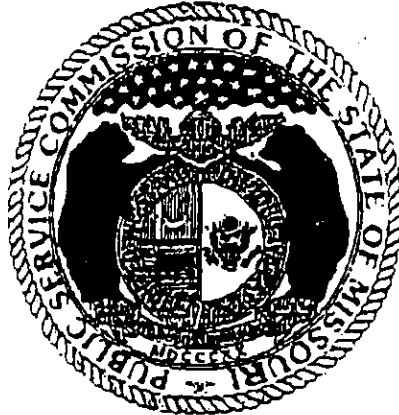


BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI



FILED<sup>4</sup>

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Missouri Public  
Service Commission

In the Matter of the Investigation of the State of )  
Competition in the Exchanges of Southwestern Bell )  
Telephone Company. )

Case No. TO-2001-467

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REPORT AND ORDER

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In the Matter of the Investigation of the State of )  
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**REGULATORY LAW JUDGE:** **Nancy Dippell**, Senior Regulatory Law Judge.

### **REPORT AND ORDER**

This order presents the Commission's determination of which Southwestern Bell Telephone Company services in which exchanges should be designated competitive services, if any. The Commission finds that where effective competition exists, Southwestern Bell's services should be designated as competitive. The Commission finds that effective competition exists: (1) in the Kansas City and St. Louis exchanges for core business switched services, business line-related services, directory assistance services for business customers, and the operator services of Busy Line Verification and Busy Line Interrupt for business customers; (2) in the Harvester and St. Charles exchanges for residential access line services, residential access line-related services, Optional Metropolitan Calling Area service, directory assistance services for residential customers, and Busy Line Verification and Busy Line Interrupt for residential customers; and (3) in all of Southwestern Bell's exchanges for Common Channel Signaling/Signaling System 7 (SS7) and Line Information Database (LIDB) services.

The Commission also concludes that certain services that had been declared transitionally competitive in Case No. TO-93-116,<sup>1</sup> are now competitive services in accordance with Section 392.370, RSMo 2000,<sup>2</sup> in all of Southwestern Bell's Missouri exchanges. The services are intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, special access services, station-to-station, person-to-person, and calling card services. In addition, the Commission determines that Section 392.200.8, authorizes Southwestern Bell to price high capacity exchange access line services and Plexar services on an individual customer basis. Finally, the Commission determines that Local Plus and switched access services are not subject to effective competition.

### **Procedural History**

This case was established on March 13, 2001, in response to the Staff of the Missouri Public Service Commission's Motion to Open Case. In its motion, Staff requested that the Commission open a new case to investigate the status of competition in Southwestern Bell's exchanges pursuant to Section 392.245.5. Under that section, the Commission must determine whether effective competition exists for each telecommunications service of an incumbent local exchange company (ILEC) in each of the company's exchanges where an alternative local exchange telecommunications company has been certified. The Commission is required to make this review no later than five years following the first certification of an alternative provider. Because alternative local

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<sup>1</sup> *In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive*, Case No. TO-93-116, *Report and Order*, effective December 21, 1992.

<sup>2</sup> All references are to the Revised Statutes of Missouri (RSMo), the revision of 2000, unless otherwise noted.

exchange telecommunications companies are currently certified in every exchange in which Southwestern Bell operates, the Commission established this case to review the status of competition in all of Southwestern Bell's exchanges.

Southwestern Bell, Staff, the Office of the Public Counsel, and 70 alternative local exchange telecommunications companies were made parties to this case. The Commission held an evidentiary hearing beginning on September 24, 2001. After the conclusion of the hearing, the Commission dismissed many of the alternative local exchange companies that did not appear at the hearing.

#### **Post-Hearing Exhibit**

On October 9, 2001, Southwestern Bell filed post-hearing Exhibit 29. Exhibit 29 is a statement of the rate increases and decreases that Southwestern Bell has implemented since coming under price cap regulation in 1997. The Commission directed that responses and objections to the exhibit must be filed no later than ten days from the submission of the exhibit. There were no objections filed. Therefore, the Commission will admit Exhibit 29 into the record.

#### **Findings of Fact and Conclusions of Law**

The Commission has considered all of the competent and substantial evidence upon the whole record and makes the following findings of fact and conclusions of law. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **General Findings of Fact**

Southwestern Bell is a large incumbent local exchange carrier subject to price cap regulation under Section 392.245. Communications Cable-Laying Company, d/b/a Dial US, was the first alternative local exchange telecommunications company to be granted a certificate in a Southwestern Bell exchange. Dial US's certificate became effective on December 31, 1996. However, no alternative local exchange telecommunications company has actually *provided basic* local telecommunications service in any of Southwestern Bell's exchanges for a period of five years.

The Commission has classified numerous alternative local exchange companies as *competitive carriers when approving each company's basic local certification*. Numerous interexchange telecommunications companies have also been classified as competitive carriers in Missouri.

### **General Conclusions of Law**

The Commission has jurisdiction in this case pursuant to its general authority over Southwestern Bell as a telecommunications company under Section 386.250, and pursuant to its specific responsibilities under the price cap statute, Section 392.245.

Under Section 392.245.2, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing such service, in any part of the large ILEC's service area. On March 21, 1997, Southwestern Bell asked the Commission to determine that it was subject to price cap regulation pursuant to

Section 392.245.2. In Case No. TO-97-397,<sup>3</sup> the Commission approved Southwestern Bell as a price cap regulated company.

Unlike a price cap company, alternative local exchange companies and IXC's, which are classified as competitive, have the authority to increase or decrease their prices on short notice to the Commission without the need of providing cost support for the change.<sup>4</sup> This flexibility allows them to modify their offerings to meet customer needs, or to respond to the offerings of their competitors in the local market.

### **Burden of Proof**

Which party has the burden of proof became an issue in this case. A finding under Section 392.245.5, that effective competition exists for a particular service in an exchange would authorize Southwestern Bell to increase or to decrease its rates in response to competition. Currently, Southwestern Bell is subject to a price cap under Section 392.245. Thus, Southwestern Bell may adjust its rates downward, but there is a statutory limit on any increased prices.

The Staff and other parties argued that because Southwestern Bell would be the beneficiary of a change in the status quo, Southwestern Bell bears the burden of persuasion.<sup>5</sup> Southwestern Bell argues that the presumption of the statute is that there is effective competition, unless other parties produce evidence that there is not effective competition.

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<sup>3</sup> *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo (1996)*, Case No. TO-97-397.

<sup>4</sup> *Id.*

<sup>5</sup> 29 Am. Jur. 2d, Evidence § 158.



Section 392.245.5, provides in part:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The Commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunications company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

In the first sentence set out above, there is a presumption of effective competition. In that sentence, Southwestern Bell must be classified as competitive "unless the commission determines . . . that effective competition does not exist." This sentence is not applicable in this case. The presumption of competition controls only where a competitor of Southwestern Bell has been both certified and has been providing service for at least five years. No competitor has been certified and providing service for a period of at least five years.

The second sentence of Section 392.245.5, set out above, does not include the presumption. Instead, it says that the Commission "shall determine . . . whether effective competition exists . . ." The Commission can only make such an affirmative finding based on competent and substantial evidence.<sup>6</sup> Consequently, the debate between the witnesses and parties regarding who bears the burden of proof is moot. Regardless of which party

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<sup>6</sup> See, e.g., *State ex rel. Rice v. PSC*, 220 S.W.2d 61, 64 (Mo. 1949).

bears the burden of proof, absent competent and substantial evidence of effective competition the Commission cannot find that it exists.

