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Witness: R. Matt Kohly
Sponsoring Party: Socket Telecom, LLC
Type of Exhibit: Rebuttal Testimony
Case Nos.: TO-2005-0035

SOCKET TELECOM, LLC
AMENDED REBUTTAL TESTIMONY
OF
R. MATTHEW KOHLY
CASE NO. TO-2005-0035

DECEMBER 17, 2005

EXHIBIT NO. 32
Date Prepared Case No. TO-2005-0035
Reporter

STATE OF Missouri)
COUNTY OF Boone) SS.

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Second Investigation)
Into the State of Competition in the) TO-2005-0035
Exchanges of Southwestern Bell Telephone.)
L.P., d/b/a SBC Missouri.)

AFFIDAVIT OF R. MATTHEW KOHLY

COMES NOW R. Matthew Kohly, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is R. Matthew Kohly. I am the Director - Telecommunications for Socket Telecom, LLC
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

R. Matthew Kohly
R. Matthew Kohly

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 21st day of December, 2004.

Susan Barlow
Notary Public

My Commission Expires:

Susan Barlow, Notary Public
State of Missouri, County of Boone
My Commission Expires March 20, 2005



1 **Q. Please state your name and address.**

 A. My name is R. Matthew Kohly. My business address is 1005 Cherry Street, Suite 104,
 Columbia, MO 65201.

2 **Q. By whom are you employed and what are your responsibilities?**

3 A. I am employed by Socket Holdings Corporation and am assigned to work for Socket
4 Telecom, LLC as Director – Telecommunications Carrier and Government Relations. In
5 this position, I am responsible for Socket's relationship with other telecommunications
6 carriers as well as regulatory issues.

7 **Q. Please describe your educational background.**

8 A. I have completed a Master of Science in Agricultural Economics from the
9 University of Missouri – Columbia, as well as a Bachelor of Science in Business
10 Administration also from the University of Missouri.

11 **Q. What is your prior work experience?**

12 A. Prior to joining Socket Telecom, I was employed by AT&T Corporation since
13 1998 in its Law and Government Affairs. In that position I was responsible for the
14 development and implementation of AT&T's regulatory and legislative policy and
15 activities in Missouri. My responsibilities included providing support for AT&T's entries
16 into various segments of the local exchange market. I also participated in regulatory
17 proceedings, including arbitration proceedings dealing with local interconnection,
18 costing, universal service, access charges, and Section 271 compliance.

19 Prior to that, I was employed by Sprint/United Management Corporation as a
20 Manager, State Regulatory Affairs. My duties included the development of Sprint

1 Communications Company L.P.'s regulatory policy focusing on issues surrounding
2 competitive market entry, such as TELRIC costing of unbundled network elements,
3 universal service, access charges, and 271 proceedings.

4 Before that I was employed at the Missouri Public Service Commission as a
5 Regulatory Economist in the Telecommunications Department and, later, on the
6 Commission's Advisory Staff. While in the Telecommunications Department, I assisted
7 in developing Staff's position on issues relating to costing, local interconnection and
8 resale, universal service and tariff issues. While serving on the Advisory Staff, I advised
9 the Commission on economic and competitive issues in the telecommunications industry
10 and assisted in the preparation of orders and opinions. In addition, while employed at the
11 Commission, I participated on the Commission's Arbitration Advisory Staff assigned to
12 mediation and arbitration proceedings filed pursuant to the 1996 Federal
13 Telecommunications Act.

14 **Q. Have you previously testified before State Public Utility Commissions?**

15
16 **A.** Yes. I have filed written testimony and/or testified before the Missouri Public
17 Service Commission, Montana Public Service Commission, Oklahoma Corporation
18 Commission and the Telecommunications Regulatory Board of Puerto Rico.

19 **Q. Can you describe the company that you are representing?**

20 **A.** Socket Telecom is a facilities-based local exchange carrier as well as an
21 interexchange carrier that operates in exchanges served by SBC, CenturyTel, and Sprint.
22 Socket offers voice and data services to small and medium-sized business customers
23 primarily in the rural areas of the state. Socket utilizes its own facilities as well as

1 facilities leased from other carriers, including SBC and other ILECs, to provide
2 telecommunications services to retail customers.

3 **Q. What is Socket's concern with SBC's request to have its retail services classified as**
4 **competitive?**

5 A. There is not "effective competition" in the local exchange market. There are still
6 great barriers to entry to the local exchange market and there are not effective alternatives
7 for many of SBC's local services. SBC continues to possess market power. Prematurely
8 granting SBC competitive classification of retail services will allow SBC to change retail
9 rates as it chooses. Socket is concerned that SBC will increase retail rates in geographic
10 areas or for services that do not face effective competition in order to engage in predatory
11 pricing by lowering rates below cost for particular customers, for a particular geographic
12 area, or for certain services where SBC may face a competitor. Another concern is that
13 SBC will increase monthly rates for retail services but allow customers to avoid the rate
14 increases or face less of an increase if they sign a multi-year contract with SBC. This
15 will allow SBC to use its market power to effectively "lock-up" customers.

16 **Q. "Regulatory parity" is one of the major themes throughout SBC's testimony. Do you**
17 **have a response?**

18 A. Yes. Many of SBC's witnesses put forth the idea that "all providers should be
19 treated equally" and that "by granting competitive classification, the Commission will
20 take a step towards regulatory parity..." While these flowery public relations sound
21 bytes may sound good at a very high level, the Commission needs to realize that all
22 carriers are not equal and, therefore, there is a need to treat them differently. SBC is
23 different than the companies that it competes against. Under the current regulatory rules,
24 a competitive local exchange carrier could tariff and charge a rate that is higher than the

1 incumbent for a comparable product. However, that CLEC could not realistically do so
2 as it would be unable to obtain customers. Thus as a practical matter, a CLECs pricing
3 ability is effectively capped by the presence of the incumbent local exchange carrier.

4 On the other hand, SBC would be able to raise rates because of its dominant
5 position in the market. In the event that SBC did lose customers, it could then offer a
6 reduced rate conditioned upon the customer's commitment to either stay with SBC or to
7 return to SBC. This explains SBC's pricing practices where it tends to increase rates for
8 non-basic services by 8% per year and then offer reduced rates only to select customers
9 through "win-back" and "retention" offers. Because SBC does have the ability to
10 increase rates, regulation is required to effectively cap that ability.

