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In the Matter of an Investigation into the)
Provision of Community Optional Calling) Case No.
Service in Missouri.) TW-97-333

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DALE H. ROBERTS, Presiding
CHIEF ADMINISTRATIVE LAW JUDGE

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KARL ZOBRIST, CHAIRMAN,
M. DIANNE DRAINER,
HAROLD CRUMPTON,
SHEILA LUMPE,
CONNIE MURRAY,
COMMISSIONERS.

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REPORTED BY:

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ASSOCIATED COURT REPORTERS, INC.

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

2 (Witness sworn.)

3 ALJ ROBERTS: Good morning, ladies and
4 gentlemen. We're on the record Thursday morning for the
5 TW-97-333 case. I believe some issues were addressed off
6 the record yesterday. I don't think we went back on to
7 make sure these were recorded. Mr. Curtis on behalf of MCI
8 asked to be excused from the remainder of the hearing, and
9 he was excused. And Mr. Shannon, who had been sitting in
10 for GTE, asked to be excused, and this morning Carolyn
11 Little is here on behalf of GTE. Good morning,
12 Ms. Little.

13 MS. LITTLE: Good morning.

14 ALJ ROBERTS: I'm sorry. Mr. England asked
15 to be excused from the -- or indicated he would not be here
16 this morning on behalf of the Small Telephone Company
17 Group, and in his place Sondra Morgan is here. Good
18 morning, Ms. Morgan.

19 MS. MORGAN: Good morning.

20 ALJ ROBERTS: And I am looking around the
21 room. Have I missed anything else? I think those are all
22 the changes for this morning.

23 Before we went on the record, Staff witness
24 Gay Smith was sworn, and she's taken the stand. It's your
25 witness, Ms. McGowan. Will you please proceed?

1 GAY SMITH testified as follows:

2 DIRECT EXAMINATION BY MS. MCGOWAN:

3 Q. Will you please state your name and
4 business address for the record?

5 A. Gay Smith. I work for Missouri Public
6 Service Commission, P. O. Box 360, Jefferson City, Missouri
7 65101.

8 Q. Are you the same Gay Smith that has
9 prepared and caused to be prefiled in this case exhibits
10 now marked 32 and 33 as your direct and surrebuttal -- or
11 rebuttal testimony in this case?

12 A. Yes, I am.

13 Q. Do you have any corrections to those
14 exhibits?

15 A. No, I do not.

16 Q. Are the answers stated therein accurate and
17 correct to the best of your belief and knowledge?

18 A. Yes, they are.

19 Q. If I asked you the same questions contained
20 in those exhibits today, would your answers be the same?

21 A. Yes.

22 MS. MCGOWAN: Then I offer Exhibits 32 and
23 33 into the record and tender the witness for
24 cross-examination.

25 ALJ ROBERTS: Is there any objection to the

1 admission of Exhibits No. 32 and 33?

2 (No response.)

3 ALJ ROBERTS: Hearing none, those exhibits
4 will be admitted.

5 (EXHIBIT NOS. 32 AND 33 WERE RECEIVED IN
6 EVIDENCE.)

7 ALJ ROBERTS: And I believe this witness
8 first goes to United.

9 MS. GARDNER: No questions.

10 ALJ ROBERTS: Southwestern Bell?

11 MR. BUB: We just have a few questions,
12 your Honor.

13 CROSS-EXAMINATION BY MR. BUB:

14 Q. Good morning, Ms. Smith.

15 A. Good morning.

16 Q. In your direct testimony on page 7 at the
17 top of the page you recommend with regard to pricing a
18 one-way reciprocal COS as a 50 percent reduction in the
19 current price. Is that right?

20 A. Yes. That's correct.

21 Q. If the Commission were to determine that it
22 would be appropriate to base prices on cost studies of
23 individual companies, would you believe that approach would
24 be reasonable?

25 A. Yes, I do.

1 Q. Ms. Smith, did you have an opportunity to
2 read Gary Godfrey's surrebuttal testimony?

3 A. Yes, I have.

4 Q. In that testimony he states that Staff was
5 aware of his Company's use of COS as part of their internet
6 service and said that last summer he had conversations with
7 Staff regarding the use of COS to avoid toll for a student
8 at Kirksville who wanted to access the internet. And he
9 says that Staff encouraged him to do that. Do you know who
10 at Staff he had that conversation with?

11 A. That was with me.

12 Q. Why did you say that this use was okay?

13 A. Well, I believe Mr. Godfrey testified on
14 Wednesday what actually occurred. He called in regarding a
15 customer's bill in the Kirksville exchange, which happened
16 to be a student at one of the universities there. The
17 student had incurred approximately \$200 in toll charges for
18 what he anticipated was toll free calling to an internet
19 service provider.

20 Mr. Godfrey called me asking if there was
21 any way they could make adjustments for the customer's
22 bill, because the student was not aware that being in the
23 dormitory he was utilizing the state network, which
24 prohibits the use of COS and doesn't recognize those
25 numbers for being toll free. I told him at the time that I

1 would have to check with the Department of
2 Telecommunications and Data Processing with the state of
3 Missouri to see if there was any way they could allow for
4 adjustments on that billing.

5 We did not explicitly discuss the fact that
6 that was -- that he was utilizing COS for the internet
7 service provider. It was simply mentioned in passing, and
8 at that time I did not give a whole lot of thought or
9 consideration to the magnitude of that usage of internet
10 service with COS, and was simply addressing the complaint
11 that he had called me on requesting assistance and trying
12 to make billing adjustments.

13 Q. So you didn't say it was okay?

14 A. No. We never actually got into discussing
15 that, whether it was okay or not okay.

16 Q. Okay. Let me direct your attention to page
17 5 of your direct where you talk about calling usage
18 studies. And on that page you express some concerns about
19 how to do it, but on the next page you say you wouldn't
20 recommend establishing a new method. Could you explain
21 what you mean if you have -- I guess let me reword the
22 question.

23 If you have concerns, why wouldn't you want
24 to change the study method?

25 A. Well, I basically say that I don't believe

1 that we should establish new methods based on my
2 recommendation, which is one-way only. And one-way only,
3 being transitional with the anticipation that as
4 competitive markets come into each individual local
5 exchange company's territory, that other services would be
6 available that, hopefully, would replace the need or the
7 request for community optional service, that there would be
8 plans perhaps better or more to suit the customer's needs.

9 So therefore, knowing the complexity and
10 trying to get calling study information in an intraLATA
11 presubscription market and trying to gather that
12 information from various carriers, trying to develop a new
13 method for calling usage studies would be very cumbersome;
14 cumbersome in the fact that gathering all the customers in
15 a particular exchange data to determine whether there could
16 be a community of interest criteria met.

17 There have been previous studies in which
18 we attempted to do that. I believe I mentioned that in my
19 testimony as well. That took place down around the
20 Springfield/Branson area. It became very cumbersome, very
21 time delayed in trying to get information from an
22 interexchange carrier reseller to determine the total
23 minutes that was being utilized between the Branson
24 exchange to Springfield.

25 And just recognizing the complexity of that

1 one case with one interexchange carrier, thinking of doing
2 that with a magnitude of carriers just seems not
3 worthwhile -- or not necessarily worthwhile but not in the
4 public's best interest.

5 Q. When you say cumbersome is that because it
6 was you just didn't get the cooperation needed from the
7 carriers?

8 A. Well, the other carrier didn't necessarily
9 have the billing systems established like other local
10 exchange carriers. We had to actually get a printout, go
11 through it manually with that carrier to skim off the
12 various subscribers in that exchange, because their billing
13 is dumped completely with everyone that they serve. That
14 was cumbersome. The delay in them getting that printout
15 took about an additional 30 to 45 days more than we
16 expected it would take. There was just a number of other
17 issues involved in that that was -- made it cumbersome.

18 Q. That was just one carrier?

19 A. That was just one carrier, yes.

20 MR. BUB: Thank you. Those are all the
21 questions I had, your Honor.

22 ALJ ROBERTS: Thank you. AT&T?

23 MR. DEFORD: No questions, your Honor.

24 ALJ ROBERTS: MCI? I'm sorry. MCI is not
25 here today. GTE?

1 MS. LITTLE: No questions.

2 ALJ ROBERTS: TCG?

3 MS. FORREST: No questions.

4 ALJ ROBERTS: CompTel?

5 MR. ANGSTEAD: No questions, your Honor.

6 ALJ ROBERTS: Public Counsel?

7 MR. DANDINO: Yes, your Honor. Thank you.

8 CROSS-EXAMINATION BY MR. DANDINO:

9 Q. Ms. Smith, when the Commission first

10 established the COS, I believe they referred to it as a

11 premium service?

12 A. You're referring to COS2, modified COS?

13 Q. Whichever one they referred to, let's see,

14 in TO-92-306.

15 A. Yes. That's correct.

16 Q. And at a premium rate?

17 A. Yes.

18 Q. And right now it's your opinion -- and I

19 think the opinion of many people here -- that the rates are

20 not premium rates. Is that right?

21 A. The rates don't recover cost.

22 Q. Okay. Would you define what a premium rate

23 is, if you know?

24 A. Well, I believe a premium rate would

25 probably vary between individuals. A customer who's on a

1 low, fixed income may see a premium rate of \$10 being too
2 high; whereas someone who may be -- as an average income of
3 35,000 would consider maybe 16 to \$20 a premium rate.

4 So I think that varies, but based on the
5 Commission's decision in the 92-306 case, premium being \$16
6 in addition to their local exchange service rate, they felt
7 like, would make the average bill somewhere around 25 to
8 \$30, and that would be a premium service rate at that time.

9 Q. In other words, premium being in addition
10 to what it would normally cost?

11 A. Yes.

12 Q. Okay. Putting aside the issues of
13 whether -- any problem with the two-way, if we're just
14 looking at cost and price, do you think that there's a way
15 to price two-way COS where it would be -- it would recover
16 its cost and still be affordable?

17 A. Statewide, I don't believe, no.

18 Q. You'd have to look at individual markets?

19 A. Yes. I believe you would have to look at
20 individual routes based on individual companies' costs for
21 establishing a particular route, whether it be, you know,
22 based on distance, total access lines in which they could
23 spread cost across, size of company. I think all those
24 things would have to be taken in consideration.

25 Q. Would it be similar kind of to the

1 examination that the Commission may have to go through in
2 looking at what -- in determining what is a high cost area
3 for local service and if they're looking in terms of toll
4 service in that area?

5 A. I don't know.

6 Q. Okay. Would -- if a -- excuse me. Would
7 one solution to some of the -- to balance the desires of
8 the customers versus some of the economic problems the
9 companies were seeing here or being expressed here, would
10 having new local providers redefining a local calling area,
11 an exchange area, combining some of them for local service,
12 would that be a possible solution to provide an alternative
13 to COS?