Generally, the party seeking relief from the Commission bears the burden of proof.<sup>7</sup> The burden of proof remains upon the party asserting the affirmative of the ultimate issue throughout a proceeding.<sup>8</sup> In order for the Commission to make that determination it must have evidence of effective competition. Since Southwestern Bell is the only party advocating that position, the burden of proof and, therefore, the burden to present competent and substantial evidence, falls to Southwestern Bell.

### Effective Competition

What constitutes effective competition is also an issue. The legislature left the determination of what is effective competition to the Commission. The statutes do not define effective competition, but rather Section 386.020(13), lists the following factors that the Commission should consider in determining effective competition:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo, are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

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<sup>7</sup> See Section 386.430; *State ex rel. Rice v. PSC*, 220 S.W.2d 61, 66 (Mo. 1949).

<sup>8</sup> See, e.g., *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

At issue was the determination of how much, if any, weight should be given to competition provided by unregulated services such as wireless, cable, Internet, fixed satellite, and customer premises equipment manufacturers.

Sprint and Southwestern Bell argued that the Commission should consider services beyond those provided by certificated telecommunications providers. They argue that, if the legislature had meant to limit the Commission's evaluation to only regulated services, it would have included the more limited term "telecommunications service" instead of the term "services." Staff argues that because the term "service" is defined in Section 386.020(47), using the terms "devoted to the public purposes," that this should be considered synonymous with "regulated service." Staff also argues that customer premises equipment and wireless service are specifically excluded from the definition of "telecommunications service." Public Counsel agrees with Staff, but it reasons that "services" used in Section 386.020(13), regarding effective competition is equivalent to the term "telecommunications services" as defined in Section 386.050(53).

The determination of what is effective competition does not necessarily turn on the definition of the term "service". Nor does it turn on whether competitors that are not regulated by the Commission are considered. Given the final factor of Section 386.020(13), the Commission's analysis must include *all relevant factors*. As stated by several witnesses, including Dr. Aron, Mr. Price, Ms. Meisenheimer, and Mr. Voight, no single factor can be determinative.

The purposes and policies of Chapter 392 as set out in Section 392.185 (as referenced in Subsection 386.020(13)(c)) are as follows:

- (1) Promote universally available and widely affordable telecommunications services;

- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

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

Neither Section 392.245.5, nor Section 386.020(13), require any quantitative market share loss test to determine whether effective competition exists for Southwestern Bell's services in Missouri. While specific market share thresholds should not be utilized to determine whether or not Southwestern Bell faces effective competition, it is one factor

which the Commission finds particularly determinative of "[t]he extent to which services are available from alternative providers in the relevant market."

In making its determinations, the Commission has considered all the relevant factors set out in Section 386.020(13), and the purposes of Chapter 392, as set out in Section 392.185. The Commission has also previously set out numerous criteria for determining which competing services are "substitutable." The Commission held in Case No. TO-93-116 that those criteria should be applied on a case-by-case basis to each service.

The Commission has, for purposes of this case, considered all the possible alternatives telecommunications consumers have as that evidence was presented and, in its discretion, determined what weight to give to evidence of forms of competition that are not regulated by the Commission.

#### **Extent Services Available from Alternative Providers**

Subsection 386.020(13)(a), provides that the first factor which the Commission must consider when determining whether effective competition exists for Southwestern Bell's services is "the extent to which services are available from alternative providers in the relevant market."

The Commission's findings in Case No. TO-99-227<sup>9</sup> are relevant to the Commission's investigation of the status of competition. In that case, the Commission found that alternative local exchange companies are providing service to customers in all of Southwestern Bell's exchanges, and that Southwestern Bell has opened its markets to

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<sup>9</sup> *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.*

competition. The Commission also found that competitive local exchange companies (CLECs)<sup>10</sup> were serving approximately 12 percent of the access lines across all of Southwestern Bell's basic local service area. It is undisputed that these CLECs are providing local services and related services to business and residential customers in various Southwestern Bell exchanges, via resale of Southwestern Bell's services, the use of unbundled network elements purchased from Southwestern Bell on a wholesale basis, and the use of the CLECs' own facilities.

These competitors are not, however, providing service equally throughout all of Southwestern Bell's exchanges. Southwestern Bell provides basic local telecommunications in 160 exchanges within the state of Missouri. Competition is greatest in the more urbanized areas. For example, in the St. Louis Principal and MCA-1 and MCA-2 zones, at least 59 CLECs are providing service. Fifty-one CLECs are providing service in the Kansas City Principal, MCA-1 and MCA-2 zones. Thirty-seven CLECs are providing service in Southwestern Bell's St. Charles exchange, and 36 CLECs are providing service in Southwestern Bell's Springfield Principal and MCA-1 zone.

Attached to Southwestern Bell witness Thomas Hughes' Surrebuttal Testimony as Schedules 1-1, 1-2 and 1-3 were maps identifying the number of active CLECs competing in each Southwestern Bell exchange throughout Missouri. These maps depict the level of CLEC competition as estimated by Southwestern Bell throughout its Missouri exchanges. In his Surrebuttal Testimony, Mr. Hughes also identified, by exchange, the

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<sup>10</sup> CLECs are also alternative local exchange telecommunications companies.

total lines served by Southwestern Bell, and its estimated minimum number of lines served by CLECs.<sup>11</sup>

Mr. Hughes' testimony demonstrates that competitors are providing local service in the less urbanized areas. After a review of the highly confidential information provided by Mr. Hughes, including the percent of market share lost by Southwestern Bell to its competitors in each exchange, the Commission finds that with the exception of two exchanges, alternative local exchange telecommunications companies are providing less than a substantial percentage of the residential local service in each Southwestern Bell exchange. Also, the majority of the service being provided in these areas is not CLEC-owned facilities-based service.

The highly confidential evidence contained in Mr. Hughes' testimony also shows that in most of Southwestern Bell's exchanges, alternative local exchange telecommunications companies have captured less than a substantial percentage of the business local service market. On the other hand, the evidence shows that in some of the exchanges, alternative local exchange telecommunications companies have captured a substantial market share of business local service. The Commission finds, however, that even in the exchanges where market share is substantial, without further substantial evidence of the effect of competition, market share alone is not sufficient for the Commission to find that effective competition exists.

The Commission finds that the lines identified as CLEC lines by Mr. Hughes represent only an estimate, and therefore, CLEC market share may be greater than reported in Mr. Hughes' Schedules. The reason for this is that Southwestern Bell should be

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<sup>11</sup> Hughes Surrebuttal, Schedules 4-1, 4-2, 4-3 and 4-4 have been designated as "highly confidential."

able to accurately estimate the number of access lines when a CLEC is reselling Southwestern Bell's service and when a CLEC purchases unbundled network elements from Southwestern Bell. Additionally, Southwestern Bell can identify the number of E-911 listings that CLECs place in 911 databases,<sup>12</sup> but as Mr. Hughes and Dr. Aron explain in their testimony, the number of CLEC E-911 listings may understate the number of access lines served by facilities-based CLECs. For example, only outbound lines have 911 listings associated with them. From the evidence presented, however, the Commission cannot determine how many more, if any, access lines in each particular exchange are being served. The Commission finds that Southwestern Bell's estimates for the minimum number of access lines being served by competitors for both business and residential customers are reasonable estimates reflecting the minimum CLEC business market share and residential market share throughout Southwestern Bell's exchanges.

