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2 PUBLIC SERVICE COMMISSION

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4 HEARING

5 September 27, 2001  
6 Jefferson City, Missouri  
7 Volume 7  
8

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

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13

14 BEFORE:

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

19

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

2 JUDGE DIPPELL: Good morning. This is  
3 Thursday, September 27th, and we're continuing Case  
4 No. TO-2001-467.

5 We ended yesterday after questions from the  
6 Bench for Mr. Voight, and he has returned to the  
7 witness stand this morning, so we're ready for  
8 recross-examination based on questions from the  
9 Bench.

10 Are there any such questions from  
11 Southwestern Bell?

12 MR. LANE: Yes, your Honor.

13 JUDGE DIPPELL: Proceed, Mr. Lane.

14 WILLIAM L. VOIGHT, being previously sworn, testified  
15 as follows:

16 RECROSS-EXAMINATION BY MR. LANE:

17 Q. Good morning, Mr. Voight.

18 A. Good morning, Mr. Lane.

19 Q. I wanted to follow up first on some  
20 questions that Commissioner Murray asked you  
21 yesterday.

22 And you had some questions about your  
23 statement that Southwestern Bell relies too much on  
24 resale in areas other than St. Louis and Kansas City  
25 for business services. Do you recall those questions?

1           A.     That's our position, yes.

2           Q.     And would you agree with me that  
3     Mrs. Meisenheimer in her Rebuttal Testimony, and  
4     specifically in Exhibit 30 HC, lays out on an exchange  
5     basis the percentage of business lines that are served  
6     via resale by CLECs, the percentage of UNE-P lines  
7     that are served on a business basis by CLECs, and then  
8     an estimate of the number of facilities-based lines in  
9     each exchange by the CLECs? Do you recall those?

10          A.     Well, without having her testimony before  
11     me, may I ask you to clarify? Exhibit 30, are you  
12     referring to Staff's Data Request 2501?

13                 MR. LANE: No, I'm not.

14                 May I approach, your Honor?

15                 JUDGE DIPPELL: Yes.

16     BY MR. LANE:

17          Q.     Then showing you Exhibit 30 HC with specific  
18     reference to Revised Schedule BAM-3 HC, would you  
19     agree that that lays out the percentage of CLEC lines  
20     served by each of the three methods that we've  
21     discussed?

22          A.     Yes. I agree there are estimates on  
23     Ms. Meisenheimer's schedule for resale, UNE-P, and  
24     pure facilities-based and so forth.

25          Q.     And then taking a look, for example, at the

1 Fenton exchange, if we look at the second and third  
2 columns which would be the estimated CLEC business by  
3 UNE-P and estimated CLEC by pure business facilities,  
4 without going into the numbers themselves, would you  
5 agree that the percentage of lines served on a  
6 facilities basis, including the UNE-P, is higher than  
7 the percentage of lines served by those two methods in  
8 the St. Louis exchange?

9 A. Well, I would agree with that, Mr. Lane, for  
10 the UNE-P second column, but I don't think I can agree  
11 with that with the pure facilities-based third column.

12 Q. Okay. And my question was the combination  
13 of the two, two types of facilities-based combination,  
14 UNE-P with partly the CLECs' owned facilities.

15 The combination of those two is higher in  
16 Fenton than it is in St. Louis?

17 A. Yes. According to Ms. Meisenheimer's  
18 estimates, it would be higher, the combination of  
19 those two, in Fenton than the St. Louis exchange.

20 Q. And we could review the other optional MCA  
21 areas using Exhibit 30 HC and see if that also shows a  
22 similar relationship, could we not?

23 A. Yes. We could review other exchanges in the  
24 optional MCA areas to see if Ms. Meisenheimer's  
25 estimates are conducive to what we just discussed.

1           Q.     Okay.  And while you indicate in your  
2     testimony that Southwestern Bell relies too much on  
3     resale, you haven't provided any specific data in your  
4     testimony that shows how much resale there is in the  
5     St. Louis and Kansas City exchanges for business where  
6     you recommend competitive status as opposed to any  
7     other exchange where you have not recommended  
8     competitive status for business service; is that a  
9     fair statement?

10          A.     That's a fair statement.

11          Q.     And the information that Ms. Meisenheimer  
12     utilized in her analysis is the same information that  
13     was provided to you and to Staff in the July time  
14     frame, is it not?

15          A.     I'm sorry.  When was Ms. Meisenheimer and  
16     Staff provided this information?  I don't recall.

17          Q.     Wasn't Staff provided some information that  
18     was designed to show on an exchange basis the same  
19     type of information that Mr. Hughes lays out in his  
20     Surrebuttal Testimony?

21          A.     Yes, I seem to recall that.

22          Q.     Okay.  And that was prior to the time that  
23     you filed your Rebuttal Testimony in this case, was it  
24     not?

25          A.     Yes, it was.  And I'm trying -- the reason

1 I'm struggling somewhat, I'm trying to reconcile in my  
2 own mind if what you're referring to was first brought  
3 to my attention in Southwestern Bell's Direct  
4 Testimony or even prior to that. I don't recall.

5 Q. You had a discussion with Commissioner  
6 Murray concerning local plus and you had indicated  
7 that you had no evidence of failure to comply with the  
8 order, but then you expressed a concern that  
9 Southwestern Bell's commitment to follow the order  
10 hadn't been set out in writing and wasn't in a tariff.  
11 Do you recall that discussion?

12 A. Yes, I recall that discussion.

13 Q. Okay. My question, then, to you is, would  
14 you agree with me that with regard to the resale of  
15 services by CLECs from Southwestern Bell that none of  
16 the CLECs resale services pursuant to tariff? All of  
17 them resale pursuant to interconnection agreements  
18 that they've entered into between -- with Southwestern  
19 Bell?

20 A. That's my understanding, yes.

21 Q. So the absence of a tariff doesn't indicate  
22 that there is a failure to comply with the  
23 Commission's local plus order, does it?

24 A. I don't know that I can fully agree with  
25 that, Mr. Lane. I'm unsure what the Commission's



1 order requiring that resale of local plus be made  
2 available to both facilities-based and resellers has  
3 to do with unbundled network elements.

4 Q. I'm not sure I understand your answer.

5 I thought you had indicated to Commissioner  
6 Murray that you were critical of Southwestern Bell for  
7 not implementing the Commission's order because it  
8 didn't have a tariff to do so. And would you agree  
9 with me that with regard both to unbundled network  
10 elements and resale that Southwestern Bell's  
11 obligation or commitment to provide those things to  
12 CLECs is not done pursuant to tariff, but it's done  
13 pursuant to interconnection agreements?

14 A. Well, first of all, let's -- I think we  
15 should clarify, local plus was originally a tariff  
16 filing, I do believe. The hearing that we had, the  
17 Commission's order issued in September of 1998, I  
18 think, rejected specific tariff sheets associated with  
19 local plus, as I recall.

20 So I think there is some type of tariff  
21 offering of local plus to end users.

22 Q. That's a retail service offering, isn't it?

23 A. Yes. Well, that would be my understanding,  
24 yes, which would be my point exactly.

25 Q. And Southwestern Bell has retail service

1 offerings throughout the tariffs that it has on file  
2 with the Commission. Right?

3 A. Yes.

4 Q. But its dealings with CLECs with regard to  
5 unbundled network elements and resale aren't pursuant  
6 to tariff. They are pursuant to interconnection  
7 agreements, aren't they?

8 A. Well, Mr. Lane, I believe I've heard in your  
9 question -- your three questions to this point -- the  
10 first two questions I believe you referred to a word  
11 to your obligations, I believe I heard in your  
12 question. And I believe the obligations that you are  
13 referring to are federal obligations, excuse me, under  
14 the Act. And I don't know what that has to do with  
15 the Commission's order in local plus.

16 As I interpret the order, they ordered you  
17 to -- excuse me -- to make local plus available for  
18 resale to competitors irrespective of the Act. We're  
19 talking about an imputation standard under Missouri  
20 law. We're not talking about the Act.

21 Q. Would you agree with me that the way  
22 Southwestern Bell offers any service for resale to  
23 CLECs is pursuant to interconnection agreements and  
24 not pursuant to tariff?

25 A. Yes, if you would agree with me that that's

1 the problem.

2 Q. Frankly, I'm not sure what your position is.  
3 I'm struggling with it, but I'll move on.

4 A. I will be happy to --

5 Q. I'll move on.

6 A. -- clarify as best I can.

7 Q. You had a discussion with Commissioner  
8 Murray concerning your interpretation of  
9 Section 386.020(13)(b) which refers to services  
10 available by a -- by alternative providers. Do you  
11 recall that discussion?

12 A. Yes, I do.

13 Q. And you had indicated that you believed that  
14 the Legislature intended the use of the word "service"  
15 to mean telecommunications service as defined in the  
16 statute. Right?

17 A. Yes.

18 Q. And you agree with me that the word  
19 "service" is also defined in the statute under  
20 section 386.020(47).

21 A. Yes.

22 Q. Okay. Now, assuming that the Legislature  
23 meant to refer to service as they used the term in  
24 386.020(47), what word would they have used?

25 MR. LUMLEY: I'm going to object to the

1 question. I believe it calls for speculation as to  
2 what the Legislature may or may not have -- what word  
3 they may have chosen had they meant something else.  
4 That's not in evidence.

5 MR. LANE: Judge, he's given testimony in  
6 this case about his interpretation of it and his view  
7 that the Legislature intended the word "services" to  
8 mean telecommunications service, and so I believe I'm  
9 entitled to explore the basis of that.

10 JUDGE DIPPELL: I'm going to let the witness  
11 answer the question.

12 THE WITNESS: I concur with Mr. Lane that I  
13 have referenced this in my testimony, and I don't know  
14 if the question calls for speculation or not, but I  
15 really don't understand the question.

16 JUDGE DIPPELL: Would you like to rephrase  
17 the question?

18 MR. LANE: I'll try again.

19 BY MR. LANE:

20 Q. If the Legislature had intended the use of  
21 the word "service" in Section 386.020(13)(a) to mean  
22 service as they define it in Section 386.020(47), what  
23 word could they have used other than "service" if  
24 that's what they had intended?

25 A. I'm sorry, Mr. Lane. I don't take issue

1 with anything in the statute. I just really don't  
2 understand your question.

3 My position is, when -- when the statute  
4 refers to -- maybe it will help.

5 In Subsection 13 where it's discussing  
6 effective competition, we talk about services  
7 available. My position is that they meant  
8 telecommunications services as defined in the statute.

9 But even if they meant service as defined in  
10 Section 47 that you're referencing, it makes no  
11 difference. Section 47, as has been pointed out by my  
12 counsel in opening statement and more eloquently by  
13 Mr. Dandino, that, too, refers to regulated services  
14 because of the use of the term "devoted to the public  
15 purposes."

16 That's the counsel that I've received, you  
17 know, about, you know, my lay person's interpretation  
18 of these statutes and that's really the best answer I  
19 can give you. In both instances it refers to the  
20 services regulated by this Commission.

21 Q. All right. And the first step, then, would  
22 you agree with me that when the Legislature uses the  
23 word service in section 386.020(13)(a), they really  
24 mean "service" as they define the term in  
25 Section 386.020(47), step one? Do you agree with

1 that?

2 A. No. I believe they really mean  
3 telecommunications service.

4 Q. Okay. And my question to you is, if the  
5 Legislature had meant to use the word "service" in  
6 386.020(13)(a) in the same sense that they use the  
7 word and define the word "service," wouldn't they have  
8 used the word "service" to mean service as opposed to  
9 telecommunications service?

10 A. Well, I think that's exactly what they did.  
11 They used the word "service" in both (13) and (47).

12 Q. And so when they use it in (13), they meant  
13 "service" as they define it in (47)?

14 A. I can accept that.

15 Q. Okay. And let me go on to the next part of  
16 it then.

17 Let's assume that they mean it as they use  
18 it in (47). Would you agree with me that "service" as  
19 its defined in 386.020(47) includes services that are  
20 offered by corporations or persons that are not public  
21 utilities?

22 A. No, I don't agree with that.

23 Q. Okay. And so when the service that's  
24 defined as being any product or commodity furnished by  
25 any corporation, purpose, or public utility, you view

1     that as the words "corporation" and "person" really  
2     don't have any effect, because you interpret it to  
3     mean only public utility. Is that a fair  
4     characterization?

5           A.     Well, I think this whole definition is  
6     referencing regulated utilities whose facilities and  
7     assets are devoted for the public purposes. I think  
8     consistent with all of these statutes that that means  
9     regulated utilities.

10           So I don't know if that's a fair statement.  
11     To answer your question, I really don't think that's a  
12     fair statement.

13           Q.     And then the last few lines, then, of the  
14     definition says, ". . .or in furnishing any product or  
15     commodity and devoted to the public purposes of such  
16     corporation, purpose or public utility," is it your  
17     view that a corporation or a person that's not a  
18     public utility doesn't have a public purpose?

19           A.     I really don't know how to answer that,  
20     Mr. Lane. It's -- to my view, this entire definition  
21     is referring to utilities regulated by this  
22     Commission.

23           Q.     Okay. In some questions from Commissioner  
24     Murray you indicated that you thought that  
25     Southwestern Bell had the authority today to rebalance

1 rates, and I think there was some discussion with  
2 Commissioner Gaw later about what sections of the  
3 statute permitted that and there was a discussion of  
4 392.245, Sections 8 and 9. Do you recall that  
5 discussion?

6 A. Yes, I recall that.

7 Q. Okay. And my first question is, for a  
8 moment, set aside 392.245(8) and (9). Set that aside.

9 Is it your view that Southwestern Bell has  
10 the authority to rebalance rates outside of those --  
11 that section if the rebalancing means that some rates  
12 would go above the maximum allowable price as defined  
13 by the statute?

14 A. Well, when we talked about this before -- I  
15 guess it was yesterday -- what I was thinking of,  
16 Mr. Lane, was when these sorts of proposals had been  
17 put before the Commission previously and rebalanced  
18 products and services and rates and done so on a  
19 revenue neutral basis. I personally have worked with  
20 Southwestern Bell, for example, when the company  
21 eliminated touch tone. We did so on a revenue neutral  
22 basis.

23 I think --

24 Q. That was prior to the --

25 A. Price cap statutes.



1 Q. -- price cap statute?

2 A. Yes, you're correct.

3 Q. I'm just interested in your opinion.

4 Do we have, in your view, the authority to  
5 rebalance rates under price cap regulation if it means  
6 that some rates would go above the maximum allowable  
7 price?

8 A. I think the Commission has considerable  
9 latitude in how it enforces and interprets the price  
10 cap statutes. For example, Mr. Lane, there has been  
11 discussion about price cap companies' desire to take  
12 the existing MTS rate schedule that has mileage bands  
13 and restructure that such that, for example, if it's  
14 mileage band 0 to 10 and the rate is 10 cents a  
15 minute and you restructured that, and you ended up  
16 with something corresponding of the neighborhood of  
17 15 cents a minute, would that exceed the price cap  
18 statute? I think the Commission has the authority and  
19 prerogative to look at those on a case-by-case basis.

20 And in many respects -- in that regard, the  
21 answer to your question is yes.

22 Q. And aside from 392.245, Subsections 8 and 9,  
23 does your view also include the ability to raise local  
24 rates above the maximum allowable price with a revenue  
25 neutral reduction in access charges?

1           A.     I think without seeing the detail, I don't  
2 know that I'm able to answer that. I think there is  
3 just details that have to be looked at.

4           Q.     I don't mean -- I just want you to assume  
5 it's on a revenue neutral basis. I'm just trying to  
6 understand if you view whether the Commission has  
7 authority to approve such a proposal.

8                     Can we raise basic local rates above the  
9 maximum allowable price and reduce access charges  
10 outside of 392.245(8) and (9).

11          A.     There are circumstances where I think that  
12 that would be possible, depending on one's definition,  
13 for example, of basic local service and other matters  
14 that would be particulars and details of the type of  
15 proposal you're talking about.

16                     I think basic local service, for example, is  
17 defined in the tariffs of each individual LEC with the  
18 calling scopes and so forth. There's just a lot of  
19 details that make it difficult to answer your question  
20 in such a pure fashion.

21          Q.     Okay. And basic local service is defined in  
22 the statute, isn't it?

23          A.     Yes. The calling scopes are defined in the  
24 tariffs, for example. You -- I mean, I agree that  
25 basic local service is two-way switched voice service

1 within a local calling scope as defined by the  
2 Commission. That's not good enough, Mr. Lane. I  
3 think you need to go to the tariff to look at the  
4 local calling scope as an example.

5 Q. Okay. Let me factor in now what your  
6 interpretation of 392.245(8) and (9) is. Is it your  
7 view that that would give Southwestern Bell the  
8 ability to restructure its access rates and lower them  
9 and increase its basic local rates?

10 A. Well, I -- I have (8) and (9) in front of  
11 me. They are rather large portions of the statute.  
12 What I'm thinking of was the exchange -- I believe  
13 Mr. Zarling's point of view where you-all were  
14 focusing on the very last sentence of -- as allowing  
15 you to restructure -- or, excuse me, rebalance.

16 I -- and, yes, I think you have the  
17 authority to rebalance.

18 Q. And yesterday I thought I heard two things.  
19 I thought I heard a general statement that we had the  
20 ability to rebalance and I thought I heard you say to  
21 Commissioner Gaw that we had the ability to rebalance  
22 under those sections only to the extent to bring  
23 access rates down to 150 percent of the interstate  
24 rates. And I'm trying to clarify which one of those  
25 you think is correct under those two sections.

1                   Is it the general ability to do a  
2    rebalancing, or is it an ability to rebalance only to  
3    the extent that our intrastate access rates exceed  
4    150 percent of the interstate access rates?

5           A.     Well, I think your general ability to  
6    rebalance, I think, will depend on, as we just  
7    discussed, the specifics of the rebalancing proposal.  
8    I also think you have the ability to rebalance  
9    pursuant to the statutes to within 150 percent of the  
10   interstate level.

11          Q.     Okay.  You're aware, are you not, that at  
12   the time that Southwestern Bell went into price caps  
13   that its intrastate access rates as of December 31st  
14   of 1996 were not more than 150 percent of its  
15   interstate access rates at that point?  Were you aware  
16   of that?

17          A.     I believe that's the case, yes.

18          Q.     Okay.  And regardless of that, your view is  
19   that under those two sections of the statute, you  
20   think the Commission has authority to approve a  
21   rebalancing proposal?

22          A.     Yes.

23          Q.     Okay.  You had some discussion with  
24   Commissioner Murray concerning the potential for  
25   residential rate increases, and you expressed the view

1 that we shouldn't give -- you were concerned about  
2 giving Southwestern Bell the keys and that  
3 Southwestern Bell would increase residential rates too  
4 fast. Do you recall that?

5 A. Yes. That's in my testimony also.

6 Q. Okay. Do you think it would be appropriate  
7 for the Commission in connection with a finding of  
8 effective competition for residential services to  
9 indicate that if rates exceeded a certain level --  
10 increases in residential rates exceeded a certain  
11 level that the Commission would immediately conduct an  
12 investigation as to whether effective competition  
13 still existed? Would that be one way to impose some  
14 restraints?

15 A. Yes. I suggest -- if I may, that sounds  
16 like there may be potential for such an approach, and  
17 there is probably value in those sorts of solutions,  
18 if you will.

19 Frankly, Mr. Lane, we recommended  
20 competitive classification for the Harvester and  
21 St. Charles exchanges. To be perfectly candid with  
22 you, I mean, I think that's a preferred approach to  
23 complete pricing flexibility to do a couple of  
24 exchanges initially, rather than the entire state.

25 Frankly, if the situation gets out of hand,

1 I believe that it would be more manageable to  
2 address it with just a couple of exchanges rather  
3 than 2 million people statewide.

4 Q. Or if the Commission had a concern that  
5 residential rates might be raised too quickly  
6 throughout the state in connection with a finding of  
7 effective competition, it could grant a finding of  
8 effective competition, but indicate if rates increased  
9 throughout the state by more than some predetermined  
10 amount that they would immediately begin an  
11 investigation as to whether effective competition  
12 still exists. That would be a possibility, would it  
13 not?

14 A. Yes, that's certainly a possibility.

15 Q. I had some questions about your discussion  
16 with Commissioner Lumpe and I believe Commissioner  
17 Gaw, as well, concerning the value of a workshop, and  
18 I want to just explore that a little bit with you.

19 Would you agree with me that the parties  
20 have expressed their opinions in this case about what  
21 effective competition means and how it should be  
22 measured and that what we need now is a decision from  
23 the Commission to guide the parties as opposed to the  
24 parties attempting to work those things out in a  
25 workshop environment?

1           A.     Well, I don't know if the idea of a workshop  
2     is -- your question seems to suggest that the idea of  
3     a workshop is opposite, somehow or another at odds  
4     with the task before the Commission, and I don't know  
5     that I can agree with that.

6                     I agree with you, yeah, we need a Commission  
7     decision, but I would submit the Commission may want  
8     to see some more details.

9           Q.     Okay. And would you agree with me that at  
10    least in terms of general parameters, the parties have  
11    positions fairly clearly expressed. And I'll use one  
12    example. You and Staff and others believe that  
13    non-regulated services like wireless and so forth  
14    shouldn't be considered in determining effective  
15    competition, and Southwestern Bell has the opposite  
16    view. Right?

17          A.     Yes.

18          Q.     And a workshop wouldn't produce anything on  
19    that particular issue. What, instead, is needed is a  
20    Commission decision. Would you agree with that?

