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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

ON-THE-RECORD PRESENTATION

HEARING

August 11, 2005

Jefferson City, Missouri

Volume 2

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

VICKY RUTH,
SENIOR REGULATORY LAW JUDGE.
JEFF DAVIS, Chairman
CONNIE MURRAY,
STEVE GAW
ROBERT M. CLAYTON, III,
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

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

2 JUDGE RUTH: We're on the record in Case
3 TO-2003-257 in the matter of the request for the customers
4 from the Rockaway Beach for an expanded calling scope to make
5 toll-free calls to Branson.

6 My name is Vicky Ruth and I'm the regulatory
7 law judge assigned to this case.

8 Okay. Let's start with entries of appearance.
9 Public Counsel.

10 MR. DANDINO: Good morning, your Honor.
11 Michael Dandino, Office of the Public Counsel, Post Office Box
12 2230, Jefferson City, Missouri 65102 representing the Office
13 of Public Counsel and the public.

14 JUDGE RUTH: Thank you.
15 And CenturyTel.

16 MR. DORITY: Thank you, Judge. Appearing on
17 behalf of CenturyTel of Missouri, LLC, Larry W. Dority with
18 the firm Fischer and Dority, PC. Our address is 101 Madison,
19 Suite 400, Jefferson City, Missouri 65101.

20 JUDGE RUTH: Thank you.
21 And Staff.

22 MR. POSTON: Mark Poston appearing for the
23 Staff of the Missouri Public Service Commission, PO Box 360,
24 Jefferson City, Missouri 65102.

25 JUDGE RUTH: Thank you.

1 Today's hearing was scheduled in order to
2 provide the Commissioners with an opportunity to ask questions
3 regarding the expanded calling scopes plan that some of the
4 parties proposed in the Stipulation and Agreement. We will
5 begin with brief opening statements followed by questions from
6 the Bench. Do the parties wish to propose an order for
7 opening statements?

8 MR. DANDINO: Your Honor, I'd be glad to go
9 first.

10 MR. DORITY: I'd be happy to follow as one of
11 the signatory parties.

12 JUDGE RUTH: Okay. Staff you get to be last.

13 Okay. The Commissioners will generally address
14 their questions to counsel. If counsel is not able to answer
15 the question, counsel may be directed to file supplemental
16 pleadings on an expedited basis. However, it is possible that
17 if available, a witness may be called to the stand to answer
18 the question. If there are any witnesses that are sworn in,
19 any cross-examination will take place after all of the
20 questions from the Bench.

21 At the end of the questions from the Bench, the
22 parties will have an opportunity for brief closing statements
23 and we will discuss at that time whether one round of briefs
24 are necessary.

25 The transcript has been expedited and will be

1 submitted tomorrow. If you want an electronic copy, you'll
2 need to see the court reporter before she leaves today.

3 Are there any other preliminary matters that
4 the parties want to address at this time?

5 Okay. Seeing none, we'll go to the opening
6 statements. And Public Counsel.

7 MR. DANDINO: Thank you, your Honor. May it
8 please the commission.

9 This case has its origin back in I'd say
10 January -- January 29th or so of 2003. At that time Missouri
11 Office of Public Counsel filed petitions with some 1,600
12 telephone customers of the Rock-- of CenturyTel's Rockaway
13 Beach NXX-561000 exchange requesting that the Public Service
14 Commission take action so that customers in that community
15 could call toll-free into Branson. They claimed they had a
16 close community of work. At the time they did not specify
17 exactly what they wanted in terms of price, exactly what
18 routes and whether it be mandatory or not.

19 The case has now evolved through -- and I
20 discussed it in the response that we filed on Monday, kind of
21 the history from -- through the end of COS through the
22 petition, into the MCA investigations, into investigations
23 into expanded calling, into petitions for public hearings to
24 be heard in these areas to hear the comments of the citizens
25 for expanded calling, to the task force to investigate

1 expanded calling, to the report of the task force recommending
2 a procedure, through the rulemaking -- proposed rulemaking,
3 which is now before the Commission on establishing a process
4 for determining these petitions for expanded calling. We've
5 come very -- a long way and not very far.

6 This Stipulation and Agreement is an attempt to
7 fulfill a need. I think we admit, both CenturyTel and Public
8 Counsel, that it does -- that we can't afford to meet all the
9 needs, we can't afford to do everything. But I suggest to the
10 Commission that we can't afford to do nothing.

11 I think it is time for a solution. And this
12 Commission has always urged that the companies be innovative
13 and I think that the Stipulation and Agreement is an effort to
14 be innovative. And I also think that it is an effort to
15 comply with the law, to fall within the law.

16 As an attorney, I would not suggest something
17 that I believe to be illegal to this Commission. And
18 Mr. Dority certainly wouldn't, so there is a rationale and
19 there is I think a reasonable rationale on how we approach
20 this.

21 I would approach this first by looking at the
22 same criteria the court uses when it looks at a Commission's
23 order. Is it lawful? Is it reasonable? Let's look at the
24 lawfulness. Is the funding mechanism that we're proposing in
25 the Stipulation and Agreement prohibited by the price cap

1 statute? It certainly is not. There is not prohibition of
2 it.

3 Also, is it expressly -- explicitly provided
4 for? Well, I have to admit that it is not explicitly provided
5 for. So I think the next area of inquiry is, is it reasonably
6 implied as incidental to the Commission's express powers and
7 authorities?

8 Now, there is authority in the statute in
9 386.250 subsection 1 -- I'm sorry, subsection 7 dealing with
10 the jurisdiction of the Commission. And it says -- and it is
11 talking about the powers and duties of the Commission and it
12 says in subsection 7, To such and further extent to which all
13 other and additional matters and things in such further
14 respects as may herein appear either expressly or implied.

15 Yes, the Commission is a body of limited
16 jurisdiction, but it also is a body which provides remedial
17 relief to citizens. And I think that there is a -- that
18 implied -- that implies and expresses their ability to fashion
19 remedies which carry out the intent of the legislation. But,
20 of course, the inquiry must always begin with the statute, the
21 specific statute 392.245.

22 And I believe in -- you have to look at what
23 the purpose of the statute as well as the language. You can't
24 look at the language just in isolation and you can't look at
25 the statute in isolation. It has to be looked at in the whole

1 context of all the telecommunications statutes.

2 But I think in Section 392.245, subsection 1
3 and it says, As used in this chapter, price cap regulation
4 shall mean establishment of maximum allowable prices for
5 telecommunications services offered by an incumbent local
6 exchange telecommunication company -- and here's the important
7 part -- which maximum allowable prices shall not be subject to
8 increase except as otherwise provided in this section.

9 Now, let's look at subsection 4,
10 subparagraph 1, which specifically is addressing the
11 adjustment for local basic service and switched access
12 service. And it talks in terms of setting the -- freezing the
13 basic -- freezing their prices as of a certain date after it
14 becomes a price cap company. And then it says, It shall be
15 not -- prices shall not be changed prior to January 1st, 2000.

16 Then it provides, Thereafter, the maximum
17 allowable prices for exchange access and basic local
18 telecommunications service of an incumbent local exchange
19 telecommunications company shall be annually changed by one of
20 the following methods. Then it provides two methods. One is,
21 A, by the Consumer Price Index Telecommunications Service
22 CPITS. Also, it provides an alternative, which provides for
23 an adjustment based upon the Gross Domestic Product Price
24 Index.

25 And let's look under subsection 2. It says,

1 When the Commission shall approve a change -- and this is
2 under paragraph A. It says, When the Commission shall approve
3 a change to a maximum allowable price. Doesn't say to all
4 maximum allowable prices, but to a maximum allowable price
5 pursuant to the paragraph and it tells you when they should
6 act.

7 In subsection B -- in subsection 3 when you're
8 doing an adjustment under B, the Gross Domestic Product Index,
9 there is an inquiry that the Commission can make that the
10 change in the price wouldn't be in the public interest and it
11 allows the Commission to make a determination considering the
12 relationship of the price that it serves and the impact of
13 competition on the incumbent exchange company based on some
14 revenues.

15 What I'm getting at, even though this section
16 doesn't necessarily specifically apply, is that the statute
17 does not adopt a hard and fast rule. It allows some
18 flexibility. And I think in terms of that, that's what I'm
19 looking for is it's not only the basis for it, but also the
20 intent of the legislature.

21 And I ask the Commission to look through
22 Section 392.185, which talks about the purposes of the
23 chapter. And, in particular, in this case we have -- the
24 purposes is No. 3, to promote diversity in the supply of
25 telecommunications services and products throughout the state,

1 promote -- No. 1, promote universally available and widely
2 affordable telecommunications services and promote parity of
3 urban and rural telecommunications services.

4 Using these elements and also the intent of the
5 legislature, I think that our solution is well grounded. The
6 prohibition of the -- the price cap statute goes more toward
7 preventing increases rather than -- and making sure that the
8 consumers receive some benefit of decreases, but they want
9 to -- the emphasis is on increases.

10 That was also apparent in the Missouri Supreme
11 Court case recent involving State ex rel Sprint versus PSC
12 where the court basically said is this -- price cap is to put
13 a cap on the prices to protect from -- protect consumers from
14 increases.

15 And I think I want to go to -- just briefly to
16 the next question is the reasonableness, because that also
17 goes to whether this is lawful or not. And I think the
18 solution here is we would be faced with a situation without
19 this that there is the possibility of -- we believe that the
20 Rockaway Beach exchange has an inadequate local calling scope.
21 And believe that the Commission would need to take action
22 under Section 392.200.1 to provide for adequate service at
23 reasonable and just prices.

24 That is basically one of the issues of what
25 we're settling in this Stipulation and Agreement. What it

1 also does is also provides a means to use the reduction in the
2 CPI to make sure it just isn't dissipated in being spread
3 across the board. We can see in examples where the consumer
4 gets little to no benefit is when access rates are reduced and
5 the companies -- and the long distance companies reduce
6 their -- or to flow it through, but if you put it on a
7 statewide basis, the consumer hardly sees any real relief.
8 The reduction is lost in the rounding.

9 I think at this point I believe that Office of
10 Public Counsel in its response on Monday and CenturyTel have
11 both provided a reasonable, legal rationale for the
12 application of -- for the approval of this Stipulation and
13 Agreement, believe it is reasonable, believe it is in the
14 public interest. Thank you

15 JUDGE RUTH: Thank you.

16 CenturyTel.

17 MR. DORITY: Good morning. For the record, my
18 name is Larry Dority with the law firm of Fischer and Dority,
19 PC, and I represent one of the signatory parties to the
20 Stipulation and Agreement now before you, that being
21 CenturyTel of Missouri LLC.

22 Mr. Dandino, of course, represents the other
23 signatory party to the stipulation, the Office of Public
24 Counsel. And I appreciate his remarks this morning in support
25 of the Stipulation and Agreement.

1 I also want to convey our appreciation to the
2 Commission for your expeditious approach in addressing this
3 important matter and for scheduling this on-the-record
4 presentation this morning.

5 I intend to focus my brief remarks on the first
6 topic of discussion listed in the Commission's order issued
7 this past Tuesday, that being whether the proposals funding
8 mechanism, particularly funding accomplished through the
9 company's annual price cap filing is consistent with Missouri
10 statutes. My short answer is, of course, yes, it is.

11 Mr. Dandino has provided with you an extensive
12 analysis this morning supplementing that contained in the
13 response of Public Counsel filed this past Monday.

14 At the outset, I would like to take just a few
15 moments and offer some observations on the extraordinary
16 efforts and processes employed in reaching the resolution
17 presented to you in the Stipulation and Agreement. As noted
18 in OPC's response, our joint proposal is a cooperative effort
19 by the company and Public Counsel to balance the interests of
20 the community, the interests of all CenturyTel ratepayers, the
21 company and the public interest as a whole to provide a
22 creative solution to a long-standing local calling area
23 problem, providing the necessary financial resources for the
24 solution, which does not adversely affect the company,
25 provides that the local community bear a part in the financial

1 burden of the plan, yet maintain the affordability of the
2 plan. And also, as they point out, the plan strikes a
3 balance between what is desirable and what is feasible.

4 While the process may have been longer than any
5 of us would have wished, I want to emphasize and express our
6 appreciation to the Office of the Public Counsel and the Staff
7 members who, along with CenturyTel employees, worked
8 diligently to address this important issue. And I also want
9 to thank Judge Ruth for her continued patience in granting our
10 various motions and status reports to allow these efforts to
11 proceed.

12 Speaking of status reports, Public Counsel,
13 Staff and CenturyTel advised the Commission in June that
14 discussions and analysis were continuing to be fruitful and
15 that we anticipated the process would reach closure with an
16 agreement or not by the end of July. And we advised the
17 Commission that weekly meetings and conference calls would be
18 held to that end.

19 Any proposal's funding mechanism was a critical
20 component of those discussions and the possible link to the
21 company's annual price cap tariff filing, which was due to be
22 filed on July 15th, necessitated CenturyTel's application for
23 a variance, which was supported by both the OPC and Staff to
24 allow 30- rather than 45-day effective dates in order to
25 maintain such a mechanism as a viable option and component to

1 any resolution that might be reached.

2 Indeed, the application for variance
3 specifically referenced the continued negotiations in this
4 docket that could relate to CenturyTel's price cap rate
5 changes, and that was noted in the Commission's order granting
6 the variance on July 14th. In fact, those extra days allowed
7 OPC and CenturyTel to reach a resolution and the work product
8 is the Stipulation and Agreement that is now before you.