11 **Q. Mr. Unruh states that the Missouri "lawmakers envisioned all providers competing on**
12 **equal terms with price caps being an interim mechanism in the transition to a full**
13 **competitive market". What is your response?**

14 **A.** I don't know the basis of Mr. Unruh's statement since there is no published
15 legislative intent that he can cite to support his statement. His statements can only be
16 speculation. A straightforward reading of the statute indicates that price caps are to be in
17 place until there is effective competition that can act as a substitute for regulation. There
18 is nothing in the statute about achieving regulatory parity simply for the sake of having
19 regulatory parity. If regulatory parity was the goal of this legislation, I would speculate
20 that there would be no requirement to demonstrate effective competition and that the
21 legislation would have dictated that all companies be classified as competitive.

22 **Q. For purposes of this case, "Effective Competition" is described by Section**
23 **386.020(14) RSMo. 2000. Can you identify and describe the various components of**
24 **that statutory provision?**

1 A. While the statute does not define "effective competition", it requires the
2 Commission to base its decision on whether or not there is "effective competition" on the
3 following factors:

- 4 1. Section 386.020(14)(a) - the extent to which services are available from
5 alternative providers in the relevant market;
- 6 2. Section 386.020(14)(b) - the extent to which the services of alternative
7 providers are functionally equivalent or substitutable at comparable rates,
8 terms, and conditions;
- 9 3. Section 386.020(14)(c) - the extent to which the purposes and policies of
10 chapter 392, RSMo, including the reasonableness of rates, as set out in
11 section 392.185, RSMo. as set out in section 392.185 RSMo. are being
12 advanced;
- 13 4. Section 386.020(14)(d) - existing economic or regulatory barriers to entry;
14 and
- 15 5. Section 386.020(14)(e) - any other factors deemed relevant by the
16 Commission and necessary to implement the purposes and policies of
17 Chapter 392 RSMo. 2000.

18 **Q. Has the Missouri Public Service Commission defined "effective competition"?**

19
20 A. Yes. In Case No. TO-2001-467, the Commission developed the following
21 definition of "effective competition"

22 When considered in the full context of Sections 392.245.5 and 386.020(13),
23 "effective competition" as used in subsection 5 of the price cap statute refers to
24 competition that is adequate to accomplish the purposes that were previously to
25 have been accomplished by the cost floors and maximum prices and, to produce
26 the intended or expected results, namely accomplishing the "purposes and policies
27 of chapter 392, RSMo, including the reasonableness of rates, as set out in
28 section 392.185," over a sustained period running up to five years into the future.
29 As witnesses such as Dr. Aron testified, this means that "effective competition" is
30 competition that exerts sustainable discipline on prices and moves them to the
31 competitive level of true economic cost.¹

32 **Q. Can you describe what Section 386.020(14)(a) requires?**

33 A. This section requires the Commission to consider the extent of competition in
34 Missouri. In doing so, the Commission must consider both the depth and breadth of local

¹ Case No. TO-2001-467, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, December 27, 2001. <http://www.psc.state.mo.us/orders/12271467.htm>

1 competition in determining whether there is effective competition in Missouri. Typically,
2 the best way to determine this is by performing an analysis of market share data and the
3 manner in which competitive services are provisioned by CLECs. While Section
4 386.020(14)(a) does not explicitly impose a market share threshold, the Commission
5 should consider whether the level and scope of competition in Missouri could effectively
6 discipline SBC's pricing strategies and restrain SBC's ability to engage in anti-
7 competitive behavior.

8 **Q. Did SBC present a marketshare analysis in this case?**

9 A. Yes.

10 **Q. Have you reviewed the testimony related to market share analysis?**

11 A. I have reviewed that public version of that testimony but have not been able to see
12 the Highly Confidential data contained in Mr. Unruh's analysis.

13 **Q. What is your understanding of the source of the data used in that analysis?**

14 A. Much of the data concerning the market share served by the various CLECs was
15 taken from SBC's wholesale operations and from the E-911 database. That data actually
16 belongs to the individual CLECs rather than to SBC. SBC's use of this data violates the
17 confidentiality provisions of the M2A and the Commission's own E-911 rules. For
18 example as an E-911 service provider, SBC is required by 4CSR 240-030(1)(B) to restrict
19 access to the E-911 database for use by basic local exchange providers (both ILECs and
20 CLECs) solely for the use of updating subscriber records. SBC's use of that data in this
21 case is certainly not for updating subscriber records. By permitting SBC's retail
22 operations to collect and use 911 data for a purpose other than updating subscriber
23 records, SBC did not fulfill its responsibilities as the E-911 service provider.

1 It is inappropriate for SBC to use this data for purposes benefiting its retail
2 operations. What is even worse is that data belongs to CLECs and yet they cannot review
3 it. Meanwhile, under the protective order, every SBC witness (and possibly every SBC
4 employee) can see that data. SBC's witnesses in this case have direct retail
5 responsibilities and job duties. For example, SBC's witness Ms. Elizabeth Stoia is the
6 Director – Consumer Marketing while another witness, Sylvia Fernandez is the Director
7 – Packaging Simplification. Both of these witness are directly involved in the sales and
8 marketing of retail products that compete with the products and services offered by
9 CLECs.

10 Several of the parties to this case, including Socket, challenged the highly
11 confidential classification of this data. In response, SBC said the data needed to be
12 protected because, "if the CLECs knew by exchange the number of access lines that SBC
13 Missouri serves and/or the estimated number of access lines that the CLECs serve, such
14 information could be used to determine whether to enter or exit a specific exchange and
15 how to price a service within an exchange. Such information may also help CLECs with
16 their marketing plans, e.g. how successful a certain marketing approach worked (door-to-
17 door selling, direct mail, etc.)."²

18 Certainly, SBC's retail marketing directors who can now freely review all of the highly
19 confidential information contained in SBC's testimony may similarly find this
20 information useful in fulfilling their retail responsibilities. SBC misuse of this data is
21 completely inappropriate.

² Southwestern Bell Telephone, L.P. d/b/a SBC Missouri's Response to Challenges to Confidential Nature of SBC's Prefiled Direct Testimony, pg 6.

1 **Q. Beyond the blatant misuse of CLEC data, do you have any general comments on**
2 **Mr. Unruh's market share analysis?**

3 A. Yes. Mr. Unruh's marketshare analysis attempts to demonstrate the level of
4 competition as of June 2004 and provides some trends leading up to that date.

5 **Q. Do you think the level of competition as of June 2004 is useful in this case?**
6

7 A. Not any longer. As Dr. Debra Aron states, "market share can be a misleading
8 measure of competition in that they compose a static picture of the market."³ I would
9 agree with that, especially in situations where you have structural changes that will
10 dramatically alter trends in the industry; as is the current situation in the
11 telecommunications market.

