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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

HEARING

February 4, 2004

Jefferson City, Missouri

Volume 7

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In the Matter of a Commission Inquiry ) Case No.  
into the Possibility of Impairment ) TO-2004-0207  
without Unbundled Local Circuit )  
Switching When Serving the Mass Market )

BEFORE: \_\_\_\_\_  
LEWIS MILLS, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE.  
CONNIE MURRAY,  
ROBERT CLAYTON,  
COMMISSIONERS.

\_\_\_\_\_

REPORTED BY:  
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24

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1 JUDGE MILLS: We're back on the record for a  
2 continuation in the phase 1 hearing in Case  
3 No. TO-2004-0207. We detoured a little bit, but we're back  
4 to questions from the Bench for Staff Witness Thomas.

5 CHRISTOPHER THOMAS testified as follows:

6 QUESTIONS BY JUDGE MILLS:

7 Q. And I just have one series of questions. And  
8 it has to do with the idea of sort of recombining building  
9 blocks, whether they be exchanges or wire centers in the  
10 next phase of the case.

11 And I think some of the parties have alluded  
12 to the fact that you can sort of treat either wire centers  
13 or exchanges as building blocks and sort of use them to  
14 build up a market. Is that how you intend to proceed in the  
15 next phase?

16 A. That's my understanding of our plan at this  
17 point, Judge.

18 Q. So that say you looked at Exchange A and  
19 Exchange B and they're contiguous, right next to each other,  
20 and, you know, all the parties -- like this is going to  
21 happen -- all the parties unanimously agree that that one  
22 meets the triggers, the one right next to it doesn't.

23 And if you combine the two, either the  
24 combined entity doesn't meet or does meet the triggers, how  
25 would you treat that? Would you say that, you know, this

1 exchange there's no impairment and that exchange there is  
2 impairment, or would you look at them both together and  
3 together there's no impairment?

4 A. I think that my preferred method would be to  
5 treat them individually. And I think that you're going to  
6 have a disagreement over how to treat those two exchanges  
7 potentially in the next phase. I think some parties may  
8 say, well, you should treat them as if they're one market  
9 because you could look at them together.

10 Q. Wouldn't you have people attempting to game a  
11 system by saying, well, let's combine them this way or let's  
12 combine them that way and that way there's either more  
13 likelihood of impairment or less likelihood of impairment?  
14 How would the parties agree how to combine the different  
15 groups of exchanges?

16 A. I don't know that it's very likely that they  
17 would agree that they combine different groups of exchanges.

18 Q. And if that were to be done, how would Staff  
19 propose that the Commission begin grouping exchanges?

20 A. I think that the MCA is certainly one way to  
21 start to look at ways to group exchanges, because I think if  
22 you look at the St. Louis MCA explicitly, zones 1 and 2 I  
23 think we've all agreed are in the St. Louis metropolitan  
24 area. And you might begin to look at zone 3 and zone 4 for  
25 other areas that you could add on to the metropolitan area.

1 I think that's certainly one method.

2 Q. Okay. So you might --

3 A. I think that makes a little more sense than  
4 just picking two random exchanges that may be next to each  
5 other.

6 Q. Right. And I was just using two as an  
7 example. I could see you could have the north St. Louis  
8 County as one area and, you know, the city and just, you  
9 know, a few exchanges around the core or one market area.

10 And I think, you know, from the point of view  
11 of someone who's going to have to try to administrate this  
12 mess, it seems to me that that could turn into a mess once,  
13 you know, you start -- if you define the geographic area as  
14 the exchange or as the wire center and then, you know, you  
15 think you're done, you get into the next phase and then you  
16 realize, no, you haven't even begun because the market area  
17 is not the wire center or the exchange, it's some unknown  
18 grouping of wire centers or exchanges. So, I mean --

19 A. I think that it -- from the Staff's  
20 perspective, we'd look for some reasonable basis to group  
21 those exchanges together such as the MCA plan. And I think  
22 that's a good way to start and a good way to approach. And  
23 I think there would have to be -- it would have to be a  
24 pretty good basis, in my opinion, to group exchanges  
25 together rather than just randomly picking two exchanges. I

1 know that that's not what you meant, but I think there would  
2 have to be a good basis such as the MCA.

3 Q. Okay. Let me go back to something I think I  
4 heard you say. Did you say that you would prefer to simply  
5 treat each exchange as its own market area and not combine  
6 them?

7 A. I think that would be ideal, but I think  
8 you're going to get into situations where some -- it makes  
9 sense to combine some such as the MCA may make sense.

10 Q. Okay.

11 A. So I think but ideally you'd want to treat  
12 each exchange individually, if that makes sense.

13 Q. Yeah. Although, I mean, ideally is a pretty  
14 big qualifier.

15 A. Yeah, it is.

16 Q. And, you know, I'm worried about the practical  
17 implications of trying to come out with a decision in the  
18 next phase and the kinds of testimony we're going to be  
19 looking and at the kinds of decisions that are going to have  
20 to be made.

21 A. And I think you're right, the parties could  
22 try to group exchanges however they chose.

23 Q. So we may look at --

24 A. That could happen.

25 Q. -- a map from Staff that looks completely

1 different from a map from SBC that looks completely  
2 different from a map from the CLEC coalition?

3 A. That could happen.

4 Q. Even though we've said, yeah, we're going to  
5 use exchanges or, yeah, we're going to use wire centers?

6 A. Yes.

7 Q. And, you know, I'm just saying this  
8 hypothetically. The Commission may decide to use the MSAs  
9 or anything, but --

10 A. And I think the other side of the argument is  
11 if you use the larger market area, then you get into the  
12 argument I think as Mr. Ankum was discussing yesterday and  
13 Mr. Starkey a little bit you get into, well, what do these  
14 mean on the entire market basis? How do you define the  
15 triggers? And it's more soft as to how you define triggers  
16 in that scenario, I think. So it's either the grouping  
17 problem or the trigger definition problem.

18 Q. Ain't nothing easy.

19 A. No. Not at all.

20 JUDGE MILLS: Okay. That's really all the  
21 questions I had. We'll do further redirect based on -- I'm  
22 sorry, further cross-examination based on those questions  
23 and then redirect.

24 CenturyTel? And now I've done it. I've got  
25 Mr. Dority asking questions.



1                   MR. DORITY: Thank you, Judge.

2           CROSS-EXAMINATION BY MR. DORITY:

3           Q.       Good morning, Mr. Thomas.

4           A.       Good morning, Mr. DORITY.

5           Q.       I wanted to follow up just for clarification

6           purposes on a few questions that I believe Commissioner

7           Murray asked you. I think Chair Gaw perhaps asked some

8           clarifying questions and now with what Judge Mills has asked

9           you this morning. I guess I just need to be sure I

10          understand what Staff's position is.

11          A.       Sure. Sure.

12          Q.       In response to Commissioner Murray, when we

13          were discussing -- or you were discussing the idea of

14          Staff's proposal that the exchange be used as the geographic

15          area, I believe you indicated that the trigger test must be

16          met in every exchange; is that correct?

17          A.       I think that's Staff's position.

18          Q.       And just very briefly, could you summarize

19          what the trigger tests are? It's my understanding there's

20          actually two different trigger tests. Is that your

21          understanding as well?

22          A.       Yes, it is. And I think it kind of depends on

23          how the case is approached because there's the initial,

24          well, three and you're out trigger test. And I think that's

25          one simple way to define the trigger test, but I think other

1 parties -- and I think some of the confusion may come in and  
2 I'm leaving the door open because we haven't -- we're going  
3 to evaluate those issues in the next phase of the proceeding  
4 and I don't want to say that Staff's position is three and  
5 you're out necessarily because there are all kinds of -- I  
6 mean, this order there are 11 witnesses to define two  
7 issues. So I think it's written in a way that it's open to  
8 a degree of interpretation.

9 Q. So, in your mind, what I will refer to as the  
10 self-provisioning trigger, the three unaffiliated carriers  
11 that have their own switches, that may not be the end of the  
12 inquiry. Is that what I'm hearing you say?

13 A. There's the potential for it not to be the end  
14 of the inquiry, I think. I think that's reflected in  
15 testimony of some of the parties in this case. They believe  
16 it's not the end of the inquiry. So I think it's something  
17 the Commission's going to have to address in the next phase.

18 Q. Okay. Now, in terms of the location of the  
19 switches, I also think I heard you say that the switch does  
20 not have to be located in every exchange. That would be  
21 true. Correct?

22 A. That's true. Just the CLEC needs to be  
23 providing service in that exchange with its own switch.

24 Q. In terms of actually providing service, would  
25 that be, for instance, by collocation?

1           A.       That's one method.

2           Q.       What we've referred to as EELs?

3           A.       That's another method.

4           Q.       Are there others?

5           A.       Not to my knowledge, but there may be

6 something that I'm not aware of. Those are the two primary

7 methods I think for CLECs to provide -- the use of their own

8 facilities, their own loops potentially too.

9           Q.       In addition to what you referred to as three

10 and out, the self-provisioning trigger, I believe there's

11 also a wholesale trigger that would be two or more carriers

12 that offer wholesale switching. Is that your understanding

13 as well?

14          A.       That's my understanding as well.

15          Q.       Okay. And then if we get beyond those two

16 triggers, there's an additional potential deployment

17 analysis; is that correct?

18          A.       That's correct.

19          Q.       Okay.

20          A.       And there's -- I think there's a question as

21 to how that plays into the phase, if that's something the

22 Commission has to do or if that's something the ILEC has to

23 request. I'm not sure how that fits into the next phase.

24          Q.       Does Staff have an opinion on that?

25          A.       I think Staff's opinion is the ILEC needs to

1 request it. And to this point Bell hasn't requested it or  
2 CenturyTel hasn't requested it either, to my knowledge.  
3 They're only asking for the initial trigger analysis.

4 MR. DORITY: Judge, if I could hold up -- I  
5 think this has been marked -- or the handout version has  
6 been marked as Exhibit 27.

7 JUDGE MILLS: I believe that's correct.

8 BY MR. DORITY:

9 Q. And, Mr. Thomas, this depicts the St. Louis  
10 MSA. And it's my understanding that the red outline is the  
11 St. Louis MSA and the blue outline depicts the MCA area in  
12 St. Louis.

13 So, again, following up on some questions here  
14 this morning, in Staff's scenario of the trigger test, if  
15 you will, of the three providers, it's my understanding from  
16 Staff's point of view that if the Commission were to decide  
17 that the -- let's just use the MCA as an example.

18 A. Okay.

19 Q. I understood Staff's thinking that that -- at  
20 some point in this proceeding that might be something Staff  
21 would be suggesting as a reasonable alternative?

22 A. I don't know that we would suggest it, but I  
23 think it's certainly one reasonable way -- in answer to the  
24 Judge's question, I think it's one reasonable basis the  
25 Commission could use to combine exchanges.

1           Q.       Okay. Well, before I go on, that is one point  
2 of my confusion. I thought I heard you testify yesterday  
3 that you were -- and I'm sorry, Staff is really looking for  
4 a definitive order from this Commission as it relates to the  
5 geographic area?

6           A.       Yes.

7           Q.       And I think as you termed it, so the parties  
8 won't be coming in again with another 15 different points of  
9 view overlaid on top of what the trigger analysis should be?

10          A.       Yes. Yes.

11          Q.       So is it Staff's position that exchange is the  
12 geographic area and that will be the extent of it, or did I  
13 understand you this morning that the exchange would be  
14 really the starting point and then you may yet build to a  
15 geographic area that could be used for later determinations  
16 in the future as to what the actual non-impairment finding  
17 was?

18          A.       I think the exchange is both the market and  
19 the starting point in a sense. You're going to look at each  
20 individual exchange and look at the triggers within each  
21 individual exchanges, but there may be areas where it may  
22 make sense to look at multiple exchanges together. But I  
23 think you'd still look at each exchange within that  
24 grouping.

25                   Does that clarify a little bit? I mean, I

1 think that there are still ways to look at exchanges as  
2 groups but you'd still look at each exchange as the market  
3 area within that group is where I was going with the Judge.

4 Q. Okay. So, again, if we look at Exhibit 27,  
5 the St. Louis MSA, the blue area -- or the outline of the  
6 blue that would depict the MCA, as far as the trigger test,  
7 if CLECs were providing service within any three exchanges,  
8 it would be your understanding that that would meet the  
9 trigger test. Correct?

10 A. If the MCA was defined as the market area?

11 Q. Yes. As opposed to --

12 A. Depending on how you define the triggers and  
13 define providing service, which I think is the next phase of  
14 this proceeding, then yes, that's correct. I just want to  
15 point out I don't think that there's necessarily a simple  
16 way to just say, well, the trigger's met. I think there's  
17 going to be a lot of disagreement over what exactly that  
18 means and what it means that a CLEC is providing service  
19 throughout the area.

20 Q. I guess part of my confusion I believe is in  
21 response to a question from Chair Gaw when he was asking  
22 about using the MSA as the geographic area. I thought I  
23 understood you to say that, you know, if a determination was  
24 made that there were three providers located anywhere within  
25 the MSA, then that would meet the trigger test. But then I

1 think you said that there needs to yet be further granular  
2 analysis on top of that. Could you explain what you meant?

