

1 to verify here or that we have to verify before we use one of  
2 those commercial service -- commercial mobile service  
3 providers as one of the competitors to establish competitive  
4 status.

5 A. I mean --

6 Q. First of all --

7 A. -- conceivably it could be two wireline  
8 providers, if that's what you're getting at.

9 Q. No. I'm saying if one of them -- one of them  
10 being used is a wireless provider, in order to consider that  
11 wireless provider, what information do you have to have that  
12 it is --

13 A. Well, technically the statutes talk about  
14 providing basic local service by that wireless provider.

15 Q. Well, it says they shall be considered as  
16 providing basic local. For purposes of this section,  
17 commercial mobile service providers -- and then it shows where  
18 they're identified -- shall be considered as entities  
19 providing basic local telecommunications service.

20 A. I'm not quite sure I'm understanding your  
21 question.

22 Q. Okay. And I'm probably not asking it very  
23 clearly. I guess let me see if I can try again. This would  
24 also raise the question as to the wireline provider because  
25 the same language is used in that, Shall be considered as a

1 basic local telecommunications provider. Well, no, that's not  
2 true.

3 For wireline -- for the wireline entity in the  
4 statute, it says, Any entity providing local voice service --  
5 and then it goes on -- in whole or in part shall be considered  
6 as a basic local telecommunications service provider for  
7 purposes of this section.

8 But if you look at commercial mobile service  
9 providers, it doesn't say providing. It says, Mobile  
10 service -- commercial mobile service providers as identified  
11 in shall be considered as entities providing.

12 And I guess what I'm asking is, if they are  
13 providing any service within the area -- within the exchange,  
14 does that mean they shall be considered as providing basic  
15 local telecommunications service for purposes of this section?

16 A. It would meet I guess half of the test that --  
17 that one of the entities, which could be a wireless provider,  
18 is providing service in that exchange.

19 Q. And it shall be -- they shall be considered as  
20 providing basic local telecommunications service?

21 A. I'm not --

22 Q. You're still not following my question.

23 A. I'm still not following the question.

24 COMMISSIONER MURRAY: Okay. I'll give up.

25 Sorry.

1 COMMISSIONER CLAYTON: He said leave him alone  
2 so I'm not going to bother him.

3 JUDGE RUTH: I think you should ask this  
4 question.

5 COMMISSIONER CLAYTON: Just go on.

6 JUDGE RUTH: No additional questions from the  
7 Bench? We'll move to recross.

8 Mr. Lane, are you ready?

9 MR. LANE: Sure.

10 RECROSS-EXAMINATION BY MR. LANE:

11 Q. Hello, again.

12 A. Hello.

13 Q. Commissioner Murray asked you a couple  
14 questions about Big River and why you didn't inquire of them  
15 about migration orders. Do you recall those questions?

16 A. Yes.

17 Q. And is it fair to say that Staff simply  
18 accepted Big River's representation that it wasn't providing  
19 service on a facilities basis in those exchanges as correct?

20 A. I think at this point, yes.

21 Q. And it's also fair to say, isn't it, that in  
22 this case you are aware of a situation in which a CLEC told  
23 you it wasn't providing service in an exchange, but further  
24 investigation it turned out that wasn't the case. Right?

25 A. Yeah. There can be those issues, yes.

1 Q. I mean, there was in this case with regard to  
2 Socket's provision of service in Fulton. Right?

3 A. Yes.

4 Q. In your Direct Testimony you identified Socket  
5 as being a provider of business services -- or that SBC  
6 Missouri had identified them but that when you checked with  
7 Socket, they denied they were providing business service in  
8 the Fulton exchange. Right?

9 A. Yeah. There -- I'm trying to recollect.

10 Q. And then SBC Missouri provided you with a copy  
11 of the page from Socket's own website where they identified  
12 themselves as providing basic local business service in the  
13 Fulton exchange and quoted from a satisfied customer of their  
14 service. Do you recall that?

