

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 September 24, 2002
8 Jefferson City, Missouri
9 Volume 2
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11 In the Matter of Southwestern Bell)
12 Telephone Company's Tariff Filing to) Case No. TT-2002-472
Initiate Residential Customer) Tariff No. 200200831
13 Winback Promotion.)
14 In the Matter of Southwestern Bell)
15 Telephone Company's Tariff Filing to) Case No. TT-2002-473
16 Extend Business Customer Winback) Tariff No. 200200828
17 Promotions.)
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MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

SHEILA LUMPE,
CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

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

2 JUDGE WOODRUFF: Let's go ahead and go on the
3 record at this time.

4 This is Case No. TT-2002-472 and TT-2002-473.
5 They both concern Southwestern Bell tariffs, one to initiate
6 residential customer winback promotion and the other to
7 extend the business customer winback promotion. And we're
8 going to start today by taking entries of appearance. Let's
9 begin with Southwestern Bell.

10 MR. LANE: Good morning, your Honor. Paul
11 Lane and Mimi MacDonald on behalf of Southwestern Bell
12 Telephone, LP, doing business as Southwestern Bell Telephone
13 Company. Our address is One SBC Center, Room 3520,
14 St. Louis, Missouri 63101.

15 JUDGE WOODRUFF: Thank you.

16 And for Staff?

17 MR. HAAS: William K. Haas appearing on behalf
18 of the Staff of the Public Service Commission. My address
19 is Post Office Box 360, Jefferson City, Missouri 65102.

20 JUDGE WOODRUFF: And for Public Counsel?

21 MR. DANDINO: Michael Dandino, Office of the
22 Public Counsel, Post Office Box 7800, Jefferson City,
23 Missouri 65102, representing the Office of the Public
24 Counsel and the Public.

25 JUDGE WOODRUFF: Okay. And for NuVox, MCI

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1 WorldCom, MCI Metro Access and Brooks Fiber?

2 MR. CURTIS: Thank you, your Honor. Let the
3 record reflect the entry of appearance of Leland B. Curtis
4 and Carl Lumley, firm of Curtis, Oetting, Heinz, Garrett &
5 O'Keefe, 130 South Bemiston, Suite 200, St. Louis, Missouri
6 63105, on behalf of NuVox Communications, MCI Metro Access
7 Transmission, Brooks Fiber, MCI WorldCom.

8 And, your Honor, if I might, I would like to
9 introduce to the Commission Pat Escobedo, who is an
10 Associate Counsel for WorldCom. She has come in from Texas
11 and has been admitted for a special appearance here.

12 JUDGE WOODRUFF: Thank you very much.
13 Mr. Curtis, do you have any preference on what I call your
14 client so I don't have to go through the list?

15 MR. LANE: I do.

16 (Laughter)

17 MR. CURTIS: I have none. WorldCom, NuVox.

18 JUDGE WOODRUFF: Okay.

19 MR. CURTIS: And just so it's clear,
20 Ms. Escobedo is representing the WorldCom companies but not
21 NuVox.

22 JUDGE WOODRUFF: Thank you.

23 And AT&T?

24 MS. DeCOOK: Thank you, your Honor. Rebecca
25 DeCook on behalf of AT&T, address 1875 Lawrence Street,

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1 Suite 1575, Denver, Colorado 80202.

2 JUDGE WOODRUFF: Thank you very much. And I
3 believe that's everyone.

4 Are there any preliminary matters anyone wants
5 to bring up before the Commissioners come down?

6 (No response.)

7 There is one matter that I wanted to deal
8 with, and that was a motion that was filed -- Motion to
9 Strike that was filed by AT&T on September 16th. It was
10 very similar to another Motion to Strike that the Commission
11 had ruled upon on that same date, I believe. At this time
12 that motion will be denied on the record.

13 So at this point, then, we'll take a short
14 break, and we'll come back at 8:45 with the Commissioners
15 and for opening statements.

16 (A recess was taken.)

17 (EXHIBIT NOS. 1 THROUGH 10 WERE MARKED FOR
18 IDENTIFICATION.)

19 JUDGE WOODRUFF: All right. Let's go ahead
20 and begin, then, with opening statements, and we'll begin
21 with Southwestern Bell.

22 MR. LANE: Thank you, your Honor. My name is
23 Paul Lane and I, along with Mimi MacDonald, represent
24 Southwestern Bell Telephone Company in this case.

25 This case involves tariffs that propose to

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1 waive nonrecurring charges for residential and business
2 customers who want to return to Southwestern Bell after
3 having received service from a CLEC. These customers would
4 pay the same monthly recurring charges, but Southwestern
5 Bell proposes to waive the nonrecurring charges to install
6 and get a service up and running. Those run about \$35 for
7 residential customers and about \$52 for business customers.

8 There's one thing that all the parties in this
9 case agree on, that it is a benefit to customers to receive
10 lower prices. Southwestern Bell would ask that the
11 Commission not ignore the benefits to consumers from these
12 tariffs.

13 One of the principal purposes of the
14 Commission is to protect and benefit consumers, not to
15 manage or allocate the market. Instead, the Commission
16 should let competition work and let the benefits flow to
17 consumers. The Commission should be extremely cautious of
18 claims that lower prices to customers should not be granted.

19 What are the complaints against the tariffs
20 here? Essentially that they are anti-competitive and
21 discriminatory. Those claims are flat wrong for reasons
22 that I will discuss. But before doing that, I'd observe
23 that this case stands on different footing from a lot of the
24 cases that come before this Commission.

25 Many of the cases, if not most, the Commission

1 is asked to make a predictive judgment about what will
2 happen in the future if a particular course of action is
3 followed or if, as in this case, a particular tariff is
4 approved.

5 But this case is different because these
6 tariffs are substantially similar to previous tariffs that
7 were approved by the Commission and were in effect.
8 Southwestern Bell had a residential tariff which waived
9 nonrecurring charges for winback customers that was
10 previously in effect from August 4th of 2000 to
11 December 31st of 2001.

12 Southwestern Bell had a business winback
13 tariff which waived nonrecurring charges that this
14 Commission previously approved and was in effect from
15 April 9th of 2001 until April 8th of this year.

16 One would expect that the parties who oppose
17 the tariffs in these cases, who claim that the tariffs are
18 discriminatory and anti-competitive, would bring facts based
19 on what happened during the time these prior tariffs were in
20 effect. If all of the problems that they claim would result
21 from the approval of these tariffs were, in fact, true,
22 competition would be ruined as they claim, we would expect
23 that they would show definite proof from the time these
24 prior tariffs were in effect.

25 In fact, we see no evidence at all from Staff,

1 from Office of the Public Counsel, from AT&T, WorldCom or
2 NuVox to show what happened during this prior period, no
3 evidence that CLECs lost access lines because customers
4 flocked back to Southwestern Bell, no evidence that
5 Southwestern Bell was able to recapture lines and eliminate
6 competitors. That ought to resolve the issue. These
7 tariffs have been tried and no one has shown any
8 anti-competitive impact.

9 But one party, Southwestern Bell, has shown
10 what the impact was from these prior tariffs. Mr. Hughes
11 looked at several indicia of competition comparing the time
12 immediately before the tariffs went into effect and the time
13 when tariffs -- when the final one was ended in April of
14 this year.

15 I'll look at just one of those indicia, access
16 lines. Mr. Hughes looked at those number of access lines as
17 of July of 2000, right before the residential tariff took
18 effect, and April of 2002, right after the promotion ended.
19 Did the CLECs experience a dramatic decline in access lines
20 during this period of time? No. Did Southwestern Bell
21 experience a dramatic increase in the number of access lines
22 that they held? Again, no.

23 To the contrary, the CLECs had a dramatic
24 increase in the number of lines that they served during the
25 time that these tariffs were in effect. Mr. Hughes shows

1 that they went from a minimum of 152,000 lines to a minimum
2 of 332,000 lines. They more than doubled the number of
3 lines that they served.

4 Mr. Regan shows that Southwestern Bell
5 experienced a significant decline in the number of access
6 lines that they served during this period of time. Almost
7 180,000 lines were lost, about 6 percent of what we serve.

8 I hesitate to rely too much on access lines
9 gained for CLECs and access lines lost for Southwestern Bell
10 as evidence that competition is working. I point out that
11 we see in normal competitive markets that there's not a
12 dramatic change in the market share on a month-by-month or
13 year-by-year basis, and yet these markets are considered and
14 are, in fact, competitive.

15 But when we show, as here, that the CLECs
16 experienced a dramatic increase in the number of lines that
17 they serve and Southwestern Bell experienced a significant
18 decrease, I believe any reasonable person would conclude
19 that tariffs like this do not have any anti-competitive
20 impact.

21 This should end the inquiry, but let me turn
22 to the claims that they make that are based on theory and
23 not on fact.

24 Parties claim that these are discriminatory or
25 anti-competitive, and I point out that the FCC has examined

1 winback offers and has found them to be pro-competitive. In
2 a September 3rd of 1999 Order in Docket No. 96-149, the FCC
3 made several important statements concerning winbacks. They
4 said, quote, Winback restrictions may deprive customers of
5 the benefits of the competitive market, unquote, and, quote,
6 winback facilitates direct competition on price and other
7 terms, for example, by encouraging carriers to outbid each
8 other for a customer's business, enabling the customer to
9 select the carrier that best suits the customer's needs,
10 unquote. Those are both from paragraph 68 of the FCC Order.

11 The FCC in that Order rejected the same claims
12 made here that incumbent local exchange companies should be
13 restricted from winback because of their, quote, historic
14 monopoly position.

15 The FCC is correct. Winback offers are
16 consistent with a competitive market and do benefit
17 consumers. The FCC has answered claims that these tariffs
18 or winback offers in general are anti-competitive. The FCC
19 has said, and they are correct, that offers are
20 anti-competitive only if they are predatory. The FCC said,
21 and again I'll quote, While excessively low pricing and
22 other exclusionary practices may contravene anti-trust law,
23 commenters proffered neither facts nor convincing arguments
24 in their legal conclusion a realistic concern, unquote.

25 The same is true here. There's no evidence

1 that these tariffs are priced below cost, the first
2 requirement to prove a predation claim. Southwestern Bell
3 expects these customers to come back and buy a normal basket
4 of goods and services and retain service with us for a
5 sufficient period of time that we will recoup any costs that
6 are involved in waiving the nonrecurring charges up front.

7 CLECs obviously believe that to be true for
8 themselves since they also waive nonrecurring charges for
9 new customers in many circumstances.

10 But even if Southwestern Bell weren't covering
11 its costs, which no party has shown, predation cannot be
12 found based on the evidence in this case. The Supreme Court
13 has said, properly so, that predation is rarely tried and
14 even more rarely achieved. Dr. Aron discusses some of the
15 reasons for this in her testimony.

16 For a predation claim to be made, one has to
17 show that Southwestern Bell would be able to drive out every
18 other competitor from the market and keep them out of the
19 market while we raise our prices above the competitive level
20 in order to recoup any losses that we experienced before.

21 As Dr. Aron testifies, that's essentially
22 impossible in the telecommunications market today. We
23 couldn't drive competitors out and we couldn't keep them
24 out. I'd point out that this Commission controls the price
25 that we charge for unbundled network elements to competitors

1 and controls resale rates to competitors.

2 I'd also point out that in the highly unlikely
3 and essentially impossible situation where all competitors
4 were driven out of the market and couldn't come back into
5 it, that Southwestern Bell still wouldn't be able to raise
6 prices above the competitive level and recoup the revenues
7 that it lost during that period. And the reason is that we
8 are still subject to price caps from this Commission and
9 under the law. That sets what we can charge for our
10 services.

11 Even in those areas that the Commission has
12 declared to be competitive where we're permitted to move our
13 prices up or down as we see fit, if there were no
14 competition the Commission retains the right under the
15 statute to reimpose price caps. So that stands as an
16 absolute barrier to any recoupement that is a necessary
17 element of a predation claim.

18 Now, Staff says that they believe these
19 tariffs are anti-competitive but they don't mean it in the
20 anti-trust sense. Instead, Mr. Thomas uses his own personal
21 standard for what he thinks is anti-competitive. He says
22 anti-competitive is, quote, actions that may possibly
23 discourage competition, unquote. Staff cites no legal or
24 economic principle for this definition. Dr. Aron testifies
25 that she is aware of none.

1 Such a definition provides no guidelines
2 whatsoever on how it should be applied. It gives Staff free
3 reign to say a particular tariff is anti-competitive or not
4 based solely on its views on whether it may possibly
5 discourage competition.

6 If General Motors decides to decrease the
7 price for all of its new models by \$500 in the next year, I
8 imagine that somebody could say that that would discourage
9 Chrysler or Ford. It wouldn't like to see those prices
10 lowered. But that's not the definition of what
11 anti-competitive means.

12 The Commission should stick to legal and
13 economic principles and not adopt such a test. The
14 Commission should look at the facts, and in this case the
15 facts show that there was no anti-competitive impact from
16 the approval of these prior tariffs that were in effect for
17 some 21 months.

18 Claims that Southwestern Bell has market power
19 and shouldn't be allowed to reduce price are equally bogus.
20 As Dr. Aron explains, market power in an economic analysis
21 involves the ability to increase prices above the
22 competitive level. These tariffs involve price decreases.
23 Market power is not an issue. Instead, if a price is being
24 reduced, we look to see if its predatory, and as I've
25 explained, nothing has been shown nor could have in this

1 case.

2 Winback offers are very common in the
3 competitive marketplace. Automobile manufacturers offer
4 special discounts to customers who previously bought one of
5 their cars. Magazine publishers offer lower prices to
6 former subscribers of the service to get them to come and
7 take their magazine again.

8 Charging different prices to different
9 customers, different groups of customers is a very normal
10 practice in a competitive environment. We see it all the
11 time. Movie theaters and restaurants offer discounts to
12 senior citizens. Airlines offer different rates and lower
13 rates for students and for seniors.

14 Does it cost less to make a car for a customer
15 who bought a similar model in the past? Of course not.
16 Does it cost less to show a movie or serve a meal or prepare
17 a magazine for a group of customers? Of course not.

18 Is the telecommunications market somehow
19 different? No. CLECs in this case also offered to waive
20 nonrecurring charges for new customers. MCI, AT&T and
21 others offer cash to former customers for their long
22 distance services to come back to them for service.
23 Mr. Hughes attaches an offer that he received personally of
24 \$75 from AT&T to win him back to their long distance
25 service.

1 Do these offers violate the statute in
2 Missouri? I don't think so, but if Southwestern Bell can't
3 have winback offers, then neither can CLECs nor
4 interexchange carriers. The statute applies equally to all
5 telecommunications providers. It's not limited to ILECs.
6 It involves CLECs and it includes interexchange carriers as
7 well.

8 Section 392.200.2 and 392.200.3 are the
9 operative sections that we're dealing with in this case. In
10 fact, the Legislature has said that the Commission cannot
11 waive these provisions of the tariffs even for competitive
12 companies.

13 I'd also point out that similar winback offers
14 are not prohibited under federal law. Federal law uses the
15 exact same operative words as state law. Section 392.200.3
16 says that any telecommunications carrier can't give an undue
17 or unreasonable preference or advantage or cause prejudice
18 or disadvantage. Section 202(a) of the federal act uses
19 those exact same words.

20 Just as winback offers are not discriminatory
21 under federal law, those same offers are not discriminatory
22 under state law. It's entirely permissible to price to a
23 designated class of customers as Southwestern Bell proposes
24 to do here.

25 And I'd point out that what Southwestern Bell

1 is doing is responsive to what we see CLECs doing in the
2 marketplace today. They don't serve all customers equally
3 on the same basis. They market to whom they want to market.

4 As the Commission's aware, many of the CLECs
5 serve only business customers. Others serve residential
6 customers but they don't want the entire group of customers.
7 They want and develop packages that are designed to attract
8 the high-use customers that will utilize not only local
9 service but a lot of vertical services and toll as well.

10 When we prepare a winback offer like this,
11 it's responsive to what CLECs have done because they've
12 engaged in niche marketing, identifying this group of
13 customers as ones that they are trying to serve, and we're
14 equally permitted to prepare and submit for approval an
15 offer that does the same thing.

16 The Commission should let the market work and
17 not attempt to manage competition, but if you disagree you
18 must treat all competitors equally because the Legislature
19 has required that.

20 If you sense that Southwestern Bell is
21 somewhat frustrated from its testimony from these type of
22 proceedings, you're correct. Competitors continue to try to
23 use the regulatory process to thwart competition.

24 The Commission should not be in the business
25 of trying to deny customers lower prices for service. The

1 Commission should approve these tariffs and make a clear
2 statement that it wants the marketplace to work and for the
3 benefits of competition to flow to customers.

4 Thank you.

5 JUDGE WOODRUFF: Thank you, Mr. Lane.

6 For Staff?

7 MR. HAAS: Good morning. I'm William Haas
8 appearing for the Staff of the Commission.

9 Southwestern Bell proposes to offer two
10 winback promotions that waive the nonrecurring installation
11 charges associated with various services for customers who
12 have left Southwestern Bell to go to a CLEC and who now wish
13 to return to Southwestern Bell.

14 The Staff has reviewed these promotions under
15 Missouri statutes. Section 392.200 authorizes
16 telecommunications companies to offer promotions so long as
17 the offer is otherwise consistent with the provisions of
18 Chapter 392 and approved by the Commission.

19 This statute also provides that a
20 telecommunications company may not charge one customer more
21 than it charges another for doing a like and contemporaneous
22 service under the same or substantially the same
23 circumstances and conditions.

24 Here Southwestern Bell proposes to waive the
25 nonrecurring installation charge to a customer returning

1 from a CLEC but would still charge a brand-new customer who
2 has no service that installation charge under the same
3 circumstances and conditions.

4 Section 392.200 also provides that if a
5 telecommunications company proposes to define a service
6 based on market segmentation, the Commission must find that
7 such market segmentation is in the public interest and is
8 reasonably necessary to promote competition and the purposes
9 of the chapter.

10 Here Southwestern Bell proposes a market
11 segmentation consisting of those customers who have left
12 Southwestern Bell and who now are receiving service from a
13 CLEC.

14 Southwestern Bell's winback proposals are not
15 only not reasonably necessary to promote competition, but
16 threaten the development of competition in the local market.
17 The fundamental disagreement between Southwestern Bell and
18 the other parties is grounded in different viewpoints about
19 the status of competition in the telecommunications
20 industry.

21 Southwestern Bell's witnesses refer to the
22 long distance market and to the winback programs of carriers
23 competing in that market, but those references are not
24 particularly relevant because the Commission recently found
25 in Case No. TO-2001-467 that Southwestern Bell does not face

1 effective competition in its local markets except in limited
2 areas.

3 Because the CLECs are not in a strong enough
4 position to effectively compete with Southwestern Bell,
5 these winback promotions are harmful to competition, are not
6 in the public interest, and should be rejected.

7 Thank you.

8 JUDGE WOODRUFF: Thank you, Mr. Haas. For
9 Public Counsel?

10 MR. DANDINO: Thank you, your Honor. May it
11 please the Commission?

12 I don't like these type of cases. This is
13 a -- puts Public Counsel and I'm sure puts this Commission
14 in a predicament, and it's a very difficult position. Do
15 you look at giving reductions to consumers, which would seem
16 at first glance is what Public Counsel should be all about,
17 or do you look at a broader picture, which is what this
18 Commission and even to some extent Public Counsel is all
19 about, too?

20 Southwestern Bell is asking you to look at one
21 little spot on the floor, looking at one little tile, and
22 say if it reduces rates for consumers, it's got to be good.
23 But I think this Commission, I think this office to
24 represent the entire public has to look at more than just
25 this tile on the floor, this spot on the carpet. We have to

1 look at the whole room. We have to look at the whole
2 building. We have to see what the effect of that is in the
3 whole environment.

4 Now, Mr. Haas from the Staff I think
5 excellently laid out the statutory basis and the legal basis
6 for -- the objections of the Public Counsel makes, and we
7 join in their position.

8 There are two real reasons or I guess two
9 general reasons why Public Counsel is opposing this, and I'm
10 going to look at it in a broader term. I don't know if it
11 follows, necessarily follows a strict economic theory, but I
12 think it's a very practical theory and I think it's
13 reflective of the facts in the market.

14 Of course, we're disturbed about singling out
15 a small subset of customers for a one-time benefit and
16 there's other similarly situated customers that don't
17 receive this benefit. Mr. Haas pointed out new customers
18 aren't treated the same way. And we're worried about cost
19 shift. It's interesting to note that the shifting costs --
20 let me backtrack a bit.

21 Public Counsel is worried about that in an
22 effort to obtain competitive advantage or gain foothold in
23 the competitive market, that decisions will be made to cut
24 prices that will affect the other services that Southwestern
25 Bell provides to the detriment of those remaining customers.

1 And many of those customers, such as residential customers,
2 don't have the same knowledge, information, even
3 opportunity, real opportunity or don't want to exercise
4 the op-- don't have the opportunity to switch providers.

5 And we think when we look at this, we don't
6 see that there's a real reasonable basis for treating these
7 similarly situated customers differently. In State ex rel
8 DePaul Hospital vs. Public Service Commission, that's one of
9 the standards this Commission -- at this Commission that the
10 law, the courts require.

11 You can treat people differently, you can
12 discriminate, discriminate being in a broad term, but there
13 has to be a rational, justifiable reason that really serves
14 the public policy. I think that's the question before the
15 Commission.

16 And one of the -- it's also interesting in the
17 cost shift that in Dr. Aron -- Southwestern Bell's witness
18 Dr. Aron says that cost shift is really an irrelevant point
19 because Southwestern Bell is a price cap company.

20 It's interesting to note that two weeks ago
21 when we were talking about CLEC cost studies and whether or
22 not there's subsidies or support given, Southwestern Bell
23 was very interested in cost shifting, and so was Sprint,
24 another price cap company, and so was Verizon and
25 CenturyTel, other price cap companies, and so was AT&T and

1 MCI and WorldCom, competitive companies. They're all
2 interested in cost shifting.

3 One of the things, too, and Mr. Lane brought
4 it out, talking about how long distance companies make a
5 cash -- cash payments to customers to switch. A couple
6 years ago I ran across a little cartoon, the Lockhorns. The
7 husband is saying -- or the wife is saying to the husband,
8 MCI sent us \$100 to switch to their service. Now we can pay
9 the AT&T bill.