21          A.     Yes. I believe that there is very little,  
22    if anything, that a workshop could accomplish to aid  
23    the Commission in determining whether or not these  
24    alternative forms of communication should be  
25    considered. The only possible thing that may be left

1 on that front, I believe, Mr. Lane, is the Commission  
2 may want to ask the parties to address that in their  
3 briefs, the legal merits of that discussion.

4 Q. Right.

5 A. But I really don't think the workshop could  
6 contribute a whole lot to that particular issue.

7 Q. A workshop would be helpful if there was  
8 some particular factual issue that the Commission  
9 might want to see further developed but wouldn't be  
10 particularly helpful in terms of trying to get a  
11 definition and an understanding of what the parameters  
12 of effective competition as defined in the statute  
13 are. Is that a fair statement?

14 A. That's a fair statement, yes.

15 Q. Okay. You had a discussion with  
16 Commissioner Lumpe concerning the reductions in basic  
17 local and in switched access services that were  
18 mandated by the price cap statute. Do you recall that  
19 discussion?

20 A. Yes, I believe so.

21 Q. And you had a discussion about the CPI for  
22 telephone service and what it was comprised of. Do  
23 you recall that?

24 A. Yes.

25 Q. You had indicated that prices went down for



1 CPI for telephone services because wireless rates had  
2 been going down. That's part of what's included in  
3 the base for CPI telephone service; is that correct?

4 A. We looked at that data and had those  
5 discussions and supported those tariff filings, I  
6 believe, over a year ago, and to the best of my  
7 remembrance and knowledge and belief, the reason that  
8 the telephone consumer price index was negative for  
9 that year was primarily, if not exclusively  
10 attributable to the decline in wireless prices, yes.

11 Q. And it's also a fair statement, isn't it,  
12 that at the time that Senate Bill 507 was passed that  
13 wireless wasn't included in the calculation of CPI for  
14 telephone service, but it was something that was added  
15 later by the United States Department of Commerce?

16 A. Yes.

17 Q. You also had a discussion with Commissioner  
18 Lumpe about the obligation of carriers to serve all  
19 customers of a certain class within an exchange,  
20 either business or residential service. Do you recall  
21 that discussion?

22 A. Yes, I do.

23 Q. And would you agree with me that tariffs for  
24 many of the CLECs contain provisions in them that say  
25 they will offer services to everyone within a

1 particular class like residential or business  
2 customers where facilities exist? Is that a fair  
3 statement of the tariff provisions of CLECs?

4 A. Yes, that is a very accurate statement. I  
5 would point out that the Staff does not always agree  
6 with the competitors with what those words mean. The  
7 Staff believes that the tariffs cannot be used to  
8 escape statutory obligations.

9 The term "where facilities are available"  
10 commonly appears in tariffs. It may even appear in  
11 the incumbent's tariffs.

12 Q. It probably does, doesn't it?

13 A. Yes. And I think we need to be very clear  
14 about this, Mr. Lane.

15 Q. I agree. For example, in the ILECs'  
16 tariffs, if you introduce a new central office-type  
17 service, but you can't put it in all of your central  
18 office, your tariff will include a provision that says  
19 "where facilities exist," so that it's known that  
20 customers in a central office that does have the  
21 capability can have that service, but customers that  
22 are in a central office that doesn't have the  
23 capability won't get it. Right?

24 A. That's right. But I can't go along with the  
25 analogy that you're putting forth here. It's one

1    thing for you not to have facilities available to  
2    offer caller ID in every exchange, but there is no  
3    statutory obligation for you to offer caller ID in  
4    every exchange as contrasted with basic local service  
5    where there is a statutory obligation.  So the meaning  
6    of "where facilities are available" has two different  
7    meanings here.

8           Q.     Okay.  And there hasn't been any case  
9    brought by the Staff to the Commission that would try  
10   to determine what -- whether CLECs do have the  
11   authority to decline to serve either residential or  
12   business customers within an exchange on the basis  
13   that they hadn't built their facilities out that far,  
14   is that a correct statement, no Commission case on  
15   that?

16          A.     Well, yes, that's a correct statement,  
17   Mr. Lane.  It's also a correct statement we haven't  
18   brought any proceeding against the incumbents for not  
19   having facilities all over the exchange.  The example  
20   most often cited is building a new house in the middle  
21   of a national forest.

22          Q.     You had a discussion with Commissioner Gaw  
23   concerning allocation of the loop.  Do you recall  
24   that?

25          A.     Yes.

1           Q.     And I think there was -- there's probably  
2     two concepts that are at issue, and let me see if you  
3     agree with that, that there is one set of issues as to  
4     whether you allocate the loop to various services or  
5     if you treat the loop as if it's for local service in  
6     terms of costing and pricing. Do you agree that's an  
7     issue?

8           A.     Yes.

9           Q.     And whether you allocate the loop or whether  
10    you treat it as it's being part of the cost of local  
11    service, there is a separate question as to whether  
12    you determine the cost by an embedded analysis or  
13    forward-looking analysis. Is that a fair statement?

14          A.     That's a fair statement.

15          Q.     Okay. And embedded analysis typically means  
16    the historical or actual cost of the provider, does it  
17    not?

18          A.     Yes.

19          Q.     And a forward-looking means some type of  
20    incremental approach. Correct?

21          A.     Yes.

22          Q.     And in connection with allocation of the --  
23    of the loop, if -- if the loop is allocated to service  
24    as opposed to treating it as a cost of basic local,  
25    would you agree that a customer that subscribes only

1 to basic local and doesn't take any vertical services,  
2 that the price may not cover the cost, then, of  
3 providing the loop in total?

4 I don't know if that was clear.

5 A. I --

6 Q. I'll try again if that was confusing.

7 A. Please do.

8 Q. Okay. If you allocate the loop and say,  
9 Well, some part of it is attributable to vertical  
10 services, and customers -- not all customers subscribe  
11 to the vertical service, then you're not going to  
12 recover the cost of the loop in total under that type  
13 of analysis?

14 A. Yes. That type of analysis is, in my view,  
15 at least my personal view, is one of the fatal flaws  
16 of the fully allocated method.

17 Q. Or one of the flaws of allocating the loop?

18 A. I'm sorry, yes. Thank you for that  
19 correction.

20 Q. A couple of questions on the existence of  
21 alternate fiber networks, which seem to be something  
22 that was of importance to you in your analysis of  
23 where effective competition could be found to exist.

24 Would you agree with me that Southwestern  
25 Bell has an obligation to provide dark fiber to CLECs

1 pursuant to its interconnection agreements?

2 A. Well, I believe you have an -- I feel  
3 certain that you have an obligation to do so under the  
4 case TO-97-40. If you wish to represent to me that a  
5 similar obligation is contained within the M2A, then I  
6 will accept that.

7 Q. Okay. And assuming it's in the M2A and it  
8 will reflect that, or in other interconnection  
9 agreements, that's an option that CLECs then have.  
10 They can choose to get dark fiber from Southwestern  
11 Bell; they can choose to put in their own dark fiber,  
12 or they can choose to acquire dark fiber from another  
13 company that may have some excess out there in the  
14 field. Would you agree that those are three choices  
15 that are available to CLECs?

16 A. Yes. The last two choices have, of course,  
17 always been available to CLECs. The first choice is  
18 available to them if they choose to enter into the M2A  
19 or some similar agreement.

20 Q. And under the pricing rules that the FCC has  
21 set for TELRIC, would you agree that those are  
22 established on a forward-looking basis intended to  
23 allow the incumbent to recover costs only under a  
24 hypothetical idealized network that is the most  
25 efficient one that is possible, as a general

1 statement?

2 A. As a general statement. However, there are  
3 particulars about what you just said that go beyond my  
4 level of expertise.

5 Q. And so from a competitor's point of view, it  
6 may be a preferable choice to buy dark fiber or any  
7 unbundled network element from Southwestern Bell  
8 because the price is set at this idealized, highly  
9 efficient basis as opposed to spending the capital  
10 themselves to place their own facilities?

11 A. I don't -- I'm not sure where we're going.  
12 I don't mean to quibble, but certainly they can make  
13 purchases from the M2A if they enter into that  
14 agreement. How idealized those rates are I don't  
15 offer an opinion on.

16 Q. All right. You agree that the FCC's TELRIC  
17 pricing principles require prices to be set on that  
18 basis? There may be a difference of opinion as to  
19 whether the Commission did it, but that's what the --  
20 that's what the Act requires, or the FCC rules  
21 require. Correct?

22 A. I agree those are the current standards.

23 Q. We should certainly consider the  
24 availability of unbundled network elements from  
25 Southwestern Bell, including dark fiber, when we

1 analyze whether there's facilities out there that  
2 competitors may -- may utilize to provide competing  
3 service. Is that a fair statement?

4 A. Forgive me. Could you repeat that?

5 Q. Sure. When we're analyzing whether we have  
6 effective competition, and if one of the things that  
7 you're looking at is the presence of alternative fiber  
8 networks, you should also consider the fact that CLECs  
9 may acquire dark fiber, as well as other unbundled  
10 network elements, from Southwestern Bell at prices  
11 that are set by the Commission. That's a factor that  
12 should be considered?

13 A. Sure, yeah.

14 MR. LANE: Okay. That's all I have.

15 Thank you.

16 THE WITNESS: Thank you, Mr. Lane.

17 JUDGE DIPPELL: Is there recross based on  
18 Commission questions from Public Counsel?

19 MR. DANDINO: No questions, your Honor.

20 Thank you.

21 JUDGE DIPPELL: AT&T?

22 RECROSS-EXAMINATION BY MR. ZARLING:

23 Q. Good morning, Mr. Voight.

24 A. Good morning, Mr. Zarling.

25 Q. Commissioner Gaw asked you some questions



1 and Mr. Lane followed up on some regarding rebalancing  
2 under the statute, and it's a confusing topic at  
3 times, but I'd like to ask you a couple of additional  
4 questions about your interpretation of the statute.

5 If you would turn to 392.245 and, again,  
6 the relevant sections are Sections 8 and 9. If you  
7 would look at the last sentence of Paragraph 8, or  
8 Section 8, do you read there that a price capped ILEC  
9 has the authority to reduce its rates to a level --  
10 its intrastate access rates to a level below  
11 150 percent of the corresponding interstate rates?

12 A. Yes, that's the way I read that.

13 Q. So notwithstanding the fact that  
14 Southwestern Bell perhaps when it was first -- first  
15 elected price cap regulation that its intrastate rates  
16 may have already been below 150 percent of their  
17 interstate rates, do you read that section to permit  
18 them to have still reduced their intrastate access  
19 rates?

20 A. Yes, that's the way Staff reads that  
21 statute.

22 Q. Okay. Now, if you would look in  
23 Paragraph 9, I'd ask you, actually, because I didn't  
24 do this with Mr. Hughes, if you would read into the  
25 record the very first sentence of Paragraph 9?

1           A.     "Other provisions of this section to the  
2     contrary, notwithstanding, and no earlier than  
3     January 1st, 1997, the Commission shall allow an  
4     incumbent local exchange telecommunications company  
5     regulated under this section which reduces its  
6     intrastate access service rates pursuant to  
7     Subsection 8 of this section to offset the revenue  
8     loss resulting from the first year's access service  
9     rate reduction by increasing its monthly maximum  
10    allowable prices applicable to basic local exchange  
11    telecommunications services by an amount not to exceed  
12    \$1.50."

13          Q.     Now.   Okay.   Now, as you read that section,  
14    first of all, do you agree with me that the sentence  
15    allowing or the provision allowing a price cap LEC to  
16    reduce its intrastate rates below 150 percent of its  
17    interstate rates is in Section 8?

18          A.     Yes.

19          Q.     Okay.   And as you read Section 9, that very  
20    first sentence, do you see any limitation in that  
21    section that -- well, that limits the rebalancing  
22    described there to a rate reduction only to  
23    150 percent?

24          A.     No, I see no such limitation.

25          Q.     So is it your opinion that at least as to

1 the first year's access reduction referred to in that  
2 sentence, the rebalancing of a \$1.50 to residential  
3 rates and a corresponding reduction to intrastate  
4 rates was applicable to any access reduction, even one  
5 below 150 percent of interstate rates?

6 A. Yes.

7 Q. Okay. So whether or not Southwestern Bell  
8 could do so today, at least under this provision of  
9 the statute, is it your opinion that Southwestern Bell  
10 could have at some time during its price cap  
11 regulation rebalanced residential and intrastate  
12 access rates?

13 A. Yes, I believe that to be the case.

14 Q. Okay. Now, I hate to put you on the spot  
15 here, and maybe there is a good answer for this:  
16 Further on in Paragraph 9 there is a sentence that  
17 reads, "No later than one year after the date the  
18 incumbent local exchange telecommunications company  
19 becomes subject to regulation under this section, the  
20 Commission shall complete an investigation of the cost  
21 justification for the reduction of interstate access  
22 rates and the increase of maximum allowable prices for  
23 basic local service."

24 Do you see that section?

25 A. I'm sorry, Mr. Zarling. You really know how

1 to put a guy on the spot.

2 Yes, I see that section.

3 Q. Okay. Has -- I understand there is some  
4 sort of access investigation taking place, but  
5 Commissioner Gaw asked whether we know the cost of  
6 basic local service.

7 Do you think that there are provisions in  
8 here that would allow the Commission to undertake an  
9 investigation of the actual cost of basic local  
10 service?

11 A. Yes. The sentence that you just referred to  
12 would certainly give the Commission the authority to  
13 undertake such an investigation.

14 Q. And do you think that that might be a  
15 beneficial endeavor going forward after this case in  
16 the event the Commission decides not to grant  
17 Southwestern Bell all of the relief it's asked, but  
18 would intend to examine some of the bases of  
19 Southwestern Bell's arguments for needing to have  
20 price flexibility?

21 A. Yes.

22 Q. Yesterday, also, in response to some  
23 questions from Mr. Gaw, Commissioner Gaw, you  
24 described how I think some Bell's MTS rate increase  
25 filings have been dealt with since 1999. Do you

1 recall those questions?

2 A. Yes, I believe I do.

3 Q. And I just want to -- I just want to be  
4 clear. You said Staff has treated -- my notes show  
5 that Staff has treated those filings as though they  
6 were subject to a price cap increase. Is that -- was  
7 that your answer?

8 A. Well, yes. I believe that was my answer,  
9 and I think it continues to be my answer.

10 More specifically, as I recall those rate  
11 increases for those supposedly and fully competitive  
12 services did not exceed the 8 percent figure that  
13 would be allowable if they were not fully competitive.  
14 I just don't think their MTS rate increases exceeded  
15 the 8 percent.

16 Q. Now, didn't Southwestern Bell in their  
17 filings for those increases indicate that they were  
18 filing them pursuant to Section 245 as though they  
19 were subject to the price cap?

20 A. I don't recall, but I have no reason to  
21 believe otherwise.

22 MR. ZARLING: Those are all of the questions  
23 I have.

24 Thank you.

25 JUDGE DIPPELL: Thank you.

1                   Are there questions from WorldCom?

2                   MR. LUMLEY: Thank you, your Honor.

3 RECROSS-EXAMINATION BY MR. LUMLEY:

4           Q.     Good morning, Mr. Voight.

5           A.     Good morning, Mr. Lumley.

6           Q.     First, following up on the discussion you've  
7 had regarding whether or not competitors can decline  
8 to provide service.

9           A.     Sure.

10          Q.     First of all, you would agree with me that  
11 you can't decline to provide service until you've been  
12 asked to provide service. Correct?

13          A.     Yes, I would agree with that.

14          Q.     Also, wouldn't you agree that Staff would  
15 likely take the position that given the availability  
16 of resale, that any customer along the established  
17 Southwestern Bell facilities that asked to be served  
18 by a competitor that was proposing to offer service in  
19 that territory would not be able to make the assertion  
20 that facilities were not available to serve that  
21 customer?

22          A.     That was a rather long question, Mr. Lumley.  
23 I didn't really follow you after the likelihood of the  
24 Staff position.

25          Q.     All right. Let me rephrase it.

1                   There was discussions about the language in  
2   tariffs about where facilities are available being  
3   some type of limitation.

4           A.     Yes.

5           Q.     And when we're talking about basic local  
6   service to a business customer in an exchange where a  
7   CLECs is tariffed to offer basic local service to  
8   business customers, and they have the ability to  
9   resell Southwestern Bell's service --

10          A.     Yes.

11          Q.     -- isn't it likely Staff would not support  
12   an argument by the CLECs that facilities were not  
13   available to serve that business customer since they  
14   could serve them by resale?

15          A.     If I understand your question correctly, no,  
16   that is not a likely scenario.  It is not a likely  
17   Staff position.

18                   If what you're saying is -- if I may, you're  
19   facilities-based CLEC.  You offer service to, for  
20   example, business customers only.  You currently have  
21   facilities only in, let's say, one-fourth of the  
22   exchange area.  You can serve and are indeed serving  
23   anybody who asks in that one-fourth of that area.  And  
24   the question arose as to what about the rest of the  
25   exchange?

1           If what you're suggesting is that Staff  
2   would insist that you serve those via resale, I  
3   believe that may not be the case at all.

4       Q.     Now, I wasn't suggesting you would insist  
5   upon that. I was suggesting that if the CLEC said  
6   there is no way for us to serve that customer, that  
7   Staff would likely point out, Well, you do have the  
8   option of using resale?

9       A.     Well, sure. It's always -- and I think we  
10   need to be clear about this. There are tariffs, for  
11   example, and I would prefer not to mention any names.  
12   I don't want this proceeding to turn into finger  
13   pointing, but there are tariffs that have, for  
14   example, a rate for if they provide their own  
15   facilities and yet another rate if they have to  
16   resell. And to be perfectly honest with you,  
17   Mr. Lumley, some of those resale rates are way above  
18   and beyond what the incumbent charges.

19            In that regard the CLEC does comply with, if  
20   you will, the letter of the law. It's just the data  
21   will show they have no customers. Who is going to  
22   sign up for something at \$40 from a CLEC when they can  
23   get it at \$10 from the incumbent?

24            So what would be far more likely would be  
25   the Staff would point out the provisions in the tariff



1 of your CLEC in question where you will, just as the  
2 ILECs will, construct facilities. I think that  
3 would -- we would look to that as a means of serving  
4 before we would resale.

5 Q. And when you were talking about rebalancing  
6 of rates, and you were pointing to the fact that the  
7 definition of "basic local service" includes the  
8 reference to local calling scopes as determined by the  
9 Commission and therefore then recorded in tariffs,  
10 were you suggesting that one alternative that exists  
11 for the Commission is that it could alter local  
12 calling scopes whether in connection with an MCA  
13 investigation or otherwise, and on paper be keeping  
14 the basic rate the same but creating the opportunity  
15 for a rate increase through some kind of additive for  
16 this new calling scope?

17 A. Well, I think that's a very important  
18 question. And I don't mean to really be suggesting  
19 anything that the Commission do anything, but what I  
20 would submit is that the statutes probably allow the  
21 Commission a good deal of flexibility in interpreting  
22 how the price cap statutes are implemented.

23 In fact, I think that the statutes defer to  
24 the Commission's expertise on how those details are  
25 accomplished.

1           Q.     Okay.  And I wasn't meaning to suggest that  
2     you were making a specific recommendation, but,  
3     rather, exploring the flexibility available to the  
4     Commission as you just described.

5                     And that flexibility includes its ability to  
6     look at the definition of local calling scopes?

7           A.     Yes, that's correct.

8           Q.     Additionally, wouldn't you agree with me  
9     that Section 392.246 provides another opportunity for  
10    a price-capped company to come to the Commission and  
11    seek to increase rates beyond what the maximum  
12    allowable price would be under the price cap statute?

13          A.     Yes.  Three 392.246 is captioned, Petition  
14    for Rate Relief, relief to be granted when. . .

15                     Yes, I agree with that.

16          Q.     And, finally, wouldn't you agree with me  
17    that -- that while we are currently to operate within  
18    the statutes as written, both Southwestern Bell or any  
19    other price-capped company and the Commission also  
20    have the opportunity to go back to the Legislature and  
21    say, We think, you know, we may have a problem here,  
22    and we'd like you to look at solving it for us?

23          A.     Without -- without a doubt, yes.

24                     MR. LUMLEY:  Thank you.

25                     JUDGE DIPPELL:  Is there recross from

1 Sprint?

2 MS. HENDRICKS: No questions, your Honor.

3 JUDGE DIPPELL: McLeod?

4 (No response.)

5 JUDGE DIPPELL: Mr. Kruse told me yesterday  
6 that he might have to leave, and he did yesterday  
7 afternoon, so in the future if I do not call on  
8 McLeod, it is because I do not see one of their  
9 attorneys available.

10 Is there redirect?

11 MR. HAAS: Yes, your Honor.

12 REDIRECT EXAMINATION BY MR. HAAS:

13 Q. Good morning, Mr. Voight.

14 A. Good morning.

15 Q. Yesterday the Commissioners asked you  
16 questions about rate rebalancing.

17 Do you believe that the issue of rate  
18 rebalancing is or will be an issue in the Missouri USF  
19 case and the case regarding the investigation into  
20 switched access services?

21 A. Yes. I believe rebalancing continues to  
22 come up not only in the context of this proceeding but  
23 other challenges currently before the Commission as  
24 well, and you've mentioned two -- two other public  
25 policy considerations, that of the generic switched

1 access case and also in the context of universal  
2 service.

3 Q. Is the Staff still developing its position  
4 regarding rate rebalancing in those cases?

5 A. Yes, that's my understanding that Staff  
6 still continues to develop its position in the --  
7 especially in the rate rebalancing -- or, excuse me,  
8 the universal service case. And my remarks to  
9 Commissioner Murray about rebalancing for the purposes  
10 of achieving competition in the local exchange network  
11 should not be taken to -- to construe a Staff position  
12 or anybody else's position in the universal service  
13 docket, in particular.

