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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
September 25, 2002
Jefferson City, Missouri
Volume 4

In the Matter of Southwestern Bell)
Telephone Company's Tariff Filing to) Case No. TT-2002-472
Initiate Residential Customer) Tariff No. 200200831
Winback Promotion.)
In the Matter of Southwestern Bell)
Telephone Company's Tariff Filing to) Case No. TT-2002-473
Extend Business Customer Winback) Tariff No. 200200828
Promotions.)

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.
SHEILA LUMPE,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:
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P R O C E E D I N G S

JUDGE WOODRUFF: Welcome to the second day of hearings. Any preliminary matters you want to take care of before we have the witness come up to the stand? I know there are some documents that appeared on my desk here.

MS. DeCOOK: Your Honor, I had promised to provide copies of Exhibit 19, and I distributed that to all the parties.

JUDGE WOODRUFF: Okay. I have it here. I believe I also have copies of document 13HC, and these were an MCI WorldCom document. I believe these -- can you explain what these were?

MS. ESCOBEDO: Yes, your Honor. These are the documents that I -- that were produced as highly confidential documents in response to the Data Requests that WorldCom issued.

JUDGE WOODRUFF: And these were the ones that you were referring to when you were talking with the witness yesterday?

MS. ESCOBEDO: That's correct, your Honor.

JUDGE WOODRUFF: Okay. Now, we actually had three other documents -- okay. I'm sorry. That was 12HC.

Did you wish to offer these into evidence or did you wish them to be identified for the record?

MS. ESCOBEDO: I would like to offer them into

1 evidence.

2 JUDGE WOODRUFF: Okay. 13HC has been offered
3 into evidence. Is there any objection to their receipt?

4 MR. LANE: Yes, your Honor. We'd make the
5 same objections we made yesterday. They haven't been
6 properly identified with foundation, nor are they relevant.

7 JUDGE WOODRUFF: I'm going to make the same
8 ruling I did yesterday on it. They will not be received
9 into evidence because of the lack of foundation. Okay. And
10 19 was already admitted yesterday.

11 All right. Then if Mr. Regan would retake the
12 stand. And you were sworn yesterday, so you're still under
13 oath. Be seated, then, and we'll begin with questions from
14 the Bench, beginning with Commissioner Lumpe.

15 JOHN REGAN, JR. testified as follows:

16 QUESTIONS BY COMMISSIONER LUMPE:

17 Q. Mr. Regan, I think I just have two questions,
18 and I think basically they're clarifying for me.

19 We had some testimony yesterday about allowing
20 customers to return who may have been in arrears on payments
21 or that sort of thing. Do you recall some of that
22 discussion?

23 A. Yes, I do.

24 Q. On your -- in your testimony on page 9, it
25 says, starting at line 11, and this is your surrebuttal,

1 that SWBT allows customers to return even if they had been
2 disconnected for nonpayment.

3 So just to clarify, based on some of the
4 conversation that was yesterday that you didn't want to take
5 credit risks, this seems to imply you will take people that
6 have nonpaid or potentially are credit risks; is that
7 correct?

8 A. We allow customers to come back, but if they
9 have an outstanding balance, we work with the customer to
10 solve the outstanding balance before service can be
11 reconnected, and there are different credit guidelines and
12 policies depending if you're a residential customer or a
13 business customer. I don't have the full details of those
14 policies.

15 Q. Is it more likely if you're a business
16 customer that you would be taken back than if you were a
17 residential customer?

18 A. Not necessarily. Not necessarily. There are
19 guidelines in terms of the dollars that they would work with
20 the client, the customer in terms of settling the past-due
21 payment. It's usually in the 50 to \$100 range.

22 Q. So in that one document where it sort of
23 talked about credit risks, there are further guidelines that
24 you would use to accept someone who had an outstanding
25 balance or whatever?

1 A. There are guidelines for customers that owe us
2 money, bad debt, past-due payments, that we work to solve
3 those particular issues before we would reestablish service.

4 Q. Okay.

5 A. And the guidelines are usually in the 50 to
6 \$100 range, and then also we establish a rating on a
7 customer's credit rating based on the past history and other
8 analysis that we verify from the customer.

9 Q. So when it said something about credit risks,
10 there are further guidelines that you would look at, sort of
11 how much and what their credit risk might be and that sort
12 of thing, so there are other factors below that?

13 A. There are other -- yes, that is correct, and
14 that would be no different than a new customer on a new
15 connect that's never had service with Southwestern Bell in
16 the past. Those are very similar guidelines.

17 Q. All right. And then on page 6 of your
18 surrebuttal, and then it appears to be highly confidential,
19 you talk about two databases, and it appears to me that
20 you're using those two databases to determine a disconnect.
21 Is that what those two databases do? Is that how you
22 determine that someone has disconnected using these two
23 databases?

24 A. We use two different databases, and we draw
25 upon, again, as we described yesterday, Commissioner, that

1 we will look at customers that we've disconnected from a
2 retail perspective and then we'll look at all disconnects
3 and then we'll compare those two different databases so we
4 understand the disconnects that we didn't take that we can
5 stop billing on, and then those would be customers that we
6 identify as potential winback customers.

7 Q. And you say, I believe, here that CLECs have
8 access to these two databases; is that correct?

9 A. My understanding, and I'm not an industry
10 markets or wholesale expert, but my understanding is that
11 CLECs do have access to their customers that disconnect,
12 just like we have access to our customers that disconnect.

13 Q. So they could use these two databases at any
14 time to determine their disconnects, not your disconnects,
15 but their disconnects?

16 A. I'm not sure if it's these exact two
17 databases. Again, I'm not an expert in our wholesale
18 business, but my understanding is they have a disconnect
19 report of their customers that disconnect.

20 Q. All right. So I can't really -- when you say
21 you're not sure, then I can't really say whether they do or
22 do not have access to these, is that correct, these two
23 databases?

24 A. It may be a better question for Mr. Hughes. I
25 just --

1 Q. It's in your testimony, and that's why I'm
2 asking you.

3 A. Well, the information I provide in my
4 testimony, Commissioner, is information about retail
5 customers.

6 Q. Okay.

7 A. Retail customers have acc-- or we have access
8 to this information on our retail customers. My
9 understanding is that CLECs have access to disconnected
10 information of their customers that subscribe to wholesale
11 Southwestern Bell services.

12 Q. And that's your understanding, but you're not
13 sure?

14 A. That is my understanding.

15 COMMISSIONER LUMPE: Okay. Thank you. That's
16 all I have.

17 JUDGE WOODRUFF: Commissioner Gaw?

18 COMMISSIONER GAW: Thank you, Judge.

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Is it Regan?

21 A. Yes, sir.

22 Q. Thank you. Mr. Regan, this -- just as an
23 aside, the exhibit that's marked 13HC that has not been
24 admitted into evidence, you were asked a number of questions
25 about pieces out of that yesterday. You remember that?

1 A. Yes, sir.

2 Q. You don't -- you don't know a lot of the
3 information that's in this document, as I took it yesterday;
4 is that accurate?

5 A. I've not seen the document, so --

6 Q. You haven't ever seen it?

7 A. Not unless -- I mean, I haven't seen it --

8 Q. Let me get it up to you. And it's marked HC,
9 so I'll avoid at the moment asking specific questions. I'm
10 just trying to understand your knowledge of it.

11 A. Commissioner Gaw, the documents that have been
12 provided here, the first set of documents, labeled page 11
13 and page 12, as well as the third page, those were documents
14 that were passed yesterday. That was the first time that I
15 saw those documents.

16 Q. All right. And the rest of the -- the rest of
17 13, are you familiar with any of it?

18 A. 13 being the --

19 Q. The exhibit. I'm sorry.

20 A. Okay. Yes. There is a few other documents
21 that I'm familiar with. Let's see. What's the best way to
22 refer to the documents? It would be about in the middle of
23 the document, there's a -- appears to be a template of a
24 letter that we had sent out to customers regarding a
25 marketing survey.

1 Q. Okay. Is there anything particular
2 identifying that letter in there that you can just --
3 A. Has SBC Southwestern Bell on the letterhead.
4 Q. All right. Is that the only one that seems to
5 be like that that you've come across?
6 A. There are several examples of that letter that
7 I am familiar with.
8 Q. All right.
9 A. Towards the -- towards the back of the
10 document, although I had not seen this document before, I am
11 familiar with the content of the document. It's referred to
12 as the tracking code cheat sheet. Not so much from the
13 letter codes or the various codes, but more or less the
14 campaigns that are described below. Those are primarily
15 marketing campaigns.
16 Q. All right.
17 A. And the last document I'm familiar with is --
18 or excuse me. Last two documents I'm familiar with are
19 towards the -- are the last -- is the last two pages. The
20 second-to-last page is Proactive Retention Customer Message
21 Campaign, and that was another document that was passed my
22 way yesterday.
23 Q. All right.
24 A. And identified that for whatever that was.
25 And then the last page, again I've not seen this e-mail, but

1 I am familiar with the Southwestern Bell loyalty program.

2 Q. Okay. What is a loyalty program by the way,
3 just briefly?

4 A. A loyalty program is a consumer residential
5 program that we initiated this year, customers throughout
6 our five states, to basically touch customers four to five
7 times a year, let them know that we appreciate their
8 business, thanking them for their business, please call us
9 if they have any questions or concerns.

10 And we also offer them coupons to various
11 folks, like Omaha Steaks and Amazon.com, those type of folks
12 if they want to take advantage of those offers that are out
13 there, made available from those vendors.

14 Q. These are customers of Southwestern Bell?
15 They're not customers that have left that you're trying to
16 get back; they're customers that you're wanting to keep? I
17 would assume that's what it's about.

18 A. Commissioner, that's exactly right. These are
19 existing Southwestern Bell customers.

20 Q. The position that you currently have with
21 Bell, would you -- would the portion of Bell that you
22 oversee in your position, would that portion of Bell have
23 anything to do with the other documents in this packet
24 labeled Exhibit 13HC that you're not -- those portions that
25 you're not familiar with, that you have not seen before?

1 A. For the most part, no. My position and the
2 areas of responsibility I have would not be involved with
3 most of the content in these documents from what I've been
4 able to look at.

5 Q. All right.

6 A. They appear to be more process and procedures,
7 methods and procedures, and we have organizations that are
8 responsible for just ensuring that we follow, are compliant
9 with process and procedures.

10 Q. And would your answer be the same in regard to
11 your previous position as well?

12 A. That would be the same, yes, sir.

13 Q. All right. And who would it be or what
14 portion of Bell would it be that would be dealing with those
15 portions of this exhibit?

16 A. There's probably several groups, but it would
17 be primarily in our -- what we consider our sales operations
18 group.

19 Q. Okay. All right. Is there anyone that you
20 know of that's testifying, scheduled to testify in this case
21 that is in that group?

22 A. There's not anyone that I'm aware of that's in
23 that group that will be testifying.

24 Q. Okay. That's it. Thank you for that.

25 Let me ask you in regard to the winback

1 program itself, do you -- do you believe that this program
2 contributes to competition?

3 A. Commissioner, yes, I firmly do believe that.

4 Q. All right. And would you explain your
5 position on that, please?

6 A. Having winback offers for customers gives
7 customers choice, gives them -- lets them know that we're
8 interested in their business, we have competitive, we have
9 offers, we can meet the competitors in the marketplace
10 fairly and squarely, and it promotes service providers and
11 vendors to be able to bring the best choices to customers to
12 meet their needs.

13 Q. And there's been some suggestion that by
14 putting -- by offering things that are lower priced in a
15 winback program, that that will prevent or diminish the
16 chances that there will be lower prices or better
17 promotionals offered to everyone in general as opposed to
18 just this group. Do you believe that that is true?

19 A. I don't necessarily agree that that's true. I
20 believe that the markets are very competitive, they're very
21 open, and we look at customers not only to win them back,
22 but we're also thinking about customers well before we lose
23 them.

24 And I think that's a new phenomena in our
25 industry. It is not a monopoly. Every customer is

1 vulnerable. Every customer is vulnerable. And, you know,
2 it's -- we want to keep our customers. We want to keep them
3 satisfied.

4 So winback is one means to win back customers
5 that we may have lost, but we are also doing things and
6 every day as part of my role of my job is how do we service
7 the customer, how do we meet the customer needs today so
8 that we don't lose them?

9 So there are some -- retention becomes a
10 larger role in our -- in our job aspect, and that is because
11 it's a competitive marketplace. Customers have choice, they
12 have many choices out there, and winback programs allow them
13 to -- if we had a winback tariff in place, it allows them to
14 try different service providers knowing that there may not
15 be a penalty if they come back. It actually could promote
16 more competition in the marketplace.

17 Q. Do you let customers know that if they go to a
18 CLEC that you will give them a better deal if they go there
19 first?

20 A. I'm not aware of that, Commissioner. I mean,
21 a lot of times we never get a chance -- in the mass market,
22 consumers and small business, we never really get a chance
23 to talk to the customer. So they're gone before we know
24 them, that they're gone.

25 We deal at the high end of the market with

1 larger complex customers usually more of a one-on-one
2 account team relationship, and again, we're -- those
3 customers have anywhere between three, four, six, seven,
4 eight different choices. But in the mass market, we rarely
5 get a chance to talk to the customer before they're gone.

6 Q. Do you know whether or not in Missouri that
7 you-all are competing for customers with CLECs that offer
8 winback programs themselves?

9 A. I'm not aware if CLECs have any specific
10 winback programs. I mean, they're primarily more in an
11 acquisition mode, but I do believe there is CLEC-to-CLEC
12 migration. So there are probably winback offers out there,
13 but I'm not aware -- I don't have any marketing intelligence
14 that would indicate that.

15 COMMISSIONER GAW: I think that's all I have.
16 Thank you, Judge.

17 JUDGE WOODRUFF: Thank you.

18 Commissioner Forbis?

19 QUESTIONS BY COMMISSIONER FORBIS:

20 Q. Good morning.

21 A. Good morning.

22 Q. Okay. The tariffs that we're talking about
23 generally just waive the reconnect charge, right?

24 A. The tariffs that we filed primarily waive the,
25 right, the nonrecurring charge, the installation charge to

1 set the service up.

2 Q. So a lot of the other promotional aspects that
3 your company would use are in other tariffs besides these
4 that have already been approved?

5 A. Commissioner, that's correct. We look at
6 existing tariffs that are already in the marketplace,
7 already approved, and look at how do we bundle, how do we
8 package to make that offer more attractive to the customer.

9 Q. On page 6 of your direct testimony, you say on
10 line 13, Even including those customers who elected to
11 return to SWBT for local service, number of retail lines
12 still hasn't decreased.

13 Do you have any notion of how successful these
14 winback programs are, particularly the tariffs that waive
15 these sorts of reconnect charges that were in effect for a
16 year already, how often are those options used?

17 A. I don't have any -- Commissioner, I don't have
18 any hard evidence with me right now to say how effective
19 they were, but what I can tell you is that our competitive
20 disconnects continue to go up. They continue to go up month
21 over month, and our net gain of access lines continue to
22 decrease. So there is a -- there is a cause and effect
23 there from what we see.

24 We do know that customers tell us and we have
25 data that account teams and service reps indicate the

1 customer wanted to come back but the entry to barrier --
2 barrier to entry was the installation charge.

3 And a lot of customers will come back with an
4 installation charge, but a lot of them will not come back
5 because they feel like they've switched and sometimes are
6 informed by the CLECs that, you know, you can always go back
7 to Bell, there's no charge to go back, and they're
8 disappointed to find out that there is.

9 Q. But you don't have any numbers really, then,
10 about how it -- how often this option is used? It's a small
11 number, you think?

12 A. It's a small number. I don't have the hard
13 data.

14 Q. Okay. I'm trying to think what else I should
15 ask you. I don't think so. Thanks very much.

16 JUDGE WOODRUFF: Commissioner Lumpe?

17 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

18 Q. If I'm understanding, the only thing in this
19 tariff is the nonrecurring charge, not discounts of any
20 sort; is that right?

21 A. Commissioner, that is correct. It is
22 nonrecurring charge that would be waived.

23 Q. Okay. And I don't know if you're the
24 appropriate one to ask this, but this is what I guess
25 puzzles me sometimes, why you wouldn't offer this to any new

1 customer, why you would just target a certain set of
2 customers. Are you the appropriate one to ask that?

3 A. Sure. Yes, ma'am. Well, again, customers
4 that leave us understand there's a competitive marketplace
5 out there and they've made a choice. More often than not
6 when they leave us to go to a CLEC or to a competitor
7 there's not -- a nonrecurring charge is waived in those
8 instances.

9 We are targeting these customers. They --
10 they're looking for choices. We want to make those choices
11 attractive when they come back. That's simply the approach
12 that we've taken.

13 Q. So the win -- and you made a distinction, I
14 think, yesterday between the win and the winback; is that
15 correct?

16 A. Yes, ma'am.

17 Q. The win is someone you never had but you go
18 out to win that customer. Is that the distinction? And the
19 winback is somebody you used to have and now you don't have
20 and you want to win them back; is that right?

21 A. Commissioner, I realize yesterday I was
22 probably a little bit confusing, and let me apologize for
23 that. Let me restate the definition of win and winback and
24 how they apply to these particular tariffs that we filed
25 both in the consumer residential area and business.

1 In the consumer tariff that we filed, the
2 tariff is primarily designed for winback. So it would be
3 designated as those customers that have had service with us
4 in the past. They could be on a facilities bypass or they
5 could be, you know, reusing our service through a CLEC
6 through UNE solution, but they've had a prior service with
7 Southwestern Bell.

8 In the business tariff, we have filed tariff
9 for both win and winback. So let me explain. A winback is
10 exactly the way I explained it on the consumer side. A win
11 is a customer that's within the same area that's -- when
12 they first established service, they never -- they didn't
13 have it with Southwestern Bell. They went to a CLEC or an
14 alternate access provider, they established service, they
15 never had service with Southwestern Bell, and now they're
16 coming back.

17 Those -- that business tariff that we filed
18 would waive the installation charge for those customers as
19 well.

20 Q. They're really not coming back. They never
21 were with you, but you're seeking to --

22 A. Win them.

23 Q. -- put them into your system?

24 A. Absolutely.

25 COMMISSIONER LUMPE: All right. Thank you.

1 JUDGE WOODRUFF: Commissioner Gaw?

2 COMMISSIONER GAW: Just one quick follow-up.

3 FURTHER QUESTIONS BY COMMISSIONER GAW:

4 Q. If a customer had never had any service from a
5 CLEC or Bell, they would not then fall into a category for a
6 win under that definition?

7 A. Commissioner, that is correct. They would be
8 considered a new connect, new service, and follow the
9 standard tariffs that we have filed.

10 COMMISSIONER GAW: Thank you.

11 JUDGE WOODRUFF: I have no questions, so we'll
12 go to recross based on questions from the Bench, beginning
13 with Staff.

14 MR. HAAS: Yes, your Honor.

15 RECROSS-EXAMINATION BY MR. HAAS:

16 Q. Hello, Mr. Regan.

17 A. Good morning.

18 Q. Commissioner Lumpe asked you questions about
19 Southwestern Bell's policy regarding customers with unpaid
20 balances regarding your testimony at the top of page 9 of
21 your surrebuttal testimony.

22 A. Yes.

23 Q. And in that testimony you say, Once a customer
24 has paid their outstanding balance or has established
25 payment arrangements with Southwestern Bell's credit

1 department, then Southwestern Bell allows that customer to
2 again receive service from Southwestern Bell.

3 Would the customer who has paid their
4 outstanding balance or established payment arrangements be
5 offered the terms of this promotion that's at issue here?

6 A. If they qualify for either a winback or a win
7 customer as described in the business tariff filing, yes,
8 they would.

9 Q. Would you be willing to put additional
10 language in this tariff filing that would specifically state
11 if that customer does make the payment arrangements or
12 become -- pay up their balance, they would get the waiver?

13 A. I'm certainly not a tariff expert, but I
14 would -- I would say we would look at that, and if it made
15 sense, we would do that.

16 Q. Commissioner Lumpe also asked you questions
17 about why you were targeting just certain customers with
18 this promotion. Is the decision to target just these a
19 profit-driven decision?

20 A. Is it a profit-driven decision? Let me answer
21 that, I mean, we're in business. We're competing for
22 customers every day. And as I stated earlier, when you look
23 at our business, we believe it's a very competitive
24 marketplace. If you look at our access line business,
25 access lines are down, new orders are down, competitive

1 disconnects are up, and year to date, year over year our net
2 access line has decreased 153 percent.

3 So we're out trying to win customers to stay
4 in business so we can continue to thrive in this marketplace
5 and bring services to the citizens of Missouri and the
6 businesses in Missouri as they expect us to.

7 MR. HAAS: No other questions. Thank you.

8 JUDGE WOODRUFF: Thank you. Public Counsel?

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

10 RE-CROSS-EXAMINATION BY MR. DANDINO:

11 Q. Good morning, Mr. Regan.

12 A. Good morning.

13 Q. When Commissioner Gaw was asking you to
14 identify -- or what parts you could identify of Exhibit 13H,
15 I notice you were marking some pages with some green Post-it
16 notes?

17 A. Yes, sir.

18 Q. What were those pages and why did you mark
19 those?

20 A. I marked these pages to refer back to these
21 were documents that I've either -- that I have identified or
22 that I'm aware of the content in the document.

23 Q. And were those the ones you discussed with
24 Commissioner Gaw?

25 A. Yes. Yes, sir.

1 Q. Okay. Thank you.
2 Commissioner Lumpe was asking you about credit
3 risk, and I notice you kept saying that you would accept
4 back people that are former customers with high -- they were
5 a high credit risk. I know Mr. Haas touched on it, but if
6 it's a high -- if a -- if a former customer was a high
7 credit risk, not that they had an outstanding balance, and
8 they came back, would they be eligible for this winback
9 program?

10 A. The answer would be yes. We're not
11 discriminating against account group class of service.
12 Different account group classes may require different terms
13 and conditions in terms of deposits and those sorts of
14 things, but we wouldn't restrict or discriminate against
15 customers that are in different credit classes of service.

16 Q. If under your original -- if a new customer
17 would come in and would not be accepted because of its
18 credit rating and they -- and then if they had that same
19 type of situation and then they left South-- or and now
20 they're coming -- now they're coming back to Southwestern
21 Bell, would they -- let me put it this way:

22 If someone was coming back to Southwestern
23 Bell and was a former customer and now they have a credit
24 rating that if they were a new customer Southwestern Bell
25 would not extend service to them, would they be entitled to

1 the winback promotion?

2 A. My understanding of how our credit policies
3 work is that that customer -- a new customer and a winback
4 customer are treated equally the same.

5 So if they had a past-due debt, we work with
6 them on a past-due debt. There's a certain credit threshold
7 or certain payment level that they have to work through. As
8 I mentioned earlier in my previous testimony, it's in the
9 range of 50 to \$100. If that's what's left, we work with
10 the customer to solve that past-due payment.

11 But our credit policies and guidelines are the
12 same if you're a new connect or if you're a winback
13 customers. We may have a history of you if you've already
14 had previous service with you versus a new connect, so there
15 may be some differences there, but we would treat each
16 customer in similar conditions.

17 Q. But a new customer isn't eligible for the
18 winback, right?

19 A. They wouldn't qualify for the winback
20 promotion, that is correct. But from a credit class of
21 service policy, the procedures and process would be very
22 similar.

23 Q. Well, right, but I'm talking about now. So
24 you're going to treat them the same. See, I don't
25 understand that. If a customer has credit problems that if

1 they were a new customer you wouldn't extend them service,
2 you wouldn't extend them service the second time, right?

3 A. If they --

4 Q. When they're coming back?

5 A. They would follow the same credit policy
6 guidelines if they were a new connect versus a winback.

7 Q. Okay. Now, you talk about would owe
8 Southwestern Bell. Is this anything that is billed on
9 Southwestern Bell's bills, like it could be say for vertical
10 features?

11 A. Yes. It would be whatever services that we
12 provide, access lines, vertical features.

13 Q. Local toll?

14 A. Local toll.

15 Q. What about toll billed by a -- or billed by
16 Southwestern Bell on behalf of an IXC?

17 A. I'm not -- I'm not sure about that. That's
18 not in my area of expertise.

19 Q. Okay. Commissioner Forbis discussed with you
20 that -- about the winback being just one of the many
21 promotions that Southwestern Bell uses to try to compete
22 with their -- with your competitors, right?

23 A. That is correct.

24 Q. And so when you contact a former customer, you
25 could offer them the winback, this winback promotion that's

1 under consideration here today as well as a whole package of
2 other different types of promotions, right?

3 A. We would have different promotions that are
4 available in the marketplace that again would be based on
5 what the customer needs are, what is it that they're looking
6 for, what's the right package to meet their needs, and
7 really a lot of customers choose what makes sense for them.

8 Q. Sure. And then you have a whole basket of
9 promotions, and you're going to pick and choose which ones
10 are the best to offer that customer to induce them to come
11 back to Southwestern Bell, right?

12 A. There are various promotions out in the
13 marketplace that these customers would be able to take
14 advantage of.

15 Q. Well, I'm asking you specifically, you have a
16 whole number of them that's at your disposal to induce a
17 customer to come back to Southwestern Bell; is that correct?

18 A. Yes, there are various promotions filed at any
19 given point in time in the year that, again, for new connect
20 customers, they're used when customers come back from a
21 winback process. They're used in many different ways.

22 Q. And this is only one of many, right?

23 A. This is one of many.

24 Q. So if this Commission would reject these
25 tariffs, these promotions, it's not going to cause the

1 demise of Southwestern Bell's competition in the state of
2 Missouri, is it?

3 A. I wouldn't say it would cause the demise of
4 Southwestern Bell but what we --

5 Q. No, that wasn't the question. The question
6 was, would it cause the demise of Southwestern Bell's
7 competition in the state of Missouri?

8 A. We -- we --

9 Q. Well --

10 A. We listen to customers, what customers tell
11 us, and we're trying to respond to customer needs.
12 Customers want and expect nonrecurring charges to be waived.

13 Q. Let me ask the question again.

14 A. Okay.

15 Q. And will you answer it this time?

16 A. I will attempt to.

17 MR. LANE: Your Honor . . .

18 BY MR. DANDINO:

19 Q. Will -- if this Commission rejects this
20 tariff, in your opinion, will it cause the demise of
21 Southwestern Bell's competition in the state of Missouri as
22 a local exchange company?

23 A. In my opinion, we will -- Southwestern Bell
24 will continue to compete in the marketplace.

25 Q. Okay. Fair enough.

1 So, and you were saying that customers mention
2 the installation charge as an obstacle to coming back to
3 Southwestern Bell, correct?

4 A. Yes, I did.

5 Q. And is this the -- is this the only thing that
6 stands in the way of them coming back to Southwestern Bell?

7 A. It's not the only thing. I mean, again, when
8 we do marketing research, we try to understand why customers
9 leave us. There's various reasons.

10 And I think that, you know, competition, what
11 it really does for the state of Missouri, for consumers and
12 businesses, it not only brings better choices to customers,
13 but it also brings more focus on the customer, as well as
14 better services, better products, as well as more
15 competitive prices. There's a lot of choices in the
16 marketplace.

17 Q. Sure. And you believe that Southwestern Bell
18 offers a very competitive and very attractive package of
19 services and innovations and prices to the marketplace,
20 isn't that correct?

21 A. I believe that we -- we do the best that we
22 can given the, you know, the regulations that we have to
23 work with in the tariff world. There are things that we
24 want to do that we're here today that we're not allowed to
25 do yet, and that's one of the reasons we're here today.

1 So, I mean, the answer to the question is that
2 we want to be able to compete very fairly and squarely with
3 our competitors, and, you know, we don't want to be
4 restricted to put competitors' offers in the marketplace.

5 Q. But you feel that you have -- that
6 Southwestern Bell offers a superior product and true value
7 to its customers and that's why they should want to come
8 back to Southwestern Bell; isn't that correct?

9 A. What I would -- how I would answer that is
10 that I think we offer -- we offer excellent products and
11 services, we offer competitive prices in the marketplace, we
12 offer outstanding service, we have a track record of
13 performance.

14 But I also believe we need flexibility to meet
15 customers in the marketplace, because it is a competitive
16 marketplace, and customers expect us to be able to respond
17 to their needs, which is again one of the reasons we're here
18 today.

19 Q. And Commissioner Forbis also asked you that
20 this is only a small number of former Southwestern Bell
21 customers really take advantage of this waiver of the
22 installation fee; isn't that correct?

23 A. Well, if you believe the testimony that's
24 identified in Mr. Hughes' testimony, which we estimate the
25 marketplace to be somewhere in the neighborhood of

1 330-plus-thousand access lines that are out there with
2 competitors today. So to me that's a pretty big market with
3 a market that's not growing in the access line arena.

4 Q. Well --

5 A. So it's a large percentage of customers that
6 would be able to take advantage of this if they were prior
7 Southwestern Bell customers or, as I stated in the business
8 tariff filing, customers that elected to go to a competitor
9 and never had service with Southwestern Bell in the past.

10 Q. But that's the potential pool of customers.
11 Commissioner Forbis, didn't he ask you about what the
12 experience was in the past, and I believe that you agreed
13 with him that only a small number of them had taken
14 advantage of the winback program that was in effect?

15 A. What I stated was that I don't have any of the
16 valid data that says here's how many customers have taken
17 advantage of this particular promotion.

18 Q. So you don't know one way or the other?

19 A. I don't know. I don't have that data with me.

20 Q. During the time -- which one of these winback
21 was in effect, the one for business, is that right, was in
22 effect previously?

23 A. We had -- we had different winback tariffs 12
24 different times that were in place over the course of the
25 last year and a half or so.

1 Q. Wasn't one of these that are in front of the
2 Commission today in effect prior to this time?

3 A. There was a business winback tariff, yes.

4 Q. And during that time, Southwestern Bell still
5 lost the same amount of customers that you identified that
6 you're talking about, all the number of lines that you've
7 lost, during that time it was in effect, you still lost
8 those customers?

9 A. We see competitive loss every day, and as I
10 stated earlier, we're seeing extremely more competitive loss
11 in the marketplace.

12 Q. And it's your opinion that this waiver of the
13 installation charge is going to stem that tide?

14 A. My opinion is that these waivers will help us
15 meet the customer needs in the marketplace and should help
16 us win back a few more customers, absolutely.

17 Q. But for the waiver of the \$35 or \$52
18 installation charge, Southwestern Bell would not lose any
19 customers?

20 A. In terms of winback or --

21 Q. Yes.

22 A. Will we lose customers? Yeah, I believe we
23 will still continue to lose customers because, again, the
24 market is competitive. The market is open. There are many
25 choices in the marketplace. And regardless if we have this

1 winback tariff or not, I mean, we're going to still continue
2 to see competitive access line loss.

3 Q. Sure. Wouldn't -- and also I think, I believe
4 it was Commissioner Gaw -- or Commissioner Forbis, why don't
5 you offer this to all customers, this waiver to all
6 customers?

7 If you believe that the competitive
8 marketplace is so competitive, wouldn't it make sound
9 business sense to abolish the connection fee up front for
10 all customers and that way you could compete very strongly
11 for all customers and that all customers would be considered
12 on the same basis?

13 A. I don't know if it makes financial sense. I
14 mean, my -- my belief is it possibly doesn't, because in a
15 new connect establishing a customer for the first time there
16 are, you know, things that you have to do to establish a
17 customer for the first time, where if a customer already has
18 a prior track record, already had experience with
19 Southwestern Bell, most likely there's going to be service
20 that was already established at that primary residential or
21 business location.

22 And again, this is in response to what we
23 believe is a competitive marketplace. Customers are making
24 choice to leave Southwestern Bell, go to competitors. They
25 want and expect us to have offers in the marketplace to win

1 their business back, and that's really what this tariff is
2 all about.

3 Q. Mr. Regan, if Southwestern Bell -- the purpose
4 of this tariff is driven by market forces; is that correct?

5 A. It's driven by the competitive nature of the
6 Missouri marketplace, yes.

7 Q. Sure. And Southwestern Bell desires to
8 strongly compete in that market. Does the issue of the cost
9 to install versus the desire of the consumers and the
10 attractiveness of offering a waiver of the installation fee,
11 doesn't that outbalance whatever cost you have?

12 A. I'm not a cost expert. I look at things from
13 a marketing perspective in terms of --

14 Q. That's what I'm saying. Just from marketing,
15 I mean, that is attractive, isn't it? You're offering free
16 installation to all, all comers.

17 A. It's attractive to offer it. We believe it's
18 attractive to offer it to customers that are aware of the
19 competitive forces of the marketplace, that have made
20 choices, that want more choices, and I don't believe it's
21 necessary for customers that are establishing service
22 primarily for the first time.

23 Q. And those who aren't aware aren't worth
24 offering this waiver to?

25 A. In terms of winback?

1 Q. Yes.

2 A. No. We would offer it to customers as part of
3 the tariff filing and promotion.

4 Q. But if they're not aware of the market and
5 have previously made choices and are just a new customer
6 just coming on board, you're not going to offer a waiver of
7 the installation charge, are you?

8 A. It's not the tariff that we filed.

9 MR. DANDINO: That's all I have. Thank you so
10 much.

11 THE WITNESS: Thank you.

12 JUDGE WOODRUFF: And for NuVox WorldCom?

13 RECROSS-EXAMINATION BY MS. ESCOBEDO:

14 Q. Good morning, Mr. Regan.

15 A. Good morning.

16 Q. A few questions. I believe it was
17 Commissioner Gaw who asked you about whether winbacks
18 contribute to competition, and your response was, and if I
19 may paraphrase, winback offers customers choice, shows that
20 you're interested in the customer, and that you can meet
21 their needs.

22 And I guess my question is going to be along
23 the same lines as Commissioner Lumpe and Commissioner Gaw
24 and Mr. Dandino also. Why not offer it to all customers?
25 Why target it to just CLEC customers?

1 A. Well, again, CLEC customers, you're either
2 with an ILEC or you're with a CLEC or --

3 Q. Well, now, excuse me.

4 A. -- or you're a new customer.

5 Q. Let me interrupt you, though, because you also
6 referred to other providers. Now you're saying it's only
7 ILEC or CLEC?

8 A. CLEC, ILEC and competitive access providers.

9 Q. And who falls under the competitive access
10 providers category?

11 A. Folks that bring in fiber-based facilities,
12 that sort of thing.

13 Q. So a facilities-based provider?

14 A. Yes.

15 Q. Okay. Thank you.

16 A. Okay. So again, as I stated earlier, we
17 believe that our tariff filing is there to promote and
18 continue to meet competition in the marketplace, give
19 customers choice.

20 Customers tell us and indicate that they want
21 to have the ability to switch providers and that they should
22 do so without having to pay a recurring charge, especially
23 with the fact that they already had service previously
24 established with us.

25 Q. And you are aware that or at least your

1 customers are telling you that if installation is a barrier,
2 it must mean that CLECs do not have installation charges.
3 Are you aware that most CLECs do not have installation
4 charges?

5 A. I'm aware that most CLECs do not have
6 installation charges, yes.

7 Q. And your response is to not have installation
8 charges for end users that come back, that you win back from
9 CLECs?

10 A. My response is, consistent with what I've been
11 saying, is that again customers are out in the competitive
12 marketplace, they have many choices, and those choices, you
13 know, are with CLECs, for example. CLECs waive nonrecurring
14 charge in many cases, in most cases.

15 The customer may not be satisfied with the
16 experience that they've had with that CLEC. The CLEC may
17 not be living up to its service standards or its pricing
18 that it's committed to in the customer contact. Customers
19 are upset. They call us. They want to return. They don't
20 feel like they should have to pay an installation charge,
21 and that's what our tariff offering is all about.

22 Q. In response to a question by Commissioner
23 Forbis, you talked in terms of the business tariff, I
24 believe, being generally available. Is it, in fact,
25 generally available to everybody?

1 A. No. Let me -- let me restate the answer.
2 Basically, in the business tariff filing that we have, it is
3 designated for customers that had had service with
4 Southwestern Bell in the past, a winback customer, and then
5 what we've designated as a win customer, a service that we
6 never had that established service in the local -- in the
7 local area, went to a CLEC initially right off the bat and
8 now wants to return, that's considered a win. We don't have
9 a prior history of them as a customer of ours.

10 So, for example, if a customer moves into the
11 St. Louis area and sets up -- sets up business for the first
12 time and they go to a CLEC to establish service, never had
13 service with Southwestern Bell, and that customer through
14 this promotional tariff offering, they would be considered a
15 win customer, and they would qualify for the nonrecurring
16 charge waiver.