14 A. I'm not sure that you could have new
15 competitive local exchange companies coming into the market
16 offering something -- if they're offering something
17 different than the incumbent local exchange company, then
18 that's competition. And if they develop that on their own,
19 then I say that's good. I'm not -- I don't believe this
20 Commission should mandate such a thing.

21 Q. Sure. And I'm not suggesting that. I'm
22 just saying that that's kind of a solution that the market
23 could make to help solve the COS --

24 A. That's an alternative with the market as
25 well as other alternatives.

1 Q. I believe in your testimony you said, I
2 think it was, 159 or thereabouts, 159 COS routes?

3 A. Yes.

4 Q. Without regard to whether they meet the
5 Commission's criteria for community of interest -- and
6 you've examined almost all of these, I'm sure, many a
7 time -- would you say that some of those 159 would, in your
8 opinion, really be communities of interest and others are
9 because they happen to meet that criteria? Am I -- I
10 just --

11 A. Well, based on the calling usage studies
12 that I've reviewed as each route has been studied, there
13 are some routes that have significant community of
14 interest. And what I mean by that is their calling usage
15 studies indicate a large percentage of customers making two
16 or more calls to the target exchange versus others who
17 virtually make any but have somehow passed the criteria.

18 Q. Thank you for making my question very much
19 more intelligent than it was. That's what I was getting
20 at. There are certain exchanges by far, there would be
21 absolutely no question from anyone in this room, even that
22 they're a community of interest, and there's some that, as
23 you say, just barely qualify?

24 A. Certainly.

25 Q. In those situations where there is a strong

1 community of interest overwhelmingly, maybe unquestionable
2 community of interest, do you think the Commission should
3 offer some type of relief to those people to put them in
4 the same calling scope?

5 A. No. Actually, I don't believe the
6 Commission should mandate such a relief. I believe the
7 customers, if they truly have that significant of a calling
8 interest with that other community, is going to seek out a
9 plan that meets their calling patterns and their budget in
10 order to get that calling.

11 Q. Would those type of plans be available to
12 the people in the rural areas at this time?

13 A. There are some at this time. I think as
14 the market moves on and we become moving into more of the
15 competitive environment, they're going to have more
16 available to them.

17 Q. Certainly in a competitive -- the new
18 competitive environments are going to offer a lot more than
19 anyone here can imagine, but certainly if we're talking
20 here today and in that transition period, there's going to
21 be a rocky road for some of those people in the rural
22 areas?

23 A. There is going to be a transitional period,
24 yes.

25 Q. And with COS at least they have a bridge to

1 it. Without COS it's going to be more difficult, more
2 expensive, less affordable?

3 A. If you're discussing the price of COS
4 versing other alternatives, I would agree with that. But
5 with some other alternatives that are available today --
6 and I believe Mr. Roberts brought up in one of his
7 questions, is that with cellular service, even though it
8 might be a little bit of a higher rate today, it's a much
9 broader calling scope. So for one trade-off you receive
10 another benefit.

11 I believe the customers are going to have
12 to start looking at all of those various balances, what
13 they're trading off for one thing versus another thing and
14 make their own decision on what best meets their needs.

15 Q. Do you know if the companies that offer COS
16 market COS to their customers?

17 A. No. I don't know.

18 MR. DANDINO: If there -- I won't go
19 there. That's all I have, your Honor.

20 ALJ ROBERTS: Okay. Small Telephone
21 company Group?

22 MS. MORGAN: No questions.

23 ALJ ROBERTS: Mid-Missouri Group?

24 MR. JOHNSON: Yes. I have a few, please.

25 CROSS-EXAMINATION BY MR. JOHNSON:

1 Q. Ms. Smith, as I understand one of the
2 recommendations that you make to this Commission is to make
3 COS a one-way only service?

4 A. Yes. That's true.

5 Q. And you -- and I think you recommended
6 reducing the existing price in half for that new service?

7 A. Yes. That's correct.

8 Q. And as I understand also, you made another
9 secondary or second level of recommendation to make COS a
10 one-way reciprocal?

11 A. I simply said if the Commission would ask
12 me which I would choose of the two straw proposals that
13 they submitted for us to review and to address, that would
14 be the one I would recommend.

15 Q. Okay. Did you recommend a price for
16 one-way reciprocal?

17 A. No, I did not.

18 Q. As I understood some of your earlier
19 answers, you agree that today COS is priced below its cost?

20 A. Yes.

21 Q. And I would imagine that you would agree
22 that if one -- if it's converted to one-way COS and the
23 rates are cut in half, it will still be priced below its
24 cost?

25 A. Not necessarily.

1 Q. Have you studied that?

2 A. In gathering data have I studied that? No,

3 I have not.

4 Q. Okay. So you're not sure whether or not at

5 that rate level it would be priced above or below its cost?

6 A. No.

7 Q. No, you --

8 A. I'm not sure. I'm sorry.

9 Q. Okay. Thank you. Let me just ask you some

10 questions. If COS is based on cost, we're talking about

11 basing it on the cost of the providing carrier. Is that

12 right?

13 A. Yes. That's correct.

14 Q. Okay. And when COS or COS2 or modified COS

15 was established in 1993, it wasn't -- the price that was

16 developed wasn't based on carrier costs, was it?

17 A. No, it was not.

18 Q. If you go to pricing COS based on the cost

19 of the carrier that provides the service for that route,

20 the Commission is going to have to get away from a uniform

21 or statewide rate. Is that correct?

22 A. I believe that's a correct statement.

23 Q. And if that's done, there will no longer be

24 a statewide rate, a uniform statewide rate?

25 A. Perhaps if the Commission wanted to look at

1 every company individually and looking at those see some
2 similarities in the cost between all those companies, they
3 could establish a statewide rate which may be a weighted
4 average or an average of that. But I don't know.

5 Q. If they did that, wouldn't that put you
6 back in the mode of looking at contributions and subsidies
7 from one company to another?

8 A. That's correct. And that's not what I'm
9 recommending.

10 Q. Okay. If the Commission were to continue
11 it and order each providing carrier to price it based on
12 its cost, would each carrier have to come in and justify
13 its cost and its prices to the Commission?

14 A. I believe they should.

15 Q. How can you do that until you know what the
16 take rate is going to be?

17 A. Just like we have done in the 92-306 case.
18 We had to make a list of assumptions in order to anticipate
19 perhaps what that take rate would be, and we base that on
20 economic buy-up on the customers' information plus growth
21 on top of that for stimulation.

22 Q. Would you agree with me that all the data
23 and all the testimony that's been presented to the
24 Commission in this docket about the amount and extent and
25 nature of the subsidies or contributions that exist with

1 respect to COS today are based on the actual data and the
2 actual take rates that have existed since it was
3 implemented?

4 A. I guess I'm not sure, the actual data and
5 the actual take rates, what you're referring to.

6 Q. Well, for example, Southwestern Bell's
7 witnesses have put testimony in front of the Commission
8 saying this is how much they're losing on COS, and this is
9 how much, quote, the subsidy is for them to serve the small
10 company exchanges. Would you agree with me that those
11 numbers are based on the actual history and the actual take
12 rates that have existed since implementation?

13 A. Yes. Since implementation I would agree
14 with that. That's correct.

15 MR. JOHNSON: That's all I have.

16 ALJ ROBERTS: Vice Chair Drainer?

17 QUESTIONS BY COMMISSIONER DRAINER:

18 Q. Good morning, Ms. Smith.

19 A. Good morning, Commissioner Drainer.

20 Q. I have some questions.

21 A. Okay.

22 Q. Let's just go ahead, first of all, and
23 clear up this internet question, because that seems to be a
24 side issue that has developed. Tell me, what is your
25 position on the internet service being accessed through

1 COS?

2 A. Based on the fact that the tariffs don't
3 explicitly identify that internet service could be utilized
4 with COS, that is why I took the position that I felt that
5 the company should not be providing internet over COS.

6 However, if the companies had somehow
7 brought that to our attention that that was their intent in
8 utilizing COS in order to reach rural customers for
9 internet access and had come to the Commission and proposed
10 a tariff filing or asked their PTC to file a tariff filing
11 in order to accommodate that, I would not have objected to
12 that based on the fact that the compensation for that is
13 done on T/O factors, and perhaps the PTC would not be
14 harmed by that.

15 If, however, it had been a different form
16 of compensation and if, however, it had been noted that the
17 significant numbers of hours of holding time that generally
18 are associated with internet, then perhaps I would have
19 objected saying there are other alternatives or other
20 programs that perhaps they should look at or propose before
21 the Commission in order to provide internet access to their
22 customers or other rural customers in other exchanges.

23 Q. But you do have extensive experience before
24 this Commission on COS issues. Correct?

25 A. Yes. That's correct.

1 Q. We can go back to like 1987 even with it?

2 A. 1987.

3 Q. So in all the development of all the
4 different EMS, COS1, COS2 type planning, were services like
5 internet ever really perceived as finding a way to serve
6 communities through COS?

7 A. I can honestly say internet never came up
8 in any of our discussions in any of the cases I've ever
9 been in related to expanded calling services, even in the
10 most recent one, 92-306. It wasn't even, I believe, even
11 thought about or anticipated as a possibility. Internet
12 just was not at that time as widely used as it is today.
13 It's just been a technology that has taken off like wild
14 fire, and customers are interested in receiving. So based
15 on that it was never conceivably even thought of at that
16 time.

17 Q. In your rebuttal testimony you took the
18 step and crossed the line, and you said it's time for this
19 Commission to make the hard decision to eliminate COS
20 two-way, COS as a mandatory service. Is that correct?

21 A. That's correct.

22 Q. What brought you to that step?

23 A. The whole picture brought me to that step.
24 I was looking at everything that was on the horizon coming
25 down from the Telecom Act of 1996 and Senate Bill 507,

1 where we were moving this market, that it was no longer
2 going to be a monopoly environment; it was going to be a
3 competitive environment, all the various players that could
4 play into that, all the various services that could play
5 into that, the alternatives that are now starting and the
6 numerous alternatives that we haven't even thought of that
7 are yet to come, looking at that, looking at the subsidies
8 that were occurring with our existing services, seeing that
9 that could not continue in a competitive environment,
10 recognizing the cases that GTE and United have filed before
11 us for intraLATA presubscription, recognizing that two-way
12 COS could not continue in that form of intraLATA
13 presubscription, recognizing all those things as well as
14 the universal service that was coming down our way that we
15 had to make decisions on. Could this be a service that
16 could be thrown in or not? And of course, it is stated
17 explicitly it's not to.