15 A. Right. Right.

16 Q. And then when you went back to Socket, they  
17 admitted, yes, they were providing service?

18 A. Yes. That is correct.

19 Q. And would you say -- would you agree, in  
20 general, that CLECs have an incentive not to say -- excuse me,  
21 that CLECs have an incentive to say they're not providing  
22 local service utilizing ing their own facilities because by  
23 doing so, SBC Missouri will be entitled to competitive  
24 classification and be able to compete with them on more even  
25 terms?

1           A.       I guess there might be that potential. I don't  
2 feel we came across that. And the reason why I think that, I  
3 think most of the companies have generally tried to be, you  
4 know, up front with us and, you know, they pointed out  
5 instances that, you know, yeah, we are providing service in  
6 this way and so on and so forth.

7           Q.       And you told them --

8           A.       I guess -- I guess the potential is, yeah,  
9 there might be an interest on their part to be  
10 non-cooperative, but I don't know if that has occurred.

11          Q.       So when they tell you that they are providing  
12 service in an exchange utilizing their own facilities in whole  
13 or in part, that's something that's essentially against their  
14 interest because they recognize that that's going to result in  
15 competitive classification for SBC Missouri. Right?

16          A.       I don't know. They -- they -- they realize  
17 that, you know, what they are saying is -- will allow that  
18 exchange to be classified as -- as competitive.

19          Q.       Right. And you made that clear. You indicated  
20 that with Birch, right, when you talked with Birch? They  
21 understood the context of the questions to them. Right?

22          A.       Yeah. I think most of the CLECs, if not all of  
23 them, knew why we were asking them certain questions.

24          Q.       Right. And so when they told you, yes, they  
25 are providing service in a particular exchange, it was

1 something that you were willing to believe because, in part,  
2 that was against their own interest because it would result in  
3 competitive classification for SBC Missouri in that exchange.  
4 Right? It's an added sign of validity of what they told you.  
5 Right?

6 A. I mean, that wasn't in our -- that wasn't in my  
7 mind.

8 Q. No. But thinking back on it now, that makes  
9 sense to you, doesn't it?

10 A. I mean, all we were trying to do is verify if  
11 they were actually providing service in the exchange.

12 Q. But if there's some question about whether the  
13 information they gave you is accurate, that's another  
14 indicator of accuracy, is it not, because it's against their  
15 interest to say that they're providing service using their own  
16 facilities because we'll then be able to get competitive  
17 classification?

18 A. They could potentially feel that way, yes.

19 Q. Okay. You were also asked some questions by  
20 Commissioner Murray concerning the portion of the statute that  
21 says that they should be considered as competitors whether or  
22 not they're regulated by the Commission. Do you recall that?

23 A. Yes.

24 Q. And you had indicated your view that it might  
25 be better to make those carriers come in and be certified

1 first before you counted them. Right?

2 A. Yes.

3 Q. And would you agree with me that it's not  
4 particularly fair from the ILEC's perspective with that  
5 approach because they're denied competitive classification  
6 because the CLEC hasn't complied with Commission rules?

7 A. Perhaps. If -- if, you know, we're unable to  
8 resolve that issue in a timely manner.

9 Q. You were also asked some questions concerning  
10 the reliability of E-911 listings. Right?

11 A. Yes.

12 Q. And from your perspective, you didn't rely on  
13 them at all. You relied upon your own review consisting of  
14 Annual Report analysis plus discussions with CLECs. Right?

15 A. Yeah. I'd have to say we primarily relied on  
16 our discussions with CLECs at this point.

17 Q. Plus Annual Reports?

18 A. Plus Annual Reports, plus some of the other  
19 items that I mentioned.

20 Q. It's SBC Missouri, in their evidence, that  
21 relied upon E-911 listings in part. Right?

22 A. Right.

23 Q. Okay. And when you say that you're not certain  
24 about the validity of the -- or the accuracy of the E-911  
25 databases, you certainly haven't explored the matter one way

1 or the other. Right?

2 A. That's true.

3 Q. And, in general, you're aware that the E-911  
4 database is used by all of the PSAPs in SBC Missouri's  
5 territory to rely upon -- to dispatch emergency services,  
6 police, fire, medical and the like based on the accuracy of  
7 the database. Right?