14 Q. Yesterday Southwestern Bell's counsel asked  
15 you questions about business customer data shown in  
16 Mr. Hughes' Surrebuttal schedules.

17 Does that data lead the Staff to recommend  
18 that additional exchanges receive a competitive  
19 classification for business services?

20 A. No, it does not lead the Staff to change its  
21 position. The data pointed out to me by Mr. Lane as  
22 contained in, I believe, Schedule 5 of Mr. Hughes'  
23 Surrebuttal Testimony was not available to the Staff  
24 at the time we filed our Rebuttal Testimony.

25 The data -- even though it may appear to

1 support Southwestern Bell's position, I cannot change  
2 my position at this late date. I believe in the  
3 future, even though technically the burden is not on  
4 Southwestern Bell, it would be on the other parties, I  
5 believe as a practical matter it would behoove  
6 price-capped companies to support their case in Direct  
7 Testimony with as much evidence as possible.

8 Q. Commissioner Lumpe asked you about whether  
9 CLECs must serve all customers in an exchange, and  
10 your responses included that service areas shall be no  
11 smaller than an exchange and that CLECs must provide  
12 access to all Missourians regardless of their income  
13 or location.

14 Are there public policy reasons for those  
15 requirements?

16 A. Yes. I think there are public policy  
17 reasons. I think it serves the public to require  
18 serving on an exchange-wide basis. I think that's the  
19 proper public policy.

20 Q. Have some CLECs found a way to in practice  
21 not serve all residential customers in an exchange?

22 A. Unfortunately, Mr. Haas, when the Staff --  
23 excuse me. Let me start over.

24 The Staff posts on the Commission's website  
25 a listing of competitive local exchange carriers and

1    their contact telephone number for consumers/  
2    businesses to call in order to sign up for service.  
3    We also as part of that describe the tariffed service  
4    area. It is very common for that website to indicate  
5    that a CLEC serve, for example, all of Southwestern  
6    Bell's area, including residential service.

7                   Unfortunately, what we're finding out is  
8    when consumers call those telephone numbers whoever  
9    answers the calls denies that service is available  
10   statewide in all of Southwestern Bell's area. It's  
11   unfortunate, but, you know, we believe that they --  
12   some of the competitors are just not marketing  
13   residential service in a manner that their tariffs  
14   would seem to say they should be.

15                   There are also, as I've just indicated,  
16   other instances where in order to be technically  
17   compliant with the law, they do -- a CLEC will offer  
18   residential service as a separate and distinct service  
19   as required by law. However, because they have fully  
20   competitive classification, they do so at a price that  
21   is not at all attractive to residential customers.

22                   And so, yes, in answer to your question,  
23   there are ways, it appears, that competitors, while  
24   they may technically be holding themselves out to  
25   provide service to everyone throughout an exchange, in

1 practice it appears that that may not be occurring in  
2 some instances.

3 Q. Today Southwestern Bell's counsel asked you  
4 questions about the Fenton exchange. Was one of the  
5 reasons Staff recommends a competitive classification  
6 for business services in St. Louis and Kansas City  
7 based on a proximity analysis?

8 A. Oh, yes.

9 Q. And do you know what the proximity analysis  
10 would show for the Fenton exchange?

11 A. It would show a marked lack of alternative  
12 facilities as contrasted with the St. Louis  
13 metropolitan exchange.

14 Mr. Lane even went so far as based upon data  
15 in Mr. Hughes' schedule of asking me if Staff would  
16 change its position while I was on the witness stand.  
17 And I -- while I feel I'm perhaps empowered to do so,  
18 I'm not going to do so without first consultation with  
19 my co-workers and subordinates and superiors and  
20 attorneys and so forth. I cannot change our position  
21 on the witness stand.

22 Q. Do you know the number of customers  
23 receiving service from CLEC facilities in Fenton as  
24 opposed to the number of lines being served?

25 A. No, we do not know the number of customers.

1 We have estimates -- we think fairly close estimates  
2 of the number of lines being served.

3 I would say that as one -- Mr. Haas, as one  
4 travels through the I-44 corridor in Fenton, Missouri,  
5 it's obvious that it's home to places like the  
6 Daimler-Chrysler plant, our own fine Meritz  
7 Corporation, perhaps United Van Lines and other large  
8 businesses. Apparently, a CLEC has succeeded in  
9 getting one of those customers to put the numbers over  
10 the limit to where it appears to be favorable to  
11 Southwestern Bell. If that's the case, then I would  
12 just reiterate it's unfortunate they waited until  
13 Surrebuttal Testimony to present that data.

14 MR. HAAS: That's all of my questions.

15 Thank you.

16 JUDGE DIPPELL: All right, then.

17 Mr. Voight, I believe the -- we're finished with your  
18 testimony and you may be excused.

19 (Witness excused.)

20 JUDGE DIPPELL: Let's go ahead and take a  
21 15-minute break, and then when we come back, we'll  
22 resume with Mr. Price. Come back at 10:00.

23 We'll go off the record.

24 (A RECESS WAS TAKEN.)

25 JUDGE DIPPELL: Mr. Lumley, you were going



1 to call your first witness to the stand.

2 MR. LUMLEY: Yes. We call Don Price to the  
3 stand, your Honor.

4 JUDGE DIPPELL: Okay. Mr. Price, would you  
5 please spell your name for the court reporter?

6 THE WITNESS: Yes. Don price, P-r-i-c-e.  
7 (Witness sworn.)

8 JUDGE DIPPELL: Thank you.

9 You may proceed, Mr. Lumley.

10 MR. LUMLEY: Thank you, your Honor.

11 DONALD G. PRICE testified as follows:

12 DIRECT EXAMINATION BY MR. LUMLEY:

13 Q. Would you state your name, please?

14 A. Don Price.

15 Q. By whom are you employed?

16 A. By WorldCom, Incorporated.

17 Q. In what capacity?

18 A. I am the Senior Regional Manager for  
19 Competition Policy in the Western Region Public Policy  
20 Group.

21 Q. And is Exhibit 24 in this case your Rebuttal  
22 Testimony?

23 A. I'm taking your word, counselor, for the  
24 exhibit number. Yes, I believe so.

25 Q. And do you have any changes or corrections

1 to that testimony?

2           There is one very minor correction at  
3 Page 3, Line 16. About two-thirds of the way through  
4 the sentence, there is an errant word "be," b-e, that  
5 should be stricken. Other than that, I have no  
6 corrections.

7       Q.     And is your testimony true and correct to  
8 the best of your knowledge, information, and belief?

9       A.     Yes, it is.

10      Q.     If I asked you the questions that are stated  
11 in that testimony, would your answers be the same  
12 today?

13      A.     Yes, they would.

14           MR. LUMLEY: Your Honor, we offer Exhibit 24  
15 into the record, and tender the witness for  
16 cross-examination.

17           JUDGE DIPPELL: Thank you.

18           Are there any objections to Exhibit No. 24?

19           (No response.)

20           JUDGE DIPPELL: Then I will receive that  
21 into the record.

22           (EXHIBIT NO. 24 WAS RECEIVED INTO EVIDENCE.)

23           JUDGE DIPPELL: Is there cross-examination  
24 by Southwestern Bell?

25           MR. CONROY: Yes, your Honor, just a few

1 questions.

2 CROSS-EXAMINATION BY MR. CONROY:

3 Q. Good morning, Mr. Price.

4 A. Good morning.

5 Q. In your testimony you don't discuss any of  
6 Southwestern Bell's specific retail offerings in  
7 Missouri, do you?

8 A. I don't believe so, no.

9 Q. And you don't attempt to apply the effective  
10 competition factors that are contained in Section  
11 386.020(13) to any of Southwestern Bell's specific  
12 retail services; is that right?

13 A. I would agree that I don't apply those  
14 standards to any of the specific services, but the  
15 purpose of this testimony is, indeed, to talk about  
16 the economic or regulatory barriers to entry and their  
17 relationship between those barriers to entry  
18 whether --

19 MR. CONROY: Your Honor, could I ask -- just  
20 a minute, please.

21 I'd ask that that be stricken. I just asked  
22 him if he applied the factors of the statute to any  
23 specific retail service in Missouri. He said he  
24 hasn't, and he's gone on to start to make a speech  
25 about something else. I'd ask it be stricken.

1                   MR. LUMLEY: Your Honor, I believe he's  
2     trying to give a complete answer to the question.

3                   JUDGE DIPPELL: Okay. I will -- the witness  
4     did answer the question with, "I would agree that I  
5     don't apply the standards to any of the specific  
6     services," and so I will strike the remainder of the  
7     testimony after that.

8                   You may continue, Mr. Conroy.

9                   MR. CONROY: Thank you, Judge.

10                  BY MR. CONROY:

11                 Q.     On Page 6 of your Rebuttal Testimony you  
12     state that a CLEC seeking to provide a competitive  
13     alternative to Southwestern Bell in all of its market  
14     segments would have to expend \$3 billion to replicate  
15     Southwestern Bell's network in Missouri. Do you see  
16     that? It's on Line 4, I believe.

17                 A.     I believe the subsequent sentence says that  
18     a CLEC hoping to do that would --

19                   MR. CONROY: Your Honor -- excuse me,  
20     Mr. Price. You're not answering my question again.

21                   And I would ask that that be struck, your  
22     Honor. All I asked him to do was if he saw in the  
23     testimony where that testimony appeared, and he's gone  
24     on to talk about something else apparently.

25                   JUDGE DIPPELL: I don't think he actually

1 said anything else, so I don't think it needs to be  
2 stricken, but I will ask Mr. Price to answer his  
3 question.

4 Do you see that on the page?

5 THE WITNESS: I'm sorry, your Honor. As I  
6 understood the question it was what my testimony says  
7 there at Page 6, and what I was pointing out is the  
8 sentence that I believe you're referring to is not at  
9 Line 4, but, indeed, begins at Line 4 and goes through  
10 Line 6 where I talk about what a CLEC hoping to do,  
11 what I'm discussing there, would have to invest, and I  
12 believe the phrase is "as least as much as  
13 Southwestern Bell's book investment."

14 BY MR. CONROY:

15 Q. All right. I mean, do you believe that  
16 statement to be true still?

17 Let me ask a different question.

18 You don't believe that to be a true  
19 statement, do you?

20 A. I do believe that to be a true statement. I  
21 would be glad to explain why.

22 Q. No. I just want to make sure you still  
23 believe it is a true statement.

24 You still believe that to be a true  
25 statement as you sit on the witness stand today?

1           A.     Yes, I do.

2           Q.     Okay.  You've testified before this

3     Commission in the past, haven't you?

4           A.     Yes, I have.

5           Q.     And your company -- I may be mistaken, but

6     it may have even been you -- has helped developed and

7     has advocated cost models which they've submitted to

8     this Commission in the past that would put a

9     significantly lower number on the cost to provide

10    service in the state of Missouri; is that correct?

11          A.     I'm not sure what you mean by a

12    completely -- or a lower number.  I don't know what

13    you're referencing.

14          Q.     Well, let's take it in steps then.

15                 Has your company submitted cost -- helped

16    develop cost models and advocated cost models in other

17    proceedings before this Commission which suggest that

18    the book value of Southwestern Bell's investment is

19    not a proper measure of the cost of providing service

20    in Missouri?

21          A.     Yes, I can agree with that.

22          Q.     Okay.  So do you -- are you telling us now

23    that those weren't accurate?

24          A.     I don't believe I'm saying that at all.

25    What I'm saying is that if one is to believe the

1 investment that Southwestern Bell reflects on its  
2 books as loop investment, and if that has anything to  
3 do with -- and I think if we're going to talk about  
4 the relationship between cost models and Southwestern  
5 Bell's book investment, the loop category is a good  
6 one, because it may well be that the labor necessary  
7 to install equipment today for a CLEC would be higher,  
8 for example, than the labor that was incurred over a  
9 number of years by Southwestern Bell to put loop plant  
10 in the ground.

11 So that may be a very specific example where  
12 the incremental cost would indeed be higher for that  
13 particular category of plant or at least a portion of  
14 that than what is reflected on an embedded basis in  
15 Southwestern Bell's books.

16 Q. So it's your testimony that to compete in  
17 Missouri, you'll have to -- that a CLEC has to put  
18 \$3 billion in plant in the ground in order to compete  
19 in Missouri, or in the air. Is that your testimony?

20 A. That is not my testimony. That's not what's  
21 reflected at Page 6 of my testimony from Lines 4  
22 through 6.

23 I state, To completely eliminate dependence  
24 on Southwestern Bell's facilities, it would be  
25 necessary, and I use the word the phrase, ". . .to

1 compete in all market segments, it would be necessary  
2 to replicate all of Southwestern Bell's plant."

3 That would be a very large number. Now,  
4 whether it's 2.97 billion or 3.16 billion or some  
5 other number, I don't think that that is relevant to  
6 the investigation that is before this Commission. It  
7 is a large number.

8 Q. Well, if it's not relevant to the  
9 investigation before the Commission, why did you put  
10 it in your testimony?

11 I'll withdraw the question.

12 Would you agree with me that the Missouri  
13 statute which defines the factors of "for effective  
14 competition" does not require a CLEC to completely  
15 replicate Southwestern Bell's existing network? Would  
16 you agree with me that that is not one of the factors?

17 A. I don't have a firm knowledge of all of the  
18 statutory provisions. If there is a particular  
19 provision you would like to reference, I'll be glad to  
20 look at it and see whether it's in there. I mean --

21 Q. You're not familiar with the factors in  
22 Section 386.020(13)?

23 A. Well, as I was beginning to state earlier,  
24 the purpose of my testimony is to talk about "D" in  
25 the list which is the --



1           Q.     Mr. Price, you're going to have to stop  
2     because you're not answering my question, and I have  
3     to ask the judge -- all I asked you was, so you're not  
4     familiar with the factors? And you've gone and you're  
5     starting to repeat your Direct Testimony on another  
6     page.

7           MR. CONROY: And it's not responsive to my  
8     question, Judge.

9           JUDGE DIPPELL: Mr. Price, are you familiar  
10    with the factors, is the question.

11          THE WITNESS: I am familiar with the factors  
12    in that portion of the statute that is 386.020.13.

13          JUDGE DIPPELL: Thank you.

14          MR. CONROY: Nothing further, Judge.

15          JUDGE DIPPELL: Thank you.

16          Is there cross-examination by Staff?

17          MR. HAAS: No, your Honor.

18          JUDGE DIPPELL: Public Counsel?

19          MR. DANDINO: No questions, your Honor.

20          JUDGE DIPPELL: AT&T?

21          MR. ZARLING: None, your Honor.

22          JUDGE DIPPELL: Sprint?

23          MS. HENDRICKS: No, your Honor.

24          JUDGE DIPPELL: McLeod?

25          Oh, it's your witness. I'm sorry.

1                   McLeod is not here. I was looking at  
2 Mr. Lumley for WorldCom.

3                   Okay. There was one question from the  
4 Commissioners, but I believe that Mr. Conroy has  
5 already covered that, so I'm not going to ask that.

6                   Mr. Price, I'm not 100 percent sure that  
7 Commissioner Gaw did not have a question for you, and  
8 the Commissioners are in agenda at this time, so I'm  
9 going to go ahead and go to redirect. If the  
10 Commissioners haven't adjourned agenda by then, I will  
11 ask you to step down, but I won't be able to excuse  
12 you just right away.

13                  Is there redirect, Mr. Lumley?

14                  MR. LUMLEY: Yes, your Honor.

15 REDIRECT EXAMINATION BY MR. LUMLEY:

16           Q.     Mr. Price, counsel for Southwestern Bell was  
17 asking you about the nature of your testimony and its  
18 application to services -- its services, and you were  
19 beginning to talk about the factor regarding barriers  
20 to entry.

21                  Would you complete that answer now, please?

22           A.     Yes. I think the purpose of my testimony  
23 was to lay out some of the economic and regulatory  
24 barriers to entry that exist. I did not try to put  
25 together an exhaustive matrix that would link, for

1 example, each of the UNE elements that are in, for  
2 example, the M2A and attempt to cross-reference each  
3 of those to any possible service.

4 But in -- in talking about what would be  
5 necessary to eliminate dependence on Bell's  
6 facilities, I was attempting to point to the fact that  
7 restrictions on the use of UNEs such as the discussion  
8 that I have in here about EELs and there are a number  
9 of such restrictions that I have seen in my experience  
10 over the years working with Southwestern Bell in its  
11 various jurisdictions that do have a significant  
12 relationship between Southwestern Bell's ability as a  
13 retail provider to provide retail services versus the  
14 ability of its competitors who rely on Southwestern  
15 Bell for certain facilities and capabilities of its  
16 network to compete on an equal footing, and it's that  
17 relationship that I think has been, at least to some  
18 extent, overlooked in this proceeding, and that was  
19 definitely what I was attempting to assist the  
20 Commission's investigation with.

21 Q. And as stated in your testimony, that cuts  
22 across all service categories?

23 A. Yes, it does.

24 Q. And with regard to the questioning from  
25 Southwestern Bell's counsel about the \$3 billion

1 investment that would be required to serve all market  
2 segments and completely eliminate dependence on  
3 Southwestern Bell's facilities, did you in any way  
4 mean to suggest that you felt that was an irrelevant  
5 portion of your testimony?

6 A. Not at all. I wanted to put a number out  
7 there that had relevance, but I wanted to show that as  
8 an order of magnitude to help guide the Commission in  
9 its thinking and its deliberations, not as a specific  
10 number whose dollar amount was precise and intended to  
11 be an exact dollar amount that any CLEC who would look  
12 at it. It was simply to provide an order of  
13 magnitude.

14 MR. LUMLEY: Thank you.

15 JUDGE DIPPELL: All right then. Mr. Price,  
16 you may step down.

17 I will ask you to remain until I'm certain  
18 that there are no further Commission questions for  
19 you.

20 And I believe we're ready then for our next  
21 witness, and that's going to be AT&T's witness.

22 Would you please spell your name for the  
23 court reporter.

24 THE WITNESS: My name is Matt Kohly, and  
25 that's K-o-h-l-y.

1 JUDGE DIPPELL: Would you please raise your  
2 right hand?

3 (Witness sworn.)

4 JUDGE DIPPELL: Thank you.

5 You may proceed, Mr. Zarling.

6 MR. ZARLING: Thank you.

7 R. MATTHEW KOHLY testified as follows:

8 DIRECT EXAMINATION BY MR. ZARLING:

9 Q. Would you restate your name for the record,  
10 please?

11 A. My name is Matt Kohly, K-o-h-l-y.

12 Q. And by whom are you employed?

13 A. AT&T Communications of the Southwest.

14 Q. And what is your job title?

15 A. I'm a regulatory manager for the state of  
16 Missouri.

17 Q. And did you prepare and cause to be filed in  
18 this case Rebuttal Testimony that has been marked for  
19 identification purposes as Exhibit 22?

20 A. Yes.

21 Q. And did you prepare and cause to be filed in  
22 this case Surrebuttal Testimony that's been marked for  
23 exhibit purposes -- for identification purposes as  
24 Exhibit 23?

25 A. Yes, I did.

1           Q.     And do you have -- beginning with your  
2     Rebuttal Testimony, do you have any changes or  
3     corrections to that testimony?

4           A.     Yes, I do. I may have quite a few. I  
5     apologize. I had a hard drive crash the day the  
6     testimony was due.

7                     Starting on Page 17 of my Rebuttal  
8     Testimony, Line 19, the second word in that line is  
9     "protect." That word should be "protection" instead  
10    of "protect."

11                    On Page 21, Line 10, the last two words of  
12    that line read "service for." The word "available"  
13    should be inserted in there between "service" and  
14    "for" so it reads "service available for."

15                    On Page 31, Line 24, it currently reads,  
16    "would have no longer have ability." The first "have"  
17    in that should be removed, and between the last two  
18    words of that line it should say "have" -- or the word  
19    "the" should be inserted, so it says "have the  
20    availability," so that entire phrase reads, "SWBT  
21    would no longer have the ability."

22                    JUDGE DIPPELL: I'm sorry. Could you point  
23    me to that one again, the page?

24                    THE WITNESS: It's Page 31, Line 24.

25                    JUDGE DIPPELL: Okay. You can continue?

1 THE WITNESS: That's it for Rebuttal.

2 BY MR. ZARLING:

3 Q. Actually, Mr. Kohly, if I can direct you  
4 to -- at least it's on Page 5 of the copy I've got,  
5 and a citation to 386.020.14. Did you intend to  
6 correct that in the testimony in the questioning?

7 A. No. I'm referring -- maybe I'm looking at  
8 the wrong statute. I'm referring at -- to the  
9 criteria for effective competition, and my copy of  
10 Senate Bill 507 shows that is 14.

11 Q. That would explain why it's in your  
12 testimony that way, I guess.

13 Okay. Then let's move on to Surrebuttal.

14 A. Surrebuttal, Page 17, Line 7, the last word  
15 in that sentence should be "competitive" instead of  
16 "completive." I don't know if it's a word or not.

17 Line 19 -- I'm sorry. Page 10, Line 19, the  
18 fourth word -- well, it currently reads, "local plus  
19 is a priced at a." The "a" in that should be stricken  
20 so it reads, "local plus is priced at a flat. . ."

21 And then Page 19, Line 13, it currently  
22 reads, "The customer is effectively of the market."  
23 That should read effectively off the market, so  
24 replace the word "of" with "off."

25 And I think that was the major ones.

1           Q.     Mr. Kohly, if I asked -- excuse me. Now,  
2     with those changes and corrections, are your -- is  
3     your testimony in your Rebuttal Testimony, are they  
4     true and correct to the best of your knowledge and  
5     belief?