3 A. I think it's going to be one -- one major  
4 disagreement in the next phase. I think that's something  
5 that's not set in stone yet. And I didn't want to foreclose  
6 it in this -- I didn't want the Commission to foreclose it  
7 in this proceeding. I wanted to make it clear that that's  
8 something we're going to look at in the next proceeding.

9 And I think there are two very valid  
10 interpretations that you've espoused there. You could look  
11 at it and say, well, there are three providers of the MCA or  
12 MSA and you're done. And I think there's another side of  
13 the issue that they're going to say, well, wait a minute,  
14 they're not necessarily providing service throughout the  
15 entire MCA to satisfy the triggers.

16 So I think there's going to be a disagreement  
17 in the next phase and I wanted the Commission to be aware  
18 that there is going to be this disagreement in the next  
19 phase and it's not something that they can address here  
20 because they don't have testimony necessarily addressing all  
21 the factors that they need to decide.

22 Q. Again, to be clear, Staff's position in terms  
23 of recommending the exchange as the appropriate geographic  
24 area, to meet the trigger test, Staff would require that  
25 there be three unaffiliated CLECs actually providing service

1 in each exchange; is that correct?

2 A. That's my understanding.

3 Q. Okay. Thank you very much.

4 A. Yes.

5 MR. DORITY: Thank you, Judge.

6 JUDGE MILLS: Thank you.

7 Sprint?

8 CROSS-EXAMINATION BY MS. CREIGHTON HENDRICKS:

9 Q. Good morning, Mr. Thomas.

10 A. Good morning.

11 Q. Yesterday in response to a question I believe

12 from Commissioner Murray, you had indicated that it was

13 Staff's belief that whatever market definition is defined

14 here the Commission should use in every subsequent request

15 made by any provider; is that correct?

16 A. That's correct.

17 Q. And I believe that you cited paragraph 495 and

18 the last sentence of 495 to support that?

19 A. Yes. As well as the rules too, Ms. Hendricks,

20 if you'd like me to cite the rules. I cited the rules

21 yesterday. The six-month -- basically the Commission's

22 given a shorter time frame for all subsequent analysis.

23 Q. Right. Now, if you look at the last sentence

24 of 495, it reads, The State Commission must use the same

25 market definition for all of its analysis; is that correct?



1           A.       That's correct.

2           Q.       And it is indicated that a footnote should be  
3 referenced to that point; is that correct?

4           A.       That's correct.

5           Q.       Now, would you take a look --

6           A.       Footnote 1540.

7           Q.       1540. If you could take a few moments and  
8 read the footnote.

9           A.       Yes.

10          Q.       Is it also a reasonable interpretation of that  
11 sentence as modified with the footnote that what the  
12 Commission must do is to the extent they define a market for  
13 the request being made by CenturyTel and SBC at this time,  
14 they have to use that same market definition in the trigger  
15 analysis as well as potential deployment analysis?

16          A.       That's one reasonable interpretation.

17          Q.       And to the extent a subsequent request was  
18 made for an exchange let's say outside of the MSA, the  
19 Commission at that time could define the market in a  
20 different manner as long as they used the same market  
21 definition for the trigger and potential deployment?

22          A.       I think they could. Given the short time  
23 frame of the second proceeding it might be difficult, but I  
24 think they could do that.

25                   MS. CREIGHTON HENDRICKS: No further

1 questions.

2 JUDGE MILLS: Thank you.

3 SBC?

4 CROSS-EXAMINATION BY MR. LANE:

5 Q. Mr. Thomas, let me start first with asking you

6 some questions about the trigger test in the next phase.

7 A. Sure.

8 Q. And your testimony I believe indicated that

9 you thought there was some question about whether you simply

10 counted three switches to see if they were serving mass

11 market customers for voice services in the relevant

12 geographic area. Right?

13 A. I think the testimony I've seen in this

14 proceeding and everything I've seen related to the next

15 proceeding does indicate that there may be disagreement of

16 the parties.

17 Q. Have you read the TRO's requirements with

18 regard to trigger analysis?

19 A. I have.

20 Q. Would you take a look at paragraph 498 for me,

21 please?

22 A. Sure.

23 Q. And with reference to the middle of the

24 paragraph do you see the statement, We require State

25 Commissions to find no impairment in a particular market

1       when either trigger is satisfied subject to the limitations  
2       described below?

3               A.       Yes.

4               Q.       And with regard to what the Commission can and  
5       can't look at, would you take a look at paragraph 500,  
6       please? The first sentence of that says, For the purpose --  
7       purposes of these triggers, we find that states shall not  
8       evaluate any other factors such as the financial stability  
9       or well-being of the competitive switching providers.

10              Do you see that?

11             A.       Yes.

12             Q.       So economic analysis or the impact on  
13       carriers, their well-being and so forth are factors that  
14       cannot be considered in the trigger analysis. Correct?

15             A.       If you'd give me just a second, Mr. Lane, to  
16       read the whole paragraph.

17             Q.       Sure.

18             A.       Could you ask your question again, Mr. Lane?

19             Q.       Yes. Paragraph 500 makes it very clear that  
20       the state cannot consider financial stability or well-being  
21       of the competitive switching providers or any other factor  
22       in doing the trigger analysis. Correct?

23             A.       It's -- it's relatively clear. I think the  
24       last sentence is relatively important though in that  
25       analysis because, The key consideration to be examined --

1       excuse me, the key consideration to be examined by State  
2       Commissions is whether the providers are currently offering  
3       and able to provide service and are likely to continue to do  
4       so.

5                       And that stage of the analysis may be  
6       relatively difficult given the directive that you were  
7       laying out before about you can't consider the stability of  
8       the providers in the market, the financial stability. So  
9       I'm not really sure how to interpret that.

10           Q.       All right. So you don't have a position on  
11       whether you're going to look at financial stability and the  
12       economic well-being of the competitive switching  
13       providers --

14           A.       The Staff --

15           Q.       -- despite the provisions of paragraph 500?

16           A.       I haven't given it a lot of thought. I think  
17       there is a disconnect there. If you can't look at each  
18       individual carrier's well-being but you have to tell -- if  
19       you have to find out that they're likely to continue to  
20       provide service in the future, I'm not sure how those two  
21       things fit together.

22           Q.       Go to paragraph 501, if you would, under the  
23       self-provisioning trigger. The first sentence provides  
24       that, We determine that subject only to the limited  
25       exception set forth below, a State Commission must find no

1 impairment when three or more unaffiliated competing  
2 carriers each is serving mass market customers in a  
3 particular market with the use of their own switches.

4 Do you see that?

5 A. Yes. It's modified by a footnote as well.

6 Q. And the limited exception is set forth in  
7 paragraph 503. Correct?

8 A. Exceptional sources of impairment?

9 Q. Right. And doesn't that provide that if the  
10 Commission finds that there is some exceptional source that  
11 makes the Commission believe that there's still impairment  
12 despite the trigger being met, that in that case, the State  
13 Commission must petition the FCC for a waiver of the  
14 application of the trigger?

15 A. Could you point out the specific petition the  
16 FCC language you're referring to?

17 Q. Sure. If you look at the last sentence that  
18 begins on page 320 and carries over to 321.

19 A. Yes, sir. That appears to be what it says.

20 Q. And so if there's any other factor that ought  
21 to be considered to try to mitigate the application of the  
22 trigger, the Commission can't simply refuse to find no  
23 impairment, it must instead petition the FCC for a waiver of  
24 the application of the trigger. Correct?

25 A. That's correct. And, once again, that's

1 modified by a footnote, that sentence is. I just want to  
2 make that clear for the record.

3 Q. All right. I mean, the footnote doesn't  
4 change the import of your answer, does it?

5 A. It limits -- it further clarifies the limit of  
6 the state petition -- ability to petition us, meaning the  
7 FCC, unless exceptional barrier to entry has been  
8 identified. So I don't think it does.

9 Q. So it's clear that if the Commission finds  
10 that the trigger has been satisfied, it must find no  
11 impairment, but if it believes that there's some exceptional  
12 circumstance that indicates to the Commission that  
13 impairment still exists, it must petition the FCC at that  
14 point for a waiver of the trigger. Right?

15 A. That appears to be what the language says.

16 Q. And you're not recommending anything different  
17 in this case, are you?

18 A. No, I'm not. No.

19 Q. And I believe you indicated in your  
20 discussion -- let me ask it this way. I was a little  
21 unclear in your answer to Mr. Dority. If the Commission  
22 sets the St. Louis exchange as the market area, is it your  
23 testimony or view that carriers have to be providing service  
24 in each wire center in that exchange before it could count  
25 towards the trigger?

1           A.       No. The exchange -- the Commission would look  
2       at the provision of service within the exchange.

3           Q.       As a whole?

4           A.       As a whole.

5           Q.       Okay. And if you have three person -- three  
6       CLECs providing service to mass market customers, voice  
7       services utilizing their own switch somewhere in that  
8       exchange area, then you'd find no impairment. Right?

9           A.       Barring the exceptional circumstance, yes.

10          Q.       All right. And no impairment would be for the  
11       whole exchange. Right?

12          A.       That's correct.

13          Q.       And that's Staff's recommendation to the  
14       Commission. Right?

15          A.       Yes.

16          Q.       Okay. And the same would be true with regard  
17       to whatever geographic market the Commission selects.  
18       Right? If they select the MSA, you look to see if there's  
19       three or more unaffiliated CLECs providing service -- voice  
20       service to mass market customers utilizing their own switch  
21       within the MSA. Correct?

22          A.       Yes. I believe that's Staff's --

23          Q.       All right. And, again, absent some  
24       exceptional circumstance that would cause the Commission to  
25       petition the FCC for a waiver, you'd find that no impairment

1 exists if you have that trigger satisfied. Right?

2 A. Yes. Absent the exceptional circumstance.

3 Q. Okay. And I was a little confused with your

4 exchange with Judge Mills and with Mr. Dority about what

5 Staff's recommendation is. It's my understanding that Staff

6 was looking to have the geographic market actually

7 determined in this proceeding. Is that still your view?

8 A. That's my view.

9 Q. And if the Commission determines that there's

10 any grouping of exchanges, then that should be determined

11 now. Right?

12 A. Not necessarily. I think you're still going

13 to look at each individual exchange regardless of how the

14 parties propose that the Commission -- which exchanges the

15 parties propose the Commission examine. Maybe that's the

16 source of our confusion. I think the parties could come in

17 and ask for different exchanges, but I think you still have

18 to look at each exchange individually.

19 Q. But if the Commission sets the geographic

20 market in this phase of the proceeding, then that's the

21 market that the parties deal with. Right?

22 A. That's correct.

23 Q. And if they say, Group exchanges in some

24 particular fashion, they need to tell us now so that the

25 evidence can react to what the market is as set by the



1 Commission. Right?

2 A. That's correct. You'd still look at each  
3 exchange individually, under the Staff's proposal.

4 Q. Okay. But I'm trying to get to the point  
5 where if the Commission has determined that they want some  
6 grouping of exchanges, then isn't it important to know that  
7 now before the next phase starts?

8 A. If the Commission determines that they do want  
9 a grouping of exchanges, they should definitely tell the  
10 parties. That's for sure.

11 Q. All right. So the only grouping of exchanges  
12 that's been contemplated by the testimony in this case on  
13 the stand and through cross and the like is either the LATA,  
14 the MSA, the MCA, or Staff's single-exchange proposal.  
15 Those are the things that the Commission can consider.  
16 Right?

17 A. That's correct. I think to a limited base,  
18 the MCA. I'm not sure how that fits in since there wasn't  
19 Direct Testimony on it. But certainly the LATA and the MSA.

20 Q. But if the Commission wanted to group  
21 exchanges for purposes of setting the market, they could  
22 tell the parties that they determined that the MCA areas in  
23 St. Louis, Kansas City and Springfield are the geographic  
24 market that they want to look at. Right?

25 A. They could tell the parties that, yes.

1           Q.       Okay. And then parties would present the  
2       evidence to see whether the triggers are met. Right?

3           A.       Yes.

4           Q.       And you had indicated earlier in response to a  
5       question from -- I'm not sure if it was Judge Mills or  
6       Mr. Dority, may have been Mr. Dority, that with regard to  
7       potential deployment that you think the parties have to  
8       request that. Right?

9           A.       That's my understanding.

10          Q.       Okay. And they have to request a trigger  
11       analysis as well, don't they?

12          A.       Yes.

13          Q.       Okay. And I thought you'd indicated that SBC  
14       hasn't asked for any potential deployment analysis to be  
15       conducted. Was that your testimony?

16          A.       I believe that was in your initial pleading in  
17       this phase. Basically, that if you received your MSA  
18       designation, you wouldn't pursue a potential deployment  
19       analysis.

20          Q.       All right. And that was the point I think I  
21       wanted to clarify with you. What SBC's position was is that  
22       if the Commission adopts the MSA approach and if they adopt  
23       the crossover approach that we're recommending, then we will  
24       limit it to the trigger case, but if a different geographic  
25       market and/or crossover is selected, we were reserving our

1 right to present a potential deployment case. Right?