**Extent of Services Functionally Equivalent or Substitutable at Comparable Rates, Terms, and Conditions**

The second factor that the Commission must consider in determining effective competition is "the extent to which these services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions."<sup>13</sup> The parties presented argument and testimony about whether services such as wireless carriers,

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<sup>12</sup> There were allegations that Southwestern Bell's use of E-911 Information was a violation of Commission orders and confidentiality clauses between some of the parties in interconnection agreements. The Commission did not base its decision solely on any one factor in making its determinations in this case. The Commission also finds that it must consider all relevant factors in determining whether or not 'effective competition' exists. The Commission finds that it does not have sufficient evidence to determine if these allegations are correct and if sanctions are appropriate. The Commission concludes that if Southwestern Bell has indeed violated Commission orders by using E-911 information in an inappropriate manner, the offended party or the Commission's Staff should seek the appropriate remedy in a formal complaint proceeding before the Commission, or other appropriate jurisdiction.

<sup>13</sup> Subsection 386.020(13)(b).



cable TV providers, Internet service providers, fixed satellite providers, and customer premises equipment manufacturers constitute "equivalent or substitutable service." The Commission finds that it is appropriate for the Commission to consider these services when evaluating all the relevant factors of effective competition. The Commission finds, however, that even if it were to find that such services are equivalent and substitutable, the testimony of Southwestern Bell's witnesses was not persuasive as to the existence of effective competition from competitors that are not regulated by the Commission because the witnesses had very little Missouri-specific information and based the majority of their testimony on national publications, general trends in the communications industry, and unverified sources. Southwestern Bell's witnesses provided very little evidence that competition has had any specific impact on Southwestern Bell's prices or its pricing and product policies, strategies or plans. Therefore, as described below, the Commission finds that Southwestern Bell has not provided substantial evidence that establishes that, for all of Southwestern Bell's regulated service offerings, there are alternative providers who are providing functionally equivalent or substitutable services throughout each of Southwestern Bell's Missouri exchanges, at comparable rates, terms and conditions.

#### **The Extent to Which the Purposes and Policies of Chapter 392 are Advanced**

The third factor that the Commission is required to consider in connection with its evaluation of whether effective competition exists is "[t]he extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo, are being advanced."<sup>14</sup> The purposes of Chapter 392 have been set out above. Section 386.020(13), clearly sets apart the purpose of ensuring "that

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<sup>14</sup> Subsection 386.020(13)(c).

customers pay only reasonable charges for the telecommunications service" for the Commission to consider in determining whether there is effective competition. The Commission finds that full and fair competition acts as a substitute for regulation by exerting discipline on prices and moving those prices toward economic cost. Thus, customers benefit from competition because of the competing companies' ability to quickly adapt to a changing marketplace. The customers also benefit because they are assured that the prices are reasonable because they are near cost.

#### **Existing Economic or Regulatory Barriers to Entry**

The fourth factor is consideration of the "[e]xisting economic or regulatory barriers to entry."<sup>15</sup> The number of companies that have become certificated and have approved tariffs is relevant to analyzing the barriers to entry and the overall status of competition. Southwestern Bell presented evidence of many CLECs that have certificates and tariffs that authorize them to provide service in all of Southwestern Bell's Missouri exchanges. The Commission finds that the evidence presented by Southwestern Bell in the form of a count of the number of CLECs or IXCs certified or tarified in the state or in any particular exchange is evidence of competition; however, the mere existence of such "paper competition" by itself does not persuade the Commission that effective competition exists.

Southwestern Bell's evidence leads the Commission to conclude that the availability of resale and unbundled network elements, including combinations of unbundled network elements, provide effective ways for CLECs to enter the market with little capital investment. Given the multitude of companies providing services, it is clear that the regulatory barriers that once prevented competitors from offering alternatives in the

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<sup>15</sup> Subsection 382.020(13)(d).

marketplace are disappearing. However, for most of Southwestern Bell's services in most of its exchanges, very little evidence was presented to persuade the Commission that alternative providers are actually offering services that are functionally equivalent or substitutable for Southwestern Bell's services at comparable rates, terms and conditions. The Commission finds that Ms. Meisenheimer's testimony regarding her investigation into which competitive companies are actually providing services in particular exchanges is more persuasive evidence of effective competition, or the lack thereof in a particular exchange.

The Commission's decision in Case No. TO-99-227, is also relevant to the analysis of the existing regulatory barriers to entry. The Commission determined in that case, that Southwestern Bell had complied with Section 271 of the federal Telecommunications Act of 1996, and that Southwestern Bell's local markets were open to competition. This finding is not equivalent, however, to a finding that effective competition exists. Southwestern Bell's own witnesses agreed with this conclusion.

Alternative local exchange telecommunications companies may experience barriers to entering the local exchange market due to current economic conditions, including limited access to capital and the current retail rate structures of ILECs. Although economic conditions and regulatory proceedings generally do not constitute insurmountable barriers to entry, AT&T presented testimony that such barriers may impede the ability of alternative local exchange telecommunication companies to enter the market, to expand their operations, and to provide competitive alternatives to Southwestern Bell. The Commission found this testimony persuasive with regard to current alternative local

exchange company plans for continued service and expansion in Southwestern Bell exchanges.

**Any Other Relevant Factors Necessary to Implement the Purposes and Policies of Chapter 392**

The fifth factor the Commission must consider is "[a]ny other factors deemed relevant by the commission and necessary to implement the purposes and policies of Chapter 392."<sup>16</sup> Other factors that the Commission deems relevant and necessary in this case are discussed below.

The Commission considers alternative communications that are not regulated by the Commission, such as e-mail, cable broadband, and mobile phones as "other factors" under Subsection 386.020(13)(e) that might be "relevant . . . and necessary to implement the purposes and policies of Chapter 392." However, the evidence did not persuade the Commission that the generalized presence of such alternative communications throughout the state constitutes, in the absence of CLEC-owned, facilities-based competition, effective competition to Southwestern Bell's telecommunications services.

Southwestern Bell's witness Thomas Hughes commented that additional pricing flexibility would "increase Southwestern Bell's ability to restructure services and offer value-added packaging." He observed that "Southwestern Bell has had only limited price changes for most of its services since 1984." He testified Southwestern Bell has no current plans to change rates. He supplied Exhibit 29, which provides information on recent Southwestern Bell price changes, including changes mandated by the price cap statute.

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<sup>16</sup> Subsection 386.020(13)(e).

There was no testimony that any specific changes were made as a result of competition or explaining the specific analysis that resulted in such changes.

### **Issues as Presented by the Parties**

Section 392.245.5, requires that the Commission make a determination for each service in each exchange of the ILEC. Because of the large number of services and exchanges of the ILEC, the parties grouped the services into categories and presented 17 groups of services to the Commission for determination as to the existence of effective competition. The parties agreed to consider Southwestern Bell's services in these categories. The Commission has adopted this method of categorization for its review of the status of competition in Southwestern Bell exchanges.

Southwestern Bell provides the following telecommunications services in its exchanges:

- Core business switched services;
- Business line-related services;
- High capacity exchange access line services;
- Plexar services;
- IntraLATA private line/dedicated services;
- Residential access line services;
- Residential access line-related services;
- IntraLATA toll services;
- Local Plus service;
- Optional Metropolitan Calling Area service;
- Wide Area Telecommunications Services and 800 services;
- Special access services;

Switched access services;

Common Channel Signaling/Signaling System 7 services;

Line Information Database services;

Directory Assistance (DA) services; and

Operator services (OS).