17 Q. Okay. So --

18 A. But it wouldn't --

19 Q. -- the business tariff is both a winback and a
20 win or just a win tariff?

21 A. A win and a winback.

22 Q. It was available to both?

23 A. That is correct.

24 Q. So in this case, in the case of the business
25 tariff, you are waiving installation charges to the entire

1 universe of customers?

2 A. That is not correct.

3 Q. Who is not eligible?

4 A. If the customer is establishing service for
5 the first time, has not had service at all with any
6 provider, then they would not qualify for this tariff
7 promotional offer.

8 If the customer is moving from, let's say,
9 Boston to St. Louis and establishes service and had CLEC
10 service in Boston, we would still consider that a new
11 connect customer. They would not qualify for that tariff
12 promotional offer.

13 It's only when they're in the immediate area
14 and they've elected to choose their service initially with a
15 competitor or CLEC and then they come back through a winback
16 process.

17 Q. Let me clarify something from yesterday. I'm
18 really confused about this. I thought yesterday -- and I
19 think this is referring to residential customers, but it
20 might apply to business also. You probably can set me
21 straight. I thought yesterday you told us that a win
22 customer was a facilities-based customer?

23 A. As I stated today, I want to make sure I was
24 very clear, I know there was a lot of discussion regarding
25 win and winback, and in the consumer tariff offering that we

1 have filed is for a customer, a win is considered a customer
2 that has had a previous service record with Southwestern
3 Bell. So they could be facilities-based, they could be
4 UNE-P.

5 Q. I'm sorry. You said a win?

6 A. A win.

7 Q. A win?

8 A. A win.

9 Q. Has to have had service with Southwestern
10 Bell?

11 A. A win customer -- let me restate the answer,
12 because it does get confusing.

13 A win customer is a customer that had service
14 with -- initially set up service with a CLEC but it was
15 through Southwestern Bell facilities.

16 Q. Okay.

17 A. And they are considered a win customer. Okay.
18 Whereas, a winback is a customer that had service with
19 Southwestern Bell and left us. The win customer would not
20 qualify for the winback tariff promotional offering, only
21 the winback customer.

22 Q. And since you make the distinction, I want to
23 understand. What about a customer who is a -- the end user
24 who is initially the customer of a facilities-based provider
25 who has no Southwestern Bell facilities in use?

1 A. They would not -- they would not be considered
2 a winback customer in the residential tariff filing.

3 Q. So they're neither a win nor a winback and
4 they're not eligible for your promotions?

5 A. They would not be eligible for promotions.
6 They would be designated as a win from a process point of
7 view in the back office, is my understanding, because if
8 local number portability is required, we have a separate
9 provisioning group that will be able to work through that
10 process.

11 Q. And that was --

12 A. A normal service rep cannot handle that.

13 Q. That was going to be my next question. How do
14 you determine which category an end user falls into?

15 A. A customer -- customer has to tell us.
16 Customer has to tell us. And if local number portability is
17 required and they've never had service established with us
18 and they're on a facilities-based provider, we have to have
19 a separate group of provisioning folks that can actually
20 work through that order process, that's why it's often
21 referred to as a win customer.

22 Q. Now, a number of the Commissioners and
23 Mr. Haas asked you also about the credit rating issue, and I
24 think your response to Mr. Haas was, and maybe even
25 Mr. Dandino, was that an end user might be a bad credit risk

1 and you will still take back that customer; is that correct?

2 A. We will -- we will follow the same guidelines
3 as we do on a new connect customer. So I'm not an expert on
4 our credit policy guidelines, I don't claim to be, but that
5 customer is not treated any differently than a new connect
6 customer as far as establishing credit and if a deposit's
7 required, et cetera.

8 The distinction I made is that if they owed us
9 money, then we have to work with the customer to settle that
10 past, you know, payment bill due. And if it's less than 50
11 to \$100, in that range, we'll work with the customer to work
12 through payment terms.

13 Q. At no point will an end user who owes you
14 money not be able to come back and, therefore, will be
15 eligible for the promotions; is that correct?

16 A. I'm not sure if I fully understand the
17 question.

18 Q. You're going to take back every end user who
19 is a CLEC customer; is that a correct statement? You will
20 take them all back?

21 A. We will follow the same guidelines and
22 policies that we follow for a new connect customer that's
23 never had service with a CLEC as well as a CLEC customer
24 returning, is what I stated, and meaning that if there is
25 past bills that are due, we will not accept them back until

1 they settle their credit, their past-due payment.

2 Q. And if they settle their credit --

3 A. We will take them back.

4 Q. -- you will take them back?

5 A. And they fall under the same credit scoring
6 guidelines that may require deposits, et cetera, as a new
7 connect customer would.

8 Q. And do you know whether sometimes an end user
9 is required to make payments, say, on a monthly basis and
10 will not get service until that payment is paid in full?

11 A. I'm not aware of that. I'm not aware of that.

12 Q. I'm going to refer to what was a Schedule 6 to
13 Mr. Hughes' testimony. Do you have access to that? And
14 this is going to the business tariff.

15 A. I have access to the tariffs.

16 Q. Okay. I'm going to refer to -- let's see.
17 This one would be Third Revised Sheet 2 replacing Second
18 Revised Sheet 2. If there's an easier way to identify this,
19 please tell me and I'll be glad to read what's on this.

20 A. It would be the tariff number at the top of
21 the page.

22 Q. 24.

23 A. Okay. It would be the -- it's in my
24 Schedule 2, or is it -- I have it in my schedule as well.

25 Q. You have it also? I'm sorry. I picked up

1 Mr. Hughes'.

2 A. Is it titled Local Exchange Tariff?

3 Q. Local Exchange Tariff. At the top it says
4 No. 24.

5 A. Okay.

6 Q. And I'm going to read at the bottom of the
7 page. So it states, The residence customers must not have
8 had, one, service disconnected for nonpayment or, two, any
9 past due bills for regulated service owed to the company.
10 That is not quite what you told us today.

11 A. My understanding is that if they have service
12 disconnected for nonpayment and they want to come back, they
13 have to settle the nonpayment issue.

14 Q. Okay. And you're not sure what that
15 settlement actually requires?

16 A. It requires them to pay their bill.

17 Q. And if it -- let's say they have a \$600 bill
18 or even a \$300 bill. It could take several months to pay
19 that, and you don't know whether it would take several
20 months also to get service back?

21 A. My understanding is that they would have to
22 pay their bill before they would have service reestablished,
23 exactly the way the tariff stated and as I've stated in my
24 previous testimony.

25 Q. I'm referring now to -- it also has 24 at the

1 top. This is local exchange.

2 A. Okay.

3 Q. And this is the business tariff, it appears.

4 The business customer must not have had, one, service
5 disconnected for nonpayment or, two, any past due bills for
6 regulated service owed to the company.

7 What's your position on that? Is an end user
8 going to be able to come back, a business end user going to
9 be able to come back if they owe?

10 A. If they owe for -- if they owe for regulated
11 tariff services, it would be the same. They would have to
12 settle that past due payment before we would bring them
13 back.

14 Q. So within this niche of end users that you're
15 calling winback, you've set up another category also, a
16 smaller subgroup, you have to have a really good credit
17 rating and you can't owe us any money?

18 A. As I stated earlier in my previous testimony,
19 winback customers are treated from a credit and policy
20 standpoint the same as a new connect customer, and that's --
21 you know, that's been consistent with my testimony
22 throughout. You don't discriminate one way or the other
23 through winback customers in terms of the credit policy or
24 the way that they follow the -- their account group
25 classifications.

1 Q. If I may refer to, it says No. 35 at the top,
2 digital loop service and, let's see, Nos. 4 and -- No. 4,
3 the business customer must not have had, one, service
4 disconnected for nonpayment or, two, any past due bills for
5 regulated service to the company. The same explanation
6 would apply here?

7 A. Would be consistent with the same explanation.

8 Q. And No. 41, smart trunk, at the bottom of the
9 page, the same statement, business customers must not have
10 had, one, service discontinued for nonpayment or, two, any
11 past due bills for regulated service to the company.

12 A. That is my understanding.

13 Q. Same explanation for that?

14 A. Yes.

15 Q. And Digi-line service, No. 41, last -- second
16 to the last paragraph, business customers must not have had,
17 one, service disconnected for nonpayment or, two, any past
18 due bills for regulated service owed to the company.

19 A. Again, as I stated earlier, they would need to
20 pay their past due payment, settle the credit issues that
21 they have, and then they would qualify for the tariff.

22 MS. ESCOBEDO: That's all I have. Thank you.

23 JUDGE WOODRUFF: AT&T?

24 RE-CROSS-EXAMINATION BY MS. DeCOOK:

25 Q. Good morning again, Mr. Regan.

1 A. Good morning.

2 Q. I have to ask you these questions since I'm
3 very confused now about the applicability of your tariffs.
4 As I understand your testimony today, for a residential
5 customer, in order to be eligible for these promotions, the
6 residential customer must have originally had service with
7 Southwestern Bell, left to go to a CLEC, and now comes back;
8 is that correct?

9 A. Let me verify again in the tariff --

10 Q. Well, that's what your tariff says, and I just
11 want to make sure that that is the nature of the offer.

12 A. That is correct.

13 Q. Okay. So a customer that originally signs up
14 with a CLEC, whether they're provisioned service using UNE-P
15 or the CLECs's own facilities, if they come over to
16 Southwestern Bell after you win them, they're not eligible
17 for this promotion?

18 A. They are not eligible if they've not had
19 service with Southwestern Bell previously.

20 Q. Now, on the business side, I understand that a
21 business customer that had business -- had service with
22 Southwestern Bell, went to a CLEC, comes back, they're
23 eligible, just like the residential customer?

24 A. That's correct.

25 Q. But then there's another layer for the

1 business customer, the business customer who had service
2 with the CLEC, originated their service with the CLEC, never
3 had service directly from Southwestern Bell, who is won by
4 Southwestern Bell will be eligible for this promotion?

5 A. That is correct.

6 Q. And is it only those customers that are
7 provisioned service by a CLEC using Southwestern Bell's
8 facilities that are eligible for this promotion?

9 A. No. They could be on a bypass situation or
10 they could be a customer coming back from a reuse of our
11 facilities.

12 Q. So if a CLEC is provisioning the business
13 customer service over their own facilities, is that customer
14 eligible for this winback promotion?

15 A. If the customer is in the same area, they've
16 established service with a CLEC on a facilities bypass
17 situation and wanted to take advantage of this tariff
18 offering, they would -- they would be eligible for the
19 nonrecurring charge waiver.

20 Q. And that particular customer is not
21 provisioned service in any way using Southwestern Bell
22 underlying facilities?

23 A. That is correct.

24 Q. Okay. Because I think you testified earlier
25 that this limitation or this provision on the win customer

1 that comes back to Southwestern Bell would only apply in a
2 reuse of facilities situation. So I just want to make sure
3 that you're comfortable now that --

4 A. Yes.

5 Q. -- it's broader than that.

6 A. Thank you for that. Again, I know yesterday
7 there was a lot of discussion around that. As I opened up
8 discussions today with the Commissioners, I wanted to make
9 sure we were very clear in terms of how the tariffs would
10 work.

11 Q. Okay. Well, hopefully we're clear now.

12 MS. DeCOOK: Thank you.

13 JUDGE WOODRUFF: Thank you. Redirect?

14 REDIRECT EXAMINATION BY MR. LANE:

15 Q. Good morning.

16 A. Good morning.

17 Q. One question on credit risks and coming back
18 and people that owe bills. Is it correct to say that those
19 customers that owe Southwestern Bell money either need to
20 pay or make arrangements to pay before they come back and
21 are eligible for this winback promotion?

22 A. That is correct.

23 Q. You were asked several questions by
24 Commissioner Lumpe and Mr. Dandino and I think others about
25 whether this offer was extended to all new customers or

1 whether the waiver of nonrecurring charges was applicable
2 just to the winback group of customers. Do you recall those
3 questions?

4 A. Yes, I do.

5 Q. And is it your understanding that CLECs have
6 targeted, particularly on the residential side, certain
7 customers as opposed to all customers?

8 A. That is correct. We have found in our loss
9 analysis that CLECs will target certain types of customers
10 in the consumer segment, primarily customers that have a
11 higher spend, have higher usage, and those tend to be the
12 customers that we appear to lose quite frequently.

13 Q. Is this tariff, the waiver of nonrecurring
14 charges for those customers designed to respond to the
15 marketing tactics or abilities of the CLECs?

16 A. The tariff is designed to meet our competitors
17 in the marketplace. CLECs offering nonrecurring charge
18 waivers to win customers occurs, and this is our response to
19 that.

20 Q. Commissioner Gaw asked you some questions
21 about winback and does it in your view contribute to
22 competition. Do you recall that question?

23 A. Yes, I do.

24 Q. Is part of the reason that Southwestern Bell
25 thinks the tariff is appropriate related to the fact that,

1 from a customer's perspective, they could try a CLEC's
2 service and know they could come back to Southwestern Bell
3 without paying a nonrecurring charge?

4 A. That is correct. Customers tell us that --
5 and again, we have information and interviews with customers
6 and customer research that they often will want to try
7 various CLECs and competitors' offers in the marketplace.

8 They're not dissatisfied with Southwestern
9 Bell. They've been loyal customers for a long, long time,
10 but felt like the offers out there were attractive, they
11 wanted to try, and for various reasons decide that they want
12 to come back and do not feel compelled to pay an
13 installation charge to return back to the company they had
14 been doing business with for many, many years.

15 MR. LANE: Thank you. That's all I have,
16 Mr. Regan.

17 JUDGE WOODRUFF: You may step down.

18 MR. LANE: May Mr. Regan be excused, your
19 Honor?

20 JUDGE WOODRUFF: Yes, he may.

21 (Witness excused.)

22 JUDGE WOODRUFF: And you can call your next
23 witness.

24 MR. CURTIS: Your Honor, if I might, at this
25 time a housekeeping item. We have a witness, Mr. Price, who

1 needs to leave today, and because of the protracted nature
2 of the hearings we have asked the other parties if he could
3 be inserted after Mr. Hughes, who will be the next witness,
4 and I don't believe there's any objection from any of the
5 parties. I am asking the Commission for permission to do
6 that to accommodate Mr. Price's schedule.

7 JUDGE WOODRUFF: That will be fine with the
8 Commission.

9 Welcome, Mr. Hughes.

10 (Witness sworn.)

11 JUDGE WOODRUFF: You may be seated.

12 THOMAS F. HUGHES testified as follows:

13 DIRECT EXAMINATION BY MS. MacDONALD:

14 Q. Good morning, Mr. Hughes.

15 A. Good morning.

16 Q. Can you please state your name for the record.

17 A. My name is Tom Hughes, H-u-g-h-e-s.

18 Q. And by whom are you employed?

19 A. I'm employed by Southwestern Bell Telephone
20 LD, doing business as Southwestern Bell Telephone Company.

21 Q. And did you prepare what has been marked as
22 Exhibit 4, the direct testimony of Thomas F. Hughes?

23 A. Yes, I did.

24 Q. And do you have any changes to make to that
25 testimony?

1 A. I do. The first change is on page 5, at
2 line 7, insert the words "or similar to" between the word
3 "as" and the word "the" in the question. So it would be
4 "the same as or similar to the one."

5 Q. Okay. And do you have any other changes to
6 Exhibit 4?

7 A. I have a change to my schedule. On page 2, at
8 the bottom should add Case TC-2002-57.

9 Q. And that's Hughes Schedule 1, page 2?

10 A. Yes.

11 Q. Okay. Do you have any other changes to make
12 to Exhibit 4?

13 A. I do not.

14 Q. And did you also prepare the surrebuttal
15 testimony of Thomas F. Hughes which has been marked as
16 Exhibit 5?

17 A. Yes, I did.

18 Q. And do you have any changes to make to that
19 testimony?

20 A. I do. On page 8, at line 22, insert the words
21 "and the Commission has approved" between the words
22 "proposed" and "a". So the line would read, "WorldCom has
23 proposed and the Commission has approved a similar tariff."

24 Q. And do you have any other changes to make to
25 Exhibit 5?

1 A. I do. On page 21, I would strike all of
2 page 21, all of page 22 and page 23, lines 1 through 17, in
3 response to the Commission's Order approving in part
4 Southwestern Bell's motion to strike part of Mr. Price's
5 testimony.

6 Q. So in other words, you're agreeing to strike
7 those portions of your testimony because they responded to
8 portions of the testimony of Mr. Price that the Commission
9 has determined will not be allowed?

10 A. That's correct.

11 Q. Okay. Do you have any other changes to make
12 to Exhibit No. 5?

13 A. I do. At page 28, strike the lines 1 through
14 13, and this is in response to the Commission granting in
15 part Southwestern Bell's motion to strike part of
16 Mr. Kohly's testimony.

17 Q. Okay. And do you have any other changes that
18 you'd like to make to your surrebuttal testimony, Exhibit 5?

19 A. I have one other change, and that's on
20 line 29. I attached Hughes Schedule 4, which is a letter
21 dated March the 5th, 2002, and I have a different
22 attachment. It's a letter dated August 21st, 2002. It's a
23 letter from -- again, from Ms. Moir to the FCC regarding
24 Southwestern Bell's -- excuse me -- SBC's compliance with
25 the SBC/Ameritech merger conditions.

1 MS. MacDONALD: Your Honor, I would be more
2 than willing to do this either way, either attach it as an
3 addition to Hughes Exhibit 5, which would mean it would be
4 Schedule 5, or if it would be easier for reference we could
5 just make it Exhibit 20.

6 JUDGE WOODRUFF: I think it would make it
7 easier to make it a new exhibit.

8 (EXHIBIT NO. 20 WAS MARKED FOR
9 IDENTIFICATION.)

10 BY MS. MacDONALD:

11 Q. And Mr. Hughes, if I ask you the same
12 questions that appear in Exhibit 4 today, would your answers
13 be the same with the changes you've reflected?

14 A. Yes, they would.

15 Q. And if I asked you the same questions that
16 you've presented in Exhibit 5, would your answers be the
17 same with the changes that you have reflected?

18 A. Yes, they would.

19 Q. And are those answers in Exhibits 4 and 5 true
20 to the best of your knowledge, information and belief?

21 A. Yes, they are.

22 MS. MacDONALD: At this time, your Honor, I
23 would offer Exhibits 4 and 5 and 20.

24 JUDGE WOODRUFF: Exhibits 4, 5 and 20 have
25 been offered into evidence. Are there any objections to

1 their receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, they will be
4 received into evidence.

5 (EXHIBIT NOS. 4, 5 AND 20 WERE RECEIVED INTO
6 EVIDENCE.)

7 MS. MacDONALD: We tender this witness for
8 cross-examination.

9 JUDGE WOODRUFF: Thank you. And for
10 cross-examination, we'll begin with Staff.

11 CROSS-EXAMINATION BY MR. HAAS:

12 Q. Hello, Mr. Hughes.

13 A. Good morning.

14 Q. Would you please turn to page 3 of your direct
15 testimony. In the middle of that page you state that the
16 legislative intent of Senate Bill 507 expressed in
17 Section 392.200.4(2) was to bring the benefits of
18 competition to customers. You dropped the word all, didn't
19 you?

20 A. I did not cite the statute in totality in my
21 testimony.

22 Q. And the statute would say that it's to bring
23 the benefits of competition to all customers, isn't it?

24 A. I believe that's true. I will be happy to
25 check it for if you you'd like, Mr. Haas.

1 Yes, the complete reading of the statute does
2 contain the word all.

3 Q. Is it correct that the promotion at issue
4 today is available to customers wishing to return to
5 Southwestern Bell from a CLEC?

6 A. It would be available subject to, as Mr. Regan
7 has testified, if the customer has an outstanding balance,
8 that they would need to either pay the balance or make
9 payment arrangements.

10 Q. Is it also correct that the promotions at
11 issue are not available to persons who are not receiving
12 service today who wish to start service with Southwestern
13 Bell?

14 A. Not receiving service today from a CLEC?

15 Q. From anyone.

16 A. A new customer to the market?

17 Q. Yes.

18 A. That is true, these particular tariffs would
19 not be available to those customers.

20 Q. Aren't both of those customer groups similarly
21 situated in that neither is receiving service from
22 Southwestern Bell?

23 A. I don't believe they're similarly situated to
24 the customer group that is identified for purposes of this
25 tariff who we intend to offer the tariffs to.

1 Q. What steps would Southwestern Bell take to
2 install service to a person without any service, a person
3 who says we'd like to begin service with Southwestern Bell?

4 A. You want me to answer the question from a -- a
5 customer calls in to the business office through the
6 connection of the service or --

7 Q. Yes, let's do that.

8 A. Okay. The customer would contact our business
9 office. The service rep would talk to the customer, in
10 discussions with the customer would identify any needs that
11 the customer -- telecommunications needs that the customer
12 might have, and the service rep would offer one of our
13 products and services or several of our products and
14 services to meet the customer's needs.

15 At that point, during that process we would go
16 through a credit check on the customer to determine whether
17 or not we needed a deposit, et cetera. We would set up the
18 customer's account as they request, with the fixtures that
19 they request, with their selected interexchange carrier,
20 both for local toll and for interLATA toll both.

21 Then the service rep would type a service
22 order. The service order would be distributed through our
23 systems. As it goes through our systems, it notifies our
24 billing system to establish a bill for the customer, a
25 billing record. It would go to our network organization,

1 and the network organization would look at that order from a
2 couple perspectives.

3 We would look at it from inside the central
4 office where we would activate any features or
5 functionalities that the customer has requested on their
6 line.

7 We would also inside the central office
8 establish what's referred to as central office equipment,
9 and we'd provide that customer with a cable pair and connect
10 the cable pair in the central office to the central office
11 equipment, and then the service would ultimately be
12 connected at the customer's premise.

13 It's possible, depending on where the customer
14 has moved into, we would have to what's referred -- commonly
15 referred to as a truck roll. We'd have to deploy a
16 technician into the field possibly to install the service,
17 make sure the service is connected at the customer's
18 premise.

19 Q. What steps would Southwestern Bell take to
20 install service to a CLEC customer who has called and says
21 they want to return to Southwestern Bell?

22 A. If would depend in part on how they were
23 receiving service from the CLEC. If the CLEC was
24 provisioning service via resale or through the use of UNEs,
25 in particular UNE-P, and when I use the term, refer to the

1 term UNE-P, I mean an end-to-end service where the CLEC is
2 purchasing a combination of unbundled network elements
3 totally over Southwestern Bell's network.

4 In those two instances, our service rep -- and
5 I'm not going to get in -- if it's okay with you, Mr. Haas,
6 I'm not going to get into details of what they do with the
7 customer as far as getting end user authorization. I think
8 your question is more from a provisioning perspective.

9 The service order would be issued, and in most
10 cases that particular service order should be a flow-through
11 service order and wouldn't require any field work on the
12 part of Southwestern Bell.

13 In the case where the CLEC is provisioning
14 service to a customer via their own switch, maybe they're
15 using a Southwestern Bell loop, maybe they're using their
16 own loop, Southwestern Bell possibly would have some field
17 work, would likely have some field work in the central
18 office, but again it would depend on how the service is
19 provisioned by the CLEC.

20 Q. Page 4 of your surrebuttal testimony, you say
21 that these customers expect to be able to return to
22 Southwestern Bell without incurring a nonrecurring charge.

23 Would a brand-new customer without any service
24 expect to pay a nonrecurring charge to establish service
25 with Southwestern Bell?

1 A. I'm sorry. Which line are you referring to?

2 Q. The sentence begins on line 6.

3 A. Okay. What was your question again?

4 Q. Wouldn't a brand-new customer first
5 establishing service also have the same expectation to
6 establish service without incurring a nonrecurring charge?

7 A. Not necessarily. As Mr. Regan has testified,
8 and I believe to be true as well based upon my knowledge of
9 the market, there -- when the customer receives service from
10 a CLEC, when they want to come back to Southwestern Bell,
11 they would like to do so without incurring a charge.

12 It is possible for a new connect customer to
13 not have knowledge of competitors in the market. It is
14 possible, although in today's competitive environment that
15 may not be likely.

16 But that new customer may not have the same
17 level of expectation that the customer who's choosing to
18 return back to Southwestern Bell does, in part because I
19 don't know what the CLEC says to the customer when they win
20 the customer from us or when they provide service, but that
21 is a differentiation between a new customer and a CLEC
22 customer.

23 Q. Wouldn't waiving the nonrecurring charge for
24 new customers, those without any service, also promote
25 competition?

1 A. It could, and it -- you know, Southwestern
2 Bell offers a lot of different promotions, as we previously
3 discussed this morning, and this is just one example of a
4 promotion that we are trying to get into the marketplace.

5 Q. At the top of page 5 of your surrebuttal
6 testimony, you say that if customers are allowed to return
7 to Southwestern Bell for local service without a
8 nonrecurring charge, they will be more likely to try service
9 from a CLEC.

10 How long does a customer need to try service
11 from a CLEC to evaluate the CLEC's service?

12 A. That depends on the service that the CLEC is
13 providing the customer. In some cases that may be the
14 matter of a couple of days. In some cases it may be the
15 matter of a couple of years. It depends on the services
16 that the customer's receiving from the CLEC.

17 And there, when I talk about service, I'm not
18 talking necessarily just about network provisioning, but
19 customer care functions, billing functions. So it depends
20 on the totality of the service that the customer is
21 receiving from the CLEC, and it would vary by customer and
22 likely vary by CLEC.

23 Q. Dr. Aron's testimony points out that
24 South Carolina adopted a waiting period. What is
25 Southwestern Bell's position on a waiting period before

1 contacting a customer for winback?

2 A. We don't believe a waiting period is
3 appropriate. We believe a waiting period inhibits the
4 marketplace from working in a truly competitive market such
5 as the one that exists in Missouri today. There's no need
6 to have a waiting period for any of the carriers to provide
7 service to a particular end user.

8 Q. Have you read the Commission's decision in
9 Case No. TO-2001-467 regarding the status of competition in
10 Southwestern Bell's exchanges?

11 A. Yes, I have.

12 Q. And what did the Commission find in that case
13 as to the status of competition for Southwestern Bell's
14 basic local services?

15 A. I can't cite the Order verbatim, but in
16 general the Commission stated that for basic local service
17 they found that our service was effectively competitive in
18 the St. Louis and Kansas City exchange for business
19 customers, business access lines, and in the Harvester and
20 St. Charles exchanges for residential lines.

21 They also found that we had competitive
22 classification for other services such as WATS and 800 toll,
23 certain operator services, LIDB, SS7 as well on a statewide
24 basis.

25 MR. HAAS: Thank you. That's all my

1 questions.

2 JUDGE WOODRUFF: Thank you. Public Counsel?

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

4 CROSS-EXAMINATION BY MR. DANDINO:

5 Q. Good morning, Mr. Hughes.

6 A. Good morning, Mr. Dandino.

7 Q. Just want to -- I don't think anyone's really
8 talked too much about the promotion. Is there an expiration
9 date on the promotion?

10 A. Yes, there was. This particular promotion,
11 the residential promotion was designed to run from
12 April the 9th, 2002 through March 31st of 2003, and the
13 business promotion was designed to run April 9, 2002 through
14 April 8 of 2003.

15 Q. Okay. So roughly a year?

16 A. Roughly a year.

17 Q. And if the Commission would approve this,
18 would you expect to extend it or seek to extend it where you
19 can still cover the year?

20 A. Yes. If the Commission approves the tariff,
21 we would refile with new dates and the time frames would
22 be -- if they're not the same, I'm sure they would be very
23 similar.

24 Q. Okay. Now, once a customer of Southwestern
25 Bell leaves, I guess, and they -- and they, let's say, come

1 home now, is there a time frame that you limit it to? I
2 mean, how long can they be gone before you'll give them this
3 promotional waiver?

4 A. There's no time frame. There's been
5 competition in the marketplace in Missouri for five-plus
6 years. So it is quite possible that customers who left us
7 back in the 1997 time frame could decide under this
8 promotion or at any time whether this promotion is available
9 to return to Southwestern Bell for local service, and
10 subject to, again, the credit qualifications that Mr. Regan
11 testified to, we'd take the customer back.

12 Q. Sure. And so once a Southwestern Bell
13 customer, for purposes of this tariff, always a Southwestern
14 Bell former customer?

15 A. That's correct.

16 Q. Okay. And if I was a Southwestern Bell
17 customer, let's say, four years ago and I move into another
18 ILEC's territory like Verizon and then I move back into
19 Southwestern Bell territory, would I be eligible for this?

20 A. No. And I was just making sure both tariffs
21 had the same wording, Mr. Dandino. The particular language
22 in the tariff indicates that the customer had established
23 service with another local exchange carrier within the
24 telephone company's service area and who now wish -- wishes
25 to return to the telephone company.

1 Q. Okay. So it's only within your existing
2 territory?

3 A. That's correct.

4 Q. Okay. Now, I believe in your testimony you've
5 identified two key reasons why these tariffs are in the
6 public interest, that being a lower price for consumers and
7 to promote competition; is that a fair statement?

8 A. That's correct. We believe they're in the
9 public interest both because there's a benefit to consumers
10 and a benefit to competition.

11 Q. Okay. And is lowering the consumer prices
12 kind of the hallmark or the fundamental element to determine
13 whether a tariff proposal is in the public interest?

14 A. Not necessarily.

15 Q. There are other factors, then?

16 A. There could be, yes.

17 Q. Okay. Could you identify any other factors?

18 A. Well, I think you have to look at each tariff
19 on its own merits, and it depends on what the offering is
20 and the rationale, if you will, behind why a particular
21 company wants to offer the tariff, what's going on in the
22 marketplace, and, you know, how that particular tariff meets
23 the needs of the customer in particular.

24 Q. Sure. Just the idea that just because it's a
25 lower price doesn't automatically make it in the public

1 interest. You want to examine everything involved with that
2 tariff on the specific basis, right?

3 A. Sure. In this particular case, though, it's
4 our opinion that because we are lowering rates to customers,
5 it is in the public interest.

6 Q. I believe at page 28 of your surrebuttal, I
7 guess it's lines 15 through 20, you're indicating there that
8 you believe that the Commission should govern its
9 consideration of this tariff by Section 392.200 RSMo; is
10 that correct?

11 A. That's correct.

12 Q. Okay. And does that section apply to all
13 telecom -- telecommunications companies?

14 A. Yes, it does.

15 Q. And would it be a fair characterization that
16 you rely upon this tariff as being just and reasonable?

17 A. Yes, we do.

18 Q. And in your opinion, does lowering consumer
19 rates mean that -- meet the criteria of just and reasonable
20 in this section, in this statutory section?

21 A. The fact that we are lowering rates does in my
22 opinion lead to, under the statute, making the tariff just
23 and reasonable, yes.

24 Q. Is there a difference in the concept between
25 just and reasonable prices and in -- and the term in the

1 public interest, if you know?

2 A. I do have an answer.

3 Q. Okay.

4 A. I want to check something in the statute.

5 Q. Sure. Go ahead.

6 A. I do believe when the Commission makes a
7 determination on whether or not a particular tariff such as
8 these that are at issue in this case are in the public
9 interest, they should evaluate whether or not the proposed
10 tariffs were -- they should evaluate whether the proposed
11 tariffs are just and reasonable.

12 But I think under the statute the definition
13 implies that, at least in my interpretation, that they are
14 unless proven otherwise.

15 Q. That the proposed -- that the tariff prices
16 that you proposed, they're presumed just and reasonable
17 unless someone else proves otherwise?

18 A. Yes. And I believe in this case, with these
19 particular tariffs, the same or similar tariffs had been
20 previously approved by the Commission, and they were allowed
21 to go into effect subject to 392.200.

22 Q. Didn't they expire, though?

23 A. They did.

24 Q. They're no longer in effect --

25 A. That's correct.

1 Q. -- as we sit here today, correct?

2 A. That's correct.

3 Q. Would you agree that -- well, Southwestern
4 Bell plans to recover or at least recover any revenue lost
5 by the waiver over the period of time the returning customer
6 stays with the company; is that correct?

7 A. Yes, based upon the features and
8 functionalities, the services that they purchase from
9 Southwestern Bell across the array of services that they
10 purchase from us.

11 Q. So if a customer comes back and only purchases
12 the basic service, they're still entitled to this
13 promotional waiver; is that correct?

14 A. That's correct.

15 Q. Okay. So essentially in that situation you'd
16 be trying to recover -- strike that.

17 Now, Southwestern Bell's been claiming in
18 other proceedings that local -- basic local service is
19 priced below cost. Doesn't this further reduce the price
20 below cost --

21 A. We --

22 Q. -- in your opinion?

23 A. We do not look at the promotion on an
24 individual customer basis. We look at it across the
25 entirety of the customers that we believe are going to come

1 back.

2 And if you look at it for one customer, for a
3 customer that purchases, let's say, just basic residential
4 service and nothing else from us, no toll, no features, no
5 anything else, we lose money on that customer today.

6 So waiving the nonrecurring charge I don't
7 believe we could recoup it, but we don't look at the tariff
8 itself on an individual customer basis. We look at added
9 across all the customers that will take advantage of this
10 opportunity.

11 Q. So when Southwestern Bell makes pricing
12 decisions and promotional decisions, they're looking at all
13 the services this local customer is going to purchase as,
14 you know, as part of the package, right?

15 A. Absolutely. And in particular for this
16 particular promotion that we're trying to get approved,
17 Mr. Dandino, we have information on the types of customers
18 that the CLECs have won from us or that they are serving in
19 the marketplace, and it's our experience that typically they
20 are not serving customers who only have a basic access line.
21 They are serving customers who have many features, lots of
22 toll, et cetera.

23 So in part this type of promotion is
24 attractive to us to combat exactly what you just said from a
25 loss perspective. We think there's minimal risk in the

1 number of customers that are actually being served by CLECs
2 that only have a basic access line.

3 Q. If they go -- if a customer leaves
4 Southwestern Bell and goes with a prepaid CLEC and then
5 returns, they're still eligible for this promotion if
6 they're otherwise qualified, right?

7 A. If they're otherwise qualified.

8 Q. Sure. And I want to get to the second point
9 of why this is in the public interest, which is promoting
10 competition.

11 A. Okay.

12 Q. Promoting competition, doesn't that mean that
13 you're benefiting your competitors?

14 A. We're benefiting the competitive marketplace.
15 I didn't say we were -- it's in the public interest because
16 we're benefiting competitors. We're benefiting -- there's a
17 benefit to competition in general, not just an individual
18 competitor.

19 As Dr. Aron put in her testimony, a promotion
20 such as this may not be good for a particular competitor,
21 but it would be good for competition. And what I have
22 placed in my testimony is also that it is good for
23 competition, but it may not be good for an individual
24 competitor.

25 Q. For an individual competitor, but all the

1 competitors as a whole, correct?

2 A. Competition as a whole, yes.

3 Q. Well, to improve competition, aren't you --
4 aren't you putting more of your market at risk?

5 A. I think our market is at risk today, very much
6 so. If you look at the data that we've presented both in
7 Mr. Regan's testimony and in mine, it's a fact the number of
8 retail access lines that we have is decreasing, the number
9 of lines that the CLECs are serving in the state is
10 increasing, and the correlation is that competition is
11 increasing and our market share is continually at risk.

12 And what we're attempting to do with this
13 tariff is to be able do compete, try to win some of those
14 customers back. And I should make it very clear,
15 Mr. Dandino, it's the customer's choice whether or not they
16 want to come back to Southwestern Bell for service.

17 Q. Well, when you say you're promoting
18 competition, aren't you really promoting Southwestern Bell's
19 ability to compete?

20 A. It certainly helps our ability to compete, but
21 we believe it helps competition in general. The
22 marketplace, the telecommunications marketplace has proven
23 in the past that other competitors will react to the
24 offerings of their competitors.

25 We have done the same thing, and we will

1 continue to try to do the same thing going forward as plans
2 such as the Neighborhood have been rolled out, different
3 CLECs have entered the market, such as Sage. We've tried
4 new marketing plans. We've tried to get tariffs approved by
5 the Commission that allow us to compete better with those
6 particular customers and the offerings that they make.

7 So what happens in a competitive marketplace
8 is competitors react to what their competition is doing, and
9 they in turn offer tariffs and offerings to customers that
10 helpfully have the end result of benefiting consumers.

11 Q. And by helping competition, one of the things
12 that you said was you're enabling your customers to try
13 competitors; is that right?

14 A. It's very possible. A customer that is
15 receiving service today from Southwestern Bell may not be
16 totally satisfied with the service that they're receiving
17 from us, but they may be wary to try service with a CLEC for
18 whatever reason, and if they were aware that they could go
19 to a CLEC and come back to Southwestern Bell without
20 incurring a cost, the cost of a nonrecurring charge, they
21 may be more likely to try service from a CLEC.

