

Exhibit No.: 33

Issues:

Witness: R. Matt Kohly

Sponsoring Party: Socket Telecom, LLC

Type of Exhibit: Surrebuttal Testimony

Case Nos.: TO-2005-0035

SOCKET TELECOM, LLC  
SURREBUTTAL TESTIMONY  
OF

R. MATTHEW KOHLY

CASE NO. TO-2005-0035

January 21, 2005

FILED<sup>4</sup>

FEB 16 2005

Missouri Public  
Service Commission

EXHIBIT NO. 33  
Date Permarked 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:

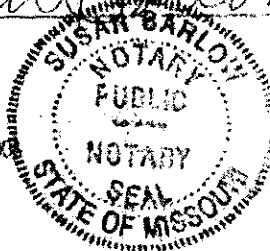
1. My name is R. Matthew Kohly. I am the Director - Telecommunications for Socket Telecom, LLC
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true 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 20<sup>th</sup> day of January, 2005.

Susan Barlow  
Notary Public

My Commission Expires: Susan Barlow, Notary Public  
State of Missouri, County of Boone  
My Commission Expires March 20, 2008



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

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

4   **Q.     Are you the same Matt Kohly who filed Rebuttal Testimony in this case?**

5   A.           Yes, I am.

6   **Q.     What is the purpose of your surrebuttal testimony?**

7   A.           The purpose of my surrebuttal testimony is to respond to the Rebuttal  
8               Testimony of Bill Peters and Adam McKinnie on behalf of the Staff of the  
9               Missouri Public Service Commission. Together, the Staff witnesses recommend  
10              that the Commission classify all business access line services (and line related  
11              services) as competitive in certain exchanges. Mr. Peters focuses on basic local  
12              telecommunications services while Mr. McKinnie focuses on access-line related  
13              services as well as high-capacity services such as ISDN and DS-1 related  
14              services.

15  **Q.     In evaluating effective competition, Mr. Peters' testimony dismisses resale**  
16  **and UNE-P as reliable means for providing effective competition. Do you**  
17  **agree?**

18  A.           Yes. Staff recognizes that a reseller's wholesale cost is directly related to  
19               the retail price that SBC charges its retail customers. For this reason, local  
20               services provided through resale cannot discipline SBC's ability to increase retail  
21               rates. Staff also recognizes that UNE-P cannot be seen as a means for

1 competitors to continue to provide local service because of the FCC's latest  
2 unbundling decision.

3 I agree with both of these conclusions and would also add that any UNE-P  
4 substitute that SBC may provide through a negotiated agreement at "market-based  
5 rates" cannot be seen as providing "effective competition". In this scenario, SBC  
6 would be free to set the wholesale rates at whatever rates it chose. In this sense,  
7 such an arrangement would be essentially the same as resale since SBC could set  
8 and/or increase the wholesale cost as it chooses. For this reason a CLEC would  
9 not have any ability to discipline SBC's retail rates.

10 **Q. What type of analysis do the two Staff witnesses assert is necessary to**  
11 **determine if "effective competition" exists?**

12 A. Mr. Peters asserts that, "an exchange-by-exchange, service-by-service"  
13 analysis is necessary to determine whether effective competition exists. In his  
14 testimony regarding ISDN services and competitive alternatives, Mr. McKinnie  
15 states that, "Staff would need to see information about the offerings and  
16 availability of these services from alternative providers on an exchange-specific  
17 level, plus any information on market share lost to these providers for this service,  
18 in order to paint an accurate picture of whether a service is effectively competitive  
19 in any one exchange." I agree with both witnesses that this is the approach that  
20 needs to be taken.

1    **Q.     What kind of information did Staff examine?**

2    A.           After discussing various services offered by CLECs, Staff looked at CLEC  
3           tariffs, the number of non-SBC listings found in the E911 database, and CLEC  
4           annual reports. According to the testimony of Bill Peters, Staff is recommending  
5           the Commission find that effective competition exists for business services based  
6           upon at least a nine-percent penetration rate<sup>1</sup>.

7           This approach essentially lumps all business services into a single  
8           category without regard to the services actually being provided or even the  
9           number of customers or customer locations being served.

