

services and services related thereto in its Kansas City and St. Louis exchanges.⁴ The Commission also found that effective competition exists for AT&T Missouri's core residential services and services related thereto in its Harvester and St. Charles exchanges.⁵ Finally, the Commission found that effective competition exists in all of AT&T Missouri's exchanges for Common Channel Signalling/Signalling System 7 and Line Information Database services.⁶ Based on its determination that these services were subject to effective competition in the exchanges identified, the Commission classified these services as competitive telecommunications services pursuant to Section 392.245.⁷

3. In its Report and Order, the Commission also determined that certain AT&T Missouri services which the Commission had previously declared transitionally competitive had automatically become classified as competitive services throughout AT&T Missouri's exchanges on January 10, 1999, in accordance with Section 392.370.⁸ These services include intraLATA private line/special access services, intraLATA toll/message telecommunications services ("intraLATA toll/MTS services"), Wide Area Telecommunications Services ("WATS"), 800 and Maximizer® 800 services ("800 services"), and certain operator services (i.e., station-to-station, person-to-person, and calling card services).⁹

4. On September 28, 2004, the Missouri Court of Appeals for the Western District of Missouri: (1) affirmed the Commission's grant of competitive classification for business services

⁴ Report and Order, p. 3.

⁵ Report and Order, p. 3.

⁶ Report and Order, p. 3.

⁷ Report and Order, pp. 52-53.

⁸ Report and Order, p. 4.

⁹ Report and Order, p. 4.

in St. Louis and Kansas City, residential services in Harvester and St. Charles, and Common Channel Signalling/Signalling System 7 and Line Information Database services in all of AT&T Missouri's exchanges, under the price cap statute (Section 392.245);¹⁰ and (2) reversed the Commission's decision that intraLATA private line/dedicated services, intraLATA toll/MTS services, WATS and 800 services, special access services, and certain operator services were classified as competitive by operation of law as a result of a prior finding of transitionally competitive status under Section 392.370.¹¹

5. With respect to its reversal, the Court held that the Commission had applied the incorrect standard in assessing competitive classification. The Court determined that the Commission had erred in relying upon Section 392.370, and it directed that the Commission assess competitive classification for the services pursuant to the "effective competition" provisions of Section 392.245. Consequently, the Court remanded the latter portion of the case to the Commission and ordered it "to re-examine the competitive status of these particular services by applying the 'effective competition' factors to the evidence the Commission has already accumulated with regard to these services both from the 1993 'transitionally competitive' hearing in Case No. TO-93-116 as well as from the hearing in this underlying case."¹²

6. On March 3, 2005, the Court of Appeals issued its mandate, which provides as follows:

Now on this date the judgment of the Commission is affirmed as to Point I [i.e., a determination that business services in St. Louis and Kansas City and residential services in Harvester and St. Charles should be deemed competitive under Sections 392.245] and reversed and remanded to the Circuit Court of Cole County as to Point II [i.e., the decision concerning the services which were deemed

¹⁰ State of Missouri ex rel., Acting Public Counsel John Coffman v. Public Service Commission of the State of Missouri, 154 S.W.3d 316, 324 (Mo. App. W.D. 2004).

¹¹ 154 S.W.3d at 329-330.

¹² 154 S.W.3d at 329.

competitive by operation of law under Section 392.370] for further proceedings all in accordance with the opinion of this court.

On March 18, 2005, the Circuit Court of Cole County entered its Order Remanding Case wherein the Court remanded the case to the Commission for further proceedings in accordance with the Court of Appeals' opinion.

7. On April 14, 2005, the Commission issued its Order Directing Filing wherein it directed the Staff to file a status report reporting its recommendations for going forward with the case. The Commission's Order also indicated that the parties could file responses to the Staff's report or could file their own recommendations. Thereafter, Staff, the Office of Public Counsel ("OPC"), AT&T Missouri, NuVox Communications of Missouri, Inc., XO Communications Services, Inc., MCImetro Access Transmission Services, LLC and MCI Communications, Inc. (collectively, "CLECs") submitted various recommendations regarding further proceedings in the case, most of which had to do with whether additional evidence needed to be gathered..

8. The Missouri legislature passed Senate Bill 237 ("S.B. 237"), which was signed by the Governor and became effective on August 28, 2005. On November 16, 2005, the Commission issued its Order Setting Procedural Conference. The Order acknowledged that "statutory changes in Senate Bill 237 are now effective. Moreover, in Case Nos. TO-2006-0093 and TO-2006-0102, the Commission has found that the business and residential services in many of [AT&T] Missouri's exchanges meet the new statutory standards for competitive classification." Order Setting Procedural Schedule, p. 2. Thus, the Order directed the parties to identify the issues remaining for Commission determination; what additional evidence, if any, was needed to make that determination; the effects of the new law on the current case; and the effect Case Nos. TO-2005-0035, TO-2006-0093 and TO-2006-0102 have on this case. Id., p. 2. In their December 5, 2005, response to the Order, the CLECs asserted that AT&T Missouri

should be directed to file revised tariffs to “revise its prices to the extent necessary to comply with the maximum prices that existed as of the January 6, 2002, effective date of the Commission’s Report and Order herein, subject to any intervening adjustments to such maximum prices under the price cap statute in its respective versions applicable during such time period.”

9. On December 14, 2005, AT&T Missouri moved to dismiss the case, explaining that the Commission’s issuance of decisions approving competitive classification for business and residential services in exchanges representing the vast majority of AT&T Missouri’s access lines negated the need for any additional action by the Commission. Further, in replying to the CLECs’ December 5, 2005, response, AT&T Missouri explaining that even if the response were well taken with respect to the services subject to the remand in exchanges not yet declared competitive under the provisions of S.B. 237, very few tariff price changes would be required because, for all but a few services, the current tariff prices do not exceed the maximum allowable prices which would have been permitted under the price cap statute.¹³

10. On December 19, 2005, the CLECs filed their reply to AT&T Missouri’s motion to dismiss, and on December 21, 2005, OPC filed its response to AT&T Missouri’s motion to dismiss. AT&T Missouri opposed this assertion.

11. On October 26, 2006, the Commission issued its Order Denying Motion to Dismiss and Directing Filing of Proposed Findings of Fact and Conclusions of Law (“Order”). In its Order, the Commission noted that the issue before the Commission now is “whether there is sufficient evidence in the record that the services which the Commission incorrectly

¹³ No party seeks a retroactive revision of the rates for these services, and it is clear that any such revisions would be unlawful retroactive ratemaking. State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W.2d 41, 58 (Mo. banc 1979); Lightfoot v. City of Springfield, 236 S.W.2d 348, 353 (Mo. 1951); State ex rel. Barvick v. Public Service Commission, 606 S.W.2d 474, 476 (Mo. App. 1980).

determined as competitive by operation of law are competitive.” Order, p. 2. The Order directed that the parties file proposed findings of fact and conclusions of law, and briefs, directed to “the competitive status of the previously determined transitionally competitive services which have not yet been declared competitive.” Order, p. 2. The Order also stated that the findings of fact should also “set out which services in which exchanges have now been designated as competitive under the new law, and which ones remain to be determined.” Order, p. 3.

II. Findings of Fact – Pre-1996 Developments – H.B. 360/Case No. TO-93-116

12. House Bill 360 (“H.B. 360”), passed in 1987, directed the Commission to reduce regulatory requirements as competition expanded in the various telecommunications markets.¹⁴ With the passage of H.B. 360, the Missouri legislature provided the Commission with the authority to begin recognizing services and service providers as competitive.¹⁵ The legislature enacted procedures to allow a company to seek classification of its services or itself (as a company) as either transitionally competitive or as competitive.¹⁶ Companies began seeking transitionally competitive classification for services in 1987.¹⁷

13. Under Section 392.361, enacted as part of H.B. 360, a telecommunications company seeking either transitionally competitive or competitive classification is required to show, based upon all relevant factors, that the service is subject to sufficient competition to justify a lesser degree of regulation. Once a service is found to be competitive or transitionally competitive, the Commission must classify the same telecommunications services of another company as transitionally competitive or competitive by relying on the finding of fact made in

¹⁴ Ex. 16, Hughes Direct, p. 6. All references to exhibits and testimony herein shall mean to refer to exhibits and testimony admitted into the record in Case No. TO-2001-467 unless otherwise indicated.

¹⁵ Ex. 16, Hughes Direct, p. 6.