8 A. That seems reasonable.

9 Q. And if those databases were -- if that database  
10 was inaccurate, wouldn't you agree that the Commission would  
11 quite likely have heard about that because of the failure of  
12 emergency services to be timely provided to customers that  
13 need them?

14 A. I don't know if we'd hear about that or not.

15 Q. You don't think that would be an issue that  
16 would come to the attention of the Commission if there were  
17 widespread problems with the validity and accuracy of the  
18 database?

19 A. Widespread problems?

20 Q. Right.

21 A. Yeah. Perhaps if there were widespread  
22 problems.

23 Q. And I may have misunderstood your testimony  
24 when you were responding to questions from Commissioner  
25 Clayton. And I want to refer you to Antonia for business



1 services. Just for clarification, you are recommending, based  
2 on Staff's analysis here, that competitive classification be  
3 granted in the Antonia exchange. Right?

4 A. Right.

5 Q. Okay. It was confirmed in your mind from  
6 Birch's Annual Report, plus your conversations with Birch.  
7 Right?

8 A. Yes.

9 Q. Okay. You were also asked some questions about  
10 other Commission records that were or could have been  
11 reviewed. Did you review any of the records cited by SBC  
12 Missouri in its petition where it identified other cases in  
13 which the Commission had examined certain data regarding  
14 provision of service in individual exchanges?

15 A. We looked at some of the information in the  
16 prior Southwestern Bell competitive classification case.

17 MR. LANE: That's all I have. Thank you,  
18 Mr. Van Eschen.

19 JUDGE RUTH: Public Counsel?

20 MR. DANDINO: I have no questions. Thank you.

21 JUDGE RUTH: Redirect?

22 REDIRECT EXAMINATION BY MR. HAAS:

23 Q. Mr. Van Eschen, Mr. Lane had asked you some  
24 questions about the follow up that Staff did after reviewing  
25 Annual Reports from the CLECs. In that follow up did the

1 Staff find an occasion or occasions where a CLEC had switched  
2 from UNE-P after the time that it filed its Annual Report?

3 A. Yes.

4 Q. And can you give me an example of that?

5 A. Well, I believe, you know, an easy example -- I  
6 think Big River was one company that comes to my mind and I  
7 believe there's others.

8 MR. HAAS: That's the only question I had for  
9 Mr. Van Eschen.

10 Your Honor, there were questions from the Bench  
11 about what notice was given in this case. And I would be  
12 willing to call Natelle Dietrich and she can explain what she  
13 has found from looking at the Commission records.

14 JUDGE RUTH: That was Commissioner Murray and  
15 she may have had that question answered. I'm not sure. Let  
16 me ask.

17 COMMISSIONER MURRAY: Well, Judge, I believe  
18 what I got was a copy of the order. I don't know that I have  
19 seen a copy of the notice that went out, so I'm not sure that  
20 we have a complete answer.

21 JUDGE RUTH: Would you like to call your  
22 witness?

23 And, Mr. Van Eschen, you may step down.

24 MR. HAAS: Staff calls Natelle Dietrich.

25 Your Honor, I'd like to have two exhibits

1 marked. At this time I only have one copy of one of the  
2 exhibits and then I would provide the additional copies later.  
3 The first exhibit is the Commission's press release for this  
4 case.

5 JUDGE RUTH: Does it have a date?

6 MR. HAAS: September 6th.

7 JUDGE RUTH: So that would be Exhibit 7.

8 MR. HAAS: And the second exhibit is the  
9 service list for the order directing notice that the  
10 Commission issued in this case. And the date of the service  
11 list is September 2nd.

12 JUDGE RUTH: Okay. That will be marked as  
13 Exhibit 8. Let me swear in your witness first.

14 (Witness sworn.)

15 JUDGE RUTH: Let me clarify. You've given me  
16 what would be the press release. That's Exhibit 7.

17 MR. HAAS: Exhibit 7.

18 JUDGE RUTH: But you don't have copies for us  
19 at this time of Exhibit 8?

20 MR. HAAS: That's correct.

21 (Exhibit Nos. 7 and 8 were marked for  
22 identification.)

