16 would be that burdensome or not, but I guess just knowing what
17 it took to take a good close look at the latest Annual Reports
18 and the follow up that was done with these companies, it's
19 quite a bit of work.

20 Q. Okay. Now, I want to ask you about Big River
21 because SBC has indicated that they -- that Big River has
22 submitted migration orders. And I believe you said that
23 that's your understanding, that they have submitted the
24 orders?

25 A. According to Southwestern Bell's application,

1 yes.

2 Q. Were you able to verify that with Big River,
3 that the orders had been submitted?

4 A. No, I have not. When I talked to officials of
5 Big River, they indicated that they only provide service on a
6 UNE-P basis in certain exchanges.

7 Q. Did you ask them if they had submitted
8 migration orders?

9 A. No, I did not.

10 Q. Why not?

11 A. I don't -- you know, in hindsight, I should
12 have. But, frankly, I thought that simply asking them if they
13 were providing service to any customers in these exchanges
14 either on a UNE-L or full facilities basis would have flushed
15 that out.

16 And in certain instances, Big River was
17 forthcoming and said, Yes, we are and that cleared up a number
18 of exchanges associated with -- with Big River. But for
19 others -- for just a couple of exchanges they indicated that
20 they only provide service on a UNE-P basis. I -- and I have
21 to admit those -- although we tried to contact and get
22 information from Big River a couple of weeks ago, it was only
23 in this past week that we actually got a response from them.
24 So --

25 Q. Okay. Is there any carrier from which you have

1 gotten no response for which -- from which you have gotten no
2 response?

3 A. I can't say that we have. I mean, there are
4 situations where I think we would have wished we would have
5 gotten a quicker response, but I -- I think all companies have
6 responded.

7 Q. Okay. I think you indicated earlier in
8 relation to Big River and the migration orders -- or order --
9 yeah, the migration orders, that you didn't know whether they
10 had been completed or had been filled, but that you were going
11 to make an inquiry or you were going to follow up?

12 A. I think, at least from our end -- I don't know
13 if it's certain or not whether or not those orders have
14 actually been completed or not. I was listening to
15 Mr. Unruh's testimony this morning and I know he said
16 something to the effect that he thought they were finished or
17 at least they didn't receive a cancellation order or something
18 like that.

19 Q. Would Staff be -- think it sufficient if SBC
20 had received those migration orders and could provide a copy
21 of the orders and also could provide documentation that shows
22 the orders were filled?

23 A. Again, I'd want further confirmation from Big
24 River that they are not solely providing service to, say, an
25 Internet service provider or somebody like that. There are

1 some exchanges where that's all that the CLEC is doing is
2 providing service to an Internet service provider.

3 Q. So that they could migrate -- they could fill a
4 migration order, but it would be -- it could be only to serve
5 an ISP?

6 A. Could be.

7 Q. And does that fall without the statute, in your
8 opinion -- fall outside of the statute?

9 A. Yeah. I think 392.245.5, subparagraph 2
10 specifically excludes those situations.

11 Q. So it would have to -- if it were considered,
12 it would have to be considered under the 60-day track; is that
13 right?

14 A. I believe so.

15 Q. Okay. You had some exchange earlier about the
16 St. Joe Cable Vision or whatever it's called -- Cable Vision,
17 I believe -- and a concern that if the competitor were -- the
18 qualifying competitor in that exchange were St. Joe Cable
19 Vision, your concern being that St. Joe Cable Vision is not
20 certificated to provide a voice service; is that correct?

21 A. I'm just -- that -- that -- that's one issue,
22 but --

23 Q. Is that one? I just want to stop there for a
24 minute --

25 A. Okay.

1 Q. -- and go through that one. Is that one of
2 them?

3 A. That's one issue.

4 Q. Okay. And I was thinking even though the
5 statute says whether or not regulated by the Commission, could
6 that be interpreted to mean that if -- whether or not a
7 company falls under the jurisdiction of the Commission, in
8 other words, is required to be regulated by the Commission,
9 but if it is a carrier that is under this Commission's
10 jurisdiction and requires our certification but is operating
11 without it, in other words, operating illegally, then that
12 might not qualify? I mean, is that a possibility?

13 A. I'd have to defer that to my legal counsel. I
14 know we've had some internal discussions about situations
15 involving a carrier that may not be certified. And in
16 general, we felt that the certification -- if this is a
17 situation where a company truly needs to be certified and have
18 a certificate of service authority from the Missouri
19 Commission and have tariffs on file here, that that issue
20 really needs to be cleared up quickly.

21 Q. Does this get into that dispute over whether
22 you're talking about an information service or a voice
23 service, whether this carrier would have to be certified?

24 A. Not necessarily, no. It could be anything
25 really. I mean, provisioning of local voice service in a

1 number of different ways. I'm not solely thinking about a
2 certain way or certain situations.

3 Q. All right. I think this is my last question.
4 Do you believe that Staff evaluated the evidence that SBC
5 provided in terms of using every avenue at Staff's disposal to
6 verify or refute that evidence?

7 A. I mean, there are -- there are things that I
8 look back on and I think there are things that we could have
9 perhaps done differently that would have perhaps saved a step
10 for us. In which case, yeah, we're going to perhaps
11 re-evaluate how we go about independently verifying these
12 things.

