

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____
4 TRANSCRIPT OF PROCEEDINGS
5 HEARING
6 March 8, 2007
7 Jefferson City, Missouri
8 Volume 2
9 _____
10 In the Matter of the Review of the)
11 Competitive Classification of the)Case No.
12 Exchanges of Southwestern Bell)TO-2007-0053
13 Telephone, L.P. d/b/a AT&T Missouri)
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15 _____
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17 DEPUTY CHIEF REGULATORY LAW JUDGE.
18 STEVE GAW,
19 ROBERT CLAYTON,
20 LINWARD "LIN" APPLING,
21 COMMISSIONERS.
22 _____
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: Okay. This is Case No.
3 TO-2007-0053 in the matter of the review of the competitive
4 classification of the exchanges of Southwestern Bell
5 Telephone, LP doing business as AT&T Missouri. My name is
6 Nancy Dippell and I'm the Regulatory Law Judge assigned to
7 this case. And we've come here today for a hearing on this
8 matter. And we're going to begin with entries of appearance.
9 We'll begin with Staff, please.

10 MR. HAAS: Good morning. William K. Haas
11 appearing on behalf of the Staff of the Public Service
12 Commission. My address is Post Office Box 360, Jefferson
13 City, Missouri 65102.

14 JUDGE DIPPELL: And Public Counsel?

15 MR. DANDINO: Good morning, your Honor.
16 Michael Dandino, Deputy Public Counsel, Post Office Box 2230,
17 Jefferson City, Missouri 65102, representing the Office of the
18 Public Counsel and the public.

19 JUDGE DIPPELL: And AT&T?

20 MR. BUB: Good morning. Thank you, your
21 Honor. Leo Bub for Southwestern Bell Telephone, LP doing
22 business as AT&T Missouri.

23 JUDGE DIPPELL: Thank you.

24 Okay. First, a little scheduling matter
25 before we begin. Mr. Dandino contacted me Tuesday and said

1 that there was a court appearance that both he and Mr. Bub
2 needed to make in Cole County Circuit Court today at 1:00. So
3 we're going to try to accommodate that. So when we get
4 somewhere between noon and 12:30, we will break so that you
5 all can make your appearance over there and we'll reconvene
6 later, if necessary.

7 Are there any other scheduling things that I
8 need to know about? I will ask that everyone turn off your
9 wireless devices as those interfere with our recording system
10 and the Internet transmission.

11 Okay. Public Counsel had previously filed a
12 motion to declassify some of AT&T's information that they had
13 pre-filed in testimony as highly confidential. AT&T filed a
14 response and basically it comes down to the identity of the
15 CLEC competitors.

16 I think AT&T was proper in its filing of the
17 highly confidential -- or filing them as highly confidential
18 as they gathered that information from non-public sources and
19 was information gathered about their wholesale customers.
20 However, as OPC points out, the identity of the competitors,
21 which if there are competitors, is the whole crux of this
22 case, obviously must be public and I would assume that the
23 competitors would want it to be so or they wouldn't be much of
24 a competitor. And, therefore, the Commission feels that it's
25 proper to make that information public itself.

1 Like I say, I think AT&T did the right thing
2 by keeping it confidential when they filed it. In addition, I
3 believe at least half of those CLECs are identified in Staff's
4 information already, maybe not all of them.

5 So I'm going to grant Public Counsel's motion
6 to declassify that information so the names of the
7 identification of the CLECs that are the competitors in the
8 various exchanges will be treated as public information. So
9 we can go ahead then and mark exhibits with that in mind. And
10 we can go off the record to do that.

11 (Off the record.)

12 (Exhibit Nos. 1 through 6 were marked for
13 identification.)

14 JUDGE DIPPELL: All right. Then we have
15 marked the exhibits and we're ready to begin with opening
16 statements. And I'm going to adopt the opening statements in
17 order of witnesses that the parties set out and I think that
18 means we begin with -- I lost my list -- Staff.

19 MR. HAAS: Good morning. AT&T Missouri is an
20 incumbent local exchange company subject to the provisions of
21 the price cap statute Section 392.245 Revised Statutes of
22 Missouri. Section 392.245 provides an expedited two-track
23 procedure when a price cap regulated ILEC seeks competitive
24 classification for its services within one or more exchanges.

25 The two tracks are referred to as the 30-day

1 track and the 60-day track. In Case No. TO-2006-0093, the
2 Commission granted AT&T Missouri competitive classification
3 under the 30-day track or business services in 45 exchanges
4 and for residential services in 26 exchanges.

5 In Case No. TO-2006-0102, the Commission
6 granted AT&T Missouri competitive classification under the
7 60-day track or business services in 30 exchanges and for
8 residential services in 51 exchanges. Section 392.245 directs
9 the Commission to review the conditions in competitively
10 classified exchanges at least every two years or where an ILEC
11 increases rates for basic local services in a competitively
12 classified exchange.

13 The Staff filed a report to initiate this case
14 after AT&T Missouri increased the monthly rate for business
15 basic local telecommunications service in its rate group B and
16 larger competitively classified exchanges. The Staff report
17 requested the Commission to review if the conditions for
18 competitive classification continued to exist for all of
19 AT&T Missouri's competitively classified exchanges.

20 The three parties to this case, the Staff,
21 AT&T Missouri and Public Counsel, filed a joint motion in which
22 they stipulate that the Commission may consider in its review
23 the verified Staff report filed in this case as evidence to
24 determine if competitive conditions continue to exist in the
25 AT&T Missouri exchanges granted competitive classification

1 under the 30-day track.

2 The Staff and AT&T Missouri stipulated that
3 the Staff report demonstrates that the competitive conditions
4 for those exchanges continue to exist and should remain
5 classified as competitive. Public Counsel agreed not to
6 object to the Staff's and AT&T Missouri's stipulation and will
7 not offer evidence in opposition to that stipulation.

8 Consequently, the focus of today's hearing is
9 a review of whether conditions -- of whether competitive
10 conditions continue to exist in the exchanges granted
11 competitive classification under the 60-day track.

12 Under that track, an ILEC may petition the
13 Commission for competitive classification within an exchange
14 based on competition from any entity providing local voice
15 service in whole or in part by using its own
16 telecommunications facilities or other facilities or the
17 telecommunications facilities or other facilities of a third
18 party, including those of the incumbent local exchange company
19 as well as providers that rely on an unaffiliated third-party
20 Internet service.

21 The Commission shall approve a 60-day petition
22 unless it finds that such competitive classification is
23 contrary to the public interest. Evidence from the Staff and
24 from AT&T Missouri shows a minimum of three CLEC competitors
25 and two wireless competitors in each of the exchanges

1 classified as competitive under the 60-day track.

2 Section 392.245 provides that if the services
3 of an ILEC are classified as competitive, the ILEC may
4 thereafter adjust its rates for such competitive services
5 upward or downward as it determines appropriate in its
6 competitive environment.

7 Public Counsel argues that the action of AT&T
8 Missouri in increasing rates for basic local service in some
9 competitively classified exchanges reflects a change in
10 circumstances such that competitive classification for all
11 60-day track exchanges is contrary to the public interest.

12 Since the statute allows an ILEC to increase
13 rates for its competitive services, it is contrary to logic to
14 suggest that such a rate increase is a change in conditions
15 such as would make the competitive classification contrary to
16 the public interest.

17 Because the evidence demonstrates the
18 existence of a plethora of wireline and wireless carriers in
19 the AT&T exchanges that were classified as competitive under
20 the 60-day track, the Commission should retain that
21 classification. Thank you.

22 JUDGE DIPPELL: Thank you.

23 Public Counsel?

24 MR. DANDINO: Your Honor, may I make the
25 opening statement from here, please?

1 JUDGE DIPPELL: You may.

2 MR. DANDINO: Thank you. Your Honor, and may
3 it please the Commission.

4 Not contrary to the public interest. That's
5 the focus of this investigation, that is the focus of this
6 hearing. The -- when you -- when this Commission revisits the
7 issue of competitive status under the price cap statute, one
8 of the things that it says is that you see if the conditions
9 are the same, the conditions for competitive status are the
10 same.

11 One of the conditions was not only the count
12 and the type of competitors, but in the 60-day petition it was
13 also a question of whether -- unless there was an indication
14 that it was contrary to the public interest. What we're --
15 what we're here today, the Office of Public Counsel,
16 suggesting to the Commission, that it is no longer in the
17 public interest and that -- and the public interest is a
18 proper area of inquiry. And because it is no longer in the
19 public interest, we're asking this Commission to reclassify
20 these exchanges as under the price cap statute.

21 Now, this public interest is a -- is not a
22 clearly defined definition. Basically it is an evaluation and
23 an analysis that this Commission must make based on the
24 circumstances before them. That is not only in this case, but
25 in every case that comes before this Commission when they have

1 to make a determination of whether something is in the public
2 interest, detrimental to the public interest or is contrary to
3 the public interest.

4 And I think that's -- that it's difficult to
5 come up with a standard to present to this Commission to say,
6 this is what -- exactly what you have to consider. I think
7 the more important aspect of it is we're asking the Commission
8 to consider all relevant evidence.

9 And when you consider all relevant evidence, I
10 think you have to look at not only the -- just counting up
11 whether there's a VoIP provider, a wireless provider, a cable
12 company modem provider, but you also have to look at the
13 impact, the effect of the decision on the public, on
14 competition and on the ratepayers, especially those ratepayers
15 who are the basic ratepayers. Those ratepayers that basically
16 form the foundation, the basis for which all other
17 telecommunications services rest.

18 Now, in this process, Staff did not make a
19 public interest analysis and AT&T did not make a public
20 interest analysis. Both of them -- both of them relied upon
21 the count of the competitors. Basically they -- both of these
22 parties are saying that it is irrelevant and that public
23 interest analysis doesn't tie into this. That isn't what the
24 statute requires. Public Counsel would suggest otherwise.

25 What we're asking the Commission to do is to

1 look at the facts, look at the surrounding circumstances.
2 Public Counsel's asking the Public Service Commission to take
3 a hard look at the competitive environment in these AT&T
4 exchanges.

5 In this room today we're focusing on the
6 regulation of wireline telecommunications since that is the
7 only authority that this Public Service Commission has over
8 the communication technologies that work in Missouri.

9 DSL, broadband, wireless, VoIP, Internet,
10 cable modem, video services, Dish TV, On Demand TV, all these
11 services are marketed by AT&T, or in some fashion in those
12 exchanges or in the near future or by some of the competitors.
13 Some of the competitors market all these services, some just a
14 number of them.

15 But the jurisdiction of the Commission and the
16 focus of the Office of Public Counsel must be on the wireline
17 competition because we must, by jurisdiction, by law, protect
18 the wireline ratepayers and customers.

19 We have -- last time we have gathered here to
20 discuss the competition and these exchanges was back in, I
21 guess, 2005. And at those times the Commission looked at
22 public policy considerations or at least said that there was
23 nothing in the evidence to indicate that it was contrary to
24 the public interest to approve these competitive
25 classifications.

1 Office of Public Counsel suggests to the
2 Commission that there has been changes. Changes that have
3 taken place that affect the status of competition in these
4 exchanges and have an important impact on the wireline
5 customers. Ever since the passage of the Federal
6 Telecommunications Act of 1996 and Senate Bill 571 implemented
7 in Missouri, it's always been the mantra of the industry and
8 regulators is that competition will bring lower prices, better
9 service, more choices.

10 SBC, which is now the new AT&T, has repeatedly
11 told us that, allow us to compete, allow us to compete like
12 CLECs and if we compete, this competition will mean lower
13 prices, better services, more choice for all our customers.
14 This Commission and the legislature took SBC/AT&T at its word
15 and now adopted competition.

16 And I think basically we're seeing that
17 competition did not turn out to be what was anticipated. And
18 we think it is time for this Commission, even in the short
19 period of time since December of 2005, to take another look at
20 it and see which direction the competition is headed and what
21 it means for the wireline customers.

22 There's always been talk about whether it's
23 effective competition or real competition or actual
24 competition or the competition that the statute says is only
25 made by counting up the number of other providers or providing

1 these telecommunications services. All these are valid
2 considerations when we're talking about economics.

3 Unfortunately, Public Counsel realizes that
4 the statute under which this Commission has to operate does
5 involve -- at least in the 60-day petition, it involves a
6 counting of different providers and recognizing how they
7 provide those services. But as we suggested, it doesn't --
8 the inquiry doesn't end there and I think the inquiry doesn't
9 end there when we're revisiting them.

10 That's why I think it's important that when
11 we're looking at the term "public interest," is the public
12 interest served, does it promote the public interest, is the
13 continuation of the competitive status contrary to the public
14 interest?

15 We need to look at what competition means --
16 you know, we need to look at a definition of competition. I
17 just kind of call it honest-to-goodness competition. And what
18 we're talking about is trying to fulfill those basic goals
19 which was always promised that competition would provide.

20 From December 2005 until -- after December
21 2005, when the reclassification was approved in these
22 exchanges, it did not take AT&T very long to increase the
23 basic local service rates. This was quite a shock considering
24 it was always said that competition was going to lower prices.
25 Competition didn't even leave the prices the same.

1 And whatever the reason for increasing it,
2 it's not what was promised, it was not what was anticipated.
3 And I think that this Commission is -- can see that the
4 promise of what competition was and the -- its impact on the
5 basic local service customer has not been delivered. And, in
6 fact, competition has had an adverse effect on those
7 customers.

8 Now, if you're getting packages, packaged
9 service or if you're buying video service or you're buying
10 services -- or not video, but broadband services, but if it --
11 if the wireline is packaged with non-regulated services such
12 as DSL, broadband, wireless, then there's some ben-- there may
13 be some benefit to the consumers.

14 But that's not what this Commission, that's
15 not what Public Counsel is focusing on. Our duty, our job is
16 to protect the wireline customer and is the wireline customer
17 benefiting. Are they receiving the benefits of competition?
18 We don't see it. Not in these exchanges. Not when basic
19 local rates have increased when under the price cap
20 regulation, those rates would have declined because -- or
21 would have -- would have declined because of the downward
22 adjustment for the Consumer Price Index for telecommunications
23 services.

24 Public interest test -- and it's not really a
25 test, but I think it's the first place the Commission should

1 look is look at Section 392.185. It points to the
2 fundamental, I guess, standards, elements of what the public
3 interest is. It is not promotion of the public interest for
4 continued competition without price cap regulation for basic
5 local services.

6 It seems that the wireline customers are no
7 longer the focus of AT&T or the other competitors. They are
8 just -- I think the move is toward new technologies and new
9 customers and we're afraid that these wireline customers are
10 going to be left behind and left really at the mercy of the
11 incumbent.

12 Also, another element that has changed since
13 2005 is now we have the new AT&T, which is not only the old
14 SBC and the old AT&T merged. And now we have them merged --
15 the new AT&T merged with the even -- with Bell South to come
16 up with the even newer AT&T. And what we're doing -- what
17 we're seeing is the reestablishment of the original AT&T
18 system, but with a bigger difference.

19 What we're seeing is it's unregulated.
20 Because in many instances in Missouri and through this, if
21 their services are classified as competitive, then there's no
22 price regulation. But what the essence of it is, is that with
23 this merger and consolidation, not only
24 of -- with AT&T creating a giant who is going to -- it's going
25 to be very difficult for anyone to really challenge AT&T in

1 Missouri exchanges or anywhere else. They have -- the
2 resources available to the new AT&T is not only considerable,
3 but it's overwhelming.

4 Also, in terms of when Verizon acquired MCI,
5 that eliminated a significant competitor for local service in
6 Missouri. Verizon doesn't appear to be making very much
7 marketing effort in Missouri and it seems just to be
8 continuing on with the -- with their -- the former MCI
9 customers and not trying to expand their market into Missouri.
10 Now, AT&T -- when SBC acquired AT&T, there was another
11 competitor which was taken out of the picture.

12 I think the Commission has to look at the
13 total effect of this and that we've consolidated those
14 choices. And I think that some of the other CLECs have fallen
15 by the wayside. We're not -- and so there isn't more choices.
16 And it's not only in -- just in these exchanges, but it's
17 throughout the industry. I think that the consolidation and
18 merger of companies, not only in the wireline industry, is
19 limiting the choices to consumers.

20 And I think in conclusion, it is contrary to
21 the public's -- to the public interest to allow competitive
22 classification where there is no protection for the ratepayer,
23 there is no price caps, there are no ability to protect that
24 ratepayer from rate increases. I think it is important for
25 the Commission to look at the facts and to provide the

1 consumer wireline consumer protection. That is what's in the
2 public interest. Thank you.

3 JUDGE DIPPELL: Thank you.

4 AT&T?

5 MR. BUB: Thank you, your Honor. Good
6 morning. Well, having now heard a discussion of the statutory
7 test from both Staff and Public Counsel, it should be apparent
8 the Public Counsel's, again, asking the Commission to
9 disregard the mandatory requirements of Section 392.245.
10 Instead, Public Counsel's asking to you apply the old
11 statutory test under which competitive classification was to
12 be granted only if the Commission finds that effective
13 competition exists.

14 Prior to the statute's revision by Senate
15 Bill 237, the Commission was required to apply the effective
16 competition definition from Section 386.020, parens 13, of our
17 statutes. And that definition listed five factors. And under
18 the old competition test, the Commission, among other things,
19 was to examine each of those five factors. It was to examine
20 the extent to which services are available from alternative
21 providers. And I remember under the new statute only -- the
22 statutory test is two providers.

23 Under the old competition test, the Commission
24 was required to examine the extent to which services of
25 alternative providers are functionally equivalent or

1 substitutable at comparable rates, terms and conditions.

2 Again, under the new test, statute directs the Commission to
3 look at whether there are two competitors.

4 Under the old competition test, the Commission
5 was required to examine the extent to which the purposes and
6 policies of Chapter 392, including the reasonableness of rates
7 as set out in Section 392.185, are being advanced. That's the
8 section that Public Counsel's asking the Commission now to
9 apply. But as you know, the legislature removed the effective
10 competition test from the statute through Senate Bill 237 and
11 that significantly changed how the Commission is to make
12 competitive classification determinations.

13 Nevertheless, Public Counsel wants you to
14 continue to use the factors from that old competition test in
15 this case to take competitive classification away from
16 AT&T Missouri. Essentially what it's trying to do is to
17 bootstrap those old factors back into the statute by claiming
18 that they should be included in the public interest analysis
19 that the Commission -- they want the Commission to make in
20 this case.

21 But that would not be true to the statute.
22 When the legislature eliminated the effective competition test
23 from the statute, that necessarily removed the factors that
24 comprise that test. In Senate Bill 237, the legislature made
25 a policy decision that economic development, consumer welfare

1 will be enhanced by allowing the incumbent local exchange
2 companies or ILECs, I-L-E-C-S, to compete on an equal basis.

3 The statute reflects this policy change.

4 It says where customers have a choice of two additional
5 providers, competitive classification is to be granted.

6 Well, as Mr. Haas explained, there are two
7 tracks under the statute. And he has already explained the
8 30-day track and the fact that no party has objected to the
9 Commission's continuing competitive classifications for the
10 30-day exchanges. So I won't go any further on the 30-day
11 exchanges other than to note that the uncontested evidence
12 here fully supports the continued appropriateness of the
13 competitive classifications in those exchanges and we would
14 respectfully ask the Commission to reaffirm that.

15 Mr. Haas also covered the appropriate
16 standards under the 60-day track and that's what's applicable
17 here. So with that in mind, let's quickly review the evidence
18 for the 60-day exchanges.

19 The question the Commission has to ask is,
20 does the evidence show that two entities are providing
21 business services in the 30 business exchanges? Does the
22 evidence show that two entities are providing residential
23 services in the 51 residence exchanges? Well, as Mr. Haas
24 indicated, the answer's clearly yes.

25 The evidence, even without counting the

1 wireless carriers, which the statute directs the Commission to
2 count, even without that, it shows there are at least three
3 such entities in each exchange and the vast majority of those
4 exchanges have many more.

5 Let's just look at the residence side for a
6 second. Without even counting wireless, just looking at Staff
7 evidence, it shows that 94 percent of the exchanges have four
8 or more additional competitors, 71 percent of those exchanges
9 have eight or more.

10 Now, let's look at the business side. Staff
11 evidence shows that 97 percent of the exchanges have three or
12 more additional competitors. 73 percent have five or more.
13 And when you add AT&T's evidence on top of that, it shows
14 there are even more competitors in those exchanges.

15 The evidence of these providers is just
16 uncontested and it's more than sufficient to show that the
17 conditions for competitive classification continue to exist.
18 And if it wished, the Commission need not go any further than
19 a Commission order reaffirming competitive classification just
20 based on that evidence.

21 And if the Commission decides that it wishes
22 to look at Public Counsel's claim that -- let me try again --
23 continuing competitive classification would be contrary to
24 public interest, you don't need to spend too much time there
25 on that issue. Excuse me. As you've ruled previously, Public

1 Counsel, as the proponent of the proposition about public
2 interest, they have the burden of proof on that issue.

3 So the question is, have they met that burden? And
4 clearly they have not. Its attempt to show that competitive
5 classification is contrary to public interest is merely an
6 attempt to recreate the old effective competition test that
7 the legislature removed from the statute.

8 Let's look at what Public Counsel's saying.
9 First they claim that competitive classification has resulted
10 in circumstances that are contrary to the goals of Section 381
11 because AT&T Missouri recently increased its prices.
12 Specifically the policy goals that Public Counsel wants you to
13 consider are the promotion of universally available and widely
14 affordable telecommunications services.

15 They want you to consider ensuring customers
16 pay only reasonable charges for telecommunications services
17 and allowing full and fair competition to function as a
18 substitute for regulation. But as I mentioned at the outset,
19 consideration of these in Section 382.185's other goals was a
20 factor from the old competition test that required the
21 Commission to examine.

22 And when the Commission -- when the
23 legislature eliminated the effective competition test from the
24 statute, it necessarily removed that factor from the
25 Commission's consideration. Now, this should not trouble you.

1 Remember what replaced it. It was replaced with the
2 legislature's belief in the market that when there are at
3 least two other competitors providing service, and that's the
4 new statutory test, customers can switch providers if they
5 believe their current provider's rates are unreasonable.

6 And if you look at what the price increases
7 are here, certainly you'll see that they were modest. For
8 business customers, it was a dollar per month increase. And
9 then for residence customers, the increase ranged from
10 93 cents to \$1.26 per month.

11 But under the new statutory framework, you
12 know, customers are protected. That's because if any customer
13 believed the price increases were unreasonable, he or she can
14 switch to one of the many other competitors that are serving
15 the market.

16 Public Counsel's attempt to characterize a
17 price increase as contrary to public interest is also absurd
18 from a statutory perspective. That's because the statute
19 itself specifically permits a carrier that has received
20 competitive classification to adjust its rates for
21 competitively classified services either upward or downward as
22 it deems appropriate in its own competitive environment.

23 Similarly, Public Counsel, under the rubric of
24 public interest, claims the Commission should consider all
25 relevant factors and the extent of competition. Again, these

1 were factors that the Commission had to examine under the old
2 statute, under the old competition test but are now excluded.

3 Public Counsel also pointing to public
4 interest complaints about the level of competition from
5 nonfacility-based providers. The complaint about the relative
6 strength of competitors, their market share, gaps in wireless
7 coverage.

8 But had the legislature intended the
9 Commission to consider any of these factors, it would have
10 specifically included them when it re-wrote the statute
11 through Senate Bill 237, but it did not. To the contrary, it
12 removed them when it eliminated the effective competition test
13 from the statute. Certainly it cannot be in the public
14 interest to enforce standards that the legislature determined
15 no longer apply.

16 Public Counsel also encourages the Commission
17 not to count wireless carriers or entities utilizing
18 commercial agreements to provide service, but the legislature
19 has already determined this too. It has specified that these
20 entities must be counted and the Commission must do so.

21 In conclusion, we would urge you not to follow
22 Pubic Council's entreaties and to instead follow the directive
23 of the legislature. There are at least two providers offering
24 local voice service in each exchange that are at issue here
25 and no party's presented any competent or substantial evidence

1 that competitive classification is contrary to public
2 interest. And, therefore, we ask you to reaffirm competitive
3 classification in the 60-day exchanges. Thank you.

