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2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 September 24, 2001
6 Jefferson City, Missouri
7 Volume 2
8

9 In the Matter of the)
Investigation of the State)
10 of Competition in the) Case No. TO-2001-467
Exchanges of Southwestern)
11 Bell Telephone Company.)

12

13

14 BEFORE:

15 NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.
16 KELVIN SIMMONS, Chair
CONNIE MURRAY,
17 SHEILA LUMPE,
STEVE GAW,
18 COMMISSIONERS.

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

2 (Written Entries of Appearance filed.)

3 JUDGE DIPPELL: This is Case No. T0-2001-467
4 in the matter of the investigation of the state of
5 competition in the exchanges of Southwestern Bell
6 Telephone Company.

7 My name is Nancy Dippell. I'm the
8 Regulatory Law Judge assigned to this matter. And
9 we're going to go ahead and take entries of appearance
10 at this time, and I'd like to begin with Southwestern
11 Bell.

12 MR. LANE: Paul Lane, Tony Conroy and Leo
13 Bub on behalf of the Southwestern Bell Telephone
14 Company. Our address is One Bell Center, Room 3518,
15 St. Louis, Missouri, 63101.

16 JUDGE DIPPELL: And Staff?

17 MR. HAAS: William K. Haas, appearing on
18 behalf of the Staff of the Public Service Commission.

19 JUDGE DIPPELL: Office of the Public
20 Counsel?

21 MR. DANDINO: Michael Dandino, Office of the
22 Public Counsel, representing the Office of the Public
23 Counsel and the public.

24 JUDGE DIPPELL: AT&T.

25 MR. ZARLING: Good morning, your Honor.

1 Kevin Zarling representing AT&T
2 Communications of the Southwest, Inc., also TCG Kansas
3 City and TCG St. Louis. My business address is
4 919 Congress Avenue, Suite 900, Austin, Texas, 78701.

5 JUDGE DIPPELL: MCI WorldCom?

6 MR. LUMLEY: Good morning, your Honor.

7 Carl Lumley of the Curtis, Oetting law firm,
8 representing WorldCom Communications, Inc., Brooks
9 Fiber Communications of Missouri, Inc., MCI Metro
10 Access Transition Services, L.L.C., Nuvox
11 Communications of Missouri, Inc., XO Missouri, Inc.,
12 and Mpower Communications.

13 JUDGE DIPPELL: And Sprint?

14 MS. HENDRICKS: Lisa Creighton Hendricks,
15 appearing on behalf of Sprint Communications Company,
16 LP. My address is 5454 West 110th Street, Overland
17 Park, Kansas, 66211.

18 JUDGE DIPPELL: Missouri Independent
19 Telephone Group?

20 (No response.)

21 JUDGE DIPPELL: That was one of the parties
22 that I had a motion for and we'll get to in a moment.

23 McLeod?

24 MR. KRUSE: Bradley R. Kruse, McLeod USA
25 Telecommunication Services, Inc., and my address is

1 6400 C Street Southwest, Cedar Rapids, Iowa,
2 52406-3177.

3 JUDGE DIPPELL: And are there others
4 present?

5 MS. YOUNG: Yes, Judge. Mary Ann Young. I
6 believe at this time I'm appearing on behalf of
7 Allegiance Telecom Missouri, Inc.

8 Allegiance will not be conducting any
9 cross-examination, so I would ask to be excused on
10 their behalf.

11 I'm also local counsel for McLeod USA, but
12 Mr. Kruse will be handling the cross-examination.

13 MS. MARTIN: Good morning, Judge. My name
14 is Cathy Martin with Newman, Comley & Ruth. I'm
15 appearing on behalf of Birch Telecom of Missouri.

16 Birch also would not be putting on any
17 testimony nor conducting any cross-examination and
18 would ask to be excused.

19 JUDGE DIPPELL: Is there anyone else present
20 that wishes to make an entry of appearance?

21 (No response.)

22 JUDGE DIPPELL: Okay. I did have some
23 requests to be excused. And, in fact, I believe I
24 have one pending motion of Morton Posner, Ms. Young,
25 to appear on behalf of Allegiance; is that correct?

1 MS. YOUNG: Yes.

2 JUDGE DIPPELL: I'm not sure I have
3 previously granted that motion, so I will do so at
4 this time.

5 I did have a request from Missouri
6 Independent Telephone Group asking to be excused from
7 the hearing, as well as a motion for Fidelity
8 Communications Services.

9 As to those parties that have asked to be
10 excused, I will say that I sort of grant these in part
11 and deny in part, and, that is, you are excused from
12 being physically present at the hearing. Obviously,
13 your not being present does not excuse you from
14 raising any objections or presenting any evidence that
15 you would have done so if you were here. So you do
16 waive those rights and those rights of your parties.
17 However, you are not going to be admonished for not
18 being physically present. So those parties may be
19 excused in that sense.

20 And I did have one motion from Southwestern
21 Bell to substitute some corrected pages for
22 Surrebuttal Testimony.

23 Are there going to be objections to that
24 motion? This was filed on September 20th.

25 (No response.)

1 JUDGE DIPPELL: Has anyone received them?

2 I'm seeing a lot of questionable looks.

3 MS. HENDRICKS: Your Honor, I have not
4 received them. I don't know if Southwestern Bell has
5 an extra copy.

6 MR. ZARLING: AT&T hasn't received it.

7 JUDGE DIPPELL: I'm sorry?

8 MR. ZARLING: I also haven't received a
9 copy.

10 JUDGE DIPPELL: Mr. Lane or Mr. Conroy?

11 MR. LANE: I think those were overnighted on
12 Thursday to everyone, so they may not have them. I
13 don't know if they were in the office on Friday, but
14 we'll get copies to them.

15 JUDGE DIPPELL: Okay. You're going to get
16 copies of that testimony for everyone to review?

17 MR. LANE: Yes.

18 JUDGE DIPPELL: All right. I also had some
19 substituted pages for Ms. Meisenheimer, Office of the
20 Public Counsel. Did everyone receive those? It is a
21 revised schedule.

22 Are there going to be any objections to that
23 item?

24 MR. LANE: I'm not sure if we've received
25 that, your Honor. I'll check with Mr. Dandino. If he

1 will give me a copy, I have no problem with it.

2 JUDGE DIPPELL: Okay. All right then. I
3 would like to go ahead and go off -- I'm sorry.

4 Mr. Lumley?

5 MR. LUMLEY: I have filed a motion on behalf
6 of Mpower to be withdrawn from the case since they
7 have ceased to operate in this state.

8 JUDGE DIPPELL: Obviously, if they are not
9 operating in the state and want to be withdrawn from
10 the case, then I'll grant that motion. I think I have
11 my copy of that one.

12 Were there any other motions pending that I
13 needed to rule on at this stage?

14 (No response.)

15 JUDGE DIPPELL: When we had the prehearing
16 conference, we discussed dismissing some of the
17 parties that the Commission made as parties
18 automatically, and I intend to do that either before
19 the end of the hearing or at the end of the hearing so
20 that your briefs will not have to be served on such a
21 long list.

22 I will expect that when you come, if you
23 have other exhibits besides those that were prefiled,
24 that you'll provide enough copies for the parties that
25 are present, and also for -- and send those to the

1 remaining parties, and also, of course, for the Bench
2 and the court reporter.

3 I think at this time we'll go ahead and go
4 off the record, and we're going to premark the
5 exhibits, and then I will go get the Commissioners and
6 we can begin with opening statements.

7 Before we do go off the record, I will say
8 that I'm pretty much going to adopt the proposed order
9 of witnesses and order of opening statements and
10 cross. We'll go on that line.

11 So I have the order of -- basically, I have
12 the parties present, and if you represent more than
13 one party, I'll probably call you by your abbreviated
14 name, so Mr. Lumley is representing several parties,
15 but I'll probably just ask for MCI or WorldCom, and
16 expect that you'll make any responses for all of your
17 parties at that time.

18 So I have Southwestern Bell, Staff, Public
19 Counsel, AT&T, WorldCom, Sprint.

20 Mr. Lumley, did you enter an appearance for
21 Nuvox also?

22 MR. LUMLEY: My opening will be
23 consolidated.

24 JUDGE DIPPELL: I'm sorry?

25 MR. LUMLEY: My opening statement will be a

1 single statement.

2 JUDGE DIPPELL: All right. And you are also
3 representing XO; is that right?

4 MR. LUMLEY: Right, but they are not
5 asserting a position in the case.

6 JUDGE DIPPELL: I need you to speak up a
7 little bit since you don't have a microphone over
8 there.

9 MR. LUMLEY: Okay.

10 JUDGE DIPPELL: And McLeod and Allegiance,
11 will they be --

12 MS. YOUNG: No opening statement and no
13 cross.

14 JUDGE DIPPELL: All right. And Birch will
15 not be making an opening statement.

16 All right. In that case, we can go off the
17 record and premark the exhibits. Thank you.

18 (A RECESS WAS TAKEN; EXHIBIT NOS. 1 THROUGH
19 25 WERE MARKED FOR IDENTIFICATION.)

20 JUDGE DIPPELL: We're back on the record,
21 and we're ready for opening statements. And we'll
22 begin with Southwestern Bell Telephone Company.

23 MR. LANE: Thank you.

24 My name is Paul Lane, and I represent
25 Southwestern Bell Telephone Company in this case,

1 along with Tony Conroy and Leo Bub.

2 This is a significant case for Southwestern
3 Bell and for the Commission. From our perspective, it
4 brings to fruition the plan that the Legislature
5 envisioned back in 1996 when they passed Senate
6 Bill 507. That Act permitted local competition to
7 take place in Missouri. It also set the stage for
8 price-capped companies to be regulated in that
9 respect. Large incumbents like Southwestern Bell
10 became subject to price cap regulation.

11 And the statute also set the stage for full
12 pricing flexibility for large incumbents like
13 Southwestern Bell. The statute contemplates that full
14 pricing flexibility will be given five years after
15 competition begins in an exchange, unless the
16 Commission finds that effective competition for
17 services do not exist in the particular exchange.

18 Dial U.S. began providing service in
19 Missouri in January of 1997, so under the statute, in
20 Springfield where they began service, the Commission
21 needs to make its decision by January of next year.

22 Competition began in some of the other
23 exchanges on a staggered basis, typically within five
24 or six months from January of 1997, and so the
25 Commission needs to make its decision with regard to

1 those other exchanges within the five-year period set
2 by the statute.

3 The Commission could choose if it wanted to
4 do a case each time on each exchange as we come up to
5 the five-year period, but I think it makes more sense
6 and I think the Commission does as well to handle all
7 of it in a single case like it plans to do here.

8 I think there's four parameters to look at
9 when the Commission examines the case and decides
10 whether pricing flexibility should be granted.

11 The first is the statute itself, which is
12 Section 386.020(13), the definition of effective
13 competition.

14 The statute lays out four criteria that need
15 to be examined by the Commission, whether services are
16 available from alternative providers, whether those
17 services are functionally equivalent or substitutable,
18 whether the policies of Chapter 392 are being met,
19 whether any existing economic or regulatory barriers
20 to entry exist, and any other factors deemed relevant
21 by the Commission that are consistent and necessary to
22 implement the policies and purposes of Chapter 392.

23 With regard to the first Subsection A, the
24 extent to which services are available from
25 alternative providers, the Staff takes the view in

1 this case that the Commission should only consider
2 competition from regulated entities. We disagree with
3 that, both from an economic and from a statutory
4 interpretation perspective.

5 We think the Commission should consider
6 services from other alternative providers, those that
7 aren't regulated by the Commission. We say that
8 because from an economic perspective, if consumers
9 look at something as a service that's in competition,
10 then you should look at that.

11 From a statutory interpretation perspective,
12 the statute uses the word "services," and Staff takes
13 the position that you should interpret that to mean
14 telecommunications services, which is a defined term
15 in the statute and sets what the Commission can
16 regulate. And that does exclude wireless and cable TV
17 and other forms of competition like CPE.

18 But the Legislature didn't use the word
19 "telecommunications services" in the statute. It used
20 the word "services," which is also defined under
21 Section 386.020(47), and it's an extremely broad
22 definition there that goes far beyond the
23 telecommunications services.

24 Staff also says you should interpret the
25 words "alternative providers" to mean alternative

1 local exchange telecommunications companies. And
2 that, of course, is also a defined term, and it's the
3 CLECs that you are used to regulating.

4 But had the Legislature wanted to use that
5 term which it defined, it would have. Instead, it
6 used the word "alternative providers."

7 So we think from an economic perspective and
8 from a statutory construction perspective, you need to
9 consider all forms of competition. But our view also
10 is that even if you don't, we've shown that effective
11 competition does exist for all of our services in all
12 of our exchanges.

13 The second major parameter is the burden of
14 proof. We state, and the Staff agrees, that
15 Southwestern Bell does not have the burden of proof to
16 show that effective competition exists for services in
17 any particular exchange. Instead, the statute is
18 framed in the negative. The Commission has to find
19 that effective competition does not exist, and that's
20 the only way we don't get the pricing flexibility.

21 Having said that, we have put forth
22 substantial evidence to show that effective
23 competition does exist.

24 The third major parameter is there is no
25 market share test that's provided for by the statute.

1 The Commission, I'm sure, is aware that SB-507 was
2 passed on the heels of the Federal Telecommunications
3 Act of 1996, and at the time that Congress was
4 debating it, there was a significant issue about
5 whether there should be a market share test required
6 before RBOCs could get into the long distance market.

7 But Congress didn't adopt that, and when the
8 Legislature in Missouri passed Senate Bill 507, they
9 also didn't require any market share test.

10 Having said that, we have shown here that
11 there is substantial competition and substantial
12 market share loss in many of Southwestern Bell's
13 exchanges for many of its services.

14 The fourth main parameter for the Commission
15 to keep in mind in this case is that the Commission
16 does retain authority in two respects even after it
17 makes a finding of effective competition. The first
18 point is that the Commission continues to control the
19 prices of unbundled network elements and continues to
20 set the retail or wholesale discount for services that
21 are resold by CLECs. And so if Southwestern Bell
22 raises prices, for example, CLECs will continue to pay
23 the same price that they were paying for unbundled
24 network elements. They will continue to get the same
25 discount for resold services that they were getting

1 before, and so that has some constraining effect,
2 obviously, on Southwestern Bell's pricing after it's
3 given pricing flexibility.

4 Second is that the statute also expressly
5 permits the Commission if it chooses to to reimpose
6 price cap regulation at some point in the future if it
7 finds that effective competition no longer exists for
8 particular service in a particular exchange. Again,
9 that obviously has some constraining effect on
10 Southwestern Bell.

11 What will we do when the Commission or if
12 the Commission grants pricing flexibility in this
13 case? Let me first dispel a myth. Competition does
14 not mean that prices will decrease. I think that's an
15 important thing to remember, that we have -- most of
16 the markets in the United States are considered to be
17 competitive, yet we know as consumers that prices for
18 services tend to increase year after year for services
19 because costs of inputs like labor and other things
20 increase. The telecommunications industry is no
21 different in that respect.

22 We have hopefully productivity increases
23 like other industries have, but our prices and our
24 costs should still rise in the normal course of events
25 as our labor and other inputs increase over time.

1 A better statement probably is that
2 competition drives prices towards costs, and I think
3 that's a true statement that most economists will
4 agree with, including Dr. Aron who testifies for
5 Southwestern Bell in this case.

6 It's inevitable that this happens, and I
7 think it's something that the Commission needs to
8 recognize because of the way pricing has occurred in
9 the telecommunications industry. We've
10 purposefully -- the Commission has purposefully set
11 prices for some services above costs so that other
12 services like residential services can be priced below
13 cost.

14 And as we introduce competition into the
15 market, there has to be a recognition that prices are
16 going to move toward cost, and if you don't have that
17 recognition, then, ultimately, we're going to have
18 problems with the telecommunications industry and with
19 the economy. You can't have a situation where
20 services that are priced above costs or competitive
21 and all of those are driven to cost, while services
22 that are below cost stay at that level. Ultimately,
23 it won't work, and the Commission needs to recognize
24 that. That's why the Legislature set this plan into
25 place.

1 All right. What evidence have we presented
2 here in this case? There's two types of evidence.
3 One would be economic data and second would be what
4 I'll call retail-type data.

5 The first type you're accustomed to seeing,
6 and Mr. Hughes and Dr. Aron presented that information
7 on our behalf. The second type is less customary, but
8 we've presented here testimony of several witnesses,
9 seven in total, that have -- are in the marketing area
10 for Southwestern Bell and have responsibility for
11 particular products and services.

12 The type of information that they present is
13 the type of information that they utilize in
14 performing their jobs, things like sales brochures,
15 advertisement, tariffs, and other public documents are
16 exactly the type of information that they utilize in
17 setting pricing and marketing strategies for
18 Southwestern Bell.

19 Staff has some criticism of that type of
20 information that's presented. In our view that
21 criticism isn't justified. Certainly, I'll agree that
22 most of the witnesses in this case from the marketing
23 side haven't testified before commissions before,
24 including this Commission, and they may or may not be
25 as polished as other witnesses that testify with

1 regularity, but I can say that the information that
2 they've presented to you is the type of information
3 that they utilize in doing their jobs, and it's the
4 type of information that's considered in a competitive
5 market and it's the type of information that shows
6 that services are available from alternative
7 providers, that they're functionally equivalent or
8 substitutable, and there are comparable rates, terms,
9 and conditions.

10 So what is happening in the market today?

11 First, let me give you an overall macro view.

12 Southwestern Bell has lost more than 15 percent of the
13 access lines in Missouri. It's a very conservative
14 estimate, and our conservative estimate on the
15 business side is that we've lost more than 22 percent
16 of the business lines in Missouri.

17 I say it's conservative because it -- we
18 don't have full information, but we've done our best
19 to try to estimate that for you. And if we compare it
20 to what Staff found when they did a survey of certain
21 of the CLECs in our 271 proceeding in Missouri based
22 on August 2000 data, they were at 12 percent, and we
23 say 15 percent. So that data is more than a year old
24 now, and it's very conservative, we think, in terms of
25 the market share loss that we have.

1 Second, still from a macro perspective, the
2 question is, How do CLECs compete? This is from
3 Mr. Hughes' Schedule 9, and he in his testimony lays
4 out how CLECs are competing, and they utilize resold
5 lines and they utilize a facilities basis to compete,
6 including utilizing what's known as the UNE-P or
7 unbundled network element platform.

8 I think this chart shows a couple of things
9 that are of importance. First, that the rate of
10 access line loss and competition from CLECs is
11 increasing significantly from March of '98 through May
12 of this year. It's also important to recognize that
13 the majority of the competition that we're
14 experiencing is in the facilities basis. It's on a
15 facilities basis. It's also important to look at what
16 happens on resold markets. As you see, over time that
17 has tended to level off, which is what we would expect
18 in the market, that some providers utilize resell as
19 an entry provision into the market and then shift over
20 to their own facilities basis or to a UNE platform to
21 provide service.

22 Next is what's been the impact overall on
23 Southwestern Bell? This is a chart from Mr. Hughes'
24 Surrebuttal Testimony, Schedule 8. It shows that the
25 CLEC access lines and their use of resold lines and

1 the like has been increasing significantly over time.
2 And it also shows that not only has the growth in
3 telecommunications services been subsumed by CLECs,
4 but that Southwestern Bell is actually experiencing a
5 loss -- a net loss of access lines at an increasing
6 level.

7 And how does that competition play out on an
8 exchange basis? Mr. Hughes' Surrebuttal Schedules 1-2
9 and 1-3, which are two pages because of the size
10 requirements in his testimony; and this chart that I
11 have exhibited for you, they are put together into a
12 single chart, and it shows a couple of important
13 things.

14 First is that there is at least one CLEC
15 that's operating every one of our exchanges in
16 Missouri. You can see that the majority of the
17 exchanges in Missouri are subject to competition from
18 a number of CLECs. Mr. Hughes' Direct Schedule 3-3
19 shows that one-third of our exchanges have at least
20 15 CLECs operating in them today, and two-thirds of
21 our exchanges have at least six CLECs operating today.

22 And CLECs are competing on a facilities
23 basis. Mr. Hughes shows this in his Surrebuttal
24 Schedules 11-2 HC and 11-3 HC. The vast majority of
25 our exchanges are subject to facilities-based

1 competition. Mr. Hughes shows that 139 out of 160 of
2 our exchanges, 87 percent, have facilities-based
3 competition. So we have competition from CLECs in all
4 of your exchanges, and we have facilities-based
5 competition in the vast majority of our exchanges.

6 Southwestern Bell has also provided some
7 substantial data on the level competition in each
8 exchange, including the market share data for
9 residential and business services in each exchange.
10 That's laid out in Mr. Hughes' Surrebuttal Schedules
11 4 HC, 5 HC, and 6 HC. And as you look at this
12 information, you see that there is very substantial
13 market share loss in many of our exchanges.

14 With that background, let me look at the
15 particular issues that have been submitted to the
16 Commission for resolution in this case, and I'm going
17 to group these in a way that I hope makes sense for
18 you and not go through each one of them individually.

19 The first grouping, there is no question
20 that certain services are competitive, and no party
21 appears to dispute that. Our SS7 services, which is
22 Issue 14, and our LIDB, line information database
23 service, which is Issue 15, no one has presented any
24 evidence that these things are not competitive, and
25 we've presented a lot of information that they are.

1 Second, we've got another group of services
2 that are already deemed competitive by statute. This
3 group includes basic toll services, which is Issue 8;
4 operator services, which is Issue 17, and speed
5 calling which is a vertical service that we have for
6 both residential and business customers.

7 These are services on the toll and operator
8 services side which were declared transitionally
9 competitive back in the 1992 time frame pursuant to
10 Section 392.361. Under the statute, after those were
11 declared transitionally competitive, they were
12 extended by two three-year terms by the Commission.
13 Those terms have expired as of January of '99, I
14 believe, and under the statute, all of those services
15 are now deemed competitive, and we think the
16 Commission should recognize that in this case.

17 AT&T contends that message toll service,
18 though, isn't competitive. I believe their goal is to
19 continue to use the regulatory process to try to
20 hamstring Southwestern Bell, and I think that appears
21 to be their goal in this case. But in my view they
22 haven't thought through what they're suggesting with
23 regard to message toll service, because the statute
24 very clearly provides that if the Commission decides
25 later on a service that has gone through traditionally

1 competitive and becomes competitive, that it should be
2 treated as non-competitive, that isn't not just
3 Southwestern Bell's services that are affected. The
4 statute expressly requires that if you determine that,
5 that you have to treat all providers in the market who
6 are offering equivalent or substitutable services as
7 non-competitive as well and treat them the same way
8 and have them treated under the exact same rules as we
9 are. That's in Section 392.370.3.

10 Other parties, including Staff, recognize
11 that MTS and operator services are deemed competitive,
12 and we think the Commission should so find here.

13 The third group is private line services,
14 which is Issue 5; special access, which is Issue 12,
15 and Plexar services, which is Issue 4. These are
16 services which the Legislature found could be priced
17 on an individual customer basis. That's in
18 Section 392.200.8 in Senate Bill 507.

19 As the Staff notes, this is the grant by the
20 Legislature of the highest form of pricing
21 flexibility. You can price two individual customer
22 based on their individual circumstances. And the
23 Legislature's determination that we and others should
24 have that pricing flexibility is a pretty solid
25 indication and tantamount to a finding that those

1 services should be treated as competitive. And we've
2 presented substantial evidence to show that those
3 services are competitive, and the Commission should so
4 find.

5 The next issue -- or next grouping, I should
6 say, is business services, which is Issue 1, and their
7 related vertical services, which is Issue 2, and
8 high-capacity services, which are Issue 3. Our
9 position is that those are competitive and all of the
10 exchanges.

11 Staff wants to limit the finding of
12 effective competition to the St. Louis and Kansas City
13 exchanges, but in our view the conceptual basis for
14 that limitation really isn't shown in Staff's
15 testimony.

16 We think -- we agree that there's a
17 substantial amount of CLECs operating and providing
18 services in St. Louis and Kansas City. We agree
19 there's a substantial market share loss that we've
20 experienced for business services in St. Louis and
21 Kansas City, but as you'll see from the testimony that
22 we submitted, that's equally true for the Springfield
23 exchange; it's equally true for the optional MCA areas
24 of St. Louis, Kansas City and Springfield.

25 There is no real distinction between those

1 in terms of the number of CLECs that are operating and
2 the market share loss that we've experienced, and we
3 think that the Commission should find that all of the
4 business services throughout the state are subject to
5 effective competition.

6 The next area, the fifth area of grouping,
7 is residential services, Issue 6, which is basic
8 residential access line, and Issue 7 is the related
9 vertical services.

10 Our view is that we are subject to effective
11 competition for residential services in all of the
12 exchanges. Staff agrees that we are in the Harvester
13 and St. Charles exchanges outside of St. Louis, and as
14 you'll see in the testimony, we have very substantial
15 market share loss for residential services equal to or
16 higher than what our loss is in business services in
17 those two exchanges.

18 This is probably the area where the
19 Commission will have the most concern. Do you follow
20 what the Legislature has said and find pricing
21 flexibility for residential services? You're
22 concerned about that, I'm sure, because you're
23 concerned about prices increasing and what impact that
24 has on consumers. And that's an understandable
25 position for the Commission to have.

1 But as I mentioned previously, the
2 Commission really does need to recognize that when you
3 introduce competition into the market, you have to let
4 prices move towards their cost. That's the inevitable
5 effect, and if you don't do it, there's going to be
6 problems developed from an investment standpoint and
7 from a viability standpoint of the company,
8 Southwestern Bell, that's left to provide services to
9 the customers whose -- residential customers whose
10 prices are below cost.

11 I think at the least you should find that
12 not only Harvester and St. Charles, but that the
13 St. Louis and Kansas City and Springfield exchanges on
14 the residential side are also subject to effective
15 competition. Again, I would remind you that you have
16 the ability in the future if you find that we don't
17 exercise that properly and that effective competition
18 does exist to reimpose price caps for residential
19 services if that becomes necessary in the future.

20 The next area is toll, which is Issue 11.
21 I've already covered basic toll services, MTS, or
22 message telecommunication services, and WATTS, but we
23 also have some flat-rated services that are not priced
24 on a per-minute-of-use basis. These include our
25 designated number offering and our local plus

1 offering.

2 Staff, Public Counsel and others suggest
3 that those should be treated differently and not be
4 found subject to effective competition. But the
5 service that's provided, the ability to call from one
6 exchange to another, is the same whether you provide
7 it on a per-minute-of-use base or on a flat-rated
8 basis. Customers can still make those calls and those
9 services are, pursuant to the statute, subject to
10 competition from alternative providers.

11 There is no basis for discriminatory
12 treatment based on the fact that we offer services on
13 a flat-rate basis. Other carriers can do the same,
14 and, in fact, they do the same with regard to MCA
15 service in St. Louis, Kansas City, and Springfield.

16 AT&T claims here that Southwestern Bell
17 would engage in predatory pricing. That claim was
18 also made in the 271 case in Missouri. It wasn't
19 accepted by the Commission, and it's equally off base
20 and shouldn't be accepted here. AT&T's own witness in
21 that 271 case in Missouri, Dr. Mayo, confirmed that
22 predatory pricing just can't happen.

23 His view which he expressed to the FCC when
24 AT&T was seeking to be declared a non-dominant carrier
25 from the FCC was that predatory pricing was rarely

1 tried and even more rarely successful. We think
2 that's true and most economists, including Dr. Aron
3 will tell you that here.

4 It won't work, because to engage in
5 predatory pricing you have to drive every one of your
6 competitors out of the market, and there's hundreds of
7 competitors for toll services in Missouri. After you
8 drive them all out of the market, then you have to
9 raise your prices up to a level way above cost to
10 recoup the revenues that you lost, and you can only do
11 that if there is no entry barriers-- I'm sorry. You
12 can only do that if there are entry barriers that
13 prevent companies from coming back into the long-
14 distance market.

15 Just as AT&T told the FCC, that can't
16 happen. Regulators will not permit a company like
17 AT&T or Southwestern Bell to drive hundreds of
18 competitors out of the market. And even if they did,
19 and even if we could do it, there is no way that you
20 can keep them out of the market when you raise your
21 prices above that competitive level to try to recoup
22 your losses, because there's ease of entry back into
23 the market. They all have facilities out there today
24 providing interLATA service and interstate services,
25 and those are the same ones they can use for intraLATA

1 toll services, which is the issue in this case. So
2 the predatory pricing claim is something we think the
3 Commission should reject out of hand.

4 The final area is switched access. We've
5 changed, or at least clarified our position on this in
6 our Surrebuttal Testimony.

7 What we're asking is to be treated like the
8 CLECs are treated in Missouri with regard to switched
9 access services. Under their certifications, they've
10 all been declared to be competitive companies and that
11 all of their services, including switched access, have
12 been declared to be competitive services, but they
13 have a condition attached to that that says they have
14 to follow the cap of prices for the incumbent in whose
15 territory they operate.

16 And so for Southwestern Bell, we think the
17 Commission should do the same thing: Find the service
18 to be competitive, but we are agreeable to a condition
19 that says, We'll maintain our current price cap
20 levels, but we should have the authority to
21 restructure our rates underneath that so long as we
22 obey overall cap.

23 And that's the exact pricing flexibility
24 that the CLECs have, and we think that's the same
25 pricing flexibility that we should have. There is no

1 difference between us and CLECs in that regard.

2 I know I went on a little bit long. I hope
3 it was helpful to the Commission. It is an important
4 case for us, and I appreciate your time.

5 Thank you.

6 JUDGE DIPPELL: Staff?

7 I'm sorry. Mr. Lane, before you leave, I
8 want to make sure all of those exhibits that you used
9 during your opening were portions of the testimony; is
10 that correct?

11 MR. LANE: Yes. I think I identified the
12 particular schedules as well.

13 JUDGE DIPPELL: Thank you.

14 Mr. Haas?

15 MR. HAAS: Good morning. My name is William
16 Haas, and I represent the Staff of the Commission in
17 this hearing.

18 This case was established to identify on an
19 exchange-by-exchange basis those services for which
20 Southwestern Bell faces effective competition. If the
21 Commission determines that effective competition
22 exists for a service in an exchange, Southwestern Bell
23 may then adjust its rates for the competitive service
24 up or down as Southwestern Bell terms appropriate.

25 Southwestern Bell claims that it faces

1 effective competition for all of its services in all
2 of its exchanges. Southwestern Bell basis this claim
3 on four refrains that are oft repeat throughout the
4 testimony of its nine witnesses.

5 In its first refrain Southwestern Bell
6 concludes that it faces effective competition in every
7 exchange because CLECs' tariffs show that there are
8 many CLECs offering service in each of the
9 Southwestern Bell's exchanges. The Staff disagrees
10 with Southwestern Bell's conclusion.

11 For effective competition to exist, CLECs
12 must actually be providing service in an exchange, and
13 the existence of a handful of lines in an exchange
14 being served by CLECs does not establish effective
15 competition.

16 In its second refrain, Southwestern Bell
17 concludes that it faces effective competition from
18 CLECs that resell Southwestern Bell's services. Staff
19 also disagrees with this conclusion.

