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10 May 11, 2005
11 Jefferson City, Missouri
12 Volume 1
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15 In the Matter of a New)
16 Proposed Rule 4 CSR 240-33.045) Case No. TX-2005-0258

17
18 KENNARD L. JONES, Presiding,
19 REGULATORY LAW JUDGE.

20 JEFF DAVIS, Chairman,
21 CONNIE MURRAY,
22 STEVE GAW,
23 ROBERT M. CLAYTON, III,
24 LINWARD "LIN" APPLING,
25 COMMISSIONERS.

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

2 JUDGE JONES: Okay. We're going to go ahead and go
3 on the record. This is a rulemaking hearing for Case
4 No. TX-2005-0258, in the matter of a new proposed
5 Rule 4 CSR 240-33.045.

6 The date of this hearing is May 11th, 2005, and the
7 location is the Governor's Office Building in Jefferson City,
8 Missouri.

9 My name is Kennard Jones. I am the presiding judge
10 over this matter. At this time we'll take entries of
11 appearance, beginning with Staff of the Commission.

12 MR. POSTON: Thank you.

13 Marc Poston, appearing for the Staff. And with me
14 today to offer comments is Natelle Dietrich.

15 JUDGE JONES: You might make sure your microphone
16 is on.

17 MR. POSTON: Okay.

18 JUDGE JONES: And from the Office of Public
19 Counsel?

20 MR. COFFMAN: Appearing on behalf of the Office of
21 the Public Counsel, I am John B. Coffman, Box 2230, Jefferson
22 City, Missouri 65102.

23 JUDGE JONES: And from the Missouri
24 Telecommunications Industry Association?

25 MR. TELTHORST: Richard Telthorst present. Our

1 address is Post Office 785, Jefferson City, Missouri.

2 JUDGE JONES: And from MCI and XO

3 Telecommunications?

4 MR. CURTIS: Leland B. Curtis with the law firm of
5 Curtis, Heinz, Garrett & O'Keffe, 130 South Bemiston,
6 Suite 200, St. Louis, Missouri 63105, appearing on behalf of
7 MCI WorldCom Communications and XO Communications.

8 JUDGE JONES: Thank you.

9 And from Sprint?

10 MR. IDOUX: Good morning, Judge.

11 John Idoux on behalf of Sprint. Our address is
12 6450 Sprint Parkway, Overland Park, Kansas.

13 JUDGE JONES: And AT&T?

14 MS. BROWNE: Wauneta Browne, assistant vice
15 president of law and government affairs. I'm located at
16 15711 West 145th Street, Olathe, Kansas.

17 JUDGE JONES: And, Ms. Brown, are you also
18 representing TCG of Kansas and of St. Louis?

19 MS. BROWNE: I am.

20 JUDGE JONES: SBC?

21 MS. MACDONALD: Hi. I'm Mimi MacDonald on behalf
22 of Southwestern Bell Telephone, L.P., doing business as SBC
23 Missouri. Our address is One SBC Center, Room 3510,
24 St. Louis, Missouri 63101.

25 JUDGE JONES: Thank you.

1 And CenturyTel and Spectra?

2 MR. DORITY: Thank you, Judge.

3 Larry DORITY, Fischer & DORITY, P.C. Our address
4 is 101 Madison, Suite 400, Jefferson City, Missouri 65101,
5 appearing on behalf of CenturyTel Of Missouri, L.L.C. and
6 Spectra Communications Group, L.L.C., doing business as
7 CenturyTel.

8 JUDGE JONES: Thank you, Mr. DORITY.

9 Is there anyone else here who is present who has
10 not entered their appearance and wishes to do so?

11 (NO RESPONSE.)

12 JUDGE JONES: Seeing none, then we'll begin with
13 testimony, starting with the Staff of the Commission. Step to
14 the podium.

15 MR. POSTON: Thank you.

16 JUDGE JONES: Are you giving testimony, Mr. --
17 Mr. Poston?

18 MR. POSTON: Well, I am gonna give a little on the
19 legal issues. Natelle Dietrich is here to offer -- offer
20 comments as well.

21 JUDGE JONES: Will you raise your right hand,
22 please?

23 (WITNESS SWORN.)

24 JUDGE JONES: Thank you. You may proceed.

25 MR. POSTON: Thank you. Is this on?

1 MR. COFFMAN: Doesn't appear to be plugged in.

2 MARC POSTON, having been duly sworn, testified as follows:

3 MR. POSTON: Okay. As I said, I'd -- I'd like to
4 address some of the legal issues that were raised in the
5 pre-filed comments before Ms. Dietrich gets up and -- and
6 issues her comments on behalf of Staff.

7 The first legal issue concerns the Commission's
8 authority to promulgate the rule. As OPC pointed out in their
9 filed comments, and is shown on the authority section of the
10 proposed rule itself, a Missouri statute at Section 386.250
11 gives the Commission the authority to adopt rules which
12 prescribe the conditions on billing for interstate
13 telecommunications service. These proposed rules would do
14 just that.

15 To the extent the rule would inadvertently apply to
16 interstate services because carriers combine both interstate
17 and intrastate services on the same bill, the
18 Telecommunications Act allows dual jurisdiction.

19 Section 152B explicitly gives states -- excuse
20 me -- states the authority to regulate the charges and
21 practices involving interstate communications, even where such
22 communications also include interstate communications.

23 In such cases, both the federal and state
24 authorities have jurisdiction. If it isn't possible to
25 separate the two -- and I'm not aware of whether it isn't

1 possible to separate the two in this instance -- the FCC may
2 pre-empt the state's authority. But that becomes a moot
3 point, since the proposed rules are consistent with the FCC's
4 truth in billing orders.

5 In pre-filed comments the industry has argued that
6 the Commission goes beyond its jurisdiction by including
7 language under Section 4, which says a charge in a currently
8 effective tariff is not in and of itself evidence the charge
9 is authorized or mandated.

10 This section simply says -- this section and
11 Section 5 simply say the Commission's obligation, its duty and
12 its authority over telecommunications matters is continuous --
13 ongoing and continuous.

14 The notion is strongly supported by case law. And
15 the Commission retains its authority to reconsider existing
16 charges not authorized or mandated by -- mandated by a
17 government entity, other than the Commission.

18 In other words, nothing in the statutes or in case
19 law prevents the Commission from changing its mind. An
20 industry cannot use a previous Commission decision as evidence
21 against the Commission's authority to render a previously
22 approved charge should now be unlawful.

23 The industry has also argued that the existing
24 tariff charges cannot be found to be unlawful -- unlawful
25 without a hearing. The Staff believes the rule contemplates a

1 hearing, because removal of any existing charge must be based
2 on a complaint. Under Section 386.390 of the statutes
3 complaints are resolved through the hearing.

4 Lastly, the industry has questioned whether
5 sufficient evidence exists to promulgate these rules. Staff's
6 response is that the Staff's initial comments provide more
7 than enough evidence that misleading charges are a real
8 concern, not only in Missouri, but clearly identified by FCC
9 to be a nationwide concern. Additional protections are
10 warranted.

11 This concludes my remarks. And I'll turn things
12 over to Ms. Dietrich, unless you have any questions for me.

13 JUDGE JONES: Commissioner Murray, do you have any
14 questions for Mr. Poston?

15 COMMISSIONER MURRAY: I don't think so right now.
16 Thank you.

17 JUDGE JONES: Commissioner Gaw?

18 COMMISSIONER GAW: Not right now. Thank you,
19 Judge.

20 JUDGE JONES: Commissioner Clayton, Commissioner
21 Applling?

22 (NO RESPONSE.)

23 JUDGE JONES: Thank you, Mr. Poston.

24 MR. POSTON: Thank you.

25 JUDGE JONES: Thank you.

1 (WITNESS EXCUSED.)

2 JUDGE JONES: Ms. Dietrich?

3 (WITNESS SWORN.)

4 JUDGE JONES: Thank you.

5 NATELLE DIETRICH, having been duly sworn, testified as
6 follows:

7 MS. DIETRICH: Staff supports the proposed
8 rule. In Staff's opinion, the proposed rules are consistent
9 with the FCC's truth in billing requirements. I offer these
10 comments in response to issues raised during the written
11 comment cycle on the proposed rulemaking.

12 First, a concern was expressed regarding the rule's
13 private cost estimate. The projected \$643,000 private cost
14 estimate accompanying the proposed rule was based on industry
15 feedback.

16 The projection -- or the projected costs were based
17 on industry feed -- feedback for costs associated with
18 training and for providing customer service representatives
19 with the information needed to provide clear, full and
20 meaningful disclosure of all monthly charges and
21 usage-sensitive rates.

22 Hopefully some of the information that I provide
23 today in these comments will provide clarification that should
24 reduce the fiscal impact estimates. But SBC filed an errata
25 yesterday stating that, in addition, to the \$643,000 of the

1 fiscal impact that was estimated, they estimate an additional
2 \$666,000. We look forward to hearing in more detail the basis
3 for those additional costs.

4 A concern was expressed that the rule should be
5 limited to residential customer bills. The intent of the
6 proposed rule was to make it applicable to both business and
7 residential customers.

8 While larger business customers may be savvy enough
9 to understand various line-item surcharges and their impact on
10 the bottom line, smaller businesses and mom and pop operations
11 may be confused when reviewing and comparing multiple fees and
12 surcharges.

13 In previous rulemakings the Commission has
14 discussed the concept of dividing large and small businesses,
15 and its been to no avail. Without a clear and easily
16 identifiable method of distinguishing between business
17 customers, Staff does not object to the rule being applicable
18 to both business and residential customers.

19 In addition, the concern was expressed that the
20 placement of the rule is confusing because -- because it is
21 between two residential only sections.

22 I'd like to point out that Chapter 33, in general,
23 applies to both residential and business customers, unless
24 otherwise specified. Some sections apply only to residential
25 customers, and those are clearly noted in the rule.

1 Staff does not object to clarifying that the rule
2 applies to both businesses and residential customers by
3 changing the title of the rule to requiring clear
4 identification and placement of separately identified charges
5 on residential and business customer bills.

6 Several concerns were expressed regarding Section 1
7 of the proposed rule. SBC states, the rule should be limited
8 to recurring monthly charges. Staff would like to point out
9 that it was a general consensus by the industry members at the
10 industry workshops that we held to add usage-sensitive rates
11 to the disclosure requirements.

12 SBC states that the use of the word "all" in
13 Section 1 of the rule could be read to mean companies have to
14 disclose all possible plans and rates with the customers.

15 The intent was to provide clear, full and
16 meaningful disclos-- disclosure of all rates applicable to
17 those services the customer is ordering or is considering
18 ordering.

19 SBC also states the rule could be interpreted to
20 require disclosure of non-regulated items, taxes, surcharges
21 and other fees. SBC says the customer service representatives
22 would have to be familiar with rate tables for such things as
23 taxes. They also state that consumers think the process is
24 already too long.

25 The intent of the rule was to provide disclosure of

1 all charges that may appear on the customer's bill. For items
2 that have a fixed rate, the customer service representative
3 should be able to disclose that exact amount.

4 For other fees and charges that are variable, the
5 customer service representative should only have to make the
6 consumer aware that there will be a charge on the bill for
7 such things as taxes, a federal universal service surcharge,
8 et cetera.

9 SBC states that many line-item charges are
10 non-regulated charges, or at least are interstate charges not
11 under the Missouri Commission's jurisdiction.

12 Staff has concerns with specifically limiting the
13 rule to interstate charges. With such an explicit limitation
14 on the applicability of the rule, carriers could call any
15 charge an interstate charge in order to bypass the
16 requirements of this rule.

17 Therefore, based on all these concerns and my
18 comments, Staff suggests Section 1 be modified as
19 follows -- and this is rather lengthy, so I'll try to go slow.

20 All telecommunications companies shall provide
21 clear, full and meaningful disclosure of all monthly charges
22 and usage-sensitive rates that are applicable to the services
23 the customer has ordered or is considering ordering.

24 Such disclosures shall be provided prior to the
25 date the service is initiated. To satisfy the disclosure

1 requirement, the telecommunications company shall be required
2 to identify and explain all applicable charges.

3 Altern-- alternatively, a telecommunications
4 company may satisfy the disclosure requirement by asking the
5 customer if they want a full explanation of all applicable
6 charges. If the customer responds affirmatively, then the
7 customer should receive a full explanation of all applicable
8 charges.

9 Any explanation of all applicable charges shall be
10 in addition to an itemized account of monthly charges during
11 the customer's first billing period for the equipment and
12 service for which the customer has contracted as required by
13 4 CSR 240-33.040, Section 8.

14 This explanation shall apply to all charges that
15 may be billed to the customer, including interstate and
16 non-regulated charges. Charges or taxes that may vary,
17 depending on the location of the customer or the amount of the
18 customer bill, can simply be identified without specifying the
19 specific dollar amount that would be applied to the customer.

20 Continuing with my comments, SBC suggests the word
21 "disguising" in 4 CSR 240.33.045, Section 2 be changed to
22 misrepresenting. Staff does not object to this change.

23 SBC, AT&T, MTI and MCI expressed concern with the
24 language at 4 CSR 240-33.045, Section 4. The language states,
25 the presence of a charge in a currently effective tariff is

1 not evidence in and of itself that the charges are authorized
2 or mandated by the Commission.

3 When read in the context of the entire paragraph,
4 the intent of the statement is not to invalidate effective
5 tariffs through the rule process, but to indicate that charges
6 should not be portrayed as mandated or authorized by the
7 Commission.

8 Many charges, although effective in a tariff, are
9 simply charges imposed by the company, and not reflective of a
10 government mandate or authorization.

11 As Sprint notes, the presence of a fee in a tariff
12 does not necessarily mean the fee is endorsed by the
13 Commission, and should not be portrayed as such on the
14 customer's bill.

15 Staff suggests the last sentence of Section 4 be
16 modified as follows: The presence of a charge in a currently
17 effective tariff in and of itself shall not permit a
18 telecommunications company to portray such charge on the
19 customer's bill as a charge that is authorized or mandated by
20 the Commission.

21 SBC, AT&T, MCI and MCI (sic) expressed concerns
22 with 4 CSR 230 -- 240-33.045, Section 5 stating that the
23 Commission does not have authority to order removal or
24 modification of any charge that does not comport with this
25 rule without a hearing.

1 The intent of the rule was not to state that the
2 mere registering of a complaint provides the means for removal
3 or modification of a charge.

4 Staff would point out that the Commission has
5 separate processes at 4 CSR 240 Sec-- 2.070 to govern the --
6 to govern the complaint process.

7 For clarity, Staff suggests Section 5 be modified
8 to state, based on a formal complaint filed and processed
9 pursuant to 4 CSR 240-2.070, the Commission may order removal
10 or modification of any charge it finds does not comport with
11 this rule.

12 This ends our formal comments, and I'd be happy to
13 answer any questions.

14 JUDGE JONES: Commissioner Murray, do you have
15 questions?

16 COMMISSIONER MURRAY: Yes, I have a couple.

17 Thank you, Judge.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Just very basically, Ms. Dietrich. What does this
20 rule do that the proposed FCC rule does not do?

21 A. This rule provides additional guidance on
22 disclosure requirements when a com-- customer contacts a
23 customer (sic). I think it also provides additional guidance
24 on how to label or how to identify charges on a bill while
25 still maintaining the consistency with the FCC's rules.

1 Q. And when you say additional guidance, are you
2 talking about additional mandates?

3 A. No. Huh-uh. Just some clarification. Like saying
4 that the charge cannot be -- well, it did say disguise --
5 misrepresented as a government charge. Just some additional
6 clarification on what that means.

7 In addition, the rule addresses some
8 Missouri-specific charges; for instance, when the Commission
9 approves a charge in a tariff, the rule states that that does
10 not mean that the next company that comes in and requests that
11 same charge it's -- it's an automatic that it would be
12 approved.

13 And it does clarify that the Commission can remove
14 charges from the pre-approved -- or from an already effective
15 tariff through the complaint process.

16 Q. Why would we have in a truth in billing rule
17 anything about Commission's approval of a tariff?

18 A. I think part of that was raised by some
19 Commissioners, that when you were reviewing tariff filings,
20 there were -- companies would come in and say the --
21 Company XYZ already has this item as a surcharge on their
22 bill, and so it makes sense for you to approve it for us.

23 And so the Commission wanted some clarification
24 that just because you approved a surcharge for another company
25 didn't mean that it was automatic for other companies to be

1 able to apply that same charge.

2 Q. Where are -- would you point me to that language
3 we're talking about in this rule?

4 A. Sect-- Subsection 5.

5 And that is the section that we're pro-- proposing
6 be clarified that it would be the formal complaint process,
7 not just somebody registering a complaint with the Commission.

8 Q. And the language you're talking about regarding
9 approval of tariffs, is that the sentence, nothing in this
10 rule will preclude the Commission from suspending or rejecting
11 company tariffs when similar or identical tariff -- I suppose
12 that means tariff -- have been approved for other companies?

13 A. That's correct.

14 Q. But that doesn't say anything about line items on
15 bills.

16 A. Well, that was when the concern was raised, was
17 that there were some charges that appear as line items, not
18 necessarily within the basic local rate or the long distance
19 rate. And so it was that concern that triggered this
20 language.

21 Q. So this was based on a Commissioner or some
22 Commissioners wanting to make a statement that we don't have
23 to approve a tariff for one company if we've approved a
24 similar one for another company; is that --

25 A. To -- to provide clarity that just because the

1 Commission had approved a charge or surcharge does not
2 necessarily mean that it was guaranteed that it would be
3 approved for other companies.

4 Q. I -- I really don't know why we would make such a
5 statement, especially in a rulemaking regarding truth in
6 billing. It has nothing to do with truth in billing.

7 And also it's a very, I think, questionable
8 statement if -- if we're looking at two carriers who are
9 offering -- wanting to offer an identical service or file an
10 identical tariff that we have previously approved.

11 If -- if there -- if there is a basis in law for us
12 to suspend or reject such a tariff, we don't need to say so in
13 a truth in billing rule.

14 A. Well, I -- I think there's two things going on.
15 First of all, some of the parties, through the informal
16 process, have stated that the Commission already has similar
17 authority to what's mentioned here through other rules or
18 statutory authority.

19 And -- but yet when the -- when tariff filings are
20 made, the -- if the Commission questions that tariff filing,
21 then in -- whether it be in testimony or briefs or cover
22 letter, whatever the format might be, the issue is raised,
23 well, you approved this for ABC Company, so you have to
24 approve it for me.

25 And I'm thinking that one of the formal comments

1 that was -- that was filed in this rule -- one of the written
2 comments that was filed in this rule also states that in the
3 comments.

4 Q. Well, my point is, if the issue is raised at the
5 time of the tariff filing, that's the -- that's the time to
6 deal with the issue. We don't need to make a statement in the
7 truth in billing rule that says, nothing in this rule
8 precludes us from suspending or rejecting tariffs that are
9 similar or identical to ones that we've approved in the past.

10 I -- I just see this as a gratuitous comment within
11 a truth in billing rule.

12 A. I -- I understand what you're saying. And, I mean,
13 it was -- like I said, it was largely done by the fact that it
14 was charges that were listed as separate line-item charges
15 where this argument has been -- has been raised.

16 And so that's why it was suggested that it be added
17 in this rule.

18 Q. Does Staff -- would Staff have any problem with
19 removing that?

20 A. Perhaps we could clarify it and say, nothing in
21 this rule would preclude the Commission from suspending or
22 rejecting company tariffs where -- when similar, identical
23 line-item tariffs are -- some -- somehow tie it into the --
24 the line item, the -- the placement of the bill and that it be
25 a line-item surcharge.

1 Q. That won't satisfy me.

2 I had another question about the proposed new
3 language for Section 1 -- Staff's proposed new language.

4 A. Okay.

5 Q. And I -- I like the idea that you put in there,
6 alternatively, the company may ask the customer if the
7 customer wishes to hear the explanation.

8 Because as I was reading this, I was thinking that
9 is all we need is another rule that says everybo-- anybody
10 that's trying to get a service is going to have to sit through
11 this lengthy explanation of something that they don't want to
12 hear --

13 A. Uh-huh.

14 Q. -- because some governmental agency said the
15 company has to do it every time.

16 So thank you for adding that language that would
17 allow the customer to have the option not to hear it.

18 And then I don't unders-- I didn't quite understand
19 what you said about may -- it was toward the end, and it was
20 something maybe simply identified.

21 Could you read that again -- that part of it?

22 A. Charges are taxes that may vary, depending on the
23 location of the customer, or the amount of the customer bill
24 can simply be identified without specifying the specific
25 dollar amount that will be applied to the customer.

1 In other words, some of the charges like, for
2 instance, the Missouri Universal Service surcharge that would
3 now be appearing on customer bills is .18 percent of the
4 customer's various charges.

5 And so since the customer service rep wouldn't
6 necessarily know what that customer's total bill would be,
7 instead of saying the Missouri Universal Service charge would
8 be \$5 or 5 cents or whatever, they could simply say, and you
9 would have a charge for the Missouri Universal Service Fund.
10 They may even take it so far as to say, approximately
11 2 percent of your bill.

12 But then there's other charges like, for instance,
13 the Relay Missouri surcharge which is a fixed amount. So
14 they -- in that case, the customer service rep should be able
15 to say, and there would also be a Missouri Relay Service
16 charge of 10 cents.

17 Q. Okay. And what -- what were the services -- how
18 were the services defined there that may be simply identified
19 that way?

20 A. Charges or taxes that may vary, depending on the
21 location of the customer or the amount of the customer bill.
22 For instance, the taxes would vary, depending on where they
23 lived.

24 Q. Okay. Then does everything else have to be
25 specifically identified by amount?

1 A. Yes. Anything that would not be kind of a
2 variable-type charge would be -- would be identified by the
3 amount.

4 Q. And how many total possible charges might be
5 involved, say, take worst-case scenario?

6 A. Well, depending on the type of carrier, there'd be
7 the subscriber line charge; of course, their basic local or
8 their long distance charges; the Missouri Universal Service
9 Fund, the Federal Universal Service Fund, which are both
10 variable; the Relay Missouri, which is a fixed charge.

11 Some of the companies have like, for instance, the
12 in-state access fee, which would be a fixed charge, and then
13 there'd be --

14 Q. Does the customer representative have to explain
15 the -- the meaning of all of these to be able to say, what is
16 an in-state access fee, for example?

