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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
September 26, 2001  
Jefferson City, Missouri  
Volume 5

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

NANCY M. DIPPELL, Presiding,  
SENIOR REGULATORY LAW JUDGE.  
  
SHEILA LUMPE,  
CONNIE MURRAY,  
STEVE GAW,  
COMMISSIONERS.

REPORTED BY:  
  
KELLENE K. FEDDERSEN, CSR, RPR  
ASSOCIATED COURT REPORTERS, INC.

1 APPEARANCES:

2 PAUL G. LANE, General Counsel-Missouri  
LEO J. BUB, Senior Counsel

3 ANTHONY K. CONROY, Senior Counsel  
One Bell Center, Room 3520  
4 St. Louis, Missouri 63101  
(314)235-4300

5  
FOR: Southwestern Bell Telephone Company.

6  
LISA CREIGHTON HENDRICKS, Attorney at Law  
7 Sprint Communications Company  
5454 W. 100th Street  
8 Overland Park, Kansas 66211  
(913)345-7918

9  
FOR: Sprint Communications Company.

10  
KEVIN ZARLING, Attorney at Law  
11 AT&T  
919 Congress Avenue, Suite 900  
12 Austin, Texas 78701-2444  
(512)370-1083

13  
FOR: AT&T Communications of the Southwest.

14  
CARL J. LUMLEY, Attorney at Law  
15 Curtis, Oetting, Heinz, Garrett & Soule  
130 South Bemiston, Suite 200  
16 Clayton, Missouri 63105  
(314)725-8788

17  
FOR: NuVox Communications of Missouri, Inc.  
18 XO Missouri, Inc.  
MCI WorldCom Communications, Inc.  
19 MCI Metro Access Transmission Services.  
MPower Communications Central Corp.  
20 Brooks Fiber Communications of  
Missouri, Inc.

21  
BRADLEY R. KRUSE, Attorney at Law  
22 McLeod USA  
6400 C Street SW  
23 P.O. Box 3177  
Cedar Rapids, IA 52406-3177  
24 (319)790-7939

25  
FOR: McLeod USA.

ASSOCIATED COURT REPORTERS, INC.  
JEFFERSON CITY - COLUMBIA - ROLLA  
(888)636-7551

1 MARY ANN (GARR) YOUNG, Attorney at Law  
William D. Steinmeier, P.C.  
2 2031 Tower Drive  
P.O. Box 104595  
3 Jefferson City, Missouri 65110  
(573)734-8109  
4

FOR: McLeod USA Telecommunications, LLC  
5 Allegiance Telecom of Missouri, Inc.

6 CATHLEEN MARTIN, Attorney at Law  
Newman, Comley & Ruth  
7 601 Monroe, Suite 301  
P.O. Box 537  
8 Jefferson City, Missouri 65102  
(573)634-2266  
9

FOR: Birch Telecom of Missouri.  
10

LISA CHASE, Attorney at Law  
11 Andereck, Evans, Milne, Peace & Johnson  
700 East Capitol  
12 P.O. Box 1438  
Jefferson City, Missouri 65102  
13 (573)634-3422

14 FOR: MITG.

15 MICHAEL DANDINO, Senior Public Counsel  
P.O. Box 7800  
16 Jefferson City, Missouri 65102-780  
(573)751-4857  
17

FOR: Office of the Public Counsel  
18 and the Public.

19 WILLIAM K. HAAS, Deputy Counsel  
P.O. Box 360  
20 Jefferson City, Missouri 65102  
(573)751-3234  
21

FOR: Staff of the Missouri Public  
22 Service Commission.

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P R O C E E D I N G S

(EXHIBIT NOS. 30, 30HC, 31 AND 31HC WERE  
MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE DIPPELL: Let's go ahead and go on the  
record.

This is a continuation of Case TO-2001-467,  
and we are about to proceed with Office of the Public  
Counsel's calling their first witness. Mr. Dandino, would  
you like to go ahead?

MR. DANDINO: Yes. I'd like to call Barbara  
Meisenheimer, please.

JUDGE DIPPELL: Thank you. Ms. Meisenheimer  
would you please spell your name for the court reporter.

THE WITNESS: It's Barbara Meisenheimer,  
M-e-i-s-e-n-h-e-i-m-e-r.

(Witness sworn.)

JUDGE DIPPELL: Thank you. Mr. Dandino, you  
may proceed.

MR. DANDINO: Thank you.

BARBARA MEISENHEIMER testified as follows:

DIRECT EXAMINATION BY MR. DANDINO:

Q. Please state your name and position.

A. Barbara Meisenheimer, Chief Economist,  
Missouri Office of the Public Counsel.

Q. And are you the same Barbara Meisenheimer that

1 caused to be filed in this -- that prepared and caused to be  
2 filed in this case rebuttal testimony which has been marked  
3 for identification purposes as Exhibit 19 and surrebuttal  
4 testimony which has been marked for identification purposes  
5 as 21?

6           A.       Yes, I am.

7           Q.       Now, I understand also there are some  
8 supplements that are an addition to your testimony, and  
9 first I just want to go through and have you identify what  
10 these exhibits are. Let's first talk about Exhibit No. 20,  
11 which I understand is a revised schedule.

12          A.       Yes, it is.

13          Q.       Could you please identify it more in detail?

14          A.       This schedule or this set of schedules BAM-1HC  
15 through 4HC, and then in addition BAM-5, and also the  
16 nonproprietary versions of those schedules, were submitted,  
17 No. 1, to make a correction in a spreadsheet that was  
18 presented in the rebuttal testimony that I filed on  
19 August 16th, and also to address some suggestions that, to  
20 the extent that information was not highly confidential,  
21 that it would be helpful to identify the portions that were  
22 not.

23          Q.       Now, Exhibit 20 was -- strike that.

24                   Now, are you -- Exhibit No. 30, could you  
25 identify that, please, the other revised schedules?

1           A.       Staff Data Request.

2           Q.       No. The other one. Your revised schedule on  
3 9/25. Do you have a copy of it?

4           A.       The nonproprietary version?

5           Q.       Both versions.

6                   MR. DANDINO: May I approach?

7                   JUDGE DIPPELL: Yes.

8                   THE WITNESS: That's what I just talked about.

9                   MR. DANDINO: Your Honor, at the beginning of  
10 this I said I wasn't very good at numbers, and obviously  
11 I've confused my own witness here. Let me try to straighten  
12 it out.

13 BY MR. DANDINO:

14           Q.       Exhibit 20 -- or Exhibit 30 is the one dated  
15 9/25. Now, could you -- now, let's talk about Exhibit 20.

16           A.       Exhibit 20 was what I just addressed where I  
17 just simply updated or where I replaced a spreadsheet  
18 calculation in response to an error that was pointed out  
19 with that and tried to point out the portions of those  
20 schedules that were not highly confidential.

21           Q.       Now, Southwestern Bell pointed out, I guess,  
22 the calculation error that you made in that one; is that  
23 correct?

24           A.       Yes. They called me on the phone and  
25 indicated that they had a concern about how one of the

1 numbers had been arrived at. I reviewed it and agreed that  
2 that calculation was miscalculated in the original  
3 spreadsheet, and just as I've called and they've made  
4 corrections in the past to their calculations, I replaced  
5 it.

6 Q. So on -- but you've further updated No. 20?

7 A. Yes.

8 Q. And that is Exhibit 30; is that correct?

9 A. Yes, it is.

10 Q. Okay. Now, please identify what you did on  
11 Exhibit 30 and how is that different from No. 20.

12 A. Exhibit 30 mirrors the form of the information  
13 and the extent of the information that was update -- or that  
14 was corrected in Exhibit 20 to reflect the new data that  
15 Southwestern Bell submitted in its surrebuttal testimony,  
16 which I did not have access to at the time that I made the  
17 correction. That was filed on the same day that Bell filed  
18 their surrebuttal.

19 This Exhibit 30 is now an update to reflect  
20 information from Southwestern Bell's update of their own  
21 information that appeared in surrebuttal.

22 Q. So is Exhibit 30 in your best estimate the  
23 most up-to-date information and includes the data submitted  
24 by Southwestern Bell in their surrebuttal testimony?

25 A. Yes.

1 Q. Now, let's talk about Exhibit No. 31. Would  
2 you please identify Exhibit No. 31.

3 A. Exhibit No. 31 is the results of the  
4 Staff's --

5 Q. First identify what document it is.

6 A. It includes an HC and nonproprietary version  
7 of response to a Staff's Data Request in this case. The  
8 Data Request number is 2501.

9 Q. Are there any other parts to it?

10 A. There is also a list of the companies that are  
11 included in the response that's summarized.

12 Q. Okay. Now, tell me how this exhibit came  
13 about.

14 A. Public Counsel had access to the information  
15 received by the Staff in response to the Staff's Data  
16 Request. Public Counsel worked cooperatively with the Staff  
17 to compile that data.

18 Q. And when was the -- these Data Requests  
19 responses received?

20 A. Our office received the most latest  
21 information, I think, that's contained in that within, I'd  
22 say, the last week.

23 Q. Now, was this compilation in Exhibit 30,  
24 information in Exhibit 30 prepared under your supervision  
25 and control?



1 A. Yes, it was.

2 Q. And is it based on the information supplied by  
3 the CLECs in the Data Requests submitted by the Staff of the  
4 Public Service Commission?

5 A. Yes.

6 Q. And do you believe this compilation to be a  
7 true and accurate reflection of the data -- of the Data  
8 Request responses that you were provided with?

9 A. Yes.

10 Q. I want to kind of go back also to when we talk  
11 about Exhibit 19, your rebuttal. Is there -- there's an HC  
12 version of that, too, there's a 9HC, isn't that correct,  
13 19HC?

14 A. Yes.

15 Q. And that was also -- that's part of your  
16 rebuttal testimony; is that correct?

17 A. Yes.

18 Q. Now, let's go one document at a time here.  
19 No. 19, your rebuttal testimony, do you have any corrections  
20 to that?

21 A. Yes, I do.

22 Q. Could you go --

23 A. On page --

24 Q. -- one by one?

25 A. On page 5, line 16, toward the end of that

1 line, right after the word "five" I'd like to insert the  
2 word "years".

3                   On page 8, line 19, I'd like to strike the  
4 repeated words "qualify for."

5           Q.       What's the next one?

6           A.       On page 11, line 24, after the word "for" I  
7 would like to insert the phrase "mandatory detariffing to  
8 occur and more than ten for."

9                   JUDGE DIPPELL: Could you repeat that again.

10                  THE WITNESS: Yes. The phrase that I'd like  
11 to insert after the word "for" is "mandatory detariffing to  
12 occur and more than ten for."

13 BY MR. DANDINO:

14           Q.       For clarity sake, could you read that sentence  
15 very slowly?

16                  JUDGE DIPPELL: I'm sorry. I didn't quite  
17 understand that. Is that "more than ten years for?"

18                  THE WITNESS: Yes.

19                  JUDGE DIPPELL: I'm sorry. Continue,  
20 Mr. Dandino.

21 BY MR. DANDINO:

22           Q.       Would you care to read that sentence as  
23 corrected for clarity?

24           A.       In the case of the long distance market, it  
25 took about 20 years after divestiture for mandatory

1 detariffing to occur and more than ten years for AT&T to  
2 gain nondominant status in the interstate domestic  
3 interexchange market.

4 Q. Ms. Meisenheimer, when you read that you said  
5 "in the case of", you said "long distance." You did not  
6 read the word "interstate". Was that intended to be there?

7 A. Yes.

8 Q. So it's "in the case of interstate long  
9 distance;" is that right?

10 A. Yes.

11 Q. Okay. Just making sure. Okay. What's your  
12 next correction?

13 A. Page 17, line 24. In recognition of both the  
14 correction that was necessary to the spreadsheet that  
15 Southwestern Bell pointed out to me and in response to the  
16 updated information that Southwestern Bell has provided in  
17 their surrebuttal testimony, I'd like to change the highly  
18 confidential number.

19 Q. Why don't we just subtract or add numbers to  
20 it either direction, without revealing the number.

21 A. Subtract five.

22 Q. Okay. What's your next correction?

23 A. On page 19, line 8, after the word "that", I  
24 would like to insert the word "were".

25 Q. Were, w-e-r-e?

1           A.       Yes. The last is on page 20, line 14. After  
2 the word "plans", I need to insert the word "are".

3           Q.       Is that all the corrections?

4           A.       For the rebuttal testimony.

5           Q.       For the rebuttal testimony. Now, Exhibit 30,  
6 is that correcting and supplementing some of your schedules  
7 in your rebuttal testimony?

8           A.       Yes, it is.

9           Q.       Could you please identify which schedules it  
10 is supplementing and correcting?

11          A.       BAM-1HC, BAM-2HC, BAM-3HC, BAM-4HC. And I  
12 would note that the update also includes BAM-5, which  
13 originally was identified as a highly confidential schedule  
14 and later treated as nonconfidential. It included notes  
15 regarding the method that was used and just provides some  
16 information about the grouping of exchanges.

17          Q.       And you intend Exhibit 30 as an update of and  
18 correction of your rebuttal testimony schedules; is that  
19 correct?

20          A.       Yes.

21          Q.       Now, do you have any corrections in Exhibit  
22 No. 21, your surrebuttal testimony?

23          A.       I have a couple. On page 2, on line 17,  
24 consistent with both the correction to the older schedule  
25 and in response to the updated information provided in

1 Southwestern Bell's surrebuttal testimony, I would like to  
2 add five to the number on that line.

3 Q. Should that number -- that should be a highly  
4 confidential number?

5 A. Actually, in an abundance of caution,  
6 previously we treated some of these numbers as highly  
7 confidential because we were still in the process of  
8 identifying specifically what Southwestern Bell might or  
9 might not consider highly confidential.

10 This number is a statewide average number, and  
11 I don't believe it's highly confidential or requires that  
12 treatment. In fact, I think Southwestern Bell may have  
13 discussed numbers like that. So that number should be  
14 10 percent.

15 JUDGE DIPPELL: Mr. Lane, do you agree with  
16 that assessment? You're shaking your head.

17 MR. LANE: Yes. Could I ask a clarifying  
18 question? Maybe you can take care of it, Mr. Dandino. On  
19 her rebuttal testimony on page 17, line 24, the correction  
20 that Ms. Meisenheimer made there, I don't believe that needs  
21 to be highly confidential. It's information that she's  
22 given elsewhere as not highly confidential. And if we can  
23 clarify that, I think that will be helpful.

24 MR. DANDINO: Okay. Thank you.

25 JUDGE DIPPELL: You may continue, Mr. Dandino.

1 BY MR. DANDINO:

2 Q. Ms. Meisenheimer, you were on your surrebuttal  
3 testimony.

4 A. On page 11, line 3, I need to delete the word  
5 "that" after the word "section".

6 Q. Do you have any other corrections?

7 A. Yes, one more. On page 12, this correction  
8 will be to provide an updated response to Southwestern  
9 Bell's data filed in their surrebuttal testimony.

10 On line 9, there's a sentence that previously  
11 read, The data shows that Southwestern Bell enjoys market  
12 dominance by virtue of control of the loop. The only  
13 exception is in one exchange where Staff is not supporting a  
14 competitive service classification.

15 I'd like to update that sentence to reflect  
16 the most current information that now I have had an  
17 opportunity to review, and that sentence should now read,  
18 The data shows that Southwestern Bell, or SWBT, enjoys  
19 market dominance by virtue of control of the loop. The only  
20 exceptions are two exchanges where the Staff is not  
21 supporting a competitive service classification.

22 Q. Are there any other corrections?

23 A. No.

24 Q. As corrected and supplemented, is Exhibits --  
25 are Exhibits 19, your rebuttal testimony, 19HC, the HC

1 version, 20, your surrebuttal, Exhibit 30, revised  
2 schedules, and Exhibit 31, the Data Request compilation, are  
3 they true and accurate to the best of your information,  
4 knowledge and belief?

5 A. Yes. I also have Exhibit 21.

6 Q. Just -- I'm sorry. Exhibit 21, the  
7 surrebuttal?

8 A. Yes.

9 Q. Okay. I did not -- let's go back on this.  
10 I'll start over. I'll do them one at a time.

11 Exhibit 19, your rebuttal testimony HC, is  
12 that true and correct to the best of your information,  
13 knowledge and belief?

14 A. Yes.

15 Q. 21, your surrebuttal, is it true and correct  
16 to the best of your information, knowledge and belief as  
17 corrected?

18 A. Yes, it is.

19 Q. Now, for Exhibits 30 and 31, are they true and  
20 accurate to the best of your information, knowledge and  
21 belief?

22 A. Yes, they are.

23 Q. Now, if I asked you the questions contained in  
24 your testimony here today, would your answers be the same?

25 A. Yes, they would.

1                   MR. DANDINO: At this time I'd like to offer  
2 Exhibits 19, 19HC, 21, 30, and 31.

3                   MR. ZARLING: Your Honor, I don't have an  
4 objection, but I am a little bit confused about --

5                   JUDGE DIPPELL: We're going to try to  
6 straighten that out.

7                   MR. ZARLING: I don't know if we should go off  
8 the record or not.

9                   JUDGE DIPPELL: No. We're fine. The record  
10 might be confused also.

11                  MR. ZARLING: I don't know what happened to  
12 20. 30 appears to be an update to 20. I haven't seen 30  
13 this morning, Mr. Dandino, but I'm not overly concerned  
14 about it. I have seen 31. It appeared to me you were  
15 updating 30, updating 20 by 30, and you haven't offered 20,  
16 and maybe that's the solution, but I'm a little confused.

17                  MR. DANDINO: I was going to explain that as  
18 20 was replaced by 30.

19                  JUDGE DIPPELL: Mr. Dandino, 20 then becomes  
20 obsolete if 30 is a new version of 20?

21                  MR. DANDINO: Right. That's correct. I don't  
22 plan to offer 20.

23                  JUDGE DIPPELL: All right.

24                  MR. DANDINO: And counsel, you may not have  
25 realized, it wasn't numbered, but yesterday I'd --



1 yesterday, late yesterday afternoon I handed out the exhibit  
2 which is 30. I apologize if I hadn't clearly identified.

3 MR. ZARLING: I think we can do that off the  
4 record in terms of making sure I've got 30.

5 JUDGE DIPPELL: Mr. Lane, you had a question?

6 MR. LANE: A clarifying question, if I could,  
7 your Honor. In Exhibit 31, I'm trying to understand whether  
8 the list of the companies that responded to the Staff's Data  
9 Request is an NP or an HC page.

10 MR. DANDINO: It is an NP page.

11 MR. LUMLEY: Do you have an extra copy of  
12 that?

13 JUDGE DIPPELL: Okay. So the Exhibit 31  
14 actually had two parts. The second part was HC and the  
15 first, the single page was all NP but it goes with both  
16 versions?

17 MR. DANDINO: Yes.

18 JUDGE DIPPELL: And so Mr. Dandino has offered  
19 Exhibit No. 19 and 19 HC, which is the rebuttal testimony of  
20 Barbara Meisenheimer. Is there any objection to that  
21 testimony as corrected?

22 (No response.)

23 Then I will receive that into evidence.

24 (EXHIBIT NOS. 19 AND 19HC WERE RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE DIPPELL: Mr. Dandino has also offered  
2 Exhibit No. 21, which is the surrebuttal testimony of  
3 Barbara Meisenheimer. Is there any objection to Exhibit 21?

4 (No response.)

5 Then I will receive that into evidence.

6 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

7 JUDGE DIPPELL: Mr. Dandino has also offered  
8 Exhibit No. 30, and 30HC, which he has provided here today  
9 and perhaps to some of the parties yesterday afternoon. Is  
10 there any objection to Exhibit 30 or 30HC?

11 (No response.)

12 Then I will receive that into evidence.

13 (EXHIBIT NOS. 30 AND 30HC WERE RECEIVED INTO  
14 EVIDENCE.)

15 JUDGE DIPPELL: I've lost track. Did you  
16 offer Exhibit 31 also, Mr. Dandino?

17 MR. DANDINO: Yes, I did.

18 JUDGE DIPPELL: Is there any objection, then,  
19 to Exhibits 31 and 31HC?

20 (No response.)

21 Then I will receive those into evidence.

22 (EXHIBIT NOS. 31 AND 31HC WERE RECEIVED INTO  
23 EVIDENCE.)

24 JUDGE DIPPELL: And it's my understanding that  
25 you're not going to offer Exhibit 20?

1                   MR. DANDINO: That's correct, your Honor. I  
2 apologize for any inconvenience I've caused the Commission,  
3 the Judge and the counsel and my witness.

4                   JUDGE DIPPELL: All right, then. I think you  
5 may proceed.

6                   MR. DANDINO: Thank you, your Honor. I now  
7 tender Ms. Meisenheimer for cross-examination.

8                   JUDGE DIPPELL: Is there cross-examination by  
9 Southwestern Bell?

10                  MR. LANE: Yes, your Honor.

11 CROSS-EXAMINATION BY MR. LANE:

12                  Q.       Good morning, Ms. Meisenheimer.

13                  A.       Good morning, Mr. Lane.

14                  Q.       First let me say thank you for the nice words  
15 you had about Southwestern Bell people in your testimony.

16                  A.       I meant it.

17                  Q.       And it's mutual. I guess that means I need to  
18 be nice to you.

19                         Let me ask a clarifying question first before  
20 I get started. In your surrebuttal testimony, on page 12,  
21 you made a correction on lines 10 and the sentence that  
22 continues on to line 11. And my question is, did you mean  
23 to say that the only exceptions are two exchanges where the  
24 Staff is supporting a competitive service classification?

25                  A.       Yes, Mr. Lane. Thank you. Oh, no. I'm

1 sorry. No.

2 Q. Are the names of the exchanges displayed  
3 anywhere in your testimony?

4 A. They are -- they can be seen within the data  
5 provided in the updated schedule that is labeled as  
6 Exhibit 30.

7 Q. And could you -- without getting into the HC  
8 information, maybe you could identify by page number and  
9 line number of the exchanges that you're referring to there?

10 A. I'm sorry to be taking a minute. I'm looking  
11 for what I was -- if I could see a copy of Mr. Hughes'  
12 testimony, it would be helpful. I need Mr. Hughes'  
13 testimony.

14 MR. DANDINO: Direct?

15 THE WITNESS: No. Updated surrebuttal.

16 MR. LANE: May I approach the witness, your  
17 Honor?

18 JUDGE DIPPELL: Yes, you may.

19 MR. LANE: Maybe in the interest of time, your  
20 Honor, I'll ask maybe to come back to this at some later  
21 point, if that's all right.

22 JUDGE DIPPELL: All right.

23 THE WITNESS: Well, in reviewing it and  
24 looking at Mr. Hughes' data, and in reviewing my own, I'm --  
25 and I certainly apologize. I think that I would say, you

1 know, sitting here now, perhaps that's no exceptions.

2 JUDGE DIPPELL: Why don't we move on to  
3 another line, Ms. Meisenheimer can review that at the next  
4 break and you can come back to it. Can we do that?

5 MR. LANE: That's fair.

6 THE WITNESS: I'm sorry. Thank you.

7 BY MR. LANE:

8 Q. Let me discuss Exhibit 31, if I could, with  
9 you. And as I understand it, Exhibit 31NP, the list of the  
10 companies who responded to the Data Request, is not  
11 proprietary; is that right, Ms. Meisenheimer?

12 A. That it's not --

13 Q. Not highly confidential?

14 A. Correct.

15 Q. And that indicates that 33 companies responded  
16 to Staff's Data Request in this case, right?

17 A. That indicates that our office received 33  
18 responses from Staff that were compiled.

19 Q. And you're familiar with Mr. Hughes'  
20 testimony, I believe, where he says that there's 62 CLECs  
21 that are, I believe, operating in Missouri today?

22 A. Yes, and I'd like the opportunity to explain  
23 why I think there might be a difference.

24 Q. Sure.

25 A. I had an opportunity to look through the list

1 of companies that responded and tried to identify if the  
2 majority of facilities-based CLECs had responded, and it  
3 appears that they have.

4           I think that probably the primary distinction  
5 between this list of 33 and the number that Mr. Hughes has  
6 identified as being operational in this state may primarily  
7 be differences due to resellers and potentially prepaid  
8 carriers that didn't respond.

9           Potentially there also -- I didn't sort  
10 through Mr. Hughes' list of 60-something. I'm not sure that  
11 all of them are actually operational. So those are the two  
12 primary distinctions that I think may explain the  
13 difference.

14       Q.     It's fair to say, isn't it, that not all of  
15 the companies that are providing service in Missouri were  
16 included in Exhibit 31 because Data Request responses  
17 weren't received from those companies by Office of the  
18 Public Counsel?

19       A.     I know that to be true at a previous point in  
20 time. If you can give me a specific company, maybe I can  
21 then say yes or no. That's kind of broad.

22       Q.     Well, let me ask it this way. You're not  
23 representing to the Commission, are you, that every company  
24 that is operating in Missouri today responded to Staff's  
25 Data Request and is included on Exhibit 31, right?

1           A.       That's correct.

2           Q.       And in Exhibit 31HC -- I'm sorry --  
3 Exhibit 31NP, the listing of the total number of lines  
4 served based on responses to Staff's Data Request is also  
5 not highly confidential, right?

6           A.       The totals should not be, that's correct.

7           Q.       And would you agree with me that because not  
8 all of the companies responded to Staff's Data Requests,  
9 that the number of access lines held by CLECs is understated  
10 in Exhibit 31?

11          A.       I can agree that to the extent that CLECs did  
12 not respond, the numbers might be higher. I do have a  
13 concern regarding the representation of equivalent voice  
14 grade lines with respect to the number of trunks. So I  
15 can't necessarily say that I would agree that in every case  
16 it's understated.

17          Q.       Would you agree with me that in the Case  
18 No. TO-99-227, our 271 application in Missouri, that Staff  
19 also sent out Data Requests in that case and that they  
20 were -- they reported to the Commission that as of August of  
21 2000 there were 328,257 business and residential access  
22 lines served?

23          A.       I did not participate in reviewing data at  
24 that point in Southwestern Bell's 271 application. I am  
25 unfamiliar with the basis of the derivation that the Staff

1 used to get that. I do have a general understanding of at  
2 least one of the components used that I do not agree with in  
3 terms of the calculation.

4                   So I'm -- I can't say that I'm aware of  
5 specifically the number that the Staff submitted in that  
6 case.

7           Q.       You're aware generally that the number of  
8 access lines that are listed on Exhibit 31 is substantially  
9 under the number of access lines that Staff reported in the  
10 227 case, right?

11          A.       I can't agree to that because I said that I  
12 was not active in reviewing the numbers that the Staff  
13 provided in that case.

14          Q.       The number of access lines that you report or  
15 list on Exhibit 31 is substantially the number of -- under  
16 the number of access lines that you report in your  
17 Exhibit 30, correct?

18          A.       I can verify that. I don't necessarily  
19 disagree with it. Let me just take a minute, and I promise  
20 it won't take as long as my earlier response.

21          Q.       And to help, if I could, on Exhibit 30, I  
22 think the NP version, the last page where totals are listed,  
23 would you agree that you would derive the number of CLEC  
24 access lines by subtracting 2.5 million from 2.8 million?

25          A.       Yes.



1 Q. Okay.

2 A. I would agree to that.

3 Q. And that number is substantially higher than

4 the number of access lines that are listed in Exhibit 31,

5 right?

6 A. In Exhibit 31, on the nonproprietary version,

7 you could add the total business lines to the total

8 residential lines and come up with something in the ballpark

9 of 200,600 -- or 640 -- 264. Sorry. The 2.8 minus the 2.5,

10 I'm not sure what you're quantifying as a substantial

11 difference.

12 Q. All right. Remove the word substantial.

13 Would you agree that the number that you reflect on

14 Exhibit 30, the lines served by CLEC, is higher than what's

15 reported in the Data Request answers that some CLECs

16 provided that you report on Exhibit 31?

17 A. I would agree with that.

18 Q. Let me just talk market share generally.

19 Based on Exhibit 30, you indicate that you believe the

20 market share or reported market share is just something

21 higher than 10 percent, correct?

22 A. Yes, and I believe that that agrees with a

23 number, although maybe not the characterization of

24 Southwestern Bell witness Tom Hughes.

25 Q. Okay. Would you agree that the best

1 determination of market share is the actual number of lines  
2 served by the CLECs?

