

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the)	
State of Competition in the Exchanges of)	Case No. TO-2001-467
Southwestern Bell Telephone Company)	

SBC MISSOURI’S REPLY TO OPC’S AND NUVOX’S RECOMMENDATIONS

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“SBC Missouri”) respectfully submits this brief Reply to the Office of the Public Counsel’s Response Concerning Remand Procedure (“OPC’s Recommendation”) and NuVox Communications of Missouri, Inc.’s Reply to Staff’s Response to Order Directing Filing (“NuVox’s Recommendation”), pursuant to Commission Rule 2.080(15) (4 CSR 240-2.080(15)).

SBC Missouri continues to maintain that the evidence adduced in this case and in Case No. 93-116 justifies resolution of this case by a stipulation that the services at issue - intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (“WATS”) and 800 services, special access services, and station-to-station, person-to-person, and calling card services¹ - are subject to effective competition on a statewide basis. The services at issue have been recognized as competitive since 1992 and most were recognized as competitive under Section 392.245 in the Sprint case² based on the statewide nature of the competition for these services.³ There is no rational basis to require the parties and the Commission to expend resources to determine whether the services qualify as subject to effective competition under Section 392.245.

Nevertheless, it appears that OPC and NuVox wish to argue that the services are not

¹ Report and Order, December 27, 2001Case No. TO-2001- 467, p. 4.

² In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc. Case No. IO-2003-0281, Report and Order, effective December 14, 2003.

³ Id., pp. 41-43, 52-53 (referencing intraLATA private line services, intraLATA MTS services, and intraLATA WATS services and 800 services).

subject to effective competition or that sufficient evidence is not in the record to establish their competitive nature. This is regrettable, as both OPC and NuVox fail to acknowledge the specific request that the Court of Appeals made of the Commission in remanding this case. Specifically, the Court asked the Commission “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.”⁴ The Court also noted that “[s]ince the original finding of transitionally competitive applied to the entire service area, we assume sufficient evidence for such a finding is available.”⁵ SBC Missouri’s attempts to resolve this matter expeditiously, and without requiring the Commission and the parties to expend additional and unnecessary resources, is completely consistent with the Court’s request.

Given OPC’s and NuVox’s positions, it appears that the parties clearly are not agreeable to a stipulation that these services are subject to effective competition, and it may be necessary to present evidence to establish that they are competitive in SBC Missouri’s exchanges (just as they are competitive in the Sprint exchanges based on statewide competition). If the Commission is of the view that the existing record is sufficient to find that the services at issue are subject to effective competition under Section 392.245.5 RSMo, then an order should be issued detailing such findings. If, on the other hand, the Commission finds that additional evidence is necessary or appropriate to evaluate whether effective competition under Section 392.245.5 exists, SBC Missouri requests the Commission to schedule a prehearing conference so that a procedural schedule can be developed.

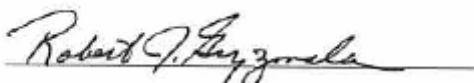
⁴ State of Missouri ex rel., Acting Public Counsel John Coffman, et al. v. Public Service Commission of Missouri, 154 S.W. 3d 316, 329 (Mo. App. 2005) (emphasis added).

⁵ Id.

Wherefore, for all the forgoing reasons, SBC Missouri respectfully requests the Commission to either issue an order finding the services at issue are subject to effective competition under Section 392.245.5 on a statewide basis or, in the alternative, to schedule a prehearing conference so that a procedural schedule can be developed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on or about May 3, 2005.


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