18 Things like that as a whole picture,
19 looking at the whole thing, I just thought it's time for
20 the Commission to consider eliminating mandatory services
21 or mandated services that are going to be very complex and
22 very difficult to deal with in the future.

23 And with that I believe I mentioned in my
24 rebuttal the interrelationship of COS with the PTC plan,
25 and how that will all play out, we have yet to find out.

1 But recognizing that that's going to be a difficult piece
2 and a difficult hurdle to cross, too, based on the decision
3 in this case that could have an impact on that case. And
4 seeing the interrelationship and the snowball effect of all
5 these things, I just felt it was time the Commission
6 consider eliminating it completely.

7 Q. In 92-306 I guess it was my understanding
8 that we basically have gone from 48,000 people that were
9 subscribing to some type of two-way COS to, once the 92-306
10 came out with OCA and MCA in their current forms, that now
11 we have the seventeen thousand odd customers that are --
12 odd customers that -- that are using COS. And so that we
13 have had about a 300 percent reduction in the demand.

14 In many ways what you were just saying with
15 the dynamics of change, we have already addressed many of
16 those issues. Is that correct?

17 A. That's correct. In the implementation of
18 MCA, actually we subsumed most all COS customers that we
19 had at that time. When I say most, I'm saying most of the
20 48,000. There were, like you say, probably approximately
21 at that time 14, 13,000 left, and since then, that's
22 grown.

23 But at this point in time it appears that
24 not only did that take care of that problem, but in
25 Charlotte Terkerhurst's testimony in that case she

1 explicitly stated that Staff did not anticipate that to be
2 a long term answer in lieu of what we thought at that time
3 would be new mandates by our federal government and state
4 governments and addressing the telecommunications industry
5 and that being how to handle intraLATA presubscription on a
6 local basis and things like that.

7 Q. So most of the solution happened at 92-306?

8 A. Yes, it did.

9 Q. Can I also ask you, with this looking over
10 the fence we've heard about, do you think even with the
11 solution you had in 92-306, have we got every customer in
12 this state happy?

13 A. No. And you're not going to.

14 Q. Because?

15 A. Because customers -- and I'll include
16 myself in that. People just in general, we all want
17 something for nothing, and the more we can get, the cheaper
18 we can get it for, the happier we are, and I think that's
19 just human nature. And I don't believe there's any plan
20 this Commission could adopt or implement that would satisfy
21 every customer within this state.

22 COMMISSIONER DRAINER: Can we go off the
23 record for a moment?

24 ALJ ROBERTS: Off the record, please.

25 (Off the record.)

1 BY COMMISSIONER DRAINER:

2 Q. If it is time to do the elimination, real
3 world, how would this transition have to happen?

4 A. It could be in two different formats. You
5 could choose one of two ways, in other words. You could
6 look at making the transition with the one-way only plan,
7 and as competition moved in, that -- it's likely that those
8 customers or that plan would dwindle away with other
9 alternatives that would be proposed by various companies or
10 various providers. Or you could wait and make the option
11 of, as the exchanges change to interLATA presubscription,
12 that that service goes away at that point in time.

13 Q. That it goes away? So let me -- I need to
14 be clear on this.

15 A. Okay.

16 Q. One way would be to have one-way COS
17 mandatory that the incumbent LEC -- or would it be that we
18 would have one-way COS cost based and an optional, that any
19 company could be offering some type?

20 A. If you were asking for my recommendation --

21 Q. Yes.

22 A. -- I would make it one-way optional and
23 that all carriers could do it and that it would be cost
24 based. Yes.

25 Q. And would it be defined as local or toll,

1 or is that something they can have the option?

2 A. It's possible it could be optional. If it
3 was made local, however, I feel like it should be
4 available, if it was held by an incumbent LEC, to be
5 available for resale. However, it's -- again, it's my
6 opinion it should probably remain as a toll service,
7 because it's more like a toll service in how it's settled
8 in the intercompany compensation arena. And therefore, it
9 would be more palatable to leave it in that arena in order
10 to make settlements between the parties.

11 Q. So if a secondary carrier, such as the
12 Pilot Grove exchange to Boonville, wanted to keep some type
13 of a cost-based service, they would have to work out an
14 agreement with their primary toll carrier on how they would
15 provide that service and how settlements would happen so
16 that they could offer it to their customers?

17 A. That's how it would with have to happen
18 today with the existing PTC plan. Now, again, depending on
19 how that would play out, that would be subject to change,
20 and then perhaps it would be more viable to make it a local
21 service. That seems to be the real stumbling block in
22 knowing how the future may affect this service, and if the
23 Commission, I guess, wanted to look at adopting an
24 alternative that would not be conducive to those stumbling
25 blocks, to make it local it would be more sensible to do it

1 that way based on the fact that they wouldn't have to worry
2 whether or not the PTC plan is going to affect that
3 service.

4 Q. I may be off on this, but then wouldn't the
5 cut date need to be -- at the time of the intraLATA dialing
6 parity would be the logical cut date?

7 A. That would be the most logical, yes.

8 Q. Because then a company would be educating
9 that exchange that they now would have one-plus dialing
10 options of carriers, plus their COS would no longer be in
11 its current form?

12 A. To me that's the most logical time to do
13 it, because you're educating your customers on why these
14 changes are occurring. The changes are occurring, because
15 the environment is changing.

16 And with that there's a number of puts and
17 takes to that. One of those is we're sorry two-way COS
18 cannot continue in this environment, but you will have the
19 option whether you want to choose this service with this
20 carrier or if you want to look at the other carriers that
21 are going to be marketing in your area and see if they have
22 plans that might better suit your budget and needs.

23 To me that's the most logical time to do
24 it, because it is an easy explanation to the customer why
25 it's all occurring, how it's all occurring, and you're

1 getting that customer educated as soon as possible.

2 Q. Can I ask, is there anything that -- the
3 position that you formulated that isn't in your testimony
4 that you don't need it to be? I mean, was there something
5 you put in and took out, put in and took out, and thought
6 through? Is there a missing block here? I just need to
7 know that. I've asked these same type of questions of
8 other witnesses before, so --

9 A. Again, when I was looking at what my
10 position should be in this case and I was looking at all of
11 the issues that we are going to have to be addressing --
12 and I wanted to consider the customer impact. I'm a rural
13 customer. I live in a rural area. I commute to Jefferson
14 City to work. So I was thinking, okay, if it was me or
15 someone else I know in my area, you know, how would I feel
16 about this?

17 And I also then decided, okay, I'm going to
18 look and see what is the percentage of rural customers in
19 this state. I took into account a lot of data from 1990
20 Census, which is somewhat outdated at this point, but it
21 was the best I could get my hands on at the time. And
22 found out that there's a very small group really in the
23 rural area. When I say rural area, I mean community that
24 doesn't have hospitals, market areas, doctors, big schools,
25 or other educational institutions or even entertainment,

1 which is a biggie for a lot of areas available.

2 And taking that into account, even myself

3 not living in Jefferson City, which is not really a

4 metropolitan area by the terms that we've defined it in

5 this case, nevertheless, it's a larger community of

6 interest area such as Columbia, St. Joe, a number of

7 other -- Cape Girardeau, a number of other communities

8 would be in this state. And when doing that I looked at

9 what the average income was for the families in this state

10 and found that to be what I consider not in the poverty

11 level, that 33,000 a year is the average family income for

12 this state.

13 The average median age of the consumers in

14 this state is approximately 32 to 34 years old. I took

15 into account, what about our residents who are on -- would

16 be perhaps fixed income, 65 and older. Sixty-five to 74,

17 we got 7.7 percent, and 85 and over we got 1.6 percent.

18 I'm thinking, well, in my community how many of those are

19 still living on their own and having to be responsible for

20 their total income and household, in other words, keeping

21 up a home and having telephone service? And there aren't

22 too many. Most of them live in either a housing unit, a

23 senior housing unit, or they live in nursing homes. Of

24 course, they can have telephone services there, but taking

25 into account that many of them either are paying for their

1 location of residence based on their income or that they
2 are getting other subsidy type payments for living in those
3 facilities, they could still afford basic telephone
4 service.

5 And I -- it really narrowed down to, what
6 are we trying to address? Are we trying to address those
7 who want everything, you know, internet access? And they
8 want the highest speed telephone line they can get, and
9 they want all the gadgets, you know, all the vertical
10 services they can put on there, caller ID. Are we trying
11 to address customers having access to the network?

12 And in that finalization on my review, I
13 thought basic telephone service is really what the majority
14 of the customers need, and that being simply dial tone. If
15 they have needs for calling to a community of interest
16 where kids go to school and the school has a payphone, they
17 don't want the kids to have to worry about coins and
18 things, today we have prepaid calling cards. We have 800
19 number services. We have cellular services. Kids in
20 Jefferson City public schools carry pagers. I mean, it
21 just goes on and on in the alternatives they're already
22 utilizing.

23 So I'm thinking to myself, well, those are
24 there; those are in place. There's going to be more,
25 because this is really just a market that's starting to

1 develop. So I thought --

2 Q. So our competitive options are more than

3 just what Mr. Roberts was telling us with his --

4 A. Right.

5 Q. -- his cell phone. We have -- and those

6 are the cards that I see when I go through Wal-Mart.

7 There's this whole thing of cards now I can buy with blocks

8 of time.

9 A. Right.

10 Q. So a student could take that and call home?

11 A. Uh-huh.

12 Q. Which also gets to the demographics of --

13 in all of the different COS cases from '87 on, has this

14 Commission ever established an income criteria of need such

15 as the blank line on who should be eligible for COS?

16 A. Life Line has established -- it has a

17 criteria for meeting its requirements.

18 Q. But as COS customers, do they have that?

19 A. No. No. COS does not.

20 Q. So in no case, besides the two calls and

21 the average of six calls and 67 percent using two calls,

22 there was also not, but then there should be a criteria for

23 income level to even get the service?

24 A. No. We never took income level into

25 consideration.

1 Q. Has that ever been proposed?
2 A. Not that I recall.
3 Q. You live in a rural community?
4 A. Yes.
5 Q. How far do you drive?
6 A. Eighteen miles.
7 Q. You heard the analogy about should you be
8 subsidized for your gas?
9 A. Yes. I heard that.
10 Q. Do you think that if your community of
11 interest, working in Jefferson City, is essential to you to
12 get an income, do you think that there ought to be to the
13 rural consumers other types of discounts?
14 A. No, I do not.
15 Q. Why should there be on telecommunications
16 services?
17 A. I don't believe there should be.
18 Q. In 92-306 we have OCA, MCA, and COS. Do
19 you believe that OCA was priced at cost?
20 A. Yes, I do.
21 Q. MCA?
22 A. Yes.
23 Q. COS?
24 A. No.
25 Q. Why isn't OCA and MCA the logical

1 replacements for COS outside of them being one-way versus
2 two-way? If you were talking about a one-way COS, why
3 doesn't OCA fit that criteria now?