23 NATELLE DIETRICH testified as follows:

24 DIRECT EXAMINATION BY MR. HAAS:

25 Q. Ms. Dietrich, would you state your name for the

1 record?

2 A. Natelle N-a-t-e-l-l-e, Dietrich,  
3 D-i-e-t-r-i-c-h,

4 Q. And where are you employed?

5 A. Missouri Public Service Commission,  
6 telecommunications department staff.

7 Q. And have you conducted a review of the  
8 Commission records to determine what notice was sent out in  
9 this case?

10 A. Yes, I have.

11 Q. Would you please turn your attention to the  
12 item that has been marked Exhibit No. 7? Can you identify  
13 that?

14 A. Yes. It's PSC News dated September 6th for  
15 immediate release, PSC sets intervention deadline in SBC  
16 Missouri request for competitive classification in a number of  
17 its exchanges.

18 Q. Do you know to whom that press release was  
19 sent?

20 A. The press release was sent to members of the  
21 General Assembly, the Capitol Press Corps, the general press  
22 in the areas being requested, for instance, like the Post  
23 Dispatch in St. Louis, Newsleader in Springfield, medias such  
24 as that. Then it was placed on the PSC press list serve,  
25 which is a list serve that has been compiled to receive press

1 releases and also placed on the Commission's website.

2 Q. Ms. Dietrich, I would turn your attention to  
3 the order directing notice, which is a record of the  
4 Commission, which is already in EFIS. Have you been able to  
5 determine what notice was provided of that order directing  
6 notice?

7 A. Yes. The order directing notice from  
8 September 2nd orders that the data center of the Missouri  
9 Public Service Commission send notice to all cert--  
10 certificated competitive local exchange carriers and to all  
11 incumbent local exchange carriers in the state of Missouri.  
12 And the data center sends information via e-mail to all  
13 certificated -- in this case CLECs and ILECs -- or CLECs and  
14 ILECs that have valid e-mail addresses in EFIS.

15 And I believe it was marked as Exhibit 8 is  
16 that list of e-mail addresses of who would have received  
17 notice of this. The notice that went out was this order  
18 directing notice, a copy of it.

19 The second part of that is that the public  
20 information office of the Missouri Public Service Commission  
21 provide notice to the members of the General Assembly and to  
22 the news media. And that was the press release that we just  
23 talked about.

24 MR. HAAS: May I approach the witness?

25 MR. HAAS: Your Honor, I would move for the

1 admission of Exhibit No. 7, the press release, and Exhibit  
2 No. 8, the service list.

3 JUDGE RUTH: Okay. First, Exhibit 7, the press  
4 release dated 9/6/05 has been offered into the record. Are  
5 there any objections to it being received? Public Counsel?

6 MR. DANDINO: No objection.

7 JUDGE RUTH: SBC?

8 MR. LANE: No, your Honor.

9 JUDGE RUTH: Okay. Exhibit 7 is received into  
10 the record.

11 (Exhibit No. 7 was received into evidence.)

12 JUDGE RUTH: Exhibit 8 is the service list for  
13 the order and notice and it is dated 9/2/05. Are there any  
14 objections to it being received into the record? Public  
15 Counsel?

16 MR. DANDINO: No objection.

17 JUDGE RUTH: SBC?

18 MR. LANE: No, your Honor.

19 JUDGE RUTH: I'll note that there were not  
20 adequate copies of Exhibit 8 so you will provide those on  
21 Monday. Correct, Staff?

22 And Exhibit 8 is received but we'll get the  
23 copies Monday morning.

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

25 MR. HAAS: Those were all the questions that I

1 had for Ms. Dietrich.

2 JUDGE RUTH: Okay. Then I'll ask if there are  
3 questions from the Bench?

4 COMMISSIONER MURRAY: I don't believe so.

5 JUDGE RUTH: Thank you. If you'll give us just  
6 a moment.

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. Ms. Dietrich, in either Exhibit 7 or Exhibit 8  
9 are the names of the exchanges for which competitive status is  
10 sought listed?