20 For a CLEC to provide effective competition
21 to Southwestern Bell the CLEC must have its own
22 facilities. A CLEC that is reselling Southwestern
23 Bell's services is not selling a competing service,
24 but, rather, is selling Southwestern Bell's service
25 under a different brand name. It matters not whether

1 Southwestern Bell sells the service to the retail
2 customer or whether the CLEC resells the service to
3 the retail customer because either way Southwestern
4 Bell is provided and getting paid for the service.

5 In its third refrain, Southwestern Bell
6 concludes that its services face effective competition
7 from alternative providers such as wireless carriers,
8 cable TV providers, internet service providers, fixed
9 satellite providers, and customer premises equipment
10 manufacturers. The Staff also disagrees with this
11 conclusion.

12 First, the service of these alternative
13 providers don't fit the statutory definition of
14 service because their facilities are not devoted to
15 public purposes. Second, Southwestern Bell provides
16 no evidence of the extent, if any, of actual
17 competition from these alternative providers in
18 individual Southwestern Bell exchanges.

19 In its fourth refrain, Southwestern Bell
20 concludes that the elimination of price cap regulation
21 will lead to the development of new service offerings.
22 This conclusion is unsupported, as Southwestern Bell's
23 witnesses point to no legal or factual hinderance to
24 Southwestern Bell developing new service offerings
25 while under price cap regulation.

1 The Staff, in contrast to Southwestern Bell,
2 has looked for the presence of actual competition in
3 Southwestern Bell's individual exchanges. Based upon
4 the presence of actual facilities-based competition,
5 the Staff proposes that the Commission find that
6 effective competition exists in the St. Louis and
7 Kansas City exchanges for Southwestern Bell's core
8 business switched services and the related business
9 line services, directory assistance and operator
10 services.

11 Also based on the presence of actual
12 facilities-based competition, the Staff proposes that
13 the Commission find that effective competition exists
14 in the Harvester and St. Charles exchanges for
15 Southwestern Bell's residential access line services
16 and the related residential line services, directory
17 assistance, and operator assistance.

18 For brevity, I will group the remainder of
19 the Staff's recommendations into four general
20 categories. The first category includes those
21 services for which Section 392.200.8 of the Missouri
22 statutes already allows Southwestern Bell to have
23 individual case basis pricing. These are its high
24 capacity exchanges access line services, intraLATA
25 private line dedicated services, and special access

1 services.

2 The second category includes those services
3 which were previously declared transitionally
4 competitive in Case No. TO-93-116, and which have
5 already attained competitive classification pursuant
6 to Section 392.370 of the Missouri statutes.

7 These are Southwestern Bell's intraLATA toll
8 services, WATTS and 800 services, and three types of
9 operator services, person-to-person, station-to-
10 station, and calling card services.

11 The third category includes those services
12 for which effective competition does not exist. These
13 are local plus, optional metropolitan calling area
14 services, switched access services, and the remainder
15 of directory assistance and operator services.

16 The fourth general category are those
17 additional services for which effective competition
18 exists in all of Southwestern Bell's exchanges, namely
19 signaling system 7 services, and line information
20 database services.

21 The Staff has previously filed two motions
22 to compel discovery from CLECs, and both motions were
23 granted by the Commission. We have not received
24 sufficient answers to supplement our testimony in this
25 case; however, we do continue to pursue this matter.

1 In closing, the Staff's positions are
2 clearly explained and supported by the Rebuttal
3 Testimony of Staff witness Mr. Voight. Staff's
4 positions allow full and fair competition to function
5 as a substitute for regulation consistent with the
6 protection of ratepayers and consistent with the
7 public interest. Accordingly, we ask the Commission
8 to adopt the Staff's positions.

9 Thank you.

10 JUDGE DIPPELL: Office of the Public
11 Counsel?

12 MR. DANDINO: Thank you, your Honor.

13 May it please the Commission?

14 Mr. Haas was directly on point when he said
15 that the issue here is the effective competition for
16 each of the services offered by Southwestern Bell in
17 each of the exchanges where Southwestern Bell is the
18 incumbent. It is very important to remember that.
19 We're not just talking about a blanket grant. I think
20 the question here is to evaluate each and every
21 service and evaluate each and every exchange.

22 But if you have probably had that experience
23 of attending a play or a baseball or a football game,
24 a council meeting or a legislative hearing and then
25 read the news account of it the next day, you kind of

1 ask the question, Were we and the reporter at the same
2 event? It just doesn't look the same, and I think
3 this is the same thing you can say about this case.

4 You look at Southwestern Bell's witnesses'
5 testimony, and it is marked contrast to Mr. Voight's
6 of the Staff, Ms. Meisenheimer of Public Counsel,
7 Mr. Kohly from AT&T, and the other CLEC witnesses, a
8 marked contrast. And I think there is -- this
9 drastically different picture should raise alarms with
10 this Commission.

11 There's a number of differences. Some are
12 legal; some are economic, and -- but most of them are
13 just factual. Let's look first at some of the legal
14 issues, the differences.

15 There's a very big difference in this
16 Commission's jurisdiction here and -- and your task.
17 In Section 392.245.5, Southwestern Bell is claiming
18 that it's an automatic determination of competitive
19 status. Public Counsel just doesn't read the statute
20 that way.

21 We think there is a threshold determination.
22 First, you have to look at each exchange and determine
23 where a CLEC is certified and providing service in the
24 exchange for five years. That's a critical element.
25 It just doesn't mean having a tariff filed and having

1 the certification to do business in that -- in that
2 exchange. It means providing service, and it means
3 providing service for five years.

4 We've yet to reach the first five-year
5 period with Dial U.S. in the Springfield areas. And
6 even with that case, it's only going to apply to the
7 Springfield exchanges where they are authorized to do
8 business.

9 I think the statute clearly provides that
10 the Public Service Commission has to make a
11 determination in an adversarial hearing -- notice the
12 statute says "notice" and "hearing" -- that effective
13 competitions exists in each and every Southwestern
14 Bell exchange.

15 Another point is Southwestern Bell refuses
16 to recognize that it has the burden of coming forward
17 with the evidence, the burden of proof in this case to
18 show that effective competition exists.

19 I think if you read the first sentence of
20 Subsection 5 of 392.245 and the next sentence which
21 clearly says, ". . . shall determine no later than
22 five years following the first certification of an
23 alternate local exchange telecommunications company in
24 such exchange whether effective competition exists in
25 the exchange for the various services of the incumbent

1 local exchange company."

2 It looks -- my reading of it clearly shows
3 that this Commission has to make determination. It
4 has to make a finding that there is effective
5 competition in there.

6 Also, if you just look at the basic
7 premises -- premise of the law that if those who want
8 to change the status quo usually bear the burden of
9 proof in a case. And right now the status quo is
10 price cap regulation for Southwestern Bell as ordered
11 by this Commission. Now, if Southwestern Bell wants
12 another form of regulation, which is essentially
13 deregulation we're talking about for the competitive
14 status, then they must come forward and present the
15 evidence.

16 Now, there is also another statutory
17 difference in what product, what services should be
18 considered as -- as in competition with -- with
19 Southwestern Bell's services. And the witnesses,
20 Mr. Hughes and Dr. Aron point to the statute, the
21 definition of services in Section 386.020, No. 47, and
22 they say, Well, it doesn't say just telecommunications
23 services.

24 If the Commission looks at what this whole
25 section, 386.020, is, this is the definition for the

1 entire chapter of Chapter 386. That's the Public
2 Service Commission's jurisdiction and power and
3 authority over all of the utilities. Of course,
4 services wouldn't just say telecommunication services,
5 because it's also talking about electricity and water
6 and sewer and gas. And if you look in 386.020, those
7 definitions and those type of definitions are provided
8 in that section.

9 I think it's a question, and if you look at
10 the definition of "telecommunications" in the statute,
11 it talks -- it -- it defines what are
12 telecommunications facilities and what are
13 telecommunications services in Subsection 53, but it
14 also specifically sets out what things are not
15 telecommunications services, customer premises,
16 equipment, answering services and pagers, radio
17 communication services and facilities, services by a
18 hospital, hotel, motel, or similar business, private
19 telecommunications service, cable television, inside
20 wiring, electronic publishing services, and services
21 pursuant to broadcast radio or television licensed by
22 the FCC.

23 Southwestern Bell is confusing communication
24 services with telecommunication services. We're
25 dealing with -- in this proceeding with

1 telecommunication services, because that's what you
2 regulate. That's what you regulate, and that's what
3 the Legislature has empowered you to look at.

4 We're looking at competition in
5 telecommunications services, not competition in the
6 communications industry. The communications
7 industry -- Southwestern Bell has discussed all other
8 alternatives, internet, customer premises, equipment,
9 and the only thing that's being missed is smoke
10 signals and carrier pigeons. But I think they have to
11 look at telecommunications, and I think that's what
12 we're here to talk about.

13 The next issue is -- I think, is the quality
14 of evidence. It used to say, I guess -- I'm not a
15 numbers person. If I was a numbers person, I would
16 have went to medical school. But they say you can --
17 numbers don't lie. Well, I've found that numbers
18 don't always tell the truth, and they certainly don't
19 tell the whole truth. And I think in this case you
20 really have to look behind the numbers, and I
21 encourage the Commission to look behind the numbers to
22 see what actually is going on in these exchanges.

23 Ms. Meisenheimer of our Staff looked behind
24 those numbers. She's presented you numbers,
25 certainly. She's presented you the HHI indicator of

1 some market dominance by Southwestern Bell, looking at
2 who controls the loops and the lines, the basic
3 bottleneck, the basic monopoly position that I think
4 you have to look at.

5 She also -- excuse me. Ms. Meisenheimer
6 also did an investigation of the CLECs. She didn't
7 just take a list that the Staff has on its website and
8 say, These are the CLECs that are doing business in
9 Missouri, and these are the CLECs that have tariffs
10 and certified in the various exchanges. No. She went
11 beyond that.

12 She looked at their annual reports, the
13 CLECs' annual reports. She looked at their tariffs.
14 She called a few of them. She called a lot of them.
15 And she found out whether they are operating, whether
16 they are in bankruptcy, whether they are just
17 providing prepaid service, and whether they are just
18 providing business service.

19 She went beyond the numbers, and I think the
20 Commission has to look beyond the numbers and see
21 what's really going on there. And I think you'll see
22 that competition isn't as robust based upon the
23 numbers.

24 She also looked at data of CLEC requests for
25 numbers from the North America Numbering Plan

1 administrator. And whether through mergers or
2 acquisitions or just scaled-back business plans,
3 hopefully even some number conservation, the trend is
4 toward a reduction in the potential number of
5 facilities-based alternative CLECs.

6 Primarily, she looked -- she concentrated on
7 the local services, and the reason for that is the
8 local services is the key. It's the bottleneck. It's
9 the way you can reach the customer. And that's where
10 all -- most of all of the other telecommunications
11 services flow from that or must use that in order to
12 reach the customer.

13 A couple other points, Staff and
14 Southwestern Bell talk about toll operator services,
15 the speed calling already having been classified as --
16 as competitive services because it was transitionally
17 competitive, and in January of 1999 it automatically
18 became competitive.

19 I would suggest to the Commission that it
20 did not, that when this Commission authorized
21 Southwestern Bell under price caps, all of the other
22 form of regulation disappeared and went to the price
23 cap. The price caps is the only method of regulation
24 at issue and is what Southwestern Bell operates.

25 They can't have it both ways. They can't

1 say we're going to operate under transitionally
2 competitive guidelines which basically is a rate of
3 return -- or stems from the rate-of-return regulation.
4 It's an alternative style. But they went to the price
5 caps, and I think they should be bound by that.

6 The parties also are -- or Southwestern Bell
7 also realized considerably upon this Commission's
8 approval of its Section 271 as evidence that there is
9 competition. The 271 application was approved in
10 March. And I'll remind the Commission that in April
11 this Commission found that Southwestern Bell fell
12 short of having open markets and fulfilling the
13 14 points. It was only after they agreed to provide
14 the M2A and abide by that that this Commission
15 conditionally approved that they should be allowed
16 into the long distance market.

17 One other -- one other issue Mr. Lane spoke
18 about and many of the witnesses from Staff and the
19 CLECs and Southwestern Bell's witnesses, they always
20 say that residential service is priced below cost.
21 Now, if you want to talk about a myth, this is the
22 continuing myth I've heard for the last five years.
23 I've yet to see any cost study that makes the proper
24 allocation of the joint and common costs that show
25 that residential or local service is provided below

1 cost. And until I see it, I won't believe it, and I
2 don't think this Commission should believe it either
3 and accept that as a fact.

4 Finally, I think that Southwestern witnesses
5 admit that effective competition is there at every
6 Southwestern Bell -- for every Southwestern Bell
7 service in every Southwestern Bell territory. This is
8 very overbroad and overreaching and has little basis
9 in fact.

10 Look behind the numbers, and I think when
11 you do that that the credibility of their position is
12 severely eroded. I think they are casting their net
13 much too broad. And Public Counsel will admit that in
14 message toll service on a minute-by-minute basis, we
15 certainly do see competition, and effective
16 competition for Southwestern Bell. We're -- you know,
17 we're willing to admit that. We're willing to concede
18 that.

19 However, if you -- if Southwestern Bell
20 insists upon that being -- that they're flat-rated and
21 local plus and MCI are to be included in that toll
22 service, then we cannot agree.

23 So on the basis of this, I believe the
24 Commission should, like I said, look very carefully at
25 the facts and look behind the numbers.

1 Thank you.

2 JUDGE DIPPELL: AT&T?

3 MR. ZARLING: Good morning, Commissioners.

4 I'm Kevin Zarling, representing AT&T Communications of
5 the Southwest and also TCG St. Louis and TCG Kansas
6 City. And as the prefiled testimony shows, we're in
7 agreement in many respects with Public Counsel and
8 Staff, and so I will try now and limit my comments in
9 opening since they've covered a number of the points
10 that I wanted to make.

11 But a very important point, I think, to
12 reemphasize that Public Counsel hit upon is the
13 statutory interpretation of 392.245.5. It's a little
14 difficult to see or to, I think, believe the argument
15 when you look in that section of the statute that
16 twice it says the Commission must find that effective
17 competition exists to believe that the task of the
18 Commission here is to find that effective competition
19 does not exist before denying Bell basically
20 deregulation.

21 Public Counsel also spoke to the idea that
22 it's not enough to simply have a carrier -- an
23 alternative carrier certificated in a local exchange
24 area, but that you actually have to have evidence of
25 service. I think that the record in this case is

1 completely void of any evidence of when carriers began
2 to provide service. What you do have is Southwestern
3 Bell pointing to when tariffs were approved, and that
4 is not evidence of when carriers began providing
5 service in a particular exchange.

6 Of course, as both Staff and Public Counsel
7 and Mr. Lane pointed out, really what the Commission
8 is looking at here is effective competition and
9 whether it exists. Now, I think that to the issue of
10 whether or not you can look at alternative service
11 providers, I think it's very telling that the statute
12 kicks off or finds a threshold for this investigation
13 by the Commission to relate to when was an alternate
14 service provider, a CLEC, certificated. I think
15 that's very telling in the statute.

16 Whether or not the Commission wants to look
17 at alternate service providers other than CLECs,
18 alternate services, as Southwestern Bell has argued,
19 and as AT&T would concur with Public Counsel is really
20 not appropriate. I think that even if the Commission
21 did want to look at those things, the evidence in this
22 case, as Staff and Public Counsel has touched on,
23 about things like internet providers and wireless
24 companies is very generalized and not
25 exchange-specific and doesn't meet the burden that

1 Southwestern Bell should have in this case to show
2 there is effective competition, because, indeed, as I
3 alluded to before, if what the Commission has to find
4 here is that there is effective competition, really
5 the only party here that's advocating such a finding
6 is Southwestern Bell.

7 And, as is typical in cases, if you have the
8 burden, as Southwestern Bell clearly does here, they
9 have had the privilege of putting on Direct in a
10 Surrebuttal case. That's not consistent with a party
11 that has no burden. If there were no burden on
12 Southwestern Bell or the burden were equal among the
13 parties or as Southwestern Bell contends the CLECs
14 have the burden in this case, I think the structure of
15 the testimony in this case would have been much
16 different.

17 Okay. So when the Commission does look at
18 what is effective competition, it has quite a bit of
19 flexibility. I mean, there are a number of criterion
20 Mr. Lane pointed to. I think that there are a couple
21 of things that AT&T would like the Commission to focus
22 on, and as in Section -- that definition 386.020(13),
23 Subsection C, or Paragraph C, I'm not sure, the extent
24 to which the purposes and policies of Chapter 392 are
25 advanced.

1 Well, you have to do a lot more jumping
2 around the statute to get to 392.185 that talks about
3 the policies and the purposes of Chapter 392. And one
4 of those, of course, is to allow competition to
5 substitute for regulation. If competition is going to
6 substitute for regulation, it has to have the effect
7 that regulation has of disciplining Southwestern
8 Bell's rates.

9 In that regard, AT&T can't agree and doesn't
10 think that it's been proven by Southwestern Bell that
11 resale service which Southwestern Bell relies so
12 heavily on can perform that function. In the resale
13 environment, basically carriers' -- a competitive
14 carrier's rates are tied to Southwestern Bell's rates.

15 The wholesale discount that's been
16 established by this Commission has been established.
17 It's not apparently going to increase, and based on
18 the Supreme Court's decision -- well, the Supreme
19 Court decision let it stand -- the Eighth Circuit's
20 decision, it's entirely possible that the wholesale
21 discount could go down if Southwestern Bell ever
22 attempted to change it.

23 So carriers would have even less margin to
24 work in if they wanted to use resale to try and
25 compete with Southwestern Bell, but as Staff and

1 WorldCom and Public Counsel and Mr. Kohly have pointed
2 out, resale really doesn't allow a CLEC to compete in
3 the sense that that competition can discipline
4 Southwestern Bell's prices, because the price
5 differential, the margins just aren't big enough to
6 allow a CLEC to offer a significantly priced
7 differentiated service.

8 And if the prices are basically the same,
9 Southwestern Bell raises theirs, the CLECs raise
10 there, the customers aren't going to switch,
11 particularly to a new -- to a new, perhaps unproven
12 CLEC. So resale can't do the job. It can't provide
13 effective competition.

14 There is then another aspect of that -- of
15 that section of the policy, a section of Chapter 392
16 where it says allowing competition to substitute for
17 regulation -- it does say that it's appropriate to do
18 that where it ensures consumers, and, yes, even
19 consumers of switched access services will pay
20 reasonable rates and allow competition then to
21 substitute for regulation when it's consistent with
22 protection of ratepayers and when it's consistent with
23 the public interest.

24 So I think this Commission does need to
25 consider what is Southwestern Bell going to do with

1 this regulation, or deregulation? What does it need
2 it for? When you start looking at this public policy
3 goal of Chapter 392, which is to allow competition
4 subject to regulation to the extent it's consistent
5 with the public interest.

6 Staff, and I think Mr. Voight's testimony
7 just hit this on the head: This case is about
8 Southwestern Bell's ability to have unfettered ability
9 to raise rates. They have all of the flexibility they
10 need today to lower rates, other than they can't go
11 below a LRIC floor, and some would question whether
12 that's one of their objectives here, but, otherwise,
13 they have all of the flexibility they need to reduce
14 rates in order to respond to competitive pressures in
15 that way.

16 There is nothing specific or discrete in
17 Southwestern Bell's testimony that addresses how they
18 need pricing flexibility over the competitive
19 classification in order to bundle services, combine
20 services. You know, they refer to the fact that they
21 can't necessarily combine their services with their
22 interLATA long distance offering. That really hasn't
23 stopped them in Texas and other Southwestern Bell
24 region states from limiting their long distance
25 service to someone who also takes Southwestern Bell

1 local, so, as a practical matter, they are bundled.

2 But, otherwise, there is nothing in
3 Southwestern Bell's testimony that explains how they
4 need competitive classification to offer innovative
5 services and new packages and new bundles. As I said,
6 they have the ability to lower rates, so this must be
7 about raising rates.

8 Mr. Lane's correct that eventually
9 competition would supposedly raise or drive rates
10 toward cost, and there is the veiled assertion there
11 that residential rates would need to go up. But this
12 isn't the case that you need to address that in.

13 Southwestern Bell has had the opportunity to
14 rebalance in the past. They haven't taken advantage
15 of it. And with regard to allowing Southwestern Bell
16 the flexibility to lower rates while remaining revenue
17 neutral, there is a USF proceeding that's been going
18 on here for nearly three years and that Southwestern
19 Bell now claims it doesn't need but would rather just
20 rebalance rates instead, which, again, flies in the
21 face of if they haven't rebalanced, then they had the
22 opportunity to do it.

23 So Southwestern Bell has come to this case
24 seeking the flexibility to rebalance rates or to be --
25 it's really just to rebalance rates, is the only thing

1 I saw in their testimony that it seemed to suggest
2 they needed flexibility to raise rates for any
3 legitimate reason. They haven't taken advantage of
4 the opportunities they've had. And what you would do
5 by reclassifying all their services as competitive is
6 give them more than the flexibility and authority they
7 need to simply rebalance rates, essentially give them
8 the ability to run roughshod over their competitors
9 and truly competitive services.

10 In conclusion, I don't think anybody thought
11 it was going to take this long when 392.245.5 was
12 enacted. I don't think anybody foresaw CLECs going
13 out of business the way they have been. The Texas
14 Commission has started a rule-making project to
15 address what to do when CLECs go bankrupt. And,
16 consequently, you need to disavow yourself of the
17 notion that five years has passed. Let's do
18 something.

19 The Commission needs to do a careful
20 examination of whether there is competition or not,
21 but I think the evidence in this case will demonstrate
22 that there is not effective competition and that there
23 is no need at this point to -- to deregulate
24 Southwestern Bell's services.

25 Thank you.

1 JUDGE DIPPELL: WorldCom.

2 MR. LUMLEY: Good morning. I speak this
3 morning for the three WorldCom companies that I
4 represent in this case, as well as Nuvox
5 Communications of Missouri. I'm also counsel of
6 record for XO Missouri, but they are not asserting a
7 position in the case, and until about an hour ago, I
8 was counsel of record for Mpower, but they've now been
9 excused since they've left the state.

10 You've been told this morning that this
11 proceeding is an investigation of the state of
12 competition in Southwestern Bell's exchanges under
13 Section 392.245.5, but I would suggest that you need
14 to be more specific in parts of the statute. We're
15 operating under the section sentence of this section
16 because it has been at least five years since an ALEC
17 or a CLEC was certificated in at least one
18 Southwestern Bell exchange, so, clearly, the second
19 sentence applies.

20 The second sentence calls for an affirmative
21 decision of whether effective competition exists as a
22 pre-condition to releasing Southwestern Bell from
23 price cap regulation, the regulation that it asked for
24 and received in 1997. We're not operating under the
25 first sentence of this 392.245.5 because no one in

1 this case is asserting that any ALEC has been actually
2 providing basic local service for a period of five
3 years anywhere in Southwestern Bell's service area.
4 In fact, you heard Mr. Lane concede in his opening
5 that it's not the case, and there is no evidence to
6 the contrary being presented to you.

7 So unless and until the Commission makes an
8 affirmative determination that effective competition
9 exists for particular services in particular
10 exchanges, Southwestern Bell is not entitled to be
11 released from price cap regulation.

12 Now, you've already heard in the openings
13 and you've probably seen in the written testimony
14 quite a debate about who has the burden of proof. I
15 would submit to you that this is an irrelevant debate.

16 The Commission has to make an affirmative
17 determination based on the evidence provided by all of
18 the parties. It doesn't matter whether anybody has
19 the burden of proof or not. If you don't feel there
20 is evidence of effective competition, you can't
21 release Southwestern Bell from price cap regulation.

22 I submit that this case is completely
23 independent of the question of whether Southwestern
24 Bell has individual case basis pricing flexibility for
25 certain services under 392.200.8 because there is

1 nothing that suggests that that flexibility is free
2 from the ultimate restraint of the price cap
3 regulation that supersedes everything else.

4 I submit further that this investigation is
5 completely independent of the old process of
6 classifying services as transitionally competitive
7 headed towards competitive status, because, again,
8 prior to this 1999 date that Southwestern Bell
9 asserts, in 1997 they asked for and received price cap
10 regulation. We're operating under Section 245, and it
11 specifically calls for a finding of effective
12 competition, completely independent of the old
13 classification scheme.

14 And, finally, I submit that this case is
15 totally independent of your proceedings under
16 Section 271 of the Telecom Act, which was looking at
17 whether Southwestern Bell has opened its systems to
18 competition. There is a difference between opening
19 things up and competition actually being effective.

20 Now, effective competition is not defined in
21 the statutes, but its meaning is clear. Has
22 competition evolved to a state such that Southwestern
23 Bell's former monopoly power can be constrained by the
24 market instead of by the regulator?

25 Now, you've seen in one of Mr. Lane's

1 exhibits that the statute does list several
2 specifically factors that you're to consider in
3 evaluating the existence of effective competition, and
4 also you've seen that that statute says, in addition
5 to the four specific ones identified, you can consider
6 any other factor that you deem to be relevant.

7 One of these factors asks you to evaluate
8 how the purposes of Chapter 392 are being effectuated,
9 and those purposes are set out for you in 392.185, and
10 I think they can be summarized as looking at
11 affordability, efficiency, diversity, and enhancements
12 to the system.

13 But it all boils down to this: Has
14 competition evolved to the point that all customers
15 will have sustainable choices of services and
16 providers at market-driven prices so that it's safe to
17 release the former monopolists from price cap
18 regulation?

19 Again, the statute requires a
20 service-by-service and exchange-by-exchange analysis,
21 and I'm not going to go over our specific positions.
22 We've filed those with you addressing all of these
23 different issues.

24 WorldCom presents witness Don Price in this
25 case. Mr. Price has over 20 years of real and

1 practical experience and expertise in the
2 telecommunications industry. He worked for GTE for a
3 while; he was with the Texas Public Utility Commission
4 for a while, and for a substantial period of time he's
5 been with MCI, which has obviously become WorldCom.

6 His testimony has been welcomed and received
7 across the country, including in three cases in the
8 state of Missouri over a span of about 15 years, and
9 he testifies that all of Southwestern Bell services
10 are yet to be subject to effective competition, and,
11 therefore price cap regulation should continue.

12 And in total, the evidence in this case will
13 show that it's not yet time to release them from price
14 cap regulation. It's not time to expose consumers to
15 unfettered rate increases. It's not time to expose
16 competitors to targeted decreases such as win-back
17 programs that can be offset by unfettered increases in
18 other areas, in particular because competitors remain
19 heavily dependent on Southwestern Bell's own
20 facilities to even be able to provide service.

21 I submit that at the end of the day the
22 Commission will have a record that demonstrates only
23 the existence of competition and not the effectiveness
24 of competition. You're not going to hear any evidence
25 that Southwestern Bell has been driven to reduce

1 prices to market levels despite the statutory purpose
2 of affordability and despite the fact that it has the
3 ability to lower prices.

4 And you heard from Staff's counsel in
5 opening statements that there is little in the way of
6 innovation going on, notwithstanding the fact that
7 there is complete flexibility on Southwestern Bell's
8 part to do that.

9 Further, there is evidence that significant
10 barriers to full entry remain. Competition can't
11 strike out on their own yet because of the financial
12 condition of our country which predated the tragedy.
13 They can't escape the restraints of restrictive and
14 costly use of Southwestern Bell's facilities, and the
15 evidence will show that, absent price caps,
16 Southwestern Bell will be able to raise prices because
17 competitors can't expand and respond in full.

18 Finally, I submit that the evidence will
19 show at the end of this case that it's premature to
20 lift price caps and that doing so would cause
21 irreparable harm to the still fragile state of
22 competition in this state and consumers with very
23 long-term ramifications for the state of Missouri.

24 Thank you.

25 JUDGE DIPPELL: Sprint?

1 MS. HENDRICKS: Good morning. My name is
2 Lisa Creighton Hendricks, and I'm appearing on behalf
3 of Sprint Communications Company, LP.

4 Sprint has only one issue in this case that
5 it has taken a position on, and that issue is whether
6 Southwestern Bell's switched access should be
7 classified as competitive. Sprint's position on that
8 is a resounding no.

9 Switched access, or Southwestern Bell's
10 switched access is not subject to effective
11 competition, nor is it likely to be in the near
12 future. The reason for this is the manner in which
13 switched access is structured. It's structured in a
14 manner that allows the end user of a local service to
15 determine who will be the switched access provider for
16 the interexchange company, the IXC; however, the IXC
17 is the actual customer of switched access.

18 Switched access refers to the connection
19 between the end user through an end office to an
20 interexchange company's point of presence. As
21 testified by Southwestern Bell and Sprint, it has
22 three primary components. It has the common line, the
23 end office, and the transport elements.

24 The common line refers to the -- the area or
25 the connection between the end user to the end office

1 switch and is sometimes referred to as a loop. The
2 end office is the end office switch that will switch
3 and route the call to the interexchange carrier, and
4 the transport between the end office to the
5 interexchange carrier is referred to as a transport.

6 Now, in order to deliver switched access
7 service, you must have all three components. No one
8 component by itself can give you switched access.

9 Now, because one of the components is the
10 common line, or the loop, it is the end user who
11 chooses who will provide the switched access.
12 Notably, too, when the end user makes this choice,
13 they don't consider the cost of switched access. They
14 consider the cost of the local service.

15 Now, given the manner in which switched
16 access is structured, it's not surprising that every
17 party in this case who has taken a position on this
18 issue except Southwestern Bell has requested this
19 Commission deny Southwestern's request for a
20 competitive designation for switched access.

21 Now, based on Mr. Lane's opening and
22 Surrebuttal Testimony filed by Southwestern Bell, it
23 appears that they have modified their position on this
24 issue, and, as I understand it, they maintain their
25 request to have this Commission designate switched

1 access as competitive, but they are willing to agree
2 to some limitations after that designation is granted.

3 Now, I'm not familiar with the details of
4 what the limitations are that they will operate under,
5 and maybe they are best discussed in another case, so
6 I'm not taking a position on that. However, to the
7 extent that they still request competitive
8 designation, we are opposing it still in this case.

9 Now, in seeking a competitive designation in
10 this case, Southwestern Bell employs two methods.
11 First of all, it takes switched access and it throws
12 it together with other services, and then it lists the
13 alternatives that exist for these services. However,
14 this Commission should look at these lists very
15 carefully, because none of them provide a competitive
16 alternative for switched access.

17 The second method that Southwestern Bell
18 uses is it will talk about one component of switched
19 access, and that is transport. And it argues since
20 there is competition, albeit small in the transport
21 element, the entire service should be deemed subject
22 to effective competition. Sprint disagrees.

23 In sum, the evidence in this case shows that
24 the interexchange carrier, the customer for switched
25 access, does not have competitive alternatives that it

1 can choose among to deliver its calls; therefore,
2 Sprint maintains that switched access is not subject
3 to effective competition.

4 Thank you.

5 JUDGE DIPPELL: McLeod?

6 MR. KRUSE: Good morning, your Honor,
7 Commissioners, my name is Brad Kruse on behalf McLeod
8 USA Telecommunications Services.

9 I will be brief as there is probably not a
10 whole lot that I can say that hasn't been said already
11 in opening statements. I concur very much with the
12 other CLECs with what they mentioned in their
13 statements and also with Staff and Office of Public
14 Counsel. I would like to merely highlight a few
15 important things that I think the Commission should
16 especially emphasize when they are considering this
17 case.