10   **Q.     What information can be taken from a review of CLEC tariffs?**

11   A.           A CLEC's local tariff will provide information that identifies the  
12           particular exchange(s) where a CLEC is offering at least one type of local service.  
13           It does not provide information about whether the CLEC actually has customers  
14           in that particular exchange or what services the CLEC is actually providing or  
15           even capable of providing in a particular exchange.

16   **Q.     Did you try to analyze the validity of using non-SBC E911 listings as a proxy  
17           for access lines provided by facilities-based CLECs?**

18   A.           Yes. While there could still be differences in the way CLECs generally  
19           place listings in the E911 database as compared to SBC, I thought a good starting  
20           point for such an analysis would be a comparison to determine if SBC's own

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<sup>1</sup> Rebuttal Testimony of Bill Peters, pg. 5.

1 count of E911 listings reflected the quantity of retail and wholesale access lines  
2 that SBC reports it serves. Mr. Unruh's Direct Testimony reports SBC Missouri  
3 retail Business Lines and SBC Missouri Residential Lines as public information.<sup>2</sup>  
4 I sent SBC Missouri a data request seeking the total number of E911 listings in  
5 the E911 database (separated by residential and business listings) and a second  
6 data request seeking the total number of E911 listings in the E911 database  
7 associated with customers served by SBC Missouri. This information would have  
8 allowed me to compare SBC's self-reported access line count to the number of  
9 SBC E911 listings.<sup>3</sup>

10 Rather than provide this information as requested, SBC Missouri objected  
11 to both of these data requests, "on the grounds that it is overbroad and seeks  
12 production of information that is neither relevant nor reasonably calculated to lead  
13 to the discovery of admissible evidence." SBC's objections are attached hereto as  
14 Schedule MK-1. In my opinion, if an effort to check the validity of E911 data is  
15 truly irrelevant as SBC contends, then so is the data. SBC's resistance to  
16 validation efforts suggests that it considers the data to be unreliable.

17 **Q. Have you tried to compare Socket's own E911 database listings as reflected**  
18 **in the E911 database to Socket's own access line count?**

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<sup>2</sup> Direct Testimony of Craig Unruh, pg. 20.

<sup>3</sup> SBC treats its exchange specific line count information as Highly Confidential. Under the protective order in this case, I am unable to view Highly Confidential Information. In order to avoid issues about access to Highly Confidential information, I requested the information at a level that should have been public information. A true comparison should be done separately for residential and business customers as well as done for each exchange to determine if there are any geographic discrepancies

1     A.             Yes. On the operations side, Socket has contacted SBC to try to get a  
2             report of Socket's E911 listings that SBC has in the E911 database. So far, we  
3             have not gotten such a report and cannot make the comparison.

4     **Q.       Why is it important to determine the validity of equating a non-SBC E911**  
5             **listing to an access line provided by a facilities-based CLEC?**

6     A.             SBC is asking the Commission to equate the total number of CLEC E911  
7             listings to the minimum number of CLEC access lines provided by CLECs that  
8             perform their own switching. It then purports to conduct a market share analysis  
9             based upon non-SBC E911 listings. Yet, SBC has not provided any analysis that  
10            validates the use of E911 listings as a proxy for CLEC provided access lines.  
11            Staff also makes use of such data. Before the Commission relies upon the quantity  
12            of E911 listings as a proxy for competitive activity, its accuracy should be  
13            thoroughly examined.

14    **Q.       Which CLECs will have listings contained in the 911 database?**

15    A.             As Mr. Unruh noted in his Direct Testimony, a CLEC that provides its own  
16            switching can have listings in the E911 database. This type of CLEC can range  
17            from one that provides its own loop facilities combined with its own switching  
18            facilities to a CLEC that relies upon network elements purchased from SBC  
19            combined with its own switching facilities to provide service.

1    **Q.    Does the number of non-SBC listings found in the E911 database provide**  
2           **information about what services CLECs are actually providing in a**  
3           **particular exchange?**

4    A.           No. The E911 database contains listings of phone numbers, subscriber  
5           names, and customer addresses. A simple count of the number of non-SBC  
6           listings does not provide any information about what type of service is actually  
7           being provided to particular customers.

8    **Q.    Did Staff conduct any analysis to determine the number of customers served**  
9           **by CLECs in each of these exchanges?**

10   A.           No. Based upon Data Request responses (attached hereto as Schedule  
11           MK-2), Staff did not conduct any analysis to determine the number of customers  
12           served by CLECs.