4 A. I believe it does. The only drawback with
5 OCA when we were even looking at that in conjunction with
6 COS and perhaps just having MCA and OCA, there are some
7 communities who do not have their community of interest
8 point within the 23 mile radius band, and those are very
9 limited. But when we were looking at it, we were looking
10 at all the existing COS cases and all the pending COS cases
11 and in our measurements determining whether or not they all
12 met the 23 mile radius criteria for OCA, and there were a
13 few that did not.

14 Q. Now, of our existing COS, two-way COS
15 exchanges, are there any that are more than 23 miles out?

16 A. Not that I'm aware of.

17 Q. So unless there were new routes added, the
18 current routes would qualify for -- I mean, they have OCA.
19 They can use OCA whether it's a discount. It's really a
20 flat rate plan up to \$5?

21 A. Right. Right. And that's true. To the
22 best of my knowledge right now there are none that are
23 beyond the 23 miles, although, like I said, to the best of
24 my knowledge. I haven't looked at it recently.

25 Q. Could you provide this Commission with a

1 list, with a response to that? Are there any exchanges in
2 the existing two-way COS routes that are greater than
3 23 miles?

4 A. Yes. I can do that.

5 Q. You believe that, if COS is not cost based,
6 whose customers are paying the difference?

7 A. The PTC's.

8 Q. Are you aware of many rate cases for the
9 secondary carriers at the Public Service Commission over
10 the last ten years or five years?

11 A. How would you define "many"?

12 Q. Well --

13 A. I'm aware of three within the last ten
14 years.

15 Q. In the last two years?

16 A. Last ten years.

17 Q. Ten years, T-E-N. You are aware of three
18 secondary carriers coming in for a rate case in the last
19 ten years. Of those three were those for -- asking for
20 increases in their revenues, or were they earnings reviews
21 or rate reductions?

22 A. All that have come in have been for
23 increases. Now, I'm talking about rate cases that they've
24 brought in. There have been some complaint cases.

25 Q. Could you provide this Commission with the

1 companies that have had rate increases in the last ten
2 years or rate reductions due to complaint cases?

3 A. Yes.

4 Q. Which brings me to the question with
5 respect to what we'll call the puts and takes between the
6 primary toll carriers and the secondary carriers with
7 respect to COS. COS was implemented originally with EAS
8 for community of interest, and this Commission has dealt
9 with that for a number of years. Was one of the concerns
10 or purposes of any type of EAS, EMS, COS ever to find a
11 method of transferring revenues from the customers of the
12 PTCs to the secondary carriers? Was it ever meant as a
13 subsidy to secondary carriers? Was that ever the purpose
14 of COS?

15 A. No.

16 Q. Then if this Commission, in dealing with
17 COS, has to look at the primary toll carriers and secondary
18 carriers, what are we going to need to do if we were to
19 make it no longer a mandatory service, but as you said, a
20 cost -- allow them to have a cost-based optional service?
21 Is there something with the revenue exchange between the
22 primary toll carriers and the secondary carriers that is
23 going to be a critical problem?

24 A. If you go to cost-based services in
25 determining who's going to carry that service, if it's each

1 individual local exchange company's responsibility to carry
2 their own traffic on that and it's cost based, I don't see
3 how anyone can be harmed.

4 If, however, you continue the existing
5 arrangement where the PTC is carrying the traffic for the
6 secondary carrier but yet it's cost based, again, I'm not
7 sure there would be any harm provided that you're taking in
8 cost consideration or perhaps both companies. By that I
9 mean the PTC and the SC. That would be a difficult
10 process, I'm sure, to come to a consensus on, but it,
11 nevertheless, could be done.

12 Q. Would there need to be a technical
13 conference that would report back? I know. But would
14 there need to be a technical conference with all the
15 primary carriers and secondary carriers?

16 A. Yes.

17 Q. And Staff and Public Counsel?

18 A. Yes.

19 Q. To --

20 A. And perhaps even the interexchange
21 carriers.

22 Q. Any and all?

23 A. Any and all carriers that could possibly
24 occur this day.

25 Q. Mr. Dandino asked you about affordability

1 of COS, and isn't affordability a relative term on what's
2 affordable to you?

3 A. Yes, it is.

4 Q. And what's affordable to you? I mean, how,
5 since there is not an income standard for COS, can we
6 really measure affordability?

7 A. I believe that's why I answered Mr. Dandino
8 it would be dependent on each individual's definition of
9 that. Some people would find telecommunications a priority
10 and affordable, and others find cable TV to be a priority
11 and more affordable.

12 Q. And when we discuss -- or when you
13 discussed with Mr. Dandino community of interest, I want to
14 be clear. Weren't you translating or defining community of
15 interest in terms of higher levels of usage?

16 A. Yes.

17 Q. So it wasn't so much any longer defining
18 community interest as you could say that there were certain
19 exchanges that had a higher level of usage to --

20 A. Right. Right.

21 Q. If we look at minutes of use, we don't
22 really know how many customers are stimulating those
23 minutes of use right now?

24 A. No, we do not.

25 Q. And COS is a flat rate service that

1 customers prefer over toll, but, you know, in the electric
2 industry and gas and water it's a measured service. If
3 customers have a community of interest, they need to make
4 certain calls, doesn't a measured service give them a
5 better indicator of controlling their own individual cost?

6 A. Yes, it does.

7 Q. And when we talk about competitive choices,
8 and we talk about the rural environment with COS, do you
9 believe that the AT&Ts and MCIs and other competitors that
10 have come into this state that offer discounted toll and
11 once there's intraLATA dialing parity with that discounted
12 intraLATA toll, has it been your experience in all your
13 tariff reviews, did they do statewide plans, or will they
14 just target a metro area and ignore the rest of Missouri?

15 A. They -- I guess I cannot recall any
16 situation where it was not a statewide plan that they
17 proposed. And MCI, Sprint, and AT&T, generally speaking,
18 as the market would normally work, if one offers a better
19 plan than the other, you can almost guarantee within just a
20 matter of a few days or a very short time frame of a week
21 or two the other one is going to be in here with a similar
22 service proposal in order to compete with that carrier.

23 Q. And you tend to get more than less of
24 those, don't you?

25 A. Yes.

1 COMMISSIONER DRAINER: I have no other
2 questions. Thank you very much.

3 THE WITNESS: Thank you.

4 ALJ ROBERTS: Commissioner Crumpton?

5 COMMISSIONER CRUMPTON: Yes.

6 QUESTIONS BY COMMISSIONER CRUMPTON:

7 Q. Good morning, Mrs. Smith.

8 A. Good morning, Commissioner Crumpton.

9 Q. I have a few questions that are kind of
10 grouped around subjects. Then I have a set that are sort
11 of random.

12 And I'd like to begin with a discussion of
13 your direct testimony, and I'd like to direct your
14 attention to page 5 of your direct, lines 2 through 4. I
15 have this question related to that testimony: Is not the
16 target exchange customer really a new COS customer who pays
17 to use COS in this instance?

18 A. Right.

19 Q. Okay. So the fact that he's a COS
20 customer, we shouldn't be concerned with any other issues;
21 he has all rights of any COS user. Is that right?

22 A. Well, I believe -- okay. What I was
23 actually trying to explain here is that currently with
24 two-way COS the target exchanges EAS points are also
25 included in that calling scope of the petitioning exchange

1 subscriber. If, however, you were to make it a one-way
2 reciprocal and you were to revert that and you expanded, in
3 other words, you would take the target exchange subscriber
4 and allow them to call the petitioning exchanges extended
5 area service, or EAS points, you're actually expanding upon
6 the calling scopes and the service that we have today.

7 Q. But shouldn't that target exchange customer
8 who is paying for COS have the same rights and privileges
9 of the petitioning exchange customer if they're paying the
10 same amount?

11 A. If all was being equal, yes. But I was
12 considering the fact rather than -- actually I did not come
13 out and say this, but had I had the -- had I done so, I
14 would have perhaps said that one-way reciprocal would only
15 allow the petitioning exchange subscriber to call the
16 target exchange customers, period, eliminating those EAS
17 points that exist today.

18 However, I was looking at the fact I didn't
19 necessarily want to take away a service that some of the
20 customers were benefiting from or utilizing today, so
21 rather than remove that from them, leave that in place.
22 But if you were to actually adopt a one-way reciprocal, do
23 not adopt that same calling pattern back, because you're
24 simply expanding upon what's there today.

25 Now, looking at it as I believe you're

1 looking at it, yes, that would be discriminatory if we did
2 not.

3 Q. And shouldn't we let the marketplace
4 dictate these kind of issues?

5 A. That's why I asked the Commission to
6 consider elimination of COS, is to let the marketplace
7 dictate the issues.

8 Q. Okay. Very good. Lines 9 through -- let's
9 see. These lines are kind of off. So I guess it's 8
10 through 10. "Such expansion raises additional concerns
11 regarding such issues as revenue losses and revenue
12 neutrality."

13 If these COS companies are already earning
14 in excess of what was intended when COS was implemented,
15 why would we care about this?

16 A. Well, we maybe necessarily would not, but
17 without doing an actual study to see if they're over
18 earning or earning beyond this, that would be just a
19 judgment call. I believe we would have to look -- we would
20 have to look at each individual case to see if that would
21 exist or not.

22 Q. Why would we have to do that when what
23 really brought this on is a failure to do true-ups?

24 A. Well, the -- this kinds of gets back to
25 Mr. Taylor's testimony yesterday. We actually -- when we

1 established the revenue neutrality true-up process, we felt
2 like, by truing up after the initial pending routes were
3 implemented, were done, there would be very few additional
4 routes added. And therefore, there wouldn't necessarily be
5 a need to do a true-up, because there wouldn't be that much
6 gain perhaps on the secondary carrier's part that would
7 warrant a second true-up.

8 The true-up has occurred for most all of
9 those companies either in the context of a case that's
10 already been before the Commission or as a true-up process
11 that we established. When I say "we," the technical
12 committee established. And that has taken place. All in
13 all from the time that we fully implemented all the COS
14 routes at that time, which we did over a period of time
15 until now, we probably only had a gain of maybe 30 to
16 50 routes.

17 Q. But hasn't the traffic grown in unexpected
18 ways? And would you not expect to do true-ups to keep it
19 in balance?