10 So somebody's paying for this. Is it the
11 other MCI customers? Is it the other -- in this case, is it
12 the other Southwestern Bell customers?

13 Mr. Lane brought up that the telephone
14 industry is the same as the other markets, the automobile,
15 the food service. I beg to differ. It is a utility. It is
16 a different environment. The telephone is a necessity, and
17 it also -- Southwestern Bell starts with a large base of
18 customers that no other industry started out with.

19 Now, the second point. The second point is
20 the effect on competition, and without question Southwestern
21 Bell's advertisements shows that it's a big company with
22 real people, that they own the network and their competitors
23 are like pigeons on their telephone lines. They make it a
24 point to know that they own the network and they are the big
25 company. Southwestern Bell without question is the big dog

1 in this yard. There's a lot of small dogs in this yard now,
2 a lot of puppies, some small dogs, and there's a lot of
3 activity, there's a lot of noise, but the fact that
4 Southwestern Bell remains the big dog.

5 And I don't know if it's an economic principle
6 and I don't know if it's a competitive rule or whether it's
7 just a corollary of Darwinism, but I do know that big dogs
8 eat first. Their size, their power, their savvy give them
9 an advantage over the other smaller competitors at the food
10 dish.

11 The small dogs and puppies only get what the
12 big dog leaves behind, or in this case, and we're talking
13 about competition, the small dog can grab one of those
14 choice morsels and take off, and if they do that enough
15 they'll develop and they'll get stronger and they can
16 compete better with the big dog.

17 The trouble is when they grab that small
18 morsel and take off, the big dog, it's going to retrieve it
19 and it's going to exact a price for retrieving it. It's
20 going to make it more difficult for that smaller dog to
21 retrieve it the next time, to snap up this choice morsel.

22 And I think it's -- and it's not because the
23 big dog is a bad dog or is bad. It's because that's its
24 nature. It's the dominant company and it's going to act
25 like the dominant company. And until the regulators come in

1 and put some type of balancing in there, the small -- the
2 smaller companies in the yard aren't going to have the same
3 opportunity.

4 Now, we're not asking you to muzzle
5 Southwestern Bell and we're not asking you to beat
6 Southwestern Bell up, but what we're asking is to tether
7 them down a little bit, that at least if the -- if the small
8 company, or let's say back to the example, the small dog
9 gets one of these morsels, you know, and gets away and has
10 the courage and the tenacity to compete with the big dog, at
11 least let them get off the porch where they can eat it and
12 grow stronger and develop this competition because that's
13 what I'm really coming down to.

14 This whole thing is preserving what we have in
15 terms of competition to give it a chance to develop.
16 Southwestern Bell is very strong and is very competent and
17 has a very strong brand name, and of course they're going to
18 say they're being punished for that. But if we're going to
19 develop true competition in this state and if we're going to
20 give the CLECs any opportunity to compete with them, then I
21 think they need to have a certain advantage.

22 If you look at the Federal Telecommunications
23 Act and the state law, they don't -- there's built into this
24 an effort to limit the power of the incumbent. You know,
25 the interconnection agreements, they have a duty to

1 interconnect, you know, and their method of -- they're
2 treated differently, and they're treated differently for a
3 purpose. They're treated differently to open competition.

4 And that's all I think that Public Counsel is
5 asking you for in this is not to hogtie Southwestern Bell,
6 but just to limit their ability in this very limited
7 situation to win back the customers.

8 Thank you.

9 JUDGE WOODRUFF: Thank you. And for NuVox and
10 WorldCom?

11 MR. CURTIS: Thank you. Good morning. My
12 name is Lee Curtis. I represent NuVox and WorldCom and its
13 associated companies.

14 With regard to the two specific Southwestern
15 Bell promotional winback tariffs at issue, WorldCom and
16 NuVox ask the Commission to reject both those tariffs in
17 their present form.

18 We appreciate and share the concerns that were
19 expressed by Staff and Public Counsel in their Position
20 Statements and their testimony and in their opening
21 statements. While their positions might be somewhat
22 counterintuitive to where they normally would be, we think
23 they have understood the global issue or the particular
24 issue of these tariffs in a global sense and the seriousness
25 of the threat that these tariffs pose.

1 We also believe that the Commission got it
2 right last year in its Report and Order in consolidated
3 Cases TT-2002-108 and 130, both involving similar
4 Southwestern Bell promotional tariffs. In its Report and
5 Order which was issued in December of 2001, the Commission
6 concluded that the use of save and winback provisions by
7 Southwestern Bell is anti-competitive.

8 As part of its rationale in rejecting the
9 winback provisions proposed by Southwestern Bell in that
10 proceeding, the Commission emphasized that it has a
11 statutory duty to regulate Missouri's telecommunications
12 industry in such a way as to promote the development of full
13 and fair competition.

14 We appreciate the Commission's sense of duty
15 here, and this is certainly a market that is very sick, and
16 it is not the robust competitive open market that is being
17 suggested by Southwestern Bell.

18 In considering the save and winback proposals
19 at issue in this proceeding, the Commission stated its
20 concern about protecting the viability of the overall market
21 for local exchange telecommunications services. In
22 rejecting Southwestern Bell's customer benefits argument,
23 the Commission concluded that Southwestern Bell's offers are
24 a threat to the long-term health of the competitive market
25 for local phone service.

1 These are strong statements. That was a year
2 ago. Nothing really has changed. In some regards it's
3 gotten worse.

4 In that Order, the Commission further stated
5 and observed its obligation to protect the viability of the
6 competitive market in order to protect Missouri's
7 telecommunications customers from the threat of monopoly
8 power in a future without viable competition in the local
9 telecommunications market.

10 In responding to Southwestern Bell's then
11 argument that in supporting its 271 petition before the FCC
12 the Missouri Commission had concluded and bound itself to
13 the local telecommunications is open to competition, this
14 Commission underscored in response to that suggestion that,
15 quote, unless the Commission acts to protect competition,
16 the local exchange market may be open to competition but
17 have no surviving competitors.

18 Sadly, the state of competition in the
19 Missouri telecommunications market today remains the same,
20 if not worse, than it was last year. Southwestern Bell is
21 still the dominant local provider in its service areas in
22 the state of Missouri. Its own witnesses freely claim an
23 80 to 88 percent share of the local market.

24 The local market is still only at the brink of
25 being open to competition nearly six years after the legal

1 mandates for that opening were put in place. Competitors
2 remain and will remain for some time completely dependent on
3 Southwestern Bell for key facilities. Competitors are still
4 working through interconnection issues. CLECs continue to
5 deal with weak capital markets, thin operating margins and
6 staggering losses, not only in Missouri, nationwide.

7 Office of the Public Counsel witness
8 Meisenheimer described the current state of competition in
9 Southwestern Bell exchanges in Missouri as bleak. This is a
10 completely accurate description. And the Commission, I
11 think, keenly understands its obligation, its duty to
12 provide some nurturing for a very young and fragile market.

13 Yet into this struggling and young market
14 Southwestern Bell yet again proposes another promotional,
15 this time to target and bring benefit to customers who have
16 left Southwestern Bell and been audacious enough to go with
17 a CLEC. It wants them back immediately. This is a monopoly
18 behavior. This is a strong market dominating type of
19 behavior, and one can't blame them. They are acting
20 naturally.

21 But this Commission must step in and must seek
22 to preserve a fragile and emerging market against those
23 kinds of actions.

24 It's an abuse of power by Southwestern Bell.
25 It is -- in addition to being abusive and anti-competitive,

1 we suggest it is decidedly unhealthy to the market.

2 Southwestern Bell's proposed winback discounts
3 are also, as has been pointed out by Staff and Public
4 Counsel, unlawful and unreasonable, in contravention of
5 Section 392.200 which prohibits pricing schemes that
6 discriminate between similarly situated customers as well as
7 unreasonable preferences and unreasonable market
8 segmentation.

9 Mr. Haas has gone into this argument in
10 detail. The Commission is well familiar with the case law
11 on this and the statute and had discussed it in last year's
12 case. We think it is still very much on point.

13 There's absolutely no basis on which --
14 reasonable basis for Southwestern Bell to segment the market
15 further and create a new class of customers which they
16 describe as customers who were once Southwestern Bell's but
17 now are customers of CLECs, and treat that as a distinct
18 subset of a class as opposed to all potential and
19 prospective customers that it would like to win back.

20 This idea of pricing that discretely is
21 flat-out unlawful discrimination, and there's no reasonable
22 basis that the -- that Southwestern Bell has provided in
23 this record. There's no cost justification, and
24 traditionally the courts have looked for reasonable basis
25 for discrimination in pricing, is there a reasonable basis

1 somewhere, and traditionally the courts look to cost
2 differences or geographic differences, and none exist here,
3 and none have been offered by Southwestern Bell other than
4 the idea that somehow this is something that customers want.
5 Well, we don't even think there's evidence of that in the
6 record.

7 We suggest that it is improper for
8 Southwestern Bell to attempt to lure back the few departing
9 customers who have left Southwestern Bell to go with the
10 CLECs and try them out with specific targeted discriminatory
11 prices. We think it's unreasonable, it's unwise, it's
12 illegal, and it's time to increase the flexibility of the
13 market, not to decrease the opportunity for CLECs to
14 compete.

15 We urge the Commission to see these tariffs
16 for what they are, destructively anti-competitive and
17 unlawfully discriminatory and reject them.

18 Thank you.

19 JUDGE WOODRUFF: Thank you.

20 For AT&T?

21 MS. DeCOOK: Good morning, your Honor,
22 Commissioners. Becky DeCook for AT&T. I guess I represent
23 one of those small dogs, puppies, I'm not sure which.

24 But like the other parties in this proceeding,
25 other than Southwestern Bell, AT&T urges that the Commission

1 reject these tariffs, and we believe that similar tariffs --
2 these tariffs and similar tariffs should be rejected until
3 controls are put in place to ensure that SWBT, Southwestern
4 Bell, cannot use its market power, its monopoly dominance on
5 this market to its advantage and to the competitors'
6 disadvantage.

7 It's our position that these tariffs are
8 unreasonably discriminatory and anti-competitive. We share
9 in the concerns that you've already heard from the other
10 parties to this proceeding, Staff, Public Counsel, WorldCom
11 and NuVox. We share those concerns and urge you to reject.

12 We believe that SWBT has the affirmative
13 obligation to demonstrate to this Commission that these
14 tariffs are not discriminatory and anti-competitive. As
15 Mr. Curtis suggests, they have not presented a scintilla of
16 evidence to support the fact that they claim that these are
17 nondiscriminatory and noncompetitive, not anti-competitive.

18 I would also note that this is not a predatory
19 pricing case. We believe that SWBT has the effect -- has
20 the ability to affect local competition in an adverse way
21 without engaging in predatory pricing. They obviously can
22 do it by engaging in predatory pricing, but we believe there
23 are actions it can take in the marketplace that do not rise
24 to the level of predatory pricing that can have an adverse
25 effect on the development of competition in Missouri.

1 I would also note that this is not a perfectly
2 competitive market. It's not a typical market, competitive
3 market. I agree with Mr. Dandino in his comments on why you
4 cannot overlay examples from other markets which are
5 obviously competitive and different from this market and use
6 those as examples for conduct in this proceeding.

7 This is a market that has been traditionally
8 regulated. It's a regulated monopoly market. It is now a
9 market that through regulation this Commission and other
10 commissions are trying to overlay a competitive regimen.
11 That is much different than the markets that are cited by
12 SWBT.

13 I think it's -- AT&T understands SWBT's
14 position in this case. We've been in that position before.
15 We were the dominant provider in the long distance market.
16 We understand the incentives and the motivations that are
17 driving Southwestern Bell.

18 We also understand that the Commission's role
19 is to ensure that the controls are in place such that
20 Southwestern Bell cannot manipulate its position in the
21 market to its competitive advantage, and that's -- that's a
22 role that you should take very seriously.

23 And because of SWBT's undeniable market power
24 and control over the local market, it has the incentive to
25 use any and all means to ensure that or to prevent any

1 market share loss, any loss of revenues, and it's the
2 Commission's responsibility to ensure that it does not do
3 that in an improper manner.

4 We would suggest that by Southwestern Bell's
5 own numbers, if you believe them, they still maintain a very
6 high market share, 88 percent market share. We think it's
7 higher than that, but even if you assume that's correct,
8 that's still a market that they're dominating.

9 And I would also agree with Mr. Dandino that
10 to the extent that Southwestern Bell attempts to use the
11 long distance market as an example of where winbacks are
12 being used and are appropriate is really a misnomer. Surely
13 the long distance market is nowhere close to the local
14 market.

15 The long distance market, AT&T no longer has a
16 dominant position. There isn't a dominant provider in the
17 long distance market. So it's inappropriate to compare that
18 and the winbacks that are prevalent in that market with the
19 winbacks that are proposed here.

20 Finally, I would note that AT&T is not opposed
21 to lawful and fair price competition, price competition
22 that's available to all local customers, not just a targeted
23 subset of customers, which is what SWBT is proposing here.

24 And for all those reasons, AT&T would
25 recommend that these tariffs be rejected. Thank you.

1 JUDGE WOODRUFF: Thank you.

2 The Commissioners all have to go up to agenda,
3 so we'll go ahead and proceed without them, and I believe
4 we're ready to start with the first witness for Southwestern
5 Bell.

6 MR. LANE: Call Dr. Debra Aron, your Honor.

7 MR. CURTIS: Your Honor, if I might, we would
8 object to the calling of Dr. Aron as the first witness.

9 JUDGE WOODRUFF: Okay. I believe this was
10 left as an open question in the preliminary matters. What's
11 your reason for objection?

12 MR. CURTIS: Our reason for objection is that
13 she is a surrebuttal witness, and the previous schedule had
14 not listed her at all. The previous schedule proposed by
15 Staff, to which no one filed objections, had Southwestern
16 Bell proceeding with Mr. Regan, Mr. Hughes next, and there
17 was no supplemental filing indicating where Dr. Aron was to
18 go. We had assumed she would be third in the order and that
19 she was the only surrebuttal witness. She did not file
20 direct. The others had filed direct.

21 And so our objection is that she's out of
22 order. We have not been consulted prior. We walked in this
23 morning and were told she's going first. So we object to
24 that order.

25 JUDGE WOODRUFF: Response, Mr. Lane?

1 MR. LANE: Your Honor, Dr. Aron is a rather
2 expensive witness for us to bring in, and we are in need of
3 trying to move her out for that purpose.

4 I think Mr. Curtis' objections are completely
5 unwarranted. He hasn't shown any Commission rule that says
6 that we have to put somebody in a particular order. It's
7 our case. It's our burden. We can put on who we believe is
8 appropriate first.

9 If Mr. Curtis is surprised that we want to put
10 Dr. Aron on first, he sure could have called and we would
11 have told him that. He never called. I can't see the
12 prejudice or surprise. She's scheduled to go on today under
13 any circumstances. I presume they're ready to do their
14 cross. He's advanced no reason why they can't.

15 So I think it's inappropriate, and we're
16 permitted to call who we believe is the appropriate first
17 witness and Dr. Aron is who I want to call.

18 JUDGE WOODRUFF: Anyone else want to be heard
19 on this matter?

20 (No response.)

21 I'm going to overrule the objection. I
22 believe that Southwestern Bell can -- it is their case.
23 They can call whichever witnesses in whatever order they
24 wish. So Dr. Aron will take the stand.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may be seated. And you
2 may inquire.
3 DEBRA J. ARON testified as follows:
4 DIRECT EXAMINATION BY MR. LANE:
5 Q. Could you state your name for the record,
6 please.
7 A. My name is Debra J. Aron, A-r-o-n.
8 Q. And by whom are you employed, Dr. Aron?
9 A. I'm employed by LECG and Northwestern
10 University.
11 Q. And, Dr. Aron, did you prepare surrebuttal
12 testimony that has been marked as Exhibit 1 in this case?
13 A. Yes.
14 Q. Do you have any changes to that testimony?
15 A. I have two changes.
16 Q. What's your first one?
17 A. On page 25, in Figure 1, there's a Footnote 3,
18 and I'd like to delete that footnote, please.
19 Q. What's your second change?
20 A. On page 37, line 4 -- the sentence starts on
21 line 3, it says, The Order explicitly provides for the
22 removal of these reductions; however, once the line loss
23 notification problem -- however, once the line loss
24 notification problem is resolved. And I'd like to add the
25 phrase "and now those restrictions have been removed,"

1 period.

2 And then on the next line, line 5, where it
3 says, While the line loss notification problem is being
4 corrected, the word "is" should now be changed to the word
5 "was."

6 Q. Is that all the changes that you have?

7 A. It is.

8 Q. With those changes in mind, if I were to ask
9 you the questions that are contained in your surrebuttal
10 testimony today, would your answers be the same?

11 A. Yes, they would.

12 Q. And are they true and correct to the best of
13 your knowledge and belief?

14 A. Yes, they are.

15 MR. LANE: Your Honor, at this time we would
16 offer Exhibit 1 and tender Dr. Aron for cross.

17 JUDGE WOODRUFF: Exhibit 1 has been offered
18 into evidence. Are there any objections to its receipt?

19 (No response.)

20 JUDGE WOODRUFF: Hearing none, then it will be
21 received into evidence.

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

23 JUDGE WOODRUFF: And for cross-examination,
24 we'll begin with Staff.

25 CROSS-EXAMINATION BY MR. HAAS:

1 Q. Hello, Dr. Aron.

2 A. Good morning.

3 Q. Your testimony provides a review of anti-trust
4 law. Has any party to this case alleged that the winback
5 promotions at issue are -- constitute anti-trust?

6 A. The parties have alleged that the winback
7 tariffs are anti-competitive, and so what I'm providing here
8 is an understanding based on the long history of thought by
9 people who have thought hard and long about similar
10 allegations in other contexts, and as I believe Mr. Dandino
11 put it, the predicament that a decision maker faces when
12 confronted with that same set of claims by allegedly
13 aggrieved competitors and how to think about and how to
14 balance and how to weigh those concerns, vis-a-vis the clear
15 interests of consumers.

16 Q. Your testimony also provides a review of
17 predatory pricing. Has any party to this case alleged that
18 the winback promotions at issue here constitute predatory
19 pricing?

20 A. In my opinion, yes, they have, and the reason
21 I say that is that the allegations are that the offers are
22 anti-competitive and discriminatory. And as I said, there
23 is a long history of thought by economists and anti-trust
24 scholars and decisions by the courts with respect to those
25 kind of claims, and what the courts and scholars have

1 concluded is that, to the extent that there's merit to such
2 claims, it's if and only if the prices at issue are
3 predatory.

4 Q. Is it your opinion that the words "anti-trust"
5 and "anti-competitive" are synonymous?

6 A. Anti-trust is a body of knowledge, thinking,
7 economics and law. What informs anti-trust is that body of
8 thinking and economic principles and legal decisions.

9 My point in raising the anti-trust precedent
10 in thinking is because this Commission should not be viewing
11 these allegations in a vacuum. This is not the first time
12 that a decision-making or policy-making body has had to
13 confront these kind of claims where competitors are coming
14 to a decision-making body for protection against what it
15 claims are harmful prices.

16 And while I fully sympathize with the
17 predicament that Mr. Dandino has articulated, courts have
18 faced that and economists have confronted that predicament
19 for a long time and have come to a very firm set of
20 principles by which to evaluate those. And those principles
21 are embodied in my testimony, that you look at them
22 skeptically and you evaluate them and the basis of whether
23 they're below cost and whether there's genuinely a risk of
24 exclusionary opportunity for recoupement.

25 Q. So would it be your opinion that these

1 promotions cannot be weighed as to their anti-competitive
2 effect outside of anti-trust theory?

3 A. I think that it would be a mistake to evaluate
4 these claims without reference to the history of thinking
5 that has been applied to these kind of claims in the
6 economic and anti-trust arena, because they're conceptually
7 the same issues.

8 Q. Would you please turn to page 8 of your
9 testimony.

10 The sentence that begins at line 19 reads,
11 Even price decreases that drive competitors out of the
12 market benefit consumers and are not necessarily symptomatic
13 of anti-competitive behavior or any long-run harm to
14 consumers, absent other relevant facts.

15 What other relevant facts would affect that
16 statement?

17 A. It's part of competition that competition will
18 drive inefficient firms out of the market. So if all one
19 observes is that competitors are being driven from a market,
20 that is, without other facts, simply a part of the
21 competitive process. The other facts that one would look at
22 to evaluate whether that's socially harmful are the facts
23 that I've discussed in my testimony.

24 If the allegation is that that exclusion or
25 driving out of competitors is a result of pricing behavior,

1 then one would ask, is that pricing behavior predatory under
2 the criteria that I've articulated?

3 Q. It isn't a word that you've used in your
4 testimony, but can you define "natural monopoly" for me?

5 A. Economists normally would define natural
6 monopoly something like this: A natural monopoly is an
7 industry characterized by a cost structure where average
8 costs are declining throughout the relevant range of demand.
9 That's roughly it.

10 Q. Is basic local telephony a natural monopoly?

11 A. I think that that's an empirical question, the
12 evidence to which right now is that, at least in many
13 geographic areas, it's clearly not a natural monopoly.

14 But the provisions of the Telecommunications
15 Act of 1996 were designed to address the concern that some
16 component of the telecommunications local network might be a
17 natural monopoly, and that led to the long list of
18 obligations imposed on incumbents, starting with
19 interconnection, but through provision of unbundled network
20 elements at regulated rates and the provision of services of
21 resale, also at regulated rates.

22 Q. At page 15 you refer to the Zenith Radio
23 Corporation case. Do you consider manufacturing radios and
24 televisions to be a natural monopoly?

25 A. Well, I haven't addressed the question of

1 whether it's a natural monopoly. The reason I raised the
2 Matsushita case in my testimony is because of the Supreme
3 Court's articulation of the principle that predatory pricing
4 cases have turned to an increasing extent on market
5 structure.

