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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

August 22, 2005
Jefferson City, Missouri
Volume 3

In the Matter of the Request from)
the Customers in the Rockaway)
Beach Exchange for an Expanded) Case No. TO-2003-0257
Calling Scope to Make Toll-Free)
Calls to Branson)

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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P R O C E E D I N G S

JUDGE RUTH: Good morning. My name is Vicky Ruth, and I am the Regulatory Law Judge assigned to this case. Today is Monday, August 22nd, 2005, and we are here for Part 1 of an evidentiary hearing in Case TO-2003-2507, in the matter of the request from the customers in the Rockaway Beach exchange for an expanded calling scope to make toll-free calls to Branson.

I'd like to begin with entries of appearance. And, Mr. Dandino, would you please go first?

MR. DANDINO: Thank you, your Honor. Michael Dandino, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, representing the Office of the Public Counsel and the public.

JUDGE RUTH: Thank you. CenturyTel?

MR. DORITY: Thank you, your Honor. Larry Dority and James Fischer, Fischer & Dority, PC. Our address is 101 Madison, Suite 400, Jefferson City, Missouri 65101, appearing on behalf of CenturyTel of Missouri, LLC.

JUDGE RUTH: Thank you. Staff?

MR. POSTON: Marc Poston appearing for the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102.

JUDGE RUTH: Okay. Thank you. The

1 procedure for this morning will be that the parties will
2 each have an opportunity for opening statements. You're
3 not required to give an opening statement, but you will
4 have the opportunity, if you wish. Then we are actually
5 going to move to questions from the Bench, and by that I
6 mean the Commissioners will indicate which party they want
7 to hear from first.

8 That witness will be called to the stand,
9 and there will be an opportunity for a brief direct before
10 we get to questions from the Bench. At the end of the
11 evidentiary portion of the hearing, you will have the
12 opportunity for closing statements, if you wish, and there
13 will be no rounds of brief.

14 Are there any other preliminary matters
15 that need to be discussed?

16 (No response.)

17 JUDGE RUTH: Seeing none, let's go to
18 opening statements, and Public Counsel, would you please
19 begin?

20 MR. DANDINO: Your Honor, Public Counsel
21 doesn't have an opening statement. We believe in the last
22 session we covered the issues that we wanted to. Thank
23 you.

24 JUDGE RUTH: CenturyTel?

25 MR. DORITY: Your Honor, I would agree with

1 Mr. Dandino, and we are going to waive an opening
2 statement this morning and would refer the Commission to
3 our comments in the, I believe it was the August 11th
4 proceeding.

5 JUDGE RUTH: Thank you. And Staff?

6 MR. POSTON: Thank you. Good morning.

7 During the on-the-record presentation, two
8 distinct issues were identified that brought about this
9 follow-up hearing. The first issue is whether the CPI
10 adjustment is required to apply to each and every basic
11 local service, and the second issue is whether the CPI
12 adjustment may have allotted carrier -- I'm sorry. The
13 second issue is whether past CPI adjustments may have
14 allowed a carrier or carriers to make adjustments similar
15 to what's being proposed here by OPC and CenturyTel.
16 Hopefully today's proceeding will clarify both of these
17 issues.

18 During the on-the-record and Staff's
19 suggestions in opposition to the stipulation, we offered a
20 narrow interpretation of the price cap statute. However,
21 even under a more liberal interpretation, there is one
22 glaring difference between the earliest CPI adjustment
23 cited by CenturyTel and the present proposal. And that
24 difference doesn't have anything to do with how we
25 determine what is basic local for the CPI adjustment

1 purposes, but it has to do with how we apply whatever
2 reduction is ultimately made.

3 In the earlier adjustment, the entire
4 adjustment was used to reduce basic local rates,
5 regardless of geography. In the CenturyTel/OPC proposal,
6 a substantial portion of the CPI adjustment would be used
7 not to reduce basic local, but to eliminate toll charges
8 for exchanges in the Branson area. We find it hard to
9 believe this is consistent with the purpose of the price
10 cap statute.

11 In analyzing the past CPI adjustment
12 examples and in talking to our telecommunications
13 department staff, I have learned that applying the CPI
14 adjustment to a carrier's rates is not as simple as
15 turning to the tariff sheet titled basic local services
16 and reducing each rate by 2 percent or whatever the
17 adjustment may be. These rates appear throughout a tariff
18 and may include a multitude of rates or they may include
19 packages of basic local services that are combined with
20 non-basic services.

21 And further confusing the issue is the fact
22 that some basic local service rates are usage based. And
23 in one tariff, I've seen these rates are as low as 4 cents
24 per minute, and the Staff has taken the position in the
25 past CPI adjustment that it would be impractical to reduce

1 a 4 cent rate by 2 percent.

2 So with this in mind, we cannot interpret
3 the price cap statute to suggest that the Legislature
4 intended an impractical result and, therefore, the
5 Commission may interpret the statute in a way that avoids
6 such result.

7 Since the on-the-record presentation, I've
8 also come to understand one important reason that went
9 into the Staff support for the CPI adjustments that did
10 not appear to be what we've called a 100 percent across
11 the board adjustment.

12 It was thought by many and probably most
13 that the CPI would go up from year to year. It was not
14 expected to decrease as often as it has. The first two
15 years of Sprint's CPI adjustment were both reductions, and
16 it wasn't until 2002 when Sprint's adjustment was an
17 increase. When the price cap carriers first proposed CPI
18 reductions to its basic local services, the Staff did not
19 object to proposals where certain basic local services did
20 not receive a reduction.

21 With the expectations that the CPI would
22 increase more often than decrease, the Staff believed that
23 agreeing to it -- agreeing to limit the number of basic
24 local services subject to the decrease would, in turn,
25 limit the number of services subject to expected future

1 increases. This position is consistent with the concept
2 of capping prices and minimizing rate increase for basic
3 local services.

4 I think it's also important to make the
5 Commission aware of an argument the Commission made in a
6 Circuit Court brief after OPC challenged the Commission's
7 approval of Sprint's 2002 price adjustment that I
8 mentioned. It was Sprint's first CPI increase and Sprint
9 proposed increasing a few select nonrecurring rates for
10 the adjustment. OPC appealed and argued that the
11 Commission misapplied the law by considering the
12 adjustment as a net revenue increase instead of as a limit
13 to increase a price charge to customers, consumers. OPC
14 claimed this was discriminatory.

15 And in the Commission's response to the
16 brief -- this was Case 03-CV-323400 -- the Commission
17 argued that if the Legislature intended all basic local
18 rates to adjust, the Legislature would have tightened up
19 the statute by providing for an adjustment to each basic
20 local service.

21 With all this said, it still leaves the
22 question, is the proposed adjustment a lawful application
23 of a price cap statute, and we see a distinction between
24 this proposal and the past adjustment cited by CenturyTel.
25 While the other adjustments do not apply on across the

1 board adjustment, the previous adjustments did apply
2 solely to basic local services.

3 The proposal by OPC and CenturyTel,
4 however, would depart from past adjustments by introducing
5 an entirely new purpose to the CPI adjustment, the purpose
6 being expanded calling for a specific community.
7 Introducing this new purpose in the price cap statute may
8 invoke geographic policy implications if the Commission
9 were to determine that the adjustment can be taken from
10 all exchanges to benefit a select few exchanges. This is
11 where we believe the stipulation proposes use of a CPI
12 adjustment that's contrary to the language and the intent
13 of the price cap statute.

14 Mr. William Voight is here today to testify
15 on the examples that have been cited, and that's all I
16 have. Thank you.

17 JUDGE RUTH: Thank you, Staff.

18 Okay. At this time the Bench is actually
19 going to start with Staff's witness. The other parties
20 will have an opportunity to call witnesses, but we're
21 going to start with Staff.

22 Staff, you had filed a pleading on Friday,
23 I believe, indicating that your witness was Mr. Voight; is
24 that correct?

25 MR. POSTON: That's correct.

1 JUDGE RUTH: Would you please bring him to
2 the stand.

3 (Witness sworn.)

4 JUDGE RUTH: Thank you. Mr. Poston, you
5 may proceed.

6 WILLIAM L. VOIGHT testified as follows:

7 DIRECT EXAMINATION BY MR. POSTON:

8 Q. Please state your name.

9 A. William L. Voight.

10 Q. And, Mr. Voight, where are you employed and
11 in what capacity?

12 A. I'm employed at the Missouri Public Service
13 Commission as a supervisor in the telecommunications
14 department.

15 Q. And what are your job duties?

16 A. I supervise the rates and tariff section,
17 and I do other duties as assigned by management.

18 Q. And are you familiar with the past CPI
19 adjustments, adjustment and Staff recommendations
20 involving Sprint cited by CenturyTel in this case?

21 A. Yes.

22 Q. And in your position as supervisor in the
23 telecommunications department, do you understand the
24 Staff's reasons for supporting the cited Sprint CPI
25 adjustments?

1 A. Yes.

2 Q. Can you please explain how the CPI
3 calculations were done for the past examples that have
4 been cited and the Staff's reasons for agreeing to those
5 calculations?

6 A. Essentially, in the year 2000 with the
7 Sprint filing, the one that was -- the recommendation by
8 Ms. Amonia Moore, a Staff economist, the CPI reduction was
9 targeted towards elimination of the touch-tone charge. In
10 the year 2002, the CPI increase for Sprint was targeted
11 upwards to increase rates solely for five specific rate
12 elements that we characterize as installation charges or
13 nonrecurring charges. In the year 2004, a CPI decrease
14 was used to target those five specific rate elements
15 downward and to set them to pre-2002 rate levels.

16 In terms of the reasons, there are many
17 reasons. There are policy reasons in the year 2002 for
18 eliminating touch-tone charges and mileage charges and so
19 forth. There are also reasons in 2002 for targeting
20 upward and agreeing to that proposal by Sprint.
21 Fundamentally, it appeared reasonable since they did --
22 especially since they did involve rate increases.

23 Q. This is kind of a -- I guess a change in
24 direction real quick. If -- and this is something that
25 was raised on the record regarding subsidization. If the

1 CP-- so your position is, if the CPI money is targeted for
2 EAS in Branson, would Columbia customers be subsidizing
3 Branson customers?

4 A. The word subsidy has a particular meaning
5 in economics. If one were to consider that meaning, my
6 answer would be no, subsidy would not be occurring.

7 However, in terms of the practical aspects
8 of how -- in the context of that question, what I think is
9 meant by the term subsidy, then yes. This year, for
10 example, to the extent a so-called across-the-board CPI
11 reduction, to the extent that customers in Columbia were
12 not to receive their portion of that, rather that was
13 redirected or targeted or funneled, whatever term one
14 wants to use, to the Branson area, then I would not argue
15 if someone wished to characterize that as a subsidy.

16 Q. And do you believe that Branson customers
17 are currently subsidizing Columbia customers?

18 A. Yes, I do believe that in terms of the
19 plain meaning of the word subsidy, yes, I do believe that
20 Branson customers are currently subsidizing Columbia
21 customers. I think an argument could be made that they've
22 been doing so for years when we begin to look at network
23 modernizations and so forth. I'll stop my answer at that.

24 Q. Is it your position that it's in the public
25 interest to support targeting CPI-TS decreases to the

1 Branson area?

2 A. Well, it certainly would not be against the
3 public interest, in my view. To the extent that it may be
4 in the public interest is a matter that the Staff would
5 encourage the Commission to examine further in more
6 detail.

7 MR. POSTON: That's all we have for our
8 direct. I now tender this witness for cross-examination
9 and Commissioner questions.

10 JUDGE RUTH: Thank you. Cross-examination,
11 I'll start with Public Counsel. Do you have any
12 questions?

13 MR. DANDINO: Yes, your Honor.

14 CROSS-EXAMINATION BY MR. DANDINO:

15 Q. Good morning, Mr. Voight.

16 A. Good morning, Mr. Dandino.

17 Q. Just a few questions. When you were
18 talking about the economic definition, you said you didn't
19 think it was a subsidy using that definition; is that
20 correct?

21 A. Yes.

22 Q. Now, and you said, but as a practical
23 method, it could be considered a subsidy?

24 A. Yes.

25 Q. Now, I take it when the -- and Mr. Poston,

1 when he was discussing what the -- how the Staff looked at
2 the Sprint adjustment with the touch-tone, he said that
3 because it was difficult to make some of these as across
4 the board, they kind of took a practical approach on
5 targeting certain ones. Would that be a fair
6 characterization?

7 A. I believe so, yeah.

8 Q. Okay. So a practical approach, you think a
9 practical approach is sometimes called for when you're
10 trying to apply these statutes?

11 A. This particular statute especially, yes, I
12 think a practical approach is called for. If I might add,
13 sir, this process has been occurring over the course of
14 five years. It has involved five different companies,
15 including GTE, CenturyTel, Spectra, Sprint and
16 Southwestern Bell. There have been very, very, very few
17 disagreements among the parties as to how such a practical
18 approach should be applied.

19 Q. Now, and you said something about -- or in
20 response to counsel's questions, that Branson subsidized
21 Columbia's customers?

22 A. In the plain meaning of the word, I would
23 accept that.

24 Q. And that -- and would, like, St. Louis
25 customers be subsidizing Columbia customers? Well, let's

1 put it, I guess, St. Charles customers.

2 A. That's quite possible, yes.

3 Q. In using the broad definition of subsidy, a
4 lot of customers subsidize other customers. It's kind of
5 the nature of the network, isn't it?

6 A. Yes, especially as we look at over the
7 course of history, as the network becomes more modernized,
8 we talk about, well, it hasn't been that many years ago
9 that the folks down around Branson were still literally
10 trying to run a business on a party line. In fact, we had
11 a case about that not too many years ago, and some of the
12 folks in the Ozarks were among the last to have their
13 network modernized to single-party service.

14 The same could be said with digital central
15 offices or sonic deployment and that sort of thing. These
16 sorts of network improvements tend to occur gradually over
17 the course of a few years, and someone's always first and
18 someone's always -- gets theirs later on down the road.
19 And to the point where we are today, when we look at
20 calling scopes, a great deal was made of that the other
21 day. Columbia has very broad calling scope compared to
22 the folks in the immediate Branson area.

23 Q. And sometimes these modernizations, they're
24 made to fulfill the Commission's duty to provide adequate
25 service?

1 A. That's correct. The modernizations that I
2 spoke of over the course of the years have certainly
3 occurred under the general direction of the Commission and
4 many times specifically working together with the
5 Commission's engineers.

6 Q. And the last statement or last question
7 counsel had for you, and I want to make sure I got your
8 answer correct, says you believe it is not against the
9 public interest for expanded calling in these communities?

10 A. As a policy matter, the question would be,
11 is it improper to take the CPI-TS of this nature and
12 address the calling scope needs of the immediate Branson
13 area. It's my opinion as a policy matter, when you look
14 at the economic development that has occurred in that area
15 since the 1970s, and we all know about that, and then you
16 consider for the moment that their exchange boundary areas
17 and so forth as reflected on the map behind me, those were
18 drawn in an era when Branson and the surrounding
19 communities were -- basically they were sleepy little
20 river towns. And a lot has changed in those years, and so
21 it's a matter of policy.

22 It would be my viewpoint that, no, it would
23 not necessarily be against the public interest -- it would
24 not be against the public interest to target money to that
25 area for expanded calling purposes.

1 Q. But first, the Commission has to decide the
2 legal issue?

3 A. Yes. Yes. That's consistent with
4 statutory applications, yes.

5 MR. DANDINO: That's all I have. Thank
6 you.

7 THE WITNESS: You're welcome.

8 JUDGE RUTH: CenturyTel?

9 MR. DORITY: Thank you, Judge.

10 CROSS-EXAMINATION BY MR. DORITY:

11 Q. Good morning, Mr. Voight.

12 A. Good morning, sir.

13 Q. Mr. Dandino addressed the points that I was
14 intending to make. I did note that in your responses to
15 questioning from Mr. Poston that you certainly used the
16 word targeted quite a bit. The 2000 decrease was targeted
17 for policy reasons. In 2002 an increase of nonrecurring
18 was targeted, and 2004, the CPI increase, again the
19 reduction was targeted.

20 I guess, Mr. Voight, the question I would
21 have, in your role as supervisor in the telecom
22 department, when the telecommunications department was in
23 the process of reviewing the various Sprint price cap
24 filings, particularly relating to the CPI-TS adjustment
25 and possible rate designs for effectuating whether it be

1 an annual increase or decrease, you did not feel that you
2 were constrained to only suggest or support equal
3 percentage across-the-board rate design proposals, were
4 you?

5 A. Very short answer is, no, we did not feel
6 that constraint. And, yes, I am using the word targeting
7 as I would understand how -- what the attorneys meant by
8 that last week.

9 Q. And again, just following up on a point
10 that was addressed by Mr. Dandino, as I understood your
11 response to Mr. Poston, the idea of targeting the CPI-TS
12 reduction to Rockaway Beach in a manner that is embodied
13 in the Stipulation & Agreement before the Commission in
14 your mind, that would not be against the public interest;
15 is that correct?

16 A. Yes.

17 Q. Thank you.

18 A. You're welcome.

19 MR. DORITY: That's all I have.

20 JUDGE RUTH: Thank you. We'll move to
21 questions from the Bench at this time.

22 Commissioner Murray, would you like to
23 start?

24 COMMISSIONER MURRAY: I thought I saw -- I
25 thought I heard some groans at the other end of the bench.

1 Was there --

2 COMMISSIONER GAW: Just trying to
3 understand what that last statement was.

4 COMMISSIONER MURRAY: I think I have a
5 question about it as well, if I'm recalling the last
6 statement.

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Good morning, Mr. Voight.

9 A. Good morning, Commissioner.

10 Q. Thank you for coming to try to help us
11 understand the technical application of the statutory
12 language. And I think I heard you say that -- and I think
13 Mr. Poston was trying to make the point with you that it's
14 not your opinion that this is in the -- this is not in the
15 public interest, this tariff filing, but rather that it is
16 not in accordance -- not lawful in accordance with the
17 statute; is that correct?

18 A. Yes, that is correct. I would note,
19 however, that there may -- as we've indicated in our
20 motion to suspend, there may be other rate designs for
21 that area the Commission may want to inquire about.

22 Q. And you indicated earlier in terms of the
23 previous Sprint tariffs that the adjustments were made
24 not -- they were not applied equally to each local basic
25 service, correct?

1 Just yes or no there, and I have another
2 follow-up.

3 A. Yes, I believe that's correct.

4 Q. And then but they were all applied, all of
5 the adjustments were applied to basic local services?

6 A. I'm sorry. I'm not sure if your mic's not
7 on or --

8 Q. Well, I can't get it close enough. That's
9 my problem. Here, is that better?

10 A. Yes. Thank you.

11 Q. With the Sprint filings, the -- all of the
12 adjustments that were made, they were not made equally to
13 all of the basic local services, correct?

14 A. To be clear, we're talking about 2000, 2002
15 and 2004?

16 Q. Yes.

17 A. That is correct.

18 Q. But they were all -- all the adjustments
19 were made to basic local services?

20 A. Yes.

21 Q. And that is -- is that what I am
22 understanding you to say is the essential difference
23 between the legality of those tariff filings versus the
24 legality of this in terms of compliance with that
25 particular statute?

1 A. I view this -- I believe Mr. Poston
2 indicated that the difference is this one's based on
3 geography, and that is the only significant difference.

4 Q. So even if you consider that an expanded
5 calling scope is a local basic service, you would -- and
6 that applying the CPI adjustment in the manner proposed
7 here would still be only by applying it to local basic
8 services, you would still say it is unlawful?