17 A. That's already a requirement by the FCC that there
18 be some means for the -- the customer to contact the company,
19 and find out what these various charges entail or how they're
20 identified.

21 Q. Okay. But I'm talking about in -- in this
22 identification process.

23 A. I -- I think it would be anticipated, because it --
24 it talks about clear, full and meaningful disclosure. And so
25 if a customer wants to know what, for instance, the subscriber

1 line charge is, they would have to have some general knowledge
2 of what -- what that charge would cover.

3 Q. Okay. I interrupted you. Go ahead with the rest
4 of the charges that might --

5 A. Oh.

6 Q. -- have to be specifically identified.

7 A. Okay. That's all I can think of off the top of my
8 head.

9 Q. And if the customer says, I don't want to hear all
10 that --

11 A. Then --

12 Q. -- what has to be done?

13 A. I think the rule allows the opportunity for the --
14 the customer service representative to not disclose all that
15 information. There is still a requirement in 33.040,
16 Subsection 8, where the first bill contains some of that --
17 some additional information.

18 Q. And that is new information that's required on the
19 first bill under this rule; is that right?

20 A. No, it --

21 Q. That's --

22 A. -- it's already in effect.

23 Q. Okay. And the language -- the suggested change in
24 language that you offered for Subsection 5 -- we don't have
25 Livenote up, so I'm not able to go back and repeat what you

1 said.

2 But the language that you offered was for the
3 purpose of -- of making it clear that the Commission could not
4 remove or modify a tariffed -- something that isn't already
5 improved in a tariff without going through the formal
6 complaint process, having the hearing and reporting all the
7 due process rights; is that correct?

8 A. That's correct.

9 Q. Isn't that the case today -- I mean, why do we need --
10 why do we need language that -- that could occur? Isn't that
11 automatically -- I mean, isn't that something that can occur
12 today?

13 A. It's -- it's something that can occur today. But
14 through the workshop and through the discussion with the
15 Commissioners, there was some concern that it wasn't
16 recognized that that could occur today.

17 And so it was suggested -- again, suggested as to
18 provide clarification adding it to the rule.

19 Q. I wonder who wouldn't recognize that a complaint
20 could be brought to the Commission. Was it carriers that
21 didn't recognize that, the Office of Public Counsel that
22 didn't recognize it, some other party that --

23 A. I -- I don't remember the specific discussions as
24 to who -- to whom said -- to who said what. But it was during
25 our workshops that issues were raised, and then also with

1 discussions with the Commissioners.

2 Q. Okay. Now, I'm gonna ask you one more time, and
3 I -- I -- maybe I can ask it a little bit differently.

4 What benefit is to be derived from this rule, and
5 how does that benefit, if any, weigh against the burden of
6 imposing the rule?

7 A. In general or when compared to the FCC's rules?

8 Q. Well, I'm just talking about our rule. What
9 benefit is to be derived from this rule?

10 A. I -- I think one of the largest benefits is the
11 customer disclosure requirement providing the requirement that
12 the customer receive full disclosure.

13 When we went through this process and through the
14 press releases that were issued on this rulemaking, we did
15 receive feedback from some members of the public that stated
16 they thought this was a good idea, that they contact a company
17 for service and they're told that their service may cost \$20,
18 for instance.

19 And then when they get the bill, there's all these
20 separate items that are listed on the bill that they weren't
21 aware of, that add up to maybe another, you know, \$15. So
22 their total bill is \$35 instead of 20.

23 So this would set forth the requirement that when
24 that customer contacts the company, they are provided clear
25 guidance as to what charges would be on the bill, unless under

1 our proposal they say, no, I understand. I'm not interested
2 in hearing all of that.

3 Q. Okay. Now, if we didn't have the rule, what about
4 the FCC proposed rule? Does that cover it -- would that cover
5 customer disclosure or not?

6 A. Just one second.

7 The -- the current rules require that com-- that
8 companies provide clear --

9 Q. Whose current rules?

10 A. The FCC's current rules require that the com--
11 companies provide full, clear, meaningful disclosure.
12 They've -- they've stated that the bill should not be
13 misleading.

14 But they've left open to the companies, and they
15 continue to leave open to the companies, what that disclosure
16 looks like, what a surcharge is -- is called on the bill
17 and -- and things like that.

18 And so what's happened is that because they provide
19 these rules that say you should provide clear and meaningful
20 information, but have left a lot of the information open to
21 the company to decide what that looks like and how to provide
22 it, customers have not be provided clear guidance.

23 And so that -- in their follow-up rules they've
24 provided some additional standards, such as you can't call
25 something a governmentally mandated charge if it's not, and

1 things like that.

2 I think part of the problem is like the National
3 Association for State Utility Consumer Advocates, NASUCA, has
4 asked the FCC to provide guidance and -- and further
5 clarification on some of these issues.

6 The FCC responded that they weren't going to do it
7 at this time, and in their order put it out for additional
8 comments as to some further steps that they're thinking about
9 taking such as pre-empting states.

10 So what we have in front of us now is a Missouri
11 rule that provides some guidance on what that disclosure looks
12 like, but doesn't go so far as to say, well, you know, the
13 FCC said you can't label something as XYZ. But in Missouri
14 we're saying you can -- or, you know, they don't conflict with
15 the federal rules, is what I'm trying to say.

16 So I -- I think it -- it provides some additional
17 guidance.

18 Q. Does it provide different requirements for a
19 carrier that operates in multiple states if this rule gets
20 passed? Will -- will they have to train their customer
21 service representatives differently in the various states?

22 A. The -- I don't think they'll have to train their
23 representatives differently. They may have to provide them
24 with a -- a little more information to address the consumer
25 that calls from Missouri than they would for other states.

1 Like, for instance, what -- you know, about municipal taxes
2 and things like that.

3 But what we're proposing is that that be just
4 general statements, not specifics on the various charges that
5 may be variable. And then they would have to, of course,
6 provide them information on things like the Missouri USF and
7 the Missouri Relay.

8 Q. Did the Staff consider recommending that we just
9 file comments with the FCC regarding the pending rulemaking
10 there --

11 A. We --

12 Q. -- rather than do an in-- an independent
13 state-specific rulemaking?

14 A. We -- we did file comments with the FCC. And it
15 was -- it about the same time as the rule was proposed, so it
16 was kind of take both tracks.

17 And the -- the original rule did have some things
18 that go farther than what was actually published.

19 Q. Now -- now, I understand that you made changes to
20 attempt at least to make it compliant or -- or not conflicting
21 with the federal -- with what the FCC has said.

22 But I'm concerned that we're -- in addition to
23 perhaps being duplicative, that we are creating a unique
24 situation that stops at the state borders, in terms of what
25 each carrier has to do.

1 And I -- I think that just merely drives up costs.
2 And there's not a com-- a concurrent benefit that goes along
3 with it.

4 A. Well, first of all, the changes that were made to
5 the rule as we went along were prior to the FCC issues its
6 order. And those were changes that were an attempt to reach
7 some con-- consensus among the industry, although the rule
8 that was published was not in its entirety language that was
9 agreed upon or put forth by the industry.

10 As far as the costs when we put together the fiscal
11 impact, it was estimated that it would cost around 600,000 to
12 implement some of the changes associated with this rule,
13 largely related to the disclosure requirements and training
14 the customer service representatives to be familiar with some
15 of the Missouri-specific charges, and then also any kind of
16 technology changes that they might have to implement in order
17 to provide that information to their CSRs or to calculate that
18 information.

19 And so hopefully through our clarification that
20 some of the charges that are not fixed charges, we would be
21 able to, if not necessarily reduce the fiscal impact that was
22 already put forward, at least reduce the fiscal impact -- the
23 additional fiscal impact that SBC had put forth.

24 Q. Well, I know when Staff is directed to go forth
25 with a rulemaking, that you -- you put a lot -- a lot of

1 effort into trying to come up with a decent compromise. And I
2 appreciate all the work that you've done. Thank you.

3 A. Thank you.

4 JUDGE JONES: Commissioner Gaw?

5 COMMISSIONER GAW: I'll wait. Thank you.

6 JUDGE JONES: Commissioner Clayton?

7 COMMISSIONER CLAYTON: Thank you, Judge.

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. Ms. Dietrich, I just wanted to ask a couple of
10 questions. Looking at the comments that were filed by the
11 Staff, and then there's an attachment of a multi-color rule --

12 A. Yes.

13 Q. -- that -- that is in there.

14 And I wanted to be clear looking at that document
15 exactly what we are looking at. Could you tell me what the
16 blue means, and what the red means, and the black means and
17 could -- is it -- is it possible to look at this draft and
18 look at the rule as it was proposed?

19 And then are the -- are the amendments to that rule
20 or -- or you -- you're proposing those changes?

21 A. No. The -- the attachment to Staff's comments was
22 the latest version of the rule that was discussed with the
23 industry. And the changes that you see in -- in the red-line
24 format -- the -- the colors don't mean anything. That just
25 depends on who made the change at what -- what time.

1 But the -- the red-line version of the rule shows
2 where changes were made as a -- as a result of that industry
3 workshop.

4 Q. Okay. This is where I'm confused. Because there
5 have been various industry workshops --

6 A. Right.

7 Q. -- have there not?

8 A. Right.

9 Q. In fact, when did the discussion about considering
10 a rule of this sort begin, do you recall?

11 A. It's probably been a year and a half.

12 Q. Okay.

13 A. I don't have that with me.

14 Q. Did industry workshops begin then?

15 A. No. We worked on the language for a while, and
16 then had some industry workshops after there was some language
17 in place. We had --

18 Q. When -- when you say "language in place," what do
19 you mean?

20 A. Something to start with.

21 Q. Okay. So not in place; not in --

22 A. Not formal.

23 Q. -- in the code?

24 A. No. Huh-uh.

25 Q. They -- there was basically a draft that was

1 proposed, and then that began -- that became the working draft
2 for everyone to have a common point of reference?

3 A. Correct.

4 Q. Okay.

5 A. And -- and then at that point -- and we could
6 probably look it up if you needed it -- but we had three or
7 four workshops with the industry, and worked through some
8 language and made modifications.

9 And what was attached to Staff's comments was
10 the -- from the last industry workshop that we had before it
11 was presented --

12 Q. Okay.

13 A. -- to the Commission.

14 Q. So -- so there were various workshops, there were
15 changes made to the proposed rule, and that was all before the
16 rule was sent to the Secretary of State for initial
17 publication?

18 A. That's correct.

19 Q. Okay. So the changes that are reflected in this
20 document, this multi-colored document, are changes that Staff
21 has worked with the industry to incorporate since the rule was
22 published initially?

23 A. No.

24 Q. Okay.

25 A. This -- this was the last version that we worked on

1 with the industry where we reached some agreement as to this
2 is what we could be comfortable with as far as the language.
3 Then we were going to bring this language in to the Commission
4 for discussion.

5 And it was at that point we received additional
6 cop-- versions from the industry, from the Office of Public
7 Counsel, from the Commission's advisory staff.

8 So the last time that I came in to the Commission
9 to discuss the rule prior to it being published, I think it
10 was we had six different versions of the rule.

11 This -- the reason we attached this version to the
12 comments was because it had come out of the industry workshop
13 as something that, although they weren't in agreement with it,
14 it was changes that they felt they could live with more than
15 what it was prior to this -- these changes.

16 And so we wanted to just make sure that it was in
17 the record in the case.

18 Q. Well, how -- how different are these -- how -- how
19 different is this amended rule compared to the rule that was
20 published?

21 A. There are some significant differences between this
22 and what was published. For instance, in what was attached to
23 Staff's comments it specifically lays out some charges that
24 could or could not appear on the bill as a separate line item.

25 Whereas in was published is some general language

1 that says that it be basically government-- governmentally
2 mandated or authorized fees and charges would be allowed as
3 surcharges and should be clearly identified.

4 I think all the concepts are covered. It's just
5 the way the language is worded was changed somewhat.

6 Q. Okay. So this document that I was looking at here
7 is actually -- it pre-dates the -- the rule that we're talking
8 about here today?

9 A. That's correct.

10 Q. Okay. Now, does the rule that -- and I think you
11 just mentioned that, and I want to be clear on this.

12 The rule that -- or the language that you just
13 mentioned and -- and the provisions of this red-lined colorful
14 document, for lack of a better term -- it's very -- it looks
15 very nice. Glad to see we're using our color printers.

16 This language was what do you think date -- what
17 date do you think or roughly?

18 A. I think it was January 24th.

19 Q. Okay. And when did we vote to publish the actual
20 rule again? Do you recall that?

21 A. It was just within a few days.

22 Q. Oh, in January?

23 A. February 3rd.

24 Q. February 3rd.

25 Okay. Now, in -- without -- I -- and I've got your

1 comments here, and I've looked through them. But not having
2 studied them, is Staff proposing that it supports the -- the
3 language in the proposed rule that was published or is Staff
4 supportive of the language that came from the final working
5 group?

6 A. In light of -- in light of the FCC's recent order,
7 I think all we can support is what was published. Because the
8 FCC appears to have pre-empted states or at least suggested
9 that it may pre-empt states and put that out for further
10 comment.

11 Q. All right. If -- if the FC-- well, can I ask this
12 hypothetical question? If the FCC had not done their -- their
13 rulemaking on their truth in billing language that pre-empted
14 the states, can I assume that Staff would have supported the
15 prior language?

16 A. There -- there were definitely some sections in
17 there that I think provided more clarification than what was
18 published, as far as, you know, listing specific charges that
19 could or could not appear on the bill just to provide
20 additional clarification.

21 Q. Okay. So they -- they would -- Staff would have
22 supported -- you would have supported the -- the prior
23 language --

24 A. We --

25 Q. -- hypothetically speaking --

1 A. Hypothetically --

2 Q. -- with that FCC rulemaking?

3 A. Hypothetically speaking recognizing that what the
4 Commission chose language that was published, I think there
5 was some -- we could support things in either version.

6 Q. Is that a yes or a no?

7 If the answer is no, just say no. Everybody's got
8 to give a longer answer, and it's just the culture and
9 it --

10 A. Right.

11 I think, yes, we would support it.

12 Q. Okay. Okay. Ms. Dietrich, are you satisfied that
13 this is -- this proposed rule is the strongest -- strongest
14 language possible to protect consumers in light of the
15 FCC pre-emption?

16 A. In -- in light of the FCC's recent order, and then
17 also with some clarifications that we're proposing, I think it
18 would be the strongest that we could do.

19 COMMISSIONER CLAYTON: Okay. And Staff is -- okay.

20 I'll -- I'll stop asking questions at that point.

21 Thank you.

22 JUDGE JONES: Commissioner Appling?

23 (NO RESPONSE.)

24 JUDGE JONES: Commissioner Gaw?

25 COMMISSIONER GAW: Oh, maybe just --

1 QUESTIONS BY COMMISSIONER GAW:

2 Q. If I understood you correctly, I believe you say,
3 Ms. Dietrich, that -- that you're not suggesting that the FCC
4 specifically pre-empted the states -- that there's a question
5 of that?

6 A. That's correct.

7 Q. And is it -- is it not true that the FCC has to
8 specifically pre-empt in order for the pre-emption to occur?

9 A. That's correct.

10 Q. So the fact that there's a question would -- would
11 lead me to believe that they didn't specifically pre-empt
12 states.

13 A. The -- the language in their order is confusing, so
14 I think at best that it is -- there is a question.

15 Q. And they're continuing -- they're -- they're
16 continuing discussions on that rulemaking?

17 A. That's correct.

18 Q. All right.

19 A. They put it out for further notice.

20 Q. I think there was -- there was -- there was some
21 concerns expressed earlier by Commissioner Murray perhaps
22 by -- something about some language on -- in the proposed rule
23 dealing with whether -- what would happen re-- regarding
24 tariffs that may have been previously approved or when -- when
25 other -- when other cases were -- might -- might come in front

1 of the Commission and whether or not those other -- other
2 tariffs would be binding on the Commission?

3 A. Correct.

4 Q. You're -- you're stating that the purpose, with
5 some clarification, that they would -- they would not be
6 binding on a determination of a tariff that might be in front
7 of the Commission?

8 A. That's -- that's correct.

9 Q. But there are also some -- I think there's also
10 some industry comment about -- maybe the last sentence in
11 subparagraph 4 in 045?

12 A. Right. Some of the comments read that language as
13 saying that the Commission had the authority to remove charges
14 that were in tariffs that were already in effect. And so we
15 have proposed some clarification.

16 Q. And did you -- did you put that in writing in an
17 exhibit?

18 A. No. This was just since the -- the written
19 comments were filed, so we have not put it --

20 Q. Okay.

21 A. -- in writing in an exhibit.

22 Q. You don't have it -- you don't have it in -- for us
23 to look at right now?

24 A. I mean, I have my notes that we could make copies
25 of if --

1 Q. That's okay.

2 A. -- you'd like.

3 Q. I'm sure we'll see it.

4 A. Yes.

5 Q. But do you want to read it again -- to me the
6 change you suggested?

7 A. Sure.

8 The presence of the charge in a currently effective
9 tariff in and of itself shall not permit a telecommunications
10 company to portray such charge on the customer's bill as a
11 charge that is authorized or mandated by the Commission.

12 Q. And do you think that clarifies the --

13 A. Yes, I think so.

14 Q. -- intent of that last sentence?

15 A. I think so.

16 Q. If the Commission desired to -- to make it clear
17 that -- that at some point in the future any tariffs that
18 were -- that were in contravention of this rule in regard to
19 surcharges that were actually mandated or authorized by the
20 state or federal statute or FCC or Missouri Public Service
21 Commission rule, we could -- we -- we could say that, even in
22 a different way, couldn't we?

23 A. Right. And I think that's actually No. 5 of the
24 rule where through the complaint process the Commission
25 could -- could make that statement -- that something is in

1 contravention with this rule.

2 COMMISSIONER GAW: Let me have you look at some
3 language, please.

4 Judge, would you give at that to Ms. Dietrich and
5 just give me one copy. Maybe that could be marked for
6 purposes of identification.

7 JUDGE JONES: Can we mark this?

8 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

9 JUDGE JONES: Does anyone want a copy of this
10 (indicating)? I have four.

11 BY COMMISSIONER GAW:

12 Q. Ms. Dietrich, do -- do you have -- do you have that
13 language in front of you?

14 A. Yes, I do.

15 Q. Would you read it?

16 A. Telecommunications companies shall not impose any
17 separately identified charges that are not governmentally
18 mandated or specifically authorized by federal or Missouri
19 statute, rule or regulation.

20 All tele-- all telecommunications companies shall
21 be compliance with this rule within six months after the
22 effective date of this rule, and shall -- shall notify the
23 Commission of such complaints.

24 Q. Okay. Now, if the Commission wanted to adjust the
25 language in this rulemaking to make it clear that only those

1 charges would be allowed going forward, as some of the
2 industry has -- has suggested might -- might be the case from
3 this -- this language that's in the current proposed rule,
4 would you say this language would -- would specifically do
5 that?

6 A. Could you repeat that one more time? I'm sorry.

7 Q. Would this language make certain that there would
8 be no charges that were not specifically authorized by the
9 feds in their statutes or Missouri in their statutes or rules
10 or regulations of the Missouri Public Service Commission or
11 the FCC -- make certain that those surcharges that were not
12 authorized by those methods would no longer be allowed to show
13 up on a bill -- on a Missouri customer going forward, that
14 that would be the intent of this language?

15 A. Yes, that would be the intent of this language.

16 Q. And you're telling me that -- that with your
17 adjustments to -- and your suggestions that you've made, your
18 adjustments to the proposed rule, that is not what would
19 occur?

20 A. That's correct.

21 COMMISSIONER GAW: Okay. That's all -- that's all
22 I have on that.

23 JUDGE JONES: Any -- are there any further
24 questions for Staff?

25 COMMISSIONER MURRAY: I had one. Let me see if I

1 can remember what it was.

2 JUDGE JONES: Did you want this admitted into the
3 record?

4 COMMISSIONER MURRAY: Oh, it was --

5 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Ms. Dietrich, I was wondering in the proposed
7 change in language that you suggested regarding -- it must
8 have been Section 4. Yeah.

9 And I believe your change in language said, it is
10 not evidence in and of itself that the charges authorized
11 or -- well, re-- read that -- read your new language to me
12 again, please.

13 A. Okay. The presence of a charge in a currently
14 effective tariff in and of itself shall not permit a
15 telecommunications company to portray such a charge on a
16 customer's bill as a charge that is authorized or mandated by
17 the Commission.

18 Q. What would the Staff think of changing that to say
19 auth-- to say it will not authorize them to portray it as a
20 governmentally mandated or authorized fee? Because that's
21 what the rest of the rule refers to that they may not include
22 on the customer's bill.

23 And I believe that's the -- the intent here that
24 the -- by having a tariff does not -- that does not authorize
25 them to represent it as a governmentally mandated or

1 authorized fee; is that right?

2 A. That's correct. Off the top of my head, I think
3 that would work. There are -- there are two different
4 possibilities. Sometimes companies -- if -- if the Commission
5 approves a charge, sometimes companies will say the Commission
6 approved this charge just by the -- the idea of the tariff
7 going into effect, say, by operation of law.

8 And so I don't -- there's that issue, and then
9 there's also the issue of actually saying it was
10 governmentally --

11 Q. Well --

12 A. -- authorized or approved.

13 Q. -- I don't see that first issue as being part of --
14 being a part of the truth in billing.

15 A. Correct. I just wanted to point out the
16 differences. And off the top of my head, I think your change
17 would be a -- would address -- or would address what's
18 attempting to be addressed in this rule.

19 Q. In the rule.

20 And the other -- the FCC -- and I thought I had
21 highlighted it here, but I can't seem to locate it exactly --
22 did indicate in, I believe, the attachment that you provided,
23 the second report and order --

24 A. Uh-huh.

25 Q. -- that separate line items were not to be

1 prohibited or mandated; is that correct?

2 A. That's correct. It denied the -- the request
3 prohibiting telecommunications carriers from imposing any line
4 items --

5 Q. And that --

6 A. -- or charges.

7 Q. And it is for that reason that we don't have
8 language such as that suggested by Commissioner Gaw that he
9 just had you read; is that correct?