13 But I don't -- it got down to, you know, the
14 amount of -- limited amount of time that we had, you know. We
15 tried to contact these companies as rapidly as possible, tried
16 to keep an open dialogue with Southwestern Bell. And on
17 the -- the status of our investigation and in those situations
18 where it looked like we weren't getting the information that
19 would allow us to recommend that competitive status be
20 granted, you know, that's I think -- that's kind of where
21 we're at right now.

22 And it's only been in the past couple of days
23 that Mr. Unruh and myself have, you know, been, you know,
24 discussing maybe some of the more specific aspects of their
25 proposal in terms of -- you know, when we talk about migration

1 orders, you know, I know Mr. Unruh had talked -- had given me
2 the numbers about -- the actual number that the carrier had
3 submitted for that exchange. And I guess I'd like to follow
4 up on that and see where that -- that leads. But we just
5 haven't had the opportunity to do that yet.

6 Q. Well, do you think because the statute provided
7 for the Commission and the language shall in there within
8 30 days, that the legislature didn't contemplate that kind of
9 an in depth examination?

10 A. I think -- I'm not sure what the -- what the
11 intent was, but I think there's a certain expectation that the
12 Commission or the Commission's Staff would try and have
13 readily available information so that this is not a cumbersome
14 process, that it's somewhat streamlined, that we can
15 independently verify that, yes, these exchanges qualify.

16 And I think we've tried to do that based on the
17 information that's submitted in the Annual Reports. Yes,
18 there are situations where it appears that we were unable to
19 verify or come to conclusion that, yeah, this exchange meets
20 the criteria for competitive status, but I think we're --
21 we're getting closer.

22 And I think, you know, out of all the exchanges
23 that, you know, we're monitoring, we're just down to really a
24 small handful. And we've tried, you know, to -- we've
25 identified additional exchanges that perhaps specifically were

1 not identified by Southwestern Bell as meeting the competitive
2 criteria. I think -- I think we've tried to do our best in
3 getting ready for these, but, you know, there are some things
4 that we could perhaps do differently that might help us all
5 out.

6 Q. Well, first try at something new is always a
7 learning process, but I assume that it will become more
8 streamlined and more easily verified in the future?

9 A. You know, I will say the more information that
10 a company provides in its initial application I think it makes
11 it easier for us. Now -- and, you know, I guess the -- the
12 step that perhaps we -- we need to take and didn't take is,
13 you know, specifically getting into the ba-- the supporting
14 information would back the application in the first place.
15 What evidence did the company have in its possession that
16 indicates that a particular carrier is providing service in
17 that exchange.

18 We -- we -- we didn't get into that. I guess
19 we -- I guess I thought that perhaps we -- we may not need to
20 get into that information if we could easily independently
21 verify these exchanges, but obviously there's some areas of
22 dispute that we need more information on.

23 COMMISSIONER MURRAY: Okay. Well, thank you.

24 JUDGE RUTH: Commissioner Gaw, are you
25 indicating you don't want to --

1 COMMISSIONER GAW: I'm going to defer right
2 now. I'll pass for the moment.

3 JUDGE RUTH: Commissioner Clayton?

4 COMMISSIONER CLAYTON: Thank you, Judge.

5 QUESTIONS BY COMMISSIONER CLAYTON:

6 Q. Mr. Van Eschen, apologize for not being in
7 here. I apologized to Mr. Unruh so I thought I'd keep it fair
8 and miss a portion of each of your testimony and I apologize
9 for that. I wanted to ask you some similar questions as to
10 questions that I asked Mr. Unruh. And I know that there have
11 been some questions by various attorneys and perhaps
12 Commissioner Murray asked some of these questions and I
13 apologize if they're repetitive. Okay?

14 I want to start off on the same track as I did
15 with Mr. Unruh and talk about the sources of data column in
16 the Exhibit 2 and 3 that have been handed out by Southwestern
17 Bell, by SBC. And I want to start off with the migration
18 orders that were discussed earlier. Are you familiar with a
19 migration order?

20 A. Yes.

21 Q. Would you explain to me what a migration order
22 is?

23 A. My understanding of a migration order is an
24 order from a CLEC generally to move from a UNE-P arrangement
25 to some other arrangement so that when calls are made, the

1 network knows that -- where to send the call. And
2 specifically it's to send the call to particular switch.

3 Q. Would a migration order be document -- a
4 document that would prove the existence of a CLEC providing
5 service in an exchange?

6 A. I think it would provide some -- you know,
7 assuming that the order had been completed and carried
8 through, in general, yes. I don't know if that would be
9 enough though by -- on its own to allow us to state that that
10 exchange qualifies for competitive status.

11 Q. Would there be a document from SBC, assuming
12 the -- the document was accurate, that would show that the
13 migration order was filled? Would that satisfy if it met the
14 time -- being in the right time span? Would that be a piece
15 of evidence or documented proof?