9 A. I believe that is our legal position.

10 Q. And that is because the customers in the
11 various exchanges are being treated differently; is that
12 right?

13 A. I'm not able to follow the legal
14 distinction.

15 Q. Okay. And it's unfortunate that we had to
16 have -- we had to call technical witnesses in because
17 basically legal counsel couldn't answer our questions the
18 other day. But you're telling me that it's the legal
19 department that made these decisions and that is the
20 reason that Staff recommended against the tariff filing,
21 that there were no --

22 A. No, we have a rate -- we have a rate design
23 issue with the tariff filings.

24 Q. And that's the reasonableness, the second
25 part of this, you say even if it is lawful, that you still

1 have a problem with it?

2 A. Yes.

3 Q. But you would not yourself have recommended
4 against this tariff filing if it had been your conclusion
5 that the rate design and every other aspect of it was in
6 the public interest, you wouldn't have recommended against
7 it for legal reasons; is that correct?

8 A. That's correct.

9 Q. And I'm trying to -- I'm still trying to
10 get a better handle on, first of all, whether the previous
11 Sprint tariffs that we approved were applied in a way that
12 was consistent with the statute, and secondly, if they
13 were, is this tariff filing completely distinguishable
14 from that?

15 And from a technical standpoint, can you
16 help me better understand the distinctions between those
17 previous Sprint tariffs and this tariff?

18 A. From a technical standpoint, they -- when
19 we look at practical applications of this aspect of price
20 cap law, Staff works with the parties and we determine
21 which specific rate elements constitute basic local
22 telephone service, at least insofar as applying that
23 definition to this aspect of the price cap statute. So
24 we're dealing with specific tariff rate elements, is the
25 technical part of it.

1 Not -- I don't -- there are instances when
2 not all of those rate elements are adjusted. There are
3 various reasons for that, not the least of which is
4 rounding, fractions and so forth. That is the technical
5 process that takes place. One of those rate elements in
6 the year 2000 for Sprint was the touch-tone charge. And
7 when we applied the CPI-TS reduction to all of the, I will
8 call them normal rate elements that normally would be
9 adjusted, we come up with a total amount of revenue.

10 In the case of Sprint in the year 2000,
11 rather than applying that CPI reduction across the board
12 equally to all basic local rate elements in a manner that
13 normally occurs, we took that total amount of revenue and
14 targeted it specifically toward elimination of the
15 touch-tone charge. There was a shortage. There wasn't
16 enough of that CPI reduction money to go around, meaning
17 it didn't wipe the slate clean on eliminating the
18 touch-tone revenue, but it was applied in that manner.

19 Q. And there was an adjustment made as to how
20 the touch-tone was charged prior to applying the CPI
21 adjustment; is that correct?

22 In other words, the touch-tone rolled in to
23 basic local rates, and then the CPI adjustment was
24 applied; is that right?

25 A. No. I think the CPI was targeted directly

1 toward the touch-tone, and then the remainder that was
2 left was rolled in to their residential one-party rate and
3 business one-party rate for all customers in much the same
4 way as the zone mileage charges were eliminated. And if I
5 had to characterize that process, it's single-issue
6 ratemaking is what occurred on that. The zone mileage
7 charge was eliminated from people's bills. The rest of
8 the customer base saw an increase as a result of that
9 across the board.

10 Q. And is it your understanding that
11 single-issue ratemaking is not allowed?

12 A. There are so many examples of that since I
13 worked here that, with all respect, I would have to say
14 no, that is not my understanding. When I open the statute
15 books as a layperson, I find that prohibition not in the
16 telecommunications chapters but in the gas, water,
17 electric and sewer chapters.

18 Q. And let's go back to the touch-tone
19 example. When the CPI was first targeted to the
20 touch-tone customer and then the remainder was rolled in
21 and applied to all customers, did that -- did that involve
22 some customers receiving more of the benefit of a CPI
23 adjustment than other customers did?

24 A. Yes, it did.

25 Q. And those differences were based on what

1 services were or how they're -- I guess it would have been
2 how their billing was constructed prior to that?

3 A. I think the primary difference would be as
4 to whether or not they subscribed to touch-tone service at
5 all. For example, 23 percent of the residential customers
6 even in the year 2000 were not subscribing to touch-tone.
7 However, after this instance, they got to pay for it
8 whether they wanted it or not.

9 The same applies with the mileage charges.
10 Those rolled in across the board in such a manner that
11 people who lived in town, inside the base rate area, ended
12 up paying for those who lived out in the country and so
13 forth. Those were the types of per customer class of
14 revenue impacts that Ms. Moore attempted to explain in her
15 recommendation.

16 Q. Okay. How do you see the variations in
17 customer impact in this particular tariff filing compared
18 to the variations on customers in the touch-tone and the
19 zone mileage?

20 A. Touch-tone charges are -- I believe at that
21 time, Commissioner, were somewhere in the range of \$1.50,
22 and Sprint's customers statewide paid those charges,
23 Warrensburg, Maryville, Fort Leonard Wood, Rolla and so
24 forth. They all paid, I do believe, the same touch-tone
25 charge. That was one instance where I think it was a flat

1 rate, irrespective of one's rate group.

2 The same with mileage. If you lived
3 outside the base rate area in Sprint's territory, it made
4 no difference if that was Harrisonville or Warrensburg or
5 Jefferson City. The charge applied to people who lived in
6 the country, no matter where Sprint's service area is.
7 That would be distinguished from this case in which the
8 CPI is being targeted solely on the basis of geography to
9 the immediate Branson area.

10 COMMISSIONER MURRAY: I'm going to pass for
11 right now. Thank you.

12 JUDGE RUTH: Commissioner Gaw, do you have
13 questions at this time?

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. Give me your two definitions of subsidy
16 that you used previously.

17 A. In the economics sense, I would -- as long
18 as the price does not fall below incremental cost or
19 exceed stand-alone cost, no subsidy is said to be
20 occurring.

21 Q. All right. Under that definition, then,
22 when you say under the economic definition, you're talking
23 about whether or not the price is falling below
24 incremental cost of providing the service?

25 A. Yes.

1 Q. All right. What's your other definition of
2 subsidy that you utilize?

3 A. I should have checked the Webster
4 dictionary. I was -- frankly was trying to respond to how
5 that term was used from the Bench last week. I --
6 however, I would define it, if this stipulation was
7 approved, then a subsidy would be going from Columbia to
8 Branson.

9 Q. Because money that, if you did -- if you
10 did reduce the rates across the exchanges, according to
11 the reduction in the CPI, then Columbia would receive and
12 Wentzville, I assume, and other exchanges would receive a
13 greater reduction than they would under this plan?

14 A. That's correct.

15 Q. Are you familiar with CenturyTel's filings
16 under basic service price cap adjustments since those
17 filings were appropriate under the '96 Act?

18 A. I'm generally familiar with them. I would
19 like to clarify when we began this process in the year
20 2000, I -- these matters were directly supervised by
21 myself. Somewhere around 2002, 2003, in that time frame,
22 we did transition those duties of mine to Natelle, to
23 Ms. Dietrich. However, I have reviewed the filings in
24 this case.

25 Q. Prior to this year, what was CenturyTel's

1 practice in regard to adjustments of local basic rates?

2 A. I have prepared an answer to that question.
3 CenturyTel's application of the price cap statute involves
4 applying the adjustments to approximately 104 rate
5 elements that constitute basic local service, as defined
6 by Century, 104 rate elements. That has been the
7 practice. There are some rate elements that Century and,
8 I do believe, Sprint do not include as part of the
9 definition of basic local telephone service that, for
10 example, Southwestern Bell does include, and specifically
11 Life Line and Link Up. There are several things that we
12 probably need to discuss.

13 Q. Probably, but let's avoid the distinction.
14 Just in general in what they call local basic, what
15 CenturyTel calls local basic, how have they adjusted those
16 rates over the last few years since the '96 Act would have
17 been effective for adjustment under the CPI?

18 A. They apply the CPI to the 104 rate
19 elements.

20 Q. And do they apply them all across the board
21 according to whatever the percentage increase or decrease
22 is?

23 A. Yes, sir.

24 Q. So this is a different position that
25 CenturyTel is taking in this case than their practice has

1 been?

2 A. Definitely.

3 Q. Okay. You want to go into the -- I don't
4 want to get too far afield. I already feel like we're
5 afield. Go into the distinctions that are made that are
6 different between the companies on what constitutes basic
7 for me, a basic service.

8 A. Two-way switch voice service within a local
9 as determined by the Commission as comprised of any of the
10 following, and then you go down A, B, C and a bunch of
11 things like that.

12 Q. But you're telling me, as I heard you start
13 out the other day -- I want to know -- give me an example
14 or two, if you would, of something that CenturyTel, for
15 instance, considers local basic or doesn't consider local
16 basic, that the opposite would be true of the phone
17 company or another phone company in the state.

18 A. I believe the Life Line and Link Up service
19 would be one example that Bell does include as part of
20 basic local for these purposes, and I do not believe that
21 Century and Sprint apply the CPI to those rate elements,
22 for example.

23 Q. How do they adjust those, CenturyTel and
24 Sprint?

25 A. They don't.

1 Q. They just remain the same?

2 A. Yes.

3 Q. Do they -- do you know whether they
4 consider them to be something other than basic service?

5 A. No, I do not know. The same could be said
6 for some other items as well. It's a matter of
7 interpreting 392.020(4). I think there's room for
8 disagreement there that's -- we would like to be able to
9 take a plain reading of that, but we've -- the companies
10 may disagree on exactly what rate elements constitute that
11 basic service.

12 Q. Okay. Has Staff -- since our last meeting,
13 has Staff notified anyone in the exchanges that are
14 adversely impacted by not receiving the downward
15 adjustment under this agreement that they are not going to
16 receive that if this agreement is approved?

17 A. No, we have not. As Mr. Dority, I believe,
18 indicated, the customer notices have been embargoed.

19 Q. So are you aware whether there's been any
20 report in the press that would allow anyone in the
21 Columbia, Wentzville or other exchanges that are adversely
22 impacted by this to know about the proposal so that they,
23 if they chose or thought it was advisable, could intervene
24 in this request to intervene in this proceeding?

25 A. I am not aware of any press like that.

1 Q. So at this point, would it be fair to
2 characterize this adjustment as being secret?

3 A. I have a hard time -- in particular because
4 of what occurred in the year 2000 with the Sprint filing
5 where there was, I believe, even more significant impacts
6 to customers and without any adverse consequences, I
7 really don't think that this is -- this is secret.

8 Q. But there's been no notification or nothing
9 that would indicate to anyone unless they happened to be
10 examining what was going on at the Public Service
11 Commission that they may be adversely impacted if this
12 agreement that Public Counsel has entered into with
13 CenturyTel is approved?

14 A. No.

15 Q. So I'm still trying to understand as a
16 practical matter how they would know.

17 A. I don't know how they would know. To be
18 clear, we're talking about something in the area of 20 or
19 25 cents that they normally might receive, that type of
20 reduction. Under the Stipulation & Agreement, they're
21 going to receive only merely something on the order of
22 7 cents. Some of the EAS routes, they would receive
23 something on the order of a one penny reduction. But I'm
24 not aware of any press releases notifying people about
25 those items.

1 Q. From the standpoint of the overall impact
2 to those areas, Mr. Voight, isn't it true that nearly
3 two-thirds of the funding for this proposal or somewhere
4 around two-thirds is coming from areas that have
5 absolutely nothing to do with this calling scope
6 expansion?

7 A. Yes, that's correct.

8 Q. And the total amount of impact is -- I
9 don't know if you can answer this in this session. Would
10 you say that the total amount of this impact is greater
11 than a half a million dollars --

12 A. Yes.

13 Q. -- for those communities?

14 A. Yes.

15 COMMISSIONER GAW: I think that's all I
16 have right now. Thank you.

17 JUDGE RUTH: Commissioner Clayton, do you
18 have questions at this time?

19 COMMISSIONER CLAYTON: I do.

20 QUESTIONS BY COMMISSIONER CLAYTON:

21 Q. Bill, I want to be clear, just to start
22 off, because I was confused in the opening round of
23 questions exactly what the position of Staff is. On the
24 first issue of the legality, is it Staff's position that
25 this is legal or not a legal mechanism for funding this

1 plan?

2 A. It would be Staff's position that it is not
3 a legal mechanism.

4 Q. Okay. Now, in the questions that
5 Commissioner Murray asked you, I got the impression that
6 perhaps there was a difference of opinion or something or
7 your analysis was different than the General Counsel's
8 Office. Did I hear that correctly or do you remember that
9 conversation?

10 A. Yes, I remember the conversation. Quite
11 frankly, yeah, there are some policy matters here that the
12 Staff is not necessarily opposed to this type of
13 targeting, but the lawyers say that goes beyond what the
14 law permits.

15 Q. Okay. Aside from the legality -- and I
16 know the principal question here today is discussing the
17 legality. But if you were to remove that issue,
18 interpretation of what the price cap statute actually
19 authorizes or doesn't authorize, are you here testifying
20 today that this plan is in the public interest?

21 A. No. No. I said it was not against the
22 public interest. I think there are some other details the
23 Commission should look at before they --

24 Q. There were a lot of double negatives in
25 those questions, and that's what led me to confusion. So

1 there are some elements or parts of the policy that still
2 need to be thought through; is that your testimony?

3 A. Yes, and we're on -- yes. The answer is
4 yes, and we're already on the record as stating that the
5 Stipulation & Agreement, while it addresses most of the
6 concerns of the citizens of Rockaway Beach, it does
7 nothing -- excuse me -- most of those concerns are the
8 ability to call Branson.

9 In terms of that concern, the Stipulation &
10 Agreement does nothing for the folks in Kimberling City,
11 Reed Springs and Forsyth, and that's the concern. The
12 concern is that this would be approved and you think you
13 would put things to rest for a while and the folks in
14 these other communities are going to get wind of it and so
15 forth, and we would have even more petitions here, because
16 Staff, along with the parties, has examined the data and
17 there is significant community of interest among all of
18 the communities that I just named.

19 Q. How many different local phone companies --
20 excuse me. How many ILECs are servicing this community of
21 interest right now? Is it a single company? Is it just
22 CenturyTel, or are there various other ILECs serving the
23 larger community of interest that you just referenced?

24 A. It is only CenturyTel.

25 Q. Okay. Now, how many different exchanges

1 would pay this mandatory surcharge or fee for the
2 unlimited calling? Is it just Rockaway Beach? There are
3 other exchanges that are paying?

4 A. Yes, there is, for lack of a better
5 description, something in this for everyone. The parties
6 have made -- stretched the money as far as they wanted to
7 go. So yes, the proposal is for Rockaway Beach to pay
8 3.50, because they get to call Branson and one other, at
9 least one area. The other folks that get to call between
10 themselves but not to Branson would pay 2.50.

11 Q. Okay. When you suggested that you weren't
12 sure whether this plan would satisfy the concerns, quote,
13 unquote, of the citizens of this community of interest,
14 how did Staff evaluate whether -- evaluate what the
15 concerns were of the citizens of this community of
16 interest?

17 A. Well, we started back in January of '03
18 looking at the petition, and then in February of this
19 year, the Public Counsel modified the request, expanded on
20 it, and we've had discussions over the telephone with
21 various people representing at least Rockaway Beach, if
22 not more of the immediate area.

23 And so we've gotten that feedback, and from
24 my perspective, most importantly, we've analyzed the
25 calling data. Imperfect though it is, we've analyzed it.

1 We think based on that data that the community of
2 interest -- well, at least we know what calling is
3 currently occurring insofar as the company's able to
4 capture that data, which I'm satisfied for the purposes of
5 what we're trying to accomplish here that the data is
6 valid.

7 Q. In analyzing the data, in reviewing
8 petitions, in reviewing the outreach that has supposedly
9 been done by OPC, by the staff in this community of
10 interest, do you believe that the participants of this
11 plan, if we use the term a majority of them, are
12 supportive of this mandatory service?

13 A. I could not testify that way, sir. There
14 is one of the other witnesses, I believe, might have
15 characterized -- used the words vocal minority that tend
16 to talk the loudest and express the most concerns about
17 calling scopes. Among the --

18 Q. So there is a minority that is vocal or at
19 least is expressing displeasure with this plan?

20 A. Oh, I'm sorry. I thought you meant
21 displeasure with the current calling scope.

22 Q. No. I'm talking about the plan that's on
23 the table.

24 A. I'm sorry.

25 Q. In the interest that has been conveyed to

1 Staff, the interest that's been conveyed to the parties on
2 the interest of expanding a calling scope, of having this
3 unlimited route into Branson from Rockaway Beach, as an
4 example, do you have data or information that supports or
5 that shows support from the community for the mandatory
6 nature of the fee?

7 A. No, I do not. Frankly, since the
8 stipulation was filed, I've not talked to anyone in the
9 Branson area. I have no feedback about that at all.

10 Q. Okay. Are you aware of whether the people
11 who expressed interest in this were interested in an
12 optional service versus a mandatory service, or was that
13 part of the -- that part of the issue not addressed one
14 way or the other?

15 A. I don't think that part of it, to my
16 knowledge, was addressed sufficiently to draw any
17 conclusions. I would state that generally people tend to
18 prefer to have options. Quite frankly, when the subject
19 matter people began analyzing the numbers, there doesn't
20 seem to fit unless it's mandatory. When we look at all of
21 the extended area service rates around the state of
22 Missouri, there are a few hundred of them, they tend to be
23 mandatory.

24 Q. The enhanced calling areas around the
25 state?

1 A. Yes.

2 Q. Okay.

3 A. An example like we have in Jefferson City,
4 I'd like to be clear about this. From the terms of --
5 from the standpoint of subscribers, there's no question
6 that it is mandatory. You have to pay that charge,
7 whatever it is. However, there are provisions in the
8 tariffs that actually call for a vote-out procedure, where
9 citizens could get a petition and do away with it. That's
10 never been exercised in my experience, but -- so it is
11 mandatory from that -- from one standpoint.

12 On the other hand, at least the reading of
13 tariffs that are very old, it would seem to contemplate a
14 procedure where citizens could vote that out.

15 Q. Does this tariff contemplate that? Does it
16 have a vote-out procedure or are you just talking in
17 general of tariffs of old?

18 A. I'm talking in general of tariffs of old,
19 although some of them are still on file. Whether or not
20 CenturyTel's --

21 Q. Does this filed tariff in this case have a
22 vote-out procedure?

23 A. It might --

24 Q. I don't want to put you on the spot, if you
25 don't know.

1 A. I don't know. I don't know.

2 Q. I'll ask somebody else, or maybe somebody

3 can address that as we get to it.

4 A. It would be in CenturyTel's tariff, and I

5 don't know if that's in there or not.

6 Q. We'll find that, Bill. Don't fret over

7 that.

8 A. All right.

9 Q. We will find it.

10 A. Okay.

11 Q. I want to -- I'd like to move to another

12 side of the issue, looking back at the Sprint case, the

13 2000 CPI adjustment where the touch-tone and zonation costs

14 were modified or eliminated. I am not sure exactly what

15 happened in those cases.

16 But in that instance, you said that you

17 started off with evaluating the amount of money that the

18 basic local rates would have to be reduced by, based on

19 the CPI, and that total dollar amount was then used to

20 reduce the touch-tone fee or the zonation costs. Is that

21 accurate, what I said?

22 A. Yes. It was used to reduce the touch-tone

23 fee and not the zonation charge. It was targeted

24 specifically to touch-tone charges.

25 Q. Okay. Now, when you said that that total

1 dollar amount was determined, was that throughout all of
2 CenturyTel's exchanges, or was that done on a per exchange
3 basis?

4 A. Throughout all Sprint's exchanges.

5 Q. It was done in total?

6 A. Yes.

7 Q. Okay. And then -- then those funds were
8 used to reduce the touch-tone charge in total across all
9 of CenturyTel's exchanges?

10 A. Sprint's exchanges.

11 Q. Excuse me. Sprint's exchanges.

12 A. Yes.

13 Q. Okay. Now, was that a -- when compared to
14 a reduction across the board for services within an
15 exchange, was that a revenue neutral exchange or change in
16 how the dollars were applied in each exchange?