22 Q. So you're confident that if a customer would
23 leave Southwestern Bell, try a CLEC, that your superior
24 services and quality and prices and overall value is going
25 to be really no match for the CLEC and the customer will

1 want to come back?

2 A. I don't think history has proven that to be
3 true. We've had winback tariffs approved by this Commission
4 in the past, and during the time frame that we've had those
5 tariffs approved the facts are our retail lines continued to
6 decrease and the number of lines served by the CLECs
7 continued to increase.

8 I don't believe there's any evidence in the
9 record that during the time we've had promotions such as
10 these in the past approved by the Commission there's been
11 any harm to competition in the state.

12 Q. I'm curious here. So you're saying that even
13 if this tariff was approved, it may not make any difference
14 in the continuing loss of Southwestern Bell's market?

15 A. It will make a difference. We will certainly
16 be able to win some customers back. Will we win back every
17 customer that we lost? No. We estimate that the minimum
18 number of lines the CLEC serve are in the neighborhood of
19 330,000. I have it in my testimony if you'd like me to cite
20 it correctly, but in that range.

21 We're not claiming, nor would we, that by
22 having a promotion such as this we'd winback all 330,000
23 customers. That's not even a remote possibility in the
24 marketplace today.

25 What we're saying is, by having an offer such

1 as this, it allows us to meet the needs of some customers
2 that do want to come back to us for whatever reason. Maybe
3 they tried the CLEC service and didn't like it. Maybe they
4 just want to come back to us for some tangible or intangible
5 reason that's personal to them.

6 I don't know all the reasons why customers
7 want to come back to us. But I do know when they do want to
8 come back to us, we want to be able to meet their needs, and
9 what I've heard from our marketing department is some
10 customers have not come back to us because of the
11 nonrecurring charge.

12 Q. You don't think that the quality of service
13 that Southwestern Bell or the value that they offer can
14 overcome a \$35 or \$52 installation charge?

15 A. We certainly like to think we offer quality
16 service and a value to the customer, but to some customers
17 that may not be within their economic ability to incur such
18 a \$35 charge or \$52 charge, whatever it might be for a
19 particular tariff. That enters into it as well, becomes a
20 financial issue potentially for customers.

21 Q. But these are really targeted to those key
22 high-service telecommunications service users that the CLECs
23 go after, isn't it?

24 A. That is who the CLECs go after, so that is who
25 they would be targeted, but don't -- don't make the

1 assumption that just because a customer purchases X number
2 of vertical features from us they necessarily are what I
3 would consider to be a good paying customer. That may not
4 be the case.

5 Q. Okay. Thank you. Thank you very much, sir.

6 A. You're welcome.

7 MR. DANDINO: Thank you, your Honor.

8 JUDGE WOODRUFF: And it's now almost 10:30, so
9 it's time for a break. We'll come back at 10:40.

10 (A BREAK WAS TAKEN.)

11 JUDGE WOODRUFF: Let's come to order, please.

12 And before we took our break Mr. Hughes was on the stand,
13 and we were about ready to begin cross-examination from
14 WorldCom and NuVox.

15 CROSS-EXAMINATION BY MR. CURTIS:

16 Q. Good morning, Mr. Hughes.

17 A. Good morning, Mr. Curtis.

18 Q. In questions Mr. Dandino asked you regarding
19 the public interest nature of these promotional winback
20 tariffs, you cited two features, lower prices to customers
21 and benefit to competition. Do you recall that?

22 A. Yes, they're in the public interest because
23 there's benefits to customers and benefits to competition.

24 Q. Are there any other benefits that are in the
25 public interest that would justify these tariffs?

1 A. Both of those categories, Mr. Curtis, are
2 pretty broad.

3 Q. Right.

4 A. As I sit here today, I can't think of any, but
5 that doesn't mean there aren't others.

6 Q. Okay. I didn't see any others in your
7 testimony. You can't point me to anything else that you've
8 relied on as being in the public interest?

9 A. Not in my prefiled testimony, no.

10 Q. Help me out a little bit. These would make
11 the tariffs in the public interest. If, in fact, you are
12 correct, Southwestern Bell is correct in its assumption that
13 this particular class that you have carved out of former
14 Southwestern Bell customers who went to a CLEC and now want
15 to return to Southwestern Bell are a unique class?

16 A. Yes, they are.

17 Q. And not similarly situated to other returning
18 Southwestern Bell or starting up Southwestern Bell
19 customers, if, in fact, they are a unique class, under
20 392.200 you need no public interest justification to be
21 charging different prices, do you?

22 A. I need to clarify your question because you
23 indicated the class of customer was different between
24 returning customers and you included in that sentence or new
25 customers, and I think there is a distinction between

1 returning customers as a class of customers and new
2 customers who don't have any service today from a CLEC or
3 Southwestern Bell.

4 Q. That's not my question.

5 A. But that --

6 Q. That's not --

7 A. You may have misstated it, Mr. Curtis, but you
8 did say that, and so I will answer your question, but I want
9 to clarify that up front. At least that's how I heard
10 your --

11 Q. Let me rephrase my question.

12 A. There's not -- okay. Please do.

13 Q. I think the witness is taking it a little
14 farther than it is.

15 If Southwestern Bell is correct in identifying
16 as a unique subset this class of customers formerly
17 Southwestern Bell customers then went to a CLEC and now want
18 to return to Southwestern Bell, that's the class I'm talking
19 about, if, in fact, Southwestern Bell is correct that this
20 is a unique, differently situated class of customers, you
21 need no public interest justification in order to charge
22 them a -- give them a benefit that you don't give others;
23 is that correct? Is that your understanding of the statute?

24 A. In this question where we're talking about a
25 unique class of customers, the customer that has previously

1 had service from Southwestern Bell and now elects to return
2 to Southwestern Bell --

3 Q. Correct.

4 A. -- there are public interest --

5 Q. That's not my question. The question is, if
6 this is, in fact, a unique class as Southwestern Bell
7 maintains, you need no public interest justification in
8 order to give them a rate preference as opposed to others;
9 is that correct?

10 A. I believe our tariffs can and should be
11 approved under Section 392.200. I'm trying to answer your
12 question. I'm trying, Mr. Curtis.

13 Q. I don't think it's a difficult question.

14 A. There is a public interest standard, and I
15 don't know the section in the tariff -- excuse me -- in the
16 statute that I was looking for, but I don't have it with me.
17 So I can't say as I sit here today that there's not a public
18 interest standard associated with this because I'm not, as I
19 sit here today, familiar with that section of the statute.

20 Q. Okay. Are you saying, then, in order for the
21 Commission to approve this tariff it must first find under
22 392.200 that you are offering a price preference to a unique
23 class that is similarly situated apart from others and that
24 there must be certain public interest tests that are met?
25 Is that your understanding of what 392.200 requires?

1 A. No, it's not, not for 392.200.

2 Q. What is your understanding of what 392.200
3 requires with regard to these winback tariffs?

4 A. Okay. With regard to these winback tariffs,
5 what the Commission should determine is that these tariffs
6 do, in fact -- do, in fact, apply to a unique class of
7 customers and that what the rates in this case, the waiver
8 of the rate that we are proposing is not unjust and it's not
9 unreasonable.

10 Q. If it is applied to a unique class of
11 customers, there's no need for you to suggest that it's an
12 undue preference?

13 A. I agree.

14 Q. Do you agree?

15 A. I agree.

16 Q. It's only if the Commission were to find that
17 this is not a unique class, that you have carved out a
18 subset and that there are, in fact, other similarly situated
19 customers. In that case you need to go and establish a
20 public interest test under 392.200; isn't that correct?

21 A. If the Commission makes a determination that
22 this is not a unique class of customers.

23 Q. Okay. Getting back to my first question,
24 then. With regard to the justification, if the Commission
25 does not find this is a unique class and there are, in fact,

1 other similarly situated customers who are not getting this
2 benefit, you are telling me and you're telling the
3 Commission the reason to make this preference, to allow
4 Southwestern Bell to make this preference is that it's lower
5 prices for some customers and it is a benefit to
6 competition. Those are the two; is that correct?

7 A. Lower prices for this class of customers and
8 it's a benefit to competition, yes.

9 Q. Okay. Let's take a look at the concept that
10 these customers that Southwestern Bell is proposing to offer
11 a promotion to are uniquely situated. Please turn to page 7
12 of your surrebuttal.

13 A. My surrebuttal?

14 Q. Yes.

15 A. Okay.

16 Q. Line 23 at the bottom. There the question is,
17 Are Southwestern Bell's proposed tariffs offered to all
18 similarly situated customers? Would you read your answer,
19 please.

20 A. Yes. My answer on page 8 at line 1 -- would
21 you like me to read the entirety of the paragraph?

22 Q. Yes.

23 A. Yes. Southwestern Bell Telephone proposes to
24 offer its winback promotions to all similarly situated
25 customers. In this instance, a similarly situated customer

1 represents a customer who has received local service from
2 Southwestern Bell Telephone in the past, subsequently
3 elected to receive local service from a CLEC, and is now
4 voluntarily electing to return to SWBT -- excuse me -- to
5 Southwestern Bell Telephone for local service. These
6 similarly situated customers represent a class of customers.

7 Q. Okay. And here we're talking about a unique
8 class that would allow you to give them a price preference
9 as opposed to others; is that correct?

10 A. That is correct.

11 Q. Let me ask this situation and ask you to
12 compare it to this particular class of -- subset of
13 customers that Southwestern Bell wants to benefit with the
14 winback tariffs.

15 How about an original residential CLEC
16 customer who never had service from Southwestern Bell,
17 signed up initially with a CLEC in the exchange but now
18 wants to switch to Southwestern Bell.

19 A. Okay.

20 Q. Okay. Is the winback promotion available to
21 that customer?

22 A. It is not available for that residential
23 customer.

24 Q. Why is that customer differently situated from
25 the proposed class that you propose?

1 A. The wording of our tariff, they would be --
2 they would not be similarly situated because, as the wording
3 our tariff indicates, they had not previously received
4 service from Southwestern Bell.

5 Q. What is the significance of that as a rational
6 basis for pricing?

7 A. I believe that firms, especially firms in
8 competitive markets, Mr. Curtis, are looking for ways to
9 identify classes of customers, and firms and competitors
10 classify them differently, and for this particular promotion
11 we have determined that this was the class of customers that
12 we want to make this promotion available to.

13 Q. What are the rational basis, cost basis,
14 otherwise, for pricing -- for allowing a discount to your
15 proposed class and not allowing it to this particular class
16 of new customers to Southwestern Bell?

17 A. It's a business decision of Southwestern Bell.

18 Q. Okay. So there's no rational basis for it?

19 A. There might be. I'm not aware of it. It's a
20 business decision.

21 Q. You say you're not aware of any rational basis
22 to differentiate on --

23 A. I'm not aware of any irrational basis either.

24 Q. And likewise, with a new resident, whether
25 moving in to a Southwestern Bell exchange or someone -- a

1 kid getting a job and moving out of the house into an
2 apartment, wanting to establish new service with
3 Southwestern Bell, that discount, the promotional discount
4 is not available to that person; is that correct?

5 A. Not this particular promotion.

6 Q. What is the rational basis for not allowing
7 the discount to that person as opposed to the class of
8 customer -- returning customers that you would offer the
9 discount to?

10 A. Again, it's a business decision as how we
11 chose to make this tariff available, similar to the other
12 promotions that we offer in the marketplace. It's a
13 business decision for who those may or may not be applicable
14 to.

15 Q. Okay. So again, no rational cost-based reason
16 for differentiating between those two classes of customers?

17 A. Not that I'm aware of.

18 Q. How about a -- how about a former Southwestern
19 Bell customer, someone who had service with Southwestern
20 Bell says, I'm tired of it, I'm going all wireless, shut off
21 all service to the house and goes wireless and then wants to
22 return to Southwestern Bell, is the winback promotion
23 available to that customer?

24 A. No, it's not.

25 Q. Why not?

1 A. Because under the terms of the tariff, they
2 had to have disconnected their local network access service
3 with the telephone company for the purpose of establishing
4 service with another local exchange carrier with the
5 telephone company -- with the telephone company service
6 area.

7 Q. I thought I heard Mr. Regan testify that one
8 of the benefits to competition is that it will allow free
9 migration of Southwestern Bell customers off their service
10 to try all providers. Do you recall that?

11 A. That is -- certainly customers are trying all
12 providers today.

13 Q. And that's one of the purposes of benefiting
14 competition, right?

15 A. If the customer chooses to receive service
16 from a wireless provider in your example, they're free to do
17 that.

18 Q. Isn't a wireless provider an alternate
19 provider?

20 A. They certainly are an alternate provider.

21 Q. Why don't you offer the discount to returning
22 wireless customers?

23 A. Maybe we will in the future, but for this
24 particular promotion we've decided not to. And let me go
25 back --

1 Q. That's fine.

2 A. -- on the cost clarification right now.

3 JUDGE WOODRUFF: Mr. Hughes, he's not asked
4 you a question at this time.

5 BY MR. CURTIS:

6 Q. I'm just curious on this situation. A
7 Southwestern Bell customer who moves across the street
8 within the exchange and wants to start up new service across
9 the street, would the win-- would the discounts, the
10 nonrecurring discounts service, connection discounts be
11 available to that person?

12 A. It's an existing Southwestern Bell customer
13 moves across the street?

14 Q. Right.

15 A. No, it would not.

16 Q. They'd pay.

17 Okay. Please turn to page 10 of your
18 surrebuttal.

19 A. Okay.

20 Q. At line 14, would you read that first
21 sentence.

22 A. At line 14 of page 10?

23 Q. Yeah.

24 A. While the Commission need not base its
25 approval of these tariffs on the basis of a cost difference

1 between the groups of customers.

2 Q. Continue.

3 A. Okay.

4 Q. The sentence goes on.

5 A. I'm sorry. I would point out for the
6 Commission that such a cost difference does exist.

7 Q. I thought you told me just a minute ago that
8 there's no rational cost basis for differentiating as
9 between these classes of customers?

10 A. I did say that, and then I tried to go back
11 and amend my answer and you told me there wasn't a question
12 pending.

13 Q. So we're at the amendment portion here, right?

14 A. I was trying earlier, but I recognize there
15 was not a question pending.

16 Q. Okay. Let's take the -- let's parse the first
17 half of that sentence.

18 A. Okay.

19 Q. You say, While the Commission need not base
20 its approval on these tariffs on the basis of a cost
21 difference between the groups of customers.

22 A. Correct.

23 Q. Stop there. On what basis could the
24 Commission approve these tariffs other than cost, rational
25 cost differentials between classes?

1 A. I think Section 392.200 is the applicable
2 section to the statute, particular Sections 2 and 3 of
3 392.200, and there, as we discussed previously in your line
4 of questioning, whether or not these customers can be
5 identified as a unique class of customers and, if so, is
6 the -- is the rate or in this case the waiver of the rate
7 being applied to all the customers within the class of
8 customers.

9 Q. All right. But in this case --

10 A. And if --

11 Q. -- you're saying that if the Commission found
12 there was no cost differential, cost basis differential to
13 differentiate these classes, the Commission could still
14 approve this price preference?

15 A. I'm saying the Commission doesn't need to get
16 to that level because that would be under Section 392.200.4,
17 and we believe they can approve the tariffs under 392.200.2
18 and .3.

19 Q. Under a public interest test; is that right?

20 A. Under the -- the wording of the statute.

21 Q. Lower prices promote competition?

22 A. And not unjust nor unreasonable.

23 Q. Okay. Then you go on and say but such a cost
24 difference, in fact, exists, right?

25 A. Yes.

1 Q. Okay. Let's explore what you're suggesting
2 here.

3 A. Okay.

4 Q. You continue at line 16 on page 10, All the
5 eligible customers of Southwestern Bell's proposed promotion
6 have previously received service from Southwestern Bell.
7 What's unique about that? Why is that an important factor?

8 A. When a customer has received service from us,
9 we have knowledge of the customer, we have knowledge of the
10 services that they've received from us in the past, we have
11 knowledge of their credit rating.

12 And if they've received service from us in the
13 past, two things would likely occur, one on the service
14 order processing side and one on the provisioning side that
15 make them different from a new connect.

16 The first one on the service order side is the
17 customer would -- would be familiar with the products and
18 services that we offer, and so that would allow the service
19 rep in evaluating the customer's needs, the customer would
20 be familiar with the services we offer.

21 It would allow the service rep, while they may
22 use the same script as with a new customer, they would
23 possibly not have to go in the same level of detail because
24 the customer would be familiar with our services.

25 On the provisioning side --

1 Q. Can I stop you right there?

2 A. Sure.

3 Q. On the customer familiarity, remember the
4 example I gave of a former Southwestern Bell customer who
5 then migrated to a wireless service and now wants to return?

6 A. Correct.

7 Q. Okay. Southwestern Bell would still be
8 familiar with that customer under those -- under that
9 scenario, right?

10 A. Yes.

11 Q. Okay. But that discount would not be offered
12 to that customer, right?

13 A. Not under this tariff.

14 Q. Okay. So that's one difference. Let me --

15 A. Can I continue with the provisioning?

16 Q. Let me -- because I think I'll get to it.

17 A. Okay.

18 Q. The next sentence beginning on line 17, By
19 virtue of this fact, Southwestern Bell can be reasonably
20 certain that facilities exist to the customer's premise a
21 greater percentage of the time for new customers. Are we
22 there now?

23 A. Yes, we are.

24 Q. Let me ask this. Under what circumstances
25 would facilities not be present at a premise within a

1 typical Southwestern Bell exchange?

2 A. There are -- it's possible that in some new
3 construction, particularly with a business, that the
4 business --

5 Q. Let's stick to residential for right now.

6 MR. LANE: Your Honor, I ask that the witness
7 be allowed to answer the question as asked and not
8 interrupted.

9 JUDGE WOODRUFF: All right. Counsel has a
10 right to ask the questions that he wants to ask and control
11 the witness' responses to an extent, and I'm going to allow
12 that. Overrule the objection.

13 THE WITNESS: Can you please restate your
14 question?

15 BY MR. CURTIS:

16 Q. Yeah. Directed to a residential, typical
17 residential situation.

18 A. What was the question? I'm sorry.

19 Q. Okay. Under what circumstances would
20 facilities not exist at a residential premise?

21 A. At a residential premise?

22 Q. Right.

23 A. It's still possible that in a new construction
24 we did not provide facilities to a home. It's still
25 possible.

1 Q. Let me stop you. You say it's possible. How
2 many new home sites do not wire inside for telephone
3 service?

4 A. I'm talking -- I'm not talking about inside
5 wiring, Mr. Curtis. Inside wiring is the customer's
6 responsibility.

7 Q. How about outside wiring to the premise?

8 A. It depends. There's competition in the
9 marketplace. It is entirely possible that another provider
10 has worked with the contractor for a subdivision and another
11 telecommunications provider has laid facilities to a
12 subdivision and Southwestern Bell has not. That is entirely
13 possible in today's competitive environment.

14 Q. Well, facilities in either case would exist to
15 the premises, would they not?

16 A. But they would not be our facilities, and if
17 they're not our facilities we would have to lay our own
18 facilities to the customer to serve them.

19 In addition, I need to point out that even if
20 we had facilities all the way to the customer's premise,
21 there still may need to be some physical work that needs to
22 be done in the plant between the central office and the
23 field if a customer had previously received service from a
24 CLEC, and that would be a cost difference in providing
25 service to that customer potentially for the establishment

1 of the service.

2 Q. Now, at line 18 you use the term "reasonably
3 certain."

4 A. Yes.

5 Q. And then at line 19 you say in many cases the
6 CLEC utilizes. Have you provided any cost studies to the
7 Commission in the context of this case with regard to
8 justifying extra costs?

9 A. We have not provided any cost studies to the
10 Commission in this case.

11 Q. Have you done any studies?

12 A. I'm certain that we've got some studies for
13 the tariff filing, but we did not provide them to the
14 Commission.

15 Q. So you may have studies, but you didn't
16 provide them to the Commission?

17 A. It's general for tariff filings before this
18 Commission that parties do not provide cost studies for the
19 tariffs they're filing.

20 MR. CURTIS: I'll ask the last part be struck
21 as not responsive. It called for a yes or no. I don't care
22 to know what's customary.

23 THE WITNESS: I said no. I'll say no again,
24 answer the question.

25 JUDGE WOODRUFF: I'm going to overrule the

1 objection. The record will stand as it was.

2 BY MR. CURTIS:

3 Q. Let me refer you, Mr. Hughes, to page 7 of
4 your surrebuttal.

5 A. Yes, sir.

6 Q. And at line 4 there's the general heading for
7 that section, I believe, that says Southwestern Bell's
8 Proposed Tariffs Comply with the statutes?

9 A. Correct.

10 Q. And then the question is asked of you, Do
11 the -- do Southwestern Bell's proposed tariffs comply with
12 the Missouri statutes? And you say yes. And then
13 continuing at line 10, you say, Since similar tariffs have
14 been approved previously by the Commission pursuant to
15 Section 392, and it's just blank. Did you mean to add 200
16 there?

17 A. Yes, sir. I'm sorry. I did not see that.

18 Q. So 392.200 RSMo 2000, there can be no doubt
19 that they comply with the statutes.

20 A. That's correct.

21 Q. Is that correct?

22 So you say there can be no doubt that these
23 tariffs comply with the statute. Can you tell me,
24 Mr. Hughes, have there been any reported court decisions in
25 Missouri stating that Southwestern Bell's winback tariffs or

1 something similar to them comply with Section 392.200?

2 A. Did you say court decisions?

3 Q. Reported court decisions. Do you know what
4 those are?

5 A. I'm sorry, I do not.

6 Q. You're not a lawyer, right?

7 A. I am not a lawyer.

8 Q. But yet you say there can be no doubt these
9 tariffs comply with the statute?

10 A. There can be no doubt because the Commission
11 has previously approved them, and if they didn't comply
12 before, the Commission certainly wouldn't have approved
13 these tariffs under the Missouri statutes.

14 Q. You consider that a valid legal premise?

15 A. I'm not an attorney, so I can't qualify it as
16 a legal opinion.

17 Q. You said it.

18 A. That's my opinion as our policy witness under
19 regulatory matters for the State of Missouri for
20 Southwestern Bell Telephone Company.

21 Q. Are there any nonreported Missouri court
22 decisions regarding Southwestern Bell's winback tariffs
23 previously or something similar to them in Missouri?

24 A. I'm not aware of any.

25 Q. Have there been any contested cases before

1 this Commission in this state that have involved winback
2 tariffs --

3 A. Yes, there have.

4 Q. -- of Southwestern Bell?

5 A. That involve provisions, tariffs that include
6 winback provisions, but not winback tariffs.

7 Q. You know what a contested case is?

8 A. I do.

9 Q. What is it?

10 A. It's a case that the Commission -- let me give
11 you my understanding of it. It may not be the legal
12 definition of a contested case. But it's a case that is
13 before the Commission that is subject to a hearing whereby
14 the parties either file Briefs and/or testimony, and the
15 Commission hears that evidence and then makes a decision
16 regarding the matter.

17 Q. Tell me when this Commission has had a hearing
18 regarding Southwestern Bell winback or even retention
19 tariffs.

20 A. They were not specifically winback or
21 retention tariffs, but there were tariffs that included
22 winback and retention provisions. But the Commission, to my
23 knowledge, has not had a hearing prior to this on a winback
24 tariff.

25 Q. Thank you.

1 Let's go to page 3 of your direct testimony.

2 A. Okay.

3 Q. And at line 7, can you read the first -- after

4 the yes, the first full sentence there?

5 A. Did you say line 7? I'm sorry.

6 Q. Seven, right.

7 A. Okay. The answer is, Yes. The only way the

8 Commission could have previously approved winback tariffs

9 proposed by SWBT was to find them to be lawful and

10 appropriate pursuant to Section 392.200 and consistent with

11 the policies and purposes of Chapter 392.

12 Q. Okay. Do you agree with me today that the

13 only way this Commission can approve Southwestern Bell's

14 proposed winback tariffs in either case is to find them

15 lawful and appropriate pursuant to 392.200?

16 A. Yes.

17 MR. CURTIS: Thank you. I have nothing

18 further.

19 JUDGE WOODRUFF: AT&T?

20 CROSS-EXAMINATION BY MS. DeCOOK.

21 Q. Good morning, Mr. Hughes.

22 A. Good morning, Ms. DeCook.

23 Q. I'd like to start by pointing you to page 6 of

24 your direct testimony.

25 A. Okay.

1 Q. And in particular I'd like to explore the
2 chart that appears on that page.

3 A. Okay.

4 Q. And I'd like to understand how you copulated
5 this chart and then how you did your calculations.

6 A. Okay.

7 Q. First of all, the resale numbers that are
8 reflected there for July of 2000 and April of 2002, for both
9 columns, did you use the same information or the same source
10 of information?

11 A. Yes, I did.

12 Q. And what source of information did you use?

13 A. As the Commission is aware, we track data
14 similar to this, and we first started providing it,
15 Ms. DeCook, to the Commission in Case No. TO-99-227, and
16 that was our 271 application case here. And this data that
17 is listed here is data that is -- what is off what we call
18 the 14-point checklist report in that case, and I receive a
19 similar report each month with the data for Missouri.

20 Q. So do you receive totals or do you receive the
21 underlying data?

22 A. I just receive the totals.

23 Q. So did you put together the underlying data or
24 you just take what you're getting from some other source
25 within Southwestern Bell and then use that information to

1 populate this table?

2 A. I take what I get, but I evaluate it to make
3 sure that it looks reasonable based upon what I think's
4 going on in the marketplace. And, for example, the number
5 of resale lines going down looks reasonable to me because I
6 know there's some migration from resale to UNE-P going on in
7 the marketplace.

8 Q. There are also some resale providers that are
9 exiting the marketplace, too, are there not?

10 A. There could be. I'm not sure if any
11 particular resale have exited the marketplace, but yes.
12 Actually, let me take that back. I am aware that a couple
13 have exited the marketplace.

14 Q. And, in fact, Southwestern Bell has taken back
15 some resale customers from CLECs that have exited the
16 marketplace?

17 A. That is correct.

18 Q. In those situations, did those customers get a
19 winback offer?

20 A. What happens pursuant to the interconnection
21 agreement and pursuant to the snap-back rule, whichever
22 one's applicable, we bring the customer back for 30 days.
23 We send the customer a letter, explain to the customer that
24 they will receive service from Southwestern Bell for a
25 period of 30 days, and the customer would need to select a

1 provider.

2 If we had a winback tariff in effect at that
3 point in time, then I believe the customer would be eligible
4 for that.

5 Q. And you say that the underlying data from the
6 resale that's populated in the resale columns is from the
7 271 14-point checklist report. What is the source for the
8 information contained in that report?

9 A. Our billing databases.

10 Q. And is that an aggregate report or is that a
11 CLEC-specific report?

12 A. It's an aggregate report.

13 Q. And who is it that prepares that report, what
14 group in Southwestern Bell?

15 A. I don't know the department name of the folks
16 that put it together. Ultimately it's a data run from our
17 system. So probably comes from our information technology
18 organization.

19 Q. So when you get it, are you getting it from a
20 specific individual?

21 A. Yes, we do.

22 Q. And who do you get it from?

23 A. I don't remember the person's name right now.
24 I can tell you the people who did it before this person, but
25 I don't remember who the person is who sends the e-mail

1 right now.

2 Q. You don't remember the person and you don't
3 know the department name. That's difficult.

4 Is it fair to say that in order to produce the
5 271 14-item checklist report that is in aggregate form,
6 whoever's preparing that has to look at the individual CLEC
7 information that's in the billing database?

8 A. I think it would be possible to do it without
9 looking at the CLEC information. You can do it by USOC,
10 which in resale we have a USOC, so you could just do a poll
11 of the USOC and just get an aggregate number and you
12 wouldn't need to know who was the service provider.

13 Q. Do you know how they do it?

14 A. I do not.

15 Q. How they do the compilation?

16 I noticed in your direct -- your surrebuttal
17 testimony at page 13, are you with me?

18 A. Yes, I am.

19 Q. You provided some updated information, and it
20 looks like you provide most categories but not the resale
21 category. Do you have updated information for the resale?

22 A. I can provide updated resale information if
23 you'd like.

24 Q. Why didn't you provide it here?

25 A. What I was explaining here was that we have

1 seen an increase in facility-based competition, and these
2 particular ones are referring to UNE-P interconnection
3 trunks, E911 listings and cumulative ported numbers, and all
4 of those are a reflection of facility-based competition.

5 So I was making sure the Commission understood
6 facility-based competition was, in fact, growing in this
7 marketplace.

8 Q. Well, as I understand the question that you
9 were posed and that you answered is do you have any updated
10 aggregate data regarding the level of competition in
11 Missouri, and do you not construe resale to be competition?

12 A. Absolutely it's competition.

13 Q. Okay. So what is the number -- did you not
14 include it because the resale numbers are going down?

15 A. It may have gone down. If you'd like, I can
16 tell you.

17 Q. Okay.

18 A. I believe I brought that with me to the stand.
19 No. This was June data.

20 Q. Wait. For the two-month period I just want to
21 have comparable information. The information you provided
22 on page 13 is for a two-month period; is that right?

23 A. Yes, it was.

24 Q. And do you have comparable data for resale?

25 A. I apologize. I did not bring that with me. I

1 thought I did, but I would --

2 Q. What is it that you do have?

3 A. I would say, Ms. DeCook, in fairness, I would
4 be surprised if the resale number hasn't gone down slightly
5 in the last two months, but what I --

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

7 A. I brought July data with me for these four. I
8 thought I had --

9 Q. And is that just for the one month period of
10 July?

11 A. Yes.

12 Q. So you don't have the May/June?

13 A. I have -- I can compile, if you'd like, the
14 period May through July.

15 Q. No. I'm just trying to understand what you
16 have.

17 A. I brought the -- if you go back to my direct
18 testimony, you don't need to necessarily, but I have an
19 aggregate number there for the month of April.

20 Q. Right.

21 A. Okay. And then in this testimony I was
22 explaining to the Commission the growth that had occurred in
23 the two-month period May through June.

24 Q. Uh-huh.

25 A. And what I brought with me for those four

1 criteria, if you will, or elements that I've broken out, I
2 brought the June aggregate data and the July aggregate data.

3 Q. Okay. Do you --

4 A. So I could give you a number associated with,
5 for example, the number of UNE-Ps that we had at the end of
6 June and the end of July.

7 Q. So you can give me a number if we were looking
8 at your chart on page 6 and substituted July 2002, for
9 resale you can give me that number?

10 A. I can't.

11 Q. You can't give me that number either?

12 A. Not resale. I didn't bring that. I can
13 certainly provide it if the Commission would like
14 late-filed. If I'm still on the stand after lunch, I
15 certainly can look at it over the lunchtime break and
16 provide it, but I do not have it with me as I sit here
17 today.

18 Q. All right. Well, I would certainly request
19 that for resale. So I will pose that request.

20 JUDGE WOODRUFF: Okay. If you can provide
21 that after lunch, that would be great.

22 THE WITNESS: I can.

23 JUDGE WOODRUFF: That way we don't need to
24 hold an exhibit number for anything.

25 THE WITNESS: Just to make sure I'm clear,

1 Ms. DeCook, you want --

2 BY MS. DeCOOK:

3 Q. And frankly, the only thing I really would
4 like to see so I can do sort of an apples to apples
5 comparison is the May to June data for resale.

6 A. Okay. So you want what happened for that
7 two-month period, whether it went up or down and the number
8 that it went up or down?

9 Q. Correct.

10 A. Okay.

11 Q. And then you said you had the July number with
12 you?

13 A. Not for resale.

14 Q. Okay.

15 A. Not for resale.

16 Q. Got you.

17 Okay. Can you tell me, moving to the E911
18 listings, where does this number come from? What's the --
19 how was that compiled?

20 A. I don't know the answer to that. I know on
21 resale we have a USOC. I know on UNE-P we have a USOC. I'm
22 not sure on E911 what database they pull it from or how they
23 pull it.

24 Q. And when you say you have a USOC, that means
25 you have an ordering code and you can somehow extract an

1 aggregate number from -- by just extracting information for
2 one particular code?

3 A. Correct. And I believe USOC, if I could
4 just -- I think it's universal service order code.

5 Q. And is that code specific to each CLEC?

6 A. I don't believe so.

7 Q. Is there a resale code? Is that what you're
8 saying?

9 A. Resale USOC?

10 Q. Yes.

11 A. Yes.

12 Q. Okay.

13 A. There is a resale USOC.

14 Q. And then you said you don't have a USOC for
15 E911, and you don't know how that number is compiled.

16 Somebody provides you with that number?

17 A. Correct. I don't believe there is a USOC for
18 that.

19 Q. And who provides you that number?

20 A. The same person who I can't think of their
21 name right now.

22 Q. Is this also information that's provided on
23 the 14-point checklist report?

24 A. Yes, it is.

25 Q. And you indicated in your testimony -- let me

1 see if I can find it -- on page 8 of your direct.

2 A. Okay.

3 Q. You state that, at page 7 -- or in line 7
4 through 12, that while SWBT can identify the number of E911
5 listings of CLECs, the number of CLEC E911 listings
6 understates the number of access lines served by
7 facility-based CLECs since only outbound lines have 911
8 listings associated with them. Therefore, certain lines
9 served by the CLECs, e.g. those at a call center receiving
10 inbound calls, are not reported. Do you recall that
11 testimony?

12 A. I see that here, yes.

13 Q. And what is your basis for making the
14 statement that CLECs are not reporting inbound access lines
15 in a 911 database?

16 A. I want to make sure we're clear on where we're
17 getting the information. I don't know how we pull the
18 information. I don't know if there's a USOC. But there's
19 obviously an E911 database.

20 Q. I understand that.

21 A. There's a listing database.

22 Q. Right.

23 A. So that's where the information comes from. I
24 don't know how they physically go in and pull it per se.
25 But to my understanding for lines in general, whether

1 they're CLEC lines, whether they're Southwestern Bell
2 Telephone Company lines, it doesn't matter. For an outbound
3 line, you do not need to have a 911 listing for purposes of
4 the 911 database.

5 Q. Well, I understand that, but you say in your
6 testimony that CLECs are not reporting, and I assume that
7 you mean that CLECs are not identifying inbound lines in the
8 911 database?

9 A. And I said outbound earlier. I should have
10 said inbound. That's correct. We get the 911 listing
11 information from the service order passed to us by the CLEC.

12 Q. And how do you know that CLECs are not
13 reporting inbound lines?

14 A. As I mentioned, within the industry you don't
15 report inbound lines because you don't --

16 Q. But you don't know what the CLEC is actually
17 reporting, do you?

18 A. I've never looked at the database, no.

19 Q. So if a CLEC were reporting an inbound line in
20 an abundance of caution, you don't know whether that's
21 happening or not?

22 A. I personally do not know. I've never looked
23 at the database.

24 Q. And do you know, even though a line may be
25 characterized as inbound, whether it can not be used for

1 outbound purposes?

2 A. I believe that when you get a direct inward
3 dial line, you cannot make an outward-bound call on that.
4 That's my understanding.

5 Q. But wouldn't it have to be blocked in order
6 for that to happen?

7 A. Technically, I don't know how it works. I
8 just know we offer direct inward dial lines.

9 Q. Uh-huh. But since you don't know how the
10 CLECs are reporting, it's at least conceivable that there
11 could be some inbound lines --

12 A. It's conceivable.

13 Q. -- in the 911 database?

14 A. It is conceivable.

15 Q. This morning when you made a change to your
16 testimony, you added page 6 of your -- 5 of your direct in
17 the question you added the phrase "or similar to?"

18 A. That's correct.

19 Q. And what prompted that change?

20 A. The -- we have the Digi-line tariff that is
21 part of the business tariff offering is the same. The
22 business tariff and the residential tariffs are similar to,
23 and if you'd like I'll be happy to explain why they're
24 similar to and not the same.

25 Q. Well, I notice one change, and let me ask you

1 if this is the only change. And I'm looking at comparing
2 your Schedule 7-1 to 8-1 --

3 A. Okay.

4 Q. -- to your direct testimony. Got it?

5 A. Yes.

6 Q. And 7-1 is the old version, right, and 8-1 is
7 the proposed change?

8 A. That's correct. The proposed tariff, yes.

9 Q. And looking at the first paragraph that begins
10 with the words "for a period of 365 days," do you see those?

11 A. Yes, I do.

12 Q. The change I noticed was in the fifth line,
13 right after the word "business customers," and in the old
14 tariff it said "establishing business access service with
15 Southwestern Bell." In the new proposed tariff it says that
16 the charge will be waived for business customers
17 establishing flat-rated business access line, multi-line or
18 trunked service.