16 A. That would be helpful, yes.

17 Q. What do you mean helpful?

18 A. That would be helpful.

19 Q. Yes, it is --

20 A. Yes.

21 Q. -- that is a piece of evidence --

22 A. Uh-huh.

23 Q. -- that would prove the existence of that
24 competitive carrier?

25 A. It would certainly cause us to, you know, go

1 back to that carrier and say, Look, we've got some completed
2 orders here that appear to show that you migrated from a UNE-P
3 arrangement to something else where it appears that calls are
4 being sent to your switch for serving customers in these
5 exchanges.

6 I mean, in these particular situations we're
7 talking about Big River. And Big River has told me that for
8 certain exchanges, they're still serving customers on a UNE-P
9 arrangement. I'm not -- I'm not quite sure whether -- you
10 know, whether it would be sufficient to just, you know, have
11 Southwestern Bell provide some documentation that says, Look,
12 here's the orders, here's some-- something that would show
13 that the work order was -- was actually completed.

14 Q. So a work order standing alone wouldn't be
15 sufficient, in your opinion?

16 A. No, there may be some other, you know, issues
17 that would cause us to hesitate. And specifically I talked
18 about them earlier where, you know, if the customer -- if the
19 carrier's only providing service to, say, an Internet service
20 provider in that exchange, then we feel that wouldn't qualify.

21 Q. Mr. Van Eschen, let's assume you've got an
22 unlimited budget in the telecommunications department, there's
23 no cap on the assessment, you can spend as much money as you
24 want, you've got enough people.

25 What would be the absolute best method of

1 finding out whether or not a telecommunications -- a
2 competitive telecommunications company is providing service in
3 an exchange? I say unlimited budget. I just want you to
4 remove the constraints of not having enough people or gas
5 prices being too high or something like that. What would be
6 the best way of verifying the existence of a competitor
7 serving an exchange?

8 A. Well, for us it was -- you know, in some cases,
9 you know, one phone call to -- to the company, to be honest
10 with you, and follow it up with an e-mail.

11 But in terms of, you know, is this something
12 that we could have that would allow us to -- I guess I have
13 this vision of checking some computer system or something
14 somewhere that would somehow show that, yes, they are
15 providing service in this exchange and it is being provided on
16 a UNE-L full facility based arrangement or some other
17 arrangement that we feel would qualify for competitive status.

18 I don't think there's anything out there at
19 this point that would allow us to have that information
20 instantaneously. I mean, ideally it would be something that
21 would be updated on a more timely basis than simply the
22 Commission's once a year Annual Reports.

23 Q. Well, how about if you went to a community and
24 attempted to provision service from a competitive carrier?
25 Would that be an example of seeing if a competitive carrier is

1 providing service in an exchange?

2 A. If I went to a community?

3 Q. Yeah. And tried to get telephone service.
4 Would that be -- would that prove that they're showing -- that
5 they're making service available in an exchange?

6 A. It may show that they're offering service in
7 the exchange. I don't think that it gets to the question of
8 are they providing service in a way that we feel qualifies for
9 competitive status under the 30-day track.

10 In fact, that's one of the problems that we
11 have when we try and contact the companies is getting ahold of
12 something that is knowledgeable to know how they're actually
13 serving customers in that particular exchange. We simply
14 can't talk to a service rep of a CLEC because generally they
15 have no idea how service is actually provisioned.

16 Q. Well, let's say you went out to -- let's pick
17 an exchange here. Let's say you went out to -- pick one
18 here -- Scott City. Let's say you went to Scott City, you
19 looked up in the phonebook, found telecommunications carrier.
20 You find a carrier that's listed other than SBC and call the
21 number, assuming you're able to have an address to turn on
22 telephone service. Hiring that service wouldn't be enough in
23 and of itself. I think that's what you're saying; is that
24 correct?

25 A. That's correct.

1 Q. Okay. So let's say you're able to provision
2 service, you're able to get service. Could you go visit the
3 facility and look at what facilities are there if they have a
4 central office?

5 A. I guess we could, but I guess --

6 Q. Do you have the power to do data requests,
7 issue subpoenas, take depositions, anything like that?

8 A. I mean, we -- in this proceeding we -- you
9 know, in instances --

10 Q. I know what you did in this proceeding, but I
11 started off asking if you had an unlimited budget, what would
12 be the best way of doing this to know for sure? I mean,
13 we're -- I know we can call up the company, we can call the
14 1-800 number and we can ask this clerk this, we can ask them
15 that. I understand that, I understand about the migration
16 orders that were discussed with Mr. Unruh.

17 I guess I want to know what would be the best
18 way? If you didn't have the budgetary issues, what would be
19 the best way of verifying this information so that we don't
20 have any uncertainty at all? And I know some don't believe
21 that there's any uncertainty, but we've had a lot of testimony
22 but we made phone calls here, we've copied newspaper ads here.
23 I want to know from you what would be the best way of
24 verifying this information?

25 A. I don't know if I have a ready answer for that.

1 I -- I -- I don't know what the best way would be offhand. I
2 guess I'd like to think about that some more. I --

3 Q. Well, we can come back next week. Okay. Maybe
4 not.

5 Does it take having a badge, going out and
6 knocking on the central office door -- knocking on SBC's doors
7 and seeing what equipment from competitors is there? Would it
8 take something like that? Is it a matter of service being
9 available to customers? Is it --

10 A. Well, what -- we have to keep in mind what
11 we're looking for is -- is, you know, evidence that the
12 company is actually providing service to customers in that
13 exchange. And if they are, is it being provided in a way that
14 we feel would qualify for competitive status.