17 A. No. I think each exchange had different
18 impacts, depending on the number of subscribers they had
19 who had touch-tone beforehand, the number of subscribers
20 they had who lived outside the base rate area and so
21 forth.

22 Q. So some exchanges benefited more than
23 others, or some customers benefited more than others
24 throughout each of Sprint's exchanges throughout their
25 entire territory?

1 A. Yes.

2 Q. Okay. That was a policy decision that was
3 made by the Staff and then adopted by the Commission?

4 A. Yes.

5 Q. Was it adopt -- was it adopted or was it --
6 did it just go into effect without an Order?

7 A. There was no case assigned, and it was
8 voted out in agenda. It was in the days when the
9 Commission actually voted on tariff sheet filings
10 without -- that did not have a case assigned to them.

11 Q. So every tariff filing required a vote?

12 A. There was a time when that was the case,
13 and this particular instance, I think we were in a time
14 period where significant tariff filings required a vote.
15 This was --

16 Q. This was a significant tariff filing?

17 A. It would have been deemed significant
18 because it does represent a significant policy matter.

19 Q. Okay. Is it your testimony that that type
20 of tariff did not violate the price cap statute?

21 A. That's my testimony, yes.

22 Q. Was there a difference of opinion between
23 GCO and telecommunications staff in regard to that tariff?
24 And if you can't tell me, you can't tell me.

25 A. No, there was no difference.

1 Q. Can you explain to me the difference
2 between that case and this case where we have a difference
3 in allocation of cost reductions among different customers
4 in these exchanges?

5 A. I can attempt to. As a layperson, if I
6 were to turn to the statute and try to glean meaning of
7 it, I would not see something that says thou shalt not
8 target based on geography. As a layperson, I do have to
9 try to enforce the rules.

10 And I'm not an attorney, but it sounds to
11 me like what the attorneys do is go from one statute that
12 says one thing and another statute that says something
13 else and then take another statute that tends to shore one
14 of those up, and they engage in something called statutory
15 construction.

16 And I think that's probably what's
17 occurring here. It's just not intended, it's not meant to
18 be interpreted in such a manner that would take what
19 should belong to everybody and target it based on
20 geography.

21 I think that's what's occurring here. Just
22 as Mr. Dandino's argument as I would understand it in 2002
23 is basically it's okay to target the purposes of the price
24 cap statute to put a cap on rates, therefore, you cannot
25 target above what would otherwise be permitted in an

1 increase situation.

2 I don't know if that answers your question.

3 Basically the difference between the telecommunications
4 department staff and general counsel is not really a
5 difference at all. We're relying on their analysis to
6 determine if this passes the statutory muster. And I
7 think they're saying, well, we recognize that some types
8 of targeting have occurred in the past. Indeed, I would
9 say that each and every case --

10 Q. But the targeting was based on services
11 statewide throughout all the exchanges rather than
12 geography?

13 A. Correct. And that's the distinction.

14 Q. How many exchanges does CenturyTel have in
15 the state of Missouri, offhand, approximately?

16 A. Probably -- I would count Spectra in this.
17 Maybe 400.

18 Q. That's a whole other issue. Let's not get
19 into that.

20 A. I really don't know.

21 Q. 400 exchanges?

22 A. Probably.

23 Q. Is Rockaway Beach or any of these other
24 communities more worthy than any other exchanges
25 throughout their territory for this -- I don't want to use

1 the term subsidy, but this type of financing arrangement
2 for this service?

3 A. In my opinion, yes, sir, it is. And this
4 is, frankly, just about the only exception I would almost
5 automatically make for that, when just on the basis of
6 economic development, I think the Branson -- greater
7 Branson area should be viewed as one community for the
8 purpose of their local calling scope. I think they look
9 to other areas of the state and sometimes feel like
10 they've been left behind, especially with calling scope.

11 But we've compared it to Columbia. If you
12 were to get on the Katy Trail and start bicycling west
13 from here, you would very soon run into the Ashland
14 exchange, and you could traverse westwardly through
15 Columbia and all the way to Rocheport and slightly beyond,
16 and that is the calling scope of the people in Columbia,
17 Missouri.

18 Q. Ashland is included in the Columbia calling
19 scope?

20 A. Yes, sir. Yes, sir. So is Rocheport. The
21 same could be said to the north, plus the Columbia area is
22 a very large exchange to start with, and the people in
23 Columbia get to call all those areas for \$1.71 a month.
24 And I think the folks in the Branson area tend to look at
25 that sort of thing and they feel a little bit left out.

1 They look at MCAs in Wentzville and so forth. They feel
2 left out.

3 And so for those reasons, as a matter of
4 economic development, I would make the exception in this
5 case for the immediate Branson area. And I forgot the
6 word you used in your original question, but I would make
7 the exception.

8 Q. More worthy?

9 A. More worthy, yeah.

10 Q. I think the language that I used. Just in
11 the sense that if we have 400 exchanges and we make this
12 modification and a reduction in other exchanges, should
13 this one community, Rockaway Beach, or a few of these
14 other small communities, be given the benefit of --
15 without addressing other needs, perhaps, for other
16 communities around the entire state, I think was my
17 question. And you answered that, yes, they are more
18 deserving.

19 Now, moving forward into that, this plan,
20 however, doesn't address the concern that you just
21 mentioned about an entire community of interest and the
22 size of the Branson area?

23 A. No. It falls far short of that.

24 Q. So setting aside the legality issue, is it
25 your recommendation to not move forward with this, but

1 continue the discussion on this community of interest for
2 the Branson area?

3 A. Yes, it is.

4 Q. And to not approve this particular plan for
5 one aspect?

6 A. Either suspend the tariff or reject it
7 outright and continue on with the other case, with the EAS
8 petition.

9 Q. Okay. Last question. Did Staff do an
10 analysis in reviewing the calling volume, the calling
11 patterns and the dollar amount of revenue requirement
12 necessary to fund this plan? Does Staff vouch for the
13 figures supplied in terms of cost of the overall plan and
14 the amount of money that would be raised through the
15 proposed surcharges and the amount of money that would be
16 raised through the other funding mechanisms?

17 A. Well, the overall cost, I would like to
18 address that first.

19 Q. I know some of this stuff is HC, so try to
20 answer it without going into that, but can you vouch for
21 the numbers?

22 A. I just want to be clear. Yes, the short
23 answer is, yes, we can vouch for the numbers. The parties
24 have all seen those numbers. I do want to be clear,
25 though, that this whole -- the overall cost is based on

1 data supplied by CenturyTel, and we're talking about
2 access, loss of access revenues. What used to be long
3 distance would now be local, and we're talking about long
4 distance revenue that Century gets from when these
5 customers subscribe to them for long distance and things
6 of that nature.

7 While I have no reason to doubt any of that
8 data, I want to be clear that we have not and it is not
9 customary to verify those figures against the books of the
10 company. Quite frankly, we've not gone down to Monroe,
11 Louisiana and examined the books of the company and
12 haven't looked at the sources of that data. But I have no
13 reason to doubt what it says, but I want to be clear about
14 that.

15 Q. But you can't swear to the accuracy or
16 verify the accuracy of the amounts, you just have no
17 reason to dispute them?

18 A. That's correct.

19 Q. Okay. Do you believe that that's important
20 in this analysis, Staff stating an opinion one way or the
21 other on the veracity -- not the veracity, but on the
22 accuracy of the figures?

23 A. Of the underlying data, I've always had
24 a -- as a regulator, I tend to trust but verify. And we
25 don't check it to the books of the company. Not

1 necessarily recommending now that we do so, but I wanted
2 to make that clear of what occurs, not only in this
3 situation, but just about anything we're involved with
4 now. We don't do that kind of checking.

5 COMMISSIONER CLAYTON: Thank you, Bill.

6 JUDGE RUTH: Commissioner Appling?

7 QUESTIONS BY COMMISSIONER APPLING:

8 Q. Good morning, Bill.

9 A. Good morning, sir.

10 Q. I think I have one question, if I can take
11 three questions and patch them together and come up with
12 one. Okay. I thank you for your comments about the
13 Branson area should be considered as one exchange.

14 With that said, if the legality of this
15 stipulation was certified in some way in a positive manner
16 so that we could see that this is a legal way to do it,
17 what would be Staff's major concerns beyond that in order
18 to try to get this calling scope certified for this
19 geographical area, which I'm talking about in Branson, the
20 Forsyth area and those areas down there?

21 A. Well, we cannot predict the future, of
22 course, but our biggest concern would be that the need of
23 the folks in Rockaway Beach would be satisfied, but not
24 those in Kimberling City, Reed Springs and Forsyth. Our
25 biggest concern is that this would not be the end of it.

1 But if you did determine that it's okay to do this
2 legally, our preference would be to target not just some
3 of the money but all of the money.

4 In other words, approximately I believe
5 it's about 13/20 of the available revenue is being used in
6 the stipulation to support the current plan. Our
7 preference -- if that were the only choice, our preference
8 would be to use all of the money and at least satisfy one
9 of the other three communities, their need to call
10 Branson, and that essentially is taking away 7 cents on
11 the basic rate for people statewide and even penny,
12 pennies on their other basic rate elements, such as
13 extended area service and so forth.

14 Q. No one has a greater appreciation for the
15 law than I do. However, when you're talking about the
16 state of Missouri and you're talking about public policy,
17 you talk about economic development, best interests of the
18 consumer, absent of the legality of this, do you see a way
19 that this could be done?

20 A. I think that the choices -- that question I
21 believe was asked last week of my attorney, is there a way
22 other than Track A or Track B. And I think there is one
23 other way. I do not recommend it, but the Commission
24 could examine the calling scope task force report, and
25 specifically the legislative subcommittee report and

1 recommendations, which calls for the establishment of a
2 statewide universal service fund in order to fund expanded
3 calling statewide. I do not recommend the Commission do
4 that.

5 Other than that, Track A and Track B
6 revenue recovery for CenturyTel are the only options. So
7 your choices are to reject this tariff filing outright,
8 tell Century to do it across the board, or to suspend it,
9 looking into perhaps satisfying Forsyth and Reed Springs
10 and Kimberling City. The third choice would be to approve
11 the tariff filing as it is.

12 COMMISSIONER APPLING: Thank you.

13 JUDGE RUTH: Are there any additional
14 questions from the Bench, Commissioner Murray?

15 COMMISSIONER MURRAY: Just one or two,
16 thank you, Judge.

17 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

18 Q. If we approved, you know, we found that
19 this was -- we considered this a lawful tariff filing and
20 we were to approve the agreement as it is, it's my
21 understanding that you believe this satisfies the needs of
22 the Kimberling City residents?

23 A. No. Rockaway Beach.

24 Q. I'm sorry. Rockaway Beach. But then it's
25 your opinion that leaves the customers of the other

1 exchanges unsatisfied with their expressed needs; is that
2 correct?

3 A. That would be my concern, that we would
4 have -- people would be looking over the fence and seeing
5 what's going on in Rockaway Beach and wondering why it
6 didn't happen there.

7 Q. And then if we use a CP -- if we allow
8 CenturyTel to use the CPI adjustments this way, does that
9 set a precedent for future use of the CPI adjustments to
10 satisfy one specific group of customers for expanded local
11 calling scope or for some other expressed need?

12 A. No, not any more than the touch-tone events
13 of 2000 have set any precedent or is in any way binding on
14 the current Commission.

15 Q. Would it be likely that we would receive
16 applications to do this sort of thing in the future,
17 though, based on the fact -- based upon approval of this
18 one?

19 A. I don't know. I think it would be likely
20 for the three communities that I've named. To the extent
21 it may happen other places, I think there's a chance that
22 we're going to see some of that. We're about to pass a
23 calling scope rule in anticipation of it, but I don't know
24 that once these events are reported in particular funding
25 mechanisms, I don't know if that will lead to more

1 petitions or not. I honestly don't know.

2 Q. If these other exchanges come back and
3 petition for expanded calling scopes that we didn't
4 address here -- assume we approved this and the other
5 communities come back, that kind of leaves you back at
6 square one determining where to find the revenue to do
7 that, is that correct, or where to find the ability to
8 expand those other calling scopes?

9 A. That's correct.

10 Q. And do you know why this specific exchange
11 was targeted?

12 A. Well, they submitted the original petition.
13 It was submitted by Mr. Charlie Fain, I believe, on their
14 behalf, and submitted to the Commission through the Office
15 of Public Counsel, I think, the citizens in Rockaway
16 Beach, that telephone exchange. And there are some
17 interesting things about the calling scope data I'm not
18 permitted to go into, but I am convinced that there is a
19 great deal of calling coming from these other areas as
20 well.

21 In terms of why this particular one,
22 they're the ones that submitted a petition and have been
23 most active among their community and civic leaders in
24 getting this through.

25 Q. Then I have another question for you. In

1 terms of the language of the statute, we've been talking
2 about instances here in which reductions were targeted,
3 but the statute talks about the maximum allowable prices
4 being changed annually by a change in telephone service
5 under the CPI. It talks about maximum allowable prices.
6 And how do you reconcile that targeting of certain prices
7 for certain services with that language?

8 A. The issue about maximum allowable prices
9 has been through the courts and back to where I'm so
10 confused about what that means, I'm not even able to
11 answer your question.

12 COMMISSIONER MURRAY: And I understand
13 that. That's perfectly understandable. I think that's
14 all I have for this witness. Thank you.

15 JUDGE RUTH: Thank you. Are there any
16 other questions from the Bench at this time?

17 (No response.)

18 JUDGE RUTH: Then we will move to recross
19 based on questions from the Bench. And Public Counsel,
20 would you begin?

21 MR. DANDINO: Thank you, your Honor.

22 RECROSS-EXAMINATION BY MR. DANDINO:

23 Q. Mr. Voight, Commissioner Clayton had asked
24 you questions about mandatory or optional. If a plan, the
25 expanded local calling plan is optional, that wouldn't

1 qualify as basic local service, would it?

2 A. No, sir, it would not.

3 Q. Now, I get the idea that you're saying that
4 unless we can provide relief to all those exchanges in the
5 Branson area, then we shouldn't give relief to any?

6 A. That's not exactly -- I don't believe
7 that's a fair characterization.

8 Q. Then your -- what would you -- how would
9 you characterize it?

10 A. Well, I'd start off by saying I don't
11 believe that even the stipulation gives all of the relief
12 to even the citizens of Rockaway Beach, because they asked
13 to be able to be called back from Branson, as I would
14 understand it, and this does not do that. So as to the
15 characterization that I feel if we can't give relief to
16 everyone we shouldn't give relief to anyone, I don't know
17 that's quite accurate.

18 What I have said is, I think that if the
19 Commission determines that's what would be appropriate,
20 then you should give as much relief to everyone as
21 possible, and this plan does not do that, sir. It uses
22 13/20 of the money, and I would I think it should use all
23 of the money and include as many people as possible at a
24 minimum.

25 Q. So it's based on we should use as much --

1 we should serve as many people as there's money available
2 for; is that correct?

3 A. If the Commission so chooses, that is more
4 appropriate than the stipulation.

5 Q. So the question of geography, then, doesn't
6 come into effect at all?

7 A. In my -- in the telephone department, it's
8 a matter of policy, no, it does not.

9 Q. So all the -- using all the money for that
10 area would be fine?

11 A. If the Commission so chose to do so, yes.
12 Mr. Dandino, if you can -- we've got Bran-- excuse me --
13 Rockaway Beach with some of the money. If the Commission
14 were to decide, well, let's -- let's use all the money to
15 include Forsyth, the county seat, I think that would be
16 fine.

17 Q. But that wouldn't solve Kimberling City's
18 calling scope issue, would it?

19 A. No, sir.

20 Q. It would still be deficient, quote,
21 deficient, and from what you said that this plan lacks; is
22 that correct?

23 A. That's correct.

24 Q. But you can only do so much, is that right,
25 based on the money available?

1 A. In this case, yeah. I mean, that is true,
2 you can only do so much with the money available, and I
3 don't -- I don't criticize the efforts of the signatory
4 party in that regard. But the Commission, one option they
5 could do is simply to reject the whole thing and continue
6 addressing the petition pursuant to its newly enacted
7 calling scope rule.

8 Q. Now, in your recommendation, you didn't
9 propose any specific price suggestion, did you?

10 A. No. We filed a recommendation to reject --
11 excuse me -- suspend the tariff sheets and have a hearing.

12 Q. But your recommendation to the Commission
13 or at least your thought that it ought to solve -- it
14 ought to include more exchanges, that doesn't give any
15 consideration to what the price of service would be, would
16 it?

17 A. I'm not following you.

18 Q. To serve all the exchanges in that area,
19 could you do it for the \$3.50?

20 A. If the Commission so ordered, they could do
21 it. Would that \$3.50 represent enough revenue to offset
22 the company's revenue impact? The answer would be no.
23 They could then -- I believe it was you, sir, who
24 outlined a Track B in your opening statements last week,
25 Track A and Track B that the Commission -- excuse me. The

1 company would then be free to pursue their cost recovery
2 through the exogenous factor portion of Track B, would be
3 my understanding.

4 So as to your question, would \$3.50 cover
5 it, I think what you meant by that, the answer would be
6 no, that in and of itself would not be enough to --
7 anywhere near enough to recover the total revenue impact
8 of the company.

9 Q. So the company would have to seek an
10 increase in rates to fund the entire expanded local
11 calling from all those communities, the communities of
12 interest around the Branson area?

13 A. With price cap, I don't know that they --
14 by seek an increase in rates, they already increase their
15 rates for non-basic services in many cases by 8 percent a
16 year. So perhaps I'm not following, seek an increase or
17 not on rate of return carrier.

18 Q. Well, if they can't get an increase in
19 rates and the Commission orders them to find it, where are
20 they going to get the money to fund this, to fund this
21 expanded calling? Isn't that the crux of the issue, how
22 do you get the money to fund this expanded calling?

23 A. No. I think the crux of the issue is
24 whether or not the CPI, that small portion should be
25 targeted to solve a portion of the issue.

1 Q. And if it doesn't, then we should not
2 embark upon expanded calling if we're not going to address
3 the funding issue except to the extent of the CPI
4 reduction? Is that what you're saying, sir?

5 A. I'm not following. I'm sorry.

6 MR. DANDINO: I think that's all I have.
7 Thank you.

8 JUDGE RUTH: CenturyTel?

9 RECROSS-EXAMINATION BY MR. DORITY:

10 Q. Mr. Voight, I have just a few questions in
11 response to inquiries from the Bench. First, I want to
12 thank you for your candor this morning.

13 In response to questions from Commissioner
14 Gaw regarding prior CenturyTel annual price cap tariff
15 filings, I believe you testified that generally those
16 adjustments were applied across the board, if you will,
17 and I think you referenced perhaps to all 104 rate
18 elements in the basic local service category. Would that
19 be an accurate representation of your answer?

20 A. Yes.

21 Q. And, in fact, EAS is specifically included
22 in those; isn't that correct?

23 A. Yes.

24 Q. And so in your opinion, would you agree
25 that EAS is, in fact, an element of basic local service?

1 A. Mandatory EAS, yes.

2 Q. Thank you. You also testified that the
3 question regarding bill notification, notification of the
4 particular tariff filing, that those bills had embargoed,
5 and that may have arisen from statements that I made in
6 the earlier proceeding regarding notifications relative to
7 the specifics of the expanded local calling plan in the
8 Rockaway Beach area.

9 But, in fact, I later corrected the record
10 to indicate that bill inserts concurrent with the tariff
11 filing on the first of August had, in fact, started and
12 that those customers were being notified of the CPI-TS
13 reduction in the amount of I believe it's .7 percent. Are
14 you familiar -- do you remember that?

15 A. Forgive me. I do now recall that.

16 Q. Okay. I just wanted to clarify the record
17 in that regard.

18 And in response to questions from
19 Commissioner Murray just now, to accommodate the Staff's
20 revisions or what you would suggest how the Stipulation &
21 Agreement and that proposal should be revised, you would
22 not have -- I'm sorry -- you would, in fact, have all of
23 the CPI-TS reduction going to fund the plan; is that
24 correct?