2 A. That was my understanding of your initial

3 pleading.

4 Q. You don't think anything has been waived on

5 that, do you?

6 A. I don't believe so. I would say from your

7 question it hasn't been.

8 Q. Commissioner Murray asked you some questions

9 concerning the use of the MSA and you had indicated to her

10 that you thought that was not administratively practical?

11 A. Yes.

12 Q. And if the Commission sets the MSA for

13 purposes of the geographic market, in the next phase the

14 parties will present evidence as to whether the triggers are

15 met in the MSA. Right?

16 A. That's correct.

17 Q. Just as they would if the LATA is selected or

18 if the exchange is selected. Right?

19 A. That's correct.

20 Q. And from an administrative practicality

21 perspective, there's no difference in how the next phase of

22 the proceeding will be conducted whether the Commission

23 chooses LATA, MSA, MCA or exchange. Right?

24 A. Not in the next phase. Potentially for the

25 next request. If another carrier comes in or if SBC comes

1 in with another request in the future, given the short time  
2 frames, there may be a problem but not for the next phase in  
3 this proceeding.

4 Q. So for purposes of what SBC and CenturyTel,  
5 the only two carriers that are going to argue for  
6 non-impairment with regard to unbundled local switching,  
7 there's no issue at this time with regard to administrative  
8 practicality that would prevent utilization of the MSA as  
9 the geographic market. Right?

10 A. For the next phase in this proceeding, there  
11 is not.

12 Q. And to be clear, I'm not sure this was your  
13 testimony so I want to ask a question about it. You're not  
14 indicating that if the Commission selects MSA for the  
15 St. Louis, Kansas City and Springfield regions as the  
16 appropriate geographic area, that they can't later decide  
17 what the appropriate market is for those areas in the state  
18 outside of those three MSAs. Right?

19 A. No. I'm just indicating that they have a  
20 reduced time frame to do so.

21 Q. And the Commission may -- the Commission may  
22 permissibly adopt the MSA as the geographic market for  
23 St. Louis, Kansas City and Springfield and then with regard  
24 to areas outside of that in some subsequent proceeding  
25 decide that either an exchange or a grouping of exchanges is

1 the appropriate geographic market for those areas. Right?

2 A. I think that depends on the interpretation of  
3 Paragraph 495, specifically the last sentence that  
4 Ms. Creighton Hendricks and I discussed, and whether all of  
5 its analysis applies just to this proceeding or to all  
6 future proceedings.

7 Q. And I guess that's what I was trying to get  
8 your opinion on. Is it your view that the Commission is  
9 somehow precluded from using the MSAs as the geographic  
10 market where they find that appropriate and in the non-MSA  
11 areas to use exchanges or groups of exchanges to be the  
12 geographic market in those areas?

13 A. Could you ask your question one more time?

14 Q. Yeah. I'm trying to understand if it's  
15 Staff's position that if the Commission selects MSAs for  
16 St. Louis, Kansas City and Springfield, that it is somehow  
17 precluded from later saying in the non-MSA areas, I'm going  
18 to use exchanges or groups of exchanges to set the  
19 geographic market there?

20 A. I'm not sure of the answer to your question on  
21 that, Mr. Lane.

22 Q. And if you take a look at paragraph 495 and,  
23 in particular, the Footnote 1540, doesn't that indicate to  
24 you that the Commission, once they set the geographic market  
25 for a particular area, must use that geographic market for

1 the purposes of the further analysis, i.e., the triggers and  
2 the potential deployment test. Right?

3 A. I think it further clarifies that sentence to  
4 mean, therefore, in this situation.

5 Q. There's nothing in the footnote that would  
6 somehow preclude the Commission from utilizing MSAs for  
7 St. Louis, Missouri -- St. Louis, Kansas City and  
8 Springfield and then subsequently -- strike that.

9 There's nothing in the footnote that would --  
10 that could be read to preclude the Commission from using  
11 MSAs as the geographic market in St. Louis, Kansas City and  
12 Springfield, applying the triggers in those areas, applying  
13 the potential deployment analysis in those areas and then  
14 subsequently in the non-MSA areas determining the  
15 appropriate geographic area and then applying the triggers  
16 and the potential deployment analysis to that subsequent  
17 geographic market. Right?

18 A. There's nothing in the footnote that precludes  
19 that, that's correct.

20 Q. Okay.

21 MR. LANE: That's all I have. Thanks,  
22 Mr. Thomas.

23 THE WITNESS: Thank you.

24 JUDGE MILLS: Thank you.

25 Mr. Magness?

1 MR. MAGNESS: Thank you, your Honor.

2 CROSS-EXAMINATION BY MR. MAGNESS:

3 Q. Morning, Mr. Thomas.

4 A. Good morning, Mr. Magness.

5 Q. I think I'd like to pick up on maybe this

6 morning's theme of what geographic market is for phase 1 and

7 two. Would you agree there's a -- I may not even need to

8 ask this -- but a fair amount of uncertainty and dispute

9 about both the meaning of the TRO and the data that's needed

10 to meet its standards?

11 A. Yes. I think the 11 witnesses in this

12 proceeding are evidence of that fact.

13 Q. And that dispute extends not just to these two

14 issues before us, but to other issues as well. Right?

15 A. That's correct.

16 Q. Okay. And let me try to describe how we might

17 move from phase 1 to phase 2 and see if you would agree that

18 this is a logical recommendation or you have a different

19 recommendation. Okay?

20 A. Okay.

21 Q. In this phase we've heard a lot of evidence

22 about these two issues. We've also heard a great deal of

23 evidence about other things because they're necessarily

24 interrelated, I suppose. The Commission makes a decision,

25 chooses one of these market definitions. And right now I'll

1       just focus on the market definition.

2               A.       Okay.

3               Q.       Okay.  Chooses a market definition and tells

4       the parties for purposes of writing all this testimony

5       you're going to have to write and getting ready an analysis

6       to bring us your positions, we choose X, we choose a

7       particular market definition.  That's what you'd suggest the

8       Commission do --

9               A.       Yes.

10              Q.       -- in this phase?  Okay.

11              A.       Yes.

12              Q.       And then let's move into phase 2.  Okay?

13       Let's say that the market definition that was chosen just

14       for the purposes of preparing this first round of trigger

15       and possibly potential deployment analysis, once all the

16       data is in, has some significant problems.  I'll give you an

17       example from both ends of the perspective.  Okay?

18              A.       Okay.

19              Q.       Let's say you start looking at it on a wire

20       center basis and you realize there's no way we can sit here

21       and do 500 or 200 or how many wire center analyses there are

22       and besides that, we don't really need to because what's

23       true of Trigger Company A in Kansas City, guess what, they

24       run the same business plan in St. Louis.  So they're either

25       a trigger or they're not.



1                   So we chose wire centers but, you know, going  
2 forward into the future and going forward into making the  
3 decisions, we think something else makes more sense. Do you  
4 think the Commission would have the flexibility to do that?

5           A.       I'm not sure that they would. I think that in  
6 your example though they could say, well, if Company A meets  
7 it in Kansas City, then necessarily Company A would also  
8 meet the trigger in St. Louis --

9           Q.       But could they do it --

10          A.       -- in the exchanges that they're operating in.

11          Q.       But if the Commission chose a wire center  
12 based analysis, wouldn't they need to produce findings on a  
13 wire center by wire center basis to that effect?

14          A.       I think they would, but I think that you could  
15 show that the -- potentially the CLEC's business plan would  
16 be the same throughout its operating territory.

17          Q.       Okay.

18          A.       And apply it to each individual wire center.

19          Q.       Let's go to the other end, the wise choice,  
20 the LATA. Say we go to the LATA and we found out, well, we  
21 chose a LATA and that's a wide area of analysis, but one of  
22 these issues comes up that you've discussed or Dr. Ankum  
23 discussed where, you know, there's one DS0 loop -- this is  
24 an extreme example.

25                   But there's one DS0 loop hanging off a CLEC

1 switch that's serving a burglar alarm line in a business  
2 that's otherwise served by DS1. That's all there is in the  
3 LATA -- or let's say there's three of them. And, you know,  
4 you look, this doesn't make any sense to trigger out. Are  
5 you saying the Commission wouldn't have the flexibility to  
6 come up with a logical result if they followed your  
7 recommendation to select a market now?

8 A. I think in that situation the only avenue they  
9 would have would be to petition the FCC as an exceptional  
10 exclusion under --

11 Q. So if the Commission's objective is to truly  
12 meet what the FCC has required it to do, wouldn't it make  
13 the most policy sense to tell us all, lawyers and witnesses,  
14 here's what we're choosing right now as what we think makes  
15 the most sense, but if when we get all the data in that's  
16 going to come at us in phase two, if we decide that, as it  
17 turns out, that tentative conclusion isn't supported by the  
18 facts, we should be able to choose another market area for  
19 purpose of our analysis that makes sense for Missouri?

20 A. That does make some sense, but from an  
21 administrative standpoint I think it dramatically increases  
22 the volume of testimony and the volume of issues that the  
23 Commission has to consider in the next phase of the case.  
24 And it kind of makes this phase moot, so --

25 Q. Well, Mr. Thomas, ultimately is it more

1       important that we have an administratively simple answer or  
2       one that locks us into what could be a result that either  
3       eliminates competition in a way that it shouldn't or  
4       continues UNE-P in ways that the FCC didn't contemplate? I  
5       mean, isn't it more important that we come up with a  
6       rational and wise, substantive outcome?

7               A.       I think it's very important we come up with a  
8       rational and wise, substantive outcome.

9               Q.       Okay. Now, I want to talk to you a little bit  
10       about the questions that Chair Gaw asked you and Mr. Lane  
11       followed up on this morning.

12              A.       Certainly.

13              Q.       Trying to -- again, this kind of moves us a  
14       little bit into the phase 2, but as we know, they're all  
15       interrelated. What is the path to finishing the trigger  
16       case at least -- what is it the Commission needs to look at?  
17       And you heard some questions on that already this morning,  
18       didn't you?

19              A.       Yes.

20              Q.       All right. I'm going to -- and you would  
21       agree with me that there are standards in the order -- in  
22       the Training Review Order and guidance from the FCC about  
23       how to apply those standards, and that that is where we need  
24       to be looking to figure this out. Right?

25              A.       That's correct.

1 Q. Do you have the order with you?  
2 A. Yes, I do.  
3 Q. I knew you wouldn't leave home without it.  
4 A. Never leave home without it.  
5 Q. I'm going to take you to paragraph 441.  
6 A. 441?  
7 Q. Yes, sir. 441. I believe -- let's see. I  
8 think you'll find that on page --  
9 A. 274, I believe.  
10 Q. -- 274. If you could read paragraph 441 and  
11 the accompanying footnote -- actually, if you'd just read  
12 the first sentence of that long footnote accompanying it and  
13 let me know when you're done.  
14 A. So the whole paragraph and the first sentence  
15 of the footnote?  
16 Q. Yes, sir.  
17 A. Okay.  
18 Q. Just let me know when you've had a chance to  
19 review it.  
20 A. Certainly.  
21 Okay.  
22 Q. Okay. Now, there's been a fair amount of  
23 testimony already just in this phase 1 about how there are a  
24 lot of CLEC switches out there, but they may not necessarily  
25 be serving the mass market. Does that ring a bell?

1           A.       That does ring a bell.

2           Q.       And in this paragraph 441 doesn't the FCC talk  
3       about a category of switches called enterprise switches?

4           A.       They do.

5           Q.       And don't they in Footnote 1354, at least the  
6       majority who wrote the order, say that enterprise switches  
7       should not be considered in the mass market trigger  
8       analysis?

9           A.       Yes.   Basically because it ignores the  
10       substantial differences between the switches serving the  
11       different markets.

12          Q.       Okay.   Let me take you now to paragraph 508.  
13       And I think you'll find that on page 322.

14          A.       Yes.

15          Q.       Now, actually just to be sure we're in the  
16       right context, you'll see above there's a Roman iii's that  
17       says Analysis of Potential Deployment.   Just to be sure  
18       we're in context, this is where they're talking about  
19       potential deployment.   You understand that?

20          A.       Yes, I do.

21          Q.       Okay.   But down in paragraph 508, if I could  
22       direct you to the sentence that begins with the word  
23       "although" at the bottom of 322.

24          A.       Continues onto the next page?

25          Q.       Yes, sir.   It says, Although switches serving

1 the enterprise market do not qualify for the triggers  
2 described above.

3 Do you see that?

4 A. Yes.

5 Q. Okay. Now, so looking at this guidance from  
6 the FCC and these standards they've set, would you agree  
7 with me that it's going to be important for the Commission  
8 in phase 2 to find some way to distinguish between the  
9 switches in Missouri serving enterprise customers and those  
10 serving mass market customers?

11 A. Yes.

12 Q. And is the Commission going to need to figure  
13 out a way to see how it is that you can make that  
14 distinction for each one of the switches that's identified  
15 in the state?

16 A. Yes. And I believe there's a reference to the  
17 batch cut process that follows in the next sentence of that  
18 paragraph.