19 A. That's correct.

20 Q. Now, what was the rationale for changing that?

21 A. It was designed to be clearer on what this
22 particular promotion, what lines it would be applicable to,
23 and we wanted to make sure that it was clear that it would
24 be for flat-rate business, access lines, multi-line or trunk
25 service.

1 Q. How was it applied in the prior tariff?

2 A. It was applied the way that it was written
3 into this proposed tariff.

4 Q. Okay. Now, what other changes prompted the
5 addition of the phrase "or similar to"?

6 A. On the residential side, we also have with
7 this proposed tariff a nonrecurring charge waiver of some of
8 our feature packages. So that was an addition to the
9 tariff.

10 Q. And where does that fall in your proposed
11 language?

12 A. If you look at my Schedule 6 to my direct
13 testimony --

14 Q. Uh-huh.

15 A. -- the sixth line down has a sentence that
16 begins "in addition". That sentence is an addition to the
17 tariff from the one that the Commission had previously
18 approved.

19 Q. So the entire sentence is a new sentence?

20 A. That's correct.

21 Then on the business side, if you go to Hughes
22 Schedule 8-2, and I'll note just so we're clear, obviously
23 the dates for all of these have changed for the effective
24 dates of the tariff.

25 Q. Right.

1 A. If you go to Schedule 8-2, line -- it's in
2 line 4 of the first paragraph of Hughes Schedule 8-2. The
3 original, and when I say original, the tariff that the
4 Commission had previously approved, included a 24-month term
5 commitment. That is not part of this proposed tariff.

6 Q. Okay.

7 A. Then in Section 2 -- No. 2 I should say, the
8 date changed to be May 31st of 2003.

9 Q. Just tell me the ones that don't involve a
10 date change.

11 A. Okay. There was a paragraph 3 in the tariff
12 that the Commission approved. That referred to termination
13 charges. That would not be applicable under the proposed
14 tariff since there's no term requirement for this tariff.

15 On Schedule Hughes 8-3, again for this
16 particular smart trunk promotion there was a 24-month term
17 that applied to the tariff that the Commission had
18 previously approved. So that was stricken. In addition, we
19 struck the paragraph that referred to the termination
20 charges that would be applicable under that tariff.

21 Q. All right.

22 A. And in Hughes Schedule 8-4, with the exception
23 of the dates, the proposed promotion is the same.

24 Q. All right. Thank you.

25 Now, let's go back to the chart.

1 A. Okay.

2 Q. In terms of the UNE-P numbers, the
3 interconnection trunk numbers and the cumulative ported
4 numbers, are these all numbers that come from the 271
5 14-point checklist report?

6 A. Yes, they are.

7 Q. And are you responsible for compiling any of
8 the information that supports these numbers?

9 A. No, I am not.

10 Q. Do you have any knowledge as to how they were
11 compiled?

12 A. Yes, I do.

13 Q. Okay. Explain to me what you know about how
14 the UNE-P numbers were compiled.

15 A. Okay. Again, similar to resale, there's USOCs
16 associated with the provision of UNE-P service. So we can
17 compile this report by pulling a report on the USOCs.

18 Q. Do you know, in fact, how those numbers were
19 obtained?

20 A. I do not know. I've not pulled this report
21 myself.

22 Q. Okay. Is the -- is there a USOC for
23 interconnection trunks?

24 A. There is not, to my knowledge. And on that
25 particular one, when there's an interconnection trunk

1 between, for example, AT&T and Southwestern Bell, there is
2 obviously coordination between the parties, and we do
3 tracking on that coordination to know how many trunks a
4 company has purchased from us, and we can get an aggregate
5 number by adding up all the interconnection trunks across
6 all the companies.

7 Q. Okay. And where is that data? Where does
8 that data reside?

9 A. I do not know.

10 Q. And who is responsible for compiling this
11 particular number?

12 A. The same person provides me all of this data.

13 Q. That unknown person. Could you provide the
14 name of that person and their department, please?

15 A. Sure.

16 Q. Thank you.

17 JUDGE WOODRUFF: Will you be able to find that
18 out over lunch?

19 THE WITNESS: Absolutely.

20 JUDGE WOODRUFF: Two questions for after
21 lunch.

22 THE WITNESS: And then the cumulative ported
23 numbers, we keep a running track of the numbers that have
24 been ported from us to a CLEC on a cumulative basis, and
25 again, the same with interconnection trunks, there's

1 coordination between the companies, in this case AT&T and
2 Southwestern Bell, to ensure that a number is ported
3 properly.

4 BY MS. DeCOOK:

5 Q. And so this is a cumulative number? It
6 doesn't reflect port backs?

7 A. That is correct, it is a cumulative number.

8 Q. And are the other numbers cumulative or are
9 those in-service numbers?

10 A. In-service numbers. And we do not use the
11 cumulative ported numbers in any way to try to represent
12 what the minimum level of CLEC market share is.

13 Q. All right. At page 8 of your surrebuttal.

14 A. Okay.

15 Q. In this testimony -- and I'll just focus on
16 the AT&T references that you have here, but starting at
17 page 7, going on -- or line 7, I'm sorry, and going on to
18 the next several pages, you talk about a case, the in-state
19 connection fee case of AT&T?

20 A. Yes.

21 Q. Were you present in the hearing room when
22 there was presentation made on that case? I was told you
23 were.

24 A. I thought I was here, but my memory is fading
25 since it was back, as I recall, in like the November time

1 frame of last year.

2 Q. I can't imagine.

3 You were asked earlier about contested cases,
4 and that was not a contested case, was it?

5 A. I don't believe that it was.

6 Q. And so there wasn't any evidentiary
7 presentation or an evidentiary hearing in that proceeding?

8 A. If there was any evidentiary testimony or
9 anything, I was not -- I did not review it.

10 Q. And as I understand the purpose of this
11 testimony here is that you're claiming that AT&T didn't
12 present any cost support in that case, and somehow you think
13 that absolves or you're suggesting that because of that SWBT
14 doesn't need to do it in this case?

15 A. What I'm stating in my testimony is that I'm
16 not aware that AT&T made any cost showing in that case, and
17 AT&T in getting that tariff approved offered -- offers it or
18 in this case applies a charge to customers that it believes
19 are similarly situated.

20 And under the tariff this is an example to the
21 Commission how they've approved something in the past that I
22 personally believe has similar characteristics to what we
23 are proposing from the perspective of application of the
24 statute, not in application of a rate to a customer.

25 Q. Well, you're aware, are you not, that during

1 the only presentation that AT&T had to the Commission on
2 this issue, that it did explain that at least for the local
3 services -- service customers that you recite or you
4 cross-reference, that AT&T local customers that don't
5 originate -- that do originate long distance calls don't
6 incur the access charges of Southwestern Bell or any other
7 independent local exchange company in the state? Do you
8 recall that?

9 A. If it's a local exchange customer of AT&T,
10 they would not incur an originating access charge from
11 Southwestern Bell.

12 Q. Right. So that's intuitive, right?

13 A. It would seem to be.

14 Q. Right. And you certainly -- Southwestern Bell
15 didn't dispute that in the proceeding, did they?

16 A. We were not a party to the proceeding. If I
17 was here, it was purely for informational purposes only and
18 interested in how the proceeding was ultimately ruled upon.

19 Q. Okay. Moving on to some other testimony. In
20 your rebuttal at page 17, you talk about some reports.
21 One's a Local Disconnect Report and an EDI 836 Line Loss
22 Notification Report?

23 A. Correct. In my surrebuttal, yes.

24 Q. And you indicate that these reports or
25 information about these options are available on the CLEC

1 online website?

2 A. Correct.

3 Q. Well, you have us baffled. I'm hoping that
4 you can provide us the link, because we've gone on your
5 website and we can't find any reference to these, so --

6 A. You've actually gone on to HTTPS?

7 Q. CLEC --

8 A. Dot SBC?

9 Q. Right. Couldn't find them. Did a word
10 search. So if you could provide us the link.

11 A. I don't have with me, but my understanding was
12 we sent an accessible letter regarding this matter, and I've
13 reviewed the accessible letter. I don't have it with me,
14 but it --

15 Q. Does it provide a link?

16 A. Well, the link would be to the website, which
17 it sounds like you've already been to, but you're saying you
18 could not find this information?

19 Q. Right. And I certainly don't get your
20 accessible letters. Are those on your web?

21 A. Yes, they are.

22 Q. Okay. Well, if it's on the letter, then I
23 think we can run it down. If it's not on the letter, could
24 you provide it? Are you certain the letter provides a link?

25 A. It provides a link, but it's likely just the

1 link to the CLEC website.

2 Q. Well, that's not going to help. Thank you.

3 I'd like to direct you to page 10 of your
4 surrebuttal.

5 A. Okay.

6 Q. And on page 10, I think you had some
7 discussion about this page with counsel for WorldCom, but
8 I -- I'd like to explore it, I think, from a different
9 angle. On line 16, starting on line 16 going to page --
10 line 17, you state, All of the eligible customers for
11 Southwestern Bell's proposed promotion have previously
12 received service from Southwestern Bell.

13 A. That's what it states.

14 Q. That's not quite accurate, is it?

15 A. Based upon the testimony from Mr. Regan this
16 morning about a win customer, I would agree.

17 Q. Okay. And even though -- let's assume we're
18 just talking about those that have received customer -- have
19 received service from Southwestern Bell in the past. Even
20 though they may have a line in place, a Southwestern Bell
21 facility, there still may be some field work that needs to
22 be done, right, in order to convert the customer from
23 Southwestern Bell -- from the CLEC to Southwestern Bell?

24 A. Assuming in your example, Ms. DeCook, that the
25 CLEC is providing service via either resale or UNE-P.

1 Q. It could be a facility-based CLEC, too.

2 A. Okay. In the example of a resale or a UNE-P,
3 there should be no field work. In the example of a
4 facility-based, if they're using our loop, we would likely
5 have to do a cross-connect in our central office to tie the
6 loop to our central office equipment.

7 Q. Right.

8 A. If they're using their own loops, then again
9 we'd likely have to do a cross-connect in the central office
10 and possibly do some field work, but the loop could be --
11 it's called a put-through loop, but it could be a loop that
12 goes from the central office to the premise, and the
13 cross-connect in the field could already be existing and the
14 only cross-connect may be in the switch, at the switch.

15 Q. And the field work that you're talking about
16 is actually rolling a truck to the customer prem and moving
17 the cross-connects that are on the NID, the network
18 interface device?

19 A. That is possible. It's also possible there
20 could be a cross-connect between the feeder and distribution
21 cable. But I wasn't thinking specifically about the NID,
22 but that is possible.

23 Q. So when you say there would be no network cost
24 associated with the end user electing to receive the same
25 service from Southwestern Bell, I assume when you're talking

1 about cross-connects you don't consider that a network cost?

2 A. Well, are you referring to lines 21 through
3 23?

4 Q. I am.

5 A. Well, it says in these instances, and these
6 instances refer to when the CLEC was utilizing the same
7 facilities to provide service to the end user, and in those
8 cases we should not need to do a truck roll when the CLEC is
9 providing service via resale or UNE-P.

10 Q. All right. So you were limiting it only to
11 the instances of resale and UNE-P?

12 A. As I noted in the parentheses on line 20 and
13 21, yes.

14 Q. And specifically excluding any of costs
15 associated with a facility-based CLEC conversion?

16 A. This testimony does not address that.

17 Q. I noticed that.

18 Now, you were in the room when I was
19 cross-examining Mr. Regan yesterday, right?

20 A. Yes, I was.

21 Q. During the course of my cross-examination,
22 Mr. Regan indicated that there were numerous activities that
23 occur in Southwestern Bell's winback organization in
24 connection with the winback. Do you recall those?

25 A. I recall his testimony, yes.

1 Q. Okay. You recall there's several departments
2 that exist within Southwestern Bell that manage the winback
3 process for Southwestern Bell?

4 A. Yes. To ensure we have proper end user
5 authorization, yes.

6 Q. Well, not only that, but to market your
7 winback?

8 A. And ultimately to type the service order, yes.

9 Q. And there are at least nine letters that go
10 out to residential customers and letters that go out to
11 business customers?

12 A. Not necessarily at least, but up to.

13 Q. Well, he indicated it could be more, so --

14 A. It could be, but if a customer chooses to come
15 back after one letter, they hopefully won't get the other
16 eight.

17 Q. Hopefully your systems are better.

18 A. And there's a telemarketing organization that
19 works in the winback area for Southwestern Bell?

20 A. There is one, yes.

21 Q. And you would agree with me that these are
22 certainly areas that generate costs for Southwestern Bell?

23 A. There are costs associated with performing
24 those functions. Sometimes it may be more than others. It
25 depends if it's a mechanized function versus a manual

1 function.

2 Q. Now, in your discussion about the costs
3 associated with the winback offers that you've made, have
4 you included any of those costs in your consideration of the
5 cost differences?

6 A. Are you referring, I'm sorry, to my testimony
7 on page 10?

8 Q. Uh-huh.

9 A. I did take those into consideration in writing
10 my testimony, and there is cost for all providers in
11 acquisition of a customer. There is no doubt about that.
12 For any carrier there would be.

13 We don't believe that a cost showing is
14 required for the Commission to approve this tariff, these
15 proposed tariffs.

16 Q. Well, certainly these costs that are directly
17 attributable to your winback campaigns are not being
18 recovered from your winback customers, right?

19 A. Today they are, because I don't have a tariff
20 in place, and under the tariff, even with the nonrecurring
21 charge waiver, we would make up the cost differential, to
22 the extent there is one -- whatever the dollar amount is I
23 don't know -- based upon the level of service that the
24 customer purchases from us, both the access line, vertical
25 service, toll, et cetera, total package that the customer

1 purchases from Southwestern Bell.

2 Q. So where precisely in your costs or in your
3 rates for local service do you recover the costs associated
4 with winback?

5 A. I couldn't point you to a specific element in
6 my rate where I recover that or the cost for nonrecurring
7 charges for other customers or the cost for anything else.
8 We don't -- we haven't typically priced our retail services
9 in that manner. We look at it on an aggregate basis.

10 Q. So you can't tell me as you sit here today how
11 you're recovering these costs?

12 A. I can tell you that it's recovered in the
13 rates that the end user pays us for the services that they
14 purchase from us when they return to us, the recurring
15 rates.

16 Q. The recurring rates?

17 A. Yes.

18 Q. And those rates are currently below cost,
19 according to your testimony?

20 A. For the access line, yes, but not for vertical
21 features, toll, access, et cetera.

22 Q. You're recovering the cost of winback in your
23 toll rates and your access rates?

24 A. I recover the cost of local service in my
25 vertical features, access and toll rates.

1 Q. Now, in your testimony you cite to the
2 Reconsideration Order, page 24. Let's just go there.

3 A. Okay.

4 Q. And in there you're responding to some
5 testimony of Mr. Kohly regarding an FCC Order on a
6 Southwestern Bell tariff that was filed at the federal
7 level, right?

8 A. That's correct, a customer-specific proposal
9 tariff.

10 Q. And I notice that you, in the lines that
11 appear starting at line 15 through 22 and carrying over on
12 to page 25, lines 1 and 2, you're citing to the
13 Reconsideration Order and making certain quotes from that
14 Reconsideration Order, right?

15 A. Yes, I am.

16 Q. And I notice you make a statement starting at
17 line 21 that, in fact, the Reconsideration Order approved
18 different rates for special classes of customers. You don't
19 provide a cite to that statement. What is your -- is your
20 cite the same as the prior cites you're citing, paragraph 9?

21 A. Yes, that would be paragraph 9.

22 Q. And you have that paragraph there with you?

23 A. I do.

24 Q. Can you read that into the record?

25 A. The entire paragraph?

1 Q. Yes.

2 A. Southwestern Bell Telephone Company -- excuse
3 me. Southwestern Bell Telephone argues that we must allow
4 it to establish customer-specific tariffs in Transmittal
5 No. 2633 because it asserts on May 8, 1997 Universal Service
6 Order N27 permits carriers to respond with below tariff
7 rates to customer RFPs from schools, libraries and rural
8 health care providers, N28.

9 We reject this argument. The Universal
10 Service Order does not permit customer-specific rates
11 similar to those in Transmittal No. 2633. Rather, the
12 Commission invoked its explicit authority under
13 Section 201(b) of the Communications Act to identify a
14 special class of communications for which different charges
15 may be made, N29.

16 Thus, the Commission stated that, quote, we
17 hereby designate communications to organizations such as
18 schools and libraries and eligible health care providers
19 eligible for preferential rates under Section 254 as a class
20 of communications eligible for different rates
21 notwithstanding the nondiscrim-- nondiscrimination
22 provisions of Section 202(a), end quote, N30.

23 Such preferential rates are not offered on a
24 customer-specific basis but rather, quote, will be generally
25 available to all members of these classes under tariffs

1 filed with this Commission, end quote, N31. Therefore, the
2 Universal Service Order, bracket, dot dot 11, bracket,
3 provides no support for SWBT's argument.

4 Q. Now, the FCC did not do anything with respect
5 to schools, libraries and eligible health care providers in
6 this Reconsideration Order, right?

7 A. It's my understanding that this reference
8 regarding those were that in the past they had said that
9 that was an eligible class of customers.

10 Q. In a different Order, right?

11 A. That's my understanding.

12 Q. And they're excising explicit authority under
13 Section 201(b) of the Telecom Act, right --

14 A. Yes, they are.

15 Q. -- when they did that?

16 And they essentially determined that those
17 classes of customers were unique and there was a reasonable
18 basis for treating them differently, right?

19 A. That's what they found, yes.

20 Q. And that's what this Commission has to decide
21 about your proposal --

22 A. Yes.

23 Q. -- here?

24 A. We believe this class of customers is a class
25 of customers, and pursuant 392.200 they should be eligible

1 for the promotion.

2 Q. And you're not suggesting here that because
3 the FCC has decided that schools, libraries and health care
4 providers are unique classes, that that necessarily means
5 that this Commission has to determine that your class is
6 correct?

7 A. No, but I believe the Commission can take
8 guidance from the FCC, both in this Order and in its Order,
9 CPNI Order regarding winback in general.

10 Q. Well, and in order for them to take guidance
11 from this Order, they would have to look at all of the
12 Orders in which the FCC reached the conclusion that schools,
13 libraries and health care providers should be designated as
14 a unique class, right?

15 A. If they couldn't ascertain that from this
16 Order, yes.

17 Q. Well, there's certainly nothing in this Order
18 that describes the FCC's rationale as to why they did that,
19 right?

20 A. I don't know that I would agree that there's
21 nothing regarding their rationale.

22 Q. In terms -- as to why they believed it was
23 appropriate to adopt this class as a special class of
24 customers, there's nothing in this Order that describes what
25 went into the FCC's thinking as to why they did that?

1 A. There's nothing in this Order other than the
2 quotes that I read from the FCC. I don't know that you
3 could infer from that that you can determine their thinking or
4 not.

5 Q. All right. Well, the Order will speak for
6 itself.

7 And that's the only paragraph in this Order
8 that you rely on for your argument at page 24, right?

9 A. That is the paragraph I relied on, yes.

10 Q. In your testimony, your surrebuttal testimony
11 at page 11, you indicate that SBC has invested over
12 \$400 million in Missouri infrastructure. Do you recall that
13 testimony?

14 A. I do.

15 Q. How much of that \$400 million is for regulated
16 telecom infrastructure?

17 A. I do not know the breakdown.

18 Q. There is some portion of that that is for
19 unregulated activity?

20 A. Yeah, there is.

21 Q. In your testimony you also cite -- this is in
22 your direct, at page 11. You indicate that Southwestern
23 Bell's performance is outstanding. Do you recall that
24 testimony?

25 A. Yes, it is outstanding.

1 Q. It's true, is it not, as part of a post-271
2 process that Southwestern Bell reports on its performance
3 and how it's meeting the performance measures that were
4 adopted in that proceeding?

5 A. At the state level?

6 Q. Yes. You report it to the Missouri
7 Commission, do you not?

8 A. I do not believe that's accurate. We provide
9 information to Staff, and Staff provides a report to the
10 Commission.

11 Q. And you're taking my statement too literal.

12 A. I'm sorry. I usually do when I'm on the
13 stand. Every word can and likely does make a difference.

14 Q. It was a poorly worded question. Let me
15 reword it.

16 You supply the Commission with information
17 regarding how you're performing under the performance
18 measures that were adopted in the 271 proceeding?

19 A. I supply it to Staff, yes.

20 Q. And then Staff, in turn, reports that
21 information to the Commission in a filing?

22 A. Generally they have, yes.

23 Q. And how often do you make those reports?

24 A. We provide it to Staff on a monthly basis.

25 Q. And then do you know how often the Staff

1 reports your performance to the Commission?

2 A. My recollection is they've maybe made three or
3 so filings with the Commission. I don't know how many
4 they've made.

5 Q. Do you know when the last filing was made?

6 A. I don't recall the specific date.

7 Q. Let me hand you -- can you identify that
8 document?

9 A. Yes, I have seen this. It's --

10 MS. MacDONALD: Your Honor, before he
11 identifies that document, can I see that?

12 MS. DeCOOK: Oh, sure. Sorry. I just didn't
13 have copies. I apologize.

14 MS. MacDONALD: Thank you.

15 THE WITNESS: The document is Staff's Report
16 on Southwestern Bell Telephone Company's Performance
17 Measurement Results for June of 2002.

18 BY MS. DeCOOK:

19 Q. Do you know if that's the most current report?

20 A. I believe it is.

21 MS. DeCOOK: Okay. Your Honor, I'd like to
22 mark this as an exhibit, and I will provide copies.

23 JUDGE WOODRUFF: Something for you to do
24 during lunch, then. Okay. We're up to No. 21, and this is
25 a Staff Report?

1 MS. DeCOOK: And I'll read it. The document
2 that has been marked as Exhibit No. 21 is Staff's Report on
3 Southwestern Bell Telephone Company's Performance
4 Measurement Results for June 2002.

5 JUDGE WOODRUFF: Okay. And did you wish to
6 offer this at this time?

7 MS. DeCOOK: I do wish to offer it.

8 JUDGE WOODRUFF: Have the other parties had a
9 chance to see this? Does anyone have any objection to it
10 coming in now or do you want a chance to see it first?

11 (No response.)

12 I hear no objections, so we'll let it in.
13 Exhibit 21 will be admitted into evidence, and you can
14 provide copies after lunch.

15 MS. DeCOOK: Thank you.

16 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

17 BY MS. DeCOOK:

18 Q. You indicated you had seen this document
19 before, Mr. Hughes?

20 A. Yes, I have.

21 Q. This is a document that, as I understand it,
22 identifies the liquidated damage payments and Tier II
23 assessments by South-- paid by South-- or at least
24 attributable to Southwestern Bell, whether they paid them I
25 don't know, and also the current status of Southwestern

1 Bell's performance under the performance measures?

2 A. I don't have the document in front of me, but
3 that's my recollection is that that's what Staff puts that
4 type of information in its report.

5 Q. And just as further clarification of my
6 statement, it doesn't reflect all of Southwestern Bell's
7 performance under the measures. It just reflects those
8 performance measures that Southwestern Bell is not meeting;
9 is that fair?

10 A. I believe that's fair. And I would note in
11 paragraph 3 of the filing that it says, For the month of
12 June 2002 Southwestern Bell met benchmarks or parity levels
13 for 380 of 402 counted measures for an all-measure success
14 rate for that month of 94.5 percent.

15 Q. So at least it does report in aggregate how
16 you're doing on the other measures?

17 A. In aggregate, and it points out, we believe
18 very unfairly, just the areas where we're not meeting
19 particular measures.

20 Q. Well, and -- if I could have my document back.

21 A. Sure.

22 Q. It might be more efficient -- I don't know if
23 this is a good time for lunch, but if --

24 JUDGE WOODRUFF: I was about to ask that
25 question. I'll kind of leave it up to you. Do you have a

1 whole lot more to go?

2 MS. DeCOOK: I don't have a whole lot more to
3 go, but I do want to ask him some questions on this
4 document. I just think it will be more efficient if he can
5 look at it and I can look at it at the same time.

6 JUDGE WOODRUFF: You're quite correct. Save
7 you some steps of walking back and forth.

8 We'll go ahead and break for lunch, then.
9 We'll come back at one o'clock.

10 (A BREAK WAS TAKEN.)

11 (EXHIBIT NO. 21 WAS MARKED FOR
12 IDENTIFICATION.)

13 JUDGE WOODRUFF: Mr. Hughes is again on the
14 stand and being cross-examined by AT&T.

15 MS. DeCOOK: Thank you, your Honor, and I have
16 distributed Exhibit 21, copies to all parties and the
17 witness.

18 JUDGE WOODRUFF: Okay.

19 BY MS. DeCOOK:

20 Q. Do you have it before you, Mr. Hughes?

21 A. Yes, I do. Yes, I do.

22 Q. I would like to refer you to the last page.

23 A. Okay.

24 Q. And in particular the performance measures
25 indicated as missed at least twice during the period

1 February 2002 through April of 2002.

2 A. Okay.

3 Q. And I see that there's a Tier I and a Tier II
4 column and there's designation LMH. Can you tell me what
5 those designations mean?

6 A. L is for low, M is for medium, and H is for
7 high, I believe.

8 Q. And those indicate what?

9 A. They're defined in Attachment 17 of the M2A,
10 which is where this came from, but I believe that that
11 designation determines the level of payment. There's
12 different levels for low, medium and high performance
13 measures.

14 Q. And is the level of payment determined upon
15 the more critical nature of the measure?

16 A. I believe that to be true.

17 Q. And at least some of the performance measures
18 that Southwestern Bell appears to be missing during this
19 time period is percent of FOCs received within 24 hours; is
20 that right?

21 A. Are you referring to measure 5-30?

22 Q. Yes.

23 A. Yes.

24 Q. And that is a measure of a return of a firm
25 order commitment?

1 A. Correct. A FOC is a firm order, I believe
2 it's confirmation.

3 Q. Confirmation. Okay. And this indicates that
4 you're not providing the confirmation for this particular
5 category of service within 24 hours?

6 A. That is the way I would interpret this table.

7 Q. And a firm order -- I'm sorry. Not
8 commitment. What is it?

9 A. I think it's confirmation. Firm order
10 confirmation.

11 Q. Firm order confirmation is the document that a
12 CLEC would receive from Southwestern Bell which allows it to
13 get a firm installation due date; is that right?

14 A. I don't know if it's tied to just the due date
15 or if it's confirmation of when --

16 Q. Is it confirmation that you can provision the
17 service in a certain interval?

18 A. That's what I'm not sure of. It's possible
19 you could do a service -- you could submit a service order,
20 let's say, today with a requested due date of next Monday,
21 and I'm not sure if the -- I think the FOC is pertaining to
22 the service order itself. I'm not sure about the requested
23 due date. I'm not sure about that.

24 Q. So it tells the CLEC that you can provision
25 the service at least to them in the manner requested?

1 A. I believe it is an indication that we received
2 the order. It's a confirmation that we received the order
3 and that it was distributed through our systems, yes.

4 Q. And then I notice that you are missing 13-02,
5 which is order process percentage flow through LEX. Do you
6 see that one?

7 A. Yes.

8 Q. And that is an indication that the orders that
9 are being submitted through the LEX interface are not
10 flowing through, they're falling out for manual processing,
11 right?

12 A. I don't know the specific business rule that
13 pertains to this one, but it does appear to be a flow
14 through measure, and flow through would be flows through the
15 systems without manual intervention. But there may be some
16 nuances in the business rule that I'm not familiar with.

17 Q. Okay. And LEX is the system that's used by
18 AT&T and TCG G and other CLECs in Missouri?

19 A. LEX is a system that is used by the CLECs to
20 order services, yes.

21 Q. And then I also notice that you're missing
22 measure 114-01, which is percentage of premature
23 disconnects?

24 A. Yes, for coordinated hot cuts and frame due
25 time.

1 Q. And I assume, is it correct that when there's
2 a premature disconnect, that means that the service has been
3 disconnected from the Southwestern Bell switch so there's no
4 dial tone before the number has been ported and is -- does
5 have a dial tone with the CLEC?

6 A. Again, I'm not familiar with the business
7 rules, but I believe that if it's premature, one party,
8 Southwestern Bell in this case, likely disconnected the
9 service.

10 To be clear on this measure, for the record,
11 we're talking about the porting of a number and the
12 coordination of it between Southwestern Bell and in this
13 case AT&T. So that coordination process, there's generally
14 a time that the parties agree on for when the particular
15 service will be transitioned from our switch in this case to
16 your switch.

17 Q. But does it reflect the possibility that the
18 customer is out of service and has no dial tone if the
19 coordination isn't done properly?

20 A. I believe that could be the result.

21 Q. And that would be a fairly serious problem for
22 the customer, right?

23 A. There will be some time during the
24 coordination that the customer will be without dial tone,
25 and the parties work together to keep that as minimal as

1 possible, yes.

2 Q. Okay. You filed testimony in Docket
3 TO-2001-467?

4 A. Yes, I did.

5 Q. And that testimony was filed in the September
6 2001 time frame?

7 A. The hearing was actually in September of 2001.
8 My direct testimony was filed in June of 2001.

9 Q. How about your surrebuttal?

10 A. I don't recall.

11 Q. Certainly after June?

12 A. It was certainly after June, and actually the
13 hearing date was 52 weeks ago this week. I was on the
14 stand.

15 Q. How many hours?

16 A. I was on the stand on September 25th of last
17 year as well in that case.

18 Q. Oh, well. Sorry. So it's your year
19 anniversary at least of being on the stand.

20 Do you recall in that case that you testified
21 that the CLEC market share estimate was 15 percent?

22 A. I do.

23 Q. And you testified in this case that the market
24 share is 12 percent?

25 A. I do. In this case I've testified that it's a

1 minimum of 12 percent, and there's a distinction between how
2 the 12 percent is calculated and how the 15 percent in that
3 case was calculated.

4 Q. So you calculate market shares differently in
5 different cases?

6 A. Well, there are different ways that the market
7 share can be calculated based upon the data that
8 Southwestern Bell has. The only true way to know is for the
9 CLECs to report to the Commission the number of lines they
10 are actually serving.

11 Q. But what drives you to use different
12 methodologies for different cases?

13 A. I don't believe there's what I'd call a
14 methodology, Ms. DeCook. I believe that probably in the
15 last 12 months we have just generally begun reporting the
16 minimum level of access lines, number of access lines that
17 the CLEC has gained.

18 I would point out, though, that in Footnote 2
19 on page 7 of my direct testimony I reference a testimony or
20 an affidavit filed by Mr. Voight. That provides some detail
21 if one is familiar with the different methods that
22 Southwestern Bell uses to calculate market share data. That
23 footnote would support the methodology that we used in
24 arriving at the 15 percent number that you referenced in my
25 testimony in the 467 case.

1 Q. Well, and in the 467 case, don't you
2 characterize your numbers as being minimum market share
3 numbers?

4 A. We believe that also to be a low estimate of
5 the market share, yes.

6 Q. And as I understand it, the difference in the
7 methodology or process that you used to develop the numbers
8 on your chart in this case does not include interconnection
9 trunks, and the process you used to submit the same kind of
10 information in the 467 case was -- did include the
11 interconnection trunks, right?

12 A. That's correct. The methodology in this case
13 is a combination of resale, UNE-P and E911 listings, and in
14 that case it would have been resale, UNE-P and 2.75 times
15 the number of interconnection trunks.

16 Q. And using the same underlying inputs to your
17 calculation that you used in this case in that case, did you
18 not come up with a different percentage?

19 A. I would have. The number would not have been
20 15 percent.

21 Q. It was more in the range of 10 percent, wasn't
22 it?

23 A. I don't have that data in front of me.

24 Q. If it was 10 percent, then we're only talking
25 about, at least in the minimum market share calculation that

1 you claim exists in Missouri, an increase of 2 percent?

2 A. The base for the CLEC number would have
3 actually grown in the neighborhood of 25 percent during that
4 time frame.

5 Q. That wasn't my question. My question is, that
6 differential in market share would have only been 2 percent,
7 in the range of 2 percent?

8 A. If it's 10 percent in my testimony and if it's
9 12 percent here, then yes, the CLECs would have gained an
10 additional 2 percent of the lines in the state of Missouri
11 at a minimum.

12 Q. And that would mean, using your minimum market
13 share number, that Southwestern Bell still maintains an
14 88 to 90 percent market share, right?

15 A. I don't believe it's 90 percent today, but if
16 we use the minimum level, which is clearly a minimum, then
17 we're in the 87, 88 percent range, yes.

18 Q. Well, let me ask you, did you have the
19 opportunity to get the resale figures that I asked you for?

20 A. I did. I believe the specific number that you
21 were looking for was what happened in May and June, as I
22 recall, and in that time frame the number of resold lines
23 decreased by 6380.

24 Q. And did you happen to get the July number?

25 A. I did. For resale?

1 Q. Uh-huh.

2 A. And I actually have the July number for all of
3 the data, the E911 listings, the interconnection trunks,
4 cumulative ported numbers, et cetera.

5 Q. I'm just interested in the resale one.

6 A. Okay. The resale number is 60,739.

7 Q. 60,739?

8 A. 60,739.

9 Q. So how many resale lines are remaining with
10 CLECs?

11 A. As of July, it would be 60,739.

12 Q. Oh, I'm sorry. I thought -- that's your
13 aggregate?

14 A. That's my aggregate number.

15 Q. All right. Thanks. So you did not bring the
16 stand-alone July?

17 A. That is the stand-alone July number for
18 resale, 60,739.

19 Q. It's not the month, though, right? It's the
20 aggregate cumulative total, not the -- what the gain was in
21 July or the loss was of resold lines in July?

22 A. That is not the number I gave. I gave you at
23 the end of the month, there are -- there were 60,739
24 remaining, yes.

25 Q. Got you.

1 A. Yes.

2 Q. Okay. And then I also asked you if you would
3 provide me with the individual that provides you with the
4 CLEC information that you input into your chart in your
5 direct testimony.

6 A. Yes.

7 Q. And who was that?

8 A. His name is Duane, and it's D-u-a-n-e, and the
9 last name is M-a-c-a-n-a-s-p-i-e.

10 Q. Macanaspie?

11 A. Don't know that I could tell you the correct
12 pronunciation.

13 Q. You call him Duane, huh?

14 A. I call him Duane.

15 Q. And what department does he work in?

16 A. He's in the long distance compliance.

17 Q. And as I understand your testimony, you get
18 this information from him, you review it for what you
19 perceive to be reasonableness, and then you submit it in
20 your testimony?

21 A. Correct.

22 Q. And what kind of review do you conduct in
23 order to ascertain whether it's -- the information you've
24 been provided is reasonable?

25 A. I look at the data on a monthly basis. Every

1 month I compare it to the month before. I look at it on a
2 quarter by quarter basis, a year over year basis, just to
3 determine whether or not the numbers are tracking with what
4 I think is going on in the marketplace.

5 And, for example, resale lines going down,
6 that doesn't surprise me because there's migration from
7 resale to UNE-P.

8 Q. So you don't verify the accuracy of the
9 information; you just apply sort of a range, it's within the
10 range of reasonableness based upon your review from month to
11 month and whatever knowledge you have of the market?

12 A. That's correct.

13 Q. And what do you -- what do you determine -- or
14 what do you review in order to determine what's happening in
15 the marketplace?

16 A. Prior data that Duane has provided.

17 Q. The cumulative stuff?

18 A. Just cumulative, yes.

19 Q. Not any of the underlying information that he
20 compiles to produce the cumulative?

21 A. No. The only time I've looked at anything at
22 a different level was in the 467 case where we provided
23 exchange-specific data to the Commission, and in that case I
24 obviously looked at it at more than a state aggregate level
25 since I provided testimony on an exchange by exchange basis.

1 Q. Right. And I'm more interested in what you
2 did in preparing your testimony here.

3 MS. DeCOOK: Okay. I think that's all I have
4 of this witness. Thank you, Mr. Hughes.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: Then we'll come up to the
7 Bench for questions, beginning with Commissioner Lumpe.

8 QUESTIONS BY COMMISSIONER LUMPE:

9 Q. These are more simplistic questions. One of
10 the issues that somewhat concerns me is why this promotion
11 is so long. Have you done other promotions that have been a
12 year long?

13 A. Yes, we have, and, in fact, these promotions
14 are the same or similar to promotions that the Commission --
15 winback promotions that the Commission has previously
16 approved.

17 In the case of the residential tariff, we
18 initially had a time frame of roughly five months, August
19 4th, I believe, through the end of 2000, and we further
20 extended that for the year 2001.