12 **Q. Can you provide an example of a change that will dramatically alter the trends in**
13 **the industry?**
14

15 A. Yes. On December 15, 2004, the FCC voted on new unbundling rules that govern
16 the CLEC's ability to acquire and use unbundled network elements. While the actual
17 rules are not available, the press release summarizes those rules at a very high level.
18 With respect to mass-market unbundled local switching, the FCC concluded that
19 incumbent LECs such as SBC have no obligation to provide competitive LECs with
20 unbundled access to mass market local switching. The FCC went on to set out a 12-
21 month transition plan that applies to the embedded base of customers served via
22 unbundled local switching and does not permit CLECs to add new switching UNEs.
23 Mass-market unbundled local switching is what makes UNE-P possible.

24 The FCC's press release also indicates there will be reductions in the availability
25 of DS-1 loops, DS-3 loops, dark fiber loops and dedicated interoffice transport. As there

³ Direct Testimony of Debra Aron, pg. 59.

1 are certain thresholds that determine their availability, I am not in a position at this time
2 to determine how that will affect their availability in Missouri absent seeing the actual
3 order and data related to those thresholds.

4 **Q. Mr. Unruh presents his market share analysis as of June 2004 along with some past**
5 **trends related to CLEC activity and suggests that based upon that analysis**
6 **concludes, "CLECs are capable of, and currently are, serving customers throughout**
7 **SBC Missouri exchanges"**⁴. **Do you have a response?**

8 **A.** Yes. In my opinion that analysis is largely irrelevant and provides no basis for
9 making future projections that CLECs will continue to service customers throughout SBC
10 Missouri exchanges.

11 For example, Mr. Unruh's analysis relies upon the unbundled network element
12 platform (UNE-P) to demonstrate the CLECs are serving business and residential
13 customers. Given the FCC's December 15, 2004 Order, UNE-P as a competitive
14 alternative is irrelevant since incumbent local exchange carriers no longer have an
15 obligation to provide unbundled local switching. Without unbundled switching, the
16 UNE-P platform cannot exist.

17 Prior to the FCC's decision, AT&T had already announced its intent to withdraw
18 from the consumer voice market⁵. According to published reports, "MCI has quietly
19 taken similar steps and is no longer competing in the residential business"⁶. Z-Tel
20 similarly announced its withdrawal from the provision of UNE-P services, citing the
21 "elimination of UNE-P as a working economic business model in early 2005".⁷ Even

⁴ Direct Testimony of Craig Unruh, pg. 32.

⁵ See "AT&T Announces Second Quarter 2004 Earnings, Company to Stop Investing in Traditional Consumer Services; Concentrate on Business Markets," News Release, July 22, 2004 available at <http://www.att.com/news/item/0,1847,13163,00.html>.

⁶ See "MCI Hires Advisors for Likely Sale Bid," Washington Post, page E01, Sept. 21, 2004

⁷ See "Z-Tel Announces Second Quarter Financial Results," Press Release, Aug. 9, 2004.

1 prior to the FCC's decision, most telecommunications industry analysts predicted that
2 voice services based on UNE-P would soon disappear as a business. One analyst
3 summed it up by saying

4 "UNE-P has come full circle. We now believe the Bells will begin to see the
5 effects of the Big IXCs' exit from the consumer business in 2Q04. With 17M
6 UNE-P lines and estimated monthly blended churn of roughly 5%, the Bells
7 should see wholesale lines fall by roughly 8M in the first twelve months after
8 competitors stop marketing. We believe the FCC's new interim rules will make
9 this a reality in 2005. Meanwhile, we think the Bells should recapture at least
10 80% of these lines, more than offsetting recent retail losses."⁸
11

12 Given the FCC's decision as it relates to UNE-P, these predictions are almost certain to
13 become a reality. More importantly, there is no basis to presume the current level of
14 competition will be sustained for any significant time.

15 **Q. How large of a factor was UNE-P in the overall local competition that SBC faced?**
16

17 **A.** It was the primary factor as indicated by SBC's own financial reports. According
18 to SBC, "The decline in retail access lines historically has been primarily attributable to
19 customers moving from our retail lines to competitors using our wholesale lines provided
20 under the Unbundled Network Element-Platform (UNE-P) rules."⁹

21 This is confirmed by Mr. Unruh's marketshare analysis. Mr. Unruh's publicly
22 disclosed data shows that UNE-P accounts for 230,137 of the 561,847 lines or 41% of the
23 lines that Mr. Unruh concludes are served by the CLECs. If you remove these lines from
24 Mr. Unruh's analysis, the total CLEC market share according to Mr. Unruh's data falls to
25 a mere 12%. This is hardly indicative of a competitive market. In fact, the statewide

⁸ See UBS Warburg, Telco Wake Up Call, "Quarterly and Update on Bell Margins," Hodulik, John, Aug. 9, 2004.

⁹ SBC Communications, Inc. Form 10Q, Filed Nov. 5, 2004 for period ending Sept. 30, 2004, available at
<http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec10Q>

1 level of competition would be at the same level that it was when the Commission
2 recommended approval of SBC's 271 Application in March 2001¹⁰.

3 **Q. What customers were previously served by UNE-P that was made possible by mass**
4 **market local switching?**

5 A. As the name implies, mass-market local switching was used to serve the mass-
6 market, which consists of residential customers as well as some small business
7 customers. Based upon the Commission's decision in Case No. TO-2004-0207, the
8 Commission defined the mass market as customers served with ten or fewer DS0 loops at
9 a particular location.¹¹ As you can imagine this represents virtually all residential
10 customers and a great many small business customers. Absent unbundled local
11 switching, competitive choice among these customers is likely to vanish.

12 **Q. In your previous responses regarding marketshare, you relied upon statewide**
13 **numbers. Do you have a concern with those numbers?**

14 A. Yes. SBC has previously received competitive classification for all business local
15 services in the St. Louis and Kansas City Metropolitan exchanges and for all residential
16 local services in the Harvester and St. Charles exchange. In providing its statewide
17 numbers in this case, SBC seems to be including competitive statistics from those
18 exchanges already declared competitive in its marketshare analysis. I do not think that it
19 is accurate to use the marketshare data from exchanges that have previously been
20 classified as competitive to demonstrate the marketshare in areas where the services have
21 not been classified as competitive. To the extent that overall marketshare is relevant, the

¹⁰ Case No. TO-2001-467, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, December 27, 2001. <http://www.psc.state.mo.us/orders/12271467.htm>

¹¹ Case No. TO-2004-0207, In the Matter of a Commission Inquiry into the Possibility of Impairment without Unbundled Local Circuit Switching When Serving the Mass Market, ORDER ESTABLISHING GEOGRAPHIC MARKETS AND ENTERPRISE MARKET CUTOFF, February 27, 2004, <http://www.psc.state.mo.us/orders/02244207.htm>

1 appropriate data is data related to the exchanges where SBC is currently seeking
2 competitive classification.