3 A. Certainly.

4 Q. And Office of the Public Counsel doesn't have  
5 that data, does it?

6 A. We have seen, I think, a substantial amount of  
7 it and from many of the primary players in the market at  
8 this point.

9 Q. My question is, Office of the Public Counsel  
10 doesn't have an actual count of the number of lines that are  
11 served by all of the CLECs in the case, does it?

12 A. A total, no. No, we do not, as does not it  
13 appears Southwestern Bell.

14 Q. And you're aware, are you not, that Staff's  
15 calculation from the 271 case based on the Data Requests in  
16 that case on August of 2000 data indicated a 12 percent  
17 market share for CLECs, correct?

18 A. I don't have reason to dispute that.

19 Q. And that was a finding of fact that the  
20 Commission made in its Order approving or recommending  
21 approval of Southwestern Bell's 271 case, right?

22 A. I'm not -- I'm not specifically familiar with  
23 that number being cited by the Commission. I don't  
24 necessarily have a reason to doubt it. I do, based on the  
25 information that I've seen in this case, have somewhat of a

1 concern. I don't think there's a substantial difference  
2 between 10 percent and 12 percent. So if that helps, maybe  
3 we can move on.

4 Q. The method that you used in Exhibit 30 to  
5 compute access lines held by CLECs counted resale lines that  
6 were based on the actual number served, correct?

7 A. Yes.

8 Q. Okay. And it counts unbundled network element  
9 platform lines. Again, that's an actual number, correct?

10 A. To the extent that that information was  
11 provided to Southwestern Bell as an actual number by the  
12 CLEC, yes.

13 Q. But Exhibit 30 doesn't reflect an actual count  
14 of the total number of lines that are served either wholly  
15 by facilities of CLECs or partially by their own facilities  
16 and partially from unbundled network elements from  
17 Southwestern Bell, correct?

18 A. I would -- I think that I can agree with that.  
19 There are a couple of cases where there's an issue about  
20 exactly how might Southwestern Bell be able to calculate the  
21 number of lines that a CLEC provides exclusively over its  
22 own facilities.

23 Q. And in your Exhibit 30, you've attempted to  
24 estimate the number of lines that CLECs are serving  
25 utilizing their own facilities by utilizing E911 listings,

1 right?

2           A.       I relied on information provided by  
3 Southwestern Bell regarding 911 listings, yes.

4           Q.       And would you agree with me that E911 listings  
5 aren't a full total of the number of access lines that are  
6 served by CLECs utilizing their own facilities in whole or  
7 in part because it excludes outward-bound lines from the  
8 category?

9           A.       Outward-bound or inward-bound?

10          Q.       Excuse me. Inward.

11          A.       I would -- I would agree that that may be true  
12 and have done some further analysis in that area that I'd be  
13 happy to talk about.

14          Q.       Okay. I want to deal really with Exhibit 30  
15 right now to make sure that the Commission understands that  
16 your analysis of the market share based on E911 data  
17 probably does understate the market share held by CLECs in  
18 part because inward-bound lines aren't included in the E911  
19 database case. You agree with that?

20          A.       I would agree that it may be.

21          Q.       Okay. And would you also agree that the E911  
22 database would not reflect when CLECs are utilizing their  
23 own facilities in whole or in part but have ported a number  
24 from Southwestern Bell?

25          A.       I would agree that there may be cases where

1 that is true. However, the extent to which that would  
2 impact in terms of the number of lines I don't think we can  
3 say with certainty at this point.

4 Q. Your market share analysis that you present on  
5 Exhibit 30 differs from that presented by Mr. Hughes on  
6 behalf of Southwestern Bell in part based upon Southwestern  
7 Bell's use of interconnection trunks as an indicator of the  
8 number of access lines that are served by CLECs and your  
9 decision not to include that type of analysis; is that a  
10 fair statement?

11 A. I believe that's true with respect perhaps to  
12 portions of Mr. Hughes' testimony.

13 Q. I'm referring to the portions of his testimony  
14 that indicate a 15 percent market share. The difference  
15 between your 10 percent and his 15 percent is based  
16 primarily upon the use of interconnection trunks as an  
17 indicator of lines served by CLECs either wholly or  
18 partially on a facilities basis as opposed to your use of  
19 E911 listings for that purpose?

20 A. Yes, I would agree with that, and I would like  
21 to discuss at some point why, you know, I think that there  
22 may be some relevance to considering how that difference  
23 occurs.

24 Q. And Southwestern Bell utilized in its analysis  
25 for purposes of the 15 percent market share a 2.75 lines to

1 each interconnection trunk to come up with an estimate of  
2 the number of facilities-based lines served by CLECs over  
3 wholly or partially their own facilities, right?

4           A.       Yes. I understand that in earlier discussions  
5 here on the record there was also a discussion of that Staff  
6 at one point may have used a 2.5 number.

7                   I might mention that one of the concerns that  
8 I have with Southwestern Bell's calculation of the  
9 15 percent based on the 2.75 number is due to my own  
10 investigation into are there other mechanisms that could be  
11 used or might be reasonable in terms of calculating what  
12 those numbers were.

13                  I'm familiar with an investigation that was  
14 done in Washington, in the state of Washington in which a  
15 Quest witness in a proceeding indicated that --

16                 MR. LANE: Judge, I think this goes far beyond  
17 the question that I asked.

18                 JUDGE DIPPELL: I would agree. I believe the  
19 witness answered your question with the statement yes.

20 BY MR. LANE:

21           Q.       And would you agree, Ms. Meisenheimer, that if  
22 your market share analysis number of 10 percent is  
23 understated, then your HHI Index analysis that you present  
24 in your testimony would be overstated in terms of  
25 concentration of the market?

1           A.       I would agree with that.  However, I do not  
2 believe there's any good reason to believe that it would  
3 change any of the results or conclusions that I made in my  
4 testimony.

5           Q.       Now, would you agree with me that in the  
6 definition of effective competition that's contained in  
7 Section 386.020.13, that there's no specific reference to  
8 utilizing any HHI Index?

9           A.       Well, No. 1, I don't have my contacts in, so I  
10 can't see that far.

11          Q.       You've read the statute, haven't you, that  
12 section?

13          A.       Yeah.  I just want to make sure that there  
14 weren't any omissions in the language before I --

15                   MR. LANE:  Can I approach, your Honor?

16                   THE WITNESS:  -- conceded to that being  
17 accurate.

18                   JUDGE DIPPELL:  Yes.

19                   THE WITNESS:  I can see that.  That's  
20 wonderful.  I believe that I also have those listed in my  
21 rebuttal testimony, so I'll speak from those.  They're close  
22 enough where I can see them, and I would agree that --

23 BY MR. LANE:

24          Q.       All right.  My question just --

25          A.       -- there is no explicit language that says

1 consider market share in those words. I believe that it  
2 does fall well within the bounds of the number of the  
3 criteria that are set out.

4 Q. All right. Specifically, though, my question  
5 was, there's nothing in there that refers to the use of HHI  
6 Index, correct?

7 A. No, those words are not there.

8 Q. Okay. And would you agree with me that the  
9 HHI Index is used by the Department of Justice in analyzing  
10 proposed mergers in the market?

11 A. Yes. It is used by other agencies as well.

12 Q. And would you agree --

13 A. The FERC and --

14 Q. -- with me that when the HHI is below a  
15 certain level, and specifically 1,800 is the figure often  
16 used, then that ends the inquiry of the Department of  
17 Justice in most cases as to whether a merger, a proposed  
18 merger should be investigated further; is that a fair  
19 statement?

20 A. I believe that there are times and a basis for  
21 which they would take a serious look and scrutinize mergers  
22 that produced HHI in the range of 1,000 to 1,800.

23 Q. Okay. Would you agree with me that if the HHI  
24 Index exceeds a particular level, whether its 1,000 or  
25 1,800, that the Department of Justice does not analyze the



1 merger and determine on that basis alone that it should  
2 be -- that efforts should be made to stop it? It's a  
3 beginning of an inquiry, is it not?

4 A. Yes.

5 Q. And part of the inquiry then looks at demand  
6 and supply elasticity in the market, whether there's ease of  
7 entry into the market, correct?

8 A. I would agree that they look at all those  
9 things. The intent of the -- of use of the HHI in  
10 evaluating mergers, however, I think is somewhat different  
11 than our purpose in this case because mergers -- and I  
12 believe that it's actually stated in the merger guidelines  
13 in portions of it, that the goal is to look on a future  
14 basis as well as what is currently going on, and we believe  
15 that our goal here is to look at what is currently going on.

16 Q. It's fair to say that if the Department of  
17 Justice finds that barriers to entry are slight, then  
18 mergers can be approved even if the HHI Index is exceeded?

19 A. I would agree there are circumstances under  
20 which that wouldn't give the full picture.

21 Q. And would you also agree with me that the  
22 interLATA toll market in Missouri would fail the type of HHI  
23 analysis that you presented in your testimony in terms of  
24 showing a competitive market?

25 A. Based on the data that I have personally

1 gathered and reviewed, and I believe under this case number,  
2 I would agree that if you take the entire intraLATA market,  
3 that that would be true.

4                   However, I do not necessarily agree that I  
5 believe that it would be true if you carved out the services  
6 that Public Counsel has identified to carve out.

7           Q.       Okay. And I think your response was on the  
8 intraLATA market, and I may not have been specific enough in  
9 my question.

10                   Would you agree with me that the interLATA  
11 interexchange market in Missouri would fail the type of HHI  
12 analysis that you present in your testimony in terms of  
13 showing an effectively competitive market?

14           A.       Based on information that I gathered under  
15 this case number, I could agree that that would be -- or I'm  
16 sorry. It was under the case number of TT-2001-347. I  
17 would agree that that would be true or that would likely be  
18 true in some cases. There are other cases where I do not  
19 have enough information at this point to agree with that.

20           Q.       Okay. And let me refer specifically to the  
21 MTS portion, the message telecommunications service basic  
22 toll portion of the interLATA interexchange market in  
23 Missouri. Would you agree with me that --

24           A.       InterLATA? I'm just trying to clarify.  
25 InterLATA, are you talking about 1+?

1 Q. Yes, interLATA interexchange basic toll  
2 service, 1+ dial.

3 A. Okay.

4 Q. Would you agree with me that the level of  
5 concentration in that market in Missouri would fail the HHI  
6 type analysis that you present in your testimony?

7 A. For Southwestern Bell's territory alone?

8 Q. You can give it either way.

9 A. For Southwestern Bell's territory, based on  
10 what I've seen, I believe that that is probably true. For  
11 other areas, I'm not sure that I could go that far to agree  
12 with that as a blanket statement.

13 Q. And your view is the interLATA interexchange  
14 market in Missouri in Southwestern Bell's territory is or is  
15 not effectively competitive?

16 A. My personal view is that it may not be.

17 Q. Okay.

18 A. The view of -- if you gauged it by mechanisms  
19 that perhaps the FCC has used in the interstate market and  
20 things like that, I'm not sure that they might not find that  
21 it was competitive. I don't know that it would rise to the  
22 level of effective competition.

23 Q. And your analysis in this case and  
24 recommendation with regard to the intrastate intraLATA 1+  
25 toll market in Missouri is that the Commission should find

1 that to be effectively competitive; is that correct?

2           A.       That's correct, with the exception of  
3 flat-rated unlimited use plans.

4           Q.       Okay.  Would you agree with me that one of the  
5 factors that the Commission is to consider in determining  
6 effective competition under the statute is whether services  
7 offered by alternative -- alternate providers are  
8 functionally equivalent or substitutable?

9           A.       I don't disagree, I think, with the general  
10 thrust of your question.  I would point out that it doesn't  
11 say anything about being offered.  It says the extent to  
12 which the services of alternatives.  So I would view that as  
13 something they're actually providing.

14          Q.       Okay.  And under subsection A of that it  
15 indicates available, does it not?

16          A.       Or available.

17          Q.       And then subsection B says, and those that are  
18 available, are they functionally equivalent or  
19 substitutable, right?

20          A.       Yes.

21          Q.       Okay.  And this Commission has examined the  
22 concept of substitutability with regard to specifically  
23 message toll service in a 1992 decision in Case  
24 No. TO-93-116, correct?  Is the case number confusing?  I'll  
25 try it a different way.

1           A.       Okay.

2           Q.       Would you agree that there have been some --  
3 that this Commission has undertaken an analysis under  
4 Section 392.361 back in 1992 to determine whether services  
5 were competitive or transitionally competitive under the  
6 statute?

7           A.       That may be true. I'm not sure that my memory  
8 is good enough at this point to talk much about it.

9           Q.       Okay. You've seen some references in  
10 Mr. Voight's testimony and maybe some others in this case to  
11 that decision in TO-93-116, have you not?

12          A.       Yes.

13          Q.       Did you read the decision?

14          A.       I have -- sitting here at this moment, I  
15 cannot say that I have a specific memory of reading that  
16 decision. I don't doubt that at some point I have.

17                   MR. LANE: Okay. May I approach the witness,  
18 your Honor?

19                   JUDGE DIPPELL: Yes, you may. Would you  
20 please show that to counsel, first?

21                   MR. LANE: Sure.

22 BY MR. LANE:

23          Q.       I'm going to show you a copy of the decision  
24 in Case No. TO-93-116, the December 21st, 1992 Report and  
25 Order, and ask if you have read that particular document in

1 the past?

2           A.       I'm not sure that I've read the entirety of  
3 this.  However, this has stimulated my memory with respect  
4 that I believe Mr. Voight outlined in his testimony a list  
5 of things that the Commission's considered.

6           Q.       Okay.  And would you agree with me that in  
7 that case some parties proposed the use of an HHI-type  
8 index, and the Commission in its analysis nevertheless  
9 granted a finding of transitionally competitive status for  
10 intraLATA MTS service at a time where Southwestern Bell had  
11 some 93 percent of the market and didn't offer 1+ service to  
12 other carriers for intraLATA toll?

13                   MR. DANDINO:  Your Honor, I'm going to object.  
14 I believe the best evidence of what that case says is what  
15 that case says.  The witness had some question about whether  
16 she even -- she remembered reading it or not.  I think the  
17 best evidence in this case is the document that speaks for  
18 itself.

19                   JUDGE DIPPELL:  Mr. Lane?

20                   MR. LANE:  That's a predicate to a series of  
21 other questions that I have for her, your Honor.  I agree  
22 that the Commission's decision says what it says.  I think  
23 she's indicated some familiarity with it.  If she knows the  
24 answer, she does.  If she doesn't, she doesn't.

25                   JUDGE DIPPELL:  I'll let her answer if she

1 knows.

2 THE WITNESS: Could you reask or rephrase the  
3 question?

4 BY MR. LANE:

5 Q. Sure. Would you agree with me that in that  
6 case, TO-93-116, that the Commission granted transitionally  
7 competitive status to Southwestern Bell's intraLATA MTS  
8 service even though it found that Southwestern Bell had a  
9 93 percent market share and did not offer at that time 1+  
10 service to competing providers of MTS service?

11 A. The short answer is that I can't agree to  
12 those numbers in a specific manner in my memory as I sit  
13 here today. Also, emphasize that our office has raised a  
14 concern about the -- on certain issues when the Commission  
15 approved or when services became transitionally competitive  
16 or -- I'm sorry. Never mind. Never mind that part.

17 With respect to the specific numbers you cite,  
18 if you can point me to the place in the Order where they  
19 said it, I mean, it speaks for itself.

20 MR. LANE: Your Honor, for ease, I would ask  
21 that the Commission take official notice of the decision in  
22 TO-93-116. I don't have copies. If you'd like to make it  
23 an exhibit, I will do so.

24 JUDGE DIPPELL: Will there be any objection to  
25 the Commission taking notice of its Order?

1 (No response.)

2 Then I will -- the Commission will take  
3 official notice of TO-93-116. Just for ease, I will give it  
4 an exhibit number and ask Mr. Lane if you can make copies so  
5 that I can put those in the record.

6 MR. LANE: Certainly, your Honor.

7 JUDGE DIPPELL: I will give it Exhibit No. 32  
8 just again for ease of identification.

9 MR. LANE: And to save time, your Honor, maybe  
10 I'll make the same offer and request with regard to Case  
11 No. TO-93-115, which was the speed calling portion of the  
12 decision.

13 JUDGE DIPPELL: Is there any objection to the  
14 Commission taking notice of its Order TO-93-115? I'm  
15 assuming that's the Final Report and Orders, Mr. Lane?

16 MR. LANE: Yes, your Honor.

17 JUDGE DIPPELL: The Commission will take  
18 notice of that Order. Again, for ease of identification,  
19 I'll mark it as Exhibit 33 and ask Mr. Lane if he'd make  
20 copies for the parties present and the Commissioners and  
21 myself.

22 MR. LANE: I will.

23 BY MR. LANE:

24 Q. On page 4 of your surrebuttal testimony,  
25 Ms. Meisenheimer, you discuss the impact of the



1 transitionally competitive findings that the Commission made  
2 in Case No. TO-93-116. Do you see that discussion?

3 A. Yes, I do.

4 Q. And would you agree with me that there's  
5 nothing in Section 392.245 which expressly states that the  
6 Commission's competitive determinations under  
7 Section 392.361 no longer apply?

8 A. I believe that in the text -- and if you have  
9 a copy of the statute, that would be very helpful to me.

10 Q. Okay. I'll find a copy of that.

11 MR. LANE: May I approach the witness, your  
12 Honor?

13 JUDGE DIPPELL: Yes.

14 BY MR. LANE:

15 Q. Let me clarify my question, make sure it's  
16 understood. My question is, would you agree with me that  
17 there's nothing in Section 392.245 that expressly states  
18 that the Commission's competitive determinations under  
19 Section 392.361 are repealed or are no longer effective?

20 A. I think that, as you legal beagles say, that  
21 it speaks for itself. We do feel like that Section  
22 292.245.1 does put some restrictions on price. Let me look  
23 at 361.

24 Q. I guess what I'm getting to -- let me try it  
25 this way -- is I understand and you present on page 5 of

1 your surrebuttal testimony your view of why 392.245.1 has  
2 the effect of overriding the other competitive  
3 determinations that the Commission may have made under  
4 392.361.

5                   But my question to you is, is there anything  
6 in 392.245 that specifically says 392.361 and the  
7 Commission's decisions under that are hereby repealed?

8           A.       Those words are not in 392.245.

9           Q.       And it's fair to say that you present an  
10 interpretation to suggest that that's an appropriate reading  
11 of it, but the specific words aren't there, right?

12          A.       Yes, that's true.

13          Q.       Okay. And the words that you cite on page 5  
14 of your surrebuttal testimony that you have bolded from the  
15 statute, and they say, Which maximum allowable prices shall  
16 not be subject to increase except as otherwise provided in  
17 this section, is another interpretation of that language  
18 that those services that remain under price caps, that the  
19 maximum allowable prices of those services that remain under  
20 price caps shall not be subject to increase except as  
21 otherwise provided in this section?

22          A.       That may be your interpretation, and the legal  
23 correctness of that I guess will be judged.

24          Q.       It's an alternate view that is -- whether you  
25 agree with it and endorse it, it's another way to interpret

1 the statute; is that a fair statement?

2           A.       I agree that it may be someone else's  
3 interpretation of the statute.

4           Q.       You're aware, are you not, that some services  
5 were declared to be competitive services under 392.361 back  
6 in the 1993 time frame, specifically Speed Calling 8 and  
7 Speed Calling 30 in Case No. TO-93-115, correct?

8           A.       Do you have the Order?

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

11                   JUDGE DIPPELL: Yes.

12                   THE WITNESS: Can you point me to it? Maybe  
13 it'll speed me up here. Yes.

14 BY MR. LANE:

15           Q.       Is it Public Counsel's position that the  
16 passage of Senate Bill 507, which included 392.245, also had  
17 the effect of repealing the competitive status of speed call  
18 services?

19           A.       No.

20           Q.       And why is that?

21           A.       Those were already competitive. Our belief  
22 about the timing regarding transitionally competitive and  
23 relying heavily on our interpretation of 392.245 indicates  
24 that that may not be true for the other services that are at  
25 issue in this case.

1           Q.       So make sure I'm clear with you. Services  
2 that the Commission had declared to be competitive remained  
3 competitive even after the passage of Senate Bill 507, but  
4 services that had been declared transitionally competitive  
5 and were still in that classification became frozen and  
6 subject only to the price cap regulation?

7           A.       I think that that's a fair interpretation from  
8 my understanding and my reading. However, I'm not an  
9 attorney, and Mr. Dandino, I'm sure, in briefing will be  
10 able to address that more.

11          Q.       Okay. Let me switch over and talk about  
12 switched access, which you discuss in your surrebuttal at  
13 page 14. Is it your position that the terminating end of  
14 switched access is a locational monopoly?

15          A.       Yes. I don't -- I will agree with that. I  
16 don't know that I specifically use the words locational  
17 monopoly.

18          Q.       I'm not suggesting that you did. There were  
19 other witnesses that had, and I was trying to get your  
20 understanding of it.

21                    But to clarify, and maybe you did answer it,  
22 your view is that the terminating end of switched access is  
23 a locational monopoly; is that correct?

24          A.       And to help me out, if you can provide a  
25 definition of locational monopoly as used in your mind in

1 asking the question, then I'd be able to answer it with a  
2 yes or no.

3 Q. Does locational monopoly have some common term  
4 among economists?

5 A. It's not a word that I use necessarily or  
6 my -- the word that I would choose for a thought or an  
7 observation that economists might generally make. It's not  
8 a term of art that I use frequently, although the concept  
9 may be fully agreeable to me.

10 Q. Okay. How would you describe the competition  
11 or lack of competition for the terminating end of switched  
12 access service?

13 A. On the terminating end of switched access, the  
14 toll provider must terminate wherever and must pay access  
15 for to terminate a call from wherever their originating  
16 customer was located. So to that extent --

17 Q. Does the -- sorry.

18 A. Go ahead.

19 Q. Does the toll provider in your view have a  
20 choice as to the local exchange company that will be  
21 utilized in completing that toll call?

22 A. No.

23 Q. And if we use that as the definition of  
24 locational monopoly, is that consistent with your  
25 understanding of the term as you've heard it?

1           A.       Yes.

2           Q.       Okay.  And would you agree with me that if the  
3 terminating end of a switched access is a locational  
4 monopoly for a customer who obtains local service from  
5 Southwestern Bell, that it's equally a locational monopoly  
6 when switched access services provided by a CLEC serving the  
7 terminating end user?

8           A.       I think that I would -- that I would agree  
9 with that, that on the terminating -- if Southwestern Bell  
10 is the toll carrier, they must pay the CLEC if the CLEC has  
11 that line, and if -- just as another IXC would, provided  
12 that it is not terminated to Southwestern Bell's own  
13 exchange or own customer.

14          Q.       Let me use AT&T as an example of the  
15 interexchange carrier.  Would you agree with me that, from  
16 AT&T's perspective, that there is a locational monopoly for  
17 the terminating end of switched access whether the called  
18 customer is served by Southwestern Bell or served by another  
19 CLEC?

20          A.       AT&T can certainly speak for itself.  I don't  
21 have a reason to disagree with that.

22          Q.       Okay.  And I was trying to get to your view of  
23 that.  It is a hypothetical example.  I wasn't asking AT&T's  
24 view.  I may have misstated my question.

25                   But from the perspective of an interexchange

1 carrier who's providing toll service to an originating  
2 customer, whether the called customer is served by  
3 Southwestern Bell or another CLEC, there's still not a  
4 choice in terms of how you terminate the call to that  
5 customer; you need to use whoever the local service provider  
6 is?

7           A.       Yes, I'd agree with that.

8           Q.       Okay. And would you agree with me that CLECs  
9 that are operating in this state have been declared to be  
10 competitive companies and their services declared to be  
11 competitive, including switched access service?

12          A.       Yes. I would clarify that they have had a cap  
13 imposed on what their access rates can be.

14          Q.       And does Office of the Public Counsel have a  
15 problem with treating Southwestern Bell like CLECs with  
16 regard to switched access in terms of declaring the service  
17 competitive as it has been for CLECs but subject to a cap as  
18 is the CLEC's -- as the CLECs's switched access service is  
19 capped?

20          A.       Yes, we do.

21          Q.       Let me have a brief discussion with you about  
22 residential service and whether it's priced below cost.

23          A.       We'll try and make it brief.

24          Q.       You would agree with me generally that the  
25 cost of providing a single business line is not

1 substantially different from the cost of providing a single  
2 residential line, correct?

3 A. Single line, no bells and whistles, I'd agree.

4 Q. And in the unbundled network element context,  
5 you would agree that no distinction is drawn between a  
6 residential line or a business line in terms of the price  
7 that's established for the loop, price that's established  
8 for switching and the price that's established for  
9 interoffice transport, correct?

10 A. Yes, provided that we're talking about a  
11 vanilla-flavored loop and not one where a business customer  
12 might be more likely to buy a high-capacity.

13 Q. Right. We're talking 1FR and 1FB as those  
14 terms are used in Missouri tariffs. Okay?

15 A. Okay.

16 Q. And you're aware also, are you not, that the  
17 cost of the unbundled network element loop by itself --

18 JUDGE DIPPELL: We can go off the record.

19 (A BREAK WAS TAKEN.)

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

21 After a slight disruption there, Mr. Lane,  
22 would you like to continue?

23 MR. LANE: Sure. Shouldn't take too much  
24 longer, your Honor.

25 BY MR. LANE:

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1 Q. I want to go back and cover one area with you,  
2 Ms. Meisenheimer. On Exhibit 31, the list of 33 companies  
3 that did respond to the Staff's Data Request --

4 A. Yes.

5 Q. -- would you agree with me that that list  
6 doesn't include, for example, Birch Telephone?

7 A. Yes.

8 Q. And to your knowledge, is Birch operating in  
9 the state of Missouri today?

10 A. Yes.

11 Q. And how about e-Spire and Global Crossing, are  
12 they listed on here?

13 A. No, they're not, and I'm trying to think  
14 about d/b/a's. I'm not familiar with even operating under  
15 another name that they responded.

16 Q. And are e-Spire and Global Crossing operating  
17 in Missouri like Birch is?

18 A. Yes, they're operating.

19 Q. Are those three companies facilities-based  
20 providers in Missouri?

21 A. They all appear to have a number of resources  
22 that indicate that they would be providing potentially on a  
23 facilities basis.

24 Q. And so the exclusion of those three companies  
25 from Exhibit 31 would be an indication that the total amount

1 of lines served in the state by CLECs is understated at  
2 least by the number of lines served by those three  
3 companies, correct?

4 A. Yes.

5 Q. I was asking you some questions about  
6 residential service and how it's priced. I'll be real  
7 brief. We've covered the UNE-P.

8 So my question to you is, you would agree,  
9 would you not, that the cost of just the UNE loop by itself  
10 established by the Commission in arbitrations with AT&T and  
11 MCI exceeds the residential retail rate in all of the four  
12 rate groups in Missouri?

13 A. Yes, I believe I agree to that. I don't think  
14 that it's reasonable to compare the cost of a UNE loop with  
15 simply the residential cost of basic service because there  
16 are numerous other services that are provided over the loop.  
17 So I don't think it's a reasonable comparison.

18 Q. Now, is it fair to say that one of the chief  
19 concerns that Office of the Public Counsel has in this case  
20 is the possibility of increase to residential basic local  
21 rates?

22 A. Certainly that's a concern for us.

23 Q. And have you done an analysis of the impact of  
24 potentially higher residential rates on subscribership in  
25 Missouri?

1           A.       No, I have not.  However, as my economics  
2 training, you know, tells me, even if -- or the demand for  
3 basic local service tends to be relatively inelastic,  
4 meaning that a price change doesn't necessarily signal that  
5 a bunch of consumers would all of a sudden drop off the  
6 market.

7                   Instead, we have additional guidance that says  
8 that the goal is to make sure that the services are  
9 affordable also.  So I think there are other considerations  
10 than just simply would people drop off the market or drop  
11 their subscribership.

12          Q.       And you're familiar with examples in Missouri,  
13 are you not, where companies have had substantially higher  
14 local rates than those of Southwestern Bell and there was  
15 not a decrease in subscribership for basic residential  
16 service by customers of telephone companies with  
17 substantially higher local rates than Southwestern Bell?

18          A.       I haven't got specific numbers in mind, but I  
19 wouldn't disagree with that as a general rule, and I just  
20 described why.