9 To that point, Public Counsel and CenturyTel
10 have been very clear and candid about this proposal and its
11 funding mechanism, specifically setting out its parameters in
12 the Stipulation and Agreement as well as the cover letter
13 accompanying CenturyTel's price cap filing.

14 CenturyTel has provided additional specific
15 information further explaining the revenue requirements and
16 the funding mechanism of the proposal in its response to order
17 directing filing that was submitted this past Friday,
18 August 5th.

19 I would note for the record that in its
20 August 8th filing, Public Counsel begins its pleading with the
21 statement that, Public Counsel concurs in and supports the
22 responses CenturyTel filed on August 5th, 2005 detailing the
23 financial and operational aspects of the expanded local
24 calling plan for the Rockaway Beach community.

25 Our perspectives on the legal argument raised

1 by Staff are fully set forth in our responsive pleading filed
2 on Monday of this week. And I would refer you to those
3 suggestions and the attached Sprint filing in the year 2000 as
4 support for our position that there is nothing in the language
5 of Section 392.345 that compels a price cap company to reduce
6 its basic local exchange rates on an equal percentage basis.

7 The rate design used to implement the CPITS
8 rate adjustment may be applied in any reasonable manner
9 provided it is approved by the Commission and adjust basic
10 local exchange and access rates in the aggregate by the full
11 amount of the CPITS adjustment mandated in Section 392.245.
12 Under the signatory parties' plan, that result is achieved.
13 Thank you.

14 JUDGE RUTH: Thank you.

15 And Staff.

16 MR. POSTON: Good morning. My name's Marc
17 Poston. I'm here on behalf of the Staff and I'll get right to
18 the disagreement and the reasons why the Staff did not sign
19 the Stipulation and why we do not support the Stipulation.

20 Basically, we just disagree with the legal
21 interpretations that CenturyTel and OPC have offered. Under
22 392.245 it says that, The maximum allowable prices for basic
23 local telecommunications service shall be annually changed by
24 one of the following methods. And one of those methods is by
25 the change in the CPI. It doesn't say the maximum allowable

1 price shall be changed by any amount so long as the overall
2 revenue reduction to the company is equal to an across the
3 board adjustment. It clearly says the maximum allowable
4 prices shall be changed by the change in the CPI.

5 And if you look further down in 392.245, I
6 believe it's subsection 4(2), it furthers this analysis by
7 saying, The ILEC shall file a tariff to reduce rates for any
8 service in any case in which the current rate exceeds the
9 maximum allowable price. And the Stipulation proposes to
10 reduce basic local rates by an amount that is not equal to the
11 CPI for all of CenturyTel's basic local service customers.

12 And briefly addressing the comments that
13 Mr. Dandino made regarding the purposes of the Commission's
14 statutes and interpreting those, I guess, liberally, I would
15 just ask the question is where do you draw the line between a
16 statute that the Commission has some flexibility to liberally
17 construe and the statute that seems to say basic local
18 services shall be annually changed by the CPI adjustment?
19 So I just have difficulty in agreeing with their analysis
20 considering this language.

21 I should also mention that in the Staff's
22 pleading on Monday, we suggested that we had concerns with the
23 reasonableness of the proposal as well. And late yesterday
24 afternoon we filed a motion to -- motion to -- I can't think
25 of the name of what our motion is.

1 JUDGE RUTH: Suspend.

2 MR. POSTON: Motion to suspend, thank you, the
3 tariff filing. And in that we attached a recommendation or
4 memorandum from Mr. Voight and it explains the reasonableness
5 concerns we have.

6 And among those the -- I guess the amended
7 petition that was filed earlier this year by OPC suggests that
8 they're seeking to expand the petition from Rockaway Beach to
9 Branson calling to include additional exchanges around Branson
10 such as Kimberling City, Reeds Spring.

11 And one of the problems why we think that this
12 proposal may not be reasonable is that the final proposal
13 appearing in the Stipulation does not allow these additional
14 communities to call into Branson toll-free. It's more of a
15 Rockaway Beach to Brandon toll-free calling and then calling
16 among those other exchanges between themselves.

17 The second major reason why the Staff found the
18 proposal to be unreasonable is that if the Commission finds
19 that the Staff's legal analysis is incorrect and that the
20 Commission may adopt a plan that uses the CPI reduction in
21 some other way, we believe that in that instance that perhaps
22 the entire CPI adjustment should be used to further reduce the
23 impact on the community. And that's all I have. Thank you.

24 JUDGE RUTH: Could you repeat that last part?
25 I'm not following.

1 MR. POSTON: If the Commission determines that
2 the Staff's legal interpretation is incorrect and that the
3 Commission has the flexibility to use the CPI adjustment to
4 expand local calling in one particular area of the state, the
5 Staff thinks that instead of as it was proposed, using the CPI
6 adjustment -- basically using some of it for expanded calling
7 and then giving a -- I guess like a .7 percent decrease for
8 the rest of CenturyTel's customers and instead of what would
9 seem to be relatively insignificant reduction for some other
10 customers, say, in Columbia, the Staff would support a
11 proposal that actually would use all of the CPI adjustment, if
12 the Commission determines that that is, in fact, legal. Am I
13 still not making sense?

14 JUDGE RUTH: No. You are making sense. I'll
15 have some questions that I'll ask you about that later.

16 MR. POSTON: Okay. Thank you.

17 JUDGE RUTH: Okay. We will now proceed to
18 questions from the Bench. I anticipate that we will start
19 with one Commissioner, that Commissioner will ask a question
20 of a particular party, all of the other parties will have the
21 opportunity to respond to that question. We'll follow that
22 same format for questions from the Commissioners, the other
23 Commissioners I expect will go through several rounds.

24 Again, then we will -- if there are any
25 witnesses that are sworn in, we'll have any cross at the very

1 end of questions. And Chairman Davis provided me with a list
2 of a few of his questions that he has, but I'm going to ask
3 those for him at the end. And I will see if Commissioner
4 Murray would like to start?

5 COMMISSIONER MURRAY: Thank you, Judge.

6 The first question I will ask of Mr. Dandino
7 and then I would ask Mr. Dority to followup and then I would
8 ask Staff to respond how you distinguish the Sprint filing
9 that was attached to the response of CenturyTel that was filed
10 on the 8th, which seems to me to have allowed for the use of
11 the reduction in the CPI -- to have allowed that adjustment to
12 occur on an unequal basis for different -- for varying
13 customers. And at that time Staff recommended approval and
14 said it meets the requirements of the price cap statute.

15 And, Mr. Dandino, do you think that that tariff
16 illustrates something similar to what is being requested of us
17 here?

18 MR. DANDINO: Yes, Commissioner. In terms of
19 targeting some of the revenues for it. Because I understand
20 that it was used to eliminate touchtone and not all customers
21 of Sprint were touchtone customers. It was used to collapse I
22 think some rate bands and it didn't affect all the customers.

23 Let me put one caveat to it, Commissioner,
24 because Public Counsel took a position that if you increased,
25 you have to apply it in a -- in such a manner that no rate

1 exceeds the CPI caps because I think that's the cap and I
2 think that's consistent with it.

3 I think if you're making a decrease, it doesn't
4 necessarily, you know, follow on the reverse because what
5 we're looking at is there's a specific prohibition that is --
6 it shouldn't exceed the CPI. That's a cap, that's an
7 increase. But otherwise, I think that what -- the Stipulation
8 and Agreement here is consistent with what was done in that
9 Sprint adjustment

10 COMMISSIONER MURRAY: Which was a reduction; is
11 that correct?

12 MR. DANDINO: Yes.

13 COMMISSIONER MURRAY: And it was applied in
14 varying degrees to varying customers based upon whether they
15 had touchtone or --

16 MR. DANDINO: That is right. It targeted a
17 purpos-- it didn't apply to cross -- let's put it this way. I
18 think the most similar aspect, it didn't apply an across the
19 board reduction in all areas for all services that are basic
20 local.

21 COMMISSIONER MURRAY: Okay. In fact, in the
22 Staff recommendation that CenturyTel attached to its response,
23 the Staff said, The impact of these changes will be different
24 for particular customers, depending on whether they currently
25 purchase touchtone service and pay zone mileage charges. And

1 then it went on to set out the varying percentages that each
2 group of customers would realize as a reduction. Is that your
3 understanding?

4 MR. DANDINO: Yes.

5 COMMISSIONER MURRAY: Are you aware of any
6 other instances in which this Commission has approved and/or
7 Staff has recommended approval of tariffs reducing the rates
8 based on the CPI adjustment which did not apply equally to all
9 customers?

10 MR. DANDINO: I know there -- I know there was
11 another one. I can't -- can't recall. I do know that we
12 did -- it's a little different, doesn't necessarily deal with
13 the price cap. In an over-earnings case we did expand -- in
14 PBS we did expanded calling rather than apply reduction across
15 the board to all basic local service ratepayers. But, once
16 again, that is the price cap, but I -- but I think the theory
17 is there.

18 COMMISSIONER MURRAY: Okay. Mr. Dority, would
19 you give your view of how that Sprint tariff applies to this
20 situation?

21 MR. DORITY: Commissioner, as you pointed out,
22 we feel that it directly applies. We attached it to our
23 responsive pleading and we do think that it stands for the
24 proposition that a rate design proposal does not have to apply
25 to the CPITS rate reduction zone across the board, equal

1 percentage basis.

2 And as you were just reading, the Staff clearly
3 recognized that different customers would be impacted
4 differently in that proposal. And they did, of course, make
5 their specific recommendation on the proposal that it does
6 meet the requirements of the price cap regulations as set
7 forth in RSMo 392.245. So we looked to that Sprint precedent
8 as certainly support for crafting the proposal that we had put
9 in front of you.

10 COMMISSIONER MURRAY: Thank you. And now,
11 Mr. Poston, how does Staff distinguish the Sprint tariff from
12 the current tariff that we're examining?

13 MR. POSTON: Well, I have to admit, I tried
14 studying the Staff's recommendation and I actually got
15 confused. I was not sure if -- whether the CPI adjustment
16 actually applied to just the subset of customers or if the --
17 like the touchtone and the mileage charges were eliminated
18 before the CPI adjustment was applied.

19 So I would like to study that more before it's
20 clear to me, but if the Staff did recommend something that's
21 other than an across the board CPI adjustment, I really have
22 no explanation other than that our interpretation of the
23 statute now and -- is that it appears that that is not
24 allowed. And whether or not we did an in depth analysis at
25 that time of the price cap statute, I don't know.

1 But one significant difference in what Sprint
2 proposed and what the stipulation proposes here is in Sprint,
3 the CPI reduction -- the CPI adjustment was used to reduce
4 current rates. And here the Commission's being asked to use
5 the CPI adjustment to benefit one geographic area of the state
6 over another geographic area of the state.

7 COMMISSIONER MURRAY: Let me think through this
8 a minute with you. In the Sprint filing, the CPI adjustment
9 was used to reduce the rates for customers who had paid
10 separately for local -- for touchtone; is that correct?

11 MR. POSTON: That sounds correct.

12 COMMISSIONER MURRAY: And some customers saw a
13 savings and some customers actually saw an increase for basic
14 local rates in that tariff; is that correct?

15 MR. POSTON: Yes. But, you know, there was the
16 rate re-balancing that was thrown in as well with -- basic
17 rates went up \$1.50 so I'm not sure how that plays in.

18 COMMISSIONER MURRAY: But if 15 percent saw a
19 \$3.20 increase in their monthly dial tone service, that was
20 beyond the re-balancing. Correct?

21 MR. POSTON: Correct.

22 COMMISSIONER MURRAY: And do you have a copy of
23 the Staff rec before you?

24 MR. POSTON: Yes, I do.

25 COMMISSIONER MURRAY: And the Sprint tariff?

1 And under Recommendation it says, Staff has
2 analyzed Sprint's proposed price cap filing.

3 Do you agree this was a price cap filing?

4 MR. POSTON: Correct.

5 COMMISSIONER MURRAY: And finds that it meets
6 the requirements of the price cap regulations as set forth in
7 RSMo 392.245.

8 Do you see that?

9 MR. POSTON: Yes.

10 COMMISSIONER MURRAY: And then it goes on to
11 say, Staff has no objections to the rate changes going into
12 effect. And then beyond that recommends -- Staff recommends
13 that the Commission approve the tariffs.

14 You don't disagree with that language that's
15 there, do you?

16 MR. POSTON: I don't disagree. And I don't
17 know if this same proposal came to us today, if the Staff
18 would have the same recommendation just given the -- I guess
19 the light that's been shown on the particular provisions of
20 the price cap statute regarding the CPI adjustment.

21 COMMISSIONER MURRAY: Okay. I'm going to ask
22 another question here regarding interpretation of the 392.245,
23 and I will throw that out to whoever would like to answer it
24 first. I believe Mr. Dandino was referring earlier to
25 392.245, subsection 4(1) -- I'm sorry, subsection 4, paren 2,

1 where the Commission shall approve a change to a maximum
2 allowable price filed pursuant to paragraph A of subdivision 1
3 of this subsection within 45 days.

4 Now, when it's talking about subsection A of
5 subdivision 1 of this subsection, it is referring to the
6 adjustment based on the Consumer Price Index; is that correct?

7 MR. POSTON: Yes.

8 COMMISSIONER MURRAY: And that provides that
9 the Commission shall approve -- and it doesn't -- I don't read
10 anything in there about a hearing or taking evidence or
11 determination that it's in the public interest. Do you see
12 that?