4 JUDGE DIPPELL: Thank you.

5 With that concluding the opening statements, I
6 believe we can go ahead then and begin with the first witness.

7 MR. HAAS: The Staff calls John Van Eschen.

8 (Witness sworn.)

9 JUDGE DIPPELL: Go ahead, Mr. Haas.

10 JOHN VAN ESCHEN testified as follows:

11 DIRECT EXAMINATION BY MR. HAAS:

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

14 A. My name is John Van Eschen.

15 Q. Where are you employed?

16 A. I'm employed on the Staff of the Missouri
17 Public Service Commission.

18 Q. And what is your position?

19 A. I'm the manager of the telecommunications
20 department.

21 Q. Are you the Mr. Van Eschen who prepared
22 Exhibit No. 1, the Rebuttal Testimony in this case?

23 A. Yes, I am.

24 Q. And do you have any additions or corrections
25 to make to that testimony?

1 A. I do.

2 Q. And what would that be?

3 A. On page 10, line 7, I want to replace the
4 phrase "none of these" with "23." Therefore, the complete
5 sentence on page 10, lines 6 through 8 will be as follows, In
6 regards to AT&T's 60-day business competitive exchanges,
7 23 exchanges appear to have a CLEC providing service on either
8 a full-facility or partial-facility basis.

9 Q. Mr. Van Eschen, you've also prepared a revised
10 Schedule 8 to your testimony. Would you explain that
11 revision?

12 A. Schedule 8 identifies specific CLECs, which
13 are competitive local exchange carriers, and the number of
14 lines that they are providing in each of the 30 exchanges
15 where competitive status was granted for business services in
16 the 60-day proceeding.

17 And the revision to Schedule 8 is the
18 insertion of footnote No. 2 where it's appropriate. Footnote
19 No. 2 identifies CLECs lines which are provided on a full- or
20 partial-facility basis. This particular footnote was
21 originally intended to be included on this schedule.

22 Q. Do you have other revisions to your pre-filed
23 testimony?

24 A. No, I do not.

25 Q. With those revisions, is this testimony true

1 to the best of your knowledge, information and belief?

2 A. Yes, it is.

3 MR. HAAS: Your Honor, I would move for the
4 admission of Exhibit No. 1 in NP and HC versions and
5 Exhibit No. 2 in NP and HC versions.

6 JUDGE DIPPELL: Thank you.

7 Would there be any objection to Exhibit No. 1?

8 Seeing none, I will receive it into evidence.

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

10 JUDGE DIPPELL: Is there any objection to
11 Exhibit No. 2, both NP and HC on those versions, of course?

12 Seeing none, I will receive that as well.

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

14 MR. HAAS: Your Honor, I tender the witness
15 for cross-examination.

16 JUDGE DIPPELL: All right then. Is there
17 cross-examination from AT&T?

18 MR. BUB: Yes, your Honor. Just a little bit.

19 CROSS-EXAMINATION BY MR. BUB:

20 Q. Good morning, Mr. Van Eschen.

21 A. Good morning.

22 Q. I want to focus just briefly on the
23 differences in Mr. Unruh's and your evidence, if I could. So
24 let's -- do you have Mr. Unruh's testimony with you?

25 A. I believe I do.

1 Q. Okay. What I want to do is focus on his
2 Schedule 2-HC. I guess it's no longer HC, so let's just call
3 it Schedule 2.

4 A. Okay. I believe I have that.

5 Q. Okay. If we could look at page 1, do you see
6 that Mr. Unruh lists Charter, Sage, Birch and Verizon as
7 providing residential service in the Antonia exchange?

8 A. Yes, I do.

9 Q. Okay. Do you understand that Mr. Unruh took
10 this information from current internal business records within
11 AT&T Missouri such as its wholesale billing records, porting
12 request records or 911 listings?

13 A. Yes.

14 Q. Okay. Do you see that Mr. Unruh also lists
15 four wireless carriers providing service in the Antonia
16 exchange?

17 A. Yes, I do.

18 Q. Okay. Is it correct that you have not
19 presented any evidence showing that these eight carriers are
20 not currently providing service in Antonia?

21 A. That's true.

22 Q. Okay. Do you see that Mr. Unruh makes a
23 similar showing in the schedule for the other 50 residence
24 exchanges in Schedule 2 showing both CLECs and wireless
25 providers?

1 A. Yes.

2 Q. And you also have not presented any evidence
3 showing that the carriers listed as providing service in these
4 50 exchanges are not currently providing those services.
5 Correct?

6 A. That's correct. I haven't provided any
7 additional testimony on that.

8 Q. Okay. Now, let's move to Mr. Unruh's
9 Schedule 3. Do you see that Mr. Unruh makes a similar showing
10 in Schedule 3 for the 30 business exchanges, again, showing
11 both CLECs and wireless carriers?

12 A. Yes, I do.

13 Q. Okay. And you have also not presented any
14 evidence showing that the carriers listed as providing service
15 in these 30 exchanges are not currently providing those
16 services. Correct?

17 A. That is correct.

18 Q. Okay. Now, I'd like to focus on the
19 differences in Mr. Unruh's and your evidence. Let's first
20 compare Mr. Unruh's Schedule 2 with your Schedule 7-HC.

21 A. All right.

22 Q. Let's start with Antonia exchange again on
23 page 1. There in your schedule you show that there are three
24 CLECs, MCI Metro, Sage and Sprint, as providing service in
25 that exchange. Am I reading that correctly? What I'm looking

1 at is Schedule 7, page 1 of 15. And I'm sorry, I'm going to
2 make you flip back and forth between Mr. Unruh's Schedule 2
3 and your Schedule 7.

4 A. Could --

5 Q. I can repeat the question.

6 A. Yeah, go ahead.

7 Q. Okay. Are you with me, schedule -- your
8 Schedule 7, page 1 shows Antonia at the top. Correct?

9 A. Yes.

10 Q. And then you have two columns, 2004 Annual
11 Report, 2005 Annual Report. Right?

12 A. Yes.

13 Q. And I'm just going to focus on the 2005 Annual
14 Report column. And just so we all remember, the numbers in
15 those columns are still highly confidential, but the names of
16 the providers are not. So I just want to focus on the names.
17 For Antonia, will you see -- or what you show is providing
18 service in Antonia, MCI Metro, Sage and Sprint; is that right?

19 A. That's correct.

20 Q. Okay.

21 A. And if I may, just as a clarification, I
22 believe -- I -- I would consider MCI Metro the same as
23 Verizon.

24 Q. Okay. Good. That was my next question.

25 A. Okay.

1 Q. Thank you. So let's go back to Mr. Unruh's
2 Schedule 2. And there you see that he lists for Antonia, for
3 residential he lists Charter, Birch and Verizon. Do you see
4 that?

5 A. Yes.

6 Q. And you just clarified that Verizon has
7 acquired MCI Metro, so it would be more appropriate to refer
8 to as Verizon?

9 A. That is correct. The names that are -- are
10 identified in my Schedule 7 are the names that came out of the
11 2005 Annual Reports. And this particular transaction
12 involving Verizon and MCI happened after they had submitted
13 that Annual Report.

14 Q. Okay. Thank you for the clarification. Your
15 Schedule 7-HC, however, doesn't list Charter or Birch, does
16 it?

17 A. No, it does not.

18 Q. Okay. And there are similar differences for
19 many of the other exchanges listed in your 7-HC and
20 Mr. Unruh's Schedule 2 and 3; is that right?

21 A. Yes.

22 Q. Okay. In your opinion, would those
23 differences be due to the different time periods for which
24 Mr. Unruh and you captured the data?

25 A. It -- that could be one factor, yes.

1 Q. Okay. Your data is taken from the CLEC's
2 Annual Report for the calendar year 2005. Right?

3 A. That is correct.

4 Q. And so that data would be as of -- current as
5 of the end of 2005?

6 A. That is correct.

7 Q. Okay. And Mr. Unruh's data is more recent,
8 you understand?

9 A. Yes.

10 Q. Okay. In your view, these differences do not
11 show that either data set is wrong, do they?

12 A. No.

13 Q. Just different periods?

14 A. Yes.

15 Q. Okay. Now, I want to focus on the differences
16 in your data in your Schedule 7-HC, the differences between
17 2004 and 2005. And let's start again with Antonia exchange on
18 page 1. There you show three CLECs, KCN Communications, Talk
19 America and Trinsic, that provide a service as of the end of
20 2004, but at the end of 2005, they no longer provided service
21 in that exchange. Am I reading that correct?

22 A. That is correct.

23 Q. Okay. And looking at the specific line counts
24 of these three providers without mentioning them, in your
25 opinion, were these three providers fairly minor players?

1 A. Yes.

2 Q. Okay. Now, we just talked about Mr. Unruh's
3 Schedule 2 showing Charter as now providing service in
4 Antonia. Correct?

5 A. Yes.

6 Q. Based on your experience and what you have
7 observed when Charter enters an exchange, would you expect to
8 see substantially more lines captured by Charter than lost by
9 ANC, Talk America and Trinsic in the Antonia exchange?

10 MR. DANDINO: Objection, your Honor, calls for
11 speculation.

12 MR. BUB: Your Honor, I'm just asking for
13 him -- for an estimate based on his experience of what he's
14 seen Charter do in other exchanges.

15 JUDGE DIPPELL: I'm going to sustain the
16 objection. I believe it does call for his speculation.

17 BY MR. BUB:

18 Q. Is it possible that the lines lost by ANC,
19 Talk America and Trinsic in the Antonia exchange are now being
20 served by Charter?

21 A. It's possible.

22 Q. Is it possible that the lines lost by ANC,
23 Talk America and Trinsic are now being served by wireless
24 carriers?

25 A. I don't know, but it's possible.

1 Q. Is it also possible that the lines lost by
2 ANC, Talk America and Trinsic are made up by what Charter
3 captures?

4 MR. DANDINO: Your Honor, I object to the
5 question. I think, once again, asking whether this is
6 possible is asking for speculation. Anything is possible.
7 Obviously the witness is saying that he doesn't know. I think
8 the counsel's just asking him to speculate.

9 MR. BUB: That's a different question. He
10 doesn't know is different than whether it's possible or not.
11 That's a fact that he's certainly competent to testify about.

12 JUDGE DIPPELL: I'm going to sustain the
13 objection. Again, I believe that it calls for his
14 speculation. It hasn't really been established that he's
15 aware of what Charter and other --

16 MR. BUB: Okay. Well, we've already
17 established that Charter is providing service in that exchange
18 through what he's seen in Mr. Unruh's exhibit. There's no
19 evidence to contradict that so I'm asking whether it's
20 possible that those lines lost by ANC, Talk America and
21 Trinsic have been more than made up by Charter's capture.

22 JUDGE DIPPELL: I'm going to sustain the
23 objection.

24 MR. BUB: That's fine.

25 BY MR. BUB:

1 Q. Okay. Based on your experience and what you
2 observed since competition has been introduced in the
3 telecommunications market, do you expect the number of
4 providers in an exchange to remain static in a competitive
5 market?

6 A. No, I would expect that to fluctuate.

7 Q. Okay. In a competitive market, would you
8 expect the number of lines that an individual provider serves
9 in an exchange to remain static?

10 A. No, I would expect that to change as well.

11 Q. Could go up?

12 A. Could go up, could go down.

13 Q. Okay. In a competitive market, no provider's
14 survival is guaranteed, is it?

15 A. That is true.

16 Q. Okay. In a competitive market, do you expect
17 to see some providers enter exchanges and others exit just as
18 we saw in the Antonia exchange?

19 A. Yes.

20 Q. In your view, is that part of the normal
21 workings of a competitive market?

22 A. Yes. I would agree with that.

23 MR. BUB: Thank you. Those are all the
24 questions we have, your Honor.

25 JUDGE DIPPELL: Thank you.

1 MR. BUB: Thank you, Mr. Van Eschen.

2 JUDGE DIPPELL: Cross-examination by Public
3 Counsel?

4 MR. DANDINO: Yes, your Honor. Thank you.

5 CROSS-EXAMINATION BY MR. DANDINO:

6 Q. Good morning, Mr. Van Eschen.

7 A. Good morning.

8 Q. Just to follow up on -- Mr. Bub was asking you
9 about a competitive market. Do you know where any exchanges
10 in the state of Missouri -- or let's even say these exchanges
11 where AT&T -- the new AT&T has withdrawn from the market?

12 A. When you say "the new AT&T," are you re--

13 Q. SBC, AT&T.

14 A. The ILEC?

15 Q. The ILEC.

16 A. No.

17 JUDGE DIPPELL: Mr. Van Eschen, can I get you
18 to speak into the microphone?

19 THE WITNESS: Yes.

20 JUDGE DIPPELL: Thank you.

21 BY MR. DANDINO:

22 Q. Mr. Van Eschen, you're the manager of the
23 telecommunications department; is that correct?

24 A. Yes.

25 Q. And how long have you been the manager?

1 A. I'd say roughly 12 years.

2 Q. And do you consider yourself familiar with the
3 workings of the telecommunications industry in Missouri?

4 A. Yes.

5 Q. And are you familiar with the various ILECs
6 and CLECs that are doing business in the state of Missouri?

7 A. I'm somewhat familiar with most of the
8 companies.

9 Q. Are you familiar enough to be able to describe
10 their relative strength in the marketplace?

11 A. When you say "relative strength," can you
12 clarify that?

13 Q. Yes. That's probably correct. As compared to
14 the ILEC -- let's put it this way. Strike that question.

15 Is it your opinion that any CLEC that is doing
16 business in the state of Missouri is as formidable as AT&T is?

17 A. There are certain exchanges that I believe
18 where CLECs certainly have made a significant presence within
19 the exchange, but I don't have the specific numbers that would
20 compare, for example, AT&T's lines versus the CLEC's lines.
21 We could get that, but --

22 Q. Which of the CLECs that operate in these
23 exchanges we're talking about today would you consider the
24 strongest competitor, the most formidable competitor to AT&T
25 in those exchanges?

1 A. I think it -- it somewhat depends on -- on the
2 exchange that you're talking about, because I think a lot of
3 CLECs are certainly not operating in all of AT&T's exchanges
4 and so that would need to be looked at on an exchange-specific
5 basis. But for the -- for the most part, I think we're seeing
6 inroads by some of the cable TV companies that have initiated
7 telephone service within the exchanges.

8 Q. And in those exchanges, usually those cable
9 television companies, like Charter or Mediacom, are those the
10 two you're kind of thinking of?

11 A. Yes.

12 Q. In those situations, those are exchanges where
13 those cable companies have been providing cable service?

14 A. Yes.

15 Q. And they're just now moving into the
16 telecom-- or telephone service?

17 A. Yes.

18 Q. And they also provide broadband services?

19 A. That is correct.

20 Q. Do the cable companies offer stand-alone
21 telephone service?

22 A. I believe they do, but I think for the most
23 part, the way they package their price -- package their
24 services that it's, I guess from my point of view, more
25 economical to seriously consider the packages of services

1 versus their -- their stand-alone offerings.

2 Q. Do you know for sure whether Charter provides
3 stand-alone telephone service separate and distinct from their
4 cable operation?

5 A. I believe they do. They -- they're required
6 to.

7 Q. Okay. And that's to Charter's CLEC operation
8 or CLEC --

9 A. That is correct.

10 Q. It's a separately certificated company.
11 Right?

12 A. I'd have to look at the structure of the --
13 the Charter company. I'm not sure what -- a lot of these
14 companies have various affiliates and I'm not sure the entity
15 that's providing phone service, where that stands in the --
16 the family of Charter companies.

17 Q. Excuse me just a second here. Okay?

18 Do you have the Unruh Schedule 2, revised
19 Schedule 2?

20 A. Yes, I do.

21 Q. Okay. And if you'd be so kind as to look at
22 page 1, which is the 60-day residential exchanges.

23 A. Yes.

24 Q. Okay. I believe Mr. Bub had asked you about
25 Trinsic and was he -- was Trinsic part of the CLECs that you

1 had agreed with him that were fairly minor players?

2 A. Yes.

3 MR. BUB: Your Honor, I need to make a clar--
4 your Honor, I need to make a clarification. The question that
5 I asked was fairly minor players in Antonia exchange. So with
6 that clarification, I'm okay with the question.

7 BY MR. DANDINO:

8 Q. Well, let's just go down through. In Antonia,
9 Mr. Unruh lists Charter. How would you characterize Charter;
10 as a major provider of service in competition to AT&T or a
11 minor player?

12 A. Charter is one company that we did not -- at
13 least for the Antonia exchange, do not list Charter as serving
14 any lines within the exchange. So it's somewhat difficult for
15 me to comment about Charter's operations in the Antonia
16 exchange.

17 But I will say that for the most part,
18 Charter, being a facility-based competitor, I guess in my
19 hierarchy of -- of ranking competition, they seem to be
20 deserving of a higher ranking simply because they're a
21 facility-based provider.

22 Q. Okay. You mentioned a hierarchy of
23 competitors. Is that what you --

24 A. I'm -- I'm -- this discussion that's occurred
25 so far in the hearing seems to be asking about is this

1 competitor more significant than other competitors. And I
2 guess I was playing off of that discussion.

3 But in general, I've always viewed a
4 competitive-based -- a competitor that is providing local
5 voice service where they have invested in their own facilities
6 or have -- are using facilities that are not the incumbent's
7 facilities as being a more significant competitor.

8 Q. Does Sage Telecom use their own facilities?

9 A. Yes.

10 Q. Or do they use a UNE?

11 A. They do have a switch, but they provide
12 service in a variety of different ways. In some instances
13 they do partner with cable TV company and use their facilities
14 in reaching the customer. In other situations they do use
15 a -- what I classify in my testimony as -- as other resale.
16 Some people may refer to that as UNE-P arrangements.

17 Q. Looking at the number of lines, I guess it's
18 in Schedule 5 of your testimony.

19 A. Yes.

20 Q. And I'm just focusing on the number of lines
21 that are residential. And these are all the exchanges that
22 are the 60-day?

23 A. Yes.

24 Q. And perhaps I'm wrong, but looking through
25 that list, I only see about three exchanges that have over a

1 thousand lines. Would that be correct? I guess that would be
2 Cedar Hill, Excelsior Springs, Festus -- whoops, I'm sorry,
3 High Ridge. Four.

4 A. That looks correct.

5 Q. All right. So these are relatively small
6 exchanges?

7 A. Oh, I don't know how -- if I'd classify them
8 necessarily as -- as small exchanges, but --

9 Q. How would you characterize them?

10 A. These -- these -- the lines that are
11 identified on -- on Schedule 5 are the number of -- of CLEC
12 lines that are operated in those exchanges. For the most
13 part, I don't know. A lot of these exchanges are -- are their
14 rate group B exchanges, which are more populated than rate
15 group A exchanges.

16 Q. So if these are CLEC line -- the CLECs serve a
17 very small portion of the customers in these exchanges or at
18 least the lines in these exchanges; is that correct?

19 A. My testimony doesn't show the proportion in --
20 in relationship to the number of lines that AT&T serves so
21 I -- it's difficult for me to answer that.

22 Q. Okay. I understand. Mr. Van Eschen, did the
23 Staff make an analysis of the public -- of public interest
24 analysis in their Staff report?

25 A. Not in our Staff report, no.

1 Q. Did you make it in another document that you
2 submitted to the Commission?

3 A. No, we did not.

4 Q. When you asked your employees to gather the
5 information for the study, did you indicate to them that you
6 wanted any information about the public interest aspect of
7 competition?

8 A. We had several meetings that -- where we
9 internally discussed our position in the case. And
10 specifically we -- we talked quite a bit about public interest
11 concerns that were I think raised by -- by Ms. Meisenheimer's
12 testimony.

13 But I guess for the most part, I'd have to say
14 that it -- it didn't rise to the level that I felt I could
15 make a compelling argument in that regard. So my testimony
16 fails to address that.

17 Q. And I'm talking about the original report that
18 the Staff submitted to the Commission, I guess which
19 instituted this case. When you asked your employees to gather
20 the facts for this -- gather the information, did you
21 specifically say, I want all information concerning the public
22 int-- any information concerning the public interest aspect of
23 this?

24 A. I think it would be a fair statement to say
25 that we primarily focused on looking at the records that we

1 have and try and identify the CLECs that are operating within
2 these competitive exchanges and the number of lines that they
3 serve within these exchanges.

4 Q. Did the Staff do any evaluation of the -- of a
5 CLEC, whether it was in bankruptcy, whether it had just come
6 out of bankruptcy, whether it had recently merged with
7 someone?

8 A. I'm not -- I mean, those -- those things have
9 been discussed, but I -- I -- I can't say that they played a
10 factor in our -- in putting together our report. Basically,
11 based on the company's Annual Reports and the information that
12 we might know about these CLECs, we took that information and
13 incorporated it into the report.

14 Q. But only in terms of number of lines and
15 whether they were still doing business in that exchange?

16 A. Yes.

17 Q. And I believe you just said that your
18 testimony did not address the public interest standard; is
19 that correct?

20 A. That is correct.

21 Q. Have you ever made a public interest analysis
22 in your position as manager of the telecommunications
23 department?

24 A. Well, I think I tried to make that sort of
25 analysis in the initial 60-day case. In -- in addressing

1 whether competitors that were providing local voice service on
2 a UNE-P or using interconnection agreements that might be
3 considered commercial agreements, whether those ought to be
4 considered meeting the criteria for the 60-day test. I argued
5 that they shouldn't be counted, but the Commission obviously
6 felt otherwise and -- and -- and felt that they should be
7 counted.

8 Q. And then in the original 60-- the 60-day
9 provision, did you do an analysis in your public interest
10 analysis? Did you consider the substitutability of the
11 service for the incumbent service?

12 A. Well, it certainly was substitutable when
13 you're using facilities of the incumbent's service. It --
14 yeah, I -- it's -- it's, from my perspective, automatically
15 known that it would be substitutable.

16 Q. In terms of suitability, did you look at
17 the -- the whole, like, wireless as compared to -- well,
18 strike that.

19 Let me get back to the facility. You said
20 facilities based. When you made a determi-- or made a
21 recommendation on facilities-based versus using the ILEC's
22 facilities, was that a recommendation based on the -- I guess
23 a relative strength and ability of the com-- of the ILEC -- or
24 of the CLEC to provide services independent of the ILEC?

25 A. I think conceptually, we just at the time had

1 a difficult time accepting that a competitor that was solely
2 using the facilities of the ILEC was a type of competitor that
3 ought to meet these 60-day tests. We tried to make a case in
4 that regard, but obviously the -- the Commission didn't find
5 it to be a compelling argument.

6 Q. But that still went to an issue of whether you
7 thought they had, I guess, staying power -- whether the CLEC
8 had staying power or was a serious competitor?

9 A. I -- I think that that's one part of it. I
10 think, you know, when you have a facility-based provider, the
11 ILEC is not necessarily receiving money or -- for the use of
12 their facilities.

13 And certainly when a competitor invests
14 facilities within the exchange, my way of thinking is that
15 it's -- it's reasonable to assume that the competitor might
16 stick around a while longer simply because they made the
17 investment within that area.

18 Q. But in making this report on whether or not
19 the competitive classification should continue, you didn't
20 make these public interest evaluations?

21 A. No, I did not.

22 Q. Okay. Let's move onto the rate increases, the
23 local basic service rate increases. Did you anticipate or
24 expect that these rate increases would be made?

25 A. I would have to say -- I -- I -- I'm not sure

1 what context you're -- you're asking the question. I know I
2 did receive a phone call from AT&T indicating that they
3 intended to make these rate adjustments prior to them actually
4 making the tariff filing to do so.

5 Q. At the time of the proceeding on the 60-day
6 application for competitive classification, did AT&T ever make
7 it aware to you that they planned to increase these rates?

8 A. I -- I don't think there were any specific
9 references one way or another. I know there was some
10 discussion about, well, if you -- if you get competitive
11 status, what are you going to do with that ability. And I
12 remember some discussion about possibly consolidating some of
13 the rate groups in which case, yeah, there might be some rate
14 increases for -- for certain customers. But beyond that, I
15 don't recall any specific proposals to increase rates.

16 Q. At the time AT&T was making application for
17 these competitive exchanges, did it make any indication --
18 statement to the Commission that they did not anticipate
19 making the rate increases, basic local service?

