

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Hearing  
8 October 12, 2005  
9 Jefferson City, Missouri  
Volume 5

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12 In the Matter of the Request of )  
Southwestern Bell Telephone, L.P., )  
13 d/b/a SBC Missouri, for Competitive)  
Classification Pursuant to ) Case No. TO-2006-0102  
14 Section 392.245.6, RSMo (2005) - )  
60-Day Petition )

15

VICKY RUTH, Presiding,  
16 SENIOR REGULATORY LAW JUDGE.

17

18 JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
19 ROBERT M. CLAYTON,  
COMMISSIONERS.

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21

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

24

25

## 1 APPEARANCES:

2 PAUL G. LANE, General Counsel - Missouri  
3 LEO J. BUB, Senior Counsel  
4 SBC Missouri  
5 One SBC Center, Room 3520  
6 St. Louis, MO 63101  
7 (314)235-4300

8 FOR: Southwestern Bell Telephone, LP  
9 d/b/a SBC Missouri.  
10 MICHAEL DANDINO, Senior Public Counsel  
11 ERIC MARTIN, Senior Public Counsel  
12 P.O. Box 2230  
13 200 Madison Street, Suite 650  
14 Jefferson City, MO 65102-2230  
15 (573)751-4857

16 FOR: Office of the Public Counsel  
17 and the Public.

18 WILLIAM K. HAAS, Deputy General Counsel  
19 P.O. Box 360  
20 200 Madison Street  
21 Jefferson City, MO 65102  
22 (573)751-3234

23 FOR: Staff of the Missouri Public  
24 Service Commission.  
25

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

2 (EXHIBIT NOS. 1 THROUGH 7 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE RUTH: Good morning. My name is  
5 Vicky Ruth, and I'm the Regulatory Law Judge assigned to  
6 this case. Today is Wednesday, October 12th, 2005, and we  
7 are here for a hearing in TO-2006-0102, in the matter of  
8 the request of Southwestern Bell Telephone, LP, d/b/a SBC  
9 Missouri, for competitive classification pursuant to  
10 Section 392.245.6, RSMo 2005, the 60-day petition.

11 I'd like to begin with entries of  
12 appearance. SBC?

13 MR. LANE: Thank you, your Honor. Paul  
14 Lane and Leo Bub on behalf of Southwestern Bell Telephone,  
15 doing business as SBC Missouri. Our address is One SBC  
16 Center, Room 3520, St. Louis, Missouri 63101.

17 JUDGE RUTH: Thank you. Staff?

18 MR. HAAS: Good morning. William Haas  
19 appearing on behalf of the Staff of the Public Service  
20 Commission. My address is Post Office Box 360, Jefferson  
21 City, Missouri 65102.

22 JUDGE RUTH: Thank you. And Public  
23 Counsel?

24 MR. DANDINO: Michael Dandino and Eric  
25 Martin, Office of the Public Counsel, Post Office

1 Box 2230, Jefferson City, Missouri 65102, representing the  
2 Office of the Public Counsel and the public.

3 JUDGE RUTH: Thank you. The procedure  
4 today will be, we'll have brief opening statements. SBC  
5 Missouri will start, followed by Staff and then the Office  
6 of Public Counsel. It's my understanding that the parties  
7 have proposed that the order of witnesses be SBC's  
8 witness, then Staff and OPC's witness last. We will  
9 discuss after the hearing whether there is a need for any  
10 post-hearing exhibits or any additional briefing  
11 schedules. We'll bring that up at that time.

12 I have a few preliminary matters.  
13 Yesterday afternoon SBC and Staff filed supplemental  
14 pleadings in response to the Commission's October 7th  
15 order. Have the parties had an opportunity to determine  
16 if they will be filing any responses to those orders? In  
17 other words, SBC, do you anticipate filing a response to  
18 Staff's?

19 MR. LANE: No, your Honor.

20 JUDGE RUTH: And Public Counsel, do you  
21 anticipate filing any response to Staff's?

22 MR. DANDINO: No, your Honor.

23 JUDGE RUTH: Okay. Then let me ask Staff  
24 if you anticipate filing a response to SBC's filing as of  
25 yesterday?

1 MR. HAAS: No, your Honor.

2 JUDGE RUTH: And Public Counsel?

3 MR. DANDINO: We will not be filing a  
4 response.

5 JUDGE RUTH: Due to the short timeframe, if  
6 you change your mind, I need a notice to the file quickly,  
7 and we would not be able to allow the standard ten days  
8 response time. But as we're leaving it now, I'm not  
9 expecting any response. If that changes, I'll need a  
10 notice to the file.

11 Staff, I want to talk just briefly about  
12 your filing from yesterday. I've talked to a couple of  
13 the Commissioners about it already. The Commissioners  
14 appreciate the effort that went into it. However, at  
15 least some of the Commissioners want the information  
16 provided by customers, whether there are two or more  
17 customers, not just by access line counts.

18 In your pleading you indicated that if the  
19 Commission needed this information, it would -- that Staff  
20 would want five business days to provide the additional  
21 information. So I'll ask Staff, do you anticipate that  
22 you could provide this information no later than October  
23 19th?

24 MR. HAAS: Your Honor, are you going to  
25 want affidavits from the companies with their answers?

1 JUDGE RUTH: The Commission would prefer  
2 affidavits, yes. Since those parties will not -- or  
3 entities will not be available at the hearing, the  
4 Commission would prefer. I mean, first the Commission  
5 wants Staff to provide what information it can. Ideally,  
6 yes, that information would be provided by verified  
7 affidavit.

8 MR. HAAS: We can gather what information  
9 we can and present that to the Commission within a week.  
10 I mean, it's up to the companies to maintain such  
11 information, to have it available, and then to respond.

12 JUDGE RUTH: Well, Mr. Haas, what I'll  
13 direct then is that Staff attempt to obtain the  
14 information as we've discussed, that you file a pleading  
15 October 19th. That's one week from today. If you were  
16 unable to get part of the information, you'll just need to  
17 make that clear, what you have and what you don't have.

18 Now, if any party wants to file a response  
19 to what Staff is going to provide by October 19th -- I'm  
20 going to do this a little bit differently, again because  
21 of the short time frame. That information should be  
22 provided by October 19th. Staff, I'll expect you to file  
23 it in EFIS as normal. However, you need to also serve it  
24 by -- or provide e-mail copies immediately upon filing  
25 with EFIS.

1                   And then from SBC and Public Counsel, once  
2   you get that information, look at it, if you think you're  
3   going to file a response, I just need a notice to the file  
4   immediately the next morning, preferably before agenda  
5   starts at 9:30, telling the Commission that you're going  
6   to file a response and giving me your expected filing  
7   time. That way, when the Commissioners -- if they discuss  
8   this case during the October 20th agenda, they'll know  
9   whether additional information is forthcoming. Is the  
10  timeline or procedure for that clear, SBC?

11                  MR. LANE: Yes, your Honor.

12                  JUDGE RUTH: And Public Counsel?

13                  MR. DANDINO: Yes, your Honor.

14                  JUDGE RUTH: Thank you. Are there any  
15  other preliminary matters from the parties?

16                  (No response.)

17                  JUDGE RUTH: Okay. If you'll give me just  
18  a second, I'm going to send an e-mail to the other  
19  Commissioners, and then we'll do our opening statements.

20                  (An off-the-record discussion was held.)

21                  JUDGE RUTH: We are going to move on to  
22  opening statements. And SBC, would you please begin?  
23  Would you make sure that microphone is on when you go to  
24  the podium?

25                  MR. LANE: It is. Good morning. In this

1 case, SBC Missouri seeks competitive classification for  
2 business services in 30 exchanges and for residential  
3 services in 51 exchanges. In evaluating the case, the  
4 Commission must be guided by the provisions of  
5 Section 392.245.5 as provided in Senate Bill 237 passed by  
6 the Legislature this year.

7                   As you're aware, one of the primary  
8 purposes of SB 237 was to change the standard for  
9 competitive classification. The Legislature's made a  
10 policy decision that economic development and consumer  
11 welfare will be enhanced by allowing incumbent local  
12 exchange companies, or ILECs, to compete on an equal  
13 basis. The statutes reflects this policy change. Where  
14 customers have a choice of provider, competitive  
15 classification is to be granted.

16                   In this case, however, both Staff and  
17 Office of Public Counsel attempt to cling to the old  
18 standards, the old regime where competitive classification  
19 was to be granted only if the Commission finds effective  
20 competition exists. Both OPC and Staff recommend  
21 competitive classification in this case be granted only  
22 where the providers are using their own facilities in  
23 whole or in part, just as they did under the old standard  
24 of effective competition. But that standard no longer  
25 applies and the new standard is very clear.

1                   Under Section 392.245.5, competitive  
2   classification is to be granted whenever two nonaffiliated  
3   entities are providing basic local telecommunications  
4   service within the exchange. Business and residential  
5   services are to be examined separately. If two entities  
6   are providing service to business customers, all business  
7   services are to be deemed competitive. If two entities  
8   are providing service to residential customers, all  
9   residential services are to be deemed competitive. In  
10   both cases, a wireless provider can be one of the  
11   entities.

12                   The statute then establishes two tracks.  
13   Under the 30-day track, the only entities to be considered  
14   are those utilizing their own facilities in whole or in  
15   part. And as an aside, I'd note that the Commission order  
16   in Case No. TO-2006-0093 erroneously stated that SBC  
17   Missouri was relying on unbundled network element platform  
18   or UNE-P providers in one particular exchange. That's not  
19   correct. The 30-day track requires the competitors to use  
20   their own facilities in whole or in part, and the  
21   unbundled network element platform doesn't meet that  
22   requirement, and SBC Missouri didn't rely upon UNE-P  
23   providers in that case.

24                   Under the 30-day track, once the Commission  
25   finds that there are two entities providing local voice

1 service in the exchange, that ends the inquiry, and the  
2 services must be declared competitive.

3           The other track is the 60-day track, which  
4 is what we're dealing with here. Again, if there are two  
5 nonaffiliated entities providing service in the exchange,  
6 the criteria for competitive classification has been met.  
7 Again, both business and residential services are to be  
8 examined separately. And again, a wireless provider can  
9 be one of the two entities.

10           There are, however, two main differences  
11 between the 30-day track and the 60-day track. The first  
12 difference is the entities which are to be counted. While  
13 the 30-day track limited the entities to be counted to  
14 those providing service using their own facilities in  
15 whole or in part, the 60-day track is much broader.  
16 In addition to entities using their own facilities in  
17 whole or in part, the 60-day track also includes those  
18 entities that are using the facilities of a third party,  
19 including those of the incumbent.

20           Also, entities which rely on unaffiliated  
21 third-party Internet series are to be counted. Thus  
22 companies which utilize the unbundled network element  
23 platform or which have entered into commercial  
24 arrangements with the incumbent to use the incumbent's  
25 facilities are to be counted, as are those providers such

1 as voice over Internet protocol providers, which utilize a  
2 third party's broadband service.

3           The second main difference in the 60-day  
4 track is that the Commission may reject a request if it  
5 finds that competitive classification is contrary to the  
6 public interest. Note that the statute doesn't require  
7 the ILEC to prove that it's in the public interest.  
8 Instead, the Commission can reject only if it finds that  
9 it's contrary to the public interest. That's an important  
10 distinction from the perspective of the burden of proof.

11           SBC Missouri is not required to prove the  
12 competitive classification is either in the public  
13 interest or not contrary to the public interest. Instead,  
14 under the Dycus v. Cross case cited by the Commission in  
15 its order in the 30-day case, the party asserting the  
16 positive of a proposition bears the burden of proving that  
17 proposition.

18           Here the statute, the proposition is, is it  
19 contrary to the public interest? SBC Missouri is not  
20 contending that it's contrary to the public interest. The  
21 parties that are contending that it is contrary to the  
22 public interest, that's their burden of proof to show  
23 that.

24           With this standard in mind, let's look at  
25 the evidence that will be presented to you. Has SBC

1 Missouri shown that two entities are providing business  
2 service in the 30 exchanges it's requested? Has SBC  
3 Missouri shown that two entities are providing residential  
4 services in the 51 exchanges it has requested? The answer  
5 to both these questions is yes. You'll see in revised  
6 Exhibit B-1 and B-2 to Mr. Unruh's rebuttal testimony that  
7 we've met this.

8                   Included in the counts of competitors that  
9 are listed in those exhibits are those companies that are  
10 providing service utilizing UNE-P, utilizing commercial  
11 arrangements, utilizing -- providing via wireless and VOIP  
12 providers that are utilizing a third party's network.

13                   What's not included in those counts are  
14 companies engaging in resale, companies that are selling  
15 prepaid services or VOIP providers utilizing SBC  
16 Missouri's network. We only counted a VOIP provider when  
17 it was utilizing the broadband network of a third party,  
18 such as a cable company, and Mr. Unruh only took a look at  
19 six such providers and analyzed those. There's many  
20 others, but he tracked six through all the exchanges where  
21 we're requesting competitive classification to see who was  
22 operating.

23                   For business services, Revised Exhibits B-1  
24 and B-2 show that there are at least five entities  
25 providing service in each exchange. 19 of the 30

1 exchanges have at least a dozen entities providing  
2 service. As shown by Mr. Unruh, these companies are using  
3 a combination of UNE-P, commercial agreements, wireless  
4 and business VOIP.

5                   On the residential side, there are also at  
6 least 5 entities providing service in each of the 51  
7 exchanges. 39 of the 51 exchanges have at least a dozen  
8 companies providing service. And as with business  
9 services, these competitors are providing residential  
10 service using commercial agreements, UNE-P, wireless and  
11 VOIP.

12                   No one contends that these entities are not  
13 providing local voice service in the exchange. The sole  
14 exception to the question of whether there are two  
15 providers providing service in the exchange was raised by  
16 Staff in its filing it made yesterday, where it identified  
17 Gravois Mills as in their view only one CLEC was providing  
18 service in that exchange.

19                   I would note that you look at exhibits to  
20 Mr. Unruh's testimony and he will show you that in Gravois  
21 Mills there's actually 11 entities providing service in  
22 that, and probably the difference between those two is  
23 either that the entities that Mr. Unruh provided have  
24 started operating in that exchange since December 31st of  
25 last year, which was the basis of Staff's analysis based

1 on annual reports that were filed, or perhaps those  
2 companies didn't accurately report that they were  
3 providing service in Gravois Mills at the time on  
4 December 31st last year.

5 But in any event, there are now 11, so it's  
6 very clear that there are at least two entities providing  
7 business services in every exchange and at least two  
8 entities providing residential services in every exchange.

9 Staff agrees with SBC Missouri's request  
10 for competitive classification in 17 exchanges. OPC  
11 agrees as to at least 13 of those 17 exchanges. In each  
12 case identified by Staff of the 17, they recommended  
13 competitive classification on the basis that those  
14 exchanges met the 30-day track, meaning that there is a --  
15 there are two entities providing service utilizing their  
16 own facilities in whole or in part. But both Staff and  
17 OPC oppose all of the other exchanges in terms of granting  
18 competitive classification.

19 Have Staff and OPC shown that granting  
20 competitive classification in these exchanges is contrary  
21 to the public interest? We don't believe so. As I  
22 mentioned earlier, their attempt to show that competitive  
23 classification is contrary to the public interest is an  
24 attempt to recreate the old effective competition  
25 standards under the prior legislation.

1                   Let's look at their claims in more detail.  
2   First, Staff claims that SBC Missouri has the burden to  
3   show that competitive classification is not contrary to  
4   public interest. As discussed, that's plainly wrong from  
5   a legal perspective. Next, Staff claims that wireless  
6   providers and VOIP providers shouldn't be counted, but  
7   that's directly contrary to the statute. The Legislature  
8   has already determined that wireless providers can be  
9   counted in both the 30 and the 60-day tracks and that VOIP  
10   providers using the third party's Internet network are to  
11   be counted in the 60-day track.

12                   The Commission can't reject competitive  
13   classification because it disagrees with the Legislature.  
14   It must follow the law here. Staff compounds its mistake  
15   by urging the Commission not to count entities utilizing  
16   UNE-P or commercial arrangements to provide service.  
17   Again, the Legislature has already determined this, and  
18   the Commission must follow it.

19                   The Staff and the OPC's position comes down  
20   to this: They say that while the Legislature has mandated  
21   that these providers be counted, Staff and OPC say don't  
22   do so because they think it's contrary to the public  
23   interest. But the Commission can't refuse to count that  
24   which the Legislature has said you must count.

25                   At the end of the day the Staff's position

1 essentially writes the 60-day track out of the statute.  
2 Staff would give competitive classification only where the  
3 30-day criteria has been met. But despite this urging,  
4 that approach would be unlawful. The Legislature has  
5 determined that providers should be counted if they  
6 utilize UNE-P, if they utilize commercial arrangements or  
7 if they utilize wireless or VOIP and the Commission must  
8 do so. You can't override this express directive based  
9 upon public interest.

10                   The other rationale as advanced by Staff  
11 also fall under their own weight. Staff suggests that the  
12 Commission shouldn't grant competitive classification  
13 because it would be hard to take it away in the future.  
14 The Legislature again has provided the standard by which  
15 you can determine in the future whether or not competitive  
16 classification should continue, and Staff's rationale is  
17 inconsistent with the requirement of the statute.

18                   Similarly, Staff cautions the Commission  
19 should not grant competitive classification because it may  
20 preclude the Commission's ability to directly control the  
21 pricing in standard local calling cases that are pending  
22 or may be pending in front of you in the future. Again,  
23 the Legislature has already determined that where  
24 competitive classification is granted, that the parties  
25 are to have the right to change their prices and set their

1 prices as they deem appropriate in a competitive market,  
2 and it would be inappropriate to refuse to grant  
3 competitive classification on the grounds that the  
4 Commission may not like the fact that the parties then  
5 have the right to control the prices.

6                   OPC's concerns are equally out of line with  
7 the statute. OPC wants the Commission to examine the  
8 quality and quantity of competition. OPC also wants the  
9 Commission to examine whether prices will be constrained  
10 by competition and whether the purposes of  
11 Section 392.185 will be advanced. Finally, they want to  
12 look at whether comparable services are available at  
13 comparable rates, terms and conditions.

14                   Each one of these things that the Office of  
15 Public Counsel wants to rely upon are provisions that were  
16 expressly a part of the definition or the standard of  
17 effective competition under the old statute, but that has  
18 been rewritten out of the statute. Effective competition  
19 is no longer the standard that the Commission is to apply,  
20 and you cannot use those items suggested by OPC to reject  
21 competitive classification in this case.

22                   In the last case, the Office of the Public  
23 Counsel made it clear that they don't like Senate Bill 237  
24 or the changes that were made to Section 392.245. Whether  
25 they like it or not, the Commission has to apply the

1 standard and the statute as it was written by the  
2 Legislature.

3                   In the end, both Staff and OPC effectively  
4 try to eliminate the 60-day track from consideration by  
5 asking the Commission to ignore the Legislature's  
6 directive to count these additional entities. Both again  
7 recommend that competitive classification only be granted  
8 where the 30-day track criteria has been met; i.e., there  
9 are two providers offering services using their own  
10 facilities in whole or in part.

11                   We'd urge you not to go down that path and  
12 instead to follow the directive of the Legislature. There  
13 are at least two providers offering local voice service in  
14 each exchange that we've requested, and no party has  
15 presented any competent or substantial evidence that  
16 competitive classification is against the public interest.  
17 We'd ask you to grant the request. Thank you very much.

18                   COMMISSIONER CLAYTON: Mr. Lane, can I ask  
19 you a couple of legal questions, excuse me, before we get  
20 started? Just to understand the legal burdens in this  
21 case, it is SBC's contention that it has the burden to  
22 bring forth evidence of the criteria set out by the  
23 statute for enabling a competitive classification, and  
24 that by establishing a prima facie showing that another  
25 party has to rebut that with a showing of contrary to the

1 public interest. Is that a fair assessment of your  
2 position on the legal standard?

3 MR. LANE: Not quite. Let me try to make  
4 it clear. I guess there's two issues here. One is, who  
5 has the burden to show there are two or more providers  
6 offering services in the exchange, and the second question  
7 is, who has the burden to show if they want to that it's  
8 contrary to public interest?

9 On the first question, whether there's two  
10 or more providers, generally I'd say we would have the  
11 burden, except that the Legislature has made clear that  
12 the Commission itself has a burden to examine its own  
13 records and to make necessary and appropriate inquiries to  
14 determine whether the providers are operating in the  
15 exchanges. With that caveat, I'll say, yes, generally we  
16 have the burden to show that there's two providers  
17 offering business and/or residential services in the  
18 exchange, and we think we've done so.

19 Then on the second question, that is, is it  
20 contrary to the public interest, the affirmative of the  
21 proposition is, yes, it is contrary to the public  
22 interest. That is not our burden of proof, since we're  
23 not asserting the affirmative of that. It's up to  
24 somebody, Staff, Public Counsel, to present competent and  
25 substantial evidence to show that's the case.

1                   COMMISSIONER CLAYTON: Okay. So with the  
2 exception of the suggestion that we have the charge to  
3 review our own records and make a determination based on  
4 what evidence is in those records, if SBC establishes the  
5 existence of those competitors, it basically makes its  
6 prima facie case and somebody's got to undermine that  
7 through the contrary to public interest standard.

8                   MR. LANE: Yes. Yes. And just to be  
9 clear, I think there's probably one particular exchange is  
10 the reason I went through that, are there two providers  
11 operating, that reflects the -- I think it's Agency,  
12 although I could be wrong -- where Staff identified in the  
13 supplemental direct testimony.

14                  COMMISSIONER CLAYTON: That wasn't  
15 specifically named by SBC?

16                  MR. LANE: Wasn't specifically named. We  
17 had said in our petition that if there are exchanges that  
18 we didn't identify that the Commission's records or the  
19 inquiries reveal that to be the case, then we should get  
20 that as well.

21                  COMMISSIONER CLAYTON: On that point, is  
22 there in your opinion a requirement that we afford the  
23 customers or other competitors providing service in the  
24 exchange of Agency some type of notice that this type of  
25 action is going on, to allow for their participation?

1                   MR. LANE: You know, there's no such  
2 requirement at all in the statute. You're allowed to have  
3 companies come before you and ask for competitive  
4 classification and there's no requirement in the statute  
5 to notice anyone.

6                   Now, in this particular case, do I think  
7 everybody effectively has notice? Absolutely. And you've  
8 given notice in a number of exchanges, and the party -- or  
9 the companies that are operating in the Agency exchange in  
10 particular clearly have notice because that company is  
11 operating in other exchanges as well, and they got the  
12 notice. So I don't think there's any real question about  
13 notice, nor do I think it's something that's required for  
14 the Commission.

15                  COMMISSIONER CLAYTON: Well, due process  
16 isn't listed in many statutes in Missouri, and it comes  
17 from I think other pieces of paper that suggest in fair  
18 play in our legal system due process requires notice and  
19 the opportunity to participate.

20                  MR. LANE: It's our rights and duties that  
21 are being determined here, and if there's due process to  
22 be given, it's to be given to us. We're not determining  
23 the rights and duties of customers, nor are we determining  
24 the rights and duties of competitors, and so there is not  
25 in my view any due process obligation with regard to those

1 entities. It's only those entities whose rights and  
2 duties are being established by the Commission that have  
3 the right to have due process.

4 COMMISSIONER CLAYTON: Does that suggest  
5 that this case has no impact on anyone other than SBC?

6 MR. LANE: No. But our rights and duties  
7 are the ones that are being determined.

8 COMMISSIONER CLAYTON: Okay. Could you  
9 give me an idea of -- in looking at the second prong, the  
10 contrary to public interest standpoint, could you give me  
11 an idea from a legal perspective what types of things this  
12 Commission would have to find to make that finding of  
13 contrary? I don't mean you to make somebody else's case,  
14 and that -- I don't mean to do that. I guess I'm looking  
15 from a legal standpoint, what did the Legislature mean  
16 contrary to the public interest in how you read the  
17 statute?

18 MR. LANE: I'm going to give what you may  
19 see as a non-answer, and I'll go farther if I need to. I  
20 agree with you it's not our burden to try to identify what  
21 that is. I think what you should do is look at the  
22 evidence that's been presented and decide whether that's  
23 competent and substantial evidence to show something is  
24 contrary to the public interest. And in each of the  
25 things that have been proposed by Public Counsel or by

1 Staff, they're really directly contrary to what the  
2 statute already says, and you cannot override the direct  
3 requirements of the statute based on public interest.

4                   Do I think it's a good idea for you to try  
5 to identify what would allow you to say something's in the  
6 public -- or contrary to the public interest? My  
7 suggestion is that it would not be appropriate for you to  
8 do that, because you have the right under the statute to  
9 look back later in other proceedings. Under the statute,  
10 the Commission is obligated every two years to look back  
11 and determine whether the criteria for competitive  
12 classification is still met, and, in addition, to do so  
13 after the incumbent raises basic local rates, if they do  
14 so.

15                   Since those things will be taking place in  
16 the future, I don't think it's in the Commission's  
17 interest right now to tie its hands and to try to identify  
18 exactly what it would take to make something contrary to  
19 the public interest. I think you ought to do that at that  
20 time based upon whatever evidence, if any, is introduced  
21 at that time.

22                   COMMISSIONER CLAYTON: In looking at the  
23 standard contrary to the public interest, must we focus  
24 only on the rights and duties and responsibilities and  
25 privileges of SBC, or can we look at competitors in the

1 marketplace? Can we look at customers in the marketplace?  
2 Can we look at the -- any type of analysis of the nature  
3 of competition for business or residential services?

4 MR. LANE: I don't think you're  
5 precluded -- or I don't think you're mandated to look only  
6 at the impact on SBC Missouri. I don't think that, no.

7 COMMISSIONER CLAYTON: Thank you very much.

8 JUDGE RUTH: Any other questions from the  
9 Bench?

10 (No response.)

11 JUDGE RUTH: Thank you very much, Mr. Lane.  
12 And we'll move to Staff.

13 MR. HAAS: Good morning. SBC Missouri is  
14 an incumbent local exchange telecommunications company  
15 subject to regulation under the price cap statute  
16 Section 392.245. Senate Bill No. 237 amended that statute  
17 and set up a 30-day track and a 60-day track by which a  
18 price-cap-regulated company may petition the Commission to  
19 have its business services or its residential services or  
20 both classified as competitive in a requested exchange.

21 For services that are classified as  
22 competitive, the company may then adjust its rates upward  
23 or downward as it determines appropriate in its  
24 competitive environment.

25 SBC Missouri has 160 exchanges. In Case

1 No. TO-2006-0093, the Commission granted SBC Missouri's  
2 request for competitive classification for business  
3 services for 45 exchanges and for residential services for  
4 26 exchanges under the 30-day track.

5                   Generally, the focus of today's case is to  
6 examine whether SBC Missouri's business or residential  
7 services should be classified as competitive in any other  
8 exchanges under the 60-day track. The part of Senate Bill  
9 No. 237 that establishes the 60-day track reads,  
10 notwithstanding any other provision of this subsection, an  
11 incumbent local exchange company may petition the  
12 Commission for competitive classification within an  
13 exchange based on competition from any entity providing  
14 local voice service in whole or in part by using its own  
15 telecommunication facilities or other facilities or the  
16 telecommunication facilities or other facilities of a  
17 third party, including those of the incumbent local  
18 exchange company, as well as providers that rely on an  
19 unaffiliated third-party Internet service. The Commission  
20 shall approve such petition within 60 days unless it  
21 appears that such competitive classification is contrary  
22 to the public interest.

23                   SBC Missouri has the burden of proof in  
24 this case because it is asserting a competitive  
25 classification is not contrary to the public interest. In

1 a sale case, the standard before the Commission is also  
2 stated in the negative, the Commission shall approve a  
3 sale of utility assets unless it finds that such sale is  
4 detrimental to the public interest. Yet in that case,  
5 even though the standard is phrased in the negative, the  
6 parties who are supporting and proposing the proposed sale  
7 of assets bear the burden of proof.

8                   The American Heritage Dictionary defines  
9 competition as the rivalry between two or more businesses  
10 striving for the same customer or market. In its  
11 testimony, SBC Missouri provides no evidence of a rivalry  
12 of businesses striving for the same customer or market.  
13 Instead, SBC Missouri's testimony merely counts other  
14 communications providers in an exchange. Similarly, SBC  
15 Missouri presents no evidence on the question of whether  
16 its request under the 60-day track is contrary to the  
17 public interest.

18                   SBC Missouri asks the Commission to delete  
19 the words competition and the phrase not contrary to the  
20 public interest from the statute. Staff witness John  
21 Van Eschen testifies that such competitive classification  
22 is contrary to the public interest at this time. First,  
23 because of their higher cost and lower service quality,  
24 wireless service and voice over Internet protocol service  
25 are not reasonable substitutes for SBC Missouri's basic

1 local service.

2                   Second, providers using SBC Missouri's  
3 facilities on either an unbundled network element platform  
4 or through a commercial agreement do not provide SBC  
5 Missouri with significant incentive to improve its  
6 facilities. Under the 30-day track criteria, business or  
7 residential services may be classified as competitive in  
8 an exchange where two nonaffiliated entities are providing  
9 basic local telecommunications services to business or  
10 residential customers respectively. Only one of the two  
11 entities may be a wireless company.

12                   Using the 30-day track criteria, the Staff  
13 recommends that SBC Missouri receive competitive  
14 classification for residential services in 2 additional  
15 exchanges and for business services in 15 additional  
16 exchanges. Thank you.

17                   JUDGE RUTH: Thank you, Mr. Haas. Public  
18 Counsel?

19                   MR. DANDINO: Thank you, your Honor. May  
20 it please the Commission?

21                   As I discussed when we were doing the  
22 30-day procedure, Senate Bill 237 lowered the bar for  
23 competitive classification. In this case, the bar has  
24 once again been lowered, but I do wish to point out that  
25 Senate Bill 237 did not remove the bar, and it certainly

1 doesn't award competitive classification without some  
2 effort, and that effort requires -- it doesn't mean the  
3 Commission or the Staff to go out and research for SBC.  
4 There must be a showing, an evidentiary showing that there  
5 are competitors and how they provide the voice service and  
6 that the grant of the competitive classification will not  
7 be contrary to the public interest.