21          Q.       Holway Telephone Company in Missouri, would  
22 you agree at least at one point in time they had a basic  
23 residential local rate of around \$18 a month?  Do you recall  
24 that?

25          A.       I remember that somewhere in the range 16 to

1 18 sounds correct.

2 Q. And with that range of rate for basic local  
3 residential service, there wasn't a decrease in  
4 subscribership for Holway Telephone Company, was there?

5 A. I don't have specific data on whether or to  
6 what extent subscribership declined. However, as I've  
7 indicated, I don't think that that is the only reason to try  
8 and keep basic rates low.

9 Q. Okay. Are you familiar with the example that  
10 Dr. Aron discussed the other day in her testimony about the  
11 Massachusetts situation where the basic residential rate  
12 went from \$8 to \$21 without any significant impact on  
13 subscribership levels?

14 A. I read Dr. Aron's testimony. That at this  
15 moment does not stand out in my mind. I certainly am not  
16 disagreeing that it's not in there.

17 Q. Actually, it was while she was testifying.  
18 I'm not sure, were you in the room?

19 A. I may not have been in the room if it was  
20 during her on-the-stand testimony. However --

21 Q. Would you agree with me if there's a concern  
22 about affordability of basic residential services, if  
23 Southwestern Bell is granted pricing flexibility that one  
24 way to ensure that there's a continued high level of  
25 affordability is to have a low-income Missouri portion of

1 the Missouri Universal Service Fund?

2           A.       That addresses the specific concerns  
3 associated with low-income potentially.

4           MR. LANE:   That's all I have.   Thank you.

5           JUDGE DIPPELL:   Mr. Lane, your questions you  
6 asked Ms. Meisenheimer covered the earlier questions that  
7 you had that we were going to come back to?

8           MR. LANE:   I'm finished.

9           JUDGE DIPPELL:   You're finished.   Okay.

10          MR. LANE:   Thanks.

11          JUDGE DIPPELL:   Is there cross-examination  
12 from Staff?

13          MR. HAAS:   Yes, your Honor.

14 CROSS-EXAMINATION BY MR. HAAS:

15          Q.       Good morning, Ms. Meisenheimer.

16          A.       Good morning.

17          Q.       Would you agree with me that this is the first  
18 case where the Commission will have addressed whether or not  
19 a telecommunications company can simultaneously use both the  
20 price cap statute and the transitionally competitive statute  
21 to have its services classified as competitive?

22          A.       To my knowledge, yes.

23          Q.       Would you also agree with me that this is the  
24 first case where the Commission will have addressed who has  
25 the burden of proof in hearings under the price cap statute

1 concerning the determination of whether effective  
2 competition exists?

3 A. Yes.

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

6 JUDGE DIPPELL: Is there cross-examination by  
7 AT&T?

8 MR. ZARLING: No, your Honor.

9 JUDGE DIPPELL: WorldCom?

10 MR. LUMLEY: No, your Honor.

11 JUDGE DIPPELL: Sprint?

12 MS. HENDRICKS: No, your Honor.

13 JUDGE DIPPELL: McLeod?

14 MR. KRUSE: I just have one, your Honor.

15 CROSS-EXAMINATION BY MR. KRUSE:

16 Q. Ms. Meisenheimer, would you agree that  
17 Southwestern Bell's market share in a particular exchange is  
18 relevant to whether effective competition exists in that  
19 exchange?

20 A. Yes. I think that that would be a significant  
21 underlying factor of what the market -- yes.

22 Q. And would you also agree that the HHI Index  
23 that you referred to earlier in your discussion with  
24 Mr. Lane measures market concentration?

25 A. Yes.

1 MR. KRUSE: That's all I have.

2 JUDGE DIPPELL: Thank you. Are there  
3 questions for this witness, Commissioner Murray?

4 COMMISSIONER MURRAY: I have no questions for  
5 this witness. Thank you very much.

6 JUDGE DIPPELL: Commissioner Lumpe?

7 COMMISSIONER LUMPE: A few.

8 QUESTIONS BY COMMISSIONER LUMPE:

9 Q. Ms. Meisenheimer, on your rebuttal testimony,  
10 on page 3, you say the full text, and there's some bolded --  
11 there's some bolded language in there, too. And starting  
12 with the second part of the bolded language, if the  
13 Commission determines effective competition exists, and then  
14 it goes down to say somewhere that if the Commission  
15 determines that effective competition does not exist.

16 Are we to determine both that it does or that  
17 it doesn't? I'm a little confused.

18 A. I think that in this proceeding you need to  
19 make a determination of whether it does or whether it  
20 doesn't. You know, certainly I believe that if you  
21 believe -- or I believe that you need evidence to say that  
22 it does.

23 To say that it doesn't, certainly I think  
24 that, you know, evidence needs to be presented in this case  
25 and has been. I think that my testimony demonstrates that

1 there is not.

2                   There's also an issue of what if you're not  
3 sure, and I think that if you are not sure, that you should  
4 say that it doesn't.

5           Q.       Because normally we're asked to determine an  
6 affirmative or a negative, and in this case it appears to be  
7 saying we're to determine both.

8           A.       Oh, well, the way that I read it is that you  
9 need to make a determination of whether it does or whether  
10 it doesn't, and in picking one you will have determined the  
11 other.

12          Q.       Okay. I was just curious how to define that.

13                   Can a CLEC refuse to serve a customer in an  
14 exchange? Dr. Aron had some testimony that an ILEC could  
15 not refuse to serve but that a CLEC could. Can a CLEC  
16 refuse to serve a customer in an exchange?

17          A.       I don't -- except where you have determined  
18 that their service territory might be smaller than an  
19 exchange or in cases where they for some reason don't have  
20 facilities that exist, I think no, they can't refuse.

21          Q.       It was my understanding that they -- in the  
22 certificate it normally says that they will serve everybody  
23 in an exchange. There may be exchanges they don't have  
24 facilities, but if they're serving one in an exchange, I  
25 thought they had to serve everybody in that exchange.



1           A.       I mean, that's my understanding. I think that  
2 there are some, you know, limited exceptions.

3           Q.       Okay.

4           A.       As there may be some exceptions for ILECs in  
5 some cases regarding existence of facilities for certain  
6 services.

7           Q.       Is some of your concern -- and I'm looking at  
8 your list of 33 CLECs there -- that a large number of those  
9 are prepaid companies, and could you tell me, out of that  
10 list, are the majority of those prepaids?

11          A.       I would say that I think a number of them are  
12 prepaids. I think, though, also that a number that are on  
13 this list are actually what may -- or they could be  
14 identified as potentially facility -- or facilities-based  
15 carriers. To what extent they're actually providing  
16 exclusively over their own facilities is kind of a different  
17 point.

18          Q.       But you didn't determine this list of 33 that  
19 X number were prepaids and Y number were facilities-based  
20 and Z number were just resellers?

21          A.       I didn't --

22          Q.       I mean prepaids essentially are resellers, but  
23 they're also prepaid resellers.

24          A.       I did not make a specific count. One of the  
25 things that I did attempt to do was to determine to what

1 extent carriers that may have numbering resources assigned  
2 to them showed up on the list, and it was my impression that  
3 to a large extent the carriers that have numbering resources  
4 signaling that they could be providing switched services did  
5 actually report.

6 Q. And do you have any idea of why all of the  
7 ones that should have reported didn't report?

8 A. The short answer is no.

9 The longer answer is I think that there may be  
10 a possibility that some of the Data Requests that were sent  
11 out were sent out to carriers that may not be here anymore  
12 and we just wouldn't get a response. The Staff may have a  
13 better understanding of exactly in what cases that may be  
14 true, but that's one of my impressions, that the Data  
15 Request was sent to carriers that may not actually be here.

16 In other cases, I have no knowledge of why  
17 these carriers chose not to respond to the Commission's  
18 Staff and it greatly concerns me.

19 Q. And that's -- that's somewhat bothersome to me  
20 also because we really don't know if there are 62, 33, what  
21 the number really is, then. We can only go by those who  
22 responded, and there may be others out there and some names  
23 were listed but they chose not to respond.

24 And so the question is, are they actually  
25 providing service? And if they are, why did they not

1 respond? So I wondered if you had any idea of why they may  
2 have chosen not to respond, and I think you've answered  
3 that.

4                   On those that actually did respond, however,  
5 do the numbers of lines that are listed, whether it's the  
6 10 percent, the 12 percent or the 15 percent that I've  
7 heard, those -- that includes both business and residential;  
8 is that correct?

9           A.       The responses provided information both on  
10 residential and business. They were broken out separately  
11 in response to the way that the Staff requested the data,  
12 which personally I thought was very good because it helps us  
13 to look at, No. 1, the different services and how they're  
14 being subscribed to for CLECs by res. and by bus.

15                   Also, it was broken down by the type of  
16 facility that might be used to provide the service; that is,  
17 is it strictly resale, is it UNE-P or does the CLEC actually  
18 own the end-to-end facilities that the customer is being  
19 provided over.

20                   My general impression was that if you treat  
21 this case as an investigation, which certainly, you know, we  
22 think that you should, that's my understanding of the name  
23 that was assigned to it, that one of the things that you  
24 might seriously consider is, is there a need for some type  
25 of workshop or mechanism to set out the rules or the

1 guidelines by which in the future you can, No. 1, get data,  
2 No. 2, have data reported to you.

3                   In things like the annual reports, in the  
4 tariffs, I think it could be more clear that CLECs provide  
5 either business or res. or both. I mean, I spent a lot of  
6 time reading through a lot of different things that raised  
7 concerns for me about how much good information is  
8 available.

9           Q.       And I think one of the comments in somebody  
10 else's testimony was the fact that the data that we need in  
11 order to determine market share nobody has, and that makes  
12 it very -- if we use market share as one of the indicators,  
13 and I believe you suggest we should, that we don't have that  
14 data.

15          A.       I think that you in this case have been  
16 presented with some evidence from Bell and from the Staff  
17 and from our office about kind of the bounds on what the  
18 market share might be, an upper bound, a lower bound.

19                   I fully agree you don't have a precise number.  
20 I'm not sure that you'd necessarily need a precise number,  
21 but I'd sure hope for something potentially a little bit  
22 better than what we have in this go-around.

23          Q.       If I look at your highly confidential data,  
24 will I find the breakout between residential and business?

25          A.       Yes, you will.

1 Q. Okay. So the global number that you talked  
2 about, the 10 percent, I can break that out and see from  
3 looking at your -- the new data you've given us how much is  
4 residential and how much is -- and I'll look at that, so I  
5 don't need to go into it.

6 A. Okay. I could point you to the things that I  
7 think were important that I did provide in terms of market  
8 share.

9 Q. And we don't have to go into in-camera or  
10 anything like that?

11 A. Right. I can give you a general description,  
12 I think.

13 Q. All right. Would you do that?

14 A. And statewide numbers are not being treated in  
15 this case as confidential, which is, you know, good for the  
16 public to be able -- to be able to review.

17 Q. When you say statewide, are you talking about  
18 all companies when you say statewide or are you just talking  
19 about those within Southwestern Bell's territory?

20 A. Those within Southwestern Bell territory in  
21 the context of this case.

22 Q. Okay.

23 A. In Schedule 4HC to my testimony, I have  
24 provided you with an estimate, you know, based on numbers  
25 that Bell gave me, and certainly they view them as a lower

1 bound, and they're saying that 15's more like it, but of the  
2 combined res. and bus. So that's what you can find in 4HC.

3                   If you look at my Schedule 2HC, let's just  
4 talk about that one for a minute. What I've tried to do is  
5 describe for you things that I think are relevant in terms  
6 of the residential access lines. I have broken it -- I've  
7 given you a column where it tells you the totals of any  
8 means of entry. I've given you a column where it says by  
9 resale.

10                   Now, certainly that includes prepaid, and our  
11 office is not real impressed with prepaid as a competitive  
12 service to Bell's, but I gave it to you so that you have it.

13           Q.       Okay.

14           A.       Also, I gave you CLEC providing residential  
15 service through UNE-Ps as reported to me by Southwestern  
16 Bell and CLEC provided on a full facilities basis utilizing  
17 the 911 listings, the number of 911 listings.

18                   I then tried to show you what about at least  
19 facilities-based, because at the federal level, I mean, I  
20 don't think that they really make a distinction between the  
21 CLEC providing end-to-end over facilities that they own or  
22 are they providing in part over facilities that they lease.  
23 So that's why I gave you the column that says at least  
24 partially facilities-based.

25                   Certainly I think that the best method to feel

1 good about the type of competition that you have, that it's  
2 robust and autonomous, is if they're providing end-to-end  
3 over their own facilities, but certainly that's not all  
4 that's allowed by the law or recognized.

5 Q. One last question on the switched access.  
6 Dr. Aron suggested that there were, particularly on the  
7 originating end, ways for CLECs to go around that or to --  
8 so that it could be considered competitive. Do you have  
9 some comments on that?

10 A. I believe that on the originating end, you  
11 know, given that they have to offer in the exchange, Bell  
12 controls the loop, so, therefore, the majority of long  
13 distance companies that provide a switched 1+ service are  
14 having to originate it on Southwestern Bell served access  
15 lines.

16 And for that reason, I believe that, based on  
17 my analysis of who's got the access lines, there is not  
18 evidence that it's competitive on the originating end for  
19 switched access service.

20 Q. And if the position has somewhat changed  
21 perhaps and what Bell is saying treat us on originating  
22 access the way CLECs are being treated, do you have a  
23 problem with that?

24 A. Yes.

25 Q. And your problem is?

1           A.       Southwestern Bell controls the majority of  
2 local access lines, and even to large part where a CLEC  
3 operates they control the underlying facilities. I don't  
4 think that we can look at these markets in a vacuum any  
5 longer.

6                   I think that there are -- you know, these  
7 firms are becoming more and more integrated in terms of  
8 providing services at a full level and that, you know, the  
9 best evidence of competition is when we see a more equal  
10 footing in terms of competitors providing the entire array  
11 of services that Southwestern Bell does as a wholesaler and  
12 a resaler, reseller, or retailer. Sorry.

13          Q.       Sorry. I have one more. It's on page 5 of  
14 your surrebuttal. Essentially in your response there on  
15 that page, and I think it goes over, are you referring to  
16 the 8 percent cap there in that discussion?

17          A.       Yes.

18          Q.       Okay. I just wanted to be clear on that.

19                   COMMISSIONER LUMPE: Thank you. That's all I  
20 have, Ms. Meisenheimer.

21                   JUDGE DIPPELL: Commissioner Gaw, do you have  
22 questions?

23                   COMMISSIONER GAW: Just briefly, I think,  
24 Judge. Thank you.

25 QUESTIONS BY COMMISSIONER GAW:

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1 Q. Good morning.

2 A. Good morning.

3 Q. Ms. Meisenheimer, do you believe that this  
4 Commission has an objective standard to look at when it's  
5 determining whether or not competition exists for a  
6 particular -- a particular area, exchange?

7 A. An objective standard?

8 Q. When the statute calls for an analysis of  
9 effective competition, do you believe that this Commission  
10 ought to have an objective standard or should it -- or is  
11 that even feasible in analyzing these cases?

12 A. An objective standard, I certainly would hope  
13 that one could be developed. I think it would be very  
14 helpful for the Commission to request that the parties or  
15 order the parties to have some type of workshop to try and  
16 develop what might be objective standards and objective  
17 measurements.

18 I pointed to one issue earlier when I was  
19 testifying on cross-examination regarding how do you count  
20 the number of lines that CLECs serve over their own  
21 facilities? There's disagreement in the appropriate method  
22 for doing that calculation.

23 I'm not trying to suggest in this case at this  
24 point that there is one method that is entirely right. I  
25 think it would be very good for us to explore that.

1           Q.       So are you suggesting that not only do we  
2 currently not have numbers that we can suggest are the  
3 benchmark to achieve to reach objective standards, we also  
4 may not have the same standards when it comes to measuring  
5 what those numbers are?

6           A.       Yes, and --

7           Q.       Go ahead. You can complete your answer.

8           A.       One very serious concern has been the  
9 reporting of line counts, that currently CLECs in their  
10 annual reports, that was one of the things that I looked at  
11 in doing my analysis, the CLECs report or most of them, it  
12 appeared, reported their line counts by residential and  
13 business.

14                   However, which specific lines, you know, is it  
15 only like an analog voice line they're reporting or could  
16 they be reporting something that's like a higher capacity,  
17 more advanced type service, that wasn't necessarily clear to  
18 me in all cases. There are other cases where they don't  
19 report.

20                   What you would most benefit from, in my  
21 opinion, is requiring the CLECs by exchange to report the  
22 number of lines that they serve by different methods,  
23 resale, UNE-P and end-to-end over their own facilities.

24                   Mr. Voight developed the -- and in part Public  
25 Counsel gave some recommendations on our things that we

1 thought were important in the Staff developing their Data  
2 Requests to the CLECs that the CLECs responded to. There's  
3 an issue of how do you convert a trunk that may be used to  
4 provide a variety of different number of voice grade lines  
5 with how many are actually being used for a certain service  
6 or -- it's like a big tube and they have lots of ways that  
7 they can split up that capacity to provide various services.

8               So I just think that that would be one of the  
9 most helpful things that you could use good information on.  
10 I think it would also send a clear signal to CLECs that may  
11 have just simply decided that it wasn't important to respond  
12 to the Staff or, in turn, the Commission on the number of  
13 lines that they serve in this state.

14               I mean, I don't know how you're supposed to  
15 make informed judgments without being able to gather data  
16 independent of perhaps what Southwestern Bell provides. I'm  
17 not trying to say that I don't trust that Bell didn't  
18 accurately provide the data that they have. I'm just saying  
19 that, you know, when you go to the bank and you get change  
20 for a hundred-dollar bill, do you count it?

21           Q.       Do you think -- when you're looking at the  
22 various services in the exchanges in Missouri, you did make  
23 some recommendations to the Commission that we find a  
24 competitive environment; is that correct?

25           A.       For per-minute toll offerings intraLATA, yes,

1 we did. We specifically said things that are provided on a  
2 flat rate, unlimited use basis, we cannot support a  
3 competitive classification at this time.

4 Q. Well, in the one area that you just mentioned,  
5 when you made that analysis and determination, did you use  
6 any kind of an objective standard, a measurable standard in  
7 making that recommendation?

8 A. I did not use some objective standard that is  
9 set out in any specific place. What I relied on is my own  
10 experience and my own knowledge in working for the Office of  
11 the Public Counsel since before the act was passed, my  
12 knowledge from attending meetings regarding numerous issues  
13 related to the provisioning of toll. I've been active in  
14 MCA and local plus at various times, and my -- and I have  
15 seen data, and my overall belief in filing the testimony was  
16 that I was fairly comfortable with per-minute plans.

17 Q. But in comparing how you arrived at that  
18 analysis -- and I'm not suggesting that this is just you.  
19 I'm asking what you did, though, since you're currently our  
20 witness.

21 Is there anything that you can point to that  
22 would suggest some sort of a measurement of the numbers,  
23 percentages that you utilized in making your recommendation,  
24 either in favor of competition or in the cases where you  
25 found none?

1           A.       I did go back and review what the FCC used in  
2 the past as some gauge of market dominance and potentially  
3 the existence of a monopolized market. I utilized my own  
4 knowledge based on my education and my teaching experience  
5 regarding levels. I relied on other factors.

6                   In total, though, I think that those things  
7 are something that, while I may have a strong position on  
8 what I think it should be, and Southwestern Bell may have a  
9 strong position on what they think it should be, I'm not  
10 sure at this point that you feel comfortable that you have a  
11 strong and well-described process for determining what it  
12 should be.

13          Q.       You have looked at the testimony of the other  
14 witnesses in this case, have you not?

15          A.       Yes, I have.

16          Q.       Are you aware of any of the other witnesses  
17 that have proposed any measurable thresholds for the finding  
18 of competition, effective competition?

19          A.       Besides myself, I can only think of that  
20 Southwestern Bell appears to believe that a simple  
21 certification and perhaps no lines in an exchange might be  
22 sufficient to gauge that effective competition exists. I  
23 certainly don't agree with it, but that's the only other  
24 specific place at which I can think of at this moment.

25          Q.       Do you believe that the statutory provisions

1 referring to effective competition require this Commission  
2 to break down the various categories of services in  
3 particular ways in determining competition?

4           A.       Yes, I do.

5           Q.       And would you please explain that to me?

6           A.       Yes. Let me go to the point in my testimony  
7 where I set out the statutory. Would you like me to discuss  
8 each or --

9           Q.       I want you to give me your general  
10 interpretation in that regard first, and then we'll see  
11 about exploring the specifics.

12          A.       I think that certainly it gives direction to  
13 you. It doesn't limit you.

14          Q.       When you say it, could you please clarify what  
15 you --

16          A.       The statutory language directs you but does  
17 not limit you to consider various factors. And I think that  
18 Mr. Voight gave some good discussion of this, of other  
19 things that the Commission has considered in other arenas.

20          Q.       Do you wish to point that out, please, in the  
21 statute that you're referring to?

22          A.       Well, that was a general statement about that  
23 with regard to, I would say, Part E. Other factors, he  
24 gives you a listing at a point in his testimony.

25          Q.       And I want you to explain to me how that --

1 how that confirms your opinion that we should be  
2 examining -- that we should break down the various services  
3 that are offered into particular categories.

4       A.       All right. Let me start with Part A, then,  
5 the extent to which services are available. That doesn't in  
6 my mind say may be available in the future. So No. 1, I  
7 think that kind of sets a guideline for you that we have to  
8 look at today, not the future, as the primary consideration.

9               Providers in the relevant market. Relevant  
10 has a significance to me in that in particular I use the  
11 HHI, and within the merger guidelines and their description  
12 of the HHI they set out a procedure by which you identify  
13 the relevant product and geographic markets. And I think  
14 that that's something at this point that's not specifically  
15 been given its fair due in terms of consideration by some  
16 parties. I did try and consider what I felt was a relevant  
17 product market.

18              So I think that that's a place where you might  
19 look to establishing objective standards.

20       Q.       I'm not sure that I'm communicating my  
21 question well enough. What I'm asking you is, what in the  
22 statute gives us guidance about how to break down the  
23 various services into specific categories, whether that's  
24 comparing residential or business basic telephone services  
25 or certain vertical services?

1                   How do we -- what part of the statute gives us  
2 guideline into how narrow or broadly to group those various  
3 services in analyzing competition, if you know? If you need  
4 a little bit more background, I'll give it to you.

5           A.       That would be helpful. I mean, in this --

6           Q.       Let's look at, for instance,  
7 Section 392.245.5. It does refer in the middle of the, I  
8 guess it appears to be the second sentence, to -- effective  
9 competition exists in the exchange for various services of  
10 the incumbent local exchange telecommunications company.

11                   And what I'm interested in is, how do the  
12 parties determine how narrowly to break down various  
13 services as utilized there? The parties seem to have  
14 been -- have broken them down in their testimony in gauging  
15 and making their arguments in regard to whether competition  
16 exists.

17                   What I'm asking you is, how does this  
18 Commission know that they should be broken down in  
19 particular ways or whether they should be grouped together  
20 in broader terms in determining whether competition exists?

21           A.       I believe -- I'm sorry that I was looking  
22 specifically at only the effective competition description  
23 before.

24           Q.       That's all right.

25           A.       But in 392.245, I think that it envisions that



1 you would look at each service in each exchange. I think  
2 that's the level of disaggregation, if you will, that it  
3 envisions.

4                   In terms of a guideline as far as are there  
5 cases where you could look at, say, for example, buckets of  
6 services or baskets of services, that where you can look to  
7 for that may be the positions of the parties.

8                   If, for example, toll service, a much broader  
9 category than we could live with, was proposed to receive a  
10 competitive classification. Instead we said, no, we think  
11 that flat-rated, unlimited use plans need different  
12 treatment.

13                   So in terms of, you know, feeling that you can  
14 in some way group the services, I think you can look to the  
15 parties. I think, once again, if you had some type of  
16 workshop, there could be more discussion and potentially a  
17 report developed and provided to you that says, Here are the  
18 groups we think we can agree on as parties, and here are the  
19 ones where we disagree on. And certainly I would suggest  
20 that the ones that we disagree on are where you're going to  
21 have the most work to do.

22           Q.       One of the -- I want to give you this scenario  
23 as a follow-up. One of the possibilities that exist, and  
24 probably it's more than that, would be that phone companies  
25 will start directly competing in a way that we haven't seen

1 to this level in the past on the bundling of local and long  
2 distance services assuming that things progress the way they  
3 appear to be progressing.

4                   If that occurs, how will this Commission be in  
5 a position to break down those bundled services to determine  
6 whether or not competition exists in each one of those  
7 separate services if the marketing eventually results in  
8 most of those services being bundled in some fashion that is  
9 not separable or segregable?

10           A.       I think certainly there will be difficulty  
11 with that. I think that you can still perhaps look at an  
12 individual service and say, No. 1, how many other providers  
13 are specifically providing that service. No. 2 -- or, you  
14 know, other things that would satisfy effective competition  
15 in the way that you gauge it.

16                   No. 2, I think then you can look behind that  
17 and ask, how many of these providers are on equal footing in  
18 terms of providing the full range of services that go into  
19 the bundle and by what means do they provide it? Do they  
20 provide only by resale or do they have a fully independent  
21 offering of this full range of services?

22           Q.       Of course, it is possible that we'll have, and  
23 probably realistic to believe that we'll have hybrids of  
24 what you just suggested where elements of ownership and  
25 elements of resale both exist within those bundled services?

1           A.       Certainly.

2           Q.       Wouldn't that be true?

3           A.       I think so, and I think then in those cases  
4 you will have the discretion to judge to what extent you  
5 view the different means by which those services are put  
6 together in terms of their -- you know, are they resale, are  
7 they provided on UNes, are they provided independently. I  
8 think that that's where you're going to need to use some  
9 discretion to determine how meaningful you feel that is.

10                   COMMISSIONER GAW: All right. I believe  
11 that's all I have, Judge, thank you. Thank you,  
12 Ms. Meisenheimer.

13                   JUDGE DIPPELL: Thank you. Commissioner  
14 Lumpe, you had a follow-up?

15                   COMMISSIONER LUMPE: Just one here.

16 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

17           Q.       Your discussion of having a workshop is what  
18 sort of triggered it, because I think Mr. Hughes was saying  
19 yesterday that should we not find that it's competitive,  
20 that we should provide a path or some guidelines, et cetera.

21                   Is it your suggestion that perhaps that if we  
22 don't have objective standards to go by and we're unclear as  
23 to whether competition exists, that such a workshop would be  
24 able to perhaps come up with some of those guidelines to the  
25 extent possible and then there may be others where we simply

1 have to make a determination? Would that be the focus of  
2 the workshops you're talking about?

3           A.       Yes. And one of the benefits that I see in  
4 doing it in that manner, in the workshop manner, is that for  
5 our office it gives me a higher level of opportunity than  
6 our resources might otherwise be able to handle on an  
7 individual case basis, the ability to weigh in on what we  
8 think are important objectives by which you will gauge the  
9 level of effective competition.

10                   Also, you know, you do it all right there.  
11 Everyone's position can be considered and included  
12 potentially in reports. Staff has done that on numerous  
13 occasions, so that it doesn't become a bargaining endeavor  
14 where you say, We want this, and you get an offer of this  
15 and you come back and say, Well, we want this, and you get,  
16 Well, we'll offer this.

17                   So you're -- I think that to do it all up  
18 front in one process is the best way to do it, and then  
19 stick to your guns once you approve something.

20                   COMMISSIONER LUMPE: Thank you.

21                   JUDGE DIPPELL: Are there any other Commission  
22 questions?

23                   All right. Then, is there recross based on  
24 questions from the Bench from Southwestern Bell?

25                   MR. LANE: Yes, your Honor.

1 RE CROSS-EXAMINATION BY MR. LANE:

2 Q. Hello again.

3 A. Hi.

4 Q. Commissioner Lumpe asked you some questions  
5 about the requirement of CLECs to serve all customers within  
6 an exchange. Would you agree that CLECs as a rule don't  
7 provide service to all residential and all business  
8 customers within a given exchange?

9 A. I would agree that they may market more  
10 heavily to certain customers than other customers.

11 Q. Some CLECs choose to serve only business  
12 customers, for example, correct?

13 A. Yes, that's true. I was primarily answering  
14 in response to basic local. That's often my mindset.

15 Q. I'll make you go broader than that.

16 A. Okay.

17 Q. Some CLECs choose to offer service only to  
18 business customers and choose not to serve any residential  
19 customers in particular exchanges, correct?