18 One is a point that was made by Mr. Lane in
19 his opening statement regarding that there was no
20 statutorily imposed specific market share test. That
21 is true, but I would urge the -- I would urge the
22 Commission to look, for example, at other tests that
23 exist that could be very helpful in determining market
24 share concentration. One of them would be the
25 Herfindahl-Hirschman Index which is used to calculate

1 the level of market concentration in an industry, both
2 pre- and post-merger. I know that it's used
3 historically by the Department of Justice in
4 evaluating mergers that are proposed that need federal
5 approval.

6 I would -- I would strongly feel that if
7 that test or a similar test is imposed, that
8 Southwestern Bell is going to be unable to meet the
9 requirements of such a test, because, as Mr. Dandino
10 has pointed out, when you look beyond the numbers, I
11 think even when you do apply the numbers, there are a
12 lot of difficulties that exist with competition.

13 For McLeod USA's part, frankly, our ability
14 to engage in meaningful facilities-based competition
15 has been decreased, frankly, by recent competitive
16 events, most notably the MCA. That situation no
17 longer exists, but the -- the blows, I think, that
18 were struck to our ability to engage in facilities-
19 based competition are still being felt.

20 We were at a time -- we were at a high time
21 for the CLEC industry at the time when we came to this
22 state and invested money here, and, you know, our
23 market cap was high. The market cap for other CLECs
24 was high. The telecommunications -- the competitive
25 telecommunications industry was doing very, very well,

1 and, unfortunately, throughout this time, we engaged
2 in some road blocks in this state, and I think there
3 is a very -- very different picture of the state of
4 competition that exists now that maybe didn't exist 18
5 months ago or a year ago.

6 And I think when you look behind the
7 numbers, as Mr. Dandino suggests, you see a very
8 different picture. You see an industry that's sort of
9 under siege. The market cap capitalization of many
10 CLECs has dropped precipitously. Many CLECs, as has
11 been pointed out, have gone -- have filed for
12 bankruptcy, highlighted by the fact that, as noted,
13 Texas has now engaged in a proceeding to try to
14 determine what to do when -- when CLECs file
15 bankruptcy.

16 So I would submit to this Commission that
17 Southwestern Bell is still a monopoly in this state.
18 That's maybe the one point that I might sort of
19 disagree with Mr. Lumley on. He referred to
20 Southwestern Bell as a -- I think a pre-monopoly
21 period or a former monopolist, and I guess I would say
22 given their market share and their market power over
23 the CLECs that they can't be view as anything but a
24 monopolist.

25 I would like to also emphasize when you

1 analyze the numbers here to pay particular attention
2 to facilities-based competition, because, as has been
3 pointed out, and I've mentioned in other proceedings,
4 it's widely recognized in this industry that resale of
5 Southwestern Bell or another ILEC's services is not
6 and cannot be a long-term viable business strategy.
7 It's something that has been recognized in a number of
8 proceedings, both at the state and federal level, in
9 testimony being given that without the ability to move
10 and transition service to a facilities-based platform
11 that the numbers just aren't there for sustained
12 growth by a CLEC.

13 So it's very important that the Commission
14 keep in mind and very much emphasize the
15 facilities-based numbers in this state, which my
16 understanding is that then with respect to residential
17 services, facilities-based competition is virtually
18 non-existing in this state.

19 One more point that I want to emphasize that
20 was touched on by Mr. Lane, and that is to par-- not
21 to paraphrase, but to phrase it in my own terms, is
22 sort of this concept of what happens maybe if the
23 Commission does go ahead and give Southwestern Bell
24 what it wants, basically deregulate them.

25 Mr. Lane made some cautionary statements, I

1 think, along the lines of, you know, if the Commission
2 feels that after deregulating Southwestern Bell that
3 there is a problem, that South-- that the Commission
4 can always turn around and reverse that.

5 Mr. Lane also noted that -- I believe, that
6 in order for predatory pricing to exist, basically
7 Southwestern Bell would have to first drive out all
8 competitors and then it would have to raise its
9 prices, and then, as I understand his argument,
10 once -- once Southwestern Bell recouped its losses in
11 significantly dropping its prices, then it would be
12 subject to competitors jumping back into the market so
13 that that, I think, is pointless, probably, that it --
14 based on that scenario, it would be unlikely that
15 Southwestern Bell would engage in predatory pricing.

16 Well, the concept of a bunch of CLECs maybe
17 being hurt by predatory pricing and just sitting out
18 on the wings waiting to get back into the market after
19 Southwestern Bell raised its rates significantly to
20 recoup its losses suffered in the dramatic price
21 decrease is -- is, frankly, ridiculous. Given the
22 precarious state of the CLEC industry right now, if
23 Southwestern Bell engaged in significant predatory
24 pricing, which the deregulation would certainly allow
25 them to do, it could be very disastrous to the CLEC

1 industry.

2 And once -- I believe once that happened,
3 there is very little ability of existing CLECs or new
4 CLECs that would somehow come out of the woodwork to
5 ever come back in and create any kind of meaningful
6 competitive environment, at least in the -- at least
7 for years and years. I think that would be a very
8 unfortunate situation.

9 Last, but not least, I would caution the
10 Commission to avoid the temptation and the suggestion
11 that since the Commission has approved Southwestern
12 Bell's 271 application that it is sort of a natural
13 progression into approving what Southwestern Bell has
14 asked for in this case. As Mr. Lumley pointed out,
15 and as I'll take maybe to the next level, the
16 difference between opening a market for competition
17 and the -- and the existence of effective competition
18 actually taking place in a market are two quite
19 different things. The existence of competition
20 certainly was a factor that could have been taken into
21 account, and, hopefully, was possibly taken into
22 account by the Commission. In the public interest
23 analysis, which is one of the prongs of the 271 test,
24 it wasn't a individual checklist item.

25 And I might also point out, in the 271

1 hearing of this case, Southwestern Bell did about
2 everything it could to minimize the public interest
3 analysis and focus on the competitive checklist. In
4 fact, at one point, or maybe a couple of points in its
5 testimony, it indicated to this Commission that
6 satisfying the 14-point checklist for 271 approval was
7 basically all Southwestern Bell had to do to meet the
8 271 requirements.

9 They very much minimized the public interest
10 standard at that point in time, and I don't believe a
11 lot of evidence, if any, was even introduced -- I take
12 that back. Some evidence was introduced as to the
13 actual state of competition, but that was very much
14 minimized in the 271 proceeding.

15 In this proceeding, the existence of
16 effective competition -- competition actually taking
17 place is -- is front and center, and we really are
18 going into new ground that I don't believe the
19 Commission was able to delve into very much in the
20 271 proceeding given the nature of that proceeding and
21 given the evidence in front of it.

22 Thank you.

23 JUDGE DIPPELL: Thank you.

24 Was there anyone else that was here to give
25 an opening statement?

1 Do you want to make an entry of appearance.

2 MS. CHASE: Yes, your Honor.

3 I do apologize. I am very sorry for
4 arriving a little late.

5 My name is Lisa Cole Chase, and I represent
6 the Missouri Independent Telephone Group.

7 And, first, I just want to say that I concur
8 with what all of the other CLECs have said along with
9 the Office of Public Counsel and the Staff. They have
10 addressed all of our concerns that we've taken
11 positions on such as local plus and switched access,
12 and we will not take any further time with the
13 Commission at this time addressing those same issues
14 since they've been adequately addressed as far as our
15 concerns at this time.

16 Thank you.

17 JUDGE DIPPELL: Thank you.

18 Ms. Chase, do you intend to go ahead and
19 participate? I received your motion to be excused,
20 and I had stated as with the other parties that you
21 are excused from being physically present. You,
22 however, will waive any rights your party would have
23 to cross-examination or presenting evidence if you are
24 not here to participate.

25 MS. CHASE: I understand that we waive that

1 right, and we would appreciate being excused from the
2 hearing and to obtain a copy of the transcript and to
3 participate in the briefing to follow.

4 JUDGE DIPPELL: That's fine. Thank you.

5 MS. CHASE: Thank you.

6 JUDGE DIPPELL: Were there any other opening
7 statements?

8 (No response.)

9 JUDGE DIPPELL: All right. Then let's go
10 ahead and take a short break. Let's return at ten
11 till 11:00. Thank you.

12 We're off the record.

13 (A RECESS WAS TAKEN.)

14 JUDGE DIPPELL: And we're ready to begin
15 with our first witness.

16 I just want to remind all of the attorneys
17 that since we have several highly confidential
18 exhibits in this case that I'll depend on you-all to
19 police that information and to stop witnesses before
20 they divulge something that's highly confidential when
21 we're not in camera.

22 Let's go ahead then with Ms. Aron.

23 JUDGE DIPPELL: Before we begin, would you
24 please state your name and spell it for the court
25 reporter?

1 THE WITNESS: Debra J. Aron, A-r-o-n.
2 JUDGE DIPPELL: And if you would please
3 raise your right hand.
4 (Witness sworn.)
5 JUDGE DIPPELL: Thank you.
6 Be seated.
7 Mr. Lane, you may proceed.
8 MR. LANE: Thank you, your Honor.
9 DEBRA J. ARON, Ph.D. testified as follows:
10 DIRECT EXAMINATION BY MR. LANE:
11 Q. Would you state your name for the record,
12 please?
13 A. Debra J. Aron, A-r-o-n.
14 Q. And do you hold a Ph.D. in economics?
15 A. Yes, I do.
16 Q. Dr. Aron, by whom are you employed?
17 A. I'm employed by LECG, LLC.
18 Q. And what is LECG, LLC?
19 A. LECG is an international consulting firm
20 comprised primarily of economists. We work in the
21 areas of antitrust, mergers and acquisitions,
22 regulation, intellectual property, and other economic
23 areas.
24 Q. And, Dr. Aron, have you prepared Direct
25 Testimony in this case that's been marked as Exhibit 1

1 and Surrebuttal Testimony that's been marked as
2 Exhibit 2?

3 A. Yes, I have.

4 Q. And starting with the Direct Testimony,
5 Exhibit 1, do you have any changes to that testimony?

6 A. I do have three changes.

7 Q. What's the first one?

8 A. On Page 20, the sentence starting on Line 7
9 which begins with the word "advertising." After the
10 word "advertising," the words "location-specific"
11 should be inserted so that it would read,
12 ". . .advertising, location-specific experience, and
13 deployed facilities share the characteristic that they
14 have little resell value to third parties," and then
15 the words, "in other locations" should be added at the
16 end, period.

17 Q. What is your second change?

18 A. On Page 22, Line 15, the first word is
19 "over," and it should be deleted. It should say
20 "almost" instead of "over."

21 Q. And what is your third change?

22 A. On Page 28, Line 13, towards the end of the
23 line it says, "Promote economics and," then it
24 continues, "other enhancements."

25 The word "economics" should be "economic,"

1 so please delete the "s" at the end.

2 Q. Do you have any more changes to your Direct
3 Testimony?

4 A. No, I don't.

5 Q. Do you have any changes to your Surrebuttal
6 Testimony?

7 A. No, sir.

8 Q. With the changes that you've given us today,
9 if I were to ask you the same questions that are
10 contained in your Exhibits 1 and 2, would your answers
11 be the same?

12 A. Yes, they would.

13 Q. And are they true and correct to the best of
14 your knowledge and belief?

15 A. Yes, they are.

16 MR. LANE: Your Honor, at this time, we
17 would offer Exhibits 1 and 2, and tender Dr. Aron for
18 cross-examination.

19 JUDGE DIPPELL: Are there any objections to
20 Exhibit No. 1 or No. 2 coming into the record?

21 (No response.)

22 JUDGE DIPPELL: Seeing no objection, then, I
23 will receive those into the record.

24 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
25 EVIDENCE.)

1 JUDGE DIPPELL: Let's begin, then, with
2 cross-examination.

3 Staff?

4 CROSS-EXAMINATION BY MR. HAAS:

5 Q. Hello, Dr. Aron.

6 A. Good morning.

7 Q. At Page 7 of your Direct Testimony you
8 identify the statutory factors which the Commission
9 looks at in determining if there is effective
10 competition, and one of those is the extent to which
11 the services of alternative providers are functionally
12 equivalent or substitutable at comparable rates, terms
13 and conditions.

14 In your opinion, do resold services meet
15 that functionally equivalent or substitutable
16 standard?

17 A. Yes, sir, in my opinion, they do.

18 Q. Is it your opinion that resold services are
19 evidence of effective competition?

20 A. Yes, and for a number of reasons that I
21 elaborate in my testimony. Resell provides effective
22 competition in a number of ways that I would be happy
23 to elaborate on if you would like to discuss it.

24 Q. Do you want to give me bullet points?

25 A. Sure. I think there are a number of things

1 to keep in mind with respect to resale competition.
2 One is that in the state of Missouri and in general
3 resale competitors tend not to be stand-alone
4 providers, but are providers who are pursuing a
5 rational strategy of hybrid entry, by which I mean
6 they are providing many of their lines over their own
7 facilities and many other of their lines over resale.
8 And so they are using resale as a way to fill out
9 their services geographically, as well as in terms of
10 their product portfolio, and they are using resale as
11 a way to establish market presence and create a
12 customer base before they sink resources into a
13 particular geographic area. That's part of the
14 strategy of a number of the carriers that are
15 important carriers in the state of Missouri.

16 I'd also like to -- the other bullet point
17 I'd bring up at this point is that it's not true, as I
18 think was alluded to in the opening statements, that
19 resale provides no pricing discipline on the incumbent
20 carrier, and I go through some numerical examples in
21 my testimony to explain why that's really not the
22 case, and that resale, although it doesn't provide the
23 same level of discipline as facilities-based
24 competition does, it would be incorrect to say that it
25 provides no pricing discipline. It does.

1 Q. At Page 14 of your Direct Testimony at
2 Line 18, you state that, "Resale can be a vital stage
3 in the development of telecommunications competition."

4 Isn't it inconsistent to say resale is a
5 vital stage in the development of telecommunications
6 competition and also to say that resale is evidence of
7 effective competition?

8 A. No, it's not. And the reason is that one
9 role that resale plays, as I was describing a moment
10 ago, is that it provides an important entry
11 opportunity for carriers so that they don't have to
12 sink resources and facilities in a geographic area in
13 advance of having customers. So many carriers,
14 including the most important facilities-based
15 carriers, use resale for that -- for that reason.

16 But it's also true that there are carriers
17 that are purely facility-- excuse me -- purely resale
18 based and that in their opinion are viable, long-term
19 competitors with purely a resale strategy.

20 Q. In your opinion, should the presence of
21 cable television companies in an exchange be
22 considered effective competition to Southwestern Bell
23 even where the cable company is not providing voice
24 services?

25 A. That would depend on whether the cable

1 company has upgraded its facilities to be two-way
2 voice capable. That involves a significant investment
3 on the cable company's part. Many cable companies
4 have done so already using a circuit-switch
5 technology. Others are in the process of doing so
6 using an IP-based technology.

7 In the state of Missouri, it's my
8 understanding that at least some of the cable
9 providers have upgraded their facilities using a
10 circuit switch-based technology and are provided voice
11 telephony, but I would say in those areas where they
12 have not yet upgraded, I wouldn't consider them as
13 providing effective competition.

14 Q. In what Southwestern Bell Missouri exchanges
15 have the cable companies upgraded their facilities?

16 A. I'm not sure to what extent this would --
17 could be considered confidential information, so
18 I'll -- my understanding is that at least in the
19 exchanges of St. Charles and Harvester, facilities
20 have been upgraded and cable voice service is being
21 provided. I don't know where else, which is not to
22 say that I know that it has not been done elsewhere.
23 I just don't know elsewhere.

24 Q. What is the standard for the Federal
25 Communication Commission to approve an application

1 under Section 271 for a Bell operating company to
2 provide in-region, interLATA service?

3 A. Well, I don't have the statute in front of
4 me. If you would like me to review it, I would be
5 happy to do so.

6 But, just generally, there are two tracks.
7 There's Track A and Track B, and under Track A, which
8 is, I think, the track that is relevant to the
9 Southwestern Bell application in the state of
10 Missouri, the incumbent must show that it is -- this
11 is roughly what I think the requirement is.

12 The incumbent must show it has completed an
13 interconnection agreement with a competitive carrier
14 and that the competitive carrier is providing
15 facilities-based service to residential facilities-
16 based customers in the state.

17 Q. Is part of the standard that Bell's area is
18 open to competition?

19 A. That's correct, yes.

20 Q. In your opinion, is the open to competition
21 standard the same as the Missouri statute definition
22 of effective competition?

23 A. The Missouri statute articulates four
24 criteria by which the Commission is asked to evaluate
25 effective competition. One of them is that the market

1 be open to competition, and I believe that that is the
2 same concept as is required in the 271 -- Section 271
3 of the Telecommunications Act.

4 Q. Is it your opinion that price cap regulation
5 prevents Southwestern Bell from lowering rates on its
6 services?

7 A. My understanding is that Southwestern Bell
8 has some downward pricing flexibility under price
9 caps, although from a company perspective to the
10 extent that the company would like to rebalance by
11 lowering prices in one area and raising them on some
12 other service, for example, it doesn't have that
13 capability.

14 Q. Is it your opinion that price cap regulation
15 delays Southwestern Bell's offering of new services?

16 A. Yes, it is. And the reason I say that is
17 that the more pricing flexibility a company has, the
18 more vigorous competition can be, and I think it's
19 very important for the Commission to understand that
20 competition is really not just about prices going up
21 or prices going down.

22 Much more important, probably, these days in
23 the telecommunications industry is the incentive to
24 offer new services, to invest in innovation and new
25 technology and just new ideas. And to the extent that

1 a company is limited in its ability to recoup the
2 gains from those risky investments, it has a
3 disincentive from making those kind of risky
4 investments in innovation.

5 So, in my opinion, imposing price
6 constraints, price caps, on a company when they are
7 not warranted does limit or delay the introduction of
8 new services.

9 Q. Can you identify a specific example or
10 examples where the price cap regulation has delayed
11 Southwestern Bell from offering a new service?

12 A. Well, I think you're asking me to identify
13 innovation that I'm saying hasn't happened as a result
14 of constraints on the market that, if they were
15 lifted, would invigorate competition.

16 Q. I'm going to try to give you a hypothetical
17 example. Assume that Southwestern Bell sells a retail
18 service for \$10. Assume that a CLEC which purchases
19 the service from Southwestern Bell at \$8, and I've
20 rounded the 19 percent, charges its customers \$9.75 to
21 cover its costs and make a reasonable profit.

22 If Southwestern Bell raises the retail price
23 of its service to \$10.50, and, thus, the wholesale
24 price goes to -- goes up, what is the CLEC's response
25 as to the price it charges its retail customer?

1 A. Well, it depends on a number of factors in
2 your hypothetical. First, I would note that the
3 original margin in your example is \$2. If the retail
4 rate were to go up to I think you said \$10.50 --

5 Q. Yes.

6 A. -- the wholesale rate would not go up to
7 \$8.50. It would go up by less than that. Let's see.
8 It would go up by, what, \$8.10, to \$8.10, something
9 like that.

10 So the margin in dollar terms would
11 increase, and that would give the CLEC a greater
12 opportunity both to make profits and to improve its
13 retailing functions, make investments in its
14 facilities and so forth.

15 It's not -- I'm sorry. It's not the case,
16 though, that the reseller would necessarily increase
17 its price in order to absorb the increase that it
18 faces on its wholesale service price, and there are a
19 number of reasons for that.

20 One is, as I indicated in my testimony, this
21 CLEC may be providing some of its services over its
22 own facilities and some of it over these resale lines,
23 and these resale lines may be a small or a large
24 fraction of its total services. It may be that the
25 cost increase on the whole -- on the resale lines

1 doesn't have a big enough impact on its overall costs
2 to warrant raising its prices on all of its customers
3 and it may be profitable depending on the extent to
4 which it believes the customers will switch away from
5 the incumbent to its own services to just hold the
6 line on its prices. And it may very well be able to
7 afford to do that, and I gave a numerical example in
8 my testimony demonstrating that it may very well be
9 profitable to do so.

10 The other reason is that the CLEC may be
11 providing a whole array of services in a bundle. For
12 example, it may be providing long distance. It may be
13 providing vertical features. It may be providing
14 paging, wireless. Carriers are bundling all different
15 services together, and this increase of, I think,
16 10 cents, 20 cents, something like that, in its
17 wholesale rate just may not be important in its
18 overall profitability picture to warrant any kind of a
19 pricing response.

20 Q. In your Surrebuttal Testimony at Page 13,
21 beginning on Line 15, you state, "Pricing strategy in
22 a competitive market involves the choice of or
23 invention of new pricing structures, bundles, and
24 service offerings."

25 Is it your opinion that the price cap

1 statute prevents Southwestern Bell from having a
2 choice of pricing structures?

3 A. I think to the extent that the price cap
4 structure makes it difficult to restructure the entire
5 portfolio of services, and by that I'm really
6 referring to a sort of rebalancing between different
7 services, then, yes, it does inhibit the incumbent's
8 ability to do that.

9 Q. Can you give an example where Bell has made
10 such a proposal and it was rejected by the Commission
11 based on the price cap statute?

12 A. I don't know that -- let me rephrase that.
13 My reading of retail rates in the state of
14 Missouri is that there is room for rebalancing of
15 those rates. I think that that could -- that
16 possibility is created in this proceeding. I don't
17 know that Southwestern Bell has requested to do so in
18 the past, but my impression is that they have not.

19 Q. Is it your opinion that the price cap
20 statute prevents Southwestern Bell from offering
21 bundled services?

22 A. Well, Southwestern Bell is certainly
23 precluded from bundling long distance with its local
24 service, not as a result of price cap statute --
25 statute, but as a result of the fact that at the

1 moment it's not able to provide long distance services
2 in its own region.

3 Q. Is it your opinion that the price cap
4 statute prevents Southwestern Bell from having a
5 choice of service offerings?

6 A. Are you referring to the language on Line 16
7 of the page you were referring to earlier? Is that
8 what you mean?

9 Q. Yes. The sentence on 15 and 16.

10 A. Well, what I'm referring to there when I say
11 choice of or invention of new pricing structures,
12 bundles, and service offerings is precisely what I was
13 talking about earlier, which is invention of new
14 service offerings, the incentive to do that, being the
15 opportunity to earn some return on those investments
16 that are by nature risky. So having pricing
17 constraints certainly limits the potential and ability
18 for a company to hope to recover the risky investments
19 that are necessary to really compete in -- on the
20 innovation front.

21 Q. And how does the price cap statute prevent
22 Southwestern Bell from recouping its costs on a new
23 innovative service?

24 A. Again, I think that the nature of price caps
25 and of pricing constraints as opposed to pricing

1 flexibility is precisely that pricing flexibility
2 creates the opportunity for a carrier to compete on
3 more fronts than just pricing, but to compete in terms
4 of investing in new kinds of services, new kinds of
5 facilities, matching those offers of its competitors
6 and generally having opportunities to recover risky
7 investment. I think it is just a general phenomenon
8 that under price cap regulation there are fewer
9 opportunities to restructure and rebalance rates in a
10 way that makes those kinds of investments attractive.

11 Q. In your Surrebuttal on Page 14, the sentence
12 begins on Line 5 that reads, "A firm is more likely to
13 attempt a price decrease if it knows it can limit its
14 risk by restoring the original price later if the
15 decrease does not work out."

16 Is it your opinion that the price cap
17 statute would prevent Southwestern Bell from first
18 lowering its rates and then raising it back up if the
19 decrease does not work out?

20 A. Well, I know there is a limit of 8 percent
21 on price increases for certain services, and it's --
22 what I had in mind here was that if a firm -- if the
23 incumbent were to choose to lower its price by more
24 than that, it may face a constraint in being able to
25 raise the price back up because of that 8 percent

1 constraint.

2 There may be ways around that. I don't know
3 the answer to that, but that was what I had in mind
4 when I wrote that.

5 Q. So it's your understanding that the
6 8 percent would apply to the price after it's lowered?

7 A. That was my concern.

8 Q. On Page 18 you give a summary of the
9 statutory definition of service and in that definition
10 you leave out the phrase "devoted to the public
11 services," but that phrase is included where you set
12 out the entire statute in the footnote.

13 What is your understanding of the phrase,
14 devoted to the public services -- public purposes?
15 I'm sorry.

16 A. I think "devoted to the public purposes"
17 simply means performing the business of that firm; in
18 other words, if it's a telecommunications company,
19 providing telecommunications services.

20 Q. Would a grocery store's delivery trucks be
21 devoted to the public purposes of the grocery store?

22 A. Yes.

23 Q. In your opinion, are there significant
24 barriers to entry into the facilities-based CLEC
25 market?

1 A. In the state of Missouri?

2 Q. Yes.

3 A. No. I think that the evidence provided by
4 Mr. Hughes in his testimony is very powerful evidence
5 demonstrating that, in fact, that's not the case.
6 There is collocation throughout the state of Missouri.
7 I think Mr. Lane said in his opening statements that
8 87 percent of the wire centers in the state of
9 Missouri have facilities-based competition in them.

10 I think that looking at the very extensive
11 collocation in the state, the very extensive evidence
12 on -- from other sources of data on facilities-based
13 competition throughout the wire centers in the state
14 of Missouri, as well as the provisions of the
15 Telecommunications Act, the M2A that's been approved
16 here, and the fact that the OSS systems and other
17 features of the 271 checklist have been approved in
18 this state are powerful evidence that there are not
19 entry barriers in facilities-based competition here.

20 Q. As you answered that question, what was your
21 definition of the phrase "facilities-based"?

22 A. Well, I started out my answer talking about
23 collocation which can include carriers providing
24 services purely over their own facilities or those
25 using unbundled network elements. I include

1 carriers -- both of those kinds of carriers in my view
2 of facilities-based competition, those that provide
3 services purely over their own facilities and those
4 that use unbundled network elements.

5 Q. Later on in your testimony you talk about
6 the difficulty that CLECs have in obtaining financing.
7 Isn't that a significant barrier to entry?

8 A. No. From an economic perspective, what I
9 explained in my testimony is that the troubles that
10 several CLECs are having these days in obtaining
11 financing is really a symptom of a number of more
12 fundamental problems that some CLECs are now finding
13 themselves in in the telecommunications market.

14 But in itself, it's not a barrier to entry,
15 and, in fact, a number of CLECs are finding that they
16 do have access to capital and that they are fully
17 funded, and those are the CLECs that by a number of
18 measures, one would expect to be successful and have
19 been successful in the market.

20 A number of CLECs have not been successful,
21 and that's unfortunate, but I don't think it's because
22 they haven't had access to capital. I think they
23 haven't had access to capital lately because they
24 haven't had sound business plans.

25 Q. Do you know whether wireless telephone

1 service provides assistance programs to economically
2 disadvantaged or disabled customers?

3 A. Are you referring to mobile wireless or
4 fixed wireless?

5 Q. Let's go with mobile wireless.

6 A. And I'm sorry. Could you repeat the
7 question then?

8 Q. Does mobile wireless telephone service
9 provide assistance programs to economically
10 disadvantaged or disabled customers?

11 A. Not to my knowledge.

12 Q. Does mobile wireless service provide access
13 to local emergency services including 911?

14 A. I don't know the status of that in the state
15 of Missouri.

16 Q. At Page 46 you report on a study that
17 concludes that a few markets can support four to five
18 facilities-based entrants.

19 Which Southwestern Bell exchanges have four
20 to five facilities-based entrants -- or, I guess,
21 first I need to ask, how do you define
22 "facilities-based" in that study?

23 A. Well, I'm referring there to a study by J.P.
24 Morgan/McKinsey, and what they did was look at the
25 cost of installing a switch and how many customers a

1 carrier would need to in the long-run recover the cost
2 of that switch. And what they're pointing out there
3 is that because a switch involves a fixed investment,
4 a carrier has to have enough revenues or enough
5 customers to makes that switch investment pay off in
6 the long-run. And so it would be unreasonable and
7 unrealistic to envision a competitive market that
8 would support 10, 20, 25 switch-based carriers.

9 And I think that that's important for the
10 Commission to understand, because it is, in fact,
11 unrealistic to think about competition in these
12 markets as being atomistic, and by that I mean sort of
13 resembling a textbook vision of competition as
14 encompassing many, many, many small carriers. It's
15 not that kind of market in the facilities-based world.

16 It's the kind of market that would support,
17 two, three, four maybe switched-based carriers, and
18 that's fine. That's perfectly sufficient, legitimate
19 competition, and it's important for regulators to
20 permit the market to achieve the structure that it --
21 the technology justifies, and not to try to impose on
22 a market the number of competitors or to pre-judge the
23 number of competitors that should be there in order to
24 make competition viable.

25 Q. Which Southwestern Bell Missouri exchanges

1 have four to five CLEC switches, or how many, not
2 which ones?

3 A. I've seen numbers pertaining to how many
4 CLEC switches there are in the state of Missouri. I
5 don't recall the number. It's in the double digits
6 certainly, easily.

7 And CLEC switches -- CLEC architectures are
8 somewhat different from ILEC architecture -- network
9 architecture in the sense that in the ILEC network
10 switches tend to cover a much smaller geographic range
11 than in the CLEC network architecture. CLECs tend to
12 use their switches to cover a much broader geographic
13 area, and so it may very well be that a switch in the
14 state of Missouri could cover a very large proportion
15 and perhaps even all of the state.

16 So it's impossible for me to say which
17 exchanges are covered by the existing CLEC switches,
18 but given the large number of switches that exist in
19 the state, it wouldn't be surprising that all of them
20 are potentially covered by the range of those
21 switches. I'd have to look at a map of the switches
22 to -- and analyze it more carefully to be able to give
23 you a definitive answer.

24 Q. Let's assume, as you state, that predatory
25 pricing is virtually impossible.

1 Does that mean, from an economic viewpoint,
2 that predatory pricing should not be prevented in the
3 instances where it is possible?

4 A. Could you just point me to where in my
5 testimony you're referring, please?

6 Q. Page 48, Line 18.

7 A. In my opinion, predatory pricing, to the
8 extent that it's demonstrated, should certainly be
9 punished. There should be consequences for
10 anti-competitive behavior. There is no question about
11 that.

12 My opinion, though, is that, in general,
13 predatory pricing is a very uncommon strategy. The
14 courts have said as much. The antitrust courts have
15 said as much. And, in particular, in the
16 telecommunications market, it's particularly difficult
17 to envision a scenario where predatory pricing is
18 likely to be viable because of all of the regulatory
19 imposed market opening requirements such as the
20 availability of unbundled network elements at
21 regulated prices, the availability of resale at
22 regulated discounts, and the interconnection
23 requirements imposed by that.

24 Q. Please turn to the example that you give at
25 the bottom of Page 52.

1 A. (Complied.)

2 Q. First, what's the purpose of including this
3 example?

4 A. This example was a response to an argument
5 made by AT&T witness Mr. Kohly who was arguing that
6 because access rates are above cost that that creates
7 an opportunity for Southwestern Bell to engage in --
8 well, I think the way he put it was that Southwestern
9 Bell has an access cost advantage.

10 And the purpose of my example was to explain
11 that when access prices are above cost, it would be
12 irrational for the incumbent to give up those access
13 revenues in favor of getting lower revenues by serving
14 the end use customer itself. So I was demonstrating
15 that with a simple numerical example.