6           A.     Yes, they are.

7           Q.     And in your Surrebuttal Testimony, with  
8     those changes, is your testimony true and correct to  
9     the best of your knowledge and belief?

10          A.     Yes.

11          Q.     I may have asked that out of order, but if I  
12     were to ask the questions contained in your Rebuttal  
13     and Surrebuttal Testimony today, would they be the  
14     same?

15          A.     Yes, they would.

16                 MR. ZARLING: Okay. With that, your Honor,  
17     I would move for admission of Exhibits 22 and 23.

18                 JUDGE DIPPELL: Okay. Mr. Kohly, before --  
19     I want to make sure I've got these corrections  
20     correct.

21                 In your Surrebuttal, you said Page 17,  
22     Line 7? Is that correct?

23                 THE WITNESS: No. I should have said  
24     Page 19, if I misspoke.

25                 JUDGE DIPPELL: Okay. So Page 19, Line 7 --



1 THE WITNESS: Yes.

2 JUDGE DIPPELL: -- of your Surrebuttal?

3 THE WITNESS: Yes.

4 JUDGE DIPPELL: I'm sorry. The first

5 correction in your Surrebuttal that you said?

6 THE WITNESS: Page 7.

7 JUDGE DIPPELL: Page 7. All right. And the

8 next one was on Page 10?

9 THE WITNESS: Yes, Line 19.

10 JUDGE DIPPELL: And what was that correction

11 again?

12 THE WITNESS: Removing the letter "a" from

13 that sentence, so that it reads, "local plus is priced

14 at a. . ."

15 JUDGE DIPPELL: Oh, I see now. Thank you.

16 Okay. I wasn't following all of those.

17 THE WITNESS: I apologize for the number of

18 those.

19 JUDGE DIPPELL: Exhibit Nos. 22 and 23,

20 then, have been offered.

21 Are there any objections to Exhibit No. 22?

22 (No response.)

23 JUDGE DIPPELL: Then I will receive it into

24 the evidence.

25 (EXHIBIT NO. 22 WAS RECEIVED INTO EVIDENCE.)

1 JUDGE DIPPELL: And are there any objections  
2 to Exhibit No. 23?

3 (No response.)

4 JUDGE DIPPELL: And I will also receive that  
5 into evidence.

6 (EXHIBIT NO. 23 WAS RECEIVED INTO EVIDENCE.)

7 MR. ZARLING: I tender Mr. Kohly for cross.

8 JUDGE DIPPELL: Thank you.

9 Is there cross-examination by Southwestern  
10 Bell?

11 MR. LANE: Yes, your Honor.

12 CROSS-EXAMINATION BY MR. LANE:

13 Q. Good morning, Mr. Kohly.

14 A. Good morning.

15 Q. I want to direct your attention to your  
16 Rebuttal Testimony on Page 2 where you state as one of  
17 your concerns that Southwestern Bell would increase  
18 access rates. Do you see that reference?

19 A. Yes, I do.

20 Q. Okay. Would you agree that Southwestern  
21 Bell has now clarified that it's willing to accept its  
22 current rates as a cap with the ability to restructure  
23 just as CLECs have?

24 A. I'm aware that you've stated that. I don't  
25 know what specific restructuring you have in mind, so

1 I can't -- so I'm not aware of the details of that.

2 Q. Okay. Does AT&T serve local customers in  
3 Missouri under various affiliates?

4 A. Yes, it does.

5 Q. Okay. And does AT&T and its various  
6 affiliates utilize its own facilities in part to serve  
7 its own customers?

8 A. Yes.

9 Q. Including the loop?

10 A. Yes.

11 Q. And in your view, does AT&T have a  
12 locational monopoly with regard to terminating  
13 switched access for the customers that it serves  
14 utilizing its own loop facilities?

15 A. Yes.

16 Q. Does AT&T in your view face effective  
17 competition with regard to its provision of  
18 terminating switched access to reach customers that  
19 AT&T serves via its own loop facilities?

20 A. I guess I would ask you to define what you  
21 mean by "effective competition." Terminating access  
22 is a locational monopoly unless there is an  
23 alternative -- alternate loop into the facility to  
24 terminate calls.

25 Q. Okay. Effective competition as you've

1 utilized it in your testimony and as defined by the  
2 statutes in Missouri, does AT&T face effective  
3 competition with regard to its provision of  
4 terminating switched access for calls to customers  
5 that AT&T serves utilizing its own loop facilities?

6 A. So imposing 386(14) as your definition for  
7 effective competition, I would have to say, no, that  
8 any provider that has terminating switched access  
9 without the presence of an alternate facility to  
10 terminate calls with would possess a locational  
11 monopoly.

12 Q. And would you agree with me that AT&T as a  
13 local exchange provider and its various affiliates  
14 have been classified as competitive in Missouri for  
15 all of its services including switched access?

16 A. Yes, however the cap was imposed by the  
17 Commission as a condition of granting competitive  
18 classification.

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

20 JUDGE DIPPELL: Is there cross-examination  
21 by Staff?

22 MR. HAAS: No, your Honor.

23 JUDGE DIPPELL: Public Counsel?

24 MR. DANDINO: No questions, your Honor.

25 Thank you.

1 JUDGE DIPPELL: WorldCom?

2 CROSS-EXAMINATION BY MR. LUMLEY:

3 Q. Mr. Kohly, if it turned out that subsequent  
4 to the passage of Senate Bill 507 that there were  
5 additional revisions that caused 386.020 Subsection 14  
6 to be renumbered as 13, your intention is to refer to  
7 the same provision about effective competition that  
8 all of the other parties were referring to; is that  
9 correct?

10 A. Yes.

11 JUDGE DIPPELL: Is there cross-examination  
12 by Sprint?

13 MS. HENDRICKS: No, your Honor.

14 JUDGE DIPPELL: Mr. Kohly, I do know that  
15 the Commissioners have questions for you, so we will  
16 at this time just proceed to redirect on the  
17 cross-examination questions, and then I will call you  
18 back to the stand when the Commissioners are available  
19 for remaining questions.

20 Is there any redirect at this time?

21 MR. ZARLING: Oh, sure.

22 REDIRECT EXAMINATION BY MR. ZARLING:

23 Q. Mr. Kohly, Mr. Lane asked you about  
24 Southwestern Bell's access proposal in this case to  
25 cap their rates.

1           A.     Correct.

2           Q.     Do you have concerns other than the  
3 restructuring concerns that you describe with  
4 Southwestern Bell's proposal?

5           A.     My main concern is that -- not knowing -- I  
6 think their witness previously stated they did not  
7 know what they would do under that cap. My main  
8 concern is that they would try to restructure  
9 transport and make up for any reduction in transport  
10 rates through an increase in another rate element or  
11 the introduction of a RIC.

12          Q.     Does the effect of classifying Southwestern  
13 Bell's access rates -- access service, in addition to  
14 all of their other services, as competitive create a  
15 concern for AT&T?

16          A.     Yes, it does. If Southwestern Bell were  
17 granted competitive classification for all of its  
18 services --

19               MR. LANE: Your Honor, I'm going to object  
20 to this. This goes beyond the scope of the  
21 cross-examination which was solely limited to switched  
22 access.

23               MR. ZARLING: Well, I asked him if he had  
24 any concerns about classifying Southwestern Bell's  
25 switched access services as competitive if all of the

1 rest of Southwestern Bell's services are classified as  
2 competitive. At least that's how I meant to ask it.

3 JUDGE DIPPELL: I will let the witness  
4 answer that question.

5 THE WITNESS: Picking up where I think I  
6 left off, one of the concerns would be that one of the  
7 safeguards in the statutes, which is 392.400.5, that  
8 prohibits or at least lessens the ability to engage in  
9 pricing rates below cost would be lifted, and that is  
10 a concern of AT&T.

11 MR. ZARLING: Okay. That's all. Thank you.

12 JUDGE DIPPELL: Mr. Kohly, you used  
13 something about an introduction of a RIC; is that what  
14 you said?

15 THE WITNESS: Yes.

16 JUDGE DIPPELL: What is that?

17 THE WITNESS: Residual interconnection  
18 charge. The concern we have --

19 JUDGE DIPPELL: That's fine. I just needed  
20 a definition. Thank you.

21 THE WITNESS: Okay.

22 JUDGE DIPPELL: Okay. Then at this time,  
23 Mr. Kohly, you may step down, and I would like you to  
24 remain for recall.

25 Mr. Price may be excused.

1 (Witness excused.)

2 JUDGE DIPPELL: And I would like to go ahead  
3 and bring up the next witness.

4 MS. HENDRICKS: Sprint calls Dawn  
5 Rippentrop.

6 JUDGE DIPPELL: Ms. Rippentrop, would you  
7 spell your name for the court reporter?

8 THE WITNESS: Dawn, D-a-w-n, Rippentrop,  
9 R-i-p-p-e-n-t-r-o-p.

10 JUDGE DIPPELL: Would you please raise your  
11 right hand?

12 (Witness sworn.)

13 JUDGE DIPPELL: Thank you.

14 DAWN RIPPENTROP testified as follows:

15 DIRECT EXAMINATION BY MS. HENDRICKS:

16 Q. Mrs. Rippentrop, or Miss Rippentrop, would  
17 you please state your full name for the record?

18 A. Dawn Rippentrop.

19 Q. And by whom are you employed?

20 A. Sprint Communications Company, LP.

21 Q. And are you appearing here today on behalf  
22 of Sprint Communications Company, LP?

23 A. Yes, I am.

24 Q. And in what capacity are you employed by  
25 Sprint Communications Company, LP?



1           A.     I'm a regulatory manager for the access  
2 management.

3           Q.     Are you the same Dawn Rippentrop that  
4 prefiled Rebuttal Testimony in this docket?

5           A.     Yes, I am.

6           Q.     Do you have any corrections to your prefiled  
7 Rebuttal Testimony?

8           A.     Yes. I have a change on my cover page. I  
9 could submit a new cover page.

10                   MS. HENDRICKS: Your Honor, if I may  
11 approach the witness?

12                   JUDGE DIPPELL: Sure.

13                   MS. HENDRICKS: Your Honor, we had forgotten  
14 to put the information on the upper right-hand corner,  
15 and I have it on the new cover page, and it's just --  
16 I'm going to provide it to the parties, but I think we  
17 can just attach it onto the exhibit.

18                   JUDGE DIPPELL: That will be fine.

19 BY MS. HENDRICKS:

20           Q.     Miss Rippentrop, with the addition of the  
21 new cover page, if I were to ask you the same  
22 questions that appear in your prefiled Rebuttal  
23 Testimony, would you provide me the same answers?

24           A.     Yes.

25           Q.     And do you believe those answers to be true

1 and correct to the best of your knowledge?

2 A. Yes.

3 MS. HENDRICKS: Sprint moves for the  
4 admission of Exhibit -- I believe it is 25, which is  
5 Ms. Rippentrop's prefiled Rebuttal Testimony.

6 JUDGE DIPPELL: Is there any objection to  
7 Exhibit No. 25?

8 (No response.)

9 JUDGE DIPPELL: Then I will receive it into  
10 the record.

11 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

12 MS. HENDRICKS: I tender the witness for  
13 cross-examination.

14 JUDGE DIPPELL: Thank you.

15 Is there cross-examination by Southwestern  
16 Bell?

17 MR. CONROY: Yes, your Honor, briefly.

18 CROSS-EXAMINATION BY MR. CONROY:

19 Q. Good morning, Miss Rippentrop.

20 A. Good morning.

21 Q. You're employed by the long distance  
22 division --

23 A. I am.

24 Q. -- group of Sprint. Right? Is that right?

25 A. Yes.

1           Q.     And you're familiar with the basic access  
2     charge structure and the access charges Sprint as an  
3     interexchange carrier pays to local exchange carriers,  
4     and by that I mean both incumbent LECs like  
5     Southwestern Bell and competitive LECs like all of the  
6     competitive LECs we talked about in this case?

7           A.     Yes, I am.

8           Q.     Would you agree with me, first off, that if  
9     the Commission were to accept your recommendation in  
10    this case that Southwestern Bell switched access  
11    services not be deemed competitive, subject to  
12    effective competition, that Southwestern Bell would be  
13    treated differently with respect to its switched  
14    access services than every other CLEC against whom  
15    Southwestern Bell competes in every one of its  
16    exchanges in Missouri?

17          A.     No, I do not believe they are treated  
18    differently. They are still allowed still the same  
19    access rate element.

20          Q.     Okay. Maybe I need to ask the question  
21    again.

22                   Would you agree with me that every CLEC  
23    against whom Southwestern Bell competes in its  
24    territory, the CLECs' switched exchange access  
25    services have been deemed to be competitive services?

1           A.     Yes.

2           Q.     And your recommendation is that Southwestern  
3 Bell's switched access service should not be  
4 competitive; is that right?

5           A.     Correct.

6           Q.     So there -- you're recommending that  
7 Southwestern Bell be treated differently in that  
8 respect than the CLECs against whom it competes in its  
9 territory. Correct?

10          A.     Yes.

11          Q.     Would you agree with me that the nature of  
12 the switched access services provided by Southwestern  
13 Bell are no less competitive than the nature of the  
14 switched access services provided by CLECs in  
15 Southwestern Bell's territory?

16          A.     All local switching and common line, whether  
17 it be from a CLEC or from an ILEC, are  
18 non-competitive.

19          Q.     You understand that as part of the CLEC  
20 certification process in Missouri CLECs' switched  
21 access rates have been classified as competitive  
22 subject to or conditioned upon a CLEC capping --  
23 agreeing to cap its access rates at the level of the  
24 incumbent LEC against whom it's going to compete?

25          A.     Yes.

1 Q. Okay. Did you used to work in the Sprint  
2 CLEC side of the business?

3 A. I worked for Sprint Business doing  
4 competitive analysis for Sprint's ION product.

5 Q. Okay. And would that have --

6 A. So it's not part of the CLEC -- that arm, I  
7 believe, if you're referring to as NIS or -- it was --  
8 it's no longer in existence. I worked for Sprint  
9 Business under the long distance arm or division.

10 Q. Okay. So you've never worked for the CLEC,  
11 Sprint CLEC business?

12 A. No, I have not.

13 Q. Okay. Are you aware that Sprint's CLEC  
14 affiliate, Sprint Communication Company, LP, applied  
15 for and was granted a certificate of service authority  
16 to provide basic local service in Missouri?

17 A. Uh-huh, yes.

18 Q. Okay. And in that case, like a lot of other  
19 cases, the parties agreed in a Stipulation and  
20 Agreement that Sprint should be classified as a tele--  
21 a competitive telecommunications company, Sprint, the  
22 CLEC, should be classified as a competitive  
23 telecommunications company?

24 A. Yes, I'm generally aware of that.

25 Q. Okay. Are you also aware that the parties

1    agreed that Sprint's -- Sprint, the CLEC, their  
2    switched exchange access services should also be  
3    classified as a competitive service conditioned upon  
4    the same cap on access rates that we've talked about  
5    already?

6           A.     I do not have specific knowledge of that;  
7    however, if they are a CLEC and abide by the rules and  
8    statutes of this state, I assume that to be true --

9           Q.     Okay.

10          A.     -- that they are subject to a cap.

11          Q.     Okay.  And that the services -- switched  
12   access service has been deemed competitive?

13          A.     Correct.

14          Q.     Okay.  Within or under the overall cap, is  
15   it your understanding that an individual CLEC like  
16   your Sprint affiliate may have an access rate  
17   structure which differs from that of the incumbent LEC  
18   against whom it's competing?

19          A.     I'm sorry.  Would you repeat the question?

20          Q.     Sure.  Within or under the overall cap that  
21   we've talked about, is it your understanding that an  
22   individual CLEC may have a different access rate  
23   structure or an access rate structure that differs  
24   from that of the incumbent LEC in that territory so  
25   long as the CLEC's overall switched access rates are

1 equal to or less than the incumbent's?

2 A. Yes.

3 Q. Okay. And are you aware that the Commission  
4 has approved tariffs of CLECs subject to the cap which  
5 contain a different access rate structure than that of  
6 the incumbent LEC but based on the Staff  
7 recommendation that the overall access rates satisfy  
8 the cap, they've approved those tariffs?

9 A. I'm aware, however, I don't know the  
10 specific rate structure like the element level.

11 Q. Okay. And do you -- because it's been  
12 subject to some question, do you now understand that  
13 SWBT's -- or Southwestern Bell's position in this case  
14 is that it seeks to be treated exactly the same as  
15 every other CLEC against whom it's competing in its  
16 territory with respect to switched access services?

17 A. Yes.

18 Q. Okay. And that treatment would result in  
19 Southwestern Bell's switched exchange access services  
20 being classified as a competitive service just like  
21 the CLECs against whom it's competing conditioned upon  
22 Southwestern Bell capping its overall access rates at  
23 its current level? Do you understand that to be the  
24 current condition?

25 A. I don't know the details of Southwestern

1 Bell's condition. I understand generally that's  
2 what you're asking, or in your opening -- in your  
3 brief.

4 MR. CONROY: Okay. That's all of the  
5 questions I have.

6 Thanks.

7 JUDGE DIPPELL: Is there cross-examination  
8 by Staff?

9 MR. HAAS: No, your Honor.

10 JUDGE DIPPELL: Public Counsel?

11 MR. DANDINO: No questions, your Honor.

12 Thank you.

13 JUDGE DIPPELL: AT&T?

14 MR. ZARLING: No. Thank you.

15 JUDGE DIPPELL: WorldCom?

16 MR. LUMLEY: No questions.

17 JUDGE DIPPELL: All right. As with the  
18 earlier witness, I'm not certain if there are  
19 questions from the Commissioners for you,  
20 Miss Rippentrop, so we'll proceed with redirect based  
21 on the cross-examination, and when -- as soon as  
22 agenda ends, then I will be able to determine if the  
23 Commissioners have additional questions.

24 Is there redirect at this time?

25 MS. HENDRICKS: I just have one question.



1 REDIRECT EXAMINATION BY MS. HENDRICKS:

2 Q. Miss Rippentrop, Southwestern Bell's counsel  
3 asked you several questions about the designation that  
4 Sprint, the CLEC, received in connection with  
5 receiving its certificate. Do you recall that?

6 A. Yes.

7 Q. To your knowledge, prior to Sprint, the  
8 CLEC, receiving a competitive classification for their  
9 switched access, did it have to satisfy a statutory  
10 requirement to show effective competition within  
11 switched access?

12 A. I do not have knowledge of that.

13 MS. HENDRICKS: Okay. No further questions.

14 JUDGE DIPPELL: You may go ahead and step  
15 down, Miss Rippentrop, subject to recall.

16 At this time since -- well, let me ask, I  
17 guess: Are there any other witnesses I have missed?

18 MR. LANE: I'll testify.

19 JUDGE DIPPELL: You'll testify, Mr. Lane?

20 MR. LUMLEY: I'm going to testify as well  
21 then.

22 JUDGE DIPPELL: I've heard enough from  
23 you-all.

24 MR. LUMLEY: We'll stipulate to that.

25 JUDGE DIPPELL: Okay. Then -- I know we

1 just took a break not too long ago, but let's take a  
2 15-minute break; come back at 11:00. And while you're  
3 on your break be considering what you think is the  
4 appropriate briefing schedule for this case, and then  
5 we'll be able to wrap that up after Commission  
6 questions.

7 I know the Commission has questions for  
8 Mr. Kohly, and I will try to determine if they have  
9 those for Mr. Rippentrop also. Thank you.

10 We can go off the record.

11 (A RECESS WAS TAKEN.)

12 JUDGE DIPPELL: Unfortunately, the  
13 Commissioners are still attending to their other  
14 business.

15 They do have questions for Mr. Kohly and  
16 Miss Rippentrop, and so what I'd like to do right now  
17 is just go ahead and let's discuss the briefing  
18 schedule and take care of those housekeeping details,  
19 and then probably what will happen, unless I hear from  
20 the Commissioners before we adjourn, is that we will  
21 take an early and long lunch and adjourn until 1:00,  
22 come back and finish up those witnesses.

23 I see your frowns. That's how we're going  
24 to proceed.

25 Let's talk about the briefing schedule. The

1 transcript is right now on its standard two weeks from  
2 the conclusion of the hearing, so it should be filed  
3 on -- according to my -- looking at my calendar on the  
4 break, it should be filed on October 11th. There is a  
5 Columbus Day holiday on the 8th, so it may be the  
6 12th. I believe the transcript comes on a working day  
7 kind of thing.

8           So October 12th is when the transcript --  
9 I'm assuming you want to file briefs. I want you to  
10 file briefs. And along with that, I want you to file  
11 Conclusions -- Findings of Fact and Conclusions of  
12 Law. I know that you love that, too, but it's  
13 especially important, I think, in this case when there  
14 has been so much controversy over exactly what law  
15 should be applied, how that law should be applied, and  
16 what needs to be found under that law.

17           So I think that each of you needs to clearly  
18 set that out in some proposed Findings of Fact and  
19 Conclusions of Law, and I would like those filed at  
20 the same time that you file your briefs.

21           So I'm open to discussion about a time for  
22 those briefs to be filed.

23           MR. CONROY: Some of the parties have  
24 discussed tentative days.

25           JUDGE DIPPELL: All right.

1                   MR. CONROY: Initial briefs on the 9th --

2                   JUDGE DIPPELL: Of November?

3                   MR. CONROY: -- of November, and reply  
4 briefs on the 21st of November.

5                   MR. LANE: We didn't discuss it, but maybe  
6 the Findings of Fact and Conclusion of Law could be  
7 filed with the reply brief.

8                   JUDGE DIPPELL: I would really like those  
9 with your original briefs. The Commission will be  
10 reviewing the record and, you know, considering these  
11 matters. They don't wait until your reply briefs are  
12 filed, and I think, again, given the situation, that  
13 those Conclusions of Law and Findings of Fact need to  
14 be filed with your original briefs.