15 Q. And when you say providing the service in a
16 particular way, is that just making reference to the amount of
17 facilities that they have in place or the type of equipment
18 that they own themselves?

19 A. We would look for whether they had their own
20 switch and/or local loop facilities and were using either one
21 of those or both in providing service to customers.

22 Q. Now, do you look at whether or not every
23 customer within the exchange has access to that competitive
24 choice? Do you also look at every customer and say, They have
25 the ability to provision service in Scott City from Big River,

1 as an example?

2 A. No, we do not.

3 Q. You don't look at that?

4 A. No.

5 Q. Do you look at any percentage of those
6 customers in an exchange that can choose among competitors?

7 A. No, we did not.

8 Q. So, in your opinion, how many customers --
9 speaking for business, say, for example, how many customers
10 would a CLEC have to be serving in an exchange to be providing
11 service in that exchange?

12 A. Well, one or two.

13 Q. One or two is sufficient?

14 A. Yes.

15 Q. So they don't have to hold themselves out to
16 the entire exchange?

17 A. That's correct. And I say one or two simply
18 because the statute talks about providing service to
19 customers. But I know going into this we generally looked at,
20 you know, if they were serving -- providing service to one
21 customer, it -- it very well may be. I mean, by looking at
22 the line counts, we don't know how many customers are --

23 Q. So can you verify that each of these
24 competitors are offering service to more than one customer in
25 each of these exchanges?

1 A. We don't know how many customers.

2 Q. So no?

3 A. No. All we know is the number of lines that
4 that competitor is providing.

5 Q. So you can guarantee me at least one?

6 A. Yes.

7 Q. Guarantee that?

8 A. Guarantee it.

9 Q. Guarantee. All right.

10 A. And in certain instances, as I said earlier,
11 there are situations where, you know, it looks like a CLEC is
12 providing service in the exchange that may qualify, but in a
13 number of instances, the carrier's only providing service to,
14 say, an Internet service provider, in which we would say that
15 would not qualify under the 30-day track.

16 Q. Were there any circumstances in the exchanges
17 at issue in this case where you found only a CLEC offering
18 service to an ISP?

19 A. I don't believe so.

20 Q. Okay. Well, did you check for that?

21 A. Yes, we did.

22 Q. You did? In each exchange, in each competitor,
23 you looked at each one or did you take a sample or --

24 A. We asked a number of carriers that we felt this
25 would make a difference and -- and asked them that question.

1 Specifically, are you -- are there any situations where the
2 only customer that you have in the exchange is an Internet
3 service provider.

4 Q. Now, when these people answered the question,
5 did you make them raise their right hand when they answered?

6 A. No.

7 Q. I mean, did you follow up and do any other
8 verification in these phone conversations? I say you. I mean
9 did your staff? Or was it just asking a couple of questions
10 and leaving it at that?

11 A. Generally, you know, through the e-mail process
12 and, you know, phone calls, things of that nature.

13 Q. Okay. I talked with Mr. Unruh about the E-911
14 listings --

15 A. Yes.

16 Q. -- which -- and I learned today that the E-911
17 listings are -- is a compilation that's actually held by SBC
18 or maintained by SBC, not by a governmental entity. Would you
19 agree with that?

20 A. I would -- I would agree with that. I'm not --
21 I know that there was probably some involvement at the county
22 level in terms of the administration of certain databases, but
23 I'm -- I don't know enough about those particular databases.

24 Q. Well, did you use E-911 listings as part of
25 your analysis of whether companies were offering service?

1 A. No.

2 Q. You or your staff?

3 A. No.

4 Q. You did not?

5 A. No, we didn't.

6 Q. So if -- if E-911 listings were the only source
7 of data as proof of competitive activity in an exchange, then
8 are you saying that you wouldn't support competitive
9 classification in that exchange?

10 A. I guess for me, I'd want to clear it up in my
11 own mind because what we have from the competing CLEC is
12 information that would conflict with that. And I don't
13 know -- if the person that we talked to for some of these
14 CLECs is mistaken or not, I don't know. I don't know enough
15 about the accuracy of these 911 databases to really say one
16 way or the other.

17 Q. Is it your testimony that the 911 database is
18 not accurate enough to rely on as the source of --

19 A. I just don't know.

20 Q. Don't know. Okay. Well, let me take one
21 example. Line No. 1 on Exhibit No. 3 of SBC offered before --
22 this is the 30-day trigger for business exchanges. Line 1 is
23 the exchange of Antonia?

24 A. Yes.

25 Q. It says source of data, E-911 listings as the

1 evidence supplied by SBC as proof of competition. I look at
2 Schedule 1.2, which is on your testimony -- this is your
3 schedule at the end but it doesn't have a source of data. Can
4 you tell me how NuVox was found to be providing competitive
5 service in the exchange of Antonia?