20 A. Well, yes. And I guess that --

21 Q. Hold on a second. The question only
22 required a yes or no, I think.

23 A. Okay. I'm sorry. Okay. Yes.

24 Q. So your answer is yes?

25 A. Yes.

1 Q. Are you, in retrospect, feeling that there
2 were unintended consequences of this new service on the
3 revenue impact -- in terms of revenue impact on the PTCs?

4 A. I'm not sure I understand. Unintended?

5 Q. In other words, did you-all really intend
6 for the PTC customers to subsidize as heavily as they are
7 the COS users?

8 A. No, we did not.

9 Q. Okay. Now, on line 13 in response to a
10 question you state, "My primary concern is how to conduct
11 the calling usage studies." Why do we have to have studies
12 in the new environment?

13 A. For -- to establish a community of interest
14 I'm not sure how you would do that without doing some type
15 of calling usage study or performance study or --

16 Q. Well, I guess I'm going to the root of
17 that. Why is it necessary to have a community of interest
18 when an individual decides whether or not he will accept an
19 offering in the marketplace?

20 A. Okay. If you're taking into consideration
21 for new alternatives for --

22 Q. In the future?

23 A. -- in the future, then you would not need
24 studies.

25 Q. Okay. Lines 18 through 21 you state,

1 "Additionally, tracking this traffic from various carriers
2 is further complicated due to coordination problems in
3 collecting data for the same time frame for all respective
4 customers."

5 And I guess my question is, why do we
6 concern ourselves when companies can bill and keep and
7 supervise their own tariffs in a new environment?

8 A. Well, we're not going to concern ourselves
9 in a new environment with that. This is in relationship if
10 you were to maintain a two-way and you did continue usage
11 studies, how that would all play out.

12 Q. Okay. And I believe you've answered this
13 question. It's on page -- it's in response to your
14 testimony on page 7 of your direct testimony, and it's
15 beginning with line 2 and going down to line 4. "That
16 without adequate data and time to review the full impact, I
17 recommend a 50 percent reduction of the current two-way COS
18 rate based on its decrease in value."

19 Is it your testimony that we can take the
20 time to develop the new rates? I'm referring to your
21 testimony under the cross of Southwestern Bell, Mr. Bub.

22 A. If we had the time, yes.

23 Q. Okay.

24 A. I'm not sure we have the time.

25 Q. What do you mean by that?

1 A. I'm not sure we have the time to develop
2 new rates in lieu of the already Commission's decision on
3 intraLATA presubscription for GTE and United telephone.

4 Q. Okay. Well, what do we -- how can we fix
5 this problem we're faced with right now with the T/O rates
6 being out of whack?

7 A. You mean as it exists right now?

8 Q. Yeah. How can we fix the -- yes.

9 A. I'm not sure.

10 Q. Okay. How soon do you think
11 presubscription is going to actually come into existence?
12 When will the first one-plus presubscribe call take place,
13 do you think?

14 A. I don't remember what United's tariff
15 said. Soon.

16 Q. Soon. Okay. When that takes place, that
17 will affect the United customers?

18 A. Right.

19 Q. When will it take place in the Southwestern
20 Bell territory?

21 A. I don't know. They have to meet a
22 checklist that has been handed down to them, must meet
23 before they can even start that process.

24 Q. Okay. Well, what are the preponderance of
25 the losses on this COS traffic?

1 A. Most of it would be with Southwestern Bell
2 as the PTC for a number of the secondary carriers.

3 Q. Okay. Do we have time to fix some of these
4 rate problems with them?

5 A. I don't believe.

6 Q. Okay. In some of your responses to
7 Commissioner Drainer you were using the term PTC. Did you
8 really mean in the new environment carrier? It doesn't
9 necessarily have to be what we call a PTC that's hauling
10 the traffic from --

11 A. Right. It's whoever's responsible for
12 carrying the traffic.

13 Q. Okay. I want to go over to page 9 of your
14 direct, beginning with line 6 and going all the way down to
15 the end of the page. The question that this raises is, if
16 we expand MCA by adding tiers in Springfield, Kansas City,
17 and St. Louis, could we reduce the 800 number requirement
18 if we expanded MCA?

19 A. Reduce the 800 number requirement for
20 customers who may already have the service? Is that the
21 question? Or for --

22 Q. For those COS customers -- in other words,
23 if we expanded the tier so that they took in the territory
24 that -- or most of the territory that the COS customers are
25 in or exchanges that they're in, would we not reduce the

1 requirement for the 800 numbers?

2 A. If they're that -- if there were that many
3 COS routes that are still targeting metropolitan areas,
4 yes.

5 Q. If we use OCA, would that reduce the number
6 of 800 telephone numbers required if we expand OCA?

7 A. Again, depending on the number of customers
8 that are trying to still target metropolitan areas, yes.
9 As I stated earlier, when we initially implemented MCA
10 service --

11 Q. Uh-huh.

12 A. -- for the most part that subsumed most all
13 COS routes that were targeting the metropolitan areas.
14 There are still a few today, however, that are beyond that
15 that have been able to pass the criteria.

16 Now, whether or not those exchanges have a
17 great number of take rate, in other words, takers to that
18 service, I'm not sure at this point. But I still believe
19 that at the time that we developed the metropolitan calling
20 area plan that we subsumed the majority, if not at that
21 time practically all, of those communities who had interest
22 with a metropolitan area.

23 Q. Okay. You mention some concerns in your
24 testimony on page 11. In general terms expanding MCA or
25 OCA, would that also reduce those concerns?

1 A. For 800 service?

2 Q. Yes.

3 A. Yes.

4 Q. I'd like to ask you to respond to this

5 question in reference to LATAwide local service. Is

6 LATAwide local service equal to LATAwide MCA with no tier

7 boundaries?

8 A. That would be my interpretation of what

9 Southwestern Bell's proposal had indicated.

10 Q. Is it your belief that LATAwide local

11 service is equal to LATAwide MCA with no tier boundaries?

12 A. Well, I guess I'm somewhat confused about

13 that question.

14 Q. Okay. Go ahead.

15 A. Are you asking if we had LATAwide -- local

16 LATAwide service, would it be identical to local MCA

17 service in its --

18 Q. With one tier.

19 A. Right. In other words, LATAwide, being for

20 all exchanges within that LATA, they could call each other

21 on a one-way reciprocal arrangement just like MCA is

22 today?

23 Q. Yes.

24 A. Yes. That would be my understanding of it

25 anyway.

1 Q. All right. So LATAwide local service is
2 really not new; it's just an extension of MCA service?

3 A. Yes. That's true.

4 Q. Is it your testimony that LATAwide service
5 should be local service?

6 A. Well, I believe in my testimony I indicated
7 that if a carrier would come in and propose such a proposal
8 for LATAwide calling and whether that be deemed by them as
9 local or some other form of discounted toll, I think the
10 Commission should certainly consider that for that company,
11 but I, by no means, believe the Commission should mandate
12 such a service.

13 Q. Okay. So it should be local or toll
14 with -- they have the option of offerer?

15 A. Right. Taking in consideration any impacts
16 that may have on any other carrier they may be involved
17 with.

18 Q. Okay. I have some other questions. In
19 your rebuttal testimony I want to talk about, first, the
20 COS true-up. Were you present during the discussions on
21 eliminating the COS true-up process?

22 A. Yes, I was.

23 Q. Do you have a list of attendees?

24 A. Yes, I do.

25 Q. Can you provide that to us?

1 A. Yes, I can.

2 Q. Can you provide us with the notes

3 pertaining to the COS true-up --

4 A. Yes, I can.

5 Q. -- from the minutes?

6 A. Yes, I can.

7 Q. Okay. Do you have that with you now?

8 A. Yes, I do.

9 Q. Okay. You can pass it out later. In your

10 opinion was the decision to eliminate the COS true-up

11 process a policy decision?

12 A. How that all came about -- this was quite a

13 heated subject at times, as Mr. Taylor indicated

14 yesterday. There were some puts and takes, and actually we

15 had to come to a resolution. It was just a matter of,

16 we're going to have to decide this, because we have to move

17 on. Time is getting away, and we couldn't pound on it

18 forever.

19 And how that all really came about,

20 Mr. Schoonmaker had submitted to us a proposal for a

21 methodology in which to use for true-up. He developed the

22 necessary spreadsheet and the assumptions and the process

23 in which to follow. In taking --

24 Q. He represented whom when he was making the

25 proposal?

1 A. The Small Telephone Company Group at the
2 time.

3 Q. He represented the Small Telephone Company
4 Group?

5 A. Uh-huh.

6 Q. Okay.

7 A. And so in that attempt, of course, the
8 committee then took that information that he had submitted
9 as a proposal, and as most committees will do, you will
10 modify it and work it out to where it is somewhat
11 compromised for all parties and move on. And basically
12 that's what we ended up doing, and Mr. Taylor indicated
13 that he had at that point been pounded to death to where it
14 was no longer an issue he could spend much more time on and
15 gave in to that.

16 And that was then what was adopted by the
17 committee, was the revised methodology that Mr. Schoonmaker
18 had submitted. And in that methodology was the proposal
19 that we do a post six months true-up based on the pre-COS
20 numbers and OCA numbers that we had gathered in the 92-306
21 case.

22 Q. Did the Commission in its order require a
23 true-up?

24 A. No. The Commission simply directed in
25 their order for the technical committee to go out and

1 address all these issues and to work it out and to bring
2 back to them reports on our progress as we moved through
3 that process. We made a number of reports to the
4 Commission, telling them at different points in times what
5 issues we had dealt with and met resolution with. There
6 were times when we couldn't meet any type of resolution,
7 and to move things -- keep things moving, we brought to the
8 Commission for a decision. And there was just other times
9 that we indicated to the Commission this is still an
10 unresolved issue, and we're still working on it.

11 Q. Was this issue brought to the Commission?

12 A. No, it was not.

13 Q. I'll ask my question again. Was this a
14 policy decision?

15 A. I'm not sure how the Commission would have
16 defined it at that time, if they would have considered it
17 to be a policy issue or not.

18 Q. Okay. When Staff makes a decision that
19 affects funds flows without a rate case, do you think
20 something like that should be brought to the Commission?

21 A. Yes.

22 Q. Okay. That's okay. And should policy
23 changes of that nature be approved in writing by the
24 Commission so that the world will know that we knowingly
25 approved this?

1 A. I think it would be expected that it be in
2 writing before they would believe it.

3 Q. Okay.

4 (Laughter.)

5 BY COMMISSIONER CRUMPTON:

6 Q. But in this case -- in this case it was not
7 done in writing?

8 A. That's correct.

9 Q. And some did not believe the Commission
10 approved it. Am I right or wrong? There was some question
11 as to whether or not the Commission really knew this was
12 happening on the parts of the parties?