15                   And what I had written down as a date was  
16 November 1st on your original briefs, so I'm willing  
17 to give you your November 9th, but you have to do  
18 the Findings of Fact and Conclusions of Law. So  
19 there will be an order to follow, but I will set  
20 November 9th and November 21st, as brief dates.

21                   I will just point out some specific things  
22 that I will expect to see in your briefs because  
23 there's been a lot of testimony by non-lawyers as to  
24 the statutes and their interpretation, and that's fine  
25 in a case like this where these are the experts that

1 deal with these statutes and regulations and stuff  
2 day-to-day, so I would expect them to have some  
3 expertise.

4 But this is where the lawyers need to excel  
5 here, and this is really a case where your arguments  
6 and interpretations are necessary, and so please be  
7 sure to explain the term "various services," the term  
8 "services," the term "telecommunication services."  
9 Those have all been issues, and I would expect to see  
10 each of your analyses in your briefs on those things,  
11 as well as especially the standard for the  
12 Commission's determination in this matter and  
13 exactly -- there's been some discussion about who has  
14 the burden, at least following that through with the  
15 analysis of what it is the Commission needs to find  
16 and how -- how they should go about finding that.

17 There's also -- I wrote down some notes --  
18 some specific issues about the whole rebalancing issue  
19 and how that statute applies or doesn't apply to this  
20 case, so I would be certain to mention that in your  
21 briefs as well.

22 We have one late-filed exhibit requested,  
23 and that was of Southwestern Bell. I would like that  
24 late-filed exhibit to be filed by October 8th. I  
25 would like any replies or objections to that to be

1 filed by October 15th.

2 MR. CONROY: I'm sorry. I thought the 8th  
3 was the holiday.

4 JUDGE DIPPELL: You're right. You're right.  
5 Mr. Conroy. The 8th is the holiday, so October 9th.

6 And then replies and responses a week later  
7 on October 16th. I'm shortening that just a little  
8 bit, and I would expect also to shorten my own time  
9 frame there and rule on any of those objections  
10 immediately, or as soon as possible. So if there are  
11 objections, they should be filed by October 16th, and  
12 a response to the objection should be filed by the  
13 22nd, which is the following Monday.

14 And, again, I will set these out in an order  
15 to follow, as well as dismissing some of the parties  
16 who have not participated so your briefs do not have  
17 to be filed on such a long list.

18 Are there any other sort of housekeeping or  
19 matters like that that I need to address?

20 (No response.)

21 JUDGE DIPPELL: Okay. Then let's go ahead  
22 and break for lunch. I apologize for the long, long  
23 lunch, but let's break until 1:00.

24 Let's go off the record.

25 (A RECESS WAS TAKEN.)

1 JUDGE DIPPELL: I see Mr. Kohly has returned  
2 to the stand, but I'm going to trip him up a little  
3 bit, because I'm going to ask if Miss Rippentrop will  
4 come back to the stand first. Sorry.

5 MR. KOHLY: Does that mean I'm done?

6 JUDGE DIPPELL: No. We thought we would at  
7 least finish her, and I think there's not as many  
8 questions for her.

9 And you were previously sworn, so I'll just  
10 remind you of that, and we're ready for Commission  
11 questions.

12 Commissioner Murray.

13 COMMISSIONER MURRAY: Thank you, Judge.

14 DAWN RIPPENTROP, being recalled, testified as follows:

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. I just briefly wanted to ask you about  
19 the -- if you're familiar with what Kansas and  
20 Oklahoma have done in terms of switched access and the  
21 limitations that they've placed on -- if I can find  
22 that so I can ask you better -- where Southwestern  
23 Bell's toll services are price deregulated but are  
24 still subject to a price floor of imputed switched  
25 access plus incremental costs. That's in Kansas. Are

1     you familiar with that?

2           A.     I am not familiar with that.

3           Q.     Okay.  Then I guess my question to you would  
4     be, if we were to find switched access to be a  
5     competitive service, but we put conditions on it  
6     setting a floor, would that be -- would that make it  
7     acceptable to Sprint?

8           A.     I guess I would ask for more detail about  
9     what we mean by competitive service?  Would they be  
10    allowed to restructure?  We don't have a detailed  
11    plan.  I don't know whether Sprint would support that  
12    or not.

13          Q.     And as far as you know about anything that  
14    has been proposed by Southwestern Bell for treatment  
15    of switched access services, are you in a position to  
16    say that you're --

17          A.     We have no detail other than Southwestern  
18    Bell has said that they would abide by a cap, but we  
19    don't know -- nothing has been proposed about how they  
20    would restructure under there -- under that cap, if  
21    the cap would remain constant over time, if it would  
22    change.  I guess if we had more detail, Sprint could  
23    respond either in support to support it or not support  
24    it.

25          Q.     At this point, then, you don't know whether



1 it would be something that Sprint could or could not  
2 support?

3 A. Correct.

4 COMMISSIONER MURRAY: All right. Thank you.  
5 That's all I have.

6 THE WITNESS: Okay.

7 JUDGE DIPPELL: Commissioner Lumpe, did you  
8 have any questions?

9 COMMISSIONER LUMPE: Just a couple.

10 QUESTIONS BY COMMISSIONER LUMPE:

11 Q. On Page 15 of your testimony, the question  
12 is about pricing flexibility standards measuring true  
13 competition, and you say it's a minimum -- it's a  
14 basis for a minimum standard.

15 Would you elaborate on that?

16 A. Yes. I was referring to the FCC standards  
17 for pricing flexibility where they have a -- what they  
18 call a Phase 1 requirement which does allow a LEC who  
19 qualifies for this minimum standard some type of  
20 pricing flexibility. They would be allowed volume and  
21 term discounts.

22 However, the ILEC that would receive this  
23 type of pricing flexibility is still obligated and  
24 regulated under the price cap mechanism.

25 Q. Okay. And then the last one sort of follows

1 up with the switched access issue, and I'm assuming  
2 that on originating access, did you disagree with  
3 Dr. Aron's comments on that?

4 A. Yes.

5 Q. All right. And is part of the concern, if  
6 Southwestern Bell is the ILEC that is setting the  
7 originating access rate and then the possibility that  
8 if it were competitive, they could set that rate  
9 wherever they wished to for any competing CLEC or  
10 CLECs?

11 A. That could be a concern. However, what  
12 Dr. Aron was referring is that I guess a CLEC -- or an  
13 IXC could get CLEC certification and then come in and  
14 serve that end user. And Sprint's position is that  
15 it's still the end user's choice of which provider to  
16 use. So whether or not they choose Sprint, the CLEC,  
17 or Southwestern Bell, it still is the consumer's  
18 choice. It's not Sprint's choice for local switching  
19 and common line.

20 Q. And the offer that has been made during this  
21 hearing, you haven't seen it on paper or what it looks  
22 like, so you're not willing to sort of say you agree  
23 or disagree?

24 A. Yes, that's correct.

25 COMMISSIONER LUMPE: Okay. Thank you.

1                   That's all.

2                   THE WITNESS: Thank you.

3                   JUDGE DIPPELL: Are there recross questions  
4 based on questions from the Bench from Southwestern  
5 Bell?

6                   MR. CONROY: Yes, briefly.

7 RECROSS-EXAMINATION BY MR. CONROY:

8           Q.       Based on previous testimony and my previous  
9 questions to you, do you understand that it's  
10 Southwestern Bell's proposal in this case that they be  
11 subject to the exact same rate cap that CLECs are  
12 subject to in the state of Missouri in Southwestern  
13 Bell's exchanges?

14          A.       Yes. But, again, if Southwestern Bell  
15 currently is at a cap, does the cap remain the same  
16 indefinitely? Does it change over time? I think  
17 those are the questions that are unanswered.

18          Q.       Okay. Are you willing to commit Sprint's  
19 position here -- if I gave you a scenario that the cap  
20 would stay the same as they are today and everything  
21 else stayed the same, would Sprint be willing to agree  
22 that the service of switched access could be  
23 classified as competitive?

24          A.       Not necessarily. We still don't know what  
25 Southwestern Bell plans to do with that if it was

1 deemed competitive, how you would restructure, so  
2 there is still some question about that.

3 Q. So it's your position you would actually  
4 need to know how Southwestern Bell would exercise the  
5 pricing flexibility that it would get as a result of  
6 operating under that cap before you could take a  
7 position?

8 A. Well, that's part of it. I mean,  
9 Southwestern Bell is required to make a competitive  
10 showing to receive a competitive status.

11 Q. Okay. Just -- okay. Go ahead. I didn't  
12 mean to interrupt you.

13 A. I guess we just don't know what it -- what  
14 exactly is it that Southwestern Bell is proposing.

15 Q. Okay.

16 A. What will you be doing with -- if you're  
17 subject to a cap and everything stays the same is one  
18 thing? If you restructure transport or raise your  
19 local switching and lower your transport costs, then  
20 that's the same thing -- I know Sprint would not agree  
21 to that.

22 Q. Okay. So they would not agree to  
23 Southwestern Bell being subject to the exact same cap  
24 that CLECs are currently under which CLECs can  
25 restructure but can't in total exceed Southwestern

1 Bell's rates? You would not be willing to agree that  
2 that would be appropriate for Southwestern Bell?

3 A. Not at this time.

4 MR. CONROY: Okay. Thank you.

5 That's all I have.

6 JUDGE DIPPELL: Let me interrupt the  
7 recross based on Commission questions and ask if  
8 Commissioner Gaw has any questions that he would like  
9 to ask of Miss Rippentrop.

10 Commissioner Gaw?

11 COMMISSIONER GAW: Just briefly, I think.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. This may have already been covered, but let  
14 me ask you, is it -- Sprint currently operates as an  
15 IXC and a CLEC in certain areas; is that correct?

16 A. Yes.

17 Q. And does that occur in some places in the  
18 same region?

19 A. No.

20 Q. And why is that?

21 A. That, I do not know. I know that we --  
22 that's beyond my -- my knowledge.

23 COMMISSIONER GAW: All right. I don't have  
24 anything further then. Thank you.

25 JUDGE DIPPELL: Did Southwestern Bell have

1 anything further based on that?

2 MR. CONROY: I'm afraid I have to based on  
3 that one question. Sorry.

4 FURTHER RECROSS-EXAMINATION BY MR. CONROY:

5 Q. I thought I expected to know the answer, and  
6 it was different than what it was.

7 If I understood the question from  
8 Commissioner Gaw, it was, does Sprint currently  
9 operate as an IXC and a CLEC in the same region, not  
10 ILEC. IXC.

11 A. I'm sorry then. I believe, yes, we do. An  
12 IXC --

13 COMMISSIONER GAW: I may have misspoken.

14 MR. CONROY: I'll sit down and wait.

15 COMMISSIONER GAW: Thank you very much.

16 JUDGE DIPPELL: You have something further  
17 then?

18 COMMISSIONER GAW: Yes, I did.

19 FURTHER QUESTIONS BY COMMISSIONER GAW:

20 Q. In those regions where Sprint operates as a  
21 CLEC and an IXC --

22 A. Uh-huh.

23 Q. -- does Sprint offer a bundled -- bundled  
24 package of long distance and local basic service?

25 A. To my knowledge, no. We offer a Sprint ION

1 package.

2 Q. What is that?

3 A. That's a bundled product that includes  
4 high-speed data over a DSL loop.

5 Q. And --

6 A. It does include local service, and sometimes  
7 that's on a resale basis. Beyond that, I do not know  
8 how the package is bundled and sold.

9 Q. So you don't have any more familiarity with  
10 the bundling of long distance and local basic from  
11 Sprint's standpoint?

12 A. Correct.

13 COMMISSIONER GAW: I didn't get very much  
14 farther. I apologize.

15 That's all I have.

16 JUDGE DIPPELL: Okay. And is there anything  
17 further based on Commission questions from Bell?

18 MR. CONROY: Nothing further, Judge.

19 JUDGE DIPPELL: Okay. Are there any  
20 cross-examination questions based on questions from  
21 the Bench from Staff?

22 MR. HAAS: No questions, your Honor.

23 JUDGE DIPPELL: From Public Counsel?

24 MR. DANDINO: No questions, your Honor.

25 Thank you.

1 JUDGE DIPPELL: AT&T?

2 MR. ZARLING: None. Thank you.

3 JUDGE DIPPELL: WorldCom?

4 MR. LUMLEY: No questions, your Honor.

5 JUDGE DIPPELL: Is there further redirect  
6 from Sprint?

7 MS. HENDRICKS: Just one question, since I  
8 said that last time too.

9 FURTHER REDIRECT EXAMINATION BY MS. HENDRICKS:

10 Q. Miss Rippentrop, does Southwestern Bell's  
11 offer without details to be subject to a cap, does  
12 that change your position on whether or not the  
13 evidence in this case shows that switched access is  
14 subject to effective competition?

15 A. No.

16 Q. And what is your position on that?

17 A. That it -- that switched access is not  
18 subject to effective competition.

19 MS. HENDRICKS: Thank you.

20 JUDGE DIPPELL: All right then. That  
21 concludes the testimony from Miss Rippentrop, and you  
22 may be excused. Thank you.

23 (Witness excused.)

24 JUDGE DIPPELL: Now we are ready for  
25 Mr. Kohly to come back up.



1 Thank you, Mr. Kohly.

2 Again, you were sworn earlier, so I'll just  
3 remind you of that.

4 And are there questions for Mr. Kohly from  
5 Commissioner Murray?

6 COMMISSIONER MURRAY: Yes, your Honor.

7 R. MATTHEW KOHLY, being recalled, testified as  
8 follows:

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Good afternoon, Mr. Kohly.

11 A. Good afternoon.

12 Q. You were in the hearing room when Mr. Voight  
13 was on the stand, were you not?

14 A. Through much of it. Not all of it.

15 Q. Did you hear Mr. Voight's answers when he  
16 spoke about SWBT's ability to rebalance currently?

17 A. Yes.

18 Q. And do you agree with what Mr. Voight said  
19 about rebalancing?

20 A. Yes, I do. I think that there are multiple  
21 avenues available. I think Mr. Voight talked about  
22 the rebalancing contemplated by the price cap statutes  
23 392.245(8) and (9) as one way, and it's AT&T's opinion  
24 that Southwestern Bell could at least take the first  
25 step in rebalancing and raise local rates by \$1.50.

1           I think also in addition to that -- I'm  
2   sorry. I think if they did rebalance and raise local  
3   rates by \$1.50, they would have to reduce their access  
4   rates pursuant to that statute as it contemplates.

5           I think outside of that as well there is an  
6   avenue for the Commission to also allow rebalancing  
7   either in a USF context or by introducing a subscriber  
8   line charge and using that revenue to reduce access  
9   rates as well.

10           The Commission has allowed a surcharge to be  
11   placed on switched access services which are also  
12   subject to the price cap standards. So I think we've  
13   crossed the threshold of whether or not a surcharge  
14   can be applied to another -- a price cap service, so I  
15   think that is also an area.

16       Q.     And when you speak of a surcharge, you're  
17   speaking of it in terms of a universal service  
18   surcharge?

19       A.     You could do it either as a universal  
20   service surcharge or as a subscriber line charge such  
21   as on the federal side where they have a fixed amount  
22   per month, and there may also be other avenues to  
23   rebalance. I didn't hear all of Mr. Voight's  
24   explanation, but I think he may have mentioned some  
25   others.

1           Q.     On Page 3 of your Rebuttal Testimony, you're  
2     speaking about being concerned about access rate  
3     increases and predatory pricing on that page. Do you  
4     see that?

5           A.     Yes.

6           Q.     And you mention at -- well, I believe  
7     beginning on Line 11, you say, "AT&T is concerned that  
8     SWBT will be in a position to reduce retail rates for  
9     business customers to predatory levels and recover  
10    those lost revenues through increases in rates for  
11    services such as switched or special access that do  
12    not place competitive pressures that would limit  
13    SWBT's pricing."

14                   And I'd like to know if any of your other  
15    competitors engage in the policy of charging high  
16    access prices in order to keep their competitive  
17    services priced low?

18          A.     I mean, I am having a little trouble with  
19    the question, because in Missouri the CLECs do not  
20    have the ability to price their access rates above  
21    Southwestern Bell's. The incentive is there and that  
22    is why that it was felt that this cap was needed, is  
23    that there certainly is an incentive to increase rates  
24    for services that don't pace competition and give the  
25    service away, and that's an extreme example, but that

1 was talked about when the Commission decided to impose  
2 the cap on switched access offered by CLECs, so I --

3 Q. Well, if -- for example, I would like you to  
4 think for a minute about small ILECs. I realize that  
5 they are not class-- they are not classified as  
6 competitive, but the -- in your experience in the  
7 different territories within Missouri that AT&T is  
8 serving, or has served, how does Southwestern Bell's  
9 access charges compare to access charges in other ILEC  
10 territories?

11 A. Southwestern Bell's access rates for both  
12 ends of the call are, I believe, around 6.3 cents per  
13 minute depending on the transport assumption because  
14 it is a mileage-sensitive transport. Outside of Bell  
15 territory, the access rates range about 18 cents per  
16 minute for both ends of the call. They go up to a  
17 high, if I remember, in northeast Missouri rural of  
18 30 cents a minute for both ends of the call.

19 Q. And what areas of the state does AT&T serve  
20 as an IXC?

21 A. We serve throughout the state of Missouri as  
22 an IXC offering both inter and intraLATA service.

23 Q. And do you -- are you providing service in  
24 areas outside of Southwestern Bell's territory?

25 A. Yes. We -- all ILEC territories throughout

1 Missouri.

2 Q. You are currently providing service --

3 A. We are currently providing --

4 Q. -- in each of --

5 Did you attempt at one point not to?

6 A. We delayed our entry into the intraLATA  
7 market in many of the small LEC -- I guess all of the  
8 former secondary carrier territories because of the  
9 access rates and not wanting to participate in the  
10 balloting process. Since then we have entered those  
11 exchanges.

12 We did so, though, after the approval of the  
13 AT&T overlay tariff which was a tariff which would let  
14 us limit the availability of toll services only to  
15 Southwestern Bell exchanges. So once we had the  
16 ability to price according to the cost, we entered the  
17 market. However, the Circuit Court of -- whatever --  
18 the Appeals Court in Cole County has overturned that  
19 decision, so we are not able to deaverage rates to  
20 reflect the higher costs outside of Bell territory,  
21 but we are still presently serving there.

22 Q. So when you serve throughout the state, and  
23 if you can't deaverage rates, are you having to sell  
24 in some areas of the state -- price in some areas of  
25 the state below your cost to serve there?

1           A.     Yes, we are. And ideally we would make it  
2 up in the areas of lower access rates. We don't  
3 necessarily do that.

4           Q.     And the areas with lower access rates are  
5 Southwestern Bell's territories; is that correct?

6           A.     Yes, they are relatively lower than the  
7 non-Southwestern Bell ILECs in Missouri.

8           Q.     On Page 16 of your Rebuttal Testimony at  
9 Lines 23 through 25, you indicate that while AT&T may  
10 be the largest cable company in the United States,  
11 AT&T only provides telephony service using cable  
12 assets in two exchanges served by SWBT.

13                   Where are those two exchanges?

14          A.     Those two exchanges are the Harvester and  
15 St. Charles exchanges in the St. Louis area.

16          Q.     Okay. And you go on to say that, "Further,  
17 AT&T has no plans to expand its cable telephony  
18 operations into additional SWBT exchanges and is, in  
19 fact, divesting itself of those telephone operations  
20 in those exchanges," meaning the other SWBT exchanges;  
21 is that right?

22          A.     No. We currently have pending before the  
23 Commission a request for approval of a transfer of  
24 assets to transfer all of the cable telephony assets,  
25 including the customer base in St. Charles and

1 Harvester, to Charter Communications. AT&T, upon  
2 approval of that, will exit the cable telephony  
3 business in the state of Missouri.

4 Q. And is AT&T exiting the cable telephony  
5 business in other parts of the country?

6 A. Generally, AT&T has sold some cable  
7 properties around the country in an effort to reduce  
8 debt loads, basically. Because of the current capital  
9 markets, we've had to reduce debt loads. So we've  
10 sold cable properties around the country.

11 The one in the St. Louis area is a little  
12 bit unique in that it is an area where we also have  
13 other affiliates providing local service to  
14 facilities-based. Many of the other areas we sold  
15 would not have had that, like Springfield or Columbia.

16 Q. Okay. And this may be -- there may be no  
17 relationship here, but as I read an article in the  
18 Wall Street Journal yesterday about AT&T considers  
19 bidding for the assets of the struggling Excite @  
20 Home, and then further in the article read that AT&T  
21 had spent billions upgrading its cable TV network to  
22 handle high-speed traffic and marketing high-speed  
23 internet service to customers across the United  
24 States.

25 Are those things totally unrelated to

1     divesting yourself of cable telephony?

2           A.     They are separate services that, you know,  
3     are distinct from cable telephony.

4                     Now, having said that, AT&T is -- or has  
5     exited the cable telephony -- cable TV business in the  
6     state of Missouri. We've transfer-- exchanged those  
7     properties or sold them. AT&T is also not providing  
8     high-speed internet access anymore in the state of  
9     Missouri as a result of that.

10                    Once the complete -- once the transfer of  
11     assets is approved to Charter, we will not be in the  
12     cable telephony business as well. They are separate  
13     services, but you cannot provide cable telephony  
14     without a cable network.

15           Q.     So is AT&T still spending money to upgrade  
16     its cable TV network?

17           A.     In Missouri or --

18           Q.     In the country.

19           A.     Certainly, there are parts of the country  
20     where we are doing that, where we plan on either  
21     rolling out high-speed internet access or cable  
22     telephony.