8                   Public Counsel and Staff are not trying to  
9 rewrite the statute. We're trying to apply it as written.  
10 And I think Mr. Haas pointed out some very excellent  
11 points using the definition of competition. That's  
12 exactly -- the word competition is used in this or  
13 competitive companies, competitors, and I think you should  
14 keep that definition in mind. Like any case, there should  
15 be, the PSC has to base its decision on competent and  
16 substantial evidence, and as Mr. Haas pointed out very  
17 clearly in his brief and in the discussion here today, SBC  
18 has the burden, since they are the ones seeking  
19 competitive classification. As such, they have to approve  
20 the affirmative of all these including -- all the points,  
21 including that it is not contrary to the public interest.

22                   Now, the amount of evidence that is  
23 necessary to satisfy that burden of competent -- of  
24 competent and substantial evidence is up to this  
25 Commission to establish. As the trier of fact and as the

1 person who applies the law, as the body that applies the  
2 law, this Commission determines what is competent, what is  
3 substantial. As long as it is reasonable, that is  
4 sufficient. But it has been almost like pulling teeth to  
5 get SBC to provide the details, to provide support for the  
6 just mere number counts that they provided as their  
7 interpretation of compliance with the statute.

8                   This Commission should look for competent  
9 and substantial evidence, evidentiary weight that the data  
10 provided and that the information that this Commission  
11 will make this determination is accurate, that it is true,  
12 that it is complete, and that it is reliable.  
13 I think it is once again going back to a burden. It's up  
14 to the person offering that evidence to provide proof of  
15 the source and proof of the fact, sufficient for this  
16 Commission to make a reasonable determination.

17                   I think it is very telling in this case,  
18 Mr. Unruh I believe in his direct said that the names of  
19 the competitors is irrelevant. It is not a relevant  
20 matter. If the names of who you're competing with aren't  
21 relevant in this proceeding, then I don't know what is.  
22 And it's not for SBC to decide what's relevant. It's for  
23 this Commission to decide what's relevant. They are the  
24 determiner. They determine what is relevant and material  
25 in this proceeding.

1                   SBC has not met its burden of proof. It  
2 had to be directed to file the names of the competitors  
3 and to provide data the Commission requested, I believe,  
4 in two orders at least that I recall for additional  
5 information.

6                   Mr. Lane on behalf of SBC said that Public  
7 Counsel has supported 13 exchanges. I believe if you look  
8 in Ms. Meisenheimer's testimony, there is no indication of  
9 support for any specific competitive classification in any  
10 exchange. If you look at her testimony that she said that  
11 the L -- that the UNE-L as used in the 60-day proceeding  
12 by the Staff would be a sufficient -- would be a  
13 sufficient basis to show -- to meet that qualification  
14 over facilities of your own facilities or facilities of a  
15 third party or an independent or of the incumbent. We're  
16 not endorsing or supporting that they've met any other  
17 proof that other competition exists. All we're asking for  
18 is that you look at the evidence.

19                  JUDGE RUTH: Mr. Dandino, I'm sorry, but  
20 we're a little confused. Can you back up and tell me  
21 again then, what is your position as compared to Staff's?  
22 Staff recommends certain exchanges be granted competitive  
23 classification.

24                  MR. DANDINO: We are not taking a stand to  
25 recommend any specific exchange. Ms. Meisenheimer has

1 shown information on the wireless. We're not offering it  
2 as proof of anything. She is offering it as -- I guess  
3 as -- I'm trying to think of the term -- as rebuttal to  
4 the accuracy of SBC's wireless data. If the Commission  
5 wants to look at this information and take it for what  
6 it's worth, that's fine, but we're not presenting that as  
7 evidence that the wireless company actually does business  
8 in there.

9 I think it's -- most telling is the  
10 Commission is to decide what is in the public interest,  
11 and that is an area that was totally ignored by SBC. The  
12 public interest -- in the questions that we're looking at  
13 in the public interest is included in Section 290 --  
14 392.245.5, as amended by Senate Bill 237. In that  
15 section, within the section talking about the 60-day, it  
16 says, in reviewing an incumbent local exchange company's  
17 request for competitive status in an exchange, the  
18 Commission shall consider all records of ownership of  
19 facilities and make all inquiries as are necessary and  
20 appropriate for regulated providers of local voice service  
21 to determine the extent and presence of regulated local  
22 voice providers in an exchange. At least the statute  
23 recognizes that the Commission should make a broader  
24 inquiry, and I think that's very appropriate for this  
25 Commission.

1                   So in summary, Public Counsel believes that  
2     the evidence, that SBC has failed to produce competent and  
3     substantial evidence to authorize a reclassification in  
4     the exchanges, and we believe it would be appropriate to  
5     reject their application. Thank you.

6                   COMMISSIONER CLAYTON: Just quickly,  
7     Mr. Dandino, I was trying to write out my question because  
8     I wanted to make sure that I ask it properly. Okay. In  
9     your opinion, is there a difference in language among  
10    these two choices that we must find competition unless it  
11    is contrary to the public interest versus that we must  
12    find it in the public interest to find competition if it  
13    were phrased differently? In your opinion, is there any  
14    difference?

15                  MR. DANDINO: I think it's the same.

16                  COMMISSIONER CLAYTON: Okay. Thank you.

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

18                  MR. DANDINO: Thank you, your Honor.

19                  JUDGE RUTH: Okay. We'll move to SBC  
20    calling its first witness.

21                  MR. LANE: Call Mr. Unruh, your Honor.

22                  (Witness sworn.)

23                  JUDGE RUTH: Thank you. You may proceed,  
24    Mr. Lane.

25    CRAIG A. UNRUH testified as follows:

1 DIRECT EXAMINATION BY MR. LANE:

2 Q. Good morning.

3 A. Good morning.

4 Q. Could you state your name for the record,  
5 please?

6 A. My name is Craig A. Unruh.

7 Q. And by whom are you employed?

8 A. I'm employed by Southwestern Bell  
9 Telephone, LP, doing business as SBC Missouri.

10 Q. And in what capacity are you employed?

11 A. I'm executive director of regulatory.

12 Q. And, Mr. Unruh, in connection with this  
13 case, have you prepared prefiled direct testimony that's  
14 been marked as Exhibit 1 and Exhibit 2HC, consisting of  
15 some highly confidential exhibits to your direct  
16 testimony?

17 A. Yes, I have.

18 Q. Do you have any changes to that testimony?

19 A. I do not.

20 Q. Have you also prepared and prefiled  
21 rebuttal testimony that's been marked as Exhibit 3 and an  
22 HC version of that testimony marked as Exhibit 4HC?

23 A. I have.

24 Q. And do you have any changes to that  
25 testimony?

1           A.       I do not.

2           Q.       And if I were to ask you the same questions  
3 as are contained in Exhibits 1, 2HC, 3 and 4HC today,  
4 would your answers be the same?

5           A.       Yes, they would.

6           Q.       And are they true and correct answers to  
7 the best of your knowledge and belief?

8           A.       Yes, they are.

9                   MR. LANE: Your Honor, at this time we'd  
10 offer Exhibits 1, 2HC, 3 and 4HC and tender Mr. Unruh for  
11 cross-examination.

12                   JUDGE RUTH: Okay. Exhibit 1 is  
13 Mr. Unruh's direct testimony. Are there any objections to  
14 it being received into the record? Staff?

15                   MR. HAAS: No objection.

16                   JUDGE RUTH: Public Counsel?

17                   MR. DANDINO: No objection, your Honor.

18                   JUDGE RUTH: Exhibit 1 is received.

19                   (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

20                   JUDGE RUTH: Exhibit 2HC are the  
21 Schedules 2 and 3 from Mr. Unruh's direct testimony. Are  
22 there any objections to these documents being received  
23 into the record? Staff?

24                   MR. HAAS: No objection.

25                   JUDGE RUTH: Public Counsel?

1 MR. DANDINO: No objection.

2 JUDGE RUTH: Exhibit 2HC is received.

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

5 JUDGE RUTH: Exhibit 3 is Mr. Unruh's  
6 rebuttal. Are there any -- it's the public version of his  
7 rebuttal. Are there any objections to this being received  
8 into the record? Staff?

9 MR. HAAS: No objection.

10 JUDGE RUTH: Public Counsel?

11 MR. DANDINO: No objection, your Honor.

12 JUDGE RUTH: Exhibit 3 is received into the  
13 record.

14 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

15 JUDGE RUTH: Exhibit 4 is Mr. Unruh's HC  
16 version of his rebuttal. Any objections to it being  
17 received? Staff?

18 MR. HAAS: No objection.

19 JUDGE RUTH: Public Counsel?

20 MR. DANDINO: No objection.

21 JUDGE RUTH: Exhibit 4HC is received into  
22 the record.

23 (EXHIBIT NO. 4HC WAS RECEIVED INTO  
24 EVIDENCE.)

25 JUDGE RUTH: It's my understanding that

1 copies have already been given to the court reporter; is  
2 that correct?

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

4 JUDGE RUTH: Staff, do you have  
5 cross-examination for this witness?

6 MR. HAAS: Yes, your Honor.

7 JUDGE RUTH: You may proceed.

8 CROSS-EXAMINATION BY MR. HAAS:

9 Q. Good morning, Mr. Unruh.

10 A. Good morning.

11 Q. I have several questions for you, and I  
12 will break them down into topics to give you an idea of  
13 where we're going. The first general heading that I want  
14 to ask you about is general questions about competitive  
15 status. What percentage of SBC's business lines have  
16 already received competitive status?

17 A. We would consider that response to be  
18 highly confidential.

19 Q. I may have other questions that would also  
20 be considered -- your answer considered highly  
21 confidential, so I'll come back to that.

22 If SBC receives competitive classification  
23 for all of its requested exchanges, what does SBC plan to  
24 do with that competitive classification that it currently  
25 is unable to do?

1           A.       Well, I don't know what the future holds,  
2   so I'm not sure what we'll do with a competitive  
3   classification, but hopefully we'll be able to better  
4   compete in the marketplace and better meet consumers'  
5   needs.

6           Q.       Does SBC envision raising the rates for  
7   certain residential customers?

8           A.       I don't know. In competitive markets,  
9   prices can go up and prices can go down. So I'm not sure  
10   what the future might hold.

11          Q.       Does SBC envision raising the rates for  
12   certain business customers?

13          A.       Again, prices rise and fall in competitive  
14   markets, and I'm not sure what will happen over the  
15   future.

16          Q.       Does SBC envision lowering the rates for  
17   certain residential customers?

18          A.       Same answer, I guess. Prices rise and fall  
19   in competitive markets, and I'm not sure what will happen  
20   in the future.

21          Q.       And does SBC envision lowering the rates  
22   for certain business customers?

23          A.       Prices rise and fall in competitive  
24   markets, and I'm not sure what the future will hold.

25          Q.       What percentage of SBC's customers

1 subscribe to bundles?

2 A. I could probably generally provide an  
3 estimate, but we'd consider that to be highly  
4 confidential.

5 Q. What evidence has SBC provided as to the  
6 extent of competition within the requested exchanges  
7 beyond counting other providers?

8 A. Well, that is the standard that the law  
9 requires, that you show there's two or more providers  
10 offering service in that exchange, and that's what we've  
11 demonstrated.

12 Q. Now I'm going to move on to the topic of  
13 DSL. If a customer subscribes to SBC's DSL service, is  
14 the customer required to subscribe to SBC's local voice  
15 service?

16 A. Yes, it is.

17 Q. Is that customer also required to subscribe  
18 to SBC's toll service?

19 A. No.

20 Q. Have any of SBC's DSL customers expressed  
21 frustration with having to continue to subscribe to SBC's  
22 local voice service?

23 A. I'm not sure.

24 Q. How much does SBC charge for DSL service?

25 A. The prices vary by the type of DSL service,

1 but we have an offer in the marketplace now for 14.95.

2 Q. Does this charge include the customer's  
3 local voice service?

4 A. It does not.

5 Q. And how much would that charge for local  
6 voice service be?

7 A. The basic local prices range between 7 and  
8 \$12 for residential customers.

9 Q. And what would the price be for service for  
10 a business customer?

11 A. I believe it's 16 to \$38.

12 Q. What percent of SBC Missouri's customers  
13 subscribe to DSL?

14 A. I don't know.

15 Q. What percent of your customers have access  
16 to SBC's DSL services?

17 A. I have a general number, but we'd consider  
18 it highly confidential.

19 Q. Does SBC offer DSL service in all of its  
20 exchanges?

21 A. I don't believe so.

22 Q. If SBC offers DSL within an exchange, does  
23 that mean that all customers within the exchange have the  
24 ability to subscribe to DSL service?

25 A. Not necessarily. It would depend on --

1   there are certain areas where an entire community, for  
2   example, might have DSL available to them, but in other  
3   communities there are technology constraints to how far  
4   the DSL signal will reach. So there are cases where there  
5   might be some customers who cannot get DSL at this point  
6   in time.

7           Q.     Do you know if broadband service is  
8   available from other providers in all of the exchanges  
9   requested by SBC for competitive status?

10          A.     I believe cable modem service -- I guess  
11   the answer would be yes, and I'll caveat that with -- with  
12   that wireless broadband would be available everywhere.  
13   Cable modem service, on the other hand, would be available  
14   in the majority of the exchanges, but I don't believe all  
15   of them.

16          Q.     My next topic is a discussion of wireless  
17   and VOIP services. If a customer subscribes to optional  
18   MCA service and the customer decides to cut the cord and  
19   go wireless, can the customer always keep his telephone  
20   number?

21          A.     Yes, I believe so. SBC has wireline to  
22   wireless number porting in all of its exchanges, so that  
23   would certainly cover the MCA exchanges.

24          Q.     And that would cover optional MCA service  
25   also?

1           A.       Correct.

2           Q.       What percentage of lines has SBC lost to  
3 wireless providers?

4           A.       I don't know.

5           Q.       What percentage of lines has SBC lost to  
6 voice over Internet protocol, VOIP providers?

7           A.       I don't know.

8           Q.       Do all wireless providers have the ability  
9 to properly route and identify the location of a wireless  
10 caller's dialing of 911?

11          A.       I'm not certain, but I believe it may vary  
12 based on the technology that the PSAPs have -- I guess  
13 what state of technology the PSAPs might be, but I believe  
14 all the wireless carriers have the technology to properly  
15 route 911 calls.

16          Q.       Do all VOIP providers have the ability to  
17 properly route and identify the location of a VOIP 911  
18 call?

19          A.       I know the FCC has required by the end of  
20 November for -- for integrated voice over IP carriers and  
21 those, my understanding would be, that an integrated voice  
22 over IP carrier would be a carrier who integrates their  
23 voice over IP network with what we call the traditional  
24 public switched telephone network. In other words, if  
25 they want to send calls to regular landline customers or

1 receive calls from regular landline customers, that they  
2 have to be able to provide 911 services to their customers  
3 by the end of November.

4 Q. Do you believe that at least two  
5 nonaffiliated wireless providers offer services in all of  
6 your exchanges?

7 MR. LANE: Excuse me. If I may make an  
8 objection here, maybe it's a clarification. You're  
9 talking about the exchanges where we've requested  
10 competitive classification?

11 MR. HAAS: Yes, sir.

12 THE WITNESS: My revised Exhibit B-1 and  
13 revised Exhibit B-2 from my rebuttal testimony show that  
14 there are two or more wireless companies in each of the  
15 exchanges for which we're seeking a competitive  
16 classification.

17 BY MR. HAAS:

18 Q. And if I'm correct, you did not list  
19 affiliated wireless providers in your exhibits?

20 A. That's correct. We would have not included  
21 Cingular, which would now include the AT&T Wireless.

22 Q. Mr. Unruh, now I'd like to move on to  
23 questions about specific exchanges. What competitors does  
24 SBC believe are providing local service to residential  
25 customers in the San Antonio exchange?

1           A.       A portion of the response would be highly  
2 confidential.

3                   JUDGE RUTH: Mr. Haas, whenever you're  
4 ready to go into in-camera, just tell me. So far you've  
5 been skipping them.

6                   MR. HAAS: I thought it might be easier  
7 just to ask the questions all at once, rather than have to  
8 go back.

9                   JUDGE RUTH: That's fine. That's fine.

10 BY MR. HAAS:

11           Q.       How many residential lines, if any, has SBC  
12 lost to competitors in the San Antonio exchange?

13           A.       I don't know the exact number, but I know  
14 there are several competitors in that exchange, and those  
15 competitors have lines, so those would be lines served by  
16 the competitor and not SBC.

17           Q.       What evidence do you have that SBC has that  
18 competitors are providing local service in the San Antonio  
19 exchange?

20           A.       We've presented evidence of my revised --  
21 my schedule, Revised Unruh Schedule 3HC shows that there  
22 are three CLECs who have signed commercial agreements with  
23 SBC to utilize SBC Missouri's facilities, switching and  
24 loops, to provide service to end user customers, and those  
25 three companies all have lines in the San Antonio

1 exchange. We've also shown evidence of two CLECs who also  
2 have -- are serving lines via UNE-P. And then we've also  
3 shown that there are four wireless companies that serve in  
4 that exchange.

5 Q. Are you counting St. Joseph Cablevision as  
6 a provider in the San Antonio exchange?

7 A. We did not -- in the counts I gave you a  
8 minute ago, I did not count those -- I should have added  
9 that -- as an additional competitor, based on the evidence  
10 that Staff has provided in this case.

11 Q. Mr. Unruh, can you refer me to the Staff  
12 testimony you're talking about on San Antonio, because --  
13 well, I'll tell you why I'm asking. It was my  
14 understanding, and is it yours, that the Staff is saying  
15 St. Joe Cablevision does not provide service in San  
16 Antonio?

17 A. My apologies. You are correct.

18 Q. So are you disputing St. Joseph's claim  
19 that it does not provide service in the San Antonio  
20 exchange?

21 A. I'm sorry. I've got my exchanges confused.  
22 At this time we are not suggesting that St. Joe  
23 Cablevision provides service in San Antonio.

24 Q. What competitors does SBC believe are  
25 providing local voice service to business customers in the

1 exchanges of Advance, Bell City, Delta, Pocahontas,  
2 New Wells and Wyatt?

3 A. We've not presented evidence in this case  
4 of competition from those exchanges. Those are not part  
5 of the list of exchanges for which we're seeking a  
6 competitive classification for business service.

7 Q. Mr. Unruh, are you familiar with foreign  
8 exchange service?

9 A. Generally.

10 Q. Would you give us a brief explanation?

11 A. Foreign exchange service is typically used  
12 by a customer where they may -- particularly a business,  
13 they may reside -- their business may reside in one  
14 exchange but they want a local presence in a different  
15 exchange somewhere else, and so they will buy foreign  
16 exchange service to obtain essentially a local telephone  
17 number in that other community where they want a local  
18 presence, even though they may not physically be located  
19 there. Q. Does SBC provide foreign exchange

20 service?

21 A. Yes, we do.

22 Q. Would SBC consider itself as competing in  
23 the first exchange or the second exchange?

24 A. I mean, I guess it might depend on the  
25 circumstances. We have not presented any -- none of the

1 exchanges that we are seeking a competitive classification  
2 for are based on the presence of foreign exchange service.

3 Q. Now I'd like to move on to some UNE-P  
4 matters. Mr. Unruh, what's the practical difference  
5 between UNE-P providers and providers using a commercial  
6 agreement?

7 A. Well, it might depend on the -- commercial  
8 agreements can be a broad term. If you're speaking to a  
9 commercial agreement for a service like what we now offer  
10 called local wholesale complete, generally it would  
11 provide the same types of functionality as far as a  
12 carrier's ability to use our switching facilities and our  
13 loop facilities, ability using ordering systems, things  
14 like that that there would be.

15 Each contract might have differences that  
16 are important to one carrier versus another that might --  
17 you know, that might make the interaction between the two  
18 carriers different in some respect. But certainly a  
19 commercial agreement -- a commercial agreement for a local  
20 wholesale complete-type service would allow a carrier to  
21 not have to invest in their own switches and their own  
22 loops and simply use our switching and our loops to  
23 provide service to their own end user customers.

24 Q. And when you refer to commercial agreements  
25 in your testimony, you're talking about the local

1 wholesale complete agreement?

2 A. That is correct.

3 Q. How do the rates that SBC charges under a  
4 UNE-P agreement compare to the rates that it charges under  
5 a local wholesale complete agreement?

6 A. The prices in a UNE-P agreement have either  
7 been negotiated between the parties or set through an  
8 arbitration in front of the Commission. The commercial  
9 agreement prices reflect a negotiated price between the  
10 two parties.

11 Q. Do you know whether one agreement or the  
12 other has higher charges?

13 A. I would say in general the UNE-P -- what's  
14 been arbitrated before the Commission for UNE-P has a  
15 range of prices. There isn't just one set price. There's  
16 different prices based on geography and switching, for  
17 example, is on a usage basis, so the prices vary.  
18 Typically what we've -- the negotiated agreements that  
19 we've reached so far with commercial carriers tend to be  
20 more of a flat rate price.

21 Q. So is your answer you don't know?

22 A. I think it varies. It would vary based on  
23 what the CLEC was purchasing and where they were  
24 purchasing service. In some cases it will be higher. In  
25 some cases it will be lower.

1           Q.     Are the commercial agreements publicly  
2     available?

3           A.     Yes, they are.

4           Q.     Can other CLECs opt into the commercial  
5     agreement?

6           A.     I don't believe the CLECs have a most  
7     favored nation right, what we call MFN right, into the  
8     commercial agreement. However, we've reached commercial  
9     agreements with a lot of carriers, and those agreements  
10    probably vary in details, but in general, a lot of the  
11    pricing has been in the same range.

12          Q.     Have those commercial agreements been  
13    presented to the Commission for its review?

14          A.     The only commercial agreement that was  
15    ultimately presented to the Commission was the Sage  
16    agreement. And I'll clarify. The Commission means the  
17    Missouri Public Service Commission.

18          Q.     Yes.

19          A.     Commercial agreements are filed with the  
20    FCC.

21          Q.     Do some CLECs with their own switch  
22    currently provide service to some exchanges on a UNE-P  
23    basis where the CLEC would use SBC's switching facilities?

24          A.     I'm sorry. I may have lost your question  
25    there. Can you repeat it, please?

1           Q.       Do some CLECs with their own switch  
2       currently provide service to some exchanges on a UNE-P  
3       basis where the CLEC uses SBC's switching facilities?

4           A.       Yes.   In fact, that's quite common.   If you  
5       look at the -- for example, my Revised Unruh Schedule 2HC  
6       and 3HC, we've highlighted the carriers who either have  
7       commercial agreements or UNE-P arrangements in those  
8       exchanges.   We've identified which carriers also have  
9       their own switches, and there's a very large -- I believe  
10      every exchange has CLECs who are either using commercial  
11      agreements or UNE-P who also have their switch, which  
12      reflects the fact that they're making economic choices  
13      about what type of -- how they want to provide service to  
14      their end users.   In some cases they make the economic  
15      decision to use their own switch, and in other cases they  
16      make an economically efficient decision for their purposes  
17      to use our switching.

18          Q.       If a CLEC is currently providing local  
19      voice service on a UNE-P basis, will SBC continue to allow  
20      the CLEC to subscribe to UNE-P services for an indefinite  
21      period of time?

22          A.       Well, that remains unclear at this point.  
23      The FCC issued an order that would call for the  
24      elimination of UNE-P in March of next year.   However, the  
25      Commission in our recent M2A successor agreement

1 arbitrations effectively ruled that UNE-P would continue.  
2 That case is now under appeal.

3 Q. If the CLEC is not allowed to continue to  
4 use UNE-P provisioning, describe what changes, if any,  
5 will be provided by SBC for the wholesale serving  
6 arrangements for that CLEC.

7 A. Well, that would be up to the individual  
8 CLECs to decide how they wanted to serve their customers.  
9 They have many options available to them. They can use  
10 their own switching, their own switches if they choose.  
11 They can choose to elect to use another carrier's  
12 switches. They can use their own switches and our loops.  
13 They could sign a commercial agreement with SBC. They  
14 could sign some kind of commercial agreement with another  
15 carrier. They could use resale. There's any number of  
16 options available to those carriers.

17 Q. What is SBC Missouri's average monthly  
18 UNE-P revenue per line received from CLECs?

19 A. It's -- I can give you a general number.  
20 It's probably in the \$20 range.

21 Q. Is it possible that SBC may receive more  
22 revenue for providing wholesale services to a particular  
23 customer than it currently receives in retail revenue for  
24 serving that same customer?

25 A. Yes, I believe that's possible. It would

1 certainly be in the minority of cases.

2 MR. HAAS: Your Honor, at this time I'd  
3 like to go into in-camera session to ask those questions  
4 which Mr. Unruh indicated would result in highly  
5 confidential answers.

6 JUDGE RUTH: Thank you, Mr. Haas.  
7 Actually, we're going to take a short break. We've been  
8 on the record for a bit. We'll break for 15 minutes until  
9 10:15, based on the clock in the back of the room.

10 Off the record.

11 (A BREAK WAS TAKEN.)

12 JUDGE RUTH: It's my understanding that  
13 this will be an in-camera session.

14 (REPORTER'S NOTE: At this point, an  
15 in-camera session was held, which is contained in  
16 Volume 6, pages 52 through 56 of the transcript.)

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1 JUDGE RUTH: Thank you for your patience.

2 We are out of the in-camera session and you may proceed.

3 BY MR. HAAS:

4 Q. Mr. Unruh, my next topic will be questions  
5 about the local public hearings. Several speakers at the  
6 local public hearings in this case testified that they had  
7 been contacted by an SBC representative. Were SBC  
8 representatives directed to contact people about the local  
9 public hearings?

10 A. We have -- as probably most of you know, we  
11 have what we call external affairs managers that live in  
12 many of our communities and work in our communities, and  
13 their job is to communicate with the public, elected  
14 officials, city leaders, et cetera, about what's going on  
15 with our company and what's going on in those communities.  
16 So it's routine for those people to talk with various  
17 people in those communities about what's going on.

18 And certainly this is an item of interest  
19 to people since it was a topic obviously during the  
20 legislative session, a lot of conversations went on about  
21 what the legislation was and what it was about. So we're  
22 trying to keep people informed about what's going on  
23 relative to that legislation.

24 Q. Were the external affairs managers provided  
25 talking points or a script?

1           A.       We routinely communicate with our external  
2   affairs managers on issues, either legislative or  
3   community relations or regulatory-type issues, where we  
4   provide them summaries of what's going on, you know, along  
5   with kind of, I guess, general talking points about what  
6   our positions are.

7           Q.       Did the talking points say what was the  
8   purpose of this hearing?

9           A.       Our external affairs managers would  
10   generally be aware of what the purpose of this hearing is.  
11   They wouldn't know necessarily all the details, but they  
12   would generally know it's about obtaining a competitive  
13   classification.

14          Q.       Did the talking points say that competitive  
15   classification would give SBC Missouri the opportunity to  
16   lower rates?

17          A.       The external affairs managers understand  
18   that we already have the flexibility to lower prices under  
19   price caps.

20          Q.       Did the talking points address Life Line?

21          A.       I'm not certain if any of the documents or  
22   communications with the external affairs managers would  
23   have involved discussions with Life Line.

24          Q.       Did the talking points assure that SBC will  
25   lower rates in Excelsior Springs if it is granted

1 competitive classification?

2 A. No.

3 Q. Assume the Commission grants competitive  
4 status in this case on the basis of competition solely  
5 from wireless providers. Would it be your opinion that  
6 the Commission could or could not later revoke competitive  
7 status on the basis that competition solely from wireless  
8 providers is insufficient?

9 A. I guess I would argue with the  
10 hypothetical, because the law would require only one  
11 wireless carrier to be used, I guess, to meet the criteria  
12 that two providers be present in the market. So I guess I  
13 would differ with the hypothetical.

14 MR. HAAS: That's all my questions. Thank  
15 you.

16 JUDGE RUTH: Public Counsel?

17 MR. DANDINO: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. DANDINO:

19 Q. Good morning, Mr. Unruh.

20 A. Good morning.

21 Q. Just want to follow up first with the  
22 questions Mr. Haas had asked you. First of all, I wanted  
23 to ask you, what is your position with SBC?

24 A. Executive director, regulatory.

25 Q. And what are your duties as the executive

1 director of regulatory?

2 A. I am responsible for advocating regulatory  
3 policy in Missouri, as well as overseeing the regulatory  
4 activities.

5 Q. And do you have supervisory control over  
6 those external affairs personnel?

7 A. I do not.

8 Q. Who does?

9 A. There would be a couple of different  
10 people.

11 Q. Who are they?

12 A. One would be Mr. Kevin Vossen.

13 Q. What's his title?

14 A. I'm not exactly sure. Probably director of  
15 external affairs. And Ms. Cindy Brinkley would supervise  
16 some of them as well.

17 Q. Mr. Haas had asked you about whether the  
18 talking points included the points about an opportunity to  
19 lower rates, and I wasn't exactly clear on your answer.  
20 Could you -- did they or did they not contain a discussion  
21 of opportunity to lower rates?

22 A. Well, I guess part of my difficulty in  
23 answering, I guess, is that there isn't just sort of one  
24 thing that -- that has either been discussed with or given  
25 to our external affairs managers. We've talked about

1 competitive classifications and issues like that over the  
2 years. So there's been a multitude of discussions. And  
3 throughout those discussions the topics like, well, what's  
4 your flexibility today have come up. And in those  
5 discussions we would explain to our external affairs  
6 managers that under the price caps you have the  
7 flexibility to lower prices.

8 Q. Did SBC generate talking points  
9 specifically for this case?

10 A. We gave our external affairs managers some  
11 background and, you know, positions and that sort of thing  
12 to those external affairs managers.

13 Q. Would it be a fair statement that what you  
14 gave them was talking points?

15 A. I would say some of -- some of what was  
16 provided is -- people would probably consider to be  
17 talking points. There would be background and other  
18 information that's provided.

19 Q. Would be outlines of testimony?

20 A. No.

21 Q. Like your testimony?

22 A. Not -- not really, other than just, you  
23 know, here's what it means kind of thing.

24 Q. And these talking points and information  
25 was provided to such people as economic development

1 directors?