¹⁶ Ex. 16, Hughes Direct, p. 6.

¹⁷ Ex. 16, Hughes Direct, p. 7.

the original proceedings.¹⁸ Under Section 392.370.1, the petitioning telecommunications company is required to show (1) an order had been issued under 392.361 that finds the service has been classified as competitive or transitionally competitive; (2) that the service of the petitioning company is the same as, substitutable for, or equivalent to the service classified as either transitionally competitive or competitive; and (3) the competitive or transitionally competitive service is authorized to be provided in the petitioning company's service area.¹⁹

14. In 1987, numerous interexchange carriers ("IXCs") filed petitions with the Commission pursuant to Section 392.361, seeking both service and company classification as either competitive or transitionally competitive.²⁰ In the resulting IXC Service Classification Order (Case No. TO-88-142) issued on September 15, 1989, the Commission found all services of the IXCs, except for AT&T Communications of the Southwest, Inc. ("AT&T-C"), to be competitive and thereby declared these IXCs to be competitive carriers.²¹ The Commission also found AT&T-C's Wide-Area Telecommunications Service ("WATS"), private line and custom network services to be competitive.²² Further, the Commission found then AT&T-C's Message Telecommunications Service ("MTS") and ancillary/complimentary services to be transitionally competitive.²³

15. In September, 1992, AT&T Missouri filed a petition seeking classification of its own Digital Private Line and Special Access Services, Message Toll Service ("MTS), 800 and Maximizer® 800 services, Wide Area Telecommunications Service ("WATS") and certain

¹⁸ Ex. 16, Hughes Direct, p. 8.

¹⁹ Ex. 16, Hughes Direct, p. 8.

²⁰ Ex. 16, Hughes Direct, p. 9.

²¹ Ex. 16, Hughes Direct, p. 9.

²² Ex. 16, Hughes Direct, p. 9.

²³ Ex. 16, Hughes Direct, p. 9.

Operator Services (i.e., Station-to-Station, Person-to-Person and Calling Card) as transitionally competitive.²⁴ In its petition, AT&T Missouri stated that these services met the requirements of Section 392.370.1 in that they were the same as, substitutable for, or equivalent to competitive services provided by other telecommunications carriers within its service territory.²⁵

16. In its resulting December 21, 1992 AT&T Missouri Reclassification Order, the Commission granted AT&T Missouri's petition.²⁶ The Commission first found that while its 1989 IXC Service Classification Order had spoken "largely in terms of interLATA service," not intraLATA service, the Commission nevertheless "was addressing a statewide market."²⁷ Thus, focusing on the first element of Section 392.370.1 (i.e., whether an order has been issued under Section 392.361 finding that the service has been classified as competitive or transitionally competitive), the Commission found that "[t]he services for which [AT&T Missouri] is seeking transitionally competitive classifications were addressed and found to be subject to sufficient competition to justify a lesser degree of regulation in [the IXC Service Classification Order] in Case No. TO-88-142."²⁸

17. Focusing on the second element of Section 392.370.1 (i.e., whether the service of the petitioning company is the same as, substitutable for, or equivalent to the service classified as either transitionally competitive or competitive), the Commission found the following with respect to the services for which AT&T Missouri sought transitionally competitive status:

²⁴ Ex. 16, Hughes Direct, p. 10.

²⁵ Ex. 16, Hughes Direct, p. 10.

²⁶ See, In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, Case No. 93-116, Report and Order, December 21, 1992, 1992 Mo. PSC LEXIS 23 ("AT&T Missouri Reclassification Order"), p. 4 (emphasis added).

²⁷ AT&T Missouri Reclassification Order, p. 11. (emphasis added).

²⁸ AT&T Missouri Reclassification Order, p. 12.

- The Commission found that AT&T Missouri's Digital Private Line and Special Access Services were "equivalent" services to IXC's provided services.²⁹ It noted that "[t]he private line services and virtual private networks (VPNs) of IXC's, including those IXC's considered competitive access providers (CAPs), have been classified as competitive by the Commission."³⁰ It found that services "which are functionally equivalent and completely interchangeable in use are equivalent under the statute"³¹ and that "[b]ased upon the finding that the dedicated private line services of IXC's and [AT&T Missouri's] dedicated private line services and special access service are equivalent, the Commission will classify these [AT&T Missouri] services as TC."³²
- The Commission found that AT&T Missouri's MTS was substitutable for IXC's state-wide MTS Service.³³ Noting, among other things, that "[t]here are at least seventy IXC's authorized to provide intraLATA MTS[.]"³⁴ the Commission recounted the extensive evidence that AT&T Missouri's MTS and the IXC's MTS are substitutable: "Customer acceptance of one service for another as indicated by market share, customer perceptions that the services are substitutable, economic analysis of the markets, the number of providers in the market, the revenues generated by each provider, all provide important information. In this instance, none of the criteria individually is determinative, but when all are considered they indicate that IXC MTS and [AT&T Missouri] MTS are substitutable services for purposes of complying with Section 392.370 and the Commission will grant [AT&T Missouri] TC classification for its MTS service."³⁵
- The Commission found that AT&T Missouri's 800 and Maximizer® 800 services were substitutable for IXC's 800 service.³⁶ The Commission noted that 59 IXC's provided 800 service and that "[t]hese 800 services have all been classified as competitive and are being provided within [AT&T Missouri's] service territory."³⁷ The Commission determined "that [AT&T Missouri's] 800 services and the IXC's are substitutable for each other and that because of [AT&T Missouri's] restriction to intraLATA,

²⁹ Ex. 16, Hughes Direct, p. 10. (emphasis added).

³⁰ AT&T Missouri Reclassification Order, p. 31.

³¹ AT&T Missouri Reclassification Order, p. 32.

³² AT&T Missouri Reclassification Order, p. 33.

³³ Ex. 16, Hughes Direct, p. 10.; AT&T Missouri Reclassification Order, pp. 18-24. (emphasis added).

³⁴ AT&T Missouri Reclassification Order, p. 19.

³⁵ AT&T Missouri Reclassification Order, p. 24.

³⁶ Ex. 16, Hughes Direct, p. 10. (emphasis added).

³⁷ AT&T Missouri Reclassification Order, p. 26.

[AT&T Missouri's] 800 services could arguably be found to be an inferior product for those customers seeking a statewide 800 service. Based upon this evidence that [AT&T Missouri's] 800 services are substitutable for IXC's 800 service, the Commission will classify the two 800 services of [AT&T Missouri] as TC."³⁸ The restriction referenced by the Commission in 1992 was removed in 2001.³⁹ The Commission had noted that "without the MFJ restriction these services would be at least equivalent."⁴⁰

- The Commission found that AT&T Missouri's WATS Service was substitutable for IXC's WATS Service.⁴¹ The Commission noted that 60 IXCs had tariffs in place to provide WATS and that "[t]hese IXC WATS services have been classified as competitive and are provided both intraLATA and interLATA."⁴² It determined that "[AT&T Missouri's] WATS and IXC WATS are substitutable. Customer acceptance of the IXC services as a suitable alternative to [AT&T Missouri] WATS is demonstrated by the decrease in hours, lines and revenue of [AT&T Missouri] while IXCs' volumes have increased and the market has expanded. The Commission will therefore classify [AT&T Missouri] WATS as TC."⁴³ As in the case of AT&T Missouri's 800 services, the Commission also found that "because of the MFJ restriction [which was removed in 2001], [AT&T Missouri's] WATS and IXCs' WATS are not the 'same' or 'equivalent.'"⁴⁴
- Finally, the Commission found that certain of AT&T Missouri's Operator Services (i.e., Station to Station, Person to Person and Calling Card) were substitutable for comparable services provided by IXCs.⁴⁵ It noted that "[t]here are eight IXCs which offer only credit card billing and there are thirty-one IXCs which offer station to station, person to person, and credit card billing."⁴⁶ Relying primarily upon, among other things, evidence indicating that "[c]ustomer perception that the services are substitutable"

³⁸ AT&T Missouri Reclassification Order, pp. 27-28.

³⁹ Joint Application by S.B.C Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001).

⁴⁰ AT&T Missouri Reclassification Order, p. 26.

⁴¹ Ex. 16, Hughes Direct, p. 10. (emphasis added).

⁴² AT&T Missouri Reclassification Order, p. 28.

⁴³ AT&T Missouri Reclassification Order, p. 29.