6 That is, in order to evaluate whether pricing
7 is genuinely anti-competitive or predatory, the courts now
8 look not just at whether prices are below cost, but in
9 addition and often first, look at whether the market
10 structure could legitimately and realistically lead to
11 exclusion of competition and then later recoupement of the
12 losses that were incurred during the exclusionary period,
13 and whether that's -- the market structure can realistically
14 lead to that outcome.

15 That was the point that I was making by
16 raising the Matsushita case, and the court certainly didn't
17 confine that principle to the television equipment or any
18 other industry.

19 Q. Historically have rates charged for radios and
20 televisions been regulated?

21 A. Not to my knowledge.

22 Q. At page 16 you note that Southwestern Bell
23 operates under price caps for residential and business local
24 exchange services. How does that price cap prevent
25 Southwestern Bell from raising its rates above a competitive

1 level?

2 A. The price cap constrains the incumbent from
3 raising the prices above the cap. So if the concern is --
4 and the concern according to standard analysis would be
5 whether the alleged predator could exclude competition by
6 pricing below cost and then raise prices above the
7 pre-predation level in order to recoup the losses that it
8 incurred during the exclusionary phase.

9 That would require the ability to raise prices
10 above the pre-predation level. And if the pre-predation
11 prices are at the cap, that would require pricing above the
12 cap, which is precluded by the cap.

13 Q. And for non-basic services provided by
14 Southwestern Bell, wouldn't it also require that the losses
15 be greater than the 8 percent increase allowed per year?

16 A. To the extent that the carrier could achieve
17 8 percent increases per year through the functioning of the
18 cap and the functioning of competition, it would not need to
19 engage in any sort of exclusionary behavior to benefit from
20 those price increases. So the increase in order to recoup
21 the losses would have to be above the price increases it
22 could otherwise achieve without the exclusion or there would
23 be no rational benefit to sustaining losses in order to
24 exclude competition.

25 By the way, I don't think it's realistic to

1 consider that these prices could realistically have the
2 effect of excluding carriers like AT&T and MCI from this
3 market to begin with.

4 Q. On page 18 you say that, to the extent that
5 CLECs have invested in their own facilities, much of this
6 investment such as outside plant may be sunk. That's at
7 line 3.

8 Do you know the extent to which CLECs have
9 invested in their own facilities in Missouri?

10 A. I testified here a year or so ago on a
11 competitive declaration matter, and at that time I did look
12 at the extent of facilities and non-facilities-based
13 competition that Mr. Hughes had provided in testimony, and I
14 recall that at least at that time there was substantial
15 investment in cable facilities. And I believe that the
16 Commission declared certain areas open to -- pardon me. I
17 believe that the Commission declared competitive certain
18 residential markets on that basis.

19 I haven't looked at the most recent figures on
20 the extent to which there are facilities investments in the
21 state of Missouri since that time, but I'm aware that
22 carriers overall are continuing to grow facilities-based
23 lines. I quoted in my testimony some statistics that are
24 based on nationwide facilities-based competition which
25 demonstrate that CLECs who are facilities-based are growing

1 their revenue year after year and growing their lines year
2 after year.

3 Q. Follow up on that. On page 22, you refer
4 to a report that found that aggregate CLEC revenues have
5 experienced a tenfold increase in five years. Did that
6 report say what had happened to the aggregate CLEC expenses
7 over that period?

8 A. The report concluded that CLECs are expected
9 to be viable and growing going forward, and drawing a
10 conclusion about viability and future success requires
11 thinking not just about revenues but about potential
12 profitability, which includes some consideration of costs.

13 Q. I'm going to ask you to define a couple of
14 other terms that I don't believe you used in your testimony,
15 but one would be economies of scale.

16 A. Well, economists normally, I guess, would
17 define economies of scale to mean a characteristic of costs
18 by which unit costs decline as quantity increases over some
19 range of output.

20 Q. The second term I'd like you to define is
21 economies of scope.

22 A. Economies of scope are defined to mean the
23 condition by which unit costs of a given product line
24 decline as the number of product lines in the organization
25 increases.

1 Q. Does Southwestern Bell have economies of scale
2 in providing local service?

3 A. I don't know the answer to that. I do know
4 that the Telecommunications Act, or perhaps it's more
5 accurate to say the FCC, was concerned that there may be
6 economies of scale and addressed that concern through the
7 requirement that CLECs have the ability to use unbundled
8 network elements at regulated rates.

9 Q. Does Southwestern Bell have economies of
10 scope?

11 A. There may be economies of scope between, for
12 example, local service and long distance service or local
13 service and vertical features. CLECs certainly can benefit
14 from the same economies of scope. AT&T, MCI are certainly
15 multi-product companies that benefit from the opportunity to
16 provide both local, long distance and other services.

17 Q. Would a CLEC have or be able to match
18 Southwestern Bell's economy of scale providing local
19 service?

20 A. CLECs can more than do that by virtue of
21 the fact that CLECs have access to unbundled network
22 elements at TELRIC-based rates and, in fact, as I testified
23 here in Missouri, the UNE rates that are in effect today
24 are, based on my analysis, below the actual cost that SBC or
25 Southwestern Bell in Missouri actually incurs to provide

1 those elements.

2 So to the extent that they're being provided
3 at less than the actual cost of providing those elements,
4 the CLECs are benefiting from more than the economies of
5 scale that Southwestern Bell may have.

6 Q. Was your study a forward-looking cost study?

7 A. No. My study was based on 2001 costs. The
8 purpose of my study was to ask and answer the question, are
9 the current prices in effect actually compensatory with
10 respect to the actual costs that the company incurs to
11 provide these elements?

12 Q. At page 25 you begin a discussion of the
13 automobile industry. Is the automobile industry a natural
14 monopoly?

15 A. Well, perhaps one of the lessons of the
16 discussion here is that in the '70s and before, I think many
17 people believed that the automobile industry was at least a
18 natural oligopoly, that there were substantial economies of
19 scale, that there were substantial entry barriers due to a
20 huge amount of capital investment necessary to build
21 automobiles, and what the Japanese incursion and success
22 ultimately in the U.S. market demonstrated was that those
23 perceptions were incorrect.

24 Q. Is an automobile manufacturer an upstart if it
25 is producing and selling a large number of cars outside the

1 United States?

2 A. When the Japanese auto manufacturers entered
3 the United States, they were producing some cars
4 domestically, but there's no question that they were
5 upstarts in breaking into a very substantial oligopoly hold
6 on the U.S. market that had, as I just testified, a number
7 of supposed advantages over the Japanese manufacturers,
8 including a perception at the time, although it's hard to
9 remember it now, Japan was thought of as producing shoddy
10 products, and the U.S. had very powerful -- U.S. companies
11 had very powerful brand names.

12 Q. Were you aware of Southwestern Bell's position
13 in Case No. TR-2000-165?

14 A. I'm afraid you'll have to tell me what that
15 case was about. I don't know the case by numbers.

16 Q. Access cost studies.

17 A. Maybe if you give me another clue I'll know,
18 but I'm not putting anything with that right now.

19 Q. Well, if you know or don't know, that's fine,
20 but isn't it correct that SWBT's view on actual costs in
21 that case focused on the TELRIC methodology?

22 A. I don't know the answer to that, and I'm not
23 here giving you SWBT's position. I'm here giving you my
24 opinion.

25 Q. Is the totality of your testimony based upon

1 the premise that competition already exists in SWBT's local
2 markets?

3 A. No. And I'd like to make that clear. When I
4 apply the anti-trust principles and economic principles that
5 are the mainstream thinking about questions of predatory
6 pricing and allegations of harmful pricing behavior, the
7 context of that thinking is cases in which the allegation is
8 that a monopolist or a dominant firm or a dominant oligopoly
9 is engaging in pricing behavior that's harmful to
10 competition, which is typically brought or often brought by
11 competitors who are claiming that they are being harmed by
12 that alleged monopolist or monopolists -- or knowledged
13 monopolist's pricing behavior.

14 So the whole context of this line of thinking
15 is how do we grapple with the question of what is acceptable
16 pricing behavior by a dominant firm, recognizing that lower
17 prices benefit customers and recognizing that we do as a
18 policy matter want to protect competition in the long run?

19 The principles that I've articulated are the
20 mainstream thinking about how to answer that question in the
21 context of pricing by a dominant firm. If the firm is not
22 dominant, if there is effective competition, then we don't
23 even have to reach these questions, because claims of
24 predation are generally not even given credence in the
25 context of competition where the alleged predator is not

1 dominant in some sense.

2 Q. Will you agree with me that the Birch Telecom
3 CLEC is in bankruptcy?

4 A. I read an article recently that Birch Telecom
5 is touting the fact that it will be emerging from
6 bankruptcy, and like many customers that are successfully
7 emerging from bankruptcy, that it will be -- have a stronger
8 balance sheet as a result.

9 Q. Will you agree with me that WorldCom's CLEC
10 affiliates are in bankruptcy?

11 A. WorldCom is in a world of trouble and hurt
12 right now, and I don't know exactly the status of their
13 bankruptcy filings.

14 Q. Will you agree with me that McLeod, another
15 CLEC, is in bankruptcy?

16 A. Again, I'm not sure of the status of their
17 bankruptcy filing. As I said, a number of CLECs are
18 expected to successfully emerge from bankruptcy and are
19 considering that a potential competitive advantage, perverse
20 as it sounds, because all that debt's going to be wiped off
21 their books.

22 MR. HAAS: Thank you. That's all my
23 questions.

24 JUDGE WOODRUFF: Public Counsel?

25 MR. DANDINO: I have no questions at this

1 time, your Honor. Thank you.

2 JUDGE WOODRUFF: NuVox and WorldCom?

3 MR. CURTIS: Ms. Escobedo will cross this
4 witness.

5 CROSS-EXAMINATION BY MS. ESCOBEDO:

6 Q. Dr. Aron, good morning. I'm Pat Escobedo
7 representing WorldCom. I have actually just one question
8 for you.

9 Can Southwestern Bell engage in back office
10 activity that would be harmful to competition?

11 A. In theory, I believe that that is possible.
12 Those allegations have not been made here, and I'm not aware
13 of any allegations being made in this context.

14 Q. So that if facts were presented during this
15 proceeding that established that Southwestern Bell were
16 engaging in back office activity, it in your opinion would
17 harm competition?

18 A. No. I didn't say that. I said in principle
19 it could harm competition, but I would also point out that
20 that would not mean that limiting winback offers, which
21 would directly disadvantage consumers, would be the right
22 response to an actual showing of a harm to competition from
23 anti-competitive back office behaviors.

24 If there were such a showing made, I think
25 that, without knowing what the behaviors are, the logical

1 response would be to address the harmful back office
2 behaviors directly and get them corrected.

3 Q. And in your opinion, any such bad acts would
4 require correction?

5 A. Anti-competitive acts that are demonstrated to
6 be harmful to competition should be addressed. I don't
7 think that's a controversial statement.

8 Q. Thank you.

9 A. I don't think there have been any allegations,
10 certainly no showing of such here.

11 MS. ESCOBEDO: Thank you, Dr. Aron.

12 JUDGE WOODRUFF: Thank you. For AT&T?

13 CROSS-EXAMINATION BY MS. DeCOOK:

14 Q. Good morning, Dr. Aron.

15 A. Good morning.

16 Q. Becky DeCook for AT&T.

17 Do you agree that there is a difference
18 between price discrimination and predatory pricing?

19 A. The modern thinking on that question with
20 respect to claims of anti-competitive price discrimination
21 is the following.

22 Q. Well, I didn't ask the question that way. I'd
23 like to know just yes or no, if there is a difference
24 between predatory pricing and price discrimination?

25 A. Well, if the nature of the price

1 discrimination that we're talking about is price
2 discrimination that is alleged to harm competition of the --
3 in the market of the alleged price discriminator, then the
4 modern thinking is they're analyzed the same way.

5 Q. Predatory pricing is defined as pricing below
6 cost, right?

7 A. That's not a full definition. Predatory
8 pricing is defined as or is treated as pricing that is below
9 cost and has the potential to harm competition through
10 exclusion.

11 Q. Okay. I accept that. And price
12 discrimination simply means a difference in price, right?

13 A. No, that's not right.

14 Q. Price discrimination, taking away whether it's
15 lawful, unlawful, reasonable, unreasonable, is simply a
16 difference in price?

17 A. As an economic definition, no, that's not
18 true.

19 Q. And what's your economic definition of price
20 discrimination?

21 A. Well, if we're talking about economic price
22 discrimination, not with respect to whether it is harmful to
23 competition or whether it is unduly discriminatory, unjustly
24 discriminatory or unreasonably discriminatory, but just what
25 is a definition of price discrimination, it would be

1 considered price differences that are not fully reflected by
2 cost differences.

3 Q. Price differences that are not fully reflected
4 by cost differences. What does that mean?

5 A. If two prices are different, that is, if the
6 price of serving -- price of providing a service to one
7 group of customers is different from the price offered to
8 another group of customers, for example, that would be one
9 context in which we could discuss price discrimination.

10 If the costs of serving those customer groups
11 is different and different in the amount, equal to the
12 difference in prices, then that would not be considered
13 price discrimination.

14 Q. And you would agree with me that there are
15 some -- there's some price discriminations -- discrimination
16 that is not unlawful?

17 A. Yes.

18 Q. And there is some price discrimination that
19 may be unlawful?

20 A. Yes.

21 Q. And there are statutes in both federal law and
22 state law that defines when price discrimination is
23 unlawful, correct?

24 A. Yes.

25 Q. And you've not analyzed any of those statutes

1 in your testimony, right?

2 A. I have analyzed the legal context of price
3 discrimination.

4 Q. From an anti-trust standpoint.

5 A. I've also looked at the regulatory statutes.
6 They tend to be -- I've looked at the regulatory statutes in
7 this state and I've looked at the federal statute and I've
8 looked at the statutes in many states. They tend to be very
9 similar, and they use the similar terminology like price
10 discrimination is unlawful if it's undue or unjustly or
11 unreasonably discriminatory.

12 Q. And that's a different analysis than a
13 predatory pricing analysis, correct?

14 A. It's different in the sense that, on the one
15 hand, one could argue that price discrimination is harmful
16 to competition, and then if one is responding to that
17 allegation, one would refer to the anti-trust thinking on
18 that question.

19 Q. Well, let me stop you there. Isn't it also
20 true that to conduct that analysis, to determine whether
21 price discrimination is proper or improper, one would have
22 to look at the statutes?

23 A. Well, I'm not sure what you're asking me. I
24 think if you're asking if it's proper or improper, one has
25 to ask what is the allegation with respect to why it's

1 improper. If it's improper because it's allegedly
2 anti-competitive, then one asks in what sense is it
3 legitimately anti-competitive? And if it's improper because
4 it is unduly or unreasonably discriminatory, if that's the
5 allegation, then one looks to that context for analysis.

6 Q. And the anti-trust evaluation that you
7 performed was designed to address the allegation that these
8 proposals are anti-competitive, correct?

9 A. My testimony with respect to the anti-trust
10 principles apply to discriminatory pricing address -- that's
11 right, address the question of whether price discrimination
12 of this sort would be anti-competitive.

13 But my testimony with respect to whether it's
14 consistent with the objectives of this Commission under the
15 statutes relevant to this Commission, like its obligation to
16 promote full and fair competition and the other list of
17 objectives that this Commission is required to uphold that
18 speak to promoting competition, one has to think about and
19 analyze the -- the question of whether discrimination is
20 undue or unjust or unreasonable in light of those
21 obligations.

22 And my testimony here on that regard is that,
23 in light of the Commission's obligations to promote full and
24 fair competition, the pricing at issue here is quite the
25 opposite of unduly discriminatory or unreasonably

1 discriminatory. It's perfectly consistent with competitive
2 behavior.

3 Q. In effectively competitive markets?

4 A. I think that --

5 Q. Yes or no?

6 A. No.

7 Q. And explain your no.

8 A. As I said earlier, this behavior is consistent
9 with the normal pro-competitive incentives of firms to
10 respond to competition in ways that respond to consumer
11 desires, demands and needs.

12 I think that the CLECs and the Staff and
13 Public Counsel testimony is a little bit circular on this
14 point. On the one hand, the claim is these prices could not
15 be -- they're indicative of monopoly power. And then I say
16 this kind of pricing is what you see in -- in any kind of
17 market, competitive or not. And then the response is, but
18 this isn't a competitive market. That's a circular
19 argument.

20 Q. You are aware that this Commission has
21 concluded that this is an effectively competitive market
22 except in two limited exceptions, correct?

23 A. This Commission has also concluded that --

24 Q. Yes or no that the market is open to
25 competition?

1 A. No.

2 Q. Yes or no?

3 A. No.

4 Q. No, they haven't concluded that it's not
5 effectively competitive except in two limited situations?

6 A. I think that that's a correct characterization
7 of one case, but it isn't a full characterization of what
8 the Commission has found about this market.

9 Q. And you cited to the finding that it's open to
10 competition. The existence or the characterization that a
11 market is open to competition is very different from
12 concluding that there's actual competition in the
13 marketplace, isn't it?

14 A. If by actual competition you mean how many
15 access lines are being served by CLECs, that's a different
16 analysis, but there are certainly many economists who would
17 argue -- and I would have to agree -- that a market that is
18 open to competition in general is subject to competitive
19 forces, and a market that is not only open to competition in
20 general but that has a carrier subject to a substantial list
21 of otherwise unusual burdens and obligations and is
22 satisfying those obligations, there is an additional layer
23 of competitive effect in such a market.

24 Q. So there is a difference?

25 A. I think I gave you my answer.

1 Q. All right. Doctor, and this is the first
2 time I've seen your resume, and I noticed in the section
3 called Selected Testimony and Hearings that you in almost
4 all cases except for one identify testimony and hearings
5 that you've -- testimony you filed and hearings you've
6 participated in for a large local exchange carrier --
7 actually there's two. I see a mobile wireless, too.

8 Could you identify what carrier or carriers
9 you've filed testimony and participated in hearings on
10 behalf of?

11 A. I don't think that I can identify or for
12 confidentiality purposes reveal the names of all of my
13 clients on whose behalf I have filed testimony, to the
14 extent that this testimony isn't public.

15 Q. Well, exclude the ones where the testimony is
16 not -- is proprietary. I assume you filed proprietary
17 testimony in some of the cases you've listed in your resume.
18 Exclude those, and who are you representing? What large
19 local exchange companies are you representing in these
20 identified testimonies and hearings?

21 A. They included Southwestern Bell and various
22 Southwestern Bell incumbent carriers, and other carriers
23 that I am not prepared to name here.

24 Q. Other local exchange carriers?

25 A. That's correct.

1 Q. And when you say Southwestern Bell, I think
2 you said affiliates or related companies, are you talking
3 about SBC companies or Southwestern Bell companies?

4 A. If I said Southwestern Bell companies, I may
5 have misspoken. I mean SBC companies.

6 MS. ESCOBEDO: All right. Thank you. That's
7 all I have for this witness.

8 JUDGE WOODRUFF: Thank you. I believe that
9 concludes initial cross. At this time we come up for
10 questions from the Bench. We're going to take a break
11 before we do that. So let's take a break and we'll come
12 back at 10:40.

13 (A BREAK WAS TAKEN.)

14 JUDGE WOODRUFF: Okay. We're back live again,
15 and Dr. Aron is on the stand, and it looks like everyone's
16 ready to proceed. So we'll come up here for quick questions
17 from the Bench, and I do have a few questions.

18 QUESTIONS BY JUDGE WOODRUFF:

19 Q. The first one is to follow up on a question
20 that WorldCom's attorney asked you. She asked you about
21 back office activity. I'd just like for you to define for
22 the record, what is she talking about when she talks about
23 back office activity?

24 A. Well, what I was thinking of when she asked
25 me about that were activities pertaining to the use of

1 information on the wholesale side of the business or
2 provisioning methods and procedures for providing wholesale
3 services under the obligations of the Telecommunications
4 Act.

5 Q. And what kind of improper activities could be
6 involved?

7 A. In other states, CLECs have alleged that --
8 and I've been involved in a couple of these proceedings, and
9 I'm specifically thinking about one Ameritech case in
10 particular, where it was alleged that Ameritech was not
11 providing timely notification of line losses to CLECs
12 symmetrically with the way notification was being provided
13 to their own retail operation, and that gave an
14 informational advantage to the ILECs, to Ameritech's retail
15 winback side of the business.

16 And, in fact, in that case Ameritech
17 acknowledged that it did have a systems problem, and the
18 Commission found that until that problem was resolved,
19 the winback offers that Ameritech was making should be
20 restricted to a waiting period of 17 days after the
21 notification was received by the Ameritech wholesale
22 operation, I think.

23 And as I updated my testimony when we started,
24 the Commission has now found that that problem's been
25 corrected and the winback restrictions have been lifted.

1 Q. That was the reason for your correction that
2 you made today?

3 A. That's right. It was really an update. At
4 the time that I filed the testimony, the Commission had not
5 made a determination yet that the -- that the line loss
6 notification problems had been corrected. And just a couple
7 weeks ago that order came out from the Commission lifting
8 the restriction.

9 Q. Okay. Now, you've testified that competition
10 will drive out inefficient competitors out of the market,
11 healthy competition; is that correct?

12 A. That's right.

13 Q. In the local market in Missouri, is
14 Southwestern Bell the most efficient competitor at this
15 time?

16 A. I don't know the answer to that, and I don't
17 think anyone knows. I think that's the role of competition
18 to determine that and either eliminate those competitors
19 that are not efficient or induce them through the
20 competitive process to enhance their efficiency.

21 Q. Okay.

22 A. And that would include Southwestern Bell.

23 Q. What if the most efficient local market had
24 only one provider? In other words, what if a monopoly is
25 the most efficient market; is that possible?

1 A. Well, I think that the Telecommunications Act
2 contemplated that concern, and that's why the Act requires
3 local incumbents to provide the elements of their network
4 that form the basis of that either scale economy or natural
5 monopoly to provide those at regulated rates to their
6 competitors so as to overcome a natural monopoly or scale
7 economy if such, in fact, exists.