19 Q. Okay. Does that change your view on  
20 whether --

21 A. It does. And it's just additional guidance on  
22 how the Commission may approach that issue.

23 Q. Okay. And from your experience, would you  
24 think that one of the things we should be looking at is,  
25 just as an example, the number of DSIs versus the number of

1 DS0s, or to put it another way, the number of digital versus  
2 analog loops that are attached to these switches?

3 A. That's certainly one method that we could  
4 employ.

5 Q. Okay. And speaking of these methods, let me  
6 take you for just a moment out of the order and into your  
7 Exhibit 35-HC.

8 A. Yes.

9 Q. And I don't want you to and I'm not going  
10 to --

11 A. Absolutely.

12 Q. -- talk about anything that's H or C.

13 A. Okay.

14 Q. Okay. And if you could look at Schedule 2-1.

15 A. Yes.

16 Q. Okay. And here you're trying -- my  
17 understanding is the purpose of 2-1 is to identify some of  
18 the data points that you think may be relevant to figuring  
19 out some of these questions the Triennial Review Order asks  
20 us to figure out?

21 A. That was the purpose of Mr. Fleming's schedule  
22 and all this is Mr. Fleming's schedule with the exchange  
23 names added in, so that would be true.

24 Q. And let me just -- because I want to do this  
25 quickly for everybody's benefit. The column that starts

1       Number of CLECs Collocated in Wire Center --  
2           A.       Yes.  
3           Q.       -- if you look there, then the next one is  
4       Number CLECs with EELs, all capital E-E-L-s, in Wire Center.  
5           A.       Yes.  
6           Q.       Number CLECs with Ported TNs, Total Ported  
7       TNs.   Okay?  
8           A.       Yes.  
9           Q.       No matter what the numbers are in those  
10       categories, the fact that there is a number in the box  
11       doesn't indicate anything about that -- whether that  
12       customer is serving mass market or enterprise customers,  
13       does it?  
14           A.       It does not.  
15           Q.       Okay.   And then the last one is Mass Market  
16       UNE Loops.   Right?  
17           A.       Yes.  
18           Q.       And is it your understanding since you used  
19       Mr. Fleming's analysis, that this relies on Mr. Fleming's  
20       view of what the cut-over is for mass market versus  
21       enterprise?  
22           A.       I believe that that is correct.   I believe  
23       that was his testimony.  
24           Q.       So we may see a different number for mass  
25       market UNE loops depending on what the cut-over is; is that



1 correct?

2 A. That's true.

3 Q. Okay. And the UNE-P residential line again is

4 one -- would you agree with Mr. Fleming that that's

5 something we ought to be at least looking at and considering

6 in the analysis for triggers?

7 A. I'm not quite sure how it fits into the

8 trigger analysis necessarily.

9 Q. Okay. Now, let me take you -- so we have,

10 number one -- I'm just trying to create that path to

11 completion. Okay? Number one, you have to decide is the

12 switch identified a mass market switch or an enterprise

13 switch. Would you agree with that?

14 A. I'd agree with that.

15 Q. Let me take you to paragraph 499. Let me take

16 you back into the territory Mr. Lane had you in a few

17 moments ago. Now, paragraph 499 is long, and in my copy

18 it's all messed up because they errated all over it. Do you

19 know what I'm talking about?

20 A. Added footnotes?

21 Q. Yes. Added footnotes and new text in the

22 errata.

23 A. Yes. A considerable amount.

24 Q. I'd like you to focus -- I'm sorry.

25 A. A considerable amount of new footnotes and new

1 erratas, yes, sir.

2 Q. I want you to focus on page 318, the sentence  
3 that begins "moreover." It's about five or six lines down.  
4 and I'll just read it for the record. Moreover, the  
5 identified competitive switch provider should be actively  
6 providing voice service to mass market customers in the  
7 market.

8 Is that a correct reading?

9 A. That's a correct reading of the paragraph --  
10 or the sentence.

11 Q. Okay. And then in paragraph 500, as you  
12 pointed out to Mr. Lane, there's a sentence at the very end  
13 of paragraph 500 that says, The key consideration to be  
14 examined by State Commissions is whether the providers are  
15 currently offering and able to provide service and are  
16 likely to continue to do so. Right?

17 A. Yes.

18 Q. Okay. And in Footnote 1556 that followed --  
19 because you're right, the footnotes often modify the text.

20 A. Are very important in the context.

21 Q. It says, For instance, states should review  
22 whether the competitive switching provider has filed a  
23 notice to terminate service in that market.

24 Is that a correct reading?

25 A. That's a correct reading.

1 Q. Okay. Now, taken together, what the FCC is  
2 telling the states is for each one of these identified  
3 triggers, you need to figure out are they -- since I'm using  
4 my thumb here, one, actively providing, two, voice service,  
5 three, to mass market customers. Right?

6 A. Yes.

7 Q. Now, a company could be actively providing  
8 enterprise service but not actively providing mass market.  
9 Right?

10 A. Mass market service.

11 Q. You could be actively providing voice but  
12 not --

13 A. Not --

14 Q. -- to the mass market?

15 A. That's correct.

16 Q. Okay. So you need to look at each one of  
17 these to decide. Right?

18 A. That's true.

19 Q. And there is some judgment the State  
20 Commission will have to exercise in determining what  
21 actively means; isn't that right?

22 A. I would assume so.

23 Q. Okay. Well, let me give you an example. Am I  
24 actively providing cross-examination right now?

25 A. Yes.

1 Q. Is Ms. Mudge?  
2 A. I think it could be argued that she is.  
3 Q. Okay. Any other lawyers in the back, would  
4 they be actively providing if they were out in the audience?  
5 A. Probably not.  
6 Q. Okay. There's a little judgment there.  
7 Right? Ms. Mudge might not think she's cross-examining  
8 right now, but --  
9 A. That's true.  
10 Q. -- since you're in the witness box, things  
11 look a little different. Right?  
12 A. That's true.  
13 Q. Okay. So we've got to figure out actively  
14 providing. Now, let me ask you, would it make sense to be  
15 looking at whether the CLEC identified is -- the extent to  
16 which they are ordering these analog loops today when we're  
17 doing the analysis versus what they were doing six months  
18 ago, a year ago? Would that make sense?  
19 A. That would make some sense.  
20 Q. Okay. Now, let me take you to one more place  
21 in the order and it's to Footnote 1549. And you'll find  
22 that -- yeah, same page we were on, page 318. And I'd just  
23 ask you to take a look at that for me and let me know when  
24 you've had a chance to review it.  
25 A. Sure. Okay.

1           Q.     Okay. And I imagine you've read that footnote  
2 before, haven't you?

3           A.     Yes. I'd seen it before.

4           Q.     And Mr. Starkey I think was discussing it  
5 yesterday about CMRS or cellular service. I'd like to focus  
6 your attention to a sentence or two above where it says, In  
7 deciding whether to include intermodal alternatives for  
8 purposes of these triggers, states should consider to what  
9 extent services provided over these intermodal alternatives  
10 are comparable in cost, quality and maturity to incumbent  
11 LEC services.

12                   Is that a correct reading?

13          A.     That's correct.

14          Q.     So the FCC's guidance to us is you've got to  
15 look at intermodal alternatives -- and when I say  
16 "intermodal," you'd agree with me, right, that's something  
17 like a cable company providing phone or some company using  
18 its own loops. Right?

19          A.     That's correct.

20          Q.     Okay. So it tells us you have to consider  
21 them, but then it tells us in the next sentence, you have to  
22 decide whether to include them as a trigger. Right?

23          A.     That's true.

24          Q.     Okay. So there are factors that have to be  
25 determined?

1           A.       Yeah.

2           Q.       Okay.  So just to summarize this path to  
3       getting the work done, we have to figure out is every switch  
4       identified an enterprise switch or a mass market switch.  
5       Right?

6           A.       Right.

7           Q.       We got to figure out actively providing voice  
8       service to the mass market.  Right?

9           A.       Right.

10          Q.       And, third, we got to figure out for  
11       intermodal providers, do they meet these standards such that  
12       they would qualify as a trigger.  Right?

13          A.       Right.

14          Q.       And that is not necessarily everything we have  
15       to look at.  Right?

16          A.       I would assume it is not.

17          Q.       Okay.  Now, let's take a trigger company.  
18       Okay?

19          A.       Okay.

20          Q.       Call them CLEC X so we won't compromise any  
21       confidential information.  When you analyze CLEC X, in order  
22       to answer these questions you're going to need to be looking  
23       at several different things about that company, I assume.  
24       Right?

25          A.       I believe that's correct.

1           Q.     Okay. And as Mr. Lane pointed out to you, you  
2     can't look at whether they're in bankruptcy. Right?

3           A.     That's true.

4           Q.     But you do have to determine whether they are  
5     likely to continue to keep serving. Right?

6           A.     That's right.

7           Q.     So you just have to figure out some way to do  
8     that within the confines of paragraph 500. Correct?

9           A.     That's correct.

10          Q.     Okay. Now, do you think it's likely that  
11     CLEC X, generally from what you know about CLECs -- I mean,  
12     it may have the same business plan in the whole state and so  
13     when you conduct a trigger analysis of it, either it's going  
14     to trigger or it's going to not wherever it is, wire center,  
15     LATA, MSA, exchange. Is that a possibility?

16          A.     I'd say that's a fair possibility.

17          Q.     Okay. Alternatively, it could be that a CLEC  
18     is providing one kind of service in St. Louis, but -- it may  
19     be providing mass market service in St. Louis, but back over  
20     in Kansas City it put in a switch that it can only make  
21     money doing that in the enterprise market. That's a  
22     possibility. Right?

23          A.     That is a possibility.

24          Q.     Okay. So there isn't really a way to -- I  
25     mean, to use the political term with maps to jerrymander

1 ourselves around the trigger analysis. Right?

2 A. Yeah. That's correct.

3 Q. You got to do the trigger analysis company by  
4 company by company?

5 A. Within the market area that you define.

6 Q. Right. And since that's the primary focus of  
7 the trigger analysis, again, wouldn't it make good policy  
8 sense to look at the trigger analysis in a way that you can  
9 be flexible about how you define the market rather than  
10 locking in now and forever holding your peace after all the  
11 data is in?

12 A. Potentially. And I think in the efforts of  
13 the making this decision as easy to administer -- or as easy  
14 for the Commissioners to consider as possible, I think it  
15 would make some sense to define the market now. And on a  
16 solid -- I think we may disagree over exactly what gets us  
17 to that end result but, yeah, I think you're generally  
18 correct.

19 Q. We could define the market now for purposes of  
20 the lawyers and witnesses and analysis but leave the  
21 Commission the flexibility, as you may know the Ohio  
22 Commission took, to make it tentative and reconsider it once  
23 all the evidence is in. Right?

24 A. I think that might be one good approach to  
25 say, Witnesses, lawyers, use these definitions, but the



1 Commission could modify their analysis in the future.

2 Q. Okay. Thank you, Mr. Thomas.

3 A. As long as we were given a clear directive to  
4 use a specific market in our analysis.

5 MR. MAGNESS: Thank you again.

6 THE WITNESS: Thank you.

7 JUDGE MILLS: Mr. Lumley?

8 CROSS-EXAMINATION BY MR. LUMLEY:

9 Q. Mr. Thomas, following up on the building block  
10 concept, wasn't the point you were trying to make that it's  
11 not appropriate to compare the scope of the MSA or the scope  
12 of the LATA to the scope of a single exchange and try and  
13 assert that Staff was, down the road, going to put on a case  
14 that there's only non-impairment in one single exchange, but  
15 rather in contrast, that even with your approach of going  
16 exchange by exchange, the result of that analysis could be  
17 an assemblage of exchanges where the Commission finds  
18 non-impairment which may or may not approach the MSA in  
19 scope because we don't know what the result's going to be.  
20 Isn't that what you were trying to communicate?

21 A. That is what I was trying to communicate.  
22 That's a very good analysis of what I was trying to  
23 communicate.

24 JUDGE MILLS: Thank you, Mr. Lumley.

25 Now, Ms. Mudge, I understand you've been

1       actively cross-examining for some time now. Do you want to  
2       get even more now active?

3                       MS. MUDGE: Yes, your Honor, please. Although  
4       I'll try not to take much more of your time.

5       CROSS-EXAMINATION BY MS. MUDGE:

6               Q.       With respect to your discussion about  
7       administrative efficiency --

8               A.       Yes, ma'am.

9               Q.       -- if this Commission decides that the  
10       appropriate geographic market for purposes of phase 2 is a  
11       wire center or exchange, does that necessarily mean then  
12       that the ILECs will come in and claim non-impairment in each  
13       wire center or exchange?

14              A.       That doesn't necessarily mean that.

15              Q.       And, in fact, if this Commission came through  
16       and decided a decision that the geographic market was either  
17       a wire center or exchange basis, then it would be up to the  
18       ILEC to look at that decision and basically go through, for  
19       example, for either Mr. Fleming's exhibit or your exhibit  
20       and really make a decision -- a strategic decision and a  
21       business decision as to whether or not it's going to claim  
22       impairment in each wire center?