⁴⁴ AT&T Missouri Reclassification Order, p. 29.

⁴⁵ Ex. 16, Hughes Direct, p. 10. (emphasis added).

⁴⁶ AT&T Missouri Reclassification Order, p. 34.

and that “IXC operator services providers market their products as substitutable for [AT&T Missouri’s] services[,]”⁴⁷ the Commission determined that these factors “demonstrate[] that IXC operator services and [AT&T Missouri] operator services (Station to Station, Person to Person and Calling Card) are substitutable, [and that] the Commission will classify these services as TC.”⁴⁸

In sum, based on the Commission’s conclusion that a grant of transitionally competitive classification to all of these services was consistent with the Section 392.370, the Commission determined almost 15 years ago that AT&T Missouri’s private line and special access services, intraLATA toll/MTS services, 800 services, WATS, and its station-to-station, person-to-person and calling card operator services should be classified as transitionally competitive services.⁴⁹

18. In keeping with the Court of Appeals’ direction, the Commission further finds that each of the above evidence and findings made in the AT&T Missouri Reclassification Order are relevant and probative to a determination that each of the services meet the “effective competition” factors identified in Section 386.020(13), discussed in greater detail below.⁵⁰

19. Since its 1992 AT&T Missouri Reclassification Order, the Commission has routinely classified CLECs as competitive carriers when approving each CLEC’s basic local certification.⁵¹ IXCs are also routinely classified as competitive carriers in Missouri.⁵² With a competitive carrier classification, CLECs and IXCs are able to change their prices (up or down) on short notice to the Commission without the need of providing cost support for the change.⁵³ This flexibility allows them to freely modify their offerings to meet customer needs, or respond to

⁴⁷ AT&T Missouri Reclassification Order, pp. 37-38.

⁴⁸ AT&T Missouri Reclassification Order, p. 39.

⁴⁹ AT&T Missouri Reclassification Order, pp. 42-43.

⁵⁰ 154 S.W.3d at 329.

⁵¹ Ex. 16, Hughes Direct, p. 12.

⁵² Ex. 16, Hughes Direct, p. 13.

⁵³ Ex. 16, Hughes Direct, p. 13.

the offerings that exist from their competitors (whether AT&T Missouri, CLECs, IXC's, or other carriers) in the local market.⁵⁴

III. Findings of Fact – Post-1996 Developments – S.B. 507/Case No. TO-2001-467

20. The continued development of effective and robust competition led to the 1996 enactment of Senate Bill 507 (“S.B. 507”), which authorized CLECs to begin providing basic local telecommunications service in competition with ILECs.⁵⁵ In recognizing the advancement of service offerings by new competitors, S.B. 507 also included provisions to ensure a level playing field for all providers, by allowing ILECs the opportunity to gain freedom from traditional rate of return regulation.⁵⁶ S.B. 507 provided for a phased-in approach. The Commission was directed to regulate ILECs via price cap regulation upon the initiation of local competition anywhere in the ILEC’s service area.⁵⁷

21. 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 a large ILEC’s service area.⁵⁸ On March 21, 1997, AT&T Missouri asked the Commission to determine that it was subject to price cap regulation pursuant to Section 392.245.2.⁵⁹ In Case No. TO-97-397, the Commission approved AT&T Missouri as a price cap regulated company, effective September 26, 1997.⁶⁰

⁵⁴ Ex. 16, Hughes Direct, p. 13.

⁵⁵ Ex. 16, Hughes Direct, pp. 13-14.

⁵⁶ Ex. 16, Hughes Direct, pp. 13-14.

⁵⁷ Ex. 16, Hughes Direct, p. 14.

⁵⁸ Ex. 16, Hughes Direct, p. 14.

⁵⁹ Ex. 16, Hughes Direct, p. 14.

⁶⁰ Ex. 16, Hughes Direct, p. 14.

22. S.B. 507 also contemplated that after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated.⁶¹ The legislature recognized that the fullest consumer benefits will be derived from a market where all telecommunications providers are regulated in the same manner.⁶² Section 392.245.5 RS Mo 2000 provides in pertinent part as follows:

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. 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. (emphasis added).

23. The legislature also provided the Commission the factors it was to use in determining if "effective competition" existed for a particular service. Section 386.020(13) states: Section 386.020(13) states: "'Effective competition' shall be determined by the [C]ommission based on:

- (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;

⁶¹ Ex. 16, Hughes Direct, p. 14.

⁶² Ex. 16, Hughes Direct, p. 14.

- (d) existing economic or regulatory barriers to entry;
- (e) any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo.”

24. As described above, pursuant to S.B. 507, the first two factors which the Commission must consider when determining whether “effective competition” exists for AT&T Missouri’s services is “the extent to which services are available from alternative providers in the relevant market,” and “the extent to which these services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.” For the reasons explained above in connection with H.B. 360/Case No. TO-93-116, and described in the remainder of these Findings of Fact, the Commission finds that for each of the services which are the subject of this case on remand, there existed alternative providers who providing functionally equivalent or substitutable services throughout AT&T Missouri’s exchanges, at comparable rates, terms and conditions, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. The Commission also finds that for each of the services which are the subject of this case on remand, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case, competitive classification advances the purposes and policies of Chapter 392, including the reasonableness of rates, as set out in Section 392.185; that there are no economic or regulatory barriers to entry that prevent competitors from offering alternatives to these services anywhere in AT&T Missouri’s exchanges and that competitive classification would be consistent with certain other de-regulatory factors deemed relevant by the Commission. The Commission specifically finds that for each of the services which are the subject of this case on remand, effective competition existed in all exchanges for these services both when the

Commission issued its December 27, 2001, Report and Order in this case and when the Court of Appeals issued its March 3, 2005, mandate reversing the December 27, 2001, Report and Order.

A. Effective competition exists for AT&T Missouri's intraLATA private line/ dedicated services in all of AT&T Missouri's exchanges.

25. The evidence clearly establishes that effective competition exists for AT&T Missouri's intraLATA private line/dedicated services, and that these services should be classified as competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁶³ Staff agreed in the case below that the Commission should confirm a competitive classification for these services pursuant to Section 392.200.8,⁶⁴ and no party presented any evidence supporting a different conclusion.

26. Both the legislature and the Commission have found the private line market to be competitive. For example, in 1996, the Missouri legislature recognized the private line market to be sufficiently competitive to permit all carriers, including AT&T Missouri, to freely price private line services. Section 392.200.8 states (in its current form):

Customer-specific pricing is authorized on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies for: (1) Dedicated, nonswitched, private line and special access services; (2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services; and (3) Any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under section 392.245. (emphasis added).

27. The evidence also showed that, as was noted earlier, the Commission recognized the existence of competition in the intraLATA private line market in its December 1992 AT&T Missouri Reclassification Order, when it found that services provided by IXC's were "equivalent"

⁶³ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, p. 29.

⁶⁴ Ex. 18, Voight Rebuttal, pp. 4, 54.

and completely interchangeable with AT&T Missouri's private line services, and thus classified AT&T Missouri's private line services private line services as transitionally competitive.⁶⁵

28. In addition, other evidence demonstrates that competition in the private line market has existed for years. Significant competition in the retail intraLATA private line market in Missouri dates back to the emergence of competitive access providers ("CAPs") in the mid-1980s. CAPs initially focused on providing alternative access to long distance companies. They also targeted commercial business customers as they completed their fiber ring build outs and gained access to multi-tenant buildings with their own facilities. In the late 1980s, the major interexchange carriers also began to compete for retail intraLATA private line services as they bid on data networks covering intrastate services as well as interstate long haul services.⁶⁶

29. Undisputed evidence showed that many alternative providers offer non-switched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to AT&T Missouri's private line services. These alternatives, against which AT&T Missouri competes, are either not regulated by the Commission or at least not price regulated in the same manner as AT&T Missouri.⁶⁷

30. 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 AT&T Missouri's wireline private line services. For example, traditional private line networks, such as those offered by AT&T Missouri and numerous other providers, are rapidly being replaced by fast-packet, frame relay and cell relay services. Internet based access for branch offices or small businesses are

⁶⁵ AT&T Missouri Reclassification Order, pp. 29-33; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

⁶⁶ Ex. 3, DeHahn Direct, p. 5.