2 A. No. Everything I've talked to so far has  
3 been information we provided to the external affairs  
4 managers for their understanding about the case.

5 Q. Okay. The external affairs managers, how  
6 many are there?

7 A. I would say about eight or nine.

8 Q. If I recall right, Ron Gillette appeared at  
9 at least one of the public hearings. Is that his name?

10 A. Ron Gillette is an external affairs  
11 manager. He did not testify in the public hearing.

12 Q. But he was present at many of those, wasn't  
13 he?

14 A. Yes. A lot of the public hearings were in  
15 what we call his service area.

16 Q. And he contacted some of the witnesses that  
17 appeared before the Commission at those public hearings;  
18 is that correct?

19 A. As I mentioned, Mr. Gillette would talk  
20 to -- I mean, that's his job, to talk to people about  
21 what's going on with the company. So he on a day-to-day  
22 basis would be talking with numerous people about issues  
23 that are important to both his community and SBC.

24 Q. Do you know if he specifically requested  
25 them to appear and testify?

1           A.       I don't know exactly what conversations  
2     were held, although I think he would, through his normal  
3     day-to-day activities, understand what issues are  
4     important to what people, and I think he would talk to the  
5     people that he believed felt this issue was important.

6           Q.       As director for regulatory affairs, you're  
7     knowledgeable of SBC's products; is that correct?

8           A.       Generally.

9           Q.       Generally?

10          A.       We have thousands of products. I won't be  
11     an expert on all of them.

12          Q.       At least the regulated products?

13          A.       Hundreds of those, and I may not be an  
14     expert on each and every one of them.

15          Q.       But you're at least knowledgeable about  
16     those; is that correct?

17          A.       Yes.

18          Q.       And you're knowledgeable about the markets  
19     in Missouri, is that correct, telecommunication markets?

20          A.       Generally.

21          Q.       And you're knowledgeable about the -- who  
22     your competitors are?

23          A.       Yes.

24          Q.       And you're knowledgeable about those  
25     companies?

1           A.       Generally.

2           Q.       How much competition would SBC claim is  
3 required for a competitive classification?

4           A.       The law requires that there be two or more,  
5 at least two, entities in the exchange providing local  
6 voice service pursuant to the criteria spelled out in the  
7 statute.

8           Q.       Would you call that viable competition?

9           A.       The law does not -- the law does not  
10 require a -- that's I guess what I would call an analysis  
11 we would have used to have done under the old definition  
12 of effective competition. The law was changed to where  
13 the Commission's role is not to determine if there's  
14 effective competition. It's to determine that there are  
15 two or more entities providing local voice service.

16          Q.       So the Commission in -- your view of the  
17 law is that the Commission is prohibited from making any  
18 analysis of what the competition is, they're just supposed  
19 to count it?

20          A.       Generally, yes. I mean, I think there  
21 would -- I mean, I guess they have to -- you know, there's  
22 criteria they would have to review. Like, there's  
23 limitations I guess that they would have to examine. For  
24 example, the law requires that one wireless carrier be  
25 counted. The law requires that prepaid providers not be

1 counted. So they would need to look to those issues.

2 Q. So they have to make sure at least they  
3 meet the statutory definition or statutory requirement; is  
4 that correct?

5 A. I probably wouldn't couch it at least. I  
6 think that is what their role is.

7 Q. And they can't go one bit further; is that  
8 correct?

9 A. I believe the law directs the Commission to  
10 examine, you know, to see that there's the two providers,  
11 and then obviously in the 60-day case, they have to  
12 determine whether any party has provided substantial and  
13 competent evidence that it would be contrary to the public  
14 interest, which in this case our position is that no party  
15 has done that.

16 Q. So if the Commission -- so the Commission  
17 can't look into the evidence presented and determine  
18 whether any of the competition that you say is present is  
19 viable competition? They're not to look at that; is that  
20 correct?

21 A. Well, again, they'd have to determine that  
22 the entities that are being presented, that there's two  
23 entities, at least those two entities, and that they are  
24 otherwise not inconsistent with the law, again, that  
25 prepaid, for example, of competition that's counted. So,

1     you know, that's what the Legislature has instructed the  
2     Commission to look at.

3             Q.       But once again, going back to viable  
4     competition, that's something that the Commission should  
5     not look at, whether it's viable or not?

6             A.       The competitors that SBC has presented have  
7     lines in the exchange, so they're competing in the  
8     exchange. They're providing the voice service pursuant to  
9     the statutory requirements.

10            Q.       And so the Commission can examine how many  
11    lines they're providing in the exchange in order to  
12    determine whether they're viable and whether they meet the  
13    definition?

14            A.       I don't know exactly what you mean by  
15    viable. The law doesn't speak to measuring competition,  
16    like we did under the definition of effective competition.  
17    The law requires a review of whether the competitors are  
18    providing service in the exchange.

19            Q.       So you can have competition but the  
20    Commission can't measure it; is that what you're saying?

21            A.       Again, the Legislature has --

22            Q.       Wait a minute.

23            A.       I would say no. I would say by measure, if  
24    you mean are there two or more entities, then yes, they  
25    measure that. If you're talking about, let's start doing

1 market share analysis and things like that, no, that's  
2 not --

3 Q. They don't measure the extent of  
4 competition?

5 A. The extent of competition would be the --  
6 are there the two providers providing service that are  
7 consistent with the requirements of the law.

8 Q. They don't look at the number of access  
9 lines a competitor has as compared to SBC?

10 A. No.

11 Q. They don't look at the number of customers  
12 that the CLEC has as compared to SBC?

13 A. Again, the only criteria is that they're --

14 Q. Sir, do they look at them or not?

15 A. Well, it's -- they would look at it to say  
16 that they're providing service, but a quantification of is  
17 it 20 lines or 20,000 lines is not relevant under the law.

18 Q. So they don't look at the quantification?

19 A. Other than are they providing service. So  
20 do they have a line in the exchange, yes, that's the --

21 Q. So one line would be sufficient?

22 A. The statute speaks to providing service to  
23 customers. So, you know, obviously if you have two  
24 competitors, they're going to be providing service to  
25 customers, plural, so I think that would meet the

1 criteria.

2 Q. So two customers is sufficient for  
3 competitive classification?

4 A. That would meet the requirement of the  
5 statute that they're providing voice service.

6 Q. If I said the Commission doesn't have to  
7 determine whether competition is actual or significant or  
8 meaningful, you would say that they're not to look at  
9 those -- any measure of competition in those terms?

10 A. Again, those things are trying to recreate  
11 the effective competition definition that was in the old  
12 law that has now been taken out of the law, and so those  
13 are not to be considered.

14 Q. Is effective -- the definition of effective  
15 competition, isn't it still in the law?

16 A. 392.245 no longer refers to -- so the  
17 criteria for obtaining a competitive classification in  
18 392.245 no longer refer to that definition.

19 Q. In Section 386.020 effective -- the term  
20 effective competition still appears in the definition  
21 section, doesn't it?

22 A. The definition was not removed from the  
23 statute, but it has no bearing on the criteria that the  
24 Commission reviews for competitive classification.

25 Q. So the Legislature performs absurd and

1     useless acts?

2             A.       The Legislature simply chose not to remove  
3     the definition, but they clearly removed its application  
4     to competitive classification.

5             Q.       You testify on behalf of SBC and represent  
6     their interests before this Commission and the Missouri  
7     Legislature; is that correct?

8             A.       I've not testified before the Missouri  
9     Legislature. I do represent SBC Missouri's interests  
10    before the Commission.

11            Q.       Okay. And would you say that as an  
12    employee and an officer -- or as an employee, at least,  
13    and in your position you have a duty to help SBC maximize  
14    its return of and its return on the shareholders'  
15    investment?

16            A.       That would be a role for all employees of  
17    SBC.

18            Q.       Sure. And are the -- are the interests of  
19    SBC and the public always the same?

20            A.       I would say generally it's in SBC's  
21    interest to satisfy -- to better satisfy the needs of its  
22    customers than its competitors, because that's what allows  
23    us to maximize our shareholder value. If we're not  
24    meeting those needs, our competitors will, and we won't  
25    maximize our shareholders' interest.

1           Q.       But at times the public interest and SBC's  
2 interest may be in conflict; is that correct?

3           A.       As with any business that's providing  
4 service to customers, the customers always want more for  
5 less, and so there's a balance that occurs in the  
6 marketplace about what products are offered at what  
7 prices.

8           Q.       What factors should the Commission consider  
9 in determining whether SBC's application for competitive  
10 classification in these exchanges is not contrary to the  
11 public interest?

12          A.       It's not -- as Mr. Lane explained, our  
13 position is that the burden of proof for determining  
14 public interest resides on those who are trying to prove  
15 that it is contrary to the public interest, and since we  
16 have no interest in proving that it's -- that our  
17 application is contrary to the public interest, we would  
18 not have submitted any evidence to that effect. It would  
19 be up to parties who are opposed to SBC's application to  
20 provide evidence that granting SBC Missouri's request in  
21 this case would be contrary to the public interest.

22          Q.       I understand that's your position, but what  
23 does contrary to the public interest mean to you?

24          A.       Frankly, I haven't given that a lot of  
25 thought since it's not our burden to prove that it's

1     contrary to the public interest.

2             Q.     You haven't given it any thought?

3             A.     I'd say not a lot of thought.

4             Q.     Have you given it any thought?

5             A.     Certainly I'm thinking about it as we sit  
6 here and speak, so I can't say no.

7             Q.     Prior to this very moment, have you given  
8 it any thought?

9             A.     A little bit.

10            Q.     And what are those thoughts?

11            A.     I think the Commission would have to  
12 examine whatever evidence was presented in each individual  
13 case and determine if that's contrary to the public  
14 interest, in light of the fact that the Legislature has  
15 made clear that it's presumed to be -- that a request is  
16 presumed to be in the public interest and, therefore, you  
17 know, the Legislature instructs the Commission to lean  
18 heavily towards that finding. It left the Commission some  
19 discretion in the 60-day case for parties opposing a  
20 request to submit evidence that something is contrary to  
21 the public interest.

22                   In this case, OPC and Staff has presented  
23 evidence where they attempt to argue that something's  
24 contrary to the public interest, but the reasons that are  
25 used are inconsistent with the law. So there's in our

1 view been nothing presented that would -- that would  
2 provide a basis for the Commission finding that our  
3 application is contrary to the public interest.

4 Q. Let me go to your statement. You said that  
5 the law presumes that your request is in the public  
6 interest?

7 A. Yes.

8 Q. And where do you get that idea?

9 A. I think by treating it the way the  
10 Legislature has stated it. It says, companies may request  
11 and the Commission is to grant the competitive  
12 classification within 60 days, unless it finds it's  
13 contrary to the public interest.

14 I believe that presumes that the starting  
15 point is a request for competitive classification based on  
16 two providers is in the public interest, because the  
17 Legislature recognizes that competitive markets maximize  
18 consumer surplus, consumer welfare, economic development  
19 and all of the good things that come with competitive  
20 markets, and so they want that to occur.

21 And so that's why they structured the law  
22 the way they did. They want the competitive  
23 classifications to be granted, but they left a -- they  
24 left an opportunity for a party to present something that  
25 would demonstrate that a request is contrary to the public

1 interest.

2 Q. Well, Mr. Unruh, you just talked about what  
3 the intention of the Legislature was. I always thought  
4 that we were supposed to look at just what the words were  
5 there, not necessarily some of those considerations you  
6 said that the Legislature took into effect. I certainly  
7 didn't see them there, economic development or -- I'm  
8 sorry. I don't want to misquote you.

9 Well, I'll just move on.

10 A. I mean, the law says what it says, and I  
11 was trying to find the exact quote, but it's -- a  
12 paraphrase of it is that the competitive classification  
13 shall be granted within 60 days. Here's the exact quote:  
14 Commission shall approve such petition within 60 days  
15 unless it finds that such competitive classification is  
16 contrary to the public interest.

17 Q. So it has -- the Commission has discretion  
18 to make a determination that it's contrary to the public  
19 interest; is that correct?

20 A. Yes. That would be -- that's the primary  
21 difference, or I guess one of the probably two major  
22 differences between the 30-day case and 60-day case. The  
23 30-day case is an automatic grant based on two carriers  
24 using their own facilities in whole or in part. For a  
25 60-day case, the Legislature broadened what the Commission

1 is to review in terms of who the competitors are, but it  
2 also gave them the discretion to find that an application  
3 is contrary to the public interest. But a party would  
4 have to present evidence that the request is contrary to  
5 the public interest, and we don't believe that's been done  
6 here.

7 Q. That's what I understand your position is.  
8 With the history of price increases that SBC has made for  
9 non-basic services since they became price cap regulated,  
10 can you -- what assurance can you give this Commission  
11 that this pricing trend and policy will or will not  
12 continue?

13 A. Well, I think you've isolated to a  
14 particular set of services which does not characterize the  
15 marketplace. The marketplace has seen a lot of price  
16 declines in prices for people and their communications  
17 services. I think to isolate to some specific price  
18 increases is not an accurate reflection of what's going on  
19 in the marketplace.

20 Q. Well, let me ask the question again, then,  
21 because I think that you need to answer this question,  
22 that with the history of price increases for non-basic  
23 services up to 8 percent -- well, let me strike that.

24 With SBC's history of increasing prices for  
25 basic services since it's been price cap regulated, can

3           A.       Your question actually said for basic  
4    services, and we've been lowering the price generally for  
5    non-basic services.  When you repeated it you used the  
6    word basic, so --

8                    A.        Okay.

13           A.           Again, I differ with the characterization  
14 of it being a trend. We do not increase all non-basic  
15 services. It varies from year to year what we increase.  
16 There's a number of non-basic services that we don't  
17 generally increase. In fact, we did an analysis at one  
18 point, and our non-basic price increases were only about  
19 1/25 of what we could have increased under price caps, so  
20 it was really a very small percentage of what we could  
21 have obtained.

23           A.       I don't agree with the characterization of  
24   that being a trend.

1 answer the question that he asked. Your counsel can  
2 follow up on redirect.

3 THE WITNESS: I don't know what the future  
4 will hold in a competitive marketplace. I will say prices  
5 tend to rise in a competitive marketplace. We pay more  
6 for goods and services generally in markets than we did  
7 historically. Inflation is typically a positive number  
8 reflecting that prices tend to rise.

9 I don't know what the future holds. I  
10 suspect that some prices will continue to increase. I  
11 suspect that other prices will continue to decrease, and  
12 it will change over time.

13 BY MR. DANDINO:

14 Q. And SBC does not have any plans or pricing  
15 strategies or policies to implement if it would receive  
16 competitive classification in these exchanges?

17 A. Well, I would say generally there are  
18 pricing plans and goals in the marketplace. I wouldn't  
19 say that there's specific, you know, like  
20 exchange-specific pricing plans that are -- that are  
21 anything definite that we would intend to institute as  
22 soon as we obtain a competitive classification, other than  
23 with the business classification you obtain the ability to  
24 do ICB or CSP pricing, and so I would anticipate that for  
25 at least some of our business services we would be

1 interested in trying to do that immediately.

2 Q. So you do have some plans?

3 A. Yeah, generally.

4 Q. Generally. Okay. I believe you talked to  
5 Mr. Haas about local wholesale complete. What is that  
6 again?

7 A. Local wholesale complete is what we're  
8 calling a wholesale service that we provide to our CLEC  
9 customers who are interested in using our switching and  
10 loop and transport infrastructure to provide service to  
11 their own retail end user customers. You can think of it  
12 as a replacement for UNE-P.

13 Q. And your Revised Schedule 2HC, tell me when  
14 you're there.

15 A. I'm there.

16 Q. In the columns that say sources of data  
17 with CLECs with commercial agreements and CLECs with  
18 UNE-Ps, the sources of the data says billing records.  
19 What billing records are those?

20 A. Those are SBC's billing records.

21 Q. Are they billing records for the wholesale  
22 products to wholesale -- like local wholesale complete or  
23 other wholesale agreements with CLECs?

24 A. Yes. This would reflect that we are  
25 providing service to those named CLECs there, either

1 under -- in the respective column, either under commercial  
2 agreement arrangement or under UNE-P.

3 Q. Do all SBC's customers have a right of  
4 privacy?

5 A. I mean, there's general CPNI rules that  
6 reflect what you can and cannot use, depending on  
7 different circumstances.

8 Q. Is there any restriction in the  
9 interconnection agreements or the commercial agreements  
10 for the use of your wholesale billing records for  
11 competitive purposes?

12 A. I would say we're generally under an  
13 obligation to inform our CLEC customers if we're going to  
14 be using their names, for example. And so like in this  
15 case, for example, we notified all of the CLECs who --  
16 well, we notified all CLECs that in this case we might be  
17 using their names and asked them to let us know if that  
18 was going to be an issue.

19 There were, I believe, two carriers who  
20 responded not necessarily that they didn't want us using  
21 their name, but they wanted to know if we were using their  
22 name. In both those cases we are not using their name.

23 Q. So there is a restriction on -- you have to  
24 get their permission, the CLECs' permission?

25 A. I would characterize it as we need to let

1    them know if their names are being used in like a  
2    Commission case, for example.

3           Q.       Do they have a right to tell you not to use  
4    their name?

5           A.       I'd have to review the specific contract  
6    language again.  In this case we notified all the CLECs,  
7    and only the two indicated that they wanted to know if we  
8    were going to use their name, and we didn't need to.

9           Q.       I was almost going to ask you who they  
10   were, but I'm sorry.  What can you tell me about Sage  
11   Telecom?

12          A.       They're a CLEC who operates throughout  
13   certainly SBC Missouri's area and SBC's area generally.  
14   They have signed a commercial agreement with SBC Missouri  
15   for a local wholesale complete-type arrangement.  That was  
16   a seven-year agreement that will have us providing service  
17   to them through July 2011.

18          Q.       And they only transition customers from SBC  
19   and from other carriers that already have established  
20   service; is that correct?

21          A.       I don't know that to be a fact.  I would  
22   say it's possible they may prefer that arrangement because  
23   that way the other carriers go through the hassle, if you  
24   will -- that's probably not the best term -- but the -- go  
25   through the issue of getting a customer signed up, and

1 then I think Sage would, obviously in their economic  
2 interest, if we go through the process of signing a  
3 customer up and then they use our operational support  
4 systems to easily migrate the customer to them.

5 If that's their policy, it certainly hasn't  
6 prevented them from obtaining customers in all of the  
7 exchanges.

8 Q. Do you know if McLeod has been in  
9 Chapter 11 bankruptcy?

10 A. I believe they have been, which Chapter 11  
11 is not a liquidation bankruptcy. It simply means you  
12 restructure and typically eliminate most, if not all, of  
13 your debt and start over. So it actually gives CLECs an  
14 opportunity to become a stronger competitor.

15 Q. Do you have any information about their  
16 financial condition now?

17 A. I do not.

18 Q. You can't tell the Commission anything  
19 about whether McLeod is viable or not?

20 A. I can tell you that they are currently  
21 serving customers in SBC Missouri's exchanges.

22 Q. Is Global Crossings one of the companies  
23 that you identified as a competitor?

24 A. We would consider that response to be  
25 highly confidential.

1           Q.       The name of a competitor you would consider  
2 as highly confidential?

3           A.       The names that are on my revised -- my  
4 Revised Unruh Schedule 2HC and Revised Schedule Unruh 3HC  
5 are highly confidential.

6                   MR. DANDINO: Your Honor, I believe that  
7 the Commission has declassified the names of all the  
8 competitors. Am I wrong in that?

9                   JUDGE RUTH: In the previous case, they  
10 were all declassified. In this case, they were not listed  
11 when that order was issued, and earlier this morning I  
12 asked if there were any objections to those exhibits being  
13 admitted. They were not. Are you asking to readdress  
14 that issue now?

15                  MR. DANDINO: No. That's fine, your Honor.  
16 I'll just have --

17                  JUDGE RUTH: Would you like to go into  
18 in-camera?

19                  MR. DANDINO: Oh, no. No. I'm just --  
20 that the names of the competitors are secret and highly  
21 confidential and should not be spread upon the public  
22 record --

23                  JUDGE RUTH: Mr. Dandino, did I give you an  
24 opportunity to object to Exhibit 2HC, those Schedules 2  
25 and 3 being admitted into the record?

1                   MR. DANDINO: Oh, yes, your Honor. I'm not  
2 criticizing the Court. I'm not. And please don't think I  
3 was going to ask Mr. Unruh that question. I'm -- if --

4                   JUDGE RUTH: I just want to clarify that I  
5 did not skip that step in the process.

6                   MR. DANDINO: No. No. No. I'm fully  
7 aware that I waived that objection. Yes. I'm just asking  
8 Mr. Unruh.

9                   MR. LANE: Judge, if I may, there may be  
10 some misconceptions here.

11                  JUDGE RUTH: Could you use your microphone?

12                  MR. LANE: Sure. Sorry. If Mr. Dandino  
13 has questions along the lines he just asked about McLeod,  
14 about the financial condition, I think he can ask if he  
15 knows about Global Crossings, and it's certainly not  
16 highly confidential.

17                  I thought that the question was going to  
18 where they're providing service and which exchanges, and I  
19 think that's how Mr. Unruh interpreted the question. If  
20 that helps clarify, it may make it easier.

21                  MR. DANDINO: That's fine.

22                  JUDGE RUTH: Thank you.

23 BY MR. DANDINO:

24                  Q.       Mr. Unruh, I was not asking in specific.  
25 Do you know if SBC has filed suit against Global Crossings

1 in the Eastern District of Missouri?

2 A. I'm not certain, but there may be a lawsuit  
3 over proper intercompany compensation.

4 MR. DANDINO: If I may just have a moment,  
5 your Honor.

6 JUDGE RUTH: Certainly.

7 MR. DANDINO: I believe that's all I have  
8 right now, your Honor.

9 Thank you, sir. Appreciate your responses.

10 JUDGE RUTH: Thank you, Mr. Dandino.

11 We'll move on to questions from the Bench.

12 At this time, Commissioner Clayton, do you have any  
13 questions?

14 QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. Good morning, Mr. Unruh.

16 A. Good morning, Commissioner.

17 Q. I've been taking notes during the  
18 discussion and I wrote some things down, and I'd like to  
19 start off with verifying some figures that were mentioned  
20 earlier, so I'd like you to either correct them or verify  
21 them. If we get to a point of HC, obviously you've shown  
22 your ability to . . .

23 Mr. Unruh, are you aware of how many  
24 exchanges SBC as an ILEC is operating?

25 A. We have 160 exchanges in Missouri.

1           Q.       In Missouri. Okay. And is it HC to ask  
2 approximately how many customers you serve as an ILEC in  
3 those exchanges?

4           A.       I don't know a customer count. I could  
5 give you a general --

6           Q.       An approximation?

7           A.       About 2 million.

8           Q.       Okay. Do you know in how many exchanges  
9 this Commission has already found there to be a  
10 reclassification as competitive for business services?

11          A.       For business services, it's 45 exchanges.

12          Q.       So 45 out of 160?

13          A.       Correct.

14          Q.       And in residential, how many have we found  
15 already in the previous case?

16          A.       26 residential exchanges out of the same  
17 160.

18          Q.       Okay. How many business exchanges are up  
19 in this case, the 60-day track case, and all the exchanges  
20 that have been moved from the prior to the current case?

21          A.       There are 30 business exchanges.

22          Q.       And in residential?

23          A.       There are 51.

24          Q.       Okay. So if we were to grant SBC  
25 everything that it asked for, I can add -- and I say

1 everything that SBC has asked for in the two cases,  
2 you-all haven't filed another case for competitive  
3 classification?

4 A. Correct.

5 Q. Not yet anyway?

6 A. We have not.

7 Q. Is there anything that would prevent you  
8 from refiling a case on an exchange where you disagree?

9 A. No.

10 Q. So that would give -- if we were to grant  
11 everything, that would be 75 of 160 exchanges and 77  
12 residential?

13 A. Correct. For clarification, it would be 75  
14 business exchanges and 77 residential exchanges.

15 Q. Okay. Now, there was a percentage that was  
16 used earlier in your conversation with Mr. Haas regarding  
17 a figure, and I'm not sure, because these number of  
18 exchanges that have already been found competitive, maybe  
19 I didn't understand what this question was. Hang on just  
20 a second.

21 COMMISSIONER CLAYTON: Could we go ahead  
22 and go into HC, because I don't want to cross any lines  
23 and I don't want to get started off asking something that  
24 is not accurate.

25 JUDGE RUTH: Give me just a second to stop

1 the recording and the streaming.

2 (REPORTER'S NOTE: At this point an  
3 in-camera session was held, which is contained in  
4 Volume 6, pages 87 through 89 of the transcript.)

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1 JUDGE RUTH: Just a second. I'm not  
2 sure -- while we're in HC, I had a question. I'm not sure  
3 if this was HC, but earlier you were being asked a  
4 question about how many exchanges you have, and about --  
5 and how many access lines and you said 2 million. Was  
6 that 2 million customers or 2 million access lines?

7 THE WITNESS: 2 million access lines.

8 JUDGE RUTH: And should I have done that in  
9 open session, was that public?

10 THE WITNESS: We would not consider that  
11 answer to be HC.

12 JUDGE RUTH: Okay.

13 COMMISSIONER CLAYTON: While we're in HC,  
14 how many customers would that be, 2 million access lines?

15 THE WITNESS: I don't know.

16 JUDGE RUTH: We're going out of HC. And  
17 Ms. Feddersen, could you designate that last question that  
18 I asked as public? The witness has indicated that did not  
19 need to be HC. That was my question about the 2 million  
20 customers or access lines.

21 THE REPORTER: Sure.

22 JUDGE RUTH: We are back in the public  
23 session, and you may continue, Commissioner Clayton.

24 COMMISSIONER CLAYTON: Thank you, Judge.

25 BY COMMISSIONER CLAYTON:

1           Q.     Mr. Unruh, your title is executive  
2 something regulatory?

3           A.     Executive director, regulatory.

4           Q.     Executive director, regulatory, and does  
5 that include the governmental affairs team? When I say  
6 governmental affairs, I mean Melanie Foley and the other  
7 capital lobbying team.

8           A.     To clarify, Melanie Musick-Foley works on  
9 the regulatory team now, so she would be part of my team.  
10 I do not have responsibility for the governmental affairs  
11 people.

12          Q.     Okay. So they're under different -- do  
13 they report directly to Cindy Brinkley?

14          A.     No. Some of them do, and some of them  
15 report to those people who do report to Cindy.

16          Q.     All right. Say that again.

17          A.     Some of the people that would work on  
18 governmental affairs issues report to say a counterpart of  
19 mine.

20          Q.     You mentioned that person's name. Who was  
21 that?

22          A.     Well, we have --

23          Q.     Or did you have several?

24          A.     It would be at least a few.

25          Q.     Well, let's go through them. Who are they?

1 Who would be at a managerial level underneath  
2 Ms. Brinkley, being president of SBC Missouri? I guess  
3 the next tier down, who would be involved in lobbying  
4 activities or governmental affairs over at the Capitol?

5 A. Okay. We would have a person by the name  
6 of John Sondag, a person by name Kevin Vossen.

7 Q. Bossen?

8 A. Vossen with a V. And a person by the name  
9 of Madeline Romious. and that would be the group I would  
10 consider responsible for governmental affairs.

11 Q. Are they the same managerial level as you,  
12 all three of them?

13 A. Yes.

14 Q. Okay. Do you know their respective titles?

15 A. I do not. Generally be something external  
16 affairs.

17 Q. So governmental affairs generally falls  
18 under the external affairs description?

19 A. Yes.

20 Q. We've argued over your title in the past  
21 because we didn't understand it, so that's fine.

22 Mr. Unruh, did you participate in any  
23 communications with legislators as this legislation worked  
24 its way through the process over at the Capitol?

25 A. Yes, a little bit.

1           Q.       Did you provide background information or  
2 data that would help legislators review the language and  
3 understand the impact of language after enactment?

4           A.       Certainly some would have been involved in  
5 some background discussions. I don't -- I don't recall  
6 exactly what all information might have been presented at  
7 various times.

8           Q.       Did you personally ever participate in any  
9 discussions or negotiations in the Capitol on language  
10 that was in SBC 237, I think?

11          A.       No.

12          Q.       You did not?

13          A.       No.

14          Q.       So you didn't visit the Capitol at all  
15 during the last legislative session, that's the other  
16 three people or --

17          A.       I would say I had some general discussions  
18 with various people. For example, maybe this will help.  
19 I provided an overview of SB 237 when it was filed to the  
20 -- I believe it was the Senate Democrat caucus, like over  
21 lunch. I walked them through, here's what SB 237 has in  
22 it, and talked to that. So that's an example of something  
23 I would have done. I would have also had perhaps just a  
24 couple of general discussions about issues surrounding  
25 SB 237, but I didn't actively work in the Legislature

1 negotiating language or anything like that.

2 Q. So you only gave one presentation, so to  
3 speak?

4 A. Yes.

5 Q. That was to the Senate Democrats?

6 A. Yes.

7 Q. Okay. And then how many times would you  
8 say that you participated in either discussions or  
9 communication of information or in negotiation over  
10 language in the bill?

11 A. I would say very few occurrences. Just  
12 maybe hit and miss conversations with -- Representative  
13 Rex Rector, for example, we sat together one night at a  
14 dinner, so there was general discussion about SB 237 and  
15 competition.

16 Q. Okay. Did you ever answer any questions  
17 about specific language and the impact it would have on  
18 certain exchanges in SBC Missouri's territory? And if you  
19 need clarification on that, I can give you further  
20 clarification on the question.

21 A. I would say perhaps I'm having trouble  
22 recalling anything specific, but it's -- it's certainly  
23 possible that Representative Rector, for example, might  
24 have had questions about different aspects of the law and  
25 what existed today versus what was changing in SB 237.

1     There might have been those. I'm having trouble recalling  
2     a specific question.

3             Q.       Do you ever recall a legislator asking you  
4     whether a certain exchange would fall into one of these  
5     categories, either the 30-day track or the 60-day track to  
6     be found competitive?

7             A.       I don't recall any specific questions about  
8     specific exchanges.

9             Q.       Okay. Are you aware of how many -- how  
10    many individuals that SBC had answering questions,  
11    lobbying, communicating positions, working in the Capitol  
12    during the last legislative session?