23              A.       That's correct.

24              Q.       And would you agree with me that if that type  
25       of analysis is done, it is likely that not every wire center

1       that's identified in Exhibit 35-HC, which is your modified  
2       exhibit, or even Mr. Fleming's, it is likely that not all of  
3       the wire centers and/or exchanges are going to be claimed to  
4       be non-impaired?

5             A.       That's certainly very likely.

6             Q.       Now, with respect to the analysis that  
7       Mr. Magness went through, and I'm not going to actively  
8       cross-examine on that any longer, what I am going to ask you  
9       though is I want to make sure I understand some of the other  
10      implications to that. And I'll try to be brief.

11            A.       Sure.

12            Q.       Would you agree with me that irrespective of  
13      whichever geographic market this Commission decides, that  
14      the data will be reviewed on a wire center basis?

15            A.       Judging from the data that's been put into the  
16      record already, I'd say that's correct.

17            Q.       And the larger the geographic area that you  
18      get, you also get -- and we can -- again, without looking  
19      and identifying any specifics from your Exhibit 35, the  
20      larger the geographic area, the larger variations you have  
21      with respect to issues such as population. Correct?

22            A.       Correct.

23            Q.       Number of CLECs collocated in a wire center?

24            A.       Correct.

25            Q.       Number of CLECs with EELs?

1           A.       Correct.

2           Q.       Number of CLECs with ported TNs?

3           A.       That's correct.

4           Q.       And even the notion of the number of CLECs

5           that have assigned NXX codes?

6           A.       That's correct.

7           Q.       But the implications are also if you have --

8           do you have Exhibit 27 in front of you, sir?

9           A.       Yes, I do.

10          Q.       But the implications also are -- and please

11          correct me where I'm off base here -- that if, for example,

12          we were to use the MSA as the geographic market right at the

13          outset in this case, that to the extent there is impairment

14          found with respect to the triggers, let's say, for example,

15          in the Webster Groves wire center --

16          A.       Okay.

17          Q.       -- again, assuming that the MSA is a

18          geographic market, then isn't it also correct then that the

19          entire MSA, which is represented in red, would be declared

20          non-impaired?

21          A.       I want to make sure I understand your question

22          correctly.

23          Q.       Absolutely.

24          A.       Because I think you said impairment the first

25          time.

1           Q.       I'm sorry.

2           A.       If you're saying that there's no impairment in  
3 Webster Groves there would be no impairment in the entire  
4 MSA. Correct? That's correct.

5           Q.       So doesn't it make sense for purposes of this  
6 initial case in particular to have the Commission at least  
7 approach the geographic market a little bit more  
8 conservative; in other words, rather than have an expansive  
9 definition, start out with a smaller review or a smaller  
10 geographic market?

11          A.       It does. It does. In the efforts of  
12 preserving competitive choice, it certainly does.

13                 MS. MUDGE: Thank you very much. I am done  
14 actively cross-examining. Thank you.

15                 JUDGE MILLS: Thank you.

16                 Redirect, Mr. Williams?

17                 MR. WILLIAMS: Thank you, Judge.

18 REDIRECT EXAMINATION BY MR. WILLIAMS:

19          Q.       Morning, Mr. Thomas.

20          A.       Morning, Mr. Williams.

21          Q.       Do you recall yesterday when Mr. Lane asked  
22 you some questions regarding what he called the DS1  
23 crossover?

24          A.       Yes.

25          Q.       And, in particular, he made some reference to

1 data revenues that had been used by SBC Witness Fleming?

2 A. Yes.

3 Q. Isn't it Staff's position that data revenues  
4 should not be taken into account in determining the  
5 crossover point?

6 A. It is.

7 Q. And why is that?

8 A. It's primarily because there's not any  
9 evidence in the record demonstrating how many customers  
10 within each particular segment of the market -- like how  
11 many customers with greater than four lines or fewer than  
12 four lines actually subscribe to data revenues. And we  
13 don't have any information about that and don't have any the  
14 record.

15 Mr. Fleming has just basically asked the  
16 Commission to assume that these customers would take data  
17 services equaling a certain amount of revenue for the CLEC.

18 Q. And I believe the Staff is supporting the  
19 model that takes into account cost but not revenues. Is  
20 there some difference between cost and revenues why that's  
21 appropriate or inappropriate?

22 A. I think the costs are more known because we  
23 can look at interconnection agreements and find out the  
24 cost. But the revenues, there's not really any evidence  
25 that the Commission's got to rely on to say, well, we expect

1       these customers to take this amount of -- this specific  
2       amount of services or these specific services to generate  
3       this much revenue.

4               Q.       Is there any support in the TRO for not using  
5       data in determining the DS1 cut-over?

6               A.       I think that there is.  And I think  
7       specifically if you look at paragraph 127 -- I'll walk you  
8       through kind of a -- on paragraph 127 I'll read the first  
9       two sentences, Mass market customer, specifically  
10      residential customers and very small business customers.  
11      Mass market customers typically purchase ordinary switched  
12      voice service, POTS basically, and few vertical features.  
13      And there's also one more sentence.  Some customers also  
14      purchase additional lines and/or high speed data services.

15               Well, then when you flip on to paragraph 497,  
16      the very first sentences of paragraph 497 says, For the  
17      purposes of the examination described herein, mass market  
18      customers are analog voice customers that purchase only a  
19      limited number of POTS lines and can be only economically  
20      served via DS1 loops.

21               So it appears that that language further  
22      narrows the definition of mass market customers to only  
23      analog voice customers.

24               Q.       If I could get you to clarify what examination  
25      is the FCC referring to in 497?

1           A.       497, the FCC's referring to the cut-off point  
2       examination. And there's even further language within that  
3       paragraph further down and there's one more sentence,  
4       Mr. Williams, that might be helpful to read.

5                    Middle of the paragraph on page 316, paragraph  
6       497, At some point customers taking a sufficient number of  
7       multiple DSL loops to be served in a manner similar to that  
8       described above for enterprise customers. That is voice  
9       services provided over one or several DSIs.

10           Q.       I want to take you still to the crossover and  
11       then the cost aspect of it. Some of the studies use  
12       ILEC-specific costs and other use only SBC-specific costs.  
13       Which does Staff support?

14           A.       We support a statewide average cost using  
15       costs from the three large ILECs.

16           Q.       And why is that?

17           A.       Because it would be the easiest to apply in  
18       areas of the state that aren't -- that basically there's no  
19       evidence demonstrating ILEC-specific crossover points. And  
20       the only evidence we've got in this record is the statewide  
21       average costs.

22           Q.       And do you have any feeling for or are you  
23       able to articulate any sensitivity to using ILEC-specific  
24       costs as opposed to SBC-specific costs?

25           A.       I haven't done any specific sensitivity



1       analysis, but I would assume that -- just brief analysis or  
2       brief overview of Mr. Fleming's schedule would lead me to  
3       believe that they're not overly sensitive to the  
4       ILEC-specific costs because the bulk of the lines do lie in  
5       SBC Missouri areas.

6               Q.       And in response to a question from Mr. Gaw, I  
7       believe you said that it was your understanding that through  
8       Carl Lumley, MCI had indicated that if the Commission were  
9       to use the wire center approach or follow Staff's  
10      recommendation in using an exchange, it would lead to the  
11      same result. Could you explain what you meant by that?

12             A.       Yes. I think that in the area -- the  
13      metropolitan areas at least if the Commission were to take a  
14      wire center by wire center analysis, they're likely to end  
15      up with the same result as the Staff's exchange analysis.

16             Q.       And I believe with respect to Exhibit 21-HC  
17      yesterday I neglected to ask you a question that I should  
18      have. And my question is, with the changes that you  
19      testified to yesterday, is Exhibit 21-HC your testimony in  
20      this case as if it had been presented verbally?

21             A.       Yes, it is.

22                     MR. WILLIAMS: I'm not sure if I've offered  
23      Exhibit 21-HC and Exhibit 35-HC; therefore, I'll do so now.

24                     JUDGE MILLS: I think you have, but just to be  
25      doubly sure, are there any objections to the admission of

1       21-HC and 35-HC?

2                   Hearing none, they will be admitted or

3       admitted again as the case may be.

4                   (Exhibit Nos. 21-HC and 35-HC were received

5       into evidence.)

6                   MR. WILLIAMS: Thank you, Judge. No further

7       questions of this witness.

8                   JUDGE MILLS: Thank you. Mr. Thomas, you may

9       be excused.

10                  Let's take a 10-minute recess before we go on.

11       We'll be off the record for 10 minutes and then come back

12       with the last witness, Mr. Cecil. Off the record.

13                  (A recess was taken.)

14                  JUDGE MILLS: We're back on the record. We're

15       ready to begin with Staff Witness Cecil. Mr. Cecil, if you

16       could raise your right hand, please.

17                  (Witness sworn.)

18                  JUDGE MILLS: Thank you. You may be seated.

19       WALTER CECIL testified as follows:

20       DIRECT EXAMINATION BY MR. WILLIAMS:

21                  Q.       Please state your full name and your business

22       address.

23                  A.       My name is Walt Cecil. My business address is

24       Governor Office Building, Suite 500, 200 Madison Street,

25       Jefferson City, Missouri 65101.

1 Q. My whom are you employed and in what capacity?  
2 A. I'm employed by the Public Service Commission  
3 and I'm a regulatory economist.  
4 Q. Did you prepare and file testimony on behalf  
5 of the Staff in this case?  
6 A. I did.  
7 Q. And is that testimony titled Rebuttal  
8 Testimony of Water Cecil and it's been marked as Exhibit  
9 No. 22?  
10 A. With the exception of the exhibit marking,  
11 yes, it is. I don't know what exhibit number it is.  
12 Q. Well, I'll represent it has been marked as  
13 Exhibit No. 22.  
14 A. Thank you.  
15 Q. Do you have any changes that you would like to  
16 make to that exhibit?  
17 A. Yes. I have a clerical error on the last page  
18 of the attachment. The first line reads, The merging firm's  
19 location would not find it profitable to oppose such an --  
20 and below that, the second line is Schedule WC-1. The  
21 Schedule WC-1 should be in a header and that first line  
22 should be part of the subsequent paragraph.  
23 MR. LANE: I apologize. Would you repeat  
24 that? I'm not finding it.  
25 JUDGE MILLS: Could you pull the microphone a

1       little closer? That might help some.

2                   THE WITNESS: Is this better?

3                   JUDGE MILLS: Yes. Thank you.

4                   THE WITNESS: Yes. The last page of my

5       Rebuttal Testimony, the first line should be part of the

6       subsequent paragraph, the second line reads Schedule WC-1.

7       That Schedule WC-1 should be in a header, not in the body of

8       the text.

9       BY MR. WILLIAMS:

10           Q.       Do you have any other changes?

11           A.       No, I do not.

12           Q.       If I were to ask you the questions that are

13       contained in Exhibit No. 22, would your answers -- today,

14       would your answers be the same as what's set out in that

15       exhibit?

16           A.       Yes, they would.

17                   MR. WILLIAMS: I offer Exhibit No. 22 into the

18       record.

19                   JUDGE MILLS: Are there any objection to the

20       admission of Exhibit 22?

21                   Hearing none, it will be admitted.

22                   (Exhibit No. 22 was received into evidence.)

23                   MR. WILLIAMS: Tender the witness.

24                   JUDGE MILLS: Thank you.

25                   CenturyTel?

1 MR. DORITY: No questions, Judge.  
2 JUDGE MILLS: Sprint?  
3 MS. CREIGHTON HENDRICKS: No questions, Judge.  
4 JUDGE MILLS: SBC?  
5 CROSS-EXAMINATION BY MR. LANE:  
6 Q. Good morning, Mr. Cecil.  
7 A. Good morning, Mr. Lane.  
8 Q. In your testimony at page 8, you state that, A  
9 wire center is not an appropriate geographic definition for  
10 the unbundled local switching mass market. Correct?  
11 A. Yes, sir.  
12 Q. And I think you explain that both in that  
13 answer and over on page 10. Correct?  
14 A. Yes, sir.  
15 Q. And is the reason -- or a reason that a wire  
16 center is not an appropriate approach because it isn't large  
17 enough to provide the economies of scale and scope to  
18 support the use of a switch by a CLEC in most instances?  
19 A. I think in the instance in which we are  
20 concerned, which is, of course, the large -- excuse me --  
21 the larger exchanges in the state, Kansas City, St. Louis  
22 and Springfield, yes, we're very concerned about that.  
23 There are smaller, more isolated exchanges which are equal  
24 to wire centers and in those cases, we would have to say  
25 otherwise.