⁶⁷ Ex. 3, DeHahn Direct, pp. 2, 5-11 and Schedules 1 and 2.

being used to substitute for analog and DS0 private line circuits as customers are increasingly sending files via the Internet, rather than incurring the monthly expense of maintaining a private line circuit. Too, the availability of fixed wireless CPE solutions has been displacing wire line DS1s in campus settings, such as school districts, in the education market.⁶⁸

31. Given this extensive evidence, the Commission's 2001 Report and Order specifically found that:

[S]ignificant 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 [then] 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 [AT&T Missouri's] private line services. These alternatives, against which [AT&T Missouri] competes, are either not regulated by the Commission or at least not price regulated in the same manner as [AT&T Missouri]. 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 [AT&T Missouri's] private line services.⁶⁹

B. Effective competition exists for AT&T Missouri's intraLATA special access services in all of AT&T Missouri's exchanges.

32. The evidence clearly establishes that effective competition exists for AT&T Missouri's intraLATA special access services, and that these services should be classified as

⁶⁸ Ex. 3, DeHahn Direct, pp. 8-9.

⁶⁹ Report and Order, pp. 44-45.

competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁷⁰ Staff agreed in the case below that the Commission should confirm a competitive classification for these services pursuant to Section 392.200.8,⁷¹ and no party presented any evidence supporting a different conclusion.

33. As in the case of the private line market, both the legislature and the Commission have found the special access market competitive. For example, in 1996, the Missouri Legislature recognized the special access market to be sufficiently competitive to permit all carriers, including AT&T Missouri, to freely price special access services. Section 392.200.8 states:

Customer-specific pricing is authorized on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies for: (1) Dedicated, nonswitched, private line and special access services; (2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services; and (3) Any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under section 392.245. (emphasis added).

34. The evidence also showed that, as was noted earlier, the Commission recognized the existence of competition in the intraLATA special access market in its December 1992 AT&T Missouri Reclassification Order, when it found that services provided by IXC's were "equivalent" and completely interchangeable with AT&T Missouri's special access services, and thus classified AT&T Missouri's special access services private line services as transitionally competitive.⁷²

⁷⁰ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 65-66.

⁷¹ Ex. 18, Voight Rebuttal, pp. 4, 54.

⁷² AT&T Missouri Reclassification Order, pp. 29-33; Ex. 7, Douglas Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

35. Finally, the additional considerations reflected in the findings of fact directed to private line services equally demonstrate that competition in the special access market has existed for years. AT&T Missouri's and Staff's testimony in the case below, and the Commission's discussion in its 1992 AT&T Missouri Reclassification Order directed to the category of private line services, specifically included special access, i.e., non-switched High-Capacity Service.⁷³

C. Effective competition exists for AT&T Missouri's intraLATA toll/MTS services in all of AT&T Missouri's exchanges.

36. The record clearly demonstrates that effective competition exists for AT&T Missouri's intraLATA toll/MTS services, and that these services should be classified as competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁷⁴ Staff agreed in the case below that the Commission should confirm a competitive classification for these services,⁷⁵ and no party presented any evidence supporting a different conclusion.

37. The evidence emphasized that the Commission has previously found intraLATA toll services to be competitive. The Commission had recognized the existence of competition in the intraLATA toll market in the early 1990's. In its December 1992 AT&T Missouri Reclassification Order, the Commission had found that services provided by IXC's were "substitutable" with AT&T Missouri's intraLATA toll services, and thus classified AT&T Missouri's intraLATA toll services as transitionally competitive.⁷⁶

⁷³ Ex. 7, Douglas Direct, pp. 6-9; Ex. 3, DeHahn Direct, pp. 5-11; Voight Rebuttal, pp. 4, 54; AT&T Missouri Reclassification Order, pp. 29-33.

⁷⁴ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 53-56.

⁷⁵ Ex. 18, Voight Rebuttal, pp. 3-4, 65-67.

⁷⁶ AT&T Missouri Reclassification Order, pp. 18-24; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

38. Competition in the intraLATA toll market has existed for many years. Competition has existed in the intraLATA toll market since July 24, 1986 when the Commission authorized intraLATA toll competition in Missouri.⁷⁷ There, 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.⁷⁸

39. The record also establishes that there are many regulated providers, including IXC's and CLECs and unregulated/non-traditional providers (such as wireless and Internet providers) offering interexchange services that are functionally equivalent to and/or substitutable for AT&T Missouri's intraLATA toll services.⁷⁹ Evidence in this case demonstrated that there were over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri.⁸⁰ The intraLATA toll services provided by these companies and other IXC's are equivalent to or substitutable for AT&T Missouri's intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls.⁸¹ This large number of certified IXC's indicates that customer choices are widely available and reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.⁸²

40. With the July, 1999 implementation of intraLATA presubscription, IXC's began offering their customers the ability to make intraLATA toll calls without dialing extra digits. (Even prior to presubscription, customers had the ability to program their PBX's and key systems to automatically route intraLATA toll calls to the IXC of their choice or to dial around the

⁷⁷ Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

⁷⁸ Id.; Ex. 16, Hughes Direct, p. 5.

⁷⁹ Ex. 9, Jablonski Direct, pp. 3, 6-10.

⁸⁰ Ex. 9, Jablonski Direct, p. 6 and Schedule 2.

⁸¹ Ex. 9, Jablonski Direct, p. 9.

⁸² Ex. 9, Jablonski Direct, pp. 6-7.

incumbents' interLATA toll services by using 10XXX dialing. Now, customers can dial around using 10XXX to use the IXC of their choice, even if they retain AT&T Missouri as their 1+ intraLATA toll provider.)⁸³ The evidence showed, in every AT&T Missouri exchange, a minimum of 73 IXCs available to be selected by the customer as a 1+ intraLATA toll provider. It is very apparent that robust competition exists for AT&T Missouri's intraLATA toll services.⁸⁴

41. In addition to more traditional forms of competition from IXCs and CLECs, AT&T Missouri's customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and the Internet. For example, many wireless providers offer free long distance packages, or unlimited long distance for a flat-rate bundled fee. Internet-enabled capabilities include Internet telephony, e-mail and instant messaging. And the use of Internet telephony is growing. The ability to make free, or at least very inexpensive, calls to other people outside a person's local calling scope, but within the LATA, makes Internet telephony an attractive substitute for AT&T Missouri's intraLATA toll service.⁸⁵

42. Based on the evidence presented, the Commission made the following findings of fact in its Report and Order:

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. 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 [then] AT&T, MCI, Sprint, WorldCom, and other IXCs are equivalent to or substitutable for [AT&T Missouri's] intraLATA toll service, in that all these services provide

⁸³ Ex. 9, Jablonski Direct, p. 7.

⁸⁴ Ex. 9, Jablonski Direct, p. 9 and Schedule 3, which is a list of the number of IXCs that are available in each AT&T Missouri exchange.

⁸⁵ Ex. 9, Jablonski Direct, pp. 8-9.

customers with the ability to place intraLATA toll calls. The large number of certified IXC's supports [AT&T Missouri'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 every [AT&T Missouri] exchange, there is a minimum of 73 IXC's certified to provide 1+ intraLATA toll services. Some exchanges have up to 140 IXC's. While the number of certificated carriers is not by itself determinative of this issue, based on the large numbers of available IXC's in each [AT&T Missouri] exchange, it is very apparent that robust competition exists for [AT&T Missouri's] intraLATA toll services.

In addition to the traditional forms of competition from IXC's and CLECs, [AT&T Missouri] customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and Internet telephony.⁸⁶

D. Effective competition exists for AT&T Missouri's Wide Area Telecommunications Services (WATS) and 800 services in all of AT&T Missouri's exchanges.

43. The evidence also clearly shows that effective competition exists for AT&T Missouri's WATS and 800 services, and these services should be classified as competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁸⁷ Staff agreed in the case below that the Commission should confirm a competitive classification for WATS,⁸⁸ and no party presented any evidence supporting a different conclusion.

44. The evidence showed that the Commission has previously found WATS and 800 service to be competitive. The Commission recognized the existence of substantial competition in the WATS and 800 service markets in the early 1990s. In its December 1992 AT&T Missouri Reclassification Order, the Commission found that WATS and 800 service provided by IXC's

⁸⁶ Report and Order, pp. 54-55.

⁸⁷ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 62-65.