13 MR. POSTON: I don't see anything in that
14 provision, no.

15 COMMISSIONER MURRAY: And yet, if you look at
16 subsection -- paren 3 and I'm talking about 392.245.4,
17 paren 3, As a part of its request under paragraph B of
18 subdivision 1 of this subsection -- and if you go back to
19 paragraph B, that is referencing an application under the
20 Gross Domestic Product Price Index; is that correct?

21 MR. POSTON: Yes.

22 COMMISSIONER MURRAY: And that is not what
23 Sprint -- or what CenturyTel is using in this particular case;
24 is that right?

25 MR. POSTON: That's correct.

1 COMMISSIONER MURRAY: But in reference to an
2 application that is using the Gross Domestic Product Price
3 Index, the statute provides that a company may seek Commission
4 approval and it goes on to provide for an evidentiary hearing,
5 I believe -- yes, after notice of hearing and a finding -- a
6 public interest finding, but that's only in reference to an
7 application under the GDPPI. Is that your understanding?

8 MR. POSTON: Correct. Instead of using the
9 FCC's productivity offset, they would use some other offset to
10 offset the GDPPI adjustment, right.

11 COMMISSIONER MURRAY: And does anybody disagree
12 with that?

13 MR. DANDINO: Commissioner, I would point out
14 that I think that even though it doesn't provide for an
15 evidentiary hearing, I think it is still within the discretion
16 of the Commission any time a tariff comes before them to
17 suspend it and to hold a hearing.

18 And I -- and even though this seems like I may
19 be arguing against my own position, but I don't think that
20 that section, subsection 2, necessarily implies a mechanical
21 application because I think the Commission always must
22 consider whether it's detrimental to the public interest in
23 looking at these tariffs.

24 That's the only comment I would say, even
25 though it -- the hearing is required when you're using the

1 Gross Domestic Price Index and it is not required in
2 subsection A, but I think it's still within the Commission's
3 discretion if they so want it.

4 COMMISSIONER MURRAY: Any other comments as to
5 that question?

6 I think I'll pass. Thank you.

7 JUDGE RUTH: Commissioner Gaw?

8 COMMISSIONER GAW: Thank you, Judge. Let me
9 start by picking up a little bit on this Sprint tariff. First
10 of all, is there any disagreement from anyone that just
11 because there was some position taken on this issue at some
12 point in the past, that that binds the Commission in some way?

13 MR. DANDINO: It certainly does not.

14 COMMISSIONER GAW: Everyone is in agreement
15 with that, aren't they?

16 MR. POSTON: Yes.

17 MR. DORITY: Yes, Commissioner.

18 COMMISSIONER GAW: In regard to what actually
19 occurred there, I'm having a little difficulty tracking what
20 this was all about. And obviously I think it was before I was
21 around here and I don't remember this discussion coming
22 before, if this was a 2000 tariff; is that correct?

23 MR. POSTON: Correct.

24 MR. DORITY: Correct.

25 COMMISSIONER GAW: Was this an adjustment that

1 was done from the elimination of additional charges that
2 included the touchtone charge that Sprint evidently was
3 assessing at the time and zone mileage charges? Are those the
4 two things that were considered at the time?

5 MR. POSTON: I believe that's correct.

6 COMMISSIONER GAW: Am I missing anything else?

7 MR. DORITY: No. I think you could look at it
8 as those revenues that were associated -- the lost revenues to
9 the company associated with the elimination of mileage and
10 touchtone were recouped by utilizing portions of the CPITS
11 adjustment.

12 COMMISSIONER GAW: Was there some encouragement
13 or something going on at the time to eliminate those charges?
14 Does anyone recall?

15 MR. DANDINO: I know it's been a long position
16 of Public Counsel to eliminate touchtone.

17 COMMISSIONER GAW: Does Staff recall?

18 MR. POSTON: I don't recall.

19 COMMISSIONER GAW: Your history here is
20 probably not --

21 MR. POSTON: Well, I was here, but --

22 COMMISSIONER GAW: -- much better than mine,
23 Mr. Poston.

24 MR. POSTON: Well, I was here in 2000, but I
25 don't recall.

1 MR. DORITY: I don't know that it would have
2 been any greater than the encouragement to try to address the
3 expanded local calling scopes, I'll put it that way.

4 COMMISSIONER GAW: Sure. Today do we have
5 ILECs that are still charging touchtone in Missouri as a
6 separate charge?

7 MR. DANDINO: I don't believe we do.

8 MR. DORITY: Not that I'm aware of.

9 MR. POSTON: Staff doesn't know.

10 COMMISSIONER GAW: Not aware?

11 MR. POSTON: No.

12 COMMISSIONER GAW: What about the zone mileage
13 charges? There are still some of those out there, I suppose;
14 is that correct?

15 MR. DANDINO: Yes. That's my understanding.

16 COMMISSIONER GAW: Public Counsel says yes.
17 Others are not so sure.

18 MR. DORITY: Not so sure.

19 COMMISSIONER GAW: Was the objective at the
20 time to try to move those charges into basic rates?

21 MR. DANDINO: I think that was the goal is to
22 use this revenue to prevent an increase in basic rates, yet
23 provide these services as part of the local --

24 COMMISSIONER GAW: I mean, look, everybody was
25 moving toward touchtone as the standard at the time. Correct?

1 MR. DANDINO: That's right.

2 COMMISSIONER GAW: And to add a charge on a
3 phone bill for touchtone was becoming an antiquated thing, I
4 would suspect also, wasn't it, since everyone was moving
5 toward touchtone?

6 MR. DANDINO: That's right.

7 COMMISSIONER GAW: Does anyone have a dial-up
8 phone today in 2005? Do they work? I suppose they still
9 work. Does anyone have them?

10 Okay. Well, I guess my next question is, when
11 this was done, was the price spread out on an
12 exchange-by-exchange basis or across the board? Does anyone
13 know that? In other words, when there was -- if there was a
14 touchtone charge in a particular exchange, was that charge
15 melded into that local basic rate or was it somehow done all
16 across all of the exchanges in some fashion regardless of what
17 exchange was most adversely impacted?

18 MR. DANDINO: Commissioner, I don't know for
19 sure, but I would -- but thinking in the way this system
20 usually operates is that touchtone would probably have been
21 applied across all the exchanges. Now, the rate bands or the
22 rate mileage charges would probably affect certain areas --

23 COMMISSIONER GAW: More than others?

24 MR. DANDINO: -- more than others.

25 COMMISSIONER GAW: So no one really knows?

1 MR. DANDINO: I can't say for sure.

2 COMMISSIONER GAW: Well, it still doesn't
3 really answer the question about whether this is legal or not.
4 It's just a question of positioning. So I'll leave that
5 alone. It was just -- I was just trying to get a better
6 flavor of what the thought process was at the time and how
7 much time was spent looking at the legal issue.

8 Let me go to that point. In 245, if I look at
9 subsection 4, sub 1 beginning there at except in -- the second
10 except dealing with the large ILECs, it says, Except as
11 otherwise provided in subsections 8 and 9 of this section and
12 Section 392.245-- 248, excuse me, the maximum allowable prices
13 for exchange access and basic local telecommunications
14 services of a large incumbent local exchange
15 telecommunications company regulated under this section shall
16 not be changed prior to January 1, 2000.

17 Thereafter, the maximum allowable prices for
18 exchange access and basic local telecommunications services of
19 an incumbent local exchange telecommunications company shall
20 be annually changed by one of the following methods.

21 I'll note there first it doesn't say shall not
22 be allowed to increase beyond. It says changed. That's my
23 first -- I want you to note these things because I want some
24 discussion on this afterwards. I'm trying to give you some
25 idea where I'm hanging up. That's one of them where it says

1 changed.

2 Sub A, which I understand we're under sub A and
3 there's no dispute about that. Am I correct about that?

4 MR. POSTON: Yes.

5 MR. DANDINO: That's correct.

6 COMMISSIONER GAW: We're under provision sub A.
7 Sub A says, By the change in the telephone ser-- in the
8 telephone service component, excuse me, of the Consumer Price
9 Index, parenthesis, CPI-TS, closed parenthesis, is published
10 by the United States Department of Commerce or its successor
11 agency for the preceding 12 months.

12 And then subdivision 2 -- I'm going to skip B
13 because it's not relevant, as I understand it. Subdivision 2
14 says, The Commission shall approve a change to a maximum
15 allowable price filed pursuant to paragraph A of subdivision 1
16 of this subsection within 45 days of filing of notice by the
17 local exchange telecommunications company. And incumbent
18 local exchange telecommunications company shall file a tariff
19 to reduce the rates charged for any service in any case in
20 which the current rate exceeds the maximum allowable price
21 established under this subsection.

22 Now, several times in there I read the word
23 "price" and that's the other word I want you all to discuss
24 for me because it doesn't talk about revenue. It seems to me
25 it talks about price. And I'll also note in the very first

1 subsection it uses the word "price" when it says, Maximum
2 allowable prices shall not be subject to increase except as
3 otherwise provided in this section.

4 So what I'm looking for here is some
5 understanding of how we -- how Public Counsel and CenturyTel
6 get around that "price" word and "changed" word in this
7 particular statutory section. And particularly, the problem
8 that I see is that when things are priced, they're generally
9 priced on an exchange-by-exchange basis. Local basic rates
10 are different from one exchange to another generally.

11 And so how do we not change the prices pursuant
12 to the downward adjustment in the CPI, which is all I think
13 agreed to? How do you get around those two words? And Public
14 Counsel, first.

15 MR. DANDINO: Commissioner, I'll give it a try
16 here.

17 COMMISSIONER GAW: Okay.

18 MR. DANDINO: My analysis -- and I think I look
19 at -- let's look at the word "changed" first in that
20 subsection -- what is it -- 4, sub 1. And if you look at that
21 last sentence that you pointed to, it says that -- it doesn't
22 say all prices, all prices of basic local telecommunications
23 services. It refers to a -- to that category of services.

24 And let's look at it this way. Can the
25 Commission take just nonrecurring costs and say we're just

1 going to apply it to all nonrecurring costs versus the basic
2 access line costs? You know --

3 COMMISSIONER GAW: Give me an example when
4 you're saying nonrecurring costs so I'm following you.

5 MR. DANDINO: Installation costs.

6 COMMISSIONER GAW: I'm now understanding.

7 MR. DANDINO: I'm saying we're going to cut all
8 installation costs for CenturyTel by \$10 and when we use up --
9 you know, when we get down to that, then we'll have a little
10 bit left over, we're going to start on service calls, we're
11 going to take 5 bucks off of that.

12 COMMISSIONER GAW: Would they fall under the
13 category though of basic local telecommunications services?

14 MR. DANDINO: I believe so.

15 COMMISSIONER GAW: Okay. So you think that you
16 can pick and choose within that category? In other words, you
17 see basic local telecommunications services prices as being
18 something other than your monthly charge for your basic
19 service?

20 MR. DANDINO: Right. Right. Otherwise, it
21 would be all the services. And if you'd use all the services
22 that would fall under basic local service and apply it -- and
23 apply the reduction to it every time, you know, then we run
24 into a problem. But I think that you can -- that as long as
25 it's applying to that category of services, I think it's

1 consistent with the statute.

2 COMMISSIONER GAW: I'm just not sure I'm
3 following you. And I think it's my fault because I'm not sure
4 what your definition is of basic local telecommunications
5 services. Are you saying that service charges to come out and
6 install your phone you consider basic local telecommunications
7 services?

8 MR. DANDINO: Right.

9 COMMISSIONER GAW: Those charges to come out
10 you think are regulated by subdivision A?

11 MR. DANDINO: If it --

12 COMMISSIONER GAW: Is that true? I mean, I may
13 be misunderstanding.

14 MR. DANDINO: I think if it falls within the
15 tariffs for basic local service.

16 COMMISSIONER GAW: Do they normally? Is that
17 true?

18 MR. DORITY: Yes.

19 MR. DANDINO: I think also in the definitions
20 of -- I'm trying to get the definition section. Do you have
21 that?

22 The definition I think of basic local service
23 when it talks about access line, I think it includes
24 installation, if I remember right.

25 COMMISSIONER GAW: Okay.

1 MR. DANDINO: Let's see. Let's see. Yes,
2 two-way basic local telecommunications service. Two-way,
3 switch voice service within a local calling scope as
4 determined by the Commission comprised of any of the following
5 services and their recurring and nonrecurring costs.

6 COMMISSIONER GAW: Okay.

7 MR. DANDINO: Then you have the multi-line,
8 single line, including installation, touchtone dialing and any
9 applicable mileage or zone charges.

10 So you can have a white pages listing on this
11 part of it --

12 COMMISSIONER GAW: So those things are all
13 under -- controlled, in this case, by the CPI in regard to how
14 much a company can charge for that service?

15 MR. DANDINO: Yes.

16 COMMISSIONER GAW: All right. And would you
17 say that a company could, under your theory, pick and choose
18 which services it wants to adjust and they would -- when you
19 pay for your telephone service, does that include
20 installation?

21 MR. DANDINO: Yes.

22 COMMISSIONER GAW: Okay.

23 MR. DANDINO: Or there's a nonrecurring charge
24 for it.

25 COMMISSIONER GAW: That comes up?

1 MR. DANDINO: Uh-huh.

2 COMMISSIONER GAW: Could you just adjust those
3 charges downward enough to take care of the CPI and leave the
4 local basic recurring charges the same? Is that what you're
5 saying?