20 A. I don't recall them making that sort of
21 statement.

22 Q. That would be something that the transcript, I
23 guess, of the -- of those proceedings would be?

24 A. Yes.

25 Q. And probably in the public hearings?

1 A. Yes.

2 Q. Did you attend any of the public hearings?

3 A. Yes, I did.

4 Q. Did you hear any of -- any witnesses testify
5 in favor of the competitive classification?

6 MR. BUB: Your Honor, I need to object. I
7 think he's calling -- the question's calling for hearsay. And
8 he's asking for statements of an out-of-court declarant who's
9 not here to testify and not subject to cross-examination.
10 There's no way to test the truth of what somebody else said in
11 another proceeding.

12 MR. DANDINO: Your Honor, I'm just asking
13 whether he heard it. Did not ask for the content of the
14 comments.

15 MR. BUB: He asked whether he heard someone
16 testify to a certain thing. Whether somebody testified or
17 not, that would be an act. What he's testifying to is a
18 statement. He's asking for that statement to come into
19 evidence here without the protections of cross-examination and
20 confrontation of those witnesses.

21 JUDGE DIPPELL: I'll sustain your objection.

22 BY MR. DANDINO:

23 Q. Mr. Van Eschen, did any witnesses -- or did
24 you hear the witnesses at the public hearings testify in favor
25 or against the reclassification?

1 A. Yes.

2 Q. Did any witness testify or state that he
3 favored competitive classification?

4 MR. BUB: Your Honor, I think I have the same
5 objection. I think we're getting into what other people
6 testified in other proceedings so I think it's hearsay.

7 MR. DANDINO: Well, your Honor, I'm asking for
8 a fact, whether they testified. Not whether that was -- it
9 was true what that person felt, just for the fact, did someone
10 on the record testify in favor or testify about competition.

11 And just to give you a preview -- and whether
12 they testified in favor of competition, they stated that they
13 testified in favor of competition because they felt it would
14 bring lower prices. That's a statement of fact, not whether
15 it was true or not.

16 MR. BUB: I think he's calling for what
17 somebody said in another proceeding. And he's asking the
18 Commission to hear it, to take that statement into evidence.

19 MR. DANDINO: Well, your Honor, that's
20 permissible. It's just the truth of that matter.

21 JUDGE DIPPELL: I'm going to overrule your
22 objection, let him answer.

23 BY MR. DANDINO:

24 Q. Mr. Van Eschen, I'll ask the question, if I
25 can remember how I said it. Did you hear any witness testify

1 that they were in favor of competitive classification because
2 they felt it would bring lower prices?

3 A. I did hear those comments.

4 Q. Did it come from one or many customers?

5 A. I'd have to say several.

6 Q. Would you think that indicated at least --
7 well, strike that.

8 Do you think that the local customers in these
9 exchanges expected an increase in local basic rates --

10 MR. BUB: Your Honor, I'm --

11 MR. DANDINO: Can I finish the question?

12 BY MR. DANDINO:

13 Q. -- because of the competitive classification?

14 MR. BUB: Your Honor, I need to object. He's
15 calling for speculation. What other people -- now are we not
16 only asking what they testified to in another proceeding, but
17 he's also asking what they expected. So I don't think this
18 witness is competent to testify about some other person's
19 expectation, much less --

20 MR. DANDINO: Your Honor, the witness has
21 testified he went to public hearings, heard what witnesses
22 testified to. He's the manager of the telecommunications for
23 12 years. I think he would have some background, some basis,
24 some expertise to, you know, testify as to his opinion as to
25 what customers expected.

1 JUDGE DIPPELL: I'm going to sustain the
2 objection. I'll leave it at that.

3 BY MR. DANDINO:

4 Q. Okay. Mr. Van Eschen, would local basic rates
5 in these exchanges increased, if they were still under price
6 cap regulation?

7 A. No. No, they would not have increased if they
8 did not have competitive classification.

9 Q. In the year in which they -- or would they
10 have decreased due to the CPI for telecommunications services?

11 A. I believe they would have decreased slightly.

12 MR. DANDINO: Your Honor, I believe that's all
13 I have.

14 Thank you, Mr. Van Eschen.

15 JUDGE DIPPELL: Thank you, Mr. Dandino.

16 I think this is probably a good place for us
17 to take a little break. Let's take a 15-minute break and come
18 back at -- or a little more than 15 minutes. By that clock
19 back in the back of the room, come back at 25 after. Let's go
20 off the record.

21 (A recess was taken.)

22 JUDGE DIPPELL: Let's go ahead and go back on
23 the record. Okay. We're ready to go ahead then. I was able
24 to talk to a few of the Commissioners during our break and
25 they will have some questions for some of the witnesses, but

1 probably will not be available to actually ask them until we
2 return this afternoon. So we'll plan to return this afternoon
3 no matter if we get through the rest of the witnesses or not
4 this morning.

5 But Mr. Van Eschen, I have a couple of
6 questions for you and we'll go ahead with those.

7 QUESTIONS BY JUDGE DIPPELL:

8 Q. I have to decipher my notes. I'm sorry.
9 Okay. In your testimony at page 11, down at the bottom,
10 line 21, you say, Some rates have decreased since competitive
11 classification was granted?

12 A. That's correct.

13 Q. Is that some rates in all of the exchanges
14 that are -- we're talking about here today or is that --

15 A. I'm primarily speaking about the rate group A,
16 basic local service rate. It was decreased slightly. And
17 there are some exchanges that are in rate group A that have
18 competitive classification.

19 Q. Okay. And that brings me then to my next
20 question. Just for us novices in the telecommunications
21 field, could you explain the different rate groups A, B, C, D?
22 Could you just define those?

23 A. Sure. And it -- it might be easiest if I
24 could just refer you to, say, for example, Schedule 9 --

25 Q. Okay.

1 A. -- of my testimony.

2 And this is a table that shows residential
3 rates and for the various rate groups. And AT&T has rate
4 groups A, B, C and D basically. There are some variations to
5 that depending on whether you have Metropolitan Calling Area
6 service or not, but those are the main rate groups. And this
7 particular table shows residential service rates for those
8 rate groups.

9 Q. But can you just tell me what is rate group A?
10 What --

11 A. Oh, the -- these are exchanges that you're
12 placed in rate group -- these rate groups based on the number
13 of access lines that the incumbent serves within the exchange.
14 And rate group A is the rate group with the smallest number of
15 access lines. It's -- they're more rural exchanges. And I
16 don't have that in front of me as to the specific cutoff
17 points between, say, rate group A and B and so forth.

18 Q. So then rate group B is -- is just more --

19 A. More populated exchanges. Rate group C is --
20 I'd say the Springfield area and rate group D is Kansas City
21 and St. Louis.

22 JUDGE DIPPELL: Okay. Okay. That's all the
23 questions I had.

24 Was there any additional cross-examination
25 based on my questions from AT&T?

1 MR. BUB: Just one, your Honor, if I could do
2 it from here.

3 RE CROSS-EXAMINATION BY MR. BUB:

4 Q. If the cutoff for rate group A is 5,000 lines
5 in an exchange, does that sound correct?

6 A. It could be, yes.

7 MR. BUB: That's all the questions we had.
8 Thank you.

9 JUDGE DIPPELL: Are there any further
10 questions based on my questions from Public Counsel?

11 MR. DANDINO: No questions.

12 JUDGE DIPPELL: Is there any redirect at this
13 point?

14 MR. HAAS: No questions.

15 JUDGE DIPPELL: Okay. I'm going to go ahead,
16 Mr. Van Eschen, and ask you to return later for Commission
17 questions, but at this time you may step down. Thank you.

18 Okay. Ms. Meisenheimer's already making her
19 way.

20 (Witness sworn.)

21 JUDGE DIPPELL: Thank you. Mr. Dandino.

22 MR. DANDINO: Thank you, your Honor.

23 BARBARA MEISENHEIMER testified as follows:

24 DIRECT EXAMINATION BY MR. DANDINO:

25 Q. Please state your name and position.

1 A. My name is Barbara Meisenheimer. I'm chief
2 economist with the Missouri Office of the Public Counsel.

3 Q. Are you the same Barbara Meisenheimer that
4 filed Direct Testimony, which has been marked as Exhibit 3,
5 and Surrebuttal Testimony, which has been marked as Exhibit 4,
6 and caused it to be filed with the Commission?

7 A. Yes, I am.

8 Q. Do you have any corrections to that testimony?

9 A. No.

10 Q. If I would ask you the questions contained in
11 those testimony today, would your answers be the same?

12 A. Yes.

13 Q. Are your answers true and correct to the best
14 of your information, knowledge and belief?

15 A. Yes, they are.

16 MR. DANDINO: Your Honor, I offer Exhibits 3
17 and 4 and tender the witness for cross-examination.

18 JUDGE DIPPELL: Would there be any objections
19 to Exhibits 3 and 4?

20 MR. BUB: Yes, your Honor. We do have an
21 objection to both. The first, we have an objection in the
22 Direct Testimony. It's on page 13.

23 JUDGE DIPPELL: What's that objection?

24 MR. BUB: It's lines 7 through 13, including
25 the question and the answer. And our objection is that it's

1 hearsay.

2 What this is, it's a statement by an
3 out-of-court declarant. It's offered for the truth of the
4 matter asserted. The statement that the Public Counsel's
5 trying to get in is a statement from unidentified wireless
6 carriers in another proceeding that they don't offer service
7 to all customers in an exchange. So that's hearsay. Didn't
8 identify the carriers making the statements, didn't identify
9 the cases, didn't say exactly what they said.

10 It's wholly improper to allow this witness to
11 testify about what others who are not here might have said in
12 another proceeding and there's no way to test the truth of
13 those statements, so we would object on the basis that it's
14 hearsay.

15 MR. DANDINO: Your Honor, I believe the
16 witness was testifying as to her knowledge of what occurred in
17 those other cases, and I think it goes more to the weight of
18 the evidence than to its admissibility.

19 MR. BUB: Your Honor, we have a statement
20 here. She says the wireless carriers admitted they currently
21 do not offer service. I'm not objecting to what she herself
22 personally might have experienced with her own cell phone
23 service. She's competent to testify about that.

24 What I'm objecting to, it appears trying to
25 get in statements from wireless carriers in another

1 proceeding, don't even know who they are, don't know what the
2 proceedings are, what they exactly said. I'm objecting to
3 those statements by the wireless carriers being admitted here
4 for the truth of the matter asserted.

5 MR. DANDINO: Well, your Honor,
6 Ms. Meisenheimer, as an expert witness, also can, without
7 admitting it as hearsay, can rely on hearsay and out-of-court
8 statements in investigation. She's merely reporting what
9 she -- what was in her knowledge and what she bases her
10 opinion on.

11 JUDGE DIPPELL: I'm going to overrule the
12 objection and allow it. I think that Ms. Meisenheimer in this
13 statement is supporting her argument that there's a flaw in
14 verifying the existence of wireless carriers. I'm going to
15 allow it. Are there further objections to that exhibit?

16 MR. BUB: No, your Honor. But we do have
17 objections to the Surrebuttal. So if you want to admit the
18 Direct.

19 JUDGE DIPPELL: All right. I'll go ahead and
20 admit Exhibit No. 3.

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

22 JUDGE DIPPELL: And your objection to Exhibit
23 No. 4?

24 MR. BUB: It's in Surrebuttal No. 9, here,
25 page 9, line 16, starting with the word "witnesses" through

1 line 19, ending with the word "prices." And here we have two
2 objections.

3 One, again, it's a statement -- it's hearsay,
4 it's a statement of out-of-court declarant offered for the
5 truth of the matter asserted. This was unidentified people,
6 unidentified times, you know, being offered to prove what
7 those people said and the truth of the matter.

8 Second, this witness is not competent to
9 testify about what another person believed. So we think it's
10 wholly improper to allow Ms. Meisenheimer to testify about
11 what other people said outside the hearing room. And to
12 testify about those people's belief, I think that's
13 speculation about what they believed.

14 MR. DANDINO: Your Honor, I think my response
15 would be the same as in the other case. As an expert witness,
16 she can rely upon -- and she can convey to the Commission the
17 information that she relied upon. In fact, that's probably
18 her duty is to advise the Commission what facts or at least
19 what information she relied upon. And I think that's
20 consistent with this testimony here.

21 MR. BUB: Your Honor --

22 MR. DANDINO: Go ahead.

23 MR. BUB: -- what she relied upon and
24 admitting evidence in a proceeding are two different things.
25 And I think we're bound by the rules of evidence and rules of

1 evidence say that it's hearsay and should not come in. Also,
2 she's not competent to testify about people's -- what they
3 believed when they said something because that's speculative.

4 JUDGE DIPPELL: Okay. I'm going to overrule
5 your hearsay objection. I'm going to grant your speculation
6 objection in that I believe the last part of that says, Based
7 on the belief that it would mean lower prices, is speculation
8 on the part of the witness. Those transcripts obviously will
9 reflect what those witnesses actually testified, but I'm not
10 going to allow her to speculate as to what their beliefs were.

11 MR. DANDINO: Your Honor, what is the specific
12 language which will be struck?

13 JUDGE DIPPELL: I'm going to end the sentence
14 at "classification" and strike the end of the sentence that
15 says "based on the belief that it would mean lower prices."

16 MR. DANDINO: Okay. Thank you, your Honor.

17 JUDGE DIPPELL: That's in line 19.

18 MR. BUB: The last objection we have, your
19 Honor, is, again, in Surrebuttal on page 10, line 14. Begins
20 with the word "further" and then goes down through line 24,
21 which is the end of the page. And, again, our objection here
22 is hearsay statement by an out-of-court declarant offered for
23 the truth of the matter asserted. And the statement is that
24 local services priced below cost is a myth.

25 You know, what we're talking about is

1 testimony that was presented in another case by another
2 witness. It was based on a study that's not -- wasn't
3 introduced here. The expert witness that prepared it,
4 Dr. Johnson, isn't here to cross-examine. So we think it's
5 wholly improper to admit the, you know, conclusion of that
6 other -- that expert's testimony in this proceeding when he's
7 not here for cross-examination. It's wholly improper, it's
8 hearsay.

9 MR. DANDINO: Your Honor, once again, I think
10 my response would be the same. I believe this was in response
11 to Mr. Unruh's comment or -- that the prices were under -- or
12 basic local prices were under-priced. And I think that as an
13 expert witness, she can testify as to what she knows.

14 You know, obviously she was a witness at that
15 proceeding or she knows of that proceeding, has first-hand
16 knowledge of it, is conveying her impressions, her beliefs,
17 the basis of other opinion that it is a myth. And I think
18 that's well within the purview of an expert witness's
19 testimony to express the underlying basis of her opinion.

20 MR. BUB: Your Honor, I think what she's
21 trying to introduce is the opinion of Dr. Van Johnson and
22 another Staff witness, Mr. Don Cline. I believe that
23 Mr. Dunkwell (ph.) was Staff's witness in that case, not
24 Ms. Meisenheimer, but I may be wrong because it's been a
25 while.

1 But the reasons for introducing something have
2 nothing to do with the rules of evidence. The rules of
3 evidence exclude hearsay and it's, you know, wholly improper.
4 You know, if the Public Counsel wanted to introduce a cost
5 study to show that the prices -- basic service cover their
6 costs, they were certainly free to do that in their Direct
7 Testimony. They didn't. You know, this is Surrebuttal.

8 You know, there's no study here or there's no
9 expert witness that prepared that study or that's competent to
10 testify to it. And so there's absolutely no opportunity to
11 respond. No way to cross-examine it, just this bare statement
12 unsupported by anything. It's just hearsay.

13 MR. DANDINO: Your Honor, I just want to
14 respond, one point is that Mr. Dunkwell, while he was a
15 witness that testified on behalf of Public Counsel in that,
16 Ms. Meisenheimer also testified in that proceeding.

17 But more to the point is that, once again,
18 this is the basis of Ms. Meisenheimer's opinion that it is a
19 myth. The rules of evidence also allow an expert witness to
20 testify as to the basis of their opinion, including what is
21 hearsay because it -- her opinion is not hearsay, it is based
22 upon her impressions, her knowledge and her experience.

23 This constitutes the basis of her knowledge
24 and experience and the information that she has and she's
25 conveying that to the Commission in support of her opinion. I

1 think it is -- it is permissible under rules of evidence and
2 should be admitted.

3 MR. BUB: Your Honor, while I may be -- I
4 stand corrected that Ms. Meisenheimer testified in that case
5 because I don't remember, but I think it's clear from her
6 testimony here that she wasn't the cost study witness. So I
7 think there's probably -- there is a foundational problem in
8 that she is -- you know, we're questioning her qualifications
9 for doing a cost study. And that was presented by a different
10 witness, not Ms. Meisenheimer.

11 JUDGE DIPPELL: I'm going to overrule your
12 objection. I'll allow it.

13 MR. DANDINO: I re-offer Exhibit 4.

14 JUDGE DIPPELL: I'm sorry. Were there any
15 other objections?

16 MR. BUB: No, your Honor. Thank you.

17 JUDGE DIPPELL: Seeing no objections to
18 Exhibit No. 4, I will receive it into evidence with the
19 exception of that part of one line that I struck.

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

21 JUDGE DIPPELL: Have you tendered this
22 witness, Mr. Dandino?

23 MR. DANDINO: Yes, ma'am.

24 JUDGE DIPPELL: All right then. Is there
25 cross-examination from Staff?

1 MR. HAAS: Yes, your Honor.

2 CROSS-EXAMINATION BY MR. HAAS:

3 Q. Hello, Ms. Meisenheimer.

4 A. Hello, Mr. Haas.

5 Q. Can you, in a sentence or two, briefly
6 summarize Public Counsel's recommendation in this case?

7 A. Public Counsel recommends that the Commission,
8 in its review of the competitive status of -- of these
9 exchanges on the 60-day track, reject that they continue to
10 qualify primarily based on -- that we do not believe that it
11 satisfies the public interest criteria.

12 Q. Do you have your Direct Testimony in front of
13 you?

14 A. I do.

15 Q. Would you please turn to page 7?

16 A. I'm there.

17 Q. At page 7, line 7, you state, For competition
18 to be meaningful and not contrary to the public interest, it
19 should constrain the price a monopoly provider or a dominant
20 provider might otherwise charge for service.

21 Are you saying that if meaningful competition
22 exists, then prices will never increase?

23 A. Based on -- based on the work that I've done
24 in this area in telecommunications in Missouri, the cost
25 studies that I've seen, all of that, I -- I did not -- I was

1 working under the assumption, because it's my belief, that
2 basic local service is not under-priced.

3 Now, I would certainly not disagree that in
4 the case where service was priced below cost, that price would
5 not necessarily be reduced. I mean, there's still a
6 possibility though that with additional competition, even a
7 monopoly might reduce price even if it were below cost if
8 faced with competition.

9 Q. Still on page 7, at line 17, you state that,
10 AT&T's action to raise basic local service prices
11 significantly above the level allowed under price caps
12 provides new evidence that competitive forces are not
13 constraining AT&T's power.

14 Are you saying, for example, that a
15 \$1 increase, which amounts to a 2.74 percent increase on top
16 of a rate of \$36.50 for basic local business service in a rate
17 group D exchange, is significantly above the amount allowed
18 under price caps?

19 A. Yes. And would you like me to explain?

20 Q. Yes.

21 A. Okay. Under price caps, if the Consumer Price
22 Index were actually falling, then, in fact, the prices would
23 be reduced by that amount under price cap. The -- I'll stop
24 there.

25 Q. How much were rates reduced under the price

1 cap?

2 A. At different -- there was a reduction that
3 occurred, and I believe that I included a letter as an
4 attachment to my testimony and that is an attachment
5 Schedule BAM Direct 6. In that filing it indicates a
6 reduction of 1.95 percent.

7 Q. Mr. Van Eschen testifies at page 12 of his
8 testimony that, AT&T applies the same rates to all rate
9 group A exchanges regardless of whether an exchange has
10 competitive classification.

11 Since the competitively classified rate group
12 A exchanges have the same rates as the non-competitive rate
13 group A exchanges, can we agree that AT&T's competitively
14 classified rate group A exchanges should retain competitive
15 classification?

16 A. No.

17 Q. Why not?

18 A. If -- if I understood the question, you're
19 asking me if simply because for its own convenience, currently
20 AT&T chooses to maintain a rate for competitive exchanges at
21 the same level as non-competitive exchanges, if that should be
22 the sole basis for allowing the competitive classification to
23 continue, then my answer would be no.

24 Q. Please turn to page 9 of your testimony.

25 A. Direct or Surrebuttal?

1 Q. Direct.

2 A. I'm there.

3 Q. At line 11 you state that, AT&T's price cap
4 increases do not advance these goals and, in fact, run afoul
5 of Section 392.185, parenthesis 1, parenthesis 4 and 6.

6 First question, did you intend to refer to
7 increases for the competitive services in that sentence
8 instead of referring to the price cap increases?

9 A. Yes. I'm sorry. That is a correction. I
10 would -- I would acknowledge that.

11 JUDGE DIPPELL: Sorry. Which line was that,
12 Mr. Haas?

13 MR. HAAS: It's on page 9, line 11 and 12.

14 THE WITNESS: I would correct that by simply
15 removing "price cap." AT&T's increases -- and then I would be
16 referring to those under the -- that have occurred with the
17 competitive classification.

18 JUDGE DIPPELL: Thank you.

19 BY MR. HAAS:

20 Q. Subsection 1 of Section 392.185 states that,
21 The provisions of this chapter shall be construed to promote
22 universally available and widely affordable telecommunications
23 services.

24 Did you present any evidence that AT&T's rate
25 increases reduced the availability of telecommunications

1 service?

2 A. Generally, from an economic perspective, price
3 increases tend to make service less affordable to people and
4 less available to those that are unable or unwilling to pay
5 higher rates. I did not provide specific -- a specific study
6 with respect to that, if that's what you're asking me.

7 Q. Did you present any evidence that AT&T's rate
8 increases make its services unaffordable?

9 A. In general discussion, I -- I didn't provide a
10 specific study. I -- I do believe that my testimony generally
11 discusses concerns about affordability.

12 Q. Subsection 4 of Section 392.185 states that,
13 Provisions of this chapter shall be construed to ensure that
14 customers pay only reasonable charges for telecommunications
15 service.

16 What is unreasonable, for example, about a
17 \$23.30 rate for business local service in a rate group B
18 exchange?

19 A. Public Counsel, in a number of proceedings
20 since the time of the implementation of the new
21 Telecommunications Act in 1996, has participated in costing
22 dockets. I, myself, have done the majority of our cost
23 studies and, in fact, I supervised and worked closely with
24 Mr. Dunkwell in his preparation of testimony in the access
25 proceeding.

1 I've also worked specifically with Ben Johnson
2 on occasion and exchanged many data requests back and forth
3 with respect to what information -- what the results of the
4 studies he performed in the access docket, in fact, indicated.

5 The costing methods that I have used and
6 relied on, the costing methods that I learned from Ben Johnson
7 in large part, the costing methods that I discussed with
8 Mr. Dunkwell, all of those indicate that the cost of basic
9 local service is -- should only include a portion of the cost
10 of the loop to be reasonable and that when you re-- reduce the
11 total cost of the network to reflect a reasonable allocation
12 of cost to other services, then, in fact, basic local service
13 covers its cost and is not subsidized.

14 Q. Are you then saying that the pre-existing rate
15 of \$22.30 cents before the \$1 increase was unreasonable?

16 A. Based solely on the cost information and my
17 belief, I -- I think that it could be lower and be reasonable.
18 That it -- in fact, I would even go as far as to say that I
19 believe it should be lower.

20 Q. What was the date of the information in the
21 costing dockets that you referred to?

22 A. The costing dockets that I -- that I referred
23 to, I believe generally the information that I've reviewed has
24 stretched primarily from around 1996 through information that
25 I believe was updated through I think at least 2001.

1 I have no reason to believe that it would be
2 any higher especially given the recognition for productivity
3 factor that has been increasing for telecommunications
4 services, a productivity factor that in the past has been
5 recognized by the FCC in calculating various things at the
6 federal level.

7 Q. Subsection 6 of Section 392.185 states that,
8 The provisions of this chapter shall be construed to allow
9 full and fair competition to function as a substitute for
10 regulation when consistent with the protection of ratepayers
11 and otherwise consistent with the public interest.