13 A. Well, there could be some lost memory of
14 what actually occurred in that process.

15 Q. Okay. That's okay. In your testimony on
16 page 4 of your rebuttal testimony you answer "certainly" in
17 response to a question. "At the time COS was initially
18 implemented, the courts ruled the companies were entitled
19 to revenue neutrality. I would anticipate similar
20 arguments if the Commission replaces the responsibility of
21 providing COS with a different company."

22 And my question to you is, if the companies
23 with regulator help have created fund transfers that are
24 detrimental to the public interest, are you saying that we
25 must permit these unintended consequences to continue?

1 A. No. That's not what I'm saying. I'm
2 saying that by no means does the Commission have
3 necessarily the authority -- and that's based on this
4 case -- whereby they can take funds away from one company
5 and not keep them whole, any company, regardless of the
6 company. If they take funds away and there's no mechanism
7 in which they can remain revenue neutral, that the courts
8 would more than likely today, as they did in the past, rule
9 that as confiscating property or --

10 Q. Okay. So now the discussion that you and I
11 had earlier becomes quite serious, does it not? If we
12 permit Staff members to create funds, significant funds
13 transfers, between companies without a rate case or without
14 any due process, that now, once they're implemented and in
15 place, we don't have the authority to remove, does this not
16 become a very serious matter?

17 A. It could be very serious, yes.

18 Q. Can this Commission order the parties to
19 true-up these T/O ratios or -- either that or go to using
20 actual traffic patterns as a means of settling?

21 A. I'm afraid I can't answer that. That's
22 probably more of a legal issue.

23 Q. Okay. Who would answer this for Staff?

24 A. Staff's attorney.

25 Q. Would you ask your attorney to respond to

1 this question and put it in the record?

2 A. Yes.

3 Q. Okay. I'm almost at the end of this.

4 A. We have all day.

5 Q. Oh, we do?

6 (Laughter.)

7 BY COMMISSIONER CRUMPTON:

8 Q. Now, that's quite an enticement. I can
9 prolong this.

10 Several questions in response to previous
11 cross. Can we change the OCA mileage limit? Can the
12 Commission change it?

13 A. Certainly.

14 Q. And can we change it based on this record?

15 A. You can try.

16 Q. What do you mean by that?

17 A. I simply mean you may have a number of
18 parties who will object.

19 Q. Well, that's always the case.

20 A. Right. One thing I would mention along
21 those lines, this 23 miles was taken from the existing toll
22 bands that we have, and so if the Commission were to change
23 it, they would need to be consistent with all the toll band
24 mileage increments that we use today.

25 Q. Okay. So we may be able to change it based

1 on this record as long as we adhere to the toll mileage
2 bands? Is that your understanding?
3 A. That makes it much simpler, yes.
4 Q. And that's your position?
5 A. That you have that authority to do that,
6 yes.
7 Q. Thank you. All right. With optional COS,
8 it's -- is it your understanding that the LEC and any short
9 haul carrier can contract to transport the call volumes for
10 the LEC?
11 A. Yes.
12 Q. Okay. Can you perceive the opportunity for
13 AT&T wireless to -- into Missouri with an aggressive
14 marketing campaign?
15 A. I guess I can perceive any new and
16 competitive carrier coming in with an aggressive market
17 campaign.
18 Q. And would they bypass as a result, since
19 they are a wireless company, the local loop?
20 A. To some degree, but not completely.
21 Q. And what part can they bypass, and what
22 part can they not if the two customers are both wireless
23 customers?
24 A. Both wireless customers?
25 Q. Yes.

1 A. Then, yes, they can bypass the local loop.
2 Q. The whole thing?
3 A. Right. I --
4 Q. Could they bypass the switch?
5 A. I'm not sure. I'm not a wireless expert.
6 Q. Okay. All right. Well, if they can -- if
7 you can perceive them bypassing the local loop, do they
8 also bypass the rates of the LEC?
9 A. Sure, they would.
10 Q. And can you perceive them offering a lower
11 cost alternative since they don't have the same cost
12 structures?
13 A. Well, I see them today offering
14 alternatives that some people would consider lower cost
15 alternatives than what our local land line companies can do
16 today.
17 Q. Okay. So no matter what we do with this
18 COS issue, can you perceive AT&T wireless coming in and
19 just bypassing all of this discussion we're having with a
20 new service that satisfies customers, gives them access to
21 the internet, and at a competitive price?
22 A. It's conceivable. I find it hard to
23 believe that they could actually do that when there would
24 probably be a number of subscribers who would not be on
25 wireless services that those wireless customers may want to

1 access. At some point in time they have to hit the land
2 line.

3 Q. Yes. And when they do, then of course AT&T
4 wireless would have to pay the going rate --

5 A. Right.

6 Q. -- to terminate the call?

7 A. Right.

8 COMMISSIONER CRUMPTON: Well, Mrs. Smith, I
9 have looked forward to this now for a long time, and I
10 really appreciate your patience. And hopefully I've
11 learned a great deal.

12 THE WITNESS: Thank you.

13 COMMISSIONER CRUMPTON: Thank you.

14 ALJ ROBERTS: We'll try and finish
15 questions from the bench, and we're about due for a break,
16 but we'll finish questions from the bench first and then
17 give you a rest. Commissioner Murray?

18 COMMISSIONER MURRAY: All of my questions
19 have been asked and answered. Thank you.

20 ALJ ROBERTS: Thank you. Commissioner
21 Drainer?

22 QUESTIONS BY COMMISSIONER DRAINER:

23 Q. Oh, I just had a couple of follow-up
24 questions based on Commissioner Crumpton's.

25 With respect to OCA I have asked if there

1 were any current exchanges that are more than the 23 miles,
2 and you're going to check into that. But assuming there
3 are not, would you recommend extending OCA out to another
4 band rather than the 23 miles? What would be your
5 recommendation?

6 A. Not to do that.

7 Q. Okay. And then with MCA you stated that at
8 the cut date on the 92-306 case you basically encompassed
9 all the surrounding exchanges to the metro areas. Would
10 you please provide us with, since that time, if there have
11 been any additional COS routes to the metro area added that
12 then are adjacent to the MCA that would then make like a
13 tier 4 or whatever, let us know what those exchanges are?

14 A. Sure.

15 Q. And the company that owns those exchanges.

16 A. Do you only want those that are
17 contiguous?

18 Q. Yes, ma'am.

19 A. Okay.

20 COMMISSIONER CRUMPTON: Commissioner
21 Drainer, is that by exchange?

22 COMMISSIONER DRAINER: Yes, sir.

23 COMMISSIONER CRUMPTON: Okay. Which means
24 there could be several small towns within the exchange that
25 would be covered.

1 COMMISSIONER DRAINER: Well, I don't --
2 COMMISSIONER CRUMPTON: And I think that's
3 correct. I think it would be by --
4 COMMISSIONER DRAINER: Well, you want to do
5 it by exchange, because we want to know if they've got any
6 new COS routes, say, into Springfield that are continuous
7 and bumped up against -- well, I guess I have to look at
8 the map to determine that.
9 BY COMMISSIONER DRAINER:
10 Q. Okay. Is it clear?
11 A. Uh-huh.
12 COMMISSIONER DRAINER: Thank you.
13 COMMISSIONER CRUMPTON: I have one
14 question.
15 ALJ ROBERTS: Yes, sir.
16 QUESTIONS BY COMMISSIONER CRUMPTON:
17 Q. In response to the response to Commissioner
18 Drainer's last question, I would like to ask the question,
19 why not extend the OCA mileage limit?
20 A. In a competitive environment you're going
21 to have other alternatives that will probably far beyond
22 exceed that. So there's really no need to do that at this
23 point in time. Let the market take care of it.
24 Q. I'm not sure I understood.
25 A. There are other alternatives that go way

1 beyond a 23 mile mileage band, and therefore, it wouldn't
2 really warrant expanding it at this time. Just allow the
3 market and those other alternatives to take care of that.

4 COMMISSIONER CRUMPTON: Well, thank you
5 very much. I do understand. Thank you.

6 QUESTIONS BY ALJ ROBERTS:

7 Q. Is there COS service in Columbia, Missouri?

8 A. No. I don't believe.

9 Q. Well, forget that hypothetical.

10 A. Clark to Columbia.

11 COMMISSIONER DRAINER: Clark's got
12 two-way.

13 BY ALJ ROBERTS:

14 Q. I could give you a generic hypothetical.
15 If I left Columbia, moved out to Clark, Missouri,
16 subscribed to COS, there's -- would there be anything
17 improper about me as an individual COS subscriber using my
18 service to call Columbia and get to an ISP to an internet
19 service provider?

20 A. No.

21 Q. Okay. And so when, I think it was, Godfrey
22 that called you about this student who had a \$200 bill from
23 the university --

24 A. Right.

25 Q. -- because that student was calling -- at

1 that point were you looking at that as simply an individual
2 who had used the service in that way, or were you aware
3 that the local company was actually running that type of
4 service?

5 A. I was simply looking at the fact that that
6 student was trying to actually get to an ISP, the internet
7 service provider. However, like I indicated before, we
8 didn't explicitly speak to the fact that the CO-- that the
9 internet service provider was the local exchange company's
10 service, that they were the ones subscribing to COS in
11 order to make that arrangement.

12 Q. You think there's a distinction then
13 between if I as an individual customer in Clark, Missouri,
14 would do that, as opposed to where -- I think one example
15 here was the company that went in with RAIN. Is there a
16 distinction between an individual using COS to get to the
17 internet versus the company that coordinates that type of
18 effort and sets up the bank of modems and the hunting group
19 and that situation?

20 A. I believe there is, yes.

21 ALJ ROBERTS: Thanks very much. I'll note
22 on the requests that have been made of you, I'd like to
23 reserve Exhibit No. 43 for the question about having to do
24 with exchanges over 23 miles, and I think there's some
25 requests about contiguous -- I mean, contiguous MCA.

1 THE WITNESS: Uh-huh.

2 ALJ ROBERTS: If that can all be
3 consolidated and that information goes together in one
4 exhibit.

5 THE WITNESS: Okay. Sure.

6 ALJ ROBERTS: And Exhibit No. 44 I would
7 like to reserve for your response on the list of rate
8 increases or decreases over the last ten years.

9 THE WITNESS: Okay.

10 ALJ ROBERTS: And I don't think we need
11 another exhibit number for the attendance list and the
12 minutes of the meetings that Commissioner Crumpton asked
13 about. I think somebody else is already supposed to
14 provide that, and we will address that at the end of the
15 hearing when we talk about briefing schedule and other more
16 administrative matters. That concludes the questions from
17 the bench at this -- Commissioner Crumpton has another
18 question.