⁸⁸ Ex. 18, Voight Rebuttal, pp. 4, 65, 73-74.

was “substitutable” for AT&T Missouri’s WATS and 800 services, and thus classified AT&T Missouri’s intraLATA toll services as transitionally competitive.⁸⁹

45. Competition has long existed in the WATS and 800 service markets. IXC’s are the dominant WATS and 800 service competitors. The evidence indicated 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. CLEC’s can also offer WATS and 800 service. These services provided by IXC’s and CLEC’s are functionally equivalent to and substitutable for AT&T Missouri’s WATS and 800 service. This 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.⁹⁰

46. In addition to IXC’s and CLEC’s, 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.⁹¹

47. Based on the evidence presented, the Commission made the following findings of fact in its Report and Order:

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. CLEC’s can also offer WATS and 800 service. The services provided by IXC’s and CLEC’s are functionally equivalent to and substitutable for [AT&T Missouri’s] WATS and 800 service. The Commission finds that the large number of certified companies indicates that customer choices

⁸⁹ AT&T Missouri Reclassification Order, pp. 64-65; Ex. 9, Jablonski Direct, pp. 15-16; Ex. 16, Hughes Direct, pp. 9-10.

⁹⁰ Ex. 9, Jablonski Direct, p. 16.

⁹¹ Ex. 9, Jablonski Direct, pp. 16-17.

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.⁹²

E. Effective competition exists for AT&T Missouri's Station-to-Station, Person-to-Person and Calling Card operator services in all of AT&T Missouri's exchanges.

48. The evidence clearly demonstrated that effective competition exists for AT&T Missouri's Station-to-Station, Person-to-Person and Calling Card operator services. Consequently, these services should be classified as competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁹³

49. The Commission has previously found these operator services service to be competitive. For example, in its December 1992 AT&T Missouri Reclassification Order, the Commission found that "IXC operator services and [these AT&T Missouri] operator services are substitutable[.]"⁹⁴ and thus classified AT&T Missouri's services as transitionally competitive.⁹⁵

50. The evidence also demonstrated numerous competitive alternatives to AT&T Missouri's operator services which are available throughout AT&T Missouri's exchanges.⁹⁶ These alternatives are provided by numerous local and toll telecommunication providers, as well as wireless service providers, specialized operator service providers, pay telephone providers,

⁹² Report and Order, pp. 63-64.

⁹³ Ex. 16, Hughes Direct, p. 10. These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, p. 75-76.

⁹⁴ AT&T Missouri Reclassification Order, p. 37.

⁹⁵ AT&T Missouri Reclassification Order, pp. 38-39.

⁹⁶ Ex. 5, Moore Direct, p. 21.

pre-paid and post-paid calling card providers and others.⁹⁷ Considering both function and price, end users throughout Missouri have substitutable and functionally equivalent alternatives for operator services, offered by numerous providers, including cellular telephone service, pre-paid calling cards, and personal 800 numbers. These services compete directly with AT&T Missouri's operator services.⁹⁸

51. For example, "00" service was established as a dialing pattern in order to route calls to the operator of a customer's presubscribed interexchange carrier.⁹⁹ "00" service may be used to provide end users throughout the state of Missouri with the complete range of calling card, third number billing, collect and person-to-person calling options, as well as other types of operator assistance, such as busy line, verify and interrupt services, and call completion services. The evidence showed over 600 interexchange service providers certificated to provide service in Missouri.¹⁰⁰

52. The evidence also showed that competitive alternatives are offered by MCI and Sprint. MCI's 1-800-Collect Service is also available to all end users throughout Missouri, irrespective of their choice of local or toll carrier.¹⁰¹ This service provides end users the ability to make collect calls from anywhere in the United States. Callers also have access to a complete range of other services including calling cards, bill to a third number, person-to-person service, line status verification, and busy interrupt. Sprint's 1-800-2Sprint is similar to the MCI

⁹⁷ Ex. 5, Moore Direct, p. 21.

⁹⁸ Ex. 5, Moore Direct, p. 22.

⁹⁹ Ex. 5, Moore Direct, p. 22.

¹⁰⁰ Ex. 5, Moore Direct, p. 22.

¹⁰¹ Ex. 5, Moore Direct, p. 22.

competitive alternatives.¹⁰² Both MCI and Sprint extensively promote their operator services, which compete directly with AT&T Missouri's operator services.¹⁰³

53. Operator services, including collect, bill to a third number, person-to-person service, line status verification, and busy interrupt are also available from wireless carriers throughout Missouri. Typically, wireless customers access their wireless carrier's operator services by dialing "0" from their wireless phone.¹⁰⁴ Moreover, wireless service, itself, has become a significant, competitive alternative to operator services, particularly for operator services originating from pay telephones.¹⁰⁵ Before wireless services became ubiquitous, customers who are away from their home or business telephone frequently used the alternative billing arrangements through operator services to place calls.¹⁰⁶

54. Another competitive alternative for operator services is "0+" and "0-" services from pay telephones.¹⁰⁷ Pay telephone providers have the option of selecting the operator service provider of their choice for specific pay telephone locations.¹⁰⁸ Customers can, in effect, choose an operator service provider through their choice of a payphone provider.¹⁰⁹ Prepaid calling cards have also become an increasingly popular choice for alternative billing arrangements historically provided by operator service providers.¹¹⁰ Prepaid calling cards are

¹⁰² Ex. 5, Moore Direct, pp. 22-23.

¹⁰³ Ex. 5, Moore Direct, p. 23: See Scheds. 10-11.

¹⁰⁴ Ex. 5, Moore Direct, p. 23.

¹⁰⁵ Ex. 5, Moore Direct, p. 23.

¹⁰⁶ Ex. 5, Moore Direct, p. 23.

¹⁰⁷ Ex. 5, Moore Direct, p. 24.

¹⁰⁸ Ex. 5, Moore Direct, p. 24.

¹⁰⁹ Ex. 5, Moore Direct, p. 24.

¹¹⁰ Ex. 5, Moore Direct, p. 24.

sold at a variety of outlets.¹¹¹ Live or automated operator assistant is typically available as required to assist in call completion relating to prepaid calling cards.¹¹² Prepaid cards are frequently branded in the name of well known retail establishments, and are offered by all major telecommunication carriers, as well as hundreds of other lesser known companies.¹¹³ Examples of prepaid card providers were provided in Schedule 12 to Ms. Moore's direct testimony in the prior proceedings in this case.

55. Finally, irrespective of the presubscribed carrier on a particular telephone line, end users can always reach the operator service provide of their choice by dialing "10-10-XXX-00." The XXX selected by the end user routes the call to the appropriate IXC.¹¹⁴ Many telecommunication carriers, including MCI and Sprint also offer personal 800 numbers. These numbers function as a competitive alternative to one type of operator services, i.e. collect calls.¹¹⁵

56. Most if not all of the competitive alternatives described above are available to an end user customer, irrespective of whether that customer is an AT&T Missouri local customer or a CLEC's local customer. However, if the customer is a CLEC local customer, the customer will likely also have a competitive alternative of operator services provided by that CLEC.¹¹⁶ Moreover, operator services are provided by facilities-based interexchange carriers, resale and switched-base CLECs and specialized operator service providers that utilize their own facilities to provide operator services directly to end users or other providers, pay telephone providers, and

¹¹¹ Ex. 5, Moore Direct, p. 24.

¹¹² Ex. 5, Moore Direct, p. 25.

¹¹³ Ex. 5, Moore Direct, p. 25.

¹¹⁴ Ex. 5, Moore Direct, p. 25.

¹¹⁵ Ex. 5, Moore Direct, p. 26.

¹¹⁶ Ex. 5, Moore Direct, p. 26.

places of public accommodation. All of these operator services directly compete with AT&T Missouri's operator services throughout Missouri, and offer substitutable or functionally equivalent operator services to the operator services provided by AT&T Missouri.

57. The FCC has found the operator services market place to be competitive.¹¹⁷ In its UNE Remand Order, the FCC eliminated operator services from the list of unbundled network elements based on the competitive nature of the operator services market place.¹¹⁸ In the UNE Remand Order, the FCC stated that incumbent LECs "need not provide access to its operator services and directory assistance as an unbundled network element."¹¹⁹ The evidence also demonstrated that operator services had been price deregulated in Arkansas, Texas and Kansas, among other states.¹²⁰

58. Finally, the evidence demonstrated that the highly competitive nature of the operator services market place had directly impacted AT&T Missouri's operator services call volumes. The evidence showed that since 1996, AT&T Missouri's operator services call volumes had declined 71 percent.¹²¹ This decline can be directly attributed to competitive alternatives that exist in the market place, described above.¹²²

¹¹⁷ Ex. 5, Moore Direct, p. 28.