8 So I think that the provisions of the
9 Telecommunications Act were intended specifically to address
10 that concern so that competition can thrive in this market,
11 notwithstanding those elements and those locations where the
12 incumbent has ownership of elements that lack of access to
13 which would impair the ability of others to compete.

14 Q. Is it fair to say that the Telecommunications
15 Act assumes that these competitors will need some help?

16 A. I think that the Telecommunications Act
17 assumes that or provides for help to CLECs through the
18 provision of unbundled network elements at regulated rates
19 and the resale obligations and the interconnection
20 obligations.

21 I don't think that the Telecommunications Act
22 implies or means that there is an unlimited need to prop
23 CLECs up or to provide them with additional help in their
24 efforts to compete, beyond those obligations that are quite
25 significant and that are already imposed on them explicitly

1 in the Act.

2 Q. If we look five years down the line, what
3 would you envision the local market looking like for
4 Missouri as far as competition?

5 A. I think that depends a lot on what the FCC
6 does in the next year or so.

7 Q. In what way?

8 A. Well, the FCC now is reconsidering which
9 elements should be subject to the unbundling obligations,
10 and the big issue before the FCC I think in reality is what
11 it's going to do with respect to availability of the
12 unbundled network element platform. And I think that has a
13 substantial impact, that decision will I believe have a
14 substantial impact on the development of competition going
15 forward.

16 I think that competition will develop going
17 forward one way or another, and all indications in Missouri
18 and nationally are that competition continues to develop
19 despite all of the well-publicized hardships of many
20 carriers. But whether it will grow through continued and
21 increased reliance on the incumbent network or whether it
22 will grow through increased investment in alternative
23 technologies and alternative networks I think really is an
24 open question and depends very much on what the FCC does in
25 the next year or two.

1 Q. Okay. At this time are there any what you
2 would term efficient competitors out there in the market?

3 A. Well, as I said, I don't know which
4 competitors will prove to be efficient and which will prove
5 not to be, and I don't think anyone can know that. I don't
6 think that -- with all due respect to this Commission or any
7 commission, I don't think regulators can determine that or
8 should be in the position of having to determine that. That
9 is why there is a preference in the Telecommunications Act
10 and in Missouri law for permitting competition to evolve in
11 the market and competition to allow the winners and losers
12 to present themselves.

13 Q. Is Southwestern Bell's efficiency in the
14 market aided by the fact that they control the network?

15 A. Well, I don't know that Southwestern Bell
16 could be characterized as having substantial efficiency in
17 the market. I don't know. I think that's, again, part of
18 what competition will reveal to us. Southwestern Bell does
19 own a substantial network in its territory and has an
20 obligation to provide elements of that network at regulated
21 rates that, according to my analysis, are below the cost it
22 incurs to provide those elements on an ongoing basis.

23 So it's a source of facilities for providing
24 services to its customers and competing for new customers,
25 and it's a source of obligations to its competitors.

1 Q. This morning somebody in their opening
2 statement quoted a decision that the Commission issued about
3 a year ago in TT-2002-108 that talked about concern that the
4 market might be open for competition but there would be no
5 competitors left. Is that a legitimate concern?

6 A. I think that that concern is the crux of this
7 case. I don't think it's a realistic concern, though, and I
8 think that the Commission ought to take serious guidance
9 from the long history of hard and rigorous thinking about
10 these very questions that have confronted policymakers and
11 courts for many years, because the issue always is you're
12 confronted with competitors who are claiming that the,
13 quote, dominant firm's prices are driving them out of the
14 market or harming their ability to compete.

15 It's clear and everyone here I think
16 acknowledges that those prices benefit consumers, and so the
17 Commission or the court is faced with deciding what's a
18 legitimate potential harm to competition and what is
19 protection to competitors to the detriment of competition
20 and to the detriment of consumers.

21 And a well-accepted mainstream consensus has
22 arisen on how to evaluate those claims and those concerns so
23 as to weigh the concern that an incumbent or a dominant firm
24 will, in fact, engage in behavior that will damage
25 competition and drive out competitors.

1 And the way to analyze that are the criteria
2 that I have talked about in my testimony. Are the prices
3 really below cost? If they're not, then I think the way
4 that policymakers think about this in the mainstream is then
5 stop complaining to me and go out and compete.

6 JUDGE WOODRUFF: Okay. That's all the
7 questions I have. So we'll go back for recross beginning
8 with Staff.

9 MR. HAAS: No questions, your Honor.

10 JUDGE WOODRUFF: Public Counsel?

11 MR. DANDINO: No questions, your Honor.

12 JUDGE WOODRUFF: WorldCom, NuVox?

13 MS. ESCOBEDO: Yes, your Honor. Last time I
14 said just one, and hopefully it will be just one this time.

15 RECROSS-EXAMINATION BY MS. ESCOBEDO:

16 Q. Dr. Aron, what obligation -- obligations does
17 this Commission have to foster competition in Missouri?

18 A. The Missouri statute lists a set of seven or
19 eight or nine objectives in the Missouri law, and I don't
20 have them in front of me, but they include the obligation to
21 promote full and fair competition, to bring the benefits --
22 and I may be paraphrasing here -- but to bring the benefits
23 of competition to consumers, and I believe to permit
24 competition to work rather than prevent competition from
25 working by managing the market and hamstringing one

1 competitor in order to protect others.

2 Q. And to ensure that filings are consistent with
3 these statutory requirements?

4 A. Well, you use the word "filings." I would say
5 to ensure that.

6 Q. Let me clarify filings. Let me change that to
7 my tariffed offering that is filed by a -- by a local
8 exchange company would be consistent with the statutory
9 requirements?

10 A. If you're asking me for a legal opinion, I
11 can't give you one, but as an economist, I would say that
12 it's the obligation of the Commission to evaluate the price
13 offerings that are proposed and to not stand in the way of
14 them being offered to the extent that they are consistent
15 with competition and don't raise any legitimate concern for
16 competition.

17 Q. But, Dr. Aron, you're not saying that they
18 should be inconsistent with the statutory requirements, are
19 you?

20 A. No, absolutely not, nor do I think that these
21 offerings are inconsistent. I think they're quite
22 consistent with the requirement to promote full and fair
23 competition.

24 Q. And that whether they're consistent or not is
25 a decision of the Commission, is it not?

1 A. Again, if that's a legal question, I can't
2 answer it, but I think what I've said is it's within the
3 Commission's responsibility to promote full and fair
4 competition through the decisions that it has to make in the
5 proceedings brought before it, and I think this is a case in
6 which the Commission has an opportunity to either impede
7 competition or permit it to function.

8 MS. ESCOBEDO: Thank you, Dr. Aron. Thank
9 you, your Honor.

10 JUDGE WOODRUFF: For AT&T?

11 MS. DeCOOK: No questions.

12 JUDGE WOODRUFF: Then redirect?

13 REDIRECT EXAMINATION BY MR. LANE:

14 Q. Dr. Aron, Judge Woodruff asked you some
15 questions concerning what you thought the competitive market
16 in Missouri would be like for local exchange service in five
17 years. Do you remember those questions?

18 A. I do.

19 Q. And you indicated that that depended upon
20 what the FCC did and whether it would foster UNE-P-type
21 competition or facilities-based competition in the decisions
22 that it would make. Is that a fair statement?

23 A. That roughly characterizes it, yes.

24 Q. From an economic perspective, do you think
25 it's appropriate for the FCC and this Commission to

1 undertake decisions that would foster facilities-based
2 competition meaning investment in the network by CLECs?
3 A. Well, I think that facilities-based
4 competition is the form of competition that brings the
5 greatest benefits to consumers, and I think that the
6 Telecommunications Act and the FCC both recognize that. I
7 think that it's appropriate for the FCC to take actions that
8 foster facilities-based competition and, in particular, that
9 do not distort competition away from facilities-based
10 competition or artificially encourage competitors to rely on
11 the incumbent's network when clearly it is in the greatest
12 interest of consumers and social welfare to encourage
13 technological innovation and redundancy to some extent of
14 the network.

15 Q. Judge Woodruff asked you if you thought it was
16 an advantage to Southwestern Bell to own its own network.
17 Do you recall that?

18 A. Yes.

19 Q. And I think you indicated that it's not an
20 advantage to the extent that Southwestern Bell is required
21 to give up piece-parts of its network to its competitors at
22 below-cost rates. Is that a fair characterization?

23 A. That's right.

24 Q. If Southwestern Bell is required to give
25 piece-parts of its network at below-cost rates, does that

1 have an incentive on either the CLECs or the incumbent,
2 Southwestern Bell, does it have an effect on their incentive
3 to invest in the network?

4 A. Well, clearly it does. Requiring the
5 incumbent to offer its network at below-cost rates both
6 discourages investment by the incumbent in further investing
7 in that network and discourages competitors from investing
8 in their own alternative networks, because why should you
9 take the risk and invest the money to build your own network
10 when you can get it from the incumbent at below-cost rates.

11 The investment community is very vociferously
12 recognizing that fact and has downgraded the investments in
13 all of the ILECs recently, including and pointedly SBC.

14 Q. Judge Woodruff asked you some questions
15 concerning back office activities, and you responded that
16 you were referring in that case to an Ameritech situation
17 involving line loss notification. Do you recall that?

18 A. Yes.

19 Q. And in that case with Ameritech, was
20 there an issue regarding whether CLECs were given line
21 loss notification at the same time that Southwestern Bell
22 retail -- or SBC/Ameritech's retail operations had access to
23 line loss notification?

24 A. Right. The issue was whether the -- as I
25 recall, the issue was whether the CLEC was being given line

1 loss notification in as timely a manner as the Ameritech
2 retail operation was being given notification.

3 Q. Is there any allegation that you're aware of
4 in Missouri that Southwestern Bell is not giving line loss
5 notification to CLECs in the same timely basis as its retail
6 operations receive notice of line losses?

7 A. No. And my understanding is that the system
8 at issue there was an Ameritech-specific system, and it's
9 also my understanding, as I said, that the problem has been
10 corrected and the Illinois Commission has acknowledged that.

11 Q. And in the Ameritech situation that you've
12 described, was Ameritech prohibited from making winback
13 offers to customers or was it simply a question of when they
14 could make those offers?

15 A. It was, as I understand it, a question of when
16 the offers could be made. The Commission did not opine, I
17 believe, that winback offers were anti-competitive, but
18 rather that in light of the -- the fact that there appeared
19 to be a delay in providing winback no-- or excuse me -- in
20 providing line loss notification to CLECs, that it would be
21 appropriate to address that delay by requiring Ameritech to
22 refrain from making winback offers for 17 days, because it
23 was thought that 17 days would cover the time that was
24 thought to be the delay in notifying CLECs.

25 And after that time, winback offers were

1 permitted to be made even during this interim period of
2 restriction, and now that they -- the restriction has been
3 lifted, I'm aware of no restrictions on Ameritech Illinois
4 to make winback offers.

5 Q. You were asked some questions by counsel from
6 WorldCom concerning Birch and its bankruptcy, as well as
7 bankruptcy questions for some other CLECs. Do you recall
8 those?

9 A. Yes.

10 Q. And you had indicated, I believe, that Birch,
11 for example, would come out of bankruptcy with a better
12 balance sheet. Could you explain what impact that has on
13 the competitive market?

14 A. Well, a company goes into bankruptcy, it
15 negotiates with its banks and debtors essentially to relieve
16 it of its debt and comes out of that process of bankruptcy
17 with often its debt wiped off the books. And so that
18 company is in a position now to price in such a way that it
19 doesn't have to recover or recognize the costs that it
20 incurred to build its network or to establish its
21 organization to the extent that those have been wiped off
22 the books.

23 So it permits these companies to price very
24 aggressively down to their costs which, because of the
25 bankruptcy process, no longer reflect some of the costs.

1 MR. CURTIS: Your Honor?

2 JUDGE WOODRUFF: Go ahead.

3 MR. CURTIS: I've got an objection here. I
4 think she's describing in great detail something that is
5 completely speculative and hypothetical and hasn't happened,
6 and I will imagine a subject of which she -- if she were
7 really inquired about, does not have firsthand legal
8 knowledge.

9 So I would object to her describing in generic
10 form what might or might happen in any bankruptcy
11 proceeding.

12 JUDGE WOODRUFF: Response?

13 MR. LANE: Your Honor, this is responsive to
14 questions that were asked by Ms. Escobedo to her of the
15 impact of bankruptcy by Birch, McLeod and other companies,
16 and from an economist's point of view, she can certainly
17 give her reaction to that.

18 MS. ESCOBEDO: Your Honor, if I might clarify.
19 It was counsel for Staff.

20 JUDGE WOODRUFF: I believe that is correct.

21 MR. LANE: Excuse me. I apologize.

22 JUDGE WOODRUFF: I'm going to go ahead and
23 overrule the objection. It is responsive to the question
24 that was asked about bankruptcy. So you can go ahead and
25 finish your answer, or you can ask a question if you prefer.

1 THE WITNESS: Could you tell me where I was?
2 I'm sorry. I lost my train of thought.

3 MR. LANE: Could you read back the last part
4 of her answer?

5 (THE REPORTER READ THE REQUESTED PORTION OF
6 THE TESTIMONY.)

7 THE WITNESS: And I'll just conclude that
8 answer by saying that this is a concern that has been raised
9 in the investment community with respect to competition in
10 those markets.

11 BY MR. LANE:

12 Q. And are companies that are involved in
13 bankruptcy proceedings, do they continue to provide service
14 to customers during the period of their bankruptcy,
15 including WorldCom companies?

16 A. Some cease operations, but some, including
17 WorldCom companies, to my knowledge do continue to provide
18 and increase their services to customers during the period
19 of bankruptcy and then emerge from bankruptcy.

20 MR. LANE: That's all I have. Thank you, your
21 Honor.

22 JUDGE WOODRUFF: Thank you. You may step
23 down.

24 MR. LANE: Your Honor, may Dr. Aron be
25 excused?

1 JUDGE WOODRUFF: Yes, she may.
2 THE WITNESS: Thank you.
3 (Witness excused.)
4 JUDGE WOODRUFF: And you can call your next
5 witness.
6 MR. LANE: Your Honor, could we break for five
7 minutes? We have an issue that we're resolving with
8 WorldCom here about some documents.
9 JUDGE WOODRUFF: Okay. We'll take a
10 five-minute break. We'll come back at -- well, let's just
11 make it 15 after 11.
12 (A BREAK WAS TAKEN.)
13 JUDGE WOODRUFF: Okay. I think I got the
14 technology to work and we're back on live, and any matters
15 we need to take up before we start with the witness?
16 MR. LANE: I think we've resolved them, your
17 Honor.
18 JUDGE WOODRUFF: Very good.
19 (Witness sworn.)
20 JUDGE WOODRUFF: You may be seated, and you
21 may inquire.
22 JOHN REGAN, JR. testified as follows:
23 DIRECT EXAMINATION BY MR. LANE:
24 Q. Could you state your name for the record,
25 please?

1 A. Yes. My name is John Regan, Jr.
2 Q. And, Mr. Regan, by whom are you employed?
3 A. Employed by SBC.
4 Q. SBC Management Services?
5 A. SBC Management Services.
6 Q. And, Mr. Regan, did you prepare testimony in
7 this case, direct testimony that's been marked as Exhibit 2?
8 A. Yes, I have.
9 Q. Do you have any changes to that testimony?
10 A. Yes, I do.
11 Q. What is your first change?
12 A. My first change is on page 1 of my direct
13 testimony, line 11. My new title is Vice President of
14 Business Services, Product Offering and Planning.
15 My second change --
16 Q. So we should strike Vice President, Regional
17 Marketing and insert Vice President, Business Services
18 and --
19 A. That is correct.
20 Q. What are your job responsibilities as Vice
21 President, Business Services?
22 A. My new responsibilities are, I have the
23 business services for all of SBC's business services across
24 our enterprise from a product offering and planning
25 perspective. So we think about general marketing terms,

1 think about the four Ps of marketing. I have responsibility
2 for three of those Ps, being product, the placement and the
3 packaging, as well as the pricing function.

4 Q. What is your second change to your direct
5 testimony?

6 A. My second change is on page 3, my direct
7 testimony, line 21. The tariff file number 200200628 should
8 be changed to reflect 200200828.

9 Q. What is your next change?

10 A. My next change is on page 4 of my direct
11 testimony, line 15. I'd like to insert the language, after
12 approved it should read, "approved a tariff similar to the
13 Southwestern Bell proposed business tariff."

14 Q. So the inserted words after the word
15 "approved" would be "a tariff similar to"?

16 A. That's correct.

17 Q. Do you have any other changes to your direct
18 testimony?

19 A. I have no further changes.

20 Q. Did you also prepare surrebuttal testimony, a
21 copy of which has been marked as Exhibit 3NP and a copy of
22 which is marked as Exhibit 3HC?

23 A. That is correct.

24 Q. Do you have any changes to that testimony?

25 A. Yes, I do.

1 Q. What is your change there?

2 A. Changes reflect page 3, line 14, where the
3 number is listed as 64,500. That number should be changed
4 to 84,500.

5 Q. Do you have any other changes to Exhibit 3NP
6 or HC?

7 A. No, I do not.

8 Q. That change you indicated is on both 3NP and
9 HC; is that right?

10 A. That's correct.

11 Q. With those changes in mind, Mr. Regan, if I
12 were to ask you the same questions as are contained in your
13 direct and surrebuttal testimony today, would your answers
14 be the same?

15 A. Yes, they would.

16 Q. And are those answers true and correct to the
17 best of your knowledge and belief?

18 A. Yes, they are true.

19 MR. LANE: Your Honor, at this time we would
20 offer Exhibit 2, Exhibit 3HC and 3NP, and tender Mr. Regan
21 for cross.

22 JUDGE WOODRUFF: Thank you. Exhibits 2 and
23 3NP and 3HC have been offered into evidence, are there any
24 objections to their receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, they will be
2 received into evidence.

3 (EXHIBIT NOS. 2, 3NP AND 3HC WERE RECEIVED
4 INTO EVIDENCE.)

5 JUDGE WOODRUFF: And for cross-examination,
6 we'll begin with Staff.

7 CROSS-EXAMINATION BY MR. HAAS:

8 Q. Hello, Mr. Regan.

9 A. Hello.

10 Q. At page 2 of your direct testimony, you
11 mention one reason that customers would return to
12 Southwestern Bell is because of their prior positive
13 experience. If they had a prior positive experience, then
14 why did they go to a CLEC?

15 A. Our research indicates that customers see many
16 offers in the marketplace, and a lot of times the offers
17 really deal with price, and we -- when customers come back
18 to us, they indicate that they were dissatisfied with the
19 price or performance that the other competitor offered them.

20 Q. If the customer had this prior positive
21 experience with Southwestern Bell and were dissatisfied with
22 the CLEC, why wouldn't they be willing to pay a nonrecurring
23 charge to reestablish service with Southwestern Bell?

24 A. Well, many do. Many of our customers do pay a
25 nonrecurring charge, but many do not, and again, based on

1 customer research and information that we hear from our
2 customers, very unsatisfied with the -- our ability to have
3 to charge a nonrecurring charge.

4 Q. At page 3 of your direct, you note that to
5 qualify for the nonrecurring charge waiver, the residential
6 customers must not have had service disconnected for
7 nonpayment or any past due bills for regulated service owed
8 to Southwestern Bell.

9 What is Southwestern Bell's rationale for
10 denying this waiver to a former customer who, although
11 disconnected for nonpayment, is now able to pay all past due
12 bills?

13 A. Well, we do work with the customer. When they
14 owe us money from a past due bill, we will work with them to
15 satisfy the payment, but we want to make sure that the past
16 due bill is corrected first and foremost, and then we'll
17 bring them back.

18 Q. When you bring them back, will you give them
19 the nonrecurring charge waiver?

20 A. If that tariff was approved and in place, the
21 answer would be yes, if they were a customer that had left
22 us and gone to a CLEC.

23 Q. Even though one of the conditions is that the
24 customer must not have had service disconnected for
25 nonpayment?

1 A. Let me restate my answer. If a customer left
2 us and went to a CLEC, if they disconnected because of
3 nonpayment status, then they would need to pay their bill
4 and past due invoices, and then once they paid that, then we
5 would bring them back as a winback customer.

6 Q. At the bottom of page 6 you mention
7 competition with wireless carriers. Does Southwestern Bell
8 offer a promotion to win back wireless customers?

9 A. First of all, are you referring to surrebuttal
10 testimony or direct testimony?

11 Q. Direct testimony, bottom of page 6, last words
12 are "wireless carriers."

13 A. Let me get to that. Do we offer winback
14 offers to --

15 Q. To wireless customers?

16 A. -- to wireless customers? No, we do not at
17 this point.

18 Q. At the bottom of page 7 you say that many
19 times customers are disappointed to learn that there is a
20 nonrecurring charge to reestablish service with Southwestern
21 Bell. How often does this happen?

22 A. Well, I don't have any hard, you know,
23 statistical data on that. What I do have is many
24 discussions with customers through customer research,
25 through direct discussions with our sales forces, our

1 service reps, and we do see this quite often that customers
2 are very concerned about the fact that they have to pay a
3 nonrecurring charge to come back to us.

4 And, again, this is usually a direct result of
5 a service issue or misleading price, the customer now gets
6 their first bill or billing errors down the road, and
7 they're very dissatisfied because we would have to charge
8 them an installation charge to come back.

9 Q. At the top of page 8 you continue that in some
10 cases customers who want to come back to Southwestern Bell
11 for local service have decided not to do so because of the
12 nonrecurring installation charge. How often has that
13 happened?

14 A. Again, I don't have any -- any hard
15 statistical data, other than research that we performed,
16 feedback from our customers, that it -- that provide
17 indication that this is a barrier to entry to come back to
18 Southwestern Bell.

19 And it's especially -- it's true with
20 consumers, and it's also true with business customers,
21 business customers that purchase large digital spans of --
22 of primary rate access where the charges become quite
23 exorbitant.

24 Q. You go on to say that to a customer seeking to
25 reestablish service, Southwestern Bell may appear

1 unresponsive to competitive forces in the marketplace.

2 Isn't Southwestern Bell then also being unresponsive to the
3 competitive forces of the marketplace because it does not
4 offer this promotion to potential customers who have no
5 local service now?