21 And in the case of the business promotion, it
22 was approved by the Commission effective April the 9th of
23 2001 with an end date of April the 8th of 2002, and the
24 proposed effective date of both of these was April 9th of
25 2002. So it's similar in time to the ones previously

1 approved.

2 Q. And other than those winback ones, have you
3 done year-long promotions for other kinds of promotions?

4 A. Yes, we have. In fact, we -- as you know, we
5 file a lot of promotions and such, and I'm familiar with a
6 generally available business tariff nonrecurring charge
7 waiver that I'm pretty sure has a one-year, I'm going to
8 call it one-year term, a one-year period of time that it's
9 available. That was effective, as I recall, beginning in
10 June of this year.

11 Q. You mention, I think, in your testimony, looks
12 like surrebuttal on page 5, that winback offers are
13 prevalent in the telecommunications industry. Aren't some
14 other states also studying the issue of winback to see if --
15 concerning the competitiveness of them?

16 A. I believe other states are. I believe
17 Dr. Aron on I think it was the last page of her surrebuttal
18 provided some analysis of that to the Commission of all the
19 states that she was aware of. She had done a study in
20 preparing for this case of what some of the other states had
21 done.

22 It's my understanding both from what I'm aware
23 of within the industry and from her testimony that no state
24 has prohibited winbacks.

25 Q. Have they allowed them?

1 A. My understanding is they have allowed them.
2 Q. And can you name that -- those states?
3 A. What I could name to you is based upon her
4 testimony, the states.
5 Q. So if I look at her testimony, I'll see what
6 the --
7 A. That they have reviewed.
8 Q. That they have reviewed and whether they've
9 approved them or not?
10 A. That's correct. And I'm not aware that --
11 Q. I'll look at that.
12 A. -- any have prohibited.
13 Q. But you're not aware that any have approved
14 them either, or are you?
15 A. Well, I am aware.
16 Q. You are. Okay.
17 A. This Commission has --
18 Q. Can you tell me the states?
19 A. This Commission has previously approved them.
20 Q. Okay.
21 A. Within the Southwestern Bell region, I know
22 that we've offered winback promotions throughout our region
23 in other states.
24 Within the Ameritech region, we -- Dr. Aron
25 testified regarding the line loss notification issue in

1 Illinois, and that has since been removed. So I don't
2 believe they have any prohibitions against winback.

3 But I'm most familiar, obviously,
4 Commissioner, with the Southwestern Bell region.

5 Q. Right.

6 A. And my understanding is no state has precluded
7 us from offering a winback tariff. Now, I do know that,
8 like, Texas has, I believe it's a rulemaking proceeding that
9 is currently under way, but I don't believe there's been a
10 prohibition.

11 Q. It hasn't been approved, neither approved nor
12 disapproved --

13 A. Correct.

14 Q. -- at this point?

15 A. Correct.

16 Q. That's what you're telling me?

17 A. Correct.

18 Q. Okay. To follow up on, I think it was Staff
19 who mentioned that the statute talks about bringing the
20 benefits of competition to all customers. Was there a
21 reason for leaving out the word all in your testimony?

22 A. No. I did not cite the entire statute in that
23 case. I simply just put it in there. I think these
24 promotions do bring the benefits to all, and the reason I
25 believe that is I believe it will spark additional

1 competition in the marketplace. As I've testified to, I
2 think these are in the public interest because of benefits
3 to both consumers, customers/consumers and to competition.

4 And the CLECs, we are trying to win back the
5 customers that have gone to a CLEC in this proceeding, and
6 the CLECs are choosing to serve whatever segmentation of the
7 market that they are for their own purposes, and those are
8 the customers that these tariffs would be most applicable
9 to.

10 Q. I'm not sure if I understood this correctly or
11 not, that you mentioned, and it seemed to me it was sort of
12 a subtarget, not just those who have left but residential
13 high users are the target. You mentioned that those are
14 CLEC targets. Are those your targets also, then, not just
15 those who have left but a subgroup of those who are high
16 users?

17 A. The basis for that is we believe the CLECs are
18 generally going after businesses and residential customers
19 that -- where the customer has vertical features and toll
20 and things of that nature because those are generally the
21 most profitable customers.

22 So by virtue of the fact that that's who the
23 CLECs have targeted to market to and the customers that
24 they're serving, by extension the winbacks would be
25 available to them.

1 But if a customer came back to us or wanted to
2 come back to us and we had this promotion available and they
3 did not subscribe to a vertical service or whatever, they
4 would still be eligible for this promotion.

5 Q. Okay. So to the extent that all of those
6 customers weren't high users, they still are eligible?
7 You're not just going to target the high users to come back?

8 A. No. Again, subject to the credit
9 classification that Mr. Regan testified to previously.

10 Q. And did I -- am I also correct that currently
11 you have no winback promotions in place, or do you have some
12 that are in place today?

13 A. Not in Missouri, no.

14 COMMISSIONER LUMPE: Okay. Thank you. That's
15 all I have.

16 JUDGE WOODRUFF: Commissioner Gaw?

17 COMMISSIONER GAW: Thank you.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Good afternoon, Mr. Hughes.

20 A. Good afternoon, Commissioner.

21 Q. Let me ask you this question. I've heard you
22 and some other witnesses talk about that the CLECs are
23 pursuing certain customers that are premium customers or, as
24 Commissioner Lumpe was just asking you about, customers that
25 tended to be -- to utilize a lot of vertical services, et

1 cetera.

2 A. Yes.

3 Q. You don't disagree with that, right?

4 A. No. I strongly believe that.

5 Q. And how, first of all, are they able to
6 determine those customers?

7 A. They market -- I don't know how they market to
8 customers. I can't tell you specifically. But what I do
9 know, Commissioner, is they have access to customer records
10 after they get customer authorization, so they can view what
11 the customer has after they gain proper end user
12 authorization.

13 Q. How would they do that?

14 A. Through our OSS's. Through our operational
15 support systems. We have what's called preordering that has
16 the customer records. So they could view them before they
17 issue the order.

18 Q. I guess what I'm asking you is how do they get
19 that permission?

20 A. From the end user. They would need to contact
21 the end user, they should be, to get their authorization
22 first. But there's intelligence in the marketplace, you
23 know. Let me give you a for example. MCA subscribers --

24 Q. Yes.

25 A. -- are probably generally attractive to CLECs,

1 would be my guess, because of the fact that they subscribe
2 to the MCA service.

3 Q. And how would they know that?

4 A. By telephone number. There's a telephone --
5 specific NPA/NXX combinations that designate them as MCA
6 subscribers.

7 Q. All right.

8 A. In addition, many of these companies are
9 interexchange carriers, so they may have a relationship with
10 them from a toll basis and know what type of toll customer
11 they are.

12 Q. And they would have access to that information
13 through their affiliates?

14 A. I'm not sure of their separation. They in
15 some cases may be the same company. In some cases it may be
16 an affiliate, but yes.

17 Q. And the current FCC opt-in/opt-out provisions
18 allows affiliates to share that information unless there's a
19 specific opt-out by the customer?

20 A. That's correct.

21 Q. As far as getting any particular information
22 from -- about customers who are Bell customers who are not
23 necessarily signed up for MCA, for the MCA, and would not be
24 affiliates, how would they -- how would they know that they
25 were high use vertical customers?

1 A. We hope that how they're finding out is by
2 contacting the customers, and in contacting them, by talking
3 to them and trying to sell their service to them, but --

4 Q. Well, have you ever -- do you believe that
5 CLECs are calling all the lists of Southwestern Bell
6 customers and asking for permission to look at their files
7 to determine that?

8 A. I believe that CLECs are accessing our
9 customers' records, and I believe that the number of times
10 they've accessed our preordering data is much greater than
11 the number of times they've submitted an order, which leads
12 me to believe --

13 Q. I don't understand what you just said. Can
14 you explain that?

15 A. I can. We have preordering systems which are
16 EDI/CORBA, Verigate and Datagate. And what those systems
17 allow is for a CLEC to look at, for example, your account if
18 you were a Southwestern Bell subscriber.

19 So they could go, with your permission is the
20 way they represent it to us, with your permission they can
21 look and see if you have call waiting, caller ID, three-way
22 calling, speed calling, whatever the compilation of services
23 is, and they can do that.

24 And we have data that states the number of
25 preorder -- and that would be considered a preorder

1 activity. Okay. The number of preorder transactions that
2 have been placed is greater than the actual number of
3 service orders that have been placed.

4 Q. All right. And in the preorder activity --
5 excuse me. In the subsequent act-- no. In the preorder
6 activity, order to access your records, do they have to
7 provide you with something from the customer indicating
8 permission to look at those records?

9 A. It is a -- we have a -- they just click to say
10 they have end user authorization. We do not require them to
11 fax us anything or in any way provide proof that they have
12 received end user authorization.

13 Q. So there's no verification of that whatsoever?

14 A. Not up front. We do it on a trust basis with
15 them.

16 Q. Have you ever heard of anybody that's received
17 a telephone call asking -- from a CLEC asking for permission
18 or authorization to view their records with an ILEC?

19 A. Not to that level. I mean, I've talked to
20 customers who have switched and they've been contacted by
21 the CLECs to switch, but I've never heard -- I've never had
22 anybody tell me that the customer wanted to look just at
23 their account. But in the business side, it's probably very
24 possible, more so than the residential would be my guess.

25 Q. You've never heard of it in any event?

1 A. I don't believe so.

2 Q. Let me ask you this. Do you think it would be
3 appropriate under the statute for a CLEC to offer a
4 promotion that gave a discount or had a different amount
5 charged, a lower amount charged or no amount charged for a
6 particular item based upon -- and made that offer only to
7 customers of Southwestern Bell who also had vertical
8 services? Would that be appropriate under Missouri statute,
9 in your opinion?

10 A. Did you say lower?

11 Q. Yes. The customer's getting a break for
12 signing up.

13 A. Well, I'm familiar with a particular CLEC
14 tariff where the rate for a basic access line is in the
15 neighborhood of \$25 and the basic access line with a group
16 of features is like \$29. So it's pretty clear that at least
17 that particular CLEC does not want to serve a customer that
18 just has a basic line, and that tariff has been approved.

19 I know it's not lower, but I think at least in
20 my mind, Commissioner, that suggests that the CLECs may have
21 other tariffs similar to that where they want to attract and
22 target the customers that utilize vertical features and
23 toll, et cetera.

24 Q. Well, I understand what you're telling me, but
25 I don't think I'm -- that my question --

1 A. Did you ask me was it appropriate under
2 statute?

3 Q. Yes. Let me rephrase it a little bit.

4 Do you believe it would be appropriate under
5 the statute for a CLEC to create a segregated or a certain
6 class of customers that would be eligible for a promotional
7 that would waive signup fees, connection fees, similar to
8 what you've done --

9 A. Okay.

10 Q. -- just for customers of Southwestern Bell who
11 currently had vertical services?

12 A. Yes. I believe they could run a promotion
13 that allows a nonrecurring charge waiver for a customer who
14 subscribes to an access line and a vertical service. I
15 believe that promotion is okay under the statutes.

16 Q. And --

17 A. Not only for CLECs, but for Southwestern Bell.

18 Q. And not -- and a customer who did not
19 currently have vertical services but who was a customer of
20 Southwestern Bell would not be eligible for this promotion,
21 and you believe that that is appropriate under the statute?

22 A. I do. I believe the statutes allow for those
23 type of tariffs.

24 Q. And tell me the justification for it under the
25 statute, in your opinion.

1 A. Well, I think, Commissioner, what you're
2 looking at in that situation is, in your example, the CLEC
3 is making it available in this case to all subscribers of a
4 basic access line and a vertical feature or a group of
5 vertical features, whichever the case may be.

6 And if they're offering it to all of those
7 customers that meet that criteria, then I don't think it's
8 unjust or unreasonable and they're not discriminating.

9 Q. Is there ever a class that could be created by
10 a telephone company, in your opinion, that would violate the
11 prohibitions of 392.200 because of the particular class that
12 was created?

13 A. I'm sure there is. I hadn't thought about
14 that.

15 Q. You can't think of one right now either, can
16 you?

17 A. I'm trying to think of one.

18 Q. There is a significant amount of verbiage
19 dedicated to that principle in 200, isn't there?

20 A. Yes, there is.

21 Q. But you can't think of one right now?

22 A. That's probably why I'm not in our marketing
23 department.

24 Q. That might be.

25 A. But --

1 Q. Let me ask you this question. Do you think it
2 would be appropriate for a telephone company to offer a
3 particular promotional that would only apply to residents --
4 residential users who lived in houses painted red?

5 A. I think that would depend -- and I'm trying to
6 come up with an example for you while I'm answering this. I
7 think that would depend, Commissioner, on whether or not
8 there was one house painted red in the state or if we
9 thought there was one on every block or every city or in
10 every exchange or whatever, but -- and the reason I say that
11 is if you -- if someone -- here's an example of one that I
12 don't think would be acceptable under the statute, okay, and
13 that is in your scenario with a house that's painted red.

14 If there is a promotion that is defined so
15 what I'll call narrowly that there are only a small, and
16 when I say small, I mean handful of customers or maybe only
17 one customer, I think that could be something that the
18 Commission should look at. But if it's generally available,
19 then I'm not sure.

20 But, Commissioner, and I can't recall the
21 exact citation in the statute, but there is some provisions
22 to price below, as an example, below an exchange level as
23 well in the statute.

24 So I think the statute is very broad in the
25 guidance that it gives as far as interpretation on allowing

1 the marketplace to work in a competitive environment. And
2 you may be familiar -- I can't right at my fingertips point
3 to that cite in the statute, but you may be familiar with
4 it.

5 Q. And your answer about my red house question
6 wouldn't change if I made my houses white or green, would
7 it, or brick?

8 A. I think it depends again. If there's evidence
9 that there's only one customer or a customer, then possibly,
10 but I think the Legislature in creating these statutes
11 wanted it to be broadly interpreted to allow competition in
12 the marketplace to work.

13 Q. For some customers or all customers?

14 A. I think by extension it will get to all
15 customers. I believe that.

16 Q. A few months ago there was a problem with a
17 portion of a statute left out of some testimony by a Bell
18 witness that gave a different impression when you read it
19 without that provision in the quoted statute. That wasn't
20 your testimony in that case, though, I don't believe, was
21 it?

22 A. I don't even know, Commissioner, that I recall
23 that proceeding that you're referring to.

24 Q. I recall it.

25 Let me ask you this. On this question of the

1 \$1.95 provision for AT&T that you referred to in your
2 testimony --

3 A. Yes.

4 Q. -- if a Commissioner was of the opinion that
5 the \$1.95 provision was discriminatory, would that
6 Commissioner also have to conclude that this provision that
7 Bell is offering is discriminatory as well under your logic?

8 A. I don't believe so. I mean, the particular
9 Commissioner would have to determine why they felt that was
10 discriminatory and whether or not this particular tariff met
11 that same set of principles, if you will.

12 Q. The reason I'm asking is because you're using
13 it the other direction in your logic. You're saying the
14 Commission somehow made a conclusion it wasn't
15 discriminatory, if I'm following you, and, therefore, the
16 Commission in this case should conclude that this one
17 shouldn't be treated any differently under the same kind of
18 principles.

19 And I guess what I'm asking you is to me
20 understand if it works the other direction, why the opposite
21 conclusion shouldn't be drawn?

22 A. It'd be okay if all commissioners voted the
23 same way.

24 Q. That's right.

25 A. But, you know, there's been some testimony in

1 this proceeding regarding TT-2002-108. I think it's
2 2002-108. And, you know, the intervenors have suggested
3 that since the Commission denied that particular tariff,
4 they must do the same, and obviously we don't agree with
5 that.

6 So I think what you're seeing is both sides,
7 and I'll just speak for myself, but we are presenting
8 evidence to the Commission where they have done something in
9 the past that has supported our position. That doesn't, I
10 believe, obligate the Commission to do the same thing.

11 But I believe that what we're looking for,
12 Commissioner, is some guidance from the Commission where
13 we're getting some very mixed signals right now on how to
14 proceed in a competitive marketplace, what is appropriate
15 and what isn't.

16 And we firmly believe beyond a shadow of a
17 doubt that 392.200 applies to all carriers. So if it's
18 going to be good, a particular tariff, and approved for a
19 CLEC or an interexchange carrier, we cannot be excluded.

20 Q. And if -- you wouldn't disagree with me when I
21 suggest to you that the Commission has recently looked at
22 long-term commitments, sign-up periods for particular -- for
23 particular services in a contested case? You remember that
24 that's --

25 A. Yes.

1 Q. -- gone on?

2 A. TT-2002-227, yes.

3 Q. And it would be true there had been tariffs
4 that had gone into effect that, under the principles
5 enunciated in that decision, probably wouldn't have been
6 allowed to if that decision had come down before those
7 tariffs had gone into effect?

8 A. I agree.

9 Q. Help me to understand how offering this
10 winback provision to a particular class as created by
11 definition by Southwestern Bell is necessary to promote
12 competition.

13 A. I believe that competition is growing and
14 thriving today. What this tariff is designed to do from our
15 perspective is to allow us to better compete for those
16 customers who have chosen to receive service from a CLEC.

17 So from that perspective, in our perspective
18 at least, it's necessary to allow us to better compete for
19 that. And when we compete more vigorously in the market,
20 which we are trying to do, we believe that will extend to an
21 even greater level of competitive opportunities and
22 marketing strategies by the CLECs.

23 Q. Do you believe that competition would be -- is
24 assisted more because this offering is to a limited number
25 in a particular class defined by Southwestern Bell as

1 opposed to being offered to everyone?

2 A. This particular tariff is only available to
3 the particular class of customers, yes.

4 Q. And my question is --

5 A. Right. I think --

6 Q. -- how does that promote competition more so
7 than offering it to everyone?

8 A. I think that allows us to better compete for
9 those customers. Okay. Then we also offer many other
10 promotions, which you're aware of, that are offered
11 generally available or to customers who sign up for certain
12 packages or whatever the case may be.

13 But those are other ways that we're trying to
14 promote competition in the marketplace and to try to provide
15 customers with alternate providers and, if it meets their
16 needs, possibly lower rates.

17 Q. If -- just a second.

18 In this particular winback proposal, you're
19 just basically waiving the connection fee?

20 A. Correct.

21 Q. That's all that's being done. Let me ask you
22 this. If the Commission were to say this is appropriate in
23 this case, is there -- would the same logic apply if there
24 was a more attractive promotional offer in winback such as
25 next tariff filing we'll give you \$100? I'm not suggesting

1 that that would be feasible economically or financially.

2 But is there any difference in this particular
3 offer of just waiving the connection fee as opposed to
4 offering something more substantial or significant in
5 another tariff?

6 A. I do believe that each tariff needs to be
7 evaluated on its own. In the particular example that you
8 mentioned, I cited in my testimony examples where carriers,
9 albeit in the interexchange business, are, in fact, doing
10 that.

11 And, you know, the day may not be long before
12 those type of promotions are available in the local
13 marketplace, and I don't -- is there something that would
14 cause it? Yes. Is a 75 or \$100 check that? I don't think
15 so, again because when you look at the promotion, at least
16 when we do, we look at it on the aggregate basis.

17 Okay. We don't look at it -- on an individual
18 customer, it may be below cost, but when you look at it over
19 all the customers and all that choose to receive service
20 from you and the array of products and services that they
21 all buy, a firm I don't believe is going to run a promotion
22 that they think is going to lose money.

23 None of us are in the business to lose money.
24 So I think we're going to present to the Commission for
25 consideration marketing efforts that are economically viable

1 for Southwestern Bell.

2 Q. Okay. But putting that possibility aside for
3 the moment of it being priced to such an extent that you can
4 even get into questions of predatory pricing and other
5 things, keeping away from that, what in the statute draws a
6 distinction between offering a winback that just says we're
7 going to waive the connection fee as opposed to we're going
8 to give you \$100 if you sign back up with us?

9 A. One of the things that comes to mind is an
10 opinion of this Commission in the 227 case. I mean, the
11 Commission at this point is concerned about term agreements.
12 So that might be something that for this period of time the
13 Commission would want to say we probably should talk about
14 that, you know.

15 I personally don't think that those tariffs
16 should be suspended. That's our position.

17 Q. I understand.

18 A. I understand why the Commission --

19 Q. I want you to ignore something where the
20 Commission has already said we think this interferes with
21 competition. I'm looking for this distinction in that
22 scenario between \$100 that's being offered and this just
23 we're going to waive a connection fee.

24 A. Just limiting it to that specific scenario, I
25 don't think there's a difference.

1 Q. So if the Commission were to say we think that
2 in this case it's okay, you can't think of any reason, at
3 least right now, why a promotional that says we'll not only
4 waive it, we'll give you \$100 would be any different from a
5 legal standpoint?

6 A. There are other tariffs that have been
7 approved by CLECs that I've reviewed that, for example,
8 provide a month free, you know, you do this and then you get
9 a month free, those kind of things, and I don't -- I don't
10 see anything wrong with them from my perspective, again, as
11 long as the statutes are applied equally.

12 Q. And you don't see any distinction? That's
13 what I'm asking.

14 A. I really don't, Commissioner. I really don't.

15 Q. And you may -- I asked this question. I'm not
16 sure if I got a complete answer. And that is, how does
17 giving this waiver of the connection fee to this particular
18 group promote competition more than waiving it for everyone?

19 A. I believe that it gets back to again if the
20 customers understand that they can leave us and go to a CLEC
21 and know that they can return and there's not a nonrecurring
22 charge, it is more likely that they will try competition.

23 Now, versus generally available, would that
24 promote competition? I guess it could. I mean, probably
25 any tariff out there that allows a customer more choice and

1 more flexibility, I think, you know, as a general statement
2 is going to be okay for competition.

3 But this particular one, if we made it
4 generally available, I don't know that it would. I don't
5 know that it wouldn't. It certainly might.

6 Q. All right. And in regard to your -- to your
7 statement in that answer regarding how a customer might be
8 more willing to leave Southwestern Bell to go to a CLEC when
9 they know that they can come back without incurring the
10 connection charge, how do they know that before they leave?
11 How would they find that out?

12 A. More than likely, it would be by word of
13 mouth, from customer to customer to customer.

14 Q. And how do they find out about it after
15 they're with a CLEC, in all likelihood?

16 A. In all likelihood, if another customer didn't
17 tell them, the most likely example is they would call us to
18 come back to Southwestern Bell and we would tell them.

19 Q. Would you -- Southwestern Bell wouldn't engage
20 in telemarketing to call those customers saying, We'd love
21 to have you back, and if you come back it won't cost you
22 anything?

23 A. Sure. We're likely to send letters or call
24 the customer and say, We have this promotion going on right
25 now.

1 Q. That's after they've left?

2 A. That's after they've left, correct.

3 Q. And just to follow up on Commissioner Lumpe's
4 questions in regard to these other states, and I recognize
5 what you said about Dr. Aron's testimony, but let me -- are
6 there tariffs currently suspended in other states that deal
7 with winback, if you know?

8 A. I'll only speak for the Southwestern Bell
9 region. I'm not aware of any tariff that is suspended right
10 now in any other state except Missouri.

11 Q. And you're not aware of any that are in any
12 kind of a -- that have been heard and approved in another
13 state or are in a contested case?

14 A. I'm not aware that there's been a hearing
15 on -- in any other state, other than I know in Texas they
16 have -- it's not a hearing. I think it's actually a
17 rulemaking proceeding, but that's not a hearing.

18 Q. Okay. So there could be some dockets open in
19 some other states investigating whether or not winbacks
20 should be allowed?

21 A. And there is a -- there's a docket in Texas.
22 There's some type of docket in Kansas. I don't frankly know
23 what they're doing in the dockets. As I understand it, it's
24 kind of they're -- I think it's one of those that it's open
25 but it's not active and it may become active today,

1 tomorrow, next week, but I don't think there's any activity
2 in it at this point.

3 COMMISSIONER GAW: That's all I have. Thank
4 you, Mr. Hughes.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: I have no questions, so we'll
7 go to recross beginning with Staff.

8 MR. HAAS: Yes, your Honor.

9 RE-CROSS-EXAMINATION BY MR. HAAS:

10 Q. Mr. Hughes, do you recall some questions from
11 Commissioner Gaw about the application of 392.200?

12 A. Yes, I do.

13 Q. And I want you to assume that Southwestern
14 Bell and a CLEC propose identical tariff filings. I want
15 you to then assume that the Commission reviews both filings
16 under Section 392.200.

17 Would it be your position that the Commission
18 could not approve the CLEC tariff filing and reject the
19 Southwestern Bell tariff filing after having applied that
20 same standard?

21 A. Yes.

22 MR. HAAS: No other questions.

23 JUDGE WOODRUFF: Okay. Public Counsel?

24 MR. DANDINO: No questions, your Honor.

25 JUDGE WOODRUFF: All right. WorldCom and

1 NuVox?

2 RECROSS-EXAMINATION BY MR. CURTIS:

3 Q. Hello, Mr. Hughes.

4 A. Good afternoon.

5 Q. You recall Commissioner Lumpe asked you why
6 you had a year-long promotion for the winback?

7 A. Yes.

8 Q. Do you recall that? Let me ask this. I think
9 you earlier in testimony indicated that while the
10 operational dates for the tariff as filed were April 9, 2000
11 (sic) to April 8 of 2003, you would probably, if this
12 particular tariff were approved or tariffs were approved,
13 you would refile for a year out from whatever the approval
14 date would be, right?

15 A. That's correct.

16 Q. Can we assume that if this Commission were to
17 approve the winback tariffs and the win tariff here, that
18 you would refile those similar tariffs, winback tariffs at
19 the end of a year's expiration?

20 A. I don't know. I mean, certainly we would,
21 Mr. Curtis, likely do something in the area. Would it be
22 these tariffs? I don't know the answer to that.

23 Q. You could in effect do that?

24 A. We could. I mean, we've done it before,
25 right. This is -- in some regards is an extension of the

1 one that was just approved. I mean, the time frame was such
2 that we wanted to keep it going for another year.

3 Q. So in effect you could arguably have a rolling
4 permanent winback tariff situation?

5 A. Arguably, yes.

6 Q. Commissioner Gaw asked you a question
7 regarding proceedings in other states. I think you
8 mentioned Kansas. Are you aware that hearings are scheduled
9 in February and that's an investigation into winbacks?

10 A. I had not heard they had set hearings, no.

11 Q. You got into a very interesting discussion
12 with Commissioner Gaw regarding the application and your
13 understanding of the application of Section 392.200.

14 A. Yes.

15 Q. And I was surprised to hear you say that
16 classes can be created on virtually any basis and discounts
17 awarded under that statute. Is that generally what you were
18 suggesting?

19 A. I believe the statute is very broad, yes.

20 Q. And you maybe drew the line at customers who
21 had red houses because there might be just a very small
22 number of those red houses?

23 A. That's what I stated.

24 Q. But you -- if we could posit that within a --
25 within Southwestern Bell's exchanges brick houses constitute

1 35 percent of the homes, that that would be a large enough
2 group that clearly a discount could be given to all
3 Southwestern Bell customers who had brick houses; is that
4 correct?

5 A. That's correct.

6 Q. Okay. Let me ask this further. Could you
7 also say that households in which you can produce one family
8 member who has red hair would be entitled to a discount
9 under your theory?

10 A. I guess, theoretically only, I can do that,
11 but -- yes.

12 Q. You could do that?

13 A. I think you could.

14 Q. Black skin?

15 A. I think the statutes allow for that, yes.

16 Q. That's interesting. You did say you have not
17 had any legal training?

18 A. None.

19 Q. You've testified at some length in your
20 testimony regarding the meaning and interpretation of
21 Chapter 392.200, haven't you?

22 A. Yes, in my position in charge of regulatory
23 matters for Missouri.

24 Q. And generally, that chapter, that particular
25 section of the chapter deals with discrimination in a

1 variety of forms in pricing, does it not?

2 A. Yes. In part, yes.

3 Q. Why do you think the Legislature wrote such
4 anti-discriminatory language with regard to pricing in
5 telecommunications?

6 A. Well, I think -- and this again is my opinion
7 of what they intended -- they wanted the statutes to be
8 broad and allow competition in the marketplace to work and
9 not regulation.

10 Q. Have you read any of the case law that
11 interprets Chapter 392.200?

12 A. I'm afraid I have not.

13 Q. Do you know what case law is?

14 A. I do.

15 Q. You know that there are cases that exist where
16 courts have interpreted Chapter 392.200?

17 A. I'm sure there are.

18 Q. Commissioner Gaw asked you regarding the
19 effect of TT-2002-108 and the companion case that went with
20 that.

21 A. Yes.

22 Q. And did I -- I thought I heard you suggest
23 that the intervenors have suggested to the Commission that
24 the Commission is bound by that previous decision?

25 A. No. What I was explaining to him is that I

1 think both sides, the intervenors and us, had suggested that
2 the Commission had -- we were both providing the Commission
3 with examples of prior decisions, and I believe that it's
4 the position of your clients that the Commission should
5 follow the decision that it made in that.

6 Q. Right. But can you point me to any place in
7 any intervenor's testimony where it is suggested by an
8 intervenor witness that this Commission is bound by that
9 prior decision?

10 A. I don't believe I ever stated that.

11 MR. CURTIS: Thank you. I have nothing
12 further.

13 JUDGE WOODRUFF: All right. AT&T?

14 RE-CROSS-EXAMINATION BY MS. DeCOOK:

15 Q. Mr. Hughes.

16 A. Good afternoon.

17 Q. There was some discussion with Commissioner
18 Lumpe regarding situations where commissions have approved
19 other winback offers by regional Bell operating companies.
20 Do you remember that?

21 A. Yes.

22 Q. And I believe you said that there were several
23 listed in Dr. Aron's testimony where those commissions had
24 approved the winback offers. Do you recall that?

25 A. I recall stating that she has a list in there

1 of the states that I believe have some type of winback
2 activity ongoing.

3 Q. And for the ones that she identifies that the
4 commissions actually approved a winback offering, they did
5 so with a waiting period attached, did they not?

6 A. Do you have a specific example that you'd like
7 to point me to in Dr. Aron's testimony?

8 Q. It's at page 36 of 37 in her testimony, and I
9 found at least two places where there was actual winback
10 tariff at issue that was approved, and that was South
11 Carolina and Georgia.

12 A. I believe that Georgia and South Carolina and
13 Illinois refer to such a waiting period. I believe Dr. Aron
14 amended her testimony on the stand to say that the waiting
15 period had been removed in Illinois, and she testifies that
16 she's not aware of any outright ban on winback marketing in
17 Illinois.

18 Q. There's no cite to any order on that
19 particular point, is there, in her testimony?

20 A. She did not cite to an order, no.

21 Q. Now, you also seem to be, although I'm not
22 clear if you're accusing CLECs of misusing customer service
23 information. Is that what you're doing?

24 A. I'm not accusing them. I'm just saying it is
25 interesting to me that the number of preordering activities

1 is significantly greater than the number of orders that have
2 been submitted.

3 Q. And there is an audit provision in many ICAs
4 that allows -- interconnection agreements that allows
5 Southwestern Bell if they believe that a CLEC is somehow
6 abusing customer information, you can invoke that audit
7 provision, right?

8 A. There are terms of the interconnection
9 agreement that likely call for such an audit.

10 Q. And it's true, isn't it, that a provider who
11 is provisioning DSL service -- you know what that is?

12 A. DSL?

13 Q. Uh-huh.

14 A. Yes, I do.

15 Q. Okay. Don't they have to look at a customer's
16 records in terms of what type of facilities they have and
17 the equipment that may be on, facilities like bridge taps
18 and load coils, to determine if the customer even qualifies
19 for service?

20 A. You're referring to loop qualification --

21 Q. Right.

22 A. -- process. Yes, they do.

23 Q. Wouldn't they have to look at some preorder
24 information in order to --

25 A. I don't believe so.

1 Q. No? You don't think so?

2 A. I don't think the loop qual is part of
3 Datagate and Verigate. I don't believe so.

4 Q. So that's what you're specifically referring
5 to?

6 A. Yes, Datagate Verigate and EDI/CORBA.

7 Q. Now, you were asked some questions by
8 Commissioner Gaw about how this particular promo or this
9 particular offering promotes competition given the limited
10 class of customers that you have chosen to offer it to. Do
11 you recall that?

12 A. I don't think the class of customers is
13 limited. It's available to all within that class.

14 Q. Well, it's not available to all customers of
15 local service. It's only available to the subset that
16 you've defined, right?

17 A. That's correct.

18 Q. Okay. And isn't the message that Southwestern
19 Bell is sending through this offering is that you're willing
20 to price compete if a CLEC is successful in winning a
21 customer?

22 A. I don't believe so. I believe we have a lot
23 of promotions that this Commission has approved that offer
24 competitive prices in the marketplace that aren't
25 necessarily for winback.

1 Q. And for those loyal customers that don't ever
2 take that first step and move to a CLEC, then they have no
3 ability to waive -- have the nonrecurring charge waived;
4 isn't that true?

5 A. They may have received their line from
6 Southwestern Bell under a different promotion that waived
7 their nonrecurring charge. I don't know.

8 Q. But under this offer, they are not eligible
9 right?

10 A. They already have service. They couldn't be
11 eligible. They've already paid us or had it waived in the
12 past.

13 Q. Isn't it true that if this winback offer were
14 made to all local service customers of SWBT, that they would
15 have the ability to freely move back and forth between
16 competitors and Southwestern Bell?

17 A. If it was available to all customers?

18 Q. Right.

19 A. Yes, they could -- we could use it -- we could
20 waive -- excuse me. We could waive -- we would waive the
21 charge when a customer came back from a CLEC, yes.

22 Q. And one of the touted public interest benefits
23 that you've identified would then be available to all of
24 your local service customers, not just to the ones that have
25 chosen CLECs, right?

1 A. If we made a business decision to make that
2 offer, yes.

3 MS. DeCOOK: Thank you.

4 JUDGE WOODRUFF: Redirect?

5 REDIRECT EXAMINATION BY MS. MacDONALD:

6 Q. Good afternoon, Mr. Hughes.

7 A. Good afternoon.

8 Q. I'd like to ask you a few questions following
9 up to some questions that Mr. Haas asked you about
10 South Carolina.

11 Did the Commission in South Carolina find that
12 the winback promotion that was presented to them did not
13 impede local competition?

14 A. No. I'm referring to Dr. Aron's testimony,
15 page 36 of 37. In South Carolina the Commission reached
16 five conclusions regarding that, and they --

17 Q. Can you tell me what five conclusions they
18 reached?

19 A. Sure. One, the winback promotion did not
20 impede local competition.

21 Two, the winback promotion may actually
22 promote competition since NewSouth or TriVergent could
23 obtain a BellSouth customer via resale of the winback
24 promotion.

25 Three, there is no abuse of market position by

1 BellSouth.

2 Four, the winback promotion is not
3 discriminatory.

4 Five, the winback promotion does not violate
5 criteria laid out by the FCC.

6 Q. Thank you.

7 You were asked a series of questions this
8 morning by Mr. Dandino regarding basic local customers that
9 are solely basic -- solely want basic local service without
10 any vertical features. Are those the type of customers that
11 CLECs are trying to win?

12 A. I don't believe so.

13 Q. Can you give me an example of any CLEC that
14 would lead you to believe that they are specifically not
15 interested in serving those customers?

16 A. Yes. I've reviewed the tariff of Sage, and in
17 their tariff they have an offering for basic line around \$25
18 and a basic line with features and toll for in the
19 neighborhood of \$29 for residential customers.

20 That leads me to believe they have no interest
21 in serving a customer who only subscribes to a basic line
22 when our basic line rates for residential customers are in
23 the \$7.50 to \$12.50 range.

24 Q. Okay. Thank you.

25 In response to some questions that you were

1 asked by Ms. DeCook, you indicated that it's conceivable
2 that the CLECs may be reporting all 911, I think you said
3 inbound calls.

4 A. On inbound lines.

5 Q. On inbound lines. Wouldn't it be fair to say
6 that that's not probable?

7 A. I believe it is fair to say it's not probable.
8 There may be an instance or two, but as a general matter, I
9 don't believe they would be reporting those.

10 Q. And can you tell this Commission why it would
11 not be probable?

12 A. Well, as I stated, the E911 database does not
13 need to know for inbound purposes where they're located.
14 The database works off of the outbound number from where the
15 customer's calling to direct the emergency response unit to
16 a particular location.

17 Q. Okay. If you would, could you turn to page 6
18 of your direct testimony.

19 A. Yes.

20 Q. And you were asked a series of questions by
21 Ms. DeCook to upgrade -- to update various numbers on that
22 table. However, Ms. DeCook indicated she was not interested
23 in the E911 listings or the UNE-P listings for the month of
24 July. Do you have those numbers with you?

