

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

In the Matter of Embarq Missouri, Inc.'s)
Application for Competitive Classification Under) Case No. IO-2006-0551
Section 392.245.5, RSMo (2005))

MOTION TO SUPPLEMENT THE RECORD

COMES NOW the Staff of the Missouri Public Service Commission and, pursuant to 4 CSR 240-2.110(8), moves to supplement the record in this proceeding by including a specific reference to the Supplemental Direct Testimony of John Van Eschen filed in Case No. TO-2006-0093.¹ In support of its motion, Staff states:

1. At hearing on August 7, 2006, the Commission inquired about references in the Staff's Recommendation to the service provided by News Press and Gazette d/b/a St. Joseph Cable Vision in the exchanges of Agency, St. Joseph and Savannah. Staff's recommendation cross-referenced the Supplemental Direct Testimony of John Van Eschen filed on September 23, 2005 in Case No. TO-2006-0093. (This testimony is filed in the Commission's Electronic Filing and Information System as Item 40 on the Commission's docket sheet). Staff made the cross-reference to inform the Commission of similar types of service the Commission had considered in previous cases.

2. Staff specifically directs the Commission's attention to the portion of the Supplemental Direct Testimony from page two, line 3, to page five, line 23, which details Staff's understanding of the nature of the type of service being provided by News Press and Gazette d/b/a St. Joseph Cable Vision in the exchanges where it provided such service (i.e., Agency, St.

¹ *In the Matter of the Request of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6, RSMo (2005) - 30-day Petition.*

Joseph, and Savannah). For the Commission's convenience, Mr. Van Eschen's testimony is attached to this Motion.

3. Subsequently, the Commission addressed the Agency exchange in Case No. TO-2006-0102,² when it denied competitive status for that exchange, stating:

The Commission will not grant competitive classification for residential services for the Agency exchange. SBC Missouri did not include the Agency exchange in the 30-day or the 60-day track of the company's original application, and consequently, it was not included in the Commission's notices regarding this case. As discussed in the Conclusions of Law section of this order, the Commission finds that issues of fundamental fairness require that SBC Missouri name, in its Petition, all exchanges in which it seeks competitive classification.

Report and Order, Findings of Fact, paragraph 1.

WHEREFORE, Staff requests that the Commission take the Supplemental Direct Testimony of John Van Eschen filed in Case No. TO-2006-0093 into consideration in this matter.

Respectfully submitted,

/s/ David A. Meyer

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² *In the Matter of the Request of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6 RSMO (2005) – 60-Day Petition.*

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19th day of July 2006.

/s/ David A. Meyer

Exhibit No.:
Issues: Competitive Status

Witness: John Van Eschen
Sponsoring Party: MO PSC Staff
Type of Exhibit: Supplemental Direct
Case No.: TO-2006-0093
Date Testimony Prepared: September 23, 2005

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SUPPLEMENTAL DIRECT TESTIMONY

OF

JOHN VAN ESCHEN

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. TO-2006-0093

**Jefferson City, Missouri
September 2005**

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

In the Matter of the Request of)
Southwestern Bell Telephone, L.P., d/b/a)
SBC Missouri, for Competitive)
Classification Pursuant to Section)
392.245.6, RSMo (2005) - 30-day)
Petition.)

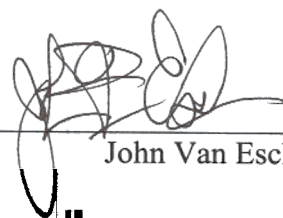
Case No. TO-2006-0093

AFFIDAVIT OF JOHN VAN ESCHEN

STATE OF MISSOURI

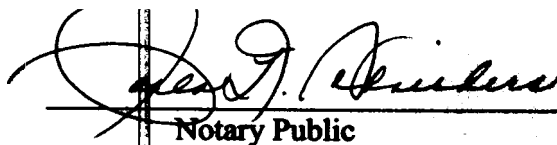
COUNTY OF COLE) ss
)

John Van Eschen, of lawful age, on his oath states: that he has participated in the preparation of the following Supplemental Direct Testimony in question and answer form, consisting of 9 pages of Supplemental Direct Testimony to be presented in the above case, that the answers in the following Supplemental Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



John Van Eschen

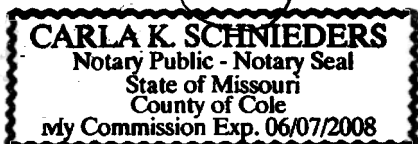
Subscribed and sworn to before me this 23rd day of September, 2005.



Notary Public

My commission expires

June 7, 2008



1 **SUPPLEMENTAL DIRECT TESTIMONY**
2
3 **OF**
4
5 **JOHN VAN ESCHEN**
6
7 **MISSOURI PUBLIC SERVICE COMMISSION**
8
9 **CASE NO. TO-2006-0093**
10

11
12 Q. Please state your name and business address.