16 Q. In your example, if Southwestern Bell serves
17 the customers, what is Southwestern Bell's net?

18 A. Okay. So, in my example, the access price
19 is .061 or 6.1 cents, and the access cost that
20 Southwestern Bell incurs is 1 cent, and in my example,
21 I posited the supposition that there are 3 cents per
22 minute in other costs, just for purposes of the
23 example, so that if AT&T were to price at its cost, it
24 would price at 9.1 cents per minute. And then I said,
25 if Southwestern Bell were to match that price, then it

1 would net 5.1 cents.

2 Q. And if AT&T serves the customer, what is
3 Southwestern Bell's net?

4 A. If AT&T serves the customer, then
5 Southwestern Bell sells that minute of access for
6 6.1 cents, which costs it 1 cent, so it nets 5.1
7 cents, so it's indifferent.

8 Q. And in your example if AT&T serves the
9 customer, what is AT&T's net?

10 A. In my example, I -- I assumed a price at
11 which AT&T would just earn a normal economic return.
12 That's not to say that AT&T does in the real world
13 charge a price at which it really earns a zero
14 economic return, but that was what I assumed for
15 purposes of my example.

16 Q. Now, let's assume that Southwestern Bell
17 tries to undercut AT&T by setting its price to its
18 customers at 8.1 cents.

19 Can AT&T match that price in your example?

20 A. In both cases, the carriers would be losing
21 money relative to what they otherwise could earn by
22 doing so. So in AT&T's case, it would be pricing
23 below its cost, and in Southwestern Bell's case, it
24 would be pricing in such a way that it -- so in AT&T's
25 case, it be would giving up 1 cent per minute. In

1 Southwestern Bell's case, it would also be giving up 1
2 cent per minute relative to what it could earn by
3 selling access to AT&T.

4 Q. And can AT&T over the long-run provide the
5 service at .81 cents?

6 A. Only if it manages to decrease its other
7 costs and improve its efficiency or find other
8 services to sell to its customers that make the
9 customer profitable through some bundling or other
10 customer-specific strategy.

11 MR. HAAS: Thank you.

12 That's all of my questions.

13 JUDGE DIPPELL: Thank you.

14 Public Counsel?

15 MR. DANDINO: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. DANDINO:

17 Q. Good morning, Dr. Aron.

18 A. Good morning.

19 Q. It would be a fair statement to say that
20 Southwestern Bell is a very strong competitor in the
21 local telephone market?

22 A. In some ways. In some ways it's hamstrung
23 by its lack of pricing flexibility and its rather aged
24 network. But in other ways, I would say it is a
25 strong competitor.

1 Q. In what ways is it a strong competitor?

2 A. It has a well-known brand name. It's not
3 unique in that strength, but it certainly is a
4 strength. It has many existing customers, and I think
5 one can't deny that that's a strength. It's also not
6 unique in that strength. The IXCs also have an
7 embedded customer base and strong customer
8 relationships and strong brand names, but one can't
9 deny that Southwestern Bell has those strengths as
10 well.

11 Q. After -- if Southwestern Bell obtains
12 in-region interLATA long distance authority, how would
13 that affect their -- how would that affect their
14 status as a strong competitor in the Missouri market?
15 Let's talk about the Missouri market.

16 A. I think it would have two effects.

17 On the one hand, I think it would certainly
18 help Southwestern Bell in its ability to compete by
19 providing a full service offering to its customers,
20 and I think customers do want full service offerings
21 of bundles of local and long distance. Customers have
22 certainly demonstrated a liking for that in the
23 wireless market and in the wire line market as well.

24 On the other hand, though, I think we've
25 seen in other states that when the incumbent is

1 granted 271 authority, that really invigorates the
2 competitors, in particular, the IXCs, to engage more
3 seriously in their own competitive efforts in the
4 state. And I think what we've seen, and the FCC has
5 commented on this as well, in those states is that
6 really competition has taken off after the approval of
7 271 authority in those states.

8 So I think it has those two opposing
9 effects. It makes Southwestern Bell stronger in the
10 sense that it can provide a broader array of services
11 that customers want, and it makes them more vulnerable
12 in the sense that it invigorates IXCs and other
13 competitors to compete more heavily.

14 Q. So you think now that IXCs and other
15 competitors have held back on competing with
16 Southwestern Bell just to wait and see what happens
17 with the 271 application in Missouri?

18 A. I would say that that appears to be the
19 evidence in other states for whatever reason. I'm not
20 saying it's for strategic reasons. It could be. I
21 don't know.

22 But it appears in other states that the IXCs
23 have chosen to compete more vigorously and to
24 substantially increase their penetration in the
25 residential market, in particular, after the approval

1 of 271 authority.

2 Q. But in Missouri, talking about your
3 knowledge of the situation in Missouri, is that
4 situation the same here, that the CLECs have kind of
5 sat back and not entered the residential market to
6 compete with Southwestern Bell awaiting 271?

7 A. I think that the IXCs have made some efforts
8 in the residential and the business market in the
9 state of Missouri. The data I've seen demonstrate
10 that these carriers are, in fact, active and
11 significantly active on a facilities basis in the
12 state.

13 I can't say what their level of activity
14 would be if SBC in Missouri were already in the long
15 distance market though. It's impossible for me to say
16 how much enhanced their efforts would be. I don't
17 know.

18 Q. Now, you were speaking in terms of the IXCs.
19 What about CLECs, the competitive local exchange
20 companies? Have they held back competing with
21 Southwestern Bell?

22 A. Let me clarify. When I was speaking of the
23 IXCs, I was speaking of them in their role as CLECs.

24 Q. You say that there are some situations where
25 price caps would be warranted.

1 Could you describe the circumstances where
2 price caps would be warranted?

3 A. Well, for example, before the passage of the
4 Telecommunications Act of 1996, it was very difficult
5 for competitors to enter the local exchange market in
6 many states and perhaps throughout the United States.

7 Since the passage of the Telecommunications
8 Act, as we all know, many requirements have been
9 imposed on incumbent carriers, and, yet, in states
10 that, let's say, have not -- where the carriers have
11 not yet complied with those requirements, one could
12 say that the market is not yet opened to competition.

13 That's not to say that in my opinion every
14 state that has not been granted 271 authority has not
15 complied with the requirements of the checklist or of
16 the Telecommunications Act in general. But in a state
17 that has -- where the carrier has not complied, I
18 would say that one couldn't conclude that the market
19 is open to competition, and, in that case, I would say
20 that price caps are probably warranted.

21 Q. What about price caps as a protection for
22 the consumer? Under what conditions would it be
23 warranted?

24 A. Price caps are a protection for the consumer
25 against price increases where competition does not

1 function to serve that role. In my opinion,
2 competition is a much more economically rich and
3 consumer friendly way of -- of disciplining a market
4 both for the protection of consumers but also for the
5 broader benefit of consumers because competition, as I
6 said earlier, brings many more benefits to consumers
7 than just price controls.

8 Q. But if you don't have effective competition,
9 then you would need something to counterbalance a
10 regulatory counterbalance in lieu of competition; is
11 that correct?

12 A. The one important caveat to a statement like
13 that is the issue that Mr. Lane alluded to in his
14 opening statements, which is that there is a
15 fundamental problem in our country, really, which is
16 that residential retail rates tend to be at a level
17 that are really not sustainable in the long-run in a
18 competitive market absent some other public policy
19 mechanism for achieving universal service goals.

20 I think that those universal service goals
21 of keeping prices low can be achieved, but they have
22 to be achieved through some direct explicit mechanism
23 and not through the indirect one of keeping prices
24 artificially low and thereby hampering competition
25 itself.

1 Q. Of course, that assumes that -- that that's
2 true, a issue I won't debate with you here.

3 A. And I heard your opening statements. I'll
4 be happy to debate that with you if you choose.

5 Q. Now, if this Commission would grant
6 competitive status to Southwestern Bell, what would
7 you look for as warning signs or signals where they
8 had to come back in and reimpose price cap or other
9 type of price regulation?

10 A. I think I would look first to whether there
11 continues to be growth of the CLECs in the state. As
12 I have said in my testimony, based on the evidence
13 provided by Mr. Hughes, there has been continued, even
14 in the face of the economic downturn and the downturn
15 in the telecommunication market, continued growth of
16 CLEC activity in the state of Missouri. I would look
17 for that to continue, and if it didn't continue, I
18 would take that as a red flag to look into in more
19 depth.

20 I would look to continued growth in
21 facilities-based competition and competition from
22 alternative technologies such as cable telephony. I
23 would look to whether there are some increase or
24 proliferation of service offerings in the market,
25 diversity of offerings as the Missouri statute terms

1 it. If that isn't occurring, I would be concerned and
2 I would take a look at whether there needs to be some
3 regulatory action.

4 MR. DANDINO: That's all I have, your Honor.
5 Thank you.

6 JUDGE DIPPELL: AT&T?

7 CROSS-EXAMINATION BY MR. ZARLING:

8 Q. Good morning, Dr. Aron. I'm Kevin Zarling
9 with AT&T.

10 A. Good morning.

11 Q. I'm going to work entirely on your
12 Surrebuttal Testimony. Okay?

13 JUDGE DIPPELL: Mr. Zarling, could you go
14 ahead and speak into the microphone so we can hear you
15 clearly?

16 MR. ZARLING: Is that better?

17 JUDGE DIPPELL: A little better.

18 BY MR. ZARLING:

19 Q. You say on Page 12 of your Surrebuttal
20 Testimony at Line 4 that CLECs need no bargaining
21 power with respect to resale discounts because they
22 are established by the Commission and under the FTA.
23 Correct?

24 A. The Federal Telecommunications Act --

25 Q. Yes.

1 A. -- is that what you mean? Yes.

2 Q. Okay. And the purpose of your statement
3 there is to suggest that CLECs then are somehow
4 protected from their lack of bargaining power in
5 trying to obtain what they might view as favorable
6 wholesale discounts for resale; is that correct?

7 A. Yes.

8 Q. Okay. Whereas in the long distance market,
9 carriers have to negotiate and bargain with the IXC's
10 to determine what kind of resale discount they're
11 going to obtain?

12 A. Well, my understanding of the way it works
13 in long distance is that the long distance companies
14 in their retail tariffs offer volume discounts for
15 large customers and that the resellers essentially
16 purchase off of those large discounts by aggregating
17 minutes and therefore purchasing large numbers of
18 minutes at a volume discount.

19 Q. And aggregators can, in fact, turn around
20 and resell to other carriers?

21 A. As far as I know.

22 Q. Okay. So that small carriers in the long
23 distance business can, in fact, attain the discounts
24 that large volumes provide, large volumes that the
25 aggregators might bring to the table when they buy

1 from the IXC?

2 A. If the aggregators are willing to make that
3 deal with the small carriers that you are
4 hypothesizing.

5 Q. And there are volume discounts under IXC
6 tariffs that range in the 40 to 50 percent range, are
7 there not?

8 A. I don't know.

9 Q. They are significantly higher than under the
10 19 percent that this Commission has approved for local
11 resale; isn't that true?

12 A. I haven't seen the discount, so I just can't
13 say that I know that's true.

14 Q. So you don't know whether in the long
15 distance market resale discounts are appreciably
16 greater or not than the kind of wholesale resell
17 discounts available in the local market here in
18 Missouri?

19 A. My impression is --

20 Q. Do you know one way or another?

21 A. I think I said I don't know.

22 Q. Okay. That's the only answer I need then.

23 Thanks.

24 Mr. Haas covered a lot of my questions.

25 On Page 31 of your testimony you're

1 describing Mr. Kohly's testimony, and you say that,
2 beginning at the very top of the page, "Mr. Kohly is
3 asking this Commission to establish a policy whereby
4 the prices of network elements or services that AT&T
5 elects to buy from Southwestern Bell are regulated and
6 low."

7 Other than network elements, what other
8 services do you think Mr. Kohly is referring to?

9 A. I think he's referring to switched access.

10 Q. Okay. When you say "elects to buy," is it
11 your opinion that AT&T in all circumstances can bypass
12 Southwestern Bell's switched access when it wants to
13 provide long distance service to a local customer?

14 A. On the originating end, yes, I do think so.

15 Q. Okay. But not in all circumstances?

16 A. In all circumstances on the originating end,
17 not on the terminating end.

18 Q. Okay. Explain how AT&T in all circumstances
19 can avoid purchasing switched access on the
20 originating end.

21 A. By providing it itself, by providing the
22 local service to that customer via UNE-P or through
23 its own facilities.

24 Q. Okay. So if AT&T succeeds in attaining the
25 customer's local business, then AT&T can avoid

1 switched access as an IXC?

2 A. Yes. And I would suggest that that is
3 precisely what AT&T should be attempting to do.

4 Q. Okay. But it's not entirely within AT&T's
5 control to win the local customer? It can do its
6 best, but it's not entirely within its control?

7 A. The customer is sovereign. The customer
8 chooses the carrier from whom it wishes to get
9 service, but I've also pointed out in my testimony
10 that to the extent there is a difference between the
11 cost of providing access and the price, that creates a
12 large arbitrage opportunity or a pricing opportunity
13 for AT&T to undercut the incumbent's retail price and
14 offer a large discount to the end user to switch local
15 service to AT&T.

16 Q. Sticking with this sentence for the moment,
17 you say in your first sentence that Mr. Kohly is
18 arguing to try to keep access prices regulated and
19 low, and then you go on to say, The prices of services
20 that AT&T sells in competition with SWBT, that what
21 we're attempting AT&T is going to do is keep them
22 regulated at umbrella levels to preclude lower prices.

23 What specific rates are you referring to
24 there?

25 A. I don't have the particular reference to

1 Mr. Kohly's testimony that I cite in front of me, but,
2 in general, you know, what's AT&T's interest in this
3 proceeding with respect to local service prices aside
4 from access prices?

5 AT&T is here, with all due respect, sir,
6 representing its own interest, not the interest of
7 consumers, and so, surely, in general, AT&T is not
8 objecting to pricing flexibility, for example, for
9 local service because it's worried that those prices
10 are going to be increased, because that is a good
11 thing for competitors.

12 What AT&T is worried about, and I think you
13 said in your opening statements, is that the incumbent
14 is going to ride roughshod over its competitors, and
15 that means it's going to compete more vigorously by
16 lowering prices in some areas and perhaps raising them
17 in others. And that is certainly a scary prospect for
18 a competitor because competition erodes competitors
19 profits. That's not a bad thing for competition,
20 though. That's a good thing for competition because
21 it's a good thing for consumers.

22 And so what I'm referring to here is that
23 AT&T's presence in this proceeding in my opinion is
24 really an effort by Southwestern Bell's competitors to
25 hamstring Southwestern Bell in its ability to compete

1 effectively not because it's worried that prices are
2 going to go up, but because it's worried about more
3 general price changes that are going to be detrimental
4 to AT&T's profits.

5 Q. Well, you've said specifically here that
6 AT&T is trying to preclude Southwestern Bell from
7 charging lower prices. What specific prices are we
8 trying to keep Southwestern Bell from lowering or
9 being able to lower in this case?

10 A. Well, one that has been an issue in this
11 proceeding is the local plus offering. I think there
12 is some confusion in the record or in the testimony
13 about what the carriers are worried about with respect
14 to local plus.

15 But I gather from Mr. Kohly's testimony that
16 the concern is that Southwestern Bell is going to
17 engage in some sort of predation by lowering its
18 prices too much and driving AT&T out of the market,
19 and I think it's focusing on that local plus offering
20 in the context of that argument.

21 Q. Is there anything else besides local plus
22 that you can think of?

23 A. I think it's a general argument with respect
24 to intraLATA toll.

25 Q. And AT&T's position is simply that we don't

1 think that Southwestern Bell should be able to price
2 below their costs of providing a service, including
3 whatever their LRIC might be in imputed access. Is
4 that your understanding of our position?

5 A. I think the position that Mr. Kohly
6 articulated is that Southwestern Bell should not be
7 granted pricing flexibility on intraLATA toll until
8 access rates are reduced to cost. That's my
9 recollection of the position.

10 Q. Okay. Do you think Southwestern Bell should
11 be able to price its toll services below the cost --
12 the LRIC of the service and the cost of the imputed
13 access?

14 A. Yes, I do, as a general matter, and I will
15 be happy to tell you why I think so.

16 The concern that you are raising with
17 respect to predatory pricing is that Southwestern Bell
18 is going to harm your interests and, I assume, your
19 position is harm ultimately consumer interests by
20 pricing too low. But as -- as a preliminary matter,
21 it needs to be said that a firm that's not subject to
22 regulation but chooses to price low, generally that's
23 good for consumers. Consumers like low prices.

24 And so regulators have to be very, very
25 careful in imposing any sort of regulatory rule that

1 would assume to constrain price decreases. That's
2 generally not a pro consumer kind of position to take
3 in an unregulated -- otherwise unregulated market.

4 There are many sound economic reasons that a
5 firm might choose to price below the cost that you
6 just described, not necessarily forever, but even in
7 some cases in the long-run. For example, a firm
8 that's meeting the prices of its competitors even if
9 that price is below its cost cannot be said to be
10 engaging in predation.

11 Similarly, in situations where a firm is
12 trying to break into a market, it's well recognized
13 that below cost pricing is predatory. It's perfectly
14 legitimate, acceptable pricing. In situations where
15 there are cyclical or secular downturns into a market,
16 it is recognized that pricing below cost is legitimate
17 and acceptable.

18 And for all of those reasons I think it
19 would be wrong to establish a presumption that pricing
20 below the cost standard that you just described is
21 anti-competitive. That's not to say that if the other
22 market conditions that would -- would tend to
23 facilitate predatory pricing were present that -- that
24 below-cost pricing shouldn't raise a red flag and
25 merit some investigation, but I wouldn't support a

1 presumption or a rule that would preclude it, because
2 precluding price decreases is generally bad for
3 consumers.

4 Q. Within Southwestern Bell's territory access
5 the access rate it charges are not a true cost that
6 Southwestern Bell experiences, are they?

7 A. Probably not.

8 Q. And I think as you described on Page 52 of
9 your Surrebuttal, you talk about a scenario where
10 Southwestern Bell would be indifferent to serving the
11 IXC; that is, charging the IXC access or -- or
12 charging toll to the end user if it were the LD
13 carrier?

14 A. Correct.

15 Q. And you said it would not have -- I think
16 you may not have said this, but I think your position
17 was that -- said this exactly what your position was,
18 it wouldn't be rational behavior for them to forgo the
19 revenue as the toll provider when they could charge
20 the access -- get the same amount of money by charging
21 access to the IXC?

22 A. Correct.

23 Q. Okay. They might not -- is it your position
24 that some carrier including Southwestern Bell might
25 not have some strategic goal to bundle services in

1 such a way that if they want to get the customers' --
2 retain the customer's local business, they need to get
3 their long distance business, and so we want to
4 undercut the competitor?

5 A. They might do so. And AT&T has a perfect
6 response to that, which is to do the same thing: Sell
7 local service, bundle it with long distance, and avoid
8 access charges entirely.

9 Q. And that's presuming AT&T can win the local
10 customer and has the local customer?

11 A. And the upshot of that in your scenario is
12 assuming that Southwestern Bell can win the long
13 distance service. They are competitors. They both
14 have an incentive to provide attractive price packages
15 to their customers and try to win those customers.

16 Q. In your scenario who is in a better position
17 to charge less than -- I can't even tell what the
18 retail -- the retail price, who is in a better
19 position to charge less than 9 cents, Southwestern
20 Bell or AT&T?

21 A. I think there is a fallacy here that needs
22 to be explained, and that is your question is implying
23 that because AT&T would have to price below cost,
24 whereas Southwestern Bell would price below its -- a
25 level where it could earn more revenues than it

1 otherwise would, that AT&T is in a worse position, and
2 that's not necessarily true.

3 AT&T, just like Southwestern Bell, is a
4 large company with many resources and is providing a
5 portfolio of services to customers. What AT&T cares
6 about is that it earn a profit on its customers,
7 ideally earn a profit on each customer, but the fact
8 that it might be taking a hit on the long distance
9 service that it sells to a given customer doesn't even
10 mean that it's not making money on that customer,
11 taking into account all of the revenues and costs of
12 all of the services that it's selling to that
13 customer.

14 In either case, both companies would be
15 doing a disservice to their shareholders by earning
16 less profits than they otherwise could earn. And in
17 both cases, the effect on their value as a firm would
18 be symmetrically affected unless anyone thought that
19 AT&T was close to bankruptcy, which I don't think is
20 the case.

21 Q. Are you aware in Missouri whether
22 Southwestern Bell provides toll services outside of
23 its intraLATA, of course, outside of its own local
24 service territory?

25 A. I'm aware that the MCA plan includes calls

1 that are treated as local calls, but that can extend
2 outside of Southwestern Bell's own service territory.
3 I don't know if that's -- if that answers your
4 question or if it gets to your point.

5 Q. Let me ask it a different way.

6 If Southwestern Bell doesn't provide toll
7 service outside of its local -- outside of its local
8 service territory, then isn't it true that
9 Southwestern Bell doesn't have to average its toll
10 rates set across different access costs throughout the
11 state?

12 A. Can you try it again? I didn't follow. I'm
13 sorry.

14 Q. If Southwestern Bell only provides toll
15 service in its local service territory, then -- I'm
16 not sure I'm going to do any better this time -- isn't
17 it true that Southwestern Bell does not have to
18 provide averaged toll rates, charge average toll rates
19 to its customers where that average would reflect
20 access charges or access costs that occur outside of
21 Southwestern Bell's local service territory?

22 A. Well, if Southwestern Bell is not providing
23 local toll outside of its service territory, then the
24 access costs that are relevant outside of the service
25 territory, at least on the originating end, wouldn't

1 be relevant to its costs. I think that's what you're
2 getting at.

3 Q. And I admit. I asked the question poorly.

4 And Bell would experience some terminating
5 costs to the extent the traffic terminated outside of
6 its territory, but it wouldn't -- it would have
7 different cost characteristics for its -- for the rate
8 structure for its toll traffic compared to a statewide
9 long distance carrier that has traffic volumes both
10 originating and terminating in carriers' territories
11 outside of Southwestern Bell?

12 A. I guess I would agree that it has a
13 different cost structure. Certainly carriers can
14 accommodate their rate structure to their cost
15 structure.

16 Q. By having higher rates, for example, if you
17 experience higher costs?

18 A. Correct, if it chose.

19 Q. Okay. You make a reference on Page 31,
20 Line 10, again criticizing Mr. Kohly's position that
21 what AT&T is trying to do, you say, is maintain a
22 profit cushion.

23 Are you referring there to AT&T operating as
24 a CLEC trying to maintain high access rates?

25 A. No. I'm referring there, again, to the

1 comments I made earlier where I think that AT&T's
2 interest in this proceeding with respect to its
3 opposition to relieving price constraints on basic
4 local services is to keep -- to disempower
5 Southwestern Bell in its ability to compete
6 vigorously, and that creates a profit cushion for
7 AT&T.

8 The more vigorously Southwestern Bell can
9 compete, the more that erodes its competitors'
10 profits, and that is bad for its competitors, although
11 it is good for competition and it's good for
12 consumers.

13 Q. Okay. Well, I think as you said before, it
14 would actually be in AT&T's best interest to see some
15 rates go up, like basic local.

16 So are you criticizing -- I guess I'm not
17 quite sure what you're criticizing there when you say
18 AT&T is trying to maintain a profit cushion?

19 A. Well, again, what I'm addressing there is
20 AT&T's comments -- raising the specter of predatory
21 pricing. To the extent that AT&T is encouraging the
22 Commission to worry that Southwestern Bell is going to
23 price too low and is encouraging the Commission
24 therefore to impose pricing constraints that keep
25 prices up so that they don't get too low, that creates

1 a profit cushion or a price umbrella for AT&T.

2 Q. And related to what I asked you about
3 before, other than trying to ensure that Southwestern
4 Bell can't take its prices below LRIC or, in the case
5 of switched access, below the cost of imputed access
6 in LRIC, where is AT&T trying to prohibit Southwestern
7 Bell from reducing rates?

8 A. Well, maybe you have to tell me what it is
9 that AT&T then is encouraging the Commission to do in
10 response to AT&T's concerns about predatory pricing.
11 If there is no action that AT&T is urging the
12 Commission to take to prevent predatory pricing, then
13 I have no complaint with it.

14 But if AT&T is encouraging the Commission to
15 impose some sort of price floor that would limit
16 downward pricing flexibility, I think that would be
17 bad policy. I think that would benefit AT&T but would
18 harm consumers and would discourage price decreases
19 that may, in fact, be below cost but are legitimate,
20 as I described earlier.

21 Q. Okay. You don't -- you don't understand
22 AT&T's position to be, keep the floor at LRIC or LRIC
23 plus imputed cost of access in the case of switched
24 access, and you would oppose either of those two
25 protections? Is that your position?

1 A. I don't think I can speak to what AT&T's
2 position is, but, as I said earlier, yes, I would
3 oppose a presumption of predatory pricing if prices
4 were to fall below the price floor that you just
5 described.

6 Q. Okay. And you said -- I think you testified
7 in prefiled certainly in response to, I think, Public
8 Counsel that 271 approval has invigorated competition,
9 and I think you were referring to the local market?

10 A. Yes.

11 Q. Are you aware of -- of what has happened in
12 the long distance market in Kansas and Texas since 271
13 approval was granted?

14 A. I know generally that AT&T has announced
15 price increases. I don't know specifically what's
16 happened in those markets.

17 Q. Were you aware in Kansas that -- that AT&T,
18 excuse me, filed a pricing complaint against
19 Southwestern Bell based on its access rates and
20 achieved a settlement from Southwestern Bell to reduce
21 access?

22 A. No.

23 Q. Were you aware in Texas that Bell's 271
24 relief triggered a similar complaint which is
25 currently pending in the state commission by which

1 Southwestern Bell has appealed all of the way to the
2 Texas Supreme Court?

3 A. I'm aware that AT&T has filed a complaint in
4 Texas alleging predatory pricing. Part of the relief
5 that AT&T was requesting in that case was that access
6 rates be reduced, and I believe that the courts ruled,
7 or the Commission ruled -- I'm sorry, I don't recall
8 which -- that that was not a valid -- that that
9 complaint was not valid in the sense that AT&T could
10 not be requesting that access rates be reduced in the
11 context of that proceeding.

12 Q. Okay. But 271 relief in Texas and in Kansas
13 produced complaints about anti-competitive behavior of
14 just the type and nature that AT&T here is asking the
15 Commission to guard against; isn't that true?

16 A. I should say that it's not surprising that
17 competitors would complain about pricing behavior that
18 harms their own interest. The fact that AT&T has made
19 these complaints, while it's somewhat predictable,
20 does not in any way imply that those charges are
21 legitimate or have any merit in fact.

22 JUDGE DIPPELL: Mr. Zarling, are you going
23 to have more than about five minutes' worth of
24 questioning?

25 MR. ZARLING: No, I don't think so.

1 JUDGE DIPPELL: Okay. Continue.

2 BY MR. ZARLING:

3 Q. You've referred to CLECs that you say
4 actually have access to capital and you would expect
5 to have access to capital, and in particular in
6 response to a question from Staff. Can you enumerate
7 who those CLECs are in Missouri?

8 A. Who the CLECs are that have access to
9 capital?

10 Q. That, based on your knowledge, yes, have
11 access to capital in Missouri?

12 A. My understanding is that Allegiance has
13 access to capital, and Mr. Holland, Royce Holland, the
14 CEO of Allegiance, has been rather vocal, I think, in
15 his criticism of other CLECs' financing strategies,
16 putting themselves in perilous predicaments by
17 overleveraging themselves, which he did not do.
18 McLeod -- my understanding is that McLeod has access
19 to capital based on public reports that I've seen.

20 Those are the ones that come to mind. I'm a
21 sure I haven't captured them all.

22 Q. Okay. You've also in your testimony said
23 you think wireless is a -- is a substitute --
24 potentially a substitutable service that provides
25 effective competition; is that right?

1 A. That's not quite what I said.

2 Q. Okay.

3 A. My view of wireless is, first of all, that
4 this Commission can look at the evidence provided by
5 Mr. Hughes on traditional land line, and in that I'm
6 including cable services and conclude that there is
7 ubiquitous competition in the state of Missouri even
8 without looking at wireless, but that wireless really
9 sort of enriches the competitive picture.

10 I think that I said in my testimony there is
11 something like 68,000 new wireless lines, let's see,
12 per day, and that studies have shown that customers --
13 12 percent of customers who are taking new wireless
14 lines say they are doing so instead of installing a
15 new second line.

16 So I think there is clearly evidence that
17 wireless is substituting for wire lines service, but I
18 wouldn't go so far as to say that I would necessarily
19 rely entirely on wireless as a substitute for purposes
20 of a proceeding like this.

21 At the same time I would just point out
22 that -- the point I made in my testimony which is that
23 you wouldn't expect to see a lot of direct wireless
24 substitution for wire line when wire line residential
25 service is held at so low a retail price level that it

1 makes it difficult for wireless to compete.

2 Q. That's also true, isn't it, that wireless
3 isn't subject to and really doesn't obtain the same
4 quality of service standards as wire line service
5 standards?

6 A. Well, wireless has a different quality mix
7 from wire line. It doesn't have the same reliability
8 that wire line does, but it has much higher quality in
9 some other dimensions like ease of use and portability
10 which people apparently value very highly. So I
11 wouldn't say that one clearly dominates the other
12 overall in terms of quality. Clearly, wireless
13 dominates wire line in some quality dimensions and
14 wire line dominates wireless in others.

15 Q. And in that respect, both services are --
16 you can differentiate both services from each other?

17 A. They are differentiated. That doesn't mean
18 they are not substitutes, but they are differentiated.
19 That's part of what comes from a competitive market.
20 One of the benefits of competition is that carriers or
21 firms in general seek to differentiate their services
22 from one another and meet customer needs.

23 MR. ZARLING: Judge, I think I'm -- I think
24 I'm there.

25 BY MR. ZARLING:

1 Q. One final set, hopefully.

2 Page 58, and this, I think, sort of
3 dovetails with the arguments about predatory pricing,
4 and you're referring to Mr. Kohly's testimony about
5 cross subsidization.

6 Do you think those are the same things,
7 price predation and cross-subsidization?

8 A. No.

9 Q. And would you agree that competitors could
10 be hurt by cross-subsidization, leaving aside
11 predatory pricing, but a cross-subsidization by one
12 competitor could hurt another competitor?

13 A. In the regulatory arena, cross-subsidization
14 refers to a strategy that rate of return-regulated
15 firms can engage in in order to -- by -- in order to
16 shift costs from a competitive to a non-competitive
17 service and therefore increase its rate base.

18 The whole idea of cross-subsidization as one
19 thinks of it in the regulatory arena doesn't really
20 apply. It doesn't make economic sense from the
21 perspective of a non-regulated firm or even a price
22 cap-regulated firm because if you're taking a loss in
23 one market, that's a loss. That's just a loss that
24 your shareholders feel, and you would be better off
25 not taking that loss.

1 The fact that you can make profit somewhere
2 else in your -- another market is profit that a
3 competitive firm should be taking whether it can
4 subsidize it from another market or not. Markets are
5 relatively independent in unregulated firms.

6 Q. Is your position that a carrier can't shift
7 its revenues -- I mean, that you can't have cross-
8 subsidization for a price cap company by making up
9 lost revenues when it reduces its revenues in one
10 market that is competitive but perhaps increases its
11 rates in another market that's not competitive?