6 MR. DANDINO: Yes.

7 COMMISSIONER GAW: You don't think there's a
8 problem with that?

9 MR. DANDINO: No. Because I think that's a
10 reasonable way of doing it. In other words, you have to apply
11 to every charge. And I think this gives the flex-- the very
12 flexibility price cap regulation is kind of designed to do is
13 to -- is to lower prices without necessarily having to lose
14 revenue.

15 COMMISSIONER GAW: Have you seen tariffs that
16 have done that, that have adjusted downward a portion of the
17 nonrecurring charges but left -- and left the price for
18 recurring local basic the same?

19 MR. DANDINO: I have -- the only place I recall
20 seeing it is when we -- is, for example -- or in some of the
21 over-earnings cases that we -- that we adjusted, applied some
22 of the over-earnings to basic local and it went to the
23 installation or it went to some -- some other element.

24 COMMISSIONER GAW: But that was an
25 over-earnings case --

1 MR. DANDINO: Right.

2 COMMISSIONER GAW: -- not a price cap case.

3 MR. DANDINO: I don't recall any particular one
4 I can point to.

5 COMMISSIONER GAW: It is possible, I suppose
6 that -- it's possible that there was some similar thought done
7 in the Sprint case, wasn't there, that really those charges
8 ought to be -- could be more in line with local basic service,
9 the touchtone charge, for instance, should become something
10 more like a local basic service so it was really an adjustment
11 within that category?

12 MR. DANDINO: Sure.

13 COMMISSIONER GAW: Now, let's move to a little
14 bit different question along the same line. Let's say that
15 you had an exchange of the company, and we'll use the same
16 scenario that the CPI is going down. And the company came in
17 and they said, We want to raise this exchange on those local
18 basic charges, but we're going to take these other exchanges
19 and we're going to lower them by more than what the CPI
20 actually said we should lower them, but the end result is same
21 revenues. We're losing this amount of revenue.

22 MR. DANDINO: I don't think you --

23 COMMISSIONER GAW: Would you support that?

24 MR. DANDINO: I don't think you could
25 increase -- increase. You could leave it the same. I don't

1 think you can increase.

2 COMMISSIONER GAW: Point out to me where it
3 says you can't.

4 MR. DANDINO: Well --

5 COMMISSIONER GAW: Under your theory. Under
6 your theory, show me in the statute where that's not allowed.

7 MR. DANDINO: Well, I think it provides that
8 the -- subsection 1, Should not be subject to increase except
9 as provided.

10 COMMISSIONER GAW: And what is not subject to
11 increase?

12 MR. DANDINO: Well, I think that --

13 COMMISSIONER GAW: What comes just before that,
14 Mr. Dandino?

15 MR. DANDINO: The maximum allowable price.

16 COMMISSIONER GAW: The maximum allowable price,
17 which is exactly what we're talking about in the subsections
18 underneath, isn't it, the maximum allowable price?

19 MR. DANDINO: Which as they exist are the
20 existing prices.

21 COMMISSIONER GAW: Yes. On an
22 exchange-by-exchange basis.

23 MR. DANDINO: Not necessarily.

24 COMMISSIONER GAW: So you think it's --

25 MR. DANDINO: Oh -- no, not necessarily.

1 Because I still think that you have to have -- that you have
2 to have the same service at the same price in all your
3 exchanges except for some very extraordinary circumstances
4 provides -- provided in Section 392.200. There's some
5 provisions in there. But I think as a rule, you can't have
6 one exchange having a higher rate for the exact -- for the
7 same service.

8 COMMISSIONER GAW: Well, we have different
9 rates for different services from different companies in
10 different exchanges, don't we?

11 MR. DANDINO: Well, within the same territory,
12 within the same service territory.

13 COMMISSIONER GAW: Right. So let's take your
14 example then, although I don't quite understand how you get
15 around the changed language down in the subsection if we're
16 talking about prices, but let me humor this for a moment for
17 my -- if you say that we left -- let's say we left that price
18 the same as it was even though it -- the CPI came down in one
19 exchange, but we're going to lower them more than the CPI said
20 to lower them in some other exchanges.

21 MR. DANDINO: For exactly the same service?

22 COMMISSIONER GAW: Sure.

23 MR. DANDINO: See, that's -- I think that's the
24 difference, that's the difference.

25 COMMISSIONER GAW: Why?

1 MR. DANDINO: I don't think -- I think because
2 you still have to maintain -- and it doesn't necessarily say
3 it in the statute, but you have to maintain that -- you can't
4 have discrimination in the same service for the same customers
5 within your service area.

6 COMMISSIONER GAW: You added same customer in
7 there and I'm not sure --

8 MR. DANDINO: Same class of customers. I'm
9 sorry.

10 COMMISSIONER GAW: I thought that's what you
11 meant.

12 MR. DANDINO: I think what we have here -- and
13 maybe I can explain it through the -- what we're doing here is
14 that we're taking -- in essence, we're providing an additional
15 service to the Rockaway people in an expanded area or to those
16 exchanges in there --

17 COMMISSIONER GAW: Right.

18 MR. DANDINO: -- and we're coming up with a --
19 with the real cost, okay, or let's say the real cost where the
20 company calculated. Then we're taking the CPI reduction, the
21 revenues from that and we're reducing -- basically we're
22 reducing that price of the expanded calling -- of that new
23 service -- of that new service by a certain amount of revenue.

24 I think that were -- that gives us a little
25 different -- you have for different routes different prices

1 because it's not the same service. You're having an
2 additional service, it's not the same service that the people
3 in Columbia have. Their basic local service is adequate.
4 This one you're expanding it, but you're also having the local
5 people pay a portion of it for a special service.

6 COMMISSIONER GAW: Mr. Dandino, you know that
7 I'm an advocate for trying to find ways to do local --

8 MR. DANDINO: I'm trying to give you that.

9 COMMISSIONER GAW: -- expanding local calling
10 scopes, but I have to be okay with the question of whether
11 it's legal.

12 MR. DANDINO: Sure.

13 COMMISSIONER GAW: And are the charges for
14 local basic in Columbia the same as they are in Branson and --

15 MR. DANDINO: I think it's a different --

16 COMMISSIONER GAW: -- Rockaway Beach?

17 MR. DANDINO: -- rate group, isn't it?

18 COMMISSIONER GAW: So they're not the same?

19 MR. DANDINO: No. Because you can call more
20 people in Columbia than Rockaway Beach.

21 COMMISSIONER GAW: Okay. I love that argument,
22 but not all the Commissioners buy it.

23 But if we look at -- if we look at the current
24 prices, the prices are not the same in Columbia as they are in
25 Branson.

1 MR. DANDINO: I think Columbia has EAS routes
2 like to Ashland and --

3 COMMISSIONER GAW: But they're not the same.

4 MR. DANDINO: They're not the same.

5 COMMISSIONER GAW: And they're not the same --
6 are the prices in Rockaway Beach and Branson the same or
7 different local basic? I'm just purely talking about local
8 basic.

9 MR. DANDINO: I think they're different, once
10 again, based on the calling scope.

11 COMMISSIONER GAW: So they're different now.
12 And I'm going back to my scenario. If they're already
13 different -- so I'm going to keep my prices in Columbia the
14 same under my hypothetical and I'm going to lower the prices
15 in Branson and Rockaway Beach --

16 MR. DANDINO: Well, we're keeping the prices
17 same in Rockaway Beach and Branson.

18 COMMISSIONER GAW: No. In my hypothetical.
19 I'm using specific communities, but my hypothetical is the CPI
20 is going down, I'm going to keep my prices the same in
21 Columbia and I'm going to lower them by more than the CPI went
22 down for local basic in Branson and Rockaway Beach, but my
23 revenues are going to equal out to be somewhere close to where
24 it would be with the reduction in CPI being an X number. Is
25 that okay?

1 MR. DANDINO: If your -- if Branson and
2 Columbia were in the same rate group, they have to maintain
3 the same level of services, same classification. And then --
4 but if Rockaway Beach is a different rate group than Columbia,
5 then you could lower that more than you could Columbia.

6 See, the EAS additive is the important thing,
7 because that is distance specific and traffic specific and
8 there's a lot of other --

9 COMMISSIONER GAW: Is that a local basic
10 charge?

11 MR. DANDINO: Yes.

12 COMMISSIONER GAW: All right. But I'm not
13 changing that in my hypothetical. I'm leaving it exactly the
14 same.

15 MR. DANDINO: The EAS charge?

16 COMMISSIONER GAW: All of those charges in
17 Columbia are going to be not changed, even though the CPI went
18 down.

19 MR. DANDINO: Okay.

20 COMMISSIONER GAW: And Public Counsel says
21 that's okay under the statute so long as I lower the other
22 exchanges that CenturyTel has significantly enough to result
23 in a net revenue that goes down at the CPI?

24 MR. DANDINO: That broadly, no. I couldn't
25 agree on that.

1 COMMISSIONER GAW: What's wrong with that?

2 MR. DANDINO: Because you still have to look at
3 the -- what services -- okay, what services you're lowering
4 and whether they're similarly situated.

5 COMMISSIONER GAW: Tell me how that scenario
6 complies with the requirement for Columbia people that the
7 maximum allowable prices for basic local telecommunications
8 service were changed by the CPI. How are we -- how are we
9 complying with the statute under that hypothetical?

10 MR. DANDINO: I don't think the statute
11 requires you to cover every service in every location.

12 COMMISSIONER GAW: So we don't have to change
13 them in Columbia?

14 MR. DANDINO: That's right.

15 COMMISSIONER GAW: Even though it says here
16 that they're supposed to be changed. Because it doesn't say
17 revenues, it says prices.

18 MR. DANDINO: No. But you are changing -- you
19 are changing some prices somewhere for a different type --

20 COMMISSIONER GAW: But not for the people in
21 Columbia. And that doesn't matter?

22 MR. DANDINO: No. To the extent that it isn't
23 the same, that if you're not taking a lower price of the same
24 service somewhere else. If you -- if I reduced --
25 nonrecurring fees for installation in Rockaway Beach, but I

1 didn't do it in Columbia, I couldn't do that. But if I -- if
2 I create an EAS expanded calling --

3 COMMISSIONER GAW: My hypothetical didn't
4 include any changes in the EAS.

5 MR. DANDINO: Right. Right. So if you're just
6 looking at the straight basic local services, if you're
7 changing it -- if you're changing a category of services in
8 one area, you need to change it in the category in the --
9 throughout your service area. If --

10 COMMISSIONER GAW: Throughout your service
11 area. Why?

12 MR. DANDINO: Because for the same service, you
13 have to charge the same price throughout your territory.

14 COMMISSIONER GAW: But I'm not charging the
15 same price now.

16 MR. DANDINO: Other than if it's based on other
17 factors similarly situated.

18 COMMISSIONER GAW: But they're not priced the
19 same now so evidently they're not similarly situated.

20 MR. DANDINO: Right. For local calling in
21 Columbia and Rockaway Beach.

22 COMMISSIONER GAW: Yes. So what I'm asking
23 about is -- and I'm beating a dead horse I think, but what I'm
24 asking about is whether or not Columbians are entitled to a
25 reduction in their local basic rates according to what the CPI

1 went down. And I'm understanding you to tell me they're not
2 entitled to it, even though it seems to say they're entitled
3 to it in this provision of the statute to me. That's my
4 opinion --

5 MR. DANDINO: Yes, that's --

6 COMMISSIONER GAW: -- until you convince me
7 it's not.

8 MR. DANDINO: I don't think that all customers
9 are entitled to any particular -- this reduction for all --
10 for all their services or for any one of the services. I
11 think --

12 COMMISSIONER GAW: In total.

13 MR. DANDINO: In total.

14 COMMISSIONER GAW: I'm not breaking the
15 services up here.

16 MR. DANDINO: No.

17 COMMISSIONER GAW: I'm not trying to separate
18 them in between nonrecurring and recurring. I'm just saying
19 for Columbians, I'm not giving them any decrease even though
20 the CPI went down in my hypothetical. And you're telling me
21 that's okay?

22 MR. DANDINO: Yes.

23 COMMISSIONER GAW: Wow.

24 Okay. Mr. Dority.

25 MR. DORITY: Yes, sir.

1 COMMISSIONER GAW: You agree with Mr. Dandino,
2 I assume?

3 MR. DORITY: I agree with Mr. Dandino on that
4 last point.

5 COMMISSIONER GAW: You think you can do
6 whatever you want to as long as the bottom line goes down to
7 the CPI on local basic?

8 MR. DORITY: Yes. Essentially when you look
9 back at the Sprint filing, that's what happened. I mean, they
10 targeted a specific group of folks and not only did they
11 reduce it -- pick a number -- 2 percent, whatever the CPI
12 adjustment was, they said we're going to reduce it
13 100 percent. And so the customers in Columbia, in the
14 hypothetical, would not have seen a reduction to the extent
15 that those dollars were focused on those particularly targeted
16 customers in that particular instance. So from that
17 standpoint, I would agree with Mr. Dandino.

18 I would not agree with the hypothetical where
19 you are actually raising rates for some customers and
20 decreasing others.