19 COMMISSIONER CRUMPTON: No.

20 ALJ ROBERTS: No? I'm sorry.

21 COMMISSIONER CRUMPTON: She was supposed to
22 have her attorney --

23 THE WITNESS: Yeah.

24 ALJ ROBERTS: But I think somebody else is
25 already supposed to provide it. That was the point. We've

1 already asked someone --

2 COMMISSIONER CRUMPTON: No. No.

3 THE WITNESS:

4 MS. MCGOWAN: There was a research issue
5 request of Staff.

6 COMMISSIONER CRUMPTON: I asked her a
7 question, and she said it was a legal opinion. And I
8 asked --

9 ALJ ROBERTS: Oh. And that's something
10 separate. I'm saying when you asked about the minutes of
11 the meeting and the attendance list for the meeting.

12 COMMISSIONER CRUMPTON: I just want to make
13 sure that you realize that they're supposed to give us
14 something that --

15 ALJ ROBERTS: Right. Okay. I'm sorry.
16 And I've got that down on the briefing schedule. That
17 doesn't require an exhibit number.

18 COMMISSIONER CRUMPTON: Okay. That's fine.

19 MR. JOHNSON: Will the other parties get to
20 see that?

21 ALJ ROBERTS: Pardon?

22 MR. JOHNSON: Will the other parties be
23 provided with that opinion that's being submitted from
24 Staff?

25 ALJ ROBERTS: It will be a briefing issue,

1 so you will all brief it. We'll talk about it in the
2 briefing schedule.

3 I believe there are no more questions from
4 the bench at this time. It's time to take a break and then
5 come back for cross based upon questions from the bench and
6 also Ms. McGowan's opportunity for redirect. So we will go
7 off the record for about 15 minutes, please. Off the
8 record.

9 (A recess was taken.)

10 ALJ ROBERTS: Good morning, ladies and
11 gentlemen. We're back from our morning break. We
12 concluded questions from the bench and are ready to do
13 cross based on those questions and then redirect. The
14 witness first goes to United.

15 MS. GARDNER: Thank you.

16 RECROSS-EXAMINATION BY MS. GARDNER:

17 Q. I just have a couple of questions,
18 Ms. Smith. When you were talking about the calling
19 criteria, is that the average of six calls with two-thirds
20 making two or more?

21 A. Yes, it is.

22 Q. When you look at the calling usage studies,
23 is there any attempt to look at the length of those calls,
24 or is two one-minute calls just as good as two sixty-minute
25 calls?

1 A. We do not look at the length of the call.

2 Q. In response to a question from Commissioner

3 Crumpton, I think you indicated that there really wasn't

4 time to look at the puts and takes to develop actual

5 cost-based rates as opposed to your recommendation for

6 50 percent reduction. Do you recall saying that?

7 A. Yes. Uh-huh.

8 Q. If the secondary carriers don't implement

9 intraLATA presubscription until February of '99 or

10 somewhere thereabouts, do you think then there would be

11 time to go through some actual cost calculations?

12 A. Certainly. And I believe Mr. Schoonmaker

13 also testified to the fact that they could look at actual

14 costs. It may take somewhere, I believe he said, around

15 twelve months to do so. So if you waited till 1999 that

16 would give you more than ample time if you're considering

17 12 months as necessary to do that.

18 Q. And in fact, Mr. Schoonmaker also testified

19 that in order to convert it from toll to local, that there

20 were certain issues, and that might take 12 to 18 months as

21 well?

22 A. Yes. That's correct.

23 MS. GARDNER: Thank you. That's all I

24 have.

25 ALJ ROBERTS: Southwestern Bell?

1 MR. BUB: We just have a couple, your

2 Honor.

3 RECROSS-EXAMINATION BY MR. BUB:

4 Q. Ms. Smith, Commissioner Crumpton asked you

5 several questions about what could be done to help correct

6 the current revenue imbalance between the secondary

7 carriers and the primary toll carriers.

8 A. Yes.

9 Q. Do you recall that?

10 A. Uh-huh.

11 Q. Would it be fair to say that that imbalance

12 isn't so much caused by the T/O factors being out of

13 balance in relationship to actuals, but with the company's

14 revenues that they receive from providing COS being out of

15 balance with the cost of providing that service?

16 A. Yes. It doesn't really have any bearing on

17 the T/O factors.

18 Q. Okay. And more the price of COS that an

19 end user pays being out of balance with the access charge

20 that the providers of COS have to pay?

21 A. Correct. It's the fact that the flat rate

22 of \$16 a month that they receive does not recover the cost

23 of the access that they're having to pay.

24 Q. Okay. You were here yesterday when

25 Mr. Taylor from Southwestern Bell testified as to his

1 recommendation to change COS to a one-way local service and
2 have intercompany compensation settled on the basis of
3 access less carrier common line?

4 A. Yes. I recall that.

5 Q. And could you accept that that approach is
6 consistent with how Southwestern Bell is going to settle
7 under Commission-approved agreements with the new LSPs for
8 EAS traffic?

9 A. Yes. I believe that's the agreements.

10 Q. Okay. And if the Commission were to adopt
11 Mr. Taylor's COS proposal, would -- for COS, would that be
12 a reasonable approach?

13 A. It may be. I really can't make that
14 recommendation until I've had more ample time to review
15 that issue and make an assessment of that. But it is
16 possible, yes.

17 Q. If the Commission were to go that route,
18 they could -- the basis would be reasonable?

19 A. Yes. It's possible. Uh-huh.

20 MR. BUB: Okay. No further questions, your
21 Honor. Thank you.

22 ALJ ROBERTS: AT&T?

23 MR. DEFORD: No questions.

24 ALJ ROBERTS: GTE?

25 MS. LITTLE: No questions.

1 ALJ ROBERTS: TCG?

2 MS. FORREST: No questions.

3 ALJ ROBERTS: CompTel?

4 MR. ANGSTEAD: No questions.

5 ALJ ROBERTS: Public Counsel?

6 MR. DANDINO: Yes, your Honor.

7 RECROSS-EXAMINATION BY MR. DANDINO:

8 Q. In response to a question by Commissioner

9 Drainer you had discussed about -- you talked about income

10 levels and that it's important for people to have access in

11 the network, and you said some people, they just -- all

12 they really need is dial tone. But isn't it true that it's

13 the policy of the United States Congress that no matter

14 where you're located, whether it's a rural or urban area,

15 that you should have comparable services available at

16 comparable prices?

17 A. I believe that's what they've said, yes,

18 that they be available.

19 Q. Sure.

20 A. Not necessarily required, but available.

21 Q. Sure. Available?

22 A. Uh-huh.

23 Q. And that's also the legislative intent of

24 the Missouri General Assembly by Senate Bill 507, is to

25 require comparable services at comparable prices both in

1 rural and urban Missouri. Is that correct?

2 A. Yes. That's correct.

3 MR. DANDINO: That's all I have.

4 ALJ ROBERTS: Small Telephone Company
5 Group?

6 MS. MORGAN: No questions.

7 ALJ ROBERTS: Mid-Missouri Group.

8 MR. JOHNSON: I have three areas that I can
9 I think I can cover fairly briefly.

10 RECROSS-EXAMINATION BY MR. JOHNSON:

11 Q. Ms. Smith, in response to some of
12 Commissioner Drainer's questions, and I think generally,
13 the thought's been expressed the last few days that when
14 people choose to live in a rural community, that they
15 choose the phone company and the calling plan that's there
16 at the time. Have you gotten that drift these last few
17 days?

18 A. Yes.

19 Q. The question to you is -- and I don't know
20 that I necessarily disagree with that. But if that
21 philosophy carried today in 1993, we wouldn't have had COS,
22 MCA, or OCA, would we?

23 A. You're saying that provided we had no
24 customer input to that?

25 Q. I mean, if the thought that it carried

1 today in TO-92-306, was when you move to that exchange, you
2 get the service that's available there today and so that
3 was your choice and you don't have to make new services to
4 make life better for you telephony-wise, then we wouldn't
5 have had these services, would we?

6 A. If you want to use that philosophy even for
7 further back than that, you would probably have an entirely
8 different telephony arrangement than you have today. You
9 may actually have local measured service statewide with all
10 other calling being similar to toll and use insensitive.

11 Q. All except, that is, EAS. Are you certain
12 that MCI, Sprint, and AT&T make the same discounted toll
13 calling plans that are available in Kansas City available
14 in exchanges like Pilot Grove, small company exchanges like
15 Pilot Grove?

16 A. I believe they do that provided there is
17 facilities available, and I believe their tariffs cover
18 that. And so if there is, for some reason, an arrangement
19 that cannot be worked out between those companies and the
20 secondary carrier for whatever reasons those may be whether
21 it's trunking, billing, or whatever may be the case, their
22 tariffs indicate that where facilities exist. So if those
23 facilities are not there to provide that same like service,
24 then perhaps they cannot, but for the most part the tariffs
25 read that they will.

1 Q. Have you ever had occasion to field a
2 consumer complaint from a rural exchange where the
3 marketeers said, "Yeah, that's available; we'll get you
4 hooked up," and later they came back and said, "Sorry, it's
5 not available in your area"?

6 A. Oh, yes.

7 Q. I want to ask you a couple of questions
8 about this transition from -- possible transitions from
9 today to equal access or the implementation today of equal
10 access or one-plus dialing parity. Are you recommending
11 that the Commission change COS to a cost-based price before
12 dialing parity occurs?

13 A. My recommendation is that they perhaps go
14 ahead and establish that that's how it will be done, but
15 not until those exchanges convert to intraLATA
16 presubscription would that occur for them.

17 Q. So would the customers be confronted with a
18 different rate for COS before the presubscription date? I
19 guess that's the question.

20 A. Well, I wouldn't expect the company to
21 notify the customer before. I would expect them to wait
22 until that time in which they are going to convert them to
23 an interLATA presubscription environment, that they would
24 notify them that these changes are occurring and this is
25 one of them and here's the new rate for that.

1 MR. JOHNSON: Thank you. That's all I
2 have.

3 ALJ ROBERTS: Staff redirect and also Staff
4 recross based on questions from the bench?

5 REDIRECT EXAMINATION BY MS. MCGOWAN:

6 Q. I think everything has been covered except
7 for one question that may require a multiple answer. When
8 you said it was your recommendation that if the Commission
9 ordered a switch from two-way COS to one-way COS, that the
10 current COS rate should be reduced by 50 percent, was that
11 under any circumstances? And if not, could you identify
12 when that would be the appropriate rate and when it would
13 not?

14 A. No. It would not be under any
15 circumstances. That would be provided that the existing
16 PTC plan stayed intact, and if the PTC plan was to be
17 removed, then that would change my answer to that
18 question.