The parties also included an additional issue for Commission determination.

That issue was:

In each exchange served by Southwestern Bell, which if any alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years (or if none, what is the longest period of time that a certified alternative local exchange company has provided basic local telecommunications service in that exchange)?

The Commission has determined that no alternative local exchange telecommunications company has been certified and providing service in any of Southwestern Bell's exchanges for a period of five years. As to the parenthetical issue, for the purposes of this case the Commission need not make that determination.

### **Findings of Fact and Conclusions of Law** **Applicable to Specific Issues**

**Issue 1:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's core business switched services be classified as competitive pursuant to Section 392.245.27

#### **Findings of Fact**

Southwestern Bell's core business switched services include the various basic business access services, including exchange access lines, analog trunks, and Basic Rate ISDN (DigiLineK Service) that Southwestern Bell's business customers use to make and receive calls over the public switched telephone network. Southwestern Bell's basic

business exchange access line is a line that provides customers the ability to make and receive telephone calls. These lines can be used to make voice telephone calls or to transmit data to or from the public switched telephone network. Analog trunks are used to connect the central office to a private branch exchange or key system, located on the customer's premises.

The Commission finds that Southwestern Bell has experienced a substantial market share loss in the St. Louis and Kansas City exchanges for core business services. This market share loss is due to alternative providers providing substitutable or functionally equivalent services to Southwestern Bell's core business switched services in these exchanges. The Commission also finds that there was some evidence presented, although not strong evidence, of competition throughout Southwestern Bell's exchanges from entities not regulated by the Commission. In addition, as Staff's witness testified, there are CLEC-owned facilities, specifically fiber networks, within 1,000 feet of a significant quantity of business and residential customers in those two exchanges.

Southwestern Bell presented evidence showing a similar or higher market share loss for other exchanges; however, the Commission must make the determination of effective competition based on all the relevant factors. The Commission finds that market share alone is not determinative of this issue. However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing both resale and facilities-based service in the exchanges, the overwhelming number of carriers certified to do business in the St. Louis and Kansas City exchanges, the comparative longevity of the companies doing business, and CLEC-owned fiber networks, the Commission determines that effective competition exists in those two exchanges.

### Conclusions of Law

The Commission finds that a substantial number of business customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned facilities in the St. Louis and Kansas City exchanges. Accordingly, the Commission finds that effective competition exists for Southwestern Bell's core business switched services which are hereby classified as competitive pursuant to Section 392.245, in these two exchanges.

With due consideration to all factors set forth under Section 386.020(13), the Commission finds that Southwestern Bell's core business services in Southwestern Bell's other exchanges do not face effective competition. In particular, the evidence did not establish that a substantial number of business customers were being provided service from widely available CLEC-owned facilities in any of Southwestern Bell's other exchanges.

While the Commission considers resale a form of substitutable service, the mere presence of resellers is not substantial evidence for the Commission to determine that effective competition exists. Alternative local exchange telecommunications companies that provide service via resale of Southwestern Bell's services are limited in their ability to differentiate their service offerings based on price, because the minimum cost that a reseller incurs to provide service is directly tied to Southwestern Bell's retail rate for the resold service.



**Issue 2:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's business line-related services be classified as competitive pursuant to Section 392.245.5?

**Findings of Fact**

Line-related or vertical services are services a business customer may add to the customer's business access line and which provide additional functions to that line. Line-related or vertical services are related to core business switched access line services. Examples of line-related services include services such as call waiting, return call, three-way calling, call forwarding, caller I.D., and speed calling. CLECs are the most evident type of competitor for business access line customers, providing business access line services that are substitutable or functionally equivalent to Southwestern Bell's services. In addition to using their own facilities, CLECs use unbundled network elements to provide business access line-related services. CLECs offer their customers the same line-related services as those offered by Southwestern Bell.

The Commission finds that vertical services and custom calling features are inseparable from the underlying basic local service because vertical services and custom calling features are not available to the customer without that customer being provided the basic local service.

The Commission finds that the same facts found with regard to Southwestern Bell's core business services are applicable to its business related services. Thus, when all the factors of effective competition are considered, the evidence of market share lost, the number of carriers, including resellers, actually providing service both resale and facilities-based services in the exchanges, the large number of carriers certified to do business in the exchanges, the comparative longevity of those companies, and

CLEC-owned fiber networks, the Commission determines that effective competition exists for business-related services in the Kansas City and St. Louis exchanges.

Likewise, when considering all the relevant factors, the weight of the evidence is not as great in Southwestern Bell's other exchanges. Therefore, the Commission finds that there is not sufficient evidence to find that business line-related services are subject to effective competition in Southwestern Bell's other exchanges.

### **Conclusions of Law**

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's core business line-related services is applicable to Southwestern Bell's core business switched services because the two groups of services are closely related, that is, line-related services cannot be provided without first providing the underlying core business service. The Commission has concluded that Southwestern Bell's core business switched services face effective competition from CLECs in the St. Louis and Kansas City exchanges. The Commission concludes that Southwestern Bell's business line-related services also face effective competition in the Kansas City and St. Louis exchanges. Therefore, the Commission finds that Southwestern Bell's business line-related services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the core business services in any other exchanges, and for similar reasons find that there is not effective competition for the business line-related services in any other exchange.

**Issue 3:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's high capacity exchange access line services be classified as competitive pursuant to Section 392.245.5?

**Findings of Fact**

There are generally three types of high capacity exchange access line services offered by Southwestern Bell throughout Missouri. Staff's witness testified that Southwestern Bell's high capacity exchange access services face effective competition in the St. Louis and Kansas City exchanges. Southwestern Bell argues that the Commission should find that all of its exchanges are subject to effective competition with regard to these services. There was no evidence presented that there was effective competition in Southwestern Bell's other exchanges. There was evidence that alternative providers are certificated, but no exchange-by-exchange analysis of the extent of competition, how effective that competition may be, or the rates and terms available.

For the same reasons as Southwestern Bell's core business line services, the Commission finds that in the Kansas City and St. Louis exchanges, Southwestern Bell's high capacity line services are subject to effective competition and should be granted competitive classification.

**Conclusions of Law**

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's core business related services is applicable to Southwestern Bell's high capacity line services. The Commission concludes that Southwestern Bell's high capacity line-related services face effective competition in the Kansas City and St. Louis exchanges. Therefore, the Commission finds that Southwestern

Bell's high capacity line services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the high capacity line services in any other exchanges, and for similar reasons to the core business line services finds that there is not effective competition for high capacity line services in any other exchanges.

Although it is not specifically an issue in this case, Staff asks the Commission to recognize that Southwestern Bell is authorized by Section 392.200.8 to use customer specific pricing for its high capacity line services in all of its exchanges. Section 392.200.8 is a specific exception to the general requirement that regulated telecommunications companies charge the same rate for similarly situated customers. Under this exception, Southwestern Bell is authorized to price its high capacity line services on an individual customer basis. NuVox and others argue that Southwestern Bell's services cannot be subject to price cap regulation and subject to the exception in Section 392.200.8. The Commission concludes, however, that one does not preclude the other. Section 392.245. is a transitional regulatory step of price cap regulation, moving from the more rigid regulation of Section 392.200. Thus, an exception to Section 392.200, can easily be translated into a continuing exception under the less stringent regulation. The Commission concludes that Southwestern Bell can utilize individual customer pricing for its high capacity line services.