12 Is it your opinion that any rate increase is
13 inconsistent with the protection of ratepayers?

14 A. Any rate increase with respect to AT&T or any
15 rate case just as a general proposition?

16 Q. Let's start with respect to AT&T Missouri.

17 A. I -- I think in this instance, yes.

18 Q. And what about referring to telecommunications
19 carriers in general?

20 A. In general, I -- I believe that there are
21 cases where it would not be unjust or unreasonable for rates
22 potentially to increase with consideration of other factors
23 such as affordability.

24 Q. Are you saying that any rate increase by
25 AT&T Missouri is inconsistent with the public interest?

1 A. Based on a number of factors, yes, I do, at
2 this point. I'm not saying that would always necessarily be
3 the case, but at this point, yes.

4 Q. Please turn to page 12 of your Direct
5 Testimony.

6 A. I'm there.

7 Q. Beginning in the middle of line 19, you state,
8 The Commission should consider if comparable services are
9 available at comparable price, terms and conditions.

10 Isn't your testimony a summary of the
11 effective competition standard that the price cap statute used
12 before it was amended?

13 A. Is it the position in this case? No. I
14 find -- or -- and, in fact, I testified on behalf of our
15 office in the effective competition case and I believe that I
16 offered to the Commission significantly higher standards under
17 effective competition than I have brought forward in this case
18 or the previous case that I testified with respect to
19 competitive classification.

20 In the effective competition docket, I argued
21 that, in fact, there should be a significant number of
22 competitors with a particular -- with at least a minimum level
23 of market share according to the Herfindahl-Hirschman Index,
24 HHI for short. And I believe I brought in other
25 considerations regarding market power. Department of Justice

1 merger guidelines was one thing I remember referring to
2 extensively.

3 Q. At the top of page 15 of your Direct
4 Testimony, you state your belief that relying too heavily on
5 the existence of wireless carrier in determining where to
6 grant competitive classification would be contrary to the
7 public interest. Doesn't the statute allow one unaffiliated
8 wireless carrier to be counted?

9 A. For purposes of the 30-day track?

10 Q. However you would like to answer the question.
11 Or to what were you referring in your statement?

12 A. Well, maybe I can be specific here.

13 Q. Let me ask a different question.

14 A. Okay.

15 Q. Does the statute forbid counting a wireless
16 carrier under the 60-day test?

17 A. Forbid it? No. I believe the Commission can
18 consider it. I think it is fully appropriate for the
19 Commission to consider the extent and whether that service is
20 ubiquitously available throughout the exchange that's served,
21 as I believe they should have considered in the 30-day
22 petitions.

23 Q. Did you identify any exchanges where the
24 wireless service was not ubiquitously available?

25 A. In this case I did not re-perform the study

1 that I performed in the previous proceeding where I actually
2 contacted wireless carriers to identify where they provided
3 service. Often they are -- websites would provide a general
4 area or you might be able to type in, say, for example, your
5 zip code and find out whether the wireless carrier was
6 actually in your area. One carrier actually had maps of the
7 strength of signal.

8 And based on that study, which I continue to
9 believe is relevant, especially given additional proceedings
10 that have come before the Commission regarding wireless
11 carriers and their requests for Universal Service support, I
12 think there -- it is -- I think there's plenty of evidence
13 that wireless carriers are not ubiquitously available through
14 many exchanges. Anyone who uses a cell phone driving on
15 Highway 54 knows that there are holes in service.

16 Q. Does Mr. Unruh's Rebuttal Schedules 2 and 3
17 identify two wireless carriers in each of these 60-day
18 exchanges. Does the presence of two wireless carriers in each
19 of these exchanges relieve your concern about too much
20 reliance on the existence of wireless carriers?

21 A. It does not relieve my concern. As I
22 indicated in the previous proceeding regarding testimony on
23 wireless carriers, I found that the testimony is not
24 necessarily comprehensive in that it does not identify areas
25 where, in certain parts of an exchange, a wireless carrier's

1 signal may not be strong enough to provide adequate service or
2 may not be able to be initiated at all.

3 So simply because we can say this wireless
4 carrier provides to at least one customer in that exchange or
5 is available to at least one customer in that exchange, I
6 don't think that that is sufficient, as I didn't feel it was
7 sufficient in the 30-day.

8 Q. At page 9 of his testimony, Mr. Van Eschen
9 states that, Based upon 2005 Annual Report data, that each of
10 the 60-day competitive exchanges has three or more CLEC
11 competitors.

12 Does the existence of three or more CLECs in
13 each of these 60-day exchanges relieve your concern about too
14 much reliance on the presence of wireless carriers?

15 A. Can you point me again to the location in his
16 testimony? I'm sorry. I missed it.

17 Q. Well, I believe it's page 9 of Mr. Van
18 Eschen's testimony.

19 A. His Rebuttal or Surrebuttal?

20 Q. He only did Rebuttal Testimony.

21 A. Oh, I'm sorry.

22 Q. It would be at lines 1 through 4.

23 A. 60-day -- certainly to the extent those were
24 facilities-based carriers, that would help. It does not
25 entirely alleviate my concern. I -- especially to the extent

1 these are resellers.

2 Q. Please turn to your Surrebuttal Testimony now.
3 At page 2, line 11, you state, Public Counsel is challenging
4 the competitive classification for residential and business
5 service in those exchanges that the Commission approved under
6 the 60-day petition based upon the change in circumstances
7 since the time of the reclassification.

8 Mr. Van Eschen's Schedules 1 and 2 indicate
9 that 15 out of the 51 residential exchanges and 23 of the
10 30 business exchanges that previously qualified under the
11 60-day criteria would now meet the 30-day criteria.

12 Can we agree that this change in circumstances
13 means that those exchanges should retain competitive
14 classification?

15 A. No.

16 Q. Why not?

17 A. As a -- the -- the issue that -- it is my
18 understanding that we're here to address is continued
19 classification under the 60-day petition. I'm not aware of
20 AT&T filing to seek classification for those particular
21 exchanges under 30-day as opposed to a 60-day.

22 That issue aside, the other information that
23 was contained in Mr. Van Eschen's reports and updated
24 information that -- that he submitted that had been compiled
25 by Staff indicated that there were a number of things that I

1 believe are of concern in terms of declining rate of growth of
2 CLEC lines in many of the exchanges and I set that out in my
3 testimony. I originally set out information on page 12 of
4 Direct and later updated it based on Mr. Van Eschen's updated
5 information. And that appears on line -- roughly lines 6 and
6 7 of my testimony.

7 I believe that on -- in the 60-day exchanges,
8 in many cases if 60-day was intended or viewed as exhibiting
9 the indication that competition was going to grow and
10 flourish, I don't think that has, in fact, been the case
11 overall for the 60-exchanges.

12 Increases in prices certainly are a concern to
13 our office in an environment when, in theory, Southwestern
14 Bell faces sufficient competition. I -- I don't think in
15 looking overall at the performance of the exchanges, that, in
16 fact, that -- that is the case.

17 Q. So is it your recommendation to this
18 Commission that the procedure would be that the Commission
19 should deny continued competitive classification for the
20 60-day exchanges and that then Bell should refile for those
21 exchanges that now meet the 30-day test?

22 A. That's more of a legal question that I would
23 prefer to defer to my attorney in terms of, you know, would --
24 would we potentially challenge a 30-day petition under those?
25 We would have similar concerns as we've had in the past

1 regarding 30-day exchanges. Now, whether we would actually
2 take those things to hearing, I don't know. That involves
3 more than simply economic considerations.

4 MR. HAAS: That's all my questions. Thank
5 you.

6 JUDGE DIPPELL: Thank you. Are there --
7 excuse me. Are there questions from AT&T?

8 MR. BUB: Yes, your Honor.

9 CROSS-EXAMINATION BY MR. BUB:

10 Q. Good morning, Ms. Meisenheimer.

11 A. Hello, Mr. Bub.

12 Q. How are you doing?

13 A. Fine. And you?

14 Q. Good. Thanks. While this is still fresh in
15 our minds, I want to follow up on one question that Mr. Haas
16 had asked. You said that -- it had to do with the gaps in
17 coverage in cellular service.

18 A. Yes.

19 Q. And you'd said that anyone driving on
20 Highway 54 would be aware of holes in wireless service.
21 That would include Missouri legislators, wouldn't it?

22 A. Yes. It likely would.

23 Q. Thank you. I realize that Public Counsel has
24 various disagreements with the Staff and with AT&T Missouri in
25 this case. But I'd first like to focus on some areas that I

1 don't believe have been contested. I'd like to review the
2 evidence of competition that's been presented both by Staff
3 and by AT&T Missouri. So if we could, let's first take a look
4 at Staff's evidence of competition. It's correct that you've
5 reviewed Mr. Van Eschen's Rebuttal Testimony?

6 A. Yes.

7 Q. You've also reviewed his schedules?

8 A. I have reviewed his schedules.

9 Q. Okay. Let's go to those schedules now, if we
10 could, please. Let's look at Schedule 1-HC. And just to
11 remind you so that we all adhere to the protective order, that
12 the lines -- fifth column with the stars, those are highly
13 confidential so let's not mention any of the lines -- the
14 names of the companies. Also the lines in the third column.
15 Anything with lines with stars I'm going to try and stay away
16 from. So I'm not going to ask you for any line counts.

17 So in your answers if you could try and stay
18 away from the numbers of lines in each exchange, then I don't
19 think -- and I think we can do this without going into camera.

20 A. I will do my best to do that.

21 Q. Okay. I will too. Do you see that line 1
22 shows that there are three CLECs providing residential
23 telephone service in the Antonia exchange using what
24 Mr. Van Eschen calls other resale?

25 A. There are how many?

1 Q. Three. The resale's the far right column.

2 A. Maybe I'm on the wrong schedule. What
3 schedule?

4 Q. Schedule 1.

5 A. I was on Schedule 3. Sorry about that.

6 Q. That's okay. And it should have Antonia as
7 the first exchange on line 1.

8 A. Resellers?

9 Q. Yes.

10 A. Three, yes.

11 Q. Okay. Now, you understand that when
12 Mr. Van Eschen uses that term "other resale" in his schedules,
13 he means that the CLEC is providing service by leasing
14 facilities from the incumbent at negotiated or arbitrated
15 rates or through an arrangement purchased under a commercial
16 agreement?

17 A. My -- my understanding is that it is actually
18 resold, Southwest-- or AT&T end to end service. It is not --
19 I don't remember the beginning of your question, but I thought
20 that the way you had your question written was maybe a little
21 more broad.

22 Q. Okay. When he uses the word "other resale" in
23 his schedules, your understanding is that he means when a CLEC
24 is leasing the facilities from the incumbent at a negotiated
25 or arbitrated rate like UNE-P or local wholesale complete. Is

1 that your understanding of what he means by "other resale"?

2 A. My understanding is that full facilities or
3 partial facilities includes -- did -- is there a place in his
4 testimony you want to point me to?

5 Q. Yes. That's probably a good idea. Let's look
6 at page 5, line 8. And there I think he defines what he means
7 as "other resale." That would refresh your recollection.

8 A. Okay.

9 Q. Okay. Let me ask my question again. So do
10 you understand when Mr. Van Eschen uses the term "other
11 resale" in his schedules, he means that the CLEC is providing
12 service by leasing facilities from the incumbent at negotiated
13 or arbitrated rates or through an arrangement purchased under
14 a commercial agreement?

15 A. That's how he describes it. And could you
16 point me to where he had that definition again? I'm sorry. I
17 found it.

18 Q. Page 5, line 8 through 10.

19 A. Okay. Yes.

20 Q. Okay. And just so that we're all on the same
21 page, an example of that would be AT&T's local wholesale
22 complete offering?

23 A. Yes.

24 Q. Okay. So now let's go back to the three CLECs
25 providing service in Antonia. It's correct Public Counsel has

1 presented no evidence disputing that these three CLECs provide
2 residential telephone service or that they provide -- yes,
3 residential telephone service in Antonia?

4 A. No. With our limited resources, we took the
5 Staff's report at face value. It's my understanding they
6 gathered this information from Annual Reports filed by the
7 companies. We did not dispute the Staff's --

8 Q. Okay.

9 A. And, in fact, I actually spoke to Staff
10 members regarding the development of -- of some of the numbers
11 so --

12 Q. And to save time, it's also correct that
13 Public Counsel's presented no evidence disputing any of the
14 carriers listed as providing residential service in the 51
15 exchanges listed on Mr. Van Eschen's Schedule 1-HC?

16 MR. DANDINO: Your Honor, I object to the
17 characterization of presenting no evidence. I think
18 Ms. Meisenheimer testified that, you know, basically we've
19 accepted at least the data in the report as, you know -- as
20 accurate. I think the only issue that we've had is the
21 implications of that data and the public interest standard.

22 MR. BUB: I don't understand what the
23 objection is, Mike.

24 MR. DANDINO: Well, I think the
25 characterization of no evidence means that it looks like the

1 Public Counsel, you know, has no evidence whatsoever, while
2 we're not disputing the Staff's recommendation -- I mean, not
3 recommendation, excuse me, their -- the data that they
4 reported, the number of lines and who's doing business in
5 there.

6 MR. BUB: I can restate the question if that
7 would help you.

8 MR. DANDINO: Sure.

9 BY MR. BUB:

10 Q. Public Counsel hasn't presented any evidence
11 showing that the carriers listed in Exhibit 1-HC are not
12 providing service?

13 A. That's -- that's true.

14 Q. Okay. And that's also correct with respect to
15 the 30 exchanges for business service listed on Mr. Van
16 Eschen's Schedule 2-HC?

17 A. That's true.

18 Q. Same thing for his Schedule 7-HC?

19 A. I-- I did not present anything to the
20 contrary.

21 Q. Okay. And that's the same thing for
22 Schedule 8-HC as well. Correct?

23 A. That's true.

24 Q. Okay. Thank you. Now, let's shift gears a
25 little bit and look at AT&T Missouri's evidence of

1 competition. You've reviewed Mr. Unruh's Rebuttal Testimony;
2 is that correct?

3 A. Yes.

4 Q. And you reviewed his schedules?

5 A. Yes. I reviewed them.

6 Q. Okay. I'd like to turn first to his
7 Schedule 2 under the Commission's ruling. Nothing in that
8 exhibit or that schedule is highly confidential anymore. Are
9 you with me?

10 A. Yes.

11 Q. Okay.

12 A. Okay. So none of this is highly confidential?

13 Q. Correct.

14 A. So I can refer to company names if asked?

15 Q. Yes.

16 A. Okay.

17 Q. Do you see that line 1 shows two CLECs as,
18 quote, trigger companies for the Antonia exchange?

19 A. That's how they are labeled in his schedule.

20 Q. Okay. And that's Charter and Sage. Correct?

21 A. Yes.

22 Q. Okay. And do you see that it also shows in
23 the last column two additional CLECs, Birch and Verizon, as
24 providing residential telephone service in Antonia? I think
25 he listed those as samples of additional competitors. It's in

1 the far-right hand column.

2 A. Are we on Schedule 2?

3 Q. No. I'm sorry -- yes, Schedule 2-HC, Antonia
4 exchange, far right-hand column, Birch, Verizon.

5 A. What page of his schedule?

6 Q. One, line 1.

7 A. I have -- in my copy I have a line number
8 column, I have an exchange --

9 Q. It's Schedule 2-HC?

10 A. Yes. I have an exchange column, I have
11 something that says, Meets 30-day criteria with X's in some of
12 them and then I have two trigger companies column.

13 MR. BUB: Can we go off the record just for a
14 minute?

15 JUDGE DIPPELL: Sure. Let's go off the
16 record.

17 (Off the record.)

18 JUDGE DIPPELL: All right. We got
19 Ms. Meisenheimer a fresh copy of that exhibit.

20 MR. BUB: Thank you, your Honor. And I'm
21 sorry for the confusion. I had the same printer problem where
22 the last column didn't print out on my exhibit so until
23 somebody was able to help me, I wasn't able to do it either.

24 BY MR. BUB:

25 Q. So let's go back and look at the first line,

1 Antonia. And I was asking you about that last column sample
2 of additional competitors showing Birch and Verizon. Do you
3 see that?

4 A. Those are listed on the schedule.

5 Q. Okay. It's correct that you presented no
6 evidence disputing that those four CLECs provide residential
7 telephone service in Antonia?

8 A. I provided no specific information. I did
9 describe for the Commission some of the current concerns I had
10 had in the past regarding the way that Southwestern Bell put
11 together evidence. In this case, I relied on the Staff's
12 numbers and have confidence in -- in their work.

13 Q. Okay.

14 A. I'm -- I'm not as confident based on my past
15 experience with the way that I've seen Southwestern Bell or
16 AT&T gather information.

17 Q. You've provided no evidence showing that
18 Charter, Sage, Birch, Verizon are not providing residential
19 telephone service in Antonia?

20 A. Only -- only to the extent that it is not --
21 that it would not be also identified in the -- in the Staff
22 schedule. And I haven't done --

23 Q. My question is, you haven't provided any
24 evidence showing they're not?

25 A. Well, to the extent that I would support the

1 Staff's evidence based on Annual Reports. If they're not
2 filing an Annual Report but they're a CLEC, then I would
3 question that -- that information. I mean, I -- Mister --

4 Q. Independent of what Staff's evidence filed,
5 Public Counsel hasn't filed any additional evidence?

6 A. Nothing -- nothing in addition to the
7 Staff's --

8 Q. Okay.

9 A. -- on -- on that, on CLECs.

10 Q. Nothing showing that those four carriers don't
11 provide service there in addition to what Staff provided?

12 A. That's fair.

13 Q. Okay. And, again, to save time, it's also
14 correct that you presented no evidence, in addition to what
15 Staff provided, disputing the CLECs listed as providing
16 residential service in any of the 51 exchanges?

17 MR. DANDINO: Your Honor, once again, I
18 just -- counsel's characterized it as no evidence. I believe
19 Ms. Meisenheimer has a number of times said that we're
20 supporting the numbers of the Staff, yes, you know. And I
21 think that's probably a fairer statement then -- that we're
22 supporting that, it means that we're -- you know, we're not
23 providing any independent information on these facts.

24 MR. BUB: My question wasn't about Staff's
25 information. My question was about AT&T's evidence and had to

1 do with whether Public Counsel provided any evidence showing
2 that the carriers that AT&T lists were not providing service.
3 I think that's a yes or no answer to that, we're entitled to
4 that.

5 JUDGE DIPPELL: I'm going to let her answer.

6 THE WITNESS: Okay. To the extent that the
7 Staff -- Staff data that we relied on does not disagree with
8 this, we provided no additional information disputing it.

9 BY MR. BUB:

10 Q. Okay. Okay. Let's move onto the wireless
11 carriers. You see in the far right-hand column still under
12 the samples of additional competitors that there are four
13 wireless carriers listed, Sprint, T-Mobile -- I'm sorry,
14 there's two, Sprint and T-Mobile. Do you see those?

15 A. Yes.

16 Q. Okay. Now, aside from your concern about
17 coverage gaps, do you agree that you've not presented evidence
18 that these carriers don't provide any service in the Antonia
19 exchange?

20 A. That they don't provide any service?

21 Q. Any service?

22 A. I would agree with you.

23 Q. Okay. And in general, for the 51 exchanges
24 listed on 2-HC, you've not provided evidence aside from your
25 coverage concern disputing that the list of carriers provide

1 any service in the exchange?

2 A. I did. And -- and I might back up a bit.
3 Primarily in this proceeding I relied on work with respect to
4 wireless that I did in the previous proceeding. And in that
5 proceeding I do believe there were, in fact, exchanges where I
6 did not agree that a provider that -- at that time
7 Southwestern Bell presented as a wireless carrier. I -- I did
8 find some exchanges. I -- so if you're asking me about each
9 and every exchange, I would literally need to go and pull that
10 back up to review which would I agree with, which would I not.

11 Q. Okay. That study you're talking about you
12 provided in the other case, you didn't redo that study for
13 this case, did you?

14 A. That's correct. I did not redo that study.

15 Q. And you didn't file that study here in this
16 case?

17 A. No. I think that in the Commission's order
18 they did -- there -- there was at least some question
19 regarding the quality of the evidence on wireless --

20 Q. Okay.

21 A. -- or carriers that existed in exchanges so --

22 Q. Okay. To save time, I'd also like to go
23 through Mr. Unruh's Schedule 3, which is the counterpart but
24 for business exchanges. Would that be the same story that
25 we've had for Schedule 2?

1 MR. DANDINO: Counsel, could we make that
2 testimony rather than story?

3 MR. BUB: I'm sorry. Testimony is fine.

4 THE WITNESS: Yes.

5 BY MR. BUB:

6 Q. Okay. Now, I want to focus on the proper
7 interpretation of the statute, which is an area where we do
8 disagree. Okay. Here you recommend the Commission find the
9 conditions for competitive classification no longer exist in
10 AT&T Missouri's 60-day exchanges; is that correct?

11 A. Yes.

12 Q. Okay. And in making this recommendation, you
13 were guided by your understanding of Section 392.245 of the
14 Missouri statutes; is that correct?

15 A. Mine and my legal representation.

16 Q. Okay. You understand that Senate Bill 237
17 significantly changed that statute, don't you?

18 A. I -- I do understand that there was
19 significant change in the statute.

20 Q. Okay. Do you have a copy of the statute?

21 A. I don't.

22 Q. Okay.

23 MR. BUB: May I approach the witness, your
24 Honor?

25 JUDGE DIPPELL: Yes.

1 MR. BUB: Okay.

2 THE WITNESS: Thank you.

3 MR. BUB: Let me show you what I did. What
4 I'm handing the witness is a copy of the Section 392.245 as of
5 2000, which is the old 392.245. Then in addition, a copy of
6 the revised 392.245 as revised by Senate Bill 237, a copy of
7 Chapter 392.185, the purposes chap-- or purposes clause.

8 THE WITNESS: Let me mark them and that will
9 make it faster later.

10 BY MR. BUB:

11 Q. Sure. And then last is the definition of
12 effective competition.

13 A. Okay.

14 Q. Thank you. I'd like to first focus on the old
15 392.245.5. You understand the old language in Section 245,
16 that the Commission was required to determine, quote, whether
17 effective competition exists, closed quote?

18 A. Yes.

19 Q. Okay. In granting competitive classification.
20 You also understand that Senate Bill 237
21 removed this requirement from Section 245?

22 A. It removed effective competition, I believe is
23 the specific term. I --

24 Q. From 245?

25 A. Yes.

1 Q. Okay. You understand that our statutes define
2 the words "effective competition" in Section 386.020 13; is
3 that correct? That would be on the last page of the material
4 I gave you.

5 A. Thanks.

6 Q. Second to the last page, 386.020, parens 13.

7 A. Yes.

8 Q. Okay. You understand that under the old
9 Section 245 language that contained the requirement to
10 determine whether or not there was effective competition, that
11 under that old language, the Commission was required to base
12 its effective competition determination on its analysis of
13 each of the five factors that are listed in the effective
14 competition definition?

15 A. Yes.

16 Q. Okay. Now that Senate Bill 237 has removed
17 the effective competition requirement from Section 245, is it
18 your understanding that it would be inappropriate for the
19 Commission to base its determination in a 60-day case on these
20 five factors from the definition of effective competition?

21 A. I think that -- I do not think altogether it
22 would be inappropriate for the Commission to consider the five
23 factors identified as components of effective competition --

24 Q. Okay.

25 A. -- in -- in its consideration in the public

1 interest. I think that they are reasonably linked.

2 Q. Okay. So even though SB 237 removed the
3 effective competition requirement, you still want the
4 Commission to continue making these examinations in the 60-day
5 case?

6 MR. DANDINO: Objection, your Honor. I
7 believe that mischaracterizes Ms. Meisenheimer's testimony.
8 She said they should consider it.

9 MR. BUB: Okay. My question was, do you want
10 the Commission to continue making the examinations in the
11 60-day case.

12 THE WITNESS: I --

13 JUDGE DIPPELL: I'm going to let her answer
14 that question. Sorry. Go ahead, Ms. Meisenheimer.

15 THE WITNESS: Okay. So I should answer?

16 JUDGE DIPPELL: Yes.

17 THE WITNESS: I believe that some of the
18 considerations in effective competition are more than
19 reasonable and reasonably linked to a consideration of the
20 public interest.