25 A. I do.

1 Q. Could you provide those for the Commission?

2 A. I can. E911 listings at the end of July were

3 172,412. UNE-P at the end of July was 131,994.

4 Interconnection trunks were 129,366, and cumulative ported

5 numbers were 381,341.

6 Q. Thank you.

7 A. And I do also have the number of CLECs passing

8 orders.

9 Q. Okay. And can you tell us that, please, too?

10 A. That was 76 at the end of July.

11 Q. So that number is also up?

12 A. Yes, it is.

13 Q. You were asked a series of questions by

14 Commissioner Gaw regarding various things that might be

15 considered unjust or unreasonable under 392.200.3; is that

16 correct?

17 A. Yes. Under the statute, yes.

18 Q. Do you believe that this Commission could make

19 a determination that it was unreasonable or unjust to

20 make or -- strike that.

21 Do you believe that this Commission could find

22 that it was neither just nor reasonable to make a promotion

23 available to a class of customers on the basis of national

24 origin, for example?

25 A. As I stated to Commissioner Gaw and as I

1 stated to Mr. Curtis, I believe the tariff is very broad in
2 defining a class of customers.

3 I guess I should state, just so everybody
4 doesn't walk away and have this bad impression of what I'm
5 saying, there are probably some other laws that would make
6 this, you know, national origin or class of persons' color
7 or something, there may be other laws.

8 But I think the statute is broad in the
9 definition that allows you to define a class of customers,
10 yes.

11 Q. But even if you believe that a -- believe that
12 you could, for example, have a promotion that was only --
13 was only made on the basis of a person's national origin,
14 wouldn't it also be true that the Commission could determine
15 that that was unreasonable?

16 A. Sure.

17 Q. Okay.

18 A. That's a finding they could make under the
19 statute.

20 Q. And they could do that with regard to sex,
21 religion, national origin or race?

22 A. They most certainly could.

23 Q. Okay. And the same would hold true for the
24 example of the red houses, they could determine that there's
25 no reasonable basis for that?

1 A. The red houses or the red hair, either one.

2 Q. And can you tell me, are CLECs specifically
3 targeting customers who live in red houses, to your
4 knowledge?

5 A. Not to my knowledge.

6 Q. Okay. Can you explain to me which type of
7 customers CLECs are targeting?

8 A. I believe they're targeting customers that are
9 generally considered within the industry profitable
10 customers, and what I mean there are business customers and
11 residential customers that subscribe to vertical features or
12 other services such as voicemail, Internet, DSL, or are high
13 toll users.

14 Q. And is it reasonable that Southwestern Bell be
15 allowed to offer promotions that are directed to the very
16 same groups that the CLECs are targeting?

17 A. I believe it is reasonable.

18 Q. Now, you were asked a series of questions by
19 Commissioner Gaw about how a customer would know that we
20 were willing to waive nonrecurring charges for winback
21 customers, correct?

22 A. Yes.

23 Q. And can you tell me, especially with regard to
24 large business customers, do they have specific individuals
25 working at those companies that would be aware of various

1 tariff provisions that Southwestern Bell has for its
2 services?

3 A. Yes. Most bigger companies, big companies
4 have telecommunications manager or someone of that ilk or
5 title that is knowledgeable of what's going on in the
6 industry.

7 Q. So their telecommunications expert could gain
8 knowledge of the nonrecurring charge waiver that
9 Southwestern Bell proposes to offer simply by reading our
10 tariffs?

11 A. Yes.

12 Q. And would you agree with me that those big
13 customers, the profitable ones, are the very customers that
14 the CLECs are targeting?

15 A. They're targeting those customers in addition
16 to residential customers that subscribe to the services I've
17 outlined earlier.

18 Q. Commissioner Gaw also asked you a series of
19 questions about whether or not it would be permissible or
20 you would be in favor, I guess, of allowing a company to
21 offer money in exchange for -- as a promotional offer.

22 Are you aware of any tariffs that Southwestern
23 Bell currently has in effect that would provide checks to
24 customers for subscribing to certain services?

25 A. No, I'm not. We do have, I believe, some

1 coupon offers, but I'm not aware of anything where it would
2 be cash, or bill credits of like \$20, \$25 if you subscribe
3 to vertical feature packages.

4 MS. MacDONALD: Your Honor, at this time I'd
5 like to get a couple of things marked as exhibits.

6 JUDGE WOODRUFF: All right.

7 MS. MacDONALD: Unfortunately, I don't have
8 copies, but I will make copies and bring them back.

9 (EXHIBIT NOS. 22, 23 AND 24 WERE MARKED FOR
10 IDENTIFICATION.)

11 BY MS. MacDONALD:

12 Q. Mr. Hughes, I'm going to come to your side so
13 we can review these tariffs together, but can you identify
14 the first tariff which I have handed you, which is Exhibit
15 No. 22?

16 A. This is PSC Mo. 35, General Exchange Tariff,
17 Section 47, Original Sheet 7.

18 Q. Okay. And can you please tell the Commission
19 what that promotion provides?

20 A. This promotion offers a \$20 check to
21 residential customers that subscribe to the SBC Advantage
22 Plan where central office facilities allow. Residential
23 customers who agree to purchase the SBC Advantage Plan will
24 be eligible to receive a coupon redeemable for the \$20
25 check. Current subscribers to the SBC Advantage Plan and

1 The Works are not eligible for this offer. This promotional
2 offer is available from August 1st, 2002 through
3 August 31st, 2002.

4 Q. Thank you.

5 Now, if you could, would you look at
6 Exhibit 23 and can you tell -- can you identify that exhibit
7 for me?

8 A. This is tariff PSC Mo. No. 35, General
9 Exchange Tariff, Section 44, 3rd Revised Sheet 4.

10 Q. And can you tell me the purpose of that
11 promotion specifically with regard to paragraph 23?

12 A. Business customers who meet the terms and
13 conditions of this offer and who order Business Preferred
14 between August 5th, 2002 and October 31st, 2002 will receive
15 a coupon that can be redeemed for \$20.

16 Q. Okay. And lastly, can you please identify
17 Exhibit No. 24?

18 A. It's tariff PSC Mo. No. 35, General Exchange
19 Tariff, Section 47, Original Sheet 6.

20 Q. And can you tell me the purpose of that
21 promotion?

22 A. New or existing residence customers who
23 subscribe to Privacy Manager during the promotional period
24 will receive Privacy Manager free for three months and a
25 nonrecurring installation charge waiver. Customers who

1 already subscribe to Privacy Manager are not eligible for
2 the promotion. There are no retention requirements
3 associated with this offer. This promotion is available
4 from July 22nd, 2002 through October 26th, 2002.

5 Q. And to your knowledge, are Exhibits Nos. 22,
6 23 and 24 tariffs that are currently in effect for
7 Southwestern Bell?

8 A. Yes.

9 Q. Okay. And are these the type of promotions
10 that would allow both compensation and/or compensation by
11 the way of months free that you were previously discussing
12 with Commissioner Gaw?

13 A. Yes.

14 Q. You were asked a series of questions by
15 numerous parties this morning with regard to cost
16 justification for the difference between a winback customer
17 and a new customer. Do you remember those series of
18 questions?

19 A. Yes.

20 Q. Is Southwestern Bell contending that the
21 Commission should approve this tariff on the basis of a
22 difference in cost to bring a winback customer back as
23 opposed to a new customer?

24 A. No, we are not.

25 Q. You were also asked a series of questions by

1 Ms. DeCook with regard to Southwestern Bell's performance.

2 Do you remember those questions?

3 A. Yes, I do.

4 Q. And she handed you an exhibit which has been
5 marked as Exhibit No. 21. Do you remember reviewing that
6 exhibit?

7 A. Yes, I have.

8 Q. And I don't know if you stated this or not,
9 forgive me, but can you tell me what performance
10 Southwestern Bell had, and by that I mean the percentage of
11 performance measurements it actually achieved in that
12 report?

13 A. There are two levels that are indicated in the
14 report. One is at paragraph 2, which says, Southwestern
15 Bell's rolling three-month period all performance measures
16 success ratios for the months of April 2002 through June
17 2002 were 95 percent.

18 Paragraph 3 continues to say, The Staff also
19 reports that for the month of June 2002, Southwestern Bell
20 met benchmark or parity levels for 380 of 402 counted
21 measures for an all-measures success rate for that month of
22 94.5 percent.

23 Q. And was that -- and were those percentages
24 part of the basis for your statement that Southwestern
25 Bell's providing outstanding service?

1 A. That and, as I indicated in my testimony, for
2 a period of greater than 12 months we've been at over
3 90 percent.

4 MS. MacDONALD: That's all the questions I
5 have. Thank you.

6 JUDGE WOODRUFF: All right. Thank you. And
7 you may step down.

8 (Witness excused.)

9 JUDGE WOODRUFF: And it's time for a break.
10 We'll take a break and come back at 2:40.

11 (A BREAK WAS TAKEN.)

12 JUDGE WOODRUFF: Let's come to order and go
13 back on the record.

14 As you may have heard, there's a possibility
15 that the hearing will not be completed today. We do not
16 intend to go late after five o'clock. The Commission's
17 schedule is open for tomorrow, and the hearing room is
18 available if we need to.

19 Of course, I and I'm sure all of you would
20 prefer to be able to finish today if we can, but I don't
21 want to try to rush anybody's cross-examination or
22 testimony. So you're all aware.

23 All right. We'll go ahead and proceed now
24 with Don Price is on the stand for MCI, and -- I'm sorry.

25 MS. MacDONALD: Your Honor, before we do that,

1 I'd forgotten to offer Exhibits 22, 23 and 24 into evidence,
2 and I wanted to do so at this time.

3 JUDGE WOODRUFF: Do you have copies of them
4 yet?

5 MS. MacDONALD: Actually, they're making them
6 right now.

7 JUDGE WOODRUFF: Exhibits 22, 23 and 24 have
8 been offered into evidence. Are there any objections to
9 their receipt?

10 (No response.)

11 JUDGE WOODRUFF: Hearing none, they will be
12 received into evidence.

13 (EXHIBIT NOS. 22, 23 AND 24 WERE RECEIVED INTO
14 EVIDENCE.)

15 (Witness sworn.)

16 JUDGE WOODRUFF: All right. And you may
17 inquire.

18 DON PRICE testified as follows:

19 DIRECT EXAMINATION BY MR. CURTIS:

20 Q. Please state your name again.

21 JUDGE WOODRUFF: You need to come up to the
22 podium.

23 BY MR. CURTIS:

24 Q. Please state your name for the record.

25 A. Yes. My name is Don Price.

1 Q. And for whom do you work, Mr. Price?
2 A. WorldCom.
3 Q. And what is your title at WorldCom?
4 A. Senior Manager - Competition Policy.
5 Q. Are you the same Don Price who has caused to
6 be filed for this Commission and this docket rebuttal and
7 surrebuttal testimony?
8 A. Yes, I am.
9 Q. And these have been previously marked
10 Exhibits 8 and 9. Do you know that?
11 A. I do now.
12 Q. You know it now. Okay. Excellent.
13 Directing your attention to your rebuttal
14 testimony, Exhibit 8, do you have any additions or
15 corrections to make there?
16 A. I have no editorial-type corrections or
17 additions. What I would propose to do at this time, with
18 the Judge's permission, is to make those changes that
19 reflect the decision by the Commission regarding the Motion
20 to Strike.
21 And what that would constitute is, in
22 Exhibit 8, the rebuttal testimony, beginning at page 2,
23 line 22 -- that's interesting. I have two page 2s. Let's
24 take the second page 2.
25 Q. Okay.

1 A. Beginning at line 22, at the end of that line
2 there's a sentence that begins "I will," and then it
3 continues on to the next line, "discuss", and I would strike
4 all of that to the following page, the portion of the
5 sentence that carries over on to line 3.

6 Q. Of page 3?

7 A. Of page 3. And then the rest of line 3 would
8 remain.

9 Q. Okay.

10 A. Then turning to page 14, at line 1, I would
11 strike the sentence beginning with the words "First, SWBT's
12 practices," that entire sentence which completes on line 3,
13 and then the remainder of that line 3 at page 14 would
14 remain.

15 Then also on page 14, striking the question
16 beginning at line 9, all the remainder of that page,
17 following page 15, the following page 16, and through
18 line 15 on page 17, which is the end of an answer. I don't
19 think it's the same question that began.

20 And finally, at page 26, beginning at line 23,
21 the very last line on that page, I would strike the
22 remainder of that answer. So at line 23 where there's a
23 comma in the middle of that sentence, that should be the
24 period.

25 Those are all of the changes that I have.

1 Q. Let me refer you back to page 14 of your
2 rebuttal testimony, top of the line, line No. 1. You say,
3 There are at least three reasons why this is true. Are you
4 there?

5 A. Yes.

6 Q. Since the first reason has been struck, do we
7 want to make that just two reasons?

8 A. We're looking for consistency here.

9 Q. That's what we're all about.

10 A. In that event, what I would do is, at line 1 I
11 would replace -- yes, on line 1 I would replace the word
12 "three" with the word "two", t-w-o. Then at line 3, instead
13 of "second", I would say "first", and then at line 5, about
14 halfway or so down that line, instead of the word "third" I
15 would say "second".

16 Q. Let's move to Exhibit 9. Does that complete
17 all of your corrections on Exhibit 8?

18 A. Yes, it does.

19 Q. Exhibit 9 is your surrebuttal testimony. Do
20 you have any additions or corrections to make there?

21 A. None to my knowledge.

22 Q. Mr. Price, if you were asked the same
23 questions that are contained in Exhibits 8 and 9 today,
24 would your answers be the same as are contained in these
25 exhibits?

1 A. Yes, they would.

2 Q. Would those be true and correct to the best of
3 your knowledge?

4 A. Yes, they would.

5 MR. CURTIS: At this time I would like to
6 offer into evidence exhibits 8 and 9 and tender the witness
7 for cross.

8 JUDGE WOODRUFF: Exhibits 8 and 9 have been
9 offered into evidence. Are there any objections to their
10 receipt?

11 (No response.)

12 JUDGE WOODRUFF: Hearing none, they will be
13 received into evidence.

14 (EXHIBIT NOS. 8 AND 9 WERE RECEIVED INTO
15 EVIDENCE.)

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

18 MR. HAAS: No questions, your Honor.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. DANDINO: No questions, your Honor.

21 JUDGE WOODRUFF: AT&T?

22 MS. DeCOOK: No questions.

23 JUDGE WOODRUFF: Southwestern Bell?

24 CROSS-EXAMINATION BY MR. LANE:

25 Q. Good afternoon, Mr. Price.

1 A. Hello, Mr. Lane. How are you?

2 Q. Great.

3 Would you turn to page 6 of your surrebuttal
4 testimony.

5 A. All right.

6 Q. I want to focus on lines 5 through 8 of your
7 surrebuttal on page 6 where you make the claim that
8 Southwestern Bell's loss of customers to a CLEC should have
9 no effect on prices paid by Southwestern Bell's remaining
10 customers. Do you see that discussion?

11 A. I do see that discussion. The copy that I
12 have in my surrebuttal is not a record copy. It's not the
13 as filed, so the pagination may be a little off. Are you
14 referring to the sentence that begins "but SWBT's decision?"

15 Q. Correct.

16 A. Okay.

17 Q. And the reason that you make that assertion is
18 because Southwestern Bell is subject to price cap
19 regulation; is that right?

20 A. Correct.

21 Q. The same holds true if Southwestern Bell
22 offers a special price or a waiver of nonrecurring charges
23 for current CLEC customers to come back to Southwestern
24 Bell, that in this instance as well other Southwestern Bell
25 customers don't pay more as a result, correct?

1 A. That's nominally true. I mean, the question
2 would still remain whether they would be paying more than
3 they might otherwise be paying, but in answer to your
4 question, that's true.

5 Q. The loss of a customer doesn't increase the
6 charges paid by other customers under price cap regulation,
7 right?

8 A. Correct.

9 Q. And the return of a customer under a winback
10 tariff that waives nonrecurring charges likewise doesn't
11 increase the cost or charges to other Southwestern Bell
12 customers under price cap regulation, right?

13 A. In and of itself, no.

14 Q. Now, there's some discussion in this case
15 about financial difficulties of CLECs, and you refer to that
16 in your surrebuttal testimony on page 2, right?

17 A. I believe that's right.

18 Q. With regard to WorldCom, it's fair to say that
19 the bankruptcy filing that it has made has not impeded
20 dramatic growth in the Neighborhood plan that WorldCom
21 offers, right?

22 A. That is correct.

23 Q. And it's fair to say, isn't it, that under the
24 Neighborhood plan that WorldCom has just announced that it
25 has achieved a million customers nationwide in just six

1 months under that plan?

2 A. That is correct.

3 Q. And that WorldCom expects to gain another
4 million customers nationwide under the Neighborhood plan by
5 the end of the year, right?

6 A. That may be the case. I did not read the
7 press releases as carefully as I might have.

8 MR. LANE: May I approach the witness, your
9 Honor?

10 JUDGE WOODRUFF: You may.

11 BY MR. LANE:

12 Q. You indicated a price release, Mr. Price. I'm
13 going to show you something from the WorldCom website and
14 ask if that's the press release that you referred to and, in
15 addition, whether it indicates that the company expects to
16 hit a combined additional one million customers by the year
17 end?

18 MR. CURTIS: Paul, could I get a copy of that,
19 please?

20 MR. LANE: Sure.

21 THE WITNESS: That is the document that I was
22 referencing.

23 BY MR. LANE:

24 Q. And fair to say that it indicates that
25 WorldCom expects to an get an additional one million

1 combined long distance and Neighborhood customers by the end
2 of the year?

3 A. The wording that you used is a little
4 different than perhaps I might use because the product is a
5 local and long distance product, and I think the reference
6 to the additional one million would be as to that product,
7 not total number of long distance and/or local customers.

8 Q. An additional one million customers by the end
9 of the year under the Neighborhood plan itself, right?

10 A. That's my understanding and hope, in fact.

11 Q. And do you know how many of those million
12 customers nationwide under the Neighborhood plan today
13 reside in Missouri?

14 A. No, I don't.

15 Q. Do you know how many of the additional million
16 that MCI or WorldCom expects on a nationwide basis are
17 anticipated from Missouri?

18 A. No, I don't.

19 Q. It's fair to say that, despite the bankruptcy,
20 that WorldCom intends to keep providing all local and long
21 distance services in Missouri, including the Neighborhood
22 plan, right?

23 A. Yes. We've made it very clear that we do not
24 expect to see any impact on our operations and services as a
25 result of the bankruptcy filing.

1 Q. And it's fair to say that WorldCom believes
2 that it's going to be successful in returning the company to
3 a sound financial footing, right?

4 A. Well, that is the intent and the hope, yes.

5 Q. And that's the expectation, is it not?

6 A. I believe so, yes.

7 Q. And, in fact, that's what you advised the
8 Commission here in Missouri, isn't it?

9 A. That would be consistent with my
10 understanding, yes.

11 JUDGE WOODRUFF: The next number is 25.

12 (EXHIBIT NO. 25 WAS MARKED FOR
13 IDENTIFICATION.)

14 MR. LANE: Your Honor, at this time I'd ask
15 the Commission to take official notice of a filing by
16 WorldCom, entitled the First Quarterly Status Report of
17 WorldCom, Inc. and its U.S. Subsidiaries in Case
18 No. TW-2003-0063, which has been marked as Exhibit 25.

19 JUDGE WOODRUFF: So you're offering the
20 exhibit into evidence?

21 MR. LANE: Yes.

22 JUDGE WOODRUFF: All right. Exhibit 25 has
23 been offered into evidence. Are there any objections to its
24 receipt?

25 (No response.)

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

3 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

4 BY MR. LANE:

5 Q. Would you agree me that WorldCom's current
6 financial difficulties and the bankruptcy proceeding that
7 it's entered into are as a result of misstatements of
8 expense that impacted the reports that WorldCom has made of
9 its financial status?

10 A. Not entirely, no.

11 Q. Okay. Would you agree with me that WorldCom
12 has admitted that it has engaged in activities that are
13 misstatements of its financial statements that it makes to
14 the public?

15 A. There -- yes. The statements that have been
16 made were that the company had discovered these things, that
17 they brought them to the attention of the appropriate
18 authorities, and we are continuing with all investigations
19 to see the extent of those misstatements and to take
20 appropriate action and cooperate with all the investigating
21 authorities.

22 Q. And that directly led to the bankruptcy
23 filing, did it not?

24 A. No, it did not, not entirely.

25 Q. To the extent that WorldCom entered into

1 bankruptcy proceedings because of these misstatements that
2 you've recognized, would you agree that it would not be
3 appropriate for the Commission to preclude Southwestern Bell
4 from offering a winback tariff because of the financial
5 difficulty of WorldCom?

6 A. Well, I haven't agreed with the premise of
7 your statement that it was entirely those misstatements that
8 caused the company to go into bankruptcy.

9 Q. My question was, to the extent it was the
10 misstatements of WorldCom that caused it to go into
11 bankruptcy, would you agree with me that it would not be
12 appropriate for the Commission to deny Southwestern Bell's
13 winback tariffs on the basis of financial difficulties at
14 WorldCom?

15 A. That was not actually a basis on which I based
16 my recommendation in this proceeding, so I don't -- I'm
17 not -- I'm not clear on the connection between WorldCom's
18 financial circumstances and the recommendation that I'm
19 making in this proceeding.

20 Q. I'm not either. That's my question to you.
21 You'd agree with me that it would not be appropriate for the
22 Commission to deny Southwestern Bell's winback tariffs on
23 the basis that WorldCom is in financial difficulties
24 resulting in part from misstatements of its financial
25 statements, correct?

1 MR. CURTIS: Your Honor, I'm going to object
2 to this line. The question's been -- it's been asked and
3 answered. And furthermore, Mr. Price's testimony at page 2
4 doesn't reference anything with regard in particular to
5 WorldCom. It talks about the general state of trouble in
6 the competitive telecommunications market.

7 JUDGE WOODRUFF: I'm going to sustain the
8 objection on relevancy. Proceed to your next question.

9 BY MR. LANE:

10 Q. Would you agree with me that the FCC has
11 addressed winback issues in Docket No. 96-115 in an Order
12 that was released on September 3rd, 1999?

13 A. The Order that was released did discuss
14 certain things pertaining to winbacks. I wouldn't say that
15 it -- that it addressed all, quote, winback issues in that
16 decision, no.

17 Q. My question to you was, did the FCC address
18 winback in Docket No. 96-115 in an Order released
19 September 3rd of 1999?

20 A. Winbacks were one of the issues discussed in
21 that Order, yes.

22 (EXHIBIT NO. 26 WAS MARKED FOR
23 IDENTIFICATION.)

24 MR. LANE: Your Honor, at this time I'd ask
25 the Commission to take official notice of the Order issued

1 by the FCC in Docket No. 96-115 and 96-149 entitled Order on
2 Reconsideration and Petitions for Forbearance released
3 September 3rd of 1999, and with regard to what I've asked to
4 be marked as Exhibit 26, ask that those portions of the
5 Order be accepted into evidence.

6 JUDGE WOODRUFF: As far as taking official
7 notice of it, I don't know that I have authority to take
8 official notice of an FCC Order. Certainly you've offered
9 it into evidence. I'll ask if anyone has objection to the
10 receipt of Exhibit 26? Yes.

11 MS. DeCOOK: I don't have any objection if the
12 entire Order is placed in the record. I do object to just
13 excerpts.

14 MR. CURTIS: We join in that objection, your
15 Honor.

16 JUDGE WOODRUFF: Well, the entire Order
17 appears to be over 201 pages, and this exhibit is four or
18 five.

19 MR. LANE: Your Honor, what I've offered, and
20 I'll do whatever you like, but I've offered all of the
21 sections that deal with the winback for the ease of the
22 Commission and not to burden the record, but I'm prepared to
23 offer the entire document if that's what your ruling is.

24 JUDGE WOODRUFF: Please.

25 MS. DeCOOK: I believe it's appropriate to put

1 the entire document in the record because I think you can
2 see the context in which this particular issue was addressed
3 by the FCC, and I think that's important to this case.

4 I certainly have my own copy. I don't need to
5 have a copy, but I think the record should be complete.

6 MR. CURTIS: Your Honor, I agree, and I would
7 note that what Mr. Lane has said that he's included only the
8 winback relevant portions of the FCC's Order. Just occurs
9 to me, looking at the index here, I see winback at page 66,
10 background discussion running all the way up to page 80, and
11 we don't have those pages here.

12 Is this the full Order, Paul?

13 MR. LANE: Yes.

14 JUDGE WOODRUFF: Mr. Lane is well prepared. I
15 will sustain the objection as to 26. We'll go ahead and
16 mark the full order as 27.

17 (EXHIBIT NO. 27 WAS MARKED FOR
18 IDENTIFICATION.)

19 JUDGE WOODRUFF: Then as to Exhibit 27, is
20 there any objection to its receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, it will be
23 received into evidence.

24 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

25 BY MR. LANE:

1 Q. I want to direct your attention, Mr. Price,
2 specifically to paragraphs 65 through 73 of the FCC's Order
3 contained in Exhibit 27 which will be found on pages 35 to
4 39. Are you familiar with those sections?

5 A. Yes, I am.

6 Q. It's fair to say that the FCC has determined
7 that winback campaigns generally facilitate and foster
8 competition, is it not?

9 MR. CURTIS: I'm going to object to that
10 question. I think the Order speaks for itself, and I think
11 it's inappropriate for Mr. Lane to be asking this witness
12 who is not sponsoring this exhibit to characterize it.

13 JUDGE WOODRUFF: I'm going to overrule the
14 objection. You can go ahead and answer.

15 THE WITNESS: I guess my reading of this part
16 of the decision is that subject to the ability of the
17 regulator to look at specifics that winback campaigns can
18 promote competition, and that as a general rule this Order
19 did not completely forbid winback activities.

20 BY MR. LANE:

21 Q. It's fair to say that in paragraph 69 of the
22 FCC's Order in Exhibit 27, that the FCC determined that
23 ILECs should not be precluded from engaging in winback
24 campaigns because of their historic monopoly position,
25 right?

1 A. Should not as a matter of policy. Again,
2 we're not dealing with policy here in this case so much as
3 we are specific application in a specific set of promotions
4 that have been offered by Southwestern Bell.

5 Q. But your surrebuttal testimony on page 8,
6 lines 15 through 17, and your rebuttal on pages 4 through 6
7 both urge the Commission to deny Southwestern Bell's winback
8 tariffs on the basis of Southwestern Bell's monopoly
9 position, right, former monopoly position?

10 A. Yes, precisely. The tariffs at issue here
11 based on -- based on the circumstances --

12 Q. That's all I need is a yes, is the question.

13 It's fair to say that the FCC also rejected
14 claims that use of CPNI for winback provisions is a
15 predatory practice designed to prevent effective market
16 entry by new competitors, right, paragraph 70?

17 A. And your question was whether that was
18 rejected by the FCC?

19 Q. No. That the FCC agreed with that. I'll
20 restate it.

21 A. Thanks.

22 Q. Fair to say that in paragraph 70 of the Order
23 the FCC rejected claims that use of CPNI and winback offers
24 was a predatory practice designed to prevent effective entry
25 by new competitors?

1 A. Well, this is the portion of the decision that
2 was cited in part in my testimony where I stated that --
3 where I referenced the part that says, Such use of CPNI is
4 neither a per se violation of Section 201 nor the anti-trust
5 laws. So I think the question is again on a case-by-case
6 basis, which is what we're here today to discuss.

7 Q. On page 7 of your surrebuttal, you make a
8 claim that winback tariffs would allow Southwestern Bell to
9 gain the reward of price caps and their -- and the
10 protection of rate of return regulation. Do you see that?

11 A. I do.

12 Q. In fact, Southwestern Bell will continue to be
13 subject to price cap regulation whether or not this
14 winback -- these winback tariffs are approved, right?

15 A. Certainly.

16 Q. Okay. And it's fair to say that while you say
17 that Southwestern Bell, quote, walked away, unquote, from
18 rate of return regulation, a more accurate statement would
19 be that the statute requires price cap regulation when a
20 competitor begins operations in a large ILEC's territory?

21 A. The way that you've posed the question
22 presumes that Southwestern Bell had nothing to do with the
23 creation of the statute, and I'm not sure that that's a fair
24 statement, Mr. Lane.

25 Q. Okay. My statement or my question to you,

1 Mr. Price, is it fair to say that the statute, price cap
2 statute that the Legislature passed requires the imposition
3 of price cap regulation on a large ILEC on the finding that
4 a competitor has begun operations anywhere in large ILEC's
5 territory?

6 A. And sitting here today, I can't say one way or
7 the other because I simply don't recall that portion of the
8 statute.

9 Q. In preparing your testimony which discusses
10 price cap regulation and in particular the section that says
11 Southwestern Bell walked away from rate of return
12 regulation, did you read the Missouri statute 392.245?

13 A. No, I did not.

14 Q. Then what was the basis of your assertion that
15 Southwestern Bell walked away from rate of return
16 regulation?

17 A. In my experience in the Southwestern Bell
18 states, Southwestern Bell has frequently been a proponent of
19 price cap regulation and has been instrumental in either
20 regulatory decisions and/or the drafting of statutory
21 language that gave it an ability to obtain price cap, in
22 other words not -- something other than rate of return
23 regulation.

24 Q. And did you participate in the process in
25 Missouri in any respect with regard to the adoption of

1 Senate Bill 507 which included the provisions 392.245
2 concerning price caps?

3 A. I believe I did indirectly. I don't recall
4 precisely what year that was, but I believe I did have some
5 indirect relationship with that.

6 MR. LANE: May I approach the witness, your
7 Honor?

8 JUDGE WOODRUFF: You may.

9 BY MR. LANE:

10 Q. Mr. Price, showing you Section 392.245.2 of
11 the price cap statute in Missouri, would you agree with me
12 that it provides that a large incumbent local exchange
13 company shall be subject to regulation under this section
14 upon a determination by the Commission that an alternative
15 local exchange telecommunications company has been certified
16 to provide basic local telecommunications service and is
17 providing such service in any part of the large incumbent
18 company's service area?

19 A. It would appear so, yes.

20 Q. And would you agree with me that the second
21 section of that same statutory cite gives small local
22 incumbent local exchange companies the option to participate
23 in price cap regulation upon the same determination that a
24 small -- that an alternative local exchange company is
25 providing service in their territory?

1 A. It would so appear, yes.

2 Q. On page 7 of your surrebuttal, on line 23, you
3 make the claim that because Southwestern Bell owns the
4 facilities of production it should not offer winback
5 tariffs. Do you see that discussion?

6 MR. CURTIS: What line are you on?

7 MR. LANE: Line 23 is where the sentence
8 begins.

9 MR. CURTIS: Beginning how?

10 MR. LANE: In the market for local
11 telecommunications, however, the facilities of production
12 are dominated by the incumbent and so forth.

13 THE WITNESS: This was part of an example. I
14 don't believe the sentence was worded exactly as you stated.

15 BY MR. LANE:

16 Q. All right. You're not contending that because
17 Southwestern Bell owns the network, that it should be
18 precluded from offering a winback tariff, are you?

19 A. No. That's one of the factors that I'm asking
20 the Commission to consider in assessing the tariffs that
21 were proposed by Southwestern Bell.

22 Q. All right. And I need to clarify that, then.
23 Are you saying that because Southwestern Bell owns a
24 network, that that's a reason that the Commission should
25 deny Southwestern Bell the right to have these winback

1 tariffs approved?

2 A. It is a factor that the Commission should take
3 into account in determining the existence of Southwestern
4 Bell's market power, which should color the Commission's, I
5 think, interpretation of the proposed tariffs, yes.

6 Q. It's fair to say that under the Federal Act
7 that CLECs may resell Southwestern Bell service, may acquire
8 unbundled network elements from Southwestern Bell or may
9 utilize their own facilities to provide service, right?

10 A. That's the current reading that SBC has yet to
11 change, yes.

12 Q. SBC can change the federal statute at its
13 will?

14 A. Well, not at its will, but it's certainly
15 instrumental in putting a lot of pressures on Congress and
16 on expert agencies.

17 Q. And WorldCom doesn't engage in any activities
18 like that, does it?

19 A. We don't seem to be quite as effective.

20 Q. And that's a financial choice that WorldCom
21 makes, isn't it, whether to use unbundled network elements,
22 whether to resell service, or whether to place its own
23 facilities, right?

24 A. All CLECs should have that choice, yes, as
25 part of their decision of how to offer services to their

1 customers.

2 Q. And the CLECs have the right to resell service
3 or to utilize unbundled network elements of Southwestern
4 Bell whether or not the winback tariff is approved, correct?

5 A. Correct.

6 Q. Let me turn to your claim that these winback
7 tariffs should be denied because Southwestern Bell or SBC
8 hasn't competed as a CLEC outside of its territory pursuant
9 to the Ameritech merger conditions. Do you see that
10 discussion on pages 8 through 11 of your rebuttal testimony?

11 A. I don't see the statement that the tariffs
12 should be denied because SBC has chosen not to compete.

13 Q. All right. Let me ask it this way: Do you
14 think that the Commission should factor into its decision in
15 this case your claim that SBC hasn't competed as a CLEC
16 outside of its territory in determining whether or not to
17 approve Southwestern Bell's winback tariffs?

18 A. As with my earlier answer, I definitely
19 believe the Commission should take that into account and
20 that that information should color the Commission's decision
21 as it assesses the tariffs.

22 Q. Now, you're aware that Southwestern Bell has
23 advised the FCC that it has met the merger conditions, are
24 you not?

25 A. Yes.

1 Q. And it's also fair to say that you haven't
2 presented any factual evidence in your testimony here to
3 show that SBC has not met that merger condition, right?

4 A. I don't believe that I stated that SBC has not
5 met a merger condition. What I said is that SBC is not in
6 any way actively marketing its services and appears to be
7 doing the bare minimum in those areas. So I'm not saying
8 that they haven't met the merger conditions.

9 Q. Do you have any information at all about the
10 number of customers that SBC has acquired operating as a
11 CLEC in the 30-plus markets outside of its territory where
12 it has offered service?

13 A. I don't have any numbers. The extent of my
14 statement was at page 10 of my rebuttal testimony where I
15 said that we've seen virtually no evidence of entry as we
16 have competed in those markets.

17 Q. All right. Which of the 30-plus markets that
18 Southwestern Bell notified the FCC that it is operating as a
19 CLEC does WorldCom claim that SBC, in fact, does not?

20 A. Again, I'm not sure that we're quite saying
21 the same thing. I am not stating anywhere in my testimony
22 that SBC has not met the merger conditions. What I'm
23 stating is that there does not seem to be any evidence of
24 aggressive -- I mean, what we saw in Mr. Hughes' testimony
25 was just another letter with the FCC. We haven't seen

1 anything in terms of marketing materials talking about how
2 great SBC's services are in the Atlanta area or the Tampa
3 area or the Seattle area.

4 There's really no evidence that there's this
5 big aggressive push by the company, and that's what I was
6 referring to in my rebuttal testimony where I said WorldCom
7 has seen virtually no evidence of this, you know, this
8 presence that Mr. Witiker touted in his testimony before the
9 Senate back in 1998 as being the national local strategy by
10 SBC.

11 Q. Referring to page 9 and the top of page 10 of
12 your rebuttal testimony, is it fair to say that you make the
13 contention that the FCC's Order required Southwestern Bell
14 to operate in 30 major markets outside the SBC territory
15 within 30 months of the Ameritech merger closing date?

16 A. Yes, it is. That Order required the companies
17 to do something that they voluntarily agreed to do as part
18 of the merger process.

19 Q. And you claim that that obligation came to
20 fruition when?

21 A. The obligation came to fruition, I guess, with
22 the effective date of the FCC's decision on the merger.

23 Q. Which was?

24 A. I thought I had in my testimony the date where
25 the 30 months would have been up, but I don't see that right

1 now.

2 Q. How about page 11, lines 9 through 13?

3 A. Thank you. That's about right.

4 Q. And you make the assertion there that the
5 30-month period ended or was reached in April of this year,
6 right?

7 A. That's the best of my knowledge, yes.

8 Q. Now, before you filed this testimony, did you
9 read the FCC's Order concerning the SBC/Ameritech merger and
10 the conditions that were included as part of that approval?

11 A. Yeah, I read good portions of it. I wouldn't
12 try to tell you I read every word, no.

13 Q. Is it fair to say that you really haven't
14 accurately portrayed when the obligation to serve all 30
15 markets outside of the SBC territory were to be -- strike
16 that.