13            A.       I could probably provide a general answer  
14    about people that would be involved in various degrees of  
15    communication with legislators. So, for example, we  
16    have --

17            Q.       I guess how many would register as  
18    lobbyists? I mean, I think that's the statutory  
19    guideline. If they're going to take any action in the  
20    Capitol on behalf of SBC, they've got to register. Do you  
21    have any idea how many registered lobbyists were acting on  
22    SBC's behalf? I don't need an exact figure either.

23            A.       I was trying to kind of generally add up in  
24    my head who I think is probably registered.

25            Q.       If you need more time. If you need a

1 calculator, we can get you that, too.

2 A. I think I can do it in my head. I would  
3 guess somewhere in the 12, 13 range.

4 Q. 12 or 13?

5 A. So that would include like individuals like  
6 the ones we've just named, hired consultants to serve as  
7 lobbyists, along with the external affairs managers that  
8 we have.

9 Q. So 12 to 13 includes all SBC employees that  
10 would be acting as lobbyists at the Capitol, as well as  
11 all contract lobbyists that were acting on SBC's behalf?

12 A. Correct. That's what I included in my  
13 count.

14 Q. And those 12 to 13 people would report to  
15 either John Sondag, Kevin Vossen or Madeline Romine (sic)?

16 A. It's Romious.

17 Q. Romious. I'm sorry.

18 A. And yes, that would be correct.

19 Q. Are you aware of whether or not SBC has any  
20 correspondence answering specific questions? And when I  
21 say questions, I'm talking about treatment of exchanges  
22 under the new law compared with the old law as it relates  
23 to competitive classification. If you don't know, you  
24 don't know.

25 A. I recall I believe it was Senator Klindt,

1     though I'm not certain of that now, that may -- when  
2     SB 237 I think was first filed, I believe asked at least  
3     Sprint, CenturyTel and SBC what exchanges would meet the  
4     criteria -- obviously in their view would meet the  
5     criteria that SB 237 had at that point. Subsequent to the  
6     law changing as it worked its way through -- through the  
7     Legislature, I'm not aware of any questions that would get  
8     to exchange-specific material.

9             Q.       So you're not sure or you don't know  
10     whether or not Senator Klindt or -- and I believe  
11     Representative Rector was the house handler?

12            A.       Correct.

13            Q.       Because I'm not sure if he was. I know  
14     he's chairman of the Utilities Committee, but I can't  
15     remember if he handled it.

16                    You do not know whether or not Senator  
17     Klindt or Representative Rector asked for a breakdown by  
18     exchange of the impact of Senate Bill 237 in its latest  
19     draft as it was passed by the General Assembly?

20            A.       I'm not aware of -- I don't recall.  
21     There's a lot of information that gets produced during the  
22     session, and I'm not recalling anything along those lines.

23            Q.       If you were not the person to ask that  
24     question, who would be the person to ask that question?  
25     Would it be Mr. Sondag, Mr. Vossen or Ms. Romious?

1           A.       I would say in general the information that  
2 was -- I'll sort of characterize this as going in and out  
3 of company as it related to legislation -- typically went  
4 through a gentleman by the name of Mike Peterson.

5           Q.       And who is Mike Peterson? He wasn't on my  
6 list, Mr. Unruh.

7           A.       Well, that's because he reports to John  
8 Sondag and not Cindy Brinkley.

9           Q.       Okay. Do you-all have a flowchart of who  
10 reports to who, put it on your website and draw arrows?

11          A.       It's not on the website. We do have an  
12 internal database that provides contact information that  
13 would show, like, for example, who's whose supervisor and  
14 who reports to whom.

15          Q.       Well, was Mike Peterson the top guy on the  
16 ground in the Capitol during the last legislative session?

17          A.       He served the role of coordination of  
18 communication, sort of going into and out of the company  
19 during the session.

20          Q.       So he was the --

21          A.       I wouldn't call him the top person.

22          Q.       Okay. But that person, Mike Peterson,  
23 would be the one who could advise on what information was  
24 provided to legislators on what exchanges on how the  
25 exchanges would be treated under the bill?

1           A.       He would have a better sense of what all  
2 information may or may not have been provided to various  
3 legislators during the session than I would.

4           Q.       Okay. Are you aware of whether SBC  
5 supported the legislation during the process? Did it  
6 oppose it or did it stay neutral?

7           A.       We supported passage of SB 237.

8           Q.       And did SBC provide information to the two  
9 different committees working on the legislation in a  
10 written form, do you know?

11          A.       I -- well, I don't know. We certainly  
12 testified in support of the bill. I don't know what may  
13 have been provided in written form.

14          Q.       Do you know if any of that information  
15 would be similar to the information that SBC has supplied  
16 as part of the filing in this case? Do you know whether  
17 that level of detail was provided to legislators?

18          A.       I would generally say that information  
19 we've provided here was likely not provided to any  
20 legislators.

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

22          A.       I would say it's unlikely that the  
23 information we've provided here would have been provided  
24 to legislators during the session.

25          Q.       Are you aware -- and you may not be

1     aware -- of whether at the hearing process whether an  
2     exchange-by-exchange breakdown was given to the  
3     legislators about what exchanges would be competitively  
4     classified under both the 30 and the 60-day track?

5             A.       I'm -- I did not sit through the hearings,  
6     but I don't know for certain, but possibly.

7             Q.       If you don't know, you don't know. That's  
8     all right. I have a bunch of questions, and if you're not  
9     the guy to ask the questions, that's okay.

10            Do you know whether SBC sought to -- sought  
11   legislation that would allow for classification of all of  
12   its exchanges as competitive?

13            A.       When the -- SBC -- I'm sorry. When SB 237  
14   was originally introduced, the language for obtaining a  
15   competitive classification differed from the language  
16   that's now in the law. That definition that was in the  
17   original version of SB 237, if I recall correctly, just  
18   had one track, not a 30-day track and a 60-day track, and  
19   I believe it was an automatic grant of competitive  
20   classification based on the presence of two or more  
21   competitors generally. And so it would not have required  
22   like the 30-day track, facilities in whole or in part, and  
23   under that criteria, that would.

24            Q.       That would lead you to yes or no?

25            A.       Well, I was trying to put it in the right

1 context. I don't know -- I haven't analyzed all of our  
2 exchanges recently, so I don't know for certain, but that  
3 criteria would probably have allowed us a competitive  
4 classification in virtually all of our exchanges.

5 Q. Even in the Rate Group A --

6 A. Correct.

7 Q. -- exchanges?

8 A. Correct.

9 Q. So it's SBC's position that it's  
10 experiencing some level of competition that would warrant  
11 at some level reclassification as competitive in all of  
12 its exchanges?

13 A. Yes, we have.

14 Q. Is that a yes or no?

15 A. We have -- I'm just trying to make sure I'm  
16 answering your question in the right context. We have two  
17 or more competitors, I believe, in all of our exchanges.  
18 Obviously in this request we've limited it to a subset of  
19 those.

20 Q. Did you -- or do you know if -- I'll not  
21 even ask that.

22 Are you aware of whether SBC made any  
23 representations to legislators regarding protections for  
24 rural exchanges or exchanges that would be considered less  
25 profitable?

1           A.       I'm not aware of any discussion along those  
2 lines.

3           Q.       Do you -- are you aware of whether any  
4 legislators ever inquired about protections for rural  
5 exchanges or exchanges that would be experiencing a lesser  
6 amount of competition?

7           A.       I'm not aware of any specific questions  
8 along those lines.

9           Q.       Are you aware of whether SBC made any  
10 representations to members of the General Assembly that  
11 the only exchanges that would be reclassified as  
12 competitive were those exchanges where a cable company was  
13 offering telecommunications services?

14          A.       I'm not aware of anything along those  
15 lines. It wouldn't be our position that that would be the  
16 only form of competition that we face.

17          Q.       Regarding your testimony earlier about  
18 UNE-P and IP services being offered in the various  
19 exchanges, you referenced a recent Arbitration Order that  
20 this Commission issued. Do you recall that?

21          A.       I do.

22          Q.       And as I recall, that is the successor  
23 agreement to the M2A. Is that a correct way of phrasing  
24 that?

25          A.       Yes, it is.

1           Q.       And in that order -- or excuse me -- in  
2     your testimony you made a reference to this Commission  
3     ordering some continued provisioning of UNE-P services,  
4     and I was wondering if you would describe what that means.

5           A.       In the Commission's order in our M2A  
6     successor arbitration case, the Commission found that  
7     essentially SBC had to continue providing UNE-P to CLECs  
8     for an indefinite period of time, including signing up new  
9     customers under UNE-P arrangements.

10          Q.       Does the Order provide for new customers to  
11     be able to provision any UNE-P service?

12          A.       I believe that it does.

13          Q.       Does the Order allow for new services to be  
14     provided to existing customers?

15          A.       Yes. And the Commission had issued an  
16     earlier order clarifying that that's -- that under the  
17     FCC's order, it included the requirements for SBC to  
18     provide additional services to existing -- to CLECs, the  
19     CLEC's existing customers.

20          Q.       Okay. Now, that Order is on appeal before  
21     the District Court --

22          A.       Correct.

23          Q.       -- right now?

24                    So if the Order stands, if the Court  
25     sustains the Order, and let's assume that it is sustained

1 throughout the process, when does this agreement or this  
2 Order end? What is its end date out in the future?

3 A. There's actually multiple agreements that  
4 came out of that, and they vary. So I think generally  
5 they're three years. A couple of them may be two years.

6 Q. Okay. If the Order is overruled and the  
7 district court sides with SBC on the issue, would UNE-P  
8 still exist in Missouri?

9 A. It would exist for existing customers until  
10 March of 2006, at which time the FCC's order has required  
11 CLECs to use a different method to serve their customers.

12 Q. And SBC, I would assume, would be taking  
13 the position that that March '06 is when UNE-P should end  
14 for existing CLECs provisioning that service?

15 A. Correct. The offering of UNE-P as a  
16 regulated thing at TELRIC prices, yes. Obviously we're  
17 interested in signing commercial agreements.

18 Q. I understand. We're going to get to those.  
19 But if SBC gets its way, then UNE-P ends March of '06?

20 A. Correct.

21 Q. Okay. Is there -- do you have any idea  
22 when the court will make a ruling? Do you know how far  
23 that is in the process?

24 A. I believe it's just getting started. I  
25 don't know specifics, though.

1           Q.       If the Court overrules the Order, would you  
2 agree that UNE-P service then should not be counted under  
3 the statutory criteria for competitive classification  
4 because it will not be available in the future?

5           A.       I think the Commission would need to look  
6 at the evidence that would be presented at that point in  
7 time, presuming that -- let's say we didn't file a new  
8 case and let's say the Court overturned the Commission's  
9 Order and we didn't file a new case until after March of  
10 2006. There wouldn't be any UNE-P to present to the  
11 Commission.

12          Q.       Let me rephrase the question this way.  
13 Let's say that the Court -- we all come into work and we  
14 read in the headlines that the Court overrules the  
15 Commission, issues a final order that's not appealable --  
16 obviously this is a hypothetical -- but says that UNE-P  
17 will in longer be available March of '06. Would you agree  
18 with me that in this case that we should not consider  
19 UNE-P as one of the competitive providers?

20          A.       No, I wouldn't agree with that. I think  
21 the law requires you to look at what exists today and  
22 determine whether or not there's the two competitors  
23 providing service. The law gives the Commission the  
24 ability to review competitive classifications at least  
25 every two years or if the ILEC increases basic local

1 service prices. So the Commission would have the  
2 discretion to relook at competitive classifications, I  
3 guess, whenever it feels like it, but if that were to  
4 become an issue.

5                   So I don't think you can use some  
6 hypothetical forward thing that may occur in the future as  
7 a basis for not granting a competitive classification  
8 today based on the evidence today.

9           Q.       Even if it were a certainty, we should  
10 ignore evidence of something that would potentially affect  
11 the statutory criteria in the near future? If it was a  
12 firm idea of what was going to happen, we should ignore  
13 that?

14                   Do you believe the General Assembly intends  
15 for us to ignore something if we know it is certain? This  
16 assumes a hypothetical, and I understand that.

17           A.       I guess I -- I guess one of the  
18 difficulties I have with it is assuming that UNE-P goes  
19 away doesn't mean the CLEC quits serving their customer.  
20 It simply means they're going to pick an alternative  
21 method of serving their customers.

22           Q.       Or not. They could choose not to serve  
23 their customers.

24           A.       I suppose that's possible. I would be  
25 surprised if the majority of these CLECs choose not to

1 continue to serve customers, but I guess we'll see.  
2 Certainly a number of them have already signed commercial  
3 agreements, and we continue to negotiate with others.

4 Q. Okay. And I'm just referring to UNE-P, and  
5 I don't want to take away from the fact that there may be  
6 or may not be existence of an alternative commercial  
7 agreement. I just want to focus on the UNE-P side of it.

8 So did you say yes or no that we should  
9 ignore that or not ignore that?

10 A. I don't believe you should -- I guess in  
11 that hypothetical, absent evidence that the CLECs were  
12 going to quit providing service tomorrow, I don't think  
13 that should be a consideration.

14 Q. So we should ignore it?

15 A. Well, I think it would be one thing if the  
16 Court had issued an Order yesterday that said tomorrow  
17 literally UNE-P goes away and today all of the CLECs said,  
18 I'm leaving Missouri. Then that's something potentially  
19 that could be examined. But I don't think the unknown  
20 about UNE-P in the future and what those carriers might do  
21 should be a criteria in this case.

22 Q. If there was certainty that one type of  
23 alternative service, specifically UNE-P, were to go away  
24 in the near future, and the Commission had evidence that  
25 that would end, is that possibly something that could be

1 found to be contrary to the public interest in granting  
2 this classification?

3 A. Again, I would argue that's not the case  
4 here, but I can -- I can, I guess, craft a hypothetical.

5 Q. I understand. Hypothetically speaking,  
6 give me a hypothetical.

7 A. I could craft a hypothetical where the only  
8 method of provisioning was UNE-P and --

9 Q. Now, wait a minute. I've crafted the  
10 hypothetical. I don't want you to change the  
11 hypothetical, because I've got it straight in my mind, and  
12 if you change it, you're going to mess me up.

13 A. Sorry.

14 Q. If we're relying solely on a UNE-P provider  
15 or as one of the criteria, and that UNE-P is going to go  
16 away in the near future. Now, there may be the existence  
17 of other commercial agreements, and I don't want to  
18 confuse -- of course, your position is going to be that  
19 there should be a reclassification.

20 What I want to know is if UNE-P is one of  
21 those two providers that's being relied upon, and we know  
22 UNE-P is going away in the future, can that fact be  
23 considered something contrary to the public interest under  
24 this statute?

25 A. I don't think by itself it could be.

1 Q. And why not?

2 A. Well, if it -- because again, I think it  
3 would presume that that also means the CLEC is going away,  
4 and that's not necessarily the case. So if there was  
5 evidence that UNE-P was going away and the CLEC was not  
6 going to provide service, they're just going to leave  
7 Missouri, and that's the only two providers I guess that  
8 you had, then I think that -- I think that's probably  
9 something the Commission could think about.

10 Q. Would it be prudent to wait for a court's  
11 determination before we rely on UNE-P service as one of  
12 the -- one of the various alternative providers in a  
13 particular exchange so that we do have some certainty in  
14 making this decision?

15 A. No, I don't believe so.

16 Q. I was surprised that you answered it that  
17 way. Why do you not think we should wait?

18 A. Well, certainly we've presented evidence of  
19 a number of competitors, not just UNE-P competitors. All  
20 of our exchanges have CLECs with commercial agreements and  
21 wireless carriers, and so there's a variety of types of  
22 competitors. And so waiting on some future unknown event  
23 I don't think is appropriate under the law.

24 We could -- I think the Legislature has  
25 built in mechanisms for the Commission to deal with those

1 sort of future hypothetical events by permitting the  
2 Commission to relook at competitive classifications in the  
3 future.

4 Q. The statute says we can look at those  
5 competitive classifications, what, at least every two  
6 years?

7 A. Correct, or when the ILEC increases basic  
8 local prices.

9 Q. So if the ILEC raises basic local prices,  
10 but only basic local, not non-basic services?

11 A. Correct.

12 Q. Is there any time prohibition of the  
13 Commission looking at a particular exchange? Say, for  
14 example, the District Court says UNE-P is done March 1st  
15 or March 15th, whatever the date. UNE-P goes away, and so  
16 a CLEC no longer provides service in an exchange. Can we  
17 then open up an assessment of that exchange at that time?

18 A. I don't believe there's any restriction.  
19 The statute speaks to the Commission shall at least every  
20 two years, so you have to do it at least every two years.  
21 And then there's no restriction the other way.

22 Q. Did the General Assembly require us to make  
23 that determination within 30 days, 60 days?

24 A. I --

25 Q. I don't want to stump you. I don't think

1 it does, but --

2 A. I don't know. I would presume that it  
3 does, but I guess I haven't thought about that.

4 Q. Let's go to commercial agreements quickly,  
5 because I know we're running up against the noon hour.  
6 Are you aware, are you personally aware of the terms and  
7 conditions of the commercial agreements that are listed in  
8 SBC's filing as one example of competitive service in an  
9 exchange?

10 A. Contracts are really big, and I haven't  
11 read through all of them.

12 Q. In general?

13 A. I would say I can speak generally to the  
14 length of the contract and the pricing of the contract.

15 Q. Okay. Do they generally have termination  
16 dates?

17 A. Yes.

18 Q. Okay. Are the agreements one year, two  
19 year, three year, ten years?

20 A. Tend to be three to seven years. A lot of  
21 them are five. Sage is seven. A few of them I believe  
22 are two.

23 Q. Do those agreements provide for automatic  
24 renewal? Can a CLEC force renewal of a commercial  
25 agreement or is it something that would be subject to

1 renegotiation?

2 A. I don't know.

3 Q. Is there any mechanism in FCC rules,  
4 federal law or state law that requires SBC to enter into a  
5 commercial agreement?

6 A. I would say generally under Section 271 of  
7 the Federal Act, we are still under a requirement to offer  
8 unbundled switching to wholesale customers, and so I  
9 guess --

10 Q. Is that in resale? I don't know if I  
11 understand what that means.

12 A. No, it wouldn't be resale. Our resale  
13 obligations remain. This would be a requirement to offer  
14 unbundled switching but not at TELRIC prices. So it would  
15 be commercially negotiated prices.

16 Q. Okay. Well, does it require -- does  
17 Section 271 or whatever law that you've just referred to  
18 require or order SBC to offer the services at any  
19 particular price?

20 A. No. They're mutually negotiated. It's a  
21 recognition -- by not being an unbundled element under  
22 251, it's a recognition that CLECs are not impaired  
23 without access to SBC's switches. They have their own  
24 switches or they can use other carriers' switches. So  
25 that's a competitive wholesale market, and so we'd be

1 competing with other providers or self provisioning to try  
2 to win that business.

3 Q. Okay. There was -- there were several  
4 cases before the Commission where some of these commercial  
5 agreements were either filed or not filed, and I believe  
6 Sage was the company at issue.

7 A. Correct.

8 Q. And I hope that wasn't an HC thing to say.

9 A. It was not.

10 Q. So Sage is a CLEC competitor in a number of  
11 exchanges --

12 A. Correct.

13 Q. -- with SBC?

14 And Sage was the first CLEC to enter into  
15 one of these newly crafted commercial agreements, once the  
16 FCC or the Court did away with UNE-P?

17 A. That's correct.

18 Q. In negotiating these agreements, what  
19 bargaining position does Sage have in fighting for a  
20 particular price for any number of the elements?

21 A. They can take their business elsewhere.  
22 They can use switches of another carrier or put in their  
23 own switches.

24 Q. Well, in an exchange like say Moberly, for  
25 instance, how many alternative providers would be

1 available to provide switching in that exchange?

2 A. There are a number of carriers who -- who  
3 are involved in trying to provide wholesale services to --  
4 to other carriers. You know, Sprint for example, became  
5 apparent they were providing wholesale switching services  
6 in our 30-day case. Other companies like McLeod and  
7 Level 3 and KMC and XO Communications have all publicly  
8 indicated their willingness to provide wholesale services  
9 to other carriers.

10 Q. How would McLeod offer wholesale service in  
11 an exchange where perhaps they do or don't have  
12 facilities? I don't know where McLeod has facilities, but  
13 how would -- if they have facilities in another exchange,  
14 do they have to transport the call to the switch and then  
15 back? Is that how it would be done in a wholesale manner?

16 A. That's typically how CLECs, they -- it's  
17 much more economical for them to position a switch or a  
18 couple switches in different parts of the state. So maybe  
19 they put a switch in St. Louis and then they use that  
20 switch to serve exchanges throughout the state.

21 Q. How do they transport the call from the  
22 outstate position to their switch and then back?

23 A. They either use their own facilities or the  
24 facilities of another carrier.

25 Q. Would SBC be one of those carriers? Could

1 they use your transiting service --

2 A. Yes.

3 Q. -- or transporting service?

4 I'm not sure how that would be defined.

5 A. Yes. They certainly could use our  
6 unbundled loops to serve that individual exchange.

7 Q. If Sage were to achieve 50 percent market  
8 share in a given exchange and the commercial agreement was  
9 up for renegotiation, why would SBC continue to negotiate?  
10 Why would it want to enter into an agreement if Sage has  
11 taken a significant amount of market share?

12 A. Well, we have a wholesale business whose  
13 job is to generate revenue, and so they're interested in  
14 finding ways of generating wholesale revenue. So I  
15 believe they would still be interested in providing  
16 service to Sage if we could reach a mutually agreeable  
17 price.

18 Q. Have you had an opportunity to review  
19 Staff's supplemental information that was filed -- I think  
20 it's document No. 34 and was filed perhaps yesterday?

21 A. I cannot see the highly confidential  
22 attachments that were filed with it, but I reviewed the --

23 Q. You're not allowed to see the highly  
24 confidential?

25 A. I'm not.

1 Q. Even in your own case?

2 A. I'm not.

3 Q. Okay. How would -- okay. So you're not in  
4 a position to agree with or disagree with the number of  
5 UNE-L, UNE-P or facilities-based lines that may be  
6 operating in a given exchange?

7 A. The only thing I could speak to that I've  
8 seen in their filing was this statement in the  
9 nonproprietary piece that Gravois Mills was an exchange  
10 which appeared to only have one wireline provider. We  
11 submitted evidence that shows there are multiple providers  
12 in that exchange with lines in that exchange. I believe  
13 there were 11 CLECs who have lines in the Gravois --  
14 residential lines in the Gravois Mills exchange.

15 Q. Was that residential or business that  
16 you're referring to?

17 A. For Gravois Mills, it was residential.

18 COMMISSIONER CLAYTON: Okay.

19 QUESTIONS BY CHAIRMAN DAVIS:

20 Q. Mr. Unruh, how are you today?

21 A. Good morning. I'm doing fine, thank you,  
22 Commissioner.

23 Q. I don't have many questions, but I just had  
24 a couple. Have you had an opportunity to review any of  
25 the transcripts from any of the local public hearings last

1 week?

2 A. I've not reviewed the transcripts. There  
3 were a couple of them that I listened to portions of.

4 Q. Which ones did you listen to?

5 A. I heard a portion of the one from Kennett  
6 and portions of the one from Hannibal. I believe that's  
7 it.

8 Q. Are you aware of SBC lobbying local  
9 officials that if your application for competitive  
10 classification were approved, that it would help you to  
11 lower rates in their areas?

12 A. I'm not aware of any conversations along  
13 those lines.

14 Q. So it would surprise you to learn that, I  
15 believe it was the mayor of Excelsior Springs, I forget  
16 his name, had the definite and firm impression, it's my  
17 recollection, that if we approved this, that rates would  
18 be -- he would be able to -- that rates would be lower for  
19 his constituents, but he was not aware that they could  
20 potentially go up? So that would surprise you?

21 A. I did hear the mayor's comments. I can't  
22 speak to what conversations may or may not have occurred  
23 between him and any, I guess, unknown representatives of  
24 SBC Missouri. I would say that the --

25 Q. You don't think anybody would go out there

1 and supplant those thoughts in his brain, do you?

2 A. Well, I would say that the external affairs  
3 manager that we -- that serves that area is certainly  
4 aware of -- generally aware of price cap regulation and  
5 how it's applied and not -- obviously I wasn't present for  
6 any conversations he may have had with the mayor.

7 Q. So you weren't physically present?

8 A. Correct.

9 Q. Did SBC, to your knowledge, prepare any  
10 talking points that went out to the external affairs  
11 managers?

12 A. We did -- we've had numerous conversations  
13 with our external affairs managers about competitive  
14 classifications and what they mean, and there would  
15 probably over the years have been various documents given  
16 to them that would help explain what a competitive  
17 classification is and what it means and what we should say  
18 about it, that sort of thing.

19 Q. Could you provide those documents that have  
20 been prepared and sent out in the last, say -- oh, I don't  
21 know. Let's pick a day. Let's say since May 1st of this  
22 year, could you provide those documents to this body?

23 A. I believe we could, yes.

24 Q. And when do you think would be a reasonable  
25 time frame for us to expect those documents?

1           A.       I guess it might depend on how broad  
2 the request is. If we had to do -- I can think of a  
3 specific --

4           Q.       I'm just asking for any communications  
5 between SBC and your external affairs managers or whoever  
6 these SBC representatives on the ground are concerning the  
7 subject of competitive classification, Senate Bill 237.

8           A.       And I was trying to differentiate  
9 between -- I can think of a --

10          Q.       Or anything reasonably related thereto.

11          A.       Yeah. What I'm not sure about is like an  
12 e-mail search. I don't know what all e-mails may have  
13 gone back and forth between an individual external affairs  
14 manager. That kind of thing might take a little longer.

15          Q.       I'll tell you what, Mr. Unruh, I will  
16 simplify that matter for you. I'm not looking for  
17 individual e-mails, but if there were broadcast e-mails  
18 that went out to -- on a listserv or to groups, I think  
19 from the company to the SBC employees, I think that those  
20 might be pertinent, because -- do you understand how this,  
21 after hearing the testimony last week, that some consumers  
22 out there could have gotten the wrong impression that by  
23 granting competitive classification rates can only go down  
24 and not up?

25          A.       That would not have been our position, and

1 I believe our document that I think is responsive to your  
2 request will reflect that. But we can certainly provide  
3 that.

4 JUDGE RUTH: Before I forget, I just want  
5 to note for the record that that will be marked for  
6 identification purposes as late-filed Exhibit 8, and we'll  
7 talk about that more later.

8 CHAIRMAN DAVIS: That's all right. No  
9 further questions, Judge.

10 JUDGE RUTH: Commissioner Clayton has a few  
11 more questions.

12 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

13 Q. Is that the person that those external  
14 affairs folks report to that you're referring to in  
15 questioning by Chairman Davis, is that -- are those the  
16 same people that supervise the lobbying team that work in  
17 the Legislature?

18 A. No.

19 Q. Who supervises the external affairs staff  
20 that you're talking about that has been out working in the  
21 community?

22 A. Kevin Vossen.

23 Q. Kevin Vossen's one of the four names that  
24 you gave me earlier, right?

25 A. Right. I think your question was, does he

1 supervise the lobbyists?

2 Q. Does the person who supervises the external  
3 affairs folks like Ron Gillette, does that supervisor also  
4 supervise the lobbying team in the Capitol, I guess is  
5 what I was questioning?

6 A. He supervises the external affairs managers  
7 that would also be registered as lobbyists. He does not  
8 oversee the contract lobbyists.

9 Q. So Vossen would not supervise David  
10 Claridge?

11 A. Correct.

12 Q. Someone like that?

13 A. Correct.

14 Q. Is David Claridge the lead, do you know is  
15 he the lead contract lobbyist?

16 A. Yes. That's generally how --

17 Q. He probably thinks so, but from your  
18 perspective.

19 A. That's generally how we organized our  
20 lobbying last year.

21 Q. Okay. And then who did he report to,  
22 Sondag or Romious or Cindy Brinkley?

23 A. Report to? I would say he reported to  
24 Cindy Brinkley. He was in primary --

25 Q. I assume somebody has to supervise him.

1           A.     Primary contact with Mike Peterson.

2           Q.     And Mike Peterson reports to?

3           A.     John Sondag.

4           Q.     Who reports to?

5           A.     Cindy Brinkley.

6           Q.     So communications theoretically would go

7     from David Claridge -- or would all communications from

8     lobbyists go through Claridge to Sondag to Peterson to

9     Brinkley?

10          A.     No, not necessarily.

11          Q.     They could also go directly to Brinkley or

12     directly to Sondag?

13          A.     Yes.

14          Q.     And then Ron Gillette and his activities,

15     people of his level in the company would report to Kevin

16     Vossen?

17          A.     Correct.

18          Q.     Okay. Did you say you know what Sondag's

19     title was or did you not know?

20          A.     I don't know exactly.

21          Q.     Okay. The last set of questions that I

22     wanted to ask you involve the language, unless we find

23     something contrary to the public interest, quote, unquote,

24     and your understanding of what that means.

25                     If this Commission were to receive evidence

1 that there was no market pressure on prices within an  
2 exchange or very little market pressure, would that be an  
3 example of something that we could find as contrary to the  
4 public interest in granting classification?

5 A. No, I don't believe so. I think that was a  
6 concept that we looked at under the definition of  
7 effective competition, and that's no longer a component of  
8 the requirements.

9 Q. Okay.

10 A. Under the new law.

11 Q. If the Commission were to find that there  
12 was an uneven playing field in an exchange where there was  
13 either some impediment to an alternative provider offering  
14 service, whether it be geography or otherwise, and SBC  
15 would retain a dominant position in that exchange, would  
16 that be a factor that this Commission could look at as  
17 possibly being contrary to the public interest?

18 A. I don't believe so. Again, those were  
19 concepts under the definition of effective competition.  
20 It required you to examine, for example, barriers to  
21 entry, and those provisions no longer apply under the new  
22 law.

23 Q. Okay. If the Commission were to find that  
24 an exchange was very rural, that is not the target of many  
25 providers in offering service or does not appear to be

1 very profitable in a business marketing sense, would that  
2 be a factor that the Commission could look at and possibly  
3 consider whether reclassification is contrary to the  
4 public interest?