6 A. We feel -- we feel we need to be responsive to
7 the customers that have -- have had service with us, they've
8 left us to go to another service provider, a CLEC, and now
9 wish to return. And their feedback is, you know, I
10 understand the tariff issues, but this is a competitive
11 marketplace. If you want to earn my business back, you need
12 to find a way to reduce the barrier to entry to come back.
13 We're not hearing that from customers that seek to establish
14 service with us the first time around.

15 MR. HAAS: That's all my questions. Thank
16 you.

17 JUDGE WOODRUFF: Public Counsel?

18 MR. DANDINO: No questions, your Honor.

19 JUDGE WOODRUFF: All right. WorldCom and
20 NuVox?

21 MS. ESCOBEDO: Your Honor, I have a great deal
22 of questioning, including questions regarding highly
23 confidential information, and I'm prepared to start now, but
24 it's up to you whether you would like to go ahead and break
25 for lunch now and let me start afterwards or --

1 JUDGE WOODRUFF: Let's go ahead and start now.
2 We can break later on, and if you get into any confidential
3 information, just let me know and we can go into a
4 confidential session.

5 MS. ESCOBEDO: And it might be that we can
6 break it into my questions regarding the nonproprietary
7 information.

8 JUDGE WOODRUFF: That would be fine.

9 CROSS-EXAMINATION BY MS. ESCOBEDO:

10 Q. Good morning, Mr. Regan. How are you doing?

11 A. Good morning.

12 Q. I'm Pat Escobedo with WorldCom. It's good to
13 meet you. And as I just explained to Judge Woodruff, I
14 tried to segregate my questions into nonproprietary versus
15 highly confidential.

16 But if at any point I ask you a question
17 regarding an issue that you feel addresses highly
18 confidential information, if you would tell me, I'll be glad
19 to stop and we can go in-camera at that point or actually
20 even just postpone it until I get into all of the highly
21 confidential information.

22 A. Okay.

23 Q. Actually, I want to start out with a
24 clarification first. The proposed description of the tariff
25 at page 3, lines 7 through 12 of your testimony differs, I

1 think, slightly from what is in the actual tariff at Regan
2 Schedule 2, and so I'd like to have some clarification
3 there.

4 You're going to waive the nonrecurring charges
5 for residential service if the -- if the end user comes back
6 to you. And here's where my confusion arises. Does the end
7 user have to take the package of features or are the
8 features optional?

9 A. The features are optional.

10 Q. So that the -- you're going to waive
11 nonrecurring charges whether they take the features or don't
12 take the features?

13 A. That is correct.

14 Q. Thank you.

15 Are any of the feature packages discounted
16 especially for this tariff?

17 A. No, they're not. We file tariffs on our
18 feature packages that are generally available to all
19 customers and there's an incentive for customers that buy
20 feature packages to get additional discount versus
21 purchasing ala carte as a standard tariff offering.

22 Q. So the savings to the winback customer is on
23 the nonrecurring charges, no savings on the features because
24 those features are priced the same whether you're a winback
25 customer or a regular customer?

1 A. That's correct. That is correct.

2 Q. Are you in charge of the letters notifying
3 winback promotions?

4 A. I have -- I have an organization that has
5 responsibility for creating the letters for winback, that is
6 correct.

7 Q. And prior to your change, you did this for
8 both residential and for business?

9 A. That is correct.

10 Q. And Southwestern Bell does send out winback
11 letters, doesn't it?

12 A. Yes, we do.

13 Q. Can you just very briefly explain the process
14 by which you determine who's going to get a winback letter?

15 A. Sure. From a retail organization perspective,
16 customers that call in and disconnect through our retail
17 organization, we code those disconnects as whatever reasons
18 that they decide to disconnect. When a customer decides to
19 go to a CLEC, the CLEC has responsibilities for that order
20 and handles that through our industry markets organization.

21 We are notified on a daily basis of all
22 disconnects, retail customer disconnects. We know the ones
23 that we've disconnected and coded. We know that there's
24 disconnects and we assume the other disconnects are
25 competitive. We don't know that for sure. We just assume

1 that they are competitive disconnects.

2 Those customers that have not called us
3 through our retail organization are the customers that
4 receive our customer return or winback letter notification
5 or notification.

6 Q. Besides winback letters, do you send out any
7 other type of letter to an end user who has migrated to a
8 CLEC?

9 A. Can you restate the question?

10 Q. Besides -- well, I'm not sure that I can
11 restate it, but --

12 A. Could you repeat it, please?

13 Q. All right. Besides winback letters, do you
14 send out letters to any end users that have -- any
15 Southwestern Bell end users who have migrated to CLECs?

16 A. We -- we send out -- we would send out the
17 letters that would be considered winback letters on our
18 winback letter campaign.

19 Q. How about the letter that actually says, we've
20 just received -- or something to the effect of, we've
21 received notice that you're switching providers and you may
22 have been slammed, what do you call that letter?

23 A. That's a winback letter.

24 Q. And what do you call the letter that just lays
25 out the types of services that are available? You don't

1 distinguish between those types of letters?

2 A. What we do is -- let me just clarify what I
3 just stated. We let customers know, first of all, from a
4 service perspective that they may have been slammed. That's
5 a normal course of business in our industry as customers are
6 often switched to other carriers without their approval.

7 So as part of our customer notification and
8 letter series, we will send them out a letter letting them
9 know, hey, our records indicate that you have left us. If
10 you have not authorized that change, please call us. You
11 may have been slammed. If not and you've made that
12 decision -- and I'm paraphrasing here -- then we just want
13 to let you know, here are some offers, capability that we
14 have for you, Mr. Customer.

15 In the consumer's residential market, that is
16 also done with notification message to the customer, and in
17 the business it's primarily through a letter series
18 campaign.

19 Q. Okay.

20 A. And we find quite often that customers are
21 slammed and they appreciate that notification so that, you
22 know, they did not authorize those changes and we are
23 allowed to get them back into service to who they desired in
24 the first place.

25 Q. How soon after an end user is going to receive

1 service from a CLEC do the letters go out?

2 A. We -- from what we do, we -- we send
3 the letters out once the customer's been officially
4 disconnected. So they've already -- they've already
5 received service.

6 Q. Are you also in charge of the voicemail that's
7 left on the telephone, either telephone -- I'm drawing a
8 blank -- call notes. I couldn't think. Either on call
9 notes or just a plain old answering machine that says you
10 have -- you may have been slammed?

11 A. I don't have functional responsibility for
12 that. Our sales organization through what they call a sales
13 operations group has that responsibility.

14 Q. So this is a separate group from the ones --
15 the personnel that you are in charge of?

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

17 Q. And how do they find out who it is that has
18 migrated over to a CLEC?

19 A. Well, they -- they receive the same
20 information that our marketing organization receives. That
21 again, once a list is made available of all -- as I
22 described earlier, of all customers that have been
23 disconnected, we then compare that to the customers that we
24 took orders for disconnects. We assume that -- again, the
25 assumption is that the others that have been disconnected

1 were done for competitive reasons, and they are given that
2 notice.

3 But I also mention that we send messages out
4 to customers for a lot of different reasons. We send
5 customer notification messages out when customers change
6 long distance carriers and do PIC changes, not necessarily
7 with SBC Long Distance but from one IXC to another IXC.

8 Q. And when they actually make a change in local
9 service and voicemail is left, is the voicemail left at that
10 point when the end user has been disconnected from
11 Southwestern Bell and is receiving service?

12 A. That is my understanding.

13 Q. On page 7, lines 4 through 5 of your direct,
14 you talk about disconnect service orders processed by retail
15 operations. What would the disconnect service orders, what
16 type of information would these disconnect service orders
17 that are processed by retail operations contain?

18 A. They would normally -- I'm certainly not the
19 expert on this, but at a high level, the type of information
20 is the customer moving to another location, are they moving
21 out of state, are they just disconnecting due to a
22 termination in the family, things of that magnitude, that a
23 relative may have called in a disconnect and said, I'm
24 disconnecting service.

25 Q. And this would include also the name and

1 address and telephone number of the end user?

2 A. Again, when a retail customer calls us, yes,
3 that would include that information.

4 Q. Now, the -- and I'm not sure that you have any
5 knowledge of this, but WorldCom actually sent out some Data
6 Requests, and we had talked in terms of this notification
7 that the end user is going to be migrating to a CLEC in
8 terms of a change notice. Do you use the term "change
9 notice"?

10 A. I'm not familiar with the exact terminology.

11 Q. Okay. So does this information that addresses
12 the end user moving over to a CLEC which would include name,
13 address, telephone number, they're moving out of state,
14 these reasons you just gave me, this would be the type of
15 information that is the notice by which Southwestern Bell
16 sends out these winback letters and sends out the voicemail?

17 A. Let me restate the answer just to make sure
18 we're perfectly clear. A retail customer calls our retail
19 organization to disconnect service. They disconnect usually
20 for, you know, they're moving out of state, there's been a
21 termination in the family, they're going to go to wireless.

22 There are various reasons why they would call
23 our retail business organization. And, yes, we have
24 information about the customer because that's -- that's --
25 we have to know how to bill them.

1 The same holds true for when customers work
2 through their CLECs to place an order through their CLEC and
3 there's a disconnect order issued to our retail
4 organization. We have to know how to final bill the
5 customer.

6 So, yes, we know who the customers are that
7 have disconnected. We don't know why they disconnected. We
8 don't know who they left us for. All we know is there's
9 been a disconnect in our retail organization that we need to
10 issue them a final bill.

11 MS. ESCOBEDO: I'm about to start my series of
12 questions, your Honor, regarding highly confidential
13 information.

14 JUDGE WOODRUFF: Okay.

15 MS. ESCOBEDO: And I'll be glad to get started
16 now.

17 JUDGE WOODRUFF: Just a moment. I need to
18 turn off the Internet so we're not broadcasting to the
19 world.

20 MS. ESCOBEDO: And if I may have a few moments
21 also, I'm going to need the highly confidential documents
22 that Southwestern Bell has produced, and I have actually
23 culled through some of those documents.

24 JUDGE WOODRUFF: Okay.

25 MR. LANE: I think they're being copied.

1 These are the ones they just identified that they wanted
2 copies of.

3 JUDGE WOODRUFF: That was the discussion
4 earlier?

5 MR. LANE: Right.

6 JUDGE WOODRUFF: Do you know how long it's
7 going to be?

8 MR. LANE: I'll check real quickly. Should be
9 just a minute.

10 JUDGE WOODRUFF: All right.

11 While we're waiting, I did turn off the
12 Internet streaming, but I've not officially announced 'til
13 now that we're going in-camera. So if there's anyone in the
14 audience that needs to leave during this part of the
15 testimony, please do so.

16 (REPORTER'S NOTE: At this point, an in-camera
17 session was held, which is contained in Volume No. 3, pages
18 102 through 105 of the transcript.)

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1 JUDGE WOODRUFF: We're still waiting on --
2 we're on the record now out of in-camera. We're still
3 waiting on some further documents, and it's almost noon, so
4 we're going to go ahead and take a break. We'll come back
5 at one o'clock.

6 (A BREAK WAS TAKEN.)

7 JUDGE WOODRUFF: Come to order, please.
8 Before we went to lunch, we had Mr. Regan on the stand with
9 WorldCom cross-examining, and I believe we were going to be
10 going back into in-camera session; is that correct?

11 MS. ESCOBEDO: Actually, I have a few
12 questions, your Honor, that don't require us to be
13 in-camera, if I may.

14 JUDGE WOODRUFF: Okay.

15 MS. ESCOBEDO: I did hand you some.

16 JUDGE WOODRUFF: You gave me Exhibit 11.

17 MS. ESCOBEDO: Good.

18 JUDGE WOODRUFF: Before you start, let me go
19 back and get this on the Internet, since we're not going to
20 be in-camera.

21 Okay. We're back on the record, we're not
22 in-camera and you may proceed.

23 MS. ESCOBEDO: Thank you, your Honor.

24 BY MS. ESCOBEDO:

25 Q. Mr. Regan, I just want to go over a couple of

1 issues that I missed before we went in-camera. The
2 residential service connection nonrecurring charge is
3 approximately \$35; is that correct?

4 A. That's the approximate cost, 35 to 40, in that
5 range.

6 Q. And the business tariff service connection
7 nonrecurring charge is approximately \$52; is that correct?

8 A. I believe that's correct for general business
9 access lines.

10 Q. Will that amount vary depending on the degree
11 of service that the business is going to get?

12 A. I don't have the exact NRC charges with me at
13 this point, but generally, yes, that would.

14 Q. It would vary?

15 A. It would vary, and if it was a general
16 exchange tariff with a smart trunk, for example, say with a
17 digital span, that would.

18 Q. Can you give us a range of the NRC that would
19 be at issue?

20 A. I don't have that information with me.

21 Q. So you can't even give us just a guesstimate
22 of \$52 all the way up to 200, 500?

23 A. I honestly can't answer that question. I deal
24 with tariffs in 13 different states, and this one is just
25 past me.

1 Q. Okay. Now, the business tariff also waives
2 equipment charges; is that correct?

3 A. I'm not -- we don't have any -- that I'm aware
4 of any tariffs that waive equipment charges. Equipment is
5 non-regulated service and wouldn't be subject to tariff
6 conditions.

7 Q. Okay. So if the tariff talks in terms of
8 waiving equipment charges, then -- I may have misspoken, but
9 if the tariff actually says that, what might be waived?
10 None that you're aware of?

11 A. I'm not aware of any equipment charges that we
12 waive as part of any of our tariff offerings.

13 MS. ESCOBEDO: Okay. And now, your Honor, I
14 would like to offer into evidence Exhibit No. 11, which are
15 the admissions of Southwestern Bell that responds to -- asks
16 whether the -- their responses to the Data Requests that
17 WorldCom submitted as their first Data Requests are, in
18 fact, true and accurate.

19 JUDGE WOODRUFF: Okay. The responses to deny
20 that they're true and accurate; is that correct?

21 MS. ESCOBEDO: Right. They refer to
22 Exhibit B, which, in fact, I think includes all of the
23 objections.

24 JUDGE WOODRUFF: Okay. Exhibit 11 doesn't
25 include any of the attachments?

1 MS. ESCOBEDO: The attachments, right. We
2 will have to get the appropriate number of copies to you.
3 We refer to Exhibit A, which would be the initial --
4 actually, are the responses that include the responses based
5 on the Order that the Commission issued --

6 JUDGE WOODRUFF: Okay.

7 MS. ESCOBEDO: -- requiring them to respond,
8 and Exhibit B, which is what Southwestern Bell claims are
9 the correct responses, include their objections.

10 JUDGE WOODRUFF: And those will be coming in
11 later?

12 MS. ESCOBEDO: Yes.

13 JUDGE WOODRUFF: Okay. That has been marked
14 as Exhibit 11, and has been offered into evidence.

15 At this time is there any objection to the
16 receiving of that Exhibit 11?

17 MR. LANE: Yes, Judge. I'm assuming that
18 we're going to attach Exhibit B to this and/or Exhibit A,
19 but by itself it's an incomplete document.

20 MS. ESCOBEDO: And, yes, your Honor, we're
21 going to offer up both Exhibits A and B. We will get those
22 into the record.

23 MR. LANE: Subject to seeing them, Judge, I'm
24 sure that once I see them, if they're accurate, they are
25 what they purport to be, then I won't have an objection to

1 them.

2 JUDGE WOODRUFF: Did you want to just wait and
3 do them all at the same time?

4 MS. ESCOBEDO: I will do that.

5 JUDGE WOODRUFF: We'll wait on ruling on
6 Exhibit 11, then, until the other exhibits come in.

7 MS. ESCOBEDO: And that concludes the
8 questions that I have that are not proprietary.

9 JUDGE WOODRUFF: Okay. At this time, then, we
10 will go in-camera, and I'll take us off the Internet again.

11 Okay. Again, if anyone is in the audience
12 that needs to leave, please do so now.

13 (REPORTER'S NOTE: At this point, an in-camera
14 session was held, which is contained in Volume No. 3, pages
15 111 through 142 of the transcript.)

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1 JUDGE WOODRUFF: Okay. We're back in regular
2 session at this time.

3 BY MS. ESCOBEDO:

4 Q. Mr. Regan, when an end user called and said, I
5 have been slammed or there's been an unauthorized change,
6 did the Southwestern Bell representative ever say, You may
7 be asked to testify in court?

8 A. I'm not aware of that, if that's part of the
9 script.

10 Q. Do you have any dealings with the script?

11 A. Not really. Again, that's a responsibility
12 of our sales organization, working with marketing as offers
13 are put together, but I'm not -- we don't have total
14 responsibilities for scripting.

15 Q. Does the script now require the telephone
16 representative for Southwestern Bell to say, You may be
17 contacted, rather than, You may be asked to testify in
18 court?

19 A. Again, I'm not familiar with the details of
20 the full scripting effort.

21 Q. Does the -- do Southwestern Bell retail people
22 ever -- employees ever view screens that actually contain
23 CLEC information?

24 A. Could you please restate the question?

25 Q. Well, apparently there's a BOSS screen, and it

1 sets out name, address, and apparently telephone number,
2 various other types of information regarding the migration.
3 Do the retail people have an opportunity to see the screen
4 containing this information?

5 A. Again, I'm not an expert in what happens in
6 the entire provisioning effort. I will tell you that our
7 sales people do not have access to any of that information
8 on customers or current customers of a CLEC.

9 Only when a customer opts to return to
10 Southwestern Bell, that's been third-party verified or has a
11 letter of authorization, then a service order writer
12 actually can gain access to help move the customer back over
13 to Southwestern Bell, but it's only after the customer has
14 agreed to come back.

15 Q. I'm going to show you a document, Mr. Regan,
16 that I'm going to see if you can identify for me.

17 MR. LANE: Your Honor, may I --

18 JUDGE WOODRUFF: You may.

19 MR. LANE: Do you have a copy for me?

20 MS. ESCOBEDO: I'm not going to introduce it.

21 MR. LANE: I still need to see it.

22 JUDGE WOODRUFF: You may approach to see the
23 document.

24 BY MS. ESCOBEDO:

25 Q. I believe your counsel has already looked at

1 it, Mr. Regan. Do you recognize this?

2 A. I've never seen those documents before.

3 Q. Okay.

4 A. Do not recognize them.

5 Q. This document says PREMIS winback, up front
6 rep cannot access on a winback or win order. What is a win
7 order?

8 A. A win order is often referred to as a
9 customer that has chosen to do business with a CLEC or a
10 facilities-based provider that is not -- is not on a resale
11 or a UNE-P facility.

12 Q. Not on resale or UNE-P? So how is he getting
13 service from the CLEC?

14 A. The CLEC has their own facilities. They can
15 run copper in the buildings or homes or it can be cable
16 telephony. It could be a lot of different ways.

17 Q. And when you market to a win customer, is the
18 win customer eligible for the same rates, terms and
19 conditions as a winback?

20 A. No. The winback tariff, if approved, would be
21 available -- as we stated in the tariff, would be approved
22 only for customers that were previous customers of
23 Southwestern Bell.

24 Q. Okay. SORD LNPI cannot access. Do you know
25 what SORD LNPI is?

1 A. I do not know that term.

2 Q. CSA/CSR records and SORD cannot access. Any
3 idea what that is?

4 A. I'm not familiar with that term at all.

5 Q. Okay. The chart actually refers to winback up
6 front rep, and then it refers to WCC rep, WB backfill and
7 manager. What is a WCC reg -- rep?

8 A. Again, I'm not familiar with those terms or
9 distinctions.

10 Q. Win conversion center?

11 A. I'm not familiar with that one either.

12 Q. Winback backfill?

13 A. Not familiar with that term.

14 Q. Do the folks that you employ check CABS, the
15 carrier access billing system?

16 A. Do they check it?

17 Q. Do they check it in order to determine whether
18 there is a winback opportunity there?

19 A. Not to my knowledge, no.

20 Q. So to your knowledge, CABS is not a tool
21 that's available?

22 A. CABS -- I mean, the only way we would use CABS
23 would be to look at existing customers to understand our
24 billing relationship with existing customers or existing
25 product lines, and that would be it.

1 Q. So if Southwestern Bell's document said, by
2 checking CABS we can check the address, check for LP -- no.
3 I'm sorry -- for PLPTX, check for SXRU and check for DNPB,
4 it would still be your position you don't check CABS?

5 A. Again, it would be my position that my
6 marketing organization does not check CABS engaging in any
7 winback process. We would only look at CABS for existing
8 customers or existing product revenues of retail customers.

9 Q. It's my understanding that Southwestern Bell
10 actually was paying \$70 to a -- to customers who engaged in
11 a marketing survey with Southwestern Bell; is that correct?

12 A. We have marketing surveys that we conduct with
13 our customers, and the value of that marketing survey
14 differs depending on how many access lines they have. So
15 \$70 would indicate that they had -- they perhaps had two
16 access lines. And we use marketing surveys when customers
17 return back to us to qualify what's going on in a
18 competitive marketplace, why did they leave us, what
19 competitors they were with, why did they come back?

20 And it's all in an effort to improve our
21 response to the marketplace so we have the right packages,
22 the products and the pricing so that we can be competitive
23 in what we think is a highly competitive marketplace here in
24 Missouri.

25 Q. And how do you identify those who receive the

1 survey?

2 A. We identify customers that receive the survey
3 as customers return back to us through our winback process,
4 we offer them for taking their time and effort if they want
5 to participate in the survey, if they say so, great, and
6 we'll send them the survey out.

7 Q. I'm sorry. How do you identify them? How do
8 you actually pick the person who's going to get the survey?

9 A. As I stated in my previous testimony, we
10 identify retail customers that are disconnected, that are
11 not disconnected through our retail organization but are
12 disconnected as potential competitive disconnects. We then
13 send out a series of letters. In fact, if the customer has
14 been -- has gone -- migrated to a CLEC, if they want to
15 return to us, once they -- once these customers do return to
16 us, we ask them if they would like to participate in the
17 marketing survey.