10 A. That's correct.

11 COMMISSIONER MURRAY: Thank you. I think that's
12 all I have.

13 COMMISSIONER DAVIS: I'll wait.

14 JUDGE JONES: Thank you, Ms. Dietrich. You may be
15 seated.

16 (WITNESS EXCUSED.)

17 JUDGE JONES: Next we'll have comments from the
18 Office of the Public Counsel.

19 And first I will admit into the record the language
20 submitted by Commissioner Gaw, and which has been marked as
21 Exhibit 1.

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

23 JUDGE JONES: Mr. Coffman?

24 MR. COFFMAN: Hello. Are you gonna swear me in or
25 anything?

1 JUDGE JONES: Oh, I'm sorry.

2 MR. COFFMAN: I don't need to be, but --

3 (WITNESS SWORN.)

4 JUDGE JONES: All right.

5 JOHN COFFMAN, having been duly sworn, testified as follows:

6 MR. COFFMAN: Good morning. May it please the
7 Commission. The Office of the Public Counsel strongly supp--
8 supports the Commission's rule as proposed to the Secretary of
9 State.

10 I submit to you that there is a serious problem in
11 Missouri with the billing of telecommunications services, that
12 there is a general -- a generally strong desire among the
13 public for this Commission to do something about it, and that
14 the proposed rule is a reasonable first step in the direction
15 of providing disclosure for the services billed and
16 identifying those services clearly, and that this is neither
17 pre-empted nor imposes any unreasonable burden upon interstate
18 or intrastate telecommunication service providers.

19 As you know, the Public Counsel would like to go
20 much further than the Commission proposes to go. We would
21 like to see a ban on line-item surcharges that are not
22 governmentally mandated charges.

23 However, we feel that the Commission has gone
24 through a good process here. In this particular case there
25 has been significant compromise after workshops and meetings,

1 and dis-- distribution of various drafts.

2 There have been a lot of -- there's been a lot of
3 discussion about the FCC. And -- and although we think the
4 Commission could go much further without pre-emption, this
5 rule before you is probably the best step that you could take
6 at this point without risking an extended course of litigation
7 on -- on that pre-emption issue.

8 First, and -- and I don't know if I even need to
9 address this, but some of the comments suggest that we don't
10 have a problem in Missouri with confusing telephone bills. I
11 don't know if I have much to add to that, other than -- than
12 anecdotal evidence and my own embarrassing mission that I
13 can't completely understand my telephone bill.

14 And I think that you'll find if you ask the folks
15 around you -- very smart people, people with advanced degrees
16 and professional jobs, lawyers, accountants, they would have
17 to admit if they were under oath that they can't completely
18 understand all of the charges and what the purpose is and how
19 it all adds up and how they're charged.

20 I was recently speaking to a local civic group,
21 just listing a variety of things -- consumer issues as it
22 relates to utilities. And when I, in mere passing, discussed
23 the truth in billing movement and -- and efforts, I received
24 spontaneous applause from the crowd.

25 There is a -- a strong sense among the general

1 public that -- that their telephone bills are too hard to
2 understand, and that they do not -- they cannot understand the
3 labels that are placed on these various charges. They -- they
4 are generic sounding, they're confusing similar at times,
5 and -- and they would like to -- to understand them.

6 I heard -- received several questions and -- and
7 stories about calling customer service representatives and not
8 getting out answers, and getting out the calculator and trying
9 to get a grasp of what -- what all this entailed and -- and
10 feeling frustrated and somewhat depressed at being abl--
11 unable to do so.

12 What you hear -- or what I hear is that, you know,
13 I would like to know whether I can make an intelligent
14 decision between competitors. If someone calls me on the
15 phone or offers me a service, I would like to know if that's
16 better than the service I'm receiving, and the sense that
17 they're -- they're unable to make that intelligent decision
18 among competitors.

19 And -- and basically I -- I think a sense of
20 growing fear that -- that perhaps I'm being cheated. If I
21 can't understand my bill -- if I don't know what I'm being
22 billed for, how do I know that it's accurate?

23 So I think the Commission is right to focus on
24 this, and that it's an important issue of the day. And that
25 this is an important productive step.

1 The Commission clearly has the authority as the
2 supervisory agency over telecommunication companies doing
3 business in the state. They're clearly delegated police power
4 under Chapter 386 and 392 to do so. And our comments list the
5 various rules.

6 This is not pre-empted by the FCC rule -- the one
7 passed in 1999. The purpose clause in there is totally
8 consistent with what the Commission is proposing to do.

9 It -- and I quote from it. We undertake
10 commonsense steps here to ensure that consumers are provided
11 with basic information they need to make informed choices in
12 the competitive telecommunications market while at the same
13 time protecting themselves from unscrupulous competitors.

14 And the Commission's rule requiring disclosure and
15 clear identification of charges cannot be seen as pre-empted
16 by this rule. But I would point out that the -- I believe the
17 FCC, in my opinion, has turned a cold shoulder to consumers in
18 recent actions and in mere enforcement of its current rule.

19 It was noted in the diss-- the dissent from
20 Commissioner Kopp in the recent order relating to wireless
21 providers that in the six years since the adoption of the
22 FCC truth in billing requirements, I cannot find a single
23 notice for apparent liability concerning the kind of
24 misleading billing we are talking about today. And that is a
25 non-slamming consumer complaint.

1 Despite the fact that the FCC had received
2 29,000 non-slamming consumer complaints in the last year
3 alone. So I think that it's important that the Commission
4 step up and give consumers a local remedy.

5 I don't think that most consumers would like to be
6 told that the only way they can seek a remedy to something so
7 commonsense as an understandable bill is to go to
8 Washington, D.C. and contact somebody with the FCC or the FTC
9 to receive a timely correction or simple explanation.

10 Again, the recent FCC decision on truth in billing
11 was wireless related. And the proposed rule here that the
12 Commission is proposing affects only telecom companies within
13 the Commission's jurisdiction.

14 I believe I agree completely with Mr. Poston's
15 legal comments, and I think the Commission is clearly on safe
16 ground in doing What is proposed.

17 I -- I also agree with the Staff in opposing --
18 limiting this rule simply to residential consumers. I think
19 that most small business owners -- in fact, probably most
20 business owners also struggle with this, and -- and the rule
21 should not be out of reach to them as well.

22 I do oppose changing the word "disguising" to
23 misrepresentation. I -- I prefer the word "disguising." It
24 is -- what we're talking about here is -- is pretty such a
25 commonsense remedy, something that should be focused on how

1 easily a reasonable consumer can make sense of their bill, not
2 necessarily using a word like misrepresentation that has
3 stringent elements under -- under the law that includes a mens
4 rea requirement.

5 I -- I would prefer that the Commission could take
6 a more commonsense approach to this, and -- and hope that the
7 Commission would be serious after this rule is passed in -- in
8 enforcing it.

9 And I do support Section 5. I think that is a good
10 section to include in the rule. It points -- it points out
11 how a remedy is to take place, that a complaint would need to
12 be filed. It also reassures that there will be due process
13 and -- and a hearing before any charge would be limiting.

14 Again, competition is not gonna work to the benefit
15 of consumers unless the true cost of service can be made clear
16 and -- and -- and not disguised and not distorted through
17 bills.

18 So I think I'll end my comments there. If you have
19 any questions, I'll be happy to answer them.

20 JUDGE JONES: Mr. Chairman, do you have questions
21 for OPC?

22 QUESTIONS BY COMMISSIONER DAVIS:

23 Q. I guess, Mr. Coffman, is -- is your primary concern
24 that -- that phone companies may be disguising things in the
25 bill as taxes, fees or surcharges that aren't actually taxes,

1 fees and surcharges, or is your -- is your primary concern
2 that consumers are not able to make an accurate comparison
3 between apples and apples, so to speak, between one phone bill
4 versus another?

5 A. I --

6 Q. Or is it similar?

7 A. -- I agree with both. I think both come into --
8 into play here. I mean, I think that the -- the idea of being
9 able to make an apples-to-apples comparison is the end goal
10 that we're striving for with -- with the truth in billing.

11 The governmentally mandated confusion, I think,
12 is -- is -- is a real area of frustration and an easily
13 identified category of, I think, misleading billing practices
14 that have developed.

15 Q. Okay. Thinking -- thinking about the issue of --
16 of providing consumers, you know, with some sort of -- for
17 back -- for lack of a better term, I guess sort of -- some
18 sort of food labeling or something where, you know, if you
19 look at a -- if you go to the grocery store, I mean everything
20 has a food label.

21 It -- you know, how much calories, how many
22 carbohydrates, what vitamins are in there, what the
23 ingredients are, et cetera. I mean, is -- is that
24 something -- I mean, is that more or less what you're -- what
25 you would -- one of the things, I guess, you'd like to see

1 is --

2 A. I think that's one of the bigger goals that this is
3 a step towards. I think a -- as you're sometimes called in
4 states that have electric retail competition, a price to
5 compare something that's in a box -- you know, like the
6 calories or unsaturated fats on your box, I think that would
7 be a capital idea to promote intelligent competitive
8 decisions, yes.

9 Q. Now, I think -- I think the phone companies or at
10 least some of the phone companies that are operating in -- in
11 multiple states would -- would say, you know, we -- we operate
12 in 17 states or however many states and, you know, we've spent
13 a lot of time and effort into -- to designing our -- our phone
14 bills or whatever.

15 You know, as a result, you know, it would cost
16 enormous expense to -- to do that. And how do you -- how do
17 you respond to that?

18 A. Simply by saying that of consumer issues that I can
19 think about, this is one that I think consumers would
20 prioritize as very high, and as -- and thus has a strong
21 governmental purpose.

22 And as far as changing bills, I know -- bills have
23 changed frequently. I -- I know that's a -- that's a common
24 concern that's raised. And the calculation of how much it
25 costs to change a bill differs greatly, depending on how much

1 computer software and so forth that you put into the equation.

2 But I -- I -- I think in this case the -- whatever
3 additional steps needing to change billing format is -- is
4 outweighed by the strong governmental purpose in
5 understandable bills.

6 Q. Okay. Now --

7 A. And -- and that -- and I can't -- you know, I feel
8 like I've done what I can to try to convince the FCC to
9 encourage this. I'm very discouraged and disappointed by the
10 slow steps that they're taking and their lack of enforcement.

11 And I think that despite the interstate overlap
12 concerns, I -- I think Missouri consumers would be very
13 grateful if this Commission would step in and do what it
14 could, and I think you have the clear authority to do to
15 require clear disclosure and understandable bills.

16 Q. Okay. Now, I'm gonna ask you about something. And
17 I know you're gonna say, well, then it -- it probably would
18 not be your priority in terms of things. But I just want to
19 explore something here for just a second.

20 Hypothetically speaking the phone companies say,
21 well, you know, we don't want to change our bills because it's
22 gonna make -- you know, it's gonna cost us money, et cetera,
23 et cetera.

24 What if we as a Commission, you know, were to
25 publish on a monthly basis, you know, our -- our appraisal of

1 what it actually costs, you know, a consumer to have a land
2 line from each of the three ILECS or the -- the -- or all of
3 the -- you know, include the small ILECs in there or whatever
4 and just say, you know, this is -- this is our opinion of what
5 they are actually charging you to say, you know, for instance,
6 if there is an intrastate access charge or an interstate
7 access charge, I mean, you know, that's not a government
8 mandated tax, but, you know, it's a fee, nonetheless that --
9 that they're gonna have to pay for, and plus give them an --
10 an accurate, you know, portrayal or at least a -- if they
11 don't want to do it, I guess I'm saying that's fine. Okay.
12 Do you want us doing it?

13 And -- and how would you feel about that?

14 A. I think there would be a great interest in that
15 among the general public. I know it's very complicated to do
16 because you're --

17 Q. Particularly --

18 A. What's best --

19 Q. -- with lo-- with lo-- estimating local taxes and
20 things of that nature.

21 A. Well, that -- that, too. But also usage levels and
22 where you call --

23 Q. Right.

24 A. -- and so forth.

25 And I know there are websites and services that

1 attempt to do this for consumers. But I -- I also know
2 there's a desire out there for a trusted dep-- you know,
3 authoritative objective source of information. And I think
4 that there -- there might be a place for that.

5 And I think that would be a good service if the
6 Commission could provide that if they I feel like they could
7 do so accurately.

8 COMMISSIONER DAVIS: Thank you. No further
9 questions at this time.

10 JUDGE JONES: Commissioner Murray?

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Mr. Coffman, do you have a sample of a bill that
13 misrepresents or disguises a governmental -- a charge as
14 governmentally mandated or authorized?

15 A. Afraid I don't -- I don't have one with me.

16 Q. Could you provide one for the record for the
17 necessity that there be a rulemaking?

18 A. I'll -- I'll see what we could do. I think that I
19 can say, in general, charges that are placed on the bill, for
20 instance, the portability fee and so forth, other regulatory
21 fees that are not required as a tax or as the Universal
22 Service Fee that's required is I -- I think inherently
23 misleading in that it's left to -- to any reasonable person's
24 interpretation to be a government charge when it's merely
25 allowed.

1 Q. Okay.

2 A. But I -- I'll see what I can do this week to
3 provide something into the record or --

4 Q. Okay.

5 A. -- a letter to the Commission if you'd like.

6 Q. Yeah, I -- I need to be more clear on what is the
7 problem, and are we -- is it necessary for us to take this
8 step to -- to solve the problem.

9 I -- the longer I'm here, the more annoyed I get by
10 rulemakings that I think go beyond what we need to do, and in
11 many instances are just plain unnecessary to begin with.

12 So from this Commissioner's perspective, I need to
13 really be convinced with each rulemaking that there is a
14 problem and that it has no other means of being solved than by
15 us doing a rulemaking, and that the benefits of solving that
16 greatly outweigh the costs of imposing the rule. Because I
17 don't generally see that.

18 A. I -- I understand your frustration. And -- and I'm
19 often in a situation myself when after much compromising to
20 get to this point, feel that the proposed rule is -- would not
21 be as effective as what was originally proposed or what I
22 would really like to see.

23 But I still believe that what's left here in front
24 of you would be a positive step and would make a difference.

25 Q. Okay. And you in-- you indicated earlier

1 that -- that you can't understand your own phone bill. And I
2 wanted to know if -- if -- wouldn't you think that it would be
3 bett-- a better help for customers to understand their
4 telephone bills if we had a requirement that was -- federal
5 requirement for the truth in billing, which would provide a
6 customer who has a home in Missouri, a summer home in
7 Colorado, a -- a winter home in Florida to be able to
8 understand all three of his phone bills without having to
9 resort to three different state requirements?

10 Wouldn't it be better if it were
11 consistent? Wouldn't that help customers understand?

12 A. Yes, I think it would for that person. I mean,
13 personally, I'm beginning to lose faith in the FCC's approach
14 on this issue. I -- you know, I would like to hope that this
15 Commission could be a leader in this area. Perhaps adopt an
16 approach that will become the Missouri approach to billing,
17 and would be adopted by many states around us.

18 But I -- I don't know. I don't know how to -- to
19 tell you to address this -- you know, the issue in a
20 federalist -- in a federalism government how best to approach
21 it, other than to suggest that you do have the authority to do
22 what's proposed. And I think it is a reasonable way to
23 address a serious problem.

24 Q. And the food labeling that was discussed earlier
25 that you indicated promotes intelligent, competitive

1 decisions. That is not done on a state-by-state basis; is
2 that correct?

3 A. I'm -- I'm not aware of any telecommunications
4 approach similar to that.

5 Q. And, in fact, if --

6 A. There maybe. I'm just not aware of it.

7 Q. If food labeling were done on a state --
8 state-by-state basis, wouldn't that create enormous confusion?

9 A. I don't know if it could be any worse than it
10 already is. I mean, right now I think what most consumers are
11 left with is to go through the trouble of switching a
12 provider -- maybe changing a phone number going through a
13 considerable amount of hassle, then waiting and going through
14 all the bill -- you know, the -- the phone calling that
15 they're used to doing and then comparing actually how much
16 they have to write the check for, instead of being able to
17 compare beforehand what to do because the char-- you know, the
18 various surcharges are not usually added in -- in the
19 particular offers. But --

20 Q. A customer today can -- can get that information if
21 they request it, can they not?

22 A. I -- I think a lot of the information can be gotten
23 with some effort and some knowledge of the system.

24 Q. And wouldn't it take some knowledge of the system
25 for a customer to understand the information that is being

1 proposed in this rule that they be required to have?

2 A. Yes.

3 Q. The -- the customer has to exert some
4 responsibility regardless; is that not true?

5 A. Well, it -- yeah. For instance, you know,
6 portability, universal service, those are concepts that, you
7 know, could require an essay to get a grasp of what
8 they're -- what you're talking about to begin with, right.

9 So I guess it -- it may depend on the
10 sophistication of the person digging into the information.
11 But I -- I think that the problem has -- has grown to such a
12 chronic state that even an educated professional person has a
13 hard time interpreting their bills.

14 Q. How many complaints does the Office of Public
15 Counsel get on a monthly basis regarding not being able to
16 understand their telephone bill?

17 A. Probably only a couple. We -- we don't track them,
18 and we do not have an 800 number that we advertise.

19 Q. So is what's --

20 A. But that --

21 Q. -- the basis of you're saying that it is enor--
22 an -- an enormous problem?

23 A. It's anecdotal evidence, based on just a variety of
24 interactions with the public that we've had.

25 Q. You indicated that customers would prioritize this

1 issue very highly; is that correct?

2 A. That's my opinion, yes.

3 Q. So -- and I believe that was in a response to a
4 question that you were asked by the Chair about driving up the
5 costs by imposing this.

6 And so I -- I assume that it follows, then, if the
7 customers prioritize this issue very highly, that they would
8 be willing pay more?

9 A. I -- I would see it would -- it would differ
10 consumer to consumer but, yes, I would probably agree that
11 generally speaking, yes, they probably would.

12 COMMISSIONER MURRAY: Thanks, Mr. Coffman.

13 JUDGE JONES: Commissioner Gaw?

14 COMMISSIONER GAW: Thank you, Judge.

15 QUESTIONS BY COMMISSIONER GAW:

16 Q. Mr. Coffman, you said earlier that you -- that you
17 would have gone farther than -- than this rule provides that
18 you support -- I think you said you support the rule, but you
19 would have gone farther.

20 Tell me what you would have done if you were going
21 to write this yourself.

22 A. Specifically I would like to ban single line-item
23 surcharges that are not based on governmentally mandated
24 charges.

25 Q. And -- and --

1 A. Although I understand that that could get into
2 litigation based on some recent FCC decisions, although I
3 would -- would definitely defend the Commission if they wanted
4 to do that.

5 I think that the -- you know, the telecom act is
6 very clear in that conditions. Including billing information
7 and activities, is left to the states.

8 Q. And if -- and -- and that's -- that authority is --
9 that you just referred to is what again?

10 A. I believe that's the Federal Telecom Act.

11 Q. Okay. So the FCC, you said you wouldn't --
12 wouldn't mind defending the Commission if we decided to go --
13 go that route?

14 A. That's correct.

15 Q. Did you see that language I passed out earlier?

16 A. I did.

17 Q. How close is that? That may not go as far as you
18 were talking about.

19 A. Oh, I think that would do.

20 Q. Would you be supportive of that language?

21 A. Yes, I would.

22 Q. Okay. What's your interpretation of what that
23 language would do, based upon your quick read?

24 A. Well, I think that -- with the second sentence I
25 think it's clear that -- that it would ban separately

1 identified charges that are not mandated or authorized.

2 Now --

3 Q. It says specifically authorizing.

4 A. Specifically authorizing, I guess could be open to
5 interpretation.

6 Q. Yes.

7 A. And --

8 Q. Your preference would be to strike the word
9 "authorize" and just go with mandated --

10 A. Yes.

11 Q. -- instead of adding specifically authorized?

12 A. Yes.

13 Q. So that's not quite as strong as you would like to
14 go?

15 A. That's correct. The --

16 Q. Go ahead. I don't want to cut you off.

17 A. I mean, it's -- it's very confusing in trying to
18 explain to a consumer how something like a portability fee can
19 be, you know, a very odd-numbered amount. And yet that
20 odd-numbered amount has not been mandated by the government.
21 The idea of simply authorizing or allowing charges to be
22 calculated and placed on the bill is -- is, I think, confusing
23 to people in and of itself.

24 But that's -- that's actually the state of the
25 regulation.

1 Q. Do you have people talk to you about issues -- in
2 general, issues dealing with your job, Mr. Coffman, when
3 you're --

4 A. Every you now and then.

5 Q. -- out with people?

6 A. Most of the time they just glaze over and --

7 Q. Yes.

8 When they do -- occasionally they want to talk to
9 you about things that you do, do you ever hear anyone say
10 anything about this issue?

11 A. Yes. I think that it's -- it's an issue that most
12 people feel free in talking about; whereas, they might not
13 understand a lot of the other technical jargon and -- or -- or
14 understand the importance of various things.

15 When they talk about their bill, they understand
16 their bill because they pay it every month. And they don't
17 understand exactly what they're paying for.

18 Q. Would you say this ranks fairly high in topics of
19 conversation, as far as quantity of conversation that comes up
20 when you're talking to people out -- out there -- the general
21 citizens that are out there around?

22 A. I would say if -- if the discussion was about
23 telephone service generally, it would be -- one of the most
24 common comments you would hear is, I can't understand my phone
25 bill.

1 Q. Do you think that helps -- do you think not
2 understanding one's phone bill helps facilitate good choices
3 in a competitive environment in telecommunications?

4 A. No. Because my understanding of -- of true
5 effective competition is that it would be based on intelligent
6 decisions.

7 Q. Based upon good information?

8 A. Yes.

9 Q. Let's talk just a little bit about this --
10 the -- the purpose of this proposed rule or -- or trying to
11 address some of the concerns that are out there surrounding
12 this general topic.

13 Would -- would you say one of the goals is the one
14 that you've just been discussing, to try to make the -- the
15 bill itself easy to understand for people who are -- who are
16 perhaps confused by looking at their particular company's
17 telephone bills today?

18 A. Yeah. I -- I think there's a -- a valid goal in
19 simply being able to understand what the charges identify, but
20 also to be able to have a good sense of what the true cost of
21 the service is, yes.

22 Q. Now, one of the -- one of the things that this
23 proposed rule also gets into is the initial sales contact or
24 the sales contact when they're describing what -- what you're
25 getting if you -- if you go to a different company's services,

1 for instance.