11 A. No, they are not. It lists the number of  
12 exchanges, which was taken from the order. I can say that I  
13 worked with Mr. Kelly of the public -- PSC's public  
14 information office on the press release and we did talk to a  
15 couple newspapers, the AP, the Post Dispatch, a couple others.

16 And when the press release originally went out,  
17 if you look at the order directing notice, in No. 1 it talks  
18 about Exhibits A-1 HC and Exhibit A-2 HC. At the time the  
19 press release went out, it appeared that the exchange list was  
20 highly confidential by the way the order was listed. Prior to  
21 talking to the press though, we were able to verify that that  
22 information was not highly confidential and so as we talked to  
23 people, we directed them to the Commission's website to get  
24 the list of exchanges.

25 Q. So only as you talked to people?

1 A. That's correct.

2 Q. So there was never a notice issued that listed  
3 the exchanges?

4 A. That's correct.

5 Q. And there was -- was there ever a notice issued  
6 that listed the particular competitors that were alleged in  
7 each of the exchanges that -- where competitive status was  
8 sought?

9 A. No. That information was classified as highly  
10 confidential and the Commission just recently declassified it.

11 Q. When did that occur?

12 A. It was either Tuesday or Thursday of this week.

13 Q. And are you aware of when that information  
14 actually was released?

15 A. I believe it was yesterday. I may be off --

16 Q. So the first time that competitors would have  
17 been given this notice from one of our official notifications  
18 would have been if they would have looked and checked on our  
19 website yesterday?

20 A. That's correct. Then I do know that we did  
21 contact at least one of the papers that had made inquiries and  
22 told them the information had been declassified.

23 Q. Ms. Dietrich, did you participate in any of the  
24 investigation on this case?

25 A. Yes, I did.



1 Q. Did you examine the -- participate in gathering  
2 information from the Annual Reports?

3 A. I did not participate in the gathering of the  
4 information, just in the reviewing and the discussions.

5 Q. Okay. Are you familiar with Annual Report  
6 filings?

7 A. Yes.

8 Q. Are you familiar with -- are those Annual  
9 Reports specific to the Commission or sometimes more general  
10 in nature that are filed as Annual Reports?

11 A. I know -- they're specific to the Commission  
12 for most of the companies. There may be a couple companies  
13 that are allowed to file like their FCC filings. I'm not  
14 sure.

15 Q. Okay. Is it sometimes to a company's benefit  
16 in their Annual Report to show that they are active and doing  
17 business in order to attract other customers or to show that  
18 they're being successful in their business?

19 A. I -- I don't know. I guess that would be the  
20 company's point of view. I know some companies file that as  
21 confidential. And in that case, customers would not be able  
22 to see it, so we would only be talking about those that were  
23 filed publicly, assuming that customers looked at it.

24 Q. Do some companies file publicly?

25 A. Yes, they do.

1           Q.       Would it make sense that some of them might  
2 want others to know that they're actively doing business in  
3 the state in a particular exchange?

4           A.       That's a possibility.

5           Q.       In fact, do not competitive companies, if they  
6 are doing business in an exchange, sometimes advertise for  
7 business?

8           A.       Yes, they do.

9           Q.       And demonstrate that they do have activity in  
10 that area?

11          A.       Yes.

12               COMMISSIONER GAW: Okay. That's all I have,  
13 Judge. Thanks.

14               JUDGE RUTH: Any additional questions from the  
15 Bench for this witness?

16               Then I'm going to allow the parties an  
17 opportunity to ask questions based on the Bench questions.  
18 Are there any from SBC?

19               MR. LANE: Just a couple, your Honor.

20       CROSS-EXAMINATION BY MR. LANE:

21           Q.       Good afternoon.

22           A.       Good afternoon.

23           Q.       On Exhibit 8, which is the service list --

24           A.       Yes.

25           Q.       -- is that the standard method that the

1 Commission utilizes to notify incumbent local exchange  
2 companies and competitive local exchange companies of  
3 regulatory proceedings of which they might have an interest?