25 A. That's preferable to the stipulation plan,

1 in my view.

2 Q. And just to be clear, in your opinion --
3 I'm sorry. I think it's Attachment D to the Staff's
4 memorandum regarding the price cap tariff filing. Let me
5 read this and make sure I'm following it. It says,
6 conceptually the Staff does support the Stipulation &
7 Agreement submitted by the OPC and CenturyTel. Is that
8 still your testimony here this morning?

9 A. Yes.

10 Q. And, again, if the Commission determines
11 that it is appropriate to apply all or a portion of
12 CenturyTel's price cap adjustments toward establishment of
13 EAS routes in the Branson area, the Staff suggests that a
14 more appropriate application would involve the entire
15 amount of price cap reduction, not just a portion of that
16 amount. And that's still your testimony this morning,
17 right?

18 A. Yes.

19 MR. DORITY: I believe that's all I have.
20 Thank you.

21 JUDGE RUTH: Redirect?

22 REDIRECT EXAMINATION BY MR. POSTON:

23 Q. I'm not quite sure if I'm doing redirect or
24 cross but, Mr. Voight, you testified earlier that the past
25 Sprint CPI adjustments used the entire reduction to reduce

1 basic local rates; is that correct?

2 A. Yes, and -- could you rephrase? I'm sorry.

3 Q. You had testified earlier that the past
4 Sprint CPI adjustment where there's been a reduction that
5 we've discussed --

6 A. Like in the year 2001, there was no
7 targeting occurring; is that your question?

8 Q. Correct. Did the entire reduction that was
9 done, was that applied only to reduce basic local rates?

10 A. Yes.

11 Q. And Commissioner Murray asked you questions
12 suggesting that since EAS is a basic local service, the
13 proposal could be consistent with the statute. Do you
14 recall that?

15 A. Yes.

16 Q. Even though EAS is a basic local service,
17 would the proposal use all of the adjustment to reduce
18 basic local rates like had been done in the past, or would
19 the creation of an expanded calling plan actually reduce a
20 consumer's toll charges in Rockaway Beach?

21 A. It would reduce a consumer's toll charges
22 in Rockaway Beach. I would not -- I don't know this data,
23 but I have examined similar data in the past, and I would
24 not be surprised if there are not certain businesses,
25 perhaps resorts, marinas, theaters and so forth in the

1 Branson area who may have a phone bill upwards of \$500 a
2 month to call from Rockaway Beach or Forsyth or some place
3 to Branson. That revenue would be reduced to \$3 and --
4 excuse me. That charge, that price would be reduced to
5 \$3.50.

6 MR. POSTON: Thank you. That's all I have.

7 JUDGE RUTH: Mr. Voight, at this time you
8 may step down, but you are not excused. Would you please
9 remain available?

10 And we've been on the record since a little
11 bit after ten, so we are going to stop, take a break for
12 lunch. We'll start back up at one o'clock. At that time
13 I anticipate that we will call CenturyTel's witness to the
14 stand. I'm getting pointing. Would the parties prefer
15 that we move to Public Counsel first?

16 MR. DANDINO: That's fine.

17 JUDGE RUTH: We'll move to Public Counsel,
18 same format as this morning, an opportunity for brief
19 direct if you have questions, and then we'll move on.

20 Are there any questions before we break?

21 (No response.)

22 JUDGE RUTH: Okay. Then we are off the
23 record. We'll start back up at one o'clock.

24 (A BREAK WAS TAKEN.)

25 JUDGE RUTH: We are back on the record.

1 We've had a short break for lunch. We are now ready to
2 begin with Public Counsel's witness. And I see, Public
3 Counsel, you have called Ms. Meisenheimer to the stand; is
4 that correct?

5 MR. DANDINO: That is correct, your Honor.
6 (Witness sworn.)

7 JUDGE RUTH: Thank you. You may proceed.

8 MR. DANDINO: Thank you, your Honor.

9 BARBARA A. MEISENHEIMER testified as follows:

10 DIRECT EXAMINATION BY MR. DANDINO:

11 Q. Please state your name and position for the
12 record.

13 A. My name is Barbara Meisenheimer. I'm chief
14 economist in telecommunications for the Missouri Office of
15 the Public Counsel.

16 Q. And could you just briefly summarize your
17 educational background?

18 A. I have an undergraduate degree in
19 mathematics. I have completed all the work for a Ph.D. in
20 economics, with an outside area of emphasis in statistics.

21 Q. Could you please describe your background
22 and experience in the field of telecommunications,
23 especially with regard to expanded calling plans?

24 A. I have worked for the Missouri Office of
25 the Public Counsel since January 1st of 1996, and in that

1 capacity I've been involved in virtually every major
2 proceeding having to do with expanded calling issues. I
3 have participated on task forces in the past, working
4 groups, the Universal Service Fund investigations.

5 At the federal level, I worked on Universal
6 Service issues, and the reason that I raise that as being
7 related is the issue of comparable service at comparable
8 rates between rural and urban areas.

9 Q. And did you work in this case involving the
10 request from customers in the Rockaway Beach exchanges for
11 an expanded calling scope to make toll-free calls to
12 Branson?

13 A. Yes. My primary involvement has come at
14 the point where there was a need to look at the traffic,
15 the cost, and to work towards some kind of solution for
16 the people in this area.

17 Q. Now, in trying to devise a local calling
18 plan or address the needs of the communities in the
19 Rockaway Beach area, what were the goals that you and the
20 Office of the Public Counsel had in mind to accomplish?

21 A. Well, Public Counsel has long been
22 interested in ensuring that people across the state have
23 adequate calling scopes at reasonable prices, and the
24 people in Rockaway Beach in particular were so motivated
25 by their need for expanded calling that they put together

1 a petition. And, of course, in the past other communities
2 have put together similar petitions and requested expanded
3 calling that ultimately was not addressed.

4 In this case we had the opportunity to
5 investigate it within the context of a case, and an even
6 greater opportunity when the issue with respect to a
7 reduction in the CPI presented itself so that there was an
8 opportunity for a reasonable funding mechanism.

9 Q. So besides trying to get comparable and
10 adequate service in the community and besides the ability
11 to fund whatever expanded calling plan, did you look at
12 the prices and the rates, any goals regarding those?

13 A. Yes. My -- at the time we began the
14 process, one of the things that I considered was, what are
15 the EAS routes costing for our communities that have them?
16 And so, you know, through discussion and through some
17 independent review, I've gone through and looked at
18 whether certain rates would be acceptable in terms of an
19 EAS additive.

20 So I had kind of an idea of a range of what
21 I thought would be affordable and reasonable for people to
22 pay for an improvement in their local calling scope. I
23 also obviously spent a lot of time looking at the
24 company's costs and the traffic data.

25 Q. Now, in terms of the petition that was

1 presented by some 1,600 people in Rockaway Beach, they
2 claim that they had a community of interest with Branson
3 and needed to call Branson. How do you determine what the
4 community of interest is?

5 A. That is something where you have -- there
6 are some general criteria that you can look to. As a
7 general response, I guess I would say, do a substantial
8 number of the people in a community call some other
9 community on a regular basis to conduct everyday types of
10 things, like to reach their schools, reach their
11 government, reach their areas where they do business,
12 their friends, their neighbors.

13 Q. And so it is -- are you saying it's based a
14 lot on the attitude or the desires of the community, as
15 well as calling patterns?

16 A. Absolutely. And in this case, we had many,
17 many of the consumers in this Rockaway Beach exchange that
18 were willing to sign this petition and get the ball
19 rolling. And then, of course, the petitions alone aren't
20 everything that you'd want to see. You'd also want to
21 make sure that there is sufficient calling in terms of the
22 minutes and the number of messages to justify changing
23 something that would have otherwise been a toll plan into
24 a local plan.

25 Q. Now, you understand that really the focus,

1 one of the key focuses of this hearing and of the
2 Commission's inquiry is into Section 392.245. I know
3 you're not an attorney, but from an economist's
4 perspective, do you feel that this use is consistent with
5 the intent and purpose of the statute, as you understand
6 it, as you understand the statute?

7 A. The use that has been proposed by the
8 company and Public Counsel?

9 Q. Yes.

10 A. Yes, I do. I believe that from an economic
11 perspective, historically what the Commission has done is
12 it has had rate cases through which it looks at the
13 company's costs and revenues, and in the event where a
14 company needs a rate increase, well, the Commission had
15 certain authority to enact increases that it felt was
16 appropriate. Under price caps with the additional
17 latitude that companies get in terms of being able to
18 raise certain prices, there was also a cap put on it.

19 But with respect to decreases, which is
20 what's important in this case, historically the Commission
21 has been able to allow decreases that ensure that no one's
22 made worse off, but in some cases you target special
23 needs, whether it be you need improved equipment in some
24 areas of the service territory, whether you need expanded
25 calling. Those are all things that the Commission has

1 traditionally done, has traditionally had the authority to
2 do.

3 This statute, from my reading -- and once
4 again, I'm an economist, but it is perfectly consistent
5 with that traditional authority that the Commission has
6 had. In this case, you have a decrease that needs to be
7 accomplished. There is a specific need that is identified
8 in this area with respect to expanded calling. Mr. Voight
9 recognized that. And what we have provided to you is a
10 recommendation that balances, it gives everybody in the
11 service territory something. Everybody gets a reduction.
12 I think it was about 8 cents.

13 In addition, we target the special need,
14 just like historically has been done. Columbia has come
15 up a lot. Columbia has expanded calling with Ashland,
16 Rocheport and also a community called Hallsville, which is
17 north of Columbia. And I mean, that was just done at a
18 point in time. It just happened to come before this issue
19 where people in the Branson area identified a specific
20 need, in particular Rockaway Beach.

21 Q. So with regard to the statute and the
22 reduction and the change in the CPI-TS, then you're asking
23 this Commission to read that change if it means if there
24 is an increase in the CPI-TS. What basis, economic basis
25 do you have to make that recommendation?

1 A. Well, in terms of, you know, the reading of
2 the entire section, and I --

3 Q. Just from your --

4 A. Okay. I think that --

5 Q. -- thoughts?

6 A. -- the first part of the section talks
7 about increases specifically. And then the parts that
8 follow go on and talk about, well, how do you effectuate a
9 change? Well, historically the Consumer Price Index, only
10 a handful of times since the 1920s has it ever fallen. So
11 I agree with what I heard this morning that generally it's
12 expected that prices are going to rise over time. So I
13 think that from an economic perspective, it was perfectly
14 reasonable that the anticipation is that prices would go
15 up, and how do you constrain how high prices go.

16 I think that the concept of change, change
17 can mean -- it could mean increase as much as it could
18 mean -- increase alone as much as it could mean increase
19 or decrease. And I think that that makes sense in terms
20 of an economic interpretation, that you would want to
21 limit how increases are imposed, while still allowing
22 flexibility to achieve targeted goals in the context of a
23 decrease that makes no one worse off.

24 Q. In terms of the question that was brought
25 up about was the -- about a public hearing on the

1 proposal, is Public Counsel opposing a public hearing?

2 A. Absolutely not. Public Counsel does not
3 oppose having a public hearing. Our primary issue with
4 respect to bringing this to you in the way that we did was
5 an issue of time. The consumer -- we have been struggling
6 for a very long time, for years with the issue of
7 addressing expanded calling needs.

8 The Consumer Price Index decreasing and the
9 company's willingness to creatively approach what was done
10 and their willingness to accept concessions on what costs
11 that I felt like they should recover put us at a point
12 where we thought that we could develop a recommendation in
13 time before the CPI reduction should have occurred.

14 And keep in mind, I mean, the CPI reduction
15 means that Missouri consumers should be getting a
16 reduction, and we didn't want to be postponing the
17 reduction that should go however you ultimately determine
18 that reduction should be spread.

19 Q. How long ago has the Office of Public
20 Counsel requested the Commission to grant some relief in
21 terms of this Rockaway petition, if you know?

22 A. Years?

23 Q. Yeah.

24 A. '93.

25 Q. In terms of years?

1 A. Sorry. 2003. And there have been issues
2 with the need for expanded calling in Branson -- in the
3 Branson area as well as other areas for probably longer
4 than that.

5 Q. Now, Commissioner Gaw had brought up in his
6 questions to Mr. Voight about whether there was any notice
7 provided to customers outside of the Rockaway Beach area
8 about they would be affected, how they would be affected
9 and would not be getting a CPI reduction. Do you have any
10 comments on that?

11 A. I have a couple of points that I think are
12 important to bring up. This is a decrease where no
13 customers will be made worse off in terms of paying more.
14 The issue is more are they getting as much a reduction as
15 they might otherwise under an alternative? And certainly
16 that is an issue that we give weight to in our
17 considerations and that we gave weight to in particular in
18 considering what to do with this case.

19 Q. Is sending notice to customers that might
20 not receive a decrease, is that a typical action that
21 occurs in regulatory cases in Missouri?

22 A. Well, to my knowledge, customers are not
23 always made aware of what is the maximum benefit they
24 could have gotten even in, say, for example a regular rate
25 case. Under rate of return regulation, there are many

1 alternatives that ultimately customers could end up with.
2 Generally customers are told in total how much rates are
3 either proposed to increase or decrease.

4 Q. Mr. Voight, one of his criticisms of the
5 proposed stipulation was that it did not provide two-way
6 service into Branson from Rockaway Beach, and was
7 providing two-way service into Branson feasible according
8 to what the cost and the other goals that you had in mind?

9 A. No, it's not. We originally -- or in my
10 opinion, it is not without such a substantial EAS additive
11 that it would be prohibitive for customers and something
12 Public Counsel could not see its way clear to sign onto.

13 We originally looked at a variety of
14 alternatives, including how much would it cost to go give
15 the whole area back and forth calling to each other, and I
16 don't think that the number, the average cost to all
17 customers would be confidential to the company, but I'm
18 waiting for him to nod or shake his head. I don't think
19 that the average cost for -- if you gave expanded
20 throughout the whole area, two-way calling, is
21 confidential. I mean, route specific I understand would
22 be.

23 MR. DORITY: Go ahead.

24 THE WITNESS: If you were to give expanded
25 calling two-way from every one of these exchanges to every

1 other one, before you talked about how you're going to
2 generate the money to pay for it, the cost based on the
3 company's calculations of anticipated line loss and some
4 other factors, which I don't agree with them 100 percent,
5 but they came up with something in the area of a \$15 EAS
6 additive.

7 BY MR. DANDINO:

8 Q. Would that be a reasonable additive to
9 approach the residents in an area with?

10 A. I don't think it would be. There -- there
11 might have been in the past some extreme cases where I
12 could see that at least some of the people benefit with an
13 additive like that. But in the environment that we have
14 today with multiple service providers in some exchanges,
15 given that customers can do some level of substitution for
16 toll calling with cellular phones and other factors, just
17 in my opinion make \$15 cost prohibitive, and that's likely
18 more than double the local rate they're paying. So I
19 think that that was one that we ruled out early on in
20 terms of something that Public Counsel could get to or
21 that the company could get to.

22 And I'd like you to keep in mind that, you
23 know, we had asked the Staff to participate in all these
24 discussions, and the Staff did, in fact, get on the
25 majority of the discussions or in on the majority of

1 discussions that we had.

2 We then looked at some other alternatives,
3 and they included one way between various exchanges, and,
4 you know, I don't -- unless my attorney tells me it's
5 okay, I'm not here to get into all the detail of what we
6 negotiated in terms of a settlement, but from my own
7 personal perspective, I believe that based on the cost, we
8 have come to the most reasonable thing that we can.

9 There's things to consider. You want to
10 provide some benefit to all the customers in CenturyTel's
11 service territory. You want to ensure that the needs of
12 the group that actually petitioned, which was Rockaway
13 Beach, that those needs are addressed. And we gave some
14 benefit to the surrounding areas. Those areas didn't get
15 their first choice in terms of calling, but all of them
16 got their next best, the one that they call second most.
17 We couldn't afford to do it all, and that's where we ended
18 up.

19 MR. DANDINO: Thank you, Ms. Meisenheimer.
20 That's all I have, your Honor.

21 JUDGE RUTH: CenturyTel, do you have cross?

22 MR. DORITY: Thank you, Judge. I know we
23 don't use the term friendly cross in this arena, but as a
24 co-signatory party, I would not have any questions for
25 Ms. Meisenheimer at this point in time.

1 JUDGE RUTH: And Staff?

2 MR. POSTON: Thank you. Since it's our
3 understanding that the purpose of this is to discuss the
4 lawfulness of the proposal and not the reasonableness, we
5 have no questions for this witness.

6 JUDGE RUTH: Thank you. We'll move to
7 questions from the Bench then. And, Commissioner Murray,
8 do you have questions to start?

9 COMMISSIONER MURRAY: Just perhaps one or
10 two to begin. Thank you.

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Ms. Meisenheimer, can you tell me, the
13 Columbia expanded calling scope, do you know how that was
14 funded?

15 A. In the past the Commission had a process by
16 which an area or an exchange could petition to have
17 expanded calling to another exchange. It was a set
18 process, and once a route was requested, there would be
19 traffic studies done to determine whether the traffic met
20 some established criteria, and it had to be met both
21 originating and terminating. And I think they actually
22 petitioned the citizens to get a vote on whether the
23 people would accept it.

24 And on each if it was a only a one-way
25 route, the originating customers paid an additive.

1 Generally those rates range from less than a dollar to, in
2 some cases, a few dollars. In cases where it was a
3 two-way calling scope that was established, then both the
4 customers in the originating and the terminating exchange
5 would pay an additive.

6 Q. And do you know when the -- when that
7 calling scope or those calling scopes were established
8 roughly?

9 A. I've been with Public Counsel since January
10 of 1996, and to my knowledge, to the best of my memory,
11 the Commission has never approved an EAS petition since
12 that time, although I think that there were some pending.
13 And I believe there were also COS routes pending at the
14 time when I started in 1996. So this unresolved issue of
15 how do customers get an expanded calling scope that meets
16 their needs has been sitting out there for a long time.

17 COMMISSIONER MURRAY: All right. Thank
18 you. I think that's all I have right now anyway.

19 JUDGE RUTH: Commissioner Gaw?

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Ms. Meisenheimer, did I understand you to
22 say that there had been no notice given to any of the
23 other exchanges that they would not be receiving the CPI
24 adjustment to the level that the adjustment -- to the,
25 what was it, over 2 percent adjustment? I can't remember.

1 A. I don't think that there were any
2 specifically bill notices or anything like that given to
3 customers. The only way they would know about it to my
4 knowledge is if they follow what goes on here at the
5 Commission.

6 Q. They would have to be here or log on to
7 EFIS or something to find out that it was -- that it
8 happened to be going on, correct?

9 A. Yes, which is, I think, generally the way
10 it would occur.

11 Q. Generally, the Public Counsel is
12 statutorily in the shoes of representing those individuals
13 and entities that are in those exchanges in this case, are
14 they not?

15 A. Yes. I mean, generally and specifically in
16 this case as well, yes.

17 Q. So the Public Counsel's office is acting as
18 counsel for those consumers, customers in Wentzville and
19 Columbia and all of the other CenturyTel exchanges, and in
20 addition, those that might be in the Branson area?

21 A. Yes, that's true. And I'd be happy to talk
22 about some of the things that we attempted to do to ensure
23 the benefit to all CenturyTel's customers.

24 Q. And can you tell me what you have done to
25 give notice to any of those areas as Public Counsel that

1 are impacted, including the Columbia area, Wentzville area
2 and the other areas?

3 A. We have done no special press releases or
4 anything of that kind, if that's what you're asking.

5 Q. Any kind of notice, including that?

6 A. None.

7 Q. Do you think that the interests of those in
8 the Columbia region and the Wentzville region are
9 benefited by this proposal?

10 A. Yes.

11 Q. Tell me how.

12 A. I believe that they're benefited by this
13 proposal in a number of ways. The first is that they do
14 get a reduction in their rate.