20 A. Yes. I'm familiar with tariffs that are  
21 designed to serve one class of customer.

22 Q. And as you indicated, even those that offer to  
23 serve business customers within an exchange may not choose  
24 to offer the same array of services that Southwestern Bell,  
25 for example, offers to business customers?

1           A.       Yes, and they may offer something different  
2 than Bell currently offers also.

3           Q.       And where they choose to operate, they still  
4 retain the ability to market on a targeted basis so that  
5 they can only serve those customers within the exchange that  
6 they think are the most profitable ones, right?

7           A.       I'd say that -- I'd say that that's true. I  
8 would also believe that in terms of Southwestern Bell's  
9 marketing, there may be customers that you pursue more  
10 vigorously than others.

11          Q.       But the other carriers, the CLECs, unlike  
12 Southwestern Bell, don't have a carrier of last resort  
13 obligation, correct?

14          A.       That's true.

15          Q.       So if a customer needs service and they're not  
16 marketed to by CLECs, they can always come to Southwestern  
17 Bell whether it's a profitable service or not for  
18 Southwestern Bell, correct?

19          A.       Yes.

20          Q.       You had indicated in response to some  
21 questions from Commissioner Lumpe that the Commission had  
22 been provided with an upper bound and a lower bound on the  
23 estimates of market shares. Do you recall that?

24          A.       Yes.

25          Q.       And I may have misunderstood you. Make sure

1 we have agreement on it. Southwestern Bell has presented  
2 evidence of a greater than 15 percent market share. You're  
3 aware of that, right?

4 A. Yes.

5 Q. And that Southwestern Bell has said that they  
6 believe that that estimate is a conservative estimate of the  
7 actual number of lines that are out there and not  
8 necessarily marks an upper bound of the level of  
9 competition; is that a fair statement?

10 A. That is fair. I was not using the upper -- I  
11 was not -- when I said upper bound, I was not referring to  
12 Southwestern Bell's number.

13 Q. Okay. And on the lower end, the 10 percent  
14 figure that you're utilizing, because of the way it's  
15 constructed, you've necessarily had to make some effort to  
16 estimate the number of facilities-based whole or partial  
17 served by CLECs, correct?

18 A. Yes.

19 Q. Okay. And in what you've chosen to use, the  
20 E911 listings, you know that that excludes some lines such  
21 as inward-bound lines to a business that only receive  
22 incoming calls as opposed to place outgoing calls, right?

23 A. And potentially ported numbers. However, I  
24 think there are issues with both that lead me to believe at  
25 this point that that 10 percent number is well within the

1 range of what I would consider reasonable.

2           Q.       But you know that it's low, don't you, if  
3 there's even one inbound line anywhere in Southwestern  
4 Bell's exchanges that's not included in the E911 database,  
5 right?

6           A.       Well, if there were another line where a  
7 CLEC -- where the service had been disconnected for a CLEC's  
8 customer that was a resale customer and you hadn't received  
9 notification of it yet, then it could offset.

10                   I mean, as a general rule, I'm not disagreeing  
11 that at some point we may include more for ported or  
12 consideration of where a CLEC's customers do not show up in  
13 a 911 database.

14           Q.       I thought we indicated before and you had  
15 agreed that you were utilizing actual counts for resale and  
16 actual counts for UNE-P and the only estimate that you were  
17 making was for facilities-based carriers were providing  
18 service in whole or in part over their own facilities and  
19 that you were using E911 listings for that purpose, right?

20           A.       Yes.

21           Q.       And within that E911 grouping, you know that  
22 the number that you are proposing is lower than actual  
23 because there are some inbound lines that don't -- that  
24 aren't included in any E911 database, and there's also some  
25 ported numbers that are being served on a facilities basis



1 and those ported numbers don't find their way into the E911  
2 database, correct?

3 A. Yes.

4 Q. You had some discussion with Commissioner Gaw  
5 concerning whether there should be an objective standard to  
6 measure whether we have effective competition. Do you  
7 recall those questions?

8 A. Yes.

9 Q. Would you agree that the statute itself,  
10 Section 386.020.13 is what controls and that that does not  
11 set any particular market share test as the basis for  
12 determining whether effective competition exists?

13 A. The statute that you cited, is that the  
14 description of how the Commission can determine effective  
15 competition?

16 Q. There's no specific reference in there to a  
17 market share test, correct?

18 A. No. However, the last part certainly says  
19 that the Commission can consider other factors that it deems  
20 necessary.

21 Q. And --

22 A. Or reasonable.

23 Q. And would you agree that Senate Bill 507 which  
24 adopts this price cap type regulation and set the stage for  
25 effective competition determination, that that was passed

1 right on the heels of the Federal Telecommunications Act?

2 A. Yes.

3 Q. And that the Federal Telecommunications Act,  
4 when it was passed, there was a lot of discussion at that  
5 time in Congress about whether there should be a specific  
6 market share test before RBOCs would be permitted into the  
7 long distance market under Section 271, correct?

8 A. I'm not personally familiar with the extent  
9 such discussions occurred. I think that what is in the  
10 language of both the federal and the state laws allows the  
11 FCC at the federal level, state commissions at a more local  
12 level, discretion, as it should be, to consider what is  
13 relevant in the particular circumstances of the state in the  
14 case of the state commission or the service that the FCC  
15 regulates at the federal level.

16 Q. And I wasn't suggesting that the federal  
17 statute mandated how this Commission determined effective  
18 competition. But it's fair to suggest, isn't it, that the  
19 fact that a market share test was ultimately not adopted  
20 under the Federal Telecommunications Act, that the state  
21 commission -- or the state legislature was aware of that and  
22 also chose not to have a market share test as part of the  
23 determination of effective competition?

24 A. I would agree with that. I would also point  
25 out that a number of agencies have chosen to use those as a

1 weight in their considerations on issues that are decided  
2 within their jurisdiction.

3 Q. And Commissioner Gaw also asked you some  
4 questions concerning how to group various services. Do you  
5 recall those questions?

6 A. Yes.

7 Q. Okay. And let me make sure I understood. Did  
8 your answer indicates that you thought under  
9 Section 392.245.5 that each service needed to be analyzed in  
10 each exchange?

11 A. Yes. And specifically I would cite you to the  
12 phrase, Whether effective competition exists in the exchange  
13 for the various services of the incumbent local exchange  
14 telecommunications company.

15 Q. And the first sentence of that indicates that  
16 you need to look at each service in each exchange, right?

17 A. Yes.

18 Q. Do you think the groupings of services that  
19 have been outlined by Southwestern Bell and Staff are, in  
20 your opinion, an effective way for the Commission to  
21 evaluate each service in each exchange?

22 A. I think some grouping is a reasonable way to  
23 go at this. Our office did in particular have a problem  
24 with some of the groups. I think the Staff even differed to  
25 some degree in their view of specific services within

1 groupings, say, for example, with respect to special and  
2 switched access is one that comes to mind.

3 Q. And those parties that had a disagreement with  
4 a grouping were able to present their views to the  
5 Commission on the services over which they had a particular  
6 concern, right?

7 A. Yes. That doesn't mean that I don't think  
8 additional consideration and work in the area might not be a  
9 helpful thing.

10 Q. Okay. But whatever additional work might be  
11 done still has to be done in the context of the statute  
12 which requires a determination within the first five years  
13 after competition begins, correct?

14 A. Yes, and that's why I would recommend that the  
15 Commission find that it doesn't at this point and then set  
16 into motion a process by which we'll have a uniform --  
17 uniform guidelines at least to look into collecting data and  
18 evaluating whether effective competition exists.

19 Q. You're not suggesting that the Commission  
20 simply deny it without doing what the statute indicates and  
21 analyze each service in each exchange, right?

22 A. No. I think there's plenty of evidence  
23 submitted in this case thus far that indicates it does not  
24 exist, with the exception in our case of on some services we  
25 took no position, and then certainly the flat-rated

1 unlimited usage services we had a problem with that.

2 MR. LANE: That's all I have. Thanks.

3 JUDGE DIPPELL: Is there questions based on  
4 questions from the Bench from Staff?

5 MR. HAAS: No, your Honor.

6 JUDGE DIPPELL: AT&T?

7 MR. ZARLING: Yes, your Honor.

8 RECROSS-EXAMINATION BY MR. ZARLING:

9 Q. Ms. Meisenheimer, I just want to clarify on  
10 your -- have you clarify a response you gave to Commissioner  
11 Lumpe.

12 She asked you some questions about your  
13 position on originating access and whether you considered  
14 that to be competitive or not, and I think your response was  
15 something along the lines of you oppose competitive  
16 classification because Southwestern Bell controls the  
17 majority of access lines, and then you made the comment,  
18 even where Southwestern Bell -- if my notes are accurate,  
19 something like even where the CLEC has the customer or where  
20 Southwestern Bell doesn't have the customer. Were you  
21 referring to resale there?

22 A. No. My thought at that point was, let's say,  
23 for example, that a CLEC owns -- or a CLEC has leased a  
24 loop. Well, the extent to which we believe that competition  
25 is effective and that those competitors have the wherewithal

1 to sustain their offerings, then we can have more  
2 confidence.

3                   However, in cases where we may have a concern  
4 that competition is not widespread or will not be  
5 widespread, then in total for the market overall it gives me  
6 some additional concern.

7           Q.       Okay.

8           A.       With respect to, in general, what would happen  
9 to the price of that service over time.

10          Q.       Okay. What is your understanding of who  
11 controls originating access when a CLEC has a resale or  
12 resold line?

13          A.       Okay. If the CLEC is reselling --

14          Q.       Right.

15          A.       -- a line?

16          Q.       CLEC has a customer.

17          A.       Then the underlying carrier gets the  
18 originating access.

19                   MR. ZARLING: Okay. Those are all my  
20 questions.

21                   JUDGE DIPPELL: Is there further cross from  
22 WorldCom?

23                   MR. LUMLEY: No, thank you, your Honor.

24                   JUDGE DIPPELL: Sprint?

25                   MS. HENDRICKS: No, thank you, your Honor.

1 JUDGE DIPPELL: McLeod?

2 RECROSS-EXAMINATION BY MR. KRUSE:

3 Q. Good morning again, Ms. Meisenheimer. Just a  
4 couple of questions.

5 With respect to the CLECs that you indicated  
6 that you believed had chosen not to serve residential  
7 customers or had chosen to serve only business customers,  
8 are those that you're including in that group only CLECs who  
9 are tariffed to serve only business customers?

10 A. Yes.

11 Q. Okay. And of those that are tariffed only to  
12 serve business customers, you don't have any idea whether  
13 some or all of them might at some point in time, given the  
14 development of competition in the state, might become  
15 tariffed to -- might choose to become tariffed to serve  
16 residential customers; is that correct?

17 A. That's correct. We would hope certainly that  
18 services expand. However, we're not convinced that the  
19 outlook is as rosy as it was at one time.

20 Q. And the fact that a particular CLEC might be  
21 only serving business customers at this point doesn't mean,  
22 given the proper competitive environment, that the CLEC  
23 might, in fact, choose to serve residential customers in the  
24 future, correct?

25 A. Yes, that's true.

1 MR. KRUSE: That's all I have. Thank you.

2 JUDGE DIPPELL: Is there redirect?

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

4 REDIRECT EXAMINATION BY MR. DANDINO:

5 Q. Ms. Meisenheimer, are you proposing that any  
6 specific market share be used by this Commission to measure  
7 whether or not there's effective competition in Southwestern  
8 Bell exchanges?

9 A. I have not picked a number certain. I've  
10 considered numbers that have been used by agencies for  
11 various purposes to evaluate mergers, the amount of  
12 dominance with respect to the toll market. Also, I think  
13 that the FERC has some guidelines that they use, but  
14 ultimately they're guidelines.

15 Q. And you're not recommending that one  
16 particular -- excuse me.

17 Let me say it this way, that market share is  
18 just only one factor this Commission should look at; is that  
19 correct?

20 A. That's correct. And then my analysis, I  
21 looked at a number of other things than simply a measure of  
22 market share based on the quantity of access lines. I  
23 considered revenue by looking at annual reports. I  
24 considered capacity by looking at NXX assignments which give  
25 an indication of where a CLEC might be using their switch to



1 provide switched services.

2 Q. And the HHI, you're not suggesting that's the  
3 only measure of market share either; is that right?

4 A. That's correct. I mean, I think that there is  
5 a good basis for picking some levels, some numbers as kind  
6 of a gauge, and then certainly the Commission has the  
7 discretion to look at all factors that it feels relevant in  
8 making a determination about the extent of effective  
9 competition if it exists.

10 Q. Does the quality and quantity of data that  
11 you've seen limit ability to set any specific threshold  
12 levels for competition?

13 A. Yes. I think that there are guidelines that  
14 have been used in other places where we might be able to,  
15 you know, pick a number to look at. I think that the  
16 information in this case makes it hard for us to determine  
17 where are we at relative to numbers that we think might be a  
18 reasonable indication.

19 Q. So is it your opinion that the data just kind  
20 of leaves many of the -- well, many of the situations just  
21 in doubt, many of the exchanges or services in doubt?

22 A. I think that there at this point is sufficient  
23 evidence to indicate that in most cases there's not really  
24 effective competition for certain services.

25 I think that there is some doubt on how good

1 are the numbers that we have at this time, and I think that  
2 as market share does increase, that's going to become more  
3 and more important than it is when there's such an obvious  
4 display that effective competition does not exist.

5                   As we get closer and closer to numbers that --  
6 other measures that have been used in various places and the  
7 arguments become more heated and your decisions become more  
8 difficult about where exactly do you call it effective  
9 competition and where doesn't it, then I think it becomes  
10 more and more important to get good data.

11           Q.       At this point in time, in this case, the  
12 Commission is forced by the circumstances to decide the  
13 issues for effective competition on the best evidence that  
14 they have available in front of them; is that correct?

15           A.       Yes.

16           Q.       Mr. Lane asked you about comparing UNE loop  
17 prices to residential rates, and you made a comment that you  
18 didn't think that was a fair comparison or that it was a  
19 proper comparison. Could you elaborate on that, please?

20           A.       I'd be happy to. What you have heard in a  
21 couple of places in Southwestern Bell's testimony on the  
22 stand, at least what I was here for sitting in the hearing  
23 room, was a statement something to the effect of residential  
24 rates, aren't they lower than UNE rates, the UNE loop rate.

25                   And if you ask that specific question, then

1 perhaps you must say yes. However, what that does not take  
2 into account is that that loop is providing multiple  
3 services, and all of those services that are provided over  
4 it reasonably should help pay for that loop.

5               So if you say the loop rate is \$25 and local  
6 service is priced at 12, that's not an apples to apples  
7 comparison because it does not take into account the money  
8 or the revenue that potentially that loop can generate in  
9 terms of originating access, in terms of terminating access,  
10 in terms of vertical services that are provided.

11              This is the same argument that you were faced  
12 with in the universal service case where carriers seem to  
13 want to allocate the entirety of the loop cost that -- when  
14 you say an unbundled loop, I mean, that's effectively what  
15 you're talking about -- but the entirety of that should be  
16 attributable to basic local service, and that is not  
17 reasonable.

18              I presented numerous rounds of testimony  
19 pointing out where other state commissions, where this state  
20 Commission, where the FCC, where the Supreme Court found  
21 that not to be a reasonable way to allocate cost.

22              So when you look at the basic local rate, I  
23 believe strongly that you should not simply say, Gee, the  
24 UNE rate is higher than that. Therefore, there's some kind  
25 of subsidy. That's not apples to apples and it's not

1 reasonable. And I strongly believe that if an appropriate  
2 cost study were done that tried to determine the incremental  
3 cost of local service, basic local services, that you would  
4 find that basic local service in the vast majority of cases  
5 covers its incremental cost, thereby not receiving subsidy.

6 I think you might also find that numerous  
7 services, in fact all services that I can think of, do not  
8 cover their stand-alone costs as if the whole network were  
9 built just to provide that service, that an economist's  
10 definition of when a subsidy may exist is in the event that  
11 a service pays more than that. There's a lot of room in  
12 between where appropriate allocations can be determined.

13 Q. When Southwestern Bell was a rate of return  
14 company, then if some of its services were classified as  
15 transitionally competitive, what does a transitionally  
16 competitive status do for a rate of return company or for  
17 their prices? What does that do?

18 A. It allows them some downward flexibility. It  
19 does, however, I believe, impose a cap on the price for  
20 their services. So, you know, it shouldn't be compared  
21 directly to a competitive -- a service that is, say, for  
22 example, already competitive.

23 MR. DANDINO: I think that's all I have, your  
24 Honor. Thank you, Ms. Meisenheimer.

25 JUDGE DIPPELL: Okay. Ms. Meisenheimer, you

1 may be excused. Thank you for your time.

2 (Witness excused.)

3 JUDGE DIPPELL: Let's go ahead and get our  
4 next witness on the stand and sworn in, and then we'll break  
5 a little early for lunch and return at one. I think  
6 Mr. Voight has returned, so we can just go ahead with him.

7 MR. HAAS: The Staff calls William Voight.

8 JUDGE DIPPELL: Would you please spell your  
9 name for the court reporter.

10 THE WITNESS: William Voight, V-o-i-g-h-t.

11 (Witness sworn.)

12 JUDGE DIPPELL: Thank you. You may be seated.

13 You may proceed, Mr. Haas.

14 WILLIAM VOIGHT testified as follows:

15 DIRECT EXAMINATION BY MR. HAAS:

16 Q. Mr. Voight, please state your name.

17 A. William Voight.

18 Q. Where are you employed?

19 A. The Missouri Public Service Commission.

20 Q. What is your position?

21 A. I'm Assistant Manager of Telecommunications.

22 Q. Are you the William Voight who prepared  
23 rebuttal testimony which has been marked as Exhibit 18 in  
24 this case?

25 A. Yes, I am.

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1 Q. Do you have any additions or corrections to  
2 that testimony?

3 A. Yes, just a couple. On page 47 of my direct  
4 testimony, on line 18, there's a parentheses that says  
5 "Fernandez direct testimony, page 17, line 16". There  
6 should be a parentheses closed after the 16. It's a  
7 typographical error.

8 On page 55, beginning at the right-hand side  
9 of line 17, there's a sentence that begins with, The Staff  
10 believes economic indicators indicate. The words "economic  
11 indicators indicate" should be deleted and replaced with the  
12 word -- the words "data show," such that the sentence would  
13 read, The Staff believes data show that most residential end  
14 users in those two exchanges have a viable choice in their  
15 local service provider.

16 Those are my only two changes.

17 Q. If I were to ask you the questions that are  
18 posed in Exhibit 18, would your answers with the changes  
19 you've just noted be the same as they are set forth in this  
20 testimony?

21 A. Yes, sir.

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

24 A. Yes, they are.

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

1 admission of Exhibit No. 18, the rebuttal testimony of  
2 William L. Voight, and I tender the witness for  
3 cross-examination.

4 JUDGE DIPPELL: Is there any objection to  
5 Exhibit No. 18 coming into the record?

6 (No response.)

7 Then I will admit that.

8 (EXHIBIT NO. 18 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE DIPPELL: And at this time, then, we'll  
10 go ahead and break for lunch and return at 1 p.m. We can go  
11 off the record.

12 (A BREAK WAS TAKEN.)

13 JUDGE DIPPELL: We can go back on the record.

14 We were about to begin with cross-examination  
15 of Mr. Voight, and it appears as though Southwestern Bell is  
16 ready to go. So you may begin, Mr. Lane.

17 MR. LANE: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. LANE:

19 Q. Good afternoon, Mr. Voight.

20 A. Good afternoon, Mr. Lane.

21 Q. Fair to say that you discussed the  
22 Commission's decision in Case No. TO-93-116 at several  
23 points in your testimony, correct?

24 A. Yes, specifically in response to direct  
25 testimony.

1 Q. And that case dealt with transitionally  
2 competitive classification for MTS, WATTS, digital private  
3 line, special access and operator services, at least  
4 station-to-station, person-to-person and calling cards,  
5 correct?

6 A. I believe so, yes.

7 Q. And the Commission found those services to be  
8 transitionally competitive in their December 21st, 1992  
9 Order, correct?

10 A. Yes, that's correct.

11 Q. Okay. And pursuant to statute, that  
12 transitionally competitive designation was extended for two  
13 three-year periods for each of those services, was it not?

14 A. I believe that's correct.

15 Q. And at the expiration of the second three-year  
16 period, those services were deemed to be competitive under  
17 the statute in your opinion; is that a fair statement?

18 A. That's a fair statement that that is the  
19 Staff's opinion. Others in this case I don't think  
20 necessarily agree, but that is the Staff's opinion.

21 Q. Is it fair to say that while the Commission  
22 retains the right to reimpose noncompetitive status on those  
23 services that it must, if it does that, apply equal  
24 regulation to all companies providing equivalent or  
25 substitutable service?



1           A.       I'm sorry. I didn't understand your question.

2           Q.       Okay. It's fair to say that under the statute  
3 that the Commission retains the right to reimpose  
4 noncompetitive status on those services, but if it does so  
5 it must apply equal regulation to all companies providing  
6 equivalent or substitutable services?

7           A.       I agree with the first part of your statement.  
8 I'm unsure as to the second part without referencing the  
9 statute.

10                   MR. LANE: May I approach the witness, your  
11 Honor?

12                   JUDGE DIPPELL: Yes.

13 BY MR. LANE:

14           Q.       Mr. Voight, showing you Section 392.370.3,  
15 with specific reference to the last sentence there. Would  
16 you agree with me that it provides that if the Commission  
17 decides to reimpose noncompetitive status, that it must then  
18 apply equal regulation with respect to those services to all  
19 telecommunications companies providing the same, equivalent  
20 or substitutable service?

21           A.       Yes, I agree that's what the statute says.

22           Q.       And in this case, then, if the Commission  
23 imposed -- reimposed noncompetitive status on those  
24 services, then it would have to do so for every long  
25 distance provider of MTS and WATTS, including AT&T and

1 MCI/WorldCom?

2 A. Yes, that would be true.

3 Q. But that's not your recommendation in this  
4 case, is it, in terms of how Southwestern Bell's MTS and  
5 WATTS services in particular should be treated?

6 A. No, that's not our recommendation.

7 Q. Your recommendation is the Commission confirm  
8 or agree that those services are competitive under the  
9 statute; is that right?

10 A. Yes.

11 Q. I want to look at operator services next and  
12 first with regard to those services that were addressed in  
13 TO-93-116. Those services like MTS and WATTS are now deemed  
14 to be competitive services, in your opinion, in the Staff's  
15 opinion, correct?

16 A. Yes.

17 Q. And it wasn't clear to me on page 76 of your  
18 rebuttal testimony whether you were taking a -- 74, excuse  
19 me, of your -- I have it wrong. 75, lines 15 through 16.  
20 In there you're confirming that those services to the extent  
21 they were addressed in 93-116 are competitive, that they  
22 should remain so, right?

23 A. Yes.

24 Q. Okay. I want to look now at operator services  
25 that were not addressed in the 93-116 Order and talk about

1 those. As I understand it, your theory is that these  
2 operator services are too closely linked to the local dial  
3 tone provision to be granted competitive status on their  
4 own; is that a fair assessment?

5 A. Yes.

6 Q. And that's because, in your view, whichever  
7 company you utilize for your local service provider is the  
8 company that provides you those operator services?

9 A. Well, my theory is it's a matter of practice  
10 in actuality that if you dial zero you're connected to your  
11 local exchange carrier.

12 Q. Would you agree with me that Ms. Moore  
13 addressed that concern in her surrebuttal testimony, and in  
14 particular on page 4 she provided at least six examples of  
15 operator service providers which the end user could reach no  
16 matter -- without regard to who the local service provider  
17 was?

18 A. I don't recall that specifically, Mr. Lane,  
19 but if you wish to represent that as the case, I will accept  
20 that.

21 MR. LANE: May I approach, your Honor?

22 JUDGE DIPPELL: Yes.

23 BY MR. LANE:

24 Q. And Mr. Voight, I'm going to show you  
25 Ms. Sandy Moore's surrebuttal testimony, and in particular

1 reference to page 4, and ask if she identifies at least six  
2 services that can be reached from a wireline phone without  
3 regard to who the local service provider is?

4           A.       Yes. Page 4 of Ms. Moore's testimony, I  
5 believe it's her direct testimony, there are seven bullet  
6 points there.

7           Q.       I think it's her surrebuttal testimony, is it  
8 not?

9           A.       Excuse me. Surrebuttal.

10          Q.       And there are seven listed, but one of them is  
11 wireless operator services, correct?

12          A.       Yes indeed.

13          Q.       And the other six would be reached from any  
14 wireline phone without regard to who the local service  
15 provider is, correct?

16          A.       That's correct.

17          Q.       It's also fair to say, isn't it, that the  
18 Commission's decision in TO-93-116 relied upon the same type  
19 of alternate providers that Ms. Moore lists on page 4 of her  
20 surrebuttal testimony as support for their finding that the  
21 operator services addressed in that case were substitutable?

22          A.       I don't recall the specifics, those specifics  
23 of the Commission's Order. It sounds very reasonable to me,  
24 though, that they would have.

25          Q.       And you would agree, would you not, that --

1 let me ask this. Have you -- since reviewing Ms. Moore's  
2 testimony in this case, have you attempted to verify that  
3 all of those companies that she lists there do provide  
4 operator services and that they can be reached from a  
5 wireline phone without regard to who the local service  
6 provider is?

7           A.       The short answer is no, Mr. Lane, I've not  
8 done any independent verification to identify the companies  
9 on page 4 of Ms. Moore's surrebuttal testimony. Of the six  
10 bullet points we're discussing, not all of them represent  
11 specific companies. For example, one of them is 1010-XXX  
12 type dialing.

13                   But I have no reason that the references to  
14 1-800-CALLATT, 1-800-COLLECT, which is an MCI service, 1-800  
15 Sprint-something, I have no reason to believe those numbers  
16 do not work.

17           Q.       And you're familiar, are you not, that the FCC  
18 has removed operator services from its list of required  
19 unbundled network elements in the UNE Remand Order?

20           A.       Well, I am familiar that the UNE Remand Order  
21 did do as you represent. However, I believe that it would  
22 have been or is the prerogative of this Commission, as with  
23 all state commissions, to establish what they believe the  
24 list of unbundled network elements are to be composed of,  
25 which would include dark fiber, et cetera, subloop

1 unbundling. But yes, I'm familiar with the FCC's Order.

2 Q. And the rationale behind the FCC's Order  
3 removing operator services and directory assistance services  
4 from the list of required unbundled network elements was  
5 that there were sufficient competitive alternatives  
6 available to CLECs such that the ILEC involved did not have  
7 to be the provider of those as an unbundled network element;  
8 is that a fair assessment?

9 A. I'm not that familiar with the UNE Remand  
10 Order or the latest attempts of the federal government to  
11 establish unbundled network elements, but if you wish to  
12 represent that that's the reasoning that's sufficient that  
13 competition exists that it need not be on the list, then I  
14 will accept that.

15 JUDGE DIPPELL: Mr. Lane, before you go any  
16 further, could you just clarify for us all the UNE Remand  
17 Order, which -- exactly which order?

18 MR. LANE: I don't have the cite to it, your  
19 Honor. I can describe it generally if that would be of  
20 assistance.

21 JUDGE DIPPELL: Okay. I just wanted the  
22 record to be clear. There's a lot of different Orders  
23 involving the UNEs. So I just want it to be clear in the  
24 record which one you're referring to.

25 MR. LANE: Okay.

1 BY MR. LANE:

2 Q. In your review of Ms. Moore's surrebuttal  
3 testimony, would you agree that she portrayed in a highly  
4 confidential schedule a very significant decrease in the  
5 volume of operator service calls since 1996?

6 A. Yes, I would agree with that. I would also  
7 add, Mr. Lane, that I believe the same type of evidence was  
8 presented in Case No. TR-96-28 in which I also testified. I  
9 believe there's no question that the level of usage of  
10 Southwestern Bell's operator services has declined, perhaps  
11 substantially or even drastically in the face of  
12 competition.

13 Q. And would you agree with me that the level of  
14 decline certainly exceeds the level of decline that  
15 Southwestern Bell has seen in the provision of its basic  
16 access line services?