23           Q.     Now, a subscriber to AT&T @ Home will soon  
24     be a subscriber to Charter, a subscriber of Charter?  
25     Is that --



1           A.     It depends -- I mean, the territory you're  
2     talking about in Columbia and Springfield, a company  
3     called MediaCom bought those assets. I think you're  
4     seeing some MediaCom -- I'm sorry. And that includes  
5     Jefferson City, as well. I think you may be seeing  
6     some MediaCom trucks around Jefferson City now. That  
7     is the company that purchased the cable assets.

8                     I do not know if they offer high-speed  
9     internet access. I have not checked that out.

10                    The properties in St. Louis were sold to  
11    Charter, and the telephony assets are set to close the  
12    end of the year pending Commission approval. Excite @  
13    Home, that's high-speed internet access that is not  
14    regulated by the Commission.

15           Q.     I understand that. I'm just curious  
16    what's -- what is going on totally with AT&T and its  
17    cable services.

18           A.     I wish I knew.

19           Q.     On Page 20 of your Rebuttal Testimony,  
20    Lines 14 through 16, you say, "Eventually competition  
21    in the interLATA toll market evolved, and AT&T is now  
22    treated as a competitive company, as are the other  
23    interexchange carriers."

24           A.     Correct.

25           Q.     So is it your position that all

1 interexchange carriers by virtue of being  
2 interexchange carriers are competitive?

3 A. Presently, as far as I know, all  
4 interexchange carriers are competitive companies.

5 Q. Okay. So interexchange services are  
6 competitive services; is that right?

7 A. The interexchange services offered by those  
8 companies that are classified as competitive would  
9 have to be competitive.

10 Q. You -- when you speak about switched access  
11 services being located -- a locational monopoly -- I'm  
12 really looking at the area of Page 22 of your Rebuttal  
13 Testimony right now. I'm not specifically wanting to  
14 cite any portion of it, but I have some general  
15 questions for you.

16 If we treated Southwestern Bell's switch  
17 access services as competitive, would that effectively  
18 remove the cap for all access services at least in --  
19 it would -- I'm asking you only for Southwestern  
20 Bell's exchanges.

21 A. I'm trying to recall the cap. I suppose  
22 that -- well, I cannot recall if the cap is a fixed  
23 cap or if it would adjust as -- assuming you found  
24 that Southwestern Bell met the burden to show that  
25 there was effective competition for it and that the

1 Commission imposed a cap or -- did or did not impose a  
2 cap in this example?

3 Q. If it did not impose the cap is the scenario  
4 I'm looking at right now.

5 A. You would have to look at the exact language  
6 of the cap. My recollection is that -- actually, I  
7 don't know one way or the other if the cap is fixed at  
8 a date in time or if it's allowed to fluctuate as the  
9 rates change. You would have to look in -- I think  
10 it's the 99-428 order. I can't recall.

11 Q. If the cap is tied to the ILEC's rate, and  
12 the ILEC's rate were allowed to fluctuate, would that  
13 not effectively remove any cap?

14 A. I think it would. I think you would see  
15 significant access rate increases.

16 Q. Okay. And it's my understanding that your  
17 position is that the market would not have to control  
18 prices there because as to switched access, the  
19 providers have locational monopolies?

20 A. Correct.

21 Q. And if the carriers can impose excessive  
22 access charges on their captive customers, that is the  
23 IXCs, that would allow them to lower their prices for  
24 the competitive services; is that correct?

25 A. It would allow them -- absent competitive

1     safeguards to the contrary, they would have, I  
2     believe, the incentive to increase switched access  
3     rates to very high levels, reducing services such as  
4     basic local, toll services, and other services that  
5     potentially face competition.

6           Q.     And that's true no matter who is providing  
7     the switched access service, is it not, in that it is  
8     a locational monopoly?

9           A.     Unless you have alternative networks or  
10    alternative avenues for the IXC to originate that  
11    call, it is a locational monopoly.

12          Q.     Would a trend of that nature escalating  
13    access -- switched access rates result in higher  
14    prices being charged to the end users by the IXCs in  
15    your opinion?

16          A.     That is going to depend on a number of  
17    factors.  If, let's say, Southwestern Bell were  
18    allowed to increase its access rates and were also  
19    allowed, I guess -- and chose to or allowed to  
20    increase its toll rates accordingly, then you may be  
21    able to -- then I think other companies may charge  
22    rates reflecting the higher access rates.

23                   The other scenario is that Southwestern Bell  
24    would keep its toll rates low but raise its switched  
25    access rates.  In that case because there is a market

1 alternative at the retail level that's below the cost  
2 of access, but the access rates are much higher, you  
3 may have a situation where the IXC, you know, cannot  
4 price its retail rate at a level to reflect the access  
5 rate because the market will bear a lower rate. And  
6 so I think there is multiple scenarios in that  
7 situation.

8 Q. Is it your opinion that all switched access  
9 rates should continue to be capped?

10 A. Yes.

11 Q. And AT&T is also a CLEC, is it not?

12 A. Yes.

13 Q. And are AT&T's -- does AT&T offer switched  
14 access service?

15 A. Yes. As -- you know, by virtue of being a  
16 CLEC, one of the services we offer is switched access  
17 services both in our cable telephony offerings as well  
18 as our UNE-P and other facilities-based offerings.

19 Q. And are those capped for AT&T?

20 A. Yes.

21 Q. On Page 25 of your Rebuttal Testimony at  
22 Lines 28 and 29 you make the statement that, "In the  
23 recent AT&T/SWBT arbitration, SWBT proposed to place a  
24 cap on AT&T's switched access rates."

25 What was the purpose of that statement?

1           A.     In our arbitration case earlier this year  
2     one of the issues in the reciprocal compensation  
3     section that was to be arbitrated was put on by  
4     Southwestern Bell to impose a cap on our -- on AT&T's  
5     switched access rates in the interconnection  
6     agreement.

7                     Our view is that was completely unnecessary.  
8     The Commission had issued an order to that effect and  
9     the interconnection agreement was not the place to do  
10    that.  The issue -- I think ultimately the parties  
11    worked out every issue in their reciprocal  
12    compensation section, so that was not arbitrated.

13                    The point of that was, I was a little  
14    surprised that Southwestern Bell was now coming in  
15    before the Commission saying, We no longer need a cap  
16    on access, when as late as May or June of this year  
17    they were insisting on a cap on AT&T's switched access  
18    rates.

19           Q.     Within the interconnection agreement?

20           A.     Within the interconnection agreement.

21           Q.     And that cap was unrelated -- the cap that  
22    was proposed for the interconnection agreement, was it  
23    unrelated to the Southwestern Bell's switched access  
24    rates?

25           A.     I believe the cap was to cap our rates --

1 AT&T's rates at a level no higher than those charged  
2 by Southwestern Bell.

3 Q. So, basically, it was the same thing that is  
4 already required?

5 A. Right.

6 Q. And if Southwestern Bell were successful in  
7 this proceeding in having its switched access rates  
8 declared competitive, then anything that was in that  
9 interconnection agreement would allow -- would also  
10 allow AT&T to increase switched access rates if  
11 Southwestern Bell increased its; is that correct?

12 A. That clause was not in the language that was  
13 agreed upon, so that clause is not in effect.

14 Q. But your statement here was, I think, taking  
15 issue of what Southwestern Bell had proposed, so I'm  
16 asking you based upon what they had proposed, would --  
17 and assuming that they had been successful here,  
18 wouldn't their success here have also applied to what  
19 AT&T gets charged for switched access?

20 A. If -- you're lifting the -- you're  
21 determining there is effective competition, so on the  
22 regulatory side, they would have pricing flexibility.  
23 There was no provision to the contrary in the  
24 interconnection agreement. I guess the  
25 interconnection agreement would be trumped by -- at

1    least as I understand it, it would be trumped by the  
2    statutes or the Commission decision.

3           Q.    My question to you is whether there would  
4    have been any inconsistency -- I -- as I read your  
5    statement there, it seemed that you were being  
6    critical of Southwestern Bell for proposing to place a  
7    cap on AT&T's switched access rates.  And as I asked  
8    you here, you indicated that the cap that they were  
9    proposing was to tie what AT&T could charge for  
10   switched access to what Southwestern Bell was allowed  
11   to charge.  Is that correct?

12          A.    What I was criticizing was as recently as  
13   May of this year, or June -- I cannot remember the  
14   exact date -- Southwestern Bell was stating there is a  
15   need to place a cap on access rates, and we want this  
16   in our interconnection agreement.  It seems a little  
17   inconsistent, or quite a bit inconsistent to now turn  
18   around and say, We don't need that cap on switched  
19   access rates.  We should have complete pricing  
20   flexibility, and there is a difference.

21          Q.    My question to you, though, is, if  
22   Southwestern Bell's rates are capped, why is it  
23   inconsistent for Southwestern Bell to say that because  
24   theirs -- their switched access rates are not treated  
25   as competitive that neither should anyone else's be



1 and that the -- if it is considered a non-competitive  
2 service that the CLECs' rates should not exceed what  
3 Southwestern Bell's rates exceed in their own  
4 exchanges? Why is that inconsistent with SWBT asking  
5 to have switched access rate caps removed knowing that  
6 when those are removed for SWBT, they are effectively  
7 also removed for all of the CLECs?

8 A. There are two issues. The first goes to  
9 whether or not there needs to be a cap, and I  
10 interpret this to mean as recently as May, by trying  
11 to impose this cap through an interconnection  
12 agreement, Southwestern Bell believed there was a need  
13 for a cap. We already had a Commission decision that  
14 said, Your rates will be capped at the rates of the  
15 ILEC, but this -- but we had opened another case  
16 saying that that was an interim decision. In addition  
17 to that protection, they sought another protection in  
18 the interconnection agreement.

19 The inconsistency I see is now they are  
20 coming before the Commission saying there is no need  
21 for a cap. And as recently as May, they were saying  
22 there was a need for a cap. And I think the other  
23 thing, when you think about this, if you remove the  
24 cap on Southwestern Bell and the cap on AT&T, it's  
25 not -- does not have the same effect.

1           AT&T purchases switched access services from  
2   Southwestern Bell as an IXC.  If they were able to  
3   increase their switched access rates, that will impact  
4   AT&T to a much greater extent than it would  
5   Southwestern Bell if AT&T increased its access rates.

6           First of all, Southwestern Bell does not  
7   provide toll service, and, as I understand their  
8   affiliates, they will not provide toll service to AT&T  
9   local customers.  So if AT&T increases access rates,  
10   that won't affect Southwestern Bell.

11           So it has very different effects when a  
12   local exchange carrier -- an incumbent local exchange  
13   carrier with almost three million access lines were to  
14   increase its access rates than it would if AT&T were  
15   to, so I think those two are very inconsistent.

16         Q.     Okay.  Well, I don't agree with you about  
17   the inconsistency of that position because I don't  
18   think it -- I think that -- to argue that a cap for  
19   CLECs should be in place so long as SWBT's caps are in  
20   place to me is not inconsistent with arguing that  
21   SWBT's caps and therefore everyone else's should be  
22   removed.  But let's move on.

23           Okay.  At Pages 29 and 30 of your Rebuttal  
24   Testimony, beginning at Line 31 where you say,  
25   "Missouri switched access" -- and I'm assuming you

1 mean rates, "are not cost-based. For that reason, FCC  
2 statements that an ILEC does not have the ability to  
3 engage in anti-competitive behavior in the toll  
4 markets are irrelevant to Missouri. The FCC is able  
5 to take this position at the interstate level because  
6 interstate access rates are priced close to  
7 incremental costs."

8           And I'd like to know if those -- that  
9 position that you're stating there would indicate that  
10 the arguments against competitive classification  
11 for -- any arguments against competitive  
12 classification for Southwestern Bell's interstate  
13 access services -- intrastate, do not apply, or would  
14 not apply to SWBT's interstate access services?

15       A.     Maybe I misunderstood the question, but  
16 Southwestern Bell's request to have its intrastate  
17 access rates declared competitive has nothing to do  
18 with the rates that they will be permitted to charge  
19 at the interstate level.

20       Q.     And what I'm asking you in relation to your  
21 statements regarding the difference between intrastate  
22 and interstate, and you're speaking about -- in that  
23 whole section, I believe you're making a distinction  
24 between competitive advantages that could result from  
25 treating intrastate access rates as competitive versus

1     treating interstate access rates as competitive.

2                 Are you making -- making a comparison there?

3             A.     What I'm, I guess, trying -- the purpose of  
4     that is to compare Southwestern Bell's ability to  
5     engage in anti-competitive pricing of its toll  
6     services.    Because Missouri's access rates are priced  
7     above their incremental cost, also by virtue of being  
8     a switched access provider and a toll provider,  
9     Southwestern Bell has, I think, the ability and the  
10    incentive to price its toll services at or even below  
11    its switched access rates in an effort to create an  
12    anti-competitive advantage over interexchange carriers  
13    that truly must pay those above-cost access rates.

14                Now, at the interstate level, Southwestern  
15    Bell's switched access rates are very close to  
16    incremental cost, in the neighborhood of half a cent  
17    per end.    Because it's close to incremental cost, they  
18    have much less ability to do that because you're at  
19    cost, or very close to cost, so you have much less  
20    ability to do that.

21                So when the FCC makes statements about,  
22    We've removed the anti-competitive advantage that an  
23    integrated local exchange provider and toll provider  
24    would have, they can say that because at the  
25    interstate level the access rates are at or near

1 costs. In Missouri, they are greatly above cost. So  
2 that comparison, and the fact that it may be fine on  
3 the interstate side, is not applicable at all to  
4 intrastate.

5 Q. Okay. I think that was my question, was, is  
6 that what you're saying that the same arguments do not  
7 apply to SWBT's interstate access service --

8 A. Right.

9 Q. -- charges?

10 Okay. That's what I intended to ask you. I  
11 don't know how it actually came out.

12 A. Okay.

13 Q. Thank you. You've answered that question.

14 On Pages 31 and 32 you -- at least on 31,  
15 you're speaking about interLATA toll services being  
16 deregulated in other states, and you cite Kansas and  
17 Oklahoma and the floors that are placed on SWBT's toll  
18 services in those two states. Do you see that?

19 A. Right.

20 Q. And as to deregulation of SWBT's interLATA  
21 toll services in the state of Missouri, would a  
22 treatment similar to that that was given in Kansas or  
23 Oklahoma be -- alleviate AT&T's concerns?

24 A. Yes, it would.

25 Q. Either treatment?

1           A.     No.   When --

2           Q.     I mean, Oklahoma and Kansas treated it a  
3     little bit differently.

4           A.     Right.  And I guess either treatment would  
5     be acceptable.  What Kansas has done is have an  
6     imputation standard plus incremental costs.  Oklahoma  
7     has the same thing, I guess, in effect.  So as long as  
8     there was an imputation standard that required the  
9     imputation of switched access plus incremental cost  
10    and that was the price floor, that would alleviate  
11    AT&T's concerns of predatory pricing.

12                   And I guess also I would want -- that price  
13    floor should be on an individual service, and if that  
14    were done, that would alleviate AT&T's concerns.

15          Q.     When you say on an individual service, on  
16    every specific toll service?  Is that what you're --

17          A.     Yes.

18          Q.     So there would be a different -- a different  
19    floor because the imputed access would be different  
20    for each service, or -- why would the -- why would it  
21    be different?

22          A.     Generally, there may be different -- some  
23    differences within the floor, but, generally, the  
24    price floor would be roughly the same.  You would  
25    impute switched access and you would add incremental

1 cost. AT&T's position would be that that price floor  
2 should be applied to each individual toll service.

3           Some -- I guess Missouri in the past has  
4 applied that imputation standard to the entire basket  
5 of toll services. So, for example, under that  
6 application, Southwestern Bell could provide one toll  
7 service below imputed cost but make that up by  
8 charging a higher rate for another one. And our  
9 position is that that imputation standard should apply  
10 to each individual service.

11       Q.     Let me think about that one.

12           Then on Page 33 of your Rebuttal, Lines 17  
13 through 23, you -- you end that paragraph there by  
14 saying, "So even competitive services must be subject  
15 to a price floor as long as SWBT remains a monopoly  
16 for some if not all of its services."

17           Are you saying that every service that this  
18 Commission classifies as competitive for SWBT must be  
19 subject to a price floor until every service that SWBT  
20 provides is classified as competitive?

21       A.     Yes. The rationale is that as long as there  
22 is a monopoly service, Southwestern Bell could use  
23 that service because it is a monopoly service to  
24 subsidize its competitive offerings. There are parts  
25 of the statute, I believe, today that prohibit

1 cross-subsidizing your competitive services with  
2 monopoly service, and this would be consistent with  
3 that, that that is inappropriate.

4 Q. Assuming that everything were classified as  
5 competitive except switched access but switched access  
6 for SWBT continued to be capped, would your position  
7 change?

8 A. No. I think absolutely the need would be  
9 for a price floor. Switched access is a monopoly  
10 service. IXC's are still captive customers. If  
11 Southwestern Bell's toll were declared competitive,  
12 they could price that toll at or below the imputed  
13 cost of switched access. And that's anti-competitive,  
14 because the IXC has to pay those access rates.

15 So in that example, as long as switched  
16 access is a monopoly service, there needs to be a  
17 price floor of an imputation standard plus incremental  
18 cost.

19 Q. Is there some level at which switched access  
20 could be capped that would change the need for a floor  
21 on the other services?

22 A. If switched access were priced at  
23 incremental cost and capped there, or if -- I would --  
24 or matched the interstate rates, which we think is  
25 close -- is very close to incremental cost, in that



1 situation if the access rates were lowered to that  
2 level and capped, there would not need to be an  
3 imputation standard.

4 Q. And I don't know if this has been pursued  
5 when I've not been in the hearing room, but has this  
6 issue that you raised in your Surrebuttal Testimony  
7 about inappropriate access and use of confidential  
8 CLEC and E-911 data been resolved?

9 A. No, it has not.

10 Q. Was AT&T asked to provide information to the  
11 Staff for this proceeding?

12 A. Yes. AT&T -- AT&T and the AT&T companies  
13 received data requests from the PSC Staff.

14 Q. Did AT&T fully respond?

15 A. Yes, we did. I will say that collecting the  
16 line count data by rate center for our TCG companies  
17 took a little longer than we thought, but we did  
18 comply with that data request.

19 Q. When did you comply?

20 A. I don't recall the exact date.

21 Q. Not -- not timely, though; is that correct?

22 A. I don't recall the exact date. We met  
23 with -- I met with Staff and discussed the  
24 difficulties we were having and told them about that.  
25 I don't remember the exact date.

1           Q.     Was it after the Motion to Compel was  
2 granted?

3           A.     I can't recall. My recollection is it may  
4 have been why the Motion to Compel was still pending,  
5 but I cannot recall.

6                   COMMISSIONER MURRAY: I think that's all I  
7 have.

8                   Thank you.

9                   JUDGE DIPPELL: Commissioner Lumpe, do you  
10 have questions?

11                   COMMISSIONER LUMPE: Just a couple. If  
12 they've been asked already, I apologize.

13 QUESTIONS BY COMMISSIONER LUMPE:

14           Q.     I just wanted to give you some -- again,  
15 access seems to be one of the major, major issues in  
16 this case. And Dr. Aron suggested that there were  
17 ways around originating access, that terminating,  
18 indeed, was probably a monopoly, that there were other  
19 ways to address originating access.

20                   Do you agree?

21           A.     I disagree. In reaching her conclusion,  
22 Dr. Aron makes the assumption that the interexchange  
23 carrier can simp-- can become their customer's local  
24 exchange provider, and that's a rather -- I disagree  
25 with that assumption.

1                   One -- you know, just to presume that they  
2   could automatically enter the market to become a local  
3   exchange provider, you presume that they could  
4   automatically get that customer. In addition, it  
5   ignores currently at the UNE-P rates in Missouri it is  
6   not profitable to enter the local market using UNE-P  
7   to provide facilities-based service to residential  
8   customers.

9                   So no carrier is going to be willing to  
10   enter a market to lose more money just to avoid paying  
11   switched access because you would be losing more  
12   money. So I disagree with her assumption.

13         Q.     Okay. You mention, I think, somewhere in  
14   your Surrebuttal the various states that have moved  
15   towards functional and structural separation as a  
16   means of competition or enhancing competition.

17                  Do you know, can you cite which and how many  
18   states that are doing that?

19         A.     The ones I know off the top of my head, it's  
20   being looked at in Illinois. Pennsylvania did look at  
21   it, and my recollection is they went with a functional  
22   separation. I believe it is being looked at in  
23   Georgia and possibly New Jersey. There may be other  
24   states that I can't recall. It's also -- there is  
25   some legislation and some discussion at the federal

1 level as well that I'm sort of aware of.

2 Q. In Pennsylvania was it a condition of 271;  
3 in other words, if they wanted approval from the  
4 Commission that they would have to move to -- 271,  
5 that they would have to move to functional separation?

6 A. I'm not sure of the relationship between the  
7 two. I don't know.

8 Q. On Page 6, I think it is, of your  
9 Surrebuttal, is that the same issue you were  
10 addressing with Commissioner Murray with regard to the  
11 six cents and the one-half cent?

12 A. Yes.

13 Q. Okay. So you were reiterating there your  
14 discussion that was -- that you had with her in your  
15 Rebuttal Testimony?

16 A. Yes.

17 Q. Okay. I won't ask that again then.

18 The 911 issue that you raised, historically  
19 and maybe -- I just need to know historically. What  
20 was the reason for having Southwestern Bell as the  
21 custodian of that, as it were, manager of it? And I  
22 assume they still are. Is there any thought that some  
23 other entity should be the manager of 911?