19 If the PTC plan was not in place, then I
20 believe it should go back to cost-based pricing for each
21 individual company and not just the PTC. But under the
22 existing PTC arrangement if the Commission goes to a
23 one-way only arrangement, that 50 percent of that existing
24 COS rate of \$16 being converted to \$8 I believe to be
25 equitable.

1 Q. So if we do away with the PTC plan, whether
2 it's offered by a PTC, a CS, or any other type of provider
3 or LEC, it should be cost based. Is that your testimony?

4 A. Yes. Yes. Any carrier, regardless who
5 they are.

6 MS. MCGOWAN: Thank you. No further
7 questions.

8 ALJ ROBERTS: I don't believe there are any
9 further questions for this witness. You may step down.
10 Thank you very much, although we do have the rest of the
11 day.

12 THE WITNESS: True.

13 (Witness excused.)

15 COMMISSIONER CRUMPTON: We could make up
16 some questions, if you like.

17 ALJ ROBERTS: Are there any motions or
18 requests at this time?

19 MS. GARDNER: Could I just make clear that
20 whatever exhibits are being submitted in response to
21 Commission questions, make sure all parties get copies?

22 ALJ ROBERTS: Yes. And I'll address that
23 when we do the briefing schedule here in a minute.
24 Anything else?

25 (No response.)

1 ALJ ROBERTS: With that we will go off the
2 record for just a moment, please.

3 (Off the record.)

4 ALJ ROBERTS: We're back after a break.
5 The Commissioners have left the hearing room, and we're now
6 trying to resolve the briefing schedule and some other
7 rather administrative duties.

8 I note several items. As to briefs, first
9 of all, the schedule, I think it's safe to anticipate that
10 the transcript will be filed and available on July 10th,
11 possibly even before that. With that in mind, we'll expect
12 a 20-day initial briefing period so that the initial brief
13 will be due on July 30th, and we'll look at a 10-day reply
14 brief. Actually, I'll move that up to make the reply
15 briefs due on Monday, August 11th.

16 There have been numerous requests from the
17 bench for information which has been asked to be filed as
18 late-filed exhibits, and we have reserved numbers for those
19 exhibits as they have come up. I would ask the responsible
20 party to number -- go ahead and number your exhibit,
21 indicate what number it is, and I can provide you a list of
22 numbers if there's any question. Number your exhibit.

23 When you provide it, you should
24 simultaneously provide it to every party of record to this
25 case. I would ask the parties to either overnight mail or

1 fax -- send by facsimile your exhibit to all other parties
2 at the same time you file it with us. If any party thinks
3 they have good reason not to overnight or fax, they can
4 contact me and raise that issue. If it's 500 pages or what
5 have you and if individual exceptions need to be made,
6 we'll deal with those as they come up.

7 Every party will have 10 days to respond to
8 the exhibits. If you receive an exhibit and you know that
9 it was filed on August 10th, you will have until
10 August 20th to respond to it, and those are hard days. I
11 mean, if that date falls on a Sunday, your time obviously
12 ran out on Friday. And, again, any time you think there's
13 need for exceptions, you can contact me, and we'll talk
14 about it.

15 As to the format of the brief, I would ask
16 the parties to structure their brief in the same order as
17 the order of the issues memorandum in terms of the
18 numbering and the way in which those issues appear so that
19 we'll have some format to follow to review those.

20 And then once you get past those issues,
21 the Commission would ask the parties to address two things,
22 two additional issues, I believe. One is whether -- I'm
23 not sure how to explain this. This comes from Commissioner
24 Crumpton's question, and the question had to do with what,
25 if anything, should be done about true-ups or the T to O

1 ratio or whether COS service or whether this service
2 should -- let's see, whether transition should be made to
3 billing on actuals. Yes, Ms. McGowan?

4 MS. MCGOWAN: Would you like me to read
5 back what I read back to him?

6 ALJ ROBERTS: Sure.

7 MS. MCGOWAN: Research whether the
8 Commission can order parties to true-up T/O ratios or go to
9 actual cost for COS.

10 ALJ ROBERTS: Thank you. And inasmuch as
11 that was primarily directed to Staff, that would not be a
12 required -- some of the parties may not address that in
13 their initial brief, although Staff certainly should. And
14 all the parties would have the opportunity to address that
15 in their reply briefs.

16 The other added item would be whether or
17 not the Commission may mandate COS service under the
18 current environment. And by that we mean, you know,
19 subject to the Telecommunications Act of 1996 and 507 which
20 was passed here in Missouri, does that change our authority
21 to mandate COS service. And, again, that might be
22 primarily addressed by the Staff attorney in the initial
23 brief. Certainly everyone can feel free to address it in
24 the initial brief and/or address that issue in their reply
25 briefs.

1 There were two other issues that I'm not
2 sure were made clear on the record but I've discussed with
3 the Commissioners. Well, it may come down to one issue,
4 and this is -- again, I'm not sure that this is in any way
5 a dispositive issue. There was considerable discussion
6 about whether -- about the issue of internet service
7 through COS and whether the ISP should be certificated, and
8 that's an issue which you may feel free to address at the
9 end of the brief. I don't know that it's mandatory in any
10 way. I believe most of that was resolved through questions
11 and answers, but it was in my notes as a briefing issue.

12 And I'll say as an aside, I realize that
13 there were a number of internet issues that came up,
14 questions and answers between the parties, which I believe
15 went beyond what would be necessary to resolve this case.
16 I understand you may talk to each other about COS slash
17 internet service. You may do that in a complaint case or
18 just among yourselves or however you may do that, but I'm
19 not sure those issues would need to be addressed any
20 further in the briefs.

21 Are there any questions about the briefing
22 schedule or the content of the briefs or the late-filed
23 exhibits?

24 MS. GARDNER: I have a question. You had
25 indicated that the ten days to object to late-filed

1 exhibits was firm. My recollection of the rule, with
2 exception of the effective dates for tariffs and orders, is
3 that if it falls on a Saturday or Sunday you have until the
4 next business day. Is that no longer the case or not the
5 case in this instance?

6 ALJ ROBERTS: Well, the CSR says 20 days
7 unless otherwise, you know, provided or shortened by the
8 presiding officer. If you-all really want the extra day or
9 two, I'm willing to do that, and I'm not sure how many of
10 these -- I mean, depending on when you file will control,
11 you know, whether it's going to run out on a Saturday or
12 Monday.

13 MS. GARDNER: And perhaps I am asking that
14 more broadly, because it has always been the practice,
15 consistent with the civil procedure rules about when it --

16 ALJ ROBERTS: Certainly the rules in
17 Chapter 2 speaks for itself, and that's unchanged. But it
18 does have a provision in there that says unless, you know,
19 changed by -- I don't have the language handy. But unless
20 the presiding officer shortens time for responses. Again,
21 I was just trying to squeeze the process a little bit
22 here.

23 But perhaps it would be better to leave it
24 consistent with the rule, and as we move along, if
25 something's filed and we know that we're running short on

1 time, I can always issue a notice that says you've got four
2 days to respond to this or what have you. So I'll retract
3 that and leave it with the ten days. And if the ten days
4 run out on Saturday, you have until Monday. That's fine.

5 And as I said, you know, as I go back and
6 revisit these time lines and the interaction of this with
7 other cases with the Commissioners, we may issue an amended
8 schedule. We may decide to expedite the transcript, just
9 depending on how we move this forward. Mr. Johnson?

10 MR. JOHNSON: I would just ask that you
11 direct the initial brief to be served by either fax or
12 overnight, because if it takes eight days to get it, which
13 some things have in the past in regular mail, then there
14 may not be an adequate opportunity for me to reply -- a
15 reply brief. But I don't think that's going to be
16 necessary for the reply brief itself.

17 MR. BUB: We would agree to that.

18 MR. JOHNSON: Okay. Thank you.

19 ALJ ROBERTS: All right. If the parties
20 would either fax or overnight mail the initial briefs or
21 some of you may want to look into sending them by
22 electronic mail. I'm not sure if that works for you
23 through the internet, as long as you don't do it through
24 COS.

25 (Laughter.)

1 MR. JOHNSON: We have a route to St. Louis,
2 don't we?

3 ALJ ROBERTS: Any other issues that need to
4 be addressed? Yes, Ms. Little?

5 MS. LITTLE: My notes indicate that
6 Commissioner Crumpton at some point -- and I can't recall
7 which day it was -- indicated that he wanted us to address
8 the issue of timing for any changes to COS.

9 ALJ ROBERTS: Oh, yes. Yes. If you
10 would -- and I'm sorry I let that one -- I dropped that
11 one, because I had brought it up again yesterday. Again,
12 that doesn't fit in the normal order. If you want to add
13 that on at the end. The timing -- there were requests
14 which we may or may not be able to accommodate that had to
15 do with timing here partly as simply -- the issue is simply
16 just directories, you know, getting these changes made
17 before directories are published. But since directories
18 are not published on the same schedule statewide, that
19 would be interesting.

20 But you may feel free to address the issue
21 of timing, and certainly I know if the Commission can
22 accommodate a timing issue, we will make this a smooth
23 transition. We don't know what that would require. Thank
24 you. Yes, Ms. Morgan?

25 MS. MORGAN: Are there page limitations for

1 the brief?

2 ALJ ROBERTS: Well, you know, one of the
3 Commissioners mentioned that on the way out the door. I am
4 not a fan of page limitations myself, although surely you
5 realize that the law of diminishing returns, that after the
6 first couple hundred pages, you just lose interest.

7 MS. MORGAN: Can you sustain for
8 200 pages?

9 ALJ ROBERTS: Well, exaggerating,
10 obviously. I don't know what you anticipate for filing
11 briefs in this thing, in this case. We -- the issues did
12 break out into about, what, subsetted maybe twelve
13 sub-issues, and so I hate to give you a firm page minimum.

14 MR. BUB: We prefer it be left to
15 individual parties.

16 ALJ ROBERTS: I mean, that's -- I
17 personally would prefer to leave it that way, too, and
18 really the burden is on you. You know, it's hard for all
19 of us to read very lengthy documents and keep track of, you
20 know -- keep everything in focus. So let your conscious be
21 your guide. I don't know what to tell you. I'm not --
22 that's a good point. I'm not going to establish any
23 artificial page limitation. Anything else?

24 (No response.)

25 ALJ ROBERTS: If you have any further

1 questions, don't hesitate to call me or write me or
2 whatever you need to do to tie up loose ends on this case.
3 I'll be anxious to see it resolved.
4 Thank you very much for your patience
5 during the past four days. The case is submitted. We're
6 off the record.
7 WHEREUPON, the hearing of this case was
8 concluded.

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