15 Q. Let me stop you for a minute. If I take
16 something back to the store that I have purchased and I
17 paid \$3 for it and they give me a dollar instead of the
18 extra, I'm being benefited by that dollar they gave me?
19 How is that different from the so-called benefit you say
20 they're getting by the smaller reduction than what they
21 would have otherwise gotten if Public Counsel's agreement
22 had not been entered into?

23 A. Well, I think that it is very much like
24 that.

25 Q. So we should be grateful for the dollar

1 instead of the total \$3 that I should have received?

2 A. The store could have had a no return
3 policy.

4 Q. Okay. Now I'm following the logic in this
5 a little better. So because the store graciously decided
6 that they would give me a third of the money back that I
7 would have been entitled to, I should be grateful?

8 A. Well, there are other benefits that --

9 Q. Okay. What other benefits?

10 A. The other benefits are that generally if
11 the Commission retains the discretion to determine what to
12 do with rate decreases in the future, then if there
13 becomes some issue relevant to the Columbia or surrounding
14 area, such as another community near Columbia that wants
15 expanded calling into Columbia, then you would have the
16 discretion to consider whether that need is sufficient to
17 address with a portion of whatever future decrease might
18 occur.

19 Q. Under 392.245 in the local basic adjustment
20 provisions?

21 A. Yes.

22 Q. So if SBC or Sprint -- and I assume both of
23 them had reductions this year because if they were under
24 this provision. Do you know? Perhaps Sprint may be a
25 little different because of the rebalancing issue. I

1 don't know.

2 A. Yeah. I haven't worked on --

3 Q. Let's say SBC. So we could take -- SBC
4 would have had an adjustment downward on the CPI, do you
5 think? Do you know?

6 A. Yes.

7 Q. So we could go in and start looking around
8 to see what areas we might want to target that money
9 toward, what exchanges?

10 A. Yes. I believe that if you -- you have
11 discretion to do things when there is -- when there needs
12 to be a reduction. Whether it be expanded calling,
13 whether it be upgrades to equipment, whether it be
14 elimination of touch-tone, whether it be elimination of
15 mileage charges, I believe you have some discretion in
16 terms of what to do with reductions.

17 Q. And you don't have to answer this question
18 if you don't want to because it's more of a legal
19 question, but do you not see any conflict of interest in
20 deciding that one -- that some of your clients are going
21 to benefit more than others without notifying them of it
22 and giving them a chance to have their own counsel or
23 notifying someone that there is a conflict that might
24 require them to at least have the opportunity to have
25 other counsel? And you don't have to answer that question

1 if you choose not to.

2 A. And I'm not a lawyer. I can't answer it
3 from a legal perspective. But I would respond that I
4 don't -- I don't view this -- and just based on my
5 experience, I don't view this as substantially different
6 than the case where you have a rate decrease under rate of
7 return regulation where -- I mean, Public Counsel has for
8 decades balanced the interests of the consumers it
9 represents.

10 In some cases you have a -- you work out a
11 solution that targets a benefit toward a subset of the
12 customers and they benefit more at one point in time than
13 other customers do at another point of time. It may be a
14 different group of customers that benefit more. It's
15 not -- I don't -- I don't view it as inconsistent or
16 different than what I'm familiar with Public Counsel ever
17 doing.

18 Q. Uh-huh. You don't -- and in this case, the
19 suggestion that it is -- that there is a rationale for not
20 seeing any kind of a conflict of interest between those
21 people that are benefited by this proposal and those that
22 are suffering a detriment from this proposal, you don't
23 see that to be in any way a conflict when Public Counsel
24 represents them all?

25 A. I do not. I mean, much of the grunt work

1 in terms of what could be done, what would it cost, what's
2 left over was work that I did for Public Counsel. It was
3 not -- I did not go into it with the opinion, I'm going to
4 try and benefit this group more than another group. I
5 aggressively told the company that we would not allow
6 certain costs, which not only benefits the people of
7 Rockaway Beach, but actually that money went to benefit
8 the customers that got the uniform reduction.

9 Q. Now I'm not following you on that last
10 part.

11 A. Well, for example, when you eliminate a
12 local calling -- or when you eliminate a toll calling
13 scope, then the CPI adjustment is made to both local and
14 toll, right? There's adjustment made to access rates and
15 to --

16 Q. On access. Okay. On access?

17 A. Now you've reduced access minutes. So why
18 should access get an excessive amount of the reduction?
19 It should go to local. That was just one of the
20 arguments, you know, that ultimately ended up in more
21 money going toward the general local reduction, uniform
22 local reduction.

23 As I said, Commissioner, we are not opposed
24 to having some type of public hearing, and you know, I
25 understand especially, you know, based on the areas that

1 you seem to be interested in when we've had discussions in
2 the past, I can understand that you want to make sure that
3 consumers know what's going on and what affects them. And
4 if you and the Commission would feel comfortable having a
5 public hearing, we're not opposed to that at all.

6 Q. Let me just talk about this public hearing
7 request. This is the first time, and I'm sure that I'm
8 just not recalling, but this is the first time that I can
9 remember Public Counsel not aggressively taking a position
10 that they want a public hearing. And I want you to
11 correct me and tell me that if that's not -- if that's not
12 accurate. It's my -- my belief is that this is the first
13 time or one of the rare times that Public Counsel is just
14 taking the position that we don't care if there is or
15 isn't a public hearing, instead of we want a public
16 hearing.

17 And it seems much different to me than the
18 past positions of Public Counsel in regard to public
19 input. If you can explain that to me, I would appreciate
20 it, or if I'm in error.

21 A. The total dollar reduction, if there were
22 more money to be fought for in total, I think it would
23 have made it much more likely that we would have felt
24 compelled to have a public hearing.

25 We have also heard from these affected

1 communities directly through, as you heard from our
2 attorney, 1,600 petitions from Rockaway Beach.

3 The other customers in the service
4 territory -- and I don't want to diminish what seems to me
5 to be a specific concern for you regarding what the
6 customers could have otherwise had as a reduction. I
7 don't mean to diminish that. But ultimately they will get
8 a reduction.

9 Q. Some reduction, but not the amount that
10 they're entitled to; isn't that correct?

11 A. I can't agree with that.

12 Q. All right. Let's go to the statutes, then,
13 because I'm -- because this is the issue as far as I'm
14 concerned is whether or not, first of all, this passes the
15 test of being legal. It's pretty clear from -- that for
16 quite some time I've been very supportive of trying to
17 find ways of expanded calling in areas of the state,
18 including this one. But I am very, very -- I'm having a
19 very difficult time following how you can read this
20 statute in 392.245 in any way other than an entitlement to
21 a change in the prices that individuals are and -- and
22 entities are charged.

23 It clearly says -- I'm just going to quote
24 again, in 392.245, thereafter, the maximum allowable
25 prices -- this is under subsection 4, sub 1, thereafter,

1 the maximum allowable for prices for exchange access and
2 basic local telecommunications service of an incumbent
3 local exchange telecommunications company shall be
4 annually changed by one of the following methods, and in
5 this case it's by the CPI. How do you get around that
6 language?

7 A. Okay. Well, I -- and you're an attorney.
8 I'm not. So just --

9 Q. And attorneys can disagree, and I'm not
10 suggesting that there's not a way to do it. I'm just
11 asking how Public Counsel does it.

12 A. Let me point you to 392.245, No. 1, which
13 says, I'll start here, as used in this chapter, price cap
14 regulation shall mean establishment of maximum allowable
15 prices for telecommunications services offered by an
16 incumbent local exchange telecommunications company, which
17 maximum allowable prices shall not be subject to increase
18 except as otherwise provided in this section.

19 Q. And it says that the maximum allowable
20 price, there is a maximum allowable price that a company
21 is allowed to be -- allowed to charge for basic local
22 telecommunications services under price cap, correct?

23 A. Yes.

24 Q. And you cannot go higher than that
25 unless -- unless you meet some exception that is in

1 Section 245; isn't that correct?

2 A. The maximum allowable price --

3 Q. Isn't that correct?

4 A. -- itself shall not be subject to increase.

5 Q. You cannot go above it, isn't that correct,
6 unless you find some way to increase it that's contained
7 inside of Section 245?

8 A. This -- this --

9 Q. Isn't that correct?

10 A. -- puts a limit on how you can increase it.

11 Q. Does it say --

12 A. Not necessarily how you can decrease it.

13 Q. Does this say that there is a maximum
14 allowable price?

15 A. Yes, there is a maximum allowable price.

16 Q. And is that maximum allowable price not the
17 price that was charged at the beginning of price cap
18 regulation for basic local services? If you look under
19 subdivision 4 under the provision that says, except as
20 otherwise provided in subsections 8 and 9 of this section
21 and Section 392.248, the maximum allowable prices for
22 exchange access and basic local telecommunications service
23 of a large incumbent local exchange telecommunications
24 company regulated under this section shall not be changed
25 prior to January 1st of 2000, correct?

1 A. Yes.

2 Q. So there was a price that was

3 established --

4 A. Yes.

5 Q. -- correct, prior to 2000 and after the '96

6 Act was passed?

7 A. Yes.

8 Q. All right. Thereafter, the maximum

9 allowable prices for exchange access on basic local

10 telecommunications service of an incumbent local exchange

11 telecommunications company shall be annually changed.

12 Does that say increase there?

13 A. I think that --

14 Q. Does it say increase there?

15 A. It does not specifically say increase.

16 Q. No. It says changed, correct?

17 A. It says changed, and changed can mean --

18 Q. And -- and changed can mean increase,

19 correct?

20 A. Yes.

21 Q. And it can mean decreased?

22 A. It can.

23 Q. So isn't it -- isn't it true that there are

24 provisions here that grant exceptions to that within 245

25 and maybe in 248? Aren't there exceptions to that being

1 the rule on the maximum allowable price that you can
2 charge? Are there not exceptions?

3 A. I'm not sure specifically what you're
4 talking about.

5 Q. Well, for instance, there are methods of
6 having some adjustments with access rates and basic local
7 that are somewhat different?

8 A. Yes.

9 Q. And that's an exception to what you can
10 charge as the maximum allowable price; isn't that correct?

11 A. That is an exception, yes.

12 Q. And isn't it true, would it not be a fair
13 reading of this to say that the only way you can increase
14 the price that you charge somebody for basic local
15 telecommunications services under price cap is to fall
16 within an exception?

17 A. Increases, yes.

18 Q. That's the only way you can increase
19 somebody's price is to fall within an exception, isn't it?

20 A. Their maximum price.

21 Q. That's right. Isn't that correct?

22 A. I don't disagree that for increases --

23 Q. That's the only way you can charge more
24 than that. And isn't Public Counsel in this case trying
25 to allow the charges for those residents of Columbia and

1 Wentzville to be increased above the maximum allowable
2 price that is provided for in this section?

3 A. No.

4 Q. Where's your exception? Find the exception
5 in 245 for me that's similar to the access switch with
6 basic local. Where is it?

7 A. With respect to part 1 --

8 Q. No. We've already established that the way
9 to get into increasing beyond the maximum allowable price
10 is to find an exception. Where is the exception?

11 A. It says, shall not be subject to increase,
12 except as otherwise provided.

13 Q. You cannot go above that maximum allowable
14 price unless you find an exception, correct?

15 A. No. It says, which maximum allowable
16 prices shall not be subject to.

17 Q. It doesn't --

18 A. It's talking about the maximum.

19 Q. The maximum allowable price is the price
20 that was in 2000 as adjusted up or down, if you're under
21 the CPI by that amount, and that's from one year to the
22 other, isn't it?

23 A. If you -- if you read change to mean up or
24 down, then I understand where you're getting to.

25 Q. Okay. And where is the exception?

1 A. The difference that I see --

2 Q. Would you agree with me that there is no
3 exception?

4 A. I would be happy to explain to you that I
5 believe that it is not a matter of looking for an
6 exception. It is a matter of looking at what the maximum
7 allowable price is versus the actual price that customers
8 pay. Those are two different things. They may or may not
9 be exactly the same level.

10 Q. Would you say that the people in -- so
11 you're telling me that -- that they can bank?

12 A. No, I'm not -- I'm not telling you that
13 they can bank.

14 Q. Did we have a court case on banking
15 recently dealing with non-basic services that Public
16 Counsel was involved in?

17 A. We did. And my understanding is that the
18 position that we're offering you here is exactly the same
19 as it was there. The increases cannot be banked. The
20 issue, the maximum allowable price --

21 Q. So decreases can be banked but increases
22 can't be?

23 A. Well, it's an issue of where -- I don't --
24 I don't -- I don't think that the banking thing is -- is a
25 reasonable characteristic of what we're talking about

1 here.

2 Q. But you agree with me that if my
3 interpretation would be correct, if it were to be correct,
4 that there is no exception in 245 that says that the
5 Commission can charge more or allow a company to charge
6 more for local basic rates than the maximum allowable
7 price as adjusted by the CPI since 2000?

8 A. I agree that that's -- that it says that
9 the --

10 Q. There is no exception, is there?

11 A. You cannot exceed the maximum rate as
12 determined by how you define the term change and what you
13 think it's referring to.

14 Q. Okay. All right. And there is no
15 exception?

16 A. I don't think that --

17 Q. In this instance, there would be no
18 exception that would qualify for what Public Counsel is
19 trying to do, if the statute is read that way?

20 A. I think that the fundamental difference in
21 the interpretation occurs before you get to Section 4.

22 Q. We're just ignoring Section 4, is what
23 we're doing?

24 A. No, I don't think that we are ignoring
25 Section 4. And once again, I would point you to part 1,

1 which talks about it's the maximum allowable --

2 Q. If I change increase to exceed, then what,

3 is your response the same?

4 A. Well, I had a thought going when I was

5 trying to answer your question.

6 Q. I know, probably. I had one, too, and I'm

7 sorry.

8 A. I can either complete it --

9 Q. Why don't you hold on to it?

10 If I change increase to exceed shall not be

11 -- increase shall not exceed -- shall not exceed the

12 maximum allowable price, then where is your exception?

13 A. I'm looking for --

14 Q. Up in the very first part, the shall not be

15 subject to increase. If I just change that to say the

16 maximum allowable prices shall not exceed, except as

17 otherwise provided, then where is your exception?

18 A. What section are you at?

19 Q. I'm in the very first part of subsection --

20 on subsection 1, just before 2, just before sub 2. I'm

21 just on the same part you've been referring to. If I

22 changed the --

23 A. Shall not exceed.

24 Q. Yeah. Yes. Excuse me.

25 A. Shall not exceed what?

1 Q. The maximum allowable price, you shall not
2 exceed the maximum allowable price except as otherwise
3 provided. If that -- if that was the wording there, or if
4 that is the meaning there, where is your exception that
5 allows Public Counsel to say this is allowed under
6 statutes?

7 A. I think -- I think that changing the term
8 in the way that you've described doesn't maintain the
9 relevance of it. I don't -- which maximum allowable
10 prices -- tell me your -- the prices for
11 telecommunications services shall not exceed. You're
12 saying they shall not exceed --

13 Q. Shall not exceed --

14 A. -- the maximum allowable price.

15 Q. -- the maximum allowable price except, and
16 then as otherwise provided in this section.

17 A. I think that the difference is that I view
18 this as a statement of how do you change the maximum
19 allowable price.

20 Q. Yes, I recognize that, and that's why I'm
21 trying to ask the question because I'm trying to
22 understand your interpretation --

23 A. Well, then --

24 Q. -- of that provision.

25 A. -- you've taken out -- you've taken out a

1 direction as to how it can be.

2 Q. If it's viewed that way. In other words,
3 if it's -- if the meaning of this is basically as restated
4 the way I said it, you no longer have any argument that
5 your position is legal, do you?

6 A. Well, but I'm not -- I don't know that
7 that's true, because I don't know where, then, are you
8 telling me the direction is with respect to how the
9 maximum price can be changed.

10 Q. It's very clearly in subsection 4, isn't
11 it?

12 A. Well, there's still an issue of do you
13 interpret the word change -- I mean, I've been around a
14 while. I've had lots of legal arguments. It wouldn't
15 surprise me that one or two people would have a different
16 legal interpretation.

17 Q. Changed only means increase?

18 A. It could -- it could be, and in this case
19 where you specifically have a statement regarding increase
20 in part 1, I don't think it's unreasonable to believe that
21 this word change, and given the time frame in which it
22 occurred when the price, the Consumer Price Index was
23 going up, this -- the fact that they've been falling in
24 recent years is unexpected from an economic perspective.
25 Back in '96, it would be my belief that that would not

1 have been anticipated, that there were going to be
2 decreases in the Consumer Price Index.

3 Q. You think that the Legislature was -- would
4 have been unable to have foreseen that possibility?

5 A. I think most would not have expected it,
6 given that probably many have been to college and gone
7 through economics where they've learned that prices tend
8 to increase over time and --

9 Q. Do you think it might be -- might be
10 interesting that we would be changing the word changed to
11 increase and saying the Legislature obviously meant the
12 same thing? It's an interesting position for Public
13 Counsel to take, I think.

14 A. Well, I mean, you were there. So, you
15 know, it's not -- I'm looking at it now in hindsight, what
16 does it mean. I was actually around in 1996, but not over
17 there voting. So, you know, you may have a different
18 perspective.

19 Q. Actually, I'm just reading the language at
20 this point.

21 A. I was, too.

22 Q. But you would agree with me, would you not,
23 that there is no exception -- if I read this language in
24 the subdivision 1 the way we were talking about it
25 earlier, there is no exception like there is for carving

1 out these differences on how much you can charge for local
2 basic if you do the work on access, the rebalancing act?
3 We've got that exception out there. There's no exception
4 like that carved out in the proposal, is there?

5 A. I certainly do not mean to be disrespectful
6 in any way.

7 Q. You don't have to worry about that with me.
8 Just --

9 A. But -- but I think that there would still
10 be potentially a legal argument to be made about --

11 Q. All I'm asking --

12 A. Can I point you to another section?

13 Q. Yes. That's what I'm looking for.

14 A. Let me point you to something else that we
15 haven't talked much about yet.

16 Q. Okay.

17 A. If you were to consider -- I mean, this
18 company has come in asking for the CPI adjustment. The
19 alternative is that you come in requesting a producer
20 price adjustment, adjusted for exogenous factors. And I'd
21 like to point out to you, it's in Section 4, what is meant
22 by exogenous factors. Exogenous factors shall mean
23 accumulative impact on local exchange telecommunications
24 company's intrastate regulated requirement of more than
25 3 percent which is attributable to federal, state or local

1 government laws, regulations or policies, which change the
2 revenue expenses, investment of the company.

3 So I think that there is from -- this one
4 in my opinion deals more with cost, what are the company's
5 costs and what adjustments should they get based on cost.
6 Well, had this company come in under this one and wanted
7 to do the same thing and built the cost of an expanded
8 calling plan in and then brought it to you, I ask you to
9 consider would you still have the same problem or issue or
10 concern that you seem to have with doing it on the price
11 side?

12 Had they built in before they came to you
13 with an equal adjustment to everybody else costs that
14 include this calling plan --

15 Q. Can they use this -- this provision in this
16 case that you're referring to?

17 A. They've already come in with a method.

18 Q. Yes, and they can't use this other
19 provision, can they?

20 A. Not since they've already come in with this
21 one.

22 Q. Right.

23 A. However --

24 Q. And so -- so the fact is that they're not
25 under this other -- that other section, let's see, that's

1 B -- it's 4B, 1B, right?

2 A. I find it hard to believe that the intent
3 would have been inconsistent, whether it be prices, based
4 on prices or based on cost.

5 Q. But there is no -- we are not under that
6 provision in this case, are we?

7 A. That is correct. I did actually discuss
8 whether that might be an appropriate method to come in
9 with.

10 Q. But they didn't do it?

11 A. They did not do it.

12 Q. Thank you.

13 A. Thank you.

14 JUDGE RUTH: Commissioner Clayton?

15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. Do you need a drink of water, a break?