18 Q. Technically tell me how you identify the end
19 user who's going to be participating in a marketing survey.

20 A. All of our customers that we send winback
21 letters out, when they return they -- they qualify to
22 participate in the winback survey.

23 Q. And so if -- if one of your winback letters
24 says that 85 percent of customers come back to you -- and
25 let me ask you before I proceed, do any of your winback

1 letters state that?

2 A. I believe there is reference in our winback
3 letters that there's reasons -- when customers choose to
4 return to Southwestern Bell, that these are the reasons
5 85 percent of the time they return back to us. And I can
6 quote you exactly what's in the letter if you'd like.

7 It basically says we provide excellent
8 service and over 85 percent of our customers return to SBC
9 Southwestern Bell because of our prices, service or direct
10 contact. That's what customers tell us through the
11 marketing survey; these are the reasons why we came back.

12 Q. And that's a 2002 letter, is it not, the
13 85 percent, that actually refers to the 85 percent?

14 A. 85 percent, again, of customers that return
15 back to us tell us -- it's not 85 percent of customers
16 return back. It's 85 percent of the customers that return
17 back to us indicate through our marketing survey that it is
18 due to pricing, service or direct contact, and once again --

19 Q. And 2001, wasn't that percentage about
20 74 percent?

21 A. I don't recall that, if it was 74 percent or
22 85 percent. I don't have that information.

23 Q. So a winback letter that said 74 percent of
24 the end users come back to Southwestern Bell, you would
25 agree with it because it's a winback letter and you are in

1 charge of that?

2 A. What I would agree is that if it -- if the
3 letter does indicate 74 percent, again, customers that
4 return back to us, 74 percent indicated these are the
5 reasons why they returned.

6 Q. And that was a 2001 letter?

7 A. Again, if that's what -- if that's what --
8 if there's a copy of that letter and that's what it says,
9 74 percent. I don't know if it was 2001 or 2002.

10 Q. Okay.

11 A. We change the letters depending on what the
12 most recent analysis from the marketing research provides.

13 Q. So in 2002 the percentage might be 74 percent,
14 and in 2-- I'm sorry -- 2001, it might be 74 percent. In
15 2002 you're saying 85 percent?

16 A. Again, I'm -- I'm not sure what 2001 stated.
17 But 2002, when we sent these letters out, that's what our
18 research indicated, 85 percent returned for these reasons.

19 Q. Because of pricing?

20 A. Because of -- because of either our prices --
21 we have competitive prices, we have a different service
22 level, we meet the customers' value proposition. The
23 customer decides what are the reasons that they return back
24 to us.

25 Q. I'm sorry. I want to make sure. Did you tell

1 me that BOSS is a system that is used by your retail folks
2 in order to engage in winback?

3 A. No, I did not indicate that. I indicated that
4 BOSS is a billing tool or billing system that our retail
5 service reps have access to with our retail customers.

6 Q. So that your -- those folks that take winback
7 orders would not have access to BOSS?

8 A. I don't know that for a fact, if they would or
9 not.

10 Q. When you send out winback letters, how often
11 are those sent out?

12 A. We have different campaigns that we run with
13 winback letters, so I'll talk through what we do with
14 consumer residential first and then business.

15 Q. All I need to know, Mr. Regan, is how often
16 they're sent out.

17 A. For residential customers, we send out
18 letters 2-day, 40-day, 80-day. We send them out probably
19 nine different times during the course of a year. And for
20 business customers, it will be three different times during
21 the course of a year.

22 Q. And when you say two-day, what triggers that
23 two-day letter?

24 A. Again, we -- we go back through -- as I stated
25 in my earlier testimony, that we compare our retail

1 disconnects with all disconnects. So orders that we take on
2 disconnects through our retail organization, and then we are
3 notified of other disconnects that occur, just like CLECs
4 are notified when disconnects occur with their customers.

5 Q. I'm sorry. Let me make sure that I understand
6 this, though. You're notified of all disconnects or just
7 disconnects for your customers?

8 A. We're notified of disconnects of our
9 customers, of all retail disconnects. Let me be clear in
10 distinction. There are disconnect orders that we take in
11 our retail organization, and then there are other
12 disconnects. So those are disconnects that we have to stop
13 billing our retail customers for, so we assume those are
14 disconnects and they're probably due to competitive losses.

15 We don't know who, what or why. We just know
16 that they're disconnects, orders that have been issued
17 through our billing system, and then those -- those
18 customers are part of this letter series campaign.

19 Q. Excuse me for being so dense on this issue.
20 Other disconnects, if they're not your customers, does that
21 mean other disconnects are CLEC customers?

22 A. No. I stated earlier these would be retail
23 customers of Southwestern Bell.

24 Q. The other customers?

25 A. Retail disconnects of Southwestern Bell of

1 orders that we did not take in the retail organization, as
2 stated in my previous testimony, both written and verbally
3 today.

4 So if we in the retail organization do not
5 take the disconnect order but there's a disconnect that
6 falls out of the system, we have to stop billing that
7 customer, and we assume that they've disconnected their
8 service for some reason. Most likely it is due to
9 competitive reasons, and they would then receive letters.

10 Q. Does a prepaid customer get the benefit of
11 winback promotions?

12 A. We don't offer prepaid service here in
13 Missouri.

14 Q. Okay. I'm reviewing a document that was
15 produced, I thought was in Missouri and referred to prepaid.
16 So you don't offer prepaid service, period, in Missouri?

17 A. Not in Missouri, we don't.

18 Q. Okay. And I need some clarification on a
19 document here. If the customer is currently with a CLEC and
20 they want to keep their current telephone number, if the
21 customer does not owe Southwestern Bell on their current
22 telephone number with a CLEC, then the customer can keep the
23 telephone number. If the customer does owe Southwestern
24 Bell on their current telephone number with the CLEC, then
25 they must have a new telephone number. They cannot keep any

1 number where they currently owe Southwestern Bell for that
2 telephone number.

3 How does Southwestern Bell know that an end
4 user owes a CLEC money?

5 A. I'm not familiar with the document you're
6 referring to, and it would be my opinion we don't know how
7 much money that the customer owes the CLEC.

8 Q. So the document is incorrect?

9 A. I'm not saying the document's incorrect. I'm
10 not familiar with the document where I could comment on it
11 with any authority.

12 Q. Another question for you. In winback, order
13 should not be placed if the customer owes \$100, unless the
14 customer has paid the bill via SPA web, which in case, look
15 for notes accordingly. A winback customer can place an
16 order if the final bill is under \$100.

17 I thought earlier -- this appears to say that
18 anything owed under \$100 you're going to take back that end
19 user, but I thought earlier this morning you said if they
20 paid in full, only then could they come back.

21 A. Well, if it's under \$100 or under \$50,
22 depending on the class of ser-- the class of customer, if
23 it's residential or business, we'll work with the customer
24 to work through those final payments. And if, depending on
25 their credit class, if they were a customer of ours before,

1 we'll work with them on those payment terms if its under
2 \$100 or under \$50. But if it's over \$100, then we need to
3 settle up. WB SPA is a credit card tool that we use.

4 Q. WB SPA. I'm reviewing an e-mail here from
5 Heather Fitzgerald. Do you know Heather?

6 A. I don't know who Heather is.

7 Q. Ms. Fitzgerald. She says to her winback team,
8 if you receive a call from a current SBC Southwestern Bell
9 customer stating they have received a winback direct mail
10 piece, please express regret for our error. Have winback
11 letters been sent out in error?

12 A. I'm not familiar if any of our winback letters
13 have been sent out in error.

14 Q. So a document that said winback letters had
15 been sent out in error twice, you would have no knowledge of
16 that?

17 A. I would not have any knowledge of that.

18 Q. And at one point it appeared that
19 20,000 customers received winback letters in error, you
20 would not have any knowledge of that either?

21 A. I do not have any knowledge of that.

22 Q. Any idea -- well, I'm sorry. I asked you
23 that.

24 How about -- well, let me just ask you --
25 because maybe you will surprise me. Have any phone calls

1 been made in error advising customers that they've been
2 changed?

3 A. I'm not aware of any erroneous phone calls
4 made to notify customers.

5 Q. Okay. Do you have any knowledge of the
6 winback completion center?

7 A. No, I do not.

8 Q. Was that form specifically to handle the
9 activities previously handled by the consumer support
10 district and the RCC within the LSC?

11 A. I'm not familiar with those terms or, you
12 know, what you are referencing there.

13 Q. Now, doesn't LSC mean the local service
14 center?

15 A. LSC does mean local service center.

16 Q. And that's where all the CLEC orders are
17 processed, aren't they?

18 A. That is correct.

19 Q. Are Southwestern Bell orders processed at the
20 LSC also?

21 A. Southwestern Bell retail orders?

22 Q. Uh-huh.

23 A. I'm not aware that Southwestern Bell retail
24 orders are processed at the LSC.

25 Q. Where are those processed?

1 A. My understand-- again, I'm not an expert in
2 the areas where orders are processed, but my understanding
3 is that our Southwestern Bell retail organization have --
4 has various call centers and service rep functions
5 throughout -- in Southwestern Bell throughout the five
6 states and that's where they handle it, many locations
7 throughout the five states.

8 Q. So that the Southwestern Bell retail folks
9 would have absolutely no reason to call the LSC, because the
10 LSC handles only CLEC orders?

11 A. Well, this is -- this probably gets into the
12 area of highly confidential information. So before I would
13 be able to discuss what I know about that, I need to --

14 MS. ESCOBEDO: Your Honor, may we go
15 in-camera?

16 JUDGE WOODRUFF: All right. Just a second.

17 (REPORTER'S NOTE: At this point, an in-camera
18 session was held, which is contained in Volume No. 3,
19 pages 158 through 160 of the transcript.)

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1 JUDGE WOODRUFF: All right. We're back from
2 in-camera session, and it's time to take a break. It's now
3 2:30. We'll come back at 2:45. Thank you.

4 (A BREAK WAS TAKEN.)

5 JUDGE WOODRUFF: Let's come back to order, and
6 at this time we are in general session, not in-camera, so if
7 you will go ahead and proceed.

8 MS. ESCOBEDO: Thank you, your Honor.

9 BY MS. ESCOBEDO:

10 Q. Mr. Regan, I'm going to read to you from a
11 document that Southwestern Bell produced and ask for some
12 clarification if you can give it to me.

13 If there is any pending CLEC orders in the
14 system, parentheses, either you OINQ the TN or the circuit,
15 closed parentheses, the winback order cannot be worked and
16 CND orders cannot be placed until the CLEC orders are
17 cleared, either posted or canceled. For orders that are
18 pushed out to a future date, contact the CLEC line unit,
19 make a follow-up to check to see when CLEC orders are
20 cleared, and work the winback in order. Always contact the
21 customer and follow up on the action taken.

22 How -- and this is entitled Winback Completion
23 Center Updates. Again, I guess my question would be, how is
24 the winback completion center going to know that there is a
25 CLEC order in the system if they don't access any of the

1 systems at the LSC?

2 A. I'm not familiar with the document at all. I
3 couldn't begin to answer the question. I'm not familiar
4 with that part of our business at all.

5 Q. But this one I hope you can answer for me.
6 What does OINQ mean?

7 A. I can't even answer that question, other
8 than -- well, I wouldn't want to say.

9 MR. LANE: We're big dogs. We usually growl.
10 BY MS. ESCOBEDO:

11 Q. It actually says O-I-N-K, but I've also seen
12 it O-I-N-Q.

13 A. I'm not familiar with the term.

14 Q. Would you agree with me that it appears that
15 winback is taking place while there are CLEC orders in the
16 system, if this statement is correct?

17 A. Again, I cannot comment on that. I'm not
18 familiar with that document or process at all.

19 Q. Another document, this one's entitled Job Aid
20 for Determining if CLEC Account is Cut. When you go into
21 CABS after entering CAB SI, and the question mark in TN
22 section, enter the circuit info and then press enter twice.
23 You will see the INMI of the CLEC. Can you tell me what
24 INMI means?

25 A. I'm not -- I'm not familiar with those terms

1 and I'm not familiar with this document, so I can't really
2 comment on that process that's described there.

3 Q. What do I do if I find a pending CLEC order --
4 and this is dated January 4, 2002.

5 What do I do if I find a pending CLEC order?
6 The CLEC order has to post before we can work our order.
7 Call our customer and advise that SWB order will go through
8 when the CLEC order posts.

9 Again, it appears that service has not been
10 migrated yet and you're already winning back the customer?

11 A. I'm not familiar with the document. I
12 can't -- can't describe it. I'm not familiar with it at
13 all.

14 Q. Okay. CLEC order in system. This one is
15 dated February 6, 2002, revised. If there is a pending CLEC
16 order with a future date in the system, example 06/29/02,
17 the first thing you do is call the line unit for that
18 particular CLEC to try to get order canceled or completed.
19 Then you place a follow the next business day to yourself to
20 check status of the CLEC order. If the order has been
21 completed, follow up one more day for the order to flow out
22 of the system. If not, make second call to line unit.

23 Again, this appears that the CLEC order has
24 not even posted and you're already trying to win back. Do
25 you have any knowledge of this document?

1 A. Not familiar with the document or any
2 knowledge about what you just described.

3 Q. Would you have any knowledge if your employees
4 are engaging in this type of activity? Would that
5 information get back to you?

6 A. It is my opinion that, from a marketing
7 perspective and the responsibility I have -- I have in my
8 organization that we would -- we wouldn't get involved in
9 process flows or process design, which is what that appears
10 to be or is described to be.

11 Q. This one is entitled, Did You Know,
12 question mark, dated February 1st, 2002. Per legal, it is
13 okay to advise a ported order customer the reason that their
14 CLEC has rejected the LSR. Example, name doesn't match,
15 address doesn't match, other TNs at location, not addressed,
16 et cetera.

17 Again, this appears that you're engaging in
18 winback because you're talking to an end user and letting
19 them know why their CLEC order hasn't been able to go
20 through the system.

21 A. I can assure you that from a retail
22 organization perspective we follow code of business
23 conduct. We don't access wholesale information. We -- as I
24 described in my earlier testimony, we understand there are
25 disconnects, retail disconnects and other disconnects.

1 With other disconnects, we don't know why
2 those customers left us, we don't know who they left us for,
3 and we will market to them, but that's the extent of my
4 knowledge in winback.

5 Q. This one is entitled WCC, and it's my
6 understanding from reading many, many of these documents
7 that that means winback completion center. Did You Know,
8 question mark, question mark, question mark. This one's
9 dated May 16th, 2002, and this one actually talks about the
10 customer notification system, CNS.

11 Do you have any knowledge of the CNS?

12 A. I'm familiar with what CNS is.

13 Q. Is that the recording system?

14 A. That is the recording system where we alert
15 customers --

16 Q. That they've been changed?

17 A. -- consumer customers that their order has
18 been changed. And if it hasn't been done with their prior
19 knowledge or authorization, that they may have been slammed
20 and to go ahead and call us back and we'll take care of it
21 from there.

22 Q. This one says the CNS recording calls the
23 number that has been changed to another CLEC. How is CNS
24 going to know the number that's been changed to another
25 CLEC?

1 A. I'm not familiar with the -- that process or
2 what's been described there.

3 Q. Can you tell me what AP means in relation
4 to -- the acronym AP in relation to win or winback orders?

5 A. Not familiar with that term either.

6 Q. There's a very lengthy e-mail where there's
7 talk about waiving the AP on a win, and at one point Lynn
8 Lehew -- am I pronouncing that correctly? L-E-H-E-W -- who
9 actually signed your winback letters; is that correct?

10 A. Lynn Lehew, she's our -- she's in our sales
11 organization.

12 Q. This lady says, No, I'm not in agreement with
13 this procedure at all. If they are a win, it's a line that
14 we have never had and now we do. Why would we want to
15 request an AP so they will get the competitor instead and
16 not come to us, question mark. Please advise whoever is
17 asking that we are not in agreement.

18 And the response is, We have gained the
19 agreement of Rick Caldevon, CNC, and will not be required to
20 obtain an AP on winback or win orders.

21 So you don't know what it means in relation to
22 winback?

23 A. I'm not -- I'm not familiar with that term or
24 those documents at all.

25 Q. And I think you explained earlier that a win

1 customer does not get the benefit of the winback promotions?

2 A. A win customer gets the benefit of a winback
3 promotion if we have a tariff approved in place, assuming
4 that they were a customer of Southwestern Bell in the past.

5 Q. This would be a separate tariff? It would not
6 be the winback tariff?

7 A. It would be the winback tariff that --

8 Q. It would be the same tariff?

9 A. It would be -- if we had a tariff in place
10 that was approved, they would be qualified for that, that's
11 correct.

12 JUDGE WOODRUFF: You're talking about the
13 tariff that's at issue here?

14 THE WITNESS: The tariff that is at issue,
15 that's correct.

16 BY MS. ESCOBEDO:

17 Q. But generically, if you were to provide
18 service to a win customer, it would be generally the same
19 winback promotion that's offered to a winback customer?

20 A. Provided that the customer was a customer of
21 Southwestern Bell in the past, regardless of if it's a win
22 or a winback, they would get the same promotion or offer,
23 that's correct.

24 Q. Okay. Here goes that OINQ again. To locate a
25 pending order from O-I-N-Q, OINQ, do not enter the TN,

1 telephone number. Instead enter the SSN to avoid any
2 possibility of inadvertently accessing a pending CLEC order.

3 It appears that there is access to CLEC
4 information in that statement.

5 A. I'm not familiar with the document or the
6 process or procedure that's described. But I may offer
7 that what occurs quite frequently is in the business -- and
8 that's what that may be referring to, and I have no
9 knowledge so I'll just offer this opinion. There's a lot of
10 what we call springboarding where a CLEC community will
11 actually ask the customer to place an order with
12 Southwestern Bell and then go ahead and have the service
13 established and then immediately issue a CLEC order to win
14 that customer back from the CLEC perspective.

15 Q. But now I understand from reading these
16 documents that --

17 COMMISSIONER GAW: Excuse me. Judge, I want
18 to interrupt for a moment. I am having difficulty following
19 the questioning in reference to the documents where there
20 are quotes from documents that are not marked as exhibits.
21 Whether or not they're going to be admitted, it's very
22 difficult for me to understand how in retrospect the record
23 will be clear about what the information that is being
24 queried about will be able to be discerned from a record in
25 the transcript.

1 And I would just like some clarification about
2 how we are going to know what these references are to, but I
3 want to know how we can do that. And it strikes me that, at
4 a minimum, we ought to at least have some marking of the
5 documents for purposes of identification or something,
6 because I don't know how we're going to reconstruct this
7 after the fact.

8 JUDGE WOODRUFF: If you would like to offer
9 these documents for identification, you may certainly do so.

10 MS. ESCOBEDO: I will certainly do that once I
11 get them organized, your Honor and Commissioner, because
12 what I have been doing is going through this stack and being
13 selective about what it is I've been asking questions about.
14 I can certainly introduce the entire stack, but if what you
15 want are the documents that I've referred to, then I will
16 have to cull them even more.

17 COMMISSIONER GAW: I just -- I want to be able
18 to go back in the transcript, if there's a reference to a
19 particular document and if that is -- if that's marked, even
20 if it's in bulk, at least we will know it's within that
21 document. And right now I don't know that we've got
22 anything that tells us that from the record in the
23 proceeding. That's all I'm asking for at this point.

24 MS. ESCOBEDO: And I think maybe the simpler
25 way to do it would be for me to turn around and put together

1 a stack of documents that mirrors the one that I've been
2 working off of and provide you the number of copies that are
3 required.

4 JUDGE WOODRUFF: That would be acceptable, if
5 you just want to mark it as -- I guess we're up to 13.

6 MS. ESCOBEDO: Yes.

7 COMMISSIONER GAW: I apologize for
8 interrupting.

9 JUDGE WOODRUFF: All right. Did you want to
10 go ahead and do that now?

11 MS. ESCOBEDO: I'm almost finished actually.
12 Would you prefer that I do that now or --

13 JUDGE WOODRUFF: Go ahead and finish and then
14 put it together.

15 MS. ESCOBEDO: And then I'll put it together
16 and make sure you get it certainly by tomorrow morning,
17 because I will probably have to work on it with Ms. Hallway
18 on getting this together.

19 JUDGE WOODRUFF: Very good.

20 MS. ESCOBEDO: Thank you.

21 BY MS. ESCOBEDO:

22 Q. I want to identify that the document that I
23 was just reading from, that was a document that's an e-mail
24 from Peggy Lunsford. Do you know Ms. Lunsford?

25 A. I do not know Ms. Lunsford.

1 Q. And the title on that is Winback Flash 02,
2 apparently February 7th, No. 1.

3 This one is entitled Winback Center Contact
4 Handling Procedures, effective February 3, 2001. Under no
5 circumstances will a winback service representative access
6 any CLEC-related information prior to the receipt of a
7 written letter of authorization. And I think we had
8 discussed that earlier.

9 It talks about your BOSS/SORD access will be
10 changed to be further restricted. So that it appears that
11 the winback reps do have access to BOSS and SORD?

12 A. Again, I'm not familiar with the document. It
13 appears to be a process procedure issue, not in my area of
14 expertise.

15 Q. And then it says, Effective February 5th,
16 2001, the C order conversion process in EASE will be
17 disabled. So it appears that access to EASE is going to be
18 restricted somewhat. The POUT, P-O-U-T, indicator on the
19 consumer EASE screen will be invisible. Can you tell me
20 what POUT means?

21 A. I'm not -- I'm not familiar with the term used
22 in that context.

23 Q. Okay.

24 A. Or the document.

25 Q. Nor I.

1 Winback procedures revised March 21st, 2001,
2 Step 1, customer indicates they are with another provider
3 and want to come back to Southwestern Bell. Information
4 should be reviewed in BOSS, parentheses CSA slash memo notes
5 or PREMIS EASE SO screen to verify that the customer is with
6 another provider.

7 So you -- it appears that there is some access
8 to CLEC-type information?

9 A. Well, I wouldn't necessarily agree with that,
10 but again, I -- I'm not familiar with the document or what
11 reference to that document, what it's referring to.