5 A. No, I don't believe so. Again, I think  
6 those are concepts that the Commission looked at under the  
7 definition of effective competition. That's been removed.  
8 The concept now is are there two providers in that  
9 exchange, and if that answer is yes, subject to the other  
10 criteria of the statute, then I -- then I think you have  
11 to count those. But I think the Legislature afforded some  
12 protection by creating or maintaining the look-back  
13 provisions, so if competition doesn't work out --

14 Q. I understand. You're going well beyond my  
15 question. I just -- an exchange being rural or not being  
16 profitable in that sense, you would not find that as being  
17 one possible example of being contrary to the public  
18 interest under this analysis?

19 A. I don't think so. As long as the carriers  
20 are serving that exchange, then it meets the statutory  
21 criteria.

22 Q. How about if an exchange is increasingly  
23 poor or is poor with little signs of growth and very bad  
24 profitability outlooks to it, would that -- and because of  
25 that it does not appear that much competition would exist

1 in that exchange. Is that -- is that possibly an issue  
2 that we could consider as something contrary to the public  
3 interest in granting reclassification?

4 A. I don't believe so. Again, to the extent  
5 that competitors chose to serve that market, for whatever  
6 reason they chose to serve it, they're serving lines in  
7 that exchange, and so they meet the statutory criteria. I  
8 would remind the Commission that certainly we offer Life  
9 Line service to help lower income individuals maintain  
10 telephone service.

11 Q. Well, since you won't agree with me on any  
12 of those as being possible issues that would cause there  
13 to be a finding of contrary to the public interest, can  
14 you give me an example of what would be something causing  
15 there to be an issue contrary to the public to prevent  
16 reclassification?

17 And I'm not asking you whether it's your  
18 burden to prove the converse, but is there an example that  
19 you could give me?

20 A. It's difficult because, obviously, of our  
21 position, so I haven't sort of spent a lot of time trying  
22 to come up with something. I certainly don't believe  
23 there's been anything presented in this case. I guess  
24 maybe if -- I don't know. Maybe if a -- I'm trying to  
25 make up something.

1                    Say there's only two VOIP providers  
2   presented in a case and there's evidence presented that  
3   say one of the VOIP providers is ignoring the FCC's 911  
4   rules, maybe something like that's something the  
5   Commission could look at.

6            Q.        How about if one of these alternative  
7   providers is only offering service in one part of the town  
8   or one part of the exchange, would that be something that  
9   we could look at as something contrary to the public  
10   interest?

11                    For example, a wireless carrier that only  
12   offers service on the interstate highway that runs through  
13   the town and offers no other service beyond the five miles  
14   around or two miles, whatever the range is, of the  
15   interstate highway and that wireless carrier is being used  
16   as one of the competing providers, would that be an  
17   example where we could make a finding of something  
18   contrary to the public interest?

19            A.        Of course, we haven't presented there's  
20   evidence in this case of there only being two providers  
21   and one of them being a wireless carrier with limited  
22   service.

23            Q.        I just offer that as an example.

24            A.        Hypothetically, I think from a wireless  
25   perspective, I read the statute to require the counting of

1 a wireless provider as long as they're providing service  
2 in the exchange. The law doesn't speak to providing  
3 service throughout the whole exchange or anything like  
4 that. So I don't think that by itself would be a criteria  
5 the Commission could review.

6 Q. How about if a CLEC is not holding itself  
7 out to all businesses in an exchange with regard to  
8 business reclassification and only wants to pick out  
9 certain businesses, would that be an example of something  
10 we could look at being contrary to the public interest to  
11 grant reclassification?

12 A. I don't think so. The law speaks to  
13 providing service to business customers, so it doesn't  
14 require any stratification, if you will, of business  
15 segment in any fashion.

16 Q. What do you think the General Assembly  
17 meant by including that language?

18 A. When you say that language, just --

19 Q. The unless it is contrary to the public  
20 interest. And I'll read it back, exact language, if you  
21 need it. The Commission shall approve such petition  
22 within 60 days unless it finds that such competitive  
23 classification is contrary to the public interest.

24 Why do you think the Legislature included  
25 that language?

1           A.       My impression of that is that the  
2     Legislature decided to set up two tracks. I believe the  
3     Legislature made clear it wants to move into a competitive  
4     marketplace, and it wants to escalate the pace at which  
5     we're moving into a competitive marketplace, so it created  
6     the two different tracks, the 30-day where it's a more  
7     limited type of competition, but it's automatic.

8                   And then I think they recognize that  
9     there's a broader set of competition that exists, and it  
10    wanted the Commission to also look at that broader type of  
11    competition. But it also wanted to provide kind of a fail  
12    safe, if you will, that would allow the Commission to hear  
13    evidence from some party to suggest that or finding that  
14    the specific request was contrary to public interest. So  
15    it didn't make it automatic, like the 30-day, because it  
16    wanted the Commission to review the broad set of  
17    competition, but also to have some discretion over public  
18    interest.

19           Q.       So the Commission does have some discretion  
20    on the 60-day track?

21           A.       I think it has discretion on -- it would be  
22    subject to the criteria of being two or more providers,  
23    the Commission would have discretion about making sure  
24    that two or more providers met the specified criteria like  
25    one wireless carrier, no prepaids, those criteria that are

1 spelled out in the law, and then it allows for parties to  
2 present evidence to you that a specific request is  
3 contrary to the public interest.

4 Q. Did the General Assembly define contrary to  
5 the public interest in the -- in Senate Bill 237?

6 A. Not that I'm aware of.

7 Q. Is it defined anywhere else in statute or  
8 in FCC rules or federal statute that you're aware of?

9 A. Not that I'm aware of.

10 Q. Okay. Do you believe that the General  
11 Assembly gave the Public Service Commission the discretion  
12 to define what contrary to the public interest means?

13 A. Within parameters. I believe the  
14 Commission's directed by the law. You know, there are  
15 certain things that it -- that it can't say -- getting  
16 some double negatives here. There's certain things it's  
17 not permitted to say are contrary to the public interest  
18 because the law specifically allows them.

19 For example, the law requires in our view  
20 the Commission to include competitors who are using an  
21 ILEC's facilities, for example, and so I don't believe the  
22 Commission can say, well, we can't count them and that's  
23 contrary to the public interest to count them. So there  
24 are parameters that I don't believe the Commission can  
25 say, we're using these parameters because the law

1 precludes that.

2                   Beyond that, though, the Commission would  
3 have discretion about defining, I guess, what would be  
4 contrary to the public interest.

5           Q.       I can't remember my question.

6           A.       You were -- it was a question about --

7           Q.       Was it a yes or no answer?

8           A.       Well, I think it's yes to a degree, but not  
9 completely. You have parameters that restrict your  
10 ability to define conflict of interest.

11          Q.       So if you had a -- hypothetical question.  
12 If you had an exchange where you had say two providers,  
13 you had a wireless provider that met the criteria and then  
14 you had a VOIP provider was the second and that was it,  
15 and the VOIP provider, they're there but they're not  
16 offering 911 service or some problem with that, even  
17 though the prima facie showing is there, we could still  
18 find that there's a public interest problem with granting  
19 that classification if those are the only two providers in  
20 an exchange?

21          A.       It's difficult for me to answer that  
22 because we haven't -- we don't face that situation here,  
23 and so --

24          Q.       That's why it's a hypothetical.

25          A.       Yeah. I just -- you know, I think from a

1 Commission perspective, I would suggest you not box  
2 yourself in with trying to figure out what is or is not.

3 Q. What our discretion is? We shouldn't  
4 figure out what our power is here and what our discretion  
5 is --

6 A. Well --

7 Q. -- in this case?

8 A. I would suggest that you not want to box  
9 yourself in because you don't know what the future holds  
10 in terms of what you might or might not want to review in  
11 the future. I guess my cautionary advice would be to not  
12 try to define that here.

13 Q. When would it be -- would we have to define  
14 it in this case to meet the statutory requirement, what  
15 the General Assembly -- they required us to assess whether  
16 something is contrary to the public interest, have they  
17 not?

18 A. I'm going to sound like an attorney here,  
19 but couldn't your finding simply be that there's been no  
20 substantial or competent evidence presented to make a  
21 finding that it is contrary to the public interest?

22 Q. Well, I understand that's how the Order  
23 would read. What happens if there is a showing during  
24 this -- during this hearing of something that is contrary?  
25 It may not meet your definition. What happens to some of

1   these examples that I threw out, what happens if a  
2   majority of the Commission finds that one of those may  
3   meet that definition? Don't we have to make that  
4   determination?

5           A.     Well, certainly in that case you would make  
6   a determination that whatever that thing was, that was  
7   presented, that the majority agreed was a sufficient  
8   reason to find that it was contrary to public interest,  
9   yes, you would -- I would presume you would have to define  
10  that, to state that reason in your --

11          Q.     I would go even further to say that it's  
12  the Commission's charge to, as it was suggested in opening  
13  statements, to investigate and make these determinations.  
14  And that would include that last sentence in that section  
15  regarding contrary to the public interest. Would you  
16  agree with that?

17          A.     I believe you do have to examine whether or  
18  not something's been presented that's contrary to the  
19  public interest. I was suggesting you shouldn't try to  
20  create a litany of here's all the things that we can look  
21  at to find that it's contrary to the public interest.

22                   COMMISSIONER CLAYTON: Okay. Thank you.

23                   JUDGE RUTH: Okay. We are going to go off  
24  the record, take a break for lunch. It's almost 12:30.  
25  We will break until 1:30, and when we come back,

1 Mr. Unruh, there will be more questions for you. Thank  
2 you. We're off the record.

3 (A BREAK WAS TAKEN.)

4 JUDGE RUTH: We are back on the record  
5 after a lunch break.

6 QUESTIONS BY JUDGE RUTH:

7 Q. Mr. Unruh, I had a question or two for you  
8 that actually involve your HC Schedules 2 and 3, but I  
9 don't think my question and possibly even my answer will  
10 be HC. I'm just asking as to, it would be Schedule 3,  
11 Revised Schedule 3, page 7, the Farley exchange. It looks  
12 to me like the source of data was left off for that entry.  
13 Is that correct? Are you following where I'm at?

14 A. Well, I'm not sure. Which schedule?

15 Q. I have it's Revised Unruh Schedule 3HC. It  
16 is attached to your rebuttal testimony.

17 A. Uh-huh.

18 Q. And I am looking actually at page 7 of 11.

19 A. Oh, you probably printed -- I'll find it.

20 Q. Did I print it wrong?

21 A. Our page numbers didn't match. There were  
22 two different exhibits, and you may have printed both  
23 together.

24 Q. I'm looking at the Farley exchange, and I  
25 wasn't going to name any competitors. I was just looking

1 at the source of data. My chart doesn't have anything  
2 there.

3 A. Neither does mine. It should reflect for  
4 the carriers listed in both the CLECs with commercial  
5 agreements and the CLECs with UNE-P that our billing  
6 records were -- well, I guess it is under UNE-P. Under  
7 the commercial -- CLECs with commercial arrangements, the  
8 source of data should be billing records.

9 Q. Okay. And I assume it's the same on a  
10 couple others, but I'm going to check. Same exhibit, what  
11 I have as page 10 of 11, it's the San Antonio exchange, I  
12 have a blank for source of data.

13 A. That would also be billing records.

14 Q. You see, I was here late last night  
15 transferring all your data to -- combining into one chart,  
16 and that's why I know there's all these -- a few holes.  
17 On Sikeston, source of data, same thing?

18 A. Yes, that would be correct.

19 Q. See, my questions were easy. Now I'm going  
20 to Commissioner Gaw's questions. I think you've touched  
21 on some of this earlier, and I expect your answer will  
22 probably require us to go into HC. Commissioner Gaw would  
23 like to have you provide some additional information,  
24 whether it's now or as a late-filed exhibit, regarding  
25 what studies SBC has done for each of these exchanges that

1 are at issue now to show what market share you have lost  
2 or gained for residential and business for each of those  
3 exchanges. Are you following the question?

4 A. I am, and I do not have that information  
5 with me.

6 Q. Would you be able to file that as  
7 late-filed Exhibit No. 9?

8 A. It would have limitations in that we're not  
9 really able to accurately identify market share. We can  
10 identify CLEC lines and use that to estimate a market  
11 share, line-based market share for traditional service,  
12 but we don't have information on voice over IP providers  
13 or wireless carriers.

14 Q. I think what Commissioner Gaw would like  
15 you to do is, in a late-filed exhibit, state what you just  
16 did, mention that there are limitations to the data that  
17 you're providing, but based on the information you have,  
18 provide that for him. And he said he was really looking  
19 back just for the past two or three years to compare what  
20 your market share has done. If you only have it back for  
21 a year, then that's what you provide.

22 But do you understand what type of  
23 information he's looking for?

24 A. Yes, I do.

25 Q. Okay. Then I'm going to mark that as post-

1 hearing Exhibit No. 9, and that would be an exhibit  
2 provided by SBC in response to a question from  
3 Commissioner Gaw by way of me regarding market share.

4 We will discuss at the end of the hearing  
5 some of the deadlines for these late-filed exhibits, but I  
6 would anticipate that the Commission would like to have  
7 that no later than the 18th. If the 18th's not possible,  
8 Staff is providing some additional information on the 19th  
9 and we can talk about if you need that extra day.

10 But since I get to incorporate whatever the  
11 Commissioners want in their Order, I also want it sooner  
12 than later. But I'll let you think about those deadlines  
13 and we'll talk about that at the end of the hearing.

14 JUDGE RUTH: That concludes my questions,  
15 Commissioner Gaw's questions. We're waiting for a couple  
16 of the other Commissioners. I'd like to go off the record  
17 for about two minutes. I'll ask that you stay in the  
18 room. I'm just going to check and see if we should move  
19 on or wait for more Commissioner questions.

20 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

21 JUDGE RUTH: We're going to move on to  
22 recross based on questions from the Bench. However, it is  
23 possible that we will later need to recall Mr. Unruh for  
24 some additional questions from the Bench.

25 But at this time, Staff, are you ready for

1 recross?

2 MR. HAAS: Yes, your Honor.

3 RE CROSS-EXAMINATION BY MR. HAAS:

4 Q. Mr. Unruh, I'm going to begin by asking a  
5 few questions about the Rate Group A exchanges that you  
6 discussed with Commissioner Clayton. In the two effective  
7 competition cases, SBC asked for competitive  
8 classification for all exchanges; is that correct?

9 A. That's correct.

10 Q. And that would have included the Rate  
11 Group A exchanges?

12 A. That's correct.

13 Q. And I believe you testified that you had --  
14 that SBC has two or more competitors in all of its  
15 exchanges; is that correct?

16 A. I believe that to be the case, although I  
17 haven't analyzed recent data to confirm that for  
18 100 percent of the exchanges. But generally, historically  
19 that has been the case.

20 Q. So then generally, under your understanding  
21 of the historical facts, would Rate Group A exchanges  
22 qualify for competitive classification under SBC's  
23 interpretation of the 60-day track?

24 A. Yes, I believe they would.

25 Q. Why didn't SBC ask for a competitive

1 classification of Rate Group A exchanges in this case?

2 A. At this point in time, we've chosen to  
3 focus on our metropolitan areas and our larger outstate  
4 communities for seeking a competitive classification and  
5 decided to limit our case to that.

6 Q. I believe you testified that the  
7 Gravois Mills exchange has 11 CLECs; is that correct?

8 A. That is correct.

9 Q. Are those CLECs each providing service in  
10 the Gravois Mills exchange?

11 A. Yes, they are.

12 Q. Do those CLECs each have two or more  
13 customers?

14 A. I don't know that for certain, although  
15 there's -- obviously having 11 CLECs for residential  
16 customers, they would be serving multiple customers.

17 Q. How do you know that each of these 11 CLECs  
18 is providing service in the Gravois Mills exchange?

19 A. Because those 11 CLECs that I've identified  
20 either have UNE-P arrangements with SBC Missouri or have a  
21 commercial agreement for a local wholesale complete voice  
22 service with SBC Missouri.

23 Q. But how does having an agreement or a UNE-P  
24 arrangement translate into serving customers in an  
25 exchange?

1           A.       They are -- they have active lines that  
2 we're billing them for.

3           Q.       In response to a question from Commissioner  
4 Clayton, you answered that SBC would maintain Life Line.  
5 Please explain what Life Line is first.

6           A.       Life Line is a federal and state program  
7 that provides discounted basic local service prices for  
8 low-income customers under certain criteria.

9           Q.       And please explain what you mean that Life  
10 Line would be maintained in an exchange that received  
11 competitive classification.

12          A.       Just for clarification, I did -- I believe  
13 I said that we offer Life Line. I have no reason to  
14 believe why we would -- why we would change that. We  
15 recently worked with the Commission to enhance Life Line  
16 service under a state funding mechanism to give customers  
17 an even bigger discount on Life Line service. So I see no  
18 reason why that will change in the future.

19          Q.       Is Life Line a percentage discount, a fixed  
20 dollar discount? Does it set a rate?

21          A.       The funding for Life Line, companies like  
22 SBC Missouri sell the service to the Life Line customer at  
23 a discounted price. There's a certain amount of discount  
24 that is then funded by either federal and/or state funds  
25 to give back to the provider of that Life Line customer.

1                   Those funds are based on certain discounts  
2 to the retail price. But there's no requirement that the  
3 Life Line price itself be fixed at that discount level.  
4 So, for example, if we wanted to offer a lower Life Line  
5 price than what the discounts call for, we could do that.

6           Q.       I want to present you with a hypothetical  
7 question, and let us assume that an SBC customer,  
8 residential customer, today pays \$10 for basic local  
9 service and that that customer qualifies for Life Line, so  
10 they get a \$3.50 discount, so they pay \$6.50.

11                   I want you to then assume that that  
12 exchange is granted competitive classification, and that  
13 the basic local rate is increased to \$12. How much would  
14 that customer pay using my example? Is it still the 6.50  
15 or is it 3.50 off of the new rate?

16           A.       Actually, to clarify, the discounts are  
17 much bigger than 3.50. They're upwards of \$12. So Life  
18 Line customers are practically getting free service. So  
19 it would be bigger than 3.50.

20                   In your example, the funding base would  
21 stay -- let's say it's -- on the \$10 example, it's really  
22 \$9 in funding. The funding would stay \$9, but the price,  
23 the Life Line price wouldn't have to go up from in this  
24 case \$1 to \$3. So your example was the basic price goes  
25 from 10 to 12. The funding is 9. So that takes it down

1 to 3, but SBC Missouri would be free to leave that Life  
2 Line price at \$1. We wouldn't be forced to raise it to  
3 \$3.

4 Q. Are you saying that SBC Missouri would  
5 leave it at a \$1 rate?

6 A. I don't know what the future holds, so I  
7 can't speak to that.

8 MR. HAAS: Thank you. That's all the  
9 questions I had.

10 JUDGE RUTH: Excuse me. Public Counsel?

11 MR. DANDINO: No questions.

12 JUDGE RUTH: Redirect? Just a moment,  
13 please. I'm sorry.

14 I apologize, Mr. Lane. Go ahead.

15 MR. LANE: No problem. I just have a few  
16 questions.

17 REDIRECT EXAMINATION BY MR. LANE:

18 Q. First you were asked some questions by  
19 Mr. Haas on behalf of the Staff concerning DSL service,  
20 and I wanted to clarify with you. To the extent that SBC  
21 Missouri is relying upon VOIP providers, is SBC Missouri  
22 relying on the availability of DSL service in connection  
23 with that?

24 A. No, we're not. We only looked at where  
25 cable modem service or high-speed Internet service is

1 available from a cable provider, and we looked at those  
2 areas and looked at whether or not VOIP providers operated  
3 in those areas.

4 Q. So whether or not SBC Missouri has DSL  
5 available everywhere or whether or not it offers DSL  
6 service without basic local service would have no impact  
7 on any of the information that you have presented to the  
8 Commission in justification for competitive  
9 classification; is that correct?

10 A. That is correct.

11 Q. You were asked several questions by  
12 Mr. Dandino on behalf of the Office of the Public Counsel  
13 concerning the number of competitors in the exchanges and  
14 the number of lines served by those -- customers served by  
15 those companies.

16 Is it your position that a company has to  
17 be serving two or more customers in order to be counted as  
18 a company providing basic local service in an exchange?

19 A. I think the fact that there's two carriers  
20 providing service to customers shows that there is two or  
21 more customers in the exchange.

22 Q. If you had an exchange where there were two  
23 providers, each of which were serving one customer in the  
24 exchange, is it your view that that would qualify under  
25 the statute?

1           A.       Yes.

2           Q.       And do you say that because the statute  
3 doesn't specifically require each entity to be serving  
4 multiple customers but simply requires the entities in  
5 combination to be serving multiple customers?

6           A.       That's correct.

7           Q.       You were asked some questions by  
8 Commissioner Clayton concerning information that was  
9 provided to the Legislature in connection with the  
10 discussion of Senate Bill 237. Do you recall that  
11 generally?

12          A.       I do.

13          Q.       And one of the questions you were asked was  
14 whether the information you provided here was presented to  
15 the Legislature, and you said it was not likely, as I  
16 recall. Do you recall that?

17          A.       I do.

18          Q.       And when you gave that answer to the  
19 question, were you referring specifically to the HC type  
20 of information that was presented here?

21          A.       That's correct.

22          Q.       Other information concerning general  
23 competitive status may have been provided to the  
24 Legislature?

25          A.       Yes, that's correct.

1           Q.       You were also asked some questions by  
2 Commissioner Clayton concerning commercial agreements that  
3 went to what standard might apply in terms of setting the  
4 prices under Section 271 of the Act. Do you recall those?

5           A.       I do.

6           Q.       And were -- is there some -- a standard  
7 that the FCC has set for what prices must be for  
8 Section 271 purposes?

9           A.       There is. The Commission has found that  
10 those prices need to be just and reasonable as defined in  
11 the Federal Telecom Act.

12          Q.       That would be under Sections 201 and 202 of  
13 the Federal Telecommunications Act?

14          A.       That's correct.

15          Q.       And so if there was disagreement between  
16 SBC and a company seeking a commercial arrangement about a  
17 price, would the FCC have the authority in that case to  
18 determine whether -- to determine and set a just and  
19 reasonable price using the standards of Section 201 and  
20 202 of the Federal Act?

21          A.       Yes, I think they would.

22          Q.       You were also asked several questions by  
23 Commissioner Clayton concerning UNE-P and whether it  
24 should or should not be counted in terms of analyzing the  
25 exchanges at issue in this case. Do you recall that

1 generally?

2 A. I do.

3 Q. And is it your view that SBC Missouri would  
4 qualify for competitive classification in each of the  
5 exchanges requested even if UNE-P were not counted at all?

6 A. Yes, it would.

7 Q. And would you explain that answer?

8 A. We have multiple competitors that both use  
9 commercial agreements along with wireless carriers and in  
10 many cases VOIP providers. So in all exchanges, even if  
11 you excluded the UNE-P providers, you would have two or  
12 more providers remaining in that exchange.

13 MR. LANE: Okay. That is all I have.

14 Thank you, Mr. Unruh.

15 JUDGE RUTH: Mr. Unruh, you may step down,  
16 but at this time you're not excused. Thank you.

17 Staff, would you like to call your witness  
18 now?

19 MR. HAAS: Staff calls John Van Eschen.

20 (Witness sworn.)

21 JUDGE RUTH: Thank you. You may proceed,  
22 Mr. Haas.

23 JOHN VAN ESCHEN testified as follows:

24 DIRECT EXAMINATION BY MR. HAAS:

25 Q. Mr. Van Eschen, please state your full

1 name.

2 A. My name is John Van Eschen.

3 Q. Where are you employed?

4 A. I'm employed as the manager of the  
5 telecommunications department of the Missouri Public  
6 Service Commission Staff.

7 Q. And are you the John Van Eschen who  
8 prepared the amended direct testimony that's been marked  
9 Exhibit 5 in this case, as well as the rebuttal testimony  
10 that's been marked as Exhibit 6 in this case?

11 A. Yes, I am.

12 Q. Do you have any additions or corrections to  
13 make to Exhibit 5, the amended direct testimony?

14 A. No, I do not.

15 Q. Do you have any additions or corrections to  
16 make to Exhibit 6, the rebuttal testimony?

17 A. Yes, I do. There are two revisions. One  
18 is on my affidavit, the signature line for some reason did  
19 not print out my full name, and I'd like it to reflect my  
20 full name, John Van Eschen.

21 Q. And did you have other changes?

22 A. Yes. Page 10, line 7, after the word  
23 Joplin, I'd like to insert and Sikeston. Also, on line 9  
24 on page 10, after Cedar Hill, I would like to insert the  
25 word Chaffee, C-h-a-f-f-e-e, comma, and after the word

1 Farley, I'd like to insert the name Linn, L-i-n-n, comma,  
2 and after Moberly, I would like to insert Montgomery City,  
3 comma. And that's the extent of my revisions.

4 Q. Mr. Van Eschen, why are you adding Sikeston  
5 exchange to the list of exchanges for residential service?

6 A. I looked at the rebuttal testimony of  
7 Southwestern Bell witness Mr. Unruh and found that that  
8 evidence was sufficient to grant competitive status to  
9 Sikeston.

10 Q. And why are you adding the exchanges of  
11 Chaffee, Linn and Montgomery City to the list of exchanges  
12 for business services?

13 A. These are also exchanges that I had  
14 previously cited as meeting my criteria for competitive  
15 status. There was an issue of whether Southwestern Bell  
16 specifically is requesting competitive status for these  
17 exchanges, and it is my understanding that they have since  
18 formally requested competitive status for these exchanges.

19 Q. Mr. Van Eschen, if I were to ask you the  
20 questions that are posed in Exhibits 5 and 6, would your  
21 answers today be the same as the answers that are given in  
22 the written testimony plus those changes that you've given  
23 us just now?

24 A. Yes.

25 Q. And are those answers true to the best of

1 your knowledge, information and belief?

2 A. Yes.

3 MR. HAAS: Your Honor, at this time I move  
4 for the admission of Exhibit 5, the amended direct  
5 testimony of John Van Eschen, and Exhibit 6, the rebuttal  
6 testimony of John Van Eschen.

7 JUDGE RUTH: Thank you. Exhibit 5,  
8 Mr. Van Eschen's amended direct testimony, and Exhibit 6,  
9 his rebuttal testimony, have been offered into the record.  
10 Are there any objections to this being -- both of these  
11 documents being received, Public Counsel?

12 MR. DANDINO: No objection.

13 JUDGE RUTH: And SBC?

14 MR. LANE: No objection, your Honor.

15 MR. HAAS: Your Honor, I tender the witness  
16 for cross-examination.

17 JUDGE RUTH: And I'll just note for the  
18 record that Exhibits 5 and 6 are received into the record.

19 (EXHIBIT NOS. 5 AND 6 WERE RECEIVED INTO  
20 EVIDENCE.)

21 JUDGE RUTH: And I apologize for doing  
22 this, but can you restate again for my benefit -- I'm  
23 trying to take some notes here -- which exchanges you're  
24 changing your recommendation on?

25 THE WITNESS: I'm adding exchanges. So on

1 line 7, it should read -- well, I'll just read the entire  
2 answer. Yes. I recommend competitive status be granted  
3 to the following exchange for residential service: Joplin  
4 and Sikeston. In addition, I recommend competitive status  
5 be granted to the following exchanges for business  
6 services: Archie, Ash Grove, Billings, Boonville,  
7 Carthage, Cedar Hill, Chaffee, Farley, Linn, Marshall,  
8 Mexico, Moberly, Montgomery City, St. Clair and Union.

9 JUDGE RUTH: Thank you. You may proceed,  
10 Mr. Lane.

11 MR. LANE: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. LANE:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Let me start first with the areas of  
16 agreement between Staff and SBC Missouri. First, it's  
17 fair to say that Staff recommends that competitive  
18 classification be granted for business services in 15  
19 exchanges, correct?

20 A. Yes.

21 Q. And those are listed on page 13 of your  
22 amended direct as well as on page 10 of your rebuttal,  
23 correct?

24 A. Yes.

25 Q. Staff also recommends that competitive

1 classification be granted for residential services in the  
2 Joplin and Sikeston exchanges, correct?

3 A. Correct.

4 Q. Now, for these 17 exchanges, is it fair to  
5 say that Staff recommends approval because these exchanges  
6 meet the standard for competitive classification under the  
7 30-day track?

8 A. I would say that's correct.

9 Q. And do they also meet the standards under  
10 the 60-day track?

11 A. Yes. I'll say that they meet that for the  
12 60-day track, yes.

13 Q. And for, I think, 16 of those exchanges,  
14 excluding Sikeston -- excuse me -- excluding, yes,  
15 Sikeston, those were exchanges that the Staff had looked  
16 at in Case No. TO-2006-0093, correct?

17 A. Correct.

18 Q. And found that they met the 30-day standard  
19 but didn't recommend approval because they hadn't been  
20 specifically requested at that point by SBC Missouri,  
21 right?

22 A. That's correct.

23 Q. Let me address first, then, the issue of  
24 residential services in the exchange of Agency. Staff  
25 found that this exchange met the standard under the 30-day

1 track, correct?

2 A. Yes.

3 Q. And have you identified in your testimony  
4 which companies you determined were providing service  
5 using their own facilities in whole or in part?

6 A. I believe Agency, it was St. Joe  
7 Cablevision.

8 Q. And with regard to Agency, Staff didn't  
9 recommend competitive classification because SBC hadn't  
10 specifically identified that exchange in its petition,  
11 right?

12 A. That's correct.

13 Q. But you're aware that SBC had requested in  
14 paragraph 21 of its petition that competitive  
15 classification be granted based on -- in exchanges where  
16 the information was available to the Commission but not to  
17 SBC Missouri, right?

18 A. I'm aware that Southwestern Bell requested  
19 that, yes.

20 Q. Okay. And the information concerning  
21 St. Joe Cablevision, did that come based upon your  
22 investigation through St. Joe Cablevision and Sprint?

23 A. That is correct.

24 Q. If the Commission disagrees with Staff's  
25 position that Agency shouldn't be considered in this case

1 because it wasn't specifically requested by SBC Missouri,  
2 would it be your recommendation, then, that the Commission  
3 grant competitive classification because Agency does meet  
4 the statutory criteria?