3 **Q. Continuing to look at the marketshare analysis, both Mr. Unruh and Dr. Aron**
4 **indicate that the data contained in the E-911 database understates the number of**
5 **access lines served by facilities based CLECs since only outbound lines have 911**
6 **listings associated with them. Do you agree?**

7 A. No, I do not. Based upon my experience, some carriers place all numbers
8 associated with any voice line in the E-911 database, regardless of whether the line is
9 inbound or outbound. Carriers do this to avoid the possibility of future omissions and
10 potential liability if the service is later changed to an outbound or to a two-way service.

11 In the example given by Dr. Aron, she indicates that her office has 16 PBX
12 trunks; consisting of eight one-way outbound and eight one-way inbound trunks. She
13 further states that only the eight outbound would be in the E-911 database, which she
14 concludes understates the total trunks by a factor of two. While I do not know which
15 carrier serves her particular office, if she were served by a carrier that placed all voice
16 lines into the E-911 database, it would actually overstate the number of lines as you
17 would see 16 E-911 listing. Based upon how the 911 data is being presented, SBC would
18 have you assume those were 16 two-way listing, thus overstating the line count.

19 Even if the carrier only listed outbound trunks, it has also been my experience that
20 very few modern PBX systems rely upon one-way trunks so I question the extent of any
21 possible overstatement.

22 **Q. Are there other issues with the data in the E-911 database?**

1 A. Yes. In my experience at Socket and focusing on the small and medium size
2 business market, there are other factors that will cause data taken from the E-911
3 database to actually overstate the number of actual phones lines actually provisioned. For
4 example, a customer may request a two-way DS-1 trunk for voice channels. This is the
5 equivalent of 24 DSOs or 24 voice channels. However, the customer will also request a
6 block of additional numbers to be assigned so that they actually have more phone
7 numbers and than phone lines. This can be done because all telephones are not used at
8 the same time. Using Dr. Aron's example, she indicated that her office had eight inbound
9 lines and eight bound lines serving approximately 40 telephones. Each of those 40
10 telephones will have a number assigned to it. If the customer requested forty numbers
11 from Socket, Socket would put all forty in the E-911 database. Thus, in the E-911
12 database, it would appear that there are 40 two-way phone lines being served by a
13 facilities-based carrier. This clearly overstates that actual number, which is sixteen one-
14 way lines.

15 **Q. If the 911 database overestimates actual lines, would SBC's line count presented in**
16 **this case be overstated as well?**

17 A. No. While Mr. Unruh does not identify the source of SBC's own line count, it does not
18 appear that it was taken from the 911 database.

19 **Q. How important is resale as a competitive alternative?**

20 A. It is generally not seen as a competitive alternative because of the low profit
21 margins that are available combined with the inability of the provider to differentiate

1 itself from the incumbent. Mr. Unruh's own numbers show that resale accounts for only
2 23,209 lines in Missouri. That translates into a market share of less than 1%.

3 More importantly for the Commission's purposes in this case, as the wholesale
4 rate is directly tied to the retail rate, resale cannot provide any price discipline on the
5 ILEC's services. The Commission recognized this in Case No. TO-2001-467 when it
6 concluded that CLECs "that provide service via resale of Southwestern Bell's services
7 are limited in their ability to differentiate their service offerings based on price, because
8 the minimum cost that a reseller incurs to provide service is directly tied to Southwestern
9 Bell's retail rate for the resold service."¹²

10 **Q. Dr. Aron suggests that resale may be an important entry strategy to allow a CLEC**
11 **to build a customer relationship or to permit the CLEC to sell additional services.**
12 **Do you have a response?**

13 **A.** While this sounds theoretically possible, Dr. Aron fails to provide any concrete
14 evidence that any carrier is actually doing this. Providing service through resale requires
15 additional ordering and maintenance interfaces, billing systems, and processes that are
16 specific to resale. This would require additional investment and expense on the part of
17 the CLEC. A resold product has a different cost structure and would most likely have a
18 different retail rate structure. Once the competitor converted the customer to a facilities-
19 based product, these items as well as the actual service would change. Because of the
20 additional investment, expense, and potential customer confusion of establishing an
21 account through resale and then later converting it to something else, it does seem not
22 likely that a CLEC would use resale as temporary arrangement.

¹² Case No. TO-2001-467, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, December 27, 2001. <http://www.psc.state.mo.us/orders/12271467.htm>

1 Moreover, the CLECs ability to provision additional services is very limited. For
2 example, Socket has considered providing resold DSL service combined with resold
3 basic local service as a potential business venture. However, SBC only permits resellers
4 of its DSL service to provide the DSL service to customers that have basic local service
5 with SBC. If the customer is getting basic local service from a CLEC through resale or
6 UNE-P, SBC will not permit a DSL reseller to provide DSL service to that customer.
7 Because of SBC's imposed restriction, resale in this area is not an option.

8 **Q. Mr. Unruh's testimony also discusses the number of CLEC switches deployed to**
9 **serve customers in Missouri, the number of points of interconnection, and the**
10 **number of collocation facilities. Do you have any comments?**

11 While these are facilities that are deployed to serve customers in Missouri, the
12 Commission should be careful in concluding that these facilities can be used to serve
13 broad geographic areas or broad customer bases. The fact that a particular CLEC may be
14 able to serve a particular market segment does not mean that the CLEC is able to
15 suddenly expand and serve all customer segments. The same holds true for geographic
16 areas.

17 Additionally as Mr. Unruh indicates, a CLEC's ability to serve a broad
18 geographic area is related to the CLEC's ability to obtain dedicated interoffice transport
19 and dedicated loops. The facilities can be combined to create Enhanced Extended Loops
20 (EELs) to serve customers in exchanges where the CLEC may not have established
21 collocation. Unbundled dedicated transport and unbundled high-capacity loops are
22 addressed by the FCC's December 15, 2004 unbundling decision. Based upon the press
23 release, additional restrictions were placed upon the availability of these UNEs that will
24 limit their availability as UNEs. Given the date of the decision and the lack of detail, it is

1 impossible to know the exact impact the FCC's decision will have on their availability as
2 UNEs. The Commission should be aware that SBC's proposed replacement for the M2A,
3 which is set to expire in March 2005, has no provisions for any dedicated interoffice
4 transport or high-capacity loops.