2 Do you -- do you think this -- this proposed rule
3 would be helpful to consumers in understanding what they're
4 going to actually be paying when they switch their -- their
5 phone service?

6 A. Again, I think it's commonsense to require
7 disclosure before the contract is entered into. Although
8 I -- I'm entirely supportive of your Staff's suggestion that
9 if consumers do not want to here a litany of what each charge
10 is, they do not have to listen to it. And I think that's
11 perfectly reasonable.

12 Q. Now, and when we're talking about some of these
13 charges that appear down -- down under the general rates of
14 below those in those line items, if we break those down, I
15 suppose we've got some charges that no matter -- no matter
16 which company you were with, you were likely to receive the
17 same charge if -- if you move from one company to another,
18 assuming everything else was equal.

19 There's some charges that would be like that, I --
20 I assume, wouldn't there be?

21 A. Yes.

22 Q. Can you name any of those off the top of your head,
23 or give me an example of one?

24 A. You mean taxes?

25 Q. I -- perhaps. And I -- I'm not sure. It's one of

1 the --

2 A. I assume you're still talking about the same
3 location.

4 Q. Would those generally on -- on a local level just a
5 straight pass-through or not, do you know?

6 A. As I understand it, yes. I don't know if I'm --

7 Q. The Missouri Universal Service --

8 A. -- an expert in taxation.

9 Q. -- Universal Service Fund charge --

10 A. Yes.

11 Q. -- would that be the same from one company to -- to
12 the next?

13 A. Well, based on the overall bill -- if the bill
14 changed, it would be -- it would be different.

15 Q. Assuming those things were changed --

16 A. If the rate -- if the rate does not change.

17 Q. -- if I just flipped different companies --

18 A. The rate would not change --

19 Q. -- for the same month?

20 A. -- from one company to the next.

21 Q. Okay. Then I -- there are -- so there are some
22 charges like that. Now, the Missouri Universal Service Fund
23 charge would be something that's -- that's authorized under
24 Missouri rules?

25 A. Yes.

1 Q. Actually mandated by Missouri rules at the present
2 time, I think --

3 A. Yes.

4 Q. -- is that correct?

5 Can you give me something on the federal level that
6 would be similar?

7 A. And -- and I -- and I'm not --

8 Q. I'm sorry. I'm not trying to put you on the spot
9 here.

10 A. -- sure if -- if -- I meant I don't know the
11 answer. I don't know about, for instance, the Federal
12 Universal Service Fund, whether that would be characterized in
13 the same manner.

14 Q. And that's because what? There's a difference in
15 the way that's allowed to be calculated, isn't there?

16 A. Yes.

17 Q. And, in fact, companies are not specifically
18 mandated to pass through at the federal level, are they?

19 A. Not at a particular rate. They're -- they're given
20 some leeway in the calculation.

21 Q. So -- so that is a -- would that be an example of a
22 charge that might be authorized by a federal -- a federal rule
23 perhaps, federal statute?

24 A. Yes.

25 Q. But the calculation of the amount is left up to the

1 company?

2 A. I believe that's correct.

3 Q. There is perhaps a maximum amount, is that -- would
4 that be accurate or not?

5 A. I -- I know there's a variety of parameters, and
6 I'm not really prepared today to --

7 Q. Yeah.

8 A. -- tell you exactly how it is. But, yeah, it's --
9 my understanding is that companies are given certain freedom
10 to calculate that as they wish.

11 Q. Okay. So if -- if I move from one company to
12 another, and if I assume I have the same -- everything the
13 same, that -- after I move on the amount of usage, et cetera,
14 I might actually have a different amount that's being -- that
15 I'm gonna be assessed when I switch that company on the
16 Universal Service Fund charges from the federal line?

17 A. Yes.

18 Q. All right. So then do we -- then we've also got
19 some line-item charges that appear that -- that are not
20 mandated or specifically authorized by the federal statutes,
21 Missouri statutes or rules under the FCC or Missouri Public
22 Service Commission that appear on Missouri's bi-- customer's
23 bills; is that correct?

24 A. Yes.

25 Q. And --

1 A. Things such as regulatory fees, yes.

2 Q. Something that shows up as government regulatory
3 fees or something that just -- in some category down there
4 that -- that --

5 A. Right.

6 Q. -- that -- that one company may put on the bill and
7 another company doesn't?

8 A. Right. And I think that would fall into the
9 category of something that is patently misleading, in my
10 opinion, if it has governmental or regulatory in the label and
11 is not in any way authorized.

12 Q. Yeah. So if -- if -- if I'm -- if I am trying to
13 decide whether to switch service or not --

14 A. Uh-huh.

15 Q. -- it -- that is something that would be important
16 to know in understanding how my rate going forward is gonna
17 compare with the rate that I've got in the company that I'm
18 currently doing business with?

19 A. I agree.

20 Q. Do you -- do you think that those particular fees
21 that do not change from one company to another that it -- that
22 it is particularly important that those be disclosed if the
23 amount doesn't change when you switch?

24 A. I think that would be a reasonable requirement.

25 Q. To -- to disclose them or not disclose them?

1 A. Perhaps it would be reasonable to require the
2 disclosure of everything that does not remain the same.

3 Q. Okay. So that you're actually getting the
4 information that -- to compare what actually changes in -- in
5 the bottom line how much you're paying?

6 A. That you might be getting closer to the
7 apples-to-apples food labeling idea.

8 Q. Which is one of the Public Counsel's objectives in
9 this --

10 A. Yes.

11 COMMISSIONER GAW: -- if I heard you correctly?

12 I think that's all I have right now. Thanks.

13 JUDGE JONES: Commissioner Clayton?

14 COMMISSIONER CLAYTON: Thank you, Judge.

15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. Mr. Coffman, I want to focus in on one particular
17 area, and that's the type of charges that we're talking about
18 here.

19 There's been some discussion today that there are
20 several types of charges that we could talk about in terms of
21 disclosure or banning those types of charges.

22 And I guess the first category would be anything
23 that looks like a government charge; is that a correct
24 statement?

25 A. That's a fair categorization, yes.

1 Q. Now, are there other charges that Public Counsel
2 believes should be either dealt with in -- through disclosure
3 or dealt with through not allowing them on -- as a line-item
4 charge on a bill?

5 A. Well, I think that the -- the spectrum that
6 Commissioner Gaw was outlining between actual taxes and
7 government-mandated charges, as specified rates, as opposed to
8 those that are not ordered or authorized directly by the
9 government, that -- that is a -- I think an important
10 spectrum.

11 And we would like to see some line drawn there
12 where -- whereby we -- we are not leading consumers to believe
13 that all these charges have been mandated by the government,
14 and -- and are not simply breaking out the basic rate to keep
15 the -- in a misleading way keep the basic rate or charge lower
16 than it actually is when you pay -- when you write your check.

17 Q. Well, what is Public Counsel's position on a
18 line-item charge that is not governmental that doesn't
19 remotely look like a governmental charge or tax being listed
20 as line item?

21 A. We'd like to discourage that. Now, if it's --

22 Q. And why is that?

23 A. Because it -- it hides the true cost of telephone
24 service.

25 Q. Okay.

1 A. Now, I -- I think that you're on -- on the safest
2 ground simply requiring here that there be full disclosure,
3 and that it be accurately identified as whether something is
4 governmentally mandated.

5 Q. Now, does Public Counsel believe that a company
6 should not be allowed to offer a service that has a monthly
7 fee; for example, unlimited long distance or, you know, say a
8 set number of minutes for a --

9 A. No.

10 Q. -- flat fee?

11 A. No, not necessarily. No.

12 Q. Okay. How about offering a particular rate per
13 call that also has as a component a monthly fee that's
14 disclosed as just the monthly cost for a particular service;
15 is there a problem with that part of --

16 A. Generic -- generically speaking, I don't think
17 there's a problem with that, as long as it's clearly and
18 accurately disclosed what the rate is.

19 Q. So you don't have a problem with a company charging
20 a separate amount of money outside of a usage rate if it's
21 disclosed, first of all?

22 A. Yes.

23 Q. And clearly identifying that type of charge is the
24 second component of that?

25 A. Yes.

1 Q. Now, if something were called a carrier cost
2 recovery charge, would something like -- would Public Counsel
3 have a problem with that type of charge?

4 A. Well, it's -- it's awfully generic. It doesn't
5 give you a lot of information about what's actually being
6 recovered. I don't -- I don't think that it would run afoul
7 of the -- the rule as proposed by the Commission.

8 I mean, I know we've -- we've been talking about a
9 lot of what we would love to see in a perfect world here
10 instead of just dealing with it. But I don't think that would
11 violate the proposed rule or any variation that's been
12 discussed here.

13 Q. Well, didn't one the orig-- one of the original or
14 one of the versions ban all non-governmental line-item
15 charges?

16 A. I think so, yes.

17 Q. Well, would -- that type of charge would violate a
18 complete ban, would it not?

19 A. I -- I think -- all I'm prepared to say today is
20 that -- that I would like to see a ban on all surcharges that
21 are line item or-- oriented and government -- and -- and not
22 governmentally mandated as part of the basics.

23 Q. How about in-state access recovery charge?

24 A. Well, I -- I think -- again, in a perfect world,
25 I'd prefer simpler apples-to-apples rate labeling. But I -- I

1 don't -- I think that that's probably getting into a tougher
2 area for the Commission to be -- to actually ban that.

3 I think that it's -- it's reasonable at this point
4 just to take the step of encouraging clarity and -- and truth
5 in what's actually governmentally mandated and what isn't.

6 Q. Well, let me ask a question this way. And I
7 know -- and I may get my facts wrong, so feel free to correct
8 me. Not too much, but feel free to correct me.

9 There's been some litigation both before the
10 Commission and before appellate courts regarding extra charges
11 on bills by various carriers around the state. And I guess
12 I'm not sure which cases there are.

13 Do you see those charges that Public Counsel has
14 frankly aggressively tried to keep from being implemented --
15 do you see those types of charges as being in play in
16 discussion on this rule?

17 A. I don't think that those issues overlap with what
18 the Commission is trying to do here. The \$1.95,
19 \$1.98 charges, I think that there's a variety of reasons why
20 those, I think, were not lawfully authorized and -- and cost
21 justified, but --

22 Q. I -- I understand that.

23 But are those the type of charges that we are --
24 are those a form of the type of charges that we're discussing
25 in this rule?

1 A. Not -- not unless they confusingly implied that
2 they were governmentally mandated.

3 Q. Well, I want to ask it -- let ask it this way:
4 Does an in-state access recovery charge sound governmentally
5 related to you?

6 A. Not necessarily.

7 COMMISSIONER CLAYTON: Okay. I don't have any
8 other questions.

9 Thank you.

10 JUDGE JONES: Are there any other questions for the
11 Office of Public Counsel?

12 (NO RESPONSE.)

13 JUDGE JONES: Seeing none, you may step down,
14 Mr. Coffman.

15 (WITNESS EXCUSED.)

16 JUDGE JONES: It's near enough to noon to take a
17 break now. We still have testimony from SBC, CenturyTel and
18 Sprint. We'll reconvene at 1:15, and begin with SBC.

19 We can go off the record. Thank you.

20 (A RECESS WAS TAKEN.)

21 JUDGE JONES: Okay. We are back on the record with
22 Case No. TX-2005-0258, in the matter of the new proposed
23 Rule 4 CSR 240-33.045.

24 This morning we had -- we heard testimony from the
25 Staff of the Commission and from the Office of the Public

1 Counsel.

2 This afternoon we'll be continuing with testimony
3 from SBC, CenturyTel and Spectra and Sprint. First we'll --
4 we'll hear from SBC.

5 MS. MACDONALD: Good afternoon.

6 JUDGE JONES: Would you please raise your right
7 hand?

8 (WITNESS SWORN.)

9 JUDGE JONES: Thank you.

10 MIMI MACDONALD, having been duly sworn, testified as follows:

11 MS. MACDONALD: Good afternoon. As the Commission
12 is aware, on April 14th, 2005 Southwestern Bell Telephone,
13 L.P., doing business SBC Missouri filed comments in this case.

14 SBC Missouri also filed an errata to its comments
15 yesterday, which I will briefly discuss in a moment. I would
16 like to take this opportunity to briefly highlight SBC
17 Missouri's position with respect to proposed
18 Rule 4 CSR 240-33.045.

19 At the outset I reiterate that SBC Missouri agrees
20 that residential customer bills should contain clear and
21 non-misleading descriptions of telecommunication company
22 charges.

23 Residential customers should be able to readily
24 discern from their bills the services for which they're being
25 billed and all charges, including surcharges associated with

1 those services.

2 However, SBC Missouri does not believe the proposed
3 rule is the prop-- is the appropriate method to achieve these
4 objectives for four main reasons.

5 First, truth in billing requirements already exist
6 at the federal level. And those rules apply to both
7 intrastate and interstate telecommunications services.

8 Specifically 47 CFR 64.2401, which SBC Missouri
9 sets forth on page 2 of its comments requires all
10 telecommunications bills to inclo-- to include full and
11 non-misleading descriptions.

12 SBC Missouri meets that standard and more.
13 SBC Missouri's descriptions of its bill's charges are clear
14 and non-misleading. SBC Missouri responds to customer's
15 request.

16 Customers advise SBC Missouri that they wanted
17 bills that were easier to understand. SBC Missouri meet --
18 met that need by implementing a new bill format, which
19 includes not only billed charges, but also information to
20 assist customers in understanding the amount for which they
21 billed.

22 For example, SBC Missouri provides its customers
23 with information regarding rate changes in a specific portion
24 of the bill. SBC Missouri also simplified billing for its
25 bundles clearly identifying the appropriate taxes and sur--

1 surcharges for the service the customer purchased.

2 Additionally, SBC Missouri provides its customers
3 with information regarding line-item charges during
4 telemarketing calls, customer-initiated calls to add or change
5 services, and in response to consumer-initiated billing
6 inquiry.

7 SBC Missouri also includes information on its
8 website so that customers can view explanations regarding
9 fees, surcharges and taxes.

10 Further, SBC Missouri is continually looking for
11 new ways to educate its residential business customers. Thus,
12 since SBC Missouri is meeting or exceeding the FCC's truth in
13 billing requirements, SBC Missouri does not believe that the
14 proposed rule is necessary.

15 Second, apart from being unnecessary, the FCC is
16 currently examining its truth in billing rules. Specifically
17 the FCC is evaluating the distinction between
18 government-mandated and non-mandated charges, and whether it
19 should require a separate section on the bill for
20 government-mandated charges.

21 Additionally and most importantly, the FCC is
22 evaluating whether it should pre-empt state regulation of
23 carrier billing practices. While it has not done so at this
24 time, it clearly indicated in its notice of proposed
25 rulemaking that it tentatively concluded that it was going to

1 pre-empt state regulation of carrier billing practices.

2 Giving the potential impact of this proceeding on
3 this -- the federal proceeding on this proposed rule, the
4 Commission should defer this proceeding until the FCC resolves
5 its truth in billing issues.

6 Third, SBC Missouri does not believe there is
7 sufficient evidence to -- to demonstrate that the existing
8 bills are insufficient to protect consumers. SBC Missouri
9 understands that some individuals find line items and
10 surcharges distasteful.

11 However, line items and surcharges convey
12 information to the public about the nature of government
13 regulations, telecommunications companies actions and/or
14 telecommunications companies services.

15 The right to bill a line item is a right protected
16 by the First Amendment of the United States Constitution. And
17 the FCC has specifically determined that non-misleading line
18 items are permissible under the FCC's rules.

19 The marketplace operates as a check on
20 telecommunications companies billing practices. If a
21 telecommunications company engages in unreasonable billing
22 practices, it will lose existing customers, as well as the
23 opportunity to gain new ones.

24 For these reasons the FCC's existing truth in
25 billing rules in combination with market forces are sufficient

1 to address telecommunications billing practices.

2 Finally, even if the Commission enacts this
3 proposed rule, the Commission does not have the legal reach to
4 fix all of the concerns regarding line items and surcharges.

5 Many line items are non-regulated charges or are
6 interstate charges, which are not under this Commission's
7 jurisdiction. Moreover, the Commission is without the
8 authority to eliminate lawfully approved tariff charges
9 through this rulemaking proceeding.

10 I know that Staff has proposed alternative
11 language, which it believes eliminates this problem. However,
12 as I will discuss in a minute, we do not believe that that is
13 the case.

14 I'm not gonna take time to address every specific
15 comment that SBC Missouri raised in its comments that are on
16 file with the Commission. However, I will briefly discuss
17 four areas which cause SBC Missouri concern.

18 First, proposed Rule 4 CSR 240-33.045 must be
19 limited to regulated services over which the Commission has
20 jurisdiction. This will require a change to the purpose of
21 the rule, as well as to Subsection 1. SBC Missouri proposes
22 specific language to rectify this concern on pages 6 and 9 of
23 its comments.

24 Second, proposed Rule 4 CSR 33.045, Subsection 1
25 must be limited to recurring monthly charges, as it would be

1 unreasonable, absent specific customer request, for
2 telecommunications carriers to keep a customer on the line to
3 discuss all non-recurring monthly charges that a customer may
4 see on his or her bill.

5 For example, companies may offer pay-per-use
6 features, such as three-way calling and directory assistance.
7 It is unreasonable for a telecommunications company to review
8 each of these services with a customer on the telephone unless
9 the customer desires such information.

10 SBC Missouri notes that customers have advised us
11 in our marketing research that they want the information to be
12 at their disposal, and they want it provided to them when they
13 request it, whether this -- that be on our website or when
14 they call in, not as the result of mandatory disclosures.

15 This subsection is also unreasonable, because it is
16 not feasible for SBC Missouri to describe all of the
17 usage-sensitive rates to a customer during the execution of
18 the service agreement.

19 The use of the word "all" may require SBC Missouri
20 to provide customers with pay-per rates for services such as
21 three-way calling, as well as each of its toll plans with each
22 customer who seeks to establish service.

23 This would place an enormous economic burden on
24 telecommunications companies without any evidence that
25 customers want such information or will be willing to foot the

1 cost of such a mandate by paying higher rates.

2 SBC Missouri appreciates Staff's efforts at
3 modifying this proposed rule to address Staff's -- to address
4 SBC's concerns. However, SBC Missouri does not believe that
5 the language proposed by Staff would eliminate its concerns.

6 Specifically the language currently proposed by
7 Staff actually expands and clarifies that it's supposed to
8 extend to not only interstate, but non-regulated charges.

9 We do not believe that the Commission has
10 jurisdiction to do that. And, furthermore, it is unreasonable
11 for SBC Missouri to have to disclose information about charges
12 for which it may be a third-party biller, but which it does
13 not have at the time of the application of service.

14 Finally, this subsection could be interpreted to
15 require telecommunications companies to provide full, clear --
16 clear and meaningful disclosure of all non-recurring and
17 recurring charges regardless of whether they are tariffed.

18 To -- to shed light on this, I want to talk briefly
19 about the problem with taxes. And I know that Staff has tried
20 to get rid of the problem with taxes, but I want to make sure
21 that we're clear on exactly why that is a problem.

22 SBC Missouri's call centers are not set up for
23 service representatives to provide customers with specific
24 information about taxes. If SBC Missouri were required to
25 link its tax tables with the billing system that the service

1 representative has access to, SBC Missouri would incur
2 non-recurring costs of approximately \$660,000.

3 That esti-- estimate was actually provided in our
4 initial comments, and was not part of what we were correcting
5 yesterday through our errata.

6 Additionally, SBC Missouri estimates that for each
7 additional minute of service representative time that the
8 service representative would remain on the line, it would
9 incur costs of approximately \$500,000 annually. This is in
10 addition to the \$660,000, which would bring our cost close to
11 \$1.1 million to implement the rule as proposed.

12 If this proposed rule requires SBC Missouri to
13 provide clear, full and meaningful disclosure of taxes, such a
14 requirement is clearly unreasonable.

15 For example, under Missouri statutes counties are
16 authorized to implement a 911 tax. Actually counties can
17 be -- impose taxes in one of two ways. Under
18 Section 190.292.4 a county may levy a sales tax, which does
19 not exceed 1 percent on the receipts from the sale of -- the
20 sale at retail of all tangible personal property or taxable
21 services at retail within any county adopting such a tax.

22 Alternatively, a county may impose a tax pursuant
23 to Section 190.305 in an amount not to exceed 15 percent of
24 the tariffed local service rate or 75 cents per access line
25 per month.

1 Some counties such as Adair and St. Louis impose
2 such a tax. Other counties, such as Marion and Pulaski,
3 however, do not impose such a tax.

4 A service representative is simply not equipped --
5 equipped to address questions regarding the imposition of
6 911 taxes and are what type of 911 tax the county has elected
7 to implement.

8 Additionally, some cities impose a city license
9 tax. However, cities do not uniformly impose such taxes. For
10 example, some municipalities tax only local services, meaning
11 dial tone and vertical features. Others, however, impose
12 taxes on all in-state telecommunications services, including
13 dial tone, vertical features and toll.

14 Service representatives are not equipped to address
15 municipalities' taxes and/or the applicability of taxes to
16 specific services.

17 Further, some municipalities impose a sales tax on
18 telecommunications services. There are dozens, if not
19 hundreds of municipalities in Missouri alone for which
20 SBC Missouri bills taxes on behalf of the municipality. A
21 service rep simply cannot be an expert on taxes in each of
22 those communities.

23 Moreover, there is simply no evidence the customers
24 want disclosure during their application for service,
25 especially since residential customers obtain information

1 regarding taxes, franchise fees and/or other fees and
2 surcharges in their monthly bill.

3 Third, SBC Missouri objects to proposed
4 Rule 4 CSR 240-33.045, which states that the presence of a
5 charge in a currently effective tariff is not evidence that
6 the charge is authorized or mandated by the Commission.

7 The Commission rarely finds itself in a situation
8 where all telecommunications companies actually agree on a
9 specific subject; however, this is one of them.

10 By definition any currently effective tariff
11 indicates that the charge is authorized or mandated by the
12 Commission. The Commission either approve of the charge or
13 allowed it to go in effect by operation of the law.

14 Section 386.270 specifically provides that all
15 rates, tolls, charges, schedules and joint rates fixed by the
16 Commission shall be enforced and shall be prima fascia lawful.