4 A. Unless there's something that specifically  
5 tells them to do otherwise, yes.

6 Q. And it's normal practice for the Commission not  
7 to attach the petition itself, but to direct the CLEC or ILEC  
8 to the website to get more information?

9 A. That's correct.

10 Q. And the petition that SBC Missouri filed in  
11 this case was available in the EFIS system?

12 A. Yes, it was.

13 Q. Okay. Including paragraph 21 where SBC  
14 Missouri requested the Commission to give competitive  
15 classification in additional exchanges that would be revealed  
16 by the Commission's own records?

17 A. That's correct.

18 Q. Okay. And the exchanges where SBC Missouri was  
19 actually seeking competitive classification based on the  
20 information that it had was available publicly from the  
21 petition on the EFIS website. Right?

22 A. I'm sorry. What was available?

23 Q. The list of the maps of the exchanges where SBC  
24 Missouri was seeking competitive classification.

25 A. That's correct.

1 Q. Okay. And so a CLEC -- if the CLEC provided  
2 service in that exchange, they would know that their interests  
3 might be affected and they could seek to intervene if they  
4 chose to. Right?

5 A. That's correct.

6 Q. And that's true both in the 30-day proceeding  
7 and in the 60-day proceeding. Right?

8 A. Right.

9 Q. And it's fair to say that not a single CLEC  
10 intervened in either proceeding. Right?

11 A. I don't recall any, no.

12 MR. LANE: Okay. That's all. Thank you very  
13 much.

14 JUDGE RUTH: Public Counsel?

15 MR. DANDINO: No questions. Thank you.

16 JUDGE RUTH: Redirect?

17 MR. HAAS: No questions.

18 JUDGE RUTH: Thank you. You may step down.

19 Staff, do you have any additional witnesses?

20 MR. HAAS: No, your Honor.

21 JUDGE RUTH: Public Counsel, it's my  
22 understanding you do not have any witnesses?

23 MR. DANDINO: I have no witnesses, your Honor.

24 JUDGE RUTH: Okay. And SBC Missouri, it's my  
25 understanding that we have -- we've called all your witnesses;

1 is that correct?

2 MR. LANE: That's correct, your Honor.

3 JUDGE RUTH: Okay. Then we are going to move  
4 on to closing arguments. The parties will have an opportunity  
5 for closing argument. It's not required. However, as the --  
6 I believe the order and notice indicated, we will not have the  
7 standard briefs.

8 And it's my understanding, based on a  
9 conversation at the beginning of the hearing, the parties  
10 propose closing arguments to be Public Counsel, Staff and then  
11 SBC; is that correct?

12 MR. LANE: That's fine, your Honor.

13 MR. DANDINO: That's fine.

14 JUDGE RUTH: Okay. Public Counsel, you may  
15 begin.

16 MR. DANDINO: Thank you. May it please the  
17 Commission. At the beginning of this case, Public Counsel  
18 asked the Commission to look very closely at the evidence and  
19 hold SBC to the strict compliance with the statute. Also, we  
20 warned you about the need for accurate -- true and accurate  
21 information. And I believe that the testimony here is -- I  
22 don't think it supports the application.

23 Let's look, first of all, even at the wireless  
24 reporter -- the wireless. The only information in this record  
25 as to the wireless is from a website of LetsTalk.com. And

1 Mr. Unruh, who prepared this, testified that he didn't know  
2 who sponsored it, but he's relying upon the accuracy of that  
3 information on some unknown sponsor. That is the quality of  
4 evidence this Commission should not accept.

5 As far as the other information in there,  
6 there's a lot of questions about whether it was verified or  
7 not. I don't remember anyone being -- either Mr. Unruh or  
8 Mr. Van Eschen being very firm or very strong about whether  
9 any particular item was verified.

10 And the one point that I would like to bring  
11 out in the -- about the additional -- 15 additional exchanges  
12 that SBC did not request, they keep pointing to paragraph 21  
13 of their petition. Well, paragraph 21 -- you know, take a  
14 very close look at what paragraph 21 is. It does not identify  
15 the exchanges. How we could provide any type of a notice to  
16 any of the party -- any party to any customer is highly  
17 questionable.