17 A. No, I'm fine. It depends, am I going to
18 get another round?

19 Q. I need a break. I have some questions.
20 I've just got a short list, and hopefully they won't be
21 too painful.

22 First question is, can Office of Public
23 Counsel vouch for the accuracy of the studies on usage or
24 costs as stated in the HC portions of the applications
25 made by CenturyTel?

1 A. I did some work discussing with their
2 costing people and, in fact, requested that they get some
3 more people that could answer the questions that I had
4 regarding the numbers. I felt confident in terms of that
5 the traffic numbers did not look out of line to me when I
6 looked at them relative to other --

7 Q. We're getting back to these double
8 negatives.

9 A. Sorry.

10 Q. Did not look out of line, so they looked in
11 line?

12 A. They looked in line. I'm sorry. I'll try
13 to avoid the double negatives.

14 Q. That's all right. You're not the first
15 person to do that, but there's a lot of it did not seem
16 inappropriate or something.

17 A. I hate to be someone who does that, so the
18 numbers, in terms of --

19 Q. You're a positive person. I understand
20 that.

21 A. The calling, the minutes and number of
22 messages looked okay to me.

23 Q. Okay. How about the dollar amounts --

24 A. The dollar amounts --

25 Q. -- in terms of the cost for having such a

1 program?

2 A. I actually did some work going back and
3 looking at what were the company's access rates for some
4 of the costs, because some of it was an offset of access
5 rates. And it looked like they were actually trying to
6 recover less on a per-minute basis from access than their
7 actual access rates are. Some costs they wanted to
8 recover I didn't agree with. I told them that we could
9 not support that, and ultimately they did not seek
10 recovery of those costs.

11 So I think that I'm okay with where the
12 dollar amount came out, in terms of the cost of doing the
13 plan that's before you. Now, if you're interested in some
14 other plan, I mean, I've looked at a few other things,
15 but --

16 Q. I just want to know if you buy their
17 numbers. That's all I'm asking. Do you accept the
18 assumptions and the estimates that they've made in their
19 cost estimates? They don't seem out of line to you, as
20 you said, so you're comfortable with them, is that --

21 A. As they are adjusted by the comments that
22 I've already made to the company.

23 Q. Okay. Is it an inappropriate question, I
24 mean, an HC question for me to ask what the average number
25 of minutes per month per user of calling from Rockaway

1 Beach to Branson for that calling scope? Can I ask that?

2 A. I think it's HC, but I could answer it, I
3 think.

4 Q. Okay.

5 A. Not in the open, no. I was waiting to --

6 Q. Hang on. Let me see if I have something.

7 JUDGE RUTH: We're going to hold off on the
8 HC section. We may go back to that question.

9 BY COMMISSIONER CLAYTON:

10 Q. Let me ask a few other questions and then
11 we'll come back to that. I'll try to close with the HC
12 questions.

13 You mention in your -- under questioning
14 from Commissioner Gaw that using these funds for other
15 purposes and adjusting rates or services or calling plans
16 was an appropriate use of funds. Is that a fair
17 reflection of what you said?

18 A. Yes. I'm not saying that every conceivable
19 use is appropriate. I'm saying that you'd have to look at
20 them on a case-by-case basis, but that, yes, there could
21 be target reductions that would be reasonable.

22 Q. What criteria should we use for determining
23 whether to target a particular service or geographic area?

24 A. I think that it makes sense, No. 1, to
25 ensure that there is truly a demonstration that the people

1 in the affected area want and need something.

2 Q. How do you truly demonstrate that --

3 A. In this case --

4 Q. -- other than saying I promise?

5 A. You've got or -- you know, 1,600 people in
6 this fairly small community signed a petition saying that
7 they needed to be able to call first and foremost Branson,
8 and I believe that there were also a number of people who
9 discussed Forsyth --

10 Q. So how many customers --

11 A. -- which is the county seat.

12 Q. How many customers are there in the
13 Rockaway Beach exchange? Is that an HC number?

14 MR. DORITY: Yes.

15 COMMISSIONER CLAYTON: Okay. We'll come
16 back to that one.

17 BY COMMISSIONER CLAYTON:

18 Q. Can you tell me what percentage -- you
19 can't do that either, if I ask you the percentage, that
20 wouldn't work either?

21 A. I could tell you that it is very
22 substantial relative to the --

23 Q. Okay. So just by sending in petitions, is
24 there any other criteria that you would use to truly
25 demonstrate their commitment or need or interest?

1 A. Well, I believe that the second thing that
2 you need to feel comfortable is the traffic, the level of
3 traffic that is exchanged between that community and where
4 they're seeking to target their calling plan. And we had
5 discussions with the company. We were provided with the
6 number of minutes, the number of messages from a
7 particular sampling of time, which is the way it was
8 traditionally done. You take a sample --

9 Q. I understand. So level of traffic. Any
10 other criteria?

11 A. And then you also want to make sure that
12 you don't just have one or two customers that are, like,
13 on the Internet all the time or aggregating traffic, that
14 that traffic that you do see is dispersed among the
15 population.

16 Q. So you verify that the level of traffic is
17 truly reflective of what's going on in the overall
18 customer base?

19 A. For the majority of customers. And we had
20 conversations. While we did not get a specific breakdown
21 of that, we did have conversations that I remember on the
22 phone with one of the people, I think, that was local to
23 the area that worked for CenturyTel who -- who verified
24 that, you know, there really was a general demand for
25 expanded calling, as well as Public Counsel's contacts

1 with the leaders in the area.

2 Q. Okay. In their petition -- and I
3 apologize. I need to look at the petitions that were
4 filed. But how specific was the petition that was filed,
5 I guess, starting with the Rockaway Beach petition? Did
6 it set a -- let me give you an example so you know what
7 I'm asking -- for example a particular price, number of
8 minutes, unlimited number of minutes, did they ask for --
9 did they ask to be subsidized by other exchanges? What
10 exactly did they ask for?

11 A. I think specifically -- and it's been a
12 while since I actually read the petition, but I think the
13 original petition that I read was primarily directed at
14 making their exchange part of the Branson local calling
15 scope. And then I think somewhere I read --

16 JUDGE RUTH: Can you tell me what you've
17 now brought up to --

18 THE WITNESS: I'm looking at the header on
19 the petition.

20 JUDGE RUTH: The original petition in this
21 case?

22 MR. DANDINO: One of them.

23 JUDGE RUTH: Okay. Thank you.

24 THE WITNESS: And so they asked by
25 telephone prefix, is how they were trying to get -- if you

1 have a 561-whatever last four digits and would like to be
2 able to call Branson at no extra charge or have a Branson
3 phone number, please sign this petition as it will go to
4 the Planning Commissioner, State of Missouri. We will
5 need approximately 80 percent of people who have a 561
6 phone number to make this work. Charlie Fain, attorney at
7 law, and his phone number.

8 COMMISSIONER CLAYTON: Former Commissioner.
9 Wasn't he the former Commissioner?

10 MR. DANDINO: Uh-huh.

11 COMMISSIONER CLAYTON: Staying active in
12 the regulatory field.

13 BY COMMISSIONER CLAYTON:

14 Q. Now, did you say at no extra charge? Was
15 that included in the petition?

16 A. It is included in here as no extra charge
17 in the petition.

18 Q. Do you support that aspect of their
19 petition, that they should have this -- this calling --
20 this calling line into Branson free of charge?

21 A. While I see, you know, historically the
22 exchange boundaries popped up where they did based on
23 company needs, not customer needs, but generally, at this
24 point in time, based on history and the fact that other
25 customers who have gotten EAS routes have paid an adder, I

1 think it's appropriate that there be an adder.

2 Q. Okay. And you also think that it's
3 appropriate, too, that there ought to be a subsidy in
4 there to help defray the cost of that service?

5 A. I was here when there was a discussion of
6 what subsidy means, and from an economist's definition of
7 subsidy, in no case whether it be Branson to Columbia,
8 Columbia to Branson, whatever, we're not talking about
9 subsidy, because if we talked about what are the
10 incremental costs of providing these services as local
11 services, we wouldn't even get to that issue. If you're
12 talking about generally --

13 Q. I'm just talking about from a layperson's
14 standpoint here. I'm not an economist.

15 A. Generally people paying more than --

16 Q. You're taking money from one person to pay
17 for service to someone else? I mean, that's the way I see
18 it. I mean, that's the way I'm looking at in terms of a
19 definition of a subsidy.

20 A. And in that case, yes, we are on board with
21 this proposal.

22 Q. You think that's appropriate?

23 A. I think that in this case it is
24 appropriate, as is true in many rate cases where there are
25 targeted needs met and the remainder of whatever access

1 there is is spread uniformly over rates.

2 COMMISSIONER CLAYTON: Judge, the last few
3 questions that I have will probably be HC, so I apologize
4 to our --

5 JUDGE RUTH: Give me just a minute. I need
6 to change the settings on the video streaming.

7 Okay. I need the parties to look in the
8 hearing room and see if there's anyone who needs to leave
9 before we start our in-camera session, and if someone in
10 the back can make sure the door's closed. I can't see
11 back there. Okay?

12 Are the parties satisfied that the room has
13 been sufficiently cleared?

14 MR. DORITY: Yes.

15 JUDGE RUTH: I heard a yes from CenturyTel.
16 Then we will move to the in-camera session.

17 (REPORTER'S NOTE: At this point, an
18 in-camera session was held, which is contained in
19 Volume 4, pages 230 through 240 of the transcript.)

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1 JUDGE RUTH: We are back in public session,
2 and I believe we have questions from Commissioner Appling.

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. Barb, I'm lost for any additional
5 questions, I think, but maybe two, two short ones here.

6 I am -- you're on board with this stip with
7 CenturyTel and trying to get this done for this location
8 in Missouri, right?

9 A. Yes, I am. And, I mean, I've already
10 explained a lot of the reasons. I would be able to
11 address for you just an economic development issue.

12 Q. Okay. Add that to the end, but let me ask
13 just two things. Two things that is facing me as a
14 decision-maker is the legality of it and the image of
15 opening the door for others to come behind this one issue.
16 Talk to me about your thoughts on those two issues and how
17 do we get -- how do I as a Commissioner who's going to be
18 faced here in the next couple of days of making a decision
19 whether to cast my vote for, and you might want to talk
20 about another way to get this done if you don't mind.
21 Kind of rambling on, but if you would.

22 A. Your first question was with respect to the
23 legality of it. As our attorney discussed, I think, in
24 his opening statements the last time you had a hearing on
25 this, you know, there's some latitude in how you can read

1 this statutory language, and even lawyers disagree about
2 what it says.

3 From an economic perspective, I tried to
4 explain earlier in my testimony why I think it makes sense
5 that you should maintain and recognize your discretion to
6 do things when rates are decreasing. That's consistent
7 with the same kind of testimony I provided to you in gas
8 and electric and water cases. It's not different in terms
9 of how I view the impact. I view it as more significant
10 when you're going to impose increases than when you're
11 going to be providing decreases. So the legality, we
12 believe that you can do it.

13 With respect to is it going to open the
14 door to other areas of the state or other communities
15 stepping up and saying, we need expanded calling, too,
16 yes, it will. Should it? Yes, it should. It has been
17 years where there has not been a uniform way by which
18 customers could have their expanded calling needs
19 satisfied. Why should they pay toll charges to call down
20 the road just a couple of miles to the town where they do
21 all their business?

22 The calling needs in Missouri should be
23 adaptable or --

24 Q. Flexible.

25 A. It should be flexible for people to call

1 where they need to at rates that are affordable. That's
2 what the federal -- one of the federal goals is and a
3 state goal that people in rural areas have services at
4 reasonable rates, just like do people in urban areas. And
5 you've in the past had the authority, under rate of return
6 regulation you have the authority to meet those needs, and
7 you do here, too, and I don't think there's anything wrong
8 with you opening this door.

9 It's sending a signal to people that for as
10 long as I've been here have felt that they're get nowhere
11 with their requests for expanded calling in their areas
12 unless they just happen to be lucky enough to live in an
13 area that's still rate of return regulated and where their
14 company is being pulled in for a rate case. And that's
15 going to happen less and less, especially with the new
16 legislation that was passed in the last session. So with
17 respect to opening the door, it needs to be opened.

18 I think that it promotes economic
19 development, especially in this lake region. You heard
20 Bill Voight talking about that area. And you asked me to
21 tack it onto the answer, so here's my pitch.

22 You know, one of the things that I do in my
23 job is I have to figure up what are the savings that our
24 office creates. And net of the cost of this plan, you
25 know, I calculate this thing you're going to be saving the

1 people in this area roughly a half a million dollars a
2 year in toll charges. Where does that money go? Instead
3 of going to New Jersey or Connecticut or wherever those
4 companies are, it's staying here in Missouri. It's
5 promoting the local economy, and ultimately the state.

6 Finally, you asked me to talk about an
7 alternative, is there an alternative. There are some
8 alternatives. I'll be up front about that. For years we
9 have been working on the issue of a Universal Service
10 Fund. That is an alternative that you, or it would be the
11 Commission, approve some kind of support that includes
12 funding expanded local calling. It will have to be
13 two-way. It will have to be mandatory.

14 The result isn't much different because the
15 way that the Commission has approved funding the Universal
16 Service Fund is through a surcharge on all customers in
17 the state. So, you know, there's a sharing of the cost if
18 you do that.

19 Another alternative is that you can
20 continue down the path where say, for example, Public
21 Counsel brings to you the concerns of a certain community
22 and we file them with you and you allow us a case and we
23 spend months or years trying to figure out how we're going
24 to fund the thing, because that's really the problem with
25 getting these things done. Until that's -- and I'm not

1 saying that this that we're asking you to approve today is
2 going to solve that problem on an ongoing basis.

3 I've got to stop. I'm going to cough.

4 Q. I didn't mean to burn you out completely.
5 I know you're having a tough time there, but that's okay.

6 COMMISSIONER GAW: I just want to note that
7 it was Commissioner Appling's questioning that caused her
8 to have to stop.

9 BY COMMISSIONER APPLING:

10 Q. I think that my colleagues have done that
11 job on you before you came up to me.

12 The question, last question I have, I
13 think, is if we choose another funding mechanism, we do
14 this a different way, you know, we come in for rates, have
15 you given any thought to whether it's going to cost the
16 consumer more money that way than the way in which you and
17 CenturyTel is proposing now? Which way is going to be the
18 most costly to our ratepayers?

19 A. Well, if you -- I mean, there are some
20 costs would be the same whichever way you do it. In some
21 cases when companies have to duke it out between
22 themselves, they tend to be a lot more critical of each
23 other's costs. So, you know, when you create a funding
24 mechanism that shoves all the costs on the customer, like
25 the surcharge which is just kind of a guaranteed recovery,

1 then I ultimately think that would cost more.

2 Q. This reaches a little bit further. Why are
3 you fighting so hard for this mecca, this economical mecca
4 in the state of Missouri? Do you see a need? Do you see
5 this being a great payoff and a good deal for the State of
6 Missouri?

7 A. I see it being an especially good deal for
8 the people in this community, in these affected
9 communities. I'm not suggesting it isn't. It's a good
10 deal for the State of Missouri as well. As I said, it
11 contributes to the local economy, keeps money in Missouri
12 that would otherwise not stay in Missouri, in my opinion.

13 And I think it facilitates more than just,
14 you know, financially are we better off. It helps
15 communities be stronger. It joins people with places
16 where they shop, where they see their doctor, and maybe
17 where they work. And, you know, I just -- I just think it
18 is reasonable to try and promote those things, and this is
19 an opportunity that we feel is legal to do.

20 COMMISSIONER APPLING: Thank you.

21 JUDGE RUTH: Commissioner Gaw, you have
22 more questions?

23 FURTHER QUESTIONS BY COMMISSIONER GAW:

24 Q. Well, I just wanted to understand something
25 that Ms. Meisenheimer just said about a half a million

1 dollars in savings. I just didn't follow that.

2 A. As part of my job, you know, I'm asked to
3 determine what is the contribution to the welfare of
4 ratepayers, and I went through and based on the calling
5 that occurs, utilizing the minutes and the cost per minute
6 that customers would otherwise pay for the calling scopes
7 that were approved less the cost of the plan, and that's
8 the entire cost of the plan, the part that is paid for
9 through the CPI adjustment and also, you know, it's -- the
10 savings that I would calculate that it would create versus
11 what other parties proposed.

12 So ultimately the company had proposed
13 higher cost, so there's a little difference there. But
14 ultimately the calculation that I did produced about a
15 half a million dollars savings a year for the customers
16 that would -- that would get this calling plan.

17 Q. I understand your conclusion. I'm just
18 trying to track what the numbers are that you had to
19 arrive at that point. You would have had the total cost.
20 Would that have been the figure that we saw on --

21 A. Well --

22 Q. -- included revenue, revenue, losses or
23 not?

24 A. How much would customers pay to make an
25 equivalent amount of calling --

1 Q. Okay.

2 A. -- if they had to do it at, like, toll
3 rates.

4 Q. Right.

5 A. And then there's also the adjustment for,
6 like, that part of this cost wasn't actually borne by
7 those customers, so I took that into account, too, that
8 you wouldn't -- part of it's paid for. I mean, the net
9 benefit has to deduct the total that was taken from the
10 CPI.

11 Q. Right.

12 A. So I did include that also in the
13 calculation.

14 Q. So when you say you included that --

15 A. I reflected it.

16 Q. -- amount --

17 A. I didn't claim that as a savings that we'd
18 produce since it was a net difference.

19 Q. Okay. That's what I'm looking for.

20 A. Yes.

21 Q. So that's basically outside of the scope of
22 what you're counting as a savings?

23 A. Right. Because it's not, I mean.

24 Q. In essence, for the whole picture. I'm
25 following you.

1 A. It would go to these customers or some
2 other customers, so it wasn't a net.

3 Q. And then the amount that would have been
4 going for access to CenturyTel, that's -- that's held
5 neutral, sort of, right?

6 A. Yeah. The real --

7 Q. So we're really talking about money that
8 would have been paid to long distance carriers less the
9 amount they would have paid in access?

10 A. We are talking about the amount --

11 Q. Am I tracking?

12 A. -- that customers would have paid to long
13 distance carriers versus what they will pay utilizing this
14 plan but subtracting from that the fact that they're not
15 providing the full recovery of the cost.

16 Q. But the part that you're missing in that is
17 that if I'm a -- if I'm that group of customers in this
18 Rockaway Beach area, I'm -- am I paying -- in all
19 likelihood am I paying a long distance carrier to transit
20 that call?

21 A. You are paying a long distance carrier some
22 number of cents per minute to complete that call.

23 Q. And then that long distance carrier then is
24 paying originating and terminating access --

25 A. Yes.

1 Q. -- back to CenturyTel?

2 A. To a price cap company, yes.

3 Q. And the reason I'm asking is because so, in
4 essence, the savings that we're talking about would be
5 that amount paid to the long distance carriers in that
6 area less the access paid by those carriers back to
7 CenturyTel?

8 A. That's -- that is not what I would view as
9 the savings to the customers. What I would view as the
10 savings to the customers are -- because, I mean, the money
11 comes back to the company. It doesn't necessarily go back
12 to the customers, reduce their rates. They're a price cap
13 company. So the access that comes back doesn't
14 necessarily ever make its way back to the customer.

15 So I view the savings to the customer as
16 the minutes of calling multiplied by a toll rate that the
17 customer pays, less what they would have paid for toll --
18 or less what they pay for it as this expanded calling
19 plan, so their rate, their 3 or 2.50 or 3.50 a month that
20 they're going to pay. So the customer would have paid,
21 say, ten cents a minute for X number of minutes. The
22 difference for him is that amount that they would have
23 paid as toll versus the \$2.50 adder, the \$3.50 adder that
24 they actually have to pay under this new plan.