17 Thus the last sentence of proposed
18 Rule 4 CSR 240-33.045, Subsection 4 should be deleted. I note
19 that Staff has today offered competing language. That
20 language does not solve the problem, because the language as
21 drafted still implies that Commission-approved tariffs are not
22 government authorized or approved.

23 As a governmental body, the Commission did
24 authorize or approve the tariffs and, therefore, that sentence
25 would simply be legally inaccurate.

1 Finally, SBC Missouri objects to proposed
2 Rule 4 CSR 240-33.045, Subsection 5. The Commission has no
3 authority to order removal or modification of any charge that
4 it does not comport with this rule. Instead the Commission
5 must consider after a hearing whether an existing tariff is
6 lawful.

7 Further, the Commission may review any newly
8 proposed tariff in its decision to approve or reject the
9 tariff that's subject to review on the basis of whether it is
10 lawful or reasonable.

11 SBC Missouri proposes specific language regarding
12 this provision on page 11 of its comments. SBC Missouri notes
13 that the Staff also attempted to rectify SBC's concerns
14 regarding this subsection.

15 However, in effect all that has occurred is that
16 Staff's proposed language would require a hearing that may
17 satisfy the due process requirements; however, the Commission
18 still must make a determination that an existing tariff is
19 unlawful, not just inconsistent with the rule.

20 I want to briefly address the errata that
21 SBC Missouri filed yesterday. On page 8 of our comments --
22 our original comments we said SBC Missouri estimates that if
23 it had to implement the information technology changes in
24 order to allow such disclosures, it would incur non-recurring
25 costs of approximately \$660,000 far in excess of the \$500

1 private-cost estimate which accompanied the proposed rule.

2 SBC Missouri discovered that the private-cost
3 estimate was actually \$643,000. Thus SBC seeks to amend the
4 above-referenced sentence to read, SBC Missouri estimates that
5 if it had to implement the information technology changes in
6 order to allow such disclosures, it would incur non-recurring
7 costs of approximately \$660,000 in excess of the \$643,000
8 private-cost estimate which accompanied the proposed rule.

9 Additionally on page 8 of our comments, we stated,
10 moreover, such disclosure would be very costly -- far in
11 excess of the \$500,000 private-cost esti-- the \$500
12 private-cost estimate which accompanied the proposed rule.

13 SBC Missouri discovered that the private-cost
14 estimate was actually \$643,000. Thus SBC Missouri seeks to
15 amend the above-referenced sentence to read: Moreover, such
16 disclosures would be very costly.

17 Finally, as I stated previously, SBC Missouri
18 estimates that for each minute of increased service
19 representative time to disclose taxes, surcharges and fees, it
20 would incur approximately \$500,000 annually.

21 SBC Missouri would need to know precisely what
22 disclosures are required under the proposed rule in order to
23 determine the actual amount of increased talk time. The
24 estimate of service representative labor cost was what was
25 inadvertently omitted, and that is what we seek to change by

1 filing the errata.

2 This concludes my original comments; however,
3 you -- however, I'd be happy to address any questions that the
4 Commissioners have.

5 JUDGE JONES: Commissioner Murray?

6 COMMISSIONER MURRAY: Thank you.

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. I have a couple of questions for you at least. Let
9 me try to get organized here.

10 First, let's go to Section 4, in that it seems like
11 the -- the Staff is trying to achieve one goal here, and in
12 doing so is creating a problem by putting in language that
13 really misstates what a tariff is evidence of.

14 With the proposed change that Staff submitted
15 today -- I think you were here when I -- I asked Staff if they
16 would -- what they would think of substituting for mandated by
17 the Commission -- substituting is not a governmental --
18 governmental mandated or authorized fee.

19 And -- but in thinking more about it, I'm wondering
20 if that would correct the problem if we added -- we changed
21 mandated by the Commission to say it's not evidence in and of
22 itself that the charge is a governmental mandated or
23 authorized fee for purposes of this rule.

24 A. Well, I -- I would have to think about that. But I
25 think the purpose of the rule is to require disclosure. And

1 so we're -- we seem to be mis-- mixing two different concepts
2 within one rule.

3 We're -- we seem to be saying we're gonna have
4 disclosure requirements, and then in that sentence we seem to
5 be saying that we're gonna have tariff filing re-- tariff
6 filing rules.

7 I mean, I think basically what the purpose of
8 Staff's proposal is that they want to say that the presence of
9 a charge in a currently effective tariff may be considered --
10 may -- you know, after a hearing and an opportunity to
11 cross-examination, maybe considered by the Commission to be
12 unlawful. But that could always occur in --

13 Q. No. That's Section 5. I'm -- I'm just focusing on
14 Section 4 right now.

15 A. Well, I mean, it is all -- any -- any charge that
16 is in the tariff currently is authorized and mandated by the
17 Commission.

18 So once we put the authorized and mandated by the
19 Commission language in a sentence, I would have a concern
20 about that. Because we wouldn't be filing a tariff pursuant
21 to a proposed rule --

22 Q. Okay.

23 A. -- this proposed rule.

24 Q. I think what -- I think what they're trying to
25 accomplish here is to say that a current -- let's see.

1 The presence of a charge and a currently effective
2 tariff is not justification for including that charge --
3 let's -- let's put it this way -- for representing that charge
4 as a governmentally mandated or authorized fee.

5 A. I agree. But I think legally that's incorrect,
6 because the Commission is a governmental agency. And when it
7 either approves the tariff or allows it to go into effect by
8 operation of law, it became authorized or mandated.

9 So while I understand we're trying to move words
10 around to get to where the Staff wants to go, I think legally
11 it's just inaccurate.

12 Q. And I -- I agree with you. It is legally
13 inaccurate.

14 And your -- your solution is just to remove the
15 sentence; is that correct?

16 A. Yes. I mean, the rule is entitled requiring clear
17 identification and placement of separately identified charges
18 on customer bills. That doesn't have anything to do with
19 that.

20 Q. The -- it's -- it's difficult for me to work with
21 this, because I personally don't think the -- I personally do
22 not believe the rule is necessary. So I'm having trouble
23 trying to wordsmith something that I don't think is necessary.
24 But I think that it has to be wordsmithed (sic), because it's
25 probably going to become a rule.

1 And if -- I -- I -- I suppose the fear here is that
2 in establishing this rule that prevents a carrier from
3 representing something as a governmental mandate or
4 governmentally authorized fee -- that since a tariff is a
5 governmentally authorized fee, if there is not some language
6 to prevent to -- to get at that problem, that's the fear, that
7 anything that's tariffed will be misrepresented as a
8 governmentally authorized fee and it won't be in
9 non-compliance with this rule.

10 A. And -- and I understand the problem. But I -- I
11 think that it is governmentally man-- authorized. And -- and
12 that's the very problem.

13 I mean, perhaps the concern is that it -- it -- it
14 shouldn't be described as a charge that the Commission
15 ordered, but they authorized it by approving the tariff.

16 Q. Yes. And so it is -- it is authorized, I agree.
17 It is an authorized charge because it is tariffed.

18 A. I mean, it's not ordered as a result, for example,
19 of a case typically. It would typically be that the tariff
20 was filed and approved or went into effect by operational law.
21 And I understand the concern. But legally it's just
22 incorrect.

23 Q. Well, why is it that we're even using "or
24 authorized"? And I'm sure that -- I think there was some
25 lengthy discussion about that. And I've forgotten where

1 authorized came in, in addition to mandated.

2 Because if you're not -- if a carrier is not
3 allowed to put a charge on the bill misrepresenting it as
4 something that the government has mandated, why do we need to
5 say they can't put a charge on the bill that says it was
6 authorized by the government?

7 A. Well, I think that concern and the reason why
8 authorized got in there, although, you know, we've gone round
9 and round on exactly how the words did get in there -- I think
10 authorized came in there because some charges
11 telecommunications carriers are allowed, but not required to
12 bill to their customers.

13 So by auth-- by using the word "authorized" the
14 feeling was that it might be -- not be a mandated charge where
15 the government said charge 9 cents, but it might be
16 authorized.

17 Q. All right.

18 A. And another example would be property taxes,
19 because those are taxes which the -- the courts -- the federal
20 courts have held that you can pass through to your customers.

21 So the courts have authorized them, but they
22 haven't mandated that we charge them.

23 Q. Well, so really what we're talking about is
24 authorize customer pass-through fees, is it not? We're not
25 talking about authorized charges that a carrier can -- can

1 charge for the carrier service; we're char-- we're talking
2 about not misrepresenting something as authorized by the
3 government to be a customer pass-through?

4 A. I'm not so sure I --

5 Q. Maybe I'm wrong.

6 A. I'm not sure I understood exactly the distinction
7 there.

8 Q. Okay. The -- the -- the apparent problem has been
9 that some carriers have put things on the bills that look like
10 some level of government either mandated it or authorized the
11 carrier to put that on as a sep-- as a cus-- as a governmental
12 fee passed through to the customer.

13 A. I agree with that. And -- and I think that that is
14 why it's primarily important that the Commission not do
15 anything at this time. Because what even the word "mandated"
16 means is being debated at the federal level.

17 And perhaps we will get clarity there as to how
18 we're going to label costs that are actually approved by a
19 Commission through a tariff filing, but are not directed by
20 the Commission to be assessed to a customer.

21 Q. Yes. And I know the FCC in its request for
22 comments was looking in -- in -- in depth at a lot of these
23 same issues, and as you say, in defining some of these issues.
24 So that's -- I believe that's strong support for not on a
25 state level addressing it at this point.

1 But I'm just wondering if this -- if this rule does
2 pass, if we could make that better by changing that identified
3 charges that appear to be govern-- either governmentally
4 man-- the charges that appear to be governmental char-- well,
5 governmentally imposed -- would governmentally imposed --

6 A. Imposed gets us somewhere. Although I'm not so
7 sure it would really -- I don't know. I'd have to think about
8 that. Because now on further reflection I don't really know
9 that -- I think that there is a distinction between
10 governmentally imposed and/or authorized once the tariff is
11 approved.

12 Because once it is approved, it is the law and it
13 would be governmentally imposed, because we would be required
14 to fil-- fil-- follow our tariffs.

15 I mean, I understand the issue, and I understand
16 the desire to simplify this. I -- I just really strongly
17 believe that we need to wait to see what happens at the FCC.
18 Because this issue, hopefully, will be addressed and make it
19 easier for carriers to apply consistently throughout their
20 territories.

21 Q. And aside from the fact that I agree with you, if
22 this were passed with the language changed to -- in Section 4,
23 companies imposing separately identified charges that appear
24 to be governmentally imposed fees --

25 A. I still think I would have a concern with that,

1 because I think that once the tariff has been approved --

2 Q. Well, it's --

3 A. Again, it's unclear.

4 Q. -- got a governmentally approved as a tariff. It's
5 a governmentally authorized charge.

6 A. But once it's -- once it's authorized, we are
7 required to follow our tariffed rate. So at that point, it
8 would be imposed on the customer. Do you see what I'm
9 saying? So we're kind of going round and round on that.

10 Q. And I think that may be splitting hairs, in terms
11 of -- and -- and I agree that you have to split hairs when
12 you're doing a rulemaking, because rulemakings create
13 tremendous problems of interpretation.

14 But if we have to do this, I'd like everybody to
15 look at whether that language would -- would be better.

16 And then on Section 5 I think I wrote down here
17 what -- when you were stating your objection to the Staff's
18 new proposed language.

19 And the reason that you're still objecting to it,
20 even though it would require a hearing and the -- the due
21 process of a complaint, is it would still allow the Commission
22 to remove or modify a tariff that doesn't -- be -- for the
23 reason that it doesn't comport with this rule, rather than for
24 the reason that it is unlawful --

25 A. Right.

1 Q. -- which is what we're now required to find?

2 A. Right. And I think that the Commission can't do
3 that. Because under 386.270, all tariffs are presumed legally
4 valid. So in order for them to be invalid, the Commission
5 would have to make a finding that they were unlawful.

6 Q. And without Section 5 altogether, the Commission
7 has the authority, as I think Ms. Dietrich recognized earlier,
8 to entertain a complaint that a tariff is unlawful?

9 A. I agree with that. And I think the Commission also
10 has the authority to refer a -- any billing problems that it
11 sees through line-item charges to the FCC under the truth in
12 billing rules.

13 Q. Okay. And you mentioned somewhere under your
14 concerns that the language -- and I -- I didn't catch where
15 this was exactly. But you said the language proposed by Staff
16 actually expands?

17 A. Yes. The language that the Staff has now added, as
18 I understand it, is this ex-- this explanation shall apply to
19 all charges that may be billed to a customer, including
20 interstate and non-regulated charges or taxes that may vary,
21 depending on the -- hold on one second.

22 I think it says, this explanation shall apply to
23 all charges that may be billed to the customer, including
24 interstate and non-regulated charges or taxes that may vary,
25 depending on the location of the customer or the amount of the

1 customer bill -- that's not it.

2 Could I -- could I just borrow that? I'm having a
3 hard time discerning my -- my written notes here.

4 It says, this explanation shall apply to all
5 charges that may be billed to the customer, including
6 interstate and non-regulated charges.

7 So now Staff has inserted into the rule that we are
8 now gonna be required to disclose non-regulated and interstate
9 charges, which was our main objection to this rule during the
10 workshops, because we believe that the Commission only has
11 jurisdiction over the intrastate charges.

12 And further, it raises concerns for carriers that
13 are serving as a thirty-party billing agents and may not be
14 able to provide such an explanation up front when the customer
15 is ordering service.

16 Q. Would the third-party billing agent be the one who
17 would handle the order?

18 A. Well, they might be. Because if they -- they -- if
19 they called up and they order both local and interstate toll,
20 but also long distance service, the -- the telecommunications
21 carrier who took the order would be billing for the long
22 distance carrier and may be taking the long distance carrier's
23 calls. But --

24 Q. I see.

25 And you're saying that the carrier then would be in

1 charge of explaining -- or the third-party billing agent would
2 be in charge of explaining the other carrier's -- all of the
3 other carriers' charges?

4 A. And it's unclear who would police whether or not --
5 I mean, whose responsibility would it be for a third-party
6 biller to explain that we need you to give us all your -- all
7 your surcharges before we can bill for you, because we don't
8 want to be violating the rule.

9 Q. And each carrier may have a different -- different
10 set of charges, so you would have your customer service --
11 that customer service representative would have to have that
12 amount of information for every potential carrier they would
13 bill for; is that --

14 A. And -- and I understand that there -- there is a
15 provision, Subsection 7, which is in the rule and we -- we had
16 note objected to which says that a company that serves as a
17 billing agent shall not be held liable for violation of the
18 rule.

19 So it seems inconsistent to me. We're required to
20 disclose all these things.

21 Q. And in terms of the argument about unregulated
22 services being covered in this rule, is there any instance in
23 which we have any kind of billing rules that relate to
24 unregulated?

25 A. We do not believe that the billing rules or the --

1 or the telecommunications statutes apply to non-regulated
2 services, because the Commission does not have authority from
3 the General Assembly to regulate those services.

4 Q. And with today's climate in telecommunications and
5 the infor-- all the means of information that are available
6 today, it appears that your unregulated services could change
7 frequently?

8 A. I think that's true.

9 Q. And assuming that -- and -- and there's nothing
10 that would prevent a carrier from changing as often as that
11 carrier chose to the charges or the combinations of
12 unregulated services that are offered; is that correct?

13 A. That's correct.

14 Q. So that to comply with this rule as -- as it is
15 written, the customer service representatives would have to be
16 informed every time any unregulated service or charge changed?

17 A. That is correct.

18 Q. And that is beyond the jurisdiction of this
19 Commission?

20 A. I not only think it's beyond the jurisdiction of
21 this Commission, but it would be simply unreasonable to expect
22 that a service representative should keep a customer on the
23 phone all that time due to discussing these things, which
24 customers have indicated to us they want available when they
25 want it available, not because we're keeping them on the

1 phone.

2 Q. I would personally decide I didn't want the service
3 before I got through that litany of --

4 Let me see. I may have one or two more. Let me
5 hurry here.

6 Oh, the errata -- and I want to make sure I
7 understand that. And you're saying there, I believe, that the
8 technical changes required by the rule -- technological
9 changes required by the rule would be 660,000, rather than the
10 643,000 that you originally estimated; is that right?

11 A. No.

12 Q. No.

13 A. The private -- the private-cost estimate was the
14 entire industry's private-cost estimate. Of that \$643,000 my
15 understanding is that Southwestern Bell, at the time that the
16 Staff requested us to estimate, provided an estimate of
17 \$500,000.

18 And that was the -- that was the service
19 representative increased talk time for one minute of use. It
20 didn't include the changes that were -- would be required for
21 full, clear and meaningful disclosure that we felt would be
22 required under what ended up being the published rule, which
23 implies that we would have to give disclosure of taxes.

24 So we would have to somehow link our tax databases
25 to the service representatives, and that's the cost of

1 \$660,000.

2 Q. And that's the technological changes you were
3 talking about. So what was the 643,000?

4 A. That's the entire industry's private-cost estimate.
5 It's just that that was provided last fall before this version
6 of the rule was published.

7 And when we -- when we saw the published version of
8 this rule, that's when we needed to modify our specific-cost
9 estimate from \$500,000 to over \$1.1 million due the technology
10 changes that would be implicated (sic) by requiring us to
11 disclose taxes.

12 Q. And that is the combination of the technological
13 changes of 660,000 and the additional labor costs of 500,000?

14 A. That's right. And that's only for one minute of
15 service representative talk time.

16 I mean, as you can tell just based on the number of
17 questions today, it's -- it's hard to know exactly how much
18 talk time we would be imposing on telecommunications companies
19 if this rule were enacted. And we would have to know exactly
20 what we were required to disclose before we could give an
21 actual estimate of the number of minutes.

22 Q. And to get to that additional labor time, I assume
23 you had to look at the current talk time that is used per --
24 for some period of time for order taking now; is that correct?

25 A. Yes.

1 Q. And mult-- and divide that by the number of service
2 representatives to come up with an hourly rate or -- and
3 you -- you may not --

4 A. I --

5 Q. -- personally know.

6 A. I think you would take the talk time -- we -- we
7 would have calculated one minute of talk time, and we would
8 multiply that by the number of new customers that we believe
9 we would have to make these disclosure requirements to.

10 Q. Okay. So my numbers --

11 A. So -- so the first calculation would involve a
12 calculation of how much it costs for service representative
13 time.

14 COMMISSIONER MURRAY: Okay. Thank you. I -- I may
15 have more later, but that's all I have right now.

16 JUDGE JONES: Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Ms. -- Ms. MacDonald, it sounds like as much as
19 this is gonna cost you that -- that you all would be better
20 off just not making those sales phone calls to begin with, and
21 it wouldn't cost you anything.

22 A. We wouldn't be making these phone calls. These
23 would be phone calls customers made to us.

24 Q. Oh, you all don't -- your -- your company doesn't
25 make phone calls to customers, trying to get them to switch

1 their services to SBC?

2 A. Well, we -- we would make some calls to customers.
3 But as I read Section 1, it would require us to disclose at
4 the time of the execution of the service agreement, which
5 would be all incoming calls, too.

6 Q. But if -- if we were to -- if we -- could we help
7 you save costs by just saying -- by -- by you all just saying
8 you weren't going to contact any potential customers from this
9 point forward by telephone?

10 A. I don't think that would be reasonable.

11 Q. Isn't it -- isn't it costing you money to do that?

12 A. Costing us money to contact customers, yes, it
13 costs us money every time. We are --

14 Q. So -- so --

15 A. -- regulated by the Missouri Public Service
16 Commission to --

17 Q. -- why do you do it? Why do you contact customers
18 or potential customers if it costs you money?

19 A. Well, hopefully we still make money.

20 Q. Oh --

21 A. Even if it costs us more.

22 Q. -- so there's profit motive in this to begin with,
23 isn't there, trying to get people to execute new agreements?

24 A. I think it's fair to say we're in the business of
25 making money.

1 Q. All right. Now, help me to understand -- you've
2 told me all the ways that -- that you can't get from
3 Point A to Point B. And I'm gonna assume that you're not
4 gonna be volunteering any information here to tell me, since
5 all of these ways that have been suggested won't work, that
6 there is a way to do it.

7 And let -- but maybe you've got something there
8 that tells me how to do it. And I'll be glad to hear it.

9 A. How to do what?

10 Q. Well, you -- how we can get to a point where
11 customers can have a disclosure of things that are on their
12 telephone bills, and how we deal with the subsec-- with the
13 Subsection 4 provision that is intended to try to, I think,
14 differentiate between things that are surcharges that are
15 actually mandated by rule or statute, and those that might
16 have appeared in some tariff that are not.

17 A. Well, let me start with the first part of your
18 question.

19 Q. There's more -- more -- that's -- that's fair.

20 A. And --

21 Q. There was a lot to that.

22 A. there was a lot to that. And -- and I think you're
23 specifically asking me to -- can consumers find out what's on
24 their bill? The answer is, absolutely yes.

25 Q. No, before they -- before they enter their

1 contract, how do you -- how do they find out what's gonna show
2 up down below the line?

3 A. Well, they could call us and we would be able to
4 tell them the fees that would be incurred. But we would not
5 be able to provide them the amounts of the fees that would be
6 incurred.

7 Q. Okay.

8 A. They could also go to our website, and they could
9 pull up a sample bill to look at the fees that would be
10 incurred.

11 Q. Let's --

12 A. But, again, that's not the amounts.

13 Q. Let's break it down here, because I have -- I have
14 some degree of -- of empathy here in regard to the tax issue
15 and the variation of it.

16 Now, what I want you to do for me, as far as SBC is
17 concerned, when you have a line on your bill that says
18 taxes --

19 A. Right.

20 Q. And I don't know if you do or don't?

21 A. We have several lines about taxes.

22 Q. You do?

23 A. Yes.

24 Q. Okay. Why don't you tell me what lines you have
25 about taxes.

1 A. My understanding of our tax lines is we have a line
2 for federal taxes.

3 Q. All right.

4 A. We have a line for state and local taxes.

5 Q. Okay.

6 A. And that specific line item is local charges that
7 are assessed on taxable services. So those would be like a
8 charge assessed on a regulated product.