5 A. In my opinion, yeah, they meet the  
6 competitive criteria. If the Commission decides that they  
7 desire to grant competitive classification, that's clearly  
8 their discretion.

9 Q. And is your recommendation based upon the  
10 Agency exchange meeting the statutory criteria under the  
11 30-day track?

12 A. Yes.

13 Q. And in your view, does it also meet the  
14 statutory criteria for the 60-day track?

15 A. Yes.

16 Q. I want to shift over to the rest of the  
17 exchanges that are at issue here. Is it Staff's position  
18 that competitive classification should not be granted in  
19 these exchanges because to do so would be contrary to the  
20 public interest?

21 A. In the exchanges that I'm not recommending,  
22 yes.

23 Q. It's fair to say that, setting aside  
24 Gravois Mills for a minute, that Staff concurs that there  
25 are two or more entities providing basic business service

1 in each of the exchanges where SBC Missouri has requested  
2 competitive classification, right?

3 A. I think in the filing we made yesterday,  
4 yes, it shows that there are other providers providing  
5 local voice service in those exchanges, yes.

6 Q. And Gravois Mills, that's for residential  
7 service, right?

8 A. That's correct.

9 Q. And so with regard to each of the exchanges  
10 where SBC Missouri has requested classification as  
11 competitive for business services, the requirement that  
12 two or more providers be operating is in Staff's view  
13 satisfied in all of those exchanges?

14 A. You're talking about under the 60-day?

15 Q. Yes, that there's two or more -- I'm trying  
16 to separate out the public interest analysis for a minute  
17 and just get you to agree that there are two providers  
18 providing business services in each of the exchanges that  
19 we requested.

20 A. I will say that there's two -- there's two  
21 entities providing -- at least two entities providing  
22 service. However, I don't know if that by itself is  
23 sufficient to grant competitive status.

24 Q. All right. And the same is true in the 51  
25 exchanges where SBC Missouri has requested competitive

1 classification for residential services, there's at least  
2 two entities providing service in those areas, right?

3 A. Yes.

4 Q. And with respect to Gravois Mills, is it  
5 fair to say that a possible difference between the  
6 information that Staff collected based on annual reports  
7 and the information that SBC Missouri presented is based  
8 upon a time difference that SBC Missouri has more recent  
9 information?

10 A. It's possible. I really haven't thoroughly  
11 researched the situation in that particular exchange.

12 Q. If SBC Missouri's testimony is that it's  
13 actually providing service to those companies in those  
14 exchanges under UNE-P or commercial arrangements, you  
15 don't have any reason to dispute the accuracy of that, do  
16 you?

17 A. I don't know. And I say that, I don't know  
18 if those companies are actually providing local voice  
19 service in those exchanges.

20 Q. Okay. SBC Missouri's testimony is that it  
21 is actually providing service to those companies in those  
22 exchanges based upon its billing records for UNE-P and for  
23 commercial agreements. Is it fair to say that you haven't  
24 presented any evidence that shows that that's not true?

25 A. We haven't seen anything in our records

1     that indicate that they are providing local voice service  
2     in those exchanges.

3             Q.       Maybe I'm not being clear on my question.  
4     Your information is based on annual reports as of  
5     December 31st of 2004, correct?

6             A.       That is correct.

7             Q.       And you didn't go and ask those ten  
8     additional companies identified by SBC Missouri whether  
9     they were providing services in the Gravois Mills  
10    exchange, right?

11            A.       No, we did not.

12            Q.       And would you agree with me that SBC  
13    Missouri is in a good position to know whether it's  
14    actually billing CLECs for providing services to them in  
15    the Gravois Mills exchange?

16            A.       Perhaps. I don't know if there are  
17    situations -- and I'm speaking about business customers --  
18    if they're providing -- if those customers served by those  
19    CLECs are solely providing data-type services to their  
20    customers.

21            Q.       All right. My question is, would you agree  
22    with me that there's nobody that knows better than SBC  
23    whether or not it's billing those CLECs for providing  
24    services to those customers in Gravois Mills?

25            A.       I guess my preference would be to talk to

1 those CLECs and find out exactly what they're doing.

2 Q. Right. I'm not asking your preference,  
3 though. I'm trying to get you to agree that we've  
4 presented information to the Commission that shows those  
5 companies are providing service in that exchange and that  
6 Staff hasn't shown that that's not true, they simply  
7 haven't verified it. Is that a fair statement?

8 A. That's true.

9 Q. Now, one of your answers interests me, and  
10 I need to follow up on it. You indicated that the fact  
11 that two or more providers were operating in an exchange  
12 wasn't necessarily sufficient for competitive  
13 classification to be granted.

14 Is there something besides the public  
15 interest analysis that needs to be considered in that  
16 context?

17 A. I guess there may be a disagreement of  
18 whether it actually requires two entities or simply one  
19 entity, and I don't know if it makes a significant  
20 difference in this proceeding or not. I know when I look  
21 at Section 392.245, subpart 6, it talks about any  
22 incumbent local exchange company may petition the  
23 Commission for competitive classification within an  
24 exchange based on competition from any entity providing  
25 local voice service.

1                   When I read that -- and again, I'd have to  
2     defer to my legal counsel. I don't know if that's just  
3     looking for one entity or two entities or not. I don't  
4     know. But I think that the Commission in its  
5     deliberations needs to consider the competition that's  
6     being generated by the entity.

7                   Q.     All right. So it's either -- in your view,  
8     the criteria is either one or perhaps two entities  
9     providing service in the exchange and competitive  
10    classification not being contrary to the public interest,  
11    right?

12                  A.     That's correct, and the competition that's  
13    generated by that entity.

14                  Q.     Is that part of the public interest  
15    analysis?

16                  A.     In my opinion, it is, yes.

17                  Q.     So in order to make it clear, from your  
18    perspective, we've satisfied the first prong of the test  
19    in that there's either one or two providers offering  
20    business or residential services in each of the exchanges  
21    where we've requested competitive classification, right?

22                  A.     Yes.

23                  Q.     And the issue then is whether grant of  
24    competitive classification is contrary to the public  
25    interest, right?

1           A.       That's correct.

2           Q.       How did you define public interest for  
3 purposes of this case?

4           A.       I guess in my view I viewed the public  
5 interest is as to whether they would view these entities  
6 as acceptable or reasonable substitutes for Southwestern  
7 Bell's basic local service, and to the extent that people  
8 were actually using these services offered by these other  
9 entities, in my view I think the general thought, and I  
10 think Mr. Unruh tried to allude to it in his testimony, is  
11 that, you know, customers should have choices in their  
12 providers.

13                   And to a certain degree I would agree with  
14 that, but I think that a certain extent needs to be taken  
15 into account as to the type of customer that we're really  
16 talking about in this proceeding and whether they would  
17 view these other providers as reasonable alternatives for  
18 Southwestern Bell service.

19           Q.       All right. As I understood, I'm trying to  
20 summarize it, I heard you say two things that you looked  
21 at in terms of defining what the public interest was, and  
22 that is whether, one, customers would view the entities as  
23 reasonable substitutes, and two, whether people are  
24 actually using the other provider's service. Is that a  
25 fair summary?

1           A.       I would say so. I talk about quality of  
2 service and the rates charged by some of these entities in  
3 my testimony.

4           Q.       All right. So we've got two more factors,  
5 quality of service and rates. I'm trying to get all the  
6 factors that you considered in determining what the public  
7 interest was.

8                    Let me ask you about the first one of  
9 those, about reasonable substitutability. Would you agree  
10 with me that that standard is one that was included in the  
11 factors to be analyzed under the effective competition  
12 standard that applied under the old statute?

13          A.       I would agree with that.

14          Q.       And there isn't anything in the current  
15 statute that specifically requires the Commission to  
16 consider whether a service is a reasonable substitute, is  
17 there?

18          A.       Well, I think the Commission needs to  
19 evaluate the extent of competition from these other  
20 entities.

21          Q.       I understand what your opinion is. My  
22 question is, would you agree with me that there's nothing  
23 in the statute itself that specifically refers to the need  
24 to make a finding about reasonable substitutability?

25          A.       I think that's within the Commission's

1 discretion.

2 Q. And in terms of reasonable  
3 substitutability, you've indicated that should be  
4 considered from the eyes of the consumer; is that right?

5 A. Yes.

6 Q. And if we're to know whether a consumer  
7 considers it as a reasonable substitute, wouldn't we have  
8 to ask the consumer?

9 A. I think that's one way. I think another  
10 way is, you know, reviewing the information that's  
11 available as to are customers using the services offered  
12 by these entities and does the Commission feel that that's  
13 sufficient.

14 Q. You haven't and Staff hasn't conducted any  
15 kind of survey to determine whether consumers view the  
16 entities identified by SBC Missouri as providing service  
17 in these exchanges as being reasonable substitutes, have  
18 you?

19 A. In my direct testimony, I do refer to some  
20 reports and studies that cite the extent that people have  
21 cut the cord for wireless service and the extent that  
22 people are using VOIP service.

23 Q. All right. In terms of CLECs that are  
24 operating utilizing UNE-P or commercial arrangements,  
25 Staff has not conducted any kind of survey that would

1 determine whether customers view those entities as  
2 providing a reasonable substitute for SBC Missouri  
3 service, right?

4 A. No, we haven't. I think that's somewhat of  
5 a unique situation to the extent that --

6 Q. And with regard to wireless and VOIP  
7 services, Staff hasn't conducted any survey of Missouri  
8 customers or presented any specific information as to  
9 Missouri customers in terms of whether they would view  
10 VOIP or wireless providers as a reasonable substitute for  
11 SBC Missouri services, right?

12 A. Again, I did provide some information in my  
13 amended direct testimony.

14 Q. Again, my question is, Staff did not  
15 conduct or present any survey of Missouri customers that  
16 would reflect whether those Missouri customers believe  
17 that wireless service or VOIP service is or is not a  
18 reasonable substitute for SBC Missouri's services in the  
19 exchanges that are at issue here, right?

20 A. No, we did not.

21 Q. And you have been around and employed by  
22 Staff during past competitive classification cases under  
23 the old statute, right?

24 A. Yes.

25 Q. And VOIP and wireless providers were an

1 issue in those cases as well, right?

2 A. Yes.

3 Q. Is it fair to say that in those cases the  
4 Staff criticized the presentation by SBC Missouri of the  
5 exact same type of information that Staff has presented  
6 here about national figures on cutting the cord for  
7 wireless providers and surveys on a national basis for  
8 VOIP providers on the basis that they didn't provide  
9 Missouri-specific information?

10 A. I think what we've seen so far is limited  
11 instances where consumers have cut the cord.

12 Q. If you would, I need you to answer my  
13 question. It's fair to say that Staff in the prior  
14 competitive classification criticized SBC Missouri for  
15 presenting the same type of information that Staff  
16 presents here, that is general information on a national  
17 basis about customers cutting the cord and moving to  
18 wireless and national information about the extent of VOIP  
19 providers obtaining market share, right?

20 A. I know we took a good hard look at the  
21 evidence presented by Southwestern Bell in the last  
22 effective competition case and the information that was  
23 supplied in it regarding wireless service. Were we  
24 critical of that? I don't know. Perhaps, yeah.

25 Q. Didn't Staff take the position there that

1     that shouldn't really be considered because it wasn't  
2     Missouri-specific and exchange-specific information?

3             A.       I think ideally we'd like to see that sort  
4     of information to the extent possible. I realize that  
5     there's some limitations in the ability to readily get  
6     that information, and I think all the parties, both Staff  
7     and Southwestern Bell, generally relied on the same source  
8     information.

9             Q.       I guess what I'm getting to,  
10    Mr. Van Eschen, is that in the prior case when it was  
11    clear that SBC Missouri had the burden of proof, then  
12    information about wireless providers on a national basis  
13    or VOIP providers on a national basis was considered  
14    insufficient and not specific to Missouri and to the  
15    exchanges at issue, but it seems like Staff's got a  
16    different view now that the burden may be on Staff to show  
17    that something is contrary to the public interest. Is  
18    that a first characterization?

19            A.       I don't know. You know, I think both in  
20    the last effective competition case as well as in this  
21    case, we cite the same figures at least when it comes to  
22    the percentage of customers that have cut the cord and  
23    gone completely wireless. We haven't been able to find  
24    any updated reports by the FCC or really any other party  
25    that would raise those numbers.

1                   I think most people who are expecting a  
2   larger percentage of customers who have cut the cord and  
3   gone wireless, but I don't think any of us have observed  
4   that happening as of yet.

5           Q.       And to observe it, wouldn't you have to  
6   have some way to gather the data, including by surveying  
7   customers in Missouri?

8           A.       I would agree with that.

9           Q.       And Staff hasn't attempted to undertake  
10   anything like that or to present any Missouri-specific  
11   information, right?

12          A.       No, we have not.

13          Q.       The next item you told me you considered in  
14   determining or defining the public interest was whether  
15   people were actually using the service. Is there, in your  
16   view, a market share test inherent in the public interest?

17          A.       I think to the extent that the Commission  
18   would want to consider the competition that's generated by  
19   these entities, yes, perhaps the Commission could, yes.

20          Q.       And my question is, then, in your  
21   recommendation here, did you make a recommendation based  
22   upon your view that there should be a market share test?

23          A.       I did not specifically discuss that in my  
24   testimony.

25          Q.       Is it your view -- strike that.

1                   You'd agree with me that the evidence in  
2     the case is that the providers cited by SBC Missouri and  
3     those that you cite in your testimony are actually  
4     providing service in Missouri, right?

5           A.       You're talking about all the --

6           Q.       Just what we already went through.  There's  
7     two or more providers operating in each exchange that are  
8     actually providing service?

9           A.       Yeah, we observed that.

10          Q.       And so if part of your test is in the  
11     public interest is whether people are actually using the  
12     service of the competitor, then the answer to that is yes,  
13     correct?

14          A.       If you're asking are there two or more  
15     providers operating in the exchange, yes.

16          Q.       Yes.  Now I'm trying to go through.  I  
17     asked you to define -- how you define the public interest,  
18     and you told me, one, do consumers view it as a reasonable  
19     substitute, two, are people actually using the service?  
20     And so on the second prong, then, are people actually  
21     using the service, the answer to that from Staff's  
22     perspective is yes, correct?

23          A.       I would say yes, and along with that the  
24     Commission would need to consider the extent that -- the  
25     competition that these entities are providing.

1           Q.       And that's where I'm trying to tie you  
2 down, then. If the answer to the question is yes, the  
3 people are actually using the service, but you're not  
4 recommending competitive classification, then it appears  
5 to me that there must be some sort of market share test  
6 inherent in your recommendation. Am I wrong?

7           A.       I would say that, yeah, I would -- yes, I  
8 would like to see that customers are viewing the services  
9 offered by these other entities as being reasonable  
10 alternatives for Southwestern Bell's service. And do I  
11 have a specific market-based test? No, I do not.

12                   But do I think it's sufficient for a  
13 wireline CLEC to be providing service to one access line  
14 within the exchange and that ought to qualify that  
15 exchange for competitive status in the 60-day track? I  
16 don't think so. I think the Commission has some  
17 discretion in determining what ought to qualify under the  
18 60-day track.

19           Q.       All right. And SBC Missouri needs to react  
20 to whatever you and the Commission do in this case, and so  
21 I want to avoid a situation where we have an ambiguous or  
22 unknown standard about what it means to be actually using  
23 the service.

24                   In your view, what with SBC Missouri --  
25 what would the evidence have to be before Staff finds that

1 people are actually using the service and that that prong  
2 of Staff's view of the public interest test is satisfied?  
3 What does it take?

4 A. Well, I think what Southwestern Bell has  
5 presented --

6 Q. I'm not asking what we've presented. I  
7 want to know what it would have taken from Staff's  
8 perspective for you to say that people are actually using  
9 the service and it meets that prong of your interpretation  
10 of public interest.

11 A. I would expect Southwestern Bell to provide  
12 information as to the services that these entities are  
13 providing, the rates that they are providing, any evidence  
14 that Southwestern Bell has that shows that these entities  
15 are actually providing service to customers that reside  
16 within the exchange. That's the type of information that  
17 I would be looking for.

18 Q. All of those things that you've just  
19 described are what the Commission has required or believed  
20 appropriate to do under the effective competition standard  
21 in the old statute, right?

22 A. I would agree with that, yes.

23 Q. I want to do a comparison between the  
24 exchanges that the Commission found met the competitive  
25 classification test in TO-2006-0093 and the exchanges that

1 are at issue here where Staff disagrees with SBC  
2 Missouri's request.

3 Is it fair to say that the primary  
4 difference between those two is the type of facilities  
5 that the competitors are using to compete?

6 A. I would generally agree with that. I think  
7 at least in the cases involving, if I can say the company,  
8 Big River, there was an issue as to how they were actually  
9 providing service. In another instance the company said,  
10 no, we're not providing service at all in that exchange.  
11 And in another instance it's somewhat confusing in that it  
12 looked like it was more of a foreign exchange type of  
13 service that was being provided.

14 Q. In general, where the competitors are using  
15 their own facilities, then the Staff views competitive  
16 classification as being in the public interest, but if the  
17 competitors use UNE-P or commercial arrangements or VOIP,  
18 then you see it as contrary to the public interest,  
19 correct?

20 A. Yes, I do.

21 Q. You indicated earlier that you thought one  
22 of the things that would be appropriate would be an  
23 analysis of SBC Missouri's prices versus the competitors'  
24 prices. Would you agree that, with the possible exception  
25 of wireless services, that Staff hasn't provided any

1 information to the Commission along those lines?

2 A. On the prices?

3 Q. Yes.

4 A. Supplied by Southwestern Bell?

5 A. Yes.

6 Q. I make some general comparisons for  
7 wireless service.

8 Q. My question was, excluding wireless  
9 services, it's fair to say that Staff has not presented  
10 any information to the Commission comparing SBC Missouri's  
11 retail prices with the retail prices charged by its  
12 competitors in any of the exchanges, right?

13 A. That's correct.

14 Q. You're aware, are you not, Mr. Van Eschen,  
15 based upon Mr. Unruh's testimony, that in each of the  
16 exchanges where SBC Missouri relies upon UNE-P and  
17 commercial arrangement CLECs, that at least one and  
18 typically two or more of those CLECs have their own switch  
19 that they deployed and are using in other exchanges in  
20 Missouri, right?

21 A. I'm aware that that may be occurring, yes.

22 Q. And in your analysis, then, if those  
23 companies were utilizing their own switch, then  
24 competitive classification would be in the public  
25 interest, but since they're using SBC Missouri's switch to

1 provides service, then you think it's contrary to the  
2 public interest, right?

3 A. Yes.

4 Q. And would you agree with me that the CLECs  
5 that take the commercial arrangements or that take UNE-P  
6 have done so because they consider that to be in their  
7 economic self interest?

8 A. That might be one reason, yes.

9 Q. And that if they believed that it was in  
10 her economic self interest to use a switch that they had  
11 already deployed and were actively using in another part  
12 of the state, they could do so, right.

13 Q. Yes. I mean, there could be economic  
14 reasons for them to do this, technical reasons. It's  
15 really difficult for me to say.

16 Q. Don't you think that the Staff should let  
17 the market work instead of making a judgment call that  
18 companies that use their own switches should count for  
19 purposes of determining what's in the public interest  
20 while companies that choose to use SBC Missouri's  
21 switching service don't count? That may have been  
22 confusing. I can reask it.

23 A. I guess on the one hand, I think you're  
24 saying that Staff finds it acceptable for the Commission  
25 to grant competitive status if the CLEC is using its own

1 switch to serve the customers, and on the other hand, when  
2 they -- when a CLEC is not using its own switch but using  
3 the switch of Southwestern Bell, then it's not in the  
4 public interest, and that appears to be an inconsistent  
5 position on Staff's part, is what I'm sensing.

6 Q. Actually, I wasn't saying it's  
7 inconsistent. I'll try it a different way. Would you  
8 agree with me that if the Commission adopts the Staff's  
9 view that competitive classification shouldn't be granted  
10 in any exchange where the competitors aren't using their  
11 own switch but they're using UNE-P or commercial  
12 arrangements, that there would be an incentive for SBC  
13 Missouri not to provide switching to those cus-- to those  
14 companies to the extent it had the ability to do so  
15 because otherwise they'd be more likely to get competitive  
16 classification, right?

17 A. Yeah, I could agree with that.

18 Q. And so don't you think it makes more sense  
19 for the Commission to adopt a process of analysis that  
20 would encourage SBC Missouri to offer switching services  
21 to those companies that are today utilizing UNE-P or  
22 commercial arrangements because that gives those companies  
23 another option in terms of competing?

24 A. Well, I'm not -- I'm not quite sure how to  
25 respond to that. To the extent that, I mean, you may --

1 Q. You can just agree with me.

2 A. I mean, there is an issue of whether, you  
3 know, an element such as switching would need to be, I  
4 guess, continued to be provided to CLECs, and there was  
5 some discussion about that earlier today, and there was a  
6 mention of March 2006 as being a date that UNE-P as it's  
7 known today might go away. And I don't know if an option  
8 that Southwestern Bell really would have is to, if it came  
9 push to shove, as to what happens after that date, I don't  
10 know. But it's difficult for me to answer that.

11 Q. Okay. With regard to VOIP providers using  
12 a third party's broadband network, you claim that VOIP  
13 providers have issues regarding 911 capabilities. Do you  
14 recall your testimony on that line?

15 A. Yes.

16 Q. Now, would you agree with me that SBC  
17 Missouri identified six specific VOIP providers in its  
18 testimony?

19 A. Yes.

20 Q. And it's fair to say that Staff hasn't  
21 identified a single 911 issue for any of those six  
22 providers, right?

23 A. We have not specifically singled out any of  
24 those VOIP providers, no.

25 Q. And you haven't made any assertions or

1 claims to the Commission that these six providers, that  
2 any of them suffer from these potential infirmities  
3 regarding 911, right?

4 A. No, we have not.

5 Q. And so to the extent that the Commission  
6 believes that it's appropriate to consider 911 issues in  
7 the public interest analysis, there isn't anything that  
8 Staff has shown that demonstrates that VOIP providers  
9 relied upon by SBC Missouri suffer from this problem,  
10 right?

11 A. I don't know yet.

12 Q. I'm sorry. You haven't presented any  
13 evidence that shows?

14 A. No, we haven't.

15 Q. Okay. That was my question.

16 A. I think part of the problem is that  
17 companies still have an upcoming deadline to comply with  
18 911 requirements.

19 Q. And if you had identified a problem with  
20 any of these specific companies, then SBC Missouri would  
21 have had an opportunity to come back and say, not these  
22 six, none of them have that problem, right?

23 A. Perhaps.

24 Q. On the issue of VOIP rates, you note that  
25 customers need to subscribe to a broadband Internet

1 service in order to get VOIP service, right?

2 A. Yes.

3 Q. Fair to say that that's always been true  
4 for VOIP, right?

5 A. Yes.

6 Q. It's always required a customer to have an  
7 underlying broadband service, right?

8 A. Yes.

9 Q. And yet despite this, the Legislature has  
10 specifically found that VOIP providers must be counted in  
11 the 60-day proceeding, right?

12 A. They could be an entity that Southwestern  
13 Bell wants to present to the Commission as being  
14 sufficient to allow the Commission to grant competitive  
15 status on that basis.

16 Q. But the Legislature imposed no limitations  
17 requiring the price of VOIP to be comparable to basic  
18 local, did they?

19 A. You will not find specific language quite  
20 like that. I mean, the Commission in my view has some  
21 generally broad discretion in determining the extent of  
22 competition by these other entities, such as VOIP  
23 providers.

24 Q. But this is in contrast, then, to the prior  
25 statute, is it not, which specifically required an

1 analysis of whether there were -- whether rates were  
2 comparable in analyzing whether competition was effective,  
3 right?

4 A. That is one thing that the Commission, you  
5 know, specifically looked at in the prior case.

6 Q. And was required to look at because the  
7 Legislature said so in its definition of effective  
8 competition?

9 A. I believe so. I don't have that definition  
10 in front of me.

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

13 JUDGE RUTH: Public Counsel?

14 MR. DANDINO: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. DANDINO:

16 Q. Good afternoon, Mr. Van Eschen.

17 A. Good afternoon.

18 Q. Do you see the public interest requirement  
19 in the 60-day petition as an addition to the  
20 identification of a competing entity?

21 A. Yes, I do.

22 Q. So do you see that as a limitation on the  
23 use of the competing entity for competitive purposes?

24 A. Well, I think there needs to be a  
25 demonstration that these other entities that are put forth

1 by the incumbent company are sufficient to be in the  
2 public interest to grant competitive status to the  
3 requested exchanges.

4 Q. In the 60-day petition, there are many  
5 types of technology and methods of providing service that  
6 is -- that would qual-- that would initially qualify; is  
7 that correct?

8 A. Yeah. I think it's fairly wide open in  
9 terms of the types of entities that a company might want  
10 to put forth in its 60-day petition.

11 Q. You could even use the facilities of the  
12 incumbent; is that correct?

13 A. Sure.

14 Q. Now, is that -- those same type of criteria  
15 available under the 30-day petition?

16 A. No, they are not.

17 Q. And does that allow the use of the  
18 incumbent's facilities?

19 A. I think you -- under the 30-day, there's  
20 the test that at least one of the entities must be  
21 providing, and I'll use the term wireline providers, needs  
22 to be providing service in whole or in part using its own  
23 facilities. If it has -- if it's providing local voice  
24 service and say it has a switch but it's using the local  
25 loop facilities of the incumbent, then in my opinion, yes,

1 that would qualify under the 30-day proceeding.

2 Q. Would it be fair to say that the statute's  
3 looking for some type of independence from the ILEC's  
4 facilities?

5 A. Yes.

6 Q. And does the use of facilities other than  
7 the ILEC's, does that show a presence of a competitor in  
8 an exchange or at least one indication of a competitor's  
9 presence in the exchange?

10 A. If it's using?

11 Q. If it's using facilities other than the  
12 ILEC's facilities to provide service in the exchange, does  
13 that indicate that the CLEC has a presence in the  
14 exchange?

15 A. Oh, we'd be looking for whether that CLEC  
16 was providing local voice service within the exchange and  
17 whether that CLEC did own its own facilities, and by that  
18 we were looking for whether they -- that company, that  
19 CLEC or an affiliate of the CLEC had its own switch or was  
20 using its own local loops in providing service to the  
21 customer.

22 Q. If a CLEC is using its own switch or its  
23 own loops or its own facilities or the facilities of an  
24 affiliate, does that indicate some signal at least of  
25 permanence to compete in the exchange, the CLEC is -- has

1 a permanence as well as a presence to compete?

2 A. I don't know about a permanence. I think  
3 it definitely shows more of a commitment to provide  
4 service within that exchange since it's obviously  
5 committed to some investment in order to serve the  
6 customers.

7 Q. Mr. Van Eschen, have you ever looked at  
8 Section 392.185 --

9 A. Yes.

10 Q. -- of the statutes?

11 And what does that contain, in your own  
12 words?

13 A. That outlines some, I guess, guiding  
14 principles to keep in mind as to the purposes of the  
15 telecommunications statutes. In terms of applying these  
16 statutes, the Legislature has indicated we're trying to  
17 promote these policies and objectives.

18 Q. Would the promotion of those policies and  
19 objectives in 392.185, would you consider those to be  
20 within the public interest?

21 A. Certainly.

22 Q. Mr. Lane had asked you about effective  
23 competition and the use of the elements that the -- that  
24 the definition of effective competition at least -- strike  
25 that. Let me start over.

1                   The factors that Section 386.020 provide  
2     for the PSC to consider in determining effective  
3     competition, are those still valid considerations for the  
4     Commission to consider in determining what the public  
5     interest is?

6                   A.       Yes. I think that's within the  
7     Commission's discretion.

8                   Q.       By removing public -- or effective  
9     competition from the price cap statute, it just -- does  
10    that mean that the Commission no longer has to determine  
11    that part for competitive classification?

12                  A.       Well, again, I think that under the 60-day  
13    track, the Commission has some discretion as to the  
14    granting of competitive status. Whether it wants to use  
15    the criteria that is spelled out for effective competition  
16    or not, I think that's within the Commission's discretion.

17                  Q.       Staff is not asking the Commission to  
18    determine that effective competition exists, is it?

19                  A.       No. But I think that the Commission needs  
20    to consider, as it's stated in the statute, you know,  
21    consider the competition from these other entities, and  
22    that may take into account the degree of competition or  
23    effective competition generated by these other parties.

24                  Q.       Should competition -- should analysis of  
25    competition include some measure or analysis of the

1 competition presence?

2           A.       As I said earlier, you know, I'd like to  
3 see that, but I -- I think that as to what goes into, you  
4 know, that analysis, you know, I don't have a specific  
5 idea as to establishing a certain benchmark for market  
6 share or anything like that. I think that there needs to  
7 be some sort of demonstration that the Commission is  
8 comfortable with the concept that if Southwestern Bell  
9 raises its rates for these customers, that the Commission  
10 views these other entities as providing reasonable  
11 alternatives for these customers in obtaining basic local  
12 voice service.

13           Q.       I'd like to move to your recommendations  
14 for -- that you made in this case. Let's first look at  
15 the residential, Joplin and Sikeston.

16                   First of all, did SBC provide any evidence  
17 of whether or not granting of this competitive  
18 classification for residential services in Joplin or  
19 Sikeston is or is not within -- contrary to the public  
20 interest?

21           A.       My recollection of their evidence is that  
22 they identified here the entities that we feel are  
23 providing service within these exchanges, and that was  
24 basically it, and the source for that information.

25           Q.       Many of the factors that you -- forget

1     that.

2                     Now, in making your recommendation to the  
3     Commission, what facts did you rely in making your  
4     conclusion that competitive classification was not  
5     contrary to the public interest in those two exchanges,  
6     Joplin and Sikeston?

7             A.       I think in the exchanges where we're  
8     recommending competitive status be granted, such as Joplin  
9     and Sikeston, we felt -- we feel that those exchanges meet  
10    the test for competitive status under the 30-day track.