**Issue 4:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Plexar services be classified as competitive pursuant to Section 392.245.5?

**Findings of Fact**

Plexar is a central office based communications system that allows business customers to use Southwestern Bell's central office technology instead of purchasing their own switching equipment. The Plexar family of services includes Plexar I, Plexar Express, Plexar II, and Plexar-Custom. A business customer has no capital outlay since Plexar switching equipment is provided, housed, and maintained in Southwestern Bell's central offices. The telecommunications industry often refers to services such as Southwestern Bell's Plexar services as "Centrex".

The Plexar system and station features are changeable by Southwestern Bell, and optionally, with some Plexar offers, by the customer. Plexar service provides basic call processing capabilities, such as call hold, call transfer, and three-way calling. Additionally, some Plexar services also offer advanced voice and data call handling such as basic rate interface and integrated service digital network capabilities.

Southwestern Bell provided testimony about many different types of services and equipment that could be considered competition for Plexar. Southwestern Bell also provided testimony regarding alternative local exchange companies that have approved tariffs to provide a similar type of service. However, Southwestern Bell did not provide any exchange-by-exchange analysis or evidence of companies actually providing this service. Therefore the Commission cannot make a finding of effective competition for this service.

### Conclusions of Law

The Commission found no substantial evidence to support a determination that effective competition exists under the five factors set out in Section 386.020(13). The Commission does recognize, however, that Centrex services are subject to individual customer pricing under Section 392.200.8, in the same manner as high capacity line services. The Commission concludes that Southwestern Bell can utilize individual customer pricing for its Plexar service.

**Issue 5: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA private line/dedicated services be classified as competitive pursuant to Section 392.245.57**

### Findings of Fact

Private line services are nonswitched, dedicated circuits, for which Southwestern Bell furnishes the requisite facilities, including channels and network terminating equipment, to enable customers and authorized users to communicate between specified locations within a LATA on a continuous basis. They are most frequently utilized for data transmissions, but are also utilized for transporting voice or integrated data/voice communications in private networks. Private line services include Analog Service; DS0 Service; DS1 Service; DS3 Service; Network Reconfiguration Service; and GigaMAN Service.

The Commission finds that significant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years. Undisputed evidence shows that many alternative providers, such as AT&T, Sprint, MCI and numerous CLECs offer nonswitched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to Southwestern Bell's private line services.

These alternatives, against which Southwestern Bell competes, are either not regulated by the Commission or at least not price regulated in the same manner as Southwestern Bell. In addition to direct competition for traditional private line services, there are many service providers in the marketplace offering a variety of networking solutions, with different technologies, that can meet the same transport needs as Southwestern Bell's private line services.

In Case No. TO-93-116, the Commission found that services provided by interexchange carriers were "equivalent" and completely interchangeable with Southwestern Bell's private line services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of private line services to a "transitionally competitive" classification. Given the extensive nature of competition for private line services and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell's private line services in all of its Missouri exchanges.

#### Conclusions of Law

Section 392.200.8 authorizes Southwestern Bell, to freely price private line services. That section states:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.<sup>17</sup>

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<sup>17</sup> Section 392.200(8).

The Commission has recognized the existence of competition in the intraLATA private line market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were equivalent and completely interchangeable with Southwestern Bell's private line services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of private line services to a transitionally competitive classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after private line services were declared transitionally competitive (January 10, 1996), the Commission, with Southwestern Bell's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, the Commission determines that Southwestern Bell's private line services became classified as competitive on January 10, 1999, by operation of law.

**Issue 6:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line services be classified as competitive pursuant to Section 392.245.5?

#### **Findings of Fact**

Residential access line services are those services that provide basic voice access for residences to the telecommunications network. For residential service, the most typical form of residential access line service is flat rate telephone service. Flat rate service is an exchange service furnished for a specified sum without regard to the amount



of use. These lines may be used to make voice telephone calls or to transmit data to or from the public switched network. Residential access line service also includes measured service and message rate service.

The Commission finds that a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges. The evidence shows that there are actually 27 CLECs serving residential customers in the Harvester exchange and 31 CLECs serving residential customers in the St. Charles exchange. In addition, Southwestern Bell has lost a substantial market share of residential customers in those exchanges. When considered with all the other factors of effective competition, the Commission finds that most residential customers in these two exchanges have not only the many choices from resale providers, but also a choice of CLEC-owned, facilities-based providers. The Commission also finds that there was some evidence presented, although not strong evidence, of competition throughout Southwestern Bell's exchanges from entities not regulated by the Commission. These factors lead the Commission to find that Southwestern Bell's residential access line services face effective competition in the Harvester and St. Charles exchanges and should be classified as competitive pursuant to Section 392.245.5 in these two exchanges.

The Commission was not persuaded by Southwestern Bell's evidence of prepaid basic local service as effective competition. Prepaid basic local service requires a customer to pay rates that are many times higher than Southwestern Bell's basic local rate. The increased rate is usually attributable to the customers problematic credit history. The

evidence showed that Southwestern Bell is not currently providing prepaid service in Missouri.

Southwestern Bell presented evidence showing a similar or higher market share loss for other exchanges; however, the Commission must make the determination of effective competition based on all the relevant factors. The Commission finds that market share alone is not determinative of this issue. However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing service both resale and facilities-based in the exchanges, the large number of carriers certified to do business in the exchanges, the comparative longevity of those companies, and CLEC-owned fiber networks, the Commission determines that effective competition exists in the Harvester and St. Charles exchanges.

#### **Conclusions of Law**

The Commission finds that a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges. Accordingly, the Commission finds that effective competition exists for Southwestern Bell's residential access line services in those two exchanges. Those services are hereby classified as competitive pursuant to Section 392.245, in the Harvester and St. Charles exchanges.

With due consideration to all factors set forth under Section 386.020(13), the Commission finds that Southwestern Bell's residential access line services in Southwestern Bell's other exchanges do not face effective competition. In particular, the evidence did not

establish that a substantial number of residential customers were being provided service from widely available CLEC-owned facilities in any of Southwestern Bell's other exchanges.

As the Commission has previously found, resale is a competing service. The mere presence of resellers, however, is not substantial evidence for the Commission to determine that effective competition exists.

**Issue 7: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line-related services be classified as competitive pursuant to Section 392.245.5?**

**Findings of Fact**

The Commission finds that vertical services and custom calling features are inseparable from the underlying basic local service because vertical services and custom calling features are not available to the customer without that customer being provided the basic local service.

The Commission finds that the same facts found with regard to Southwestern Bell's residential access line services are applicable to its residential access line-related services. Thus, when all the factors of effective competition are considered the Commission determines that effective competition exists for residential access line-related services in the Harvester and St. Charles exchanges.

Likewise, when considering all the relevant factors, the weight of the evidence is not as great in Southwestern Bell's other exchanges. Therefore, the Commission finds that there is not sufficient evidence to find that residential access line-related services are subject to effective competition in Southwestern Bell's other exchanges.