21 BY MR. BUB:

22 Q. Okay.

23 A. So I -- I believe that maybe not to the same
24 extent. And, in fact, we have not asked for that to the same
25 extent, that the Commission consider those. But to, you know,

1 completely ignore economic -- reasonable economic
2 considerations and whether competition benefits consumers, to
3 the extent they are similar to those under the effective
4 competition criteria, I don't think the Commission should
5 ignore them.

6 Q. Could you look through those factors in
7 paragraph 13 and tell us which ones you contend the Commission
8 should continue to examine? You can just go A, B, C or
9 whatever.

10 A. Okay.

11 Q. Just so you can identify them.

12 A. Should I explain why for each or should I just
13 say yes or no on each of them?

14 Q. I'm trying to define -- and the purpose of
15 this whole line of questions is to define where we disagree.
16 You know, and our position is that none of this applies. I
17 want to try and find out which ones you think do apply. So if
18 you could just tell me A, B and C or whatever, that's all I'm
19 looking for.

20 A. Let's see. I believe that -- I would say that
21 aspects of each -- not to the extent that I argued when
22 effective competition was the standard, but to some extent,
23 each of these considerations I believe is relevant in the
24 Commission's consideration in this case.

25 Q. Okay. That's fair enough. Okay. One of the

1 concerns you have in this case is that since AT&T Missouri
2 received competitive classification for 60-day exchanges, it
3 increased business and residential prices; is that correct?

4 A. Yes.

5 Q. Okay. You understand that price increases for
6 competitively classified telecommunications services are not
7 unlawful under Missouri statutes. Right?

8 A. I'm not a lawyer. I don't -- you know, so I'm
9 certainly probably not the best authority, but I don't -- in
10 my laymen's reading, I would say they are not necessarily
11 unlawful.

12 Q. Okay. You understand that, in fact,
13 Section 392.245.5 specifically permits price increases for
14 competitively classified telecommunications services? And I'm
15 looking for your understanding.

16 A. Specifically permits you mean in terms of
17 actually spelling it out? Can you just point me -- do you
18 have the --

19 Q. Sure.

20 A. I think you gave that to me. Maybe I can just
21 look real quick. This is where we can adjust up and downward.

22 Q. Yes. I don't need you to read it, but why
23 don't you take a look at that.

24 A. I would agree that they have the option of
25 filing tariffs that seek upward price adjustments.

1 Q. And the statute permits that. Right?

2 A. Yes. The statute permits it.

3 Q. In your opinion as an economist, is it
4 possible that an incumbent's increasing prices in a market
5 could make that market more attractive to potential
6 competitors?

7 A. It's possible. I would say that would likely
8 be on a temporary basis.

9 Q. But it's possible?

10 A. It's possible.

11 Q. We've already established that 392.245.5
12 specifically permits price increases for competitively
13 classified services. My question is, even though specifically
14 permitted, you claim that AT&T Missouri's recent price
15 increases show competition is not constraining its pricing
16 power; is that correct?

17 A. I -- I did say it's not constraining its
18 pricing power, yes.

19 Q. Okay. You understand that under 392.245.5,
20 AT&T Missouri could have doubled its retail prices for its
21 competitively classified services?

22 A. It could have filed tariffs.

23 Q. Could have doubled it?

24 A. It could have filed tariffs. Whether there
25 would have been objection and the effective dates and all

1 that, that's more legal.

2 Q. You don't disagree that the statute allows
3 adjustments upward or downward as it deems -- as it determines
4 appropriate in its competitive environment upon filing tariffs
5 which shall become effective within the timelines identified
6 in 392.500?

7 A. And do you have 392.500 here?

8 Q. Yes.

9 A. I mean, I don't mean to belabor this. I would
10 not disagree that the company can change its rates
11 significantly. I --

12 MR. BUB: Your Honor, let me have the record
13 reflect that I'm handing the witness 392.500.

14 JUDGE DIPPELL: I think Ms. Meisenheimer has
15 agreed that AT&T could raise its rates. I don't believe we
16 need her legal opinion and analysis about the individual
17 sections of the statute.

18 MR. BUB: I misunderstood. I thought she had
19 a question about 392.500.

20 JUDGE DIPPELL: She did, but I think while you
21 were looking it up, she agreed that AT&T could be able to
22 raise its rates. Whether there would be legal technicalities
23 with that, she could not testify to.

24 BY MR. BUB:

25 Q. Okay. So --

1 A. And then this -- this section takes us back to
2 392.200. Right? As provided in subsection 2 through 5 of
3 Section 392.200.

4 Q. Okay. Maybe we could just shortcut this. And
5 my question was, AT&T could -- Missouri could have filed
6 tariffs to double its retail prices?

7 A. I said yes to that.

8 Q. And AT&T Missouri could have filed tariffs
9 that tripled the prices. Right?

10 A. You could file tariffs to raise it 300 -- to
11 300 percent if you -- if you decided to attempt that, yes.

12 Q. Okay. Even though AT&T could have doubled or
13 tripled prices, the fact that it increased business services
14 only a dollar per month shows some constraint on pricing,
15 doesn't it?

16 A. It may show constraint on pricing. I don't
17 know whether that's due to the competitive carriers --

18 Q. Looking at that --

19 A. -- putting that -- in fact, I -- I -- I don't
20 think that the competitors are strong enough to constrain it.
21 I think it is other considerations that likely constrained it.

22 Q. We're not looking at the other competitors.
23 We're looking at what actually happened with the rate
24 increases. Even though AT&T could have doubled or tripled
25 prices, the one fact that increases -- that it increased

1 business services only one dollar per month shows some
2 constraint on pricing, does it not?

3 MR. DANDINO: Your Honor, it's been asked and
4 answered. She said it shows some constraint.

5 MR. BUB: I think she cut back on her answer
6 and I really didn't get a straight answer to my question. So
7 I think my question could be answered with a yes or no and I'm
8 entitled to that.

9 JUDGE DIPPELL: I'll let Ms. Meisenheimer
10 answer yes or no.

11 THE WITNESS: My answer is yes, it --

12 JUDGE DIPPELL: All right.

13 THE WITNESS: -- shows constraint, but not --
14 what my testimony relates to is constraint due to competitive
15 forces.

16 BY MR. BUB:

17 Q. Okay. I'm not -- okay. Just talking about
18 what AT&T's price increase reflected versus its ability.

19 A. It -- I -- I will give you that it relates to
20 a constraint that is not addressed in my testimony.

21 Q. Okay. Even though AT&T could have doubled or
22 tripled prices, the fact that on the low end for residential
23 rates it increased prices only 93 cents per month, that too
24 shows some constraint on pricing, does it not?

25 A. The 93 cents --

1 Q. On the low side.

2 A. Can you point me to a place in my testimony --
3 I mean, the 93 cents, I may have characterized that as a
4 percent increase.

5 Q. Okay. Ms. Meisenheimer, I'm afraid I'm going
6 to make you do some math. Look at Mr. Van Eschen's
7 Schedule 9. He lists in the two far right-hand columns the
8 rates at July 1, 2006 and that column right before that, the
9 rates of December 1, 2005. To get the 93 cents I subtracted
10 \$12.07 -- for this I'm looking at -- I'm sorry, the
11 Metropolitan Calling Area D, the last number at the bottom.

12 A. Which page of the schedule?

13 Q. One.

14 A. Okay.

15 Q. I think it's a one-page schedule. Schedule --

16 A. Metropolitan Calling Area --

17 Q. Two.

18 A. Two.

19 Q. Right.

20 A. 93 cent increase from December 1st, 2005 is
21 footnoted to 2006.

22 Q. Yes.

23 A. As footnoted. Okay.

24 Q. That's where I got the 93 cents.

25 A. Okay.

1 Q. So you'd agree that only raising rates for
2 that group on the low end 93 cents does show some constraint
3 on pricing?

4 A. I -- I agree that it shows constraint on the
5 potential that you may have -- have tried to raise them. I
6 don't agree it's from competitive forces, again.

7 Q. Okay. Then on the high side, look at the
8 rates for rate group C, the principal zone. What I did is I
9 took \$9.74 from 11 --

10 A. Yes.

11 Q. -- and came up with \$1.26.

12 A. Okay.

13 Q. On the high side, the fact that AT&T raised
14 rates only \$1.26 when it could have doubled or tripled, that
15 also shows some constraint on pricing?

16 A. Yes.

17 Q. Okay.

18 A. Again, with the caveat I gave earlier.

19 Q. Okay. I'd like now to focus on AT&T
20 Missouri's retail price increases as not hurting competitors
21 that are trigger companies. And when I use the term "trigger
22 companies" you understand that's meant to denote the
23 competitors upon which we're relying for the grant of
24 competitive classification. Are you with me there?

25 A. Okay.

1 Q. Okay.

2 A. I don't know that I'll use the same term,
3 but --

4 Q. Okay.

5 A. Okay.

6 Q. At page 7 of your testimony, I think it's
7 your -- yes, page 7 of your Direct.

8 A. Yes.

9 Q. Around line 19, you note as a detriment that,
10 AT&T'S retail price increases increased the wholesale cost of
11 CLECs reselling AT&T's services. Do you see that?

12 A. Yes.

13 Q. Okay. There you're referring to CLECs
14 reselling AT&T Missouri's retail offerings under Section
15 251 C4 of the Federal Act, aren't you?

16 A. That's -- yes.

17 Q. The resale section?

18 A. I mean, that's my memory of the section. I --

19 Q. Under 252 C2 of the Act's wholesale -- that's
20 the wholesale pricing section, CLECs wishing to resell the
21 incumbent's telecommunication services are required to pay the
22 incumbent's retail price less a wholesale discount. Is that
23 your understanding?

24 A. That's my memory.

25 Q. Okay.

1 A. It's been a long time since I looked at those.

2 Q. I have the book if you want to look at it.

3 A. Okay.

4 Q. Do you want to see it?

5 A. I -- let's see where we go.

6 Q. Okay.

7 A. Maybe I won't need it.

8 Q. Okay. The resellers that you're referring to

9 on page 7 of your testimony, those aren't trigger companies

10 for purposes of the 60-day competitive classification case,

11 are they?

12 A. If they're pure resellers --

13 Q. Correct.

14 A. -- they would not be the facilities or partial

15 facilities-based carriers, which is the terminology that the

16 Staff used. And since I'm relying on theirs, I would focus on

17 that.

18 Q. Okay.

19 A. I did.

20 Q. And they were also to be distinguished from

21 what Staff characterized as other resales. Would that be

22 correct as well?

23 A. Yes.

24 Q. Okay. I'd like to now change to focus on your

25 claim that AT&T Missouri's retail rates for basic local

1 telephone service covers the cost of service. Let's go to
2 page 10 of your Surrebuttal, please. Are you with me?

3 A. Yes.

4 Q. Okay. At page 10, line 14 you claim that
5 there was evidence presented in Commission Case TR-2001-65
6 that basic local rates cover basic local cost. Do you see
7 that?

8 A. Yes.

9 Q. Okay. You would agree that that case wasn't
10 established to determine the cost of basic local telephone
11 service, was it?

12 A. No. It was to determine whether there --
13 whether there was subsidy.

14 Q. Okay. It was established to investigate the
15 actual costs incurred providing exchange access service,
16 wasn't it?

17 A. Yes.

18 Q. Okay.

19 A. And I believe there was a relationship between
20 access and -- and local that we were also looking at in that
21 case.

22 Q. Okay. In your testimony, you refer to a cost
23 study that was prepared and presented by Dr. Johnson in that
24 case. He was an outside Staff witness, wasn't he?

25 A. Yes.

1 Q. Okay. The large, medium and small LECs, they
2 disagreed with Mr. Johnson's opinion, didn't they -- or
3 Dr. Johnson's opinion?

4 A. I would agree that the large LECs and at least
5 some of the small LECs -- well, I should say at least I would
6 agree that the large LECs disagreed --

7 Q. Okay.

8 A. -- with his opinion.

9 Q. The small LECs, they produced their own cost
10 study, did they not?

11 A. They did. And I'm trying to remember whether
12 there were, in fact, two small company groups in that
13 proceeding. GB&W was one and --

14 Q. That was their consultant for --

15 A. That's where I'm having difficulty with
16 whether basic local service covers its cost. Because I think
17 that Mr. Schoonmaker, who generally testifies on behalf of
18 them, is -- recognizes allocations more readily than do the
19 large company experts.

20 Q. Where I was going with this is, this was a
21 very disputed area in that case, was it not?

22 A. Oh, yes.

23 Q. And it's also correct that the Commission
24 didn't make any findings with regard to Mr. Johnson's study
25 about being below or above cost, did it? Basic local being

1 above or below cost?

2 A. I don't recall.

3 Q. Okay.

4 A. I'd be happy to look at the order if you want
5 me to.

6 MR. BUB: Your Honor, may I approach the
7 witness?

8 Let the record reflect that I'm handing the
9 witness a copy of the Commission's August 26th, 2003 Report
10 and Order in Case TR-2001-65.

11 BY MR. BUB:

12 Q. Why don't you take a look through this?

13 A. Okay. Okay. I've reviewed the section you've
14 asked me to.

15 Q. Okay. It's correct the Commission declined to
16 determine in that case the actual cost incurred in providing
17 exchange access service. Correct?

18 A. Based on my review of this section you've had
19 me review, yes. And that -- I would agree with you. And
20 that's page 17 of the Commission's order.

21 Q. Okay.

22 A. I -- I have not reviewed the entire --

23 Q. Take your time --

24 A. -- order.

25 Q. -- if you'd like to. If you want to.

1 A. If -- if that's enough for you, then I --

2 Q. That is enough for me. But I want to make
3 sure you're okay.

4 A. Then I won't take the time to review the rest
5 of it.

6 Q. It's correct the Commission limited scope of
7 the case to two issues. The first to determine whether their
8 capping mechanism for intrastate CLEC access rates is
9 appropriate and in the public interest. That was one issue
10 that they limited the case to and actually determined; is that
11 correct?

12 A. Yes.

13 Q. Okay. And the second was whether there were
14 any circumstances where a CLEC should not be bound by the cap
15 on switched access?

16 A. Yes.

17 Q. Okay. And they did not make any
18 determinations in that case as to the cost of providing basic
19 local subsidy -- excuse me, basic local telephone service or
20 the existence of subsidy? And if you want to read the whole
21 order, that's fine.

22 A. Okay.

23 MR. DANDINO: Your Honor, I think the order is
24 going to have that information in it or not. Whether
25 Ms. Meisenheimer reads it and brings it into the record is

1 immaterial. Why don't we just say that whatever the order
2 says, it says.

3 MR. BUB: That's a good suggestion. I'd be
4 satisfied if we just take administrative notice of the
5 Commission's Report and Order.

6 JUDGE DIPPELL: Why don't we do that. Let's
7 take administrative notice of the Commission's Report and
8 Order in -- what is that case number?

9 THE WITNESS: TR-2001-65. And I'm not sure
10 this is a full copy of it. Was there more past page 20?

11 JUDGE DIPPELL: That's all right. We're going
12 to take administrative notice of the entire Report and Order
13 in TR-2001-65.

14 THE WITNESS: Sorry.

15 BY MR. BUB:

16 Q. Okay. Thank you.

17 A. I don't think I lost it.

18 Q. That's all right.

19 JUDGE DIPPELL: And Staff doesn't have any
20 objection to that, do they?

21 MR. HAAS: No objection.

22 BY MR. BUB:

23 Q. Okay. Now, you would agree with me that the
24 Commission did examine the cost of unbundled network elements
25 that are used to provide local telephone service in Case

1 TO-97-40, which was one of the first arbitrations the
2 Commission conducted under the Federal Telecommunications Act;
3 is that correct?

4 A. Local and other services, yes.

5 Q. And it's correct that the Commission, in its
6 July 31, 1997 final arbitration order, did set the cost to
7 provide loops, l-o-o-p-s, in each of AT&T Missouri's rate
8 groups; is that correct?

9 A. Yes.

10 Q. Okay. It's correct that the Commission set --
11 the Commission's order set up for UNE zones one, two, three
12 and four to correspond to AT&T Missouri's four general rate
13 groups?

14 MR. DANDINO: Your Honor, I'm going to object.
15 I think if counsel wants to talk about this other -- this
16 other case and the terms of it, let's take official notice of
17 it, let's put the whole thing into evidence rather than
18 cross-examining a witness on what an order says. Let's let
19 the order say what the order says.

20 JUDGE DIPPELL: Are you discussing a
21 particular order or just the general issues, Mr. Bub?

22 MR. BUB: I was discussing from the case, and
23 where I was going with this is to look at specific costs that
24 the Commission determined for the different network elements
25 that are used to provide telephone service.

1 And I'm also willing to live with
2 Mr. Dandino's suggestion to take official notice of the
3 Commission's final arbitration order in that case because it
4 does contain the rate elements that I'm interested in.

5 Rather than put the whole thing into evidence,
6 I was just -- I actually had gone and prepared a little chart
7 that would show for each of the UNE zones the loop rate, the
8 UNE port rate, UNE switching rate adding them up and then
9 comparing them to retail rates. And I think I could -- if we
10 take official notice of the order, it would have the rate
11 elements that I need to do this.

12 JUDGE DIPPELL: Okay. Unless there's an
13 objection, I'll take official notice of the Report and Order
14 in -- what was that Case No.?

15 MR. BUB: It's TO-97-40. It's the July 31st,
16 1997 final arbitration order.

17 MR. DANDINO: Your Honor, I don't have any
18 objection to taking official notice in order to have it in
19 there. Because at that -- because of the passage of time and
20 the fact that SBC AT&T is no longer a -- or these exchanges
21 are competitive exchanges, I don't want to tie it in that I
22 think everything in there is relevant. But for the purposes
23 of getting this in front of the Commission and that they have
24 it, they can decide what it says.

25 JUDGE DIPPELL: We're just going to take

1 official notice of that order, but I think --

2 MR. BUB: Okay. Thank you, your Honor.

3 BY MR. BUB:

4 Q. And, Ms. Meisenheimer, it's your understanding
5 that the rates that were determined in 97-40 are still the
6 rates that AT&T Missouri uses in its successor M2As. Is that
7 your understanding?

8 A. I don't recall.

9 Q. Okay. Do you recall --

10 A. I -- I don't know whether they were updated in
11 the time that -- I've been spending less time working in the
12 phone area. I -- I did work -- I did participate in that
13 case. I'm happy to look at those rates. I would likely
14 remember them by looking at them.

15 Q. Okay. We don't need to do that because the
16 order's already in.

17 You don't recall that there was any subsequent
18 arbitration where loop rates, UNE port rates or switching
19 rates were determined, do you?

20 A. There were -- there were a number of companies
21 that we did arbitrations for and set UNE rates, and I -- I was
22 not as involved in the history of all those cases and whether
23 those rates changed or were updated over time. Those are UNE
24 rates as opposed to basic local service rates though?

25 Q. Yes.

1 A. Okay.

2 Q. Now, I'd like to focus on how certain costs
3 have continued to rise. Since the Commission determined
4 AT&T Missouri's cost of providing the various network elements
5 in Case TO-97-40, are you aware that AT&T Missouri's wage
6 rates under its collective bargaining agreements have
7 increased?

8 A. I don't know. It wouldn't surprise me.

9 MR. BUB: May I approach the witness, your
10 Honor?

11 JUDGE DIPPELL: Yes.

12 MR. BUB: Okay. Your Honor, could we please
13 let the record reflect that I'm handing the witness the
14 May 25th, 2004 settlement agreement between the Communications
15 Workers of America and SBC Southwest which contains the labor
16 rates for Southwestern Bell Telephone, LP?

17 THE WITNESS: This is a document I've never
18 seen before.

19 BY MR. BUB:

20 Q. Okay. That's fine.

21 A. Okay.

22 Q. I think if you just read this, I'm interested
23 in -- I think this is it.

24 A. Are these public numbers?

25 Q. Yes, they're all public. They're all public.

1 It's a collective bargaining agreement basically between AT&T
2 Missouri and the Communications Workers of America.

3 A. Okay. And reading from the front of the
4 document, if ratifies --

5 MR. DANDINO: Your Honor --

6 THE WITNESS: -- of the members of the CWA --

7 MR. DANDINO: -- there's been no question
8 posed, first.

9 JUDGE DIPPELL: Ms. Meisenheimer, your counsel
10 would like you to --

11 THE WITNESS: Be quiet.

12 JUDGE DIPPELL: -- hold your tongue until
13 you're asked a question.

14 BY MR. BUB:

15 Q. Ms. Meisenheimer, I'd just like you to confirm
16 that effective April 4, 2004, the wages are to be increased
17 2 percent. The wages that are subject to the collective
18 bargaining agreement are subject to be increased 2 percent.

19 MR. DANDINO: Your Honor, I want to object to
20 this line of questioning. This document is a document that
21 the witness has not seen. I think there's been no foundation
22 laid for it. If counsel wants to get this information in, he
23 can introduce the document into the record subject to also our
24 objection.

25 Also, it is irrelevant what their costs are

1 for labor and for any other purposes. It's a price cap
2 company. Southwestern Bell is a price cap company, which is
3 no longer under expenses plus rate of return. They're free to
4 set their price based on market conditions.

5 And to tie it to, you know -- to attempt to
6 introduce prices of their labor costs into this is just
7 irrelevant and immaterial and I would object. Certainly
8 object to my witness reading in their settlement agreement in
9 their labor negotiations into the record.

10 JUDGE DIPPELL: Mr. Bub, do you have any
11 response?

12 MR. BUB: Yes, your Honor. One of the
13 contentions of Public Counsel is that the rates that we
14 currently charge more than adequately cover our costs. And in
15 evidence already is the cost to provide -- the cost of the
16 different elements to provide telephone service to the
17 Commission's arbitration order in 97-40. My questions are
18 designed to show that since that time, our costs have
19 continued to increase, including labor costs.

20 If she isn't familiar with the document and
21 not comfortable to lay a foundation, I'd be happy to do it
22 through my witness, Mr. Unruh, who can identify it.

23 JUDGE DIPPELL: I think I'll sustain the
24 objection on the grounds of lack of foundation and this would
25 be more appropriate --

1 MR. BUB: We'll do it in our case, your Honor.
2 That's fine.

3 JUDGE DIPPELL: Yes. Mr. Bub, do you have
4 substantial further questions for Ms. Meisenheimer?

5 MR. BUB: Yes. Yes.

6 JUDGE DIPPELL: I don't want to make you all
7 late for your circuit court appearance --

8 MR. BUB: Or miss lunch.

9 JUDGE DIPPELL: -- or completely fall out when
10 you get back here this afternoon because you haven't had a
11 chance to eat anything. So I think we'll go ahead and break
12 now then for lunch and you can resume your questioning of
13 Ms. Meisenheimer when we return.

14 MR. BUB: That's fine. Thank you very much.

15 MR. DANDINO: Thank you, your Honor.

16 JUDGE DIPPELL: All right. We will adjourn
17 then and return at 3:00 p.m. this afternoon. We can go off
18 the record.

19 (A recess was taken.)

20 JUDGE DIPPELL: We have reconvened and we were
21 in the middle of AT&T's cross of Ms. Meisenheimer. You can
22 resume. Mr. Bub can switch gears back to --

23 BY MR. BUB:

24 Q. Good afternoon, Ms. Meisenheimer.

25 A. Good afternoon, Mr. Bub.

1 Q. When we left off, we were in the general area
2 of costs to provide telephone service, and I'd like to talk
3 about healthcare costs. Are you aware that employee
4 healthcare costs have also increased since the Commission's
5 decision in 97-40?

6 MR. DANDINO: Objection, your Honor. I think
7 there's no basis that this witness would know what the
8 healthcare costs are for SBC or AT&T.

9 JUDGE DIPPELL: He asked her if she was aware.
10 I'll let her answer.

11 THE WITNESS: Specifically for AT&T, no.

12 BY MR. BUB:

13 Q. Generally?

14 A. Generally, yes. I do know that healthcare
15 costs have increased for industries.

16 Q. And you've looked at that?

17 A. Yes. I teach a class in healthcare economics.

18 Q. Okay. You're familiar with the US Department
19 of Labor, Bureau of Labor Statistics?

20 A. I am generally aware of them. I don't know
21 specifically what you are interested in me responding to.

22 Q. Okay. You pulled some of your statistics from
23 the US Department of Labor, Bureau of Labor Statistics for
24 your testimony?