1           Q.     All right.  If we take in the St. Louis --  
2     Exhibit 27, if we take a look at the St. Louis metropolitan  
3     area --  
4           A.     I don't have that exhibit.  
5           Q.     You're generally familiar with the St. Louis  
6     metropolitan area?  
7           A.     I didn't -- I've never lived there.  I've been  
8     there several times.  
9           Q.     Are you familiar with Chesterfield?  
10          A.     Yes, I am.  
11          Q.     Okay.  And Chesterfield lies outside of the  
12     St. Louis exchange.  Correct?  
13          A.     Yes, it does.  
14          Q.     And under the Staff's analysis, would  
15     Chesterfield exchange be treated as an individual entity for  
16     purposes of geographic market in defining triggers?  
17          A.     Yes, it would.  
18          Q.     And for potential deployment analysis?  
19          A.     Should that be necessary, yes.  
20          Q.     And would you agree with me that the first  
21     factor that the FCC has said to consider in setting the  
22     geographic market is looking at where competitors are  
23     providing switching today using their own switches, the  
24     location of those areas?  
25          A.     Yes.  They -- they have a strong preference

1 for actual evidence.

2 Q. Okay. And then on the bottom end of what the  
3 Commission can do in terms of setting a market, it can't be  
4 so small as to an area that doesn't properly reflect scale  
5 and scope economies. Right?

6 A. Correct.

7 Q. And what does that mean to you, scale and  
8 scope economies, in this context of unbundled local  
9 switching?

10 A. Forgive me. I must have an aversion to  
11 sitting here. With respect --

12 Q. That just means you're a rational man.

13 A. With respect to the scale economies, Mr. Lane,  
14 if the market is chosen in such a manner that it's too  
15 small, then the average costs of operating would not be as  
16 low as they could otherwise be if the market were larger.  
17 The same can be inferred to the scope economies where you  
18 could perhaps offer other services which would also then  
19 assist in driving prices down.

20 Q. All right. And let's reference that then with  
21 specificity to the Chesterfield exchange in terms of doing  
22 this analysis. If that is a separate geographic market,  
23 that market needs to reflect the scale and scope economies  
24 for purposes of a competitor using its own switch to provide  
25 unbundled local switching. Right?

1           A.       They need to be present, yes.

2           Q.       Okay. And have you done an analysis as to  
3 whether it's cost effective for a CLEC in terms of scale and  
4 scope economies to serve the Chesterfield area alone with  
5 this switch?

6           A.       No, I have not.

7           Q.       Okay. Would that be an important factor to  
8 determine in terms of making sure that you comply with the  
9 FCC's directive that you don't set your geographic market so  
10 low that it doesn't reflect scale and scope economies?

11          A.       I think that it absolutely needs to be  
12 considered, but I think one of the factors that is related  
13 to that is the -- the equipment -- by that I mean the  
14 switch -- doesn't need to be resident within any particular  
15 exchange. Location doesn't matter. Therefore, as long as  
16 you have a market large enough with appropriate transport  
17 and whatever other facilities are necessary, you should be  
18 able to capture those economies of scale and scope.

19          Q.       Okay. So you have to consider, if I  
20 understood what you said, Chesterfield in combination with  
21 some other area to determine whether it reflects the proper  
22 size to have scale and scope economies?

23          A.       No. No. I just said that the CLEC switch  
24 should be capable of serving a great number of lines with  
25 appropriate facilities. That switch can be resident



1 anywhere.

2 By choosing the Chesterfield -- a distribution  
3 area within the Chesterfield exchange, you would very likely  
4 limit your market to the point that you have to ask for much  
5 higher prices than you would if you were to serve the entire  
6 exchange. By having your switch resident somewhere, that  
7 switch can serve other exchanges as well and, therefore, you  
8 can capture even larger benefits of economies of scale and  
9 scope.

10 Q. All right. And I'm trying to follow through  
11 on that. If we, under your analysis, were to look at the  
12 Chesterfield exchange as a stand-alone geographic market.  
13 Right?

14 A. Yes, sir.

15 Q. And that means that that market then has to be  
16 of sufficient size to reflect scale and scope economies for  
17 a competitor using its own switch or you don't meet the  
18 FCC's test. Right?

19 A. Yes, sir.

20 Q. And you haven't conducted an analysis of the  
21 Chesterfield exchange to determine whether it is by itself  
22 of sufficient size to support a CLEC utilizing its own  
23 switch. Right?

24 A. We have conducted no such analysis for  
25 Chesterfield.

1           Q.     Okay. And you have conducted an analysis to  
2     see where CLECs are utilizing their own switch to provide  
3     service. Correct?

4           A.     Staff has done so.

5           Q.     Okay. And would you agree with me that there  
6     are several CLECs that are utilizing their own switch to  
7     provide service in the Chesterfield exchange?

8           A.     I do not have personal knowledge of that.  
9     Staff is pursuing that information. I have not personally  
10    seen it.

11          Q.     It's fair to say, isn't it, that there is no  
12    CLEC that is serving the Chesterfield exchange but doing so  
13    with a switch that is only used for purposes of the  
14    Chesterfield exchange. Right?

15          A.     Could I have a -- just a moment?

16          Q.     Sure.

17          A.     Thank you.

18                 I seem to have mislaid the document I was  
19    looking for.

20          Q.     Is it from somebody's testimony that you're  
21    looking at?

22          A.     No, it is not. It's actually something that  
23    I've prepared and done it twice to make sure that I would  
24    find it.

25                 Here it is. Would you repeat your question,

1 please?

2 Q. Yes. It's fair to say that there isn't a CLEC  
3 that's providing service in Chesterfield using its own  
4 switch where that switch is used only for purposes of the  
5 Chesterfield exchange?

6 A. I have evidence that there are CLECs providing  
7 service in Chesterfield, but I have nothing that indicates  
8 that it's exclusive to that exchange.

9 Q. Okay. And typically CLECs utilize one switch  
10 to serve whatever areas they choose to serve in throughout  
11 the St. Louis MSA. Correct?

12 A. That's my understanding.

13 Q. And in that case the CLEC has made the  
14 decision that the broad service area that its chosen is  
15 sufficient to reflect scale and scope economies to justify  
16 buying and installing the switch. Right?

17 A. I'm a little bit reluctant to conclude that --

18 Q. Assuming --

19 A. -- based on the way your question is phrased.  
20 I'm not sure what the CLEC has in mind. I would infer that.

21 Q. If we assume that the CLEC is a rational  
22 business entity, that would follow. Right?

23 A. I would think so.

24 Q. Okay. And so given that there are not any  
25 CLECs that are providing service in Chesterfield using a

1 switch exclusively for that purpose but there are CLECs  
2 providing service in Chesterfield using the switch that is  
3 taking many exchanges into account, wouldn't that indicate  
4 to you that with regard to Chesterfield, you shouldn't look  
5 at that on a stand-alone basis as a separate market because  
6 it doesn't reflect the size and the scale and scope  
7 economies necessary under the FCC's rule?

8 A. No. I think that there are various markets  
9 within Chesterfield. Obviously we have the enterprise  
10 market and we have the mass market. It may well be that the  
11 CLECs are at the moment avoiding the mass market through  
12 provision of services by means of their own switch.

13 But it doesn't mean that they're avoiding  
14 Chesterfield because of economies of scale and scope in  
15 terms of the enterprise market. So I don't think I can  
16 agree with that.

17 Q. All right. If a rational CLEC were choosing  
18 to place a switch in the St. Louis area to serve the  
19 metropolitan area, would they utilize one switch for each  
20 exchange in the MSA? I'm sorry. Would they use a separate  
21 switch for each exchange within the MSA?

22 A. I think not.

23 Q. Would they tend to utilize one switch to serve  
24 multiple exchanges?

25 A. I believe that would be the rational course of

1       action.

2               Q.       And the rational CLEC would do that because

3       using a switch to serve multiple exchanges would give it the

4       scale and scope economies necessary to make that a good

5       business decision?

6               A.       Yes.   I can agree with that.

7               Q.       Okay.   That would argue, would it not, for

8       consideration of a market area that is larger than an

9       exchange with regard to Chesterfield, in particular?

10              A.       I would agree that we can create markets of

11       varying sizes and that that could be one outcome.

12              Q.       Okay.

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

14                      JUDGE MILLS:   Thank you.

15                      Mr. Magness?

16                      MR. MAGNESS:   I have no questions, your Honor.

17                      JUDGE MILLS:   Mr. Lumley?

18                      MR. LUMLEY:   No questions, your Honor.

19                      JUDGE MILLS:   Ms. Mudge?

20                      MS. MUDGE:   No questions.   Thank you, Judge.

21                      JUDGE MILLS:   Questions from the Bench,

22       Commissioner Murray?

23       QUESTIONS BY COMMISSIONER MURRAY:

24              Q.       I don't have much.

25                      Good morning, Mr. Cecil.

1           A.       Good morning.

2           Q.       Staff's position that your geographic market  
3 definition is a compromise between the parties, is that --  
4 between the positions that the parties have taken; is that  
5 right?

6           A.       I don't believe that it is our position that  
7 it's a compromise. I didn't think that we were attempting  
8 to do that. I think our witnesses have characterized it as  
9 a compromised position, but I don't believe that's what  
10 we've been attempting to do at all.

11          Q.       Would you look at page 10 of your testimony,  
12 line 17?

13          A.       As soon as I find it. Pardon me. I just had  
14 it.

15          Q.       Things have a way of disappearing, don't they?

16          A.       Here.

17                 MR. WILLIAMS: May I?

18                 JUDGE MILLS: Yes.

19                 THE WITNESS: Thank you.

20 BY COMMISSIONER MURRAY:

21          Q.       Does that say that Staff believes this  
22 recommendation is a reasonable compromise between the two  
23 proposals set forth by the parties in this investigation?

24          A.       Yes, it does.

25          Q.       Is that your position?

1           A.       It is a reasonable compromise. That was not  
2       our intent. We didn't try to create a comprise position,  
3       but by default it became so.

4           Q.       And why do you think it produces any  
5       compromise, particularly when the results, I believe, have  
6       been indicated to be the same for this particular case as  
7       the results that we would get if we used wire centers?

8           A.       I think that for a large number of wire  
9       centers, results would be the same because the wire center  
10      and the exchange occupy the same geographic space.

11                  I think that when we look at St. Louis, for  
12      example, we have multiple wire centers. And there it could  
13      be different. And so rather than analyzing the information  
14      on a wire center basis with the thought that we would treat  
15      each wire separat-- wire center separately and distinctly  
16      once the analysis is done, we would have several areas  
17      smaller than an exchange.

18                  So with respect to the conclusion of our  
19      analysis, there's where the difference would be. We would  
20      analyze based on wherever the information arose, probably  
21      the wire center basis, but then we would have -- recommend  
22      that you act based on the entire exchange.

23           Q.       So is it your position that whatever  
24      geographic market we choose, there will still be an analysis  
25      made on a wire center basis?

1           A.       Information can be collected on a wire center  
2       basis and for the majority of the exchanges where the space  
3       is the same as a wire center, yes. With respect to Kansas  
4       City, St. Louis and Springfield, the exchange is larger than  
5       the wire center and so I would say no.

6           Q.       Okay. And I don't think that was my question.  
7       I was saying regardless of which geographic area we chose,  
8       any of the geographic areas that have been proposed here,  
9       would we still have to do analysis based on wire centers?

10          A.       I think you'll have to collect your  
11       information based on wire centers. I think dependent upon  
12       how you aggregate Kansas City, St. Louis and Springfield,  
13       what you choose to do, the answer is yes, if you want to go  
14       for a wire center basis if you choose -- if you're persuaded  
15       that the information represents -- the information for a  
16       wire center is, in fact, a market area then, yes.

17                 If you're persuaded with Staff's  
18       recommendation, then with respect to Kansas City, St. Louis  
19       and Springfield, no, you have a market. If you're persuaded  
20       with respect to the MCA or the LATA, then with respect to  
21       the exchanges that are equal to a wire center, yes; with  
22       respect to Kansas City, St. Louis and Springfield, the  
23       information may come from wire centers, but I think you'll  
24       be looking at something larger than a wire center. I don't  
25       have a straight answer for you.



1           Q.       Okay. The FCC has instructed us to look, in  
2           an analysis of potential deployment, potential revenues and  
3           potential costs. Is that your understanding?

4           A.       Yes, ma'am.

5           Q.       And at paragraph 520 of the TRO on page 332,  
6           among those things that we would be considering for costs,  
7           the FCC talks about the cost of collocation and equipment  
8           necessary to serve local exchange customers and wire center  
9           taking into consideration an entrants likely market share,  
10          the scale economies inherent to serving a wire center and  
11          the line density of the wire center.

12                   And then skipping on down they say, We also  
13          note that parties to this proceeding have placed evidence in  
14          the record that economic impairment may be especially likely  
15          in wire centers below a specific line density.

16                   Before finding no impairment in a particular  
17          market, therefore, State Commissions must consider whether  
18          entrants are likely to achieve certain volume of sales  
19          within each wire center and in the entire area served by the  
20          entrant switch to obtain the scale economies needed to  
21          compete with the incumbent.

22                   And as I read that, it appears to me that we  
23          have to look at individual wire centers.

24          A.       To be sure, collocation takes place on a  
25          wire -- collocation takes place on a wire center basis. The

1 wire center is the geographic footprint served by a switch.  
2 So if you wish to serve a particular loop which is served by  
3 a given switch, you have to have access to that switch, so  
4 there will be costs involved.