6 A. All I can tell you is that we just found that
7 Birch was operating in that exchange in a way that qualifies
8 competitive status for that exchange. NuVox -- I know there
9 were some issues that we had with NuVox that we needed to get
10 further verification from. We simply couldn't solely use
11 their Annual Report information.

12 Q. So you all couldn't confirm that NuVox was
13 providing service?

14 A. No, we couldn't.

15 Q. Okay. How did you confirm that Birch was
16 providing service?

17 A. Through their Annual Report.

18 Q. Okay. And did you -- was the information in
19 that Annual Report updated?

20 A. Not to my knowledge.

21 Q. Well, didn't Birch go through -- aren't they in
22 bankruptcy?

23 A. Yes, they are.

24 Q. Have their lines gone up or down since they
25 filed bankruptcy, do you know?

1 A. I do not know.

2 Q. Are you confident in the information that was
3 included in their Annual Report ending December 31, 2004, that
4 it's accurate today?

5 A. I guess I'm fairly confident that, you know,
6 they --

7 Q. They'd never lie to us? Is that why or --

8 A. No.

9 Q. Never change?

10 A. And maybe -- maybe I would need to look at the
11 actual line counts that we have.

12 Q. Do we have line counts?

13 A. Yes we do.

14 Q. Just out of the Annual Report though?

15 A. Yes.

16 Q. Just out of the Annual Report.

17 Okay. Do you have a chart or a compilation to
18 explain what additional work that Staff did -- or did Staff
19 rely entirely on Annual Reports?

20 A. We -- we used the Annual Reports as a starting
21 point. I tried to explain what we did --

22 Q. Yeah.

23 A. -- in my testimony.

24 Q. Did you follow up with Birch with the e-mails
25 and the phone calls?

1 A. Yes, we did.

2 Q. You did. Okay. And I guess you're saying that
3 they confirmed their numbers?

4 A. Yes, they confirmed certain information that we
5 were looking for. Now, they -- knew why we were asking for
6 the information. I -- I guess I don't see anything that would
7 cause us to necessarily change our recommendation.

8 Q. You mentioned -- in the exchange of Antonia you
9 mentioned that NuVox had some problems in their Annual Report.
10 Do you recall that?

11 A. Yeah.

12 Q. And what kind of problems did they have?

13 A. They did not break down their access line
14 quantities to the exchange-specific level.

15 Q. Okay. Did they eventually do that?

16 A. We eventually got information that -- we
17 eventually got that information.

18 Q. Okay. So you were able to rely on NuVox being
19 a competitor in a number of exchanges, I believe; is that
20 correct?

21 A. Yes.

22 Q. But not Antonia?

23 A. Yes.

24 Q. Okay. Did you or your staff ever use directory
25 listings as evidence of existence of competition?

1 A. No.

2 Q. Okay. And on Exhibit 3 offered by SBC where
3 they reference the source of data, Staff evidence, would you
4 agree that they're making reference to the Staff analysis of
5 Annual Reports only?

6 A. Yes.

7 Q. Do you know what I mean? It's their document.
8 I can't ask you what you think they mean, but is that what
9 they mean?

10 A. That's what I think they mean.

11 Q. Okay. Okay. Okay. Mr. Van Eschen, can you --
12 are you guaranteeing this Commission that at least one
13 customer is being served by each of these competitors listed
14 on Schedule 1.2? You can provide that guarantee, cross your
15 heart type of thing?

16 A. Yes. I -- I -- I don't see -- I mean, what we
17 have is evidence that a competitor is serving lines in that
18 exchange. I don't know the number of customers or anything
19 like that. I mean, to the extent that a company may have
20 pulled out of an exchange in, say, the past couple of months
21 since they filed their Annual Report, I guess that's possible,
22 but I don't think that's happened here.

23 Q. Can you tell me if you or your staff ever
24 contacted any customers in a given exchange being served by
25 one of these competitors to verify that they're receiving

1 service?

2 A. No, I haven't.

3 Q. All the contact was with the carriers?

4 A. Right.

5 Q. Did you ever do any investigation of
6 advertisements or solicitations of competitors in each of
7 these exchanges or a handful of these exchanges?

8 A. I mean, we've looked at advertisements,
9 websites, things like that.

10 Q. Are they part of your testimony, the results of
11 that --

12 A. No.

13 Q. -- analysis?

14 A. No.

15 Q. No? So you did not rely on that information?

16 A. No. I mean, those are -- that's an indication
17 that they may offer service. We're looking for whether
18 they're actually providing service to a customer.

19 Q. Other than an Annual Report, are there any
20 other compilations of data or reports or any other information
21 of the Commission record that you or your staff used in making
22 these determinations?

23 A. I -- other than what I had previously talked
24 about, I don't believe that there are any other records at our
25 disposal. I guess I'm -- I'm trying to think. We do receive

1 quality of service reports from some CLECs and --

2 Q. Are those part of this record?

3 A. No, they are not. But I don't believe that we
4 relied on them in any way.

5 Q. Would those be more accurate than Annual
6 Reports -- more or less accurate?

7 A. No. And I -- I'm trying to think if that -- if
8 those reports would actually contain any information that
9 would be considered relevant for this proceeding. And I don't
10 know if they would.