18 The intervention deadline for this case I  
19 believe was September 7th. The order granting the motion to  
20 declassify the exhibits was issued September 13th, effective  
21 September 14th. And this hearing today is September 16th.  
22 I think that goes a long way of saying how much notice was  
23 given to -- given as to the investigation into those other  
24 14 -- or other 15 exchanges.

25 I think if you look at the evidence as a whole,

1 I think it falls short of being true, accurate and correct and  
2 whether it's competent and substantial evidence which this  
3 Commission can base its decision on. Ask you to reject  
4 Southwestern Bell's application and tariffs. Thank you.

5 JUDGE RUTH: Thank you, Mr. Dandino.

6 And Staff.

7 MR. HAAS: May it please the Commission.

8 First, the Staff would refer the Commission to the Staff's  
9 pretrial brief. And in that brief the Staff cited to a  
10 Missouri Supreme Court statement that the law in this state as  
11 to the burden of proof is clear and designed to assure that  
12 hearings on contested matters provide the parties with  
13 predictable rules of procedure. The party asserting the  
14 positive of a proposition bears the burden of proving that  
15 proposition.

16 Here, SBC asserts that there are the requisite  
17 number of entities providing basic local service to business  
18 or residential customers or both in an exchange. Therefore,  
19 SBC Missouri has the burden of proof.

20 Second, SBC Missouri asks the Commission to  
21 grant it competitive classification under the 30-day track for  
22 exchanges that were not listed in its petition. The Staff  
23 disagrees with this request, as we've said before.

24 During his testimony, Mr. Van Eschen talked  
25 about the Sprint case. In that case, Sprint's application

1 asks for competitive classification for business services in  
2 the Fort Leonard Wood exchange because Fidelity's Annual  
3 Report listed two full facility basis customers in that  
4 exchange.

5 Fidelity sought intervention. The next thing  
6 that happened was that Sprint amended its application to  
7 remove the request for competitive classification for business  
8 service in the Fort Leonard Wood exchange. Now, I don't know  
9 why, but it does suggest that there may have been a problem  
10 with the Annual Report. But that problem was brought to the  
11 Commission's attention, to the Staff's attention, to Sprint's  
12 attention because of notice to the intervenor.

13 Third, the statute provides that the wireline  
14 entity providing local voice service counts, regardless of  
15 whether such entity is subject to regulation by the  
16 Commission. The Staff suggests that unregulated and unlawful  
17 are not synonymous.

18 In conclusion, for the reasons set forth in the  
19 testimony of Mr. Van Eschen, the Staff requests the Commission  
20 to grant competitive classification for residential services  
21 in 24 of the 28 requested exchanges and in 43 of the 46  
22 requested exchanges for business services. Thank you.

23 JUDGE RUTH: SBC.

24 MR. LANE: I'll be very brief, your Honor. In  
25 this case we asked for -- in our petition and then as modified



1 here -- for competitive classification in 46 exchanges for  
2 business services and 28 exchanges for residential services.  
3 Based on the testimony by Staff, they concur in 43 of the 46  
4 business exchanges and 24 of the 28 residential exchanges.

5 I think it's absolutely clear that the  
6 Commission needs to grant competitive classification in those  
7 exchanges. There is clear evidence from two separate sources.  
8 SBC presented its evidence and Staff presented its separate  
9 analysis that relied not at all on SBC's Missouri evidence.  
10 So we have two independent sources and verification of those  
11 and I think the Commission pretty clearly needs to grant  
12 competitive classification in those areas.

13 That leaves really two areas that are in  
14 dispute. One is the additional exchanges that we identified  
15 in our petition and which Staff does not recommend competitive  
16 classification, the three business exchanges and the four  
17 residential exchanges.

18 We presented information in our petition and in  
19 Mr. Unruh's testimony that identified the provider and the  
20 basis on which we proved that that provider was offering  
21 service in the exchange utilizing its own facilities. Staff  
22 has not, nor any other party, has countered that.