12 A. I don't think that I would describe what you
13 just explained to be cross-subsidization. I think
14 what you just said is, isn't it possible for a firm to
15 engage in a revenue neutral rebalancing of rates by
16 decreasing prices in one market and increasing them in
17 another? And I think that is possible, but I wouldn't
18 call it cross-subsidization. There was nothing in
19 there that implied that one was decreasing rates in
20 one market below a competitively rational level.

21 Q. How about if it was decreased below cost?

22 A. Then I would say that subject to the caveats
23 that I articulated earlier about why a firm might
24 rationally choose to set prices below cost for
25 perfectly legitimate and non-predatory reasons, that

1 other than such reasons it would be irrational to set
2 prices below cost.

3 MR. ZARLING: Okay. That's all I have.
4 Thanks.

5 JUDGE DIPPELL: Thank you.

6 It's about 12:23, and we're going to go
7 ahead and take a break for lunch. We'll return at
8 1:30 and pick up with the cross-examination by
9 WorldCom. Thank you.

10 We'll go off the record.

11 (A RECESS WAS TAKEN.)

12 JUDGE DIPPELL: Let's go back on the record.

13 And we're ready to begin with
14 cross-examination by WorldCom.

15 MR. LUMLEY: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. LUMLEY:

17 Q. If you could turn first to Page 28 of your
18 Direct Testimony, please.

19 A. All right.

20 Q. And specifically on Line 18 you're talking
21 about markets functioning more effectively to protect
22 customers. Do you see that reference?

23 A. Yes, I do.

24 Q. Could you explain what you mean by that in
25 terms of protecting them from what?

1 A. I would say protecting them from
2 inappropriate prices, inefficient production, and
3 dampened incentives to bring services and prices to
4 the market that respond to consumer demands.

5 Q. And by that last thought, would another way
6 of saying that be dampen innovation?

7 A. I would say that's true, yes.

8 Q. Turning to the bottom of the next page,
9 Page 29, the sentence that starts, "Accordingly," and
10 carries over to the top of the next page --

11 A. Yes.

12 Q. -- you are speaking of, again, availability
13 of new services and of prices commensurate with the
14 efficient use of resources.

15 Would you agree that those are conditions
16 that would result from effective competition,
17 innovation, and market-based practices?

18 A. Yes. I would say that competition tends to
19 lead to prices that move toward cost and tend to
20 create incentives for innovation.

21 Q. In looking at Page 17, I just want to make
22 sure I understand your terminology.

23 When you're talking about -- I'm looking at
24 Line 9 -- competitive discipline on pricing, is that
25 another way of saying driving prices to economic cost?

1 A. That's correct.

2 Q. In looking briefly at your Schedule 1, your
3 resume or your CV, looking at your publications --

4 A. Actually, I don't think I have a copy of
5 Schedule 1 here. Will I need to refer to it?

6 Q. We'll see.

7 A. Okay.

8 Q. Hopefully not.

9 One of the articles that you've authored is
10 entitled, "Effecting a Price Squeeze Through Bundled
11 Pricing"; is that correct?

12 A. Yes.

13 Q. And you have research in progress entitled,
14 "Balancing Concerns of Price Squeeze and Pricing
15 Flexibility in Regulated Telecommunication
16 Industries"?

17 A. Correct.

18 Q. And would it be fair to say with regard to
19 your testimonies that, counting this case, 50 percent
20 of the time has been for companies that at least now
21 are a part of the SBC corporate family?

22 A. I do a lot of work outside of the
23 telecommunications industry narrowly defined, so
24 that's probably not true.

25 Q. Okay. I was looking at your section

1 "Testimony and Other Engagements," and it looked to me
2 like 14 out of 28 counting this case would be for
3 Ameritech or SBC or Southwestern Bell.

4 A. Well, let me say, first of all, that a fair
5 amount of my consulting work is not testimony-related,
6 and not all cases that are not testimony-related would
7 appear there for client confidentiality reasons. But,
8 you know, the number you cited is what it is.

9 Q. Okay. Turning to your Surrebuttal
10 Testimony, at Page 7, specifically Line 5, the
11 sentence beginning, "The next step," you say, "The
12 next step however must be for retail price constraints
13 to be relieved so that prices can respond to cost and
14 competitive conditions and facilities-based entry can
15 take root." Do you see that?

16 A. Yes, I do.

17 Q. Are you speaking there of retail price
18 increases?

19 A. In some cases, retail price increases.
20 That's not -- it doesn't encompass all of what I would
21 expect to happen if price constraints were relieved.

22 Q. Turning to Page 14, and following up on
23 questions by Staff's counsel regarding the sentence
24 that starts at Line 5, isn't it correct that the price
25 cap statute sets the cap at a certain level and that

1 cap does not ratchet down if the company makes
2 voluntary decreases?

3 A. Well, as I understand it, for non-basic
4 services, the -- there is an 8 percent limit on price
5 increases per year, and if you decrease your price,
6 then the next year, for example, that's where you take
7 the 8 percent -- you can take the 8 percent increase
8 from, so you give up the opportunity to increase up to
9 the level that you could have increased to had you not
10 decreased your price in the previous year. So
11 decreasing your price does have implications for the
12 upward flexibility you have in future years.

13 Q. So it's not your understanding that the
14 8 percent annual increase applies to the cap as
15 opposed to the actual rate that may be in effect at a
16 particular time?

17 A. My understanding is what I said.

18 Q. Okay. And your testimony is based on that
19 understanding in part?

20 A. Well, in part. In addition, other scenarios
21 that are affected by this are, for example, for a non-
22 basic service, let's say you wanted to rescind your
23 existing tariff for intraLATA toll and replace it with
24 a postalized rate. Then if some of the rates embodied
25 in that postalized rate would entail an 8 percent

1 increase, more than an 8 percent increase, that would
2 be prohibited even if the overall restructuring were
3 revenue neutral. So that's another example of a
4 restructuring that would be precluded, as I understand
5 the workings of the price cap mechanism, by virtue of
6 that 8 percent limit.

7 Q. So it's your understanding that the price
8 cap applies to each rate element independently as
9 opposed to the total price?

10 A. My understanding is that the 8 percent limit
11 does apply as I just described it, on an element-by-
12 element basis.

13 Q. At the bottom of Page 14 you indicate that
14 it's your belief that certain prices have been
15 distorted by regulation; is that correct?

16 A. By regulation and by the public policy
17 objectives that have been pursued in
18 telecommunications markets.

19 Q. And is another way of expressing that
20 opinion that you're saying that these rates are not
21 cost-based?

22 A. Many rates are not cost-based. That's
23 correct.

24 Q. Page 31 of your Surrebuttal, just to
25 clarify, first, at Line 4, when you're talking about

1 Southwestern Bell prices being regulated at umbrella
2 levels to preclude lower prices, you're not speaking
3 there of price caps, are you?

4 A. No. Again, I'm speaking there about the
5 testimony in this case that raises the concern of
6 predatory pricing and what has been urged on the
7 Commission to preclude that possibility.

8 Q. Okay. So that's not -- I just want to make
9 sure you're not expressing the idea that the price cap
10 statute precludes lower prices for a particular
11 service?

12 A. Well, to the extent that the price cap plan
13 includes a price floor, then there is a lower limit
14 that would preclude yet lower prices. But what I was
15 referring to here specifically was the urgings of
16 AT&T, in particular, in this passage to establish some
17 sort of rule that would preclude decreasing prices in
18 order to prevent the possibility of predatory pricing.

19 Q. To your knowledge, does Southwestern Bell
20 currently have any prices in Missouri that are at the
21 price floor established in the price cap statute?

22 A. I don't know the answer to that.

23 Q. Earlier this morning you discussed red flags
24 that the Commission might see that -- if it were to
25 release Southwestern Bell from price cap regulation

1 that might cause it to consider to reimpose the
2 regulation. Do you recall that?

3 A. I do.

4 Q. Would you agree with me that another red
5 flag could be if -- again, assuming price caps have
6 been lifted, that the Commission observes market
7 behavior where Southwestern Bell raises most rates and
8 then establishes targeted discounts available only to
9 customers that are thinking of switching to a
10 competitor?

11 A. In itself, I wouldn't consider that
12 necessarily alarming, no. That's not inconsistent
13 with the way that firms behave routinely in
14 competitive markets, including IXCs in the long
15 distance market today.

16 Q. Page 45, in Lines 6 to 8, you refer to
17 flawed regulation concerning reciprocal compensation;
18 is that correct?

19 A. Yes.

20 Q. At Page 52 -- and you've discussed this
21 example with several attorneys today already -- when
22 you talk about Southwestern Bell being indifferent to
23 either selling access service to AT&T in the example
24 or selling the retail long distance service to its own
25 customer, you're really focusing on those services in

1 isolation in the example, aren't you?

2 A. In the example, the costs and revenues
3 postulated just pertain to the long distance service
4 at issue.

5 Q. And I take it from your prior testimony
6 today that you would agree that Southwestern Bell's
7 indifference in that example could be affected if it
8 were bundling services and potential impacts of
9 retaining that customer on that bundle of services?

10 A. That's true. It's also true for AT&T or
11 WorldCom or anyone else wishing to provide services
12 bundled with long distance.

13 Q. At Page 62 -- and to refer you back, so you
14 have your context, on Page 61 you're talking about
15 arguments regarding switched access being locational
16 monopoly, and then on Page 62, you're asked whether
17 you agree with those arguments. Do you see that?

18 A. Yes.

19 Q. If the Missouri Commission had recently
20 ruled that switched access was a locational monopoly,
21 would that be an example of regulatory flaws, in your
22 opinion?

23 A. I guess that would depend on what rule or
24 decision the Commission implemented as a result of
25 that opinion that's it a locational monopoly. Calling

1 it that or labeling it that in itself isn't
2 necessarily problematic unless a rule is promulgated
3 on that basis that really doesn't recognize that there
4 are alternatives to bypassing the incumbent local
5 exchange carriers' provision of switched access.

6 Q. Well, are you familiar with a recent
7 Missouri Commission decision that excepts the argument
8 that switched access is a locational monopoly? And
9 specific-- specific-- just to give you a little more
10 information to see if it helps you answer the
11 question, the case had to do with the retention of the
12 incumbent's price as a cap on what CLECs can charge
13 for switched access service. Are you familiar with
14 that decision?

15 A. I haven't reviewed it recently, but I am
16 familiar with it, yes.

17 Q. In your opinion, was that correct or an
18 incorrect decision?

19 A. Well, in my opinion, I think that
20 terminating access for all practical purposes in the
21 market today probably is a locational monopoly.
22 Originating access -- I think I made the argument in
23 my testimony, and I think in the environment in
24 Missouri today I think it is legitimate to say that
25 originating access is not a locational monopoly in

1 that the constraints imposed are probably not
2 necessary on the originating end.

3 Having said that, though, I can understand
4 the Commission's desire to impose those constraints on
5 originating access and I just note that Southwestern
6 Bell in this proceeding is only asking for the same
7 treatment.

8 Q. So are you clarifying your testimony then
9 where on Line 7 you say "particularly on the
10 originating end"? Did you really mean only on the
11 originating end?

12 A. I think that the argument with respect to
13 terminating access is a much more difficult one that
14 would involve more institutional changes about how we
15 bill calls to originating and terminating customers,
16 and so in the current environment, as I said a while
17 ago, I would be willing to accept the argument that
18 terminating access is a locational monopoly. That's
19 why I said particularly on the terminating end.

20 MR. LUMLEY: Okay. Thank you for that
21 clarification.

22 That's all of my questions, your Honor.

23 JUDGE DIPPELL: Thank you.

24 Sprint?

25 MS. HENDRICKS: No questions, your Honor.

1 JUDGE DIPPELL: McLeod?

2 MR. KRUSE: Thank you, your Honor. Just a
3 couple.

4 CROSS-EXAMINATION BY MR. KRUSE:

5 Q. Mrs. Aron, I think you, in response to one
6 of Mr. Haas's questions, indicated that you believe
7 that any problems experienced by CLECs with respect to
8 lack of capital were due to unsound business plans
9 other than on anti-competitive behavior. Is that a
10 fair characterization of what you were communicating?

11 A. I didn't understand the part of your
12 question pertaining to anti-competitive behavior. Can
13 you run that by me again?

14 Q. I believe you made the statement to one
15 of -- an answer in response to one of his questions
16 where you indicated that you felt that if -- if CLECs
17 were experiencing a problem with lack of capital, it
18 was due to unsound business plans as opposed to any
19 other factors. Is that correct?

20 A. I think that the capital market tends to
21 have a bit more of a herd mentality than would be
22 predicted by pure capital market frictionless theory,
23 and so I think that it's probably true that CLECs that
24 have descent business plans can be harmed by the
25 overall, I think I called in my testimony, mob justice

1 of the market which has turned against CLECs of late.

2 But the fact nevertheless remains that CLECs
3 with sound business plans do continue to have access
4 to capital and in many and perhaps most cases the
5 CLECs that have been really hurt by the downturn are
6 the ones that at least the analysts are saying did not
7 have sound business plans or did not have sound
8 management or experienced management or were simply
9 overleveraged relative to what a prudent financial
10 structure would be in the market today.

11 Q. Okay. Have you reviewed any -- any of the
12 business plans of any of the -- any particular
13 competitive carriers?

14 A. I'm not privy to proprietary business plan
15 information. I've read many, many reports by
16 investment analysts that discuss the businesses and
17 business plans and business strategies by many CLECs
18 in the telecommunications market. And I think I said
19 in my testimony it's certainly true that when you read
20 these reports, you get very similar messages over and
21 over again, and that message does not include focusing
22 on or blaming ILEC behavior for the problems of the
23 CLECs.

24 Q. Okay. And these reports, are these --
25 you're referring to just general reports from market

1 analysts, I take it, then, is that correct, as opposed
2 to specific CLEC business plans?

3 A. I'm referring to analyst reports, not
4 proprietary CLEC business plans.

5 I've also read the 10-Ks and other financial
6 statements of many of the CLECs to get a better
7 insight into what they tell their investors they are
8 doing and how they tell their investors they are
9 doing.

10 Q. Okay. But when you talk about -- when you
11 make reference to unsound CLEC business plans, you're
12 not basing that on any particular CLEC's own business
13 plan, whether it's proprietary or not, are you?

14 A. Well, let me clarify. I'm not saying that I
15 have reviewed any CLEC's business plan and I'm
16 pronouncing it unsound. I'm saying that in the
17 opinion of the investment analysts who are the experts
18 in reviewing these sorts of things, they express the
19 opinion over and over again that the demise of many
20 CLECs is due to the fact that they had unsound
21 business plans, just inexperienced management, poor
22 management, high turnover, highly leveraged capital
23 structures and so forth.

24 That's a very consistent message, including,
25 as I said earlier, the pronouncements of other members

1 within the CLEC industry like Royce Holland.

2 Q. And these same market analysts, I take it,
3 never brought up as one of the factors of any
4 competitor's having problems that of anti-competitive
5 behavior or conduct on the part of any of the
6 incumbent carriers; is that correct?

7 A. I know that's hard to believe in this room
8 because we focus so much here on the regulatory
9 environment, but, in fact, in the investment world,
10 you have to look very hard to find any sort of
11 statement like that in these -- in these investment
12 analyst reports. I'm sure that one could find one,
13 but I can't think of any and it's not the overriding
14 message, no.

15 Q. Following up on another question or response
16 to a question from Mr. Haas, I believe that I
17 understood you to say that you believe the marketplace
18 would bear approximately three to four competitors per
19 market. Is that a fair assessment?

20 A. Do you want to point me to that spot again?

21 Q. It was just, I believe, in response to one
22 of his questions.

23 A. I think the number I quoted was four to five
24 from the McKinsey report. I may have said three to
25 four. I think that's probably in the right range.

1 Q. Okay. So if a particular market had --
2 had -- had 15 competitors in it at present, you would
3 expect that to dramatically decrease in number of
4 competitors, wouldn't you?

5 A. If they were all facilities-based, I would,
6 yes. That's not a bad thing for competition or
7 consumers, although it is certainly potentially
8 painful for those carriers that exit in the market.

9 Q. Whether it's called predatory pricing or
10 not, if Southwestern Bell is given relief that it
11 seeks in this proceeding, Southwestern Bell could
12 lower its rates if it so chose to a level that would
13 cause economic hardship to competitors; isn't that
14 true?

15 A. I think that any time a firm decreases its
16 price it makes life harder for its competitors, and
17 Southwestern Bell can do that to some extent today.
18 Whether that's a bad thing for consumers is another
19 matter, and, as I've said before, typically lowering
20 prices is a good thing for consumers in an unregulated
21 market.

22 Q. Okay. But if -- but if that lowering caused
23 such a degree of harm to competitors that the
24 competitors either ceased to exist or only could offer
25 far less services to consumers, that wouldn't be a

1 good thing for consumers either, would it?

2 A. That depends on why the effect was so
3 dramatic as you describe it on the competitors. If
4 it's because the competitors were simply less
5 efficient than the incumbent who lowered its price,
6 then that is a natural part of the competitive
7 process. Those competitors will have to either
8 improve their efficiency, come up with products and
9 services that are more attractive to consumers in
10 light of their less efficient production capabilities,
11 or other firms will come in and do it better than they
12 will.

13 That's not bad for consumers. That's part
14 of competition.

15 Q. And you would expect other firms to come in
16 and take the place of any CLECs that maybe cease to do
17 business in Missouri for whatever reason?

18 A. Entry into the local market is certainly
19 ongoing. I don't think that the list of CLECs that
20 are in the market today is written in stone and there
21 will be no further entrants. I'm sure there will
22 be -- some of the existing firms will exit and firms
23 we don't know about yet will come in. I expect that
24 that's the way that the market will evolve in this
25 state as in every state.

1 Q. Are the market analysts that you were
2 referring to before predicting there is going to be an
3 upsurge or -- in competitive local exchange carriers
4 entering markets in general or Missouri specifically
5 that you're aware of?

6 A. I think what they're predicting is -- right
7 now they are predicting consolidation, and that means
8 that some carriers will leave the market. Others will
9 remain by being purchased by still other competitive
10 carriers, so that there -- they gain some economies of
11 scale and scope.

12 What we've seen in the last year or so is a
13 decline in market value of all of the carriers and --
14 including the incumbents in the telecom industry, but
15 those valuations of the CLECs were sky high relative
16 to the number of lines they had and the valuations of
17 the remaining carriers that appear to be strong,
18 including your company.

19 The equity value per line is now comparable
20 to or above the equity per line of the ILECs, and so
21 in that environment, I don't see that as a
22 particularly inhospitable environment for future entry
23 of sound CLECs who have learned from the experiences
24 of recent years what a successful business plan might
25 be.

1 Q. Okay. But what I'm hearing is some
2 discussion on consolidation and so forth, but I didn't
3 hear any direct response to my question, which was,
4 are you aware of any specific plans or predictions
5 about new CLECs coming in the market, in general,
6 either on a national basis or in Missouri?

7 A. Well, I think you asked me what are the
8 analysts predicting? And I think what the analysts
9 are predicting is that there is going to be a
10 shakeout. There is a shakeout. It's going on now.
11 It will continue. But that the industry itself is not
12 structurally unsound, that the strong competitors will
13 survive, will grow, will thrive, and there will be
14 continued growth, expansion, and potentially new entry
15 into that market.

16 I don't think that the analysts are
17 predicting doom and gloom. On the contrary. I think
18 they are predicting that this is a long-term viable
19 market and in a long-term viable market there will be
20 continued entry.

21 Q. Okay. Anything else upon which to base that
22 on other than your understanding of comments of market
23 analysts?

24 A. That's also consistent with just fundamental
25 economic principles of how markets work. It's not

1 unexpected in a new market that there will be
2 exuberant entry and then a weeding-out process in a
3 market that, as I believe this market to be, is
4 structurally sound, and by that I mean can sustain
5 competition in the long-run.

6 Q. Okay. One final question: You mentioned
7 earlier that you believe that you had seen that my
8 company, McLeod USA, was on the list of companies that
9 had access to capital. I'm just wondering where that
10 is, because I'd love to take that back to my boss and
11 tell him where that capital is, because we'd love to
12 have more of it now.

13 A. I'm sure you would love to have more
14 capital. I'm sorry. I don't have with me a source
15 for that. From my understanding, McLeod is routinely
16 cited as one of the survivors, one of the companies
17 with good management and a business plan that has a
18 good chance of success. And in those -- in that same
19 context, it's reported that those firms tend to be
20 successful at attracting capital.

21 I'm sorry that I can't pull out for you a
22 document that I could point to that says you've gotten
23 capital from someone recently.

24 Q. Would those citations be by those same
25 market analysts that you referred to before?

1 A. The same array of analyst reports, yes.
2 There are many analyst houses that follow the
3 telecommunications industry. We try to keep on top
4 of -- of as many of those as possible.

5 MR. KRUSE: Are they the same array of
6 market analysts that have our stock down to about half
7 a buck?

8 Thank you very much.

9 JUDGE DIPPELL: We'll go ahead and go to
10 questions from the Bench at this time.

11 Chair Simmons, do you have questions for the
12 witness?

13 COMMISSIONER SIMMONS: Yes, I do, just a
14 few.

15 Thank you, Judge.

16 QUESTIONS BY COMMISSIONER SIMMONS:

17 Q. Good afternoon, Dr. Aron.

18 A. Good afternoon.

19 Q. I only have two sets of questions, and my
20 first set of questions have to do with issues
21 involving the economy, economic conditions probably in
22 the telecommunications market, and my second set of
23 questions has to do with your Direct Testimony.

24 I realize that you have a Ph.D. in
25 economics; is that right?

1 A. Yes, sir.

2 Q. Okay. Well, when I ask you certain
3 questions on economic theories, I hope you will go
4 light on me, please.

5 The first question I want to ask you, and
6 this has to do with barriers to entry, have you ever
7 witnessed any cases where economic conditions present
8 barriers to entry in the telecommunications field?

9 A. Well, I'm not sure what you mean by
10 witnessed any cases, but, as I said earlier, I think
11 that in the telecommunications market, before the
12 Telecommunications Act of 1996 was passed, I think
13 there were substantial barriers to entry. I think it
14 would be very difficult for a competitor to enter the
15 market if, for example, it could not interconnect with
16 the incumbent. The ability to interconnect in my
17 opinion is critical to the ability to compete in the
18 market.

19 Going beyond that, the Telecommunications
20 Act establishes many other market opening methods, as
21 you know, that I think have substantially changed the
22 landscape for competition in that market, but prior to
23 those market opening requirements, I would say that
24 the local exchange market had substantial entry
25 barriers and was not open to competition.

1 Q. In your field of study, have you looked at
2 situations where you found the economy in such a way
3 whereas economic conditions were good or as economic
4 conditions were bad that at any points in time,
5 especially in not so good economic conditions, that
6 that created problems as it relates to the CLECs and
7 whether that was a barrier to entry?

8 A. Economists don't tend to look at business
9 cycle phenomena as imposing or lifting barriers to
10 entry really. Being in the downturn of the business
11 cycle is viewed as depressing demand overall, and so
12 it makes it more difficult for everyone to do business
13 if their sector is pro cyclical, and by that I mean is
14 following the market generally so that if the market
15 is in a downturn, that industry is in a downturn. So
16 that makes -- it depresses profits and it depresses
17 demand for everyone in the market and could enhance
18 exit from the market.

19 But I don't think economists would say -- I
20 wouldn't say that that in itself amounts to or creates
21 an entry barrier.

22 Q. Okay. And I'm going to go down the same
23 line of questioning as I believe some of the other
24 parties have alluded to, and that was the issue of
25 financing. And I think there were comments in terms

1 of the CLECs having difficulty as it related to
2 financing, and I believe that you talked about the
3 fact that there were some business plans that may not
4 have been sound that could have been problematic as it
5 related to financing, and so I want to ask you a line
6 of questioning concerning that.

7 Just for my clarification, are you
8 suggesting that the CLECs that don't have the sound
9 business plans, that that is the reason why the CLECs
10 would have difficulty entering into the market, that
11 it -- it wouldn't be the economy or it wouldn't be
12 anti-ILEC behavior, but the unfortunate bad business
13 plans would be a reason why they would not be entering
14 into the market?

15 A. Well, I think it's a combination of things,
16 and part of what I think has triggered the withdrawal
17 of funds from the CLEC industry is that perceptions
18 about demand and demand growth over the last couple of
19 years, I think, have been tremendously overly
20 optimistic that -- I think I talked about this in my
21 testimony, that it was -- it was thought that demand
22 driven by broadband and internet and so forth would
23 grow at phenomenal rates for a phenomenally long
24 period of time, and CLEC valuations were to a large
25 extent driven by that, by growth far out into the

1 future, expectations of growth far out into the
2 future. I think that we've come down to earth a
3 little bit in our expectations about what realistic
4 sustained growth in the industry of demand really is.

5 But once expectations of demand become more
6 realistic and therefore decrease from what the
7 expectations were of a couple of years ago, that
8 naturally, unfortunately, has to depress the market
9 valuation of those firms and makes investors much more
10 selective in the business plans they want to invest
11 in.

12 In addition to that, I think there has been
13 a learning process. I think that initially the
14 venture capitalists were willing to fund just about
15 anything that came along, and venture capitalists
16 typically expect something like one in seven of their
17 firms -- of their investments to succeed. Well, now
18 the reckoning is coming and there is a much better
19 understanding of which of those business plans has a
20 chance of succeeding, which one -- which ones are most
21 likely to survive in the market.

22 It's not that every business plan that we're
23 now calling bad was foolish when it was originally
24 made, but that everyone knows more about demand, about
25 costs, and about technology so that we're all more

1 sophisticated about what's likely to succeed, and I
2 think that has also had the effect of more discipline
3 and more targeting of funds to more likely to be
4 successful business plans.

5 Q. Can you tell me whether or not you believe
6 that investor expectations are such that Missouri is
7 looked at as profitable?

8 A. I don't think that I've seen any analyst
9 reports of the kind I've been referring to that speak
10 to Missouri or any state specifically. I -- based on
11 what I know about the state of Missouri, I have no
12 reason to believe that Missouri would not be as
13 attractive a state for investment as any other state.

14 Q. Okay. I think at this time I'm going to ask
15 you a few questions involving your Direct Testimony.

16 The first question I have, I think, is from
17 your Direct Testimony on Page 9, and I think you are
18 talking about the language found in 386.020(13)(b).

19 There on Line 9, I believe, you start to
20 talk about the standard economic approach to assessing
21 services. And with this sentence, that very long
22 sentence, it talks about over a period of time.

23 And I guess I'm looking to ask you what is a
24 reasonable period of time?

25 A. The approach that I'm referring to there

1 comes from the antitrust approach to looking at market
2 definition, and in that scenario or in that context, a
3 reasonable period of time has traditionally been taken
4 to be two years.

5 Q. Two years?

6 A. But that can vary by market, and one I think
7 has to recognize that some markets move faster than
8 others, and in a fast-moving market, you might want to
9 modify that time frame. In the telecommunications
10 market, which certainly is a fast-moving market, two
11 years may be a lot. But, certainly, I think in this
12 context you would say maybe one to two years.

13 Q. Okay. So would that be your opinion in
14 terms of Missouri when you say one to two years that
15 that's reasonable, or --

16 A. Based on what I know about the state, as I
17 sit here today, I think that's reasonable, yeah.

18 Q. Okay. My next question I'm going to go to
19 Page 13 of your Direct Testimony and starting there at
20 Line 9. We talk about the Commission evaluating
21 whether the two services are reasonably
22 interchangeable.

23 As you start to go through that question and
24 answer situation, I kind of wanted to talk to you
25 about the economic theories of product names, and I

1 think earlier you spoke to it being -- Southwestern
2 Bell having a strong brand name. And I kind of wanted
3 to ask you the question in terms of product names, if
4 that is a factor in choice and if that is a variable
5 to take into consideration when you're talking about a
6 competitive market.

7 With a strong product name, do people have a
8 tendency to stay with a strong product name, and could
9 that be a potential barrier for CLECs?

10 A. This is an issue that does come up often in
11 all sorts of antitrust cases too. It's not one that I
12 would say that has a cut and dried answer to it, but I
13 would say that -- you asked whether consumers tend to
14 stick to a product with a strong brand name.

15 To some extent they do, assuming that the
16 brand name is associated positively with quality and
17 other desirable attributes. That means that the brand
18 name has what we call a signaling value. It tells
19 customers something about what they are buying.

20 For a company to enter a market where there
21 are other companies with strong brand names, that
22 creates a dilemma, I guess you could say, for those
23 companies to figure out how to create their own
24 perception of quality or how to get customers to try
25 their products so that customers can determine

1 first-hand the quality and other attributes of the
2 product. And companies have avenues by which they do
3 do so like offering introductory prices, free samples
4 of the service, six months free service, for example.

5 In this market, it's the case that many of
6 the strong competitors all have strong brand names
7 already and are very familiar to the customers in the
8 telecommunications context, and so at least among
9 those companies brand name is certainly no impediment
10 to them. For newcomers that haven't built up a strong
11 brand name, they have other avenues available to them
12 to attempt to overcome customer perception or lack of
13 awareness of their brand.

14 Q. So in this case, you would be arguing that a
15 strong brand name would not present a potential
16 barrier to entry?

17 A. I think that certainly in the business
18 market there is much more direct sales involved in the
19 business market, and in that market I think that brand
20 name in itself is probably less important. That's my
21 perception. In the consumer market, brand names
22 probably have more importance, and I don't think that
23 for a newcomer the fact that there is Southwestern
24 Bell and AT&T and MCI and others with strong brand
25 names in the market imposes an insurmountable barrier,

1 but I wouldn't say that it's completely unimportant
2 either.

3 It presents -- it imposes some sort of
4 demand on them to find other ways to get customers to
5 try their product.

6 COMMISSIONER SIMMONS: That's all of the
7 questions I have at this time. Thank you for your
8 patience.

9 JUDGE DIPPELL: Commissioner Lumpe, did you
10 have questions? I'm sorry.

11 Commissioner Murray, do you have questions?

12 COMMISSIONER MURRAY: Yes, I do. Thank you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good afternoon, Dr. Aron.

15 A. Good afternoon, Commissioner.

16 Q. I wanted to pursue the area of residential
17 service and competition in the area of residential
18 service.

19 Is residential service priced significantly
20 below business service?

21 A. In the state of Missouri?

22 Q. Yes.

23 A. That's my impression, yes.

24 Q. And is there a higher level of competition
25 in the business service area?

1 A. If you look exchange by exchange, there will
2 be variance. There are exchanges where there is
3 more -- appears to be more competition in the
4 residential market than in business, but, overall, in
5 the state, as in every other state I've looked at,
6 there is more competitive activity in the business
7 market.

8 Q. Okay. Can you think of an example of an
9 explanation as to why that would be the trend, that
10 there is more competition in the business market than
11 there is in the residential?

12 A. I think there are two primary reasons for
13 it. One is that there's simply more revenue available
14 from a business customer relative to the cost of
15 serving that customer than there is from a typical --
16 what did I say?

17 From a typical business customer there are
18 more revenues available relative to cost than for a
19 typical residential customer. Business customers
20 typically demand multiple lines. They may demand
21 additional services and, yet, the costs are not
22 proportional to the amount of additional lines and
23 services because a lot of telecommunications cost is
24 driven by density and, in particular, how much
25 capacity you have to bring to the customer location.