¹¹⁸ Ex. 5, Moore Direct, p. 28.

¹¹⁹ UNE Remand Order, para. 441.

¹²⁰ Ex. 5, Moore Direct, p. 28.

¹²¹ Ex. 6(HC), Moore Surrebuttal(HC), Sched. 1(HC).

¹²² Ex. 6, Moore Surrebuttal, p. 6.

F. Other evidence demonstrates that effective competition exists for each of the services at issue in this case on remand in all of AT&T Missouri's exchanges.

59. With the advent of local competition under S.B. 507, moreover, functionally equivalent or substitutable services being provided by alternative providers have increased substantially. As this Commission found in Case No. TO-99-227, CLECs are currently providing service to customers in all of AT&T Missouri's exchanges, and AT&T Missouri has fully opened all of its markets to competitors.¹²³ In addition, IXC's provide services that are also functionally equivalent to or substitutable for some of AT&T Missouri's services, including interexchange services (e.g., interLATA Toll, 800 Services), operator and directory services, and dedicated services (e.g., private line and special access).¹²⁴ Furthermore, there are a number of alternate providers of functionally equivalent or substitutable services that are not under the jurisdiction of this Commission. Some of these alternate providers include, but are not limited to, wireless carriers, cable TV providers, Internet service providers, fixed satellite providers and customer premises equipment manufacturers.¹²⁵

60. Other indicators likewise demonstrate effective and robust competition. Neither Section 392.245.5 nor 386.020(13) required any quantitative market share loss test to determine whether "effective competition" existed for AT&T Missouri's services in Missouri. Nevertheless, the record in this case reflects AT&T Missouri's belief that there were facilities-based CLECs in more than 80% of AT&T Missouri's exchanges in Missouri.¹²⁶

¹²³ Ex. 16, Hughes Direct, p. 19.

¹²⁴ Ex. 16, Hughes Direct, p. 19.

¹²⁵ Ex. 16, Hughes Direct, p. 19.

¹²⁶ Ex. 16, Hughes Direct, p. 27.

61. AT&T Missouri presented evidence that for the period from the first quarter of 1998 through the second quarter of 2001, E-911 listings had increased 8,546 percent and the growth in “ported” numbers was 26,392 percent.¹²⁷

62. Attached to AT&T Missouri 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 AT&T Missouri exchange throughout Missouri. These maps depict the extensive level of CLEC competition faced by AT&T Missouri throughout its Missouri exchanges. In his Surrebuttal Testimony, Mr. Hughes also identified, by exchange, the total lines served by AT&T Missouri, and the minimum number of lines served by CLECs.¹²⁸ The Commission finds that the lines identified as CLEC lines by Mr. Hughes represent only a minimum number, and therefore, CLEC market share is likely greater than reported in Mr. Hughes’ Schedules.¹²⁹ The reason for this is simple. AT&T Missouri knows when a CLEC resells AT&T Missouri’s service and when a CLEC purchases unbundled network elements from AT&T Missouri. Additionally, AT&T Missouri can identify the number of E-911 listings that CLECs place in 911 databases, but as Mr. Hughes and Dr. Aron explained in their testimony, the number of CLEC E-911 listings likely significantly understates the number of access lines served by facilities-based CLECs.¹³⁰ For example, only outbound lines have 911 listings associated with them.¹³¹ Complex voice services may be only partially represented in the E-911 database.¹³² DSL and

¹²⁷ Ex. 17, Hughes Surrebuttal, p. 7.

¹²⁸ Ex. 17 HC, Hughes Surrebuttal, Schedule 4-1, 4-2, 4-3 and 4-4 HC.

¹²⁹ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6.

¹³⁰ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

¹³¹ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

¹³² Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

cable modem lines may not be reported in the E-911 database.¹³³ Furthermore, AT&T Missouri does not know the number of lines served by CLECs utilizing only CLEC facilities.¹³⁴

63. Additional evidence of effective competition from CLECs was produced by AT&T Missouri. Over the 18-month period prior to November, 2001, AT&T Missouri had experienced a declining trend for retail access lines.¹³⁵ Over the three quarters prior to November, 2001, AT&T Missouri had experienced a decrease in the total number of retail lines sold.¹³⁶ During this same time period, the number of CLEC lines continued to grow.¹³⁷ In addition, there were 23 CLEC switches deployed throughout the state of Missouri, and these switches deployed by CLECs in Missouri had the capacity to serve 100 percent of AT&T Missouri's customers.¹³⁸

64. The Commission's findings in Case No. TO-99-227 concerning AT&T Missouri's compliance with Section 271 of the Act are also instructive in this regard. There, the Commission determined that AT&T Missouri had complied with the Act, and that AT&T Missouri's local markets were open to competition. In its March 15, 2001, Order the Commission determined that AT&T Missouri had met the "competitive checklist" requirements set forth by Section 271 of the Act¹³⁹ and, in particular, that AT&T Missouri "is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion."¹⁴⁰ CLECs offer services which are functionally equivalent or substitutable at comparable rates,

¹³³ Ex. 17 HC, Hughes Surrebuttal, p. 6.

¹³⁴ Ex. 17HC, Hughes Surrebuttal, p. 6.

¹³⁵ Ex. 17, Hughes Surrebuttal, p. 14.

¹³⁶ Ex. 17, Hughes Surrebuttal, p. 14.

¹³⁷ Ex. 17, Hughes Surrebuttal, p. 14.

¹³⁸ Ex. 17, Hughes Surrebuttal, p. 14.

¹³⁹ Mo PSC 271 Order, p. 6.

¹⁴⁰ Mo PSC 271 Order, p. 91.

terms and conditions. Even apart from the availability of resale and UNEs, in Case No. TO-99-227, the Commission had determined that CLECs are providing facilities-based services to both business and residential customers.

65. The evidence here demonstrated a multitude of alternative providers of the services for which AT&T Missouri seeks a competitive classification, including the existence of over 600 interexchange carriers providing interexchange service in Missouri¹⁴¹ and over 60 CLECs providing a wide range of services, including local services in Missouri.¹⁴² In this case, AT&T Missouri has presented substantial evidence, both from a wholesale and retail perspective, that alternative providers are offering services which are functionally equivalent or substitutable at comparable rates, terms and conditions. The availability of resale and UNEs provide effective ways for CLECs to enter the market with little capital investment and, in Case No. TO-99-227, the Commission has already determined that CLECs are providing facilities-based services to both business and residential customers.

66. The third factor which the Commission is required to consider in connection with its evaluation of whether effective competition exists is the extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, are being advanced.¹⁴³ The purposes and policies of Chapter 392 are clear. Section 392.185 outlines that the provision of telecommunications services should be maintained and advanced. The Commission finds that in a competitive market place, it is the market place that will maintain and advance the services offered to customers. The Commission finds that when all competitors who serve the same market are allowed to compete on equal footing, customers

¹⁴¹ Ex. 16, Hughes Direct, p. 22.

¹⁴² Id.

¹⁴³ Ex. 16, Hughes Direct, pp. 20-21.

will benefit from the competitor's ability to quickly adapt to a changing market place.¹⁴⁴ An important purpose specified in the statute is to allow for full and fair competition to function as a substitute for regulation.¹⁴⁵ The statute the Commission is implementing in this proceeding is the mechanism that legislators gave to the Commission to permit this express purpose to be achieved.

67. The fourth factor which the Commission is required to consider in its evaluation of whether effective competition exists is existing economic or regulatory barriers to entry.¹⁴⁶ As noted above, AT&T Missouri is providing competing carriers nondiscriminatory access to all of the checklist items contained in the federal Act, and thus, each of these carriers has a meaningful opportunity to compete with AT&T Missouri. Furthermore, given the multitude of providers providing functionally equivalent or substitutable services that are described in the testimony of AT&T Missouri's witnesses in this case, it is clear that there are no barriers to entry that are preventing competitors from offering alternatives in the market place.¹⁴⁷ The Commission's findings in Case No. TO-99-227 concerning AT&T Missouri's compliance with Section 271 of the Act are instructive in this regard. In that case, the Commission determined that AT&T Missouri had complied with the Act, and that AT&T Missouri's local markets were open to competition. In its March 15, 2001, Order the Commission determined that AT&T Missouri had met the "competitive checklist" requirements set forth by Section 271 of the Act¹⁴⁸

¹⁴⁴ Ex. 16, Hughes Direct, pp. 20-21.