23 And, in fact, the only other witness in this  
24 case, Mr. Van Eschen, agrees that the type of data that we  
25 were providing, the migration data and E-911 data, is

1 sufficient to establish somebody providing service in an  
2 exchange. They didn't investigate in this case and instead  
3 took their own path to check with the CLECs, which again, is  
4 fine, but if the CLEC doesn't confirm it, that doesn't mean  
5 that the evidence we submitted is insufficient. It is  
6 sufficient for you to grant competitive classification in  
7 those exchanges.

8           With regard to the 15 business exchanges and  
9 1 residential exchange that Staff identified as meeting the  
10 30-day trigger, we believe the Commission needs to grant  
11 competitive classification in that area. We believe it both  
12 as a matter of law because the statute gives the Commission  
13 the obligation to look and to check its own records and to  
14 make necessary and appropriate inquiries of regulated  
15 providers in order to determine whether and where competitive  
16 classification should be granted. That's the requirement of  
17 the statute.

18           The Staff worked on that, presented it to the  
19 Commission and the Commission needs to utilize that and grant  
20 competitive classification in those exchanges.

21           I would also say as a practical matter it would  
22 be silly to reach any other result because based on what we  
23 know now, we would simply resubmit another petition, Staff  
24 would confirm that competitive classification should be  
25 granted in those areas and the Commission would approve it.

1 It's a waste of administrative time and the parties' time to  
2 require that kind of step and we don't think you can even  
3 under the law. We think you need to go ahead and grant it  
4 now.

5 The contentions that this is a matter that the  
6 CLECs lack notice and they would have been in here by the  
7 scores if only they'd known is really a silly argument. All  
8 of these CLECs had notice of the existence of this proceeding.  
9 All of them were obviously well aware of the legislation  
10 having been passed. This has gotten a lot of attention in the  
11 press and in the legislative session we just went through.

12 These are experienced companies, many of which  
13 frequently participate in matters before this Commission. And  
14 when they had notice of it and access to it, they could see  
15 precisely which exchanges we were seeking competitive  
16 classification in and they could see from the maps that were  
17 attached that we were asking for competitive classification in  
18 those exchanges.

19 In all but 3 of the 16 exchanges, 15 business  
20 and 1 residential exchanges, that were identified were  
21 identified in the filing that we made. Precisely because we  
22 were seeking 60-day relief in those, not knowing the evidence  
23 that Staff had available to it. So the CLECs had clear and  
24 absolute knowledge that we were seeking competitive  
25 classification for 13 of those 16 exchanges from the notice

1 that was sent, which they could use then to look on EFIS and  
2 get that information.

3 With regard to the other 3, I would point --  
4 exchanges, I would point to the fact that we had in our  
5 petition a request that the Commission follow the law and do  
6 the investigation of its own records and make the necessary  
7 and appropriate inquiries and to grant us competitive  
8 classification in the additional exchanges, so the CLECs were  
9 obviously aware of that too.

10 And, again, none of them sought to intervene in  
11 this case nor have any of them sought to intervene in the  
12 60-day case. The argument of notice is silly. They did have  
13 notice, they could have intervened if they wanted to.

14 The information is there and ready for the  
15 Commission to act upon. The statute requires the Commission to  
16 act upon it and we hope that they do. That's all I have.  
17 Thank you very much.

18 JUDGE RUTH: Okay. I have just a couple of  
19 housekeeping matters. Just want to clarify for the record  
20 that Exhibits 1 through 8 have been received into the record.  
21 Copies of Exhibit 8 will be provided to the parties Monday  
22 morning.

23 The transcript is to be submitted by the court  
24 reporter on Monday, September 19th. If you want your  
25 electronic copy, don't forget to talk to her. It depends on

1 what time the transcript is submitted on Monday whether or not  
2 that transcript will be on EFIS Monday or Tuesday.

3 Are there any other matters that need to be  
4 addressed before we adjourn?

5 Okay. Seeing none, this hearing is concluded.

6 Thank you.

7 WHEREUPON, the hearing was concluded.  
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