25 A. Yes. I use that site regularly.

1 MR. BUB: Okay. May I approach the witness,
2 your Honor?

3 JUDGE DIPPELL: Yes.

4 MR. BUB: Your Honor, can I have an exhibit
5 marked, please?

6 JUDGE DIPPELL: Sure. We are up to Exhibit
7 No. 7.

8 (Exhibit No. 7 was marked for identification.)

9 MR. BUB: Your Honor, we may be missing copies
10 of this one. At a recess, we'll get copies.

11 JUDGE DIPPELL: Okay.

12 MR. BUB: Your Honor, let the record reflect
13 that I'm handing the witness Exhibit 7, which is a printout
14 from the US Department of Labor, Bureau of Labor Statistics
15 showing US City Average Medical Care Costs, Consumer Price
16 Index, All Urban Consumers for the Medical Care, US City
17 Average.

18 BY MR. BUB:

19 Q. Could you take a look at that?

20 A. I thought you were asking me about producer
21 costs of healthcare. You now want me to talk about consumer?

22 Q. Is that consumer?

23 A. I think you indicated this was a Consumer
24 Price Index, is it not? Consumer Price Index.

25 Q. For all urban consumers.

1 A. Right. So I'm sorry. Okay. If you want me
2 to talk about Consumer Price Index, I'm happy to.

3 Q. Okay. Can you confirm that -- you've had a
4 chance to look at this?

5 A. Briefly, yes.

6 Q. Okay. Just have a simple question. Can you
7 confirm that it shows a continued increase in healthcare
8 costs?

9 MR. DANDINO: Your Honor, I'm going to object
10 to relevancy of this document. AT&T is a price cap company.
11 Their expenses of doing business is not really relevant to
12 this. They're -- they have the ability to raise and lower
13 prices based upon market conditions. They're not a rate of
14 return company and so these specific expenses and not even
15 specific expenses of this company are irrelevant.

16 MR. BUB: Excuse me, your Honor. AT&T
17 Missouri is a business. For any business selling any service,
18 cost is an issue. Cost is something that every business must
19 look at in determining prices.

20 And one of the positions that Public Counsel's
21 taken is that the price increases that we've made over the
22 past year are unreasonable. And one of the basis for looking
23 at the reasonableness in their view is cost. I can't see how
24 you could -- how they can contend now that one of the major
25 components of labor costs should be excluded.

1 MR. DANDINO: Your Honor, the Public Counsel's
2 position isn't necessarily that the amount was unreasonable,
3 that their increase was unreasonable. I mean, I think, you
4 know, it goes to the amount that we said it was a significant
5 increase. Fine. But the whole question of whether it's
6 triggered by cost or market, you know, I think that that's --
7 if it's not triggered by market, then I think it's irrelevant.

8 JUDGE DIPPELL: Okay. I'm going to overrule
9 the objection. You can ask your question.

10 BY MR. BUB:

11 Q. Can you confirm that this exhibit shows that
12 there's continued increase in healthcare costs?

13 A. This indicates that there is increased
14 healthcare costs to consumers of healthcare, which my
15 understanding would be that this is like for a -- worker's
16 cost or a household's cost of -- of healthcare. That's not
17 necessarily the same thing as the cost to an employer of
18 providing healthcare.

19 In fact, the trend has been -- and as I said,
20 I teach a class in this. The trend has been, in fact, that
21 employers are shifting more costs to their employees to cover
22 in terms of healthcare in -- in recent -- that's the recent
23 trend is that -- an attempt to shift more to the employee as
24 opposed to the employer. Now, I don't know the specifics
25 for -- for your company. I haven't looked at it specifically.

1 Q. Based on your experience, if the cost to a
2 consumer to purchase healthcare is going up, wouldn't it also
3 be -- wouldn't the cost to companies purchasing healthcare,
4 would you expect that also to increase, if the company's
5 paying the healthcare?

6 A. It depends on what proportion of the
7 healthcare the company pays for and how able they are to pass
8 any increases that they would otherwise face onto employees,
9 in fact.

10 Q. If a company pays a fixed proportion of the
11 healthcare cost, if the overall costs go up, wouldn't the
12 employer's portion go up as well as the employee's?

13 A. In that case, I don't know that that's the
14 case for AT&T.

15 Q. But in that case, that would be correct?

16 A. If -- if it were a fixed contribution by both,
17 under that strict condition, then, yes, both costs would go up
18 in proportion.

19 Q. Okay. Thank you.

20 MR. BUB: Your Honor, I'd like to move for the
21 admission of Exhibit --

22 MR. DANDINO: Your Honor, I'll object to
23 the --

24 MR. BUB: Seven.

25 MR. DANDINO: I'm sorry. Are you finished?

1 MR. BUB: I just want to make sure I have the
2 number correct.

3 MR. DANDINO: I object to the introduction of
4 Exhibit 7, which, again, it goes that there's no foundation
5 laid for the purpose of showing that AT&T has incurred any
6 type of expenses at this level in Missouri or for the
7 regulated LEC. This is just a federal -- or a generalized
8 statistic for the federal government and I think it has by
9 itself -- standing by itself, has no relevance in this case
10 and Public Counsel objects.

11 MR. BUB: Your Honor, I think we have laid
12 sufficient foundation. The witness has testified that she's
13 familiar with the Bureau of Labor standards -- statistics.
14 She has pulled evidence herself, is relying on it from the
15 same source. She's familiar with the document. She teaches a
16 class in healthcare costs for companies.

17 THE WITNESS: Well, it's -- it's -- one aspect
18 of it is to look at the healthcare costs in -- in various
19 industries.

20 MR. BUB: And she's testified that, in
21 general, costs of healthcare have gone up and this then
22 supports that.

23 JUDGE DIPPELL: May I see Exhibit 7?

24 MR. BUB: Sure.

25 JUDGE DIPPELL: Okay. I'm going to overrule

1 the objection as to foundation, but I'm going to sustain the
2 relevance objection. I'm not sure how the consumer -- urban
3 consumer healthcare costs is relevant to this proceeding,
4 Mr. Bub. So the exhibit is not admitted.

5 MR. BUB: Thank you, your Honor.

6 JUDGE DIPPELL: We'll give it back to you to
7 make copies for us though.

8 MR. BUB: Okay.

9 BY MR. BUB:

10 Q. Let's go to your Rebuttal Testimony, page 12,
11 please.

12 A. Which testimony?

13 Q. Surrebuttal.

14 A. Surrebuttal.

15 Q. Okay.

16 A. Okay. I'm there.

17 Q. Okay. At line 10, you list with respect to
18 residential exchanges a figure, 76 percent negative or no
19 growth in facilities-based CLEC lines; is that correct?

20 A. I'm sorry. I must have turned to the wrong
21 page.

22 Q. Okay.

23 A. Surrebuttal Testimony? Is it Direct?

24 Q. I'm sorry. That was my fault. It was Direct.

25 A. Okay.

1 Q. My fault. I apologize.

2 A. Yes, I'm there now.

3 Q. Okay.

4 JUDGE DIPPELL: What page was that again? I'm
5 sorry.

6 MR. BUB: Page 12, line 10.

7 BY MR. BUB:

8 Q. Ms. Meisenheimer, we had asked for your work
9 papers and you kindly produced those in discovery to us. In
10 reviewing your work papers, I saw that this percentage
11 represents 39 out of 51 residence exchanges as having negative
12 or no growth; is that correct?

13 A. That -- that sounds right. I'm trying -- I
14 brought a copy of my work papers --

15 Q. Okay.

16 A. -- so that I can answer questions. I'm not
17 sure that I have actually --

18 Q. I brought it if you don't.

19 A. That would be great. With the formulas
20 intact? That sounds right. That sounds right to me.

21 Q. Everything that you gave us, I brought. Do
22 you want to see it?

23 A. Yes. There's one sheet that is a worksheet
24 where if you printed it off where the formulas show, I sent --

25 Q. It says Attachment 2.

1 A. Okay. There was also, I sent you --
2 Q. I know what you're talking about.
3 A. -- a file.
4 Q. That (indicating)?
5 A. Yes. This one. But we don't have the formula
6 that we can look at. But I think that sounded --
7 Q. Okay. I took it off the top of this.
8 A. Yes. Okay.
9 Q. Do you want to keep that?
10 A. Okay. Yes. I actually have a copy of it.
11 Q. Okay.
12 A. I don't know whether I have that -- yeah, I
13 do. I read that on this one too. Okay. We're set.
14 Q. So let me repeat the question. Your work
15 papers show that of those 39 exchange -- I'm sorry, this
16 percentage, the 76 percent, represents 39 out of 51 residence
17 exchanges as having negative or no growth; is that correct?
18 A. Yes. That's -- I used 39 out of 51. The 39 I
19 identified from this work paper that you have a copy of and
20 asked me about.
21 Q. Okay. And those are your work papers?
22 A. Yes.
23 Q. Okay.
24 A. They're based on -- it was actually a file
25 that was provided to me by the Staff as part of their work

1 papers.

2 Q. Okay.

3 A. And I simply counted from there how many of
4 them that I believed showed zero or no growth.

5 Q. Okay. Now, let's look at those 39 exchanges.
6 Thirty-eight you characterize -- thirty-eight are no growth;
7 is that correct?

8 A. I'm just trying to count how many of them I
9 had as negative growth so then I would -- the difference
10 would --

11 Q. Okay.

12 A. And these are confidential?

13 Q. Okay.

14 A. I marked them that way because at the time I
15 thought they should be treated that way.

16 Q. Company-specific is confidential, but as far
17 as like overall totals shouldn't be because you used the
18 76 percent without classification.

19 A. Yes. Looking through it quickly, I only saw
20 one that I -- one of those exchanges out of the 39 as
21 negative. So that would leave the 38 as no.

22 Q. Thirty-eight no growth and one negative
23 growth?

24 A. Yes.

25 Q. Okay. Now, let's do the same with your -- at

1 line 12. You have -- I'm sorry, line 14. You have a figure
2 of 47 percent negative or no growth. Do you see that?

3 A. Yes.

4 Q. Can we do the same thing with that?

5 A. We almost can.

6 Q. Okay.

7 A. The -- the -- when I actually did the original
8 calculation, what I provided to you was the original work
9 paper that I used in doing that calculation. And when I went
10 back and was gathering up the work papers, when I recounted
11 it, it turned out, I believe, that there was one additional
12 exchange that I hadn't identified the first go-around --

13 Q. Okay.

14 A. -- so the percent would be a little bit
15 higher.

16 Q. Okay.

17 A. But it's -- it's only off by one so --

18 Q. Okay. Well, can you tell me how many you
19 characterize as growth and how many you characterize as
20 no-growth exchanges?

21 A. Okay. One, two, three -- six -- I counted it
22 twice. I got nine both times as negative.

23 Q. So nine negative.

24 A. And the remaining --

25 Q. And six no.

1 A. No.

2 Q. Okay.

3 A. Oh --

4 Q. At the top --

5 A. Yes.

6 Q. -- it says 15 negative or no growth --

7 A. Yes.

8 Q. -- so 9 would be negative and 6 no growth?

9 A. Yes.

10 Q. Now, let's go to your Surrebuttal, please, at

11 page 9, lines 16 through 19.

12 A. 16 through 19.

13 Q. You talk about the public hearings.

14 A. Yes.

15 Q. Okay. And you attended some of those public

16 hearings, I take it?

17 A. I don't think I did.

18 Q. Oh, you didn't? Not any of them?

19 A. I don't remember attending any of them -- I

20 don't recall.

21 Q. Okay.

22 A. I'm sorry.

23 Q. Okay. I was just surprised because you

24 testified about what people said at the public hearings and

25 you weren't there at the public hearings?

1 A. Well, part of my job is also to interact with
2 others in our office that do attend --

3 Q. So they told you?

4 A. -- at public hearings.

5 So this wouldn't be the first time that I
6 testified about Public Counsel's belief about what occurred at
7 public hearings.

8 Q. Okay.

9 A. And I do review transcripts of public
10 hearings.

11 Q. Okay. Did you review the transcript of these?

12 A. I believe that -- that I did review
13 transcripts. I don't -- I'm -- I'm sorry. I don't have a
14 real good recollection. I've been working on a number of
15 cases and in all of them they tend to have public hearings,
16 but --

17 Q. So you can't testify --

18 A. If you show me --

19 Q. -- today whether or not you read the
20 transcripts that contain these witnesses' statements?

21 A. I believe that I read the transcripts. I'm
22 just saying that I don't remember the specifics of it. If you
23 have transcripts that you want me to look at, I'm happy to.

24 Q. Okay. So you don't remember -- when you
25 prepared this testimony, did you use those transcripts?

1 A. I -- I read those transcripts I believe
2 earlier, but I don't remember if when I wrote this line, it
3 was -- you know, whether I was looking at them specifically at
4 that time. I don't think I was.

5 Q. Okay.

6 A. I -- we also had discussions within the office
7 regarding --

8 Q. Okay. Okay. Are you aware from reading those
9 transcripts and seeing the information that was provided to
10 the public at those meetings that Staff advised the public
11 that attended, that a grant of competitive classification --
12 that SBC Missouri would be permitted to raise or lower its
13 telephone prices at its own discretion subject to the
14 marketplace?

15 A. I don't recall.

16 MR. BUB: Okay. Let me get an exhibit marked,
17 please.

18 JUDGE DIPPELL: Exhibit No. 8.

19 (Exhibit No. 8 was marked for identification.)

20 BY MR. BUB:

21 Q. Ready?

22 A. Sure.

23 Q. Okay. Ms. Meisenheimer, can you identify this
24 information sheet as what the Missouri Public Service
25 Commission Staff handed out at the local public hearings --

1 A. No.

2 Q. -- that were held as part of Case
3 TO-2006-0102?

4 A. I can't identify it as that, but Mr. Van
5 Eschen will be able to or has.

6 MR. BUB: Okay. Your Honor, will I be
7 permitted to authenticate this through Mr. Van Eschen? I'd
8 like to either -- if we can't stipulate to this, I think I'm
9 going to need to call --

10 MR. DANDINO: Your Honor, we'll stipulate that
11 this was handed out at or this was prepared for these -- for
12 the public hearings. I've seen it there, I think.

13 JUDGE DIPPELL: Okay.

14 MR. BUB: Thank you, Mr. Dandino.

15 We'd like to move for the admission of
16 Exhibit 8, please.

17 JUDGE DIPPELL: Did you have any objection,
18 Mr. Dandino, to the admission of Exhibit 8?

19 MR. DANDINO: No.

20 JUDGE DIPPELL: Mr. Haas?

21 MR. HAAS: No, your Honor.

22 JUDGE DIPPELL: All right. Then I will admit
23 it.

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

25 MR. BUB: Thank you, your Honor.

1 BY MR. BUB:

2 Q. Ms. Meisenheimer, one of your schedules you
3 had a display of the Consumer Price Index for landline
4 telephone services. And could you turn to that, please?

5 A. Okay. Did you want me to look at the -- I
6 think that I had two.

7 Q. I'll tell you the reason I'm asking this next
8 series of questions is that your chart stopped in the middle
9 of 2006. And what I was interested in is trying to get that
10 updated so that we could have a CPI telephone service figure
11 for 2006. And I'll tell you we printed out --

12 A. Are you talking about the one that's on page 1
13 of 3? Schedule BAM, Surrebuttal 2, page 1 of 3 or there is
14 also a page 2 of 3.

15 Q. The 1 of 3. It stopped at 2005. And what I'd
16 like you to do is, I have the page that has the 2006 figure
17 and I was going to ask if you could confirm --

18 A. Okay.

19 Q. -- a number for 2006 so that we could have an
20 updated number for that schedule.

21 MR. BUB: May I approach?

22 THE WITNESS: Yeah, I'd be happy to look at
23 it --

24 JUDGE DIPPELL: Yes.

25 THE WITNESS: -- I think I'd be comfortable

1 looking at it and seeing if it agrees with the chart. Where's
2 the annual --

3 MR. BUB: Right here.

4 Okay. Can we go off the record for a minute?

5 JUDGE DIPPELL: You're needing to go off the
6 record to --

7 MR. BUB: Show her the figures that I'm going
8 to ask her about.

9 JUDGE DIPPELL: Okay. We can take just a
10 minute. We can go off the record.

11 (Off the record.)

12 BY MR. BUB:

13 Q. Ms. Meisenheimer, whenever you're ready, could
14 you give us a percentage increase for 2006 of the Consumer
15 Price Index for All Urban Consumers, US City Average, Landline
16 Telephone Service?

17 A. Mr. Bub, I have not verified your calculations
18 and the basic numbers look a little bit different --

19 Q. Okay.

20 A. -- in form than the ones that I included as a
21 schedule.

22 However, if -- you know, looking at the chart
23 that I developed and comparing it to your calculations, I
24 wouldn't view them as substantially different. I mean, while
25 I may not be able to agree to your 2.05, if I were to go and

1 pull similar information for 2006 as I did in my table, I
2 might not get your 2.05, but I would not disagree that I'd get
3 something near to it.

4 Q. Very close it?

5 A. Yes.

6 Q. Thank you. That's what I thought. Thank you.

7 I'd like to focus now on your concern with
8 AT&T Missouri's price increases to local telephone service.
9 In your opinion, is it possible that some of AT&T Missouri
10 customers saw those increases as reasonable given the
11 increases in natural gas, electric and other utility costs
12 over the past couple of years?

13 A. Their perception -- the customers may have a
14 perception that prices tend to go up over time for some
15 services. However, for other services, they go down, such as
16 for personal computers and things like that. And so I -- I
17 don't -- I don't know for sure whether they would recognize,
18 you know, telecommunications as being more like technology or
19 being more like natural gas service or electric service where
20 the cost structures are different.

21 Q. Possible that there would be some that would
22 think it was reasonable, others may think it's unreasonable?

23 A. Given their -- their base of understanding,
24 they may have different beliefs about -- or different
25 perceptions of whether it's reasonable or not.

1 Q. Okay. Let's focus on customers that might
2 have seen the increases as unreasonable. If a customer saw
3 the increases as unreasonable, he or she could change to
4 another provider; isn't that right?

5 A. Maybe. If they felt that they had comparable
6 services available that suited their needs.

7 Q. For example, if Charter Fiberlink was
8 available in an exchange, they could take Charter's service
9 for a \$9 stand-alone basic residential local service line;
10 isn't that correct?

11 A. The Charter number, do you -- if it were
12 available in -- in their exchange, that is the rate that's
13 indicated on this tariff sheet for triggerlink -- or Charter
14 Fiberlink.

15 Q. If that was available, that would be an
16 alternative for a customer?

17 A. It -- it would be an alternative for a
18 customer if -- if they felt that service was entirely
19 substitutable, yes.

20 Q. If Granite Telecommunications offered service
21 in an exchange where a customer of AT&T Missouri thought our
22 increases were unreasonable, they could change to Granite
23 telephone service. Correct?

24 A. I'll need to look at that one as well. And
25 this one, the rates appear to vary according to your zones --

1 Q. And they're all lower. Correct?

2 A. -- your rate class.

3 Q. And all the rates are lower too, aren't they?

4 A. Let's see. Do they have an additional EAS as

5 you do for certain exchanges or is it --

6 Q. It's probably on a different tariff page and I

7 don't have that one with me.

8 A. We don't have it.

9 Q. It's focusing on basic local rates.

10 A. For rate -- and this is residential rate? Let

11 me verify that. Residential monthly rate, rate class A on --

12 on this sheet indicates 7.49. And using Mr. John Van Eschen's

13 testimony for rate group A, he had 7.15.

14 Q. Rate group A didn't get an increase though,

15 did it?

16 A. That's true.

17 Q. And there are no group A exchanges in this

18 case, are they?

19 A. Okay. So you want me to limit it to the --

20 I'm sorry. You had them all highlighted so I was --

21 Q. That's my mistake then. Sorry, Barb.

22 A. Okay. So which rate groups are you interested

23 in me talking about?

24 Q. B, C and D's. All I'm looking just for you to

25 confirm that they are lower than AT&T Missouri's.

1 A. They have -- and maybe you have your own rate
2 schedule. They seem to have a metropolitan one, metropolitan
3 two. They have a metropolitan and a principal -- or principal
4 one and two on D and I don't have with me the breakout. If
5 you have that, that would be helpful. Same for C, rate
6 group C.

7 Q. Mr. Van Eschen has his Schedule 11.

8 A. Okay. I have his testimony. Sorry, I didn't
9 go there first. Schedule 11?

10 Q. Yes. I believe it's the first column.

11 MR. DANDINO: Counsel, I kind of got lost.

12 What was the question?

13 MR. BUB: The question is that Granite
14 Telecom, in the areas where they offer service, are an
15 alternative to a customer if that customer believed that AT&T
16 Missouri's rate increases were unreasonable could switch to
17 Granite.

18 The concern that Ms. Meisenheimer raised was
19 that the services may not be priced the same or they're
20 substitutible so going through some examples where there are
21 other alternatives with lower costs -- lower priced services
22 than AT&T Missouri. And all I'm really trying to do with this
23 series of questions is get her to confirm that Granite's basic
24 local rates are lower than AT&T Missouri's. She's checking
25 that.

1 MR. DANDINO: I was going to say, I thought
2 she answered that they were. Maybe that was Charter.

3 MR. BUB: We've done Charter first and now
4 we're doing Granite.

5 THE WITNESS: I -- I would agree that the
6 rates on the tariff sheet for Granite Telecommunications, LLC
7 appear to be lower than those as of 7/21/06 for Southwestern
8 Bell according to Mr. Van Eschen's schedule. I -- I don't
9 know whether Granite, in response, would ultimately raise
10 their rates as well or not. I don't know.

11 BY MR. BUB:

12 Q. Okay.

13 A. But as of, you know, this comparison --

14 Q. Okay. Why don't we do this to short circuit
15 this. I'm going to hand you three more companies' tariff
16 sheets. So we don't have to go through them line by line,
17 I'll just ask you to quickly glance at them. So you don't
18 have to go line by line, just I'll ask if they're in the range
19 of AT&T Missouri's rates and then I'm going to ask for
20 administrative notice of them -- of the tariff sheets. That
21 might make this quicker.

22 MR. DANDINO: Why don't you ask for
23 administrative notice and not bother about asking her? Those
24 tariffs will speak for themselves.

25 MR. BUB: Probably a better suggestion, Mike.

1 Thank you.

2 JUDGE DIPPELL: Why don't you tell me which
3 companies those are? And do you have copies of those, by
4 chance?

5 MR. BUB: I can make copies. I just thought
6 we could do this --

7 JUDGE DIPPELL: Okay.

8 MR. BUB: -- really quick company by company.
9 I didn't know --

10 JUDGE DIPPELL: Okay. Tell me what --

11 MR. BUB: -- it would take so long for each
12 company, but I can make copies.

13 JUDGE DIPPELL: Tell me which companies they
14 are.

15 MR. BUB: Charter Fiberlink, PSC MO No. 1,
16 13th revised, page 33, effective December 3, 2006. Then we
17 have Granite Telecommunications, PSC tariff No. 1, original
18 sheet 52. And that's effective December 5th, 2003; Navigator
19 Telecommunications Missouri PSC tariff No. 5, second revised,
20 page 5, section -- section 3, second revised, page 5,
21 effective September 8, 2006; LDD, Inc., which I believe is Big
22 River's tariffs. It's the Missouri tariff No. 2, original
23 page 76, effective February 4th, 1999. And then, finally,
24 Birch Telecom, PSC MO No. 36, revised sheet No. 35, effective
25 June 5th, 2005.

1 And, your Honor, I will make copies of these
2 and file them as a late-filed exhibit.

3 JUDGE DIPPELL: Appreciate that.

4 MR. BUB: We'd ask the Commission to take
5 administrative notice of these tariff pages of these various
6 companies that all have rates that are similar to and lower
7 than AT&T Missouri's basic local service rates.

8 JUDGE DIPPELL: Okay. Would there be any
9 objection to the Commission taking administrative notice of
10 those tariffs or those tariff pages at least?