9 Q. Uh-huh.

10 A. Then we have a separate line for state and local
11 charges, which are non-regulated and toll products. In
12 addition to that --

13 Q. Non-regulated and toll.

14 All right.

15 A. In addition to that, however worded, there would be
16 a line for 911 service fees. And that is a tax --

17 Q. Okay.

18 A. -- which I had said before could be imposed by
19 counties in the State of Missouri in one of two ways. And
20 that's what that line would reflect.

21 Q. Okay. All right. Anything else?

22 A. Oh, I think that if there were -- well --

23 Q. Because I want to -- I want to come back to this.

24 A. -- are we taking about just intrastate or are we
25 talking about totally anything you could see on your bill? If

1 there was long distance charges, for example --

2 Q. Okay. Go ahead.

3 A. -- I think you would see a federal excise tax. And
4 that would be 3 percent.

5 Q. Federal excise.

6 Okay. Anything else?

7 A. I hope not.

8 Q. All right. Let's go back through these, then.

9 A. Okay.

10 Q. All right. Let's start with the -- with the
11 federal taxes. Okay. What is -- what are you talking
12 about? What's in that line?

13 A. That would be taxes that the federal government
14 is -- that -- that we are passing through to our customers as
15 a result of the federal government imposing those taxes on us.

16 Q. Does it include corporate income taxes?

17 A. Now, you've gone beyond my knowledge of the tax.
18 But I could find that out.

19 Q. The reason I'm asking these questions,
20 Ms. MacDonald, is to try to understand, if we were to deal
21 with this issue, do these calculations vary from company to
22 company or --

23 A. Oh, yes.

24 Q. -- are we dealing with the same thing every
25 time? Because -- because that's making a difference to me.

1 A. Right.

2 Q. If they're -- if these numbers can be gained
3 internally --

4 A. Right.

5 Q. -- depending upon how a company chooses to put
6 numbers -- or figures inside of these subcategories?

7 A. I don't think the taxes can be gained, for lack of
8 a better word. I think that different taxes may apply to
9 different companies. For example, you may have a franchise
10 tax that may apply to some carriers, but not to others.

11 Q. A federal franchise tax?

12 A. No, just state.

13 Q. Let's stick with the federal line item right now,
14 so I don't get confused. That's gonna be easy.

15 A. Yeah, I would assume that the federal would be a
16 percentage, but I'm not 100 percent sure on that.

17 Q. Well, did -- will somebody know that answer here
18 today?

19 A. We could find out.

20 Q. I'm interested in knowing whether or not that's
21 just an outright calculation of certain federal taxes that's
22 passed through that everybody does the same way, or whether or
23 not that's just a line item and people throw things in it that
24 have nothing to do with any kind of calculation. That's what
25 I want to know.

1 Okay. If you could find that out for me.

2 A. Uh-huh.

3 Q. And -- and then let's drop to the second category,
4 state and local.

5 A. Uh-huh.

6 Q. Is that -- and that's you said --

7 A. Regulated versus non-regulated and toll.

8 Q. Okay. Regulated. And let -- tell me what those
9 state and local taxes would be.

10 A. Well, for example, and -- and -- like 911. 911 --

11 Q. I thought that was a separate line on down below
12 here. I'm still on --

13 A. Well, but I'm just giving you an example of how a
14 tax could be imposed by a state.

15 Q. Okay.

16 A. In the 911 language you have specific reference to
17 the fact that it applies to telecommunication services, so
18 those would be regulated. So if the actual statute told us
19 that we had to apply it to the regulated services, that's what
20 it would be.

21 And the -- and the state would provide us the
22 tax -- you know, the -- the percentage, and we would apply it
23 pass it through, and it would go to the customer.

24 Q. But that's a calculation you're gonna do the same
25 way. It just depends every time on -- it doesn't -- it

1 doesn't vary much for you all anyway as a carrier. The
2 911 tax only varies depending upon whether that particular
3 county has it or not?

4 A. I think I agree with you.

5 Q. Okay.

6 A. Because -- because I -- every county would be
7 different. But within one county --

8 Q. Right.

9 A. -- if you order the exact same product at
10 two different places, you should see the same amount, because
11 it's a percentage typically.

12 Q. That's what I'm trying to -- that's what I'm trying
13 to differentiate, those kinds of things from other things that
14 sort of get no particular methodology applied to them on how
15 you come up with a -- with the -- the number, okay.

16 A. And my understanding is that all the taxes --

17 Q. Yes.

18 A. -- whether they be the federal, the state and local
19 or the state and local for non-regulated and toll charges,
20 those are pass-throughs. Those are not things that we
21 incorporate a charge into and then --

22 Q. That's what I want to know. I want to know how
23 the -- it -- because that makes a difference to me, and it's
24 important to me in looking at this rule. So whatever --

25 A. I can verify that.

1 Q. -- you can do in -- in finding that out would be
2 helpful.

3 I want to go back to the state and local on the
4 regulated portion, and give me an idea of what's in
5 that -- what -- what taxes. What kinds of taxes.

6 Are we talking about income taxes on the
7 corporation at the state level, or are we talking about simply
8 sales taxes? Are we talking about property taxes? Are we
9 talking about state franchise taxes?

10 A. Well --

11 Q. That's what I want to know.

12 A. Okay. We can find that out.

13 Q. What is in that line item. Okay. And then do the
14 same thing for me on -- on your -- what I've got down here in
15 my notes as C or whatever it is.

16 A. Non-regulated and toll.

17 Q. The non-regulated and toll, if you would.

18 A. Sure.

19 Q. And then -- and then drop down -- on the long
20 distance, you say the federal excise tax is a straight
21 3 percent. Did I --

22 A. That's my understanding.

23 Q. -- hear you correctly?

24 So that's another one of those things that -- that
25 at least appears to be from what you're telling me is the same

1 with every one?

2 A. I -- I assume that that's correct.

3 Q. Okay. I want to -- I want to know if that's the
4 case. Because it may be that it makes less sense to have an
5 explanation of something that doesn't vary from carrier to
6 carrier, because it's calculated the same way.

7 A. Well, it could be calculated the same way, but it
8 could be -- it could result in different amounts. Because
9 if --

10 Q. Depending upon?

11 A. Well, for example, if you're -- if -- if it's a
12 pass-through of property taxes, everybody is not gonna have
13 the same property.

14 Q. Ev-- every carrier?

15 A. Every carrier.

16 Q. Okay.

17 A. So it may be percentaged (sic) the same, but it
18 wouldn't necessarily result in the same charge to the -- to
19 the end user, as I understand it.

20 Q. Okay. That's fair.

21 But the calculation may be done the same way in --
22 in regard to how you pass it through?

23 A. And -- but I -- I -- I would think that this is
24 where we get into the authorized versus mandated.

25 Q. Okay. Go ahead. But I'll -- I'll come back to

1 that. I promise. But go ahead if you have something that
2 attaches to this particular thing.

3 A. Well, I just think that --

4 Q. I'm gonna get to that.

5 A. -- if you had property taxes, some people may pass
6 those through and others may not.

7 Q. All right. Okay. But I'm interested in knowing if
8 there's -- if they do pass them through, are they passed
9 through with some sort of similar calculation, and how does a
10 customer know that those calculations are -- are -- are indeed
11 state and local taxes, and what they are -- what are they?

12 Are they -- are -- are they some figure that the
13 company just throws into the mix and says, oh, we'll just say
14 those are state --

15 A. Well, let me --

16 Q. -- and local taxes?

17 A. -- just ask you for a second, so I'm sure what I'm
18 looking into.

19 Q. All right.

20 A. Are you saying if you have a property tax, for
21 example, that you're passing through to your customers, is it
22 an actual percentage or are you taking the total amount of the
23 property tax bill and divide it by your number of customers?

24 Q. Yeah, I -- I'm looking for that.

25 A. Okay.

1 Q. I'm looking for what's in there and --

2 A. Okay.

3 Q. -- and how is -- how is that calculation made?

4 Because the fact that you and I don't know that right now
5 means that there can't be very consumers that have any clue.

6 And -- and so I don't know what this line item
7 means if we don't know what it means to them. Do you see what
8 I'm saying?

9 I -- I'm trying to understand whether or not this
10 disclosure thing is really a disclosure or is it just a way to
11 hide charges that are not in the -- in the top rates?

12 Now, I was -- I -- I really was going to ask you
13 earlier, if I'm looking at SBC's bill --

14 A. Uh-huh.

15 Q. -- would you say SBC has a lot of these extra
16 charges down below on their bill that would be impacted by
17 this if we exclude taxes?

18 A. Do we have line-item surcharges --

19 Q. Yes.

20 A. -- today?

21 No.

22 Q. I didn't think you did.

23 A. But that doesn't mean that we believe that the
24 Commission should mandate something that we -- we do not
25 believe in. We believe that if the customer --

1 Q. But -- but if --

2 A. -- wants the information, they can call.

3 Q. If we were with -- if we were not dealing with
4 taxes in this rulemaking, and ignore the disclosure issue for
5 the moment on -- how does this impact SBC today?

6 A. I don't know how I would ignore the fact that we're
7 gonna increase customer talk time and, therefore, impact --

8 Q. I -- I -- I --

9 A. Our customers financially.

10 Q. You didn't -- I said to ig-- ignore that for the
11 moment for me, and tell me how else it impacts you -- the rest
12 of the rule in regard to cost --

13 A. If we eliminated --

14 Q. -- of changing your bill.

15 A. If we eliminated -- you're saying if we eliminated
16 the obligation to disclose anything about taxes --

17 Q. Uh-huh.

18 A. -- and we eliminated the obligation and -- and we
19 didn't suffer any increased talk time, hypothetically, which
20 couldn't occur.

21 Q. Hypothetically.

22 A. There's still going to be probably system upgrades
23 that we would need to do to be able to discuss all of the
24 surcharges in Missouri, even though we don't have a line item.

25 Cuz you would still have your Relay Missouri surcharge, your

1 Missouri Universal Service fee.

2 And as it is today, we would tell the customer that
3 they are going to have taxes and surcharges, but we would not
4 go into a long-winded explanation of what those are and why
5 they're being imposed.

6 Q. All right.

7 A. Unless asked. And if asked, we absolutely would
8 describe those to the customer. And we make them available to
9 the customers on our website.

10 Q. Now, does -- does SBC have some line item that's
11 categorized as regulatory fees or --

12 A. SBC, the --

13 Q. One part may and one part may not?

14 A. Right.

15 Q. Okay. Who does and who doesn't?

16 A. I -- I couldn't tell you that.

17 Q. All right.

18 A. All I -- the only work I do for is for the
19 regulated entity.

20 Q. What about the regulated entity?

21 A. The regulated entity does not.

22 Q. All right.

23 A. But I believe some of our --

24 Q. Cingular may?

25 A. Cingular may. I don't know whether LD does. And

1 they -- I mean, technically they're regulated, but not
2 interstate regulated.

3 Q. Yeah. Okay. But -- but SBC in -- on the regulated
4 company doesn't do -- doesn't have that kind of a line item?

5 A. Not today.

6 Q. You -- is that --

7 A. And not to say that we're gonna do it tomorrow.

8 Q. Are -- are there plans in the works to do this,
9 Ms. MacDonald?

10 A. I -- I just think --

11 Q. Are -- are we infringing on some grand plan of
12 changing your bills again after you've just modified them in
13 the last few months?

14 A. I sure hope not. But since we don't know what
15 tomorrow will bring us, we don't want to pre-empt our right to
16 impose such a charge.

17 Q. Because I -- I think you said earlier much -- well,
18 that you had some constitutional right to put surcharges on
19 people's bills?

20 A. I believe we do.

21 Q. A constitutional right --

22 A. Uh-huh.

23 Q. -- to surcharges?

24 This is a new argument to me. And -- and you have
25 all of the authority cited for me to look at?

1 A. I haven't, but if you -- there were plenty of
2 briefs on that in the NASUCA case.

3 Q. In the NASUCA case. So I --

4 A. Uh-huh.

5 Q. -- I just need to look at the NASUCA case to find
6 that there are all of these constitutional reasons why
7 Missouri statutes on billing are unconstitutional, and any
8 rulemaking on this subject would be immediately thrown out by
9 the courts?

10 A. I don't think those are one in the same.

11 Q. Okay.

12 A. I think you're talking apples-to-oranges
13 comparison. I said --

14 Q. Which is exactly what I do not want to be talking
15 about when I'm dealing with billing --

16 a. I --

17 Q. -- apples to oranges.

18 A. I said that you have a constitutional right to
19 describe on your bill --

20 Q. Okay.

21 A. -- surcharges that you believe have been im--
22 that -- that you are gonna impose on your customer. And those
23 charges may describe a regulatory action, they may describe
24 something that the -- that the company felt that -- that they
25 had to do, in order to maintain business in the State of

1 Missouri.

2 Q. Okay. Now, maybe -- maybe there's a distinction
3 there in what I heard you just say, and what I thought I heard
4 you say earlier.

5 A. And maybe I wasn't clear. But that is what I
6 meant.

7 Q. What you meant is, if you put a surcharge on, you
8 have a right to explain it?

9 A. I think you -- you also have the right to have a
10 surcharge, not only under our -- not -- not only as a result
11 of our -- our rights as a company to determine what charges
12 are gonna be on our bills, but also because the FCC has
13 specifically stated that non-misleading line items are
14 permissible.

15 It says it on page 2 of the notice of proposed
16 rulemaking.

17 Q. Now -- now, that is different than telling me that
18 you have a First Amendment right to put a surcharge on your
19 bill -- saying the FCC has said that you can put
20 non-misleading surcharges on your bill.

21 Is that because the FCC has said that you have a
22 constitutional right to do that, or because there's some
23 pre-emption argument that the -- if the -- if the FCC has
24 acted there?

25 A. If the FCC has acted here, I believe that we have

1 the right. And I believe that --

2 Q. Because of a pre-emption argument?

3 A. Right.

4 Q. Not because of a First Amendment free speech
5 argument?

6 A. I think those are two separate arguments.

7 Q. I agree. That's why I'm asking which one you're --

8 A. I'm saying both apply.

9 Q. All right. Well, I want to see your documentation
10 on your free speech argument. The other one I'm -- I'm sure
11 there's plenty of arguments to go around about whether they
12 specifically pre-empted or not in this case.

13 But would you -- would you mind providing that?

14 A. Sure.

15 Q. Now, tell me how the -- if -- if you have a -- if
16 you have a rulemaking that hypothetically changes. And I'm
17 gonna -- in this hypothetical I'm gonna say in -- in a fashion
18 that is -- that is allowed by the statute changes the way that
19 certain practice is done among a regulated -- or regulated
20 entities like -- like telecommunications might be considered.

21 If -- if there are in that -- already prior to that
22 rule some companies that have tariffs that would be in
23 contravention of that rule if they continued to exist after
24 the rule was passed, is it SBC's position that -- that
25 simply -- there's simply nothing that can be done by the PSC

1 about that?

2 A. No, that's not SBC's position --

3 Q. Okay.

4 A. -- and that's not what I said.

5 Q. Well, I -- I'm just trying to clarify here.

6 A. I think --

7 Q. What I want you to do is tell me how you deal with
8 that situation.

9 A. I think you bring a complaint against the carrier.

10 Q. Okay.

11 A. But what I'm saying is, you're going to have to
12 make a determination that the provision that's in the tariff
13 is unlawful, because it statutorily is deemed lawful --

14 Q. Yeah.

15 A. -- as approved.

16 Q. We're back to the dog chasing his tail problem in
17 this -- in -- in the language in the -- in the proposed rule
18 that you referred to earlier about whether or not this
19 is -- that this is authorized already because it's in the
20 tariff?

21 A. And this just further emphasizes the reason why we
22 think that we should wait until that FCC addresses this issue.

23 Q. I understand your point on that. But I'm trying to
24 get to here, though, is whether or not there is
25 any -- if -- if the PSC passed the rule and there were tariffs

1 in existence -- in existence that were in contravention of the
2 rule, your -- SBC's position is, then, that there would need
3 to be complaints filed at some point in time, and then a
4 hearing held deter-- to make a determination whether or not
5 those -- those tariffs should -- should be determined to be
6 unlawful under the new rule.

7 Am I following you? I'm really not trying to put
8 words in your mouth. I'm just trying to see if I'm
9 understanding your -- your position.

10 A. I think that it would -- you would have to make a
11 determination that they were unlawful. I don't think you can
12 just say -- I -- I -- I personally cannot say -- think you can
13 say, you can no longer offer, for example, whatever service,
14 voice -- voice mail.

15 Q. Okay.

16 A. Well, that's not a good example --

17 Q. Probably not.

18 A. -- because that's not regulated.

19 Q. But anyway.

20 A. But let's pick a regulated example.

21 Q. Okay.

22 A. I don't think that you can just have a rule and
23 say, well, now we have a rule. And since your tariff is
24 inconsistent with this rule, we now have --

25 Q. Okay.

1 A. -- that it, by definition, is unlawful. I think
2 you're gonna have to have a hearing --

3 Q. Okay.

4 A. -- and you're gonna have to determine that it is
5 unlawful, pursuant to the statute. And I think you would
6 probably go to 392.200 and maybe conduct some kind of a just
7 and reasonable analysis -- I mean, you're gonna have to have a
8 lawful basis for saying why it's unlawful --

9 Q. Okay.

10 A. -- is my thing.

11 Q. Okay. But the -- there is a process --

12 A. Yes.

13 Q. -- that you believe exists to deal with that?
14 Because part of the frustration that I've had in hearing this
15 discussion has been that you -- you can't do it this way, you
16 can't do it that way, and no one has any suggestion about,
17 okay, how do you solve the issue?

18 You're providing me with some suggestion about how
19 it could be dealt with. And I -- and I appreciate that.

20 So in -- in -- in dealing with that, then, in -- in
21 going back to this problem that you -- you have suggested
22 exists in the current language in the proposed rule on
23 Subcategory 4 --

24 A. Right.

25 Q. -- in the last sentence, and you say you think it's

1 still a -- a problem with Staff's suggested language?

2 A. Yeah, I do.

3 Q. Have you -- did you look at that language that was
4 passed out earlier? I think it's in Exhibit 1 --

5 A. Yes.

6 Q. -- or something, which I recognize goes farther.

7 Well, let me ask you first, I'm assuming you don't
8 like that as -- as a draft either?

9 A. I believe it not only would violate the FCC's truth
10 in billing order, but it would violate any First Amendment
11 rights.

12 Q. Well, you've already said that's what happens with
13 the current one. But in any event, this doesn't help you very
14 much in regard to your position on -- on adding that language.

15 But I -- but what I am looking for is whether or
16 not drawing any kind of a distinction about tying the -- the
17 word "mandated" or specifically authorized by federal or state
18 statute or rulemaking by the FCC or the state in disconnects
19 the problem of the circularity in dealing with tariffs --

20 A. I --

21 Q. -- or not?

22 A. Well, I -- it's hard to say. Because frankly, I
23 mean, you have to look at the language. And no matter how
24 much we look at this language, it's very -- it's very
25 difficult to come to any kind of consensus that everybody

1 could agree to.

2 Q. Well, I'm not -- I -- I recognize that. I'm
3 looking to try to understand, because there's a circularity
4 here in the -- in using the word "authorized." And I'm trying
5 to see whether or not there is a way that can be -- that will
6 break that circle.

7 A. Right. And I understand that's what you're trying
8 to do. But it's not just -- as I understand it, it would not
9 just be -- well, first of all, let's just talk about
10 interstate charges, because we, of course, believe that they
11 can't apply to intrastate charges.

12 Q. That's fine.

13 A. Let's assume it was a interstate charge. It would
14 not only be the result of a rulemaking that ended up in
15 something like the Missouri Relay Fund. It would also be back
16 to the tax problem, that if you had a property tax, you could
17 assess that against the customers.

18 And that in and of itself is authorized by the
19 government because it's allowed by the case law. So I
20 understand what you're saying. I just don't know exactly how
21 you get to the words.

22 I mean, I think the concept is you don't want --
23 you don't want the implication that things that are allowed
24 but not necessarily required be described as mandated or
25 authorized.

1 But the problem then becomes back to the circular
2 argument, because by filing a tariff and having it approved it
3 is mandated or authorized.

4 Q. Well, if I -- if I utilize language that -- that
5 did talk about statutes or rules of the federal or state
6 government -- or state government, then I'm going to also have
7 to do something about -- about the -- the -- the tax issue as
8 a pass-through.

9 And I haven't -- that's not -- I don't think that's
10 dealt with in that language. So there -- there would have to
11 be some additional thought given to that as well.

12 And -- and again, I'm not suggesting to you that
13 that particular -- the way that language is phrased is
14 something you ought to -- I'm trying to talk you into
15 supporting. I'm just trying to figure out if there's -- if --
16 if making that break could be --

17 A. Well, frankly --

18 Q. -- morphed into something more helpful than what we
19 currently have.

20 A. I almost hate to go here, but maybe it's not as big
21 of a problem with regard to the taxes.

22 Q. Okay.

23 A. Because they wouldn't be an effective tariff, I
24 don't think.

25 Q. All right.

1 A. But I'd have to check to see whether --

2 Q. I don't know.

3 A. -- we -- ever -- I don't know whether our tariffs
4 cross reference taxes, but don't put in amounts. I can't
5 imagine they would put in amounts since they change too often.

6 Q. I don't know either. I don't think so either.
7 Would you -- could you check on that, too?

8 A. Uh-huh.

9 Q. And if I didn't ask you, could do this for me,
10 Ms. MacDonald, and let me know what you find out in a little
11 bit?

12 A. Okay.

13 Q. I'll -- I'll leave this for now.

14 A. Okay. So let me make sure I just know what I'm
15 getting.

16 Q. My notes are probably not very good.

17 A. Okay. You want the tariffs, whether -- whether we
18 have information about taxes in our tariffs you want the free
19 speech information, and then you want an explanation of --

20 Q. Yeah, but you can do that -- the free speech stuff
21 later. That's --

22 A. Okay.

23 Q. You can supply that whenever. That's a --

24 A. Okay.

25 Q. -- legal thing. If you want to point me to

1 whatever the cites were and whatever the briefs were, I'll
2 look at that.