### Conclusions of Law

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's residential access line services is applicable to Southwestern Bell's residential access line-related services because the two groups of services are closely related, that is, line-related services cannot be provided without first providing the underlying basic residential service. The Commission has concluded that Southwestern Bell's residential access line services face effective competition from CLECs in the Harvester and St. Charles exchanges. The Commission concludes that Southwestern Bell's residential access line-related services also face effective competition in those two exchanges. Therefore, the Commission finds that Southwestern Bell's residential access line-related services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the residential access line-related services in any other exchanges, and for similar reasons find that there is not effective competition for the residential access line-related services in those exchanges.

**Issue 8: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA services be classified as competitive pursuant to Section 392.245.5?**

### Findings of Fact

IntraLATA toll service furnishes telecommunications between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA.

Southwestern Bell requests that its intraLATA toll services be classified as competitive in all Southwestern Bell exchanges based on prior Commission determinations and the extensive nature of competition in the intraLATA toll market. Staff agreed that the Commission should approve a statewide competitive classification for Southwestern Bell's intraLATA toll services. In its Statement of Position, the Office of the Public Counsel also agreed, with the exception of flat-rated interexchange services.

The Commission finds that competition has existed in the intraLATA toll market since July 24, 1986, when the Commission authorized intraLATA toll competition in Missouri.<sup>18</sup> In that case, the Commission found that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster responses to customers' needs.

Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri. These include many that offer both intraLATA and interLATA toll service. The intraLATA toll services provided by AT&T, MCI, Sprint, WorldCom, and other IXC's are equivalent to or substitutable for Southwestern Bell's intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls. The large number of certified IXC's supports Southwestern Bell's contention that customer choices are widely available and it reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.

With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the ability to make intraLATA toll calls without dialing extra digits. In

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<sup>18</sup> *In the Matter of the Application of the Chinese Chef, Inc. for Certificate of Service Authority to Provide Private Pay Telephone Service within the State of Missouri*, Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

every Southwestern Bell exchange, there is a minimum of 73 IXCs certified to provide 1+ intraLATA toll services. Some exchanges have up to 140 IXCs. While the number of certificated carriers is not by itself determinative of this issue, based on the large numbers of available IXCs in each Southwestern Bell exchange, it is very apparent that robust competition exists for Southwestern Bell's intraLATA toll services.

In addition to the traditional forms of competition from IXCs and CLECs, Southwestern Bell customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and Internet telephony.

Given the extensive nature of competition for intraLATA toll services and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell's intraLATA toll services in all of its Missouri exchanges.

#### **Conclusions of Law**

The Commission recognized the existence of competition in the intraLATA toll market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were substitutable with Southwestern Bell's intraLATA toll services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of its toll services to a transitionally competitive classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after intraLATA toll services were declared transitionally competitive (January 10, 1996), the Commission, with Southwestern Bell's agreement, extended the

transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, intraLATA toll service became classified as competitive on January 10, 1999, by operation of law.

**Issue 9:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Local Plus services be classified as competitive pursuant to Section 392.245.57

**Findings of Fact**

Southwestern Bell's Local Plus service is an optional one-way expanded calling plan that provides subscribers with flat rate unlimited calling to all customers within the LATA. Southwestern Bell does not pay itself access charges when Local Plus calls terminate to its own customers, but a competitor trying to provide a facilities-based alternative to Local Plus would pay Southwestern Bell access charges for calls terminating to Southwestern Bell's customers. To mitigate this economic barrier to entry, the Commission previously found in Case No. TT-98-351 that "in order to enable customers to obtain this type of service by using the same dialing pattern, the dialing pattern functionality should be made available for purchase to IXC's and CLECs on both a resale and unbundled network element basis."<sup>19</sup> In Case No. TO-2000-667, the Commission determined "that Southwestern Bell had not made its Local Plus service available for resale by companies providing service to their customers through the use of UNE's or through the use of their own facilities."<sup>20</sup>

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<sup>19</sup> In the matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-Wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan, Case No. TT-98-351, Report and Order Issued September 17, 1998, at 39-40.

<sup>20</sup> In the Matter of the Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company's Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies, Case No. TO-2000-667, Report and Order issued May 1, 2001, at 14.

The Commission specifically ordered Southwestern Bell to make its Local Plus service available for resale to companies providing service to their customers through the purchase of switching from Southwestern Bell or through the use of the company's own switch.<sup>21</sup> Southwestern Bell has petitioned the circuit court to review the Commission's Report and Order in Case No. TO-2000-667. Thus, there is no evidence that Southwestern Bell is currently providing Local Plus as directed by the Commission.

The Commission also heard no specific evidence regarding competition for Local Plus service. Southwestern Bell's witness Barbara Jablonski testified that the Local Plus service faces competition from IXCs, CLECs, and other competitors that are not regulated by the Commission. The Commission does not find Ms. Jablonski's testimony persuasive, however, since she did not provide any specific information regarding particular calling plans that are equivalent and substitutable for Local Plus. The Commission finds that without specific evidence of equivalent and substitutable competition and without evidence that Southwestern Bell is making the resale of this service available in accordance with its orders, the risk that predatory pricing may endanger competition remains. Therefore, the Commission concludes that Southwestern Bell cannot be said to face effective competition for Local Plus.

#### **Conclusions of Law**

The Commission takes notice of its previous orders regarding the provisioning of Local Plus. The Commission also takes notice that its most recent order in TO-2000-667 is currently pending upon review by the circuit court. In Case No. TT-98-351, the Commission found that Local Plus was a unique service because it was a hybrid of toll and local service.

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<sup>21</sup> *Id.* at 14-15.



Because it found Local Plus to be unique, the Commission imposed the requirement that Southwestern Bell make Local Plus available for resale. In Case No. TO-2000-667, the Commission found that Southwestern Bell was not abiding by those original requirements and therefore, that "companies seeking to compete against Southwestern Bell in the Basic Local Service market through use of their own facilities, or through use of unbundled network elements, have been placed at a competitive disadvantage." The Commission also directed Southwestern Bell to comply with its previous order.

Until the issue regarding the resale of Local Plus is final, the Commission cannot, considering all the relevant factors, make a determination that Southwestern Bell's Local Plus faces effective competition.

**Issue 10: In Which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Optional Metropolitan Calling Area services be classified as competitive pursuant to Section 392.245.57**

#### **Findings of Fact**

MCA is an optional interexchange plan available in three distinct areas in Missouri: the St. Louis MCA, the Kansas City MCA and the Springfield MCA. This optional plan provides subscribers with a calling area that includes their respective metropolitan exchange and certain customers in other exchanges where MCA service is also available. The Commission, in Case No. TO-92-306,<sup>22</sup> created MCA service to address customer requests for expanded calling scopes in the areas surrounding the three major metropolitan areas of St. Louis, Kansas City and Springfield. The existing calling scopes were modified

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<sup>22</sup> *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. TO-92-306.

to address the changing demographics of the metropolitan areas by creating an optional service that expands the local calling scopes for a flat-rated monthly charge.

Southwestern Bell's optional MCA service is not classified as interexchange message telecommunications service. Rather, MCA is similar to basic local telephone service. Southwestern Bell's optional MCA service is very closely related to its corresponding basic local service and, like residential access line-related services, cannot be separated from it for purposes of analyzing whether or not effective competition exists. Accordingly, the Commission finds that Southwestern Bell's optional MCA services face effective competition and should be classified as competitive pursuant to Section 392.245.5 only for residential customers in the St. Charles and Harvester exchanges.