11 Q. Okay. I haven't asked any questions about this
12 topic and I'm just going to ask one or two. Would you tell me
13 what steps that Staff took to verify the existence of the
14 wireless providers, the competitor No. 2? What was the method
15 of analysis?

16 A. I guess, you know, long before any companies
17 had made filings, we took a look at, you know, are there any
18 areas of this state where we feel that a wireless company is
19 not available. And I know we'd looked at one website that was
20 on the Office of Administration's website pertaining to 911
21 wireless availability and things of that nature. And there
22 wasn't anything that -- that we were able to identify that
23 would cause us to reach a conclusion that a wireless provider
24 is not available in every exchange.

25 Q. Were there any areas of the state where

1 wireless is not available at this time?

2 A. We're unaware of any.

3 Q. So wireless is 100 -- there is at least one
4 wireless carrier everywhere throughout the state of Missouri?

5 A. In our opinion, yes.

6 Q. Did you go out there and --

7 A. No.

8 Q. -- say, Can you hear me now?

9 A. No.

10 COMMISSIONER CLAYTON: Okay. Thank you,
11 Mr. Van Eschen.

12 JUDGE RUTH: Okay. We have been on the record
13 for quite some time, so we are going to take a short break
14 until 3:15. Thank you.

15 (A recess was taken.)

16 JUDGE RUTH: Okay. We are back on the record
17 after a short break.

18 When we left, Commissioner Clayton had finished
19 asking his questions, but it's my understanding that
20 Commissioner Murray has some additional questions.

21 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Mr. Van Eschen, can you tell me if we have a
23 way of tracking access lines per carrier for purposes of the
24 Universal Service Fund?

25 A. Not that I'm aware of.

1 Q. So in terms of either the federal Universal
2 Service Fund or the state low-income/disabled Universal
3 Service Fund, how do we track carriers' eligibility?

4 A. Well, for the state Universal Service Fund
5 right now it's simply reimbursing carriers for -- who are
6 providing lifeline and linkup service. And I believe that's
7 done through separate paperwork that's filtered through the
8 Missouri USF administrator. I think there is some limited
9 lifeline information that is filled out in the Annual Report,
10 but it really is not useful for our purposes here.

11 Q. And how would it be limited? I mean --

12 A. It just simply identifies the number of
13 lifeline subscribers in an exchange. It doesn't say anything
14 about how service is provisioned or anything like that. And
15 it's -- it's not on an exchange-specific basis either.

16 Q. Okay. And then the federal Universal Service
17 Fund, when we certify that a carrier is using the funds as
18 they're required to use the funds, do we do it -- do we have
19 any information about access lines in relation to that?

20 A. Not that I'm aware of.

21 COMMISSIONER MURRAY: All right. Thank you.

22 JUDGE RUTH: Commissioner Appling, do you have
23 questions?

24 COMMISSIONER APPLING: They've asked them all.

25 JUDGE RUTH: We'll go to Commissioner Gaw.

1 COMMISSIONER GAW: Thank you.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. Mr. Van Eschen, I think I'm clear on this, I
4 just want to make sure I'm correct. Did you seek any verified
5 statements or did you do any depositions of any authorized
6 agents of the companies that are listed in your exhibits as
7 being competitors of SBC?

8 A. Other than what's in the Annual Report, I think
9 those may be verified, but subsequent follow up, no.

10 Q. Okay. And those Annual Reports are all, at the
11 latest, 2004 Annual Reports. Correct?

12 A. Correct.

13 Q. And do you have -- did you verify that the
14 company is today or within the last few weeks in each of these
15 exchanges that you've identified a competitor, that the
16 company was providing service to two or more customers in the
17 exchange for residential and then for business?

18 A. No. We didn't try and discuss anything about
19 the number of customers.

20 Q. Did you seek verification in any kind of a form
21 that was under oath that you could present to this Commission
22 indicating that there were customers in the exchange receiving
23 service in the last couple of weeks that would have met the
24 requirements, in your opinion, of the statute?

25 A. Not within the past couple of weeks. I mean,

1 the Annual Report information is -- is verified, but we didn't
2 get any subsequent verification formally from these carriers.

3 Q. And you did not take any depositions, you said
4 earlier?

5 A. That's correct.

6 Q. Are you aware of whether or not SBC did either
7 of those things?

8 A. I'm not aware that they -- they did.

9 Q. Is the line count information that you referred
10 to I believe earlier, is that in your testimony?

11 A. No, it is not.

12 Q. And it's not in the record, to your knowledge;
13 is that correct?

14 A. No, it is not.

15 Q. The carriers who would have potentially been
16 and are listed in your exhibits as being competitors, when
17 would they have received notice of that status in regard to
18 this proceeding?

19 A. I don't know. I'm looking at an order
20 directing notice, establishing procedural schedule, preserving
21 hearing date and granting a protective order that was issued
22 on September 6th.

23 Q. Did that protective order provide that
24 information in regard to the naming of those competitors in
25 particular exchanges be confidential?