25 But then I took from it the issue of that

1 there's more costs than are being reflected in the 2.50
2 rate that he's paying because I recognize that ultimately,
3 you know, we would have -- our office would have argued
4 that if that customer didn't get that benefit, then other
5 customers should have gotten that benefit originally from
6 the CPI adjustment.

7 Q. So you think the total savings to that --
8 to those Branson customers alone -- not Branson customers,
9 Rockaway Beach customers that are benefiting in the area
10 would in essence be the total of the difference plus the
11 amount of, we overuse the word subsidy, but whatever that
12 amount is that's being put in by the other exchanges that
13 aren't involved in any way in this plan?

14 A. The benefit that --

15 Q. The total benefit.

16 A. The total benefit would have been reduced
17 by the amount that the other customers are putting in.

18 Q. In your half a million dollars number?

19 A. Yes.

20 Q. But the total actual monetary benefit to
21 this area would be that half a million plus, the gross
22 benefit?

23 A. There is the issue of traffic stimulation.
24 I mean, that was kind of a simplifying thing that I didn't
25 talk much about yet, but there's -- you know, these people

1 may not have called as much as they would now.

2 Q. They're going to call more afterwards?

3 A. Yeah, with that consideration. And then
4 another benefit that I calculated in coming up with that
5 total number was -- and I discussed this with you
6 earlier -- that when you reduce the toll calling, that
7 means that local should be getting a higher proportion of
8 the CPI reduction, the minutes. When you change toll
9 minutes to local minutes, if you do an equal percent and
10 you get, what was it, 2 percent reduction, then there was
11 some money that should have been shifted away from an
12 access reduction into a local reduction. So I counted
13 that as part of the savings that were generated, too.

14 Q. Do you have those figures somewhere on
15 paper?

16 A. I don't have -- I don't have them with me.
17 I have -- I have, like, a draft that I prepared internally
18 for Public Counsel. I don't have a --

19 Q. Maybe -- there may be some opportunity to
20 see those later. I don't need to see them now.

21 COMMISSIONER GAW: Thank you, Judge.

22 JUDGE RUTH: Any additional questions from
23 the Bench?

24 COMMISSIONER APPLING: One additional
25 question.

1 FURTHER QUESTIONS BY COMMISSIONER APPLING:

2 Q. Barb, in the plan that you are putting
3 forth, you and CenturyTel is putting forth, would that
4 include Rockaway Beach, Mariam, Wit Village and Bull Creek
5 Village, also Forsyth and Branson, did that include that
6 whole district there? Is that right, Larry?

7 THE WITNESS: The For--

8 JUDGE RUTH: I'd like the record to reflect
9 the question was asked and answered by counsel, correct?
10 Could you state your answer for the record?

11 COMMISSIONER APPLING: I'm sorry.

12 JUDGE RUTH: No. That's okay.

13 COMMISSIONER APPLING: I just saw him
14 nodding his head back there, so I thought that was a quick
15 way to get to the answer.

16 JUDGE RUTH: It's not a problem. I just
17 want the record to reflect that counsel --

18 COMMISSIONER APPLING: We can go back to
19 Barb and just --

20 BY COMMISSIONER APPLING:

21 Q. Barb, tell me what area is involved.

22 A. I wish I'd been looking at him. I believe
23 it includes all of them, but Forsyth is actually a
24 separate exchange. I think some of those individual
25 communities might have the same telephone prefix as

1 Rockaway Beach, but I think -- is that right?

2 MR. DORITY: I'm going to keep my head
3 still. That's correct.

4 COMMISSIONER APPLING: Thank you. I was
5 just trying to get that straight and make sure everybody
6 was included in the scope here. Thank you.

7 JUDGE RUTH: Let me ask then, CenturyTel,
8 do you have anything you need to clarify on the record
9 before we go into cross from -- I'm sorry -- recross from
10 Staff?

11 MR. DORITY: No, thank you.

12 JUDGE RUTH: Staff, do you have recross?

13 MR. POSTON: No, we do not. Thank you.

14 JUDGE RUTH: And will there be redirect?

15 MR. DANDINO: No redirect, your Honor. No
16 redirect.

17 JUDGE RUTH: Thank you. Ms. Meisenheimer,
18 you may step down, but please remain available in case the
19 Commission wants to recall you.

20 Okay. CenturyTel, it's my understanding
21 that you have brought a witness also, Arthur Martinez.

22 MR. DORITY: Yes, Judge. Thank you.
23 Mr. Martinez was simply going to take the stand in
24 response to an inquiry from the Commission, or I should
25 say a directive from the Commission in an Order regarding

1 the community informational meetings. We did, in fact,
2 file a response this morning and attached Mr. Martinez's
3 affidavit to that pleading.

4 I don't know if that is sufficient in and
5 of itself or if the Commissioners have any questions they
6 would like to ask Mr. Martinez. He is here and available
7 to take the witness stand if that's appropriate.

8 JUDGE RUTH: I would like him brought up.
9 I have the pleading from this morning, and I believe the
10 Commissioners have it also, and I have a couple of
11 clarifying questions.

12 MR. DORITY: All right. Thank you. I'd
13 call Mr. Arthur Martinez.

14 (Witness sworn.)

15 JUDGE RUTH: Okay. Thank you. Proceed.

16 MR. DORITY: Thank you, Judge.

17 ARTHUR MARTINEZ testified as follows:

18 DIRECT EXAMINATION BY MR. DORITY:

19 Q. Could you please state your name and
20 address for the record, please.

21 A. Yes. My name is Arthur P. Martinez, and I
22 am at 220 Madison Street in Jefferson City, Missouri.

23 Q. Mr. Martinez, by whom are you employed and
24 in what capacity?

25 A. I'm employed by CenturyTel, and I am the

1 Director of Government Relations for the state of
2 Missouri.

3 Q. Mr. Martinez, are you testifying here this
4 afternoon on behalf of CenturyTel of Missouri, LLC?

5 A. That's correct.

6 Q. And how long have you been involved in the
7 telecommunications industry?

8 A. For 12 years.

9 Q. And has that been entirely with CenturyTel?

10 A. No, it has not. I started my career as an
11 economist on staff with the New Mexico State Corporation
12 Commission in the telecommunications division, and I've
13 also held various operational roles, including that of
14 assistant general manager and general manager for various
15 telephone companies.

16 Q. Thank you, sir. Mr. Martinez, did you
17 cause to be filed this morning a pleading titled Response
18 of CenturyTel of Missouri, LLC to Order Directing Filing,
19 wherein the company responded to the Commission's request
20 for further information on the community informational
21 meetings that had been referenced in pleadings in this
22 docket?

23 A. Yes, I did.

24 Q. And did you also attach your personal
25 affidavit to that pleading?

1 A. Yes.

2 MR. DORITY: Thank you. Judge, I have no
3 other preliminary questions at this time for Mr. Martinez,
4 and I would offer him for cross-examination and inquiry
5 from the Bench. Thank you.

6 JUDGE RUTH: Thank you. Is there any
7 cross-examination before we get to questions from the
8 Bench?

9 MR. DANDINO: No questions, your Honor.

10 JUDGE RUTH: No questions from the Staff?

11 MR. POSTON: No.

12 JUDGE RUTH: Fine. Do the Commissioners
13 have any questions for this witness? You have one? Go
14 ahead.

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. How are you doing, Arthur?

17 A. I'm doing fine, sir. Thank you.

18 Q. By any chance, since you're an economist,
19 have you given any thought at all to this area in the way
20 of savings to the consumers in the Branson/Rockaway Beach
21 area? Just while you're riding back and forth to work,
22 have you given any thought to what benefit beyond just
23 being able to call, is there some savings to these
24 individuals?

25 A. Well, beyond the fact that they will no

1 longer be paying toll, I believe this plan does provide a
2 plan to address some of the economic needs of the region.
3 Obviously I've attested that we've had community
4 informational meetings in the past concerning this area,
5 and I think there is a need from the community for
6 expanded calling.

7 And this is the, from our perspective, is
8 the way to accomplish it. Outside of using the CPI-TS
9 decreases, we know of no other way to accomplish this, and
10 I think that's the testimony of Ms. Meisenheimer as well.
11 So this is a reasonable plan and a fairly balanced plan
12 from our perspective.

13 Q. Do you think that the citizens of Rockaway
14 Beach, Branson, Forsyth understand the total cost this is
15 going to cost them to -- not only them, but it's going to
16 cost the people, the citizens of the state, do they have a
17 feel for what the cost, the total cost is going to be?
18 Don't you think they should know what it's going to cost?

19 A. I don't -- I don't disagree with that.
20 Obviously any ratepayer should be aware of what a service
21 is going to cost them. I think, though, we've had
22 community informational meetings. We do recognize that
23 there is a need for calling in this area, and we also have
24 an amended petition from the Office of Public Counsel
25 which laid out a rate of approximately \$3 that the

1 community was willing to pay for expanded calling.

2 Now, recognizing that the expanded calling
3 asked for in the petition was more extensive than what
4 this plan contemplates, as Ms. Meisenheimer and I think
5 Mr. Voight has testified here today, we did -- we have a
6 fixed set of dollars to work with, and we have attempted
7 to do the best that we can with those dollars.

8 COMMISSIONER APPLING: Thank you.

9 JUDGE RUTH: Commissioner Murray, do you
10 have questions?

11 COMMISSIONER MURRAY: Thank you.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good afternoon.

14 A. Good afternoon, Commissioner.

15 Q. If we were to approve this plan and then
16 the other communities came back and petitioned for
17 expanded calling, how would you be able to handle those
18 petitions? How would you be able to provide expanded
19 calling to those other communities that are not being
20 addressed here?

21 A. That's a little difficult to say, not
22 something even within their petition would entail. But
23 assuming that it would be over similar routes, I think we
24 would, if we're faced with other CPI-TS reduction, then I
25 think -- and this was proven, this was voted to be legal

1 by the Commission, then we would move forward and propose
2 that if there were further reductions in the CPI-TS, that
3 we would use that in this area or other areas.

4 Q. And suppose that there are not a reduction
5 in CPI-TS next time around.

6 A. The company is always looking to be
7 responsive to the needs of our customers, and we have
8 several optional plans that would be available in
9 different areas for those customers that might not have --
10 might not be part of this plan.

11 Q. Why wouldn't one of those optional plans be
12 available for the Rockaway Beach customers?

13 A. They are available today, and I think that
14 we -- to be responsive to the petition, that's why we've
15 looked at utilizing the CPI-TS in the manner that we have
16 in this particular plan.

17 Q. Do you know with the customers that are
18 being affected, all your customers that would affected by
19 this proposal, what would be the amount that your largest
20 customer would forego by -- I'm just asking you to give me
21 an approximation -- by not receiving the full CPI-TS
22 adjustment if it were spread out evenly amongst all the
23 customers?

24 A. I'm not sure if that's highly confidential,
25 but --

1 JUDGE RUTH: If the answer is confidential,
2 I can go into in-camera. Are you telling me that it is?

3 THE WITNESS: I believe it is.

4 JUDGE RUTH: Give me just a second.

5 (REPORTER'S NOTE: At this point an
6 in-camera session was held, which is contained in
7 Volume 4, pages 262 through 264 of the transcript.)

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1 JUDGE RUTH: Okay. Commissioner Murray, do
2 you have more questions?

3 COMMISSIONER MURRAY: Just one or two.

4 BY COMMISSIONER MURRAY:

5 Q. Of your 104 rate elements that are local
6 basic services, are all of the customers receiving a
7 reduction in all of those, even though it's not the full
8 percentage reduction they would receive otherwise?

9 A. Yes. To the extent we offer it, yes.

10 Q. For every one of those 104 local basic
11 services?

12 A. Yes.

13 Q. Okay. Just one last question. In terms of
14 the wisdom of setting this kind of a precedent, if you
15 look to the future and you have future applications for
16 expanded calling scopes in some of your exchanges and you
17 have created perhaps expectations that this kind of thing
18 can be done with the mechanism that you're using here, do
19 you see potential problems arising from that based on the
20 fact that, one, you can't determine whether the CPI will
21 go up or down year to year, and secondly whether any
22 adjustment would be sufficient to meet the needs of any
23 particular area?

24 A. No, I don't, and the reason being is that
25 this is done all the time in the context of a rate

1 proceeding as it would apply to a rate of return company.
2 Obviously CenturyTel and some of the other companies in
3 the state are not rate of return, and this is probably the
4 only way that we can see to effectuate this type of plan
5 and this type of revenue offset in the context of a price
6 cap, in the context of price cap regulation.

7 So I guess my answer would be that in the
8 context of a rate of return case, different ratepayers may
9 be impacted differently depending on the level of earnings
10 at any point in time, and it's not necessarily consistent
11 in that case either, nor can it be anticipated or
12 forecasted reasonably.

13 COMMISSIONER MURRAY: Okay. I think that's
14 all I have. Thank you.

15 JUDGE RUTH: Any additional questions from
16 the Bench, from the Commissioners? I have a couple of
17 questions.

18 QUESTIONS BY JUDGE RUTH:

19 Q. First, looking at the filing that was made
20 this morning, I note on page 2 of that filing that you
21 list three of the informational meetings, March 14, 2003,
22 April 17, 2003, September 30th, 2003. Am I to understand,
23 then, that there have not been any of these community
24 informational meetings or other public meetings since
25 2003? Most of those are slightly over two years old?

1 A. I believe there was a call that took place
2 between the petitioners and CenturyTel and the Public
3 Counsel, who represented petitioners, after that, but I
4 don't know. I can't recall the date on that. But these
5 three --

6 Q. But the call did not involve members of the
7 public, is that --

8 A. No. It did include members of the public.

9 Q. And you don't know when that was?

10 A. I can't recall the date.

11 Q. Or what members of the public, by category
12 at least, who was on that call?

13 A. There were representatives from, I believe,
14 Forsyth, Kimberling City, Rockaway Beach, and I believe at
15 the time mayor Fred Cravens was on the call as well as
16 other individuals.

17 Q. And Mayor Cravens was from what town?

18 A. He was the mayor of Rockaway Beach.

19 Q. How were those participants notified or
20 selected to be a part of that call?

21 A. I believe it happened based on our
22 experience in the previous community informational
23 meetings as well as information that the OPC had based on
24 their petitions.

25 Q. For the three meetings that you did hold in

1 2003, based on what's on page 2 of the pleading from today
2 it indicates the participants included representatives of
3 chambers of commerce, mayors and a state senator. Can you
4 tell me, were members of the chambers of commerce from
5 each of the communities that we're dealing with here, were
6 they present or were only some? I have the same question
7 for the mayors.

8 A. I believe there was --

9 Q. In other words, I'm saying this pleading
10 does not adequately answer the Commission's question. So
11 I'm trying to get more information from you.

12 A. Yes. There were representatives. I
13 couldn't say definitively that all the mayors were there,
14 but several were there. There were several business
15 leaders, including banks. I think there were some
16 representatives from various school districts. I think
17 there was even a representative from one of the colleges
18 in the area. There were state legislators that were
19 invited and attended, representatives and senator, and --

20 Q. Was the public informed in general or
21 invited to attend or only these particular --

22 A. These individuals, these community members
23 were invited.

24 Q. But it's your understanding that
25 representatives from all four of the communities were

1 invited to attend?

2 A. Yes, and I -- I believe that all four
3 communities were represented in some capacity during all
4 three of those meetings.

5 Q. And at that time, according to your
6 pleading, the participants expressed that there was a high
7 level of interest in providing alternative calling plans.
8 Two of those three meetings occurred more than two years
9 ago, and one was almost two years ago. Would you
10 anticipate that there has been any change in the high
11 level of interest?

12 A. No, I don't.

13 Q. And what are you basing that opinion on?

14 A. Based on the current petition and the fact
15 that it was modified just recently, as well as information
16 we're getting directly from our customers in that area.

17 Q. Is there any -- there's nothing in the
18 record to indicate those additional customer comments that
19 you're receiving; is that correct?

20 A. No.

21 Q. And I know you touched on this with
22 Commissioner Murray, but I want to follow up that I
23 understand. If the Commission were to approve this plan,
24 it includes the price cap tariff portion. Every year,
25 then, there would need to be in future price cap filings

1 or assuming the CPI goes up or down, there would need to
2 be a provision for funding the program again; is that
3 correct?

4 So say next year the CPI instead of
5 going -- CPI-TS, instead of indicating that there needs to
6 be a reduction, if there's an increase, your price cap
7 filing would have to take into account that increase and
8 allocate it out somehow to continue funding the program?

9 A. Continue funding which program?

10 Q. If the Commission were to approve the
11 proposed program that we have here.

12 A. Well, I don't know what you mean by
13 continue funding.

14 Q. Okay. The current proposed plan provides
15 that consumers telephone, they would pay 2.50 or 3.50,
16 depending on what town they're in, per month as a partial
17 funding mechanism.

18 A. Yes.

19 Q. The rest of the funding would come from
20 this adjustment or reallocation of some CPI-TS money.
21 There will be future reviews of the CPI-TS. And I want to
22 make sure, then, in those future reviews, wouldn't it also
23 be necessary to allocate money from those for funding this
24 program?

25 A. I think assuming that there is a decrease,

1 then yeah, I would consider -- you could consider those
2 dollars for funding this plan or further funding of this
3 plan or other plans.

4 Q. What if there was an increase?

5 A. Then you would have to look at all the
6 rates and determine how that would be allocated, how the
7 increase in the CPI-TS would be allocated so long as it
8 doesn't exceed the maximum allowable rate.

9 Q. So if there was an increase, I'm not sure
10 how you would fund it. Can you give me any other
11 clarification there? In other words, are you saying that
12 this plan only works as long as the CPI-TS goes down or
13 stays the same in future years?

14 A. I'm saying that this plan contemplates a
15 one-time adjustment based on the change in the CPI-TS for
16 this year. In subsequent years, depending on what the
17 change is, whether it's up or down, this plan could be
18 modified to account for that further reduction, to
19 accommodate a further reduction in the CPI-TS, or it -- if
20 it's a rate increase, then we would have to -- we would
21 apply the CPI-TS to the rates in accordance with the law.

22 Q. So under 392.245, paragraph 4, subpart 1,
23 there is to be the review annually of the maximum
24 allowable prices where it says that maximum allowable
25 prices for exchange access and basic local communications

1 services of an incumbent local exchange telecommunications
2 company shall be annually changed by one of the following
3 mechanisms or methods, and A is the CPI-TS that's being
4 used here. So next year there'll be a review.

5 MR. DORITY: Judge, I'm sorry to interrupt,
6 but I'm hoping that I might be able to clarify for you. I
7 could cover this in cross, but I think we're kind of
8 talking past each other here. If I could just perhaps
9 voir dire the witness with one question, I think I might
10 be able to help us here.

11 JUDGE RUTH: Please proceed.

12 MR. DORITY: Thank you.

13 Mr. Martinez, the dollars that are built
14 into the rates for this plan that's contained in the
15 Stipulation & Agreement utilizing the CPI-TS adjustment
16 for this year, those will be in the rates on an ongoing
17 basis and there will not be any need for future funding
18 from the CPI-TS to fund this particular plan; is that
19 correct?

20 THE WITNESS: That's correct.

21 MR. DORITY: Thank you. I hope that
22 clarifies.

23 JUDGE RUTH: That helps a lot. I have a
24 follow-up question.

25 MR. DORITY: I'll let you ask.

1 BY JUDGE RUTH:

2 Q. I understand there were assumptions based
3 into this plan, and those assumptions, one of them might
4 be how much calling -- how much this plan is utilized, how
5 many calls are made. Is it possible that it will need to
6 be adjusted in the future based on calling plans?

7 And Mr. Dority, if this is something you
8 can answer, please proceed.

9 MR. DORITY: Mr. Martinez, I'll let you --
10 it's my understanding that there would be no adjustments
11 on any ongoing basis in terms of that particular factor.