17 It's fair to say that you haven't accurately
18 cited the FCC's Order with regard to when SBC was required
19 to enter into service as a CLEC in 30 markets outside of its
20 ILEC territory?

21 A. I don't know if it's fair to say that or not.
22 I have made mistakes before, and it's possible that I may
23 have made one here, but it was certainly not in an intent to
24 mislead anyone.

25 MR. LANE: May I approach the witness, your

1 Honor.

2 JUDGE WOODRUFF: You may.

3 BY MR. LANE:

4 Q. Show you a copy of the Memorandum, Opinion and
5 Order in Docket No. 98-141 which was released on October 8th
6 of 1999, and with specific reference to the paragraph that
7 you cited in your testimony, ask you to look at paragraph
8 399 and agree that what the FCC actually ordered was the
9 final 15 of the 30 markets were to be entered the later of
10 30 months after the merger closing date or two months after
11 SBC/Ameritech had acquired 271 authority covering 60 percent
12 of its access lines.

13 A. That appears to be the case, yes.

14 MR. CURTIS: Did you say he cited paragraph
15 299?

16 MR. LANE: 399.

17 MR. CURTIS: 399.

18 THE WITNESS: Right. 398.

19 MR. CURTIS: 398.

20 BY MR. LANE:

21 Q. Actually, you meant to cite 399, right? Does
22 398 contain the language that you cite?

23 A. Bear with me, please. Yes, it does.

24 Paragraph 398 says --

25 Q. I'm talking in specific reference to what you

1 have here in your testimony on the bottom of page 9 and the
2 top of page 10. Quote, At least 30 major markets outside
3 SBC/Ameritech's incumbent service area is a facility-based
4 provider of local telecommunications service to business and
5 residential customers, and then a second quote, within 30
6 months of the merger closing date.

7 My question relates to the phrase that you
8 quote within 30 months of the merger closing date, and ask
9 if that is within paragraph 398?

10 A. Yes. The ellipses that appears at the top --
11 on my copy at the top of page 10 in line 1 is because the
12 way I phrased the sentence, I reversed the phrases. The way
13 that it appears in paragraph 398 it says, Within 30 months
14 of the merger closing date, which is the phrase that I had
15 last, then it says, the combined firm will enter at least 30
16 major markets outside SBC or Ameritech's incumbent service
17 area as a facilities-based provider, et cetera, et cetera.

18 Q. So did you not read, then, before you filed
19 your testimony paragraph 399 which made clear that the
20 obligation to enter the final 15 markets wouldn't arise
21 until SBC/Ameritech had received 271 authority covering
22 60 percent of its access lines?

23 A. I don't believe I did. I think I stopped
24 there with 398.

25 Q. And would you agree with me that SBC/Ameritech

1 has not received Section 271 authority governing 60 percent
2 of its access lines?

3 A. I would have to -- I would to speculate a
4 little bit on that, but given that it has not yet been --
5 given that SBC's not yet received such authority for
6 California and Illinois, I would say that was probably a
7 fair statement.

8 Q. It's SBC/Ameritech access lines in the Order,
9 is it not, not Pacific?

10 A. I'm sorry. I didn't know. I thought it was
11 the combined companies. It says 60 percent of the combined
12 firm's incumbent LECs. So I would assume that includes
13 Pacific.

14 Q. Let me refer you back then to Appendix C of
15 the Order which lists the conditions themselves, and with
16 regard to paragraph 59 of that it makes it clear that it's
17 the SBC/Ameritech's incumbent LECs.

18 A. I guess I'm not understanding the distinction
19 because Pacific is one of the SBC/Ameritech ILECs. So I'm
20 not following you, Mr. Lane.

21 Q. All right. In any event, you'd agree that
22 there hasn't -- that the obligation to enter into the final
23 15 markets hasn't yet arisen?

24 A. Yes. And again, I'm not alleging that there
25 is a failure to meet the merger obligations.

1 Q. But you're alleging that the Commission should
2 consider what you say is a less than aggressive approach to
3 meet an obligation that hasn't fully arisen yet, right?

4 A. No, I wouldn't agree with that. I mean, what
5 I'm saying is that in those markets where SBC has stated to
6 the FCC that it already has met the merger conditions,
7 there's no -- there's no evidence that there's any
8 aggressive pursuit of this national local strategy that was
9 so highly touted at the outset.

10 Q. On page 12 of your rebuttal testimony, you
11 term the CLEC market share gain to be marginal. Do you see
12 that reference?

13 A. Yes, I do.

14 Q. Okay.

15 A. Actually, I think the phrase is small amounts
16 of market share.

17 Q. If we look at line 13, doesn't it say,
18 Notwithstanding the marginal gains that CLECs have made in
19 eroding SWBT's market share?

20 MR. CURTIS: Your Honor, could I request,
21 could you ask counsel when he's referring to testimony to
22 start referring to the line numbers so that we can all
23 follow it? He's picking words out of the air and asking the
24 witness to guess where they are. We also are trying to
25 guess, too.

1 JUDGE WOODRUFF: If you could comply with that
2 as needed.

3 BY MR. LANE:

4 Q. Do you see that discussion, Mr. Price?

5 A. I see my testimony, yes.

6 Q. What is the CLEC business market share in
7 Missouri?

8 A. I don't know.

9 Q. Are you aware that Staff has testified in
10 prior proceedings in front of the Commission that the CLEC
11 market share for business customers is in excess of
12 30 percent?

13 A. Generally, yes.

14 Q. And is it your view that a greater than
15 30 percent market share for CLECs is a marginal gain?

16 A. Well, I need to clarify because this
17 particular part of my testimony was not with reference to a
18 particular segment. So if we look at the market overall,
19 you know, obviously that wasn't -- I guess what I'm trying
20 to say is that what I've said here and what your questions
21 imply are two different things.

22 Q. All right. But my question now is, is it your
23 assertion that a market share for business customers for
24 CLECs in Missouri in excess of 30 percent is only a marginal
25 market share?

1 A. Well, I guess two points in response. One, is
2 a market share of 70 percent by Southwestern Bell certainly
3 doesn't suggest that Southwestern Bell cannot exercise
4 market power.

5 And secondly, I believe we heard testimony by
6 one of your witnesses earlier today that there were 76 CLECs
7 that were passing orders today. So if you take 30 percent
8 market share in the business segment, divide that up however
9 many ways you want to among 76 CLECs, obviously there's a
10 very, very disproportionate presence in the marketplace
11 between any given CLEC and Southwestern Bell.

12 Q. It's also fair to say, isn't it, that CLEC
13 market share for both business and residential customers has
14 continued to increase even while Southwestern Bell operated
15 under winback tariffs which waived nonrecurring charges as
16 Southwestern Bell proposes here?

17 A. I don't know that to be a fact, although it
18 would not surprise me.

19 Q. Did you read Mr. Hughes' and Mr. Regan's
20 testimonies in this case?

21 A. Yes, I did.

22 Q. And would you agree with me that Mr. Hughes'
23 testimony laid out that Southwestern Bell had a residential
24 winback tariff in effect from August 4th of 2000 through
25 December 31st of 2001 and that Southwestern Bell had a

1 business tariff that waived nonrecurring charges in effect
2 from April 9th of 2001 through April 8th of 2002?

3 A. And is your question whether I recall that
4 testimony?

5 Q. Uh-huh.

6 A. Yes, I do.

7 Q. And would you agree with me that Mr. Hughes
8 laid out information that showed that the minimum market
9 share for CLECs increased from 152,000 lines immediately
10 before the first tariff took effect to more than 330,000
11 lines after the last business tariff expired by its terms?

12 A. I believe the way you phrased that question
13 was the market share, and yet you were talking in terms of
14 numbers of access lines.

15 Q. No. My question was access lines.

16 A. If that's his testimony, that's his testimony.
17 I have -- I don't have the ability to independently verify
18 that.

19 Q. Did the WorldCom companies' market share
20 increase from August 4th of 2000 through April 8th of 2002?

21 A. I don't know.

22 Q. Have you reviewed any evidence or any
23 information from WorldCom companies along those lines?

24 A. For Missouri, no.

25 Q. Okay. Did you think it was not relevant to

1 the testimony in this case to determine what had happened to
2 WorldCom's number of lines that it served during the time
3 that the prior winback tariffs with waivers of nonrecurring
4 charges were in effect?

5 A. That is correct.

6 Q. Okay. On page 12 of your rebuttal you make
7 the claim that market share confers a massive financial
8 advantage relative to CLEC competitors. Do you see that
9 on --

10 MR. CURTIS: Your Honor, could I object again?
11 I'd like to have a line number.

12 MR. LANE: I'm going to, Lee. I haven't
13 finished.

14 MR. CURTIS: I thought you were requested to
15 give a line number before you begin reading. I can't find
16 it.

17 MR. LANE: I didn't know you said put the line
18 number first. I was going to put it at the end.

19 MR. CURTIS: Your Honor, counsel has misread
20 some of this testimony already.

21 MR. LANE: I have not misread any of the
22 testimony.

23 MR. CURTIS: I want to know where he is
24 reading. I would like to be able to follow it in the
25 transcript or in prefiled testimony.

1 JUDGE WOODRUFF: Certainly if you cite
2 testimony, please do give the line numbers, whether you do
3 it before or after. And please don't exchange conversation
4 with counsel. Direct all questions to the Bench. Thank
5 you.

6 BY MR. LANE:

7 Q. Do you recall the question, Mr. Price, or do I
8 need to redo it?

9 A. If you wouldn't mind, please start over.

10 Q. On page 13 of your -- excuse me. Page 12 of
11 your rebuttal testimony on lines 17 and 18, you make the
12 claim that Southwestern Bell's market share confers a
13 massive financial advantage relative to its CLEC
14 competitors. Do you see that?

15 A. I do.

16 Q. And on the next two lines you make the
17 statement that in ARMIS filings with the FCC that
18 Southwestern Bell reported revenues totaling nearly
19 \$40 million a week in Missouri. Do you see that?

20 A. I do.

21 Q. And if we're going to examine relative -- I'm
22 sorry. Let me ask you this. Did you cite the revenues per
23 week that Southwestern Bell receives in Missouri as support
24 for your claim that SWBT has a massive financial advantage
25 relative to its CLEC competitors?

1 A. I believe the phrase starts "for example." So
2 it was an example of the fact that Southwestern Bell's
3 treasure chest is a rather large one.

4 Q. And if we're going to look at something
5 relative to CLEC competitors, don't we also need to look at
6 what CLECs' revenues were for that period of time?

7 A. I didn't, but I don't know --

8 Q. What were the CLECs' revenues in Missouri
9 during 2001 that would compare to the \$40 million a week
10 figure that you give for Southwestern Bell?

11 A. The information that I looked at was in the
12 ARMIS reports to the FCC. Those are reports that are
13 limited to incumbent local exchange companies. So there's
14 not a -- there's not a similar source that I could go to see
15 what CLEC numbers look like.

16 Q. Do you know what the CLECs received in
17 revenues in Missouri during 2001?

18 A. No, I don't.

19 Q. Isn't it hard to say that revenues per week
20 gives a massive financial advantage relative to CLEC
21 competitors if you don't know what revenues CLECs received
22 in Missouri during that same period of time?

23 A. No. I don't think that's an apples and
24 oranges at all. I mean, one only needs to read the business
25 pages on a relatively regular basis to know that SBC is one

1 of the more well-capitalized telecommunications companies in
2 the United States and perhaps in the world, and that same
3 thing cannot be said for very many of the CLECs.

4 Q. How about AT&T?

5 A. Depends on who you ask.

6 Q. How about the expense side of the equation,
7 what was Southwestern Bell's reported expenses in Missouri
8 during 2001?

9 A. I didn't look at that. I mean, it's available
10 through the ARMIS report, but I didn't look at it.

11 Q. If the expenses are high, is that a financial
12 disadvantage?

13 A. I guess it depends on how much effort there's
14 been to control the expenses.

15 Q. How about capital expenditures, what capital
16 expenditures did Southwestern Bell make in Missouri in 2001?

17 A. The only information that I've seen on that, I
18 believe, was the information in Mr. Hughes' surrebuttal.

19 Q. Do any of the WorldCom companies waive
20 nonrecurring charges for customers under any circumstances?

21 A. Yes, I believe so.

22 Q. Do they do it for local service?

23 A. I believe so, yes.

24 Q. Do they do it for interexchange service?

25 A. Not -- on the interexchange side, there's not

1 much on the way of upfront fees. I think the PIC change
2 charge that was referenced in Mr. Hughes' testimony is
3 likely the only thing, and that's somewhere between \$1 and
4 \$5 depending on which ILEC's territory you're operating in.

5 Q. And I gather by that answer you're indicating
6 that WorldCom companies either waive or reimburse the
7 customer for that PIC change charge?

8 A. I can't tell you what our practice is today,
9 but that sort of practice has occurred certainly in the
10 past.

11 Q. How about winback offers? Have there been any
12 winback offers on the inter exchange side for WorldCom in
13 the past or present?

14 A. I don't know.

15 Q. Did you do any investigation to determine
16 whether or not WorldCom had engaged in any winback
17 activities?

18 A. On the interexchange side?

19 Q. Uh-huh.

20 A. No, because I was looking solely at local
21 exchange services here in this proceeding.

22 Q. Did you look at WorldCom's tariffs in Missouri
23 to determine whether they provide for any waivers of
24 nonrecurring charges?

25 A. Are we talking local here?

1 Q. Local or interexchange.

2 A. On the local side, I did. I don't recall if I
3 looked at the tariffs. I did look at our business practices
4 internally to see what some of the promotions were.

5 (EXHIBIT NOS. 28, 29 AND 30 WERE MARKED FOR
6 IDENTIFICATION.)

7 JUDGE WOODRUFF: These will be 28, 29 and 30,
8 and they're all very similar, although they are all signed
9 by different persons. No. 28 is the one that's signed by
10 Susan Keefer, 29 is the one signed by Kristi Berg, and 30 is
11 the one signed by Maureen Holt.

12 MS. DeCOOK: Your Honor, can you go over that
13 again once we all get our copies?

14 JUDGE WOODRUFF: Certainly. Okay. 28 is the
15 letter that is signed by Susan Keefer, 29 is the letter
16 signed by Kristi Berg, and 30 is the letter signed by
17 Maureen Holt.

18 BY MR. LANE:

19 Q. Mr. Price, would you agree with me that the
20 offers contained in Exhibits 28, 29 and 30 are the type of
21 offers that MCI WorldCom has made to win back customers in
22 the interexchange market?

23 A. Generally, I think so, although my activities
24 ever since the passage of the Telecommunications Act have
25 been more geared towards local competition issues, and I

1 have not had frequent contact with people that do the long
2 distance side of the business.

3 Q. But offers of number of hours of free long
4 distance service are consistent with what WorldCom or MCI
5 WorldCom has done in the past and is doing today, to your
6 knowledge?

7 A. To my knowledge, which is admittedly limited,
8 yes.

9 Q. When a customer elects to accept one of these
10 winback offers, does MCI WorldCom change both their
11 interstate and intrastate service providers?

12 A. I don't know.

13 Q. Would you agree with me that when MCI WorldCom
14 makes these type of offers to win back customers, that
15 they're targeted to former customers of WorldCom and are not
16 extended at the same time to all new customers that want to
17 come to MCI WorldCom?

18 A. Yes, as is appropriate in a marketplace where
19 there's no one provider that has market power.

20 Q. Do you know whether MCI WorldCom has filed any
21 tariffs in Missouri that would authorize providing free
22 hours of long distance service to customers that are won
23 back by MCI WorldCom?

24 A. No, I don't.

25 Q. In your opinion, does the offer of free

1 service to a former customer of WorldCom to come back to
2 WorldCom violate any federal or state anti-discrimination
3 provisions?

4 A. Not to my knowledge.

5 Q. Now, on page 22 of your rebuttal testimony,
6 you cite Section 392.200.2 and .3. Do you see that on
7 lines 5 through 36 and then carrying over to page 23?

8 A. Yes, I do.

9 Q. And would you agree with me that the terms of
10 the statute are directed to all telecommunications
11 companies?

12 A. That appears to be so.

13 Q. Sections 392.200.2 and 392.200.3 don't draw a
14 distinction between interexchange carriers and local
15 exchange carriers, do they?

16 A. These sections do not appear to do so, no.

17 Q. Nor do those sections draw a distinction
18 between incumbent local exchange companies and competitive
19 local exchange companies or CLECs, do they?

20 A. Again, these sections do not. And if I could,
21 there is a part of 200 that does appear to relate only to
22 local exchange companies down towards the bottom, to
23 slightly modify my previous answer.

24 Q. The section that talks about Life Line
25 connection assistance plans and so forth?

1 A. That's the part I was referencing, yes.

2 Q. General prohibitions that are contained in
3 392.200.2 and 392.200.3 apply to all telecommunications
4 companies, do they not?

5 A. Again, these sections, yes.

6 Q. And would you agree with me that the Missouri
7 statutes are written such that the obligations of
8 Sections 392.200.2 and .3 cannot be waived for a company
9 classified as competitive by the Commission?

10 A. I'm not in a position to make a legal
11 conclusion such as that.

12 Q. Okay. You haven't had a chance to look at the
13 statute?

14 A. I certainly looked at these provisions because
15 these are the ones that were referenced in Mr. Hughes'
16 direct testimony, but to tell you that I'm ready to do a
17 Hornbook on Missouri's statute, no.

18 MR. LANE: May I approach the witness, your
19 Honor?

20 JUDGE WOODRUFF: You may.

21 BY MR. LANE:

22 Q. And Mr. Price, showing you Section 392.361,
23 subsection 5, would you agree with me that it provides that
24 the Commission can waive portions of the statutes in
25 Sections 392.200 to 392.340 except as provided in

1 Section 392.390?

2 A. I believe so, yes.

3 Q. And then referring you to Section 392.390,
4 subsection 5, would you agree with me that it provides that,
5 at a minimum, that telecommunications company is subject to
6 the provisions of subsections 2, 3, 4 and 5 of Section
7 392.200?

8 A. It would appear so, yes.

9 Q. Let me ask you some questions about the
10 Neighborhood Plan of MCI WorldCom. Well, strike that.
11 How many WorldCom companies operate in
12 Missouri?

13 A. Oh, gee, I wish you hadn't asked me that.
14 Several.

15 Q. Tell me the ones you know.

16 A. I believe the certificated local exchange
17 companies would include Brooks -- what at least was at one
18 time known as Brooks Fiber, MCI Metro, and it used to be
19 called MFS, and I believe is now WorldCom Services. I don't
20 recall.

21 Q. Okay. Would you agree that only one of those
22 companies provides any residential service in Missouri?

23 A. Yes, I would.

24 Q. And which one is that?

25 A. MCI Metro.

1 Q. And would you agree with me that MCI Metro
2 offers local service to residential customers only in
3 designated portions of Missouri?

4 A. I would not be surprised because that practice
5 does exist where there are disparate rates for the
6 underlying network elements charged by Southwestern Bell,
7 for example.

8 Q. It's fair to say that MCI Metro has targeted
9 the major metropolitan areas of St. Louis and Kansas City
10 for its service offerings to residential customers, right?

11 A. I believe that would be the case, although I
12 don't believe that the Neighborhood is not available
13 elsewhere. It may just be not marketed heavily.

14 Q. Okay. But is it marketed heavily in the
15 St. Louis and Kansas City areas?

16 A. Actually, I don't. I believe that we have
17 begun marketing. I don't know how heavy that marketing has
18 been yet.

19 Q. And how does MCI Metro identify the customers
20 to whom it wants to market?

21 A. Well, certainly one -- one target market would
22 be those customers that currently have MCI long distance
23 service. So that would be a major -- a major source of the
24 market.

25 Q. How else does MCI Metro identify the customers

1 to whom it wants to market its Neighborhood Plan?

2 A. I don't know.

3 Q. And the Neighborhood Plan has a price attached
4 to it of \$55.99; is that right?

5 A. I don't believe there's a single Price. I
6 believe there are multiple tiers of services that are
7 available under the Neighborhood.

8 Q. Okay. Why don't you tell us the tiers that
9 are available?

10 A. There would be a, I guess, a bundled product
11 that would have unlimited long distance, a certain number of
12 features, perhaps voicemail and a basic access line. That
13 would be the top tier.

14 Then there would be a second tier that would
15 be below that that would have the basic access line, perhaps
16 a smaller number of features, and then I believe the long
17 distance portion would be priced on a more conventional
18 basis, in other words per minute, per minute of usage.

19 And then I believe there's a third tier that
20 provides the accessline and allows the customer to choose a
21 separate LD provider.

22 Q. And all of the plans that MCI Metro has in the
23 Neighborhood offering include a bundle of vertical services,
24 do they not?

25 A. I don't know that all of them do. Certainly

1 the top two tiers would, yes.

2 Q. Okay. And what are the vertical services that
3 are included in those top two tiers?

4 A. I'm going from memory here. I believe
5 three-way calling, call waiting, perhaps an eight-number
6 speed dial, voicemail.

7 Q. Why is speed dial included in the group of
8 services that MCI WorldCom -- or MCI Metro offers under the
9 Neighborhood Plan?

10 A. If you're asking me for the marketing
11 rationale, I don't know.

12 Q. Do you know the marketing rationale for
13 offering a bundle of vertical services?

14 A. Well, it's my understanding that -- and the
15 best example that I can give of this is my own experience in
16 buying an automobile, because I know that if you look at
17 certain manufacturers, what you see is you see feature
18 packages where basically you order, you know, whatever car
19 you want and that particular model comes with a certain set
20 of features.

21 Whereas, other manufacturers you have, you
22 know, the basic model, and then you've got literally dozens,
23 maybe even scores of different feature packages, some of
24 which overlap, some of which don't. That gets a little bit
25 confusing.

1 So I think the idea was to try to make it a
2 little bit more like the automobile manufacturers that
3 basically have three different models with three different
4 trim packages and you either buy the low one if that's what
5 you want for economy or you buy the higher one if you need
6 the sunroof and the CD player.

7 Q. Would you agree with me that WorldCom develops
8 and markets package of local service plus vertical features
9 plus long distance because it's seeking to attract what I'll
10 call the high end of residential customers, those that have
11 high-dollar spend for their telecommunications needs?

12 A. I'm not sure I would agree that it's the
13 attraction of the high-dollar customer so much as it is
14 being able to offer the package that is both attractive and
15 makes financial sense for the company to offer.

16 Q. It's fair to say that MCI Metro does not
17 target or seek to acquire residential customers that utilize
18 just a basic access line without vertical features and
19 without substantial long distance service, right?

20 A. And I would agree with that, and that goes to
21 the point that I made earlier about the financial viability.
22 I mean, I think Southwestern Bell's done an excellent job of
23 showing in the past how the marketing of advanced, you know,
24 the feature packages can add an awful lot to the
25 profitability of the customer.

1 MR. LANE: Thank you. That's all I have, your
2 Honor.

3 JUDGE WOODRUFF: All right. We'll come up for
4 questions from the Bench, then, and begin with Commissioner
5 Lumpe.

6 COMMISSIONER LUMPE: I don't have anything.

7 JUDGE WOODRUFF: All right. Commissioner Gaw?

8 QUESTIONS BY COMMISSIONER GAW:

9 Q. Earlier I asked Mr. Hughes about how he
10 believed that companies like yours would determine who to
11 market to in coming up with the -- those customers that
12 might want to subscribe to the higher-end services that
13 included vertical services and other things. Were you here
14 when I was asking about those things?

15 A. Yes, I was.

16 Q. I guess what I want to know is, does your
17 company seek to identify those customers that already have
18 vertical services with companies such as Bell before they --
19 before they make contact with them?

20 A. I don't think that's the case, and I think in
21 part because of the answer that Mr. Hughes gave earlier. I
22 mean, it's really not appropriate for WorldCom, for example,
23 to be launching queries into Bell's system just to poke
24 around and see what kind of customers are there, which is
25 really the flip side of the point that I tried to make in my

1 rebuttal testimony, which is that Bell already has all of
2 that wonderful information about 80 to 90 percent of the
3 market.

4 But to answer your question, it's not my
5 understanding that we would be doing that type of, as I
6 called it, poking around.

7 Q. Yeah. But is it -- would it be more accurate
8 to say that in doing marketing to potential customers out
9 there, that your company might be stressing packages that
10 are -- that include those high-end kinds of services,
11 including vertical services and other things in the package
12 and seeking to sell those particular services as opposed to
13 just trying to sell basic service by itself?

14 A. I think so. I think the process -- in other
15 words, when the customer is on the line with the sales
16 representative, the process would probably involve some
17 questions about how much do you normally spend on
18 telecommunications services, and, you know, would you
19 believe that you could get the following, you know for less
20 money or whatever. I haven't seen the scripts, but I can
21 envision that type of approach.

22 Q. And would it be fair to say, then, that at
23 least from one standpoint, that if you end up with customers
24 who tend to purchase your services because of the marketing
25 that you have done which promotes the sale of things like

1 vertical services and other things, that in essence you
2 would end up with, hopefully, a greater percentage of your
3 customers as compared to Bell's customer base that have the
4 high-end vertical services as a component of their service?

5 A. I think that's true, and we've seen in other
6 ILEC territories, in fact, a focus towards feature packages.
7 And I neglected to mention this in response to Mr. Lane's
8 question, but I think in part the putting together of the
9 packages that way was in part recognition of the fact that
10 people like to buy their services in packages as opposed to
11 having to decide A, B, C and D, and if that package is
12 fairly priced and includes a number of features that are
13 desirable, the fact that it includes some that you may never
14 have used before is not really a big deal to the customer.

15 Q. Now, you may be selling some of these -- some
16 of these higher-end packages to customers that may not have
17 those kinds of similar services while they're with Bell?

18 A. Possibly.

19 Q. But the percentages again you believe would be
20 higher with your customer base after you finish those kind
21 of marketing endeavors than what Bell would have to begin
22 with?

23 A. Intuitively -- intuitively, I think so, yes.

24 Q. So if I were -- if I were shopping for those
25 kinds of customers from other companies that might be out

1 there, would it be fair to say that CLEC customers would be
2 fairly fertile ground in knowing that those particular
3 customers at least would tend to have those higher-end
4 packages?

5 A. Again, on average, I think that is a fair
6 assumption.

7 COMMISSIONER GAW: That's all I have. Thank
8 you, sir.

9 JUDGE WOODRUFF: And I have no questions, so
10 we will go to recross, beginning with Staff.

11 MR. HAAS: No questions, your Honor.

12 JUDGE WOODRUFF: Public Counsel?

13 MR. DANDINO: No questions, your Honor.

14 JUDGE WOODRUFF: AT&T?

15 MS. DeCOOK: No questions.

16 JUDGE WOODRUFF: Southwestern Bell?

17 MR. LANE: No questions, your Honor.

18 JUDGE WOODRUFF: Then redirect?

19 MR. CURTIS: Thank you.

20 REDIRECT EXAMINATION BY MR. CURTIS:

21 Q. Mr. Price, Mr. Lane from Southwestern Bell
22 showed you Exhibits 28, 29 and 30. Do you have those still
23 over with you?

24 A. Yes, I do.

25 Q. Are these all long distance offering

1 promotions --

2 A. Yes, they are.

3 Q. -- from MCI?

4 Do you know, would the -- would MCI normally
5 file these as promotional packages for approval by the
6 Commission?

7 A. The thing that I was looking at, I think the
8 answer depends on whether or not these are applicable to
9 in-state calling, and what I was finally able to discern is
10 that on Exhibit 29, for example, it expressly states that
11 the great low rates are on all your, quote, state to state
12 calls from home, which would mean that this would be
13 interstate --

14 Q. Interstate offering.

15 A. -- offering.

16 Q. And that's not subject to approval by this
17 Commission?

18 A. Correct. And that also appears on Exhibit 30.

19 Q. Okay. If they were in-state offerings,
20 promotions, they would need approval by the Commission; is
21 that correct?

22 A. That's my understanding, yes.

23 Q. Is there a difference between the long
24 distance market competitive-wise and the local market, local
25 telephone market in Missouri?

1 A. Oh, absolutely. I mean, the long distance
2 market has for a number of years been characterized by
3 significant competition, by relatively low barriers to
4 entry, and is a vibrant, competitive market where no single
5 carrier has market power, and that same thing cannot be said
6 about the local market in Missouri.

7 MR. CURTIS: Thank you. I have nothing
8 further.

9 JUDGE WOODRUFF: Thank you. You may step
10 down.

11 MR. CURTIS: May Mr. Price be excused?

12 JUDGE WOODRUFF: Yes, he may be excused.

13 (Witness excused.)

14 JUDGE WOODRUFF: All right. Then I believe
15 the next witness on the list is for Staff. You may call
16 your witness.

17 MR. HAAS: Staff calls Chris Thomas.

18 (Witness sworn.)

19 JUDGE WOODRUFF: You may inquire.

20 CHRISTOPHER C. THOMAS testified as follows:

21 DIRECT EXAMINATION BY MR. HAAS:

22 Q. Please state your name.

23 A. Christopher C. Thomas.

24 Q. Are you --

25 A. T-h-o-m-a-s.

1 Q. Would you please state your place of
2 employment and your position.

3 A. I am an economist for the Missouri Public
4 Service Commission Staff, and my address is 200 Madison
5 Street, Jefferson City, Missouri 65102.

6 Q. And are you the Christopher C. Thomas who
7 prepared the rebuttal testimony that's been premarked as
8 Exhibit 6?

9 A. Yes, I am.

10 Q. Do you have any additions or corrections to
11 that testimony?

12 A. I have three corrections. On page 4, line
13 No. 15, about in the middle of the line there, the word
14 "decrease" should be "decreased". Then on to page 6, on
15 line 19, toward the end of the line, the word "equitable"
16 should be "equitably".

17 Q. Continue.

18 A. On line 25, I want to add after "SWBT", "as
19 defined under the terms of the proposed tariff filing."

20 Q. Would you read that one again, and where is
21 it?

22 A. It's right after the -- at the end of the
23 sentence on line 25, I want to add the phrase "as defined
24 under the terms of the proposed tariff filings."

25 Q. Is that all your corrections and additions?

1 A. Yes, it is.

2 Q. With those additions and corrections, if I
3 were to ask you these questions today as are posed in this
4 testimony, would your answers be the same?

5 A. Yes, they would.

6 Q. And are those answers true to the best of your
7 knowledge, information and belief?

8 A. Yes, they are.

9 MR. HAAS: Your Honor, I would move the
10 admission of Exhibit 6, rebuttal testimony of Christopher
11 Thomas.

12 JUDGE WOODRUFF: Exhibit 6 has been offered
13 into evidence. Are there any objections to its receipt?

14 (No response.)

15 JUDGE WOODRUFF: Hearing none, it will be
16 received into evidence.

17 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

18 MR. HAAS: At this time I would tender the
19 witness for cross-examination.

20 JUDGE WOODRUFF: Okay. And for Staff, we
21 begin with Public Counsel.

22 MR. DANDINO: No questions, your Honor. Thank
23 you.

24 JUDGE WOODRUFF: And WorldCom/NuVox?

25 MR. CURTIS: No questions. Thank you.

1 JUDGE WOODRUFF: AT&T?
2 MS. DeCOOK: No questions, your Honor.
3 JUDGE WOODRUFF: And Southwestern Bell?
4 CROSS-EXAMINATION BY MS. MacDONALD:
5 Q. Good afternoon, Mr. Thomas.
6 A. Good afternoon, Ms. MacDonald.
7 MS. MacDONALD: Your Honor, may I approach the
8 witness?
9 JUDGE WOODRUFF: Yes, you may.
10 BY MS. MacDONALD:
11 Q. Mr. Thomas, I've just handed you what has been
12 marked as Exhibit 27. Is Exhibit 27 a copy of the Order on
13 Reconsideration and Petitions for Forbearance dated
14 September 3rd, 1999 in CC Docket Nos. 96-115 and 96-149?
15 A. It is.
16 Q. If you would, I'd like you to turn to
17 paragraph 66.
18 A. 66. Okay.
19 Q. In that paragraph, did the FCC determine that
20 winback campaigns are, and I quote, consistent with
21 Section 222(c)(1) and in most instances facilitate and
22 foster competition among carriers, benefiting competition
23 among carriers without -- strike that. Let me just start
24 all over again because I messed up that quote.
25 In paragraph 66, did the FCC determine that,

1 and I -- that winback campaigns are, and I quote, consistent
2 with Section 222(c)(1) and in most instances facilitate and
3 foster competition among carriers, benefiting customers
4 without unduly impinging upon their privacy rights?

5 A. That's what this --

6 MS. DeCOOK: Your Honor, I'm going to object
7 to the question until she lays some foundation he's even
8 seen this document, has reviewed the Order. She can't just
9 walk up to the witness and hand him a document and ask him
10 to read from it unless she lays some foundation.

11 JUDGE WOODRUFF: I'll sustain the objection.
12 Please lay some foundation.

13 BY MS. MacDONALD:

14 Q. Mr. Thomas, in preparing for today's
15 testimony, did you have opportunity to review the FCC's
16 Order on Reconsideration and Petitions for Forbearance?

17 A. I did not. I read the few excerpts that were
18 in testimony, but I did not get a chance to read the entire
19 Order.

20 Q. Okay. Did you have an opportunity to read
21 paragraphs 66 through 70, which are the applicable
22 provisions that are at issue with regard to winbacks?

23 A. Specifically from this document, I did not.
24 Now, if they were in someone's testimony I would have.

25 Q. Okay.

1 A. I can't recall if those are exactly the ones
2 that were cited or not.

3 Q. And if those were cited in the testimony of
4 Tom Hughes, did you have an opportunity to review them?

5 A. Yes, I did.

6 Q. Now, turning back to my question, since you
7 had the opportunity to read paragraph 66 in preparation for
8 today's hearing because it was contained in the direct
9 testimony of Mr. Hughes, did the FCC in paragraph 66 state,
10 and I quote -- state that winback campaigns are, and I
11 quote, consistent with Section 222(c)(1) and in most
12 instances facilitate and foster competition among carriers,
13 benefiting customers without unduly impinging upon their
14 privacy rights?

15 A. That's how the paragraph reads, yes.

16 Q. Turning to page -- paragraph 68 of that Order,
17 did you have an opportunity to read that paragraph, which is
18 also contained in the surrebuttal testimony of Thomas
19 Hughes?

20 A. Yes, I did.

21 Q. And in that paragraph did the FCC state, and I
22 quote, winback restrictions may deprive customers of the
23 benefits of a competitive market. Winback facilitates
24 direct competition in price and other terms, for example, by
25 encouraging carriers to, quote, outbid, close quote, each

1 other for a customer's business, enabling the customer to
2 select the carrier that best suits the customer's needs?

3 A. That is how the paragraph reads, yes.

4 Q. Okay. Did you also have an opportunity to
5 read paragraph 69 of that Order which was also contained in
6 the surrebuttal testimony of Mr. Thomas Hughes on page 24?

7 A. Yes, I did.

8 Q. Okay. And in that paragraph did the FCC
9 acknowledge that some commenters argue that ILECs should be
10 restricted from engaging in winback campaigns because of the
11 ILECs' unique historic position as regulated monopolies
12 because of the vast stores of CPNI gathered by the ILECs
13 could potentially chill local entrants and thwart
14 competition in the local market?

15 A. Could you repeat that one more time?

16 Q. Sure. Maybe you want to read paragraph 69,
17 and if you want that opportunity, take your time to read it
18 and I can ask the question after you've had an opportunity
19 to review it.

20 A. Sure. Give me just a second.

21 Q. Sure.

22 A. Okay.

23 Q. Okay. Did the FCC acknowledge in paragraph 69
24 that some commenters argue that ILECs should be restricted
25 from engaging in winback campaigns because the ILECs' unique

1 historic position as regulated monopolies and because of the
2 vast stores of CPNI gathered by the ILECs could chill
3 potential local entrants and thwart competition in the local
4 market?

5 A. I think you paraphrased that accurately.

6 Q. Okay. And despite those concerns in
7 paragraph 69, did the FCC determine that once a customer is
8 no longer obtaining service from an ILEC, the ILEC must
9 compete with the new service provider to obtain the
10 customer's business?

11 A. That is what it states, yes.

12 Q. Okay. Now, in that same paragraph, did the
13 FCC determine that such competition is in the best interest
14 of the customer and that it saw no reason to prohibit ILECs
15 from taking part in this practice?

16 A. Once again, that is what the paragraph
17 references.

18 Q. Turning to paragraph 70, did you have an
19 opportunity to read paragraph 70, which is contained in the
20 surrebuttal testimony of Tom Hughes on pages 24 and 25?