21 COMMISSIONER GAW: Why?

22 MR. DORITY: If you look at subparagraph 2 --

23 COMMISSIONER GAW: Yes

24 MR. DORITY: -- it does speak in terms of the
25 company's filing a tariff to reduce the rates charged for any

1 service. And I -- I would just look to that that when you're
2 looking at a CPITS adjustment where the CPITS has, in fact,
3 decreased, then I think, you know, we ought to be looking from
4 a policy standpoint on reductions and not increases. And that
5 is effective --

6 COMMISSIONER GAW: Mr. Dority, help me out a
7 little bit on subsection 2.

8 MR. DORITY: Yes, sir. I was reading it -- I'm
9 sorry, it's .4, subsection 2.

10 COMMISSIONER GAW: Oh, thank you.

11 MR. DORITY: I apologize. It's language that
12 you had referenced earlier yourself.

13 COMMISSIONER GAW: Yes. I'm with you now. I
14 was under the original subsection 2. That's why I was having
15 trouble.

16 So your position is again that it focuses how?

17 MR. DORITY: On the fact that the company will
18 be filing tariffs to reduce rates charged --

19 COMMISSIONER GAW: Yes.

20 MR. DORITY: -- as opposed to a hypothetical
21 where a particular segment or customer group might have their
22 rates increased as a result.

23 COMMISSIONER GAW: Yes. And doesn't that infer
24 that all customers have a right to that decrease?

25 MR. DORITY: I don't think it necessarily says

1 that. I was just using this to suggest that I could not
2 support an increase for any customer looking at this
3 particular language.

4 COMMISSIONER GAW: Okay. Well, Staff, I don't
5 know if you've got something. I know you're not probably
6 going to argue that my hypothetical is wrong, but maybe you
7 will. So I'll let you, if you want to.

8 MR. POSTON: Well, two responses. One, I think
9 the hypothetical kind of highlights the slippery slope that we
10 could perhaps get into if companies are using the CPI
11 adjustment to change rates here and there and to try to do
12 different things with it.

13 But in response to some of the comments that
14 Mr. Dandino was making, I think that -- I think that they're
15 reading intent into this statute that the legislature meant to
16 have the company's revenues go down by a certain amount. And
17 when I read this statute, I think the intent is to have prices
18 go down or go up. I don't see anything in here that suggests
19 that the legislature's concern was the revenues to the
20 company.

21 COMMISSIONER GAW: Has there been notice given
22 to the exchanges that -- the cities or the areas that are
23 impacted here that are not receiving the full amount of the
24 reduction that they might have received if this plan were not
25 put in the tariff this way? For instance, has the City of

1 Columbia received notice about this?

2 MR. DANDINO: No, Commissioner.

3 MR. DORITY: Commissioner, we have attached
4 proposed notices with our tariff filing, but they were also
5 labeled as embargoed and not to be distributed because we did
6 not want to get ahead of the Commission on these particular
7 matters.

8 COMMISSIONER GAW: Yeah, I understand. It just
9 seems to me if they were going to -- if someone wanted to
10 object, the time to object is before the tariff goes into
11 effect and I'm not -- I'm just curious about whether they even
12 know that this is going on.

13 The other questions I have I think are really
14 factual in nature. I'm not going to go into that. I'll pass
15 for now.

16 JUDGE RUTH: Just a moment, Commissioner
17 Murray. We'll go back to Commissioner Murray for a question.
18 No, I'm sorry. I misunderstood.

19 We're taking a 10-minute break, which means
20 actually by the clock in the back we'll be back on the record
21 at 20 until 11:00, so we are off the record. Thank you.

22 (A recess was taken.)

23 JUDGE RUTH: Okay. We are back on the record
24 after a short break.

25 Now we're back on the record after a short

1 break. When we left, we had some questions from
2 Commissioners. Commissioner Gaw, are you finished at this
3 time?

4 COMMISSIONER GAW: Well, Commissioner Appling
5 hasn't gone. I've a couple more questions.

6 JUDGE RUTH: We'll let you have a turn,
7 Commissioner Appling.

8 COMMISSIONER APPLING: Judge, thank you.

9 I'm going to start off with Staff because I
10 want you to clarify me on a couple things -- clarify for me on
11 a couple things here. Let's go back to 392.245. Do you have
12 that in front you?

13 MR. POSTON: Yes, I do.

14 COMMISSIONER APPLING: The thing that I'm
15 having a tough time crawling over is down on the Section 1
16 where it says, Just, reasonable and lawful. I'm having a
17 little tough time with the word "just "and "lawful."

18 MR. POSTON: Can you point me to where you are?
19 I'm sorry.

20 COMMISSIONER APPLING: Section 1 of 392.245,
21 the third or fourth line. And it says that, The Commission
22 shall have the authority to ensure that things are just,
23 reasonable and lawful.

24 MR. POSTON: Okay.

25 COMMISSIONER APPLING: Okay. Then it goes on a

1 little bit further, talks about price cap and then it jumps a
2 little bit further down and says, Exchange telecommunication
3 companies which maximum allowable price shall not be subject
4 to increase except as otherwise provided in this section.

5 Help me out, Staff. Where in that section do
6 you see it gives the Commission the authority to approve what
7 CenturyTel and OPC is asking us?

8 MR. POSTON: I don't see it in here. I think
9 you pointed to the language that states that -- I guess what
10 we need to look at has to be in this section, has to be in
11 this statute to determine how -- to determine those maximum
12 allowable prices. And I don't see anything else in here that
13 would support the proposal.

14 COMMISSIONER APPLING: Are CenturyTel and OPC
15 asking us to do something here that's not legal?

16 MR. POSTON: I believe so, yes.

17 COMMISSIONER APPLING: Okay. Now, skipping on
18 down to section 4 where it talks about -- the best place to
19 pick it up where it says, Change prior to January 1, 2000.
20 Are you there?

21 MR. POSTON: Yes.

22 COMMISSIONER APPLING: Therefore, the maximum
23 allowable price for exchange access in basic local
24 telecommunications service of an incumbent local exchange
25 telecommunication shall be annually changed by one of the

1 following methods, and they have chosen A. So, again, I ask
2 you, where is it that gives this Commission the authority to
3 approve this Stipulation?

4 MR. POSTON: I would say it's -- it's
5 definitely not in this section because this section says -- I
6 mean, the subsection it clearly says that the maximum
7 allowable prices shall be annually changed. And if you jump
8 down to A, which is what they've selected, shall be annually
9 changed by the change in the CPI.

10 COMMISSIONER APPLING: Okay. I will give OPC
11 and CenturyTel a chance to clear me up and help me out here on
12 some clarity on that because I'm looking for a leeway here.
13 It's not a matter that I don't want to do this, but it's just
14 a matter of give me a leeway, OPC or, Larry, and help me out
15 so that I can get over this hump here and do that.

16 I'm having a problem with this because I'm
17 thinking in the future here, Staff, that when we open this
18 floodgate, what's going to happen when Sprint and SBC come
19 back in the next few weeks asking for a local calling scope?

20 Help me out, please, OPC. I heard what you
21 said this morning about -- and you spoke to this early on in
22 your opening statement, but I'm still having a problem with
23 the legality. So if there's anything you can say to help
24 clarify this point for me so that I can find some kind of
25 leeway, a segue into a decision here, I'd appreciate it.

1 MR. DANDINO: Certainly, Commissioner. And I
2 certainly understand, you know, the dilemma that the
3 Commissioners are looking at this. I mean, I wish it was
4 crystal clear, but like so many things in law, it's not
5 crystal clear.

6 But I think a reasonable interpretation -- one
7 of the things is I don't think you could take a strict literal
8 reading of this because I think when you look at statutes --
9 and I think there's enough ambiguity in the statute when you
10 look in terms of what the -- you want to look at what the
11 effect is. That's the whole purpose of applying statutes and
12 interpreting statutes is to give effect to what the General
13 Assembly intended.

14 I think -- first, also you were asking about
15 the words "just" and "lawful." And I think the just is
16 equitable and fair. And we're talking in terms of -- we're
17 talking about the Commission's duties to look at just,
18 equitable and fair remedy and authority to implement this.

19 Because we're asking you to be just and
20 equitable and fair to the people of Rockaway Beach in order
21 for them to have an adequate calling scope in the same manner
22 as the people of Columbia have an adequate calling scope.

23 When we're looking at lawful, is it within --
24 and courts have said that means within the Commission's
25 statutory authority. There we always get into the question is

1 can you put your finger on the exact statute that allows this.
2 And I think that -- I think in this case, you have to put your
3 hand on -- more than your finger on the statute. You have to
4 put your hand on the whole telecommunications provisions, the
5 authority of the Commission to provide and ensure adequate
6 service.

7 I think in the first subsection you're looking
8 at -- when it talks about the maximum allowable price shall
9 not be subject to increase except as otherwise provided in
10 this section, we're not talking about an increase to -- to the
11 people of Columbia or others. We're talking about implement--
12 how to implement a decrease.

13 The increase in -- or the additional additive
14 for EAS is really not necessarily an increase in basic local
15 service, but it is the addition of an EAS and expansion of the
16 local calling. So it's only -- I would liken it more toward
17 an additional service that they're obtaining.

18 In terms -- and the harder part is when we get
19 to subsection 4(1) that you've discussed before, Shall not be
20 changed prior to January 1st, 2000, that was -- is usually
21 interpreted as though rates are frozen, the company cannot
22 raise them and no one in the Commission cannot compel them to
23 lower them, shall not be changed. And thereafter, it can be
24 changed -- annually changed by one of the following methods.

25 Change means up or down. It doesn't say that

1 it has to be -- has to be decreased by that amount and it
2 doesn't say -- you know, even though I would say that when it
3 says changed, it certainly puts a limit in B with the CPI
4 because that's what the whole statute is about, is putting a
5 cap on prices. It is not necessarily a statute designed to
6 lower prices.

7 And in terms of -- well, I think that's about
8 the best I can -- I can just refer you to what I said this
9 morning. I am -- we're trying to bridge this in terms of
10 looking at what the intent of the legislation is, what the --
11 trying to work this into a new environment, competitive
12 environment before company -- the company could just, you
13 know, recover all its costs. And now we're trying to try to
14 work this alternative regulation into a network that really
15 doesn't change all the time. Thank you.

16 COMMISSIONER APPLING: Follow up on that. Now,
17 you used the words "just, equitable and fair." If you were
18 living in Wentzville and you were asked to supplement Rockaway
19 Beach, would you find that fair?

20 MR. DANDINO: I don't necessarily think that
21 I'm subsidizing Rockaway Beach. I'm a CenturyTel customer in
22 St. Peters and I don't see this as a subsidy for them. It's
23 part of a whole network that I have value because of the whole
24 value of the network.

25 And there's going to be certain inequities.

1 The company is going to take some revenues that it has and
2 spend more in a certain area than it's going to spend in mine.
3 And especially when they're spending more in an area where
4 they need an adequate calling scope and the company could be
5 subjected to a complaint for an inadequate calling scope.

6 COMMISSIONER APPLING: Thank you, sir.

7 Larry, would you like to just shortly comment
8 on that?

9 MR. DORITY: Yes, thank you, Commissioner. And
10 thank you for your interest and question.

11 I would support what Mr. Dandino just offered
12 to you. And I guess I would also suggest that in the area of
13 rate design -- and that's really I think what we're talking
14 about here today in terms of, you know, you established a
15 certain level of revenues in terms of reduction and now how
16 are we going to allocate them.

17 We've shown you that there certainly is
18 precedent, looking at the Sprint tariff, for targeting
19 portions of the reduction, if you will. And I certainly agree
20 with Commissioner Gaw. People can change their minds and
21 Staff is welcome to do that and that is not necessarily
22 binding on this Commission, but it is out there, it is
23 precedent and it certainly gave us cause to look at this as an
24 option, a viable option for your consideration.

25 But in the context of rate design, deciding how

1 those dollars are going to be allocated or flowed through,
2 in -- that whole rate design concept has normally been
3 considered a quasi-legislative function of the Commission.
4 You've been given great leeway in deciding how those dollars
5 can be allocated.

6 And in terms of the slippery slope argument, I
7 guess I would just remind the Commission that these are filed
8 tariffs that have to be approved by the Commission. And I can
9 assure you that the tariffs are reviewed in detail. Both the
10 Staff and the Office of Public Counsel review these tariffs to
11 see what is being accomplished.

12 And I don't see this as necessarily opening up
13 the floodgates to problems that you might have to encounter in
14 the future. I mean, we're talking -- in the context of price
15 cap filings, these occur one time a year on an annual basis.

16 And, you know, normally they would have a
17 45-day effective date to make sure that the Staff and the OPC
18 has, you know, ample opportunity to review these. And in the
19 context of this particular filing, we asked to shorten that to
20 30 days so we could still have the opportunity to negotiate
21 and try to reach a resolution.

22 The Staff and OPC were well aware of what we
23 were looking at and they, in fact, supported our filing to
24 reduce that 45-day time frame to 30 days. So, you know, I --
25 and I appreciated their support of that because that did give

1 us the time that we actually needed to bring this thing to
2 resolution.

3 COMMISSIONER APPLING: Larry, thank you. Thank
4 you very much.

5 Anything else, Staff, that you would like to
6 comment on before I move on?

7 MR. POSTON: No, thank you, Commissioner.

8 COMMISSIONER APPLING: Thank you very much,
9 Judge. And you can go on to another Commissioner.

10 JUDGE RUTH: Thank you.

11 We'll start round 2. Commissioner Murray, do
12 you have additional questions?

13 COMMISSIONER MURRAY: Thank you. First, I want
14 to ask, is an expanded calling scope -- or is a calling scope
15 within the definition of basic local service?