11 Seeing none, I will take administrative notice
12 of those. I'm not going to mark those as an exhibit, Mr. Bub,
13 but if you would go ahead and make copies, that would --

14 MR. BUB: And distribute them.

15 JUDGE DIPPELL: -- we'd appreciate it so we
16 don't have to all pull up those tariffs.

17 MR. BUB: And that concludes my
18 cross-examination. Thank you, your Honor.

19 Thank you, Ms. Meisenheimer.

20 JUDGE DIPPELL: Thank you. Then that brings
21 us to Commission questions for Ms. Meisenheimer. Commissioner
22 Clayton, do you have questions for Ms. Meisenheimer?

23 COMMISSIONER CLAYTON: I don't think I have
24 that many questions.

25 QUESTIONS BY COMMISSIONER CLAYTON:

1 Q. Ms. Meisenheimer, I do want to ask -- and I
2 apologize for missing the initial part of the
3 cross-examination. I was wondering if you could just very
4 briefly summarize your testimony and your position in this
5 case?

6 A. Okay. Our primary position in this case is
7 that the marketplace has changed in the sense that AT&T has,
8 in fact, used its competitive classification to increase
9 prices in certain exchanges, that that is a difference and
10 that where you have the flexibility under the 60-day track --

11 Q. So your testimony -- your position and your
12 testimony focuses on those exchanges that were classified as
13 competitive in the 60-day review part of the statute?

14 A. Yes.

15 Q. Okay. Does any of your testimony relate to
16 any of the exchanges that were deemed competitive pursuant to
17 the 30-day track?

18 A. Originally I believe I'd done some testimony
19 on it, but ultimately we agreed to focus on the 60-day.

20 Q. Okay. Okay.

21 A. So this is limited now to the 60-day
22 discussion.

23 Q. So basically your testimony is focusing on the
24 public interest component of the statute; is that correct?

25 A. Yes.

1 Q. Okay. And forgive me for asking this. Let me
2 catch up here with everybody. Hang on just a second.

3 Okay. Does your testimony change or get
4 modified at all among the various exchanges subject to the
5 60-day classification test? I mean, is your position the same
6 for each of the exchanges deemed competitive under the
7 60-day --

8 A. Yes.

9 Q. -- process?

10 Okay. So it doesn't vary from exchange by
11 exchange?

12 A. Right.

13 Q. Okay. In making that determination, does the
14 Office of Public Counsel have information separate than what
15 has been submitted by the Staff's report and Staff
16 investigation?

17 A. Not anything new to this case in addition to
18 the Staff's data, which we relied on, and its updated
19 information that we saw in additional testimony by -- or in
20 John Van Eschen's Rebuttal Testimony.

21 There was additional information that I've
22 discussed in previous cases related to this issue. In
23 particular, issues regarding wireless carriers, the
24 credibility of the evidence provided by Southwestern Bell in
25 terms of where they get it and how they get it, those types of

1 things. But there is -- there was no -- I did no new studies,
2 if you will, independently. I did review and draw different
3 conclusions based on the Staff's testimony.

4 Q. Do you dispute the data that's been compiled
5 by the Staff?

6 A. Not by the Staff, no.

7 Q. Okay. Can you tell me from your client's
8 perspective -- and really this isn't from perspective, just in
9 your interpretation of the statute, what is it you believe our
10 obligation is in this case?

11 A. I believe your obligation is to review the --
12 to determine whether you believe that the conditions that
13 existed when you granted the original 60-day class-- or
14 competitive classification continue to exist. And in my
15 opinion, they do not.

16 There are various factors that lead me to
17 believe that, one of which I discuss in Direct Testimony and
18 then update based on Staff's updated information regarding the
19 number of exchanges where there was no or negative growth for
20 competitive CLECs. There was also information regarding price
21 increases and I attached some information as schedules that
22 summarizes it was summary from the -- I believe it was the
23 Commission Staff's review of the price filing.

24 Q. What relief do you request?

25 A. We ask that you find that these -- that these

1 no longer qualify under the 60-day.

2 Q. And that would mean they'd revert to price cap
3 regulation; is that correct?

4 A. Yes.

5 Q. Would the prices change if we granted the
6 relief that you request, would the prices change or would
7 they -- would the new benchmark begin at their existing
8 prices?

9 A. They -- they -- I believe they would change.
10 You set them back and adjust them for all price cap
11 adjustments that would have otherwise occurred.

12 Q. Okay.

13 A. So I think there's a possibility that some of
14 them would be different.

15 Q. Are you aware, are there any reporting
16 obligations upon the Public Service Commission to the
17 legislature as part of this statute, are you aware? Is this
18 one of those statutes where we have to give a report to the
19 legislature?

20 A. I --

21 Q. If you don't know, that's okay.

22 A. I don't -- I don't know. I can't specifically
23 remember. I know you are charged with doing a regular ongoing
24 investigation every -- you know, within so many years.

25 COMMISSIONER CLAYTON: Oh, I'll reserve those

1 questions for Staff. Thank you.

2 THE WITNESS: Sorry. I'm sorry.

3 COMMISSIONER CLAYTON: No need to apologize.

4 JUDGE DIPPELL: All right. Ms. Meisenheimer,
5 that's all the questions for you at this time. I'm going to
6 ask that you remain -- let me ask because I know you had a
7 scheduling conflict. Will you be available tomorrow?

8 THE WITNESS: I -- I will be here tomorrow.
9 If -- if I could not be the first witness tomorrow, that would
10 be helpful.

11 JUDGE DIPPELL: Okay. I know you needed to
12 leave at 5:00 this evening.

13 THE WITNESS: Yes.

14 JUDGE DIPPELL: Okay. I will let you step
15 down now.

16 THE WITNESS: Thank you.

17 JUDGE DIPPELL: If there are further
18 Commission -- oh, I'm sorry. I forgot to ask about recross
19 and redirect. Is there recross based on questions from the
20 Bench from Staff?

21 MR. HAAS: No questions.

22 JUDGE DIPPELL: AT&T?

23 MR. BUB: No, thank you, your Honor.

24 JUDGE DIPPELL: Okay. And is there redirect?

25 MR. DANDINO: No, your Honor. Thank you.

1 JUDGE DIPPELL: All right. Ms. Meisenheimer,
2 you may step down now, subject to being called back.

3 THE WITNESS: Thank you.

4 MR. DANDINO: Your Honor, I'm sorry. Were you
5 ready to proceed?

6 JUDGE DIPPELL: Wait just one moment.

7 MR. DANDINO: Sure.

8 JUDGE DIPPELL: Okay. Let's go back to
9 Mr. Van Eschen for some Commission questions and then we'll
10 take up Mr. Unruh after that.

11 Mr. Van Eschen, you were previously sworn and
12 I will just let Commissioner Clayton go ahead with his
13 questions.

14 JOHN VAN ESCHEN testified as follows:

15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. Good afternoon, Mr. Van Eschen. I apologize
17 for --

18 A. Good afternoon.

19 Q. -- not being very organized here.

20 First of all, it is my understanding that
21 you've offered Exhibit 2-HC, which is a revised Schedule No. 8
22 that is attached to your Rebuttal Testimony; is that correct?

23 A. That's correct.

24 Q. Did you have any other revisions to the
25 schedules that are located within your Rebuttal Testimony?

1 And I'll specifically refer to the schedules.

2 A. No.

3 Q. Okay. It says the data's from 2004/2005
4 Annual Reports. The report that is due April 15th of this
5 year, that would be for 2006; is that correct?

6 A. Yeah. The upcoming Annual Reports would
7 reflect access line quantities as of end of 2006.

8 Q. Okay. And that would be due in roughly
9 30 days --

10 A. Yeah.

11 Q. -- 40 days?

12 A. April 15th.

13 Q. A lot of things are due on April 15th. Okay.
14 Did Staff prepare any other similar schedules for exchanges
15 associated with the 30-day competitive classification cases?

16 A. In terms of comparison with 2004 Annual
17 Report?

18 Q. Is there -- is there a schedule like Schedule
19 7 and revised Schedule 8 that reflect the number of access
20 lines in the 30-day -- the exchanges that were declared
21 competitive in the 30-day cases?

22 A. No, we did not. Primarily because the focus
23 of the case is on the 60-day --

24 Q. I understand.

25 A. -- exchanges.

1 Q. Don't need to make a reason. Just asking yes
2 or no.

3 Focusing on Schedule 7 and Schedule 8, for
4 each of those exchanges listed in those schedules, does the
5 Staff have access to the number of access lines served by the
6 incumbent in each of those exchanges?

7 A. I believe we do.

8 Q. Is that something that you could supplement
9 these schedules with?

10 A. I will say yes.

11 Q. Okay. Now, in reviewing the statute, do we
12 have any obligations to the legislature aside from the
13 specific provisions of the 30-day and the 60-day cases? For
14 example, do we have to report to them on the status of
15 competition or is it just that we review the competitive
16 nature of each exchange or -- what -- what is our ongoing
17 obligation under the statute?

18 A. In my opinion, for this particular proceeding,
19 we have no obligation to report it to the state legislature.
20 There are other reports that are expected to be submitted to
21 the legislature, but in my opinion, I don't believe --

22 Q. Okay. But not part of this -- not part of
23 this case?

24 A. Right.

25 Q. What information does the legislature request

1 of us in terms of reports? Right now, what does the telecom
2 department report to the legislature, if anything?

3 A. Well, we have the Annual Report regarding
4 municipalities providing telecommunication services, Internet
5 services and so forth that we've been providing to the
6 legislature for the past several years. Another report that
7 we are expected to provide to the state legislature is the
8 concerns through calculation of the weighted statewide average
9 rate. And I believe that's described in the latter part of
10 Section 392.245.

11 Q. Hang on. Slow down here. Calculations of the
12 statewide weighted average basic local rate?

13 A. Yes. That's the way we've been --

14 Q. Okay.

15 A. -- looking at it.

16 Q. When is that -- when is that report due? How
17 often and when is it normally due?

18 A. I think our -- our -- we are expected to
19 report that by January 30th, 2008.

20 Q. So that's just a one-time report?

21 A. And then there's a second report January 30th,
22 2011.

23 Q. 20-- what?

24 A. 11.

25 Q. Now, were these part of the revisions that

1 came with the 30- and 60-day competitive classification cases?

2 Those are new obligations?

3 A. That's correct.

4 Q. Okay. And were they part of the same bill?

5 A. Yes.

6 Q. Was it 237?

7 A. That's correct.

8 Q. House Bill 23--

9 A. Senate Bill 237.

10 Q. Senate Bill 237. So the first report due on

11 the statewide weighted average basic local rate would be

12 January 30, 2008?

13 A. That's correct.

14 Q. Second one January 30th, 2011?

15 A. That's right.

16 Q. And are there any more subsequent to that?

17 A. No.

18 Q. Okay. Okay. So you are going to prepare a

19 modified Schedule 7 and modified revised Schedule 8 that's

20 going to include the number of access lines by the incumbent

21 for each of those exchanges. Correct?

22 A. Correct.

23 JUDGE DIPPELL: And, Commissioner, I'll

24 designate that as Exhibit No. 9 and you'll receive --

25 COMMISSIONER CLAYTON: Nine and ten. There's

1 two.

2 JUDGE DIPPELL: As nine and ten then.

3 COMMISSIONER CLAYTON: And those will probably
4 be HC, I'm guessing.

5 JUDGE DIPPELL: Yes. And when those come in,
6 I'll give the parties a chance to object.

7 BY COMMISSIONER CLAYTON:

8 Q. Now, Mr. Van Eschen, how many exchanges were
9 declared competitive under the 30-day track, do you recall?

10 A. Yes. I had it in my testimony.

11 Q. I guess if you --

12 A. Twenty-six exchanges for residential services
13 and 45 exchanges for business services. That's the 30-day
14 track. And under the 60-day track, there were 51 exchanges
15 for residential services and 30 exchanges for business.

16 Q. On the 60-day -- what were those numbers,
17 again? I'm sorry.

18 A. Fifty-one exchanges.

19 Q. On residential?

20 A. Correct. And 30 exchanges for business
21 services.

22 Q. Okay. Now, when you did your analysis, you
23 did some analysis on the exchanges deemed competitive under
24 the 30-day track. Correct?

25 A. That's correct.

1 Q. So this case is more than just the 60-day
2 cases. You went back and evaluated whether the statutory
3 criteria were met in those 26 residential exchanges and
4 45 business exchanges?

5 A. That's correct.

6 Q. Now, did you compile information similar to
7 the information compiled in Schedule 7 and revised Schedule 8
8 when you did that analysis?

9 A. No.

10 Q. Okay.

11 A. Not specifically for the 30-day track
12 exchanges, we did not.

13 Q. Is that information that you could compile?

14 A. Sure.

15 Q. And could you also compile the access lines --

16 A. Sure.

17 Q. -- reported by the incumbent?

18 JUDGE DIPPELL: So Exhibits 11 and 12 -- I'm
19 sorry, Commissioner, the 30-day -- the same thing for the
20 30-day. And those will also be HC.

21 BY COMMISSIONER CLAYTON:

22 Q. Mr. Van Eschen, tell me what kind of analysis
23 that you did with regard to wireless service in all of the
24 areas. And I don't want to be too specific in this regard,
25 but just give me a little insight into what you all did in

1 looking at wireless coverage, wireless service in both the
2 30 and the 60-day exchanges.

3 A. I looked at numbering resources from the
4 Numbering Administrator as to whether unaffiliated wireless
5 providers had numbers assigned to a wireless carrier in those
6 exchanges. And there were I think approximately 12 exchanges
7 that I could not find any unaffiliated wireless carrier that
8 assigned telephone numbers. And that was the extent of our
9 investigation.

10 Q. When -- did you get that information directly
11 from the company? Was it in sworn affidavit? Did you all get
12 on websites? Did you look at prior cases and just verify the
13 information? How did you get that information?

14 A. We got the information from NuStar.

15 Q. So in this analysis, you went to NuStar to see
16 what numbers that they had assigned. And if -- and what about
17 how did you confirm wireless service in territories where
18 there were no numbers available in those 12 ex-- I think you
19 said there were 12 exchanges?

20 A. Yeah. We -- we didn't. I -- I asked AT&T if
21 they had any what we call type one connections with any
22 wireless carriers.

23 Q. And you're focusing on numbering and believe
24 me, I appreciate that, but what did you do -- if you looked at
25 NuStar first or -- how did you confirm that a wireless company

1 was present and offering service in the
2 12 exchanges where numbers were not available?

3 A. We did not confirm that the wireless carriers
4 had any numbers assigned to them within those exchanges.

5 Q. I understand that you didn't do that. How did
6 you confirm that the wireless company was providing any
7 service in those 12 exchanges?

8 A. I -- I'd have to answer that by saying we
9 didn't simply because there were enough other CLECs or
10 providers that would enable those exchanges to still meet the
11 criteria of two other providers --

12 Q. Really?

13 A. -- providing local voice service within the
14 exchanges.

15 Q. Well, let's talk about that. Do you have the
16 12 exchanges --

17 A. Yes.

18 Q. -- handy or identify them in your Rebuttal
19 Testimony?

20 A. Yeah. They're on page 12, footnote No. 4.

21 Q. So in footnote No. 4. The exchanges -- the
22 12 exchanges --

23 A. Wait.

24 Q. -- there --

25 A. Pardon me. Pardon me. Pardon me. I

1 misspoke. Page 13, footnote No. 6. I apologize. Those are
2 the 12 exchanges, Ashgrove, Billings, Clever, Farley, Green
3 Valley, Greenwood, Linn, Marionville, Montgomery City,
4 Richmond, St. Clair and Walnut Grove.

5 Q. Okay. Okay. How about were there any 30-day
6 exchanges in any of the 30-day cases where you could not find
7 NuStar numbers to verify wireless presence? Where does -- in
8 your testimony, does it reference the 30-day cases? I -- or
9 are they in footnote No. 6? I think those are referenced as
10 60-day cases.

11 A. Let me -- looking back through my notes, those
12 do just refer to the 60-days of the list of --

13 Q. How many 30-day exchanges did not have
14 wireless numbers?

15 A. I don't have that information.

16 Q. You don't have it with you or it's just you
17 didn't compile it?

18 A. I did not compile it.

19 Q. So did you verify that wireless service was
20 being provided in each of the 30-day competitive
21 classification areas or did you rely on CLEC numbers for those
22 as well?

23 A. Relied on CLEC numbers as well.

24 Q. Okay. Is there a schedule that sets out
25 the CLECs that are present in each of the 30-day exchanges?

1 A. That would be Schedule 3 and 4. Schedule 3
2 refers to the business 30-day competitive exchanges and
3 Schedule 4 refers to the residential 30-day exchanges.

4 Q. Okay. Good. Okay. So on Schedule 3 of your
5 Rebuttal Testimony, it lists out the CLECs that would be
6 providing service either full facilities or partial-facilities
7 based service. Is this -- this is an HC.

8 JUDGE DIPPELL: The numbers.

9 BY COMMISSIONER CLAYTON:

10 Q. Okay. So under No. 1, Antonia is the exchange
11 and there's a number of lines that's classified underneath
12 full facilities and partial facilities. So that counts as the
13 CLEC -- the facilities-based competition, which is one half --
14 basically half the criteria. Correct?

15 A. That's correct.

16 Q. Okay. Now, you also have a column that says,
17 Other resale. Do you consider resale sufficient to meet one
18 of the statutory criteria for competitive classification?

19 A. It was a criteria that the Commission found to
20 be acceptable under the 60-day track.

21 Q. I understand. This is a 30-day track though.
22 Wasn't the criteria different?

23 A. Yes.

24 Q. Did the Commission say that resale or UNE-P
25 type of service would be sufficient to establish the presence

1 of one of the two competitive carriers in an area?

2 A. Not under the 30-day track.

3 Q. Okay. So on Schedule 3, you've basically got
4 one eligible CLEC for each of the 30-day competitive exchange
5 areas. Correct?

6 A. Yeah, I think there may be some exchanges
7 where I show zero providers under full-facility based and
8 partial.

9 Q. I see one there. So for line No. 27 on
10 Schedule 3, are you recommending that we deem that exchange as
11 price cap and revert to price cap?

12 A. No, I -- I'm not.

13 Q. Why?

14 A. For that particular one and it -- it's spelled
15 out in the Staff report that we filed in August, we talk about
16 the Marble Hill exchange. And we contacted AT&T for
17 information about whether it was providing switching and local
18 loop facilities to any CLECs in the Marble Hill exchange. And
19 we also contacted the CLECs that were operating in the Marble
20 Hill exchange and --

21 Q. Wait a minute. Wait a minute. What did you
22 just say? You contacted the CLECs operating in the Marble
23 Hill exchange?

24 A. That's correct.

25 Q. Well, how could there be any if you've got

1 zero here? There were no asterisks around that either.

2 A. Well, if you look under Other Resale, there
3 were four other providers.

4 Q. But I thought we deemed resale insufficient to
5 meet the 30-day competitive classification.

6 A. That's correct.

7 Q. And did we say -- well, I know I didn't do it,
8 but we, the Commission, said resale was acceptable under the
9 60-day?

10 A. Well, I want to make the distinction between
11 what I am classifying as other resale versus pure resale.
12 Other resale refers to -- and you used the term earlier
13 "UNE-P." It's where the competitor is using the incumbent's
14 facilities and paying an arbitrated or negotiated rate and
15 it's typically in an interconnection agreement or commercial
16 agreement.

17 Pure resale is where the competitor is using
18 the incumbent's facilities and simply paying a discounted rate
19 off the --

20 Q. But the Staff didn't differentiate between the
21 two in its analysis in the 30-day and 60-day competitive
22 classification cases. Correct?

23 A. In the -- in the original proceeding, Staff
24 argued that you should not count the other resale types of
25 competitors as qualifying for competitive status and the

1 Commission --

2 Q. Did Staff differentiate between the two?

3 A. Yes, we did.

4 Q. In the 30-day case, did you differentiate
5 between the two?

6 A. Not in the 30-day case.

7 Q. Okay. So in the 30-day case, you said
8 regardless of whether it's resale or UNE-P, that was
9 insufficient to meet one of the competitive carriers in the
10 exchange?

11 A. That's correct.

12 Q. Now, in the 60-day case, did you say that
13 UNE-P was sufficient?

14 A. We argued against it.

15 Q. Okay. And how about resale? Was resale
16 sufficient to meet one of the carriers in the 60-day case?

17 A. No.

18 Q. Now, did the Commission say that UNE-P or
19 resale was sufficient by themselves to satisfy either of the
20 competitive carrier presence?

21 A. They would say that the other resale category
22 of service would qualify as criteria for the 60-day track.

23 Q. So the standard on the 60-day cases was
24 actually lowered to get competitive classification than what
25 it is in the 30-day?

1 A. I would agree with that.

2 Q. So really what you're arguing for line 27,
3 this exchange, even though it has zero wireline full-facility
4 or partial-facility service in that exchange, which clearly
5 suggests that it does not meet the criteria of the 30-day
6 competitive classification statute -- well, would you agree
7 with that? Would you agree under the 30-day analysis,
8 line 27, that an exchange does not meet the criteria from a
9 purely 30-day case competitive analysis?

10 A. No, I wouldn't. Based on the information that
11 AT&T provided to me, they did indicate that they were porting
12 telephone numbers to a CLEC which would indicate that that
13 CLEC is not using AT&T switching facilities. And so from that
14 standpoint, I would -- I would say that that particular CLEC
15 miscategorized --

16 Q. Then why didn't you adjust the schedule to
17 reflect that? I mean, I don't -- I don't know if I --

18 A. Well --

19 Q. -- necessarily think it's appropriate to
20 accept --

21 A. Well --

22 Q. -- information from an ad-- from an
23 adversarial party to establish a fact, but why wasn't the
24 number changed to reflect that?

25 A. We didn't -- we didn't want to go ahead and

1 change numbers unless the CLEC actually submitted a revised
2 Annual Report.

3 Q. Why is that? Do you think it was important to
4 get that information directly from the CLEC to verify its
5 accuracy?

6 A. I wanted to get a -- a revised Annual Report
7 from the CLEC before we would, you know, actually change the
8 numbers. I didn't want to try and disguise what the
9 records --

10 Q. So you thought it was important enough to have
11 an accurate listing on Schedule 3 that you get the information
12 from the CLEC in an Annual Report or revised Annual Report.
13 Correct?

14 A. Yes.

15 Q. In spite of that, you still believe this
16 exchange is competitively classified, even though you won't
17 change the schedule?

18 A. That's true.

19 Q. How do you justify that?

20 A. Well --

21 Q. The information isn't good enough for the
22 schedule, but the end analysis, the conclusion, you're not
23 willing to change.

24 A. I -- I think -- and -- and granted, I -- I was
25 relying on information provided by AT&T, I did --

1 Q. You feel comfortable -- I don't want to say --
2 I'm not reflecting AT&T, but they are a party seeking
3 continued treatment under this statute and I understand that.
4 But do you feel comfortable relying on just getting that
5 information from that entity?

6 A. My preference would be to get the information
7 directly from the CLEC, but at the time we did not -- we were
8 unable to get that.

9 Q. Then why didn't you argue that this exchange
10 should be -- should revert to price cap regulation?

11 A. Based on the information that I received from
12 AT&T, plus based on the fact that they could simply refile the
13 request to class-- classify the exchange under the 60-day
14 track.

15 Q. So -- well, somebody will get the information
16 to us and another case will come, why change our analysis?

17 A. But --

18 Q. Couldn't they do that with any of these
19 exchanges? I mean, they could -- I mean, they could always
20 come back and seek change in classification regardless of what
21 we do.

22 A. Well, if there's a -- an exchange in question
23 that was granted competitive status under the 30-day track,
24 that -- that is I think a factor that needs to be taken into
25 account as to whether the exchange might qualify for

1 competitive status under the 60-day track.

2 Q. Okay. Now, on Schedule 3 and Schedule 4,
3 all -- the only columns that you have listed -- listing out
4 lines are full facilities and partial facilities in one and
5 then you have other resale in another. There's not a wireless
6 column. Would you agree with that?

7 A. Yes.

8 Q. Now, in the 30-day competitive classification
9 exchanges, did you do any analysis of whether a wireless
10 carrier has a presence in those exchanges?

11 A. No.

12 Q. Okay. So let's take line No. 1. Antonia is
13 the exchange. Make sure I'm reading this correctly. It
14 suggests that there is one provider offering full-facilities
15 and partial-facilities service; is that correct?