1 So there are more revenues available from a typical
2 business customer per cost than typical residential
3 customer.

4 And then the other side of it is what we've
5 been talking about, which is business prices tend to
6 be higher than residential prices, and so residential
7 competition is suppressed by virtue of the fact that
8 it may not even be economical to serve those customers
9 at all.

10 Q. Okay. If Southwestern Bell were free to
11 raise its rates for residential service, and, in fact,
12 did so, how would competition for residential service
13 be affected?

14 A. Well, I think that, first, let me say, even
15 with residential prices below cost, it doesn't mean
16 that it's not economic to serve any residential
17 customers because of the fact that vertical features
18 and other services associated with basic service tend
19 to have relatively high margins associated with them.
20 So carriers that do want to serve the residential
21 market have some avenues to do so by targeting those
22 customers.

23 But what I would expect in the scenario you
24 described is that there would be less cherry picking
25 of just the very high -- highly attractive residential

1 customers and more interest in going after a broader
2 base of residential customers.

3 In addition, I think there would be -- as
4 I've emphasized a number of times, I think there would
5 be more interest in innovation and bringing desirable
6 new services to residential customers because there is
7 more revenue opportunities there to capture.

8 Q. So do you think it would be in the public
9 interest to increase competition in the residential
10 service area even if it involved raising prices?

11 A. I do think so, but in addition to what we
12 just talked about, I think it needs to be said that
13 the concern that -- the public policy concern that
14 that raises is whether residential customers would be
15 induced to disconnect from the network as a result of
16 higher prices, and that's really the fundamental
17 universal service concern.

18 And I think that saying that raising prices
19 to residential customers is in the ultimate public
20 interest, while I think that's true, I would also
21 hasten to add that a company with that could be and
22 probably should pay some attention to alternative
23 universal service mechanism so that the unintended or
24 at least undesirable -- undesired consequences of
25 raising prices don't occur.

1 Q. Is a primary tool of competition the ability
2 to lower prices below those of your competitor?

3 A. Certainly.

4 Q. And if the rates for residential services
5 are set at a level which is too low for the
6 competitors to be able to go below them, wouldn't that
7 fact alone act as a barrier to competition?

8 A. I believe it has acted as a barrier to
9 competition, yes.

10 Q. So if Southwestern Bell were given
11 competitive status in the residential service market,
12 and it wants to maintain its customer base, wouldn't
13 it behoove Southwestern Bell to keep those rates as
14 low as possible in order to prevent the competitors
15 from underpricing it?

16 A. A firm's desire not to gain market share for
17 its own sake but to serve customers profitably, so
18 while maintaining prices below cost may retain
19 Southwestern Bell's market share, it wouldn't be a
20 profitable and therefore it wouldn't be a rational
21 strategy for them to undertake.

22 It would be more rational for the firm to
23 engage in pricing that drives prices more towards
24 cost. There is no -- there is no benefit to a firm of
25 keeping prices below cost to keep out your competitors

1 by -- and thereby winning your right to lose money.

2 Q. By the same token, I would think there would
3 be no benefit in raising prices beyond what would be
4 necessary to make them at cost if they felt they were
5 going to lose customers by doing so?

6 A. That's right. It's the threat of
7 competition that disciplines firms from raising prices
8 above a level that they need to cover their costs.

9 Q. Now, I struggle with this chicken and egg
10 concept with the competition in the residential
11 service market because on the one hand we would like
12 to see more competition than is there. But on the
13 other hand, we have to free up some of the regulatory
14 constraints in order to get that competition into that
15 market, it seems.

16 So -- I think this is my last question to
17 you: Can you think of any other ways to stimulate
18 competition in the residential service market absent
19 removing or placing Southwestern Bell in a competitive
20 status in that market?

21 A. I guess what I would encourage -- and let me
22 say I fully recognize and fully understand the dilemma
23 you just described, but I think that the best way to
24 address that is to construct a mechanism for achieving
25 universal service objectives using explicit and

1 probably targeted subsidies, I guess you might say,
2 for customers that require them, or merit them, and
3 deal with the universal service objectives that way
4 and let the market work otherwise.

5 I think the market can work. I think that
6 there is a substantial amount of both facilities-based
7 and non-facilities-based entry into the state of
8 Missouri, and I think that the competition is poised
9 to work here if the pricing conditions can be
10 normalized to the point that entry is invited.

11 COMMISSIONER MURRAY: All right. Thank you.

12 Thank you, Judge.

13 JUDGE DIPPELL: Commissioner Lumpe, did you
14 have questions?

15 COMMISSIONER LUMPE: A few.

16 QUESTIONS BY COMMISSIONER LUMPE:

17 Q. Ms. Aron, I think they are mostly, I think,
18 clarification for me.

19 I think somewhere in your testimony you said
20 that barriers trump market share. Do you recall that?

21 A. Yes, I do.

22 Q. You're not suggesting that there shouldn't
23 be some market share, are you, or are you?

24 A. What I'm saying there is that, number one,
25 there is really no economically based threshold that

1 one can look to to determine that if you're above this
2 threshold, there is effective competition, and if
3 you're below it, there is not. There is simply no
4 threshold like that that one can point to, and in the
5 history of antitrust case law, you can see examples of
6 virtually any market share where even very high market
7 shares in such situations the market was deemed to be
8 competitive because of the lack of entry barriers.

9 On the other hand, I think it's important
10 that there be competitors in the market. I think that
11 the statute in Missouri requires that by saying
12 services be available. But I also think it is
13 important from an economic perspective because if
14 competitors are in the market, by that I mean they are
15 collocated or they are providing service, they have
16 some lines in service, that -- that means that they
17 have overcome a number of entry conditions already.

18 They've established interconnection
19 agreements; they have established a marketing arm of
20 their firm; they've got advertising, so forth.
21 They've got what they need in place to at least begin
22 serving customers, and once you're in the market in
23 that sense, the barriers to what I've called in my
24 testimony expansion are minimal.

25 Even if you believe that there are barriers

1 to entry, once you're in the market, the barriers to
2 expansion are minimal, and that's emphasized in this
3 state by the fact that the OSS system has been deemed
4 by the Commission to be satisfying the requirements of
5 the 271 requirements, so we know that carriers that
6 are in the market can expand their operations, and
7 they've proven that they can do so.

8 Mr. Hughes's exhibits demonstrate the very
9 high growth rate and the use of unbundled network
10 elements and other that facilities-based approaches to
11 service. So I think that being in the market is
12 meaningful, but there is no market share threshold
13 that logically should be established to determine
14 whether there is effective competition or not.

15 Q. And I think I understand what you're saying
16 that we shouldn't have a threshold. But if you had no
17 market share, wouldn't you then be concerned that
18 there must be some barriers somewhere? In other
19 words, if a company came in, you wouldn't have a lot
20 of companies coming in and sitting there with no
21 customers. There wouldn't be any point in that.
22 There would have to be some market share somewhere,
23 wouldn't there?

24 A. Yes. And what I'm seeing in the data in
25 this state is that there are CLECs active in each and

1 every wire center in the state of Missouri, and that's
2 based not on data from whether a CLEC is certificated
3 in the state or is tariffed in the state but based on
4 whether the carrier has lines in service. It's based
5 on lines-in-service data, in other words.

6 And if I see that exchange by exchange there
7 are CLECs and typically many CLECs, multiple CLECs
8 operating in each and every exchange with lines in
9 service, that tells me that those carriers have
10 overcome whatever entry barriers that might be to get
11 operational in the market.

12 Q. To sort of follow up, I think, some of the
13 questioning of Commissioner Murray on subsidies, I
14 think there is a perception that business has
15 subsidized residential.

16 Would you agree with that, and would that be
17 a barrier if you removed that subsidy?

18 A. I think that the existence of below-cost
19 pricing in the residential market is a barrier to
20 competition in that market because no firm wants to
21 come in to provide service to customers if it can't
22 cover its costs in doing so, or if the only way it
23 could price and cover its costs is at a price that so
24 far exceeds the incumbent's that no customers wanted
25 to take its service.

1 Q. So if there has been a subsidy of business
2 for residential and that subsidy should go, that
3 subsidy in effect may have been a barrier to entry
4 into local because that kept the local lower than
5 cost?

6 A. In the residential market, right. It
7 wouldn't be a barrier in the business market.

8 Q. No. But in the residential?

9 A. Right.

10 Q. Right.

11 Has anyone -- or have you done a cost study?
12 There is -- I think there was some opening statement
13 that suggested we don't know that residential is
14 priced below its cost. Have you or anyone done a
15 study to show whether it is or it isn't at cost?

16 A. I think you do know, and the reason is the
17 Commission has investigated the unbundled network
18 element cost studies that were put into the record in
19 the process of the arbitration proceedings in this
20 state that led to what are now the prices in the M2A,
21 I believe. And those prices substantially exceed
22 residential retail prices, even just for the UNE loop,
23 the unbundled network element loop.

24 By that I mean the unbundled network element
25 loop prices that were determined on the basis of a

1 TELRIC methodology exceed the residential retail rate
2 for, I believe, every rate band in the state.

3 Q. And so because of that we know then that
4 residential is priced below cost?

5 A. That's right, because the TELRIC methodology
6 is a forward-looking cost-based methodology.

7 Q. Is the fact that Southwestern Bell has
8 carrier of last resort obligations a barrier?

9 A. In a sense you could say it's a barrier.
10 It's certainly a barrier to exit for Southwestern
11 Bell. It's a regulatory-imposed barrier to exit.

12 It also has some impact on the market in the
13 sense that it tells competitive carriers that no
14 matter how hard it tries to supplant the incumbent in
15 certain areas, the incumbent doesn't have the option
16 of exiting. Only if customers choose to switch their
17 service on the basis of a better price or a better
18 offering can the incumbent choose not to serve a
19 customer.

20 So it has some affect of making it -- making
21 the incumbent stick in a market, you could say.

22 Q. I think you mentioned also -- you talk
23 about -- in talking about resell that resell does
24 provide some pricing discipline. What do you mean by
25 that?

1 A. Well, by that I mean that when the incumbent
2 raises its price, it's not -- it doesn't automatically
3 follow in lock step that a reseller has to raise its
4 price as well.

5 On the contrary, as I -- I think I said
6 earlier, I go through a numerical example of this in
7 my testimony. When the incumbent raises its price,
8 that opens up a somewhat larger margin in terms of
9 dollar value for the reseller and especially if the
10 reseller is a hybrid provider. By that I mean they
11 have facilities as well as resale.

12 They can maintain the existing price at
13 which they are providing service and undercut the
14 incumbent, attract customers away from the incumbent,
15 and thereby discourage the incumbent from raising
16 prices. Even if the reseller does increase price, it
17 doesn't have to increase price by the same amount as
18 the incumbent does and that again gives the reseller
19 the opportunity to attract more customers away from
20 the incumbent and that again discourages the incumbent
21 from raising prices to begin with.

22 Q. You talked about some of the warning signals
23 that might lead us to reimpose.

24 Would one of those warning signals be if
25 CLECs were abandoning the Missouri market?

1 A. Well, I think you have to be careful there
2 because you will see no matter what that some CLECs
3 will abandon the Missouri market. Some CLECs are not
4 going to survive in any market unfortunately. That's
5 part of the weeding out process that I talked about
6 earlier, and it's inevitable. There are probably too
7 many CLECs in the market today to survive.

8 So you can't just say that if CLECs are
9 abandoning the market that that is automatically
10 symptomatic that there is something really wrong with
11 competition in the market.

12 Q. Should it wave a flag that we ought to look
13 at it in any event?

14 A. I think that if you are finding that overall
15 the CLEC market or lines provisioned by CLECs are not
16 growing, are not continuing to grow, that would, to
17 me, raise a red flag.

18 I would expect to see overall that CLEC
19 activity is growing. I don't know that it would be
20 activity by the same number of CLECs or a growing
21 number of CLECs. It might be by a decreasing number
22 of CLECs because those are the ones that are
23 consolidating and getting stronger, but if overall
24 CLEC activity starts to turn down and plummet, I would
25 worry.

1 Q. Okay. One further, I think.

2 I really would like to know your definition
3 of predation. You listed some things that you said
4 these are not predatory. In other words, if you price
5 below cost, that's not necessarily predatory.

6 How do you define predation?

7 A. Predation is considered to be a strategy of
8 anti-competitive intent by which the carrier or the
9 company engaging in the predation is intending to
10 drive its competitors out of the market by pricing
11 below cost in some sense for the purpose of later
12 raising its price to a monopolistic level and earning
13 not only the profits lost during the predatory phase
14 but more profits still.

15 So it's got to be a long-run profitable
16 strategy which means that it involves the intent of
17 driving rivals out of the market and then the
18 expectation of being able to recoup the losses by
19 raising prices later.

20 Q. One of the things I think you talk about
21 also is a market that was a monopoly, and I recall
22 information about when the long distance was open, how
23 many years it took, you know, for competitors to get a
24 foothold in there.

25 Does there not need to be a transition

1 period along those lines? And if not, tell me why
2 not. And what do you think that transition period
3 might be. Have we reached it?

4 A. Well, let me say that there is a difference
5 between the evolution of the long distance market and
6 the evolution of the local market, an important
7 difference, which is in the local market local
8 exchange incumbent carriers have the obligation to
9 provide unbundled network elements at cost-based
10 rates, forward-looking cost-based rates, I might add,
11 and to provide resale at a fixed discount without the
12 requirement of any term or volume commitments or
13 anything of that nature. They are required to provide
14 interconnection and so forth.

15 And so the -- what I've termed extraordinary
16 obligations that have been imposed on the incumbents
17 to open their markets didn't exist in the long
18 distance market. That market was opened in a
19 different way.

20 So I think that once those obligations were
21 imposed, and once it's determined that the incumbent
22 is satisfying those obligations, I think that they
23 provide very powerful safeguards for consumers because
24 they provide opportunities for competitors to come
25 into the market even with very little sunk investment

1 and compete with the incumbent.

2 So I don't see the long transition, ten or
3 more years, that the long distance industry took to
4 achieve the level of competition it's at today as
5 providing a good analogy for what we should expect to
6 see in the local market because of the safeguards that
7 were imposed by the Federal Act in the local market
8 and because of the fact that we do now have these
9 multiple long distance carriers who have the
10 opportunity and -- and will soon, if not already, have
11 the incentive to enter the local market.

12 Q. Somewhere along the -- on Page 11, and it
13 sort of starts on Page 10, you took about the number
14 of -- or somebody does, about the number of
15 facility-based long distance carriers; whereas, there
16 is only one network, that being the incumbent
17 monopolist, being resold.

18 Would you give me your thoughts on that? Do
19 you disagree with that? Because you sort of mentioned
20 there was a way to bypass originating access. And I
21 wish you would kind of tell me what you mean by that
22 too.

23 A. Okay. I think those are two a little bit
24 different questions.

25 Q. All right.

1 A. Let me start with the second one.

2 There are a couple of ways that competitors
3 can bypass originating access. The one that I talked
4 about earlier is that -- let's take AT&T, for example.
5 If AT&T wishes to be your long distance carrier, then
6 AT&T has -- and suppose that you are a local customer
7 of Southwestern Bell, then AT&T has to pay
8 Southwestern Bell on a permanent basis for every
9 minute of use that you use making a long distance call
10 over AT&T's network.

11 AT&T can avoid that by becoming your local
12 carrier, and it can do that by becoming your local
13 carrier over its own facilities. AT&T now has a fixed
14 wireless offering that it's advertising in the state
15 of Missouri. So that's one facilities-based approach.

16 It can do that by becoming your local
17 carrier over its cable facilities, or it can do that
18 by becoming your local carrier over its traditional
19 wire line facilities, especially in the business
20 market, or by using unbundled network elements.

21 As a carrier providing service to an end use
22 customer over unbundled elements, it does not have to
23 pay access to the underlying provider, so it's self
24 supplying access, and it entirely avoids paying access
25 to Southwestern Bell.

1 That's what I meant when I said, if AT&T is
2 concerned about avoiding local -- excuse me --
3 avoiding switched access charges, it can avoid them by
4 getting into the local market and offering customers a
5 package deal of local and long distance. It can offer
6 a good deal because it can undercut -- it can save
7 itself a lot of money by not bearing access charges
8 and just bearing the cost of access, and so it can
9 share those benefits, those cost savings with the
10 consumer in attracting consumers away from
11 Southwestern Bell.

12 Q. It's not going to have to put another wire
13 down my street and all of that sort of stuff?

14 A. It does not have to do that because it can
15 provide service to you over a -- an unbundled network
16 element platform or UNE loop, or if it already has
17 two-way capable cable to your house, it can use that
18 facility. So, no, it doesn't have to build facilities
19 to bypass Southwestern Bell's switched access.

20 That was your second question.

21 Q. Yes.

22 A. Your first one was --

23 Q. I thought -- sort of thought it went along,
24 because the quote on Page 11 has to do with there
25 being only one network of the incumbent monopolist as

1 opposed to it looked like multiple networks for long
2 distance so that you were maybe limited to one
3 network.

4 A. Well, here I'm responding to Mr. Voight's
5 comments in which he's explaining what he thinks the
6 weaknesses of resale are --

7 Q. Yeah.

8 A. -- as a competitive strategy.

9 Q. I assume you disagree, and that's what I
10 want to have clarified.

11 A. The way I responded to that argument that he
12 made is to point out that if what he's concerned about
13 is that because there is only one underlying network
14 it makes it -- it deprives the CLEC reseller of
15 bargaining power to get access to those facilities for
16 use for resale, then that shouldn't be a concern
17 because the Commission has established a rate that's
18 available to every reseller without a requirement of
19 any given level of volume, without the requirement of
20 any contractual commitment for three years or five
21 years or anything like that. It's available on a
22 line-by-line basis to the reseller.

23 I'd also like to just point out, though,
24 that it's not accurate to think that the only network
25 available to resellers is the incumbent provider's.

1 I'm aware of resellers, at least in the business
2 market, who are engaged in a pure resell strategy but
3 purchase their underlying facilities from multiple
4 carriers.

5 I'm aware of this in Illinois. I haven't
6 studied it in the state of Missouri. But I do know in
7 Illinois resellers are buying resold services not just
8 from Ameritech, Illinois but also from local and other
9 carriers.

10 Q. Okay. I think this may be my last one.

11 On Page 52 you went through that exercise on
12 pricing I think with a couple of the attorneys.

13 Am I clear that in the one example you said
14 where AT&T would be at zero and, if I understood you,
15 Southwestern Bell would be still making money but less
16 than it would have made. Is that the correct
17 interpretation?

18 In other words -- go ahead.

19 A. I'm sorry. Try me again.

20 Q. Okay. I remember one of the responses from
21 you was that AT&T would be making zero, that
22 Southwestern Bell would be making a dollar less. It
23 would still have a margin there, but it would be a
24 dollar less margin, so it would still be making money
25 while AT&T would be making zero. Did I misunderstand

1 you?

2 A. Let me clarify. I'm sorry if I was
3 confusing on this.

4 In the example at the prices I have
5 hypothesized, AT&T would make zero economic profit,
6 and that means would make a normal return to its
7 investment. Southwestern Bell would make a positive
8 profit, you could say. They would be making some
9 money on that transaction.

10 As an aside, we all know that the reason
11 that access rates are set above the cost of access is
12 because those revenues are intended to -- at least
13 historically to subsidize local service, so that's
14 what those revenues are supposedly going to.

15 But then what I said is if Southwestern Bell
16 were to attempt to undercut AT&T's retail price and
17 thereby attract customers away from AT&T, the question
18 is could AT&T match that? And the answer is, if AT&T
19 were to match that, it would -- and let's say we
20 reduced it by a penny, AT&T would lose a penny on each
21 minute.

22 Southwestern Bell would lose a penny on each
23 minute also relative to what it would have earned had
24 it not decreased its price because AT&T -- excuse
25 me -- because Southwestern Bell could make more money

1 by selling access in that scenario than by selling
2 long distance service or local toll to the end user.

3 Q. I may be confused, but it still appears to
4 me that one is taking a real loss; whereas, the other
5 is taking a loss on something above.

6 A. Right.

7 Q. In other words, one is just taking a loss on
8 the margin.

9 A. You're right about that. But I just want to
10 clarify what I explained earlier. It's a little bit
11 misleading to think that what you're referring to is a
12 real loss is in some sense different from a loss
13 relative to what you could have earned. Unless you're
14 near the threshold of bankruptcy, those appear to be
15 the same thing to the shareholders.

16 COMMISSIONER LUMPE: Thank you.

17 That's all I have, Judge.

18 JUDGE DIPPELL: Thank you.

19 Commissioner Gaw, do you have questions?

20 COMMISSIONER GAW: Just a few. Thank you.

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Good afternoon, Doctor. How are you?

23 A. Good afternoon, sir.

24 Q. Did I understand your testimony correctly to
25 suggest that if competition is -- is found to exist in

1 the residential market that we should expect because
2 of the costs of residential markets in Missouri that
3 the prices that consumers will be charged will rise?

4 A. Did you ask me whether I would expect
5 competition in the residential market to lead to
6 increased prices? Was that your question?

7 Q. My question is more accurately described
8 this way: If we allow removal of the price caps in
9 the residential markets, should we expect that the
10 prices in the residential markets for Southwestern
11 Bell customers, those prices will rise?

12 A. I don't think we can predict that one way or
13 another. I think that's possible, and I think one has
14 to face that possibility. Given that overall and I
15 would say on the average it appears to me that
16 residential retail prices are below cost and that
17 competition tends to drive prices to cost, I think
18 that one could expect that as a possible scenario, but
19 it's not inevitable.

20 And the reason it's not inevitable is that,
21 as I said earlier, customers purchase a portfolio of
22 services, not just basic service, and it may turn out
23 that when selling a portfolio of services and crafting
24 that portfolio carefully and creatively that carriers
25 can compete without ending up with a higher price

1 facing the residential customers.

2 It's also possible that other technologies
3 such as cable telephony may end up being much more
4 efficient than traditional local wire line service and
5 that as a result the costs of cable telephony really
6 drive prices in the market rather than the cost of
7 wire line.

8 But I certainly can't preclude the
9 possibility, and I wouldn't be surprised to see some
10 prices going up.

11 Q. And when you say "some prices," what prices
12 are you referring to?

13 A. The price of the basic network access line
14 in some high-cost areas.

15 Q. And what high-cost areas might those be?

16 A. Well, typically, high-cost areas are those
17 that are less dense and/or involve longer loop
18 lengths. I can't tell you the names of the exchanges
19 that that might involve in Missouri.

20 Q. Would those tend to be areas that were more
21 rural in nature?

22 A. Typically, yes.

23 Q. So if I were a rural residential customer,
24 would you say it was more likely than not that if
25 these caps were removed that I should expect price

1 increases from my Southwestern Bell bill?

2 A. I think it's possible. The other piece of
3 this that I think you need to understand is in my
4 experience it's very difficult for incumbent carriers
5 to target prices to different customer groups, and
6 that's because -- and Southwestern Bell might not like
7 my saying this, but they don't have terribly
8 sophisticated billing systems that permit highly
9 sophisticated pricing differentiation.

10 So what I think is more likely is that
11 you'll see more pricing that tends to be more uniform
12 than pricing that tends to be highly targeted to
13 reflect in a very refined way cost differences by
14 geographic location.

15 On the other hand, I think it's also the
16 case, as I said earlier, that the public policy
17 concern of keeping prices down for rural customers or
18 other high-cost customers is one that can and perhaps
19 should be addressed but in another way through a
20 mechanism that's directly focused on giving price
21 relief through a subsidy mechanism to those customers.

22 Q. And are you familiar with the -- the state
23 Universal Service Fund that is not implemented but
24 that is authorized under the Missouri statutes?

25 A. Not specifically, no.

1 Q. So you couldn't tell me whether or not that
2 might fall into the criteria of the mechanism that
3 you're describing in order to help those public policy
4 concerns on keeping residential rates lower?

5 A. No. Normally, what you -- as an economist
6 you would like to see is a mechanism that is
7 competitively neutral in the sense that it permits
8 carriers to compete in that market, to earn a return
9 on their investment for those customers, but that
10 creates some subsidy or relief directly to the
11 customers.

12 Q. Would it be fair to say that under the
13 current scenario with price caps in effect that -- and
14 with the fact that Southwestern Bell is the carrier of
15 last resort to some areas of the state that there is a
16 supplementing of some of those areas that may be under
17 cost -- excuse me -- may be where the revenues are
18 under cost by areas where there are more revenues
19 coming in and that there is a clear profit being made?

20 Do you need me to ask that again?

21 A. I think what you're saying is because there
22 is a carrier of last resort obligation it creates
23 revenues in some areas that can be used to subsidize
24 other areas?

25 Q. That's a general form of it, yes.

1 Is that true?

2 A. Well, I would say that where prices and
3 therefore revenues exceed costs, you don't need a
4 carrier of last resort obligation to induce a firm to
5 sever. That's profitable and a firm would want to
6 serve there. It's where customers are not profitable
7 that the carrier of last resort constraint is binding,
8 and it's also in those areas that competition is
9 discouraged.

10 Q. So is it -- would it be fair to say that
11 there is a movement of -- or a balancing of the entire
12 profit structure of the company in those two different
13 areas that you describe, one that's profitable and one
14 that's not?

15 A. Well, since we're not in a rate of return
16 environment here, there isn't an overall profit
17 constraint that is in play. So having said that,
18 it's, I guess, true as a matter of arithmetic that if
19 some areas are under water and some are profitable
20 that they average out, and the profit of the firm
21 overall is some average of those.

22 Q. My question is going -- my series of
23 questions is going in this direction: If that is the
24 case and there is not real competition in those areas
25 where the company is operating at a loss, if you just

1 compartmentalize it, then is -- would it not be the
2 case that that company is in effect absorbing the
3 public policy desire that may exist to tend to keep
4 those residential rates at a lower level rather than
5 spreading it over all of the companies that are doing
6 business in a particular state?

7 A. I think the problem with this scenario that
8 you describe is that when you open a market to
9 competition, the -- the areas with the gravy are the
10 ones that attract competition and drive the gravy out.

11 And so to the extent a company was
12 previously able to subsidize the undercost areas with
13 the profitable areas, the profit opportunities
14 dissipate, but the loss obligations don't. So, yes,
15 the company continues to bear those and absorb them,
16 as you put it, but the ability to absorb them isn't --
17 isn't infinite. And as those profit opportunities
18 erode, the ability to absorb those losses erodes.

19 Q. I understand. So if there were a mechanism
20 that shared that responsibility among more than one
21 company or a handful of companies, is that what you're
22 talking about when you're talking about a different
23 means of addressing the -- the desire to keep these
24 higher cost residential rates at a lower price rather
25 than allowing them to rise simply on the basis of what

1 their cost is?

2 A. An example of what I have in mind is -- here
3 is a very simple example, is that customers in
4 high-cost areas are given a direct subsidy of
5 X dollars per month for their local phone service
6 regardless of which carrier they take it from, and the
7 carriers can charge the prices that competition will
8 permit.

9 So the prices that they charge and the
10 revenues they earn reflect their costs as well as
11 competition. The net price that the customer bears is
12 subsidized, and so the customer bears a lower price
13 but in a way that is neutral to which carrier they are
14 taking service from.

15 Does that go to your question?

16 Q. Well, I'm not sure it answered it. But I --
17 I'm interested in knowing what specifically this
18 Commission has as an option or that may already exist
19 in the state to address the means that you have
20 described on, I think, three or four occasions so far
21 in your testimony of -- of keeping the residential
22 customer that has higher costs from seeing their bills
23 go up substantially because of being -- of the only
24 mechanism or the only determinant of their -- of their
25 phone bill being their cost of service.

1 And I'm wanting to understand what it is
2 that you're describing.

3 A. The example that I just gave you is one
4 concrete mechanism that, as far as I understand, the
5 Commission could implement in some form to achieve the
6 objectives that you just described. In other words,
7 it's a mechanism that gives the consumer relief on the
8 cost of getting local exchange service but doesn't
9 distort competition in favor of one carrier or
10 another.

11 Q. Are you aware of any states that have that
12 kind of a program?

13 A. I haven't been studying the State's
14 universal service mechanisms. I know the FCC has been
15 seeking a mechanism that satisfies the conditions I
16 just described, namely is revenue neutral -- excuse
17 me -- is competitively neutral but also achieves the
18 objective of getting relief to high-cost or low-income
19 customers.

20 COMMISSIONER GAW: All right. That's all I
21 have.

22 Thank you.

23 JUDGE DIPPELL: Are there other Commission
24 questions for Dr. Aron?

25 (No response.)

1 JUDGE DIPPELL: All right. Let's go ahead,
2 then, and take a ten-minute break. It's 10 after
3 3:00. We'll return at 20 after.

4 We'll go off the record.

5 (A RECESS WAS TAKEN.)

6 JUDGE DIPPELL: We have one more question
7 for you, Dr. Aron, before the Commissioners are gone.

8 Commissioner Lumpe?

9 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

10 Q. I think this is just clarification. It's on
11 Page 23 of your Surrebuttal at the very bottom there,
12 Line 20, where you say, "Coincidentally, it is this
13 very data that SWBT is unable to offer that Staff and
14 intervenors argue is the most important in evaluating
15 effective competition."

16 You're referring to market share data there?

17 A. No. What I'm referring to there is data on
18 pure facilities-based lines.

19 Q. Okay. And that data is impossible or -- to
20 find?

21 A. Well, what Southwestern Bell's wholesale
22 unit has is information on how many resell lines it
23 sells to competitors, how many unbundled network
24 elements and UNE-P it sells to competitors. It knows
25 how many interconnection trunks it has with

1 competitors.

2 But it doesn't know how many lines
3 competitors are providing purely over their own
4 facilities. It can only estimate that based on other
5 information like interconnection trunks or E-911
6 listings, and those are just estimates and not
7 necessarily, especially when it comes to 911 listings,
8 probably not complete estimates at all.

9 Q. And on Page 50, Line 1 in your Surrebuttal
10 where you say, "Regulators would not permit SBC or
11 SWBT to increase its prices," et cetera, what
12 regulators, which set of regulators are you referring
13 to there, the FCC or this Commission?

14 A. Well, I think this Commission would be the
15 first line of defense, and I'm confident that carriers
16 would not be shy to come in with complaints. And
17 we've talked about guidelines that I think would be
18 appropriate to look at to evaluate whether such
19 complaints had merit.

20 COMMISSIONER LUMPE: Okay. Thank you.

21 That's all.

22 JUDGE DIPPELL: All right then. At this
23 time we'll have recross based on questions from the
24 Bench, and then we'll go to redirect after that.

25 Staff?

1 MR. HAAS: No questions.

2 JUDGE DIPPELL: Public Counsel?

3 MR. DANDINO: No questions, your Honor.

4 JUDGE DIPPELL: AT&T?

5 MR. ZARLING: No questions.

6 JUDGE DIPPELL: WorldCom?

7 RECROSS-EXAMINATION BY MR. LUMLEY:

8 Q. First, following up on a question asked by
9 Commissioner Gaw, you were speaking of billing system
10 constraints on Southwestern Bell's ability to
11 differentiate its prices. Do you recall that?

12 A. Yes.

13 Q. You understand, don't you, that Southwestern
14 Bell currently has different residential local rates
15 in different rate groups across the state?