5 **Q. On page 40 of his direct testimony, Mr. Unruh states that SBC has lost over 100,000**
6 **residential lines since July 2003 and indicates that 50,000 went to CLECs and other**
7 **50,000 were "lost". Do you have a response?**

8 **A.** Yes. While acknowledging that it is difficult to say exactly what happened to the
9 "lost" lines, Mr. Unruh conjectures that some of the difference is due to "substitution and
10 replacement by wireless, VoIP, and high-speed Internet services (e.g. cable modem
11 service)" as well as the recent economic downturn causing customers to disconnect
12 second phone lines.¹³ Mr. Unruh fails to mention what is likely to be the major cause of
13 the lost lines, which are customer's canceling second lines when purchasing SBC's DSL
14 service. SBC acknowledges this case in its 3rd Quarter 10-Q Report filed with the SBC
15 and specifically states, "The decline in total access lines reflects many factors including
16 the disconnection of additional lines as our existing customers purchase our DSL
17 broadband services." The Commission should realize that as a condition of getting DSL
18 from SBC, the DSL customer is required to have basic local service from SBC, thus DSL
19 cannot be a substitute for primary lines. This also means that the various VoIP services
20 cited by Mr. Unruh cannot be viewed as a substitute for basic local service if the
21 customer is relying upon SBC's DSL to provide the necessary broadband connection.

22 **Q. Can you describe what Section 386.020(14)(b) requires?**

¹³ Direct Testimony of Craig Unruh, pg. 40.

1 A. This provision requires the Commission to determine the extent to which services
2 offered by alternate service providers are functionally equivalent to the services offered
3 by SBC.

4 **Q. What is required to meet this standard?**

5 A. To meet this standard, the services must be relatively substitutable at the retail
6 level. In addition, the services must be functionally equivalent in the manner in which
7 they are provisioned. In other words, the only substitute for SBC's facilities-based
8 service is another facilities-based service that is provisioned in a particular geographic
9 area or to a particular market segment.

10 **Q. Several SBC Witnesses suggest that the Commission should consider wireless**
11 **service as a substitute for landline, basic local services. Do you agree?**

12 A. While I agree that the Commission can look at wireless service as well as other
13 "alternative services" and consider whether they are truly substitutes, SBC's own data as
14 well as other data indicates that wireless service and other alternatives do not function as
15 a substitute for basic local service.

16 **Q. You mentioned SBC's own data shows that wireless is not a substitute for basic local**
17 **exchange service. Can you elaborate?**

18 A. Yes. Dr. Aron presents a study that purports to show that 5% of the households
19 have abandoned their landline in favor of cell phones. This is consistent with other
20 surveys that I have seen. This tells me that 95% of the households have not abandoned
21 their landlines in favor of cell phones, which indicates that a wireless phone is not a
22 substitute for basic local service.

1 In addition, this 5% number is similar to the number that an SBC Witness, Tom Hughes,
2 presented in the previous case addressing the level of competition in the SBC exchanges.
3 In Case No. TO-2001-467, Mr. Hughes suggested that 3% of the customers use wireless
4 service as their only service.¹⁴ While the newer number represents an increase, it is only
5 a two-percent increase over a three-year period, indicating that rate for wireless
6 substitution is fairly static.

7 **Q. Has the FCC addressed the issue of wireless substitution for landline connections?**

8
9 A. Yes. The FCC's recent report on wireless competition addressed intermodal
10 competition and concluded that "While specific data is largely unavailable, it appears that
11 only a small percent of wireless customers use their wireless phones as their only phone,
12 and that relatively few wireless customers have "cut the cord" in the sense of canceling
13 their subscription to wireline telephone service.¹⁵

14 **Q. Mr. Shooshan discusses two-forms of wireless substitution. Those are "line**
15 **substitution" and "usage substitution". Can you explain those two forms and**
16 **explain which is relevant to this proceeding.**

17 A. Yes. As Mr. Shooshan describes, "line substitution" occurs when a customer
18 disconnects or never connects a wireline phone and instead uses only a wireless phone.
19 Usage substitution occurs when a customer elects to place a call on his or her wireless
20 phone rather than on his or her landline phone. For purposes of this case, the only
21 substitution that is relevant is line substitution. SBC is asking the Commission to
22 consider whether a wireless connection is a substitute for a landline connection. The fact
23 that a customer may purchase both a cell phone and landline phone and then choose to

¹⁴ Case No. TO-2001-467, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Direct Testimony of Mr. Thomas Hughes, pg. 29.

¹⁵ FCC's Ninth Annual Report of Competitive Market Conditions with Respect to Commercial Mobile Services, Released Sept. 28, 2004, pg. 89.

1 make a call on the cell phone is irrelevant to whether the wireless connection serves as a
2 substitute for the landline connection. People may choose to make all long distance calls
3 on their cell phone because of a lower rate but if they still retain their landline, it is not a
4 replacement or a substitute for that landline connection.

5 **Q. Mr. Shooshan presents a study of wireless usage in SBC's metropolitan exchanges.**
6 **Do you have any concerns with how the results of that study are presented?**

7 A. Yes. According to the testimony, Mr. Shooshan presents results that indicate that
8 18% of wireless phone users said they did not have wireline service at their home. While
9 this may an interesting statistic, it is not the question that the Commission needs to
10 consider in this case. The relevant question is whether wireless service is a substitute for
11 landline service. To answer that question, a survey needs to be taken across all
12 households.

13 In addition, it seems likely that the survey methodology created results that were
14 biased in favor of heavy cell phone users. The survey was conducted by calling cell
15 phone users based upon their NPA-NXX. That means that the cell phone user had to
16 have their cell phone turned "on" and be willing to answer a call from an unknown caller.
17 It also means that the cell phone user had to be willing to use purchased minutes of
18 service to participate in the survey.

19 This survey methodology would not have captured cell phone users that use their
20 cell phones only for emergencies, those that turn the cell phones off when at work or at
21 home, or those that only turn their cell phone when they are making calls. It also would
22 not have captured users that are only willing to use purchased minutes of service talking

1 to people that they know. By excluding these users, the results are likely to be biased and
2 produce results that overstate actual wireless substitution (both line and usage).

3 Focusing only on urban markets, where wireless service tends to be more
4 ubiquitous than in rural areas, could create an additional bias. Thus, these results should
5 not be used to make any inferences regarding wireless usage outside of the survey areas.

6 One thing that is interesting is that when conducting the wireline survey based
7 upon customers with NPA-NXXs associated in the LERG with landline providers, the
8 survey appears not to have captured a single customer that had ported their landline
9 number to a wireless user.