21 A. Yes, I did.

22 Q. Okay. And in that paragraph, did the FCC
23 conclude that because winback campaigns can promote
24 competition and result in lower prices to consumers, it
25 would not condemn such practices without a showing that

1 they're truly predatory?

2 A. That appears to be an accurate
3 characterization of what the paragraph says, yes.

4 Q. Okay. Now, the Order that we've just
5 discussed, was that issued on September 3rd, 1999, almost a
6 full year before the Missouri Public Service Commission
7 approved Southwestern Bell's first winback campaign, tariff
8 I mean?

9 A. I'm not exactly certain of the date, but that
10 seems to be -- I'll accept your representation.

11 Q. Okay. In preparation for this hearing today,
12 did you have opportunity to review the case file in Case
13 No. TT-2001-54?

14 A. I reviewed documents from that case file, such
15 as the Staff's filing and the Commission Order, yes.

16 Q. Okay. And in that case, would you agree with
17 me that Southwestern Bell proposed to revise its local
18 exchange tariff, specifically PSC Missouri 24, Appendix 7,
19 Sheet 1, to establish a promotional period from August 4,
20 2000 through December 31st, 2000, during which time
21 Southwestern Bell would waive nonrecurring charges for
22 residential customers returning to Southwestern Bell after
23 establishing service with a CLEC?

24 A. I don't have the tariff sheet in front of me,
25 but I'm willing to accept your representation of this.

1 Q. Okay. And in that Case Tt-2001-54, Staff
2 filed a Motion to Suspend Southwestern Bell's tariff,
3 correct?

4 A. That's correct.

5 Q. And the Commission thereafter entered an Order
6 denying the Motion to Suspend, thereby allowing Southwestern
7 Bell's tariff which waived nonrecurring service and
8 connection charges for residential customers returning to
9 service to Southwestern Bell after having had service with a
10 CLEC to become effective August 4th, 2000; is that correct?

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

12 Q. Okay. And since August 4, 2000, would you
13 agree that the Commission has approved a dozen winback
14 promotions that have been offered by Southwestern Bell?

15 A. I'm not sure of the exact number, but I know
16 there have been several.

17 Q. Okay. And in preparing for today's hearing,
18 did you have the opportunity to look at Tom Hughes'
19 Schedules 4-1 and 4-2 which are attached to his direct
20 testimony?

21 A. Yes, I did. I don't have those schedules with
22 me if you'd like to ask, but I did review them.

23 Q. Okay. And in those schedules, would you agree
24 that some of the winback promotions that Southwestern Bell
25 has offered were for residential customers and some of the

1 promotions that Southwestern Bell has offered have been for
2 business customers?

3 A. I believe that's correct.

4 Q. And would you agree with me that the
5 Commission has acted lawfully when it approved the 12
6 winback tariffs that were offered by Southwestern Bell?

7 A. I'm not offering a legal opinion, so I don't
8 know that I can say that the Commission acted lawfully. I
9 think that might be the presumption, but I'm not an
10 attorney.

11 Q. Okay. Are you aware of any changes to
12 Section 392.200 since August of 2000 when the Commission
13 first approved a winback tariff for Southwestern Bell?

14 A. I am not.

15 Q. And just to be clear, there have been no
16 changes to Section 392.200 since, I believe, 1996; is that
17 correct?

18 A. That sounds correct.

19 Q. Okay. Turning to your testimony --

20 A. Certainly.

21 Q. -- on page 3, specifically at line 14, you
22 indicate that throughout the hearing in Case
23 No. TT-2002-227, in the matter of Southwestern Bell
24 telephone company's proposed revision to PSC Mo. No. 26 long
25 distance message telecommunications service tariff, there

1 was uncertainty about the use of the term anti-competitive.

2 Do you see that testimony?

3 A. Yes, do.

4 Q. And on lines 20 and 21, you indicate that the
5 term anti-competitive is not an accusation of anti-trust
6 violations?

7 A. Yes.

8 Q. Okay. And you thereafter define
9 anti-competitive to mean, and I quote, actions that might
10 possibly discourage competition in a given marketplace. Do
11 you see that?

12 A. Yes, I do.

13 Q. Would you agree with me that the definition of
14 anti-competitive that you espouse, meaning, quote, actions
15 that might possibly discourage competition in a given
16 market, is neither a recognized legal or economic standard?

17 A. I think that's the definition that the
18 Commission implied with its use of the term anti-competitive
19 in it's Order in 108, but I --

20 Q. Can you -- I'm sorry. I don't mean to cut you
21 off.

22 A. Go right ahead.

23 Q. Okay. Can you tell me any legal textbook that
24 I could read where I'd find that definition of
25 anti-competitive?

1 A. I don't believe it's in Black's Law
2 Dictionary. It is in the American Heritage Dictionary, very
3 similar to that. However, I can't point you to any legal
4 textbook or legal document, other than the Commission's
5 Order.

6 Q. Okay. And can you point me to any text,
7 economics textbook that would have a definition of
8 anti-competitive that would mean actions that might possibly
9 discourage competition in a given market?

10 A. Not that I can point you to right now.

11 Q. Would you agree with me that the history of
12 anti-trust analysis and practice in the United States has
13 been focused on defining and distinguishing those behaviors
14 that are, in fact, anti-competitive and, therefore, an
15 anti-trust violation?

16 A. I believe that's how Dr. Aron characterized
17 it, but I don't have a lot of knowledge in the anti-trust
18 area.

19 Q. Okay. Are you aware of any practice in the
20 United States where anybody has reviewed anti-competitive in
21 a context other than an anti-trust violation?

22 A. I believe that the Commission used the term
23 anti-competitive in it's Order in 108, and I don't think
24 there were any specific allegations of anti-trust made in
25 that case.

1 Q. Okay. And specifically with regard to the
2 courts who have looked at anti-competitive activity, which I
3 thought is what I had asked but I'm not a hundred percent
4 sure, are you aware of any court that has considered
5 anti-competitive actions to merely mean actions that might
6 possibly discourage competition in a given market?

7 A. I'm not.

8 Q. Okay. Now, you defined -- when you defined
9 anti-competitive to mean actions that might possibly
10 discourage competition in a given marketplace, did you
11 provide the parties to this proceeding or the Commission
12 with any guidelines with regard to how it would know which
13 actions may possibly discourage competition in the local
14 telecommunications market?

15 A. I have not.

16 Q. Okay. And if the Commission were to adopt
17 your definition of anti-competitive, would you agree with me
18 that not only would the Commission be adopting a definition
19 of anti-competitive that is without support in any legal or
20 economic textbook, the Commission would also be adopting a
21 definition of anti-competitive that is ambiguous?

22 A. Ms. MacDonald, that definition is my
23 understanding of how the Commission had used the term
24 anti-competitive in its 108 Order.

25 Q. Okay.

1 A. But I think that you make some good points
2 there, yes.

3 Q. Okay. So you would agree with me that -- you
4 would agree with me that if the Commission were to adopt
5 your definition, there could be some ambiguity as to what
6 actually would constitute anti-competitive behavior?

7 A. If they were to use the word the way they used
8 it before, that could be an outcome, yes.

9 Q. Okay. And therefore, since it would be fairly
10 ambiguous, that definition in and of itself could be the
11 subject of numerous proceedings wherein the Commission would
12 have to make a subjective determination of whether a
13 particular action may possibly discourage competition in the
14 local exchange market?

15 A. I think it already has been.

16 Q. That's why we're here today?

17 A. Exactly.

18 Q. Okay. Would you agree with me that in the
19 instant proceeding, the Commission doesn't need to determine
20 whether Southwestern Bell's proposed tariffs may possibly
21 discourage competition in a vacuum because the Commission
22 has the benefit of evaluating the effect of past
23 Southwestern Bell tariffs that similarly waived the
24 nonrecurring charges for both residential and business
25 customers?

1 A. If those are the Commission's only concerns, I
2 believe that that's correct.

3 Q. Okay. And when you say if those are the
4 Commission's concerns, that's based on your definition of
5 anti-competitive, right?

6 A. It's based on the fact that we believe there
7 are many other issues in this case.

8 Q. Okay. But one of the bases that you think
9 these tariffs should be rejected is because you believe that
10 they are anti-competitive because they may possibly
11 discourage competition?

12 A. I believe the Commission has found that
13 before, and we think that was an appropriate finding. We
14 think that that word may be a little ambiguous because there
15 weren't any anti-trust -- any findings that Southwestern
16 Bell had made any anti-trust violations, but the Commission
17 still found that the local marketplace was in such a
18 position that Southwestern Bell could threaten their
19 competitors.

20 Q. Okay. I want to make sure that we are really
21 on the same wavelength. Are you telling me that this
22 Commission has already decided that Southwestern Bell's
23 tariffs in the instant proceeding are anti-competitive?

24 A. I believe they've said that -- the Commission
25 has made statements in previous Orders that winback tariffs

1 are anti-competitive.

2 Q. But they never reviewed the two tariffs at
3 issue here; is that correct?

4 A. That's correct.

5 Q. And you would agree with me and you admit in
6 your testimony that in the TT-2002-108 case that you're
7 referencing, that a majority of this case arguably did not
8 make that determination?

9 A. Arguably, yes.

10 Q. Okay. Now, turning back to the fact that this
11 Commission could look at the effect of past Southwestern
12 Bell tariffs and the effect that they may have had on
13 competition, the Commission could examine the period from
14 August 2000 through April 2002, and that is the period that
15 Southwestern Bell had winback tariffs in effect; is that
16 correct?

17 A. That is my understanding.

18 Q. Okay. And during this period, August 2000
19 through April 2002, would you agree that the minimum number
20 of access lines served by CLECs nearly doubled from
21 approximately 180,000 access lines to over 330,000 access
22 lines?

23 A. I believe that was in Mr. Hughes' testimony.
24 If you're willing to represent those numbers, I'm willing to
25 accept them.

1 Q. Okay. And you --

2 A. I don't have it in front of me, but I'm

3 willing to accept those numbers. That seems reasonable.

4 Q. Those were in Hughes direct, page 6.

5 A. That's what I thought.

6 Q. Now, you have no numbers that would indicate

7 that those were --

8 A. I do not.

9 Q. -- not accurate, correct?

10 A. That's correct.

11 Q. Okay. And during the same approximate period,

12 Southwestern Bell's access lines declined by approximately

13 180,000 lines, correct?

14 A. I believe that's what Mr. Hughes said in his

15 testimony, yes.

16 Q. And you have no evidence to demonstrate

17 anything to the contrary?

18 A. That's correct.

19 Q. And no party in this proceeding presented any

20 evidence that during the period August 2000 through April

21 2002 any CLEC lost access lines because customers were

22 returning to Southwestern Bell for service?

23 A. I don't believe there's any direct evidence of

24 that.

25 Q. Okay. And clearly no party presented any

1 evidence that during the period August 2000 through April
2 2002 Southwestern Bell eliminated its competitors in the
3 local exchange telecommunications market, correct?

4 A. I don't believe anybody's made that
5 allegation.

6 Q. In fact, today there's dozens of CLECs in
7 Missouri; in fact, we have heard today over 67 CLECs passing
8 orders to Southwestern Bell?

9 A. Yes.

10 Q. Turning to your testimony on page 4, beginning
11 with line 6, you indicate that Southwestern Bell is in a
12 position to threaten the existence of competitors within its
13 exchanges while Southwestern Bell's competitors are not in a
14 similar position.

15 A. Yes.

16 Q. As an example, you state the FCC has recently
17 initiated its triennial unbundled network element review
18 docket that could potentially result in the removal of
19 incumbent unbundling obligations, resulting in increased
20 regulatory uncertainty for many competitive companies; is
21 that correct?

22 A. Yes, it is.

23 Q. Okay. Now, if the FCC removes an unbundling
24 obligation for a particular unbundled network element in a
25 particular geographic area, wouldn't you agree that it would

1 be because the FCC determined after conducting a necessary
2 and impair analysis that lack of access to that specific
3 unbundled network element from Southwestern Bell at
4 regulated rates did not impair the ability of CLECs to
5 compete?

6 A. I believe that's correct. If you could point
7 me to a document where that's been said in that record, that
8 would be great. I don't know that for a fact. That seems
9 to be reasonable.

10 Q. Okay. I'll go with it's reasonable.

11 On page 4, beginning on line 21 of your
12 testimony, you indicate that Southwestern Bell is in a
13 different position in the local marketplace and needs to be
14 subject to more stringent regulatory oversight if effective
15 competition is to survive and prosper. Do you see that?

16 A. Yes. And to clarify, that's a quote from the
17 Commission Order in TT-2001-108.

18 Q. Okay. And you're familiar with the provisions
19 in Chapter 392; is that correct?

20 A. Generally, yes.

21 Q. Okay. And specifically, 392.361 addresses
22 classifications of telecommunications companies and services
23 that such companies offer; is that correct?

24 A. I'm not sure of that. I'd like to see it --

25 Q. Sure.

1 A. -- if you have it available.

2 MS. MacDONALD: May I approach the witness?

3 JUDGE WOODRUFF: You may.

4 MS. MacDONALD: Thank you.

5 BY MS. MacDONALD:

6 Q. I'm giving you an opportunity to look at
7 392.361, and specifically I was going to talk to you about
8 subsection 5, so --

9 A. 5, okay. If you'd let me look at the whole
10 thing real quick.

11 Q. Sure.

12 A. Okay.

13 Q. And in Section 392.361.5, does that section
14 indicate that for competitive or transitionally competitive
15 companies, the Commission may suspend or modify the
16 application of any statutory provision in 392.200 to 392.340
17 except as provided in 392.390?

18 A. That is what it says, yes.

19 Q. Okay. Now, I've also given you a copy of
20 392.390, and specifically can you review that? And it's
21 subsection 5.

22 A. Okay.

23 Q. Okay. And Section 392.390, specifically
24 Section 5, specifies that all telecommunications companies
25 must be subject to the provisions of subsections 2, 3, 4 and

1 5 of 392.200; is that correct?

2 A. That's correct. That's what it says.

3 Q. Okay. So in other words, 392.200 applies
4 equally to ILECs and CLECs; is that correct?

5 A. I believe there may be differences in
6 circumstances that could lead the Commission to find
7 different -- to have different findings based on the
8 company's classification or the company's situation in the
9 marketplace. However, I think that they do apply equally.

10 Q. Okay. And nowhere in Section 392.200 does it
11 state that ILECs are subject to more stringent regulatory
12 oversight, does it?

13 A. It does not.

14 Q. Okay. Turning to your testimony on page 5,
15 beginning with line 4, you state in the question, Mr. Regan
16 states, quote, the fact that SWBT is providing such
17 promotions demonstrates competition is working, close quote,
18 citing Regan direct page 9, lines 20 to 21, and then you ask
19 yourself, Do you agree with his conclusion? Do you see
20 that?

21 A. Yes, I do.

22 Q. And you indicate that you don't agree with
23 that, and the fact that Southwestern Bell's providing such
24 promotions only indicates that Southwestern Bell is
25 concerned about its loss of revenue and market share; is

1 that correct?

2 A. Yes, that's correct.

3 Q. Would you agree with me that the reason, at
4 least one of the reasons that Southwestern Bell is concerned
5 about its loss of revenue and market share is due to the
6 loss of access lines it has encountered due to competition
7 and loss of revenue and market share?

8 A. That could very well be one of the reasons,
9 yes.

10 Q. Okay. And would you agree with me that
11 Southwestern Bell cannot offset decreases in revenue by
12 increasing prices with impunity because Southwestern Bell is
13 a price cap company and is subject to the statutory
14 requirements that are set forth in Section 392.245?

15 A. Generally, I believe that's true.

16 Q. Okay. Turning to page 7 of your testimony,
17 you address the concept that customers leave Southwestern
18 Bell for lower prices; is that correct?

19 A. Yes, it is.

20 Q. And you opine that some of Southwestern Bell's
21 customers have not left Southwestern Bell due to factors
22 such as their perceptions of either search costs or risks?

23 A. Yes.

24 Q. And on lines 19 to 20 you indicate, and I
25 quote, It is possible that customers in other SWBT

1 exchanges -- you might have said Southwestern Bell. No.
2 I'm sorry. You did say SWBT. I want to make sure I got
3 your quote right.

4 Quote, it is possible that customers in other
5 SWBT exchanges, or customer classes, may be just as
6 sensitive to price changes but without similar alternatives,
7 or choices.

8 Do you see that testimony?

9 A. Yes, I do.

10 Q. Would you agree with me that in Case
11 No. TO-2001467 the Commission determined that alternative
12 local exchange carriers are providing service to customers
13 in all of Southwestern Bell's 160 exchanges?

14 A. Could you restate the question?

15 Q. Sure.

16 A. Could you ask the question again?

17 Q. Will you agree with me that in Case
18 No. TO-2001467 the Commission determined that alternative
19 local exchange carriers are providing service to customers
20 in all of Southwestern Bell's 160 exchanges?

21 A. I believe that's correct.

22 Q. Okay. Would you like me to show it to you?

23 A. Well, I --

24 Q. I'd be more than happy to do it.

25 A. Please show it to me.

1 Q. Sure.

2 A. Please show it to me.

3 MS. MacDONALD: May I approach the witness?

4 JUDGE WOODRUFF: You certainly may.

5 BY MS. MacDONALD:

6 Q. Okay. I'm handing you a copy of the Order in
7 TO-2001467, and specifically I opened it for you to page 12.
8 At the bottom of page, would you agree with me that the
9 Commission has determined that alternative local exchange
10 carriers are providing service to customers in all of
11 Southwestern Bell's exchanges? Even though it doesn't say
12 160, I don't think, in that sentence, would you agree with
13 me there are 160?

14 A. I believe that's correct, and it does say all
15 exchanges.

16 Q. Okay. Mr. Thomas, on page 9 of your rebuttal
17 testimony, you discuss the concept that as prices are driven
18 towards cost, there will be a relationship between rates and
19 costs.

20 A. Yes.

21 Q. And on lines 9 through 12 you conclude, Thus,
22 there's a reasonable and fair basis for price discrimination
23 based upon differences in cost of service among different
24 customer classes. Do you see that testimony?

25 A. Yes, I do.

1 Q. Would you agree that the Commission has
2 allowed different rates for different customers on bases
3 other than the cost of providing service to customers?

4 A. Historically, that's true.

5 Q. Okay. And one example of when the Commission
6 has approved tariffs that allow Southwestern Bell to offer
7 different prices to different customers is the different
8 prices Southwestern Bell charges its residential and
9 business customers?

10 A. Yes. Those were established under the
11 regulated monopoly environment.

12 Q. Okay. And while the services offered to these
13 customers in the same exchange is the same, meaning the
14 customers have the same calling scope, the price the
15 customer pays for the service is dependent on whether the
16 customer's a residential or business customer?

17 A. Certainly, it's a result of the legacy
18 monopoly pricing.

19 Q. And in general, would you agree with the
20 concept that the Commission has allowed Southwestern Bell to
21 charge its business customers more for telephone service
22 than its residential customers even though the cost of
23 providing the same services in same exchange is the same?

24 A. Historically, yes.

25 Q. Okay. And let's just turn to the rates that

1 Southwestern Bell's charging its residential customers.
2 Would you agree that the Commission has allowed Southwestern
3 Bell to charge lower basic local rates for Rate Group D
4 customers than Rate Group A customers even though the cost
5 to serve Rate Group A customers is greater than the cost to
6 serve Rate Group D customers?

7 A. Yes. I believe those decisions were made
8 quite some time ago.

9 Q. Okay. And the Commission's also previously
10 approved a dozen winback tariffs for Southwestern Bell,
11 correct?

12 A. Somewhere around there, yes.

13 Q. If you want to check, there's 12 in
14 Mr. Hughes' testimony.

15 A. Okay. I'll accept your representation.

16 Q. Okay. So the Commission has previously
17 allowed different rates for different classes of customers
18 for reasons which are not necessarily based upon differences
19 in the cost of providing the service to customers?

20 A. Yes. Goals of universal service have
21 necessitated those findings.

22 Q. Would you agree with me that competitive local
23 exchange carriers frequently waive nonrecurring charges for
24 their customers?

25 A. That's my understanding.

1 Q. Okay. And would you also agree that IXCs
2 frequently make winback offers to their customers, including
3 cash offers such as the one presented in Schedule 1 that is
4 attached to the surrebuttal testimony of Mr. Hughes?

5 A. That's correct.

6 Q. Now, on page 10, lines 8 through 10 of your
7 testimony, you indicate that Staff finds it difficult to
8 support restrictions against customers who have service --
9 who have had service disconnected for nonpayment?

10 A. Yes.

11 Q. Okay. You state that you believe that the
12 restriction for nonpayment is not in the public interest?

13 A. Yes.

14 Q. And you conclude that customers who have been
15 disconnected for nonpayment but have settled their debt with
16 Southwestern Bell are subject to undue discrimination?

17 A. Yes.

18 Q. And in preparation for today's hearing, did
19 you have an opportunity to read John Regan's surrebuttal
20 testimony?

21 A. I did.

22 Q. After reading his testimony, do you understand
23 that Southwestern Bell will allow a customer who has been
24 disconnected for nonpayment to return to Southwestern Bell
25 so long as the customer pays Southwestern Bell the

1 outstanding balance or makes acceptable payment
2 arrangements?

3 A. After his testimony and his live testimony
4 this morning, yes, I do.

5 Q. Okay. And with that explanation and perhaps
6 some clarification in the tariff, are you satisfied that
7 customers who have been disconnected for nonpayment will not
8 be the subject of undue discrimination?

9 A. With perhaps some clarification in the tariff.
10 I realize Mr. Regan has said that and Southwestern Bell's on
11 record as saying that, but I think the tariff language is
12 still a little shaky on that issue, but I -- yes.

13 Q. Okay. So if we modified our tariff language
14 or tweaked it a bit to state exactly what we testified to,
15 you wouldn't have a concern about the nonpayment provisions;
16 is that correct?

17 A. That's correct, if it's tweaked to be in line
18 with what was said this morning.

19 Q. Okay. Now, turning to the tariffs that are at
20 issue in this case, Southwestern Bell proposes to waive the
21 nonrecurring service connection charges for residential
22 winback customers, correct?

23 A. Yes.

24 Q. And Southwestern Bell also proposes to waive
25 the nonrecurring charges associated with the SBC Advantage,

1 Essentials, Basics or Works packages for residential winback
2 customers?

3 A. I believe that's correct.

4 Q. Now, from a winback customer's perspective,
5 these promotions would allow customer to save money?

6 A. From a customer's perspective, yes.

7 Q. And if the Commission approves Southwestern
8 Bell's residential winback tariff, it would be available for
9 resale; is that correct?

10 A. That's what Mr. Hughes has stated.

11 Q. And you have no reason --

12 A. I don't have any reason to disagree with that.

13 Q. -- to disbelieve that? Thank you.

14 Now, in addition to Southwestern Bell's
15 residential winback promotion being available for resale, if
16 the Commission were to approve the winback tariff,
17 residential winback tariff that Southwestern Bell has
18 proposed in this proceeding, would it be fair to say that a
19 CLEC could also offer a similar package to the one that
20 Southwestern Bell's proposing?

21 A. I think the CLEC could offer that now. I
22 think the CLECs do offer things like that, only they offer
23 them to their entire customer base.

24 Q. Okay. And that's not exactly my question.
25 I'm saying if the Commission were to approve Southwestern

1 Bell's winback tariffs as worded, so they've gone into
2 effect now, would you agree with me that a CLEC could just
3 copy the tariff and change it to their telephone company
4 name?

5 A. Yeah.

6 Q. Okay. And turning to the business promotions
7 that Southwestern Bell has proposed in this proceeding,
8 Southwestern Bell proposes to waive the nonrecurring service
9 and equipment charges for various business services; is that
10 correct?

11 A. That's correct.

12 Q. And from a business winback customer's
13 perspective or a business win customer's perspective,
14 Southwestern Bell's proposed tariffs would allow the
15 customer to save money?

16 A. From the customer's perspective, yes.

17 Q. And if the Commission approves Southwestern
18 Bell's proposed business winback tariffs, those promotions
19 would be available for resale?

20 A. As Mr. Hughes has stated, yes, and I don't
21 have any reason to disagree with that.

22 Q. Okay. And like the residential example that
23 we've just discussed, if the Commission were to approve
24 these tariffs, a CLEC could offer the same or substantially
25 similar tariff by just substituting in their own company's

1 name?

2 A. That's correct.

3 MS. MacDONALD: That's all the questions I
4 have.

5 JUDGE WOODRUFF: Let's come up for questions
6 from the Bench. Commissioner Lumpe?

7 QUESTIONS BY COMMISSIONER LUMPE:

8 Q. Mr. Thomas, the discussion that went about
9 following the Commission's Orders, you are in effect
10 following our Order, not us following your position; is that
11 what you're saying?

12 A. I believe that may have been Mr. Cecil's
13 position in the case. I'm not entirely sure. I know that
14 is in the Order, and I'm not sure if that's what Staff's
15 testimony said or not.

16 Q. And do you personally disagree with that
17 Order? If you do, I think you need to tell us that.

18 A. Well, personally I think that term
19 anti-competitive has led to a lot of confusion.
20 Southwestern Bell has filed a lot of testimony about
21 anti-trust violations, and I don't believe that anti-- any
22 anti-trust violations have been brought forward in this
23 proceeding, and this is the second proceeding where this
24 sort of thing has happened.

25 Q. The terminology anti-competitive, that is what

1 is confusing?

2 A. I believe so.

3 Q. Have you proposed a definition for that in
4 your -- is that the definition you've proposed in your
5 testimony here? Is that the one we should follow?

6 A. That's the definition, as I understood, the
7 Commission had followed in the past.

8 Q. So that that was our definition and you were
9 just following it. Do you have a better definition that we
10 should be using, do you think?

11 A. I'm not really sure that anti-- the term
12 anti-competitive is the appropriate word to use. It may
13 just be the Commission needs to say we have found that these
14 may harm competition, and I don't know --

15 Q. So using the word anti-competitive is
16 inappropriate?

17 A. I think it might be. It opens up a whole
18 gamut of anti-trust law that I don't think the Commission
19 intended to address in its Order.

20 Q. But to say may harm competition is not
21 ambiguous?

22 A. I think it's still somewhat ambiguous, but I
23 think it removes the anti-trust law aspect.

24 Q. Issue?

25 A. Issue.

1 Q. Okay. Mr. Thomas, do you have a position on
2 at what point Bell would become non-dominant, and is that
3 even something to consider?

4 A. I think the Commission's been given guidance
5 there in the effect of competition sections of the statute,
6 and I think that may be a fine course to follow in
7 determining non-dominance for Southwestern Bell, when
8 Southwestern Bell has been declared a competitive company or
9 a company with all of its services competitive.

10 Q. So at that point we would consider it
11 non-dominant. At this point it is still under price cap,
12 and is that why you imply that it should be subject to more
13 stringent regulatory oversight --

14 A. Absolutely.

15 Q. -- because it's still not still dominant and
16 subject to price cap and not been declared --

17 A. No competitive service. There has not been
18 effective competition found in all of Southwestern Bell's
19 exchanges for all their services, yes, ma'am.

20 Q. So at this point we not found that local
21 residential competition is robust or should be -- what's the
22 word I want here -- well, I'll just use that it's robust?

23 A. Yeah, you found that in two exchanges.

24 Q. All right.

25 A. And the rest of the 160, I believe

1 Ms. MacDonald represented.

2 Q. Okay. Is it necessary that we follow the
3 FCC's findings on winback?

4 A. I don't believe so.

5 Q. We can determine for our own purposes whether
6 it's appropriate or not?

7 A. Absolutely. I think the FCC did not -- the
8 FCC definitely was not considering Missouri statutory law.

9 Q. All right. And there was some discussion
10 about the wholesale discount or that they could resell, that
11 CLECs could resell this. Would they be reselling it at the
12 wholesale discount?

13 A. I believe that that's correct.

14 Q. So they would get the discounts?

15 A. I don't quite know. We had some questions for
16 Mr. Hughes that I think may have gotten missed in
17 cross-examination that we're going to attempt to clarify
18 that, because I'm still a little foggy on exactly how the
19 discount would apply to a waiver of nonrecurring charges.

20 Q. I wasn't certain about that either. I know
21 somewhere they resell them as is, but there may be other
22 situations where they are to be sold at the discount, and
23 that's -- I'm not -- that's why I wanted to ask.

24 A. I'm sure we'll get an answer --

25 Q. Okay.

1 A. -- before the hearing's over.

2 COMMISSIONER LUMPE: I think those are all the
3 questions I have, Mr. Thomas. Thank you.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: Commissioner Gaw?

6 COMMISSIONER GAW: No, thank you.

7 JUDGE WOODRUFF: I have no questions, so we'll
8 go back to recross based on questions from the Bench. For
9 Public Counsel?

10 MR. DANDINO: Yes, your Honor.

11 RECROSS-EXAMINATION BY MR. DANDINO:

12 Q. Mr. Thomas, you and Commissioner Lumpe
13 discussed whether anti-competitive -- anti-competitive or
14 harm competition would be a better term.

15 Are you -- is it your thought that this
16 Commission does not have to judge whether an activity harms
17 competition by the same rules that apply strictly to
18 anti-trust?

19 A. I believe that's correct.

20 Q. And so you could have something that --
21 Southwestern Bell has been talking about the benefits of
22 promotes competition. Would inhibiting effective
23 competition, would that be a phrase that might be acceptable
24 to this Commission?

25 A. I think that could very well be acceptable.

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

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Then for WorldCom NuVox?

4 MR. CURTIS: I think we'll pass. Thanks.

5 JUDGE WOODRUFF: For AT&T?

6 MS. DeCOOK: I have no questions.

7 JUDGE WOODRUFF: For Southwestern Bell?

8 RE-CROSS-EXAMINATION BY MS. MacDONALD:

9 Q. Good afternoon again, Mr. Thomas.

10 A. Good afternoon again, Ms. MacDonald.

11 Q. Would you agree with me that even though the
12 FCC may not have considered the Missouri statutes when it
13 rendered its opinion that I've given you which is now marked
14 as Exhibit 27, it nevertheless would have considered the
15 provisions in the Telecommunications Act of 1996?

16 A. I believe that it would have or it should
17 have.

18 Q. And would you agree with me that the
19 provisions in Section 202(a) of the Telecommunications Act
20 of 1996 are substantially similar to the provisions that are
21 contained in 392.200.3 RSMo?

22 A. You're going to have to show them to me.

23 Q. Sure.

24 A. I don't know those at all.

25 Could you restate your question?

1 Q. Sure. I asked you whether the provisions that
2 are contained in Section 202(a) of the Federal
3 Telecommunications Act of 1996 are substantially similar to
4 the provisions contained in Section 392.200.3?

5 A. Yes, they are substantially similar.

6 Q. Okay. And that is the basis of -- that is the
7 basis under which Southwestern Bell is seeking to have the
8 Commission approve these tariffs, correct, 392.200.3?

9 A. That's correct. But I think we're also
10 missing some other objectives that I think the Commission
11 might have been given by the Legislature contained in
12 392.185.

13 Q. Okay. You would agree with me that
14 Southwestern Bell would not seek approval of a tariff under
15 Chapter 392.185 because that's merely the purposes of the
16 chapter?

17 A. I will agree.

18 Q. Okay. So back to my question, Southwestern
19 Bell is seeking approval under 300 -- 392.200.3, which is
20 substantially similar to Section 202(a) of the Federal
21 Telecommunications Act of 1996 which you said the FCC
22 considered when it issued its decision in Exhibit 27?

23 A. And my answer for that is that I don't know
24 that the FCC had the same directive to allow full and fair
25 competition to function as a substitute for regulation when

1 consistent with the protection of ratepayers and otherwise
2 consistent with the public interest to consider when they
3 evaluated 392.200.3.

4 Q. Okay. So you're not aware of any provision in
5 the Telecommunications Act of 1996 that would state that one
6 of the purposes and goals of that act is to allow
7 competition to substitute as a basis for regulation?

8 A. It's the second part of that, and I believe
9 your witnesses mischaracterized that as well, because it's
10 the when consist with the protection of ratepayers and
11 otherwise consistent with the public interest.

12 Q. Okay. And that's what you're contending it
13 isn't, in the public interest?

14 A. I'm not an attorney, but to me that means --
15 that means quite a lot when you have an entire statute with
16 six or seven different references to price discrimination.
17 And there's a lot of emphasis put on 392.200 about different
18 forms of discrimination, and I don't think it's something
19 that the Legislature intended to gloss over in my
20 understanding as an economist.

21 Q. Okay. But you would agree with me that when
22 Southwestern Bell has had winback tariffs in effect,
23 competition has increased based on the number of access
24 lines that CLECs serve during the period of August 2000 to
25 April 2002?

1 A. That's what Mr. Hughes represented.

2 Q. And you have no reason to disagree with those
3 numbers, correct?

4 A. Don't have any reason to disagree with them.

5 Q. Okay. Now, you were also asked a series of
6 questions by Commissioner Lumpe regarding Southwestern
7 Bell's status as a dominant telecommunications provider.
8 Remember those questions?

9 A. Yes, I do.

10 Q. Would you agree with me that the FCC allowed
11 AT&T to engage in winback activities even when it was the
12 dominant long distance carrier?

13 A. I have no knowledge of that.

14 Q. You don't know one way or the other?

15 A. I don't know one way or the other.

16 MS. MacDONALD: Thank you. That's all I have.

17 JUDGE WOODRUFF: Redirect?

18 MR. HAAS: Yes, your Honor.

19 REDIRECT EXAMINATION BY MR. HAAS:

20 Q. Mr. Thomas, do you recall Ms. MacDonald asking
21 you to review several paragraphs out of an FCC Order?

22 A. Yes, I do.

23 Q. Was your review of the tariffs at issue
24 performed under federal law?

25 A. It was not. It was performed under state law.

1 Q. Ms. MacDonald also referred you to a decision,
2 and I believe it was case TT-2001-154, where the Commission
3 rejected a Motion to Suspend filed by Staff and allowed a
4 winback tariff to go into effect August 4, 2000.

5 When was the decision in the TT-2001-108 case
6 that you rely upon?

7 A. That decision was -- if you give me just a
8 second. It was made on December 28th, 2001, or effective
9 December 28, 2001.

10 Q. And do you recall that Ms. MacDonald asked you
11 several questions about your definition of anti-competitive?

12 A. Yes, I do.

13 Q. I would like to read a section out of the
14 statute and then ask you a question about that.

15 A. Sure.

16 Q. 392.185 provides, The provisions of this
17 chapter shall be construed to, and then I turn to
18 subsection 6, allow full and fair competition to function as
19 a substitute for regulation when consistent with the
20 protection of ratepayers and otherwise consistent with the
21 public interest.

22 If the Commission in reviewing these tariffs
23 under 392.200 were construing -- 392.200 and reviewing the
24 tariff, were to find that these tariffs did not allow full
25 and fair competition to function as a substitute for

1 regulation when consistent with the protection of ratepayers
2 and otherwise consistent with the public interest, would
3 that require the Commission to make a finding that the
4 tariffs constituted anti-trust behavior?

5 A. It would not.

6 Q. Section 392.200.4(2) (b) provides in part that
7 the Commission shall approve such proposal if it finds based
8 upon clear and convincing evidence that such service in a
9 smaller geographic area or other such market segmentation is
10 in the public interest and is reasonably necessary to
11 promote competition and the purposes of this chapter.

12 And I'm asking you as an economist again, is
13 it your opinion that the Commission could find that such
14 service in a market segmentation is not in the public
15 interest and is not reasonably necessary to promote
16 competition and the purposes of this chapter and to make
17 that finding without making a finding of anti-trust
18 behavior?

19 A. Yes, it is.

20 MR. HAAS: Those are all my questions.

21 JUDGE WOODRUFF: All right. Thank you. You
22 may step down. You are excused.

23 (Witness excused.)

24 JUDGE WOODRUFF: We still have two witnesses
25 left, and obviously we're not going to do that before

1 five o'clock since it's now five after five. We will have
2 to come back tomorrow morning, and we'll begin at 8:30.

3 I know the court reporter was wondering how
4 long you might go tomorrow. I don't know, of course, how
5 long cross-examination might take. Based on what has
6 happened with previous witnesses, I would expect we'll
7 probably be able to finish by noon. Does anyone -- I won't
8 hold you to that, but does anyone disagree that?

9 I don't hear any responses to that, so for the
10 benefit of the court reporter we'll look towards finishing
11 by noon. If we go longer than that, of course, we'll stay
12 until the bitter end.

13 With that, then, we are adjourned until
14 tomorrow morning at 8:30. Thank you.

15 WHEREUPON, the hearing of this case was
16 adjourned until September 26, 2002.

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