16 MR. DORITY: Commissioner, if I may, the way
17 this has been structured in terms of being a mandatory
18 non-optional service, it fits the current EAS definitions that
19 are in the CenturyTel of Missouri tariff. We would consider
20 it an EAS-type of route with an additive that is offered for
21 mandatory service for these particular exchanges. And to that
22 extent, it would meet the definition of basic local.

23 COMMISSIONER MURRAY: Anybody else have
24 anything to add to that?

25 MR. POSTON: I could just repeat the definition

1 of basic local from 386.020 as two-way switched voice service
2 within a local calling scope as determined by the Commission.
3 And then it says, Comprised of any of the following services,
4 and then it goes on to list.

5 MR. DANDINO: Commissioner, I was just going
6 to -- just one brief point. For USF, Universal Service
7 support purposes, you can receive funds -- you can use those
8 funds only for mandatory expanded calling of plans.

9 MR. DORITY: And if I may, Commissioner -- and
10 I'm sorry, I don't have the statute book in front of me -- but
11 I believe it's -- the exclusion is just as important where it
12 excludes from basic local service those routes that are
13 optional.

14 COMMISSIONER MURRAY: Okay. So the answer that
15 I appear to be getting is that a mandatory two-way calling
16 scope is basic local service; is that correct?

17 MR. DANDINO: Yes.

18 MR. DORITY: Yes.

19 COMMISSIONER MURRAY: And --

20 MR. DANDINO: Commissioner, one point I think
21 that's -- as Ms. Meisenheimer reminded me, EAS, even though
22 it's a one-way EAS, I think that still falls within the -- and
23 if it's mandatory, which it is, it still falls within the
24 local -- basic local.

25 COMMISSIONER MURRAY: Because it's mandatory?

1 MR. DANDINO: That's correct. The two-way
2 was -- well, I guess that means for -- well --

3 MR. DORITY: Connectivity.

4 JUDGE RUTH: Mr. DORITY, did you say something?

5 MR. DORITY: I'm sorry. Just in terms of
6 connectivity, not necessarily the rate charge.

7 MR. DANDINO: Yes.

8 COMMISSIONER MURRAY: In 392.245.4, paren 2,
9 the carriers have to file tariffs to reduce rates charged, and
10 I'm quoting, For any service in any case in which the current
11 rate exceeds the maximum allowable price.

12 Now, if we read that literally, would we not
13 require every local -- every basic local service to be reduced
14 by the percentage of reduction in the CPI? Would we not
15 require that to occur or -- I guess you'd have to change the
16 percentage, but to reduce every service to the degree that
17 would equal the revenue reduction that the company should
18 receive as a result of the reduction in the CPI? And I'll ask
19 Staff, because it says, For any service in any case in which
20 the current rate exceeds the maximum allowable price.

21 MR. POSTON: I would say that, yes, that every
22 basic local rate would need to be reduced if it exceeded the
23 maximum allowable price. I'm not sure -- there was a second
24 part to your question I'm not sure if I'm answering.

25 COMMISSIONER MURRAY: Well, any time there was

1 a reduction in the CPI, wouldn't a literal reading of that
2 statute require a reduction in every service that qualifies
3 under the definition of basic local service?

4 MR. POSTON: Yes. Every time that the
5 preceding 12 months the CPI would show a reduction, that the
6 maximum allowable prices for every basic local service would
7 be adjusted downward in that instance.

8 COMMISSIONER MURRAY: And is that what has
9 occurred in the past, that every basic local service,
10 everything that fits within that definition has been reduced?

11 MR. POSTON: I can't answer to that. I really
12 don't know.

13 COMMISSIONER MURRAY: Has that ever occurred?
14 You don't know?

15 MR. POSTON: I don't know.

16 COMMISSIONER MURRAY: Mr. Dority, I think you
17 wanted to say something.

18 MR. DORITY: Commissioner, I would just suggest
19 that to the extent that it would, in fact, require -- or a
20 literal reading of the wording would require that, then I
21 would suggest that the language would read, Not any service in
22 any case, but all services in all cases.

23 COMMISSIONER MURRAY: So you could read it to
24 say because it refers to any service, that it could be any one
25 of the basic local services?

1 I think I'm not going to suggest that a witness
2 be called since this is just an on-the-record presentation
3 regarding this Stip and Agreement and I think our purpose here
4 is just to address the legal -- the threshold legal question
5 of whether this is a tariff that meets the legal definition of
6 what can be done under the price cap statute. So I will limit
7 my questions to the attorneys.

8 And none of the three attorneys have knowledge
9 of any tariff -- and just correct me if I'm wrong, but it
10 sounds as if none of the three attorneys here have knowledge
11 of a tariff filed under the price cap statute that they can
12 point to which demonstrates that every local basic service
13 provided by that carrier was reduced by that filing; is that
14 correct?

15 MR. DANDINO: Yes.

16 MR. POSTON: That's correct.

17 COMMISSIONER MURRAY: Mr. Dandino, you heard
18 Mr. Dority offer the interpretation that in 392.245.4,
19 paren 2, any service in any case could mean any service, not
20 all services in all cases.

21 MR. DANDINO: Well, that's right. And I
22 believe you could read it that way. And I think also you
23 could almost look at it as a direction for the Commission --
24 or that if they find one that is above the -- you know, if
25 they find one that is above the maximum rate, that you could

1 reduce it.

2 COMMISSIONER MURRAY: And how do you determine
3 if any service is above the maximum rate?

4 MR. DANDINO: Well, you start with what the
5 rates were when they were frozen. And then the maximum rate
6 would be --

7 COMMISSIONER MURRAY: Let me stop you a second
8 and ask for clarification on that. When they were frozen, you
9 mean in the beginning, the first time period?

10 MR. DANDINO: Right. I'm looking under
11 section 1 in parens where it said the -- let's see here. That
12 the maximum allowable rates shall not be changed for a period
13 of 12 months after the company subject to this -- they were
14 frozen until January 1st, 2000. So you establish a base.
15 These are the maximum rates.

16 COMMISSIONER MURRAY: Okay. So you're saying
17 that if a local basic service or a basic local service, for
18 example, installation was priced prior to January 1, 2000 at
19 \$10, that is the maximum allowable price?

20 MR. DANDINO: To start with. Then it's -- from
21 then on, it's what -- if I can think through this now, if it
22 is then what -- if to the extent that the company implements
23 changes -- okay, if they don't increase the -- the rate, then
24 that maximum -- that maximum rate would stay the same. If
25 they decreased their rate, then it would be to that -- it

1 would reset the maximum amount.

2 COMMISSIONER MURRAY: Okay. Let me go through
3 this a little bit more. If, in 2002, that rate had been set
4 at \$10.50 and prior to January 1, 2000 it was \$10.00,
5 somewhere in 2002 it was set at 10.50 --

6 MR. DANDINO: Consistent with the increase in
7 the CPI.

8 COMMISSIONER MURRAY: Yes.

9 MR. DANDINO: So that would be the new.

10 COMMISSIONER MURRAY: Yes. Then the following
11 year there was a decrease in the CPI. Would that \$10.50 have
12 to be reduced by the reduction in the CPI or would that \$10.50
13 charge not be above the maximum allowable charge because --
14 wait a minute. That doesn't make sense. If the -- okay.

15 If it had gone up to \$10.50 and then there was
16 a reduction in the CPI the following year, would the maximum
17 allowable still be \$10?

18 MR. DANDINO: It would be -- I think it would
19 still be the 10.50. I'm confused.

20 COMMISSIONER MURRAY: Okay. I am too.

21 MR. DANDINO: This maximum allowable is -- in
22 terms of what -- an existing price, I keep going back to --
23 and I'm confusing it, I'm sorry, but the 8 percent in the
24 different section. I barely understood -- got that straight
25 in my mind. I'm just having trouble with this.

1 COMMISSIONER MURRAY: Okay.

2 MR. DANDINO: Let me try it again. If it's --
3 if it was \$10 and the CPI changed so it would be \$10.50, if
4 the company increased it -- actually implemented it, it would
5 increase the maximum allowable price. If they didn't, then
6 the maximum allowable price would stay the same. If they
7 decreased it, they would -- by the CPI adjustment, then it
8 would be resetting it the maximum allowable price, but I'm --

9 COMMISSIONER MURRAY: Okay. But we're talking
10 about the CPI here, which doesn't work the same way the
11 8 percent --

12 MR. DANDINO: That's correct.

13 COMMISSIONER MURRAY: -- increases work.

14 MR. DANDINO: Yes. I think you're right. My
15 analysis isn't working right in that.

16 COMMISSIONER MURRAY: And I got confused, so
17 I'm going to change that line of questioning unless somebody
18 else can straighten us out. I don't see any volunteers so --
19 all right.

20 Is it Staff's position, Mr. Poston, that when
21 the CPI is reduced, that a tariff filing, to be in accordance
22 with the price cap statute, that that tariff filing would have
23 to reduce all basic local rates?

24 MR. POSTON: Yes. That's -- that's how I
25 interpret the price cap statute.

1 COMMISSIONER MURRAY: So that's for everything
2 that falls within the definition of basic local service?

3 MR. POSTON: I mean, the statute doesn't
4 distinguish between different services that fall under basic
5 local. It just refers to basic local services. And so I read
6 that to mean all basic local services.

7 COMMISSIONER MURRAY: So is that a yes?

8 MR. POSTON: Yes.

9 COMMISSIONER MURRAY: So we can look in the
10 definition of basic local services and determine that under
11 Staff's interpretation of the statute, a legal price cap
12 filing would have to include a reduction in every one of those
13 services equally to all customers?

14 MR. POSTON: Yes. Percentage -- the percentage
15 would be equal to all customers and that would apply to the
16 items listed under the basic local definition.

17 COMMISSIONER MURRAY: Mr. Dority, do you agree
18 or disagree with that?

19 MR. DORITY: Obviously, Commissioner, we
20 disagree with that interpretation. I think you'd have the
21 latitude to spread the decreases in a way that does not
22 necessarily equal percentage across the board.

23 COMMISSIONER MURRAY: Do you think we have the
24 latitude to apply it to only some of the basic local services
25 and not all of them?

1 MR. DORITY: Yes.

2 COMMISSIONER MURRAY: And, indeed, is that not
3 what your tariff filing asks us to do?

4 MR. DORITY: Our tariff filing would take a
5 portion of the revenues associated with the CPITS reduction
6 and apply them to the revenue requirement necessary to
7 effectuate the expanded calling plan.

8 COMMISSIONER MURRAY: Which you have said is a
9 basic local service.

10 MR. DORITY: That's correct. The remainder of
11 those dollars is, in fact, applied to all components of basic
12 local service. It's just in a lesser amount.

13 COMMISSIONER MURRAY: Okay. So all basic local
14 services are being reduced for everyone?

15 MR. DORITY: Correct.

16 COMMISSIONER MURRAY: And one basic local
17 service is being reduced an additional amount for those people
18 who receive that particular basic local service; is that
19 right?

20 MR. DORITY: No, ma'am.

21 COMMISSIONER MURRAY: No. Okay. Explain where
22 that's wrong.

23 MR. DORITY: If you look at the whole of the
24 revenue reduction pursuant to the CPITS, a proportion of those
25 dollars is being used to effectuate the expanded calling plan

1 in the Rockaway Beach area.

2 COMMISSIONER MURRAY: But because that will be
3 an expanded calling plan that is mandatory, I have been told
4 here today that that is a local basic service.

5 MR. DORITY: It is a basic local service, it's
6 a new basic local service that we are offering now.

7 COMMISSIONER MURRAY: Okay. So my
8 characterization of it as a reduction was incorrect, but it is
9 being applied to nothing but basic local service; is that
10 correct?

11 MR. DORITY: That is correct, Commissioner.

12 COMMISSIONER MURRAY: Do you agree with that,
13 Mr. Dandino?

14 MR. DANDINO: Yes, Commissioner.

15 COMMISSIONER MURRAY: Okay. I think I'll stop
16 for a while. Thank you.

17 Excuse me. Did Staff have anything to add to
18 that?

19 MR. POSTON: No, thank you.

20 JUDGE RUTH: Okay. Let me see. Commissioner
21 Gaw, do you have additional questions?

22 COMMISSIONER GAW: Oh, I don't know. Let me --
23 maybe a couple of lines. I'm just trying to make sure that I
24 understand the inference that was made in the one question
25 from Commissioner Murray that no one can point out a tariff

1 where all of the basic local service rates as they're
2 individually priced were moved according to the CPI. Does
3 that mean that you don't believe there are any or that you
4 just don't know what's in the tariffs you don't recall what's
5 in the tariffs, whether they do or they don't follow the CPI
6 according to individual rates?

7 MR. DANDINO: Speaking for myself, I'm not sure
8 on -- on what's in all the tariffs, all the price cap
9 companies, but I would point out that I don't believe that
10 since the price cap there's been very many I think reductions.
11 I think there's only two, maybe a second one.

12 COMMISSIONER GAW: Whether they're reductions
13 or increases, either way?

14 MR. DANDINO: The increases -- when they've
15 increased -- well, I can't say that either, that they
16 increased all of them, but --

17 COMMISSIONER GAW: You just don't know is what
18 you're telling us.

19 MR. DANDINO: Right.

20 COMMISSIONER GAW: It's not an inference that
21 it's one way or the other?

22 MR. DANDINO: That's correct.

23 COMMISSIONER GAW: Is that true of the others
24 that answered that they didn't know?

25 MR. POSTON: That's true. I haven't looked at

1 all of the price cap filings -- the previous price cap filings
2 to determine whether or not it was across the board.