13   **Q.    Did Staff conduct any analysis to determine the number of customer**  
14           **locations served by CLECs in each of these exchanges?**

15   A.           No. Based upon Data Request responses (Schedule MK-2), Staff did not  
16           conduct any analysis to determine the number of business locations served by  
17           CLECs.

18   **Q.    Why would such an analysis be important?**

19   A.           There is a wide variation in the type of services provided to business  
20           customers. These services range from a single line or multi-line local exchange



1 service provided to mass-market customers to high-capacity or specialized  
2 services provided to enterprise customers such as larger businesses or businesses  
3 that rely heavily on telecommunications services such as call centers. Even if  
4 there are a significant number of access lines being provided by a CLEC in a  
5 particular exchange, it could very well be that only one or two business locations  
6 with a large number of access lines are being served by one facilities-based CLEC  
7 while smaller business locations do not have the choice of purchasing service  
8 from a CLEC.

9 For example, assume that a count of listings from the E911 database for an  
10 exchange shows 48 business E911 listings. This count could reflect 48 single line  
11 business access lines provided to 48 different business locations. It could also be  
12 two DS1 lines, each having 24 voice channels for a total of 48, provided to a  
13 single customer at a single location or it could be 8 lines provided a single  
14 customer location with each line having it own listing along with 40 Direct  
15 Inward Dial (DID) numbers that are also included in E911 database.

16 Just as one E911 listing could serve more than one access line at a  
17 business with a PBX, each DID number assigned to a station could also be in the  
18 E911 database, which would overstate the number the number of access lines  
19 actually served by CLEC. SBC's own Private Switch 9-1-1 Service allows owners  
20 of Private Switches or Private-Branch Exchange (PBX) equipment to place the  
21 telephone numbers of Direct Inward Dial (DID) stations in the 911 database.  
22 According to the tariff, Private Switch Providers referred to in the tariff might  
23 include such organizations as: businesses, schools, nursing homes, hospitals,

1       planned communities, and Shared Tenant Service (STS) providers that own or use  
2       a Private Branch Exchange (PBX) system. Thus, even SBC places DID numbers  
3       in the E911 database, which would cause the number of E911 listings to overstate  
4       the number of access lines actually provided.

5               There is no way that a simple count of E911 listings or access lines can  
6       indicate which services are actually being provided. It would be a mistake to  
7       deregulate all business services if the only service being provided in the exchange  
8       is a high-capacity DS1 facility being provided to single customer.

9       **Q.     Has the Commission recognized that CLECs use different means to serve**  
10       **different segments of the business market?**

11      **A.**       Yes. In Case No. TO-2004-0207, the Commission analyzed the cut-off (in  
12       terms of lines) between the mass-market and the enterprise market. In that  
13       proceeding, the Commission found that it was most economical to serve a  
14       customer with ten or fewer DS0 lines via UNE-P while it was most economical to  
15       serve a customer with eleven DS0s or more with a DS1 line. Given this finding, it  
16       is likely that facilities-based competitors are more likely to serve larger customers  
17       or at least those with eleven or more lines while CLECs will use UNE-P to serve  
18       smaller customers. It would be a mistake to simply count E911 listings or access  
19       lines and conclude that facilities-based CLECs are serving all business customers  
20       equally.

1   **Q.     Staff's witness Adam McKinnie indicates that there is some confusion related**  
2       **to the services for which SBC is seeking competitive classification. Do you**  
3       **have any response?**

4   A.   Based on the Commission's orders and rules, the only services at issue are those  
5       described on the issues list. Apparently, SBC is content with an all-or-nothing  
6       result with regard to the service categories described in the list. Hence, absent  
7       proof that each and every service within the category is subject to effective  
8       competition in a particular exchange, the Commission should not release SBC  
9       from price cap regulation as to that category of services in that exchange. To date,  
10      SBC has failed to provide information on a service-by-service basis within these  
11      categories, so the Commission should not reduce the scope of price cap regulation  
12      that currently applies to SBC.