24 A. I'm not sure of the rationale of why they  
25 became the 911 provider. At the time 911 service

1 began, there was not local competition, so I don't  
2 think there was a concern that one competitor would  
3 have access to a database, the 911 database. And so  
4 that evolved in kind of the monopoly local market.

5           And now we're in a position today where you  
6 have multiple local exchange carriers with only one  
7 carrier being the custodian of the 911 database. We  
8 had a 911 forum in Missouri a few months -- I think a  
9 few months ago, and there is -- was a company that  
10 made a presentation on being the 911 service provider  
11 in that they would not in that capacity also act as a  
12 CLEC.

13           To do that would require a rulemaking or  
14 something by the Commission, I would think, to take  
15 the 911 custodial -- custodial relationship with  
16 Southwestern Bell and move it to another carrier,  
17 though.

18       Q.     Would it be sort of similar to the way, I  
19 think, when Southwestern Bell was the number  
20 administrator at one time and now an independent  
21 entity is the number administrator? And so, again, in  
22 a competitive environment having one company as the  
23 custodian of a database that could be very, very  
24 significant may not be appropriate anymore?

25       A.     I think that's an excellent comparison.

1           Q.     Okay.  You mention predatory pricing, and I  
2     think you've discussed that at some length, but I'm  
3     assuming you had a number of examples.  Was local plus  
4     one of them, win-back programs?  Could you give me  
5     some sense of what predatory -- what programs or what  
6     services do you consider to be predatory at this time?

7           A.     I would consider local plus to be predatory.  
8     It's priced below the imputed cost of switched access.  
9     There has been some discussion with Dr. Aron and other  
10    witnesses about the term "predatory pricing," and  
11    there is the classic example that -- you know, that --  
12    the textbook example of predatory pricing below cost  
13    by a single-product firm in an effort to drive its  
14    competitors out of the market.

15                   The example that I'm talking about is not  
16    necessarily that textbook example.  It's where  
17    Southwestern Bell has priced an interexchange product  
18    below the imputed cost of switched access.  Thereby  
19    gaining a competitive advantage over an IXC relative  
20    to cost, because the IXC would have to pay switched  
21    access and could not match that offering without  
22    losing money out of pocket, while Southwestern Bell  
23    would still be earning revenues because the service is  
24    priced above its incremental cost.

25           Q.     So we're back into the area of switched

1 access and the importance of switched access?

2 A. Yes.

3 COMMISSIONER LUMPE: Okay. Thank you,  
4 Mr. Kohly.

5 JUDGE DIPPELL: Commissioner Gaw, do you  
6 have questions?

7 COMMISSIONER GAW: Thank you, Judge.

8 QUESTIONS BY COMMISSIONER GAW:

9 Q. Good afternoon, Mr. Kohly.

10 A. Good afternoon.

11 Q. I want to ask you, too, is AT&T operating as  
12 a CLEC and an IXC in any exchanges in Missouri?

13 A. Yes, it is.

14 Q. In the exchanges where that is occurring,  
15 does AT&T offer a bundling of long distance and local  
16 basic service?

17 A. Yes.

18 Q. And is that -- do you know what those  
19 particular plans are called, or are there a number  
20 of -- let me ask you this first: Are there -- would  
21 there be more than one of those bundled packages that  
22 are currently being offered?

23 A. There would be. I can't recall the exact  
24 bundles. The bundles will differ by what's on the  
25 local side and what is -- what is the toll rate or the

1 interexchange rate.

2 Q. In your testimony -- and I believe that you  
3 may first bring it up on Page 2. One of the concerns  
4 that you list there has to do with -- with  
5 Southwestern Bell at some point in time in the future  
6 being able to offer both local and long distance  
7 services.

8 A. Is that Page 2 of my Rebuttal?

9 Q. I'll tell you here if I look.

10 Yes, sir, of your Rebuttal, toward the  
11 bottom of the page --

12 A. Okay. Yes.

13 Q. -- when you say a second concern, I think,  
14 or something like that.

15 A. Yes.

16 Q. When you're listing that concern, are you  
17 referring to the anticipation that Southwestern Bell  
18 will -- could be approved under -- for 271 status  
19 in -- at some point in the future and be able to  
20 bundle long distance and local services together?

21 A. In this context, I'm talking about the  
22 current situation in which Southwestern Bell is both a  
23 local exchange provider, which means a switched access  
24 provider, as well, and an intraLATA toll provider.

25 Q. Would that concern be changed or enhanced in



1 any way if the 271 application is approved?

2 A. The concern with the 271 application and  
3 predatory pricing is the same. I mean, it's the same  
4 concern.

5 Q. Only on a broader spectrum?

6 A. Much broader.

7 Q. Okay. Currently, AT&T can do this; is that  
8 correct? It can offer long distance? As you've said,  
9 you are currently doing it, I believe?

10 A. Yes.

11 Q. And I'm not talking about the predatory  
12 pricing thing that you're -- that you had in here, if  
13 that's your hesitation. I'm talking about being able  
14 to bundle long distance and local basic service.

15 A. Where we offer local exchange service, we  
16 can bundle them.

17 Q. All right. Do you believe that if we assume  
18 that Southwestern Bell will get at some point in time  
19 authority to -- to offer interLATA long distance that  
20 that concept of bundling will become more or less  
21 prevalent in the packages offered by those companies  
22 that are both -- offer local basic and long distance  
23 service?

24 A. Do you mean more prevalent by Southwestern  
25 Bell or more prevalent by CLECs?

1           Q.     I'm talking about more prevalent in general  
2     in Missouri, not by any particular company  
3     necessarily.

4           A.     I guess I would have to break the answer  
5     down kind of by company and basically speak for AT&T  
6     and Southwestern Bell.

7                     The tariffs --

8           Q.     That's okay. I'll allow you to do that. I  
9     may come back with a follow-up.

10          A.     Okay. The application for an interexchange  
11     carrier certificate and the tariffs proposed by  
12     Southwestern Bell long distance combined with  
13     Southwestern Bell's toll tariffs by Southwestern Bell  
14     Telephone Company indicate they will bundle service.  
15     They have -- by 272 they have separate affiliates, but  
16     they will bundle services together.

17                     That does not necessarily mean that AT&T  
18     will move to bundle services as well. Currently, with  
19     the UNE rates in Missouri, we've done the UNE  
20     analysis, and it is not profitable to provide UNE-P  
21     service to residential customers in Missouri. So  
22     regardless of 271 entry, that -- AT&T will not  
23     automatically come into Missouri and offer bundles of  
24     service and lose even more money.

25                     So I can't say that you'll see an overall

1 general increase in bundles. I don't know what other  
2 competitors will do. I know that Sprint Communi-- or  
3 Sprint has basically stopped providing UNE-P service  
4 anywhere in the country. I don't know if WorldCom or  
5 anyone else would plan on offering that service and  
6 offering bundles as far as the interexchange carriers.

7 Q. So what is your -- what is your belief, if  
8 you have one, about -- about the offering in general  
9 of these bundled packages if we assume Southwestern  
10 Bell gets into the long distance interLATA market?

11 A. I think Southwestern Bell will be the only  
12 company to be able to offer that bundle. An  
13 interexchange carrier such as AT&T will not be able to  
14 enter that market and offer a competent bundle. And  
15 to the extent the toll charges charged by SBC's LD are  
16 below the imputed cost of access. AT&T will lose  
17 money to match those offerings.

18 So you will not see an increase in bundles,  
19 and you're not going -- AT&T won't be able to match  
20 those prices without losing money. And that is the  
21 unfair competitive advantage created by a combination  
22 of high-switched access rates or switched access rates  
23 priced above cost and the inability to enter the local  
24 exchange market.

25 Q. So is it your suggestion that -- that upon

1 approval of the 271 application, if that occurs, that  
2 the face of competition in Missouri will change from  
3 what it is currently?

4 A. I guess I'm struggling with the question.

5 From AT&T's perspective, I do not think that  
6 the local exchange market will change measurably when  
7 Southwestern Bell gets 271 authority. The  
8 interexchange market will be increasingly difficult  
9 for interexchange carriers to compete because of the  
10 bundling of services priced below the imputed cost of  
11 access.

12 So it will change in the interexchange  
13 market by creating a competitive advantage for one  
14 carrier relative to the others. And I don't think the  
15 local exchange market is going to change markedly from  
16 what it is today.

17 Q. So you don't believe that those items that  
18 we're asked to review in regard to competition and the  
19 level of competition that currently exists and whether  
20 it's effective or not is impacted by the action of the  
21 FCC in approving or disapproving of the 271  
22 application for Southwestern Bell?

23 A. Can you restate that?

24 COMMISSIONER GAW: Probably not. We could  
25 have it read back.

1 (THE PENDING QUESTION WAS READ BY THE COURT  
2 REPORTER.)

3 QUESTION: So you don't  
4 believe that those items that  
5 we're asked to review in regard  
6 to competition and the level of  
7 competition that currently  
8 exists and whether it's effective  
9 or not is impacted by the action  
10 of the FCC in approving or  
11 disapproving of the 271  
12 application for Southwestern Bell?

13 COMMISSIONER GAW: Thank you.

14 THE WITNESS: Let me start to answer it, and  
15 if I'm not answering the right question, let me know.

16 I think that if 271 is approved by the FCC  
17 and they are granted the 271 relief, that does not  
18 mean there is an automatic assumption that there is  
19 effective competition. So to that extent, those two  
20 are separate.

21 BY COMMISSIONER GAW:

22 Q. That's not what I'm asking.

23 What I'm asking you is whether or not the  
24 entrance of Southwestern Bell into the long distance  
25 market, into the interLATA market, has an impact on

1 the face of competition on those services that we are  
2 currently reviewing because of the potential for  
3 bundling with long distance?

4 A. Given the UNE-P rates in Missouri -- I can  
5 only speak for AT&T.

6 Given the UNE-P rates in Missouri, the  
7 approval of 271 will not automatically mean we're  
8 going to enter the local market and lose money. So,  
9 no, I don't think that will change. I don't think you  
10 will see a big increase in residential competition  
11 because 271 is granted.

12 I think in the DOJ comments they noted,  
13 the most recent ones, that there has been overall a  
14 1 percent increase in CLEC access lines in Missouri  
15 from when Southwestern Bell filed its first  
16 application to now and most of that is business.

17 So the idea that 271 is going to suddenly  
18 make people enter doesn't hold up, because I would  
19 think that if you were going to follow that strategy,  
20 you would start to see some entrants as they go closer  
21 and closer, and we haven't seen that.

22 Q. Okay. Well, I'll -- if that's your answer,  
23 I'll let it stand.

24 If -- if I were looking at -- if I were  
25 looking at your standards at determining whether or

1 not competition exists for particular services, where  
2 would I find them in your testimony?

3 A. I guess I would point to my Rebuttal  
4 Testimony where I address each of the statutory  
5 requirements.

6 Q. And do you have, Mr. Kohly, objective  
7 standards that you have suggested that this Commission  
8 utilize in order to assess whether or not competition  
9 exists for particular services in particular  
10 exchanges?

11 A. No. And when you say "objective," there is  
12 no magic number that when you see this magic number  
13 you know it is competitive.

14 I think it has to be a subjective standard  
15 where you do look at market share and look at that and  
16 then use that to determine the barriers to entry.

17 Q. Well, within the -- within the concept of  
18 your answer that it has to be a subjective standard,  
19 does that mean that there are no objective thresholds  
20 that should be utilized whatsoever?

21 A. I guess there may be objective standards  
22 that would have to be used together subjectively.  
23 There is no one answer. You need to have actual  
24 competition for that service, and I guess that is an  
25 objective standard.

1                   Now, how you apply that and how you define  
2 "actual" may be a little more subjective.

3           Q.     But you really don't have any -- anything to  
4 offer as far as your testimony is concerned? And I'm  
5 not suggesting that it should be you.

6           A.     I do not.

7           Q.     I've been asking this question to a number  
8 of witnesses.

9           A.     I think Mr. Voight said economics is a  
10 social science and combined of many different things.

11          Q.     So how do we assure consistent application  
12 from one exchange to another if we're looking at this  
13 on a one-exchange-at-a-time basis so that we don't  
14 have different results with the same or similar facts?

15          A.     I almost think that any subjective standard  
16 you develop in the first time you approve effective  
17 competition that will then be the standard. We've  
18 already seen that a little bit where Mr. Voight  
19 recommended competitive status within the St. Louis  
20 and Kansas City metropolitan areas and was  
21 cross-examined, Isn't this the same in Fenton, so  
22 shouldn't it apply here?

23                   So I think whatever you do is going to  
24 eventually become an objective standard, and that, I  
25 guess, may ensure some standard be applied equally.



1 There may be situations where the standard will have  
2 to differ, so there is not necessarily -- I won't  
3 necessarily agree right off the bat that there needs  
4 to be the same standard. I don't know where the  
5 difference is right now, but there may be.

6 Q. Are you aware of any other state that has a  
7 similar statutory provision with utilizing the phrase  
8 effective competition?

9 A. Not that I'm aware of.

10 Q. So, to your knowledge, that's unique to  
11 Missouri, to the best of your knowledge?

12 A. The statutory requirements in this section  
13 are unique to Missouri as far as I know.

14 COMMISSIONER GAW: All right. I believe  
15 that's all, Judge. Thank you.

16 Thank you, Mr. Kohly.

17 JUDGE DIPPELL: Are there any further  
18 Commission questions?

19 (No response.)

20 JUDGE DIPPELL: Is there recross based on  
21 questions from the Bench from Southwestern Bell?

22 RECROSS-EXAMINATION BY MR. LANE:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Let me correct one area first with you and

1 make sure we're in agreement.

2           You referenced the DOJ comments and you said  
3 a 1 percent increase in CLEC market share. Was that  
4 your testimony?

5       A.     Yes.

6       Q.     Okay. Would you agree with me that the  
7 increase was from a 9 percent market share under the  
8 DOJ's estimate to a 10 percent market share in the  
9 three- or four-month period between the time of the  
10 filing of the two applications?

11      A.     Yes.

12      Q.     Okay. And mathematically speaking, an  
13 increase of -- from 9 percent to 10 percent means  
14 about an 11 percent increase in the CLEC's market  
15 share in that three- or four-month period, doesn't it?

16      A.     It's amazing what you can do with numbers.  
17 Yes.

18      Q.     They can be misused to indicate that  
19 competition isn't growing, when, in fact, it's growing  
20 at a greater rate; isn't that correct? That's one of  
21 the ways it can be misused.

22      A.     No. You're comparing the rate of growth to  
23 the overall growth. Those are different. Using one  
24 versus the other is not a misuse.

25      Q.     Okay. You talked about an objective

1 standard and said, no, it should be a subjective  
2 standard but that you should look at market share, if  
3 I heard you correctly. Was that your statement?

4 A. Correct.

5 Q. Okay. And would you agree with me that in  
6 other context AT&T has taken the position that market  
7 share is the least important and least reliable  
8 indicator of market power?

9 A. When used alone, I would agree. And I did  
10 not suggest that it be used alone. I think you need  
11 to look at the market share and see, is there actual  
12 entry and if there is or isn't. And if there is not,  
13 you need to look for other barriers to entry. So I  
14 have not said you need to use market share alone.

15 Q. And in context, it's fair to say that when  
16 AT&T was seeking to be declared a non-dominant carrier  
17 at the FCC and had at that time what was considered a  
18 high market share for AT&T, AT&T was quick to run from  
19 that and say market share is not an indicator of  
20 market power. Correct?

21 A. I think AT&T's condition on that was market  
22 share alone is not, but you use market share as one  
23 way to determine are there barriers to entry.

24 Q. Market share is a completely different  
25 economic concept than barriers to entry, isn't it,

1 Mr. Kohly?

2 A. No. The DOJ uses market share -- actually,  
3 let me quote it. "The Department of Justice standards  
4 first looks to actual competitive entry because the  
5 experience of competitors to seek to enter the market  
6 can provide highly probative evidence about the  
7 presence or absence of artificial barriers to entry."

8 So you would look at market share, and if  
9 you see competitive entry, you may be able to stop.  
10 If you don't see it, you may need to look and see are  
11 there barriers to entry?

12 Q. Right. That's a separate thing you look at.  
13 You look at it to see even if there is not market  
14 share. If there are not barriers to entry, you may  
15 still have effective competition in a market.  
16 Correct?

17 A. Yes, but I don't think that's the case here.

18 Q. Okay. You had some questions from  
19 Commissioner Murray that dealt with ILECs in Missouri  
20 other than Southwestern Bell. And is it -- is it your  
21 testimony today that AT&T is competing as vigorously  
22 in those ILECs' territories as it was two years ago?

23 A. We offer service in those territories. I do  
24 not know the extent to which we're marketing in those  
25 territories. I don't know.

1           Q.     Have you had a dramatic decline in your  
2 market share in those territories?

3                   MR. ZARLING:  I think -- I'm a little bit  
4 concerned, Mr. Lane, about even discussing the effect  
5 on our market share and what is a competitive market.

6                   First, I'll ask Mr. Kohly.  Do you even  
7 know?

8                   THE WITNESS:  Very, very generally.

9                   MR. ZARLING:  I won't ask we go in camera  
10 for this answer if he can describe it without going  
11 into any detail.

12                  JUDGE DIPPELL:  All right.  Do you know the  
13 question?

14                  Mr. Lane, would you like to ask the question  
15 again?

16 BY MR. LANE:

17           Q.     Has your market share in those territories  
18 declined dramatically?

19           A.     In some of the former secondary carrier  
20 exchanges, it did decline somewhat at the onset of  
21 intraLATA presubscription.  I do not know if it has  
22 risen again or not.

23           Q.     Okay.  And it declined there because you  
24 didn't participate in the intraLATA presubscription  
25 process?

1           A.     Correct, the balloting process.

2           Q.     So customers couldn't choose you?

3           A.     For intraLATA, yes.

4           Q.     And it may or may not have come back up

5     since that time?

6           A.     Correct.

7           Q.     Now, would you agree with me that in many of

8     the small ILECs' territories in which AT&T competes

9     that it is an affiliate of the small ILEC that

10    provides toll service in competition with you?

11          A.     Yes.

12          Q.     And would you agree with me that the

13    affiliates of the small ILECs offer services at prices

14    that are below their access charge prices to AT&T?

15          A.     I've not analyzed their offerings.  In

16    general, that may occur.

17          Q.     Okay.  Because they are charging access to

18    you at 18 cents a minute, right, and they are not

19    charging that to the toll customers, are they?

20          A.     Correct.

21          Q.     And that's precisely the claim or concern

22    that you raise with regard to Southwestern Bell, isn't

23    it?

24          A.     I will say that it is different.  The market

25    price for intraLATA toll -- for toll services in

1 Missouri, is generally the price where there is more  
2 customers. So we charge a rate -- the rates we're  
3 going to charge in Southwestern Bell territory will  
4 also be charged in those small LEC territories. The  
5 Small LEC territory does not drive that rate for  
6 competitive reasons because most of the customers  
7 reside in Southwestern Bell territory. That's where  
8 the market rate will be decided.

9           So, for example, if Southwestern Bell were  
10 to raise a rate or charge a toll rate at 7 cents a  
11 minute, AT&T is going to have to match that rate.

12       Q.     Okay. That's not my question, though, so  
13 let's make sure we're clear.

14           It's fair to say that both you and the ILEC  
15 affiliate providing intraLATA toll service in small  
16 ILEC exchanges are charging less than the cost of  
17 access charged by the ILEC in those exchanges. True?

18       A.     In some situations, yes. But, again, there  
19 is a big difference between a small LEC and an RBOC.

20       Q.     Well, in terms of serving the customer that  
21 resides in that territory, there is no difference, is  
22 there? They have a choice either of AT&T or of the  
23 ILEC's affiliate or whoever else is offering service.  
24 They can't take service from an IXC offering it in  
25 Southwestern Bell's exchanges, can they?

1           A.     The sheer size and the sheer number of  
2 customers creates a difference.

3           Q.     Well, first, my question, can you answer  
4 that yes or no?

5           A.     Can you restate the question?

6           Q.     Sure. From the standpoint of competing for  
7 particular customers in the small ILECs' exchanges,  
8 the fact that other IXC's are operating in Southwestern  
9 Bell's exchanges doesn't mean anything with regard to  
10 that customer whose choice is only AT&T or the ILEC  
11 affiliate or whoever else might be offering service in  
12 that exchange?

13          A.     That is true.

14          Q.     Okay. And has AT&T brought any complaints  
15 against the small ILECs or their affiliates contending  
16 that they are being driven out of the market in the  
17 small ILEC territory because the affiliate is charging  
18 a price that doesn't cover imputed access?

19          A.     No, we haven't. And given the access rates,  
20 we're not necessarily worried about losing some of  
21 those customers because we lose money with the ones we  
22 have.

23          Q.     With regard to cable, there was some  
24 discussion with Commissioner Murray about what AT&T's  
25 plans are in Missouri. And it's fair to say that



1 today you're continuing to operate the cable telephony  
2 assets in the Harvester and St. Charles areas.

3 Correct?

4 A. We continue to provide cable telephony  
5 service in those exchanges. We're not necessarily the  
6 cable TV provider. The cable TV assets may already  
7 have been transferred to Charter. I'm not sure of  
8 that.

9 Q. But you wouldn't have transferred the cable  
10 telephony assets until you got approval from the  
11 Commission. Right?

12 A. The cable telephony assets are still  
13 controlled by AT&T.

14 Q. Owned by AT&T?

15 A. Yeah, owned.

16 Q. Okay. And Charter has committed as part of  
17 the asset transfer process in Missouri to continue to  
18 provide service to all of the customers that AT&T is  
19 serving today. Correct?