13 A. My name is John Van Eschen. My business address is 200 Madison
14 Street, Jefferson City, Missouri 65102-0360.

15 Q. Are you the same John Van Eschen that filed Direct Testimony in this
16 case?

17 A. Yes, I am.

18 Q. What is the purpose of your Supplemental Direct Testimony?

19 A. My purpose is to discuss the service offering of News-Press and Gazette
20 Company d/b/a St. Joseph Cablevision (St. Joseph Cablevision or NPG Cable). On
21 page 16 of my Direct Testimony, as amended on September 16, 2005, beginning on line
22 1, my testimony indicates the Commission Staff is unable to confirm that a qualifying
23 competitor is providing residential local voice service on a full facility basis or UNE-L
24 basis in the exchanges of San Antonio and St. Joseph. SBC claims Sprint is providing
25 local voice service in these exchanges. Sprint's response to a Staff data request indicates
26 the company is not providing service to these exchanges. The purpose of this
27 Supplemental Direct Testimony is to explain that Staff has obtained additional
28 information that the News-Press and Gazette Company d/b/a St. Joseph Cablevision (St.
29 Joseph Cablevision) is providing local voice service in the St. Joseph exchange.

Supplemental Direct Testimony of
John Van Eschen

1 However, Staff is unable to confirm St. Joseph Cablevision is providing service in the
2 San Antonio exchange. The purpose of this Supplemental Direct Testimony is to
3 recommend the Commission grant competitive status to the St. Joseph exchange in the
4 provisioning of residential local voice services.

5 Q. Why are you recommending the Commission grant competitive status to
6 the St. Joseph exchange for the provisioning of residential local voice services?

7 A. Since I filed my Direct Testimony, Staff has talked with representatives of
8 both St. Joseph Cablevision and Sprint Communications Company L.P. (Sprint), the
9 competitively classified Sprint company. Based on these discussions, I conclude St.
10 Joseph Cablevision is providing local voice service in a way that qualifies the St. Joseph
11 exchange for competitive classification for the provisioning of residential services. I will
12 attempt to explain my understanding of St. Joseph Cablevision's offering and St. Joseph
13 Cablevision's relationship with Sprint.

14 Q. What is your understanding of St. Joseph Cablevision's offering?

15 A. St. Joseph Cablevision offers Digital Phone service to residential
16 customers within the exchanges of Agency, St. Joseph and Savannah where it offers
17 cable TV service. The company claims it does not offer the same or a similar service to
18 business customers. St. Joseph Cablevision uses its own cable TV network to connect to
19 the residential customer's premise. St. Joseph Cablevision supplies a box or adaptor to
20 subscribers which is placed at the customer's residence. The adaptor interfaces with the
21 customer's existing inside wiring so the customer can use existing telephone equipment
22 and jacks. The adaptor essentially alters the format of a voice call so that it traverses
23 St. Joseph Cablevision's network using an Internet protocol. St. Joseph Cablevision

1 routes all calls to Sprint Communications Company L.P. which interfaces with the public
2 switched network.

3 Q. What functions does Sprint provide for St. Joseph Cablevision?

4 A. Sprint performs all switching functions for St. Joseph Cablevision. Sprint
5 converts the call's format between the Internet protocol format to the time division
6 multiplex format used by the public switched telephone network depending on whether
7 the call traverses the public switched telephone network. Sprint obtains telephone
8 numbers for St. Joseph Cablevision and places the telephone numbers for St. Joseph
9 Cablevision in the appropriate 911 data base. Sprint also provides such services as
10 operator services and directory assistance services for St. Joseph Cablevision. Sprint
11 does not bill St. Joseph Cablevision subscribers. Instead Sprint is reimbursed for the
12 wholesale services it provides to St. Joseph Cablevision based on a private contract
13 between the two entities.

14 Q. Is St. Joseph Cablevision's offering similar to other cable TV local voice
15 service offerings?

16 A. Yes. I might consider St. Joseph Cablevision's offering similar to the
17 local voice service offering of Time Warner. Both companies offer cable TV services
18 and rely on Sprint for routing calls over the public switched network. Representatives of
19 St. Joseph Cablevision acknowledge St. Joseph Cablevision's service might be
20 considered similar to Time Warner's local voice service offering. I might also add
21 St. Joseph Cablevision's service might be considered similar to the service offered by Big
22 River Telephone Company and SEMO, a cable TV company in southeast Missouri. In

1 that arrangement, the competitive local exchange company rather than the cable TV
2 company is the company claiming they are providing service to customers.

3 Q. Are there any additional issues raised by St. Joseph Cablevision's
4 offering?

5 A. Yes. St. Joseph Cablevision's Recommendation and Objection in Case
6 No. IO-2006-0108, In the Matter of Spectra Communications Group, LLC d/b/a
7 CenturyTel's Request for Competitive Classification Pursuant to Section 392.245.5,
8 RSMo. (2005), states the company "...does not provide any form of telecommunications
9 service in Missouri. NPG Cable is a provider of voice over internet protocol ("VoIP")
10 services in the Savannah exchange. NPG Cable is not a wireline competitor providing
11 local voice service to residential customers." In addition, I should point out that St.
12 Joseph Cablevision is not a certificated provider of basic local telecommunications
13 service in Missouri. I would like to comment on each of these items.