13   **Q.     Ignoring your concerns about the use of E911 listings as a proxy for CLEC**  
14       **provided access lines, do you have response to Staff's use of a 9% threshold**  
15       **for classifying business services as competitive?**

16   A.         Staff provides very little support for this threshold. I also cannot view the  
17       same exchange specific data that Staff and SBC's witnesses can view. By not  
18       being able to review the data, I cannot determine if there is a natural break or  
19       other pattern in the data that would support this number. In my opinion and based  
20       upon my experience, nine percent is simply too low to support a conclusion that  
21       there is effective competition that is viable or sustainable.

1           However, I think the bigger concern is that the market share analysis done  
2       by Staff treats all business access lines the same, and in doing so, ignores the  
3       actual number of customers being served and the type of services that are actually  
4       being provided. Staff also ignores the means that CLECs are using to serve these  
5       customers and treats all carriers that provide their own switching equally  
6       regardless, if they have their own network or rely upon UNEs. Given the  
7       continued attack on the remaining UNEs, including inter-office transport and DSL  
8       loops, the Commission should be hesitant to make predictions about the future  
9       viability of competitive alternatives.

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

11   **A.           Yes.**



**Leo J. Bub**  
General Attorney

SBC Missouri  
One SBC Center  
Room 3518  
St. Louis, Missouri 63101

314.235.2508 Phone  
314.247.0014 Fax

[leo.bub@sbc.com](mailto:leo.bub@sbc.com)

**VIA E-MAIL AND U.S. MAIL**

December 29, 2004

Mr. Carl Lumley  
Curtis, Oetting, Heinz, Garrett &  
Soule, P.C.  
130 S. Bemiston, Suite 200  
St. Louis, Missouri 63105

Re: SBC Missouri's Objections to Certain Data Requests from Socket  
Case No. TO-2005-0035

Dear Carl:

I am writing to express SBC Missouri's objections to Data Request Nos. 2 and 3 you sent us on behalf of Socket Telecom, LLC via e-mail on December 20, 2004.

**DR No. 2**

On page 19 of the Direct Testimony of Craig Unruh, Mr. Unruh provides the total CLEC E-911 Listings. Please provide the total number of E-911 listings in the 911 database that are associated with all customers located in exchanges where Southwestern Bell Telephone, L.P. d/b/a SBC Missouri serves as the incumbent local exchange company. Please provide the requested information in total and separated by the total number of residential listings and total number of business listings.

**SBC Missouri Objection:** SBC Missouri objects to this data request on the grounds that it is overbroad and seeks production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**DR No. 3**

On page 19 of the Direct Testimony of Craig Unruh, Mr. Unruh provides the total CLEC E-911 Listings. Please provide the total number of E-911 listings in the 911 database that are associated with customers served by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri. Please provide the requested information in total and separated by the total number of residential listings and total number of business listings.

Mr. Carl J. Lumley  
December 29, 2004  
Page 2

**SBC Missouri Objection:** SBC Missouri objects to this data request on the grounds that it is overbroad and seeks production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Please call me with any questions or if you would like to discuss any of these objections.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. M." or "Leo M.", written in a cursive style.

Leo J. Bub

**DATA REQUEST FROM  
SOCKET TELECOM, INC.**

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. TO-2005-0035**

REQUESTED FROM: Staff of the Missouri Public Service Commission

DATE REQUESTED: 12/21/2004

**INFORMATION REQUESTED:**

For each exchange where Staff recommends that SBC receive competitive classification for business services as set forth on page 23 of the Rebuttal Testimony of Bill Peters, please indicate whether Staff has conducted any analysis to determine the number of actual business customers (as opposed to number of access lines) served by competitive local exchange carriers. If the Staff has conducted such analysis, please provide a description of the analysis conducted and all documents and results that were produced as a result of that analysis.

For each exchange where Staff recommends that SBC receive competitive classification for business services as set forth on page 23 of the Rebuttal Testimony of Bill Peters, please indicate whether Staff has conducted any analysis to determine the number of business locations (as opposed to number of access lines) served by competitive local exchange carriers. If the Staff has conducted such analysis, please provide a description of the analysis conducted and all documents and results that were produced as a result of that analysis.

REQUESTED BY: Matt Kohly

**INFORMATION PROVIDED:**

Staff has not conducted such analyses.

The information provided in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the requesting party if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information. The data request is ongoing in nature and the undersigned agrees to provide additional responses as appropriate.

DATE RECEIVED: 12/22/2004

**Schedule MK-2**

SIGNED BY: Bill Peters      01/07/05  
TITLE: Economist II