#### Conclusions of Law

The Commission concludes that applying the factors contained in Section 386.020(13), Southwestern Bell's optional MCA service faces effective competition only for residential customers in the St. Charles and Harvester exchanges. It also follows that because Southwestern Bell's residential access line services have not been shown to face effective competition in its other exchanges, that its optional MCA services do not face effective competition in its other exchanges either.

**Issue 11: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services and 800 services be classified as competitive pursuant to Section 392.245.5?**

#### Findings of Fact

Wide Area Telecommunications Services includes both 800 service and outward WATS (OUTWATS). 800 service provides the subscribers with the ability to receive incoming intraLATA interexchange calls that are toll-free to the calling party. OUTWATS

service provides subscribers with the ability to place outgoing intraLATA, interexchange calls that are billed on a usage-sensitive basis.

Southwestern Bell requests that its WATS and 800 services be classified as competitive in each of its Missouri exchanges. Staff agrees that the Commission should approve a statewide competitive classification for Southwestern Bell's WATS service. No party presented any evidence with respect to these services that would support a different conclusion.

There are over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800 service. The services provided by IXC's and CLECs are functionally equivalent to and substitutable for Southwestern Bell's WATS and 800 service. The Commission finds that the large number of certified companies indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.

In addition to IXC's and CLECs, WATS and 800 service faces competition from nontraditional competitors. Many companies are utilizing various e-commerce methods to communicate with their customers. For instance, consumers can purchase airplane tickets, rent cars, or check the balance on their credit card via the Internet, making calls to a company's 800 number unnecessary.

Given the extensive nature of competition for WATS and 800 service and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell's WATS and 800 service in all of its Missouri exchanges.

### Conclusions of Law

The Commission recognized the existence of substantial WATS and 800 service markets in Case No. TO-93-116. In that case, the Commission found that WATS and 800 service provided by IXC's was "substitutable" with Bell's WATS and 800 services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of its WATS and 800 service to a "transitionally competitive" classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such time as the Commission affirmatively extends the transitionally competitive status period. Three years after WATS and 800 services were declared transitionally competitive (January 10, 1996), the Commission with Southwestern Bell's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, Southwestern Bell's WATS and 800 services became classified as competitive on January 10, 1999.

**Issue 12: In which Southwestern Bell Telephone Company's special access services should Southwestern Bell's special access services be classified competitive pursuant to Section 392.245.5?**

### Findings of Fact

Special access services are dedicated, nonswitched services that connect one or more end-user customer premises with an IXC's location, common point of presence. Special access services are used to carry voice and data, at higher speeds, video. Southwestern Bell offers eight categories of special access services: Metallic, Telegraph Grade, Voice Grade, Wideband Analog,

### Conclusions of Law

The Commission recognized the existence of substantial competition in the WATS and 800 service markets in Case No. TO-93-116. In that case, the Commission found that WATS and 800 service provided by IXC's was "substitutable" for Southwestern Bell's WATS and 800 services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of its WATS and 800 service to a "transitionally competitive" classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after WATS and 800 services were declared transitionally competitive (January 10, 1996), the Commission with Southwestern Bell's agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, Southwestern Bell's WATS and 800 services became classified as competitive on January 10, 1999, by operation of law.

**Issue 12: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's special access services be classified as competitive pursuant to Section 392.245.5?**

### Findings of Fact

Special access services are dedicated, nonswitched services used to connect one or more end-user customer premises with an IXC's location, commonly referred to as a point of presence. Special access services are used to carry voice and data applications and, at higher speeds, video. Southwestern Bell offers eight categories of special access services: Metallic, Telegraph Grade, Voice Grade, Wideband Analog, Wideband Data,

MegaLink Data (DS1), High Capacity (DS3), and DovLink service (data over a voice grade facility).

### **Conclusions of Law**

The Commission recognized the existence of competition in the intraLATA special access market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were "equivalent" and completely interchangeable with Southwestern Bell's special access services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of special access services to a "transitionally competitive" classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after special access services were declared transitionally competitive (January 10, 1996), the Commission with Southwestern Bell's agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, special access service became classified as competitive on January 10, 1999, by operation of law.

**Issue 13: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's switched access services be classified as competitive pursuant to Section 392.245.5?**

### **Findings of Fact**

Switched access service refers to the line of services sold to IXCs who wish to access the local public switched network in order to provide long distance service to end-users. It enables IXCs to originate or terminate their customers' long distance calls from an

end-user's premise. Switched access has four categories of service, which are designated by feature groups. Feature groups are differentiated by their technical characteristics and how an end-user accesses each of these services. The four categories of feature groups are: Feature Group A, which is a line side connection; Feature Group B, which is a trunk side connection accessed via the 950 access code; Feature Group C and Feature Group D, which are both trunk side connections allowing 1+ dialing of long distance calls. Switched access has three major components: the common line element, the end office element and the transport element.

Southwestern Bell is the dominant provider of exchange access services within its service territory. Southwestern Bell does not pay itself exchange access rates. Thus, switched access by its very nature is a locational monopoly. Southwestern Bell's witness Dr. Aron agreed that an IXC cannot bypass Southwestern Bell's terminating access. IXCs have no choice but to pay exchange access rates in order to complete their subscribers' calls. An IXC cannot select a lower cost alternative because there is no lower cost alternative.

The Commission has granted many CLECs competitive status for their switched access services. The Commission has, however, placed the restriction on CLEC switched access service that those rates may not be restructured if the aggregate of the rates is greater than the incumbent local exchange company's switched access rates. There was general agreement in the testimony that switched access is a locational monopoly no matter whether an incumbent or a competitive company provides the access. The Commission finds that Southwestern Bell's switched access services are no different than CLEC switched access services.

In its surrebuttal testimony and at the hearing, Southwestern Bell indicated that it is willing to provide this service subject to the same conditions applicable to CLEC provision of switched access service, specifically, Southwestern Bell's switched access service would remain subject to price caps, but Southwestern Bell would have greater flexibility to restructure its rates under that cap.

### **Conclusions of Law**

Pursuant to the Commission's decision in Case No. TO-99-596,<sup>23</sup> CLECs' switched access rates are capped at the rate of the incumbent local exchange company in whose territory the CLEC competes. The CLEC, however, is not required to match the ILECs rate structure so long as the overall average is within the cap.

Southwestern Bell requests that its switched access services be classified as competitive in all of its exchanges in Missouri. Southwestern Bell indicates, however, that it is willing to provide this service subject to the same conditions applicable to CLEC provision of switched access service, specifically, Southwestern Bell's switched access service would remain subject to price caps, but Southwestern Bell would have greater flexibility to restructure its rates under that cap.

The Commission has determined that the switched access service of CLECs is competitive under Section 392.361. Under that section, the Commission determines that a service is competitive by finding that the "telecommunications . . . service . . . [is] subject to sufficient competition to justify a lesser degree of regulation." Section 392.245.8 sets out a different standard for the Commission with regard to a company under price cap regulation.

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<sup>23</sup> *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596.



Under that statutory provision, the Commission is required to determine whether or not effective competition exists for switched access service. Having found that Southwestern Bell's switched access service is a locational monopoly service, the Commission cannot find that switched access is subject to effective competition.

**Issue 14: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Common Channel Signaling/Signaling System 7 services be classified as competitive pursuant to Section 392.245.5?**

#### **Findings of Fact**

Southwestern Bell's SS7 provides a dedicated two-way signaling path between a customer and Southwestern Bell's Signal Transfer Point and provides access to Southwestern Bell's SS7 network. Where available, SS7 signaling is used with switched access service to carry the signals associated with a call on a transmission path that is separate from the voice path. In addition, SS7 is utilized to access Southwestern Bell's line information database and switched access 800 number portability access service.