1 A. The notice doesn't identify any specific
2 competitors, if that's what you're asking.

3 Q. I guess what I'm asking, are you aware of the
4 fact that this Commission did issue an order this week, I
5 believe, that provided that the certain information that had
6 been declared to be confidential or highly confidential would
7 be released as public information?

8 A. I'm unaware of that.

9 Q. You didn't follow that part of the case?

10 A. No. No.

11 Q. In regard to Annual Reports, Mr. Van Eschen,
12 you were involved in the most recent SBC case wherein SBC was
13 requesting competitive status throughout the state of
14 Missouri, the case previous to this one, were you not?

15 A. We had other Staff witnesses that filed
16 testimony in that proceeding.

17 Q. Were you involved in that case?

18 A. Yes.

19 Q. Are you familiar with whether or not there was
20 criticism from any of the parties in that case in regard to
21 information provided in Annual Reports in regard to
22 competitors doing -- offering services in exchanges?

23 A. I don't know if there were specific differences
24 as to the Annual Reports. I don't know offhand.

25 Q. All right. So, Mr. Van Eschen, back to my

1 other question, you are not aware then when officially the
2 competitors listed in Exhibits 2 and 3 would have been able to
3 know of this proceeding and that they had been officially
4 named as a competitor in this case?

5 A. No, I don't know.

6 Q. You do not know. When you suggested earlier
7 that there were wireless -- there was wireless availability
8 throughout the state, can you tell me what you mean by
9 availability?

10 A. That it's simply available somewhere in the
11 exchange. Maybe not the entire exchange, but somewhere.

12 Q. And --

13 A. Maybe just a portion of the --

14 Q. What does "available" mean when you use that
15 word in this context?

16 A. That a wireless provider is offering service.

17 Q. Does that mean to you that in that exchange
18 that you would always be able to dial, in every one of those
19 exchanges, a wireless phone that is offered in that exchange
20 and not have to call long distance?

21 A. I don't know, no. I don't know.

22 Q. Isn't it true, Mr. Van Eschen, that there are
23 exchanges in this state where there is no wireless phone
24 offering that would allow a wireline carrier in that exchange
25 to dial that wireless phone number without dialing long

1 distance?

2 A. There may be. I'm unaware of those exchanges.

3 Q. So if that -- the standard that you're using is
4 not dependent upon that factor, is that correct, since you
5 don't know?

6 A. That's true.

7 Q. So what did you do to verify availability,
8 under the phrase that you're using availability, in every
9 exchange in the state?

10 A. For wireless service?

11 Q. For wireless service.

12 A. We did not attempt to verify that wireless
13 service is available on I guess a local calling availability,
14 as you described it.

15 Q. Okay.

16 A. We did not do that.

17 Q. So what did you do?

18 A. We had looked at some other information that
19 the Office of Administration had put together regarding
20 wireless availability in the state. That was one area.

21 Q. The Office of Administration?

22 A. Yeah. Yeah. And they had -- they had --

23 Q. Are those records that are kept by the
24 Commission?

25 A. No, they are not.

1 Q. What else did you look at?

2 A. But they had looked at -- they're involved in,
3 oh, 911-related availability for wireless providers. They
4 have a person there that closely follows that. We look at --
5 we looked at maps of, you know, wireless providers' coverage
6 areas. But beyond that, that's all we did.

7 Q. Are those maps in the record in this case?

8 A. No.

9 Q. Are the individuals that you talked to, have
10 they been offered -- have they offered testimony in this case?

11 A. No.

12 Q. Has there been any kind of under oath written
13 statements given by those individuals and offered in this
14 case?

15 A. No.

16 Q. Do you know whether or not Bell has filed
17 anything in regard to the availability of wireless service in
18 this case?

19 A. They identified the wireless provider that they
20 feel qualifies for that particular exchange and that's -- and
21 they also cited a website where they obtained that
22 information.

23 Q. So their source is a website somewhere. Is
24 that website or the author of that website, has that been
25 offered into evidence in this case?

1 A. Not that I'm aware of. They simply identify
2 the -- the website address.

3 Q. So was there anybody that had first-hand
4 knowledge of the authenticity of that information on that
5 website that testified in this case?

6 A. No.

7 COMMISSIONER GAW: I think I'm done, Judge.
8 Thank you.

9 COMMISSIONER MURRAY: I have another question,
10 but if you want to follow up --

11 COMMISSIONER CLAYTON: It will be really quick.
12 It will be really quick.

13 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

14 Q. On this wireless issue, I wanted to clarify.
15 In your analysis of whether a wireless carrier is serving --
16 gosh, I can't see the board -- pick an exchange up there.
17 When you looked at the maps, it didn't say whether a local
18 phone number would be available there; is that correct?

19 A. That's correct.

20 Q. So if -- I don't -- let me see that chart. So
21 let's say Joplin -- Joplin says Verizon is the competitor 2 on
22 Exhibit 3. You don't know if there's a Joplin phone number
23 available for the wireless provider?

24 A. No.

25 Q. So it's basically coverage works there, but it

1 could be a long distance call?

2 A. Potentially, yes.

3 Q. Does the statute make reference to what type of
4 wireless service needs to be available in an exchange to count
5 or does it just have to have cell towers?