16 A. Yes, sir.

17 Q. And following up on your responses to
18 questions from Commissioner Lumpe regarding the
19 comparison of residential retail local rates and the
20 UNE costs or the UNE prices based on TELRIC costs, do
21 you recall that discussion?

22 A. Yes.

23 Q. As we noted when I asked you questions
24 earlier, you've expressed the opinion that residential
25 rates have been set artificially low.

1 At least hypothetically wouldn't agree with
2 me that the reverse could be true, that it's the
3 retail residential rate that's correct and it's the
4 UNE costs that are too high and that's the barrier?

5 A. When the Commission in Missouri established
6 its pricing philosophy for residential rates in 1977,
7 it expressly established a philosophy for residential
8 basic services that was not a cost-based philosophy.
9 It was a methodology whereby competitive and other
10 services would be priced on the basis of cost plus,
11 roughly speaking, as much of a markup as the market
12 would bear, and then everything that's left over would
13 go to basic services, and the Commission explicitly
14 acknowledged that that well could result in
15 residential rates being below cost.

16 So based on that and the fact that the
17 Commission, I think, engaged in a rather exhaustive
18 evaluation of the TELRIC costs and the resulting UNE
19 rates, I don't think your hypothetical is likely.

20 Q. But it's possible?

21 A. I don't think it's possible.

22 Q. Let me ask it a different way: One could
23 hypothetically construct a situation where we have
24 retail rates below UNE costs and the problem is
25 actually that the retail rates are okay. It's the UNE

1 costs that are too high. You could construct that
2 scenario, couldn't you?

3 A. One could arbitrarily assign numbers that
4 would satisfy the condition that you just described,
5 but I don't think it would be a possible outcome of
6 the processes that this Commission went through to
7 arrive at both the retail rates and the UNE rates.

8 Q. And also it would be at least hypothetically
9 possible to construct a scenario where the correct
10 answer is in between the two where you have
11 residential rates that are below costs, but you also
12 have UNE prices that are above costs if mistakes are
13 made in both calculations?

14 A. I would point out that the effective UNE
15 rates in Missouri today are below the cost that was
16 approved and established by the Commission in its cost
17 proceeding. Southwestern Bell, as I understand it,
18 voluntarily took reductions on UNE loop rates for
19 Areas A, B, and C and that those below -- those rates
20 that are below the cost as established by the
21 Commission are the effective rates in the M2A.

22 Q. But that wasn't my question.

23 My question was that we could construct a
24 scenario where the correct price is as a mid point
25 between retail rates that are below costs and UNE

1 prices that are above costs, and both figures would be
2 inaccurate?

3 A. In principle, again, one could construct
4 such prices, but I don't think that that gives due
5 credit to the process that the Commission underwent to
6 arrive at the prices it did arrive at.

7 Q. And if parties disagreed about whether it's
8 the retail rates that are correct or the UNE prices
9 that are correct, the one thing that they could agree
10 on is that the combination of the two when different
11 can create a barrier?

12 A. Well, if the retail rates were roughly
13 correct relative to cost, that would not create a
14 barrier either for pure facilities-based entry or for
15 resale. It would only create a problem for UNE-based
16 entry.

17 On the other hand, if the retail rates are
18 truly below cost, that's going to create a problem for
19 purely facilities-based entry as well.

20 MR. LUMLEY: Thank you.

21 JUDGE DIPPELL: Is there any recross from
22 Sprint?

23 MS. HENDRICKS: No, your Honor.

24 JUDGE DIPPELL: McLeod?

25 MR. KRUSE: No questions, your Honor.

1 JUDGE DIPPELL: Redirect?

2 REDIRECT EXAMINATION BY MR. LANE:

3 Q. You know that redirect is harder than cross,
4 don't you?

5 A. Are you going to be tough?

6 Q. In response to questions from Commissioner
7 Lumpe, you discussed the estimate of competitive
8 losses and talked about estimates from E-911. You
9 indicated that that would likely be on the low side.

10 Would you explain why E-911 data would be
11 low on the estimate of lines served by competitors?

12 A. Sure. E-911 data have a number of
13 deficiencies, and I described one of them in my
14 testimony which is that in the business market --
15 well, I should say this problem arises primarily in
16 the business market. Phone numbers are only listed in
17 the E-911 database if they are associated with lines
18 that are capable of making outward-bound calls. And
19 many lines in the business market are not.

20 So the example I gave in my testimony is
21 that in my offices in Evanston we have 16 trunks that
22 feed our PBX. Eight of them are outward bound and
23 eight of them are inward bound. That means we would
24 have only eight listings in the E-911 database,
25 although we have 16 lines that come in to serve about

1 40 stations in our office.

2 That problem is likely to be pervasive
3 throughout the whole business market and as a result
4 the E-911 database is not going to reflect many
5 business lines.

6 In addition, it's my understanding that
7 ported numbers are not reflected in the E-911 database
8 as CLEC numbers, so if the CLEC customer ports its
9 phone number from Southwestern Bell to the CLEC, that
10 number would remain in the database as a Southwestern
11 Bell number. And then it's also the case that resale
12 and UNE-P phone numbers are associated in the E-911
13 database with the incumbent, and not with the CLEC.

14 So for all of those reasons, the 911 numbers
15 are not going to be a very complete estimate of
16 competitive services.

17 Q. You had several questions from various
18 Commissioners concerning the relationship of
19 residential rates to residential costs.

20 Do you have information there available to
21 you indicating what the retail rates for residential
22 services are in Southwestern Bell's four rate
23 groupings that it has in Missouri and a comparison of
24 the M2A rates for the UNE loop all by itself?

25 A. Yes, I do.

1 In Rate Group A, and I'm looking now at the
2 flat rate, residential rate, that rate is \$7.48 per
3 month in Rate Group A. The UNE loop recurring rate
4 under the M2A, which I said earlier, is below the
5 cost-based rate that was established by the Commission
6 because Southwestern Bell voluntarily took reductions
7 on the M2A. That recurring rate is \$19.74.

8 In Rate Group B the residential flat rate is
9 \$9.02; whereas, the UNE loop rate under the M2A is
10 \$18.64.

11 In Rate Group C, the residential rate in C
12 principal is \$10.01, and the UNE loop rate is \$16.41.

13 And in Rate Group D, the Metro I rate is
14 \$11.74. The Metro II rate is \$13.39, but the UNE loop
15 rate is 12.71.

16 So in every case the UNE loop rate exceeds
17 the residential retail rate. Of course, the UNE loop
18 rate is not the entire cost of providing service for a
19 CLEC either. And I would also point out that the UNE
20 loop rates are highest in the high-cost areas;
21 whereas, the residential retail rates are lowest in
22 the high-cost areas, so the direction of change is
23 opposite as well which exacerbates the problem in the
24 high-cost areas.

25 Q. In addition to the UNE loop, what other

1 unbundled network elements would typically be required
2 in providing comparable local exchange service to
3 residential customers?

4 A. Well, a carrier need not use any other
5 unbundled network elements necessarily. It could
6 provide its own facilities, but in some way, either
7 using its own facilities or using unbundled network
8 elements, it needs to provide switching, it needs to
9 provide interoffice transport, and it may be -- it
10 would have to pay reciprocal compensation on local
11 calls for call termination.

12 Q. You had some discussion with Commissioner
13 Lumpe concerning resale and how effective it would be
14 as a pricing constraint, and one of the items that you
15 discussed was a hybrid carrier or a hybrid CLEC.

16 Could you describe what you mean by a
17 "hybrid CLEC"?

18 A. Sure. What I mean by that is that in the
19 market today many carriers -- I would say probably
20 most carriers don't enter using just unbundled network
21 elements or just their own facilities or just resale.
22 They enter with a combination of those strategies.

23 So when I say a "hybrid carrier," I mean a
24 carrier that is taking advantage of those
25 opportunities to use its own facilities where it is

1 economical to deploy them, uses resale where that's
2 the most economical strategy either in the short-run
3 or the long-run, might use unbundled network elements
4 where those are the most economical, and because there
5 are no commitments required of CLECs, when they use
6 unbundled network elements or resale, CLECs have the
7 opportunity to take advantage of those options and
8 then release those lines and transit those customers
9 to their own facilities when it becomes economical to
10 do so.

11 Q. And if there is an increase in price on the
12 retail side to Southwestern Bell, might that have an
13 impact on the mix of the way a particular CLEC chooses
14 to provide service, either resale or via unbundled
15 network elements or via its own facilities?

16 A. Yes. When the price goes up, that would
17 tend to encourage carriers to invest in their own
18 facilities more relative to using resale because,
19 number one, the returns to their own facilities are
20 higher when retail rates are higher, and, number two,
21 resale prices are higher when retail rates are higher,
22 and so that also encourages a transition from resale
23 to facilities.

24 Q. Okay. And is it your understanding that
25 carriers that use a mix of facilities to provide

1 services to the customers nevertheless have one tariff
2 offering with a particular price that they offer their
3 service to the customers?

4 A. That's my understanding. And, moreover, as
5 I said in my testimony, typically customers wouldn't
6 know and wouldn't care what kind of line they are
7 being provisioned over.

8 Q. You had a discussion with Commissioner Gaw
9 concerning the impact potentially on residential
10 customers from pricing flexibility if rates increase
11 and in particular on rural customers.

12 Do you have any information from other
13 states about what -- what has happened in the market
14 place when pricing constraints on the incumbent were
15 lifted?

16 A. I'm aware of one scenario in Massachusetts
17 where the Commission over time increased residential
18 retail rates from a level about ten years ago of \$8 to
19 a level almost three times that today. And in that
20 state, as retail rate constraints were lifted, there
21 was a tremendous influx of competition.

22 And what happened in that state is that
23 rates effectively were restructured in the sense that
24 there was increased competitive pressure on
25 traditionally high margin services like the vertical

1 features so that while the network access line rate
2 did go up, competition enhanced significantly and that
3 rationalized the overall package of rates, so that
4 today a typical customer's overall bill is comparable
5 to what the typical customers overall local phone bill
6 was in 1990.

7 Q. So that prices for vertical and other
8 discretionary services tended to decrease while the --
9 at the same time that the network access line was
10 increasing?

11 A. The vertical features prices tended to be
12 driven down towards their cost so that the whole
13 package of the combination of the network access line
14 and the vertical features tended to balance out, so
15 that the whole package of services that constitute a
16 typical customer's local bill ended up being, after
17 competition, about the same.

18 Q. You had a discussion with Commissioner Lumpe
19 concerning a transition period that was in effect for
20 the time it took on the interexchange side for
21 competition to develop after it was permitted in that
22 market. And you were comparing that to the transition
23 period that might be expected in the local exchange
24 market.

25 In terms of comparing those two, in your

1 view, are alternatives like cable television, possible
2 cable telephony, as well as wireless or other
3 wire-type service, things that indicate competition
4 alternatives that are available in the local market
5 that were not available in the long distance market at
6 the time it was deregulated?

7 A. I can't think of anything analogous in the
8 long distance market to the availability of
9 alternative technologies in the local market today,
10 both through cable telephony as well as through
11 wireless. Now, today, mobile wireless is serving as a
12 substitute not only for local service but for long
13 distance service in a very important way and will
14 become a substitute for broadband shortly as well.

15 That kind of inter-technology competition
16 was really not a factor in the long distance market as
17 it was evolving to competition.

18 Q. You had some discussion with the WorldCom
19 attorney concerning switched access and whether
20 switched access should be defined as a service subject
21 to effective competition. And you had some specific
22 discussions concerning whether or not it constituted a
23 locational monopoly on the originating end or the
24 terminating side. Do you recall those questions?

25 A. I do.

1 Q. Okay. If terminating access is a locational
2 monopoly for Southwestern Bell, in your opinion, would
3 it also be a locational monopoly for CLECs serving
4 customers on the terminating end of the call?

5 A. Yes. It really is location-specific to the
6 customer, not to the carrier, so it would be a
7 locational monopoly for everyone as a service, not
8 specific to a carrier.

9 Q. Okay. And if CLEC-switched access service
10 is deemed competitive by the Commission for all of the
11 CLECs in the case in the state, in your opinion,
12 should Southwestern Bell's switched access rates also
13 be subject to the same competitive finding and the
14 same cap that Southwestern Bell's proposing to apply
15 in this case? Do you see a difference between the
16 incumbent and the CLECs in that regard?

17 A. No, I don't see a difference. One thing
18 about switched access and the issue of locational
19 monopoly is that it really doesn't matter how many
20 customers you have. It's a locational monopoly
21 because if an IXC wants to -- let's say we're looking
22 at the terminating end. If the IXC's customer is
23 asking the IXC to terminate a call to a specific
24 customer, the provider of that customer's local
25 service gets the terminating access whether that

1 provider has one customer or all of the customers in
2 the market.

3 So, really, the issue of locational monopoly
4 is not one that depends on the provider's market
5 share, but depends on the ability of the IXC or the
6 toll provider to circumvent or to bypass the access,
7 and that's why I said on the originating end there is
8 certain opportunities for that.

9 On the terminating end, there might not be,
10 but it's symmetric for all of the carriers in the
11 market, and if -- and I think that they should all be
12 treated symmetrically.

13 Q. You had a discussion with AT&T's counsel
14 concerning a comparison of the resale discount for
15 local service versus the resale discount for
16 interexchange services. Do you recall that --

17 A. Yes, I do.

18 Q. -- discussion?

19 And at one point you started to answer
20 concerning your general understanding of discount
21 levels in the interexchange market as compared to the
22 local market. And I wondered if you would care to
23 finish the answer that you began to give there.

24 A. Well, I just wanted to say there that in the
25 long distance market, the resale discount varies

1 considerably by a number of factors that aren't
2 relevant in the local market. For example, in the
3 long distance market, it's sometimes said that the
4 resellers get very deep discounts, but one has to
5 understand that to the extent they get those
6 discounts, they are subject to contract.

7 So carriers -- the resellers are signing
8 long-term contracts with term commitments, three
9 years, five years, for example, with the long distance
10 carrier, and it's under those terms that they are
11 permitted those discounts. That's not the case in the
12 local market.

13 In the local market, the discount is
14 available to every carrier without any sort of
15 commitment, and that's a benefit for the local
16 resellers.

17 Secondly, whatever the discount is, and I
18 said I don't really know what the -- what one could
19 call a typical discount in the long distance market.
20 I do know that how you calculate that discount is very
21 important, because if you're getting a very deep
22 discount, let's say, and let's say you use 50 percent
23 as was posited, it might be 50 percent off of some
24 rack rate that no one is actually purchasing or few
25 customer are actually using. It may be 10 percent off

1 of the average revenue from a typical customer because
2 of the huge range of long distance plans there are in
3 the market.

4 And so it's very difficult to even know what
5 the realistic discount is that resellers are getting
6 in the long distance market and it makes it very
7 difficult to compare.

8 Q. In response to a question from WorldCom
9 counsel and I think also in response to questions from
10 the Bench, you had a discussion of the Commission's
11 pricing philosophy with regard to residential
12 services, and you cited to a 1977, I believe,
13 decision.

14 Could you say what case number that was that
15 you were quoting from, or do you have that available
16 to you?

17 A. I have the order in the room, but I didn't
18 bring it up to the podium with me. I'm sorry.

19 Q. Okay. In response to a question from I
20 believe it was Staff, there was some discussion of the
21 271 findings of this Commission with regard to the
22 market being open and what relationship it had in this
23 case.

24 Are there any factors in Section
25 386.020(13), the definition of effective competition

1 in this case that you think the 271 findings are
2 relevant towards?

3 A. In 386.020(13), Part D instructs the
4 Commission to look at existing economic or regulatory
5 barriers to entry. There it is.

6 So, yes, the Commission is explicitly
7 instructed to evaluate barriers to entry as a
8 determinant of whether effective competition exists
9 just as the existence of barriers to entry is part of
10 the 271 process.

11 Q. In your view, is Subpart D of
12 Section 386.020(13) equivalent to a determination that
13 the market is open for competition?

14 A. Yes, I think those are, from an economic
15 perspective, the same thing.

16 MR. LANE: That's all I have.

17 Thank you very much, Dr. Aron.

18 JUDGE DIPPELL: Thank you.

19 Is there anything further from the
20 Commission for this witness?

21 (No response.)

22 JUDGE DIPPELL: All right then.

23 MR. LANE: May Dr. Aron be excused?

24 JUDGE DIPPELL: Dr. Aron, you may be
25 excused.

1 THE WITNESS: Thank you.

2 JUDGE DIPPELL: Thank you for a very long
3 day.

4 THE WITNESS: My pleasure.

5 (Witness excused.)

6 JUDGE DIPPELL: Southwestern Bell, you can
7 go ahead and call your next witness.

8 MR. BUB: Thank you, your Honor.

9 We'll go ahead and call Tom DeHahn, please.

10 JUDGE DIPPELL: Mr. DeHahn, would you please
11 state your name and spell it for the court reporter?

12 THE WITNESS: Yes. It's Thomas S. DeHahn,
13 and it is D-e-H-a-h-n.

14 JUDGE DIPPELL: Would you please raise your
15 right hand?

16 (Witness sworn.)

17 JUDGE DIPPELL: Thank you.

18 You may be seated.

19 Mr. Bub, you may proceed.

20 MR. BUB: Thank you, your Honor.

21 THOMAS S. DeHAHN testified as follows:

22 DIRECT EXAMINATION BY MR. BUB:

23 Q. Mr. DeHahn, could you please repeat your
24 full name for the record?

25 A. Yes. Thomas S. DeHahn.

1 Q. And where are you employed?

2 A. I'm employed by SBC Ameritech Corporate in
3 Chicago, Illinois.

4 Q. And what are your responsibilities?

5 A. I have a 13-state responsibility for all of
6 SBC's regulated operating companies for dedicated
7 private line services and Life-cycle product
8 management function.

9 Q. And that would include Missouri, wouldn't
10 it?

11 A. Yes, it does.

12 Q. Are you the same Thomas DeHahn that caused
13 to be filed Direct Testimony that's been marked as
14 Exhibit 3 and Surrebuttal Testimony that's been marked
15 as Exhibit 4?

16 A. Yes.

17 Q. If I were to ask -- let me ask you, are
18 there any changes to either piece of testimony?

19 A. No.

20 Q. If I were to ask you the same questions that
21 are contained in Exhibits 3 and 4, would your answers
22 today be the same?

23 A. Yes.

24 Q. Are those answers true and correct to the
25 best of your knowledge?

1 A. Yes.

2 MR. BUB: Thank you, your Honor.

3 Your Honor, I would like to offer Exhibits 3
4 and 4 into evidence.

5 JUDGE DIPPELL: Are there any objections to
6 Exhibit No. 3 or 4 coming into the record?

7 (No response.)

8 JUDGE DIPPELL: Then I will receive those
9 into the record.

10 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
11 EVIDENCE.)

12 MR. BUB: And we would offer Mr. DeHahn for
13 cross-examination.

14 JUDGE DIPPELL: Thank you.

15 MR. BUB: Thank you.

16 JUDGE DIPPELL: Is there cross-examination
17 from the Staff?

18 MR. HAAS: Staff has no questions for this
19 witness.

20 JUDGE DIPPELL: Public Counsel?

21 MR. DANDINO: I have no questions, your
22 Honor. Thank you.

23 JUDGE DIPPELL: AT&T?

24 MR. ZARLING: No questions.

25 JUDGE DIPPELL: WorldCom?

1 MR. LUMLEY: No, your Honor.

2 JUDGE DIPPELL: Sprint?

3 MS. HENDRICKS: No, your Honor.

4 JUDGE DIPPELL: McLeod?

5 MR. KRUSE: No. Thank you, your Honor.

6 JUDGE DIPPELL: Well, that was quick.

7 Are there questions from the Bench?

8 Commissioner Lumpe.

9 COMMISSIONER LUMPE: No.

10 JUDGE DIPPELL: Commissioner Gaw?

11 COMMISSIONER GAW: None from me either.

12 THE WITNESS: Wow.

13 JUDGE DIPPELL: Record time.

14 In that case, I haven't cleared with

15 Commissioner Simmons and Commissioner Murray to make

16 sure that they don't have questions for you,

17 Mr. DeHahn, so at this time what I would do then is to

18 ask you to go ahead and step down but to remain, and I

19 will check with those Commissioners before the end of

20 the day --

21 THE WITNESS: Okay.

22 JUDGE DIPPELL: -- and let you know if you

23 can be excused.

24 THE WITNESS: That would be good.

25 JUDGE DIPPELL: Thank you.

1 We can proceed with the next witness.

2 MR. CONROY: Thank you, Judge.

3 Southwestern Bell calls Sandy Moore.

4 JUDGE DIPPELL: Ms. Moore, could you please

5 spell your name for the court reporter?

6 THE WITNESS: Sandy, with a "Y," M. Moore

7 spelled M-o-o-r-e.

8 JUDGE DIPPELL: Thank you.

9 Would you please raise your right hand?

10 (Witness sworn.)

11 JUDGE DIPPELL: Thank you.

12 You can be seated.

13 Proceed, Mr. Conroy.

14 MR. CONROY: Thanks, Judge.

15 SANDY M. MOORE testified as follows:

16 DIRECT EXAMINATION BY MR. CONROY:

17 Q. Would you state your name again for the

18 record and your business address?

19 A. Sandy M. Moore. My business address is

20 2000 West Ameritech Center Drive in Hoffman Estates,

21 Illinois.

22 Q. And by whom are you employed, Ms. Moore?

23 A. I'm employed by SBC Ameritech Corporation.

24 Q. Could you briefly describe your

25 responsibilities?

1 A. I am executive director of product marketing
2 for retail directory assistance and operator
3 assistance services for 12 states, including Missouri.

4 Q. Are you the same Sandy Moore who has
5 prefiled Direct and Surrebuttal Testimony which has
6 been marked as Exhibit 5, 6, and 6 HC?

7 A. Yes, I am.

8 Q. Do you have any corrections or revisions
9 that you would like to make to your testimony that you
10 prefiled?

11 A. Yes, I do.

12 The first change is on Page 16.

13 Q. Of your Direct Testimony?

14 A. Of my Direct Testimony, Line 1, and it's to
15 delete the words "directory assistance services."

16 Q. All right. Any other changes?

17 A. Yes.

18 The next change that I have is on
19 Schedule 8. At the time my testimony was submitted
20 Schedule 8 was accurate; however, subsequent to the
21 filing some rates have changed. Therefore, I have
22 updated schedules to submit.

23 Q. All right. And have you recently prepared a
24 Revised Schedule 8 that takes into account those
25 revisions?

1 A. Yes, I have.

2 MR. CONROY: Your Honor, if I may, I have a
3 revision to Schedule 8.

4 JUDGE DIPPELL: And have the other parties
5 received Schedule 8?

6 MR. CONROY: No. They are just receiving it
7 now.

8 JUDGE DIPPELL: And you have copies for
9 them.

10 MR. CONROY: Yes, I have, as well as for you
11 and the Commissioners.

12 JUDGE DIPPELL: Mr. Conroy, that's not the
13 subject of your motion that you filed?

14 MR. CONROY: No, it's not. We're going to
15 talk about that in just a second.

16 JUDGE DIPPELL: Okay. While he's passing
17 that out, Ms. Moore, what were the words you deleted
18 from Line 1, Page 16?

19 THE WITNESS: It's the second, third, and
20 fourth words, "directory assistance services." It was
21 redundant from the previous two words.

22 MR. CONROY: Judge, would you prefer this
23 get a new exhibit number or just replace her
24 exhibit -- or Schedule 8 from her Direct Testimony?

25 JUDGE DIPPELL: Let's go ahead and mark it

1 with a new exhibit number since that's how we did it
2 for Public Counsel's revised, and so that would be
3 marked Exhibit No. 26. And that's the revisions to
4 schedule -- what's the schedule number?

5 MR. CONROY: Eight of direct.

6 JUDGE DIPPELL: Revisions to Schedule No. 8
7 of Ms. Moore's testimony.

8 (EXHIBIT NO. 26 WAS MARKED FOR
9 IDENTIFICATION.)

10 THE WITNESS: And then I do have one last
11 change on Schedule 14, and it's similar to the issue
12 on Schedule 8 where the schedule was accurate at the
13 time the testimony was submitted, but prices have
14 changed subsequent to the filing.

15 JUDGE DIPPELL: So you have a revised
16 schedule there for that also, Mr. Conroy?

17 MR. CONROY: Yes, your Honor.

18 JUDGE DIPPELL: Then we'll go ahead and mark
19 that Exhibit No. 27.

20 (EXHIBIT NO. 27 WAS MARKED FOR
21 IDENTIFICATION.)

22 THE WITNESS: And that is my last change in
23 the Direct Testimony.

24 BY MR. CONROY:

25 Q. And subsequent to the filing of your

1 Surrebuttal Testimony, did you discover an error in
2 your -- in the highly confidential version of your
3 Surrebuttal Testimony?

4 A. Yes, I did.

5 Q. And was that the subject of a motion that
6 Southwestern Bell has filed to substitute corrected
7 pages for that testimony?

8 A. Yes, it was.

9 JUDGE DIPPELL: Now, did everyone get copies
10 of those revisions?

11 I'm seeing heads nodding yes.

12 Let me ask it again. Did anyone not get
13 copies of those revisions that were the subject of the
14 motion filed by Southwestern Bell?

15 (No response.)

16 JUDGE DIPPELL: Are there any objections to
17 Southwestern Bell's motion to substitute those pages?

18 And I'm sorry. Mr. Conroy, tell me again
19 what -- what schedule those were.

20 MR. CONROY: It's page -- it's a new Page 6
21 to the Surrebuttal Testimony, Exhibit 6 HC, and the
22 actual correction is an HC number. That's why I'm not
23 saying it. And it's also Page 2 of Schedule 1 HC,
24 again, to Ms. Moore's Surrebuttal Testimony, 6-HC.

25 JUDGE DIPPELL: Okay. I want to make sure

1 that the parties have had an opportunity to review it
2 and make sure that the changes are not such that they
3 would object to this just being substituted and
4 entered into the record.

5 So are -- have the parties had an
6 opportunity to review this substantially? Does any
7 one object to those pages being substituted for the
8 exhibit as they are?

9 (No response.)

10 MR. ZARLING: AT&T has no objection, your
11 Honor.

12 JUDGE DIPPELL: All right. I don't see any
13 objection.

14 Then what I'm going to do is -- I'm going to
15 go ahead and mark this one just to be consistent, so
16 I'm going to go ahead and mark those pages that are
17 attached to your motion as 28 HC. And then when we
18 introduce -- assuming you're going to offer all of
19 those exhibits, when we introduce those into the
20 record, we will substitute them at that time.

21 MR. CONROY: It was 28 HC. Correct?

22 JUDGE DIPPELL: Yes.

23 Were there corrections to the NP version of
24 that?

25 MR. CONROY: No.

1 JUDGE DIPPELL: So 28 HC.

2 (EXHIBIT NO. 28 HC WAS MARKED FOR
3 IDENTIFICATION.)

4 JUDGE DIPPELL: Go ahead.

5 BY MR. CONROY:

6 Q. With those changes to your testimony, would
7 your testimony be the same as your prefiled testimony
8 if you were presenting your testimony live here today?

9 A. Yes.

10 Q. And is your testimony true and correct to
11 the best of your knowledge and belief?

12 A. Yes, it is.

13 MR. CONROY: Southwestern Bell would move
14 that exhibits 5, 6, and 6 HC, along with Exhibits 26,
15 27, and 28 HC be admitted into evidence. And we would
16 tender Ms. Moore for cross-examination.

17 JUDGE DIPPELL: All right. Is there any
18 objection to Exhibit No. 5? That's Direct Testimony
19 of Sandy Moore.

20 (No response.)

21 JUDGE DIPPELL: Then I will receive that
22 into the record.

23 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

24 JUDGE DIPPELL: Is there any objection to
25 Exhibits 6 and 6 HC?

1 (No response.)

2 JUDGE DIPPELL: Then I will receive that
3 into the record.

4 (EXHIBIT NO. 6 AND 6 HC WERE RECEIVED INTO
5 EVIDENCE.)

6 JUDGE DIPPELL: And are there any objections
7 to exhibits -- or Exhibit No. 26?

8 (No response.)

9 JUDGE DIPPELL: Then I will receive that
10 into the record.

11 (EXHIBIT NO. 26 WAS RECEIVED INTO EVIDENCE.)

12 JUDGE DIPPELL: And is there any objection
13 to Exhibit No. 27?

14 (No response.)

15 JUDGE DIPPELL: Then I will receive that
16 into the record.

17 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE DIPPELL: And is there any objection
19 to Exhibit No. 28 HC?

20 (No response.)

21 JUDGE DIPPELL: Then that is also received
22 into the record.

23 (EXHIBIT NO. 28 HC WAS RECEIVED INTO
24 EVIDENCE.)

25 JUDGE DIPPELL: So those last three exhibits

1 are actually corrections of Ms. Moore's testimony.

2 All right, then. Did you tender the
3 witness, Mr. Conroy?

4 MR. CONROY: I did.

5 JUDGE DIPPELL: Thank you.

6 MR. CONROY: Mr. Conroy, do you have copies
7 of Exhibit 28 HC for the court reporter? That's the
8 one that was attached to your motion.

9 MR. CONROY: I think I do. I need to make
10 some extras. I only have two at this moment. I'll
11 give her what I have.

12 JUDGE DIPPELL: Will you provide those to
13 the court reporter at the end of the hearing?

14 MR. CONROY: Judge, so I'm clear, you just
15 made it the actual pages that we're going to be
16 changed?

17 JUDGE DIPPELL: That's correct, not
18 including your motion.

19 MR. CONROY: I'm going to give her one so I
20 have one to make the copies from, and then I'll bring
21 copies.

22 JUDGE DIPPELL: Thank you.

23 I'll try to get back on track here.

24 Is there cross-examination for Ms. Moore by
25 Staff?

1 MR. HAAS: Yes, your Honor.

2 CROSS-EXAMINATION BY MR. HAAS:

3 Q. Hello, Ms. Moore.

4 Please turn to Page 14 of your Direct
5 Testimony.

6 A. (Complied.)

7 Q. At Line 10 you state, "The rates available
8 for the comparable alternatives are competitive with
9 Southwestern Bell's rates for directory services," and
10 then you say, "see Schedule 8."

11 Does the Revised Schedule 8 change your
12 conclusion?

13 A. No, it does not.

14 Q. Given that Southwestern Bell's rates are
15 comparable, what's the problem with Southwestern
16 Bell's directory services remaining under price cap
17 regulation?

18 A. We're looking to remove the services from
19 price cap regulation so that we can compete on a level
20 playing field which will basically drive prices to
21 market and spur innovation and, ultimately, benefit
22 the consumer. For example, if you look at some of our
23 competitive alternatives, when a customer has selected
24 Southwestern Bell for service, their rates range, for
25 example, from 75 cents to \$1.99 per call, so our rate

1 for local directory assistance at 55 cents is
2 competitive today.

3 Q. How does price cap regulation slow
4 Southwestern Bell's ability to offer new directory
5 assistance products?

6 A. That was really covered in Dr. Aron's
7 testimony in terms of the economics, and I'm really
8 not an economist, but I will tell you that it does
9 slow it down, that as prices can increase, there will
10 be more investment, et cetera.

11 Q. Can you give us an example of where a
12 directory assistance product was delayed or hindered
13 by Southwestern Bell's being under price cap
14 regulation?