17 A. I would expect that to be the case.

18 Q. Which would you agree that that's an  
19 indication that the competition for provision of operator  
20 services is in a market separate from the market for basic  
21 access line type services?

22 A. Oh, yes. That's why we've considered it,  
23 we've gone along with Southwestern Bell's classifying it in  
24 that manner in this case. It's separate.

25 Q. And after reviewing Ms. Moore's schedule that

1 shows what you described as possibly a dramatic decrease in  
2 operator services and her page 4 listing of all of the -- or  
3 some of the competitive alternatives that are available from  
4 a wireline phone without regard to who the local service  
5 provider is, would you agree that those operator services  
6 that have not yet been classified as competitive ought to be  
7 classified as competitive without regard to who the --  
8 without regard to the classification of the basic access  
9 line in that exchange?

10           A.       No, Mr. Lane, I can't go along with that.  
11 They are separate services. Nevertheless, they are still  
12 very closely linked one to the other.

13           Q.       And I want to just explore why they're closely  
14 linked. If you can reach a significant number of alternate  
15 providers without regard to who your local carrier is, and  
16 if the decline in the operator services volumes that  
17 Southwestern Bell has experienced is significantly greater  
18 than its decline and loss of access lines, doesn't that  
19 indicate that they're not closely tied to each other?

20           A.       I don't believe so, Mr. Lane. The -- I just  
21 don't believe so.

22           Q.       Okay. Let me switch over and talk about  
23 directory assistance, then. And it's fair to say that  
24 you've opposed a competitive classification of directory  
25 assistance services because you must dial 411 and the call



1 is then routed to the customer's local service provider?

2 A. That's correct.

3 Q. And as with operator services, would you agree  
4 that Ms. Moore in her surrebuttal testimony has outlined a  
5 number of alternatives that are available to reach directory  
6 assistance services that do not require dialing 411 and are  
7 available regardless of who the local service provider is  
8 for that customer?

9 A. Yes, I would expect upon reviewing Ms. Moore's  
10 testimony to find that she's provided a list of alternative  
11 providers, all of which require dialing extra digits or  
12 getting on the Internet or something of that sort.

13 Q. And you've also reviewed Ms. Moore's schedule  
14 in which she outlines the significant decline that  
15 Southwestern Bell has experienced in directory assistance  
16 services, have you not?

17 A. Excuse me. Was that in her direct or --

18 Q. Surrebuttal.

19 A. I believe I did review that, yes. I will  
20 accept that you -- if you wish to represent that you  
21 experienced a decline in volume of directory assistance  
22 traffic, I will accept that.

23 Q. And would you agree with me that the decline  
24 in directory assistance traffic has been in excess of the  
25 decline in Southwestern Bell's share of the basic local

1 access line market?

2 A. I have no reason to doubt that.

3 Q. And as with operator services, that would be  
4 an indication that the provision of directory assistance  
5 services is separate from the provision of the basic access  
6 line; would you agree with that?

7 A. As with operator services, they are separate  
8 but very closely linked in the Staff's view.

9 Q. And Ms. Moore in her surrebuttal testimony  
10 also presented evidence that the volume of directory  
11 assistance calls were substantially increasing in the market  
12 at the same time that Southwestern Bell's share of those  
13 calls was significantly decreasing; is that a fair  
14 statement?

15 A. I believe so.

16 Q. And do you have any independent evidence or  
17 research that indicates that Ms. Moore is incorrect in her  
18 analysis that the directory assistance market in general has  
19 been growing over the period of time that Southwestern Bell  
20 has been experiencing a significant decline in directory  
21 assistance volumes?

22 A. I suppose a short answer is no, I have no  
23 independent knowledge. However, I would note that you  
24 increased the price for directory assistance not too many  
25 years ago, and that could account for some of the decline in

1 your volume.

2 Q. Would you agree that CLECs competing in  
3 Missouri have the choice of doing so via resale, unbundled  
4 network elements or their own facilities?

5 A. Yes. And I want to be very clear, we're  
6 talking about competing only in Southwestern Bell's area.  
7 The answer is yes.

8 Q. All my questions, just so it's clear, I'm  
9 asking about Southwestern Bell territory.

10 A. And the reason I state it that way, there's  
11 been some discussion in this case about statewide  
12 certification, and from my perspective I would view that as  
13 including all 43 ILECs in Missouri.

14 I understand that the parties who have said  
15 that really only are referencing Southwestern Bell's service  
16 area, and I understand that's what this case is about.

17 Q. The reference that you're making to that is  
18 with regard to Dial US and others that have statewide  
19 certification for Southwestern Bell's territory, correct?

20 A. Yes, sir.

21 Q. If Southwestern Bell is granted competitive  
22 status for its services, would you agree that the Commission  
23 would continue to have regulatory oversight over the level  
24 of the resale discount that Southwestern Bell provides to  
25 CLECs?

1           A.       Yes, for those services that fall within the  
2 provisions of the act. I believe there are services in this  
3 case that are being discussed that do not fall within the  
4 provisions of the act.

5           Q.       And for that same group of services that fall  
6 within -- strike that.

7                    Would you agree that the Commission also has  
8 the authority to continue to establish the price for  
9 unbundled network elements that Southwestern Bell would be  
10 required to provide to CLECs?

11          A.       I'm sorry. The Commission has the authority  
12 to do what?

13          Q.       To establish the price at which Southwestern  
14 Bell will sell various unbundled network elements to CLECs.

15          A.       Yes.

16          Q.       And if Southwestern Bell raised its retail  
17 prices, the price charged by unbundled network elements as  
18 set by the Commission wouldn't change when Southwestern Bell  
19 raised its retail rates, would it?

20          A.       That's correct, because those unbundled  
21 network element rates are based on the total element  
22 long-run incremental costing methodology and have very  
23 little, if anything, to do with your retail price.

24          Q.       Now, on page 23 and 24 of your rebuttal  
25 testimony, you make the assertion that this regulatory

1 oversight over the price of unbundled network elements and  
2 the resale discount would not be a safeguard because  
3 Southwestern Bell appealed the AT&T arbitration award in  
4 Case No. TO-97-40. Do you see that discussion?

5 A. You may want to point me to that. If I stated  
6 that that's the only -- your appeals is the only reason that  
7 those are insufficient, then that may be an error.

8 Q. I'm looking in particular on page 23 and 24 of  
9 your rebuttal testimony, and ask if at least one of the  
10 reasons that you give as to why the Commission's control of  
11 unbundled network element prices is not a safeguard is  
12 because Southwestern Bell appealed its -- appealed the  
13 Commission's decision in Case No. TO-97-40?

14 A. Yes. The answer to your question is yes, that  
15 is one of the reasons.

16 Q. Okay. It's fair to say that the Commission  
17 decision in Case No. TO-97-40 was actually implemented even  
18 while the appeal was under way; is that correct?

19 A. Yes.

20 Q. It's also fair to say that many CLECs, more  
21 than a dozen, opted into that AT&T/Southwestern Bell  
22 interconnection agreement and the UNE prices that were set  
23 by the Commission even though the appeal was under way,  
24 correct?

25 A. Yes.

1 Q. And, in fact, many of the prices that the  
2 Commission set in the TO-97-40 case are still available to  
3 CLECs under the auspices of the Missouri 271 interconnection  
4 agreement, correct?

5 A. Yes.

6 Q. And I may have misunderstood the thrust of  
7 your testimony, but you're not indicating that Southwestern  
8 Bell has to give up any right to appeal Commission decisions  
9 before a finding of effective competition could be made, are  
10 you?

11 A. Certainly not, and I want to be very clear on  
12 that. I believe I heard Mr. Hughes express what I took to  
13 be some similar concerns, and Staff most certainly is not  
14 suggesting that Southwestern Bell should not be able to  
15 exercise its rights of appeal.

16 Q. Okay. And referring on page 31 of your  
17 surrebuttal testimony, you say, Second, as I previously  
18 stated on page 24, SWBT has been known to react in an  
19 adverse manner to this Commission's arbitration awards.  
20 SWBT has shown a propensity to appeal this Commission's  
21 arbitration decisions to the highest levels of appeal. Do  
22 you see that?

23 A. Yes, I do.

24 Q. Okay. And when you say we have --  
25 Southwestern Bell has a propensity to appeal, are you

1 referring to any arbitration -- strike that. Let me reask  
2 that.

3                   Would you agree with me that the only  
4 arbitration award that Southwestern Bell has appealed is the  
5 one involving AT&T from Case No. TO-97-40 and the subsequent  
6 TO-98-115?

7           A.       I believe I would agree with you on that,  
8 Mr. Lane, if perhaps I could get you to agree with me that's  
9 been the only arbitration there is, hasn't it?

10          Q.       No.

11          A.       No?

12          Q.       I wouldn't agree on that. Let me ask you if  
13 you're familiar with arbitrations that Southwestern Bell has  
14 had in Missouri with MFS, Metropolitan Fiber Systems, with  
15 Broadspan, with Sprint and with Covad?

16          A.       Forgive me. You have refreshed my memory.  
17 I'd forgotten about those.

18          Q.       And so would you agree with me that it's  
19 probably not correct to say that SWBT has shown a propensity  
20 to appeal arbitration decisions if it's only appealed one?

21          A.       Well, I don't know if you won or lost the  
22 others.

23          Q.       I guess that depends on your point of view.

24                    Would you agree with me that in the other  
25 arbitrations each time on the Covad, Sprint and Broadspan,

1 in reverse order of that, that the Commission wound up  
2 lowering the prices that Southwestern Bell was permitted to  
3 charge?

4 A. I'll accept that.

5 Q. Hard to say we won all of them, right?

6 A. I'm sure it is hard to say.

7 Q. Okay. On page 24 of your rebuttal testimony,  
8 you state that the 271 case that this Commission heard in  
9 TO-99-227 has no relevance here. Do you see that reference?

10 A. Yes, I see that reference.

11 Q. And if we go back to the definition of  
12 effective competition in Section 386.020, would you agree  
13 with me that one of the factors there is whether there are  
14 existing economic or regulatory barriers to entry?

15 A. Yes. That's Item D under the section you're  
16 referring to.

17 Q. And would you agree with me that the  
18 Commission's decision in the 271 case that found that the  
19 markets were open and that the 271 checklist was satisfied  
20 means that there are no regulatory barriers to entry as  
21 discussed in Section 386.020.13(d)?

22 A. I'm sorry, Mr. Lane. I just really don't see  
23 the linkage. I don't recall the 271 proceeding, perhaps my  
24 memory's fading, but I don't recall examining regulatory  
25 barriers. I do recall examining 14-point checklist and



1 public interest standards and so forth.

2 Q. Wasn't part of the examination in the 271 case  
3 a determination of whether the market was open to  
4 competition?

5 A. Irreversibly open.

6 Q. And the Commission made the finding that it  
7 was open to competition and the 14-point checklist had been  
8 satisfied, right?

9 A. Yes.

10 Q. Is that at least some evidence in your mind  
11 that Section 386.020.13(d) has been satisfied?

12 A. I think it would be relevant, yes. But to the  
13 extent the Commission may want to consider that evidence,  
14 I'm a little unsure of that.

15 Q. Let me discuss business services with you for  
16 a moment. At some point I may need to go into in-camera,  
17 your Honor, but I'll try not to for a little while.

18 It's fair to say that the Staff's position in  
19 this case is that the Commission should find effective  
20 competition for business services in St. Louis and Kansas  
21 City exchanges, correct?

22 A. Yes.

23 Q. Okay. And to clarify, when you say the  
24 St. Louis exchange, that's the equivalent to the mandatory  
25 areas of the MCA which would be the principal zone and

1 Tiers 1 and 2; is that a fair statement?

2           A.       That's an accurate statement. It applies to  
3 both St. Louis and Kansas City. That geographic area is  
4 further delineated in your local exchange tariffs.

5           Q.       Okay. The definition of the St. Louis  
6 metropolitan exchange includes the principal zone plus  
7 Zones 1 and 2, which are the other mandatory portions of the  
8 MCA, correct?

9           A.       Yes. The mandatory MCA areas, correct.

10          Q.       And it's those areas that Staff is  
11 recommending that the Commission find effective competition  
12 for business services, right?

13          A.       Yes. Business services, associated  
14 vertical -- and their associated vertical services, yes.

15          Q.       And the same is true in Kansas City, you mean  
16 the Kansas City exchange, which is the principal zone plus  
17 Tiers 1 and 2, the mandatory portions of the MCA, correct?

18          A.       Yes, Mr. Lane.

19          Q.       Now, if you would, I'd like to discuss some of  
20 the exchanges that are in the optional areas of the MCA and  
21 try to understand where Staff sees the differences between  
22 those.

23                   MR. LANE: And, your Honor, if I may, I think  
24 we may need to go in-camera. I need to use some highly  
25 confidential information.

1 JUDGE DIPPELL: All right. Let's go ahead  
2 then and go in-camera at this time. Those that are not  
3 authorized to hear highly confidential information will need  
4 to leave the room. I'm going to ask the attorneys to help  
5 me in determining who those people are.

6 We can go off the record while everyone exits.

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

8 (REPORTER'S NOTE: At this point, an in-camera  
9 session was held, which is contained in Volume 6, pages 646  
10 through 659 of the transcript.)

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1 BY MR. LANE:

2 Q. Do you have the statute in front of you there?

3 A. Yes.

4 JUDGE DIPPELL: You may continue, Mr. Lane. I  
5 apologize for interrupting.

6 BY MR. LANE:

7 Q. Do you remember the question or should I  
8 repeat it?

9 A. I think you're wanting to know, again,  
10 pursuant to the statutory guidelines, why we recommended  
11 competitive classification for business services in  
12 St. Louis but did not do likewise for the exchange of  
13 Fenton.

14 Q. Yeah. If you want, let's just do why you did  
15 in St. Louis and go through the five criteria there and tell  
16 me why you think Southwestern Bell met it.

17 A. For St. Louis?

18 Q. Yes.

19 A. Criteria No. A, the alternative providers,  
20 we've been tracking that since December 31st, 1996. There's  
21 no question that the -- and I don't use this word  
22 pejoratively. I would note Dr. Aron used the word, but  
23 cherry picking. There's no question of the cherry picking  
24 going on in St. Louis as contrasted to Fenton. That's item  
25 No. A.

1 Q. Let me stop and we'll go back. You're saying  
2 that there's no cherry picking going on in Fenton, there is  
3 in St. Louis, and that's a reason to grant?

4 A. No. The statute says the extent to which,  
5 Mr. Lane, and my position is that the extent to which it  
6 goes on in St. Louis is far, far greater than Fenton.

7 Q. And is that a market share analysis for that?

8 A. I don't believe the statute makes any  
9 reference to market share.

10 Q. And I'm trying to understand how --

11 A. Sure. The sheer quantity of providers.

12 Q. The number of providers?

13 A. Yes.

14 Q. The number of CLECs?

15 A. The services that those providers -- the  
16 alternate providers is the CLEC. The services that are  
17 available are the services provided by the CLECs. That's  
18 just simply greater in the St. Louis exchange than it is in  
19 Fenton.

20 Q. Okay. And let me stop there, then, and ask  
21 you to look at Mr. Hughes' Schedule 5-1HC, and we're going  
22 to try to do this without going in-camera. Is it your  
23 position that the number of CLECs that are providing service  
24 in the Fenton exchange is inadequate to meet the first  
25 criteria?

1           A.       No. No, that's not my position. I haven't  
2 said that. It's not my position. Mr. Lane, again, I have  
3 to go back. We agree with you legally, the burden -- not  
4 all parties in this case agree, but Staff agrees that  
5 legally the burden is on other parties in this case. But as  
6 has been pointed out, indeed the Commission's Order  
7 establishing this case is a case of first impression. The  
8 whole situation is awkward with this burden of proof.

9                   Frankly, Southwestern Bell did not establish  
10 in their direct testimony the presence of effective  
11 competition in the Fenton exchange, and I'm left with no --  
12 really nothing supplied by your firm to go on.

13          Q.       Okay. And I guess our view is that even under  
14 your criteria it appears that there's many exchanges in the  
15 optional areas of the MCA where effective competition has  
16 been demonstrated, and it may be at the point in time that  
17 this came to the attention of Staff.

18                   Is it a fair statement to say that if you were  
19 to go back and reflect on some of the information in  
20 Mr. Hughes' surrebuttal testimony, that Staff may come to  
21 the conclusion that there is sufficient competition to be  
22 judged to be effective pursuant to the terms of the statute  
23 as outlined in 386.020?

24          A.       It is more than fair to say that upon further  
25 review, more detailed review, in consultation with counsel

1 and other Staff members, we very well -- if given more time,  
2 we very well indeed may conclude that effective competition  
3 could possibly exist in optional MCA areas.

4 Q. Okay.

5 A. Given the new data that was presented, or  
6 given the additional data that was presented in Southwestern  
7 Bell's surrebuttal testimony, specifically Mr. Hughes'  
8 Schedule 5.

9 Q. And that would be true for the Kansas City MCA  
10 as well?

11 A. New data's constantly coming in. Yes, that  
12 will probably be true for Kansas City as well.

13 Q. And the Springfield MCA, is it also a fair  
14 statement that if you were to reflect further on the data  
15 that's presented in Mr. Hughes' Schedule 5-1HC, that you  
16 might find that the Springfield market for business services  
17 is also subject to effective competition?

18 A. Maybe, although Mr. Tebeau's fiber maps do not  
19 reveal nearly the presence of alternative facilities in  
20 Springfield as they do in St. Louis and Kansas City, but  
21 maybe a review of the data would indicate that effective  
22 competition might exist in Springfield as well.

23 Q. There are some fiber facilities that are in  
24 the Springfield area, are there not?

25 A. Yes. There's little or no doubt about that.

1           Q.       Last area, residential competition. Staff  
2 recommends that effective competition be found by the  
3 Commission in the Harvester and St. Charles exchanges, and  
4 what I'd like you to do, if you would, is to run through the  
5 same criteria of 386.020.13 and explain why in your view  
6 that effective competition has been shown.

7           A.       The primary difference would fall under Item E  
8 of effective competition, statutory definition, any other  
9 factors deemed relevant by the Commission. The Staff deemed  
10 the presence of cable telephony to be extremely relevant,  
11 what we consider -- and I understand we're no longer  
12 in-camera, but we consider the manner in which those  
13 alternative cable telephony facilities are being utilized,  
14 we consider that to be -- frankly, we don't know how  
15 profitable it is, but from the standpoint of consumers, we  
16 think it's an effective delivery mechanism.

17                   So the short answer to your question would be  
18 Item E, those alternative facilities. The Commission needs  
19 to take that into consideration.

20          Q.       Okay. Is that the -- that's the primary  
21 difference, I take it, between why you recommended it in  
22 Harvester and St. Charles and why you didn't recommend  
23 competitive classification in other exchanges for  
24 residential services; is that a fair statement?

25          A.       That's a fair statement. I would quickly add,



1 just as with the business services and the fiber in  
2 St. Louis, it's not only the presence of those facilities  
3 but how they're being used and the quantity of  
4 subscribership also has an impact in the residential markets  
5 in Harvester and St. Charles.

6 Q. And in your view is cable telephony, it's a  
7 telecommunications service that is regulated by the  
8 Commission?

9 A. Yes, I have no doubt about that.

10 MR. LANE: That's all I have. Thank you.

11 THE WITNESS: Thank you.

12 JUDGE DIPPELL: Is there cross-examination by  
13 Public Counsel?

14 MR. DANDINO: Yes, your Honor. Thank you,  
15 your Honor.

16 CROSS-EXAMINATION BY MR. DANDINO:

17 Q. Good afternoon, Mr. Voight.

18 A. Good afternoon, counselor.

19 Q. It seems from the conversation you've had with  
20 Mr. Lane that it's very difficult to find some objective  
21 guidelines that, as Commissioner Gaw was hoping, that we  
22 could determine -- to determine what effective competition  
23 is, correct?

24 A. Yes. As I've stated in my testimony, this  
25 case is chock full and replete with economic theory. I

1 believe economics fundamentally is a social science.

2 There's no mathematical formula to rely upon to determine  
3 the extent of effective competition.

4           Q.       In the Harvester and St. Charles residential  
5 exchanges, I don't recall seeing any description of what  
6 those exchanges are like or anything. Do you have any  
7 knowledge of what those exchanges, what do they look like in  
8 terms of topography, demographics, land use?

9           A.       Well, I have a general awareness, but I  
10 believe at one time a few years ago St. Charles -- although  
11 it's an exchange, St. Charles County was the fastest growing  
12 county. I think Christian County now plays into it, but at  
13 one time I think St. Charles was not only the fastest  
14 growing county in Missouri but possibly in the nation as  
15 well. It's very heavily populated.

16                   Topography, I think those exchanges are  
17 probably intersected by the Missouri River. It's probably  
18 not a whole lot different than what we have here locally.

19           Q.       Do you have any information one way or the  
20 other whether those exchanges were a test market for the  
21 cable telephone provider?

22           A.       I believe I can answer that without going  
23 in-camera. It's a matter of public record. I believe AT&T's  
24 local exchange tariff still has a page or a cancel page  
25 where they did a market trial with their cable telephony

1 service. I might add, Mr. Dandino, similar trials were  
2 permitted by the Commission, I believe, in the Rolla,  
3 Missouri exchange and perhaps some others.

4 Q. You think basing decisions on residential --  
5 strike that.

6 I understand one of the key factors in basing  
7 your business -- or your recommendation that the St. Louis  
8 and Kansas City principal zones for business services be  
9 classified as competitive was based on your fiberoptic  
10 proximity analysis; is that correct?

11 A. That's correct.

12 Q. And how -- is that the -- I guess the  
13 proximity and the availability of fiberoptics, is that more  
14 of a forward-looking ability to provide service?

15 A. To the extent that the facilities are in place  
16 and are not currently being utilized to provide service to a  
17 given neighborhood, let's say, yeah, that would be -- that's  
18 one aspect. I would characterize it as forward-looking.  
19 But to the extent that that same fiber system may be  
20 currently being utilized to connect to another neighborhood,  
21 then it is not forward-looking.

22 Mr. Tebeau's testimony that I've referenced  
23 and the maps that I've adopted, the purpose of that was to  
24 demonstrate at that time at least how close the proximity of  
25 these facilities to business and residential customers,

1 specifically how many came within, for example, 1,000 feet,  
2 how many household were within 1,000 feet of that fiber  
3 facility.

4           The premise, being I suppose, that if you're  
5 only 1,000 feet away, it's -- the increment to expand that  
6 additional thousand feet is really not that great.

7           Q.       Was there any analysis either by you or  
8 Mr. Tebeau or whatever you relied upon that evaluated the  
9 percentage of dark fiber versus fiber in active use?

10          A.       No, I did not do any analysis, and as I recall  
11 Mr. Tebeau's schedule that I'm relying on likewise did not  
12 analyze, for example, there may be ten strands of fiber, six  
13 of them lit, four of them dark. I don't recall his analysis  
14 going to that extent either.

15          Q.       Now, I understand that Staff's position is  
16 resale is not a viable alternative --

17          A.       That's correct.

18          Q.       -- for competition, for effective competition?

19          A.       That's correct.

20          Q.       Do you look at it in terms of it being just a  
21 factor to be considered rather than as a -- to be given the  
22 same weight as a facilities-based?

23          A.       I think it's a factor that should be looked  
24 at. Staff doesn't put a whole lot of weight in that at all.  
25 With all respect, I very much would disagree with Dr. Aron

1 as well as Mr. Hughes.

2                   If I understand Dr. Aron's testimony, she  
3 believes that effective competition can exist in an exchange  
4 even with no competition, not to mention resellers, simply  
5 because the price of basic local service is so low that it's  
6 already effective, and I can't accept that. Resale should  
7 be looked at, but it's not viable.

8           Q.       When you considered your recommendation for  
9 business competition in the St. Louis and Kansas City  
10 principal zones, did you look at MCA as more local service  
11 or as a toll service?

12          A.       We tried to look at it the way I believe  
13 historically the Commission and others have always looked at  
14 it. Back in 1992-'93, I don't believe the Commission used  
15 the term hybrid, but I think I would not object to that.

16                   What is meant by that is, to be certain it's  
17 an interexchange service, it goes from one exchange to the  
18 other, from St. Louis to Manchester for example.  
19 Historically we think of those types of services as long  
20 distance or toll services. In the case of MCA, as with  
21 other services, that is not the case.

22                   So to the extent that it goes from one  
23 exchange to the other, and especially in the early days of  
24 MCA when you often needed to dial, precede your digits with  
25 a one, one plus the number, in that regard it could be

1 viewed as a toll service or a long distance service.

2 However, switched access rates do not apply. So that  
3 disqualifies it from the toll category.

4               So we tried to look at it as the, if you'll  
5 permit me, the hybrid that it is. It's more -- it's  
6 characterized more as local than as toll.

7           Q.     Do you think it's essential for a CLEC to be  
8 able to offer MCA service in order to compete for business  
9 local service in the metropolitan areas?

10          A.     Yes.

11          Q.     And on the same basis as Southwestern Bell  
12 provides their MCA service?

13          A.     Yes.

14          Q.     Do you consider local plus as more of a toll  
15 service or as an optional service to expand the local  
16 calling scope?

17          A.     I consider it as -- well, it's a hybrid,  
18 Mr. Dandino. Access rates do apply on local plus. It has  
19 those toll aspects. On the other hand, I agree with you,  
20 it's an expanded local calling scope that extends LATA-wide,  
21 has characteristics of both local and toll. The Commission  
22 in approving that characterized it as a hybrid.

23          Q.     Do you think it's important for a CLEC to be  
24 able to provide a local plus as part of their service in  
25 order to effectively compete with Southwestern Bell for

1 business local service in the St. Louis and Kansas City  
2 areas?

3           A.       I think it's important that the CLECs be able  
4 to provide that; not only provide it, but to be able to  
5 resell it on a facilities basis.

6           Q.       Mr. Voight, do you see the ability of the PSC  
7 to determine the wholesale discount for the resale of  
8 Southwestern Bell services as an effective way to control  
9 consumer prices?

10          A.       No, I don't believe I see it that way. I may  
11 have misunderstood your question. I think the answer is no.

12          Q.       Well, let's be sure here. What I'm trying to  
13 say is, if the Commission -- it's been submitted to you or  
14 been submitted by Southwestern Bell that by this  
15 Commission's control of the resale prices and the UNE  
16 prices, they effectively control, have a price discipline on  
17 Southwestern Bell's prices as well as the CLECs. Do you  
18 agree with that?

19          A.       No. No. Southwestern Bell's -- no, I don't  
20 agree with that. If granted effective -- if granted fully  
21 competitive status, Southwestern Bell could certainly raise  
22 its prices irrespective of the wholesale discount, I  
23 believe.

24          Q.       Wholesale discount is only one factor or the  
25 cost of service in a competitive market is only one factor

1 to consider in pricing; is that correct?

2 A. Yes, that is only one factor.

3 Q. If this Commission grants competitive status  
4 to Southwestern Bell, how easy do you feel it would be for  
5 the Commission to reimpose price cap regulation?

6 A. Again, this is uncharted ground, along with  
7 a lot of aspects of this case. I have no way of knowing,  
8 but my instincts tell me that that would be a cumbersome  
9 process.

10 Q. You think that's a -- or reimposing price cap  
11 regulation would be an efficient and effective means to  
12 control Southwestern Bell's consumer prices?

13 A. I think it might possibly be effective. I'm  
14 not sure how efficient it would be. I think it would be a  
15 cumbersome process and a strong likelihood that for those  
16 desiring to control Southwestern Bell's retail prices, there  
17 would be a strong likelihood in my view of disappointment.

18 Q. The process you described as cumbersome.  
19 Would it also be -- is there possibly going to be a time lag  
20 involved there to reimpose price cap regulation?

21 A. Perhaps I'm not understanding the question.  
22 You mean once the investigation is launched, would there be  
23 a time lag --

24 Q. Yes.

25 A. -- in which to conclude the proceedings?



1 Q. Right, to conclude the proceedings and for the  
2 Commission to make a final order.

3 A. I'm not aware that there would be any time  
4 constraints. There may be. I'm just not aware of them.

5 Q. What I was asking more than time constraints  
6 is from the time this Commission starts investigation to  
7 reimpose price cap regulation and until they issue a final  
8 Order, there is going to be some type of a time lag,  
9 correct?