12 Q. I do believe this is the last document. This
13 one is entitled Winback Process Southwestern Bell Region.
14 It's dated August 19th, 2002. Summary, the following
15 timeline illustrates the flow of service orders that are
16 initiated in SORD. And SORD, I think we discussed, was
17 service order retrieval and distribution system?

18 A. That's correct.

19 Q. The order may change its status to complete in
20 the same day or it may not occur until several days later.
21 And recall this is titled Winback Process Southwestern Bell
22 Region. Day 1, orders are complete -- are in complete
23 status in SORD.

24 So if you have access to SORD and it contains
25 CLEC information, then you have access to that information

1 on Day 1?

2 A. I haven't made that reference at all, and
3 again, I would go on the record as saying that, as I stated
4 in my testimony, that to the best of my knowledge, that our
5 retail employees do not have access to wholesale
6 information.

7 Q. But they do have access to SORD, don't they?

8 A. They have access to SORD because there is --
9 there's a component of SORD that is for retail customers.
10 And that's the only -- to my knowledge, that's the only
11 information they have access to. They access information
12 about retail customers, not wholesale customers, retail
13 customers.

14 Q. Day 2, a.m., order is posted to CRIS system in
15 the morning in overnight processing. And CRIS is another
16 system that you said that retail folks do have access to,
17 right?

18 A. CRIS is a billing system.

19 Q. So on Day 2 you have access to CRIS
20 information?

21 A. I'm not familiar with the terms of that
22 document that you're referring to or the process or
23 procedures. Again, not in my area of expertise.

24 Q. Day 2, p.m., enterprise data warehouse process
25 extracts the posted orders from CRIS and loads onto the

1 posted service order database tables. I think you actually
2 referred to EDW in your direct testimony, didn't you?

3 A. Yes, I did. Yes, I have.

4 Q. Okay. Day 3, IT/winback group's process
5 executes at 4 a.m. to extract from PSOD on EDW, based on
6 business rules per region/customer segment to populate the
7 winback tables.

8 By Day 3, do you have information regarding an
9 order that's been put into a system?

10 A. What we have access to from a retail
11 perspective, again, are retail customers that have been
12 disconnected, just as the CLECs have information or the
13 information's available to them when their customers are
14 disconnected and they use Southwestern Bell's wholesale
15 organization for the service, UNE-P or resale. That
16 information's made available to CLECs. It's also made
17 available to our Southwestern Bell retail organization.
18 When we lose our customers, customers are disconnected.

19 Q. By three -- is an end user, whether it's a
20 CLEC end user or a Southwestern Bell end user, are they
21 likely to have service by Day 3?

22 A. To the best of my knowledge, are they likely
23 to have service? I'm not -- I'm not --

24 Q. To have their service up.

25 A. I'm not sure. I'm not sure. I don't know

1 what the standard installation intervals are from our --
2 from our wholesale organization.

3 MS. ESCOBEDO: Mr. Regan, I really appreciate
4 your patience. I think that's all I have.

5 Thank you, your Honor.

6 JUDGE WOODRUFF: Thank you. Before you leave,
7 we do have a couple of exhibits offered. Exhibit 11 there
8 was the -- was offered. There was an objection as to what
9 was going to be attached to it. You talked about A and B.
10 I assume that objection still stands.

11 MS. ESCOBEDO: And at this point we'll just
12 withdraw 11. Right. And so then the exhibit that --
13 however the Commission would like to label it -- of these
14 documents that I've been reviewing would become Exhibit C.

15 JUDGE WOODRUFF: We've got 12HC which was
16 offered, which I --

17 MS. ESCOBEDO: And I'll withdraw that one
18 also.

19 JUDGE WOODRUFF: You don't need to withdraw
20 it, but I'll show it as not received because of --

21 MS. ESCOBEDO: Oh, all right. We went through
22 that.

23 JUDGE WOODRUFF: We went through on lack of
24 foundation.

25 And the next exhibit, the other exhibit, then,

1 that you indicated you'd have for tomorrow morning will be
2 13, and I assume those are HC documents on that also?

3 MS. ESCOBEDO: Yes, they are.

4 JUDGE WOODRUFF: We'll call it 13HC, and I'll
5 reserve that number for you to provide that in the morning,
6 and you can offer it then and we'll deal with it at that
7 time.

8 MS. ESCOBEDO: Thank you, your Honor.

9 JUDGE WOODRUFF: All right, then. Further
10 cross-examination from AT&T?

11 CROSS-EXAMINATION BY MS. DeCOOK:

12 Q. Good afternoon, Mr. Regan.

13 A. Good afternoon.

14 Q. Becky DeCook for AT&T. I'd like to explore
15 with you a little bit about your access line loss
16 information that you have reflected in your testimony. And
17 I'd like for you to explain to me how you calculate access
18 line loss.

19 I assume you perform those calculations
20 yourself?

21 A. Uh-huh. Yes, that is correct. And you're
22 referring to Exhibit --

23 Q. Actually, I'm referring to your -- I'm looking
24 in particular at your surrebuttal testimony, page 3. And it
25 is reflected -- and we'll get to this later -- in the

1 attachment to your direct testimony, Exhibit -- Schedule 4.

2 A. Okay. Let me -- the best way to describe it
3 is that we -- we start with an in-service number of retail
4 lines that are in service, and we look at how many lines
5 that we -- that are decreased or increased when we look at
6 it on a perspective of inwards, outwards.

7 We get to a net gain view, and from there we
8 then look at what we deem as noncompetitive disconnects,
9 what we assume are competitive disconnects, and then
10 customers that return back to Southwestern Bell to look at
11 what do we believe is happening from an access line
12 perspective.

13 Q. Okay. And these numbers that you've presented
14 here are a combined business and residential line loss
15 count?

16 A. That is correct.

17 Q. Okay. And you said that you looked at
18 inwards. I assume that's lines that you're gaining?

19 A. Inward order activity.

20 Q. Okay.

21 A. Not necessarily gaining, but inward order
22 activity.

23 Q. And what would that encompass?

24 A. It would a new connect order. It would be --
25 it could be a change order, where a customer's ordering more

1 lines, or it could be an FNT order where a customer moves
2 from one location to another.

3 Q. What does FNT stand for?

4 A. To and from.

5 Q. Not T and F?

6 A. Well, we just -- we have a lot of acronyms.

7 Q. Yes, you do. Now, would inwards include
8 winbacks?

9 A. Inwards in this in our view would not -- would
10 not include winbacks.

11 Q. So line -- the line loss numbers that you've
12 recounted on page 3 do not include winbacks. Do those --
13 those would include wins?

14 A. Let me reflect back. When we say net decrease
15 from lines, what we -- what I refer to in my testimony is,
16 we have a starting point of access lines and we have an
17 ending point of access lines, and that's a combination of a
18 lot of activity, inward, outward, competitive disconnects,
19 noncompetitive disconnects. Net -- net is to get to a net
20 gain number, which has been negative, net gain over the
21 past, you know, two years.

22 Q. Right. But at least for calculating your net
23 gain, you include inwards and outwards, but the inward
24 doesn't include winbacks?

25 A. That's correct.

1 Q. And does it include wins?

2 A. Does it include wins?

3 Q. Right. I think you -- I have a question about
4 this, but I think you defined a win customer as a customer
5 of a facility-based CLEC that comes back to -- that comes to
6 Southwestern Bell?

7 A. Let me make sure we're clear on understanding.
8 Our net gain includes -- is the combination of -- of all
9 activity, and that would include winbacks, wins, and at the
10 end of the calculated period, it's -- we have a starting
11 point for access lines. We have an ending point of access
12 lines, and that includes all activity.

13 So if you start with ten and your inwards,
14 your outwards, your winbacks, your competitive losses, all
15 that adds up that now you have five and your net gain is
16 negative five, if that makes sense. It has all the activity
17 involved in it.

18 Q. Where does the winback get included in your
19 calculation, because you said it wasn't in inward, and it
20 wouldn't be in the outward, right?

21 A. It's not in the outward, but it is an
22 in-service line. You have to start with an in-service line
23 perspective. So if it's -- if it's in inward -- I guess the
24 answer is yes, it is -- winbacks are considered inwards.
25 There's an inward order that's associated with that.

1 Q. So you're changing your testimony now?

2 A. I'm changing my testimony, so that is correct.

3 I just want to make sure I answered it correctly.

4 Q. And I appreciate that. I just wanted to make

5 sure that that is your position --

6 A. Yes.

7 Q. -- that it's in inwards. So if you start with

8 five and during the period that you're measuring you get

9 five winbacks and three competitive losses, then that would

10 be reflected in your net gain at the end of the day?

11 A. That is correct.

12 Q. Okay. And tell me what outwards is, then.

13 A. Outwards are all orders that there's been a

14 disconnect order issued, all lines that have been removed

15 from service. So --

16 Q. Now, is that -- does that just include the

17 lines that the retail organization has received a customer

18 notice on, or does it receive -- does it include all

19 disconnects, including competitive disconnects and others

20 where you may not have received customer contact of the

21 disconnect?

22 A. If it's a retail customer, we're going to be

23 notified one way or the other if they stop billing with us.

24 There's a disconnect regardless of who issues the order, if

25 it's an outward. So it's all outward activity, all retail

1 outward activity.

2 Q. So any disconnect for any reason would be
3 included in the outward?

4 A. From a retail perspective, yes.

5 Q. And what does that mean?

6 A. It's a retail customer of record.

7 Q. Okay. And you're differentiating between a
8 wholesale disconnect, which wouldn't have any relevance on a
9 retail line count?

10 A. That's correct.

11 Q. Okay. And then you said taking the lines
12 in service at the start of the period, subtracting and
13 adding inward and outwards, you come up with a net gain.
14 And then you indicated that then you apply -- you look at
15 noncompetitive disconnects and competitive disconnects. Is
16 that another step?

17 A. It's a step that I use -- that we use in
18 marketing to understand what's going on from a -- from a --
19 an outward perspective, to understand what are -- how we
20 classify outward activity as either noncompetitive or what
21 we assume to be competitive.

22 Q. Well, let me ask you this question. In your
23 testimony on page 3, you said in the months of June and July
24 the number of retail lines decreased by over 32,500 lines.
25 Is that the net gain during that period or have you -- is

1 there more to it than that?

2 A. That is the -- that is the --

3 Q. Or net loss?

4 A. -- negative net gain, so net loss, yes.

5 Q. Okay.

6 A. And you know, if you look at it, really

7 if you go back and you look at 2002 versus 2001, from

8 August to August, our negative -- our net gain is decreased

9 153 percent. So it's quite dramatic just in a 12-month

10 period, while competitive disconnects have been up

11 57 percent over that same period.

12 Q. And that's what I wanted to ask you. Based on

13 your methodology, the net loss that you're reflecting here

14 is not attributable just to CLEC disconnects, right?

15 A. How I would answer that is that our inwards

16 year over year, if I look at August of 2002 through August

17 of 2001, our inwards are down 14 percent.

18 Now, that clearly is -- part of that is

19 economic. Part of that is based on customer choice. Part

20 of that may be substitution of multiple lines. Outwards are

21 flat, but what's disturbing or challenging for us is really

22 that our overall net line has decreased 153 percent and our

23 competitive disconnects are up 57 percent over the same

24 period last year.

25 Q. Well, and that's what I want to ask you about

1 next. Your competitive disconnect number -- bear with me.

2 I have to find it in here.

3 Now, as I understand -- and it's at page 7 of
4 your direct. I don't know if you found it.

5 A. Are you referring to the graph or testimony?

6 Q. I'm actually referring to your testimony where
7 you describe the process, and I --

8 A. On page 7 of direct or surrebuttal?

9 Q. Direct.

10 A. Okay.

11 Q. And you had some discussions with Ms. Escobedo
12 about this, and as I understand it -- and I'm looking at the
13 description of how you ascertained competitive disconnects
14 on pages page 7, line 3 through 6.

15 A. Uh-huh.

16 Q. And there you say that, My organization
17 estimates the number of customers that have left SWBT and
18 elected to receive local service from a CLEC by comparing
19 disconnect service orders processed by our retail operations
20 with the total number of disconnects for all of SWBT retail.

21 And I understand your testimony in discussions
22 with Ms. Escobedo that there are only certain numbers of
23 disconnect service orders that are processed by your retail
24 operations, right?

25 A. That is correct.

1 Q. And that's -- the ones that are processed by
2 your retail operations are the ones where the customer
3 actually contacts the retail operations and informs them
4 that they're disconnecting service?

5 A. That's correct.

6 Q. And then you make the assumption that the
7 remaining disconnects are all attributable to CLEC
8 disconnects?

9 A. We attribute -- we attribute the remaining
10 disconnects to be competitive disconnects. Most likely they
11 have gone to CLECs. We don't know that for sure, we don't
12 know that for a fact, but we assume that they're competitive
13 disconnects.

14 Q. And I'd like to explore that. Aren't there
15 some disconnects that are customer related that are not
16 necessarily generated by virtue of a contact with the retail
17 operations group, that are not competitive losses?

18 A. I'm -- I'm not sure I understand the question,
19 so if you could explain a little further.

20 Q. Well, if you have a disconnect for nonpayment,
21 customers certainly wouldn't be calling you and saying, I'm
22 disconnecting because I'm not going to pay, right?

23 That's something that's generated internally
24 at Southwestern Bell; that's not generated by a customer
25 contact.

1 A. Then that would be categorized in our
2 noncompetitive disconnect category. We would have that
3 coded out as nonpay.

4 Q. But it's not a result of a customer contact?

5 A. That's -- that's true, but it would be -- it
6 would still be coded out as a noncompetitive disconnect due
7 to nonpay.

8 Q. So any information that you looked at to
9 determine the total number of disconnects that are
10 attributable to a CLEC change, a disconnect for CLEC
11 competitive reasons, you have some sort of documentation
12 generated by retail operations that identifies the
13 disconnect reason?

14 A. Yes, we do.

15 Q. And there's a disconnect code attributable
16 with every disconnect reason?

17 A. For customers that call us or contact us or is
18 handled through our retail organization.

19 Q. And what about a situation where the customer
20 declares bankruptcy, is that coded?

21 A. We have it coded for -- we have a code for
22 bankruptcy, out of business, et cetera, economic.

23 Q. What about a code where the customer is moving
24 but going to another location in SBC territory, how is that
25 treated?

1 A. We have a code for when that customer moves
2 within a Southwestern Bell territory, and we also have a
3 code when they move out of state. We also have a code when
4 they move out of state within an SBC entity; for example,
5 moving from St. Louis to Los Angeles.

6 Q. And I assume that's not treated as a
7 competitive loss, then --

8 A. That assumption --

9 Q. -- or competitive disconnect?

10 A. That assumption is correct. It's considered a
11 noncompetitive disconnect.

12 Q. Now, looking at Schedule 4, I have to tell you
13 it's confusing when there's two different axes for the same
14 information, so I just want to make sure I understand. The
15 line that is represented as in-service on your chart, that
16 corresponds to the information that's on the right vertical
17 axes, right?

18 A. That is correct.

19 Q. And that represents the access lines in
20 service, right?

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

22 Q. And then the other line which represents
23 competitive disconnects is -- follows the information that
24 is reflected on the vertical axis on the left?

25 A. That's correct.

1 Q. And there is no correlation between the two
2 vertical axes, right?

3 A. The only correlation would be that in-service
4 access lines have been going down and competitive
5 disconnects have been going up.

6 Q. But certainly the volumes on the left axes are
7 much smaller than the volumes on the right axes, right?

8 A. That is correct.

9 Q. And can you account for what -- the
10 significant increase in disconnects that occurred in
11 February of 2002?

12 A. Can you restate the question, please?

13 Q. Can you account for the increase, looks like
14 it's -- the one that's reflected for February 2002 on
15 competitive disconnects?

16 A. I don't have the specific information as to,
17 you know, what was occurring at that point in time, other
18 than there are, you know, competitors in the marketplaces
19 with general available offers, marketing efforts that are
20 going on, and -- and customers that elect to leave
21 Southwestern Bell and go to the CLECs.

22 Q. But you can't tell me if there's any specific
23 activity that resulted in this increase?

24 A. In February?

25 Q. Of 2002.

1 A. I can't tell you any specific activity that
2 occurred in February 2002.

3 Q. Now, you testified that Southwestern Bell or
4 some group, and I assume it's the winback group, but tell me
5 if I'm wrong, receives notification on a daily basis of
6 disconnects.

7 Do you recall that testimony?

8 A. We receive information of disconnects that --
9 that have not occurred within our retail organization.

10 Q. That have not occurred?

11 A. That -- that did not occur in our retail
12 organization. In other words, the customer did not call us
13 in our retail center to say I'm disconnecting the line. So
14 we -- we look at all disconnects and we compare those to the
15 ones that have been called in and we have to stop billing on
16 these retail customers, so there's disconnect orders that
17 have been issued.

18 Q. And who is it that gets notification of those
19 nonretail, I'll call them, disconnects? What organization
20 gets those?

21 A. Well, our sales and marketing organization
22 receives that information.

23 Q. And is that where the winback organization
24 resides?

25 A. There's -- I'm not sure if there's really a

1 winback organization. There is a sales customer return
2 function organization, and within marketing, like many
3 marketing companies, there are personnel that are -- that
4 are focused on winning customers back in the marketplace.

5 Q. Is there a consumer winback and retention
6 group at Southwestern Bell?

7 A. There is a consumer customer return group.

8 Q. And is that where -- the group that engages in
9 winback activities?

10 A. There's a specific group where when customers
11 respond to letters that they're called -- there's a call
12 center that handles those customer inquiries, and there's
13 also a group that handles outbound telemarketing activity.

14 Q. And they're both within this consumer return
15 group?

16 A. For consumer customers, consumer organization,
17 consumer sales organization.

18 Q. Okay. Is there another similar business
19 organization?

20 A. Yes, there is a similar business organization.

21 Q. Is there a business winback center that's
22 separate from the consumer winback center?

23 A. Yes, there is.

24 Q. And how does -- let me ask you this, because
25 you did change your position during the course of this

1 proceeding, so I just want to understand. Your prior
2 position was vice president of regional marketing?

3 A. That's correct.

4 Q. Okay. And in that position, what was your
5 role in Southwestern Bell's winback efforts?

6 A. My role, I had responsibility for the
7 marketing efforts for Southwestern Bell, both consumer and
8 business retail organizations, primarily in the area of
9 promotions and packaging efforts. So customer return
10 winback in the normal course of marketing that I had
11 responsibility for to develop the right offers in the
12 marketplace to meet customer demands.

13 Q. In that -- in that role as reviewing the
14 packaging and the offers for winback, would you review the
15 letters, the winback letters that were sent out, or would
16 that be under your responsibility?

17 A. Folks on my team work through the letters. I
18 can't say that I've reviewed every letter personally or
19 individually, but my group had the responsibility for
20 creation of the winback letters.

21 Q. And how has -- or has your position changed or
22 your responsibility changed now that you are vice president
23 of business services?

24 A. Responsibility has changed in that we've
25 segmented our markets between consumer and business, and now

1 I have responsibility for all business services throughout
2 all SBC companies.

3 Q. So is your role beyond just the marketing,
4 packaging and offering of the service?

5 A. We have -- we have some of the same
6 responsibilities but primarily in business. We now have
7 additional responsibility that really helps develop the
8 product, the product development side of the house in terms
9 of developing, you know, prioritizing the products that
10 customers want in the marketplace. So that's a new
11 responsibility, and the impact that we have on pricing
12 decisions and where we think we need to be priced in the
13 marketplace with our products and services.

14 MS. DeCOOK: Bear with me a minute, your
15 Honor. I'm trying to organize my cross so I can do the area
16 that involves nonproprietary at the end.

17 JUDGE WOODRUFF: Okay.

18 BY MS. DeCOOK:

19 Q. Now, are you familiar with the term
20 "retention"?

21 A. I am familiar with the word "retention."

22 Q. In the context of a retention offer?

23 A. Yes, I am.

24 Q. And what does that mean in SWBT's vernacular?

25 A. Well, the -- in any competitive marketplace,

1 retaining customers becomes a vital component of marketing
2 efforts and we -- we have retention offers out there in the
3 marketplace for customers that we want to keep, the same
4 customers that our competition CLECs and IXC's are going
5 after, and we look to put motions and offers in the
6 marketplace that are attractive to customers, that benefit
7 customers, that add value.

8 That's how I would describe what we do with
9 retention offers. And they're all, you know, approved
10 tariffs that we would have to offer from the tariff
11 perspective.

12 Q. In your position as regional marketing vice
13 president, would it have been part of your responsibility to
14 review retention offers?

15 A. Yes, it would.

16 Q. And would it have been part of your
17 responsibility to determine who should receive a retention
18 offer?

19 A. My -- my group had that responsibility in
20 terms of our targeted customers that would most likely
21 benefit from a retention offer.

22 Q. And let's just focus on the -- well, let me
23 ask you this. In your new position as vice president of
24 business services, is it now part of your responsibility to
25 determine who you should target retention offers to on the

1 business side?

2 A. That is part of my responsibility.

3 Q. And how do you determine who to target a
4 retention offer to?

5 A. Well, we -- again, we look at customers and we
6 try to understand the cause and effect in the marketplace,
7 in terms of what's going on from a competitive landscape,
8 from a competitive activity, competitive perspective, and we
9 look at customers that we believe are most likely to have an
10 impact to turn and try to get the right products and
11 promotions in the marketplace that would meet their needs.

12 Q. Do you target your retention offers based on
13 geography, location of the customer?

14 A. There's various means and ways that we target
15 retention offers. It could include all of those.

16 Q. I only mentioned one, so does it include that
17 one?

18 A. Well, it could. I mean, again, it depends on,
19 you know, the time and, you know, where we're at. I mean,
20 retention offers to me is not an exact, you know, we do it
21 this way every time. From a marketing perspective, you're
22 looking at opportunities to keep customers and satisfy
23 customer needs. And as a marketer, I mean, I have
24 responsibility for growing our business.

25 Q. And is it fair to say that from a business

1 standpoint you target customers who add value to your
2 revenue, and it's important to maintain them as SWBT's
3 customers because of the revenue they generate for
4 Southwestern Bell?