10 **Q. Have any SBC executives made any statements regarding the substitutability of a**
11 **wireless connection for a landline connection?**

12 **A.** Yes. SBC Chairman Ed Whitacre addressed wireless phone usage and stated that
13 wireless is, "not going to displace the wireline network. It's certainly going to be a big
14 product, but it's never going to be the substitute. Reliability is one reason."¹⁶ SBC's
15 actions are consistent with this view as SBC tries to package wireline phones with its
16 Cingular wireless service.

17 **Q. Has the Commission addressed the issue of wireless providers competing against**
18 **wireline carriers in another case?**

19 **A.** Yes. This issue was addressed in Case No. TO-2003-0531 that involved Mid-
20 Missouri Cellular's (MMC) request to be designated as an Eligible Telecommunications
21 Carrier for purposes related to the universal service. In that case, Spectra
22 Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri
23 ("CenturyTel") opposed Mid-Missouri Cellular's request and argued, "Wireless service

¹⁶ "A Wireless World, *Business Week*, October 20, 2003.

1 differs significantly from wireline service in many respects and is generally not
2 considered "substitutable."¹⁷ Citing the transcript from that case, CenturyTel went on
3 state, "the majority of MMC's customers already have landline service provided by the
4 incumbent LECs."¹⁸ Staff's Witness in that case reached similar conclusion by stating
5 that,

6 When a competitive local exchange carrier (CLEC) receives ETC status, it is
7 presumed that the CLEC will be taking the same customer line from the ILEC,
8 thus receiving the funding the ILEC previously received. However, when a
9 wireless carrier receives ETC status, for a large majority of the customers, it can
10 be presumed that the ILEC will continue to receive support for the customer's
11 wireline service while the wireless carrier would receive additional support for the
12 customer's wireless service.

13 This conclusion indicates that wireless is not viewed as a substitute for wireline service.
14 Ultimately, the Commission denied Mid-Missouri Cellular's request for ETC status
15 citing, among other factors, concerns about the rapid growth of the universal fund¹⁹. If
16 wireless service was a substitute for wireline service, the designation of multiple ETCs in
17 the same study area would not cause increase in the fund, it would simply change which
18 carrier received the funds. The fact that the two services are not substitutes is what
19 causes the rapid growth of the universal service fund.

20 **Q. Dr. Aron also refers to a study that estimates that 10% of the wireline users**
21 **responded that they would take their wireline number to a wireless carrier based**
22 **upon the new rules.²⁰ Do you have a response?**

¹⁷ Case No. TO-2003-0531, In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Designation as a Telecommunications Company Carrier Eligible for Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Initial Brief of Intervenor Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC, pg. 16

¹⁸ Ibid.

¹⁹ Case No. TO-2003-0531, In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Designation as a Telecommunications Company Carrier Eligible for Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Report and Order, August 5, 2005, <http://www.psc.state.mo.us/orders/08053531.htm>.

²⁰ Direct Testimony of Debra Aron, pg. 85.

1 A. When that prediction is compared to the number of people that actually ported
2 their wireline number to a wireless carrier, it shows how far off such predictions can be.
3 According to one report, there are 183 million "traditional" phone lines in the United
4 States. If ten percent of the wireline users ported their wireline line number to a wireless
5 phone that would be 18.3 million numbers ported. According to the FCC, only about
6 750,000 people have ported a number from a wireline phone to a wireless phone. That
7 number is well short of the predicted 10%.

8 **Q. SBC's testimony also addresses VoIP as being a substitute for local service. Do you**
9 **have any response?**

10 A. SBC presented no actual state-specific statistics on its current use in Missouri.
11 The general VoIP offers cited by SBC require a broadband connection, either via DSL or
12 via a cable-modem. As a condition of the getting DSL from SBC, the customer must also
13 purchase basic local service. Thus, for DSL customers served by SBC, VoIP products
14 cannot serve as a substitute for basic local service. A DSL customer might purchase a
15 VoIP service to place long distance calls and even local calls but it still cannot be
16 considered a substitute for basic local service.

17 With respect to the small business market, the dominant broadband connection
18 available to business customers is DSL services. Cable providers have historically
19 focused their network deployment in residential areas, leaving most business with the
20 ILEC as their only broadband option. Recent figures show that cable penetration in the
21 small business market is miniscule and actually dropped:

22 [The Yankee Group] projected cable modem would surpass DSL in this [the small
23 business] segment by year-end 2003. However cable modem penetration dropped
24 precipitously in the small business markets, or businesses with between 20 and 99
25 people. Cable operators also achieved limited success in the remote office

1 market, reaching only 4.2 percent of the market in 2003.... DSL operators
2 dominate the U.S. [small business] broadband and enterprise remote office
3 broadband market²¹

4 Given this, VoIP or even traditional phone service via a cable operator is not a true option
5 for small business customers.

6 **Q. Mr. Unruh states that "VoIP services are attractive in the residential market**
7 **because of lower prices."²² Do you have a response?**

8 A. The lower price is certainly a major driver if not the main driver. However, there
9 are many unanswered regulatory issues that will ultimately affect the price consumers
10 pay for VoIP services. These issues include what taxes will be applied to VoIP service
11 and what intercompany compensation applies. Until these questions are answered, the
12 popularity and the future of VoIP are largely unknown.

13 **Q. Will you describe what Section 386.020(14)(c) requires?**

14
15 A. Section 386.020(14)(c) - the extent to which the purposes and policies of Chapter
16 392 RSMo 2000, including the reasonableness of rates, are set out in Section 392.185,
17 RSMo. 2000 as set out in section 392.185 RSMo. 2000 are being advanced. While each
18 purpose set forth in this section is relevant and must be considered in the determination of
19 whether or not there is effective competition, I will only focus on three that are directly
20 related to Socket's concerns. Those three are:

21 Section 392.185(3) – promote diversity in the supply of telecommunications
22 services and products throughout Missouri.

23 Section 392.185(4) – ensure that customers pay only reasonable charges for
24 telecommunications services.

²¹ Yankee Group, Cable, and DSL Battle for Broadband Dominance (February 2004), at 4-5.

²² Direct Testimony of Craig Unruh, pg. 35.

1 Section 392.185(6) – allow full and fair competition to function as a substitute for
2 regulation when consistent with the protection of ratepayers and otherwise
3 consistent with the public interest.