5 If you wanted to collocate in Westphalia, you  
6 have a very low population density and your costs will be  
7 very much higher. If you wanted to collocate in a wire  
8 center inside the St. Louis metropolitan exchange, I think  
9 you would find that you would have many more handsome  
10 economies of scale, you'd have a larger population density,  
11 you would have greater opportunity to take advantage of.  
12 So, yes, you do have costs arising on a wire center basis.

13 Q. So if we were looking at an MSA as a  
14 geographic area, we would examine within that MSA the costs  
15 to collocate in each wire center, among other things. Is  
16 that your understanding?

17 A. Yes. That would be an appropriate cost to  
18 examine, yes.

19 Q. And would we come up with an overall average  
20 of costs and revenues of the wire centers within that MSA?

21 A. I'm uncertain as to whether you'd average  
22 them. I don't think the number of wire centers is so large  
23 that we could not do it on an individual basis, but I really  
24 am unsure whether we would average them or look at them  
25 specifically. I'm inclined to think we would look at them

1 specifically.

2 Q. And would that be your testimony also  
3 regarding an exchange being the geographic area that we  
4 chose?

5 A. Well, as I said earlier, for most of the  
6 exchanges involved, wire center or exchange would be the  
7 same thing. With respect to just a few exchanges, most  
8 noticeably the large metropolitan areas, I think that we  
9 would look at those on an exchange basis for analysis, but  
10 we would look at each wire center individually in composing  
11 that information.

12 Q. And what if you found one wire center or two  
13 wire centers did not meet your test, but the rest of them  
14 did within the exchange?

15 A. Are you referring to the larger exchanges --

16 Q. Yes.

17 A. -- in your question? I was assuming that, but  
18 I did not know.

19 If it did not meet our analysis -- by that do  
20 you mean the trigger analysis?

21 Q. Yes.

22 A. Yes, ma'am. Then we would have to proceed  
23 on to the next step, which we're mandated to do, which is  
24 the potential deployment analysis. And at that point you  
25 might -- you would have to consider why is the CLEC not

1 present. Is it something they have not yet gotten around to  
2 doing or are there, in fact, barriers to entry?

3 Once you make the determination that there are  
4 or are not barriers to entry, then you can determine whether  
5 or not impairment exists within that wire center.

6 Q. So if we took -- if we chose an exchange  
7 rather than a wire center as our geographic basis, how would  
8 we be determining the triggers any differently? I mean, it  
9 sounds like we would be determining whether the triggers  
10 have been met wire center by wire center anyway, but with  
11 the exchange being the geographic area, that would eliminate  
12 our concluding that the triggers have been met in the rest  
13 of the wire centers within that exchange, would it not?

14 A. Well, it could. Yes, I think it would. But  
15 if we were to conclude that in a particular wire center that  
16 some impairment remained -- I'm having to think very quickly  
17 here -- I believe that would just mean that unbundled  
18 switching should remain for that wire center.

19 The Commission has at its disposal the  
20 opportunity -- or the -- the ability to create a rolling  
21 time period where it can say there is impairment, but it  
22 would only take a limited period of time for that to be  
23 corrected so for that period of time, we're going to allow  
24 the switching to remain at the end of that time we're going  
25 to re-examine this, we expect the impairment to be resolved

1       and we expect things to become -- we expect to find no  
2       impairment at the end of that period.

3               Q.       So what would be the purpose of the  
4       geographic -- of establishing the geographic market  
5       definition if we're going to be -- if we said the geographic  
6       market is the exchange but in the larger exchanges that  
7       included several wire centers we determine that one or more  
8       of those wire centers did not meet the triggers, then you're  
9       saying it would still be wire center by wire center?

10              A.       Well, perhaps I've misspoken.  What I'm saying  
11       is that our information would arise on a wire center basis,  
12       but I think that the analysis would have to be done on the  
13       exchange basis.

14              Q.       So that we would not say there was impairment  
15       in an entire exchange based on finding the triggers were not  
16       met in one or two wire centers within that exchange?

17              A.       I'm not sure I followed you.

18              Q.       Okay.  If you're looking at an exchange and  
19       you take an exchange that has several wire centers, define  
20       one wire center that does not meet the triggers, are you  
21       saying that the entire exchange can still be found to meet  
22       the triggers?

23              A.       I think that that question -- the basic  
24       premise of that question is that we're going to do a trigger  
25       analysis on a wire center by wire center basis.  And Staff

1 is proposing that the exchange is the market. So while the  
2 information would be collected on a wire center basis, we're  
3 going to aggregate it so that we look at the entire  
4 exchange.

5 Q. So you're not doing a wire center by wire  
6 center trigger analysis?

7 A. Yes, ma'am.

8 Q. Okay.

9 A. I'm sorry if I've muddied the waters.

10 Q. Well, I probably just made it confusing.

11 And that would be the same, I would assume, if  
12 we chose an MSA as our geographic market definition, that we  
13 would not do a wire center by wire center trigger analysis,  
14 but we would do the analysis based upon an aggregate within  
15 the MSA?

16 A. I believe that's the intention, yes.

17 Q. Okay. And that would be the same if we chose  
18 a LATA?

19 A. Yes.

20 COMMISSIONER MURRAY: Thank you.

21 THE WITNESS: Yes, ma'am.

22 JUDGE MILLS: Thank you.

23 Commissioner Clayton?

24 COMMISSIONER CLAYTON: Cut him loose --

25 THE WITNESS: Thank you

1 JUDGE MILLS: I have questions, but just a  
2 few.  
3 QUESTIONS BY JUDGE MILLS:  
4 Q. Let me make sure I understand Staff's  
5 position. Is it Staff's position that the exchange is a  
6 sufficiently large geographic area to meet the FCC  
7 requirement of economies of scale and economies of scope?  
8 A. It is.  
9 Q. Okay. So that the Commission -- it's Staff's  
10 position that the Commission should do its impairment  
11 analysis on each exchange as a specific geographic area?  
12 A. It is.  
13 Q. And not somehow group exchanges together to do  
14 the analysis?  
15 A. That is correct.  
16 Q. Okay. That's what I was getting, but I just  
17 wanted to be sure. That's all the questions I have.  
18 Actually, I do have one more. I think you  
19 said in the analysis if we were doing the impairment  
20 analysis and the triggers were not met, we would have to  
21 automatically proceed to the potential deployment analysis.  
22 Was that your testimony?  
23 A. Yes, sir. Yes, sir. I believe in paragraph  
24 504 of the TRO the word "shall" is present. And I  
25 understand that to be an imperative. See if I can find

1       that.

2               Q.       504 begins on page 321, I believe.

3               A.       Yes. I have that. Thank you.

4                       I'm sorry. It was paragraph 494. It's about  
5       halfway through the paragraph. The sentence reads, If the  
6       triggers are satisfied, the states need not undertake any  
7       further inquiry because no impairment should exist in the  
8       market.

9                       The next sentence reads, if the triggers are  
10      not satisfied, the State Commission shall proceed to the  
11      second step of the analysis in which it must evaluate  
12      certain operational and economic criteria to determine  
13      whether conditions in the market are actually conducive to  
14      competitive entry and whether carriers in that market are  
15      actually not impaired without access to unbundled local  
16      switching.

17              Q.       So is it the parties' intention in this case  
18      to provide testimony on both of those issues for phase 2 of  
19      this proceeding? Let me just ask you, is it Staff's  
20      intention to provide evidence on both of those?

21              A.       I believe it is, yes.

22                       JUDGE MILLS: Okay. Okay. That's all the  
23      questions I have.

24                       Commissioner Murray?

25                       COMMISSIONER MURRAY: I have a follow up.



1 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

2 Q. You indicated in your answer to the Judge that  
3 you thought an exchange was a sufficient geographic area to  
4 satisfy the requirements of the TRO; is that right?

5 A. Yes, ma'am.

6 Q. But in most instances an exchange is  
7 equivalent to a wire center, is it not?

8 A. Yes, ma'am.

9 Q. And I thought your testimony somewhere  
10 indicated that you did not think a wire center satisfied  
11 those requirements.

12 A. I understand that we're splitting hairs in --  
13 so if I were to restate my sentence, in those states -- in  
14 those exchanges where the exchange and the wire center  
15 occupy the same space, then the analysis of the wire center  
16 would be sufficient. In those spaces where the wire center  
17 and the exchange do not occupy the same space, then we would  
18 need to examine the exchange.

19 Q. And why would a wire center be sufficient for  
20 economies of scale and scope, or whatever the terminology  
21 is, where a wire center is equal to an exchange but not  
22 sufficient where the wire center is not equal to an  
23 exchange?

24 A. I fear without any in-depth analysis, that we  
25 would be overlooking various parts of a market. You know,

1 we have markets of different sizes because we have exchanges  
2 of different sizes. The more remote a market, the more  
3 likely that the wire center and the exchange would be the  
4 same and whatever the economies of scale and scope exist are  
5 present.

6 I think that if we were to look at the larger  
7 exchanges, that we would, if we were to look at the wire  
8 center, create pockets -- if we looked at the larger  
9 exchanges, we could create pockets where impairment might  
10 continue to exist where unbundled switching should or should  
11 not continue by combining various wire centers. But by  
12 looking at the entire exchange we will not create pockets of  
13 impairment or --

14 Q. Is an exchange equivalent to a community of  
15 interest?

16 A. I don't have a straight answer. Perhaps. At  
17 one time, for sure. I think today if you lived in a rural  
18 area, likely. If you live in Kansas City, it might be  
19 larger than a community of interest, if you lived in the  
20 metropolitan exchange.

21 Q. You mean a community of interest might be  
22 larger than an exchange or an exchange might be larger than  
23 a community of interest?

24 A. At the risk of appearing contrary, both. I  
25 did live in the Kansas City exchange for a long time and my

1 community of interest was about 45 blocks in diameter. My  
2 mother-in-law lived about 5 miles away, so occasionally my  
3 community of interest would include a call to her home.

4 But, by and large, the places where I bought  
5 my gasoline and my groceries, where my insurance agent was,  
6 they were within just a few blocks of where I lived. So my  
7 community of interest was within my exchange to be sure.

8 Q. So a local scope -- a radius of 45 blocks  
9 would have been sufficient to satisfy your community of  
10 interest?

11 A. For 9 out of 10 or perhaps even 90 out of --  
12 9 [sic] out of 100 of my phone calls, to be sure. But not  
13 always. We did live in a larger metropolitan area and we --  
14 I don't believe the movie theater was within that range, so  
15 if we wanted to see a movie, wanted to make a phone call --

16 Q. And smaller exchanges that are just one wire  
17 center, can you make any generalization about whether or not  
18 those involved a community of interest or more or less of a  
19 community of interest?

20 A. At the risk of over-simplifying I think by  
21 choosing to live in a more rural area where you have a  
22 smaller exchange or perhaps within context, an exchange with  
23 a limited -- a small number of loops -- I've made a choice  
24 to have my store, my friends, my church, whatever I might be  
25 interested in within a particular area, I'm going to

1 establish my habits, my lifestyle there. And, yes, I think  
2 you could make that a community of interest.

3 Q. Do we hear complaints from time to time from  
4 people who don't agree that their community of interest is  
5 only -- is that small based on local calling scope issues?

6 A. I do. But I think that there's an economic  
7 principle that says more is preferred to less. And I think  
8 all of us would like to get more for the same price.

9 Q. I can't disagree with you there.

10 COMMISSIONER MURRAY: All right. Thank you.  
11 I think that's all I have.

12 JUDGE MILLS: Thank you. Further  
13 cross-examination based on questions from the Bench,  
14 CenturyTel?

15 RECROSS-EXAMINATION BY MR. DORITY:

16 Q. Good morning, Mr. Cecil.

17 A. Good morning.

18 Q. In response to some questions from  
19 Commissioner Murray and Judge Mills, I believe you indicated  
20 that it is Staff's position that the Staff's recommendation  
21 of an exchange as the appropriate geographic area would be  
22 consistent with the TRO. Is that your testimony?

23 A. Yes, it is.

24 Q. In fact, you've testified that the MSA would  
25 be consistent with the TRO; isn't that correct?

1           A.       Yes, it would be.

2           Q.       And if I understand your testimony correctly,  
3       you've also indicated that the Commission could -- I believe  
4       your words are "reshape at will" the appropriate geographic  
5       area for purposes of this case; is that correct?

6           A.       Perhaps reshape was wrong. Shape. Reshape  
7       being that it's changed its mind some time down the road,  
8       and I don't believe that option is available to it.

9           Q.       But I understand your testimony correctly that  
10       if the Commission were of a mind, for instance, that the  
11       MCA, as opposed to the MSA, was the appropriate geographic  
12       area, is it Staff's position that there's enough evidence in  
13       the record for the Commission to do that?

14          A.       The evidence is granular. We have evidence of  
15       customer location, we have evidence of -- yes, I believe so.

16          Q.       Okay. I guess we've determined this morning  
17       that you've not lived in Manchesterfield [sic], you've lived  
18       in Kansas City and I notice that you got your MA from  
19       University of Kansas; is that right?

20          A.       Yes, I did.

21          Q.       Which basketball team were you rooting for  
22       Monday night? And let me remind you you're under oath.