5 A. I mean, I would say we have different
6 retention offers for different sizes of customers, different
7 values. They're not necessarily restricted to any one class
8 or one type of customer. There are multiple retention
9 offers that are available to different customers of all
10 sizes and scope.

11 Q. Have you ever offered any retention offers in
12 Missouri?

13 A. I'm not aware if we have specifically.

14 Q. Is that you don't know?

15 A. I don't know.

16 Q. Have there been any consumer retention offers?

17 A. Again, universally or --

18 Q. Universally first.

19 A. Yes, very much the way I described the
20 business retention offers.

21 Q. How about in Missouri for consumers?

22 A. I'm not -- I'm not familiar with if we have
23 a -- if we would have a specific retention offer.

24 Q. Now, in your testimony you claim that
25 Mr. Kohly addressed retention efforts. Do you recall that

1 testimony?

2 A. If you could refer to the exact page.

3 Q. It's at page 7 of your surrebuttal.

4 A. Yes.

5 Q. And in the response there, you say that both
6 of the SWBT tariffs at issue are winback tariffs, they're
7 not retention tariffs. It's fair to say that Mr. Kohly did
8 not suggest that these tariffs were retention tariffs, did
9 he?

10 A. I'd have to go back and look at his rebuttal
11 testimony. I'm not aware of that as I sit here right now,
12 but I believe when I responded to the question, that really
13 what I was trying to address was what -- what's really at
14 question here are winback tariffs. This is not about
15 retention tariffs, retention efforts.

16 Q. You also address several of the advertisements
17 that Mr. Kohly addresses in his testimony, and you indicate
18 that those ads did not run in Missouri. What did you mean
19 by did not run?

20 A. The advertisements that Mr. Kohly mentioned
21 were not specifically run in the Missouri marketplace at
22 all. Those were run in other --

23 Q. What does "run" mean? That's what I want to
24 know.

25 A. We didn't have it on television. We didn't

1 have it in the newspaper. We didn't have it in the media.
2 It was not a -- an advertising campaign targeted towards the
3 Missouri market.

4 Q. What did you do to investigate that, to
5 determine that?

6 A. I had responsibility for advertising, so I
7 know what markets the advertising was in.

8 Q. Did you make any attempt to determine whether
9 there was any billboards in Kansas City that contain that
10 ad, one of those ads?

11 A. I'm not aware of any billboards in Kansas City
12 that had any of those ads.

13 Q. Might want to check.

14 Now, you also say this advertising
15 typically -- that advertising typically emphasizes how a
16 product meets customer needs and the competitive strengths
17 of the advertiser. Now, that really wasn't the design of
18 these ads, was it?

19 A. Well, these ads -- again, we're in a
20 competitive marketplace, and customers, you know, from our
21 research don't always understand that there are choices,
22 choices with -- within the SBC family of companies.

23 And that's really what the intent of those --
24 of that advertising campaign was all about, make customers
25 aware that they have choices and they can call us, and if

1 they're looking to change their service or bring new
2 services into place, we have offers that are available in
3 the marketplace.

4 Q. Now, how does a fork and a toaster that says
5 bad idea to go to the competitor, how does that provide the
6 customer with any notice about the choice that's available
7 at Southwestern Bell?

8 A. Again, I don't know if that's really relevant
9 to this particular winback tariff and offer that we're
10 discussing with this case. I'm not sure how that's really
11 relevant.

12 Q. Well, your counsel didn't object, so I would
13 like an answer to my question.

14 A. The advertising -- again, customers have many
15 choices, and really what our advertising in that campaign
16 was really aimed at was, when you make a decision with a
17 company, make sure that you make a decision with people that
18 have experience in the area of telecommunications. That's
19 what that advertising was there to draw upon.

20 Q. It's suggesting that making a decision to move
21 to another carrier is very risky, isn't it?

22 A. It's, again, trying to help customers
23 understand there are choices out there in the marketplace
24 and SBC is -- is also a viable choice to consider.

25 Q. Now, SBC has argued in this case that their

1 tariffs are in the public interest because they incent or
2 encourage a customer to try another competitive alternative;
3 isn't that true?

4 A. What is being stated is that there's incentive
5 for customers to -- to go to a CLEC and try it. If the
6 service is good and meets their customer needs and
7 expectations, then great. But if they want to return back
8 to Southwestern Bell, they should be able to do so without
9 any penalty.

10 Q. But the message that you're sending through
11 these ads is they'd be foolish to try another competitor;
12 isn't that true?

13 A. What our ads are suggesting is that there are
14 choices in the marketplace, and where you may have not
15 thought about your existing carrier, which may be an SBC
16 company, that we do have choices available. Call us before
17 you think about switching or consider a switch. I think
18 that's a prime example of what's going on in the
19 marketplace, advertising that customers can resonate with.

20 Q. I'm sure. You also testified regarding the
21 letters that Mr. Kohly references in his testimony that SWBT
22 sends to their customers once they are -- or our customers
23 once they have disconnected from Southwestern Bell. Do you
24 recall that testimony?

25 A. If you refer to the exact testimony, I can --

1 Q. Page 8 of your surrebuttal.
2 A. Line?
3 Q. It's line 10 through 22 is the entire
4 discussion.
5 A. Okay.
6 Q. Now, you start out by saying that SWBT has no
7 way of verifying that a customer has been slammed, and this
8 is -- apparently that's the reason for your sending out the
9 slamming notice, so that you can assist the customer in
10 determining whether they've been slammed?
11 A. We do not know -- you're correct. We do not
12 know if the customer's been slammed or not. We just know
13 that there's been a disconnect or an order that we haven't
14 issued. And so, again, the notification process begins to
15 ensure that the customer, if they have been slammed, if they
16 have, we have provisions to bring them back under their
17 authorization.
18 Q. And then SWBT sends a letter to the customer.
19 At least part of the letter says, If you've been slammed,
20 call us, or if you think you've been slammed, call us,
21 right?
22 A. That's correct.
23 Q. And then you say, It is during the
24 conversation with the customer that SWBT is able to identify
25 if the customer has been slammed. Now, you don't have

1 access to the LOA, the letter of authorization that the CLEC
2 may have received, right?

3 A. The retail organization does not.

4 Q. And whoever -- who's getting this call from
5 the customer?

6 A. The customer would call our winback center and
7 we would ask them, Have you been slammed? And if they say,
8 What does slamming mean, we'd say, Did you authorize a
9 change in your phone service? And if they say, No, my
10 service is with Southwestern Bell, then we would derive that
11 they've been slammed, and if they want to come back to us,
12 then we would start the process, third-party verification,
13 et cetera, as I described in my previous testimony.

14 Q. Well, what steps are you taking to determine
15 that the customer that calls in is the customer that had the
16 authority to switch the service to the CLEC in the first
17 place?

18 A. I'm not -- I'm not an expert on all the steps
19 in the scripting that takes place, but again, when we --
20 I'll say what I do know, and that is, when we contact the
21 customer and the customer calls us back, customer sees that
22 notice or they receive a letter and they call us back, we
23 work through the customer to try to verify did they
24 authorize a change in their -- in their service provider, do
25 they have authority to make that change, and if they're --

1 they haven't authorized that and they are the person of
2 authority that can make that change, they go through the
3 third-party verification process.

4 Q. And you recognize that letter of
5 authorization, the third-party verification process is an
6 important part of the process of switching a customer from
7 one provider to another, right?

8 A. Yes.

9 Q. But in terms of when you're talking to the
10 customer and you're ascertaining whether the customer has
11 been slammed or not, you have no access to the LOA that may
12 have been provided to the CLEC or the third-party
13 verification, right?

14 A. It -- that's correct. It's my understanding
15 that once the customer tells us they believe they've been
16 slammed or they want to come back to us, that's when we pass
17 that customer off to third-party verification or we use a
18 letter of authorization.

19 Q. And the winback center accepts whatever
20 representation the customer makes?

21 A. I wouldn't necessarily agree with that.
22 Again, as I've stated earlier, I'm not an expert on the
23 scripting that we use, but we follow the code of business
24 conduct. We -- we do things by the wall, we verify, and
25 again, pass that information, pass the customer on to

1 third-party verification.

2 Q. That's on your side. That's your third-party
3 verification. That's not the CLEC who won the customer in
4 the first place. You have no ability to access that
5 information, right?

6 A. Not to my knowledge, no, we do not.

7 Q. And if the customer represents that they've
8 been slammed, do you know if Southwestern Bell advises them
9 to do something with the state commission?

10 A. It is my understanding that if they have been
11 slammed, we'd want to know about that, and not only the
12 state commission, but also at the FCC level, we do report
13 slamming statistics.

14 Q. You report slamming statistics based upon the
15 disclosure that the customer that calls in makes to you?

16 A. My understanding is we would do that under a
17 normal affidavit-type process, but I'm not an expert on the
18 exact process that we follow.

19 Q. Do you know -- getting back to the disconnect
20 list for a minute, do you know who's responsible for
21 compiling the disconnect list?

22 A. The disconnect list is the responsibility of
23 our SBC Services, Incorporated IT organization that is a
24 separate entity that provides that information as far as,
25 you know, total disconnects of customers to a retail

1 organization.

2 Q. And the list that you use or the
3 winback organization uses for purposes of winback
4 activities, meaning those which are not as a result of
5 consumer-initiated disconnects, is that a separate list?

6 A. It is a -- it is a derived assumed list of
7 customers that have been disconnected that have been -- that
8 haven't been taken care of from a retail perspective.

9 Q. It's an extraction from the total list, I
10 assume?

11 A. That's correct.

12 Q. And who does the extraction?

13 A. We have our retail organization.

14 Q. Is it the same group or a different group?

15 A. I'm not sure who the -- who the group is, that
16 group that does the manipulation.

17 Q. Now, for purposes of these winback offers of
18 Southwestern Bell's, in particular this one where there's an
19 exception for customers that are a high credit risk, does
20 Southwestern Bell look at their own data on the customer to
21 determine whether they're a high credit risk?

22 A. We look at if the customer's returning back to
23 us through the winback process we've described here, then we
24 would -- we would have information on the customer's records
25 that they had established service with us previously. Then

1 we look at their -- their credit class of service.

2 Q. So you'd look at their historical records?

3 A. Once they give us permission, we do that.

4 Q. So you don't do that until you've initiated

5 the winback contact or they've initiated the winback

6 contact?

7 A. That's correct.

8 Q. Okay. Now, who is ChaseCom? Do you recognize

9 that name?

10 A. ChaseCom is a company that we use to do

11 various marketing campaigns for us, primarily in the

12 outbound telemarketing area.

13 Q. Are they involved in the winback activity?

14 A. Again, I'm -- I'm not sure if they are or not.

15 We use them in many different marketing programs, sales

16 programs. They're not under the direct responsibility of

17 the marketing organization.

18 Q. And whose responsibility are they under?

19 A. The sales organization.

20 Q. For retention offers, are they involved in

21 those?

22 A. I'm not aware if they are or not.

23 Q. Now, you described at one point during your

24 testimony in response to questions by Ms. Escobedo that

25 there are a series of letters that are sent out by

1 Southwestern Bell when a customer changes to a CLEC. Do you
2 recall that?

3 A. Yes.

4 Q. I think you said there were nine different
5 letters that go to a residential customer or at least nine
6 separate mailings?

7 A. There's -- there's different -- yes,
8 there's -- over a course of a year, there may be up to nine
9 different mailings that a customer may receive.

10 Q. And for business, I believe you said three
11 times per year; is that right?

12 A. About three --about three times per year.

13 Q. And is the nine times for residence per year?

14 A. It's about -- yes, it's on an annualized
15 basis.

16 Q. So when do you stop, or do you?

17 A. Well, we do stop. Not saying we may not
18 recontact those customers after a year basis, but during the
19 course of a year we will -- there's a frequency that we
20 contact customers with, and then after that year's period of
21 time, we will then also, you know, reintroduce winback
22 campaigns to customers that may have been gone for more than
23 a year. So as a new offer becomes available, you may
24 reinitiate contact. Maybe a new offer, maybe a new contact.
25 Could be a lot of different ways.

1 Q. Do you make other contacts besides letters?
2 A. We do through outbound telemarketing.
3 Q. And what is that based upon, a list of
4 customers that you're -- do you have an outbound
5 telemarketer?
6 A. We use both internal and external resources to
7 do outbound telemarketing, but primarily we -- in the
8 consumer area we will use more of our internal resources to
9 do that, but it varies.
10 Q. And when do the outbound telemarketers first
11 start contacting customers that have indicated they're going
12 to change to a competitor?
13 A. In the consumer area, we would start with
14 outbound telemarketing at about 25 days after the customer's
15 disconnected service, we got receipt of a disconnect or
16 whatever. And in the business area, it would -- it would
17 begin after two days and after 90 days.
18 Q. How does that work?
19 A. I say that in the business. In the small
20 business space, those customers that have one to four lines.
21 Customers that have more than four lines, then we would --
22 we would not do any outbound telemarketing with those
23 customers.
24 Q. Do you have direct contacts with those
25 customers?

1 A. The larger customers we provide a list to our
2 PREMIS-based sales organization where they would then, in
3 the context of a normal sales call, go out and visit with
4 customers. They would call and various ways that they would
5 attempt to reach a customer, but primarily its PREMIS-based,
6 and they would go out and visit with a customer in those
7 areas.

8 Q. So in the two days and the 90 days, is that
9 two series of contacts, one that occurs after two days and
10 one that occurs after 90 days?

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

12 Q. And then for the large business customers, are
13 they exclusively responsible for all winback activities for
14 the large customer?

15 A. Could you restate the question? I'm not sure
16 I understand it.

17 Q. Sure. For the large business customer, the
18 PREMIS group that you described, are they solely responsible
19 for winback activities for those large customers?

20 A. For larger customers, we will, you know -- in
21 our smaller end of the market, we will use agents,
22 authorized sales agents for Southwestern Bell. But
23 primarily to get to your largest customers, we'll use our
24 own sales team, our own sales organization.

25 Q. So is that a yes?

1 A. Yes.

2 Q. And I guess my question went to, there is a
3 winback organization that you describe that apparently has
4 some responsibilities for sending out letters, and I just
5 want to know if they send letters to these large customers
6 or is that exclusively within the domain of the PREMIS group
7 that you described?

8 A. No. The -- the customers of all sizes are
9 sent letters.

10 Q. From the winback group?

11 A. From the winback group. And then there is a
12 winback sales organization that will contact larger
13 customers. The larger the customer, there normally would be
14 an assigned account manager or account rep. So not
15 necessarily using winback, there's other things we do with
16 those customers, so they would normally follow up on that
17 contact.

18 Q. Aside from outbound telemarketing winback
19 efforts and the letters that you described, are there other
20 contacts that are made with the customer for purposes of
21 winback?

22 A. Not that I'm aware of. Those would be the
23 only contacts.

24 Q. I think you mentioned a recorded notice
25 system?

1 A. That's correct. A cus-- a customer notified
2 message to consumer customers occurs after -- after a
3 two-day period, and again, that -- that is a message that we
4 leave only to our consumer customers, just to let them know
5 that their service has been changed and if they've not
6 authorized that change, they may have been slammed and
7 here's a number to call to get the situation corrected.

8 Q. Is this recorded notice system used for
9 winback purposes?

10 A. It's used for multiple purposes. As I
11 described earlier today, it could be used for -- we use it
12 for -- for customers that change their PIC, for IXCs, going
13 from one IXC to another IXC. It could be a local PIC, a
14 two-PIC. It could be used for follow-up on a service order
15 completion, things of that magnitude.

16 Q. Once the customer's service is ported to a
17 CLEC, can Southwestern Bell still leave a recorded message
18 for that customer?

19 A. If we have -- if from a retail perspective we
20 have -- we gave the phone number. If we have a phone number
21 of a retail disconnect and they've -- if they were ported
22 over and they kept the same number, then, yeah, they would
23 receive the message.

24 Q. Okay. One question on the survey, and then I
25 think we'll move into confidential. You had some discussion

1 with Ms. Escobedo about a marketing survey. Do you recall
2 that discussion?

3 A. Yes, I do.

4 Q. And what's the range of payment that a
5 customer can receive for completing a marketing survey, do
6 you recall?

7 A. We only do marketing surveys with our -- with
8 our consumer customers through the survey process, and that
9 range would be between \$35 and \$100, depending on how many
10 lines that they have.

11 Q. Is the survey used as a tool to convince a
12 customer to return to Southwestern Bell?

13 A. The survey is used as a reimbursement for a
14 customer's time and effort to provide us marketing research
15 information as to why they opted to leave Southwestern Bell,
16 why they opted to return. As I stated earlier, we don't
17 know who we lose lines to, so they tell us who they -- why
18 they left and what competitors they went to. That's what
19 it's really used for.

20 Q. Well, are they told during the course of the
21 winback discussions that you have with the customer that if
22 they complete a survey and reestablish service with
23 Southwestern Bell, that they'll get a \$35 to \$100 credit?

24 A. What -- what we talk to them about is that
25 once your service is connected, the marketing survey we

1 mentioned during the call will be mailed to you, and if you
2 return it within 30 days of the date that's printed on the
3 survey, we would issue a credit on the bill.

4 Q. I lied. I have one other area of questioning.

5 You described a win customer as a customer of
6 a facility-based CLEC that comes over to Southwestern Bell;
7 is that right? Is that how you define it?

8 A. A win would be a customer that had service
9 with Southwestern Bell and they have gone to a
10 facility-based provider.

11 Q. That was my question, because you didn't make
12 that clear the first time. So they initially were a
13 customer?

14 A. Yes.

15 Q. Went to a facility-based CLEC and came back?

16 A. That's correct.

17 Q. Now, why do you treat that as a win rather
18 than a winback?

19 A. It's just a definition change. I mean, a
20 winback really describes a customer that has -- either has a
21 resale service or a UNE service versus a win being a
22 facilities-based -- really a bypass customer altogether, but
23 they've been a customer of Southwestern Bell of record
24 before.

25 MS. DeCOOK: Okay. I think there's two

1 documents we can maybe do before we go into HC.

2 JUDGE WOODRUFF: Okay.

3 (EXHIBIT NOS. 14 AND 15 WERE MARKED FOR
4 IDENTIFICATION.)

5 JUDGE WOODRUFF: Did you want these marked as
6 separate exhibits?

7 MS. DeCOOK: Yes.

8 JUDGE WOODRUFF: Which do you want to mark as
9 which?

10 MS. DeCOOK: For purposes of the record, your
11 Honor, they look very similar, and the way you can tell the
12 difference are the bullet points that are towards the middle
13 of the page.

14 The first bullet point, the document that has
15 the first bullet point that says save 15 to 44 percent is
16 marked as Exhibit 14, and the other one, which has the first
17 bullet point that says access line term pricing plan is
18 Exhibit 15.

19 BY MS. DeCOOK:

20 Q. Mr. Regan, you have what's been marked before
21 you as Exhibit 14 and 15. Can you identify -- and I will
22 just state for the record that these were produced as
23 nonconfidential documents.

24 Can you identify what those are?

25 A. These are -- appear to be our winback series

1 letters for business customers. One would be what we would
2 call our simple -- simple customers, and the other one would
3 be more the complex area.

4 Q. And it appears that these are letters that
5 have gone to business customers as opposed to residential
6 customers?

7 A. As I stated, yes, these are business
8 letters.

9 Q. Thank you. I missed that.
10 And these appear to be samples, since they're
11 not actually dated or named with -- the name of the company
12 is omitted; is that correct?

13 A. That's correct. They're samples.

14 Q. And this -- is this -- do these appear to be
15 examples of the letter that is sent to the customer once
16 Southwestern Bell learns that the customer has disconnected
17 from Southwestern Bell?

18 A. That's what they appear to be.

19 Q. So would this be an example of the two-day
20 letter that you referenced?

21 A. That would be an example of the two-day
22 letter.

23 Q. Now, is the two-day letter synonymous with
24 what I've seen referred to as an exit letter?

25 A. I'm not -- I'm not familiar what an exit

1 letter is. I'm not familiar with that term.

2 Q. Have you ever heard the two-day letter called
3 an exit letter?

4 A. I've not heard that. I've heard two-day
5 letters referred to as two-day letters, so on and so forth.

6 Q. And this is the letter that we talked about
7 earlier where Southwestern Bell is checking to see whether
8 the customer believes he or it, in this case, has been
9 slammed?

10 A. This is -- this is, again as I stated earlier,
11 we don't know if customers have been slammed or if they've
12 authorized their account to switch service providers.

13 So absolutely in these letters we give -- we
14 want to inform the customer that we've noticed there's been
15 a disconnect issued on your behalf, and if you're not
16 cancelling your service then please call us because we want
17 to make it right for you.

18 Q. And you also, I believe in cross-examination
19 with Ms. Escobedo, referred to this as a winback letter; is
20 that right?

21 A. It is also a winback letter, yes.

22 Q. And it's a winback letter because you're
23 reflecting a winback offer to the customer, right?

24 A. Well, those aren't necessarily winback offers.
25 They're different promotions and plans that are already out

1 there in the marketplace that are already -- if they're a
2 tariff service, they're already tariffed, and we just want
3 to let the customer know that we have options for them that
4 are available if they're interested.

5 Q. And you're sending that to the customer and
6 trying to win them back?

7 A. Absolutely. In the spirit of competition,
8 yes, we are.

9 MS. DeCOOK: I need to go into highly
10 confidential now.

11 JUDGE WOODRUFF: Did you want to offer 14 and
12 15?

13 MS. DeCOOK: Yes, I do. Thank you.

14 JUDGE WOODRUFF: Exhibit 14 and 15 have been
15 offered into evidence. Are there any objections to their
16 receipt?

17 MR. LANE: No, your Honor.

18 JUDGE WOODRUFF: Hearing none, they will be
19 received into evidence.

20 (EXHIBIT NOS. 14 AND 15 WERE RECEIVED INTO
21 EVIDENCE.)

22 JUDGE WOODRUFF: Okay. At this time, then,
23 we'll go into highly confidential session, to in-camera
24 session I should say.

25 And, again, if anyone needs to leave, please

1 do so.

2 (REPORTER'S NOTE: At this time, an in-camera
3 session was held, which is contained in Volume No. 3, pages
4 217 through 230 of the transcript.)

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