3 COMMISSIONER GAW: Okay.

4 MR. DORITY: Yes, Commissioner, that's correct.
5 Speaking from personal knowledge, I just simply don't know. I
6 would not be surprised, however, if a prior CenturyTel price
7 cap reduction may well have been applied equally across the
8 board. I just don't know.

9 COMMISSIONER GAW: I understand. I just was
10 trying to make sure that there wasn't some inference to be
11 drawn from answers to those questions. And it might be
12 helpful in a setting down the road, if we go farther with
13 this, to know some of those things, but from a legal
14 perspective, I don't know if it -- if it matters tremendously.

15 From the standpoint of -- you say there are EAS
16 tariffs that CenturyTel has on file?

17 MR. DORITY: Contained within our basic local
18 service tariff are references to EAS routes that are in effect
19 for which an EAS additive is recovered, yes.

20 COMMISSIONER GAW: Okay. And that EAS
21 additive, is it recovered throughout the CenturyTel region?

22 MR. DORITY: It would be applicable to a
23 specific exchange.

24 COMMISSIONER GAW: Okay.

25 MR. DORITY: And their calling capabilities.

1 COMMISSIONER GAW: Do those EAS tariffs recover
2 the costs of that service from that exchange that it's located
3 in or the exchanges?

4 MR. DORITY: Some of those tariffs are legacy
5 from the Verizon days. I could not speak as to whether or not
6 they recover the costs that are incurred as a result.

7 COMMISSIONER GAW: You just don't know?

8 MR. DORITY: I just don't know.

9 COMMISSIONER GAW: Are those two-way or one-way
10 EAS tariffs?

11 MR. DORITY: I believe we have both.

12 COMMISSIONER GAW: Okay. And were any of those
13 EAS routes effective -- initially effective subsequent to the
14 '96 Act?

15 MR. DORITY: Commissioner, I don't know. I can
16 find out for you.

17 COMMISSIONER GAW: Okay. And is there an EAS
18 route in the exchanges that we're dealing with in this case
19 currently in tariffs?

20 MR. DORITY: I believe there may be.

21 COMMISSIONER GAW: Can you be more specific
22 with that too?

23 MR. DORITY: If I could have a couple of
24 minutes, I'll try.

25 COMMISSIONER GAW: Sure. Or if someone else

1 knows that -- if Staff or Public Counsel knows --

2 MR. DORITY: Commissioner, some of these
3 exchanges have current EAS routes to other exchanges that are
4 not necessarily included in this particular package.

5 COMMISSIONER GAW: Okay. So there are no EAS
6 routes that would be from the exchanges that you propose to be
7 involved in this tariff to -- that terminate in the same way
8 that this proposal terminates? In other words, you've got --
9 right now you've got proposed Rockaway Beach to Branson,
10 Rockaway Beach to Forsyth, Forsyth to Rockaway Beach,
11 Kimberling City to Reeds Springs and Reeds Springs to
12 Kimberling City; is that right?

13 MR. DORITY: I believe that's right. For
14 instance, in our current tariff, there is an EAS from Branson
15 to Branson West, for instance. If you go to Forsyth,
16 currently has EAS to Bradleyville, Cedar Creek Protom.

17 COMMISSIONER GAW: Do you know what the prices
18 are on those?

19 MR. DORITY: Branson to Branson West I believe
20 is \$1.55.

21 COMMISSIONER GAW: Okay. How about some of the
22 others?

23 MR. DORITY: Then -- I'm sorry -- Branson West
24 to Branson, the rate is \$2.52.

25 COMMISSIONER GAW: Okay.

1 MR. DORITY: I'm sorry. Forsyth, I'm not sure
2 what the current rate is because I believe we're showing the
3 current rate plus the additive in our proposed tariff that I'm
4 looking at, so I --

5 COMMISSIONER GAW: The particular plan
6 description though that we have in front of us, there are no
7 current EAS routes that are the same?

8 MR. DORITY: There are none that are the same
9 existing today, that is correct.

10 COMMISSIONER GAW: Okay. And you believe that
11 this EAS service that this new plan would offer is not a new
12 service?

13 MR. DORITY: I believe it is a new service for
14 these particular communities in these particular routes.

15 COMMISSIONER GAW: Okay. The reason I'm asking
16 that question, Mr. Dority, is because of the language in
17 sub 34 of 386.20 where it says, Any retail telecommunications
18 service offered for the first time after August 28th, 1996
19 shall be classified as a non-basic telecommunications service,
20 including any new service which does not replace an existing
21 service.

22 Can you reconcile that for me?

23 MR. DORITY: Not at the moment.

24 COMMISSIONER GAW: Okay. I'm not suggesting
25 that I want you to be wrong in suggesting that this is a basic

1 service, but just note that that may be somewhat of an issue
2 that you all aren't raising, but someone else might.

3 MR. DORITY: I understand. Thank you.

4 MR. DANDINO: Commissioner, on the new service,
5 it's a new service -- it's a new EAS service for this
6 community. EAS is a long-standing service, part of basic
7 service, but it's new to them.

8 COMMISSIONER GAW: Well, it could be that the
9 interpretation is that any EAS service is a basic service
10 because there was something called the EAS before '96 or it
11 could be more specific to whether or not there was a
12 particular EAS service in that -- in that exchange to another
13 exchange, and I'm not sure which interpretation is
14 appropriate. But I just -- I note that this is -- could be an
15 issue.

16 MR. DANDINO: That's one reason why we didn't
17 just want to make it a -- an interexchange -- an additional
18 interexchange toll plan in a different part of the -- whereas,
19 you know, we thought as a EAS -- mandatory EAS, it is part of
20 a -- more likened to -- it is part of the basic service and we
21 wouldn't have to be creating a new service.

22 COMMISSIONER GAW: I think I'm done, I think,
23 Judge. Thank you.

24 JUDGE RUTH: Commissioner Appling, do you have
25 additional questions?

1 COMMISSIONER APPLING: One question for the
2 Staff. If the Commission should approve this Stip and
3 Agreement, do you have any recommendations for the Stip?

4 MR. POSTON: When you say --

5 COMMISSIONER APPLING: Any comment? If it's
6 approved, do you have anything that you would like to add to
7 that we should consider in the process of approving this?

8 MR. POSTON: Well, our arguments against the
9 Stipulation are both legal and as to the reasonableness. And
10 so if the Commission wishes to approve the Stipulation on the
11 basis that it is lawful to use the CPI adjustment as proposed,
12 we do have concerns with the reasonableness of the proposal
13 and we have filed a motion to suspend the tariff and our
14 concerns are outlined in a memorandum attached to that motion.

15 COMMISSIONER APPLING: Is there some other way
16 outside of A and B in this statute for, say, doing another
17 tariff that would get us to where we want to be on this?

18 MR. POSTON: Nothing that we've identified.
19 We've been fighting with this for several years now. I mean,
20 not fighting amongst ourselves, but fighting with the idea of
21 how can we get this done and do it legally and do it in a way
22 that I guess serves the need of the people in these exchanges,
23 and we have not come up with anything.

24 COMMISSIONER APPLING: Okay. Thank you.

25 JUDGE RUTH: Okay. Additional questions from

1 the Bench?

2 COMMISSIONER MURRAY: I kind of hesitate to go
3 here because I don't know exactly what I'm trying to get at,
4 but -- and I don't have the statutes in front of me, but I
5 know that there is a reference in the statutes to comparable
6 rates for comparable services. And I'd like some feedback on
7 calling scope as a part of basic local service and then
8 expanded calling scope as a part of basic local service in
9 terms of fulfilling that part of the requirements that we --
10 that customers receive comparable services for comparable
11 rates. Can anybody figure out what I'm trying to ask?

12 MR. DANDINO: I think you have to -- well, what
13 I looked at was 392.185 where it's parity of urban and rural
14 services and then ensure the customers pay only reasonable
15 charges. The comparable, I'm trying to -- oh, I think it is
16 federal USF. That's one of the goals of the federal USF --

17 COMMISSIONER MURRAY: Oh, okay.

18 MR. DANDINO: -- to have comparable services
19 and that's what the cost is for at the federal level.

20 COMMISSIONER MURRAY: And what is the language
21 in the Missouri statute regarding parity of services?

22 MR. DANDINO: That's one of the purposes of the
23 telecommunications laws is to promote parity of urban and
24 rural telecommunications services.

25 COMMISSIONER MURRAY: And that is one of the

1 purposes of the '96 Act?

2 MR. DANDINO: That was part of Senate Bill 507,
3 yes, to implement the '96 Telecommunications Act.

4 COMMISSIONER MURRAY: And, Mr. Dandino, did you
5 make some reference to the Commission's consideration of that
6 part of the '96 Act in interpreting the price cap statute?

7 MR. DANDINO: Yes, Commissioner. I think -- I
8 think -- and in the recent Supreme Court case of Sprint, the
9 court, when it interpreted the price cap, went directly to
10 this statute, 392.185, and used that as an interpretation tool
11 to show what the intents and what the purpose of the statute
12 was. So I think it would be consistent with looking at this
13 statute to look as a means to interpret and implement the
14 Commission's duties.

15 COMMISSIONER MURRAY: Do you have the citation?

16 MR. DANDINO: Let's see. Oh, yes. It would be
17 Sprint Missouri, Inc. versus Public Service Commission and
18 it's No. SC-86584. It was decided June 14th, 2005, Missouri
19 en banc.

20 COMMISSIONER MURRAY: Thank you.

21 Judge, I think that's all I have. Thank you.

22 JUDGE RUTH: Then I have a question from
23 Chairman Davis. He'd like me to follow up. He's aware that
24 this has been discussed somewhat in the pleadings, but he's
25 asked that I direct it particularly to the Office of the

1 Public Counsel. The question is, why is the Stipulation and
2 Agreement, the plan that's proposed under it, why is it in the
3 public interest? Particularly, how is it in the public
4 interest of the areas that are not in the Branson area, that
5 are not getting the expanded scopes, for example, Columbia?

6 MR. DANDINO: Well, first of all, I think
7 overall, it's in the public interest specifically for the
8 Rockaway Beach area, probably that's -- because you are
9 increasing the adequacy of the service.

10 As far as to other service areas of CenturyTel,
11 it still goes back to the value -- the telecommunications
12 network, the telecommunications system is -- is as valuable as
13 it is useful to all the customers. And if -- you know, it --
14 if the people in Rockaway Beach will continue to use the
15 system, that supports the whole network. And once again, it
16 makes it a -- makes the whole system as valuable.

17 And you also have to look at it as if you
18 improve one part -- in Columbia they added I think the
19 Ashland -- the Ashland route, expanding those routes. In
20 other areas, in my area they -- they went from the -- there's
21 an EAS route in St. Charles from St. Peters into one of the
22 St. Charles area exchanges long-standing. There's -- expanded
23 calling is to benefit the whole system.

24 And then it, of course, benefits the economic
25 stability or improvement of the state and, you know, that has

1 impact on the entire state. That's one of the things too is I
2 think when you're looking in the Branson area, it's a -- is a
3 high tourism area. Missouri tourism is an important industry
4 for Missouri and I think that that benefit spills over into --
5 into all areas of Missouri.

6 I think we can't be very parochial in looking
7 at is it specifically benefiting me for it to be in the public
8 interest. And I don't think that necessarily is the test.
9 The same way as a highway up near St. Joseph doesn't
10 necessarily specifically benefit me traveling to Jefferson
11 City, but it's improvement for the state and improvement of
12 the network of highways and improves -- improvement for the
13 whole state.

14 JUDGE RUTH: Okay. Does anyone else want to
15 respond to that? CenturyTel?

16 MR. DORITY: Yes. Thank you, Judge. I would
17 echo Mr. Dandino's remarks and simply indicate that we make
18 investments across the state in our different service areas
19 throughout the course of the years, different years, different
20 amounts of investments, but the point is that it does benefit
21 the whole system.

22 And I would also point out that with -- under
23 the Stipulation and Agreement, with our plan in place, we are
24 still reducing every basic local service element across the
25 state. Thank you.

1 JUDGE RUTH: Staff?

2 MR. POSTON: I don't have any followup. Thank
3 you.

4 JUDGE RUTH: I think the Chairman would like to
5 hear your point of view as to if we got past the legality
6 issue --

7 MR. POSTON: Correct.

8 JUDGE RUTH: -- do you believe that the
9 proposal is otherwise in the public interest? Specifically,
10 you know, he was looking at how some areas are subsidizing
11 other areas. Could you respond?

12 MR. POSTON: Well, it's Staff's position that
13 just the concept of using, say, money that would normally
14 reduce customers in Columbia using that for expanded calling
15 to Rockaway Beach, that that is not necessarily against the
16 public interest.

17 JUDGE RUTH: Okay. Thank you.

18 Then I have a couple of questions also. And
19 the first one, I'm looking at CenturyTel's filing from
20 August 8th, page 3, paragraph 5. This paragraph states that,
21 CenturyTel believes that expanded calling in these affected
22 areas -- or exchanges would not garner acceptance by its
23 customers if the full revenue requirement associated with the
24 plan were recovered through monthly expanded calling
25 additives.

1 Can you tell me what the additives would be if
2 we did not have the price cap mechanism -- funding mechanism
3 in there? Instead of the 250 and 350, what would it be for
4 those communities? And if this is HC, then we'll go
5 in-camera. You'll have to tell me.