20 A. Yes.

21 Q. Okay. And do you know whether Charter has  
22 plans to expand cable telephony services beyond the  
23 Harvester and St. Charles exchanges?

24 A. I'm not in a position to comment on their  
25 market plans.

1           Q.     Do you know?  My question was whether you  
2     knew of their market plans.  That's either a yes or a  
3     no.  If the answer is yes --

4           A.     No.

5           Q.     -- but you've got some confidentiality  
6     agreement, then we'll deal with it.  But do you know?

7           A.     I do not know their specific plans.

8           Q.     And AT&T on a nationwide basis is -- are  
9     they the largest cable television provider?

10          A.     Yes.

11          Q.     Okay.  And AT&T utilizes those cable -- I'm  
12     not sure if it's cable telephony or cable modem  
13     service.

14                 Do you consider cable modem service a  
15     telephony service?

16          A.     No.

17          Q.     Okay.  But you provide high-speed access to  
18     the internet via cable modems.  Correct?

19          A.     Yes, in other states.

20          Q.     And it directly competes with ILEC offerings  
21     in other states of high-speed offerings to the  
22     internet.  Correct?

23          A.     Yes.

24          Q.     And those ILEC services are regulated either  
25     by the FCC or the state commission.  Correct?

1           A.     Yes.

2           Q.     From the standpoint of the -- strike that.

3                   On the originating side of switched access,  
4     would you agree that an interexchange carrier has  
5     various alternatives that are available to reach that  
6     customer beyond simply using switched access from the  
7     incumbent local provider?

8           A.     There may be other alternatives that are  
9     possible, but they don't make economic sense, so,  
10    therefore, they are not possible.

11          Q.     Does AT&T utilize special access acquired  
12    from any incumbent providers in Missouri to provide  
13    originating service to customers?

14          A.     Yes, where it's economical.

15          Q.     Okay.  So your first answer was really not  
16    correct.  There are areas where it is economical,  
17    right, to use something besides switched access on the  
18    originating side?

19          A.     Yes, but special access is not always a  
20    substitute for switched access, is what I meant by  
21    that answer.

22          Q.     And there is also competitive access  
23    providers, or so-called CAPs, that are operating in  
24    the marketplace that can be utilized by an IXC to  
25    obtain originating access to customers.  Correct?

1           A.     To the extent those facilities are  
2     available, yes.

3           Q.     There's companies out there today in the  
4     market that offer those facilities, aren't there?

5           A.     I believe so.

6           Q.     Okay. And on the terminating end of a  
7     switched access call, you would agree that whoever is  
8     the local provider, whether it's the ILEC or the CLEC,  
9     has the same locational monopoly. Correct?

10          A.     Yes.

11          Q.     Okay. And despite that locational monopoly  
12     that CLECs have, they have been declared to be  
13     competitive companies and all services declared  
14     competitive subject to a cap, correct, a cap on  
15     switched access?

16          A.     Yes.

17          Q.     And that's exactly what Southwestern Bell is  
18     asking for in this proceeding; isn't that correct?

19          A.     That's correct, but I do think they are two  
20     different things.

21          Q.     Okay. Now, with regard to predatory  
22     pricing, it's fair to say that AT&T has taken the  
23     position in front of the FCC that predatory pricing is  
24     highly unlikely to occur in the interexchange market.  
25     Correct?

1           A.     Yes. Using the classic example of a firm  
2 pricing below cost, yes, that is true. It is --

3           Q.     Pricing below cost --

4           A.     Below its actual --

5           Q.     -- drive out its competitors, and then  
6 recoup that money by raising prices once all  
7 competitors have left the market. Right? That's the  
8 classic predatory pricing.

9           A.     That is correct that AT&T has taken that  
10 position. That is a different animal completely than  
11 the instance where the toll provider is also the  
12 switched access provider and the access rates are  
13 above cost.

14          Q.     And I understand that's your position, but I  
15 want to make sure that we have it clear what your  
16 position is with regard to AT&T. When it was seeking  
17 to be declared a non-dominant provider at the FCC when  
18 it had a substantial market share, it took the  
19 position at the FCC that there was no effective way  
20 that it could engage in predatory pricing because it  
21 couldn't drive out all of its competitors from the  
22 market because there were several hundred of them, and  
23 even if it could drive them all out of the market,  
24 their facilities --

25                   MR. ZARLING: I'm going to object, your

1 Honor. I think it really sounds like Mr. Lane is  
2 testifying here about what --

3 MR. LANE: Well, not yet. I'm trying to ask  
4 a question.

5 JUDGE DIPPELL: Mr. Lane, perhaps you could  
6 break your question up into segments.

7 BY MR. LANE:

8 Q. Did AT&T take the position at the FCC that  
9 they could not engage in predatory pricing because  
10 they would not be able, first, to drive hundreds of  
11 competitors out of the market, and, second, even if  
12 they could, they couldn't keep those competitors from  
13 coming back into the market because there was ease of  
14 entry into the long distance market?

15 A. After being completely separated from the  
16 local exchange provider and switched access provider,  
17 AT&T did take that position.

18 MR. LANE: Thank you.

19 That's all I have.

20 JUDGE DIPPELL: Is there recross from Staff?

21 MR. HAAS: No questions, your Honor.

22 JUDGE DIPPELL: Public Counsel?

23 MR. DANDINO: Yes, your Honor.

24 JUDGE DIPPELL: Mr. Dandino, do you have a  
25 lengthy --

1 MR. DANDINO: No. Just a few questions.

2 JUDGE DIPPELL: Okay.

3 RECROSS-EXAMINATION BY MR. DANDINO:

4 Q. Good afternoon, Mr. Kohly.

5 A. Good afternoon.

6 Q. Commissioner Murray and Commissioner Lumpe  
7 talked to you about access rates and the ability of  
8 AT&T to avoid some of the access rates.

9 Isn't it true that AT&T has requested and  
10 received relief from their carrier-of-last-resort  
11 obligation?

12 A. That is true.

13 Q. And wasn't one of the reasons that AT&T  
14 requested this was because of excessive access rates?

15 A. Yes.

16 Q. And AT&T could leave any exchange both in  
17 Southwestern Bell's territory or throughout the state  
18 without a hearing under that decision?

19 A. We think so. I understand your office and  
20 the small LECs differ on that.

21 Q. That's true. But according to -- you would  
22 proceed, or AT&T would proceed as you thought the  
23 order read; is that correct?

24 A. Yes.

25 Q. Commissioner Gaw asked you about some

1 objective standards and the difficulty in developing  
2 those.

3           Would some of the standards necessarily  
4 depend on what type of service you were talking about?

5       A.     Yes. I think they would differ by service.

6       Q.     And would they also differ perhaps by the  
7 exchanges you're talking about whether a rural or  
8 urban or -- or principal business area versus  
9 suburban?

10      A.     There could be a situation where that would  
11 happen, yes.

12      Q.     Would it depend on what period of time  
13 you're looking at for the competition that you're  
14 examining?

15      A.     I guess I may not -- that I'm not sure of.

16      Q.     And would it also depend on changes  
17 occurring in the industry from one time that the  
18 Commission would look at those at the status of  
19 competition and then maybe perhaps at a later date in  
20 six months or a year?

21      A.     Absolutely. We've seen a tremendous  
22 slow-down in the telecommunications industry.  
23 Obviously, six months ago or a year ago there was a  
24 very different outlook than there is today, and that  
25 is very relevant to determining whether there is



1 effective competition.

2 Q. Has there been reductions in access rates in  
3 ILECs in Missouri let's say in the last three years?

4 A. Not by Southwestern Bell. Verizon has taken  
5 one step to rebalance rates. I believe Sprint has  
6 taken one step to rebalance rates. For the small  
7 LECs, it's my recollection it's kind of a mixed bag.  
8 Some have gone up; some may have gone down.

9 Q. Some have gone down because of overearnings  
10 cases and some have gone up because of cost recovery  
11 for the end of the primary toll carrier plan?

12 A. Yes. I will point out, though, they are  
13 still some of the highest in the nation.

14 Q. And do you -- do you know when the last  
15 reduction was for Southwestern Bell's access rates?

16 A. I believe it was in 1994.

17 Q. Okay. Now, prior to Southwestern Bell going  
18 under price caps, did AT&T and other IXCs attempt to  
19 have the access rates reduced for Southwestern Bell?

20 A. I believe in 1997 in Case 97-303 there was a  
21 complaint filed by MCI to look at access rates.

22 Q. Did AT&T join in that?

23 A. AT&T and 27 odd other carriers, I believe.

24 Q. And that effort was rejected by the  
25 Commission?

1           A.       It was.

2                   MR. DANDINO:  That's all I have, your Honor.

3                   Thank you.

4                   JUDGE DIPPELL:  Thank you.

5                   WorldCom?

6                   MR. LUMLEY:  No questions, your Honor.

7                   JUDGE DIPPELL:  Sprint?

8                   MS. HENDRICKS:  I have a few.

9  RE CROSS-EXAMINATION BY MS. HENDRICKS:

10           Q.       Mr. Kohly, there was a discussion about

11  alternatives for switched access.  Do you recall that?

12           A.       Yes.

13           Q.       Now, Southwestern Bell's attorney identified

14  specific access as a determinative.  Do you recall

15  that?

16           A.       Yes.

17           Q.       Now, isn't it true that Southwestern Bell in

18  this docket is seeking competitive classification for

19  special access as a separate and distinct service?

20           A.       Yes, it is.

21           Q.       There were also some questions about the

22  classification of competitors' switched access service

23  as a competitive classification.  Do you recall that?

24           A.       Yes.

25           Q.       When AT&T got its CLEC certificate, its

1 switched access was classified competitive; is that  
2 correct?

3 A. Correct.

4 Q. Was its local service offering also  
5 classified competitive?

6 A. Correct. When the CLECs began getting their  
7 certification, there was a presumption that they were  
8 competitive.

9 Q. Now, if we go back to your switched access,  
10 did you have to demonstrate -- or let me rephrase  
11 that.

12 In securing your competitive classification  
13 for switched access as a CLEC, was there a statutory  
14 requirement that you demonstrate that it was subject  
15 to effective competition?

16 A. No.

17 MS. HENDRICKS: Okay. No further questions.

18 JUDGE DIPPELL: Is there redirect?

19 MR. ZARLING: Yes, your Honor.

20 JUDGE DIPPELL: Let me ask you the same  
21 question, Mr. Zarling. How long do you think? I'm  
22 trying to determine if we should take a short break.

23 MR. ZARLING: Personally, I would enjoy a  
24 short break myself.

25 JUDGE DIPPELL: Okay. Let's go ahead and

1 take a 15-minute break and come back at 3:00 and we'll  
2 finish up. Thank you.

3 Go off the record.

4 (A RECESS WAS TAKEN.)

5 JUDGE DIPPELL: Mr. Zarling, before you  
6 begin -- stay right there for just a minute --  
7 Commissioner Murray had one more question she wanted  
8 to ask.

9 COMMISSIONER MURRAY: And I apologize for  
10 this but this was something that came up in  
11 Mr. Kohly's answer to someone, and if it creates  
12 follow-up questions, I understand. Perhaps, it won't.  
13 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

14 Q. You stated, Mr. Kohly, that you -- that  
15 Missouri access rates are some of the highest in the  
16 nation.

17 A. Yes.

18 Q. And what I wanted to clarify there, are you  
19 talking about Southwestern Bell's access rates, or are  
20 you talking about access rates other than Southwestern  
21 Bell's?

22 A. Both. Overall, Missouri has -- it's in  
23 my universal service testimony. I forget the exact  
24 numbers.

25 But Southwestern Bell's are some of the

1 highest RBOC access rates in the country. I believe  
2 they are seventh. As far as non-Bell companies,  
3 Missouri is fourth or fifth in the country. And then  
4 our statewide average is one of the highest also.

5 Q. And Southwestern Bell's are, you said,  
6 seventh in the nation?

7 A. That's my recollection.

8 Q. And the RBOCs?

9 A. Yes.

10 Q. Okay. Thank you.

11 A. Let me clarify. Those numbers are based  
12 upon AT&T's cost data that we track by company, so  
13 it's not access rates in the tariff. It will be very  
14 close, if not identical. I just want to -- before  
15 there is a bunch of questions about this, it's based  
16 on AT&T's costs.

17 COMMISSIONER MURRAY: Thank you.

18 JUDGE DIPPELL: Okay. And now let me  
19 quickly ask if there's any further questions based on  
20 Commissioner Murray's questions from Southwestern  
21 Bell?

22 MR. LANE: No, your Honor.

23 JUDGE DIPPELL: Staff?

24 MR. HAAS: No, your Honor.

25 JUDGE DIPPELL: Public Counsel?

1 MR. DANDINO: No, your Honor.

2 JUDGE DIPPELL: Sprint?

3 MS. HENDRICKS: No, your Honor.

4 JUDGE DIPPELL: WorldCom?

5 MR. LUMLEY: No, your Honor. I just want to  
6 go home.

7 JUDGE DIPPELL: Okay. Then it's up to you,  
8 Mr. Zarling.

9 MR. ZARLING: All right. I'm crossing  
10 things out as we speak, so I think it's really up to  
11 Mr. Kohly.

12 REDIRECT EXAMINATION BY MR. ZARLING:

13 Q. The first question, Mr. Kohly, I'm not  
14 sure -- I think it was in response to, actually,  
15 questions from Mr. Dandino, you were asked how -- if  
16 you could recall when the last time was Southwestern  
17 Bell had reduced its access rates, and I think you  
18 said 1994.

19 And in all fairness to Southwestern Bell,  
20 you would like to correct that?

21 A. Yes. I forgot about the rate decrease that  
22 occurred pursuant to the price cap statute that they  
23 did, I believe last year and will be doing another one  
24 this year. I apologize for forgetting those.

25 Q. In response to a question from Mr. Lane, you

1 said that the cap upon CLECs; that is, the -- placing  
2 a switched access upon CLECs and Southwestern Bell's  
3 willingness to have a cap placed on their switched  
4 access rates were two different things. Do you recall  
5 that answer?

6 A. Yes.

7 Q. Would you like to explain your answer  
8 further?

9 A. The -- it's a very different thing mainly  
10 because of the sheer number of access lines to just  
11 simply place the same cap on CLECs' access lines that  
12 are on Southwestern Bell. First of all, the statute  
13 requires a showing of effective competition to decide  
14 that that service is competitive.

15 AT&T is concerned that, because of the sheer  
16 number of access lines, even the cap may not be enough  
17 to prevent increases in access rates. While one CLEC  
18 may be able to enter the cap, change their access  
19 rates, redistribute those, or whatever, that is not  
20 going to have a very big effect possibly on the  
21 market, especially given competition today. It's very  
22 different if Southwestern Bell were to do that, given  
23 the sheer number of their access lines.

24 Q. Mr. Lane also asked you some questions about  
25 originating access, and he pointed to some

1 alternatives, and I think you agreed with him that  
2 there were some competitive access providers. Do you  
3 recall that line of questioning?

4 A. Yes.

5 Q. Okay. First of all, who do competitive  
6 access providers tend to serve; that is --

7 A. Generally, if a competitive access provider  
8 has placed facilities, it's going to be to a very  
9 large business or very large building where there are  
10 many businesses in there.

11 Q. So what is your opinion about the  
12 availability of alternatives to originating access for  
13 residential consumers?

14 A. There is no alternative. No CAP is going to  
15 place facilities to any individual's home.

16 Q. Has Southwestern Bell, to your knowledge,  
17 provided any evidence on the presence of competitive  
18 access providers within Missouri particularly on an  
19 exchange by exchange level in this case?

20 A. They have not provided any data that I can  
21 recall about individual CAPs. There was the proximity  
22 analysis map that may show some fiber that does not  
23 show that necessarily those are CAPs.

24 Q. Commissioner Gaw asked you some -- a  
25 question about the impact of the FCC's 271 decision on



1 the Commission's decision here.

2 Do you believe that the outcome of the FCC  
3 271 decision falls -- the impact of that decision will  
4 fall under any of the criteria the Commission needs to  
5 look at in determining whether there is effective  
6 competition?

7 A. I had viewed the 271 case as -- I guess I  
8 would call it a necessary but not sufficient criteria  
9 for determining effective competition, so that the 271  
10 means at best the market is open. Missouri statutes  
11 require actual competition, and so you need to have  
12 the market open, but that 271 is not sufficient to  
13 mean there is effective competition.

14 Q. And taking the hypothetical of Southwestern  
15 Bell receiving 271 relief and providing long distance  
16 service as an interLATA interexchange carrier, and I  
17 guess it would be a Southwestern Bell affiliate, would  
18 the impact -- do you think the Commission should  
19 consider the impact of that under any of the  
20 effective -- effective competition criteria under the  
21 statute?

22 A. Can you restate the question? Sorry.

23 Q. Do you think that the Commission should  
24 consider the impact of Southwestern Bell possibly  
25 receiving 271 relief; that is, a Southwestern Bell

1 affiliate being permitted to provide interLATA  
2 interexchange service, under any of the criteria for  
3 determining whether there is effective competition for  
4 other services that are at issue in this case?

5 A. Again, I guess the 271 decision would be at  
6 best the markets are open. Under 13 --  
7 386.020(13)(a), that talks about the extent to which  
8 services are available. 271 does not satisfy that  
9 criteria, for example.

10 Q. Commissioner Murray asked you some questions  
11 about the cap and the -- the cap on switched access,  
12 and, let's see, in particular, a question regarding  
13 some testimony by you where you were complaining of  
14 Southwestern Bell's attempt to put -- or request in  
15 the last arbitration to put a cap in -- on AT&T's  
16 switched access rates in our interconnection  
17 agreement. Do you recall that line of questioning?

18 A. Yes.

19 Q. And can you explain why it is that although  
20 there was a cap based on the Commission decision, that  
21 AT&T opposed having a cap also placed in our  
22 interconnection agreement?

23 A. AT&T did not believe that the  
24 interconnection agreement was the appropriate place to  
25 cap a rate, a wholesale rate, or whatever, in an

1 interconnection agreement. The appropriate place to  
2 do that would be in a tariff or Commission order or  
3 rule, and it was not necessary in this agreement.

4 The other point -- the other problem was the  
5 cap on switched access for CLECs is a temporary  
6 solution, and that's why they've created this effect--  
7 this cost of switched access docket.

8 And so to the extent that the cap imposed by  
9 the Commission is an interim cap, having a cap in your  
10 interconnection agreement would then need to be  
11 changed if the cap by the Commission changed. And we  
12 didn't think that was efficient or necessary.

13 Q. Okay. One of the scenarios, I think, that  
14 was discussed was -- by Commissioner Murray was the  
15 idea that if Southwestern Bell's switched access  
16 services were defined as competitive, then if those  
17 rates went up, the CLECs' rates would be able to go  
18 up. Do you recall that example?

19 A. Yes.

20 Q. Okay. If a CLEC's rates are tied to  
21 Southwestern Bell's rates, do you consider that to be  
22 the equivalent of a cap?

23 A. I guess I would say it's a very loose cap.

24 Q. Would a CLEC under that scenario have any  
25 ability to control the upward flexibility of its

1 switched access rates?

2 A. No, it wouldn't. It could not go above  
3 Southwestern Bell's. It could mirror rate increases  
4 of Southwestern Bell, but it couldn't go above.

5 Q. So in a scenario where Southwestern Bell had  
6 competitive flexibility or competitive classification,  
7 so it had pricing flexible for its switched access  
8 rates, and the CLECs' rates were tied to Southwestern  
9 Bell's, in your opinion, would the CLECs have the same  
10 pricing flexibility as Southwestern Bell for switched  
11 access?

12 A. No, they wouldn't. They would effectively  
13 be price-capped by the actions of Southwestern Bell.

14 The other issue that raises is could  
15 Southwestern Bell raise access rates in an area where  
16 the CLEC was not competing, a rural area, for example,  
17 and deaverage those rates.

18 Well, the CLEC would not be able to match  
19 that because the cap would be lower where the CLEC was  
20 competing, and that would allow Southwestern Bell to  
21 gain new revenues potentially used to subsidize other  
22 offerings.

23 Q. Commissioner Murray also asked you a  
24 question related to AT&T's providing intraLATA  
25 service, and I think you responded that we delayed our

1 entry in that -- in that market. I think the question  
2 really was, are we providing service in all  
3 Southwestern Bell exchanges. I think your answer was  
4 we delayed our entry but that we are today.

5 Did AT&T delay its entry on a 1+ basis or  
6 did they delay their entry providing any sort of  
7 intraLATA toll service?

8 A. No. Prior to the advent of intraLATA  
9 presubscription, AT&T provided dial-around 10-10-type  
10 service and continued to do so after the  
11 implementation of dialing parity. When dialing parity  
12 was implemented, AT&T did not delay its entry into the  
13 Southwestern Bell market but did delay its entry into  
14 the exchanges served by the former secondary carriers  
15 for the 1+ product, but during that whole time did  
16 provide dial-around service.

17 MR. ZARLING: That's all I have. Thanks.

18 JUDGE DIPPELL: Thank you.

19 Mr. Kohly, just one more clarifier.

20 You used the term "RBOC," and I don't know  
21 if that's in this record anywhere. Would you like to  
22 tell me what that means?

23 THE WITNESS: Regional Bell operating  
24 company.

25 JUDGE DIPPELL: Thank you.

1 I believe that concludes all of the  
2 testimony.

3 Mr. Kohly, you may be excused.

4 (Witness excused.)

5 JUDGE DIPPELL: And unless anybody objects,  
6 Mr. Lumley, you may go home.

7 We're adjourned. Off the record.

8 WHEREUPON, the hearing of this case was  
9 concluded.

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