23          A.       I hate to say this, but I didn't know they  
24       were playing.

25          Q.       Good answer.

1 MR. DORITY: Thank you.  
2 JUDGE MILLS: Thank you.  
3 Sprint?  
4 MS. CREIGHTON HENDRICKS: No questions, your  
5 Honor.  
6 JUDGE MILLS: SBC?  
7 MR. LANE: No questions, your Honor.  
8 JUDGE MILLS: Mr. Magness?  
9 MR. MAGNESS: Yes, your Honor. One -- I hope  
10 one or two questions. I'm only asking because they're very  
11 important to all of our daily lives in the near future.  
12 RECROSS-EXAMINATION BY MR. MAGNESS:  
13 Q. Mr. Cecil, I want to ask you about your belief  
14 that State Commissions must or are required to conduct  
15 potential deployment analysis as well as trigger analysis.  
16 Okay? You know what I'm talking about?  
17 A. Yes, sir, I do.  
18 Q. Could I direct you to paragraph 527?  
19 A. I'm there.  
20 Q. Okay. This is where the FCC discusses what  
21 happens if a state fails to act. Have you read that  
22 paragraph before?  
23 A. I have.  
24 Q. Okay. And in the middle of the paragraph it  
25 says, To the extent that a State Commission fails to

1 complete the granular inquiry, any aggrieved party may file  
2 a petition with this Commission, that is with the FCC.

3 Correct?

4 A. It does.

5 Q. And then the FCC would review what happened.  
6 Right?

7 A. And make a determination, yes.

8 Q. Okay. Now, the footnote accompanying that,  
9 1613, says, By complete -- that's in quotes, complete -- we  
10 mean that a State Commission upon receiving sufficient  
11 evidence has an affirmative obligation to review the  
12 relevant evidence associated with any market submitted by an  
13 interested party and to apply the trigger and any other  
14 analysis specified in this part to such evidence.

15 And I take that "such" to be such evidence  
16 brought forward by a party. Is that a fair reading?

17 A. I believe so.

18 Q. Okay. So if no party came forward -- if we  
19 were in a state, and I believe such states exist in the  
20 United States, where the ILEC did not come forward and ask  
21 to challenge the national finding of impairment for mass  
22 market switching, could the state not conduct the analysis  
23 or would the state have to plow forward with the whole case  
24 anyway even if no one wanted to come?

25 A. No. It's my understanding that if the state

1       should make the determination that there is impairment, that  
2       is, make its finding consistent with the FCC's finding, that  
3       that would be the end of the matter. But if it wishes to  
4       pursue things, then these other things come into play.

5               Q.       Okay. And the way in which such findings get  
6       challenged is if an aggrieved party comes forward and  
7       protests that not enough has been done in a granular  
8       analysis. Right?

9               A.       I would agree with that.

10              Q.       Okay. There are certain states, I will  
11       represent to you, including my home state of Texas and I  
12       believe the state of California, in which SBC has  
13       represented that it is only going to put on a triggers case.  
14       Are you aware of that?

15              A.       No, I'm not.

16              Q.       Okay. Would it be your contention that the  
17       State Commissions of California and Texas are violating the  
18       TRO by telling SBC that we don't have to put on the whole  
19       potential deployment case if they don't want to put it on?

20              A.       I would be reluctant to speak for them. My  
21       interpretation is that if the triggers are not satisfied  
22       once the case has commenced, the word "shall" is an  
23       imperative and you need to look at the potential evidence as  
24       well.

25              Q.       Okay. And are you a lawyer, Mr. Cecil?



1           A.       No, I'm not.

2           Q.       Okay. And are you offering us a legal opinion  
3 about what exactly the "mays" and "shalls" in the TRO mean?

4           A.       No, I'm not.

5           MR. MAGNESS: Okay. Thank you, sir.

6           JUDGE MILLS: Mr. Lumley?

7           MR. LUMLEY: No questions.

8           JUDGE MILLS: Ms. Mudge?

9           MS. MUDGE: No, thank you, Judge.

10          JUDGE MILLS: Redirect, Mr. Williams?

11          MR. WILLIAMS: Thank you, Judge.

12          REDIRECT EXAMINATION BY MR. WILLIAMS:

13          Q.       Mr. Cecil, do you recall when Mr. Lane  
14 referred to economies of scale and scope tests that the  
15 FCC's put into place?

16          A.       I recall the discussion.

17          Q.       Did the FCC define specifically what it meant  
18 by an economy of scale test for purposes of defining the  
19 market? In other words, did it establish some criteria that  
20 you would look at for determining -- specifically  
21 determining a market should be larger because of economies  
22 of scale?

23          A.       No. I'm not aware of any such determination.

24          Q.       And did the FCC establish specific criteria  
25 for determining whenever economies of scope would mandate

1 the change in the size of the market?

2 A. No. I'm not aware of anything.

3 Q. Then Commissioner Murray referenced you to

4 page 10 at line 17 of your testimony where you indicated

5 that the exchanges are a reasonable compromise between the

6 parties?

7 A. Yes.

8 Q. Could you explain what you intended to convey

9 by that statement?

10 A. I was attempting to point out that the

11 parties' proposals had advantages and disadvantages and that

12 by choosing the exchange proposal, you would capture several

13 of the advantages and avoid several of the disadvantages of

14 each of the parties' proposals.

15 Q. And then I believe in response to Commissioner

16 Murray you said that you wished you could provide a straight

17 answer. I'd like to suggest, and you can tell me if this is

18 accurate or not, that by that statement you meant a more

19 definitive answer. Is that correct or not?

20 A. It appeared that I was saying yes and no. I

21 wished I could have provided a more precise answer.

22 Q. And are there any characteristics, and I think

23 I'm thinking of population in particular, that relate to

24 where wire centers equate to exchanges and where they do

25 not?

1           A.       Would you restate that?

2           Q.       Are there any specific attributes that you can  
3 point to, and in particular I'm thinking of population but  
4 there may be others, that distinguish where an exchange is  
5 the same size as a wire center and where an exchange is made  
6 up of multiple wire centers?

7           A.       I think population and the community of  
8 interest -- I've spoken to several technical representatives  
9 and asked how the larger metropolitan exchanges became a  
10 single exchange as opposed to several smaller exchanges  
11 served by each of the wire centers. And no one seemed to  
12 remember.

13                   They all gave me anecdotal evidence that said,  
14 in essence, community of interest grew over time, regulatory  
15 involvement, the exchanges coalesced -- the wire centers  
16 which were distinct exchanges coalesced because of the  
17 community of interest, because of cases brought before the  
18 proper authorities, the Commission.

19           Q.       And then with regard to your reference to  
20 paragraph 494 and the imperative that you shall do a  
21 potential deployment analysis in the event the triggers are  
22 not met, if this Commission were not to do the potential  
23 deployment analysis if the triggers are not met, does  
24 anything happen to the Commission as a result of that?

25           A.       I don't believe so.

1           Q.       And do you know if Staff plans to provide  
2       testimony on a potential deployment if the parties do not do  
3       so in phase 2?

4           A.       I am not writing testimony in phase 2. I can  
5       only speak for myself. And the answer is no.

6                   MR. WILLIAMS: No further questions.

7                   JUDGE MILLS: Thank you.

8                   Mr. Cecil, you may be excused.

9                   That brings us to the end of our witnesses.

10          I'd like to address the question of briefs. We should be  
11       getting -- you've gotten transcripts of the proceedings from  
12       last week already. The transcripts from this week should be  
13       following within two days. You should have these available  
14       here by the end of the week.

15                 So I'd like to set briefing schedule -- let me  
16       look at my calendar here. If we have transcripts available  
17       on the 6th, I'd like to set a due date for one single round  
18       of briefs on the -- either Friday the 13th or Monday, the  
19       16th.

20                 MR. LUMLEY: Monday's a holiday, I believe.

21                 JUDGE MILLS: Monday's a holiday. You know, I  
22       know the parties are anxious to get this case decided --

23                 MS. MUDGE: Your Honor, we're fine with the  
24       13th.

25                 MR. MAGNESS: I'd prefer the 17th, if

1 possible. We could do the 13th if it's an inconvenience for  
2 others, but we'd prefer the 17th.

3 While we're talking about the dates, I just  
4 wondered while we're still here to ask -- I know the order  
5 contemplated a decision on a certain date and then dates  
6 succeeding in the procedural schedule after that. I'm not  
7 sure where we are there.

8 JUDGE MILLS: I'm not either. I was going to  
9 ask if anyone has an immediate recollection of when you all  
10 expected a Commission order.

11 MR. LUMLEY: The 16th.

12 JUDGE MILLS: 16th of February.

13 MR. LUMLEY: I think 11 days after the end of  
14 the hearing, which was something like that. We set the  
15 testimony on the 23rd, I believe.

16 JUDGE MILLS: I don't think that's going to  
17 happen.

18 MR. LUMLEY: Right. I understand. I was just  
19 refreshing your memory.

20 JUDGE MILLS: Well, you know, obviously the  
21 more time you all take for briefs, the longer it's going to  
22 be before you get an order out of us.

23 MR. LANE: The 13th is fine with us, your  
24 Honor.

25 MR. WILLIAMS: I won't say it's fine, but

1 we'll do whatever we have to.

2 JUDGE MILLS: If we have to wait -- if we  
3 don't get briefs until the 17th, I don't realistically see a  
4 chance of getting an order out, you know, really before the  
5 end of February, you know, effective.

6 I think I'll set briefs on the 13th. Is there  
7 anything else we need to take up?

8 MR. LANE: How will we handle the Direct  
9 Testimony then? I don't know when you -- it's due on the  
10 23rd and that may apply only to us. I don't know if anyone  
11 else is planning on filing Direct Testimony.

12 MR. DORITY: I believe CenturyTel would as  
13 well.

14 MR. LANE: I'm sorry, Larry. I apologize.

15 JUDGE MILLS: I assume that because, you know,  
16 the hearing went longer than anyone intended -- or then the  
17 parties expected at any rate so the decision is going to be  
18 later, I don't think that there's going to be likely a  
19 decision on the geographic area and the DS0 cut-off, you  
20 know, certainly not much before the 23rd.

21 MR. DORITY: Can we drop that back?

22 JUDGE MILLS: Yeah.

23 MR. MAGNESS: It seems like we need to because  
24 people -- witnesses won't really know what quite to say.

25 JUDGE MILLS: Exactly. Why don't you all get

1 together before you head out the door and see if you can  
2 come to an agreement on how much time you want to push it  
3 back and then have somebody file a motion to extend the  
4 schedule.

5 If you can't come to an agreement, then, you  
6 know, SBC and CenturyTel can file a motion on their own  
7 saying we think we need 10 days after the orders is out,  
8 20 days after the order is out or something to that effect.

9 MR. LANE: Do you have an estimate, Judge,  
10 about when an order might be issued if we have briefs in on  
11 the 13th? I know that's a hard thing for you to answer.

12 JUDGE MILLS: Honestly, I don't. My intention  
13 would be to have the initial discussion with the  
14 Commissioners on the 17th or the first -- there are dates in  
15 which we're not having regular Tuesday and Thursday agendas.  
16 But my intention would be to have the initial discussion on  
17 resolving the case with the Commissioners the first agenda  
18 after the 13th, but you know, to a certain extent it's out  
19 of my hands from that point.

20 I know the Commissioners are cognizant of the  
21 need to get this resolved quickly before we move into  
22 phase 2 and, you know, the fact that we do have a clock  
23 ticking. So I can't give you a guess on when an order is  
24 likely to come out. I would expect that at the earliest the  
25 24th of February, realistically as much a week or two after

1       that.

2                   You know, and I could be surprised. I mean, I  
3       could go in and the Commissioners may, all three of them,  
4       know exactly what they want and, you know, be ready to do an  
5       order by that Thursday. It's hard to predict.

6                   MR. MAGNESS: Perhaps I could suggest -- I  
7       mean, this doesn't need to be on the record, but maybe we  
8       can discuss having a call. I know Ms. Mudge and I need to  
9       hit the road, unfortunately, to catch a plane, but if we  
10      could have a conference call maybe before the week is out to  
11      discuss the schedule, it would probably be helpful.

12                  JUDGE MILLS: And obviously I'd be amenable to  
13      setting back the Direct Testimony date, because the whole  
14      point of doing this in two phases was to have some of this  
15      locked down before you all started filing testimony trying  
16      to cover all the basis.

17                  Yes, the shorter and the better the briefs,  
18      the Commissioner reminds me --

19                  COMMISSIONER CLAYTON: The more concise, the  
20      quicker your order is going to come.

21                  MR. MAGNESS: Set a five-page limit?

22                  COMMISSIONER CLAYTON: Triple spaced.

23                  JUDGE MILLS: Anything further

24                  MR. LUMLEY: Are you formally suspending that  
25      due date, so the parties know?



1 JUDGE MILLS: Yeah. I think so. Yes. I'm  
2 formally suspending that due date and I'm looking to the  
3 parties for suggestions on what date to replace it with.  
4 Then if I don't hear from you, I'll just sort of set one,  
5 you know, a couple of weeks later.

6 We're off the record.

7 WHEREUPON, the hearing was adjourned.

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