6 MR. DORITY: Your Honor, I don't have that at
7 my fingertips. I think we can get that information for you.
8 It may take a couple of minutes to do that.

9 COMMISSIONER GAW: Judge, if they're going to
10 look at that -- I avoided that earlier, but if they're going
11 to look at that, I would like to know the numbers if the
12 calling were mandatory two-way. So that it would be a rate --
13 a rate that would also be assessed on, for instance, the
14 Branson exchange to call Rockaway Beach so if that -- maybe
15 that number is in there.

16 JUDGE RUTH: I can move on. And if this is
17 something that you can get, I have questions for other parties
18 and we'll come back to it. If not, I'm not going to pursue it
19 at this time, but it may be something that comes up if we have
20 an evidentiary hearing. Like I said, I didn't know if this
21 was something you would have with you or not because --

22 MR. DORITY: I'm sorry, Judge, I do not have
23 that with me. It would probably take us some time to pull it
24 together.

25 JUDGE RUTH: We'll avoid it at this time. If

1 the Commission wants to follow up, there might be an order
2 directing filing or this might be brought up at an evidentiary
3 hearing, if it goes to that.

4 Then I also want to ask CenturyTel, this may be
5 in here somewhere, but -- and it may have been referenced, but
6 I didn't get down the full cite for the Sprint case that is
7 referenced on page 5. It's called file No. 2001-00493 there.

8 MR. DORITY: Your Honor --

9 JUDGE RUTH: Does anyone have the full cite?

10 MR. DORITY: It was a tariff approval and it's
11 actually attached to our pleading.

12 JUDGE RUTH: Well, I was hoping there was more.
13 There's not?

14 MR. DORITY: No. It was a tariff that the
15 Commission allowed to go into effect.

16 COMMISSIONER GAW: So it was -- okay. Thank
17 you. It was allowed to go in effect. There wasn't a specific
18 order approving it?

19 JUDGE RUTH: That's what I was trying to follow
20 up on it. And it sounds like the answer is no. It wasn't
21 actually a case?

22 MR. DORITY: I'm never quite sure when the
23 routing slips are utilized and signatures or initials are on
24 them. It does indicate approved on a certain date, file
25 agenda action, December 5th, 2000. So it may well have

1 general, do you believe that the Commission has the authority
2 to suspend this type of price cap statute that comes under
3 392.245, paragraph 4, subparagraph 1, part A?

4 MR. DORITY: To the extent that the tariff --
5 the mechanics of the tariff did not correspond with the
6 overall adjustment that was in place. I mean, if there was a
7 review and a finding that the mechanics of the tariff just
8 simply did not reflect appropriately what the statute
9 required, then they may -- you may, in fact, have authority to
10 suspend the tariff.

11 JUDGE RUTH: Would that be a suspension though
12 or a rejection if the Commission felt that the mechanics were
13 incorrect? One reason I ask the question is -- then if you go
14 to 392.245, subparagraph 4 and then paren 2, which is, The
15 Commission shall approve a change to a maximum allowable price
16 filed pursuant to paragraph A, which is what this one is,
17 subdivision 1 of this subsection, within 45 days of filing of
18 notice by the local exchange company.

19 Normally these would have had a 45-day tariff
20 effective date. It didn't. It had 30 days. So my question
21 would be -- my next question. This is really separate from
22 before. Does the Commission have authority to suspend this
23 tariff then for at least 15 days because the statute says
24 shall approve within 45 days?

25 MR. DORITY: I would think not, because the

1 Commission also gave us the variance from the 45-day notice
2 provision earlier.

3 JUDGE RUTH: That was a permission to file it
4 with 30 days as opposed to rejecting the tariff for not
5 complying with the statute. Does that automatically remove
6 the Commission's authority under this provision?

7 MR. DORITY: In terms of rejecting the tariff?

8 JUDGE RUTH: No. Suspending now.

9 MR. DORITY: I don't know, Judge. I'd have to
10 think about that.

11 MR. DANDINO: Your Honor, may I respond?

12 JUDGE RUTH: Yes. Sorry. Can you give me a
13 second?

14 MR. DANDINO: Sure. Certainly.

15 JUDGE RUTH: Mr. Dandino.

16 MR. DANDINO: Your Honor, the language there
17 that says it shall be approved within a certain time period,
18 it is still -- that language is still considered directory
19 under some of the statutes. Usually a public official, if
20 it's directed to do something within a time period, it is not
21 mandatory, but -- but rather unless it provides a consequence
22 for not acting, then it's considered directory and it is used
23 for a period of time in order so that -- the time periods are
24 usually used so if the Commission does not act, then a party
25 could go to the courts and get a mandamus for the -- to direct

1 the Commission to act and that time period would help.

2 In terms of whether the Commission has the
3 authority to suspend, I certainly believe that they have the
4 authority to suspend any tariff that comes before them in
5 Section 386.250. And their -- the Commission has the
6 authority to -- and also 392.200, has the authority to review
7 all tariffs filed with the Commission and to reject or suspend
8 tariffs.

9 So to inves-- and they have the power to
10 investigate any tariffs, any matter that comes within their
11 jurisdiction. I think this falls -- certainly falls within
12 their jurisdiction and they have the power to suspend tariffs
13 in order to conduct that investigation.

14 JUDGE RUTH: Okay. Staff, do you want to make
15 a response to any of this discussion?

16 MR. POSTON: Just that I think the authority
17 does fall under the statute that we cited, 392.230,
18 subsection 3.

19 JUDGE RUTH: Okay. Thank you.

20 In one of Staff's pleadings in this case, Staff
21 recommends that the Commission hold an evidentiary hearing on
22 the reasonableness of the plan. And I'm not certain that the
23 parties responded directly to that point. And I'd like to ask
24 them to do so now; in other words, if Staff recommended it.
25 And I want to hear, CenturyTel, your thoughts on that.

1 MR. DORITY: Well, this Stipulation and
2 Agreement is, in fact, a settlement among the parties,
3 primarily the Office of Public Counsel and CenturyTel. There
4 was tremendous give and take to get to this resolution.

5 And I think the Stipulation and Agreement
6 itself provides that all of those different provisions are
7 interdependent to the extent that were we going to interject
8 new and different considerations and proposals, that I'm not
9 sure where that would leave us in terms of the actual
10 Stipulation and Agreement as it is now filed.

11 We do not feel that an evidentiary hearing is
12 required. To the extent that the Staff has specific proposals
13 as to reasonableness that it would like to have the Office of
14 Public Counsel and CenturyTel consider, then we may try to be
15 able to do that in very short order, but, you know, we stand
16 by the Stipulation and Agreement that's in front of you.

17 JUDGE RUTH: Has Staff not given you any
18 details on what those alternative proposals are outside a
19 formal hearing? I mean, in individual discussions have you
20 not discussed that?

21 MR. DORITY: During the course of negotiations
22 we discussed some aspects of the Staff -- what I understand is
23 Staff's proposals in terms of -- again, I just saw it for the
24 first time, so I don't want to go behind the negotiations, if
25 you will. So maybe I better stop at that.

1 JUDGE RUTH: And Public Counsel, do you have a
2 response?

3 MR. DANDINO: I just echo Mr. Dority's
4 statement. I think we have a -- I don't think a hearing is
5 required. I don't think one is necessary to the extent that
6 the stipulation, you know, provides the information if the --
7 that's all.

8 JUDGE RUTH: I don't have any other questions.
9 Are there any more from the Bench?

10 COMMISSIONER GAW: I kind of have a question,
11 but I think it might be HC.

12 JUDGE RUTH: Even the wording of your question?

13 COMMISSIONER GAW: No.

14 JUDGE RUTH: Would you like to ask it? If the
15 answer's HC, you'll need to stop me and have me go in-camera.

16 COMMISSIONER GAW: The nature of the question
17 has to do with the potential for CenturyTel to file under the
18 new statute in its exchanges. And I don't know whether asking
19 a question as to CenturyTel's intentions there would be HC,
20 but I would expect it might be.

21 JUDGE RUTH: Mr. Dority, are you shaking your
22 head yes, that that would be HC?

23 MR. DORITY: I guess I'm not quite sure I
24 understand the question. I'm sorry, Commissioner.

25 COMMISSIONER GAW: Well, in this particular

1 case you're proposing to make adjustments that have potential
2 legal questions in regard to whether or not it can occur under
3 the price cap statutes.

4 If the same proposal were in front of this
5 Commission in dealing with adjustments that we didn't -- we no
6 longer had control over because of a declaration of
7 competitive status under the new statutory provisions, I'm
8 just wondering if the argument here is one that sets on a
9 legal issue that may no longer be as relevant within a short
10 period of time.

11 Are you understanding what I'm thinking about
12 here? And if that -- I don't really have to know the answer
13 to that. I may have done what I was looking for just by
14 asking it in a rhetorical fashion.

15 MR. DORITY: Commissioner, I think that the
16 company is still looking at the new law and evaluating it.
17 And at this point in time I really don't have any specific
18 response.

19 COMMISSIONER GAW: Even in HC you wouldn't have
20 any?

21 MR. DORITY: That's correct.

22 COMMISSIONER GAW: All right. I don't need to
23 go into HC then, Judge.

24 JUDGE RUTH: Any other questions from the
25 Bench?

1 MR. DORITY: Your Honor, if I may clarify a
2 point that I made earlier regarding -- I believe I was
3 responding to a question from one of the Commissioners
4 regarding customer notice. We have not provided any customer
5 notification at this point that would relate specifically to
6 the proposed expanded calling plan or any of the rates
7 associated with that.

8 We have, however, because of the billing
9 cycles, submitted customer notifications that would follow the
10 tariff filings that were actually made by CenturyTel in terms
11 of the price cap changes themselves because there were some
12 increases in non-basic services that your rule requires us to
13 give 10 days notice to.

14 So I just wanted to clarify in case I misspoke
15 earlier that there have been some notifications that have
16 been -- that are now going out in the billing cycle related to
17 the tariffs as filed.

18 COMMISSIONER GAW: Do we have copies of any of
19 those inside of filings that you all have made?

20 MR. DORITY: I believe they're in the filing
21 itself, the tariff filing. I think we had copies of proposed
22 notices that were in there.

23 COMMISSIONER GAW: Do you think it would be
24 obvious to someone receiving that in Wentzville or Columbia,
25 perhaps some others that they may not be receiving as much of

1 a reduction because of this proposal in Rockaway Beach and
2 Reeds Springs and others?

3 MR. DORITY: I'm not sure I could characterize
4 it as being obvious, no.

5 COMMISSIONER GAW: Okay. Thanks.

6 MR. DORITY: Thank you.

7 JUDGE RUTH: Does anyone need to respond to
8 this last exchange?

9 Okay. No responses.

10 Then we will move on to closing statements. If
11 the parties wish, they may make a brief closing statement.
12 It's not required. And actually, Staff, I'm going to ask you
13 first if you have a closing statement?

14 MR. POSTON: Yes. Do you want me to stand up
15 for it?

16 JUDGE RUTH: Yes. I'll be brief. In closing,
17 the Staff is just as eager as the other parties to resolve the
18 Rockaway Beach expanded calling petition, but we cannot
19 endorse a proposal that appears to be unlawful.

20 Even if we did support CenturyTel's use of
21 their CPI adjustment for the benefit of the citizens for
22 Rockaway Beach, then that raises the question about other
23 petitions like Ozark, which I believe is a CenturyTel
24 exchange. They've petitioned for expanded calling. There
25 certainly wouldn't be any CPI money left over for them, so

1 that's just another concern.

2 But we do commend CenturyTel for coming up with
3 a unique solution. And the Staff is hopeful the parties could
4 come up with additional solutions to address the expanded
5 calling needs of Missouri consumers. Thank you.

6 JUDGE RUTH: Public Counsel, would you go next,
7 please?

8 MR. DANDINO: I have no closing statement. I
9 believe the opening statement covered everything I really
10 wanted to say. Thank you.

11 JUDGE RUTH: Thank you.

12 And CenturyTel.

13 MR. DORITY: Your Honor, I did not prepare a
14 closing statement. I would just echo my points made in the
15 opening. And we feel like we have struck a just and equitable
16 balance here and would encourage the Commission to approve the
17 Stipulation and Agreement. Thank you.

18 JUDGE RUTH: Okay. Thank you.

19 Just a few housekeeping matters. The
20 transcript has been expedited, should be submitted by the
21 court reporter to the Commission tomorrow.

22 OPC has provided me with a copy -- or is it an
23 e-mail of some exclusionary dates that -- you know, their
24 preferences. The Commission will make the final decision if
25 the Commission chooses to have a hearing. I had mentioned in

1 one of the orders some possible dates.

2 If any of the other parties have exclusionary
3 dates, you're welcome to call me or e-mail me. Those will be
4 shared with the Commission, but they have a lot of calendars
5 to balance so I can't make any promises. But if you're going
6 to give me exclusionary dates, I certainly want those before
7 Tuesday.

8 And the last thing, I do not see the need for
9 any kind of round of briefs following this, but if any party
10 wants to, I want to hear -- I see Mr. Dandino and Mr. Dority's
11 heads shaking no. Staff, do you wish to file a round of
12 briefs?

13 MR. POSTON: No.

14 JUDGE RUTH: Then there will be no briefs set
15 and we are now off the record.

16 WHEREUPON, the on-the-record presentation was
17 concluded.

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