16 A. Full facility or partial facility.

17 Q. Yeah. I think I said that. But there's just
18 one provider?

19 A. Correct.

20 Q. Okay. So how does that exchange meet the
21 criteria under the 30-day competitive classification statute?

22 A. We went with the assumption that there was no
23 change in the presence of a wireless carrier.

24 Q. But wasn't the purpose of this to evaluate
25 whether things have changed?

1 A. I think the only way we could definitively get
2 that information is to recontact the wireless carriers.

3 Q. Wasn't that the purpose of this investigation?

4 A. I -- I -- I suppose so.

5 Q. So under the exchanges where there is only one
6 full-facility and partial-facility based provider,
7 specifically on Schedule 3, lines 1, 2, 6, 7, 11, 12, 13, 14,
8 16, 17, 22, 29, 30, 34, 35, 36, 38 and 45, which is a
9 substantial number -- I don't know how many I just read off.
10 In each of those, there's only one provider offering service
11 on a full-facility or partial-facility basis. Would you agree
12 with me on that statement?

13 A. Yes.

14 Q. Okay. And it's your testimony that the Staff
15 did not verify the existence of the wireless carrier under
16 present circumstances in any of those categories on any of
17 those exchanges?

18 A. Yes.

19 Q. So if there has been no analysis of present
20 day circumstances, how are we able to continue deeming each of
21 these exchanges as competitive?

22 A. I think at least from our perspective, and --
23 and I realize you may disagree with it, but at -- it -- you
24 know, what we're talking about is a wireless carrier suddenly
25 no longer providing wireless service within the exchange.

1 That's I guess the -- the situation that we might be concerned
2 about. Although that's possible, I think the likelihood of
3 that actually being the case is somewhat remote.

4 But, we -- we -- we -- we run into problems
5 in -- in contacting a lot of the wireless carriers and getting
6 those -- a sworn affidavit from them in terms of providing
7 service to wireless subscribers within particular exchanges.
8 It can be a difficult process. And being the first re--
9 review of this type, I guess it's -- it's part of a learning
10 experience for -- for the Staff as to how far we really need
11 to take these reviews.

12 Q. On Schedule 4, line 6, that exchange has zero
13 listed. Is it your testimony that that exchange still meets
14 the 30-day competitive classification criteria?

15 A. Yes.

16 Q. And how did you base that?

17 A. That's also described in the Staff report that
18 we filed in August.

19 Q. Could you just restate that for me?

20 A. And it's a similar situation that we talked
21 about.

22 Q. You got to -- you went to AT&T and got the
23 information from AT&T?

24 A. Well, went to both AT&T and the CLECs
25 operating in the exchange and we did get information back from

1 AT&T that they were ported.

2 Q. And same thing for Washington?

3 A. That's correct.

4 Q. Okay. In doing -- in completing the Staff
5 analysis, did Staff find any exchange where rates had
6 increased at a level that Staff found inappropriate?

7 A. I -- no.

8 Q. What would be the standard of Staff in
9 evaluating whether rates increased -- what would be
10 inappropriate, improper or -- what would you consider a rate
11 increase out of line?

12 A. I don't know if I have a ready answer for
13 that. I know when we looked at the rate increases, we looked
14 back and found that the current rates are similar to the rates
15 that AT&T charged approximately 20 years ago. And from that
16 standpoint, we didn't feel that the current rates were
17 unreasonable.

18 Q. Okay. I understand that. I can see that in a
19 number of --

20 A. But in terms of do we have a threshold as to,
21 well, if the rates were increased by a certain percentage,
22 that would suddenly cause us to say that's an unreasonable
23 rate increase, we haven't had those types of internal
24 discussions.

25 Q. What was the greatest increase that you all

1 found? Do you recall by percentage?

2 A. I don't know about percentage, but --

3 Q. Did you have any increases greater than, say,
4 10 percent?

5 A. We did -- we did identify the -- the actual
6 rate levels as of December 1st, 2004 --

7 Q. Yeah, I saw that.

8 A. -- in Schedule 9 and what the current rates
9 are.

10 I'm not sure if -- if any of these -- while I
11 would suppose some may go beyond 10 percent, but for the most
12 part, most of the rates were adjusted by approximately a dollar.
13 Okay. Okay. I will look forward to seeing those exhibits.

14 COMMISSIONER CLAYTON: Is it 9, 10, 11 and 12;
15 is that right?

16 JUDGE DIPPELL: Yes.

17 BY COMMISSIONER CLAYTON:

18 Q. And did you have any question about what I'm
19 asking in each of those exhibits? Are you clear on --

20 A. We're to revise Schedules 7 and 8 to include
21 the AT&T lines on an exchange-specific basis. You wanted
22 similar schedules to 7 and 8 for the 30-day track exchanges
23 and also include the AT&T line counts for those exchanges as
24 well.

25 COMMISSIONER CLAYTON: Gotcha. Okay. Thank

1 you, Mr. Van Eschen.

2 JUDGE DIPPELL: Thank you.

3 Commissioner Gaw, did you have questions?

4 COMMISSIONER GAW: Thank you, Judge.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. I'm not sure if -- hopefully I won't be too
7 terribly redundant here. Mr. Van Eschen, what is it that you
8 think the Commission is supposed to review in determining
9 whether or not competition -- whether or not the public
10 interest standard is met under the 60-day provision in the
11 statutes?

12 A. We looked at whether competitive conditions
13 continue to exist.

14 Q. Define that.

15 A. The conditions that were present when the
16 Commission granted competitive status, do they continue to
17 exist today.

18 Q. Okay. Keep going. What does that mean to
19 you?

20 A. If -- if -- if the types of competitors that
21 were operating within a particular exchange qualified that
22 exchange for competitive status, are those types of
23 competitors still there.

24 Q. Why don't you name them for me, the types of
25 competitors that would -- that provide for an automatic

1 qualification under the 60-day provision according to your
2 view of the Commission's decision?

3 A. Under the 60-day track?

4 Q. Yes.

5 A. I think I spelled that out in my testimony on
6 page 4.

7 Q. Of your Rebuttal?

8 A. Yes. Starting on line 18. The Commission's
9 decision in Case No. TO-2006-0102 recognized local voice
10 service competition from non-affiliated entities that included
11 wireless carriers, VoIP providers using the non-affiliated
12 cable television companies, broadband network and CLECs
13 providing service on either a full facility, partial facility
14 or other resale basis, whereby other resale is defined as
15 arrangements where the CLEC uses UNE-P or similar commercial
16 wholesale service from AT&T.

17 Q. Any of those things that you listed existed in
18 an exchange of the 60-day requirement is met according to your
19 view of the Commission's decisions on the 60-day?

20 A. As long as there's two carriers.

21 Q. And, again, I believe you have already
22 testified that you believe that actually a lower standard than
23 what is required in the 30-day provision?

24 A. In my opinion, yes.

25 Q. All right. And would you explain to me then

1 why it is that there is -- if you know, why it is that you
2 believe this additional language is contained in subsection 6
3 of 392.245 that says that, The Commission shall approve such
4 petition within 60 days unless it finds that competitive
5 classification is contrary to the public interest. Is that
6 language meaningless?

7 A. No, I think under the 60-day track, the
8 Commission has some discretion in determining the criteria for
9 competitive status.

10 Q. Would it be true to say that Staff's position
11 in this case is an attempt to reflect what it views the
12 majority of decision of the Commission to have been in regard
13 to the criteria to establish a 60-day competitive status?

14 A. Well, yes.

15 Q. And it is, would it not be true, a different
16 position that Staff is taking here in this case than what it
17 originally took in the cases that were before the Commission
18 on the 60-day status initially?

19 A. Yes, I would agree with that.

20 Q. And if we're looking at other things that
21 might be appropriate for public interest, have you ever had
22 occasion in other matters to examine public interest as a part
23 of the determination of a case, not just limited to this
24 particular subsection?

25 A. We've had other cases. Some of the prior

1 effective competition cases I'd have to say looked at, I
2 guess, public interest as a standard as -- in terms of the
3 criteria for granting competitive status.

4 Q. Would it not be true that there are -- there
5 is language within the statutes that's still in existence that
6 does talk about some of the things that -- some of the factors
7 that ought to be examined in regard to determining whether or
8 not competition exists outside of just the minimum particular
9 things that you say that you looked at in this case?

10 A. Yeah. I think public interest is a valid
11 consideration in determ-- determining whether competitive
12 status ought to be retained for the 60-day exchanges.

13 Q. Okay. Did Commissioner Clayton already ask
14 you for market share information on all of these exchanges
15 that are in question?

16 A. I think he'll have that information through
17 these additional exhibits. I -- I guess it depends on your
18 definition of -- of market share, but certainly the -- you
19 know, you'll have the number of lines that AT&T has and be
20 able to see the number of CLEC lines and the number of CLEC
21 competitors.

22 Q. Okay. And that will cross-reference or at --
23 so we'll be able to see, identify the particular CLEC as to
24 whether or not it is a resale or -- reseller, excuse me, or
25 facilities-based provider?

1 A. Yeah. We -- we will -- in my schedules, I
2 simply focus on CLECs that are providing service on a full
3 facility, partial facility or other resale basis.

4 Q. Mr. Van Eschen, do you recall -- or let me ask
5 you this. Do you have an opinion as to whether or not
6 competition should or should not drive -- if it's in existence
7 and healthy, drive prices toward cost?

8 A. I think that can happen. I -- I think, you
9 know, it's -- it's common for competitive markets to see some
10 rate increases. I think for the most part though, people
11 believe that competitive markets would generate rate decreases
12 rather than rate increases, but I think both can happen in a
13 competitive market.

14 Q. Well, that wasn't exactly my question. My
15 question is whether or not you believe that healthy
16 competition will drive prices toward cost?

17 A. Yes.

18 Q. Have you looked at the pricing on the various
19 vertical services that are offered in the exchanges that are
20 in issue here?

21 A. No, I have not.

22 Q. Is that information available?

23 A. The -- the rates that would be charged for
24 vertical services?

25 Q. Yes.

1 A. Yes, it would be in the company's tariff.

2 Q. And is that information available over the
3 course of time from just before or at some place before the
4 declaration of competitive status in this 60-day and 30-day
5 cases up to the present time?

6 A. I believe so. I believe we would still have
7 the canceled tariff sheets. I believe so.

8 Q. And would it be possible then to notice the
9 percentages of increases from one to another and then from the
10 first until the most recent?

11 A. Yes.

12 Q. Have you ever noted on any tariffs dealing
13 with vertical services, notations in those tariffs that assign
14 some value to the actual cost of that service? Have you ever
15 noticed that on any of those tariff filings?

16 A. No.

17 Q. Would it be possible for you to check to see
18 whether some of those tariff filings might indeed have a
19 figure that indicates the incremental cost or some portion of
20 cost that is attributable to that particular service,
21 providing that service?

22 A. I know it would not be in the tariff. And
23 it -- and it -- I would anticipate it would be -- if it was
24 ever provided to us, meaning Staff, it would be on a
25 confidential basis. And, frankly, I haven't seen that type of

1 cost study for a number of years.

2 Q. Have you ever been involved in cost studies
3 involving vertical services?

4 A. I have seen them, yes.

5 Q. All right. Are you familiar with the range of
6 costs?

7 A. Generally the costs for a lot of vertical
8 services is somewhat minimal is what I observed.

9 Q. Is there a way that we could get information
10 on that -- that you could provide to us in that regard?

11 A. I'm not sure I have any information readily
12 available that --

13 Q. But you have seen -- you have been involved,
14 you just said that you've seen that in the past that the cost
15 of providing some of those vertical services is minimal. What
16 do you mean by that?

17 A. Well, I think a common example that is always
18 raised is -- is the rate for Call Waiting. And, you know, how
19 much does it cost to actually provide Call Waiting. And the
20 actual costs are -- are minimal, but yet I believe AT&T may
21 charge \$8 or something for that feature. But I don't have
22 a -- a cost study that I could, I guess, provide to the
23 Commission that would identify what those costs are.

24 Q. Do you have any information at all that you
25 might have in your records that would help me in that regard?

1 A. I'd have to do some checking. I don't know.

2 Q. Would you mind doing that, please?

3 A. Okay.

4 Q. And, again, I suppose you'd have to check to
5 see what the current tariffed rates are for vertical -- for
6 those vertical services such as Call Waiting for this company,
7 for AT&T?

8 A. Yeah. That would be in the company's tariff.
9 That --

10 Q. All right. And you are not familiar off the
11 top of your head as to the percentage of increases that have
12 been experienced in vertical services since the competitive
13 classification was granted to AT&T under either 30-day or
14 60-day?

15 A. I'd have to look and see what we have on that.
16 I -- I think we have looked at that at some point in the past.
17 I'd have to see what we have on that.

18 Q. All right. Are there any vertical services
19 that you're -- that you're aware of that -- the provision of
20 which is something more than, as you say, quote/unquote,
21 minimal, in cost?

22 A. Where the rate is substantial --

23 Q. Cost?

24 A. -- is substantially more than cost?

25 Q. That's not exactly what I asked, but I would

1 get there so -- what I'm asking you is whether you're aware of
2 any vertical services, the provision of which is something
3 more than what you --

4 A. Oh, what the --

5 Q. -- determined as minimal?

6 A. I'd have to think about that. I know the Call
7 Waiting is the -- rate is the one that typically comes up.

8 Q. Okay. Can you list off a few vertical
9 services off the top of your head?

10 A. Oh, Call Waiting, Call Forwarding, Speed --
11 Speed Dialing.

12 Q. Caller ID?

13 A. Caller ID. Yeah.

14 Q. Do you know whether or not there is any
15 tracking of the percentage of residential customers that buy
16 one or more vertical services as a part of their local
17 service?

18 A. None comes to mind, but, again, I'd need to
19 check on that.

20 Q. Okay.

21 COMMISSIONER GAW: Judge, I guess I'm making
22 an assumption here that he's going to be back in the morning.
23 Is that a bad assumption to make?

24 JUDGE DIPPELL: Not if you're wanting him to
25 be back in the morning.

1 COMMISSIONER GAW: Well, if he's looking up
2 some of these things, it might be the only way I'm going to
3 find out is the only reason I'm asking.

4 JUDGE DIPPELL: I have sort of assumed that he
5 might be reporting back after the hearing, but if Mr. Van
6 Eschen believes he could look it up quickly enough to report
7 back to you tomorrow --

8 BY COMMISSIONER GAW:

9 Q. Mr. Van Eschen, is it possible that you might
10 be able to get some of that information sometime in the
11 morning, not first thing, but --

12 A. I'm going to have to see what we can do,
13 what's readily available. For some of this, I'm not sure if
14 we even have any information. For example, the cost studies,
15 I -- I -- it's doubtful that we would have anything and even
16 if we did, it would be very dated. But it's possible.

17 Q. Okay.

18 A. The -- the rate changes I'm not sure. I mean,
19 we can put that information together, but to have -- have that
20 readily available by first thing tomorrow morning, I don't
21 know.

22 Q. Well, I understand that you can't have it
23 first thing. I'm talking about -- there's a couple of more
24 witnesses maybe that -- or one more that might testify in the
25 morning and I was thinking maybe after that, you might have

1 time to do a little bit.

2 A. Uh-huh. We'll see what we can do.

3 COMMISSIONER GAW: Thank you. I'm going to
4 stop there, Judge. Thank you.

5 JUDGE DIPPELL: Okay. Mr. Van Eschen, I have
6 a couple of questions that Commissioner Murray wanted me to
7 ask you.

8 QUESTIONS BY JUDGE DIPPELL:

9 Q. And I think you kind of testified to this
10 before, but just to make sure that it's clear, I'm going to --
11 so if this seems a little repetitive, please excuse it. I
12 just want to make sure that her question got answered. What
13 do the words "or other resale basis" in the statute mean to
14 you?

15 A. I talk about that in my testimony and --

16 Q. Is that the same as the way you describe it in
17 your -- is the way you describe "other resale" in your
18 testimony? I'm sorry.

19 A. Yes. On page 5 of my testimony, I -- I try
20 and distinguish the terms "full-facility basis,
21 partial-facility basis and other resale." And how I defined
22 other resale is contained in my answer.

23 Q. Okay.

24 A. And specifically other resale basis refers to
25 CLECs providing service where the CLEC leases facilities --

1 facilities from the incumbent local telephone company at a
2 negotiated or arbitrated rate or through an arrangement
3 purchases via a commercial agreement.

4 Q. And so what is your interpretation of what the
5 statute requires with regard to how many facilities based on
6 other resale are required?

7 A. Well, I think the statute is just looking for
8 two carriers that would fit the criteria and that under the
9 30-day track, they do place some limitations on the type of
10 carriers that could qualify as valid criteria. Under the
11 60-day track, the Commission has greater discretion.

12 JUDGE DIPPELL: Okay. Thank you. All right.
13 I believe then that that is all of the Commission questions at
14 this time.

15 Is there further cross-examination based on
16 Commission questions from AT&T?

17 RE-CROSS-EXAMINATION BY MR. BUB:

18 Q. Mr. Van Eschen, in answering some questions
19 from Commissioner Clayton, you had indicated that you had no
20 column in your schedule for the 30-day track CLECs for
21 wireless carriers. Do you recall that exchange?

22 A. Yes.

23 Q. Okay. Has Staff heard of any wireless carrier
24 leaving any exchange in Missouri?

25 A. No.

1 Q. Would you expect that if a wireless carrier
2 left an exchange, you would have heard about it from
3 customers?

4 A. Yes.

5 Q. Okay. You also had some discussions with
6 Commissioner Clayton about the data in your various schedules,
7 I think 7 and 8, and you had indicated to him that the data in
8 those schedules was taken from CLEC Annual Reports; is that
9 correct?

10 A. Yes.

11 Q. And that you didn't update that unless you had
12 something specific from a CLEC?

13 A. That's correct.

14 Q. Okay. In relying on 2005 Annual Report data,
15 would it be correct to say that that data is
16 15 months old now?

17 A. Yes.

18 Q. Okay. Okay. And the data supplied in
19 Mr. Unruh's testimony is more recent than that; isn't that
20 correct?

21 A. Yes.

22 MR. BUB: Okay. Thank you.

23 Judge, those are all the questions we have.

24 JUDGE DIPPELL: Thank you.

25 Is there further cross-examination based on

1 questions from the Bench from Public Counsel?

2 MR. DANDINO: Yes, your Honor.

3 RECROSS-EXAMINATION BY MR. DANDINO:

4 Q. Mr. Van Eschen, I believe in response to
5 Commissioner Gaw, you said that public interest is a standard
6 where you can judge whether or not to retain competitive
7 status. Did I hear you accurately?

8 A. I think it could be, yeah, considered in their
9 decision in this proceeding.

10 Q. In this proceeding?

11 A. Yeah.

12 Q. And am I right in recalling that you told me
13 in your testimony that the Staff report did not do a public
14 interest analysis?

15 A. We didn't, no.

16 Q. And am I correct in -- that you told me today
17 that your testimony did not address or make a public interest
18 analysis?

19 A. That is true.

20 Q. But do you think it's okay for the Commission
21 to do that and it would be appropriate?

22 A. If they -- if they want to, yes.

23 Q. So it's within the statute that they can make
24 that public interest analysis?

25 A. I'm not an attorney, but I would say sure.

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

2 Thank you.

3 JUDGE DIPPELL: Thank you.

4 Is there any redirect? And let me interrupt
5 just a moment, Mr. Haas.

6 What I'm going to do is we're going to finish
7 with Mr. Van Eschen as best we can and then in the morning,
8 we'll start with Mr. Unruh. And then go to any Commissioner
9 questions we might have for Ms. Meisenheimer that weren't
10 asked if Commissioner Gaw has questions or some of the other
11 Commissioners that didn't ask. And then we'll get back to
12 Mr. Van Eschen at that point if he has further information.

13 So, Mr. Haas, I'm sorry. Did you have
14 redirect?

15 MR. HAAS: Yes.

16 REDIRECT EXAMINATION BY MR. HAAS:

17 Q. Mr. Van Eschen, you were asked if you had
18 checked on the presence of a wireless carrier in the 30-day
19 exchanges. Have you had a chance to review the Rebuttal
20 Testimony of Craig Unruh?

21 A. Yes.

22 Q. And at Schedules 4 and 5, Mr. Unruh lists
23 wireless competitors in the 30-day exchanges. Do you have any
24 information to dispute that the wireless carriers are present
25 in those exchanges?

1 A. No.

2 MR. HAAS: That's all my questions. Thank
3 you.

4 JUDGE DIPPELL: Thank you. All right then. I
5 think --

6 MR. DANDINO: Your Honor.

7 JUDGE DIPPELL: Yes, Mr. Dandino.

8 MR. DANDINO: I just wanted to catch you
9 before you adjourned. I just want to make sure I want to make
10 a request that the Commission take administrative official
11 notice of something. I wanted to make sure I made it --

12 JUDGE DIPPELL: Okay.

13 MR. DANDINO: -- before it's considered to be
14 closed Public Counsel's case. I wanted to ask the Commission
15 to take administrative official notice of the Public Service
16 Commission record in TO-2006-0102, which was the original
17 60-day petition resulting in a competitive classification for
18 these exchanges. Since this is a continuation of the -- or at
19 least a revisiting and review of the decision in that case, I
20 believe it is relevant and, therefore, I think the Commission
21 ought to take official notice of that.

22 Just as authority, the Missouri Court of
23 Appeals in State, ex rel. Coffman versus Public Service
24 Commission, and I don't remember the cite, but it involved the
25 TO-2004, I believe 0467, which was the review of the

1 competition case under --

2 JUDGE DIPPELL: Actually 2001.

3 MR. DANDINO: 2001. How time flies when we're
4 having fun.

5 In that case, the court said that the
6 Commission can often can consider the record in prior Public
7 Service Commission cases even though those cases weren't in
8 front of them. And I believe the Commission has, in its
9 recent Report and Order in that case, done exactly that. So,
10 therefore, I think it is only reasonable for them to consider
11 the entire record in 2000-206-0102 as part of this record too.

12 JUDGE DIPPELL: Could I suggest -- would it be
13 appropriate for the Commission to consider the testimony and
14 transcripts as well as their Report and Order, their final
15 Report and Order in that? Would that be sufficient?

16 MR. DANDINO: Testimony, transcripts and
17 public hearings, sure. Sure. I -- you know, and -- well,
18 yes, would it include the exhibits?

19 JUDGE DIPPELL: Right. The exhibits attached
20 to all of the transcripts, including the public hearings --

21 MR. DANDINO: That's fine.

22 JUDGE DIPPELL: -- and their final Report and
23 Order. That would at least eliminate all the pleadings and --

24 MR. DANDINO: All the pleadings and briefs. I
25 think that would be appropriate, your Honor.

1 MR. BUB: Your Honor, we wouldn't have a
2 problem with that as long as we got into the record on the
3 same basis for the 30-day case as well the TO-2006-0093 case.

4 MR. DANDINO: Well, your Honor, I don't think
5 that case, that one really has -- we're not reviewing those --

6 MR. BUB: Yes, we are.

7 MR. DANDINO: -- cases.

8 Okay. Well, I won't object to that. Let's
9 get everything in. More the merrier.

10 MR. BUB: With that, I think it's -- a
11 balanced full record's there and we're okay with that.

12 JUDGE DIPPELL: Well, we are discussing those
13 30-day exchanges in this case as well, so if there is no
14 objection then, to the Commission taking official notice of
15 the record at least with regard to the transcripts, the
16 testimony, the -- all the exhibits attached thereto, including
17 the public hearing transcripts of TO-2006-0102 and
18 TO-2006-0093, then the Commission will take official notice of
19 those.

20 MR. DANDINO: Thank you, your Honor.

21 JUDGE DIPPELL: I'm sorry, Mr. Van Eschen, you
22 may step down. And that included the final Report and Order
23 in those.

24 MR. DANDINO: Yes.

25 JUDGE DIPPELL: And any written concurrences

1 or dissents thereto.

2 All right. Okay. I don't think that there's
3 any other housekeeping things that we need to take care of
4 tonight so I think this is probably a good place to break for
5 the evening and we will reconvene tomorrow morning at 8:30 and
6 we'll begin with Mr. Unruh's testimony. We can go off the
7 record.

8 WHEREUPON, the hearing was adjourned until
9 March 9, 2007 at 8:30 a.m.

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