11            Q.       And is wireless, a wireless company one of  
12    the competitors that are providing service for  
13    qualification --

14            A.       Yes.

15            Q.       -- under the 30-day?

16            A.       Yes.

17            Q.       And does a wireless company provide local  
18    basic service as defined by the statute?

19            A.       Well, the statute, I guess, in the  
20    definition for basic local telecommunications service, I  
21    believe they exclude wireless providers, if that's what  
22    you're referring to.

23            Q.       No. The number of -- the services that  
24    constitute local basic service, do the wireless companies  
25    identified by SBC provide the complete array of services

1     that are basic local service?

2             A.     I'm not sure offhand.

3             Q.     Did you make an investigation into that?

4             A.     No, we did not.

5             Q.     Let's go to the business exchanges.  Now,

6     let me kind of group these together at least.  I want to

7     make sure we're on the same page here.  I want to know --

8     first let's talk about the exchanges that you identified

9     as qualifying for the 30-day criteria.  Okay?  And would

10    that be Archie?

11            A.     Yes.

12            Q.     Ash Grove?

13            A.     Yes.

14            Q.     Billings?

15            A.     Yes.

16            Q.     Boonville?

17            A.     Yes.

18            Q.     Carthage?

19            A.     Yes.

20            Q.     Cedar Hill?

21            A.     Yes.

22            Q.     Chaffee?

23            A.     Yes.

24            Q.     Farley?

25            A.     Yes.

1 Q. Marshall?

2 A. Yes.

3 Q. Mexico?

4 A. Yes.

5 Q. Moberly?

6 A. Yes.

7 Q. Montgomery City?

8 A. Yes.

9 Q. St. Clair?

10 A. Yes.

11 Q. Union?

12 A. Yes.

13 Q. Is there any more?

14 A. Linn.

15 Q. Linn, yes. I had that. Okay.

16 A. That's it.

17 Q. That's it. Okay. And these exchanges, and

18 if you want to take them individually or if you want to

19 just discuss them as a whole, what facts did you rely on

20 in making your recommendation that a competitive

21 classification granted in these exchanges would not be

22 contrary to the public interest?

23 A. We relied on access line quantities

24 supplied by these companies in their latest annual reports

25 that were submitted to the Commission, and in their annual

1 reports they're requested to identify the number of lines  
2 that they are serving based on whether it's UNE-P, resale,  
3 UNE-L or facility-based service. And we found that there  
4 was at least one wireline provider that was providing  
5 service either on a UNE-L type basis or on a full  
6 facility-type basis.

7 Q. As for the UNE-L basis, was that UNE-L  
8 provide -- or the facility of the incumbent or another  
9 party, third party?

10 A. That -- by UNE-L, and I'm probably using  
11 the term somewhat loosely in the sense that the CLEC  
12 generally had its own switch and was using the loops of  
13 the incumbent. However, there could be some slight  
14 variations of that.

15 Q. Can you identify by exchange which ones  
16 were using the facilities, the loops of the incumbent and  
17 those which were using the loops of third party, either  
18 the CLEC or --

19 A. I don't know if that is issue for any of  
20 these. I mean, I could go through and identify, you know,  
21 the CLECs that we feel caused us to say that this  
22 particular exchange qualifies for competitive status.

23 Q. When you said you didn't think that was an  
24 issue, wasn't that one of the considerations that you made  
25 is whether it was by UNE-L?

1           A.     Right.

2           Q.     So you treated all UNE-Ls the same whether  
3 it's by the incumbent or by the CLEC itself?

4           A.     Yeah. There are different variations where  
5 some companies might have their own switch and use the  
6 loops of the incumbent. There are other situations where  
7 the company has its own loops, but it's using, say, the  
8 switch from some other provider. There's different  
9 combinations like that, but I -- I group them all into the  
10 UNE-L type of category.

11          Q.     So you treated all those the same, whether  
12 it's an incumbent loop or a CLEC loop?

13          A.     Right.

14          Q.     Okay. Now, on the -- once again, was a  
15 wireless company one of the qualifying providers that was  
16 used to make your recommendation under the 30-day criteria  
17 in this case?

18          A.     Yes.

19          Q.     And once again, does a wireless provider  
20 provide all the services that are designated as local  
21 basic service in the statutes?

22          A.     As I said earlier, we did not specifically  
23 look at that. I don't know.

24          Q.     Now, let's move on to the other remaining  
25 exchanges, and let's see -- let me list those and make

1     sure I have all those. And these are the ones that meet  
2     the 60-day requirement; is that correct? Chillicothe?

3             A.       I'm not quite sure what you're referring  
4     to.

5             Q.       I'm wanting to get the ones that the Staff  
6     is recommending as qualifying under the 60-day requirement  
7     rather than meeting the 30-day requirement.

8             A.       I mean, those exchanges that I -- that we  
9     had identified earlier, those are the only ones that I'm  
10    recommending that the Commission grant competitive status  
11    to in this 60-day proceeding.

12            Q.       Okay. So all the other ones that SBC  
13    requested, you're recommending denial?

14            A.       Correct.

15                    MR. DANDINO: That's all I have, your  
16    Honor. Thank you, sir. Appreciate it.

17                    JUDGE RUTH: Mr. Van Eschen, I have a few  
18    questions for you, but I have been told that it's possible  
19    some of the Commissioners may not make it back this  
20    afternoon, that they do have questions for you, which  
21    means you'll likely be recalled tomorrow.

22                    THE WITNESS: Okay.

23                    JUDGE RUTH: Tomorrow morning. But first,  
24    I wanted to just clarify a couple of things with your  
25    amended direct testimony.

1 QUESTIONS BY JUDGE RUTH:

2 Q. If you would please look at page 29 at the  
3 bottom of the page. I'm not sure I followed what you were  
4 saying particularly in lines 20 on where you say specific  
5 exchanges where Staff and SBC appeared to disagree.

6 A. Yes.

7 Q. Can you help me with some of that, because  
8 that's not the only places where you disagree?

9 A. These were specific exchanges that I  
10 discussed in my testimony that I did not feel they met the  
11 criteria for competitive classification, and if you'd  
12 like, I can explain why.

13 Q. I was trying to figure out why these are  
14 listed out and not all of them are. In other words, there  
15 are more exchanges that you did not recommend competitive  
16 classification be granted than just these?

17 A. Yes.

18 Q. So what's special about these?

19 A. Well, I think these were ones that were at  
20 issue in the 30-day proceeding, and what we did is we took  
21 a look at our records that we had on hand and tried to  
22 identify all the exchanges that we felt met the criteria  
23 for competitive status under the 30-day track.

24 And there were certain exchanges that  
25 popped out in terms of there appeared to be a disagreement

1 between Staff and Southwestern Bell as to if a particular  
2 CLEC was actually providing service in these exchanges,  
3 and that's why they were zeroed in on.

4 I did not go into, you know, a similar I  
5 guess discussion about, well, this is what Staff found out  
6 for this particular exchange for all the exchanges in the  
7 60-day proceeding. And basically, it is my understanding  
8 that Bell, Southwestern Bell wanted any exchanges that did  
9 not meet or were not granted competitive status in the  
10 30-day proceeding, that that be transferred to the 60-day  
11 proceeding or something to that effect.

12 Q. At the end of this amended direct testimony  
13 you have some schedules, and I just want to clarify a few  
14 things. Schedule 1, page 1.

15 A. Yes.

16 Q. Where it says, SBC's request for  
17 competitive status residential.

18 A. Yes.

19 Q. Is this the request particularly for the  
20 102 case or is it the 93 case? Is it a combination?

21 A. It's the -- it's primarily the 93 case.  
22 Has expanded to include any other exchanges that we --  
23 that Staff feels meets the competitive criteria under the  
24 30-day track.

25 Q. So it does not provide -- for those

1 exchanges in which you do not recommend competitive  
2 classification, it doesn't provide who Staff believes the  
3 local voice competitors are?

4 A. No. Under the 60-day track, no.

5 Q. Does anything that Staff filed have that  
6 information, what Staff believes are the local  
7 competitors? That would be in the stuff filed on the  
8 11th?

9 A. That --

10 Q. Although this -- I'm sorry. Go ahead.

11 A. Under the 60-day proceeding, we don't feel  
12 that any additional exchanges warrant granting competitive  
13 status.

14 Q. But you don't have anything that shows  
15 where you do agree with SBC and where you don't? In other  
16 words, it's possible that you would feel that there's one  
17 competitor, but you don't have that in here for me?

18 A. What we had filed yesterday in response to  
19 the Order Directing Filing is what I would consider to be  
20 Staff's records as to what competitors do we see providing  
21 local voice service in this particular exchange.

22 Q. So --

23 A. And based on whether the competitor is  
24 providing service on a UNE-L, UNE-P or full facility-based  
25 basis.

1           Q.       And I'm looking at that, and I'll try to be  
2   careful not to share any of the HC information. But  
3   looking at page 1, there are the columns, business UNE-L,  
4   business UNE-P, business facility or FAC based.

5           A.       Uh-huh.

6           Q.       The numbers that are under those columns,  
7   are those access lines?

8           A.       Correct.

9           Q.       And so where I'm seeing some that just say  
10   one, that really is just one access line?

11          A.       Correct.

12                 JUDGE RUTH: Okay. As I mentioned before,  
13   I do expect questions from the Commissioners. They're not  
14   down here now. I suggest that if there are any questions  
15   for recross based on my few, we'll go ahead and take care  
16   of those, but I do know that Mr. Van Eschen will be  
17   recalled either later this afternoon or first thing in the  
18   morning.

19                 Like I said, I just asked a few questions,  
20   but SBC, do you have any recross based on those questions?

21                 MR. LANE: No, your Honor.

22                 JUDGE RUTH: Public Counsel?

23                 MR. DANDINO: No, your Honor.

24                 JUDGE RUTH: Any redirect so far?

25                 MR. HAAS: Yes, your Honor.

1 JUDGE RUTH: Please proceed.

2 REDIRECT EXAMINATION BY MR. HAAS:

3 Q. Mr. Van Eschen, I'm not certain I will get  
4 this question and answer exactly correct, but I'm hoping  
5 it will trigger your memory. Mr. Lane asked you if the  
6 Staff surveyed UNE customers, and you answered no, and  
7 then you said something like this is a unique situation to  
8 the extent, and then your voice dropped off. Do you  
9 recall that conversation and what the rest of your  
10 sentence was?

11 A. I recall a -- the general discussion about  
12 UNE providers and whether that justified the granting of  
13 competitive status. I guess what I was thinking in my  
14 mind was, you know, the ability of UNE-P providers or  
15 providers that were using Southwestern Bell's facilities  
16 entirely, as to their ability to minimize the impact that  
17 competitive status might be on Southwestern Bell's prices.

18 Q. Mr. Lane asked you if you had identified  
19 any of the six VOIP providers listed by SBC as having 911  
20 problems. Do you recall having seen a notice from  
21 1Touchtone about the availability of 911?

22 A. I've seen some -- some -- it escapes me  
23 right now where I did see it, but some VOIP providers are  
24 having difficulty meeting the 911 requirements, but  
25 offhand, no.

1                   MR. HAAS: That's all the questions I have  
2 at this time.

3                   JUDGE RUTH: Thank you. Okay. It's a good  
4 time for a short break. It is 20 after 3, so we'll break  
5 until 3:30. We're off the record now. Thank you.

6                   (A BREAK WAS TAKEN.)

7                   JUDGE RUTH: Okay. We are back on the  
8 record after a short break, and Public Counsel is now  
9 ready to call its witness.

10                  MR. DANDINO: I have called Barbara  
11 Meisenheimer as a witness.

12                  (Witness sworn.)

13                  JUDGE RUTH: Thank you. You may proceed,  
14 Mr. Dandino.

15                  MR. DANDINO: Thank you.

16 BARBARA A. MEISENHEIMER testified as follows:

17 DIRECT EXAMINATION BY MR. DANDINO:

18                  Q.       Please state your name and position.

19                  A.       Barbara Meisenheimer. I'm chief economist  
20 in telecommunications with the Missouri Office of the  
21 Public Counsel.

22                  Q.       Are you the same Barbara Meisenheimer that  
23 caused to be filed in this case Exhibit No. 7 entitled  
24 Meisenheimer rebuttal and schedules?

25                  A.       Yes, I am.

1 Q. And do you have any corrections?

2 A. Yes, I have two.

3 Q. Okay.

4 A. The first -- the first is on page 1 of the  
5 actual testimony, and it's in the header. After d/b/a, it  
6 should say SBC. And then on page 12, line 3, the word  
7 credible should have an I instead of an A.

8 Q. Are there any other corrections?

9 A. No. That's all.

10 Q. As corrected, is Exhibit 7 and the  
11 schedules true and accurate and correct to the best of  
12 your information, knowledge and belief?

13 A. Yes, it is.

14 Q. And if I asked you the questions contained  
15 in Exhibit 7, would your answers be the same here today?

16 A. Yes, they would.

17 MR. DANDINO: Your Honor, at this point I'd  
18 like to offer Exhibit No. 7 and tender the witness for  
19 cross-examination.

20 JUDGE RUTH: Thank you, Mr. Dandino.  
21 Exhibit No. 7, Ms. Meisenheimer rebuttal testimony, has  
22 been offered. Are there any objections to it being  
23 received from SBC?

24 MR. BUB: No, your Honor.

25 JUDGE RUTH: And Staff?

1 MR. HAAS: No, your Honor.

2 JUDGE RUTH: Exhibit 7 is received into the  
3 record.

4 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

5 JUDGE RUTH: Did you have anything further,  
6 Mr. Dandino?

7 MR. DANDINO: No, your Honor.

8 JUDGE RUTH: Thank you very much. We will  
9 move to cross from Staff.

10 MR. HAAS: The Staff has no questions for  
11 this witness.

12 JUDGE RUTH: SBC?

13 MR. BUB: Thank you, your Honor.

14 JUDGE RUTH: You may proceed.

15 CROSS-EXAMINATION BY MR. BUB:

16 Q. Good afternoon, Ms. Meisenheimer.

17 A. Hello, Mr. Bub.

18 Q. The first area of questions I have for you  
19 concerns some of the things that Mr. Dandino said in his  
20 opening statement earlier this morning, so if I could take  
21 you back to that.

22 In his opening statement, Mr. Dandino  
23 indicated that Office of Public Counsel opposes SBC  
24 Missouri's request for competitive classifications in all  
25 requested exchanges, including those that were recommended

1 for approval by Staff.

2 The question to you is, that really wasn't  
3 the position that you took in your testimony, was it?

4 A. In my testimony what I focused on are  
5 the -- I think in particular there's likely one area where  
6 you're referring to, and it has to do with saying that we  
7 support the UNE-L recommendation of Staff, and that is  
8 intended to say that for the purposes of a 60-day track,  
9 we don't oppose what -- the Staff's recommendation related  
10 specifically to UNE -- to UNE-L.

11 Q. Okay. Let me ask my question again. In  
12 your testimony you specifically didn't ask the Commission  
13 to reject SBC Missouri's application; is that correct?

14 A. That's true. My testimony goes more to the  
15 technical aspects. One of those has to do with the  
16 provisioning of landline service, which specifically  
17 relates to the UNE-L issue. One relates to the wireless  
18 issue, which I discussed at length and I don't think that  
19 the Staff commented on as extensively as I did.

20 And then the other aspect has to do with --  
21 well, actually two -- the public interest issue, and then  
22 there's also the legal issue of the burden of proof and  
23 that it's Southwestern Bell's responsibility to prove that  
24 it's not contrary to the interest that it be granted what  
25 it seeks.

1           Q.       Let's go back to the area that confused me  
2 a little bit. I'm trying to compare what Mr. Dandino said  
3 in his opening statement to your testimony, and let's  
4 focus specifically on your testimony that Office of the  
5 Public Counsel does not disagree with Staff's  
6 recommendation based on service provided by UNE-L, and  
7 that was your testimony, I think, on page 15 you were  
8 referring to?

9           A.       Yes.

10          Q.       Okay. It's correct that you haven't  
11 provided any evidence to contradict Staff's recommendation  
12 on these exchanges; is that correct?

13          A.       Well, there's -- there's two different  
14 elements to that. There's the issue of are we -- are we  
15 comfortable with UNE-L as a method of provisioning under  
16 the restrictions of Senate Bill 237. Then there's also  
17 the issue of do we agree with the Staff's overall  
18 recommendation. So really there are two different things.

19                   With respect to for a 60-day track, are we  
20 comfortable with the concept of UNE-L as a provisioning  
21 method? I think it's allowable, and --

22          Q.       And that's where you agree with Staff?

23          A.       And I did not -- all although I did contact  
24 some companies myself to try and investigate what kind of  
25 provisioning they did with respect to UNE-L, I don't have

1 anything that contradicts the Staff's evidence on that,  
2 and, therefore, that's -- that's why I say that, you know,  
3 we can support their recommendation with respect to the  
4 UNE-L.

5 Q. Okay. Fair enough. I'd like to change  
6 gears a little bit on you, talk about UNE-P. You state in  
7 your testimony that the Commission should not rely on  
8 competition from UNE-P; is that correct?

9 A. Yes.

10 Q. Would you agree with me that that's  
11 contrary to the position you took in the previous  
12 competition case where you said that --

13 A. It was -- we were applying a different  
14 standard, and so I don't think it's inconsistent at all.

15 MR. BUB: May I approach the witness, your  
16 Honor?

17 JUDGE RUTH: Yes.

18 THE WITNESS: If it's Case  
19 No. TO-2005-0035, I have a copy myself.

20 BY MR. BUB:

21 Q. Great. Thank you.

22 A. What page?

23 Q. Could you go to page 13, please?

24 JUDGE RUTH: Can you help me out? Where  
25 are we again, on page 13 of what?

1                   MR. BUB: Okay. This is the rebuttal  
2 testimony of Barbara Meisenheimer from case No.  
3 TO-2005-0035. So it's the prior competition case  
4 involving SBC Missouri's request for competitive  
5 classification.

6                   JUDGE RUTH: I don't have that one with me,  
7 but that's okay. That's fine. Proceed.

8 BY MR. BUB:

9                   Q. And we're at page 13. Could you please  
10 read us the statement you made starting at line 9,  
11 continuing to the end of line 11, please.

12                  MR. DANDINO: Your Honor, could she also  
13 read the question? I think it would be appropriate to  
14 read the question and the response.

15                  JUDGE RUTH: Actually, I think that's a  
16 good idea. It would help me follow along since I don't  
17 have a copy also.

18                  THE WITNESS: And I'd be happy to read the  
19 entire answer if you want.

20                  JUDGE RUTH: Let's start with the question  
21 and then the part that Mr. Bub has referred you to.

22                  THE WITNESS: All right. The question  
23 begins on page 12 of my rebuttal testimony in Case  
24 TO-2005-0035. And at line 8, the question reads, what  
25 types of evidence would you find persuasive in

1 demonstrating that an alternative basic local exchange  
2 carrier is providing service in an exchange?

3 And the part that Mr. Bub asked that I read  
4 in the response begins later in -- or late in my answer on  
5 page 13, beginning at line 9, and it reads, other evidence  
6 of providing service would be verifiable information that  
7 the incumbent provides more than an insignificant number  
8 of resold lines or unbundled network elements in the  
9 relevant exchange.

10 MR. BUB: That's what I was interested in,  
11 your Honor. If she wants to read the entire answer,  
12 that's okay with me. I was trying to shorten the record  
13 by just focusing on that being something that she was  
14 willing to consider in the prior case and not in this  
15 case. But if she wants to read the entire answer, I have  
16 no objection to that.

17 JUDGE RUTH: I think this is sufficient for  
18 now. If we need to come back to that, Mr. Dandino will  
19 bring us back to it later.

20 THE WITNESS: I'm sorry if it doesn't  
21 answer the question that you asked me, which you were  
22 asking me about UNE-P. However, this is not a specific  
23 statement exclusive to UNE-P.

24 BY MR. BUB:

25 Q. You would agree that UNE-P is a combination

1 of unbundled network elements, though, right?

2 A. I would agree that it is one combination of  
3 unbundled network elements, yes.

4 Q. Thank you. Let's go back to -- come back  
5 to this case with the standard that we're to apply now  
6 under SB 237. You would agree with me that your position  
7 that the Commission should not rely on competition from  
8 UNE-P providers is contrary to the requirements under  
9 SB 237 for the 60-day track?

10 A. No, I don't think it's inconsistent. Is  
11 that what you asked me?

12 Q. Uh-huh.

13 A. No, I don't think it's inconsistent, and  
14 I'd be happy to explain why I don't think so.

15 Q. Let's look at -- let's go back to your  
16 testimony at page 7, and there you quote the statute  
17 392.245.5. You quote the statute beginning with the words  
18 notwithstanding. That's the language bolded. Do you see  
19 that?

20 A. Yes.

21 Q. Would you agree with me that starting at  
22 line 25, 26, the statute specifically allows consideration  
23 of service being provided over other facilities of a third  
24 party, including those of the incumbent local exchange  
25 company? Would you agree with me that that's one thing



1 witness said she didn't say considered. It shouldn't be  
2 relied upon. I think counsel's question should reflect  
3 what her testimony is.

4 MR. BUB: I have no problem with that,  
5 Mike. I can change it.

6 BY MR. BUB:

7 Q. Let's focus on your concern why the  
8 Commission should not rely on evidence of UNE-P  
9 competitors. Okay. And one of your concerns, and this is  
10 what I want to focus on right now, is your concern that  
11 there's no assurance of continued service. That's one of  
12 your concerns; is that correct?

13 A. Yes.

14 Q. Would you agree that CLECs have the option  
15 of entering into commercial agreements with SBC for  
16 wholesale services to replace UNE-P?

17 A. I don't know that those will consistently  
18 be available in the future.

19 Q. They're available now, are they not?

20 A. I have not read one of them myself, but  
21 I've heard your witness testify in great extent, and I am  
22 familiar with companies such as Sage as one that you've  
23 used as an example.

24 Q. You're aware that Sage is operating now  
25 under a wholesale commercial agreement; is that correct?

1           A.       I am aware that companies can negotiate  
2 different types of agreements with you whether or not they  
3 are arbitrated by a commission. So on a voluntary basis,  
4 companies can enter into negotiated agreements.

5           Q.       And you're aware that there are several of  
6 those negotiated commercial agreements in place today?

7           A.       Yes.

8           Q.       Would you also agree with me that CLECs  
9 have other options besides UNE-P or wholesale commercial  
10 agreements to provide service? For example, they can  
11 purchase their own switch and become a facility-based  
12 provider; is that correct?

13          A.       They could.

14          Q.       And have you had a chance to review  
15 Mr. Unruh's Schedule 2 and 3, his highly confidential  
16 schedules?

17          A.       I have, yes. I only have 3HC with me.

18          Q.       Let's focus on 3HC, and then I can give you  
19 2HC if we need to. Could you scan through that? What I'd  
20 like you to look for are the carriers -- and this is a  
21 highly confidential schedule, so let's stay away from  
22 exchange-specific, disclosing exchange-specific  
23 information. What I'd like to point you to are in the  
24 columns where the CLECs are listed, and some of the CLECs  
25 have asterisks and some do not.

1           A.       Yes.

2           Q.       At the end of the exhibit, the last page  
3       where it tells what all these different footnotes means,  
4       it says that the asterisk denotes CLECs with switching  
5       facilities. Do you see that?

6           A.       I see that that is what SBC's testimony is.

7           Q.       Okay. And could you look through that and  
8       for each one of the exchanges verify for me that there's  
9       at least one CLEC with an asterisk by it? And I don't  
10       want to know the names. Just could you verify that that's  
11       correct?

12          A.       Your testimony says what your testimony  
13       says. This is not my work. So in terms of, you know, I  
14       wouldn't be verifying that I agree there's a switch held  
15       by each of these companies that would be able efficiently  
16       and effectively to provide service to each of these  
17       exchanges.

18          Q.       Be correct to say that you haven't provided  
19       any evidence contrary to Mr. Unruh's evidence that he's  
20       provided in this schedule, that these carriers do not have  
21       switches?

22          A.       I am aware that there are certain carriers  
23       in the state that have switches. I don't think that  
24       Mr. Unruh's testimony is claiming that each of these  
25       carriers has a switch in each of these exchanges.

1 Q. That's correct.

2 A. Instead, it's just saying they have a  
3 switch somewhere.

4 Q. Yes. That's correct.

5 A. And what I'm saying is that I would -- I  
6 would --

7 Q. You don't know whether that's true or not,  
8 is what you're saying?

9 A. Oh, well, I am familiar with that a number  
10 of these carriers have their own switches. I look at  
11 numbering information on a regular basis from the North  
12 American Numbering Council web page.

13 Q. For example, MCI?

14 A. Yes, and most of the others. What I --  
15 what is important to this proceeding is whether each of  
16 these exchanges is served by a carrier using its own  
17 switch. And Mr. Unruh testified, in fact, earlier that  
18 carriers instead of using their own switch, even though  
19 they may have one, have instead chosen to use UNE-P, maybe  
20 because it is efficient for them to do so. And so I don't  
21 know that each of these carriers would utilize their own  
22 switch if they didn't have UNE-P to provide service.

23 Q. Okay. You understand that this exhibit is  
24 not meant to show that there's a physical switch in each  
25 one of these exchanges? You understand that, right?

1           A.       I understand that. I also --

2           Q.       Just wanted to make sure we were not  
3 talking past each other.

4           A.       I also don't believe that this schedule  
5 shows that these carriers could provide their own service  
6 efficiently.

7           Q.       Let's explore that concept because I think  
8 that's -- because that's exactly where I want to go. I  
9 just wanted to make sure we weren't misinterpreting what  
10 was depicted in Mr. Unruh's schedule.

11                   In this schedule it shows carriers, CLECs  
12 that have their own switches. Would you agree with me  
13 that those with their own switches, for example MCI, it is  
14 that CLEC, in this case MCI, that has a business decision  
15 to make of whether to use its own switch to provide  
16 service in a particular exchange?

17           A.       I think it has three options. It can use  
18 its own switch to provides service in an exchange, it can  
19 use someone else's switch to provide service in an  
20 exchange, or it can choose not to provide service at all  
21 in an exchange.

22           Q.       And those are all business decisions that  
23 the CLEC would have to make, correct?

24           A.       Sure.

25           Q.       And you would expect that that decision

1 would reflect its view of what's in its best economic  
2 interest?

3 A. Sure.

4 Q. Let's change gears again and focus on  
5 resale versus UNE-P, and I'd like to focus on the  
6 difference in the pricing methodologies for both of those  
7 methods of provisioning service that CLECs can use. Let's  
8 look at resale on one hand. Okay. With resale, would you  
9 agree with me that the price that the CLEC pays to resell  
10 the ILEC's service is determined from applying the  
11 wholesale discount to the ILEC's retail rate?

12 A. Yes.

13 Q. And that discount can either be set by  
14 negotiations between the CLEC and the incumbent or, if  
15 there's no agreement, then it goes to the Commission to  
16 arbitrate and then the Commission sets that resale  
17 discount?

18 A. Yes.

19 Q. And you would agree with me that the resale  
20 prices that CLECs pay since it's a discount that's  
21 multiplied against the retail rate, that resale price will  
22 rise and fall as the retail rates of the incumbent goes up  
23 or down?

24 A. Yes.

25 Q. Now let's look, compare that to pricing for

1     UNE-P. With UNE-P, would you agree with me that prices  
2     are not tied to the ILEC's retail prices?

3             A. Not directly tied to the retail price, yes,  
4     I would agree with you.

5             Q. What UNE-P is, it's a price for, like you  
6     said earlier, a group of unbundled network elements?

7             A. Yes.

8             Q. And under the act, carriers, the CLEC and  
9     the incumbent, are to negotiate prices for those network  
10    elements, and if they can agree upon a price, that's the  
11    price. And if they can't, then it goes to the Commission  
12    to arbitrate. Is that your understanding?

13            A. Yes. There are two tracks, one for  
14    negotiated and one for cases where an agreement can't be  
15    reached.

16            Q. And where an agreement can't be reached and  
17    it's arbitrated, then the FCC requires the state  
18    commission that sets those prices to apply the TELRIC  
19    pricing method; is that correct?

20            A. Yes.

21            Q. And here SBC Missouri's UNE-P price was set  
22    by the Commission in arbitration?

23            A. I'm not sure about your commercial  
24    agreements.

25            Q. I'm not talking about commercial. UNE-P.

1 The old UNE-P.

2 A. Okay. Well, you've been talking about

3 companies like some companies using --

4 Q. Right now I'm just talking about UNE-P.

5 We'll talk about wholesale agreements next.

6 A. So you're talking about arbitrated UNE-P --

7 Q. Correct.

8 A. -- pricing would have been set by the

9 Commission?

10 Q. Yes. Would you agree with that?

11 A. Or in a total settlement that the

12 Commission ultimately approved.

13 Q. Yes.

14 A. Yes.

15 Q. And now would you also agree with me that

16 the UNE-P price doesn't change when the ILEC raises or

17 lowers its retail rate?

18 A. Yes.

19 Q. Now let's change to the wholesale

20 agreement. Would you agree with me that the same is true

21 with wholesale services that are being offered to replace

22 UNE-P, that those also are not tied to the ILEC's retail

23 rate?

24 A. Your commercial agreements?

25 Q. Yes.

1           A.       I have not reviewed your commercial  
2 agreements.

3           Q.       Okay.

4           A.       Or the ones that I have reviewed were so  
5 long ago, I'd be surprised if they're still in effect.

6           Q.       Would you expect if there was one set price  
7 that wouldn't vary over the term of the contract --

8                   MR. DANDINO:  Objection, your Honor, calls  
9 for speculation.

10                  MR. BUB:  Hypothetically.

11                  THE WITNESS:  Well, it could have a factor  
12 in there for inflation.  I don't know.

13 BY MR. BUB:

14           Q.       Would you agree with me that the rates in  
15 the wholesale agreements, they're negotiated; is that  
16 correct?

17           A.       Yes.

18           Q.       And hypothetically, if a carrier agreed to  
19 a set price for a term of years, if that were the case,  
20 regardless of what the ILEC's retail rate would be, the  
21 CLEC's pricing for the UNE-P replacement wouldn't change?