4 The first purpose requires the Commission to determine whether granting SBC
5 competitive classification will promote competitive entry by promoting diversity among
6 telecommunications suppliers. The second requires the Commission to determine
7 whether there is sufficient competition to ensure that customers pay only reasonable
8 charges. Under this requirement, the Commission should consider whether SBC has the
9 market power to sustain rates that greatly exceed their costs. The fact that SBC may be
10 able to increase rates does not, in and of itself, mean there is not sufficient competition.
11 However, the ability to sustain rates that greatly exceed the underlying cost of providing
12 the service is an indication that effective competition does not exist. Finally, the
13 purposes set forth in Section 392.185(6) requires the Commission to only classify SBC's
14 services as competitive if there is sufficient competitive activity to ensure the ratepayers
15 will be protected and that such price deregulation is in the public interest.

16 This section as well as Section 386.020(14)(c) also requires the Commission to
17 consider whether the respective markets are "irreversibly competitive". This case
18 involves the issue of whether or not an ILEC is deregulated going forward. The three
19 criteria mentioned above require the Commission to consider the future ramifications of
20 classifying SBC's services as competitive.

21 For this reason, the Commission must be certain that effective competition is
22 sustainable going forward as well. If competition is not irreversible or sustainable, the
23 competitive market cannot effectively replace price regulation and price deregulation will
24 be premature.

1 **Q. Can the Commission be even relatively certain that the current level of competition**
2 **is sustainable?**

3 A. As stated previously, the answer is clearly no. Given the elimination of
4 unbundled local switching and the curtailing of the availability of other UNEs, it should
5 be clear that the current level of competition is not sustainable and will most certainly
6 decrease.

7 **Q. The fourth statutory criterion regarding by the definition of "Effective**
8 **Competition" is the presence of economic and regulatory barriers to entry in**
9 **Missouri. Do barriers to entry exist?**

10 A. Absolutely and it is doubtful that they have ever been higher than they currently
11 are.

12 **Q. Can you elaborate?**

13 A. Certainly. One of the largest regulatory barriers to entry has been the uncertainty
14 in the marketplace caused by a lack of unbundling rules. This uncertainty has prevented
15 Socket from developing and implementing clear business plans and strategies without
16 having to hedge based upon our guesses about the regulatory landscape. The regulatory
17 uncertainty has also contributed to the lack of available investment capital available to
18 CLECs, creating an economic barrier to entry as well.

19 **Q. Does the FCC's December 15, 2004 do anything to reduce this uncertainty?**
20

21 A. No. SBC has already vowed to appeal the FCC's decision as it relates to the
22 unbundled network elements that are still available to CLECs²³. Thus, SBC's own
23 actions continue to add the uncertainty in the marketplace.

²³ New York Times, "F.C.C. lets big Bells charge rivals more to use phone lines", by Stephen Labaton, December 16 2004.

1 **Q. Did the Commission's previous investigation into the state of competition make any**
2 **findings regarding barriers to entry?**

3 Yes. In Case No. TO-2001-467, the Commission considered barriers to entry and
4 concluded that, "Southwestern Bell's evidence leads the Commission to conclude that the
5 availability of resale and unbundled network elements, including combinations of
6 unbundled network elements, provide effective ways for CLECs to enter the market with
7 little capital investment. Given the multitude of companies providing services, it is clear
8 that the regulatory barriers that once prevented competitors from offering alternatives in
9 the marketplace are disappearing."²⁴

10 Mr. Unruh uses similar logic to summarily dismiss barriers to entry in his direct
11 testimony by concluding that with the, "multitude of providers providing functionally
12 equivalent or substitutable services that are highlighted in SBC Missouri's testimony, it is
13 clear there are not barriers to entry that are preventing competitors from offering
14 alternatives in the market place"²⁵

15 Each of these conclusions was based upon the current or past presence of CLEC
16 competition and the past availability of unbundled network elements, including
17 combinations of UNEs. Given the FCC's decision to eliminate combinations of UNE's
18 and curtail the availability of additional UNEs, the Commission cannot base any
19 conclusions about a lack of barriers to entry on the current number of competitors and
20 current level of competition.

21 **Q. Going forward, are there economic barriers to entry that will curtail CLEC entry**
22 **and expansion?**

²⁴ Case No. TO-2001-467, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, December 27, 2001. <http://www.psc.state.mo.us/orders/12271467.htm>

²⁵ Direct Testimony of Craig Unruh, pg 41

1 A. Yes. Going forward, CLEC competition will be facilities-based. Facilities-based
2 competition is capital intensive. Given the lack of available investment capital, a CLECs
3 ability to enter new markets or to expand within existing markets will be constrained.
4 For example, a CLEC Industry Report noted that, "Capital expenditures by CLECs in
5 2004 fell 50% from 2003, down to \$2.4 billion. [New Paradigm Research Group] expects
6 an 8% to 10% increase in 2004, but that's not much more than network maintenance
7 money, Barnich said."²⁶ The ability to attract venture capital funding to expand into new
8 markets will not change until the financial outlook for CLECs improves.

9 Additionally, facilities-based competition tends to be geographically concentrated
10 or concentrated within a particular customer segment. As the competition becomes
11 concentrated, it exposes the CLECs to additional risks of predatory pricing in that
12 particular segment or geographic area while an incumbent simultaneously recoups any
13 lost revenues by raising rates for services in other geographic markets or market
14 segments that do not face competition.

15 **Q. NuVox's witness Ed Cadieux discusses barriers to entry faced by facilities-based**
16 **CLECs. Do you have anything to add to that?**

17 A. Yes. I agree with his testimony and would add that the barriers to entry faced by
18 facilities-based CLECs are even higher in the rural areas of the state where Socket
19 Telecom tends to compete.

20 **Q. Can you elaborate on a few of these items?**

21 A. Yes. The cost structure for providing retail service through EELs outside of the
22 Metropolitan Calling Areas is very different than providing retail service through EELs

²⁶ Telephony Online, "Report CLECs Holding Steady",
http://telephonyonline.com/ar/telecom_report_clecs_holding/index.htm citing "CLEC Report 2005", New
Paradigm Research Group, Terry Barnich and Craig Clausen, December 2004.

1 within the MCA areas. Within the MCA areas, a CLEC is required to establish a single
2 point of interconnection ("POI") to exchange traffic. It is at this point where the two
3 carriers connect their facilities to exchange traffic. Thus a CLEC operating in the MCA
4 can provision an EEL to reach customer premises and then hand all traffic to SBC at a
5 single location.