¹⁴⁵ Ex. 16, Hughes Direct, pp. 20-21.

¹⁴⁶ Ex. 16, Hughes Direct, pp. 21-22.

¹⁴⁷ Ex. 16, Hughes Direct, pp. 21-22.

¹⁴⁸ Mo PSC 271 Order, p. 6.

and, in particular, that AT&T Missouri “is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion.”¹⁴⁹

68. The Commission finds that customers will ultimately benefit from an environment where all providers are free to compete on equal terms.¹⁵⁰ It is in this unfettered environment where service innovation flourishes, customer demands dictate outcomes and maximum benefits are derived. The legislature understood this when it passed S.B. 507 with the clear intent that price caps be an interim measure and the real goal was to have providers competing for customers on equal terms.

IV. Findings of Fact – Post-1996 Developments - The Sprint Report and Order

69. On December 4, 2003, the Commission issued its Sprint Report and Order in which it concluded, among other things that several services that are the subject of this case and which are likewise provided by Sprint throughout its Missouri exchanges are subject to effective statewide competition and may be classified as competitive pursuant to Section 392.245 and are no longer subject to price cap regulation,¹⁵¹ particularly because it was the Commission’s reliance on the existence of statewide, not exchange-specific, competition for these services that led the Commission to grant Sprint competitive classification for them in all of its Missouri exchanges.

A. IntraLATA Private Line Services

70. The Commission found that Sprint's competition for intraLATA private line services comes from a variety of competitors providing services which are not limited to a

¹⁴⁹ Mo PSC 271 Order, p. 91.

¹⁵⁰ Ex. 16, Hughes Direct, p. 32.

¹⁵¹ In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, December 4, 2003, 2003 Mo. PSC LEXIS 1560 (“Sprint Report and Order”), pp. 2, 23.

specific exchange, and that the legislature has recognized the existence of competition for this service by allowing for customer-specific pricing for private line services pursuant to Section 392.200.8.¹⁵² The Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA private line services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for [*67] these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁵³

71. Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case.

B. IntraLATA Toll/MTS Services

72. The Commission found that Sprint faces a great deal of competition for the provisioning of this service, noting that there are at least 586 interexchange carriers certified in Missouri that can offer this service in competition with Sprint, and that there were 52 different carriers actually providing intrastate toll services to Sprint's local customers. The Commission

¹⁵² Sprint Report and Order, pp. 25-26.

¹⁵³ Sprint Report and Order, pp. 66-67.

also found that as a result of intraLATA presubscription, which Sprint instituted in August 1997, Sprint's local customers can utilize the interexchange carrier of their choice without dialing any extra numbers.¹⁵⁴ Consequently, the Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA MTS services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁵⁵

73. Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case.

¹⁵⁴ Sprint Report and Order, p. 27.

¹⁵⁵ Sprint Report and Order, pp. 68-69.

C. IntraLATA WATS and 800 Services

74. The Commission found these services were essentially intraLATA toll services merely billed in a different way, and that, as such, they are subject to competition from the same competitors as intraLATA toll services. It also found that Sprint's competition for intraLATA WATS and 800 services comes from competitors that are not limited to a specific exchange.¹⁵⁶ The Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA WATS services and 800 services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁵⁷

75. Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case. Equally important, Sprint retains the competitive classifications it obtained in the Sprint Report and Order, even though, as is discussed below, Section 392.245 (the statute on which Sprint relied) has been amended yet

¹⁵⁶ Sprint Report and Order, p. 28.

¹⁵⁷ Sprint Report and Order, pp. 69-70.

again and even though Sprint (like AT&T Missouri) also has a number of exchanges which qualify as competitive under the new law.¹⁵⁸

V. Findings of Fact - S.B. 237/Case Nos. TO-2006-0093 and TO-2006-0102

76. As previously noted, on December 14, 2005, AT&T Missouri moved to dismiss the case on the basis that new legislation (S.B. 237, which became effective on August 28, 2005), essentially mooted the need for remand proceedings. In its motion, AT&T Missouri noted that the passage of S.B. 237 and the issuance of decisions by the Commission approving competitive classification for business and residential services in exchanges representing the vast majority of AT&T Missouri's access lines negated the need for any additional action by the Commission.

77. The CLECs and OPC, however, argue that certain rates charged by AT&T Missouri for the services which the Commission classified as competitive by operation of law under Section 392.370 must be revised on a prospective basis pursuant to the mandate issued by the Court of Appeals.¹⁵⁹ However, the Court of Appeals did not address the rates for any service offered by AT&T Missouri, nor did it direct the Commission to review any rate for service offered by AT&T Missouri. Instead, the Court of Appeals directed the Commission to consider whether the services at issue should have been classified as competitive pursuant to the "effective competition" standard of Section 392.245.5.

¹⁵⁸ See, e.g., Embarq Missouri, Inc. P.S.C. MO.-No. 22, General Exchange Tariff, Third Revised Page 23 and P.S.C. MO.-No. 23, Message Telecommunications Service, Statement of Service Classifications, Sixth Revised Page 36 (both referencing competitive service classifications "pursuant to [the Commission's] Order of December 4, 2003, in Case No. IO-2003-0281").

¹⁵⁹ No party seeks a retroactive revision of the rates for these services, and it is clear that any such revisions would be unlawful retroactive ratemaking. State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W.2d 41, 58 (Mo. banc 1979); Lightfoot v. City of Springfield, 236 S.W.2d 348, 353 (Mo. 1951); State ex rel. Barvick v. Public Service Commission, 606 S.W.2d 474, 476 (Mo. App. 1980).

78. Regardless, as explained in greater detail below, the Commission need not conduct an analysis of these services under the S.B. 237 criteria. First, the services which are the subject of this remand (indeed, all of AT&T Missouri's telecommunications services, excluding exchange access) are already classified as competitive in exchanges serving the overwhelming majority of access lines -- in excess of ** __% ** of business lines and ** __% ** of residence lines). Second, while there is no authority for a retroactive revision of the rates for the services at issue here, AT&T Missouri's current rates for these services do not exceed (except in a very small number of cases) those rates that could be in place if the services in question had never been declared competitive and had always been under price caps.

79. Several months after the Court of Appeals issued its mandate on March 3, 2005, the Missouri Legislature passed S.B. 237 ("S.B. 237"), which was next signed by the Governor and became effective on August 28, 2005.

80. New Section 392.245.5 provides, in pertinent part:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. . . .

81. Section 392.245(6) provides, in pertinent part:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so shall

approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange. Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. . . .

82. Following the passage of S.B. 237, AT&T Missouri applied for competitive classification pursuant to its various provisions. In Case No. TO-2006-0093, the Commission determined that competitive classification should be granted for business services in 45 AT&T Missouri exchanges and residential services in 26 AT&T Missouri exchanges. In Case No. TO-2006-0102, the Commission determined that competitive classification should be granted for business services in an additional 30 AT&T Missouri exchanges (i.e. 75 in total) and for residential services in an additional 51 AT&T Missouri exchanges (i.e. 77 in total).

83. Consequently, pursuant to Section 392.245.5, all of the AT&T Missouri business services other than exchange access are deemed competitive in the 75 exchanges where basic local business services have been declared competitive and all residential services other than exchange access are deemed competitive in the 77 exchanges where basic local residential have been declared competitive. These exchanges, and the applicable type of competitive classification associated with each, are listed on Exhibit 1 to AT&T Missouri's proposed findings of fact and conclusions of law submitted herewith.

84. The Commission rejects the CLECs' assertion that AT&T Missouri should be directed to file revised tariffs to revise its prices to the extent necessary to comply with the maximum prices that existed as of the effective date of the Commission's Report and Order,

subject to any intervening adjustments to such maximum prices under the price cap statute. This assertion is mooted by the Commission's conclusion that effective competition for all of the services which are the subject of this remand proceeding existed both as of the December 27, 2001 Report and Order and the March 3, 2005, mandate issued by the Court of Appeals. However, even if the Commission were not to so conclude, as a result of the Commission's decisions in Case Nos. TO-2006-0093 and TO-2006-0102, the vast majority of AT&T Missouri's lines have now been declared competitive. The percentage of AT&T Missouri's business services lines which lie in the 75 exchanges wherein competitive classification was granted for business services is approximately **__%__**; the percentage of AT&T Missouri's residential services lines which lie in the 77 exchanges wherein competitive classification was granted for residential services is approximately **__%__**. Clearly, any Commission action that would purport to require rate adjustments could not be imposed in exchanges which have been declared to be competitive under the provisions of S.B. 237.