15 A. Again, it's something futuristic in terms of
16 innovation that has not occurred today.

17 Q. On Page 27 of your Direct Testimony you say
18 that the comparable operator service rates are
19 comparable to Southwestern Bell's rates, and then you
20 refer us to Schedule -- you refer to Schedule 14, and
21 now we have Revised Schedule 14.

22 Would that change your statement that the
23 rates are comparable?

24 A. No, it does not.

25 Q. On Pages 28 and 29 you explain how three

1 operator services, namely station to station, person
2 to person, and calling card services, have already
3 been competitively classified; is that correct?

4 A. They were transitionally competitive and
5 that was determined in late 1992, and after three
6 years and a three-year extension in January of 1999,
7 they were deem competitive.

8 Q. What are some of Southwestern Bell's other
9 operator services?

10 A. The services that were classified as
11 transitionally competitive included everything except
12 busy line verification and busy line verification
13 interrupt and also directory assistance services.

14 Q. What is the problem if Southwestern Bell's
15 busy line verification and interrupt services stay
16 under price cap regulation?

17 A. My answer is the same as directory
18 assistance. Again, by removing these services from
19 price caps and moving them to a competitive
20 classification, it will allow Southwestern Bell to
21 compete on a level playing field and, again, driving
22 prices to market.

23 Q. Do you think these prices are below market?

24 A. If you look at Schedule 14, it gives our
25 rates relative to other competitive rates, and in some

1 instances, we are below that of the competitive rates,
2 namely AT&T and some of the other players in the
3 market.

4 Q. On Page 30, you have a sentence that starts
5 on Line 7. "Southwestern Bell will be able to respond
6 more quickly to the competitive marketplace offering
7 new products when appropriate at prices in line with
8 those offered by the competition."

9 Can you offer examples of where Southwestern
10 Bell has been hindered in its ability to bring new
11 products, new operator service products to the
12 marketplace because it's under price cap regulation?

13 A. Again, similar to my response with directory
14 assistance service, we're talking about future
15 innovation and what removing services from price cap
16 regulation will bring to customers.

17 MR. HAAS: That's all of my questions, your
18 Honor.

19 JUDGE DIPPELL: Thank you.

20 Any questions from Public Counsel?

21 MR. DANDINO: I have no questions, your
22 Honor. Thank you.

23 JUDGE DIPPELL: AT&T?

24 MR. ZARLING: No questions, your Honor.

25 JUDGE DIPPELL: WorldCom?

1 MR. LUMLEY: No questions, your Honor.

2 JUDGE DIPPELL: Sprint?

3 MS. HENDRICKS: No questions, your Honor.

4 JUDGE DIPPELL: McLeod?

5 MR. KRUSE: No questions, your Honor.

6 JUDGE DIPPELL: Are there questions from the
7 Bench?

8 Commissioner Lumpe.

9 QUESTIONS BY COMMISSIONER LUMPE:

10 Q. Just a couple, Ms. Moore.

11 Do I gather from this that what you want to
12 do is raise the prices of these items?

13 A. We have no plan as a result of these
14 services being declared competitive to alter our
15 rates, either decrease or increase at this time. But,
16 again, based on the market information and the
17 information contained in the highly confidential
18 version of our testimony, we've seen significant
19 declines in our values in recent years, from 1996 to
20 2000.

21 And there is also two levels of competition
22 for directory assistance and operator assistance
23 service. One, of course, is if you have a competitive
24 local exchange carrier for service, you could obtain
25 directory assistance from that CLEC who has options in

1 terms of self-sourcing or out-sourcing that. But even
2 if you selected Southwestern Bell for service, there
3 is numerous alternatives for both directory assistance
4 and operator services.

5 For example, with directory assistance,
6 customers can dial 00 or 10109000, or area code
7 555-1212 for information. Wireless really has become
8 a substitute product too, and that's pretty apparent
9 based on the key players in the wireless markets whose
10 volumes are doubling year over year.

11 So there really are significant alternatives
12 even if a customer is selected to Southwestern Bell
13 for service from the DA perspective.

14 The same holds true from an operator
15 services perspective. Customers can dial
16 1-800-COLLECT or 1-800-AT&T -- CALL-ATT, which are
17 heavily promoted services.

18 And I always look at the example of wireless
19 from an airport perspective. Years ago you used to
20 see customers lined up to make payphone calls, and
21 now the payphone banks are empty, because everyone
22 is using their wireless phones. So there really is
23 intense competition for these products and
24 services.

25 Q. So with that intense competition, would it

1 make sense to raise your rates?

2 A. Again, that's something that we have a
3 pricing group that really looks at market conditions
4 and what the competition is doing to determine how to
5 price our products and services, so with the
6 competitive status, rates could increase or they could
7 decrease.

8 Q. And is there any suggestion that the rates
9 you're charging are not meeting the costs of the
10 service?

11 A. The rates that we charge today are above
12 cost.

13 Q. Above cost.

14 Okay. So, as I understand it, basically the
15 reason you want them out from under price cap is so
16 that you may or may not increase the rates, but that
17 you're looking to innovative -- different innovative
18 ways of providing this service?

19 A. Really, because they truly are competitive
20 based on the data presented in my testimony.

21 COMMISSIONER LUMPE: Okay. Thank you,
22 Ms. Moore.

23 THE WITNESS: Sure.

24 JUDGE DIPPELL: Commissioner Gaw?

25 COMMISSIONER GAW: Thank you.

1 QUESTIONS BY COMMISSIONER GAW:

2 Q. Good afternoon, Ms. Moore.

3 A. Good afternoon.

4 Q. As I understand your testimony to
5 Commissioner Lumpe, it is not clearly the case that
6 you would be raising your rates if the price caps were
7 done away with on the items that are in your
8 testimony?

9 A. That's correct. There are no current plans.

10 Q. And, currently, your rates as you have set
11 them out, at least in regard to directory assistance,
12 are lower than a number of your competitors but not
13 the lowest; is that correct?

14 A. Correct. Rates vary, I believe -- let me
15 pull my schedule -- between 30 cents to a \$1.99 per
16 call, and we're currently at a level of 55 cents for
17 local directory assistance.

18 Q. All right. But your argument in regard to
19 the items that are in your testimony does not deal
20 with the question of whether or not you are being
21 forced to sell these services at less than your costs?

22 A. That's correct. My arguments are around all
23 of the alternatives that are available in the
24 marketplace that are available statewide, even if a
25 customer has Southwestern Bell for service.

1 Q. All right. And so you -- your argument
2 really is -- goes to the heart of whether or not
3 competition currently exists, and, therefore, this
4 should no longer be subject to regulation?

5 A. Correct.

6 Q. Now, in regard to the prices on directory
7 assistance and operator assistance, what information
8 does a customer have to allow them to make an informed
9 decision as to which company's directory assistance or
10 operator assistance it should use to get the best
11 deal?

12 A. Well, several of the providers do promote
13 their product. For example, in 1999 and 2000 AT&T and
14 MCI promoted their products, and on the bottom, of
15 course, there is notes about what the price is per
16 call. And other providers will send their customer
17 information in their bills, bill page messages,
18 et cetera, to educate customers what costs are for
19 services.

20 And also with the prevalence of the
21 internet, I think it's fairly common knowledge with
22 the public that internet directory assistance sites
23 are free, and there really are hundreds of sites
24 available and volumes of requests from the internet
25 are also increasing.

1 So I think from a consumer education
2 perspective, there is an awareness of the options
3 available in the marketplace.

4 Q. But, specifically, my question has to do
5 with how a customer would be aware of his or her
6 choices of operator assistance or directory assistance
7 specifically as to a price comparison?

8 A. I'm not aware of any competitor putting out
9 a document that would show their rates versus somebody
10 else's rates, so it really is up to each provider to
11 communicate their rates to their customers.

12 Q. But if a customer calls for operator
13 assistance to Southwestern Bell, for instance, are
14 they quoted a price for that service at the time they
15 call?

16 A. If the customer asks for a rate, yes, they
17 are. We have a rater that would rate the call in
18 terms of the surcharges and the usage element.

19 Q. And if they do not make the request, then
20 the information is not volunteered?

21 A. No.

22 Q. Is it your -- is it your experience that
23 that is true among the other carriers that you have
24 listed on Revised Schedule 14 and Revised Schedule 8?

25 A. From some of the test calls I have placed, I

1 would say yes, but I cannot say with 100 percent
2 certainly what each of the providers' practices are.

3 Q. Do you believe, Ms. Moore, that having
4 choices is equivalent to having an informed set of
5 choices?

6 A. I believe so. Again, based on how
7 companies promote their products, I think there's
8 awareness of prices for products and also through the
9 billing mechanisms as well customers become aware of
10 what their options are and the prices of those
11 options.

12 Q. Have you done any survey work, Ms. Moore, or
13 do you know of any survey work done in Missouri in
14 regard to consumers' knowledge of their -- of their
15 choices on operator assistance or directory
16 assistance?

17 A. No, I'm not aware of anything.

18 Q. So you couldn't testify to us today in
19 regard to what consumers are or are not aware of other
20 than some general belief that you have?

21 A. Not specific to the state of Missouri.

22 Q. Do you have any that's -- that's broader
23 than that that would include the state of Missouri?

24 A. We've done some focus groups in the past to
25 understand what customers perceive as prices and also

1 options for services and what their future needs are
2 for services.

3 Q. But have you done any survey work?

4 A. Quantitative research? No.

5 Q. Yes. And you're not aware of any?

6 A. No, I'm not.

7 COMMISSIONER GAW: That's all I have.

8 Thank you.

9 Thank you, Ms. Moore.

10 JUDGE DIPPELL: Thank you.

11 Is there recross based on questions from the
12 Bench from Staff?

13 MR. HAAS: No, your Honor.

14 JUDGE DIPPELL: Public Counsel?

15 MR. DANDINO: No questions, your Honor.

16 Thank you.

17 JUDGE DIPPELL: AT&T?

18 MR. ZARLING: None, your Honor.

19 JUDGE DIPPELL: WorldCom?

20 RECROSS-EXAMINATION BY MR. LUMLEY:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. In response to questions from Commissioner
24 Lumpe, you mentioned there is a pricing group that
25 evaluates the market and how to make your pricing

1 decisions. Do you recall that?

2 A. Yes.

3 Q. Were you speaking of a group that's
4 specific to the directory assistance and operator
5 services area, or is it a broader group than that?

6 A. The example I was using was specific to
7 directory assistance, but we do have internal groups
8 that look at our pricing strategies.

9 Q. For all of the different services?

10 A. I'm not sure if it encompasses 100 percent
11 of the services or not, but it does extend beyond
12 directory assistance.

13 Q. Are any of the witnesses in this case
14 members of those groups?

15 A. Of our pricing group?

16 Q. Yes.

17 A. Not that I'm aware of.

18 MR. LUMLEY: Thank you.

19 JUDGE DIPPELL: Is there cross based on
20 questions from the Bench from Sprint?

21 MS. HENDRICKS: No, your Honor.

22 JUDGE DIPPELL: McLeod?

23 MR. KRUSE: No. Thank you, your Honor.

24 JUDGE DIPPELL: Is there redirect?

25 MR. CONROY: Briefly, your Honor.

1 REDIRECT EXAMINATION BY MR. CONROY:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. In response to questions from Commissioner
5 Gaw regarding whether you are -- whether you
6 understand Commission -- or customers to be aware of
7 their choices, I'm referring to Exhibit 28 HC that was
8 the revision to your testimony.

9 Without getting into any of the HC
10 information, does the decline in operator services
11 volumes lead you to believe that customers are aware
12 of their choices?

13 A. It certainly does. Again, those volumes
14 have been significant over the last four years, and
15 the demand is still there based on industry reports,
16 but the demand is moving to other alternatives.

17 Q. And that's reflected in -- that's reflect
18 in your original Surrebuttal Testimony as well as
19 Exhibit 28 HC; is that right?

20 A. That's correct.

21 MR. CONROY: That's all I have, judge.

22 JUDGE DIPPELL: Thank you.

23 Is there any other questions from the
24 Bench?

25 Commissioner Gaw.

1 COMMISSIONER GAW: No.

2 JUDGE DIPPELL: All right, then. Ms. Moore,
3 there are no further questions for you. And you may
4 be excused.

5 (Witness excused.)

6 JUDGE DIPPELL: And through the wonders of
7 technology, I have found out that there were no
8 further questions for Mr. DeHahn from the Commission,
9 and he may also be excused.

10 (Witness excused).

11 JUDGE DIPPELL: Let's go ahead and proceed,
12 then, with your next witnesses.

13 MR. BUB: Thank you, your Honor.

14 Next we have Sandra Douglas.

15 JUDGE DIPPELL: Would you spell your name
16 for the court reporter?

17 THE WITNESS: It's Sandra M. Douglas,
18 D-o-u-g-l-a-s.

19 JUDGE DIPPELL: And would you please raise
20 your right hand?

21 (Witness sworn.)

22 JUDGE DIPPELL: Thank you.

23 You may be seated.

24 You may proceed, Mr. Bub.

25 MR. BUB: Thank you, your Honor.

1 SANDRA M. DOUGLAS testified as follows:

2 DIRECT EXAMINATION BY MR. BUB:

3 Q. Ms. Douglas, could you repeat your full name
4 for the record?

5 A. Yes. It's Sandra M. Douglas.

6 Q. And where are you employed?

7 A. I'm employed by Southwestern Bell Telephone
8 Company at 311 South Akard, Dallas, Texas.

9 Q. And what are your responsibilities at
10 Southwestern Bell?

11 A. I am responsible for switched access issues,
12 and that includes monitoring state access activities,
13 providing expertise based on my prior experience with
14 the Federal Communication Commission's rules and
15 regulations, and helping to plan strategies for
16 responding to various state activities.

17 Q. Okay. Are you the same Sandra Moore (sic)
18 that caused to be filed in this case Direct Testimony
19 that's been -- I'm sorry -- Sandra Douglas, pardon me,
20 premarked as Exhibit 7?

21 A. Yes.

22 Q. And the highly confidential version of that
23 testimony has been premarked as Exhibit 7 HC?

24 A. Correct.

25 Q. And Surrebuttal Testimony that's been marked

1 as Exhibit 8?

2 A. Yes.

3 Q. Are there any changes to any of those pieces
4 of testimony?

5 A. Yes. I have a change to my Direct
6 Testimony. It is on Page 10.

7 Q. Could you tell us what lines, please?

8 A. Lines 18 and 19 should be struck, and they
9 will be replaced with the following: Identifies an
10 NPA/NXX which a CLEC has in a particular SWBT rate
11 center and shows the ability to provide
12 facilities-based service.

13 JUDGE DIPPELL: Okay. Repeat that one more
14 time.

15 THE WITNESS: Sure. Identifies an NPA/NXX
16 which a CLEC has in a particular SWBT rate center and
17 shows the ability to provide facilities-based service.

18 JUDGE DIPPELL: All right.

19 BY MR. BUB:

20 Q. Ms. Douglas, could you tell us the reason
21 for that change, please?

22 A. Yes, I can. Originally, when I developed
23 Schedule 6, I received that data thinking it was from
24 a billing system source, and as it turned out upon
25 further review, the data actually is from the local

1 exchange routing guides which I believe all carriers
2 provide input to.

3 Q. So the purpose is to change is to correct
4 the identification of the source of your data?

5 A. Yes.

6 Q. Thank you.

7 Are there any other changes that you need to
8 make to your testimony?

9 A. No.

10 Q. With that change in mind, if I were to ask
11 you the questions that are contained in Exhibits 7,
12 7 HC, and Exhibit 8 today would your answers be the
13 same?

14 A. Yes.

15 Q. Are those answers true and correct to the
16 best of your knowledge?

17 A. Yes.

18 MR. BUB: Thank you.

19 Your Honor, with that we would like to offer
20 Exhibits 7, 7 HC, and 8 into evidence.

21 JUDGE DIPPELL: All right. Are there any
22 objections to Exhibits 7, 7 HC, and Exhibit 8?

23 (No response.)

24 JUDGE DIPPELL: Then I will receive those
25 into the record.

1 (EXHIBIT NOS. 7, 7 HC, AND 8 WERE RECEIVED
2 INTO EVIDENCE.)

3 MR. BUB: And we'll offer Ms. Douglas for
4 cross-examination.

5 JUDGE DIPPELL: Thank you.

6 MR. BUB: Thank you.

7 JUDGE DIPPELL: Is there cross-examination
8 by Staff?

9 MR. HAAS: Yes, your Honor.

10 CROSS-EXAMINATION BY MR. HAAS:

11 Q. Ms. Douglas, please turn to Page 8 of your
12 Direct Testimony.

13 A. Page 8?

14 Q. Yes.

15 A. Okay.

16 Q. At Line 13 you say that, "Unlike
17 Southwestern Bell, competitors can provide transport
18 on a flat rated basis," and then you refer to
19 Footnote 3, where you say that the Commission rejected
20 Southwestern Bell's filing because of the
21 interconnection charge was not cost supported.

22 When was that Commission decision made?

23 A. On the -- on Footnote 3?

24 Q. It does say March 6, 1996.

25 A. Yes.

1 Q. Was that before or after Southwestern Bell
2 came under price cap regulation?

3 A. My understanding is that was before.

4 Q. On Page 10 of your testimony you made a
5 revision, and you are using the word -- or the phrase
6 "facilities-based service."

7 Would you define what you mean by
8 "facilities-based service"?

9 A. Yes. As other witnesses have stated,
10 facilities-based meaning the carrier either owns or
11 leases from someone else network components necessary
12 to provide the service.

13 Q. On Page 12 of your Direct Testimony you list
14 several forms of alternative transport in which
15 Southwestern Bell Missouri exchanges are metropolitan
16 fiber rings competing with Southwestern Bell switched
17 access?

18 A. Well, what I had attached to my testimony
19 were some fiber ring maps from, I think, it was Axom.
20 I had Kansas City and Missouri. They were Schedules 8
21 and 9.

22 I didn't actually list each individual
23 rate center or exchange, but, basically, it was the
24 St. Louis exchange in Schedule 8 and several of the --
25 I believe they are called optional -- MCA optional

1 exchanges, and then on Schedule 9 was the Kansas City
2 map, and that, too encompassed most of the Kansas City
3 metropolitan area.

4 Q. In which Southwestern Bell Missouri
5 exchanges are collocation hotels competing with
6 Southwestern Bell switched access?

7 A. I do not know that with certainty.

8 Q. In which Southwestern Bell Missouri
9 exchanges are collocation and interconnection being
10 used to compete with Southwestern Bell switched
11 access?

12 A. I don't know.

13 Q. In which Southwestern Bell Missouri
14 exchanges is satellite service being used in
15 competition with Southwestern Bell's switched access?

16 A. I do not know.

17 Q. Please turn to Page 1 of your Surrebuttal
18 Testimony.

19 A. (Complied.)

20 Q. In the sentence that begins on Line 18 you
21 state, "While Southwestern Bell may have the authority
22 to decrease switched access rates which are above
23 cost, it does not have the authority to increase other
24 rates that may be below cost in order to remain
25 revenue neutral."

1 In your opinion, does the price cap statute
2 guarantee revenue neutrality?

3 A. If you look at just the price cap statute, I
4 would say no, it doesn't guarantee anything. However,
5 when you look at the Commission's order from the
6 mid-'70s, I mean, in there they state that local
7 service is residually priced and that other services
8 are contributing -- are enabling that residual
9 pricing.

10 Several of our states have engaged in
11 efforts where they've looked at the price of local
12 service; they've looked at switched access. Kansas is
13 the most recent one, and we, in fact, are now going to
14 be raising local residential rates by the amount that
15 we're reducing switched access in recognition of this
16 continued subsidy.

17 Q. Does the removal of price cap regulation
18 guarantee revenue neutrality?

19 A. I don't think so.

20 Q. On Page 7 of your Surrebuttal Testimony at
21 Line 10, you refer to Schedule 3 which you say,
22 ". . .provides the growth rates of Southwestern Bell's
23 total (interstate plus intrastate) Missouri switched
24 access minutes of use. . ."

25 A. Yes.

1 Q. Do you have those figures for the intrastate
2 minutes only?

3 A. I did not bring those with me.

4 MR. HAAS: Those are all of my questions,
5 your Honor.

6 JUDGE DIPPELL: Thank you.

7 Are there questions from Public Counsel?

8 MR. DANDINO: No questions, your Honor.
9 Thank you.

10 JUDGE DIPPELL: AT&T?

11 MR. ZARLING: Yes, your Honor.

12 CROSS-EXAMINATION BY MR. ZARLING:

13 Q. Good afternoon, Ms. Douglas.

14 A. Hi.

15 Q. We heard earlier today from Mr. Lane and I
16 think maybe Dr. Aron that Southwestern Bell's proposal
17 is sort of a hybrid here perhaps, that you want
18 comparative classification but you'll make a
19 commitment to a cap on your access rates that you want
20 to have the ability that you see the CLECs have to
21 restructure access rates; is that correct?

22 A. Yes. We want to be treated the same as
23 CLECs in this regard.

24 Q. Okay. Do you have -- is there a particular
25 type of restructuring that Southwestern Bell has in

1 mind?

2 A. We actually are still investigating that
3 internally; however, based on our strategies long-term
4 we would look forwards the federal tariff and federal
5 rate structure that's in place today as a guide.

6 However with the FCC opening up the
7 intercarrier compensation docket, we would also need
8 to consider anything that comes up along the way with
9 that.

10 Q. Okay. Would you envision Southwestern Bell
11 proposing a RIC, residual interconnection charge
12 element as was previously proposed?

13 A. No, because that rate element actually was
14 removed from Southwestern Bell's federal tariff, I
15 think, in 1999.

16 Q. Okay. Could you -- I'm trying to pay
17 attention, but it happened kind of quickly.

18 Could you restate for me the change that you
19 made to Lines 18 and 19 on Page 10, I guess, of your
20 Direct?

21 A. Sure. "Identifies an NPA/NXX which a CLEC
22 has in a particular SWBT rate center and shows the
23 ability to provide facilities-based service."

24 Q. Okay. You would agree with me that
25 sometimes CLECs open up codes in anticipation of

1 providing service, but, in fact, they don't? It
2 does -- you did say just have the ability to provide
3 service?

4 A. That's true.

5 Q. Okay. And, in fact, the CLEC may not even
6 have the ability. It only is anticipating providing
7 service in the future?

8 A. I think as other witnesses have testified
9 today, it's just like with having tariffs approved and
10 having certification. They hope to do business.

11 Q. In fact, it's fairly common these days for
12 NPA/NXXs to be surrendered by CLECs, and some states
13 have some processes to require that. Isn't that
14 true?

15 A. I'm not aware of that.

16 Q. In your testimony, your Direct Testimony, on
17 Page 18 you refer to some examples of voice over IP as
18 a method of bypass of Southwestern Bell's switched
19 access; is that correct?

20 A. Yes.

21 Q. Okay. You haven't provided anywhere in your
22 testimony, have you, any specific examples of where
23 voice over IP is being used in Missouri as a form of
24 bypass?

25 A. No, I have not.

1 Q. In your Surrebuttal Testimony on Page 7, you
2 refer to your Schedule 3 and you talk about a year-
3 over-year decrease in switched access minutes for
4 Southwestern Bell; is that correct?

5 A. Yes.

6 Q. Okay. It's possible, is it not, that those
7 reduced minutes could be a result of carriers finding
8 cheaper forms of access and so bypassing Southwestern
9 Bell's network?

10 A. That they have chosen alternative providers
11 for access, yes.

12 Q. And one of the reasons they might choose
13 alternate providers is because they can gain access at
14 lower rates?

15 A. That's quite possible.

16 Q. And so Southwestern Bell might possibly be
17 able to regain some of those minutes and that growth
18 if it offered lower rates; isn't that true?

19 A. It's a possibility.

20 MR. ZARLING: Those are all of the questions
21 I have.

22 JUDGE DIPPELL: Thank you.

23 Is there cross-examination from WorldCom?

24 MR. LUMLEY: No, your Honor.

25 JUDGE DIPPELL: Sprint?

1 CROSS-EXAMINATION BY MS. HENDRICKS:

2 Q. Hello, Ms. Douglas. My name is Lisa
3 Creighton Henricks, and I'm here on behalf of Sprint.

4 Initially, I have a few questions about what
5 Southwestern Bell's position is with respect to
6 switched access in this docket.

7 In your Surrebuttal on Page 3, Lines 15
8 through 17, you indicate that Southwestern Bell is
9 willing to defer a determination that all rate
10 elements of switched access are subject to effective
11 competition and accept the level of relief available
12 to CLECs. Do you see that?

13 A. Yes.

14 Q. Does that mean that Southwestern Bell is
15 withdrawing its request for a competitive designation
16 for switched access?

17 A. Well, with that -- what this does, in
18 clarifying our position, it became quite clear that
19 what we needed to do was treat switched access service
20 as a whole, not individual rate elements, which is
21 what I initially tried to do in my Direct Testimony
22 which tended to confuse things, and the recognition
23 that this Commission cannot look at every rate element
24 for every service.

25 Therefore, looking at switched access

1 service as a whole, and taking into consideration
2 various things that have happened, including the FCC's
3 pricing flexibility rules, the intercarrier
4 compensation docket that's just been opened up, we are
5 willing to forgo that at this time, but we do want to
6 be treated like the other CLECs -- or like the CLECs,
7 I'm sorry, and be able to restructure our switched
8 access, meaning establish tandem switching if we would
9 like, dedicated transport if we would like, and just
10 be subject to the overall cap the same as the CLECs
11 are.

12 Q. And does Southwestern Bell anticipate that
13 in some other docket addressing access charges that
14 you will make that request?

15 A. To restructure?

16 Q. Yes.

17 A. We are currently still analyzing that
18 internally.

19 Q. Okay. But in this docket you do not want
20 the Commission to make any ruling on your
21 competitive -- your request for a competitive
22 designation for switched access; is that correct?

23 A. My understanding of the rules regarding
24 CLECs is they have to make some type of determination
25 because CLECs, in effect, are competitive, and that

1 was required in their certification process, as I
2 understand it. So I think the Commission does have to
3 make some determination on that. But the bottom line
4 is we would like to be treated the same as CLECs as
5 far as pricing and structural.

6 Q. Okay. Let's talk a little bit about the
7 determinations the Commission would have to make in
8 this case.

9 Now, in order to grant competitive
10 designation, if Southwestern was asking for that,
11 would the Commission have to find that switched access
12 was subject to effective competition?

13 A. That goes back to one of the reasons for the
14 clarification in my testimony, in my Surrebuttal
15 Testimony. It appears that the Commission is going to
16 have to treat switched access as a total service.

17 Q. And that's because you will admit it's not
18 subject to effective competition; is that correct?

19 A. Even as the FCC and other parties have
20 recognized it across the nation, the carrier common
21 line element is questionable at best. Local switching
22 remains a question. But part of transport has been
23 determined to be competitive even from the FCC.

24 Southwestern Bell has received approval for
25 its first pricing flexibility petitions which enables

1 portions of transport within three of the Missouri
2 MSAs to be qualified as competitive.

3 Q. Switched access, the service switched
4 access, you would agree with me that switched access
5 is not subject to effective competition in Missouri,
6 is that correct, in Southwestern Bell's territories?

7 A. Looking at switched access service as a
8 whole, we would be hard-pressed to prove anything
9 differently without looking at each rate element
10 individually.

11 Q. So you would agree with me. It's not
12 subject to effective competition?

13 A. I would say it's a hard hurdle.

14 MS. HENDRICKS: I think that's all of my
15 questions.

16 JUDGE DIPPELL: Are there questions from
17 McLeod?

18 MR. KRUSE: I don't have any questions, your
19 Honor.

20 Thank you.

21 JUDGE DIPPELL: Are there questions from the
22 Bench?

23 Commissioner Murray.

24 COMMISSIONER MURRAY: I have no questions.

25 Thank you.

1 JUDGE DIPPELL: Is there redirect by
2 Southwestern Bell?

3 MR. BUB: Yes, your Honor.

4 REDIRECT EXAMINATION BY MR. BUB:

5 Q. Ms. Douglas, I would like to take you back
6 to a couple questions that Mr. Haas had asked you
7 first.

8 A. Sure.

9 Q. He had asked some questions looking for some
10 local information about Missouri concerning
11 collocation hotels or collocation in Southwestern Bell
12 central offices that would provide alternatives to
13 switched access.

14 A. Uh-huh.

15 Q. You indicated you didn't have that
16 information.

17 Would another Southwestern Bell witness have
18 that local information that you could point to?

19 A. Actually, once a competitor or any company
20 has bypassed us, it is very difficult to obtain
21 specific information for them.

22 Q. Who might be able -- is there another
23 Southwestern Bell witness that might be able to tell
24 the Commission which Southwestern Bell central offices
25 in Missouri have collocation?

1 A. Based on my understanding of Mr. Hughes's
2 testimony, there may be some information in that.
3 There may be a couple of other witnesses that I'm not
4 thinking of off the top of my head.

5 Q. Those type of questions should be addressed
6 to Mr. Hughes?

7 A. I believe that would be appropriate.

8 Q. Okay. I'd also like to ask you some
9 questions to follow up to Sprint's attorney's
10 questions concerning the status of switched access as
11 being subject to effective competition in Missouri.

12 You're familiar, are you not, with the
13 method of regulation that the Commission extends to
14 switched access of CLECs in Missouri; is that correct?

15 A. Yes.

16 Q. And can you tell us how switched access--
17 tell us what type of regulation applies to CLEC
18 switched access services?

19 A. Well, my understanding, and I'm paraphrasing
20 my understanding. I apologize if it's not quite on
21 the money.

22 But it's section -- as I understand it,
23 CLECs basically are free to structure switched access
24 service as they choose. They -- however, they are
25 capped at the incumbent LEC's rate, and that's done on

1 an average basis. It's not done on a rate element by
2 rate element basis. It's done on an average basis by
3 summing all of the revenues together somehow and
4 coming up with an average per minute.

5 ALLTEL, as I understand it, actually was
6 given permission to structure their transport portion
7 of the switched access differently than Southwestern
8 Bell's because Staff had done an analysis and
9 determined that their average was below, or was --
10 yes, was below Southwestern Bell's average access
11 minute charge.

12 Q. You understand that CLECs have been given
13 competitive classification in Missouri, haven't they?

14 A. That's my understanding.

15 Q. For all of their services?

16 A. That's my understanding.

17 Q. Including switched access?

18 A. My understanding is that was a requirement.

19 Q. Would you agree with me that Southwestern
20 Bell's switched access services are as competitive as
21 the switched access services being provided by CLECs
22 today?

23 A. Absolutely.

24 Q. And in this case, Southwestern Bell is
25 asking for that same competitive classification with

1 the condition that you just mentioned; is that true?

2 A. Yes, sir.

3 MR. BUB: Thank you.

4 Those are all of questions we have, your
5 Honor.

6 JUDGE DIPPELL: Thank you.

7 I believe that's all of the questions for
8 you, then, Ms. Douglas, and you may be excused.

9 (Witness excused.)

10 JUDGE DIPPELL: We'll go ahead and call that
11 a day, and we will begin tomorrow at 8:30 a.m. Please
12 be on time. We'll begin with Southwestern Bell's next
13 witness, and, according to our order, that is
14 Jablonski. All right then. Thank you.

15 Go off the record.

16 WHEREUPON, the hearing of this case was
17 continued to 8:30 a.m., Tuesday, September 25, 2001.

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