10 A. Oh, without question, and I think one should  
11 keep in mind, it bears noting that ostensibly the reason  
12 such an investigation would be launched is because of the  
13 Commission either on its own motion or the motion of some  
14 party would be attempting to demonstrate some type of market  
15 failure.

16 To the extent that an investigation or a  
17 hearing might go on for six or nine months or even longer,  
18 you would have to keep in mind the potential that that  
19 market failure could be occurring all the while.

20 Q. And during that time, Southwestern Bell would  
21 continue to have the competitive classification?

22 A. Yes, sir.

23 MR. DANDINO: That's all I have, your Honor.  
24 Thank you, sir.

25 THE WITNESS: You're welcome.

1 JUDGE DIPPELL: Is there cross-examination by  
2 AT&T?

3 MR. ZARLING: Yes, your Honor.

4 CROSS-EXAMINATION BY MR. ZARLING:

5 Q. Good afternoon, Mr. Voight.

6 A. Good afternoon, Mr. Zarling.

7 Q. Would you turn to page 66 of your rebuttal  
8 testimony, please.

9 A. I'm there.

10 Q. That reference to Staff's position  
11 recommending competitive classification for MTS or intraLATA  
12 toll, you state at lines 6 to 8 that Staff further believes  
13 safeguards are statutorily in place to prevent Southwestern  
14 Bell from unjustly pricing MTS below cost. Do you see where  
15 you said that?

16 A. Yes, I see where I said that.

17 Q. I see you flipping toward the statute already.  
18 Can you tell me which statutory provision you were -- or  
19 what safeguards you're referring to there?

20 A. As a noncompetitive company, Staff's position,  
21 it is our opinion noncompetitive companies, even though they  
22 may be providing legally classified competitive services,  
23 they are still not permitted to price those competitive  
24 services below cost, which in the case -- if I may somewhat  
25 anticipate your question, Mr. Zarling, in the case of

1 message telecommunications service, in our opinion that  
2 entails an imputation standard. And I don't -- I can't  
3 recall the specific section of the statute. It's 392. I've  
4 forgotten.

5 Q. Is it 400.5?

6 A. Yes, that sounds familiar.

7 Q. You did anticipate my question about what  
8 Staff would include as costs.

9 So is it your position and your understanding  
10 of the statute that so long as Southwestern Bell as a  
11 company is classified as a noncompetitive company, that the  
12 provisions of 392.400.5 would continue to apply to all of  
13 Southwestern Bell's services?

14 A. Yes. And I would further add that what I  
15 would expect to happen is to have a hearing, evidence to be  
16 presented to the Commission, and then it would be the  
17 Commission's prerogative to determine whether or not such an  
18 offering was consistent with the public interest.

19 In other words, I'm saying similar to the  
20 geographic deaveraging questions that were asked yesterday,  
21 they're not entirely prohibited by statute, but rather the  
22 statutes contemplate a hearing and the Commission making a  
23 determination as to whether or not those sorts of things are  
24 consistent with promotion of full and fair competition.

25 Q. Would Staff take the view that it would be

1 appropriate and in the public interest to suspend a tariff  
2 or otherwise examine whether such a tariff is consistent  
3 with the promotion of full and fair competition and the  
4 public interest if it appears that on the face of an  
5 application the service is being offered below cost?

6           A.       The short answer is yes, and I want to be  
7 clear that historically Staff would give due deference to  
8 history here. Historically, we've looked at, for example,  
9 message telecommunications service as an entire basket of  
10 services, though revenues from that entire basket have to be  
11 equal to or greater than the cost plus imputation.

12                   Historically that has been the standard,  
13 rather than picking out one particular type of MTS service  
14 and saying this service does not -- is not profitable.

15                   So it could very well be that a specific  
16 tariff could be filed that may outwardly appear to be priced  
17 below cost. We may not file. We may not recommend that  
18 that be suspended. It may not rise to that level. That's  
19 the best answer I can give you.

20           Q.       So Staff may support the idea of putting the  
21 tariff into place, having a hearing and then determining  
22 whether it needs to be pulled down in some circumstances?

23           A.       Yeah. It's all a red flag, frankly, not just  
24 for Southwestern Bell, but with any incumbent. Similar  
25 allegations or charges have been made not only by Staff but

1 by other parties against Sprint and Verizon, for example.

2 Q. Now, is it also your understanding of the  
3 statute that, in the event that all of Southwestern Bell's  
4 services were to be classified as competitive, then  
5 Southwestern Bell as a company could be classified as a  
6 competitive company?

7 A. Was your question could be or --

8 Q. Is that your understanding of the statute,  
9 that that would happen if Southwestern Bell -- of its  
10 services were classified as competitive, then Southwestern  
11 Bell would be a competitive company?

12 A. I'm sorry. I don't know the answer to that  
13 question.

14 Q. And you saw the statute there in front of you,  
15 correct? Could you refer to Section 392.361.3?

16 A. 392.361?

17 Q. Yes.

18 A. For the record, I mean, that statute says the  
19 Commission may classify a telecom company as a competitive  
20 telecom company only upon a finding that all of its services  
21 are competitive.

22 Q. So the Commission --

23 A. I'm not sure if we have the chicken or the egg  
24 first here.

25 Q. So the Commission may not be required to, in

1 the event that Southwestern Bell -- that all of Southwestern  
2 Bell's services are competitive, they may not be required to  
3 classify Southwestern Bell as a competitive company. I  
4 think we agree there; is that right?

5 A. That's my reading here. They may classify it  
6 as such or they may not.

7 Q. But it's a necessary precondition that all of  
8 Southwestern Bell's services be classified as competitive  
9 before Southwestern Bell could be a competitive company?

10 A. Yes.

11 Q. What would be your expectation of Southwestern  
12 Bell if all of its services were classified as competitive  
13 with regard to whether they would seek competitive  
14 classification as a company?

15 A. I would expect them to quickly follow up with  
16 the company status.

17 Q. And referring back to 392.400.5, is it your  
18 understanding of that part of the statute that the  
19 protections there against pricing below cost would not be  
20 applicable to Southwestern Bell if they were classified as a  
21 competitive company?

22 A. That's my understanding, yes.

23 Q. Now, I know that Staff's position is that  
24 resale is not a viable form of competition. I want to see  
25 if you -- strike that.

1                   Are you aware of the 8th Circuit's decision  
2 that the Supreme Court let stand changing the methodology  
3 for the calculation of a wholesale discount for resale?

4           A.       I don't know that I'm -- you may have to  
5 refresh my memory, Mr. Zarling. I don't know.

6           Q.       Okay.

7           A.       My understanding, it's an avoidable -- that  
8 which is discounted are those costs that are avoided by not  
9 having to sell and market the service.

10          Q.       Okay. Is it your understanding that what the  
11 8th Circuit determined was that rather than -- rather than  
12 the FCC's initial rule that said avoided cost means the  
13 costs that should be avoided when Southwestern Bell no  
14 longer provides the service or the RBOC no longer provides  
15 the service, the 8th Circuit determined that what the  
16 Federal Telecom Act means is it's only those costs that are  
17 actually avoided which produces a lower wholesale discount?

18          A.       Forgive me. I'm not that familiar with the  
19 finer points of those arguments.

20          Q.       Okay. If the manner of calculation for a  
21 resale discount were to only include -- to only exclude the  
22 costs that were actually avoided, would you expect that the  
23 wholesale discount would be less than the costs that the  
24 Commission would calculate should be avoided?

25          A.       Yes.

1 Q. And do you recall from TO -- I guess it's  
2 TO-97-40, the first AT&T/Southwestern Bell arbitration, the  
3 wholesale discount that Southwestern Bell was proposing in  
4 that case?

5 A. My recollection is 13 percent, approximately.

6 Q. That's my recollection, too. Would you have  
7 any greater concerns about resale being a viable form of  
8 competition if your expectation was that at some point in  
9 the future this new standard or different standard for  
10 calculating the wholesale discount would produce an even  
11 lower discount than the 19 percent that is in the M2A today?

12 A. I would be extremely concerned about that. I  
13 would note AT&T and MCI and Sprint don't engage in -- don't  
14 have customers via pure resale. Many other people have  
15 elected not to provide service that way. I believe there's  
16 a substantial body of opinion in testimony if not evidence  
17 that it's not really all that viable a way of doing  
18 business.

19 I respect, though, that you may be able to  
20 bundle long distance and things and make a profit, but a lot  
21 of -- a lot of people view -- AT&T called -- C. Michael  
22 Armstrong called pure resale a fool's errand. A lot of  
23 strong statements to that effect.

24 Q. So would you expect resale to be even more  
25 difficult entry vehicle or means of competition if the



1 wholesale discount was even less than what it is today?

2           A.       Yes.

3           Q.       Is it your understanding that Southwestern  
4 Bell put the 19, I think it's .6 percent in the M2A on a  
5 voluntary basis, that that was their -- they proposed that  
6 on a voluntary basis?

7           A.       They submitted the entire M2A on a voluntary  
8 basis.

9           Q.       Does it trouble you that Southwestern Bell has  
10 not elected to extend the term of the M2A commensurate with  
11 its subsequent delay in refiling its application for 271  
12 relief at the FCC?

13                   MR. LANE: I'm going to object to that, your  
14 Honor. It assumes facts not in evidence.

15                   MR. ZARLING: Which facts?

16                   MR. LANE: It's contrary to --

17                   JUDGE DIPPELL: I'm sorry. Mr. Lane, can you  
18 speak up just a little?

19                   MR. LANE: It assumes facts not in evidence  
20 and it's contrary to the facts.

21                   JUDGE DIPPELL: Which facts is it assuming?

22                   MR. LANE: That are reflected in the  
23 Commission's Order in TO-99-227 about the commitment being  
24 made with regard to the extension of the M2A.

25                   JUDGE DIPPELL: Okay. I'll sustain that

1 objection. You can ask him questions regarding the 271  
2 information that was in his testimony. I don't believe  
3 there was any information about the delay or lack of delay  
4 in the M2A agreement in the record.

5 MR. ZARLING: Okay, your Honor.

6 BY MR. ZARLING:

7 Q. There's been extension discussion about the  
8 M2A by numerous parties, so let me ask this, Mr. Voight.  
9 Are you aware that Southwestern Bell refiled its application  
10 for approval of 271 -- application to obtain 271 approval at  
11 the FCC?

12 A. Yes.

13 Q. And are you aware that the term length of the  
14 M2A is contingent upon whether Southwestern Bell gets 271  
15 approval at the FCC?

16 A. That's my understanding, yes.

17 Q. As an initial matter, do you have any concerns  
18 about whether the M2A may not be in effect, I believe it's  
19 beyond March of 2002, if Southwestern Bell's 271 application  
20 is not approved by the FCC?

21 A. Yes, I have concerns about that, as I've  
22 expressed on page 63 of my rebuttal testimony on Footnote 7  
23 where I state, Moreover, because the M2A has not been  
24 approved by the FCC, it is set to expire in March of 2002 as  
25 expressed by MCI/WorldCom in its July 27, 2001 supplement to

1 motion to reopen case in Case No. TO-99-227. Due to delays  
2 associated with Southwestern Bell's long distance  
3 application, the Staff would be pleased if Southwestern Bell  
4 extended the M2A expiration date past March, 2001.

5                   It's my understanding, counselor, that there  
6 are negotiations along those lines currently in progress.

7           Q.       If Southwestern Bell is able under a different  
8 standard for establishing a wholesale discount to lower the  
9 wholesale discount in a subsequent version of the M2A at  
10 whatever point it might expire, does that give you concerns  
11 about the use of the M2A as -- and in particular in  
12 connection with resale, as a means of entry and a means of  
13 providing competition in Missouri?

14          A.       Yes. If that discount is lowered, it would  
15 appear that as a means of entry it would be even less viable  
16 than what it currently appears to be.

17          Q.       Mr. Voight, I know you said this was a case of  
18 first impressions, and I understand being some uncertainty  
19 about what position to take, but can you explain to me why  
20 Staff believes that the burden is on the other parties in  
21 this case to prove -- what is it you think that needs to be  
22 proven?

23          A.       Yes. Thank you for asking. And I've  
24 forgotten. I think it might be 392.245. I don't recall the  
25 exact statute.

1 Q. 245.5, I believe --

2 A. .5. Thank you.

3 Q. -- is the section we're laboring under here.

4 A. If I may go through the first two sentences, I  
5 will attempt to answer your question.

6 Q. Sure.

7 JUDGE DIPPELL: Let me interrupt just a  
8 moment. I hate to interrupt in the middle of a question,  
9 but our conversations about this particular section with  
10 other witnesses have ended up being fairly lengthy. So  
11 rather than get started and have to stop, I think we should  
12 go ahead and take about a 15-minute break, and then we'll  
13 come back and resume with that question. So return at ten  
14 'til three.

15 We can go off the record.

16 (A BREAK WAS TAKEN.)

17 (EXHIBIT NOS. 32 AND 33 WERE MARKED FOR  
18 IDENTIFICATION BY THE REPORTER.)

19 JUDGE DIPPELL: Let's go ahead and go back on  
20 the record.

21 Mr. Zarling, I interrupted your question.  
22 Mr. Voight, do you remember the question or do you need that  
23 read back to you?

24 THE WITNESS: I believe I remember, Judge.

25 MR. ZARLING: Your Honor, I was going to

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1 withdraw the question.

2 JUDGE DIPPELL: Well, that's acceptable also.

3 BY MR. ZARLING:

4 Q. Sorry to occupy your mind unnecessarily  
5 perhaps during the break, Mr. Voight.

6 I want to return to Staff's recommendation on  
7 toll on MTS, and you're aware, of course, that some parties,  
8 I think Public Counsel, AT&T, have argued that the  
9 Commission's transitionally competitive determination in  
10 93-116 does not have the effect that Staff believes it does,  
11 and so I'd like you to assume hypothetically that it  
12 doesn't.

13 Okay. Absent the effect of the transitionally  
14 competitive determination, would your position on toll be  
15 any different today?

16 A. No.

17 Q. Okay. And what would -- what would your basis  
18 be for competitive classification, then?

19 A. Well, Mr. Zarling, as I've outlined in my  
20 testimony, the -- whether or not effective competition  
21 exists in an exchange, the Staff's viewpoint, we tend to  
22 analyze that from the standpoint of the end user, whether or  
23 not they have viable choices and so forth.

24 We believe that with a minimum of 75 carriers  
25 to choose from in each exchange in Southwestern Bell's area,

1 that that indeed represents viable choices, especially light  
2 of the facilities-based providers providing service in each  
3 of those exchanges, AT&T, WorldCom and Sprint, the  
4 preponderance of resellers. We believe the end users have  
5 viable choices in those exchanges.

6                   Furthermore, we believe there's statutory  
7 safeguards that prevent Southwestern Bell and similar  
8 incumbents from pricing the totality of that service below  
9 cost.

10           Q.       Okay. And that's one of the bases of your  
11 opposing the resale -- excuse me -- the competitive  
12 classification of local plus, if I'm correct, is that it is  
13 priced below cost and Southwestern Bell has not made it  
14 available for resale pursuant to Commission order? Is that  
15 a fair characterization of your rationale or some of your  
16 rationale for that not being made available, not classified  
17 as competitive?

18           A.       The second part is about not being available  
19 for resale to facilities-based providers. The first part  
20 about references to below-cost pricing, thinking back to the  
21 local plus hearing, my recollection is, and I believe it may  
22 have been the testimony of Mr. Hughes, that there has been  
23 no cost study put forth before this Commission with regards  
24 to local plus and, therefore, we have no evidence as to  
25 whether or not that service is priced below cost, not to

1 mention that we have no evidence that, when taken with the  
2 entire basket of MTS services, local plus is enough to dip  
3 that entire basket below cost.

4               Certainly it represents a red flag for all the  
5 reasons that AT&T and others have pointed out. So our  
6 reason for the local plus is because in our view -- in our  
7 view, Mr. Zarling, for Southwestern Bell to be in full  
8 compliance with the Commission's Order to make that service  
9 available for resale to facilities-based interexchange  
10 carriers and competitive local exchange carriers,  
11 Southwestern Bell should have or would have had to have  
12 filed a tariff making it available, putting it in their  
13 access tariff, or incorporating it in perhaps to their M2A  
14 agreement, or in some manner establishing a statement of  
15 generally acceptable terms and conditions. They need to  
16 make local plus available for resale to facilities-based  
17 IXCs and CLECs.

18               They've not done so. Their position is, as I  
19 understand it, they want to negotiate that matter. So  
20 that's not acceptable to the Staff. That's why we don't  
21 agree that it should be made effectively or fully  
22 competitive.

23           Q.       Isn't it true that part of the rationale for  
24 requiring it to be made available for resale is because of  
25 the fact that at least it would appear to be provided below

1 cost, that it's a cost that CLECs and IXC's can -- it's  
2 priced in such a way that CLECs and IXC's can't provide it at  
3 that type of rate that Southwestern Bell does given access  
4 costs?

5 A. That's correct.

6 Q. And so wouldn't similar concerns exist for  
7 MTS-type services and individual discrete service like local  
8 plus if it's priced in such a way that an IXC or a CLEC  
9 can't compete with it if it's priced in such a way that the  
10 rate doesn't recover its costs?

11 A. Yes. Provided there was evidence of that,  
12 yes, that would be a concern.

13 Q. And I understand the Staff's historical  
14 position. Are you aware of any other state commissions or  
15 regulatory bodies that have applied imputation tests on a  
16 service-by-service basis rather than on a service class or  
17 service category basis?

18 A. Well, the Staff's position on that -- and I'm  
19 not necessarily trying to represent to you that on a  
20 going-forward bases that would indeed be our position. I  
21 don't know the answer to that. A lot of things have changed  
22 since the days that I'm talking about, but I would like to  
23 point out that that was not the Staff's position  
24 historically. That was the Commission's position.

25 The answer to your question is no, I'm not



1 aware of any other state that looks at the entire basket  
2 rather than a service-specific basis.

3 Q. Can you envision any circumstances under which  
4 it would be appropriate to do such a class-- excuse me --  
5 such an imputation test on a service-by-service basis if, in  
6 fact, services are now going to be perhaps considered or  
7 classified as competitive on a service-by-service basis?

8 A. Yes, I can envision scenarios where it may  
9 very well be appropriate to look at it on a  
10 service-by-service basis, such as local plus or 1+ Saver  
11 Direct, rather than the entire basket of MTS services.

12 MR. ZARLING: That's all I have. Thank you,  
13 Mr. Voight.

14 THE WITNESS: You're welcome.

15 JUDGE DIPPELL: Thank you, Mr. Zarling.  
16 Is there cross-examination by WorldCom?

17 MR. LUMLEY: No questions, your Honor.

18 JUDGE DIPPELL: Sprint?

19 MS. HENDRICKS: No questions, your Honor.

20 JUDGE DIPPELL: McLeod? Mr. Kruse had to  
21 depart. McLeod is not present.

22 Are there questions from the Bench,  
23 Commissioner Murray?

24 COMMISSIONER MURRAY: Thank you, Judge.

25 QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Good afternoon, Mr. Voight.

2 A. Good afternoon, Commissioner.

3 Q. I would like to ask you a little bit about the  
4 seven service categories that you do not support price  
5 deregulation for, and I'd like to go to the second one on  
6 business telephone service, and there on page 5 of your  
7 rebuttal testimony you indicate that in all of the exchanges  
8 except St. Louis and Kansas City SWBT relies too much on  
9 resale to demonstrate effective competition.

10 And when I read it, I thought, well -- in  
11 fact, I'd written in the margin, Is that the only reason?  
12 And then I heard you give Mr. Lane some other reasons that  
13 you felt that business telephone service should not be  
14 deregulated.

15 Is the fact that you set out resale here when  
16 you were summarizing, you didn't set out any other reason,  
17 does that mean that reliance on resale in those other  
18 exchanges is Staff's primary reason for opposing  
19 deregulation in those exchanges?

20 A. I think when I wrote the testimony what I was  
21 trying to look for was reasons to support competitive  
22 classification, rather than reasons to not support it, and  
23 you're correct.

24 In summarizing all of that, it appeared to the  
25 Staff that, from Southwestern Bell's direct testimony, that

1 when it came to areas such as Boonville, Haiti, Meta,  
2 Missouri and some of these more rural areas in particular,  
3 there was virtually no what we considered to be real  
4 credible evidence of competition in those areas.

5               So I don't think -- rather than Southwestern  
6 Bell relying so much on resale in those types of areas, to  
7 us it was we began to notice an absence of facilities-based  
8 providers and that sort of thing in those areas.

9           Q.       And you indicated that in St. Louis and Kansas  
10 City that cable telephony is a significant factor; is that  
11 correct?

12          A.       Yes.   Actually, I think what we've said is  
13 in -- I don't believe we've applied that to Kansas City.  
14 We've said that about St. Louis, that in particular the  
15 Harvester and St. Charles areas where there's a cable TV  
16 provider that uses those cable TV facilities to provide not  
17 only advanced-type telephone services but basic local  
18 telephone services in particular to the residential market.

19               The data, I believe, in Ms. Meisenheimer's  
20 schedule would tend to -- her highly confidential schedule,  
21 would tend to point out the success of that.

22          Q.       Okay.   Now, the fourth area, operator  
23 services, and the fifth, directory assistance services,  
24 those are both tied, in your opinion, too closely to basic  
25 local service to deregulate those without also deregulating

1 basic local; is that correct?

2 A. Yes, that's my testimony.

3 Q. So that if we were to decide that basic local  
4 were to be granted competitive status, that those other  
5 services that are tied to basic local might logically be  
6 classified as competitive also?

7 A. Yes, that's correct, Commissioner Murray. And  
8 I think my testimony indicates that happening in the -- for  
9 residential service in the Harvester and St. Charles  
10 exchanges. For example, we've said that basic local service  
11 in those two exchanges should receive competitive  
12 classification, that there is viable effective competition  
13 there, and I pointed out that, along with that basic local  
14 service, that the what are called vertical services should  
15 likewise receive the competitive classification, that being  
16 call waiting, caller ID and all those sorts of things.

17 And I would like to state now that, if my  
18 testimony did not say so, then the same would extend to  
19 operator services and directory assistance service.

20 Q. Would that also be true of optional  
21 metropolitan calling area service?

22 A. Yes, it would.

23 Q. And in terms of local plus, which you list as  
24 your sixth item that you're opposed to deregulation of, you  
25 state there on line 12 of page 6 that Staff is concerned

1 that SWBT may still not be making this service available for  
2 resale as ordered by the Commission.

3                   Do you have any evidence that anyone has  
4 applied to resell local plus and been denied that  
5 opportunity?

6           A.       No.

7           Q.       And your next statement, There continues to be  
8 some concern by the Staff that local plus is priced below  
9 the cost of providing the service. Isn't the fact that it  
10 is made available for resale the factor that offsets having  
11 to price it at least at cost?

12          A.       Yes, that in the Staff's view was certainly  
13 the Commission's intentions. I believe that's very clear.  
14 The problem is we don't believe Southwestern Bell is doing  
15 as the Commission intended.

16          Q.       And yet you say you don't have any evidence  
17 that anyone has asked to resell; is that correct?

18          A.       That's correct.

19          Q.       Let me stop you there, because then I want to  
20 follow up. If no one has asked, how can Southwestern Bell  
21 not be doing what it was ordered to do by the Commission?

22          A.       Because it takes, as I -- I believe it will  
23 take a tariff filing to make -- I believe all their services  
24 have be made available in writing some way or another. They  
25 haven't done that. They haven't changed their access tariff

1 offering if for resale to facilities-based providers. They  
2 haven't incorporate it into their M2A. They haven't offered  
3 a statement of generally acceptable terms and conditions  
4 making that available for resale to facilities-based  
5 providers. Indeed, their position is, as I understand it,  
6 it's technically impossible to do so. We disagree with  
7 that.

8 Q. So your position is that they should have a  
9 tariff on file and they should have amended the M2A?

10 Q. Well, they need to make it available in  
11 writing some way. I'm not exactly certain what mechanism  
12 should be utilized.

13 Q. Okay. You mentioned fiberoptic facilities in  
14 the Springfield area. Can you tell me how many providers of  
15 the fiberoptic -- have fiberoptic facilities? Do you know?

16 A. Actually, I believe it was Mr. Lane that  
17 mentioned the Springfield area. My testimony focuses on  
18 St. Louis and Kansas City. But from the same Southwestern  
19 Bell witness testimony in the 271 case, the analysis at that  
20 time, Commissioner Murray -- it's highly confidential,  
21 Judge.

22 Q. That's all right. I don't need that answer.  
23 But your testimony is that there are fiberoptic facilities  
24 in all three of the metropolitan areas --

25 A. Yes.

1 Q. -- by at least some providers?

2 A. Yes. And my testimony also is that especially  
3 in St. Louis and Kansas City, in the year 2001, there's a  
4 preponderance of fiberoptic facilities available in  
5 St. Louis and Kansas City in particular.

6 Q. On page 14 of your testimony, at line 5, the  
7 question is, Why is Staff unwilling to accept the mere  
8 presence of competition as sufficient to grant SWBT complete  
9 pricing flexibility? Do you see that?

10 A. Yes.

11 Q. And then your answer goes on to speak about  
12 SWBT relying heavily on resellers and other alternative  
13 means.

14 If the Commission were to agree with SWBT that  
15 resellers do help demonstrate effective competition, is it  
16 even necessary then to consider other alternative providers  
17 to find effective competition?

18 A. Well, I think perhaps even the Staff agrees  
19 with Southwestern Bell that resale helps effective  
20 competition, but our position is that there are instances  
21 where Southwestern Bell appears to rely on that almost  
22 exclusively, if not predominantly.

23 And I think your question, I mean, to the  
24 extent that you agree with Southwestern Bell on that, then  
25 that would be sufficient. That would be a sufficient

1 finding.

2 Q. Okay. If those areas -- let's see how to  
3 phrase this. I'll skip that for a minute.

4 On page 18, at lines 12 through 14, you state,  
5 Because of the nature of individual services, it would be  
6 entirely appropriate for the Commission to give greater  
7 weight to certain criteria when examining, say, for example,  
8 basic local residential services compared to special access  
9 service. Do you see that?

10 A. Yes.

11 Q. Are there some services for which you or the  
12 Staff believes that resale should be given greater weight?

13 A. Not that I can think of, Commissioner. For  
14 example, the two -- it goes back to one of my responses to  
15 Mr. Lane, the two examples that I've provided here,  
16 residential service as compared to special access service.  
17 There's no such thing, I don't believe, as resale of special  
18 access service. That is not, I don't believe, a UNE.

19 So it's kind of hard for me to answer your  
20 question, giving greater weight to resale.

21 Q. But I'm talking about in terms of any service.

22 A. Not that I can think of.

23 Q. On page 21, at line 6, you speak of the intent  
24 of the legislature, and your sentence there says, It is  
25 clear that the legislature intended the presence of



1 regulated competitors to be the catalyst for examining the  
2 presence of effective competition. Are you there?

3 A. (Witness nodded.)

4 Q. Then on lines 10 through 12 you state, If  
5 legislators had intended for the Commission to examine other  
6 forms of communications in an exchange, they would not have  
7 exempted those other forms of communications from the  
8 definition of telecommunications service.

9 And my question to you is, wouldn't the reason  
10 for exempting those other forms of communications from that  
11 definition have been for the purpose of clarifying that  
12 those other services are not regulated by this Commission  
13 rather than for the purpose of stating that only regulated  
14 competitors were to be considered in determining effective  
15 competition?

16 A. Well, on second thought, that very well may  
17 have been the case. I still believe that in 386.020, the  
18 effective competition statute, when it references the word  
19 service, it means telecommunications service as defined by  
20 the Missouri statute.

21 We believe that for the reasons that were, I  
22 think, expressed by my counsel and also were, in my view,  
23 artfully expressed by Mr. Dandino in opening statements.

24 Q. Okay. And yet the statute itself does not say  
25 telecommunications services, does it, it says services?

1           A.       That's right, it says services. And when the  
2 Staff looked at that, we tried to understand what the  
3 legislature may have meant by service, and we went to the  
4 statutory definitions of both service and telecommunications  
5 service.

6                   And Staff came away with the understanding or  
7 the belief that the Legislature intended for it to apply to  
8 regulated services as contrasted with, you know, the  
9 Internet and things of that nature.