85. Moreover, even as to the small percentage of lines that have not been yet declared to be competitive, as AT&T Missouri previously explained in its December 14, 2005, motion to dismiss,¹⁶⁰ AT&T Missouri's current rates for the services which are the subject of this remand do not exceed (except in very few cases) those rates that could be in place if the services in question had never been declared competitive and had always been under price caps.

86. The tariff prices for all intraLATA private line/dedicated services, WATS and 800 services, special access services and operator services do not exceed the maximum allowable prices derived by application of the provisions of Section 392.245.11 to the prices which existed as of the effective date of the Report and Order on January 6, 2002. The current tariff prices for

¹⁶⁰ AT&T Missouri's Motion to Dismiss, December 14, 2005, pp. 5-7.

all these services do not exceed the prices that would result from an 8%¹⁶¹ annual increase as permitted for non-basic services under the price cap statute.

87. The rate structure for all intraLATA Message Telecommunications Services (“MTS”) was substantially revised effective April 2, 2002. Prior to that date, intraLATA MTS toll was subject to a per minute of use charge that varied according to the time of day, day of week, and distance the call was carried. Within each of these classifications, each call was subject to a charge for the initial minute and a different charge for each additional minute. In response to consumer preference and market factors, AT&T Missouri substantially revised its MTS toll offerings in April, 2002, moving to a simplified plan under which each call was billed on a per minute basis, varying only by whether it was made during the day, the night or on the weekend. The restructured MTS prices for residential customers did not, on a weighted average basis, exceed the prices which would result from application of the permitted 8% increase to the old prices. The restructured business MTS prices did, on a weighted average basis, exceed the rates which would result from application of the permitted 8% increase to the old rate structure. But, even if it were permissible to do so, no modification to business MTS prices would be necessary as the restructure would constitute a new service under the price cap statute and revised prices do not exceed those that would have permitted if price caps had applied on a prospective basis.¹⁶²

88. Since the time the restructured residential MTS prices went into effect on April 2, 2002, AT&T Missouri has revised the prices. Except for the evening prices, the current prices do not exceed the levels derived by application of the annual price cap increases under Section

¹⁶¹ Effective August 28, 2005, the annual increase for non-basic services subject to the price cap statute was reduced to 5%.

¹⁶² See, Section 392.245.11 (“This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services.”).

392.245.11 to the prices as they existed on April 2, 2002. The evening price of 22 cents/minute is 1 cent/minute higher than the price which would result from application of the general price cap increases to the April 2, 2002 evening price. With regard to business MTS prices, the current prices do not exceed the level which would result from applying the permitted annual increase for non-basic services¹⁶³ to the restructured prices as they existed on April 2, 2002.

89. Revisions to the prices for certain Residence and Business 1+ Saver rates would be necessary if, contrary to AT&T Missouri's view, the CLECs' assertion were well taken. First, the current price for Residence 1+ Saver, which provides a 15% discount off of MTS prices, is \$2.50, compared to a price of \$2.04 which would result from the application of annual price increases for non-basic services under Section 392.245.11 to the rates in effect on January 6, 2002. Second, the current price for Residence 1+ Saver, which provides a 20% discount off of MTS prices, is \$3.50, compared to a price of \$3.40 which would result from application of annual price cap increases for non-basic services to the price which existed as of January 6, 2002. Third, the price of an additional number under the Business 1+ Saver tariff is \$14.00, compared to a price of \$13.60, which would result from application of an annual increase for non-basic services to the price which existed as of January 6, 2002.

90. In sum, the rates for these few services would be subject to reduction only in the exchanges representing a small minority of AT&T Missouri's residential and business access lines and only if the CLECs were correct in their claims which, for the reasons explained above, they are not.

91. The Court of Appeals' decision certainly did not address the rates for any service offered by AT&T Missouri, nor did it direct the Commission to review any rate for service

¹⁶³ The permissible increase was reduced 8% per year to 5% per year effective August 28, 2005.

offered by AT&T Missouri. Instead, as noted above, the Court of Appeals directed the Commission to consider whether the services at issue should have been classified as competitive pursuant to the “effective competition” standard of Section 392.245.5. Nor would it have been appropriate for the Court of Appeals to address rates, since no rates were established in Case No. TO-2001-467 and the appeal did not address the rates for any service. Moreover, rates for the services that are the subject of this proceeding were changed in subsequent tariff filings over the last several years, none of which were the subject of any appeal or any request for stay by either the CLECs or any other party. No one has provided any legal rationales that would permit the Commission to override tariffs previously approved without objection.

92. For the reasons presented herein, the Commission determines that the services at issue are competitive on a statewide basis pursuant to the criteria in Section 392.245.5 as it existed when the mandate issued. Under no circumstance, however, may the Commission penalize AT&T Missouri by requiring an adjustment of rates for services which should have been declared competitive in either December, 2001, or March, 2005.

93. As noted, rate changes for the services at issue were approved in subsequent proceedings without objection by either the CLECs or OPC. Had the Commission applied the standard of Section 392.245.5 in its December 27, 2001, Report and Order, it is clear that the price changes could not have been rejected by the Commission. Similarly, the rates would have been permitted to remain in effect had the Commission undertaken the review directed by the Court of Appeals in March, 2005. In any event, no party cites any authority for the extraordinary proposition that the Commission may revise those rates when no party appealed the Commission’s decision nor sought a stay of the Commission’s decisions approving tariff price changes since the December, 2001 Report and Order. To the contrary, Section 386.270 provides

that all rates shall be in force and be prima facie lawful until found otherwise in a suit brought for that purpose pursuant to the provisions of Chapter 386. No such suit has been initiated.

94. The Commission is without authority to change rates for any service in this proceeding. The rates for the services at issue here were not changed in the Report and Order, but were changed in subsequent cases which no party appealed or sought a stay of implementation. Attempted revision of those rates is not required by the mandate of the Court of Appeals; instead, the mandate requires the Commission to assess competitive classification for the services at issue under the standard as it existed in Section 392.245.5.

VI. Conclusions of Law

95. Effective competition exists for AT&T Missouri's intraLATA private line/dedicated services, and effective competition for these services existed in all of AT&T Missouri's exchanges, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245. AT&T Missouri's intraLATA private line/dedicated services shall be classified as competitive in all of AT&T Missouri's exchanges pursuant to Section 392.245.

96. Effective competition exists for AT&T Missouri's intraLATA toll services, and effective competition for these services existed in all of AT&T Missouri's exchanges, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245. AT&T Missouri's intraLATA toll services shall be classified as competitive in all of AT&T Missouri's exchanges pursuant to Section 392.245.

97. Effective competition exists for AT&T Missouri's Wide Area Telecommunications Services and 800 services, and effective competition for these services existed in all of AT&T Missouri's exchanges, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245. AT&T Missouri's Wide Area Telecommunications Services and 800 services shall be classified as competitive in all of AT&T Missouri's exchanges pursuant to Section 392.245.

98. Effective competition exists for AT&T Missouri's special access services, and effective competition for these services existed in all of AT&T Missouri's exchanges, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245. AT&T Missouri's special access services shall be classified as competitive in all of AT&T Missouri's exchanges pursuant to Section 392.245.

99. Effective competition exists for certain of AT&T Missouri's operator services (i.e., station-to-station, person-to-person, and calling card services), and effective competition existed for these services in all of AT&T Missouri's exchanges, both when the Commission issued its December 27, 2001, Report and Order and the Court of Appeals issued its March 3, 2005, mandate in this case. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245. AT&T Missouri's Station-to-Station, Person-to-Person, and Calling Card services shall be classified as competitive in all of AT&T Missouri's exchanges pursuant to Section 392.245.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

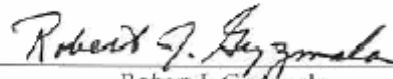
BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

Attorneys for Southwestern Bell Telephone, L.P.,
d/b/a AT&T Missouri
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)
314-247-0014 (Facsimile)
robert.gryzmala@att.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on each party shown on the Commission's Data Center Service List, either by electronic mail or by first-class, postage prepaid, U.S. Mail, on December 11, 2006.


Robert J. Gryzmala