12 JUDGE RUTH: Okay. Thank you. I have no
13 other questions. Are there additional questions from the
14 Bench?

15 QUESTIONS BY COMMISSIONER GAW:

16 Q. Mr. Martinez, can you tell me, if you know,
17 what exchanges of CenturyTel qualify for competitive
18 status under the new laws that will be in effect as of
19 August the 28th?

20 A. I don't know that at this time.

21 Q. You don't know which ones might qualify?

22 A. I mean, it's still under evaluation and
23 we're still evaluating the new law.

24 Q. Is it difficult to determine how many
25 carriers there are in each exchange to see whether or not

1 you exceed -- is it match or exceed the number two, or is
2 it -- I mean, is there some difficulty in determining how
3 many carriers there are that allow you to qualify for
4 competitive status --

5 A. No.

6 Q. -- under that law?

7 A. I'm hoping not.

8 Q. Okay. What's the impediment, then?

9 A. We're still just evaluating the law and
10 we're working through it.

11 Q. Didn't you help write the law,
12 Mr. Martinez?

13 A. Did I help write the law? No. I believe
14 the legislators wrote the law.

15 Q. You weren't over there when the law was
16 being written?

17 A. Yes, I participated.

18 Q. That's what I thought. So the new statute
19 says two competitors?

20 A. That's correct.

21 Q. And one of them can be wireless?

22 A. Uh-huh. Yes.

23 Q. How many of your exchanges have one
24 wireless competitor, using that term loosely?

25 A. I think several of them have one wireless

1 competitor, at least.

2 Q. And I'm talking about your -- the
3 CenturyTel that we're talking about in this case, not the
4 Spectra, d/b/a CenturyTel.

5 A. That's correct.

6 Q. Do some of them not have a wireless
7 carrier?

8 A. I'm not aware of any.

9 Q. So probably all of them have one wireless
10 carrier, correct?

11 A. I can't say definitively that all of them
12 do.

13 Q. You don't know of any that don't?

14 A. No, I'm not aware of any that don't.

15 Q. Okay. And then so the only question then
16 would be, do you have a carrier that -- an additional
17 carrier that qualifies under the statute, correct?

18 A. Right.

19 Q. Under the new statute. And you haven't
20 completed that assessment?

21 A. No, we have not finalized that assessment.

22 Q. Do you know whether Columbia will qualify,
23 in your -- in CenturyTel's opinion?

24 A. Yes.

25 Q. It will qualify? Wentzville?

1 A. Yes.

2 Q. Is some of St. Charles in CenturyTel?

3 A. Yes.

4 Q. And it will qualify?

5 A. Based on my interpretation of the law.

6 Q. Sure. That's all I'm asking for. Branson?

7 A. Yes.

8 Q. Okay. What other exchanges does CenturyTel
9 have that I haven't mentioned? I'm not talking about
10 Spectra.

11 MR. DORITY: Commissioner, we have many,
12 many exchanges, and I think what Mr. Martinez is trying to
13 explain is that we are still evaluating that sort of a
14 filing on an exchange by exchange basis. And in all
15 honesty, it may be somewhat attorney/client privileged as
16 to what those feelings may need to contain in terms of
17 filing with the Commission, and I think that's what
18 Mr. Martinez is delicately trying to convey.

19 COMMISSIONER GAW: I'll try not to delve
20 into this much deeper, and I appreciate the point.

21 BY COMMISSIONER GAW:

22 Q. But if you get to a point where exchanges
23 are qualified as competitive, then is there anything that
24 prevents CenturyTel from pricing those services in that
25 exchange at whatever price that they choose to price it,

1 other than whatever competition does to control the
2 pricing?

3 A. There will be market constraints.

4 Q. Aside from that, there's nothing that --

5 A. I'm not aware of any other regulatory
6 constraints, except for the tariff filing requirements.

7 Q. Okay. So if you wanted to make these kind
8 of adjustments in exchanges if they did get qualified as
9 competitive, there's nothing to prevent at that point in
10 time adjustments to be made by CenturyTel in exchanges up
11 or down or otherwise except for the competitive forces?

12 A. I don't disagree with that.

13 COMMISSIONER GAW: That's all. Thanks.

14 JUDGE RUTH: Any more questions from the
15 Bench?

16 (No response.)

17 JUDGE RUTH: Then are there recross
18 questions, Public Counsel?

19 MR. DANDINO: No questions, your Honor.

20 JUDGE RUTH: Staff?

21 MR. POSTON: No questions. Thank you.

22 JUDGE RUTH: Redirect?

23 MR. DORITY: Just a couple.

24 REDIRECT EXAMINATION BY MR. DORITY:

25 Q. Very briefly, Mr. Martinez, you were asked

1 some questions regarding the pleading that was filed this
2 morning to which you attached your affidavit, and that was
3 focused on the community informational meetings as
4 discussed in the Commission's order; is that correct?

5 A. That's correct.

6 Q. And we anticipated that the Office of
7 Public Counsel would be filing a pleading that would
8 address the other contacts with members of the public; is
9 that your understanding?

10 A. That's my understanding.

11 MR. DORITY: And I don't know that you even
12 had an opportunity to see it since it was just filed this
13 morning, but your Honor, I would bring to your attention
14 the Office of Public Counsel did file a report on customer
15 contacts this morning, and paragraph 2 of that document
16 references the meetings that I believe Mr. Martinez
17 testified to, and that states in December 2004 OPC, Staff,
18 the company and various community leaders in the area held
19 a telephone conference to discuss desired options for
20 expanded calling.

21 And that, of course, happened a few months
22 ago in December of 2004, to again confirm the level of
23 interest that the community leaders had at that point in
24 time. I just wanted to clarify that for the record.

25 Thank you.

1 JUDGE RUTH: Mr. Martinez, you may step
2 down. Please remain available just in case we need to
3 recall you, although I don't anticipate it.

4 I'm going to give the parties an
5 opportunity for closing statements, if you wish. They're
6 not required. However, as the previous order scheduling
7 this hearing indicates, there will not be a briefing
8 schedule set for this.

9 The housekeeping matter I have is simply
10 that once the transcript is filed, I would ask that
11 CenturyTel review the in-camera portions. If there are
12 any of those portions designated as HC, in-camera that
13 should be made public, then CenturyTel needs to file a
14 notice and attach to the notice the actual portions that
15 should now be made public.

16 And the way you do that is, you know, you
17 can either get an electronic copy of the transcript, copy
18 it over, or you can actually take the HC portion and
19 blacken out the ones that you want to remain HC and just
20 attach then that sheet. It's up to you, but you'll need
21 to attach that actually to your notice if any of the HC
22 should be made public.

23 Do you have any questions on that,
24 Mr. Dority?

25 MR. DORITY: Is there a time frame?

1 JUDGE RUTH: I would request that it be
2 done within ten days, but if you need additional time,
3 just let me know.

4 MR. DORITY: Thank you.

5 JUDGE RUTH: And as I've mentioned, the
6 transcript is to be filed -- I'm sorry -- to be submitted
7 to the Commission tomorrow. It will take it a day or two
8 to actually get on EFIS. So if you want a copy sooner
9 than that, you'll need to see the court reporter before
10 you leave today.

11 Okay. Closing statements. Staff, I'm
12 actually going to ask you if you would go first, if you
13 have a closing statement.

14 MR. POSTON: I don't have anything in
15 addition to what I said in my opening. Thank you.

16 JUDGE RUTH: CenturyTel?

17 MR. DORITY: Thank you. May it please the
18 Commission?

19 As I stated in the earlier on-the-record
20 presentation, the Office of Public Counsel and CenturyTel,
21 the Stipulation & Agreement and its funding mechanism that
22 we have submitted to you is a creative solution which
23 strikes a fair balance between what is desirable and what
24 is feasible.

25 At the August 11 session, we focused on the

1 previous Sprint filings as indications of support for our
2 collective position that there is nothing in the language
3 of Section 392.245 that compels a price cap company to
4 reduce its basic local rates on an equal percentage basis,
5 contrary to Staff's position that they presented on that
6 August 11 date.

7 This morning, we now hear that the legal
8 impediment is not concerns about all adjustments being
9 equal. In fact, evidently, as I understood the Commission
10 counsel, the Commission itself previously argued in court
11 that if the statute had meant all the services equally,
12 the Legislature would have said so. Now the objection is
13 that it is a geographic area that is being targeted.

14 However, as Mr. Voight testified, the same
15 policy concerns could be levelled against elimination of
16 touch tone and mileage charges that were not universally
17 imposed by Sprint at that point in time.

18 There is no question, as you've heard this
19 morning, that the mandatory EAS proposals before you are
20 considered basic local services, and a portion of the
21 CPI-TS adjustment is being used for those purposes. All
22 customers are receiving the balance of the adjustment in
23 reductions to basic local service and access components.

24 As I stated on August 11, the Commission's
25 interest in this matter in the time devoted to

1 understanding its terms are greatly appreciated by both
2 the Office of the Public Counsel and CenturyTel. And I
3 would echo Mr. Dandino's request this morning that the
4 Commission make a determination on this legal issue that
5 the Staff has presented as quickly as possible.

6 Thank you.

7 JUDGE RUTH: Thank you, Mr. Dority. Public
8 Counsel?

9 MR. DANDINO: Your Honor, Public Counsel
10 has nothing further to add. Thank you.

11 JUDGE RUTH: Okay. Are there any other
12 matters that I need to address before we adjourn?
13 Commissioner Gaw?

14 COMMISSIONER GAW: I have questions for
15 counsel.

16 JUDGE RUTH: Okay.

17 COMMISSIONER GAW: But I don't want to jump
18 in front of anyone. Mainly to Public Counsel.

19 Mr. Dandino, you were referring back to
20 again 292.245, sub 1, and my understanding is that Public
21 Counsel is placing a great deal of its argument on the two
22 words, to increase, subject to increase, as being -- as
23 being definitive in regard to the ability of this plan to
24 be approved.

25 MR. DANDINO: Commissioner, that's only one

1 aspect of it. I mean, yes, we do point to that. This is
2 really a broader brush than just being able to say, well,
3 it's this sentence here and this sentence here, because I
4 wanted to point you out not only to that section and then
5 to, yes, the word change, and then going beyond this
6 section, well, the statute does refer to consistent with
7 392.200, which in that talks about just and reasonable
8 rates, just and reasonable facilities.

9 Then we have a -- we also have a position
10 here where reasonable lawyers -- the Staff's very
11 reasonable, accomplished lawyers. I believe our office
12 has reasonable lawyers, and the Commission has reasonable
13 lawyers and takes reasonable approaches. And we all
14 differed on the effect of making the CPI adjustment,
15 whether it was in bulk, to a certain area. We disagreed
16 whether it was an increase. Now, the Staff and -- is
17 disagreeing when it is a decrease. The Commission has
18 approved it when it was an increase, also approved it when
19 it was a decrease when the Sprint case was remanded back
20 and they turned it down. They brought it down.

21 Given that whole milieu of reasonable
22 people could disagree, that means to me that it's subject
23 to interpretation. When you're going to interpret a
24 statute, you want to look at the intent and purpose of it.
25 And at Section 392 -- my mind just went blank. It's a

1 section I cite all the time -- 185. Sorry. 185 provides
2 exactly the criteria that we need to look at, and in
3 those, it -- these are the goals. So if you're going to
4 interpret the statute, you want to look at these goals,
5 promote universal, available, widely affordable
6 telecommunications services, promote diversity, promote
7 parity in urban and rural areas, promote economic
8 educational health and cultural enhancement.

9 All this is a tapestry-- I like to refer to it
10 as a tapestry. You can't look at one little section and
11 say, that's what the law means.

12 COMMISSIONER GAW: You sure can't,
13 Mr. Dandino, but isn't it true when you have a specific
14 provision in a statute, that you cannot ignore it either?

15 MR. DANDINO: That's true. That's true,
16 your Honor.

17 COMMISSIONER GAW: So I'm going to go
18 through this with you, and I apologize, but if you -- I'm
19 trying to get some better understanding of how this
20 position got carved into Public Counsel's view, and I'm
21 just struggling with that as you know.

22 MR. DANDINO: Certainly.

23 COMMISSIONER GAW: It clearly says that the
24 maximum allowable prices shall not be subject to increase
25 except as otherwise provided in this section.

1 MR. DANDINO: That's right.

2 COMMISSIONER GAW: And as I understand it,
3 Public Counsel is making some argument that the fact that
4 they use the words "to increase" are important in its
5 position.

6 MR. DANDINO: It shows the intent of the
7 statute is to put a cap on increases.

8 COMMISSIONER GAW: Now -- I'm sorry to cut
9 you off.

10 MR. DANDINO: No. That's fine.

11 COMMISSIONER GAW: So is it Public -- just
12 to clear one thing up right now for me, is it Public
13 Counsel's position that if a maximum allowable price was
14 established in 2000 or in 2001, that there is nothing here
15 that requires a downward movement or change in the price
16 even if the CPI goes down and the company had elected
17 under (4) (1) (A).

18 MR. DANDINO: In that, I think the literal
19 reading of it, you'd say, of course, they had to decrease
20 it.

21 COMMISSIONER GAW: Okay. And why is that?

22 MR. DANDINO: I think if you just -- if you
23 look at it in terms of -- I think just reading the very
24 literal word without considering anything about the intent
25 and purpose of the statute, you may very reasonably reach

1 that conclusion.

2 COMMISSIONER GAW: But in order to say that
3 it has to come down, I have to suggest that there's some
4 other language that forces it downward other than the two
5 words, to increase, right? I mean, because otherwise
6 there's to increase doesn't say to decrease. That seems
7 to be Public Counsel's position.

8 So what is it that Public Counsel would
9 argue if a company came in and said, the CPI went down,
10 we're electing under that provision, but the statute says
11 that we can't increase, so we're not moving the prize?
12 What would you argue?

13 MR. DANDINO: We would say that it requires
14 that there be a reduction in local basic rates. Okay.
15 And what we're saying is that the manner in which that is
16 done based upon the intent and purpose of the statute once
17 again --

18 COMMISSIONER GAW: I understand, and I want
19 to get to that argument in a minute. I just want to
20 establish a very basic level of agreement here in this
21 discussion.

22 MR. DANDINO: If we were just talking about
23 what the literal, we would say that a reduction is
24 required.

25 COMMISSIONER GAW: And would that be

1 because of the provision -- essentially because of the
2 provisions under 4 sub 1 where it says that the company
3 shall -- that the basic -- the charges for basic local
4 shall be annually changed in 4 sub 1? Would that be your
5 argument about why it has to come down?

6 MR. DANDINO: I would say in that and also
7 in subsection 2.

8 COMMISSIONER GAW: Yes.

9 MR. DANDINO: The second sentence,
10 incumbent local exchange company shall file tariffs to
11 reduce the rates charged for any service in any case which
12 a current rate exceeds the maximum allowable price.

13 COMMISSIONER GAW: Okay. So there are two
14 arguments there that you would make.

15 MR. DANDINO: Sure.

16 COMMISSIONER GAW: Now, here's -- now I
17 want to get to the next part of your argument. In
18 subdivision 4(1), right up there above -- well, it's kind
19 of in the middle where it says, the second -- I think it's
20 the second except in 4(1) where it says, except as
21 otherwise provided in subsections 8 and 9 of this section
22 and Section 248, and then it goes on to talk about maximum
23 allowable prices for large ILECs. Do you see that?

24 MR. DANDINO: Yes.

25 COMMISSIONER GAW: That seems to carve out

1 an exception to the maximum allowable price, doesn't it?

2 MR. DANDINO: I don't know if I'd put it in

3 terms of an exception to it. I was --

4 COMMISSIONER GAW: It uses the word except.

5 MR. DANDINO: Right. And I see it more as

6 saying that these sections contain different provisions.

7 COMMISSIONER GAW: Let's go to one part of

8 subsection 8, and you're familiar with subsection 8 I

9 know --

10 MR. DANDINO: Yes.

11 COMMISSIONER GAW: -- because you've argued

12 it here and Court of Appeals and everywhere around. That

13 refers to what, generally?

14 MR. DANDINO: That's the rollback provision

15 for --

16 COMMISSIONER GAW: Access?

17 MR. DANDINO: Access, right. That's right.

18 COMMISSIONER GAW: And subdivision 9, which

19 is also listed as an exception?

20 MR. DANDINO: That's part of the two.

21 COMMISSIONER GAW: Those two sections work

22 together, don't they?

23 MR. DANDINO: That's correct.

24 COMMISSIONER GAW: All right. Now, I want

25 you to look there in that, I think it's the first

1 sentence. My arms need to get another couple of inches
2 longer so I can see this. See where it says, other
3 provisions of this section to the contrary
4 notwithstanding, and no earlier than January 1st, 1997,
5 the Commission shall allow an incumbent local exchange
6 telecommunications company regulated under this section
7 which reduces its intrastate access service rates pursuant
8 to subsection 8 of this section to offset the revenue loss
9 resulting from the first year's access service rate
10 reduction by increasing its monthly maximum allowable
11 prices applicable to basic local exchange
12 telecommunications services by an amount not to exceed
13 \$1.50.

14 Do you see it uses the term there again
15 increasing its monthly maximum allowable prices?

16 MR. DANDINO: Yes.

17 COMMISSIONER GAW: Now, I want to go to the
18 other section that's mentioned, and that's in 392.248, if
19 you can find it here again.

20 MR. DANDINO: Universal Service Fund.

21 COMMISSIONER GAW: Yeah. I want you to
22 look at subsection 3, and I think it's the third sentence
23 down, and I'll just read it here for the record. A
24 telecommunications company regulated under Section 392.245
25 may upon providing written notice to the Commission

1 increase the maximum allowable prices for any or all of
2 its telecommunications services except -- you always love
3 this part, pardon the editorial -- residential basic local
4 telecommunications services above those maximum allowable
5 prices otherwise established in Section 392.245 by an
6 amount not to exceed the amount required to recover
7 50 percent of its assessment under this section.

8 My point there again is it uses the phrase
9 increase maximum allowable prices, which again ties back
10 to subsection 1 of 245. I know it's not your position,
11 Mr. Dandino, but isn't it entirely plausible that all of
12 these provisions can be read very consistently just by
13 saying that there is a maximum allowable price and you
14 cannot go beyond that maximum allowable price except under
15 the provisions that are defined here on rebalancing on
16 access and local basic and for purposes of assessing USF
17 charge?

18 MR. DANDINO: That you can't increase
19 beyond those?

20 COMMISSIONER GAW: Yes.

21 MR. DANDINO: That's right.

22 COMMISSIONER GAW: I think that's all I
23 have, Judge.

24 One question of counsel, which you may not
25 have to disclose to me, because it may be, as was pointed

1 out earlier, an attorney/client thing, so just say. But
2 did Public Counsel make a request of the department
3 director under 386.710 sub 3 regarding inquiring whether
4 additional counsel could be appointed for any of the other
5 consumers that are impacted outside of the Branson/
6 Rockaway Beach area in this case?

7 MR. DANDINO: Since we didn't see it as a
8 conflict of interest, we did not.

9 COMMISSIONER GAW: Okay. I just wanted to
10 ask, and that's all I have, Judge. Thank you.

11 JUDGE RUTH: Thank you. Were there
12 additional questions from the Bench?

13 (No response.)

14 JUDGE RUTH: Okay. Since we've had some
15 additional discussion, I'll allow the parties an
16 opportunity to supplement their closing statements if you
17 wish. Staff?

18 MR. POSTON: This is just based on the
19 questions from Mr. Dandino?

20 JUDGE RUTH: Yes.

21 MR. POSTON: No, thank you. I have nothing
22 further.

23 JUDGE RUTH: CenturyTel?

24 MR. DORITY: No, thank you.

25 JUDGE RUTH: Public Counsel?

1 MR. DANDINO: Oh, no. Thank you.

2 JUDGE RUTH: Then are there any other
3 matters from the parties that we need to discuss before we
4 adjourn?

5 Okay. Seeing none, this hearing is
6 concluded and we are off the record.

7 WHEREUPON, the hearing of this case was
8 concluded.

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