10          Q.       I'd like you to turn to page 23 of your  
11 testimony.

12          A.       I'm there.

13          Q.       And at the top of the page, beginning at  
14 line 1, there's a question about Section 386.020.13(c). Do  
15 you see that question?

16          A.       Yes.

17          Q.       And it relates to effective competition and  
18 how that should be determined.

19          A.       Yes.

20          Q.       And the language is used there, Based on the  
21 extent to which the purposes and policies of Chapter 392,  
22 RSMo, including the reasonableness of rates as set out in  
23 Section 392.184, RSMo, are being advanced. Do you see that?

24          A.       Yes.

25          Q.       If you look at -- I don't know if you have the

1 statute in front of you -- 392.185 which gives the purpose  
2 of the chapter. Do you have that?

3 A. Yes, I'm there.

4 Q. Okay. And if we look at those one by one, The  
5 provisions of this chapter shall be construed to, one,  
6 promote universally available and widely affordable  
7 telecommunications services.

8 If wireless -- if services from wireless  
9 providers, Internet service providers and other  
10 non-regulated providers were to be available, widely  
11 available and affordable, why would that not contribute to  
12 achieving that purpose in this statute?

13 A. Commissioner, I think from the standpoint of  
14 economics, it would, and I agree with Dr. Aron in that  
15 regard when she talked about this subject a couple days ago.  
16 Dr. Aron was quite critical of Staff position in this manner  
17 from the standpoint of economics.

18 From the standpoint of the end user, I don't  
19 know -- I mean, all things, all other things being equal, I  
20 don't know that it makes a whole lot of difference to the  
21 end user whether or not the utilities commission regulates  
22 something or not.

23 But from the standpoint of the law, looking at  
24 the statute, we still believe that the intent of that was to  
25 look at and analyze this in the light of regulated services.

1                   But looking solely at the purposes of  
2 Chapter 392, to the extent to which these alternative forms  
3 of communication could be used to promote universally  
4 available and widely affordable communications services, I  
5 think that the purpose of Chapter 392 would contribute to  
6 that.

7                   But I have to -- I have to go back to in this,  
8 you know, the definition of telecommunications service, and  
9 we believe by definition wireless is excluded. The law --  
10 with all respect, the law may not be perfect, but that's the  
11 way they wrote it.

12           Q.       Okay. And then every section of that statute  
13 which sets out the purpose that refers to the type of  
14 services, it does say telecommunications services; is that  
15 correct?

16           A.       Yes, that's -- I believe that's correct, and  
17 we fall back to Chapter 386 for the definition of  
18 telecommunications service.

19           Q.       Okay. On page 33 of your testimony,

20           A.       I'm there.

21           Q.       At line -- beginning of line 5, you state, If  
22 granted complete restructuring authority, my concern is that  
23 SWBT would implement overall price reductions for business  
24 service and make up the difference by greatly increasing  
25 residential rates.

1                   And my question to you, and I struggle with  
2 this because I don't know how to get -- I don't know how to  
3 get where we want to be. If we keep the regulatory  
4 constraints on SWBT so that local residential services  
5 remain priced very low compared to other services, how  
6 can -- how will competitors be encouraged to enter that  
7 market?

8           A.       Well, it depends on how you exercise the  
9 regulatory constraint. My concern in writing these words  
10 was over what's commonly called rate shock. My belief is  
11 that we should embark upon a course to engage in what is  
12 commonly called rebalance and do so over the course of four,  
13 five or six years, to do so gradually.

14                   There's been a lot of -- in fact, it's  
15 Southwestern Bell's position, as I understand it, that they  
16 are precluded by statute from engaging in what is commonly  
17 called rebalancing. Staff does not believe that to be the  
18 case. We believe that they can rebalance.

19                   Southwestern Bell's position, as I understand  
20 it, is that unless there's an express statutory grant of  
21 authority for them to rebalance, that they're otherwise  
22 precluded from doing so, and I don't believe that to be the  
23 case.

24                   I believe that there are several examples  
25 where rates have been changed, adjusted and done so on a

1 revenue neutral basis outside of the context of a general  
2 rate case, and we believe that that would -- that approach  
3 has merit and should be looked into.

4           Q.       I'm not clear in my mind what it is you're  
5 saying, because if SWBT is under the price cap statute and  
6 in order to rebalance they need to raise local rates a  
7 certain degree above the 8 percent that's allowed by the  
8 price cap statute, can they do that? Is there a mechanism  
9 by which they can do that?

10          A.       That's a very good question. The 8 percent,  
11 just for clarification purposes, does not apply to basic  
12 local service.

13          Q.       That's right. I know that. I'm sorry.

14          A.       The consumer price cap index. Forgive me.  
15 I'm not being critical of your question. It's a very good  
16 question.

17          Q.       You're right. I do remember that now.

18          A.       I think that just as Sprint and Verizon have  
19 rebalanced rates, that so, too, can Southwestern Bell  
20 rebalance rates pursuant to the rate rebalancing statute. I  
21 agree with -- Staff agrees with AT&T in that regard, and we  
22 disagree with Southwestern Bell over their particular  
23 difference there.

24          Q.       Can you give me an example of what would be  
25 one form of rebalancing, what they might do in one instance

1 to rebalance?

2           A.       GTE and -- excuse me. Verizon and Sprint  
3 have, pursuant to the express authority granted by the  
4 statute, which we believe also extends to Southwestern Bell,  
5 they have increased local rates by \$1.50. Did that last  
6 year.

7                   There was a statement, I believe, that was  
8 objected to, but Staff is not aware of any complaints that  
9 were received over those local rate increases, certainly not  
10 an outpouring, and they took that increased revenue and  
11 decreased switched access service correspondingly, dollar  
12 for dollar.

13                   I believe GTE -- or excuse me -- Verizon and  
14 Sprint may do that again this year. So does that answer? I  
15 mean, we would expect Southwestern Bell -- we would like to  
16 see Southwestern Bell put something on the table along those  
17 regards as well.

18                   If the goal is to get costs more -- excuse  
19 me -- prices more in line with costs for residential  
20 service, if the goal is to have more competition, if you  
21 believe that in order to have competition for residential  
22 service there must be some profit motivation, and if you  
23 believe that currently basic local service is priced below  
24 cost, thereby thwarting the profit motivation, if you  
25 believe that's the reason we don't have competition for

1 basic local telephone service, I would respectfully suggest  
2 that we need to embark upon a course of rate rebalancing,  
3 much the same as I understand has been done in Kansas, for  
4 example, Texas.

5                   It's my understanding that there's a law in  
6 both Arkansas and Oklahoma that says that their intrastate  
7 access rates have to be in parity with the interstate rate.  
8 It seems as though all around us there's some sort of  
9 rebalancing efforts, and I would like to see us look at that  
10 as well.

11           Q.       Can you tell me why you believe that  
12 residential service has not been -- has not received the  
13 same level of competition that business service has  
14 received, for example?

15           A.       Well, I have a lot of my opinions about that,  
16 but a lot of my opinions, Commissioner, are based upon the  
17 expert opinions of people, other people in the industry  
18 whose opinions I admire and value very highly.

19                   I would point to, for example, recent  
20 testimony before Congress. Forgive me. I've forgotten the  
21 committee name, but I watch it live on CSPAN where it was  
22 former Texas Chairperson Pat Wood and former FCC  
23 Chairperson, I believe it may have been Reed Hunt, although  
24 it may have been William Kinnard.

25                   Anyway, their testimony before Congress about



1 this subject, why isn't there residential competition, their  
2 testimony was that residential service is priced below cost  
3 and there's no profit motive there.

4                   And I share that view. I believe that  
5 primarily is why there's very little viable effective  
6 competition for residential service, combined with the fact  
7 that when you look at the business market, the margins are  
8 greater for business telephone service, not to mention when  
9 you do the bundling that you hear so much about, businesses  
10 typically spend many times over what residential spends for  
11 bundling and long distance and all of those sorts of things  
12 shall.

13                   The market -- excuse me. The margins, in my  
14 opinion, are simply not there to have viable competition for  
15 residential service.

16           Q.       But you think that that can be corrected by a  
17 rebalancing that SWBT is currently able to do?

18           A.       I think that would be the first step to  
19 getting where we need to be. I've listened very attentively  
20 to the discussions about universal service. Forgive me. I  
21 don't mean to be changing the subject matter.

22                   We have a universal service docket, and I  
23 believe that's going to exactly as it was intended, and  
24 that's to assure the continuation of very basic local  
25 telephone service for people who are very poor and in

1 high-cost areas. Basic local telephone service these days  
2 is really not much.

3                   And so that still doesn't answer -- even once  
4 we accomplish that, it still doesn't answer the question of  
5 how are we going to have competition for basic local  
6 telephone service.

7                   In my opinion, and I respect the opinions of  
8 perhaps the Public Counsel and others who have a different  
9 viewpoint, but in my opinion, the only real way to achieve  
10 that long-term, effectively and viably is to have those  
11 prices more in line with their costs.

12                   And I think that at a minimum would be  
13 required to provide some sort of incentive, if you will, for  
14 competitors to go in to the local residential market. I  
15 don't think that there's any guarantees or assurances, but I  
16 think that is a necessary first step.

17           Q.       And I just want to be clear that I'm  
18 understanding what you're saying here, because are you  
19 saying that in light of that, which you think prices need to  
20 come more in line with the costs in order to have more  
21 competition, that that can be accomplished without granting  
22 competitive status to SWBT for residential services?

23           A.       I think eventually we want to have SWBT to  
24 have competitive classification for residential services and  
25 everybody else, truly let the market determine the price

1 rather than us trying to regulate it, but I don't think  
2 we're ready for that just yet.

3 I go back to line 5 of my testimony. My  
4 concerns are that you hand them those keys and they're going  
5 to just do it too fast. We could -- for lack of a better  
6 word, we can flash cut. Grant them competitive status and  
7 let them raise basic local phone service, and they pointed  
8 out, like they have said time and again here on the witness  
9 stand, they don't know for sure what they're going to do  
10 once they get this classification, and I believe that.

11 I've been sort of bugging them for a long  
12 time, Well, what are you going to do once we give you this?  
13 I don't know. And they don't really know. They want to see  
14 what they get out of this case and go back and do their  
15 homework and then formulate their strategy.

16 My concern is, you hand them the keys and  
17 they'll be raising residential rates too much too fast.

18 Q. And the down side to that would be? Would you  
19 elaborate on what you think the down side to raising the  
20 rates to cost quickly would be?

21 A. Well, I really don't like to rattle skeletons  
22 in closets, but community optional service is the first  
23 thing that comes to mind. The consumer backlash would just  
24 be too great. Too many people would fall off the network.  
25 They may -- I'm sorry, but they may pay \$40 a month for

1 cable TV, but they don't want to pay more than \$10 a month  
2 for phone service, and get into all those kind of arguments.

3 Q. So it's primarily to avoid a backlash from  
4 consumers?

5 A. Yes.

6 Q. And did I hear you say that you thought that  
7 there would be too many people falling off the network?  
8 Does that mean that you think that people would actually  
9 disconnect from basic local service rather than pay more for  
10 it?

11 A. I think they will pay more for it and even in  
12 some cases almost willingly pay more for it if it's  
13 perceived that they're getting more. I think if we do it in  
14 increments of a dollar and a half a year or something along  
15 those lines as envisioned by the statute, I think that  
16 that's palatable.

17 But if we had a doubling of rates, I think --  
18 I mean, Missouri has something on the order of 96 percent  
19 penetration rate or maybe higher, one of the highest in the  
20 nation historically. We're proud of that, and we may see  
21 some reduction of that, I mean, as rates increase, yes.

22 Q. Okay. Now, not granting SWBT competitive  
23 status prevents them from raising residential rates to cost  
24 too quickly, right?

25 A. Yes.

1 Q. What else does it do?

2 A. Well, if you listen to Southwestern Bell, it  
3 inhibits their ability to -- if you rely exclusively on  
4 Southwestern Bell's arguments, it inhibits their ability to  
5 respond to changing market conditions. From their  
6 perspective, their competitors are able to get tariffs  
7 through here on seven or ten days notice, and we rarely, if  
8 ever, question any of their bundling offers and that sort of  
9 thing. But here we are, Staff filing motions to suspend MCA  
10 promotions and all that sort of thing.

11 They just believe bottom line is that  
12 Southwestern Bell, one of the things that they believe that  
13 they're inhibited from is effectively responding to changing  
14 market conditions by being under price cap statutes or  
15 traditional rate of return regulation.

16 I think we should anticipate having a similar  
17 proceeding here for both Verizon and Sprint. I think that  
18 view would be shared by them. Maintaining the current  
19 status quo in addition to keeping them from raising prices  
20 too much too quick also inhibits their ability to  
21 effectively respond to changing market conditions.

22 Q. And to be able to effectively respond to  
23 changing market conditions is a part of a competitive  
24 atmosphere; is that right?

25 A. Yes. In competitive markets, yeah, you need

1 to be able to respond soon.

2 Q. Do you think it's in the public interest for  
3 residential services to be as competitive, to be fully  
4 competitive?

5 A. In this day and age, I would say yes, I think  
6 that is very much in the public interest. I think it would  
7 be very much -- I think we should have as a public policy  
8 goal to frankly get the government out of the business of  
9 regulating rates, including consumer rates.

10 I see a lot of success, I believe, in  
11 St. Charles and Harvester. That's why our testimony is that  
12 we should turn Southwestern Bell loose there. We should let  
13 the market determine what rates are appropriate there, what  
14 bundles are offered and so forth, and I -- that's my answer.

15 Q. In those two exchanges, do you see benefits  
16 for the local consumers?

17 A. Yes, I see benefits for local consumers under  
18 the current regime, I'll call it, where we have a major,  
19 major national competitor providing basic local and all  
20 sorts of advanced services over cable TV wires.

21 I think there's major benefits to consumers,  
22 even extending that situation to right here in Columbia and  
23 Jefferson City where AT&T has as a matter of public record  
24 reinforced their fiberoptic cable TV networks in  
25 anticipation of offering broadband services and so forth.

1 I think a similar is going on with Fidelity Cable TV in  
2 Rolla and Cuba and St. James.

3 I think -- so yes, there are consumer benefits  
4 to what's occurring in Harvester and St. Charles, even to  
5 the extent of having Southwestern Bell, if you will permit  
6 me, hamstrung by an inability to react to that, to the  
7 extent one accepts their argument.

8 There are consumer benefits, and I would  
9 submit there would be greater consumer benefits flowed  
10 through in those two exchanges if Southwestern Bell were  
11 granted competitive status there for residential service and  
12 associated vertical services and optional MCA and operator  
13 and DA services.

14 Q. Okay. I'd like to ask you a couple of  
15 questions about switched access, and I understand what  
16 you're saying about it being a situation of monopoly  
17 bottleneck service. And on page 33 of your testimony you  
18 indicate that you think it should never be price deregulated  
19 for any carrier under any circumstance that you can think  
20 of.

21 Now, I know that for CLECs, the rates that the  
22 CLECs can charge for access are limited to what the large  
23 ILEC within your service territory it's serving charges.  
24 But as far as the small ILECs, are the access charges of the  
25 small ILECs subject to price controls or price caps?

1           A.       Your question is about small ILECs?

2           Q.       Yes.

3           A.       Their access charges are subject to  
4 traditional rate of return regulation by this Commission.

5           Q.       Now, are they not higher than -- are the small  
6 ILECs' access charges higher than SWBT's access charges?

7           A.       There are approximately 38, 39 small ILECs in  
8 Missouri. Overwhelmingly, they are higher. However, there  
9 are some small ILECs, and I'm thinking perhaps most recently  
10 the Ozark Telephone rate case stipulation, I think there are  
11 some small ILECs whose access rates may indeed even be lower  
12 than Southwestern Bell's at this point in time. So we have  
13 a mixture.

14                   Generally they tend to be higher, much higher,  
15 but not in all instances are they higher than Southwestern  
16 Bell's.

17           Q.       And why do you think that under their type of  
18 regulation that they have been -- they've maintained in at  
19 least the majority of instances higher access rates?

20           A.       One of the reasons is they tend to charge less  
21 for vertical services and have to make up the difference  
22 somewhere else. They choose to do it in access.

23                   One of the reasons is their basic local  
24 service is substantially lower. Forgive me, but as we saw  
25 in the Northeast Missouri case of a coop where after the end



1 of the year they actually get rebates where their basic  
2 local service ends up costing them virtually nothing, but  
3 yet -- so that's one of the reasons why their access rates  
4 are higher also, because they simply don't have the  
5 widespread customer base in the metropolitan areas and those  
6 large business customers to make up the difference.

7           Q.       Is it not -- is that not an example of a  
8 company, a carrier charging a higher rate for a  
9 noncompetitive service where there is a situational monopoly  
10 in order to reduce the rates for services where there is  
11 competition?

12           A.       I'm not aware of any competition occurring in  
13 the small LEC areas, or certainly nothing viable. There may  
14 be one reseller or something. But it is an instance of  
15 where taking -- actually, I think in the small ILECs, all of  
16 their services are legally classified as noncompetitive, but  
17 from the standpoint of economic certainty, I mean, that  
18 would be one of the most noncompetitive services I could  
19 think of would be switched access, and to the extent that  
20 they have high rates for that, yes.

21           Q.       Could that be a part of the reason that we  
22 don't see more competition in the small ILECs' territories?

23           A.       I'm a little uncertain about that. A  
24 facilities-based provider could go into a small ILEC area  
25 and, under our guidelines here at the Commission, charge the

1 same very high switched access rates that the incumbent  
2 charges, so -- but it's difficult to build out all those  
3 facilities and so forth.

4                   So I don't know -- I think that's a  
5 contributing factor. The fact that we don't have  
6 competition in small ILEC areas may very well indeed be  
7 partly attributable to the high access rates of the  
8 incumbent. I'm not -- if that was your question, I hope I  
9 answered it.

10           Q.       That was my question. Thank you.

11                   On page 75 of your testimony, you speak about  
12 directory assistance and operator services, and on line 7  
13 through 9 you make the statement that Staff is concerned  
14 that without an upper limit on prices SWBT would raise  
15 prices for directory assistance and operator services to  
16 unacceptably high levels. Do you see that?

17           A.       Yes.

18           Q.       How do SWBT's prices for these services  
19 compare to those of other competitively classified carriers?

20           A.       SWBT's rates are much, much lower, I believe  
21 even to -- even approaching half as low. In other words, if  
22 a competitor charges \$10, a \$10 surcharge for a collect call  
23 or person-to-person operator dialed type call, Southwestern  
24 Bell's rate I would expect to be somewhere in the vicinity  
25 of \$5.

1           Q.       So if they were to raise their prices for  
2 those services to the same level as the highest levels that  
3 are in existence today, would you consider that an  
4 unacceptably high level?

5           A.       If Bell were to raise their rates to the level  
6 of competitors?

7           Q.       Yes.

8           A.       The short answer is no, I would -- well, yeah,  
9 I think \$10 is unacceptable in any circumstance in part  
10 because of the situational monopolies represented there, but  
11 it would not be -- that would not represent an unfair  
12 situation. I think to an extent the situation that exists  
13 currently is a little bit unfair.

14                   This particular issue that was addressed in  
15 Case TR-96-28, one of the -- one of the concerns expressed  
16 by the Commission in that case, as I recall, was the extent  
17 to which the competitors used Southwestern Bell as the  
18 incumbent to benchmark their prices, the thought being that  
19 if Southwestern Bell in your example were to be allowed to  
20 raise their rate to \$10 to match AT&T, MCI or Sprint or  
21 whomever, well, then the competitors will just turn around  
22 and raise their rate to \$15, and you would end up in an ever  
23 escalating price increase because of the situational  
24 monopolies associated with operator services, and that was  
25 part of my thinking in writing those words.

1           Q.       So you don't think that the market would drive  
2 the prices downward on those services?

3           A.       No, because of commissions -- what I'm  
4 speaking of primarily is aggregator locations, hotels,  
5 airports, truck stops, pay phones. Statute defines  
6 aggregator locations.

7                   What happens is telephone companies go up to a  
8 business and they say, What percent are you being paid on  
9 your operator-handled traffic? The proprietor of the  
10 business says, for example, 20 percent. The new competitor  
11 says, Well, switch over to me and I'll pay you 30 percent.  
12 Bell hears of that and they go, Oh, wait a minute, sign a  
13 new contract and we'll pay you 40 percent.

14                  And, of course, all of these commissions are  
15 coming from one place and one place only and that's the end  
16 user, hence \$10 for a collect call.

17          Q.       So why should those services be classified as  
18 competitive for any carrier?

19          A.       Statutes contemplate it.

20          Q.       Where exactly?

21          A.       Well, these are interexchange carriers  
22 providing the services that I'm talking about.

23          Q.       And because interexchange carriers are  
24 competitively classified, all of their services are  
25 competitively classified; is that right?

1           A.       Yes.

2           Q.       Or maybe I have that reversed in order, but --

3           A.       Yes, Commissioner.  Once a carrier is  
4 classified as competitive, all of their services are  
5 subsequently classified as competitive.

6                    I should point out, as in the case of switched  
7 access rates for CLECs, the Commission certainly has the  
8 authority to attach conditions to that certificate.

9                    The condition that's been attached, as you  
10 know, to the CLECs' switched access rates is no higher than  
11 the incumbent absent a showing of cost, and presumably  
12 something along that order could also be done for operator  
13 service providers of all sort, competitively classified  
14 anyway, although I'm not necessarily suggesting that we do  
15 so.

16                   There's a specific section of the statutes  
17 that deals with what are called alternative operator service  
18 providers.  So I'm sorry, I'm fumbling here for the exact  
19 cite.

20           Q.       That's all right.  I'd like to ask you about  
21 the conditions that you just mentioned.  Has Staff ever  
22 recommended that we attach conditions to those services for  
23 IXC's?

24           A.       Operator services or --

25           Q.       Or directory assistance.

1           A.       No, we've never recommended -- the only  
2 condition that I can think of that Staff has ever  
3 recommended be attached to competitively classified services  
4 of competitively classified companies is switched access.  
5 That's the only thing I can think of.

6           Q.       I think I heard you say a few minutes ago that  
7 you did not think it was fair, the situation that exists  
8 today where --

9           A.       Southwestern Bell is allowed to charge only  
10 half what its competitors are allowed to charge.

11          Q.       And additionally, the fact that consumers end  
12 up paying whatever an IXC wants to charge.

13          A.       Well, Southwestern Bell has reported today  
14 that their revenue has decreased for operator services, I  
15 believe. And I don't know what the figures today would show  
16 for other carriers, but certainly people are looking for  
17 alternative means of making collect calls and using operator  
18 services. I mean, they use wireless devices and that sort  
19 of thing, and -- but apparently enough people still put  
20 their finger in the dial and dial zero and take what they  
21 get.

22          Q.       But basically if carriers take a service that  
23 is a service such as operator services and continue to raise  
24 rates above what would be a reasonable level or an  
25 acceptable level, the market, maybe not the same market, but

1 some market will come in and offer alternatives; is that  
2 correct?

3           A.       That's correct. Personally, I go to Sam's  
4 Club and buy debit cards for four and a half cents a minute,  
5 just call an 800 number. Ultimately alternative markets  
6 will move in and displace those services that are priced  
7 beyond reasonable levels.

8                   We hear, for example, 1-800-COLLECT save a  
9 buck or two advertising on TV, 1-800-CALLATT. These are all  
10 examples of -- of course, you're familiar with the 1010  
11 dialing. All of these are examples of alternative forms of  
12 making operator assisted calls in many cases rather than  
13 paying these, in my opinion, these outlandish \$10  
14 surcharges.

15           Q.       But I think in your testimony you come around  
16 to the statement that you do agree that operator services  
17 are now competitive but would suggest that if SWBT increased  
18 the rates beyond the bounds of reasonableness, that Staff  
19 would consider petitioning to reclassify them; is that  
20 correct?

21           A.       That's correct. That's an example of how even  
22 though something may be classified as competitive, if you're  
23 a noncompetitive company, we can -- you can reexamine that.

24                   COMMISSIONER MURRAY: All right. Thank you,  
25 Mr. Voight.

1 THE WITNESS: You're welcome, Commissioner.

2 JUDGE DIPPELL: Commissioner Lumpe, do you  
3 have questions?

4 COMMISSIONER LUMPE: Just a few.

5 QUESTIONS BY COMMISSIONER LUMPE:

6 Q. Mr. Voight, you have a list of services in  
7 your testimony that you say are competitive. Are they  
8 competitive in every exchange?

9 A. Yes, many of them are, except for the ones  
10 that I've noted.

11 Q. All right. So that even the list of services  
12 that you have, the WATTS, Plexar, et cetera, et cetera,  
13 there may be some exchanges where there is not competition  
14 in that particular exchange. So have you listed the  
15 specific exchanges where they are competitive?

16 A. Yes. For WATTS and Plexar and all of the  
17 services where the Staff has recommended competitive  
18 classification, that would be extended to all of  
19 Southwestern Bell's exchanges except for the residential  
20 basic service. We think that that's competitive only in  
21 Harvester and St. Charles, and the business service only in  
22 St. Louis and Kansas City.

23 Q. All right. But that's what I was trying to  
24 get at. The list of services that you have called  
25 competitive, it is competitive in every one of Southwestern



1 Bell's exchanges?

2 A. Yes, Commissioner.

3 Q. And I was curious, and I think you were asked,  
4 what was special about St. Charles, and I think what you  
5 talked about was the dense population regarding population,  
6 the quantity or the number of customers, a large number of  
7 customers, and then you said cable telephony. Do we  
8 regulate cable telephony?

9 A. Yes, Commissioner, we do. The reason for that  
10 is -- and it's, I believe, readily acknowledged by the cable  
11 telephony providers, AT&T, Charter, Fidelity, for example,  
12 what they're doing with their coaxial cable TV wires is  
13 entirely consistent with the statutory definition of  
14 providing a telecommunications service.

15 Q. So they have certificates and that sort of  
16 thing for cable telephony?

17 A. Yes, Commissioner.

18 Q. Okay. I just saw the word cable and I  
19 thought, Well, we don't do cable, but we do cable telephony?

20 A. Yeah.

21 Q. Okay. There's been some discussion by Public  
22 Counsel about a workshop, and Mr. Hughes talked about if we  
23 were not to find the company competitive, would we give them  
24 a road map.

25 Do you think doing -- and since I think you

1 mentioned this as a case of first impression, do you think a  
2 workshop is an appropriate vehicle to maybe arrive at some  
3 of the criteria, standards in a case like this?

4           A.       It depends on what the Commission determines,  
5 whether or not you agree with -- if you agree with Bell,  
6 everything Bell wants to do in this case, then a workshop's  
7 not necessary. But to the extent that you say, Wait a  
8 minute, we don't believe that effective competition exists  
9 for a certain service in a certain exchange, then I think a  
10 workshop may be appropriate.

11                   What the Staff really supports is Southwestern  
12 Bell's very respectful request that, I think what they're  
13 saying, if I can paraphrase, is, Commission, we think that  
14 we have effective competition for all of our services in all  
15 of our exchanges. To the extent that you may not agree with  
16 that, to the extent that you disagree with that, please tell  
17 us what needs to happen for effective competition to exist.

18                   They want to know why, what it would take for  
19 you to determine that effective competition exists. And to  
20 the extent the same questions, I would anticipate, are going  
21 to be asked by Sprint and GTE, then yes, I think a workshop  
22 may be appropriate to examine what would be required.

23           Q.       Okay. You talk a little bit about access and  
24 go back to Dr. Aron's testimony about originating access,  
25 that there is a way around terminating, I think she said,

1 she agreed sort of noncompetitive. Do you agree with her  
2 assessment of originating access?

3 A. I respectfully disagree. We believe that the  
4 same situation that exists for terminating access also  
5 exists for originating access.

6 If I understood Dr. Aron's testimony  
7 correctly, her solution was, well, if you're a long distance  
8 carrier and you think that the incumbent has some sort of an  
9 advantage because they get to collect all this high  
10 originating access or don't have to pay it, well, then you  
11 should just become a CLEC.

12 And I would submit that, for example,  
13 Mr. Ensrud is not here. There's a whole group of long  
14 distance companies who are not here today who have, I would  
15 submit, no interest in becoming a CLEC. So Dr. Aron's  
16 solution seemed to be, well, if you can't lick them join  
17 them, and I don't share them.