3 A. Okay. And then you want to know what is all
4 included in the line items of taxes?

5 Q. Right.

6 A. Okay.

7 Q. Now, if we could -- if we could cut back the
8 explanations on the front end, the disclosure part --

9 A. Right.

10 Q. -- to -- to those -- to really deal with those --
11 those line items that were not taxes, as long as you can
12 tell -- find out for me that taxes are really calculated the
13 same way, and if we could cut back the -- the other -- the
14 other portions of things that are really to the point of just
15 saying we do assess the USF, we do assess -- and -- and --
16 and, for -- for instance, the Missouri USF is the same for
17 everybody. I -- I -- may -- maybe that's even taken out.

18 If we trimmed this thing back to a -- to a level of
19 where you were just dealing with some of these companies that
20 were having these extra line items on there that were add-ons
21 that didn't apply to the things that -- for instance, your
22 company on the regulated side is currently doing. If you can
23 help me with that, I would appreciate it.

24 A. Okay.

25 Q. I'm -- I'm looking for some assistance there.

1 A. Right.

2 Q. Okay.

3 A. I mean, I -- I think that the -- I think we just
4 have a philosophical dis--

5 Q. Phil--

6 A. -- difference.

7 Q. Philosophical difference is one thing.

8 A. About -- but about where the disclosure goes. And
9 we believe the --

10 Q. All right.

11 A. -- disclosure should be in the monthly bill after
12 the first service. And if the customer wants information
13 about the surcharges, we'd be happy to provide it to them.
14 The -- the -- the problem comes when we're mandated to do
15 that.

16 Q. If you all are not -- if you all are currently not
17 mandating or currently not -- excuse me -- currently not
18 passing through regulatory fees and regula-- and other things
19 that -- that are not -- are outside the scope of taxes
20 and -- and those were -- were -- ended up being excluded, why
21 do you care?

22 A. Are you saying that I would have some verbiage in
23 here that would say I don't have to discuss -- disclose to the
24 customers information about the Relay Missouri sur--
25 surcharge, the Missouri Universal surcharge and all of the

1 others?

2 Q. If -- if every company was -- was passing those
3 things through. Does that -- does that -- it -- I mean, if we
4 trimmed down the number of things you have to discuss, it
5 trims down the amount of time you have to discuss --

6 A. Right.

7 Q. -- them on the phone.

8 A. If -- if the rule -- I mean, I guess -- I guess
9 what it all boils down to, is even if we got down to the point
10 where we only had to discuss with customers any -- that we
11 were mandatorily required to discuss with customers any fee
12 that was a recovery fee of some kind that was not an actual
13 service to the customer, I -- I still think that our problem
14 is that we just don't believe it should be mandated, because
15 that increases costs and costs are passed on to the consumer.

16 Q. I understand your general principle here. At some
17 point in time I'm looking for practicalities.

18 A. Right.

19 Q. I mean, if -- if -- if this -- if this thing
20 gets -- if you all are not putting on those surcharges
21 currently, and we -- and -- and we only require companies who
22 are putting them on to -- to disclose them at the beginning,
23 it doesn't impact your -- you monetarily on your disclosure
24 portion.

25 A. Today.

1 Q. Well, hopefully it wouldn't in the future either.

2 A. That I don't know.

3 COMMISSIONER GAW: Well, I don't know either.

4 Okay. Thank you.

5 THE WITNESS: Thank you.

6 COMMISSIONER GAW: I'll --

7 JUDGE JONES: Commissioner Appling?

8 COMMISSIONER APPLING: Commissioner Murray has a --

9 a follow-up question to my colleague, so --

10 JUDGE JONES: Commissioner Murray?

11 COMMISSIONER MURRAY: Thank you, Commissioner

12 Appling.

13 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

14 Q. I just wanted to ask in that we were looking at
15 this -- the language that Commissioner Gaw had suggested. And
16 I was playing with that as you all were talking.

17 And I -- I just wanted to run this by you before we
18 get off of that subject. Take the language,
19 telecommunications companies shall not -- remove the word
20 "impose" --

21 A. Uh-huh.

22 Q. -- and replace it with, represent as a
23 governmentally mandated or authorized fee any separately
24 identified charges that are not governmentally mandated or
25 specifically authorized by federal or Missouri statute, rule

1 or regulation.

2 A. I think that's one step in the right direction. My
3 only hesitation, it's saying that it would suffice is when you
4 get down to the actual phraseology.

5 That, for example, you went through with -- not you
6 specifically, but I think -- I can't remember. One of the
7 Commissioners went through with -- with Mr. Coffman. It --
8 I -- I guess it -- it would -- it would like an in-state
9 access recovery fee. I don't know whether that sounds like
10 it's governmentally mandated or not.

11 Q. Well, the -- the language that Commissioner Gaw put
12 in there, not governmentally mandated or specifically
13 authorized by federal or Missouri statute, rule or regulation,
14 that eliminates tariffs.

15 A. Okay.

16 COMMISSIONER MURRAY: And -- and by changing the
17 shall not impose, that's -- that's taking away the requirement
18 that they not be listed. But -- and I'm -- and I even would
19 not call it misrepresent, but I would say shall not represent
20 as a governmentally mandated or authorized fee.

21 Anything that's not mandated or specifically
22 authorized by federal or Missouri statute, rule or regulation.
23 And I -- I don't know. I just throw that out for you to think
24 about, and I wanted to follow up immediately after that
25 conversation with that language. So that -- thank you,

1 Commissioner Appling, for letting me butt in.

2 QUESTIONS BY COMMISSIONER APPLING:

3 Q. Ms. MacDonald, how are you doing?

4 A. I'm doing great --

5 Q. Okay.

6 A. -- of all things considered.

7 Q. Well, I'm gonna try this show and then we're gonna
8 get on down the road, okay?

9 But, anyway, I've listened to a lot of words here
10 this afternoon. Some of them was unreasonable, that's being
11 used, I mean, in the FCC act.

12 And it's hard for me to justify not doing something
13 and waiting on the government to sign a bill or waiting on the
14 FCC to come out with another rule on what they're gonna do.

15 And we may be waiting for a long time. In the
16 meantime there are people -- or the citizens of this state
17 that has expectations of SBC, as well as this -- the PSC, and
18 that we should be doing something to -- to help them.

19 Do SBC believe that the citizens of this state --
20 the people that pay for your all's services has a right to be
21 able to read their bill when they receive it from you?

22 A. Absolutely when they receive a bill from us. Our
23 hang up is with the disclosure requirement at the time of
24 execution of the service agreement.

25 Q. Well, if you was renting a car tomorrow, would you

1 want the disclosures when you drive it off the lot or would
2 you want them to send that to you 30 days after you had the
3 car?

4 I'm not trying to put you on the spot here, but
5 just trying to put you on the spot. I'm curious about it.
6 You're the one that used the word unreasonable expectations.

7 If I'm your customer, I have the right to know what
8 you're gonna charge me, do I or do I not?

9 A. I -- I agree that you have the right. And if you
10 ask, we will tell you.

11 Q. Well, why don't you tell me what it's gonna cost me
12 to sign up for SBC.

13 A. I think that we do tell you the costs for the
14 services that we offer. And we indicate it -- and we indicate
15 that taxes and surcharges will be added. And we indicate that
16 to every customer that signs up for service. So I think we
17 are advising the customer that those things will apply.

18 And it's no differently (sic) than when you go and
19 buy a car and they're gonna tell you the car costs \$20,000,
20 but you're gonna have to pay taxes and surcharges.

21 Q. I agree with you. And I'm not trying to put you on
22 the spot.

23 But, anyway, I just happened to think that, you
24 know, if the -- if the provider out there and the SBC and the
25 other companies can't come up with a way of disclosing this,

1 then you're gonna end up with a rule, even though my
2 colleague, Commissioner Murray, doesn't like rules and -- but,
3 anyway, we're gone come up with rules if we are not able to
4 satisfy the customer.

5 The customer is beating the drum out there right
6 now saying, tell me, what am I paying for? And they have the
7 expectation that we will tell them what it is costing them.

8 I've -- I've heard exactly what you said today loud
9 and clear that made me really think about so many regulations
10 in which we put on the consumers, and what we put on the
11 providers. And we need to take a hard look at that.

12 But I don't know any other way to get around it,
13 other than the -- than to satisfy through the rules. So I --
14 I -- I'm just asking a question. How do we get there? What
15 is SBC doing? Do you all ask the customer, can you read this
16 bill? Is there any way that we can improve this?

17 A. Absolutely. And what's why we changed our billing
18 format in order to meet the customer's needs for a simplified,
19 more easy-to-read bill.

20 And, I mean, I -- obviously any time we have a bill
21 that customers cannot read, they call us. Every time they
22 call us, we incur costs.

23 So, frankly, we would rather have the bill be in a
24 manner that they can read it and understand it so that they
25 don't make the call to just explain what is the Missouri Relay

1 surcharge.

2 And -- and that is why we have gone to great
3 lengths, not only on the bill, but also to provide such
4 information on our website so the customers can access the
5 information when they want it at their convenience. But not
6 as a required mandatory --

7 Q. What do you do --

8 A. -- mandatory disclosure.

9 Q. -- with the people that don't have websites,
10 though, you know? There's -- there's thousands of people --

11 A. Well, those people --

12 Q. -- who doesn't have web pages and websites, and
13 maybe they don't have a computer in their home. So what do
14 they do?

15 A. Well, they can call us. I mean, obviously we
16 would -- we would like to minimize the calls that are coming
17 to us.

18 Q. Right.

19 A. But -- and that's why we're trying to provide clear
20 explanations. And we do believe we do provide clear
21 explanations on our bills.

22 But if they don't have -- if they have no
23 understanding of what, you know, a federal excise tax is, they
24 can call us up, and we'll absolutely provide an explanation as
25 to what it is.

1 COMMISSIONER APPLING: Thank you.

2 THE WITNESS: Sure. Thank you.

3 JUDGE JONES: Are there any more questions for SBC?

4 (NO RESPONSE.)

5 JUDGE JONES: Seeing none, Ms. MacDonald, you may
6 be seated.

7 THE WITNESS: Thank you.

8 (WITNESS EXCUSED.)

9 JUDGE JONES: At this time, I think we'll take a --
10 a ten-minute break. So we can reconvene at ten 'til three.
11 And we'll hear from CenturyTel, Spectra and Sprint.

12 We'll go off the record now.

13 (A RECESS WAS TAKEN.)

14 JUDGE JONES: Okay. We're back on the record with
15 Case No. TX-2005-0258, in the matter of the new proposed
16 Rule 4 CSR 240-33.045.

17 Prior to the break we heard from SBC, and now
18 we'll -- we'll hear from CenturyTel and Spectra.

19 (WITNESS SWORN.)

20 LARRY DORITY, having been duly sworn, testified as follows:

21 MR. DORITY: Good afternoon. For the record, my
22 name is Larry DORITY with the law firm of Fischer & DORITY,
23 appearing this afternoon on behalf of CenturyTel of Missouri,
24 L.L.C. and Spectra Communications Group, L.L.C., doing
25 business as CenturyTel.

1 Before going on the record this morning, Judge
2 Jones admonished us not to be redundant. And I intend to
3 comply with his directive.

4 My clients simply wanted to go on record in support
5 of the industry's written comments submitted primarily by the
6 Missouri Telecommunications Industry Association.

7 And those comments focus on Subsections 4 and 5 of
8 the proposed rule, as did I believe Mr. Curtis, who has filed
9 written comments on behalf of the MCI. And those are the ones
10 that we find most objectionable as well.

11 I want to also indicate that we certainly
12 appreciate Staff's interaction with the industry on this
13 proposed rule and their facilitating industry workshops.

14 However, our participation in those workshops
15 should not be construed as support for the current version of
16 this proposed rule. As I indicated, we do have some concerns,
17 and I'll try to elaborate on those.

18 Ms. Dietrich this morning had proposed some changes
19 and additions to the -- the rule as it was published in the
20 Missouri Register. And I'll be the first to confess, I don't
21 write fast enough to get those down.

22 And I -- I guess what I would be asking the
23 Commission at this point is that if there was a way that we
24 could leave this record open and continue the hearing so
25 that -- that 90-day o'clock for your issuing an order in

1 response to a hearing does not actually begin.

2 That if we had an opportunity to actually review
3 that language, not only what has been offered by the Staff,
4 but also the Commissioners themselves have -- have offered
5 some revisions to that and their own -- own language for our
6 consideration.

7 I certainly for one would be most appreciative to
8 have the opportunity to really look at that, read it, give it
9 some consideration, and perhaps have an opportunity to provide
10 our input to you in that regard.

11 You've -- you've heard a lot this afternoon
12 regarding Subsection 4 and -- and how it -- that language
13 might be tweaked to address the concerns. And -- and I really
14 have nothing that I could add further in that regard.

15 Subsection 5, again the Staff had suggested
16 language that I believe would incorporate a specific reference
17 to Chapter 2.070, the complaint rule, suggesting that that
18 would take care of the due process and hearing concerns.

19 And I -- I would submit that, quite frankly, I'm
20 not sure that that particular rule does. In fact,
21 Subsection 11 of 240-2.070 indicates that when the Commission
22 determines that a hearing should be held, the Commission will
23 fix the time and place for a hearing.

24 So I'm not sure that there is an absolute
25 requirement for a hearing under the Commission's complete rule

1 as it is written in Chapter 2.

2 I know Mr. Poston had made specific reference to
3 Section 386 and some of the subsections therein, and -- and
4 perhaps a specific reference to that would -- would be a
5 better resolution of this particular concern.

6 But again, we would like to just ask to -- to have
7 the opportunity to -- to look at some of this language
8 and -- and be in a position to perhaps offer some further
9 comments and -- and suggestions of our own in that regard.

10 And with that I will end my comments and be happy
11 to answer any questions.

12 JUDGE JONES: Commissioner Murray, do you have
13 questions for Mr. Dority?

14 COMMISSIONER MURRAY: Just a couple.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Mr. Dority, do you think this -- this rule is
17 necessary to protect consumers?

18 A. Commissioner Murray, it is -- it is our position
19 that -- that the rule is -- is not necessary, particularly in
20 light of the FCC's current deliberations and -- and the orders
21 that they have submitted.

22 As -- as the Staff indicated in their written
23 comments, you know, I -- I believe that the FCC is trying to
24 address the issues that are contemplated in this particular
25 rule. I agree with those that have testified before me

1 that -- you know, to the extent that we can have a -- a broad
2 template that would apply to not only the State of Missouri,
3 but other states as well. For those companies that operate
4 in -- in multiple jurisdictions I think that would be a very
5 helpful resolution to these -- to these issues.

6 So, no, to answer your question directly, we do not
7 think that this particular rule is needed.

8 Q. Do you know if CenturyTel's or Spectra's bills are
9 confusing and/or misleading?

10 A. I would suggest to you that they are not. I was
11 going to call Mr. Coffman in that regard, but I -- he must
12 subscribe to a service of one of our competitors, so I won't
13 be able to use him.

14 But, no, I would not suggest that our -- our bills
15 are either misleading or confusing. We certainly don't intend
16 for them to be.

17 Q. Did CenturyTel or Spectra do a cost analysis for
18 what the -- this rule might cost them to implement?

19 A. I don't know the answer to that. If -- if --
20 yes -- yes, we did. And I'm sorry. I don't have that
21 information.

22 Q. I guess you don't know what --

23 A. No.

24 Q. -- they came up with?

25 A. No, but I would be happy to -- to provide that to

1 you for the terms of the fiscal impact that we would have
2 probably provided to the Staff for their preparation of their
3 fiscal note.

4 Q. And both of these carriers operate in more than
5 one state; is that correct?

6 A. I'm sorry?

7 Q. These carriers operate in more than one state; is
8 that correct?

9 A. Yes. The CenturyTel entities operate in multiple
10 states.

11 Q. And if Missouri passes a set of truth in billing
12 rules that differ from another state in which CenturyTel
13 operates that has another set of truth in billing rules, and
14 then another state in which they operate has a different set
15 of truth in billing rules, does that impose a cost for
16 CenturyTel in each state with which it operates to
17 differentiate all of their bills?

18 A. Yes, Commissioner, it certainly does, particularly
19 to the extent -- and -- and, in fact, these companies do -- we
20 use a centralized billing mechanism that's provided by
21 corporate.

22 I don't want to misstate, for the record, the fact
23 that these two particular ILECs operate in more than
24 one jurisdiction. They do not. They operate in Missouri, but
25 they are part of the CenturyTel corporate family.

1 And it's the -- CenturyTel, Inc. and it's companies
2 that provide billing services for these companies. And to the
3 extent that there are divergent rules and regulations among
4 the various states within which our operating companies
5 provide services, then, yes, very much so. They -- that would
6 constitute an increased cost.

7 Q. So is it CenturyTel, Inc. that provides the billing
8 services for all of them --

9 A. I'm not --

10 Q. -- or do you know?

11 A. I believe it's -- CenturyTel Services Groups is the
12 entity that provides that.

13 Q. Okay. But obviously if they had to provide a
14 different format for every state, that would -- would drive
15 costs, would it not?

16 A. Yes, it sure would.

17 COMMISSIONER MURRAY: Okay. All right. I think
18 that's all I have. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE JONES: Commissioner Gaw?

21 COMMISSIONER GAW: Thank you.

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Mr. Dority, do you -- do you know about the -- the
24 form -- the billing format for CenturyTel and -- and Spectra?

25 A. Just in general terms, Commissioner. I -- I -- I'm

1 not that familiar, but I would be happy to -- to provide that
2 to you.

3 Q. Oh, that'd be great if you want to do that. And --
4 but the other -- I guess was I was wanting in particular, I
5 was curious about whether or not if you knew how -- what --
6 what appears inside the tax columns?

7 A. I'm sorry. I do not know. But I can -- again,
8 I'll be happy to that get information to you.

9 Q. And I asked that same question of Ms. MacDonald.
10 And I'm trying to find out if the -- if companies are
11 consistent what they -- when they show a tax line, what's
12 contained inside of that --

13 A. Uh-huh.

14 Q. -- line item. And -- and if you all could help
15 with that, too, I would be grateful.

16 A. I will be happy to do that.

17 Q. Okay. And do you know whether or not CenturyTel
18 has any charge -- line-item charge that would be other than
19 taxes or USF, state or federal? Let's see. Can you think of
20 anything else? I think I'm missing one of them.

21 But in any event, do you know if they have anything
22 like a regulatory fee line item?

23 A. We -- we do not have a -- regulatory fees or
24 anything like an interstate access line, recovery fee or
25 anything of that sort.

1 Q. All right.

2 A. I believe we may be implementing an -- local number
3 portability fee authorized by the FCC.

4 Q. Okay.

5 A. But, again, that would be something that emanates
6 from -- from the government --

7 Q. Yeah.

8 A. -- and not something that we initiated. So --

9 Q. Yeah. Okay. Do you -- do you see any -- any legal
10 issues with the Commission issuing a rule that suggests that
11 anything that's contained in the tariff to the -- that the
12 com-- the company shall file compliance tariffs with the
13 ruling within so much time after the rule is -- the rule's
14 effective date?

15 A. I guess to the extent that it would contravene an
16 existing tariff.

17 Q. But -- go ahead. Let's assume that it might do
18 that.

19 A. Then I would generally agree with Ms. MacDonald's
20 analysis that I think, you know, as opposed to suggesting that
21 just because a tariff now would contain language that might
22 contravene a rule --

23 Q. Right.

24 A. -- that would be promulgated by the Commission. I
25 believe it would be incumbent upon the Commission or its Staff

1 to bring an action -- what we call a complaint --

2 Q. Yeah.

3 A. -- or whatever, and have an evidentiary basis upon
4 which to make a determination that that tariff is no longer
5 lawful.

6 Q. Wouldn't that have to occur anyway, even if the
7 rulemaking suggested that compliance tariffs should be filed
8 within so much time -- if the company chose not to change a
9 tariff that was in contravention of the rule, wouldn't it
10 require, in order for that to be changed, a complaint to be
11 filed?

12 A. You mean just by inaction --

13 Q. Yes.

14 A. -- the company could force that issue?

15 Q. Yes.

16 A. Possibly.

17 Q. And that -- that would -- that would be the way to
18 have to change the tariff for the Staff to file a complaint,
19 wouldn't it?

20 A. I -- I believe so. I guess I would hate to be in a
21 position to where I'd be suggesting to a client that, you
22 know, they would be in what would appear to be a violation of
23 an existing rule to which fines and other bad things could
24 happen to them.

25 So, you know, I -- I don't know from that

1 standpoint. But I -- I -- like -- like I say, I would agree
2 that there needs to be a -- an evidentiary foundation --

3 Q. And -- and --

4 A. -- laid upon which the Commission, based upon
5 competent and substantial evidence, can make a determination
6 as to whether a tariff is lawful or not.

7 Q. Would -- would it surprise you to -- to see
8 precedent for that in the Missouri Commission? Would it
9 surprise you to find precedent for that --

10 A. I'm sorry?

11 Q. -- for the Commission to have issued a rulemaking
12 saying companies have so much time to file tariffs and comply
13 with the tariff -- with the new rule?

14 A. No, that would not surprise me. I -- I'm not sure
15 if I remember tariffs having to filed. I know that -- I'm
16 trying to think. I mean, I -- I recall there being precedent
17 for a rulemaking being -- a rule being promulgated and a
18 timeline within which companies must be in compliance.

19 COMMISSIONER GAW: Yes. Okay. All right.

20 I think that's all I have. Thanks.

21 THE WITNESS: Thank you.

22 COMMISSIONER MURRAY: Can I --

23 JUDGE JONES: Commissioner Murray?

24 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Mr. Dority, speaking of tariffs, I'm trying to

1 figure out exactly how the tariffs fit here with this
2 rulemaking.

3 Do your -- do -- do -- do your tariffs, do you
4 know, actually state what will be -- what will appear on the
5 bills?

6 A. I don't believe they specifically delineate the
7 format of the bills. I expect they have a specific section
8 that reflects the fact that they are authorized to recoup
9 taxes and -- and surcharges and may be mandated by
10 governmental entities and -- and pass through to the customer.

11 But I'm -- I'm not aware that there may be -- you
12 know, there's anything that would address the general
13 formatting of the bills in our tariffs.

14 Q. And is there anything, to your knowledge, that
15 addresses what has to be disclosed at the time the customer
16 contacts a company for service?