The evidence presented shows that competition for SS7 services is significant. Southwestern Bell faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis. No party presented evidence to dispute this fact. Staff agrees with Southwestern Bell that SS7 services are subject to effective competition in all its Missouri exchanges.

#### **Conclusions of Law**

The Commission concludes that given the extensive nature of competition, there is effective competition throughout all of Southwestern Bell's Missouri exchanges for SS7 services. The Commission concludes therefore that this service should be classified as competitive under Section 392.345.5 in all of Southwestern Bell's Missouri exchanges.

**Issue 15:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Line Information Database services be classified as competitive pursuant to Section 392.245.5?

**Findings of Fact**

LIDB provides the customer with the ability to query billing validation data in Southwestern Bell's database in support of alternate billing services, such as Calling Card, collect, and third number billing. Alternate billing services allow telecommunications companies to bill calls to an account that might not be associated with the originating line.

As with SS7 services, the evidence presented shows that competition for SS7 services is significant. Southwestern Bell faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis. No party presented evidence to dispute this fact. Staff agrees with Southwestern Bell that LIDB services are subject to effective competition in all its Missouri exchanges.

**Conclusions of Law**

The Commission concludes that given the extensive nature of competition, there is effective competition throughout all of Southwestern Bell's Missouri exchanges for LIDB services. The Commission concludes, therefore, that this service should be classified as competitive under Section 392.345.5 in all of Southwestern Bell's Missouri exchanges.

**Issue 16:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's directory assistance (DA) services be classified as competitive pursuant to Section 392.245.5?

**Findings of Fact**

Directory Assistance Services provide callers with assistance in obtaining telephone listing information. The directory assistance services currently offered by Southwestern Bell locally include local directory assistance, directory assistance call

completion (including AutoConnect) and national directory assistance. Local directory assistance provides callers with listed telephone numbers of subscribers who are located in the same local calling area and in the calling customer's home numbering plan area. Directory assistance call completion provides the customer the option of having local or intraLATA long distance calls automatically completed by pressing "1" after the listed telephone number is received from directory assistance.

AutoConnect is another form of call completion service available to callers to directory assistance. AutoConnect differs, however, in that there is no charge to the caller for the service. Rather, call completion charge is billed to the called AutoConnect subscriber. If the directory assistance caller requests the telephone number of a caller subscribing to AutoConnect, the caller will be advised that the call can be completed at no additional call completion charge to the caller. Finally, national directory assistance is a service whereby customers may obtain telephone listing information for areas outside their local calling area.

Staff and Public Counsel presented persuasive testimony about the link between directory assistance and basic local service. Directory assistance has historically been accessed when customers dial "411." When customers dial in this manner, the calls are routed to the local exchange carrier. Southwestern Bell presented evidence of several other types of directory assistance available on a statewide basis in Missouri.

The Commission finds that directory assistance is so closely related to basic local service that it cannot be subject to effective competition where basic local is not subject to effective competition. Therefore, the Commission determines that where it has found basic

local service to be subject to effective competition, directory assistance services are also subject to effective competition and should be classified as competitive.

### **Conclusions of Law**

In weighing all the relevant factors, the Commission finds that directory assistance is so closely related to basic local service that it cannot be subject to effective competition where basic local is not subject to effective competition. The Commission has found above that for basic local business customers the Kansas City and St. Louis exchanges are subject to effective competition, and for basic local residential customers the Harvester and St. Charles exchanges have been determined to be subject to effective competition. Therefore, the Commission determines that directory assistance services for those business and residential customer are also subject to effective competition and should be classified as competitive.

**Issue 17: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's operator services (OS) be classified as competitive pursuant to Section 392.245.5?**

### **Findings of Fact**

Operator Services refer to a variety of call completion services that Southwestern Bell offers its customers in Missouri. These services facilitate the completion of a call, often using live operators or through an automated Interactive Voice System. Southwestern Bell's operator services in Missouri include calling cards, collect calls, calls billed to a third number, sent paid calls, person-to-person, line status verification, and busy line interrupt service. A customer may use operator services by dialing "0" or "0 + number" from any telephone, but generally customers utilize operator services when placing a call when away from their home or office.

Southwestern Bell's Station to Station, Person to Person and Calling Card Services were previously declared transitionally competitive in Case No. TO-93-116. The Commission extended the initial three-year period for the transitionally competitive classification from January 10, 1996, to January 10, 1999. The Commission finds that these services became classified as competitive at that time.

Southwestern Bell's other operator services are busy line verification and busy line verification interrupt. Staff and Public Counsel presented persuasive testimony that the same interrelationship between local service and directory assistance applies to busy line verification and busy line interrupt. Historically, customers have dialed "0" to use these operator services. When customers dial in this manner the calls are routed to the local exchange carrier. Thus, as with directory assistance, busy line verification and busy line interrupt are too closely related to the provision of basic local service to be considered subject to effective competition where the underlying basic local service is not also subject to effective competition.

#### **Conclusions of Law**

Southwestern Bell's station-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in Case No. TO-93-116. Subsequent to that finding, and following a three-year extension of the transitionally competitive classification, these services have become classified as competitive as of January 10, 1999.

The Commission finds that Southwestern Bell's busy line verification and busy line verification interrupt services face effective competition and are hereby classified as competitive pursuant to Section 392.245.5 for business customers in only the Kansas City

and St. Louis exchanges and for residential customers in only the St. Charles and Harvester exchanges. It also follows that because Southwestern Bell's business and residential services have not been shown to face effective competition in its other exchanges, that its busy line verification and busy line verification interrupt services do not face effective competition in its other exchanges either.

### **CONCLUSION**

The Commission has examined the status of competition within each of Southwestern Bell's exchanges. The Commission considered all the relevant factors set out in Section 386.020(13), and the purposes of Chapter 392, as set out in Section 392.185, and made the above findings and conclusions. Therefore, the Commission, in accordance with those findings and conclusions, will designate certain of Southwestern Bell's services in certain exchanges as competitive.

#### **IT IS THEREFORE ORDERED:**

1. That the core business switched services of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
2. That the business line-related services of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
3. That the directory assistance services for business customers of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
4. That the Busy Line Verification and Busy Line Interrupt services for business customers of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.

5. That residential access line services of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

6. That residential access line-related services of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

7. That the Optional Metropolitan Calling Area service for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

8. That the directory assistance services for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

9. That the Busy Line Verification and Busy Line Interrupt for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

10. That Southwestern Bell Telephone Company's Common Channel Signaling/Signaling System 7 services are classified as competitive in all of its Missouri exchanges.

11. That Southwestern Bell Telephone Company's Line Information Database services are classified as competitive in all of its Missouri exchanges.

12. That any motion not previously ruled on is denied and any objection not previously ruled on is overruled.

13. That this Report and Order shall become effective on January 6, 2002.

BY THE COMMISSION

*Dale Hardy Roberts*

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(SEAL)

Simmons, Ch., Murray, and Lumpe,  
CC., concur;  
Gaw, C., dissents;  
certify compliance with the provisions  
of Section 536.080, RSMo 2000.  
Forbis, C., not participating.

Dated at Jefferson City, Missouri,  
on this 27th day of December, 2001.