18 I think that while the corporations have done  
19 the work and deserve all the credit, the government is  
20 responsible for establishing a framework of competition, and  
21 that's what we've done in the long distance industry, and I  
22 see Dr. Aron's approach as diminishing that, and I don't  
23 advocate that approach.

24 Q. I've also been asking the question of others  
25 that if Southwestern Bell were to raise the rate to the

1 8 percent that they're allowed and then they guessed wrong  
2 and the market didn't go that high and they were to lower  
3 it, does that lower base then become the amount from which  
4 they could raise 8 percent the next year, in your opinion?

5 A. Thank you for asking that clarifying question.  
6 In our opinion, Southwestern Bell's incorrect. It would be  
7 the original base.

8 Q. So if they had raised it to 8 percent, that  
9 becomes the new base even if they were to lower it? That  
10 becomes the new base from which they could raise 8 percent  
11 more? That's what you're telling me, right?

12 A. It's all a case of first impression, but as I  
13 understand the statute now, it would be the original base.

14 Q. Okay.

15 A. The original 8 percent.

16 Q. A little bit about the rebalancing that you  
17 were talking about with Commissioner Murray, and it's your  
18 testimony that Southwestern Bell could rebalance now that --  
19 they take an opposite position, but it's Staff position that  
20 they could rebalance.

21 And that brings me to the question. Yesterday  
22 I think I asked and was told that on local service they are  
23 allowed to raise the rate by some factor, CPI factor, and  
24 based on that they actually lowered the rates last year.  
25 Were they compelled to lower that rate?

1           A.       I believe, pursuant to the Missouri statute,  
2 Commissioner Lumpe, yes, they were compelled pursuant to  
3 statute. The amount that they lowered the rate was .9 or  
4 9/10 of 1 percent. We expect it to be a reduction again  
5 this year for all three price cap companies.

6           Q.       Doesn't that even make -- if you're talking  
7 about local services being priced below cost, I know there's  
8 some disagreement, doesn't that make it even more below cost  
9 and less likely for a competitor to be able to compete?

10          A.       Yes, it does.

11          Q.       What do we do about that?

12          A.       Well, with all respect, when these laws were  
13 written, not only in Missouri but nationally, a lot of  
14 things have happened, a lot of things have changed. Surely  
15 when they were writing these Consumer Price Index laws tying  
16 into that they expected the price index to go up, but  
17 largely because of the decline in wireless, it's going down.

18          Q.       And then how could they -- how can they  
19 rebalance if they're compelled to lower that local rate  
20 every year? How would they rebalance?

21          A.       Well, we tied that as -- using Verizon and  
22 Sprint as an example, we simply tied everything together,  
23 and we performed the calculations in such a manner that  
24 benefited the consumer the most. We looked -- I hope I get  
25 this right. We looked at the rebalancing. No. First we

1 applied, I believe, the 9/10 of 1 percent reduction to the  
2 basic local rate, and then -- which, for example, if it was  
3 \$10, we took 9/10 of 1 percent of \$10 and reduced that, and  
4 then we balanced, raised the rate \$1.50. I'm sorry. I've  
5 forgotten the order, but we just do everything all in one  
6 mathematical.

7 Q. You found a way is what you're telling me.  
8 You found a calculation somewhere.

9 A. The important thing is we did it in a manner  
10 working with the companies and the Public Counsel and the  
11 industry in general, and we found a way to do that in a way  
12 that benefits the consumers the most.

13 Q. And we have an access case coming up, and you  
14 talked about access as part of this rebalancing. Is  
15 there -- is that something that could be addressed in that  
16 access case, rebalancing?

17 A. Oh, I hope it does get addressed in the access  
18 case.

19 Q. Okay. So you're looking forward to that being  
20 part of it?

21 A. I'm very much looking forward to that.

22 Q. One other question that I have asked of the  
23 others and have gotten additional clarification as I've gone  
24 along, and it came from Dr. Aron's testimony, that a CLEC  
25 could refuse to serve a residential customer, and then I

1 think Mr. Lane said yes, but they could only serve -- their  
2 tariff could be such that they only serve business  
3 customers, and I understand that they could only serve that  
4 class if that's what they put in their tariff.

5                   But if their tariff said they will serve  
6 residential customers, could they not serve a customer in an  
7 exchange?

8           A.       I respectfully disagree with Dr. Aron's  
9 assessment in that manner. I believe her testimony was not  
10 based on a sound knowledge of the Missouri statutes.

11                   The answer is no, you cannot refuse to serve a  
12 residential customer in an exchange in which you're holding  
13 yourself out to provide residential service within that  
14 exchange. We have statutes in Missouri that says, for  
15 example, service area shall be no smaller than an exchange,  
16 must provide equitable access to all Missourians regardless  
17 of where they live or their income and, of course, that's  
18 subject to some interpretation.

19                   But the Staff's position is and our  
20 enforcement efforts would be geared towards if you hold  
21 your -- via your tariff, if you hold yourself out to provide  
22 residential service in an exchange, then that means all  
23 residential households, not just a cherry-picked few.

24                   And I would extend that, for example, to the  
25 Harvester and St. Charles exchanges where AT&T provides

1 residential cable telephony service. They may come along  
2 and say, Well, we only have adequate facilities to, you  
3 know, half of the neighborhoods or something. It's Staff's  
4 expectation that they would use either resale or UNEs or  
5 some other manner to provision service to all residential  
6 customers within that exchange. That's consistent with  
7 Missouri law, and I respectfully disagree with Dr. Aron.

8 Q. And I just have to ask this. You mentioned  
9 Mr. Armstrong and what he said about resale, as I recall,  
10 and it seems to me that I read somewhere that a fairly high  
11 level executive of Southwestern Bell called resale sham  
12 competition. Were you basing some of your testimony on that  
13 when you talk about resale?

14 A. Yes. That's in Schedule 4 of my rebuttal  
15 testimony, the testimony of Mr. Royce Caldwell, president of  
16 Southwestern Bell Communications Operations, in testimony  
17 before the United States Congress characterized resale as  
18 sham competition, further stating that -- well, in summary,  
19 resale is not real competition. Resellers make no  
20 investment in the network. They make no real financial  
21 commitment. They create no network jobs and they offer no  
22 new products or services. Resellers are nothing more than  
23 additional retail outlets for the network owned and operated  
24 by the facilities provider.

25 COMMISSIONER LUMPE: Thank you very much.

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1 That's all I have.

2 JUDGE DIPPELL: Commissioner Gaw, do you have  
3 questions?

4 COMMISSIONER GAW: Thank you, Judge.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. Good afternoon, Mr. Voight.

7 A. Good afternoon, Commissioner Gaw.

8 Q. Let's begin with where you just ended. Do you  
9 know the context of that testimony that you referred to with  
10 Commissioner Lumpe?

11 A. Well, it was March 4th of 1998. I do not know  
12 the reason Mr. Caldwell and others may have been called  
13 before Congress to testify.

14 Q. All right. And you don't have the whole  
15 transcript of that testimony in your exhibit, do you?

16 A. No, sir.

17 Q. Okay. Let's go to rebalancing again. When  
18 you refer to rebalancing, are you just referring to exchange  
19 access and basic local telecommunications services?

20 A. In my remarks here today, that's, I believe,  
21 almost exclusively how I've been referring to it. It can be  
22 looked upon in another context, however.

23 Q. I mean, when you say rebalancing, you could be  
24 looking at a whole myriad of things under other  
25 descriptions, I assume, but your testimony related to those

1 two services; is that correct?

2 A. That's correct.

3 Q. And if I look at Section 392.245, sub 4,  
4 sub 1, do you have that statute in front of you somewhere?

5 A. Yes, sir.

6 Q. I'm trying to understand the analysis that you  
7 went through, that Staff went through in coming up with that  
8 capability. And if you would read sub 1 there to yourself  
9 for a moment, down to A, down to sub A under that. Do you  
10 see that?

11 A. Yes, sir, I believe I do. And I think perhaps  
12 4 referring to small ILECs, and something almost identical  
13 exists for large ILECs.

14 Q. That could be. I was looking under -- you're  
15 right. Do you have the section for the large ILECs?

16 A. I'm sorry. I'm just not able to find it right  
17 at the moment. I know it's in this area somewhere.

18 MR. LANE: I think it is there. It's just the  
19 second sentence of it.

20 THE WITNESS: The second sentence of 4?

21 MR. LANE: Yeah.

22 THE WITNESS: Okay. I'm sorry, Commissioner  
23 Gaw. Mr. Lane is correct. The second sentence of 4  
24 addresses, I believe, the situation.

25 BY COMMISSIONER GAW:

1 Q. All right. And you've looked at that just  
2 briefly now, have you not? If you want to finish it down  
3 there through.

4 A. Yes, I've finished that.

5 Q. All right. Now, my question is, first of all,  
6 is the reason that Staff takes the position that there can  
7 be some rebalancing on exchange access and basic local that  
8 you believe or have taken the position that you sum those  
9 two services and the charges for them in coming up with the  
10 amount that needs to be raised or lowered under the  
11 remainder of subsection 4?

12 A. Well, there's somewhere in the statutes -- I'm  
13 not sure if my reasoning is pursuant to this particular  
14 subsection or not, but somewhere in the statutes what is  
15 contemplated is \$1.50 annual increase in basic local,  
16 corresponding decreases to switched access in a manner  
17 identical to what Verizon and Sprint have done.

18 Q. And you believe that \$1.50 is something that's  
19 statutory or something that you just agreed to in those  
20 individual cases?

21 A. It's statutory.

22 Q. But you can't point that out to me at the  
23 present? And if that's something you could supply later,  
24 that's fine.

25 A. I think we can do that.

1 MS. HENDRICKS: I believe it's Section 9 of  
2 the statute.

3 MR. LANE: Section 8 and 9.

4 THE WITNESS: I'm told it's Sections 8 and 9  
5 of Section 392.245. Section 9, I believe, specifically  
6 references the \$1.50.

7 BY COMMISSIONER GAW:

8 Q. And you believe that that can be done as a  
9 rebalancing on an annual basis?

10 A. Yes. Yes, it can, to a point to where the  
11 incumbent's intrastate switched access rates are no more  
12 than 150 percent of the corresponding interstate rate.

13 Q. All right. So the measurement on the cap of  
14 the so-called rebalancing here relates to the switched  
15 access charges and their relationship between inter and  
16 intrastate?

17 A. Yes, sir.

18 Q. All right. And if that -- if that is the  
19 case, then, is that something that you -- strike that.

20 Have you seen or are you aware of any study or  
21 information that has led you to the conclusion that local  
22 basic residential service is being operated -- is being  
23 assessed at below cost?

24 A. I believe that it is.

25 Q. And what do you base that opinion upon?

1           A.       First of all, I respectfully acknowledge not  
2 everyone agrees with that, particularly the Office of Public  
3 Counsel.

4                   The example that's been most often cited in  
5 these proceedings and one which I adhere to is the  
6 comparison to the unbundled network element loop cost  
7 studies supplied by Southwestern Bell. I think we have  
8 similar studies by Verizon, if not Sprint, which indicate  
9 that just the loop according to a total element long-run  
10 incremental methodology, and the whole answer to that  
11 question depends on which type of costing methodology one  
12 believes is appropriate.

13                  You have the Staff, for example, and  
14 presumably long distance carriers represented here, if not  
15 the ILECs themselves, that think that an incremental costing  
16 methodology is the most appropriate costing methodology to  
17 base costs in a competitive environment, and we have those  
18 studies that -- as contrasted with Ms. Meisenheimer who  
19 believes that a more fully distributed or fully allocated  
20 traditional historical cost type methodology should be used.  
21 That's the fundamental difference between the Staff and the  
22 Public Counsel.

23           Q.       Without that loop that you're using as a  
24 comparison on the cost, you can't do local basic service?

25           A.       No, you cannot. Further, if I may, the other

1 components of basic local service in addition to that loop  
2 are things such as central office port, switching cost,  
3 transport, reciprocal compensation paid to your competitors,  
4 cross connects, things of that nature.

5 Q. So there's additional costs in addition to the  
6 loop is what you're saying?

7 A. Yes, sir. And we determined, for example, the  
8 Commission has determined through these incremental costing  
9 studies that a loop in, for example, downtown St. Louis is  
10 somewhere in the neighborhood of 10 or 11, just the loop,  
11 and then your basic local residential service is below that.  
12 So that's the example most often cited in this proceeding,  
13 and I adhere to that belief.

14 Q. And again, you can't do local basic without  
15 having that loop or the other items that you mentioned, I  
16 assume?

17 A. You cannot.

18 Q. Can you have vertical services?

19 A. No, you cannot.

20 Q. Can you have any long distance coming in on  
21 switched access to the end of that loop?

22 A. No, sir. You cannot do anything without that  
23 loop.

24 Q. So if you're trying to figure out how to  
25 determine how to assess those costs across all of those

1 things, wouldn't it be true that there is at least some  
2 argument that can be made that all of those different  
3 services could be attributed at least in some part to the  
4 loop?

5 A. Yes.

6 Q. And therein lies the disagreement in part,  
7 doesn't it?

8 A. Yes. I think therein lies the disagreement  
9 exclusively over that. Should it be incremental or should  
10 it be fully distributed? Do you wish to analyze it in terms  
11 of an historical perspective or do you wish to take the  
12 approach that in competitive markets competitors don't  
13 calculate their costs or much less set their prices based on  
14 some allocation of cost.

15 The example, if I may, that I use is the  
16 proprietor of Arris Pizza up here. If Arris pays himself  
17 \$30,000 a year, he doesn't take his salary and say, Well,  
18 I'm going to set the price of my sausage. I'm going to  
19 allocate so much of my salary to the sausage and the  
20 pepperoni and so forth.

21 It doesn't happen that way in competitive  
22 markets, hence the theory that the incremental methodology  
23 is more appropriate.

24 Q. All right. So I come back to my -- one of my  
25 original questions. Have you seen any kind of a study other

1 than the pricing that you're talking about that would let us  
2 analyze in a different way whether or not the charges for  
3 local basic are above or below cost?

4           A.       Yes. There are -- there have been instances  
5 where this point of view has been debated in, for example,  
6 rate cases here at the Commission.

7                   Steelville Telephone Company was the first one  
8 I was ever exposed to. Larry Vanruler was a witness for  
9 Steelville and supplied a fully distributed, fully allocated  
10 FCC-type costing study for the loop for Steelville Telephone  
11 Company and showed the price of basic local service to be --  
12 well, or the cost of providing basic local service to be --  
13 well, he attributed that loop to long distance and all of  
14 the various services.

15           Q.       Okay. How long ago was that, by the way?

16           A.       I believe that was in 1995.

17           Q.       All right. Are you familiar with anything  
18 like that that's been done with Southwestern Bell?

19           A.       No. They've been out of rate of return  
20 regulation too long.

21           Q.       Sure. Okay. So if we were trying to  
22 determine how much rebalancing would have to occur in order  
23 to get local basic services for residential customers to a  
24 level that is above cost, we'd have a lot of work to do,  
25 wouldn't we?



1           A.       Unless you chose to use surrogates of some  
2 sort, yes.

3           Q.       Okay. Let me ask you a few things in regard  
4 to how you, as a representative of Staff, how you made your  
5 determinations in deciding -- and I know we've plowed this  
6 ground some, but how you've made the determination about  
7 whether or not service was competitive or not in a  
8 particular exchange, and I'm interested in knowing whether  
9 or not you have a road map and what that is.

10          A.       I wish I could give you the road map. I'll  
11 try my best. First of all, I believe the plain language of  
12 the statutes has already decided for us that what I call  
13 private lines and Centrex service are fully competitive.  
14 The statute in our view plainly says that.

15                   Secondly, Commissioner Gaw, we have these  
16 certain services, for example, message telecommunications  
17 service or long distance service, the same thing, that  
18 currently have a transitionally competitive status pursuant  
19 to actions taken by previous commissions.

20                   We believe that there's -- there was sort  
21 of -- it was automatic that some of those services became  
22 fully competitive, all of them actually, and we share  
23 Southwestern Bell's request that you acknowledge that in  
24 this case.

25          Q.       May I stop you right there?

1           A.       Yes.

2           Q.       And explain to me how Staff has been treating  
3 those transitionally competitive areas that you've just  
4 described of late.

5           A.       Well, there hasn't -- there has been no action  
6 on the part of Southwestern Bell to cause us to treat them  
7 any differently. I mean, they've been in my view kind of  
8 sitting back waiting for this case. Staff has been  
9 bird-dogging this case since 1996. We knew it was going to  
10 happen, and I think Southwestern Bell was aware of it also.

11                   But they haven't done anything that would  
12 trigger any sort of red flag to us with regards to these  
13 services that we think are now automatically competitive.

14          Q.       All right.

15          A.       Nothing's happened.

16          Q.       All right. I'm sorry. If you would proceed.

17          A.       And they've kept their -- to the extent they  
18 may have had rate increases for some of those non-basic  
19 service, they've kept those rate increases to within the  
20 8 percent guidelines. So nothing's happened there.

21                   Thirdly, with regard to the others,  
22 specifically I guess the business and residential telephone  
23 service that we've -- we believe that effective competition  
24 exists in the St. Louis and Kansas City areas. We are  
25 convinced of that. As Mr. Lane brought out of me, well,

1 yeah, maybe the same thing's going on in Fenton. I don't  
2 know.

3 Q. All right. Let me stop you again, and I don't  
4 mean to cut short your answer, but I'm going to revisit it.  
5 At least I intend to.

6 Your suggestion is that Staff believes that  
7 competition exists in St. Louis and Kansas City, in those  
8 areas you describe, and that you have come to that  
9 conclusion because you feel you have sufficient evidence to  
10 that effect --

11 A. Yes.

12 Q. -- is that correct?

13 And in regard to Fenton, which was the  
14 hypothetical that Mr. Lane used earlier, you believe that it  
15 may exist but that you have not been presented with  
16 sufficient evidence that that is the case? Is that what  
17 you're testifying to?

18 A. That's a fair characterization of my  
19 testimony. Actually, I suppose technically we have been  
20 presented with additional evidence during the past few days,  
21 but we've been kind of working on this case for months and  
22 months, and certainly at the time I wrote my rebuttal  
23 testimony Staff was relying most heavily on responses to our  
24 Data Requests. We didn't -- we had not received any  
25 semblance of an adequate response even at the time I wrote

1 my rebuttal testimony.

2                   But we know we have our finger on the pulse of  
3 competition in the state of Missouri and we have had for  
4 years. We know certain market shares in St. Louis and  
5 Kansas City. We looked at that as probative evidence of  
6 success of the competitors, how many customers they're  
7 taking away, the cherry picking that I referenced, the  
8 presence, the widespread deployment, the alternative  
9 fiberoptic facilities within a thousand feet of the  
10 businesses.

11                   I've done my own informal surveys every time,  
12 for example, in some of our outreach programs where we send  
13 speakers to St. Louis and so forth to talk to the business  
14 community. The first question I always ask is, How many of  
15 you all in your businesses and your governmental  
16 institutions and so forth have been approached by  
17 competitive local exchange carriers? Invariably every hand  
18 goes up in the air.

19                   I then ask them, Okay, take off your work hat  
20 and put on your residential consumer hat. How many of  
21 you-all have been approached by competitive local exchange  
22 carriers at your home? Hardly ever a hand goes up.

23                   We just believe having our finger on the pulse  
24 of this competitive environment, and we've been reporting  
25 data to the Governor's office, or we were in the past

1 administration at least for a long time. We just believe  
2 that effective competition exists in St. Louis and Kansas  
3 City for business services.

4 Q. Well, I understand the finger on the pulse  
5 analogy. I'm looking for an electrocardiogram. Is there  
6 any -- is there something that you could point to us, point  
7 us to, that would allow this Commission to understand or at  
8 least to have something to look at in deciding whether or  
9 not to adopt it as a test in making consistent  
10 determinations as to whether or not competition does or does  
11 not exist for particular services?

12 A. I'm sorry. I don't have anything readily  
13 available that I would consider fully responsive to your  
14 request.

15 Q. All of the -- I've heard your testimony and  
16 read about why you believe that competition does exist in  
17 certain areas and doesn't in others, but I'm still  
18 struggling to try to translate that from a conclusion that  
19 you've reached based upon the information that you have and  
20 which you have also presented us with into a system of tests  
21 that we could decide whether or not we thought was  
22 appropriate for this Commission to adopt.

23 And again, that may fall back on, Mr. Voight,  
24 the concept of having some additional work and workshops,  
25 but I was wanting to see whether or not there might be

1 something more specific that you had today, and I'm not  
2 saying that you should. I'm just asking whether that might  
3 exist, and I've just not heard it yet.

4           A.       I not only sympathize but I empathize with the  
5 difficult choices you must make. I feel my response is  
6 going to be inadequate, Commissioner Gaw, but on page 17 of  
7 my rebuttal testimony I list some 29 criteria that's been  
8 examined by previous commissions, and it includes such  
9 things as Department of Justice merger guidelines and market  
10 share and all of these types of things.

11                   And I continue to believe that there's no  
12 one -- no single criterion that should be looked at, whether  
13 it's a totality of the circumstances, and I really keep  
14 falling back in St. Louis and Kansas City in particular that  
15 the presence of the alternative fiber networks is something  
16 that I believe is unique to those metropolitan areas as  
17 contrasted with the other areas of the state.

18                   If I may add, that goes back to the very  
19 progressive legislation and outlook of this Commission going  
20 back to House Bill 360 where at that time Missouri was  
21 recognized, I believe, as one of the more progressive  
22 forward-looking states in creating an atmosphere and an  
23 environment that was conducive to the deployment of these  
24 alternative fiberoptic facilities. They've been there for  
25 years.

1                   Once you're providing long distance special  
2 access burglar alarm circuits, whatever, data circuits,  
3 you're doing all of that with these alternative systems,  
4 it's a simple matter in my view -- maybe AT&T or someone  
5 could speak differently, but in my view it should be a  
6 simple matter of flipping a switch and providing basic local  
7 dial tone.

8           Q.       Is it your belief that that fiberoptic network  
9 in St. Louis is necessary in order to establish competition,  
10 that that type of a network has to exist first?

11          A.       That's a very good question, and thank you for  
12 asking. Yes, I do believe there has to be some degree of  
13 alternative systems in place, delivery mechanisms, in order  
14 to constitute effective viable competition.

15                   We simply cannot -- I don't mean to imply that  
16 we need, you know, 10 or 12 alternative providers digging up  
17 residential streets. I think the solution is the cable TV.  
18 I think the solution could be fixed wireless, AT&T's Project  
19 Angel, traditional wireless I suppose.

20                   We have situations in Missouri where there's  
21 what I call an overbuild occurring where a CLEC has just  
22 gone into an incumbent area. That exists in Carney,  
23 Missouri for one place, and you simply overbuild the  
24 incumbent's network.

25                   I believe it certainly makes it easier from

1 our standpoint to conclude that viable competition exists in  
2 areas where there are alternative delivery systems being  
3 used that are successful. We know from the data the number  
4 of customers being served from those facilities. We know  
5 that they're being used and they're viable.

6           It's easier for us to conclude that effective  
7 competition exists rather than relying on, for example,  
8 resale or UNE-Ps or -- yeah, UNE platforms and that sort of  
9 thing.

10          Q.       And you're not suggesting that other things  
11 such as percentages of, for instance, local basic that would  
12 be in CLECs as opposed to -- as opposed to in this case  
13 Southwestern Bell, that that should not also be a factor; is  
14 that correct?

15          A.       If I understand your question, there's no one  
16 single thing, but rather all things should be factored in.

17          Q.       But you are suggesting that it is a necessary  
18 component for there to be some infrastructure so that it is  
19 not entirely based upon resale?

20          A.       Yes, until such time, frankly, Commissioner,  
21 and I'm not advocating this, but until such time -- it is  
22 being advocated in other jurisdiction -- until such time as  
23 the incumbent is required to completely divest itself from  
24 its wholesale and retail operations, the answer to that  
25 question is yes.



1           Q.       Now, I want to understand what you just  
2 testified to just a moment ago and make sure that it doesn't  
3 contradict my understanding of your earlier testimony.

4                   I thought I heard you suggest that other kinds  
5 of services such as cable and wireless are a factor in  
6 looking at the state of competition in a particular region,  
7 and I want to know whether that is your opinion or whether I  
8 misunderstood that, because I'm not sure that I understood  
9 that from your earlier testimony?

10          A.       No. It is my opinion that cable TV as an  
11 alternative delivery mechanism is a factor in establishing  
12 whether or not effective competition exists. It's also my  
13 opinion from the standpoint of economics, maybe not  
14 necessarily from the law, but from the standpoint of  
15 economics, various wireless is also a factor.

16          Q.       Is it your testimony, then, if I can -- see if  
17 I can differentiate, that you don't necessarily believe that  
18 that is the intent of this statute for us to look at those  
19 other forms of services in deciding whether competition  
20 exists?

21          A.       That's correct. It's Staff's belief that  
22 statutes speak only in terms of regulated services. When it  
23 talks about alternative and so on and so forth, it's talking  
24 about alternative suppliers, which the statute calls them  
25 alternative competitive local exchange carriers, ALECs, the

1 A being alternative. When the statutes talk about  
2 alternative, we think they mean alternative LECs.

3 Q. And if for some reason there would be a  
4 different conclusion of law reached and the Commission would  
5 make a conclusion that the statute indeed meant something  
6 broader and meant to include other things that are not  
7 telecommunications services under your definition, would  
8 that change your opinion in regard to the status of  
9 competition in any of these exchanges and any of the  
10 services that you made recommendations on?

11 A. It certainly has the strong potential to  
12 change our opinion, and in all likelihood it would.  
13 However, what I would have -- what I still fall back on is  
14 the statutes do require an exchange-by-exchange analysis.  
15 It's not in our view simply good enough to say, Well, gosh,  
16 you know you can drive down the road and have a car phone  
17 anywhere you go. That's not good enough.

18 At a minimum I would expect to see  
19 Southwestern Bell researching the Federal Communications  
20 Commission documents, and I don't think this is proprietary,  
21 but they should know there are rural service area, RSAs, and  
22 metropolitan service areas, they should know what wireless  
23 license have been granted to what wireless providers in  
24 those areas, and they should present that and extrapolate  
25 that down to an exchange basis and present evidence to this

1 Commission that, yes, there's so many PCS companies licensed  
2 in Haiti, Missouri and so on and so forth.

3 COMMISSIONER GAW: I think that's all I have,  
4 Judge. Thank you.

5 JUDGE DIPPELL: Thank you.

6 QUESTIONS BY JUDGE DIPPELL:

7 Q. Mr. Voight, I just have one clarifying  
8 question I wanted to ask you, and that is you used the term  
9 preponderance of providers. Can you tell me what that means  
10 to you?

11 A. Yes. As I recall that line of questioning,  
12 what we mean, the sheer number of providers. For example,  
13 the staff of my department keeps posted on the Commission's  
14 website a list of CLECs, I think it's up to 70 or so now,  
15 and we not only provide that list of CLECs, we provide the  
16 areas in which, pursuant to their tariff, they hold  
17 themselves out to be providing service.

18 And if you look at them, Judge, invariably  
19 almost all of them, probably 85 percent of them, if not 90  
20 or 95, hold themselves out to be providing service in  
21 St. Louis and Kansas City. So the preponderance, I mean the  
22 sheer quantity of providers.

23 JUDGE DIPPELL: All right. Thank you.

24 Let's take just a five-minute break, stretch  
25 our legs, regroup and figure out what we're going to do

1 tomorrow. Let's go off the record.

2 (A BREAK WAS TAKEN.)

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

4 Okay. Since it's so close to five o'clock, I  
5 didn't think that we would have time to finish with  
6 Mr. Voight, so I asked him to go ahead and step down. We'll  
7 finish with him first thing in the morning. We'll do the  
8 recross and redirect.

9 Then I had someone mention to me on one of the  
10 breaks that perhaps Mr. Price would like to move up in the  
11 lineup because he is from out of state, and is there any  
12 objection to moving Mr. Price to immediately following  
13 Mr. Voight?

14 (No response.)

15 All right. Then we will take Mr. Price and  
16 then resume with Mr. Kohly after that and, with any luck,  
17 maybe finish tomorrow. So come back tomorrow morning at  
18 8:30. Thank you.

19 WHEREUPON, the hearing of this case was  
20 recessed until September 27, 2001.

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