22           A.       Their costs of utilizing the incumbent's  
23 UNE-P replacement might not change.  However, that doesn't  
24 say that they might not choose to charge a retail rate  
25 that was higher.

1           Q.       That's different. We're talking about what  
2   the CLEC pays the incumbent for using the UNE-P  
3   replacement. That would not change under the  
4   hypothetical?

5           A.       I would agree, their costs would not  
6   directly change under your hypothetical.

7           Q.       Change gears on you again and talk about  
8   prepaid local service providers and resellers. And here  
9   I'll give you a page reference to your testimony, page 14.

10          A.       Of this testimony?

11          Q.       I'm sorry. Yes, the testimony in this  
12   case, 2006-0102.

13          A.       Okay. I'm there.

14          Q.       There you discuss whether the Commission  
15   should rely on prepaid local service providers and resold  
16   local service. Are you with me?

17          A.       Yes.

18          Q.       As part of your preparation for this case,  
19   you reviewed Mr. Unruh's testimony, did you not?

20          A.       Yes.

21          Q.       Would you agree that SBC's application does  
22   not reply on competition from prepaid local service  
23   providers? I can help if you want to look to Mr. Unruh's  
24   direct testimony at page 9, line 15.

25          A.       I know that Southwestern Bell has

1 characterized their testimony as not relying on prepaid  
2 providers. However, I don't -- I don't know that that's  
3 true.

4 Q. How about resellers?

5 A. Resellers, I --

6 Q. Would you agree with me at least that  
7 Mr. Unruh's testimony says that SBC Missouri's data does  
8 not -- and I'm reading -- does not include any competitive  
9 services currently being offered by, down to 15, prepaid  
10 carriers or resellers?

11 A. Where are you reading from?

12 Q. Page 9, lines 14. I skipped a few,  
13 paraphrase.

14 A. Of his direct?

15 Q. Yes.

16 A. What page? I'm sorry.

17 Q. 9.

18 A. What line?

19 Q. Starting at 11 at the end of the line. SBC  
20 Missouri's, next line, data only counts wireless carriers  
21 who use their own facilities, ignoring Mobile Virtual  
22 Network Operators, or MVNOs, such as Virgin Mobile, and it  
23 does not include any competitive services currently being  
24 offered by AT&T or its affiliates, prepaid carriers or  
25 resellers.

1           A.       I see that that is how Mr. Unruh has  
2 characterized his testimony.

3           Q.       Okay. Have you also had a chance to look  
4 at his schedules? For example, let's go back to  
5 Schedules 2 and 3HC, again, the footnotes on the last  
6 page.

7           A.       Yes, and if I were -- I have an answer  
8 which includes HC, I'm afraid, that might be responsive.

9                   JUDGE RUTH: I would be happy to go  
10 in-camera.

11 BY MR. BUB:

12          Q.       I'm not calling for information that's HC.  
13 What I'm interested in is just if you could -- one, I'm  
14 interested in whether you saw that Mr. Unruh's testimony  
15 stated that we did not include evidence from prepaid or  
16 resold providers. That was a question based on your  
17 statement.

18          A.       And I said that I saw that his testimony  
19 characterizes Southwestern Bell as not utilizing that.  
20 However, I think that in at least one case, and maybe more  
21 if I looked for a while, there is a carrier which I am  
22 familiar with that is both a reseller and, in fact, a  
23 prepaid carrier. And I'd be happy to talk about that  
24 in-camera if I were allowed to.

25          Q.       Your testimony was filed after Mr. Unruh's;

1 is that right?

2 A. Yes.

3 Q. And in your testimony you didn't point out  
4 any mistakes that Mr. Unruh had made?

5 A. I pointed out a number of mistakes  
6 Mr. Unruh made.

7 Q. As far as this particular point?

8 A. I -- I think that in total my testimony  
9 demonstrates that Southwestern Bell -- what Southwestern  
10 Bell relied upon cannot be trusted in its entirety, that  
11 there are mistakes in it. And simply because I didn't  
12 point out each and every possible mistake, I mean, this is  
13 one that hadn't come to my attention until just now when  
14 you pointed me to that specific claim in Mr. Unruh's  
15 testimony.

16 However, I'm saying that, sitting here now,  
17 I have -- I recognize a carrier that I think is, in fact,  
18 both a reseller and a smaller -- in a smaller subset of  
19 resellers, which is particularly prepaid carriers.

20 Q. Hold on one second. I need to ask about a  
21 confidential matter.

22 Ms. Meisenheimer, if we be careful, we can  
23 do this without going into camera. So if we can use the  
24 name and not tie it to particular exchanges, that would  
25 not -- just the fact that a particular carrier in your

1 view is providing service on a resale or prepaid basis,  
2 that wouldn't be HC. But if we say in a particular  
3 exchange, then I think we've crossed the line. So if we  
4 stay away from exchange specific, if you can tell us the  
5 carrier or carriers that you question.

6 A. In particular, ComSouth.

7 Q. Okay. Thank you. Are you aware of  
8 ComSouth providing service through different methods, for  
9 example, resale, prepaid and UNE-P?

10 A. I am familiar with the work that I did in  
11 Case TO-2005-0035, and in preparing for that case I  
12 specifically called ComSouth and -- actually, there was a  
13 case even before that where I had done some work, and  
14 originally I was -- I learned that that carrier was a  
15 prepaid carrier along the way. Had nothing that changed  
16 my knowledge of that up until the time of the 2000 annual  
17 report. They had filed no access lines being provided in  
18 Missouri. And if I can have just a minute, I will verify  
19 on the Staff's additional information that they filed.  
20 Okay. And --

21 Q. Let's stay with ComSouth for a minute if  
22 you have another one.

23 A. Oh, no. I was going to continue on with  
24 the discussion about ComSouth, if that's okay.

25 Q. Go ahead when you're ready.

1           A.       Okay. And, in fact, I can identify you, if  
2 we go in-camera, at least one exchange, and there are  
3 likely more, where it appears that ComSouth is identified  
4 in SBC's schedules as being a competitor with UNE-P.  
5 However, both my own past investigation and the Staff's  
6 updated information that was submitted yesterday does not  
7 identify the carriers being a UNE-P provider. And if  
8 you'd like, I'd be happy to go through each exchange.

9           Q.       I don't think we need to do that. I think  
10 just focusing on the carrier itself.

11          A.       Okay.

12          Q.       We talked earlier about CLECs having  
13 different choices, different options for providing service  
14 to customers on a retail basis, right? They can resale an  
15 incumbent's service, right?

16          A.       Yes.

17          Q.       They can use UNE-P if they want to, right?

18          A.       Yes, as long as it's available.

19          Q.       Wholesale commercial agreement if they want  
20 to?

21          A.       As long as they're able to negotiate with  
22 the incumbent, yes.

23          Q.       Their own facilities, provide their own  
24 switch?

25          A.       If they find it economical.

1           Q.       And as far as how -- let's stick with those  
2     for example. Those are all choices. None of them are  
3     mutually exclusive, are they? For example, MCI, they have  
4     a switch like we talked about before. Just because they  
5     have a switch doesn't mean they can't also resell the  
6     incumbent's service in a different exchange, right?

7           A.       That's true.

8           Q.       Or they can use UNE-P if they want to in a  
9     different exchange?

10          A.       Provided that in total, in the event that  
11     they have their own switch, that they're able to flow  
12     enough traffic through there to make it cost effective.

13          Q.       That's their decision, right?

14          A.       Sure.

15          Q.       They can use their own switch if they want  
16     to in one exchange, in another exchange if they want to  
17     they can use UNE-P, and in a third exchange if they want  
18     to they can use a wholesale commercial agreement. None of  
19     them are mutually exclusive, and in fact -- is that  
20     correct?

21          A.       I think I already said that they may not be  
22     if it's cost effective for them to provision in multiple  
23     ways, and if all of those options continue to be available  
24     to them.

25          Q.       And you're aware today that there are some

1 CLECs like MCI that are actually providing service using  
2 different methods in different exchanges?

3 A. Yes.

4 Q. When you testified about ComSouth in the  
5 prior case, your testimony -- when was it filed?

6 A. September -- or December 17th, 2004.

7 However, as I just mentioned, reviewing --

8 Q. Let's just stick with yours.

9 A. Okay.

10 Q. And that was the investigation that you did  
11 that you were talking about was to prepare that testimony  
12 filed in 2004, right?

13 A. Yes.

14 Q. And you haven't done any further  
15 independent investigation on ComSouth for this case, have  
16 you?

17 A. I mean, I looked back at my testimony. I  
18 spent a number of hours looking at annual reports. I  
19 don't specifically remember looking at the ComSouth.  
20 However, the Staff's data --

21 Q. And you haven't called them recently to ask  
22 them how they're providing service, have you?

23 A. No.

24 Q. So it's possible between the time -- just  
25 looking at your own information, between the time you

1 filed your testimony then and now, it's possible that  
2 ComSouth has started providing service using UNE-P, is  
3 that right, just using what you -- based off your own  
4 investigation? We'll get to Staff next.

5 A. That's true.

6 Q. Okay. Now let's turn to Staff. You're  
7 looking at Staff's supplemental information, and your  
8 conclusion is, since they weren't listed as a UNE-L or  
9 UNE-P or facility-based provider, that therefore they're  
10 not a UNE provider?

11 A. It is characterized as, in the attached  
12 response, the Staff describes its review of annual reports  
13 and follow-up contacts. The Staff also reports on  
14 business and residential line counts in the requested  
15 exchanges.

16 Q. Okay.

17 A. And in at least one exchange -- which I  
18 checked rather quickly; however, there may be a number  
19 more -- it does not include ComSouth as one of the  
20 carriers with UNE-P specifically.

21 Q. But in other exchanges, say for example on  
22 page 16 of 17, let's not use the exchange, but on that  
23 particular page, Missouri ComSouth is listed as a UNE-P  
24 residential service provider, is it not? About the ninth  
25 one down.

1           A.       The company is identified in at least one  
2     exchange, perhaps more, as having UNE-P lines.  However,  
3     that is not -- what SBC's characterization of its  
4     testimony was that that carrier's operating or is in that  
5     exchange and has its own switch.

6           Q.       And you agree with me that the data that's  
7     in Mr. Unruh's Schedule 3HC was based on SBC Missouri's  
8     own wholesale billing records.  So it would know as of the  
9     date of this schedule who was buying UNE-P and who was not  
10    buying UNE-P in which particular exchange?

11          A.       I'm not sure why the company's using its  
12    wholesale information for the purposes of this case.

13          Q.       That's a different question.  Could you  
14    answer mine, please?

15          A.       But I understand that's how you've  
16    characterized your testimony.

17          Q.       And if Staff's supplemental information was  
18    based on annual reports from 2004, that could be  
19    information that's just as stale as your testimony from  
20    the prior case?

21          A.       Well, it indicates that it was updated with  
22    context to the company, so I don't -- I think that's  
23    something you'd need to ask the Staff.

24          Q.       So it's possible that if this was based  
25    only on annual reports in those exchanges where you may

1 have seen a gap, they could have since purchased UNE-P?

2 A. I actually spoke to the Staff a couple of  
3 times regarding what they were relying on for their  
4 information, and it was my understanding that they were  
5 attempting to get updated information from carriers. So I  
6 don't have any reason to believe that they wouldn't have  
7 sought updated information.

8 Q. And did you have any conversations about  
9 ComSouth?

10 A. I had general conversations regarding all  
11 companies.

12 Q. But not specifically about ComSouth?

13 A. I did not ask about each and every carrier  
14 individually. I asked them generally to explain to me  
15 where they were -- what they were doing in terms of  
16 updating information.

17 Q. Okay. Let's switch gears again. Let's now  
18 focus on the standard that the Office of Public Counsel  
19 proposes the Commission apply to SBC's application here.

20 As a preliminary matter, would you agree  
21 with me that the statutory standard for obtaining  
22 competitive classification has significantly changed as a  
23 result of SB 237?

24 A. That the standard for what has changed, for  
25 competitive classification?

1           Q.       For obtaining competitive classification  
2       has significantly changed as a result of SB 237?

3           A.       Yes, I would agree with that.

4           Q.       Okay. Prior to the change, you would agree  
5       that the Commission had to investigate the state of  
6       competition in an exchange and determine whether, quote,  
7       effective competition exists in the exchange; do you agree  
8       with that?

9           A.       Yes, and in a much longer time frame.

10          Q.       Okay. And that was the language that was  
11       used in Section 392.245.5 before it was changed by SB 237?

12          A.       Yes.

13          Q.       And SB 237 removed effective competition  
14       requirement from 392.245.5, right?

15          A.       It removed the words.

16          Q.       Okay. Now let's go back to the prior SBC  
17       competitive classification case. That's the one we were  
18       talking about earlier, TO-2006-0035. You were OPC's  
19       witness in that case, were you not?

20          A.       Yes, I was.

21          Q.       And you filed rebuttal and surrebuttal  
22       there, correct? You filed testimony there?

23          A.       Yes, I filed testimony, and I have my  
24       rebuttal. I don't have a copy of my surrebuttal.

25          Q.       I promise I won't ask you any questions

1 about the surrebuttal. Let's focus on rebuttal. I don't  
2 think you'll need to refer to it, but if you do and want  
3 to keep it handy, that will be great.

4 In your rebuttal testimony, you analyze  
5 whether SBC for the requested in that case met the  
6 effective competition requirement in 392.245.5, right?

7 A. Yes.

8 Q. Now let's come forward a little bit and  
9 shift to this case. Even though SB 237 removed the  
10 effective competition language and that requirement from  
11 392.245.5, would it be fair to say that in analyzing SBC's  
12 application here, you want the Commission to continue to  
13 apply the old effective competition test?

14 A. No, that is not correct, and I'd be happy  
15 to explain the answer.

16 Q. Okay. Would you agree with me that in your  
17 pretrial brief OPC cited the definition of effective  
18 competition?

19 A. I didn't prepare the brief. I'm not sure.  
20 I don't recall. Oh, let me -- let me try again. I do  
21 have the brief, and it includes in the -- in a section  
22 labeled applicable law, it does include that definition.  
23 However, I don't know whether the purpose was to simply  
24 explain that there's been a change or whether it -- you  
25 know, I did not intend to apply the effective competition

1 criteria --

2 Q. Okay.

3 A. -- as they used to be in the law to this  
4 case.

5 Q. In this case, would it be correct to say  
6 that you want the Commission to evaluate whether prices  
7 will be constrained?

8 A. Sure.

9 Q. And you agree that in the prior case you  
10 also wanted the Commission to make that same evaluation,  
11 right?

12 A. Yes. However, the manner in which I  
13 believe that the Commission could be assured that prices  
14 would be construed is different.

15 Q. Let's compare that. Let's go to in this  
16 case your rebuttal, I think on page 9. Okay. I found it.  
17 I'm sorry for the delay. At page 9, line 6 you say --  
18 let's go back here. The question that you were asked  
19 starts at page 1 -- I'm sorry, line 1 of page 9 of your  
20 rebuttal in this case. From an economic perspective, do  
21 you believe it is important in the 60-day track petitions  
22 for the Commission, in its discretion, to evaluate the  
23 quality and quantity of competition for before it grants a  
24 competitive classification?

25 And your answer at line 6 is, yes. For

1 competition to be meaningful and not contrary to the  
2 public interest, it should constrain the price a monopoly  
3 provider might otherwise charge for service.

4 A. Yes, my testimony says that.

5 Q. Okay. In the prior case, if I can direct  
6 your attention to page 15, the 2005-0035 rebuttal,  
7 page 15, line 12, the primary economic benefit -- I'm  
8 sorry. Are you with me?

9 A. Yes, I am.

10 Q. The primary economic benefit of truly  
11 effective competition is that no single firm or group of  
12 firms has the ability to profit or sustain price increases  
13 to any significant degree above cost. In that case you  
14 also were interested in the ability to constrain pricing,  
15 right?

16 A. Sure. That doesn't make the two things  
17 identical. Constraining prices is one element.

18 Q. It's one thing you considered as relevant  
19 for the Commission to look at in both cases, and that's  
20 where I'm going.

21 A. Yes, I do think it's relevant for the  
22 Commission to consider in both cases. That does not make  
23 them identical in terms of whether your standard is  
24 effective competition or simply competition that you  
25 believe is in the public interest.

1           Q.       Let's look at some of the other elements,  
2     and here I want to focus on the definition of effective  
3     competition. So maybe it might be helpful if we can grab  
4     Mr. Dandino's pretrial brief.

5           A.       I have a copy.

6           Q.       Page 11.

7           A.       I'm there.

8           Q.       Okay. The first section, top of the page,  
9     definition section 386.020, in parentheses 13, effective  
10    competition shall be determined by the Commission based  
11    on, A, the extent to which services are available from  
12    alternative providers in the relevant market.

13                    Would you agree with me that you applied  
14    this element in this case?

15           A.       Certainly the existence of providers is  
16    something that is relevant either with the standard of  
17    effective competition or with competition that is not  
18    contrary to public interest. The difference in how or to  
19    what degree that competition exists and the way that I  
20    measured it in the previous case and, in fact, the one  
21    before that, I focused on a market share analysis which  
22    attempted to identify a minimum market share or actually a  
23    minimum HHI, Hirschman-Herfindahl Index. Sometimes you  
24    see it written the other way, but --

25           Q.       That's easy for you to say.

1           A.       Sometimes you say it the other way around.  
2   And what that did -- or what that is from an economic  
3   perspective is, it is one mechanism by which you can gauge  
4   the extent of competition and --

5           Q.       I don't know if I want to get too far. You  
6   didn't do that here.

7           A.       Well, I'm saying that that's a difference.  
8   I did not -- that I view as, in fact, a fairly strict  
9   standard. And I can't remember whether it was you,  
10   Mr. Bub, or Mr. Lane who asked me numerous questions back  
11   in those previous cases about whether it was true that I  
12   wouldn't recommend that there be like seven or eight  
13   facilities-based carriers, and I said yes, I would, under  
14   an effective competition standard.

15                   In this case, you'll see nothing like that  
16   in my testimony. I don't think that, although  
17   constraining prices and having competitors in the exchange  
18   is important, that I've set the same standard in the two  
19   cases.

20           Q.       While your evidence that you're presenting  
21   in the two cases is different, just so I'm clear, you  
22   agree that in both you thought it was important that the  
23   Commission look to the extent to which services are  
24   available from alternative providers in the relevant  
25   market?

1           A.       Yes, I did, and I think that's consistent  
2     with the statute and the two different -- at the two  
3     different times.

4           Q.       And the approach you took here was to  
5     evaluate the quality and quantity of competition; would  
6     that be fair to say?

7           A.       I did not do it in the same manner or to  
8     the same extent as I had previously.

9           Q.       Different evidence?

10          A.       Difference evidence because of different  
11     standards.

12          Q.       Let's go on to the next one, B, the extent  
13     to which the services of alternative providers are  
14     functionally equivalent with substitutable and comparable  
15     rates, terms and conditions. Would you agree with me that  
16     you applied this element here also?

17                   I can help you if you want. Bottom of  
18     page 11, line 21.

19          A.       Well, the issue of being functionally  
20     equivalent, I'm not sure that it's used in the same  
21     manner, because in this case specifically the statute sets  
22     forth that you will consider wireless carriers. Under the  
23     30-day tract, they can be considered one of the basic  
24     local providers. Under the 60-day tract it at least says  
25     to consider them.

1                   And, in fact, my analysis took -- I spent  
2 much more analysis time in this case evaluating the  
3 quality of wireless service available to customers in  
4 various exchanges relative to the last case I don't  
5 remember specifically doing any such analysis in the  
6 previous case. And that was specifically in response to  
7 that this new standard puts a greater emphasis on the  
8 existence and the service available from wireless  
9 carriers.

10               Q.       Would you agree with me that here in this  
11 case you testified at the bottom of page 11 that the  
12 Commission should consider if comparable services are  
13 available, comparable price, terms and conditions? One of  
14 the things that the Commission should consider? I'm just  
15 looking at what you think is an appropriate standard.

16               A.       Sure, I think that is an appropriate  
17 standard, and that is one of the standards that I think is  
18 still -- was there before and is still there now.

19               Q.       Okay. Let's go on to the next one, C, and  
20 this is still from 386.020. The extent to which the  
21 purposes and policies of Chapter 392, RSMo, including the  
22 reasonableness of rates as set out in Section 392.185,  
23 RSMo are being advanced. You'd agree with me that you  
24 also think that's an appropriate element to apply here?

25               A.       Yes, because it is still set forth as the

1 purpose of the chapter.

2 Q. Okay. Let's look at that. I think at  
3 page 10, you talk about --

4 A. I list, yes.

5 Q. -- you talk about that one of the purposes  
6 of Section 392.185 serving as a reasonable yardstick.  
7 Were those your words?

8 A. I remember using that term.

9 Q. Page 10, line 8.

10 A. Serves as a reasonable yardstick in  
11 evaluating what is in the public interest.

12 Q. Would you agree with me that the text of  
13 392.245.5 does not refer to the purposes identified in  
14 392.185?

15 A. I think that your -- it's supposed to be --  
16 and I'm not an attorney, but I think it's supposed to be  
17 read with that in mind as the purpose. It does not  
18 specifically exclude it.

19 Q. Okay. My question was, those words aren't  
20 in 392.245.5? That language is not there?

21 A. Those words, that text is not listed there.

22 Q. Okay. Would you agree with me that the  
23 60-day criteria in 392.245.5, and here we might want to go  
24 back and you can read along with me in your testimony  
25 where you quote the statute. We looked at it earlier,

1 page 7 of your rebuttal.

2 A. Yes.

3 Q. Line 27, I'm going to start with the end of  
4 the line. The Commission shall approve such petition  
5 within 60 days unless it finds that such competitive  
6 classification is contrary to the public interest, right?  
7 That's what it says?

8 A. Yes, that's what that sentence says.

9 Q. You agree that the Legislature could have  
10 instead referred there to Section 392.185, right?

11 MR. DANDINO: Objection, your Honor. He's  
12 asking the witness to guess what the Legislature could  
13 have done. It's speculation. Let's talk about what the  
14 Legislature did do.

15 JUDGE RUTH: Do you want to respond?

16 MR. BUB: I think that's what we are  
17 talking about, what the Legislature did do. She's  
18 contending -- Office of the Public Counsel is contending  
19 that 392.185 is the appropriate standard to apply when the  
20 Commission has to determine whether or not something is  
21 contrary to the public interest. My point is that if  
22 that's what the Legislature wanted, it would have put  
23 those words in here and not the ones that they did.

24 JUDGE RUTH: Could you repeat your  
25 question, though, for the witness and for me?

1                   MR. BUB: Sure. Would you agree with me  
2     that if the Legislature intended -- let me back. I think  
3     my question that I said was, would you agree that the  
4     Legislature could have instead referred to 392.185 there  
5     but it didn't?

6                   THE WITNESS: It didn't need to. At the --  
7     I'm sorry. Should I --

8                   JUDGE RUTH: Does your objection still  
9     stand?

10                  MR. DANDINO: Still stands, your Honor.

11                  JUDGE RUTH: I'm going to overrule the  
12     objection and allow the witness to answer the question.

13                  THE WITNESS: It didn't need to because it  
14     told you at the very beginning of 392 the purposes of the  
15     chapter include all these things. It didn't need to  
16     repeat itself.

17     BY MR. BUB:

18                  Q.     Would you agree with me that the purposes  
19     of this chapter as articulated in 392.185 on one hand and  
20     the public interest on the other hand are two separate  
21     things?

22                  A.     No. I think 392.185 is overarching and  
23     should be kept in mind when interpreting the rest,  
24     although, once again, I'm not a lawyer.

25                  Q.     Would you agree with me that the

1     Legislature in other parts of the telecom statute refers  
2     to these -- to public interest and the purposes set out in  
3     392.185 as two separate things?

4             A.     I'm not specifically sure what you're  
5     referring to.

6             Q.     Okay. Let's look at Section 392.200 and --

7             A.     I don't have a copy.

8             Q.     Do you have SB 237 with you?

9             A.     No.

10            Q.     I have mine.

11                   MR. DANDINO: Your Honor, before we get  
12     into this, if counsel's going to ask the witness what the  
13     statute says and whether it includes the words public  
14     interest and whether it includes the purposes, the  
15     Commission can read the statutes for themselves. They can  
16     determine what it says and what it doesn't say.

17                   JUDGE RUTH: Do you have a response,  
18     Mr. Bub?

19                   MR. BUB: Yes, your Honor.

20                   JUDGE RUTH: I have -- I'll let you  
21     respond.

22                   MR. BUB: Okay. What the witness in her  
23     testimony is trying to do is show that the public interest  
24     and the purposes are the same, and -- for the treatment of  
25     interpreting the words against the public interest in

1 329.245.5, but in other parts of the statute they're  
2 treated as two separate things. I want to show her that  
3 and ask her if her opinion is the same.

4 MR. DANDINO: Your Honor, if I may just  
5 briefly, this is an economic witness. She's testifying  
6 from an economic perspective. What counsel is asking her  
7 to do is make an interpretation of the law and construe  
8 the law. This Commission can do that.

9 JUDGE RUTH: I'm going to agree with  
10 Mr. Dandino. You'll need to move your line of  
11 questioning. This is something -- I'll give you an  
12 opportunity for additional briefs if we want and you can  
13 bring this point up there.

14 MR. BUB: Fair enough, your Honor. In  
15 order to preserve this, can I at least reference the  
16 statute, the statutory cites that I'm referring to?

17 JUDGE RUTH: Yes.

18 MR. BUB: The statutory sections that I'm  
19 referring to are 392.200.4(2)(a). That appears -- that's  
20 language that's in the statute now, but it was also in the  
21 statute before SB 237. With 237 added an additional  
22 section 392.200.4(2)(b), and that section also lays out  
23 public interest and purposes as two separate things. And  
24 we'd be happy to brief that, your Honor.

25 Thank you, Ms. Meisenheimer. Those are all

1 the questions we have. Thank you very much. Appreciate  
2 your answers.

3 JUDGE RUTH: Ms. Meisenheimer, there aren't  
4 going to be any questions from the Bench, so we will move  
5 to recross from Staff.

6 MR. HAAS: No questions.

7 JUDGE RUTH: And Public Counsel, you are  
8 welcome to start redirect. I may cut you off if we go  
9 much past five o'clock, and we'll certainly recall the  
10 witness tomorrow if that additional time is necessary.

11 MR. DANDINO: Your Honor, if I could just  
12 begin tomorrow with my redirect?

13 JUDGE RUTH: That's fine.

14 MR. DANDINO: That way I can include any  
15 questions that the Commissioners may have.

16 JUDGE RUTH: What we'll do, then, is I have  
17 a couple of housekeeping matters that I want to take up,  
18 and I'll remind the parties that we will need  
19 Mr. Van Eschen available first thing tomorrow at -- we may  
20 actually move to him before we go to Ms. Meisenheimer.  
21 That will be up to the Commissioners. But I'll want both  
22 Ms. Meisenheimer and Mr. Van Eschen available at 8:30  
23 tomorrow morning. And Mr. Unruh, you are actually  
24 excused. You do not need to come back tomorrow.

25 I want to remind the parties that when we

1 started the hearing, I asked Staff to file some additional  
2 information that has to do with the customer lines related  
3 to the October 11th filing that Staff made, and I've  
4 requested that that information be provided by  
5 October 19th, and then the very next day by 9 a.m. on the  
6 20th if any party plans on filing a response, I'll need a  
7 notice in the file to that effect, and then I'll actually  
8 give you until the 21st to make the filing.

9 MR. DANDINO: Your Honor, is there going to  
10 be a deadline on, like, October 19th, is it going to be  
11 like they have to file by noon or three or --

12 JUDGE RUTH: I had not set a time deadline  
13 on October 19th. On the 20th it's 9 a.m. Let me ask  
14 Staff, do you think that you would be able to provide your  
15 filing by 12 noon? That's one week from today, and this  
16 is relating to the filing that you made on the 11th.

17 MR. DANDINO: I don't want to put any extra  
18 pressure on any of the other parties. It's just I think  
19 we may need more than a half hour.

20 JUDGE RUTH: Maybe some time to review it.

21 MR. DANDINO: Even read it may take longer  
22 than a half hour.

23 JUDGE RUTH: Well, the notice is just to  
24 let the Commission know that a response is coming. I  
25 certainly don't expect you to outline your response in

1     that notice.

2                   MR. DANDINO: Well, if it would be simply a  
3     notice, I won't have any problem.

4                   JUDGE RUTH: The 9 a.m. deadline is for  
5     just a notice, are you filing a response. If nobody files  
6     a notice by 9 a.m., then you won't get to file your  
7     response.

8                   Staff, it would still be helpful if you  
9     would be able to file your pleading on the 19th sometime  
10    before five o'clock. Would noon work?

11                  MR. HAAS: We'd like to get as much time as  
12    we could have. We had contacted the companies, begun  
13    contacting them and asked them to provide the information  
14    by the 18th.

15                  JUDGE RUTH: We'll leave it at the 19th,  
16    but certainly before the close of business day so that --  
17    and e-mail your response to the parties. Again,  
18    Mr. Dandino, all I'm asking for the next morning is a  
19    notice, a one line that you intend to file a response.

20                  MR. DANDINO: That's fine, your Honor, and  
21    at the end of business day is fine with me, too. That  
22    works out.

23                  JUDGE RUTH: All right. Thank you.  
24    Late-filed Exhibit No. 8 I'm expecting from SBC, and I had  
25    requested that it be filed by 10/17, objections to that

1 10/19 by 12 noon. And the same deadlines then for  
2 late-filed -- or post-hearing Exhibit No. 9, which will be  
3 coming from SBC. That's the response to Commissioner  
4 Gaw's question that I relayed.

5 MR. BUB: Market share.

6 JUDGE RUTH: Okay. Do the parties have any  
7 other housekeeping matters? Mr. Bub?

8 MR. BUB: Your Honor, on the market share,  
9 we'll do our best to get it by the 17th. If we have a  
10 problem, we'll let you know.

11 JUDGE RUTH: Fair enough. Then we will  
12 adjourn for the day, and I will see everyone at 8:30  
13 tomorrow morning. Thank you. We're off the record now.

14 WHEREUPON, the hearing of this case was  
15 recessed until October 13, 2005.

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