6 A. I mean, it just talks about commercial mobile
7 service providers and they provide some federal citations.
8 Our interpretation of that is, you know, wireless providers.
9 We haven't made a distinction -- I mean, we -- as to the types
10 of wireless providers. I'm not quite sure what -- if I'm
11 addressing your question or not.

12 Q. I think the answer is you just think coverage
13 is sufficient. Is that how you interpret that?

14 A. Yes.

15 Q. Well, for, like, say, Mexico, Missouri,
16 Sprint/Nextel is listed as the competitor. You don't know if
17 there's a Mexico number there. Could be --

18 A. No. We don't --

19 Q. It could be a Columbia number?

20 A. We don't have any information as to the number
21 of providers that -- that a particular wireless company may
22 have in a certain exchange. I don't know if the wireless
23 company would even necessarily have that information.

24 Q. Whether they have an NXX for --

25 A. Yeah, I --

1 Q. Or is that NPA?

2 A. They would probably have that information.

3 Q. Do we maintain records on that -- on those
4 numbering issues, what NXX belongs in what exchange?

5 A. We have a list of, you know, telephone numbers
6 by area code, NXX and who they're assigned to. And that may
7 be --

8 Q. So we do have -- we do hold a list of numbers
9 and we know who they're assigned to? So could you look at
10 that record and say Sprint/Nextel, they have -- they have NXX
11 numbers in the following exchanges? Could you cross-reference
12 those --

13 A. Maybe.

14 Q. -- to know if they're offering a local number
15 in Gravois Mills or Imperial or Jackson or Pond, Missouri or
16 something like that?

17 A. Maybe.

18 Q. Maybe.

19 A. I'd have to look at our list. And -- and I
20 think it -- it might be possible, but I -- I'd have to look at
21 the list again.

22 COMMISSIONER CLAYTON: Okay. Thank you.

23 JUDGE RUTH: Commissioner Murray?

24 COMMISSIONER MURRAY: Thank you.

25 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

1 Q. I just wanted to ask you in terms of the
2 statutory requirement where one commercial service provider --
3 up to one can be used to establish one of the two providers
4 for competitive status, it references 47 USC Section 332 D(1)
5 and 47 CFR, parts 22 or 24. And then it says, Shall be
6 considered as entities providing basic local telecommunication
7 service provided that only one such non-affiliated provider
8 shall be considered.

9 And I'm assuming you read that as any -- a
10 wireless provider shall be considered as an entity providing
11 basic local communications service?

12 A. Yeah. Wireless in a somewhat generic sense of
13 the word. We're not talking about hand radio operators or any
14 other wireless type of service.

15 Q. The CMS providers as outlined in those
16 sections?

17 A. Yes.

18 Q. And then in most -- are there any exchanges in
19 Missouri in which there is only one wireless provider that you
20 know of?

21 A. I don't know.

22 Q. Are you aware of, in general, say, on average,
23 how many wireless providers would be in an exchange?

24 A. That would vary by exchange, but no, I don't
25 know.

1 Q. Okay. And in terms of these particular
2 exchanges, I assume that means you're not aware of how many
3 other wireless providers there may be in each one of these
4 exchanges?

5 A. That's correct.

6 COMMISSIONER MURRAY: Okay. Thank you.

7 JUDGE RUTH: Commissioner Gaw?

8 COMMISSIONER GAW: Just real quickly.

9 FURTHER QUESTIONS BY COMMISSIONER GAW:

10 Q. Mr. Van Eschen, earlier you were asked about
11 verifying whether or not there were actual -- was an actual
12 customer or customers of wireline service in an exchange. Did
13 you verify that there were -- that there was actually service
14 being provided to business customers or residential customers
15 by wireless -- by a wireless or wireless companies in each
16 exchange?

17 A. No, we did not.

18 Q. And it is true, is it not, Mr. Van Eschen, that
19 basic local telecommunications service is a two-way service?

20 A. Yes.

21 COMMISSIONER GAW: That's all I have. Thank
22 you, Judge.

23 COMMISSIONER MURRAY: I have one more.

24 JUDGE RUTH: Commissioner Murray.

25 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

1 Q. In relation to that question, and I'm reading
2 the statute again, and it talks about the wireless provider,
3 the CMS provider. And then it says, Shall be considered as
4 entities providing basic local telecommunications service,
5 provided that only one such non-affiliated provider shall be
6 considered as providing basic local telecommunications service
7 within an exchange.

8 It doesn't say that there is a procedure
9 whereby there has to be a determination made that there is
10 such provision of service. It says wireless mobile service
11 provider shall be considered as providing basic local
12 telecommunications service, does it not?

13 A. Well, there needs to be two entities providing
14 basic local service. And one of the entities could be a
15 wireless provider. The other entity can be a wireline
16 provider.

17 Q. Okay. And what I'm trying to get at is the
18 question of whether you have to look at whether that provider
19 is providing basic local service or is it -- if the wireless
20 carrier is providing service in the exchange, is the direction
21 from the statute that they shall be considered as providing
22 basic local service?

23 A. I'm not sure I understand the question.

24 Q. Okay. Probably because I didn't phrase it very
25 well. I'm trying to just establish what it is that you have