6 Outside of the MCA, a CLEC is required to establish a POI in each mandatory
7 calling area where it desires to exchange traffic with SBC. This will require the CLEC to
8 incur the cost of either provisioning or leasing facilities to reach a distant rate center to
9 establish a POI as well as incur the cost of the dedicated transport and dedicated loop to
10 reach the actual customer premise. This expense is, at a minimum, an additional
11 overhead expense and can represent additional sunk investment depending upon the
12 source and type of facilities the CLEC is forced to rely upon. In order to recover the cost
13 of the facilities required to establish the additional POI, the CLEC using EELs would
14 most likely have to attract several customers within a rate center. In the smaller rate
15 centers, that may difficult simply because there are fewer customers. This changes the
16 economics of provisioning service outside of the MCA. It would be inappropriate for the
17 Commission to assume that just because it may be economical for a CLEC to serve a
18 customer through facilities in the metropolitan areas that a CLEC can also serve
19 customers in other exchanges outside of the MCA.

20 An additional issue is the ILEC's use of originating call records for paying
21 terminating access bills associated with ILEC carried IntraLATA toll calls. Under the
22 current system, ILECs that originate toll calls identify the terminating carrier based upon
23 the NPA-NXX code. Once they identify the carrier by the NPA-NXX code, they then

1 send call records to that carrier which the identified carrier uses to generate access bills to
2 the originating carriers. This system falls apart when numbers are ported between
3 carriers, as carriers cannot be identified correctly. For example, when a customer
4 switches from SBC to Socket, Socket will almost always port that customer's number. If
5 that customer then receives an IntraLATA toll call from a customer using the IntraLATA
6 toll service of Sprint or CenturyTel, it will appear to Sprint and CenturyTel that the
7 customer is served by SBC as the customer's phone number (NPA-NXX) would still be
8 associated with SBC in the Local Exchange Routing Guide even though the customer is
9 actually served by Socket. In this instance, Sprint or CenturyTel would send a summary
10 record to SBC and SBC would use that record to bill Sprint or CenturyTel for a call that
11 SBC didn't even terminate. Not only would Socket not be able to receive the appropriate
12 compensation, its direct competitor would receive the compensation instead. Because of
13 these problems, the wholesale revenue stream that a CLEC will receive when competing
14 with the ILEC is lower. While this is an issue that affects all facilities-based CLECs and
15 it is important that it be resolved, I believe it is even more important to CLECs in rural
16 areas where the costs are higher and the amount of IntraLATA toll is likely to be higher.

17 **Q. Are there issues that affect a CLEC's abilities to expand geographically?**

18 A. Expanding geographically requires additional capital resources for facilities and
19 employees. It also requires that the CLEC's systems be scalable to accept additional
20 customers over a broader market.

21 Even when the CLEC uses its own facilities, it still requires a cooperative ILEC.
22 For example, Socket has been going through the process of expanding into the
23 Springfield LATA for the last several months. Socket is doing this by bringing trunking

1 facilities into an SBC central office located in Springfield and is planning on
2 interconnecting these facilities with SBC facilities to exchange traffic. Once the
3 interconnection facilities are in place, Socket intends on using high capacity loops (if
4 available) to serve retail customers.

5 Just last week, SBC informed me that it will not provision the facilities needed to
6 interconnect with Socket in Springfield unless Socket signs an additional agreement that
7 is intended to govern the exchange of traffic between SBC and Socket when Socket
8 competes in the territories of other ILECs such as Sprint and CenturyTel. Under SBC's
9 proposed agreement, Socket would be required to provide and pay for trunking facilities
10 to every SBC tandem in the state as well as every SBC end-office that does not subtend
11 or sit behind an SBC tandem. These trunks are not necessary for Socket's operations. In
12 this LATA, that would mean that Socket would have to install trunking facilities to
13 SBC's Westphalia end-office as a condition of being able to interconnect with SBC in
14 Springfield. In addition, the agreement would require Socket to agree to the originating
15 record process, which as outlined above, would mean that Socket's competitors
16 inappropriately receive the terminating access revenue instead of Socket when a LEC-
17 carried IntraLATA toll is terminated to one of Socket's customers.

18 **Q. This seems to be a specific issue between Socket and SBC. Why do you bring it up**
19 **in this case?**

20 These actions clearly demonstrate that all LECs are not equal and should not be
21 regulated equally. First, SBC does not require any other ILEC to agree to these terms.
22 Secondly, if Socket and SBC had equivalent market power, SBC would have a similar
23 interest in interconnecting the two companies' networks to exchange traffic because

1 companies would have angry customers if they could not place calls to each other's
2 customers. Since Socket and SBC do not have similar market power, SBC is able to use
3 its monopoly position to deny interconnection unless Socket agrees to contractual
4 obligations that unnecessarily increase Socket's cost and reduce Socket's revenue stream.
5 As a new entrant, Socket has to choose between getting into the market in a timely
6 fashion or prolonged litigation.

7 **Q. At Page 43 of his Direct Testimony, Mr. Unruh attempts to appease fears of**
8 **premature price deregulation by suggesting that the statute provides a mechanism**
9 **for the Commission to withdraw SBC's competitive classification if it chooses. Is**
10 **that a sufficient safeguard?**

11 **A.** Absolutely not. In order to withdraw SBC's competitive classification pursuant to
12 Section 392.245(5), the Commission would have to conduct a hearing and render a
13 decision to determine that effective competition no longer existed. This type of
14 proceeding would take several months at a minimum. During this time, SBC would still
15 be functioning as a competitive company.

16 For example, if SWBT were to engage in predatory pricing in an attempt to drive
17 CLECs from the market, some event would have to trigger a Commission inquiry into
18 whether effective competition continued to exist. Once the Commission began that
19 inquiry, it would take several months at a minimum for the Commission to determine that
20 effective competition no longer exists. During that time, SWBT would continue to
21 engage in the predatory pricing or anti-competitive behavior. In other words, by the time
22 the Commission could make a decision to re-impose price caps, it would be too late.

1 **Q. Finally, Mr. Unruh suggests that the Commission's ability to set wholesale rates for**
2 **unbundled network elements and resale discounts can act as a substitute for price**
3 **cap regulation. Do you have a response?**

4 **A.** The Commission's ability to set UNE rates and resale discounts is not a substitute
5 for price cap regulation. The TA96 and the FCC's rules require the Commission to set
6 cost based rates for unbundled network elements without reference to rate-of-return or
7 other rate-based proceedings. In setting those rates, the Commission cannot consider
8 SBC's retail pricing activities. A Commission decision that set low UNE rates because
9 SBC was charging excessive retail rates would certainly be challenged in the courts by
10 SBC. Unless those UNE rates could be cost justified, they would most likely be
11 overturned.

12 **Q. Does this conclude your testimony?**

13 **A. Yes.**