17 A. Not that I'm aware of.

18 Q. So there may be nothing in the tariffs that
19 actually would be affected by this rulemaking; is that
20 possible?

21 A. Commissioner, I just don't know. I'll have to get
22 back with you on that one.

23 Q. Do you know if -- if the language that Commissioner
24 Gaw has suggested were added that said, all telecommunications
25 companies shall be in compliance with this rule within

1 six months, whether it -- in order to be in compliance, the
2 carriers would just have -- would -- would have to change
3 their billing structures and their customer service
4 representatives instructions, as well as change tariffs or
5 would there be no need to change tariffs?

6 A. Again, I -- I'm personally not familiar with that
7 particular language that would -- would be in our tariffs.
8 And I will -- I'll -- I'll just simply need to take a look at
9 that. And, like I said, I'd be happy to report back you what
10 I find.

11 COMMISSIONER MURRAY: We've given you a lot of work
12 in the short time you've been up there, haven't we?

13 Thank you.

14 JUDGE JONES: Thank you, Mr. Dority. You may be
15 seated.

16 THE WITNESS: Thank you.

17 (WITNESS EXCUSED.)

18 JUDGE JONES: Now we'll hear -- we'll hear from
19 Sprint.

20 Please raise your right hand, sir.

21 (WITNESS SWORN.)

22 JOHN IDOUX, having been duly sworn, testified as follows:

23 MR. IDOUX: Good afternoon, Judge. Good afternoon,
24 Commissioners.

25 I am here on behalf of -- of Sprint Missouri, Inc.,

1 the local phone company, as well as Sprint Communications
2 Company, L.P., the long distance division of Sprint.

3 From Sprint's local perspective, we have a taxes
4 and surcharge section of our phone bill that has up to a dozen
5 different taxes and surcharges that have been discussed here
6 this morning and this afternoon.

7 And from Sprint's long distance perspective, we
8 have an other charges and credits section of the bill, which
9 includes items like the in-state access recovery fee, and
10 other similar items that have been discussed as part of this
11 rulemaking process.

12 From a general perspective, Sprint is in favor of
13 this rule and supports its purpose. We believe in up-front
14 disclosure so the consumers can make an educated and informed
15 decision.

16 We also have some self-interest in that, in that if
17 we tell a customer that their monthly is gonna be \$7 and they
18 get a bill for \$15, we're gonna lose the customer in 30 days
19 when they get that bill. And we might also upset that
20 customer enough that they are -- they will stay away from
21 other Sprint products, such as Sprint DSL, such as Sprint PCS.
22 So we have very strong, self-motivating factors to make sure
23 we get it right up front with the customer.

24 We also support very clear and concise billing
25 practices. Sprint long distance does have an in-state access

1 recovery fee. It is imposed by the -- by the company. And we
2 think it is unfair for carriers to label that sort of fee as a
3 tax or other government-mandated surcharge. And Sprint's bill
4 clearly labels this as a other charge incurred.

5 So we do support the two goals of this proposed
6 rule. You know, up-front, clear identification, as well as
7 proper bill placement.

8 Sprint takes that one step further. And in it's --
9 in it's bills it provides the customers with an 800 number
10 and/or a website that they can go and provide -- or and
11 obtain, you know, immediate information as to the charges and
12 taxes that appear in that section. This is different than our
13 normal 800 number. It's specifically related to those items.

14 So by and large Sprint is in favor of the proposed
15 rule. But like the other carriers today, we do have a couple
16 of concerns.

17 The biggest concern being in Subpart 4, the last
18 sentence that does talk about the presence of a charge in a
19 currently effective tariff is not evidence in and of itself
20 that the charge is authorized or mandated by the Commission.

21 We agree with the intent of that sentence as it was
22 portrayed to us by the Staff in workshops, as well as
23 portrayed this morning by Staff. But we also acknowledge that
24 sentence, in and of itself, is a very loaded sentence, can be
25 interpreted many ways by many people for many years to come,

1 and recommend the elimination of that sentence.

2 By eliminating that sentence it does not weaken the
3 Commission's rule whatsoever. The Commission still has all of
4 the authority it did without that sentence.

5 Alternatively, the language proposed by -- by Staff
6 this morning, while I haven't seen it and was read many times
7 by Ms. Dietrich, we would support that as an alternative,
8 although our first recommendation would be to eliminate that
9 sentence. Because we feel the -- by not having that sentence,
10 the proposed rule clearly accomplishes the purpose and the
11 goals.

12 And that's all of my prepared comments. I will be
13 open to questions, and I'll try to void any action items.

14 JUDGE JONES: Commissioner Murray?

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. I -- I think as -- when you started out there, you
17 kind of made my case, that we don't need a rule. And that was
18 that you have a very strong, self-motivating reason to provide
19 disclosure up front, because you don't want to irritate your
20 customers with a surprise and get them to associate Sprint
21 with misinformation or misrepresentation or something negative
22 so that they will not use Sprint for local long distance or
23 other services in the future.

24 But don't you think that there is a very strong --
25 there is -- should be strong self-motivation for carriers to

1 disclose to their customers?

2 A. Oh, absolutely. Not only do you have the cost of
3 the customer calling in and complaining. Once they do get
4 that final -- or that first bill 30 months (sic) down the
5 road, and it's -- Sprint does everything possible to give a
6 very good reasonable up-front estimate of that first monthly
7 bill, so there is no sticker shock. There are no surprises.

8 I mean, there are a lot of items on a phone
9 company's bill. It is complicated, although I don't
10 necessarily share the OPC's comments that they are -- are
11 confusing.

12 But carriers spend a lot of money on bill
13 presentation, both local and long distance companies. So in
14 turn it's one of the biggest enemies for any telecom carrier,
15 whether it's local, long distance or wireless.

16 Customer churn is something that Wall Street pays
17 attention to, it's something that management pays attention
18 to.

19 Anything that we can do to relieve customer churn,
20 anything that carriers can do to keep their costs down by not
21 having additional phone calls, you know, 30 months -- or
22 30 days after a new customer signs on, those efforts are gonna
23 be taken, not because of the rules, but because of customer
24 satisfaction and self-interest of the carrier to keep that
25 customer happy.

1 Q. And you indicated, though, that you believe in
2 strong labeling requirements, in spite of the fact that there
3 is strong self-motivation for --

4 A. Correct.

5 Q. -- disclosure to satisfy the customers?

6 A. Right.

7 Q. And that you are in support of this rule. Do you
8 really think that this rule in Missouri is necessary with the
9 proposed FCC rule, and -- and are you at all concerned about
10 mandating certain specific requirements in this state that --
11 that may carry over differently in other states?

12 A. Do I think -- a lot of questions there. I'll try
13 to address -- address them individually.

14 Do I think it's needed, no, I don't. But then why
15 do we go ahead and support it? As we read the rule today,
16 Sprint and its companies, both the local side and the long
17 distance side, we feel we are in "compliance" with the
18 proposed rule.

19 We are aware of other carriers -- and they're not
20 big, national carriers -- most of them are local, regional
21 carriers that do disguise some of these fees as taxes.

22 That does put Sprint at an unfair disadvantage --
23 competitive disadvantage when it looks like Sprint is imposing
24 a fee that other carriers aren't.

25 Those situations are limited, and those carriers,

1 you know, by and large are not gonna be around a whole lot
2 longer. So that's the only, you know, perspective as to why
3 we think it would be needed to level the playing field. But
4 those situations are very -- are very limited.

5 Q. Well, is it going to be costly at all for Sprint to
6 make the changes in their disclosure requirements that would
7 be mandated by this rule?

8 A. Sprint already discloses.

9 Q. Do you -- does Sprint --

10 A. And -- and as we -- as we read the rule, our
11 disclosure process in and of itself would not have to change
12 with the way it's worded.

13 We, both on the local and long distance side,
14 provide our customers with our best efforts to give them the
15 total monthly -- what the -- what the total monthly bill would
16 be, including all taxes and surcharges.

17 As the customer, you know, asks questions, we
18 provide additional information as to the different number of
19 taxes and the various surcharges that would be applied.

20 Do we give an exact penny or the exact tax based
21 upon each city, no, we don't do that. But we don't read the
22 rule that that is required.

23 Q. Okay. Does Sprint operate that way in all of its
24 states, to your knowledge?

25 A. At that general high-level perspective, yes, it

1 does. So -- so any Missouri-specific requirement that we
2 currently are not doing we would, you know, require changes in
3 both the local and long distance side, which would increase
4 costs.

5 But, like I said, as we read the rule now, you
6 know, all of the items -- actually there's only two, an A and
7 B, or items 1 and 2, are currently accommodated for.

8 Q. So do you force your customers to listen to the
9 whole litany of charges for every -- every service when they
10 request service?

11 A. We do provide them with -- we -- we currently do
12 provide them with an estimate. If you called up and wanted
13 the solutions package, which is one of Sprint's products,
14 we'll tell you that it is 14.95. It includes these particular
15 items.

16 At the end of the call, we will tell them that, you
17 know, their first monthly bill it may or may not include
18 partial charges. If it does, we'll let them know what those
19 partial monthly charges are, what their first monthly bill
20 would be, and an estimate of all of the surcharges and taxes.
21 And the known ones will be spelled out, including, like I
22 said, access recovery fee. And if it was a long distance
23 customer and if it was for local service, we would, you know,
24 highlight the big items.

25 We do not provide an itemization, if you would, of

1 all of the individual, you know, state tax, local tax, county
2 tax, franchise taxes and they're estimated individual items.
3 We -- we do estimate taxes in total, and provide them with a
4 best-effort taxes.

5 And as I read the proposed rule, it doesn't say
6 anything about an itemized, you know, per-line item estimate.
7 We do provide full disclosure, you know, using reasonable
8 assumptions.

9 Q. In Section 1 where it says, shall -- this
10 disclosure shall be in addition to the itemized account --
11 well, that -- I guess that's to the itemized account of
12 monthly charges during the customer's first billing period for
13 the equipment and service for which the customer is
14 contracted.

15 Do you read that as applying to the first monthly
16 bill?

17 A. And we do. We provide an itemized -- I mean, their
18 monthly bill -- if they're a new customer, we'll provide an
19 itemized detailed exist. If it's an existing customer with a
20 new service, there's a separate section on there that
21 highlights changes from the previous bill. And it will
22 itemize each and every new item.

23 Q. But then the first part of that section that says,
24 shall provide a clear, full and meaningful disclosure of all
25 monthly charges and usage -- usage-sensitive rates at the time

1 of the execution of the service agreement between the company
2 and the customer or at the time the customer otherwise
3 contracts with the company. But in any event, prior to the
4 date service is initiated.

5 You think you do that now for all charges and
6 usage-sensitive rates --

7 A. The --

8 Q. -- at the time the --

9 A. That the customer orders, correct. Now, I'll agree
10 with SBC. We don't provide a detailed listing of all the
11 potential pay-per-use directory assistance like
12 star 60-whatever for call back.

13 There's a lot of things that, you know, are pay as
14 you go or on demand that we have no way of knowing that the
15 customer will order. And, no, we do not provide a detailed
16 listing of all those services, nor do we believe the rule
17 requires it.

18 Q. Okay. And I don't recall you're saying today, and
19 I can't remember whether it was in your comments on the
20 Section 5, the language that purports to allow the Commission
21 to remove or modify a currently effective tariff.

22 Do you have a problem with that?

23 A. We -- we agree with -- with the industry comments.
24 And not being a lawyer, I mean, I can't give you a -- a legal
25 interpretation.

1 But with discussions from our attorneys, it was my
2 understanding, I mean, if Sprint has a charge that has been
3 lawfully approved by the Commission, the only way to -- to get
4 Sprint to stop assessing that is for a complaint to be filed
5 regarding the lawfulness of the -- the charge.

6 If Staff or OPC or -- or the Public or anybody,
7 just like a charge that Sprint currently was charging, they
8 could file a complaint to go through the process to try to get
9 it removed. And there would have to be some lawful basis to
10 remove it from the tariff.

11 We don't think that's necessarily changed. We
12 don't think that paragraph 5 necessarily changes that -- that
13 requirement.

14 Q. But you didn't analyze it from a wider scheme
15 point, right?

16 A. I personally did not; our legal team did.

17 Q. Can you tell me if you -- do you work with your
18 tariffs?

19 A. Yes.

20 Q. Can you tell me if your tariffs contain language
21 about what has to appear on a customer's bill or what a
22 customer service representative has to disclose?

23 A. I can answer that. And, no, our tariffs do not
24 have that.

25 Q. So this rule has nothing to do with tariffs?

1 A. It doesn't. It has nothing to do with tariffs.

2 Q. So would you have any objection to rat-- removing
3 Section 5 altogether, which talks about tariffs?

4 A. I -- I would have absolutely no objection to
5 removing 5. I don't -- once again, I don't think it will
6 weaken the proposed rule at all. And obviously it's a -- you
7 know, a major piece of -- of, you know, disagreement.

8 And just to -- to make matters simpler, without
9 weakening it, I don't see any reason why not to remove it.

10 COMMISSIONER MURRAY: That's all I have. Thank
11 you.

12 JUDGE JONES: Thank you.

13 Commissioner Gaw?

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. Mr. Idoux, do you know what goes into the tax
16 sections of Sprint's bill? Do you -- do you know
17 how -- what's actually in there when you go down through the
18 list?

19 A. I do know how Sprint calculates its taxes.

20 Q. can help me with that? That would be --

21 A. I will try.

22 Q. Okay. To the extent that you know.

23 A. All right. I --

24 Q. Just tell when you're not sure, and that'll be fine
25 for now.

1 A. Now, one statement before -- before you --

2 Q. Sure. Go ahead.

3 A. -- fire away.

4 Q. I'm not -- and I'm gonna let you tell me. I'm
5 not -- I'm really not trying to -- to --

6 A. Now.

7 Q. I don't have a whole list of questions here for
8 you.

9 A. The -- well, then maybe I shouldn't make my
10 statement. Under Sprint's local bill --

11 Q. Yes.

12 A. -- the following taxes apply, and we do have
13 surcharges. These are just the taxes, federal tax, state tax,
14 local tax --

15 Q. Okay.

16 A. -- county --

17 Q. Go ahead.

18 A. -- county tax and franchise tax.

19 Q. Okay.

20 A. And there may be, depending upon different parts of
21 the -- the state, there may be additional.

22 Q. Can -- can you run that list down real quick? I
23 don't have any Livenote working today, for what it's worth.

24 A. Federal.

25 Q. Okay.

1 A. State.

2 Q. All right.

3 A. Local.

4 Q. All right.

5 A. County.

6 Q. All right.

7 A. And franchise.

8 Q. And franchise.

9 Okay. Now, can you bre-- can you go within those

10 categories and tell me what's in there?

11 A. From --

12 Q. Like on the federal line item.

13 A. The federal line item is -- doesn't -- I can tell

14 you what it doesn't include.

15 Q. Okay.

16 A. It doesn't include any of Sprint's income taxes.

17 Q. No income tax.

18 Okay.

19 A. I do not believe when we put -- when we went down

20 and figured out how to calculate that there would be any

21 concern. It's simply the taxes imposed by the federal

22 government for telecommunication services as remitted back to,

23 you know, the appropriate federal agency.

24 It does not include --

25 Q. Okay.

1 A. -- corporate income tax. It does not include
2 property tax. The same with --

3 Q. Same with state?

4 A. Same with state. You know, I don't know if there's
5 a sales tax or --

6 Q. Yeah, but what about fi-- fi-- the -- you know, I'm
7 not even sure what the status of it is, the Missouri franchise
8 tax, is that in or out or do you know? Is it -- do we still
9 have that?

10 A. The -- the franchise tax would be a local franchise
11 tax, as I read it here.

12 Q. Yeah, that's another thing. There used to be a
13 state franchise tax. I'm not sure -- I'm not positive that
14 it's still in existence. It was a few years ago trimmed down.
15 N?

16 A. I don't know if that's part of the state tax --

17 Q. Okay.

18 A. -- or not.

19 Q. All right. But do you know what's actually in
20 it? Do you know what would -- would be in that line on state?

21 A. Not the specifics --

22 Q. Okay.

23 A. -- but -- and I know there's no things like --

24 Q. Is that something you can get for me, too?

25 A. I can -- sure.

1 Q. Okay. Local?

2 A. The local tax is just whatever the city --

3 Q. Is that a specific tax on the company, as a
4 telecommunications company?

5 A. I -- I believe the local tax is similar to a local
6 sales tax or a local receipts tax.

7 Q. So that probably -- so that -- that would be
8 probably what's in that --

9 A. Sales tax.

10 Q. All right. County?

11 A. Would be the same.

12 Q. What's the difference -- is -- is the local the
13 municipal?

14 A. Yes.

15 Q. And the county then is just the county instead of
16 local?

17 A. The franchise taxes.

18 Q. What is that?

19 A. It usually goes to the local government.

20 Q. Is it like a local business tax?

21 A. Local -- for right-of-ways, et cetera.

22 Q. For right-of-ways, okay, and things of that sort.

23 A. And the local tax is -- or a local sales tax or
24 a -- the franchise tax is an additional tax on
25 telecommunication providers.

1 Q. Okay. Do you know how they pass through on -- to a
2 customer-by-customer basis? After you determine what's in
3 there, are they allocated according to how much usage there is
4 for that month or do you know?

5 A. Sprint passes these taxes on to its customers based
6 upon a percentage.

7 Q. Percentage of --

8 A. It's all percentage.

9 Q. Percentage of what?

10 A. It's whatever the tax rate is times the, you know,
11 applicable base. And every community will apply the
12 applicable base differently.

13 Q. Okay.

14 A. Some will include the basic service, and some will
15 include basic and toll.

16 Q. But does it vary according to that customer's usage
17 for that month?

18 A. It could. If they have -- if they have, you know,
19 more toll in a given month --

20 Q. Yes.

21 A. -- their taxes would be higher. If they have more
22 pay-per-view items like directory assistance, well then, yes,
23 that -- that amount would go up on all of those taxes.

24 Q. Okay. Okay. So it does vary according to usage,
25 it's just the basic local doesn't vary according to usage,

1 so --

2 A. Correct.

3 Q. -- it's gonna be the same for -- according to what
4 class of customers you have?

5 A. If the city limited -- limited their tax to -- to
6 basic local, then, no, it wouldn't.

7 Q. Yeah.

8 A. It would only change if the tax rate changed or the
9 basic local --

10 Q. Okay.

11 A. -- rate changed.

12 Q. All right. And is that similar to the -- to
13 Sprint's long distance bill?

14 A. Well, Sprint's long distance bill, you know --

15 Q. On the tax issue?

16 A. -- you know, by -- yeah, on the tax issue it's the
17 same.

18 Q. Same.

19 Okay.

20 A. And it's -- but it's -- by and large, it is more
21 usage based.

22 Q. Sure. But that's because of the variance --

23 A. Right.

24 Q. -- more than it is, because the difference in your
25 policy?

1 A. Correct. Our policy is the same.

2 COMMISSIONER GAW: Yes. Okay.

3 If you could get that clarification for me, that
4 would be helpful.

5 That's all I have.

6 JUDGE JONES: Commissioner Clayton?

7 COMMISSIONER CLAYTON: I did have some questions
8 regarding my Sprint bill, and I'm gonna spare Mr. Idoux that.

9 JUDGE JONES: Commissioner Appling?

10 COMMISSIONER APPLING: I apologize for coming back
11 late, but I went out on the street just to ask people about
12 their bill and stuff. And you'd be surprised that somebody
13 told me I -- I talked to SBC not in here tonight, but what
14 they told me about you guys. But I was out there checking.
15 That's why I got back in late.

16 No questions for you.

17 JUDGE JONES: Okay. There -- there doesn't appear
18 to be any further questions. Mr. Idoux, you may have a seat.

19 (WITNESS EXCUSED.)

20 JUDGE JONES: Apparently the hearing record will
21 need to be held open to receive a -- a number of -- of
22 research items, and to also give the industry an opportunity
23 to review the -- the changes that the Staff to the Commission
24 introduced today.

25 So with that in mind, we will leave the hearing

1 open and we'll go in recess now.

2 Yes?

3 MS. MACDONALD: Can I provide the information about
4 the -- about the First Amendment?

5 JUDGE JONES: Of course you can.

6 MS. MACDONALD: Thank you. SBC Communications,
7 Inc. filed comments in, in the matter of the truth in billing
8 and billing format CG Docket No. 04208 on August 13th, 2004.

9 And although I'm not gonna bore you with all of the
10 details of that, of particular interest is that we stated most
11 commenters agree that a ban on the use of line-item charges or
12 surcharges would be impermissible under the First Amendment.

13 Carriers that supported that were specifically
14 BellSouth, MCI, Verizon and Leap Wireless International.

15 The only commenter that attempted to justify the
16 proposed ban under the First Amendment ultimately conceded
17 that such a ban on line items would prove unsuccessful was the
18 public utilities commission of Ohio.

19 And our comments are specifically on pages 7
20 through 11.

21 COMMISSIONER GAW: 7 through 11?

22 MS. MACDONALD: Uh-huh.

23 COMMISSIONER GAW: And --

24 MS. MACDONALD: And I can provide you that if you
25 would want to --

1 COMMISSIONER GAW: Especially if they have the
2 legal cites.

3 MS. MACDONALD: Yes, we do.

4 COMMISSIONER GAW: That's fine. So whenever.
5 Just -- just if you want to make copies and send them to my
6 receipt (sic), Ms. MacDonald.

7 MS. MACDONALD: And then with regard to the tariffs
8 we're still looking into that.

9 COMMISSIONER GAW: Okay.

10 MS. MACDONALD: But we do know that in our general
11 tariff, Subsection 17, we have a reference in there that
12 states that we will pass through taxes. So we are passing
13 through the taxes.

14 COMMISSIONER GAW: Okay. But there's not a
15 specific provision about anything, and you don't know what's
16 included in there as of -- as of now?

17 MS. MACDONALD: Right. We're -- we're still
18 waiting for our --

19 COMMISSIONER GAW: But you're working on it?

20 MS. MACDONALD: -- tax people to get back to us.

21 COMMISSIONER GAW: Okay.

22 MS. MACDONALD: Thank you.

23 JUDGE JONES: Thank you, Ms. MacDonald.

24 JUDGE JONES: Commissioner Murray?

25 COMMISSIONER MURRAY: Is that all the parties?

1 JUDGE JONES: With that then, as I say, we'll go in
2 recess. Thank you.

3 WHEREUPON, the on-the-record portion of the hearing
4 was concluded.

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5 Proposed language from
6 Commissioner Gaw

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