14 Q. What comments do you have regarding the previously identified
15 statements in St. Joseph Cablevision's Recommendation and Objection in this case?

16 A. In my opinion, St. Joseph Cablevision is claiming it does not provide any
17 form of telecommunications service in Missouri because of its belief that VoIP services
18 are not regulated by the Missouri Commission. I don't intend to get into a debate as to
19 whether the Missouri Commission has the authority to regulate St. Joseph Cablevision's
20 offering. I am not addressing the Commission's authority in this proceeding because
21 Missouri law in describing the type of entity that would qualify an exchange for
22 competitive status under the 30-day track would appear to count St. Joseph Cablevision's
23 offering.

1 Q. Why do you believe Missouri law would count St. Joseph Cablevision's
2 offering as a qualifying entity for competitive status under the 30-day track?

3 A. Section 392.245.5(2) states, "Any entity providing local voice service in
4 whole or in part over telecommunications facilities in which it or one of its affiliates have
5 an ownership interest shall be considered as basic local telecommunications service
6 provider regardless of whether such entity is subject to regulation by the commission...."

7 In addition, Section 392.245.5(3) defines local voice service as "...two-way voice service
8 capable of receiving calls from a provider of basic local telecommunications services as
9 defined by subdivision (4) of Section 386.020, RSMo." St. Joseph Cablevision's offering
10 appears to fit the statutory definition for local voice service. Therefore, St. Joseph
11 Cablevision's offering should allow an exchange to be classified as competitive under the
12 30-day track regardless of whether the Commission regulates the company's services.

13 Section 392.245.5(2) does identify situations where an entity's service offering
14 would not allow an exchange to be classified as competitive under the 30-day track;
15 however, in my opinion, St. Joseph Cablevision's service would not fit those exceptions.
16 Specifically, Section 392.245.5(2) states, "...A provider of local voice service that
17 requires the use of a third party, unaffiliated broadband network or dial-up Internet
18 network for the origination of local voice service shall not be considered a basic local
19 telecommunications service provider...." In contrast to this section, St. Joseph
20 Cablevision uses its own broadband network in the Savannah, St. Joseph and Agency
21 exchanges for the origination of local voice service. Therefore, I recommend St. Joseph
22 Cablevision's offering should qualify an exchange for competitive status under the 30-
23 day track.

1 Q. If the Commission concludes St. Joseph Cablevision's offering qualifies
2 an exchange for competitive status, does such a conclusion appear to lock the
3 Commission into reaching a similar conclusion for all other VoIP-related offerings?

4 A. No. As explained in the VoIP Industry Task Force Report filed on
5 March 30, 2004, in Case No. TW-2004-0324, there are different variations of VoIP
6 offerings. Depending on the application and arrangement the Commission could
7 conceivably reach different conclusions. In this instance St. Joseph Cablevision owns
8 facilities within these exchanges to provide residential local voice service to these
9 exchanges.

10 Q. What comments do you have regarding the fact St. Joseph Cablevision
11 does not have a certificate of service authority from the Missouri Commission?

12 A. In other competitive classification request proceedings I have said on the
13 record that if an entity lacks the proper authority to providing service, such certification
14 and tariffing expectations need to be resolved before the Commission grants competitive
15 status. In this particular instance, however, I would not recommend the Commission
16 delay the granting of competitive status to the St. Joseph exchange over this issue. In this
17 instance, the competitor has stated it only provides VoIP service. This claim has not been
18 made in the other cases. A state commission's authority over VoIP offerings may be
19 debated by different parties. I would not wait for this issue to be resolved by the parties
20 before proceeding with competitive classification.

21 Q. Are you recommending competitive status be granted to the Agency
22 exchange for the provisioning of residential services?

Supplemental Direct Testimony of
John Van Eschen

1 A. No. SBC has not specifically requested competitive status be granted to
2 this exchange and therefore I maintain my recommendation that the incumbent company
3 needs to specifically request competitive status for an exchange before it can be granted.

4 Q. Are you recommending competitive status be granted to the San Antonio
5 exchange for the provisioning of residential services?

6 A. No. As previously discussed, my discussions with representatives of St.
7 Joseph Cablevision indicate the company does not provide such service within the San
8 Antonio exchange. Unless further evidence can be presented, Staff recommends the
9 Commission deny competitive status for the San Antonio exchange for the provisioning
10 of residential services.

11 Q. Do you have any comments about NuVox's provisioning of services in the
12 Excelsior Springs exchange?

13 A. Yes. There appears to be a discrepancy as to whether the NuVox
14 customer has a physical location in the Excelsior Springs exchange. SBC officials claim
15 the customer has a premise in Excelsior Springs based on the directory listing data base
16 which shows the Excelsior Springs telephone numbers in question are associated with a
17 location in the Excelsior Springs exchange. In contrast, the E911 data base shows the
18 five telephone numbers are associated with a location in the Kansas City exchange.
19 According to NuVox officials, NuVox is providing foreign exchange service to a
20 customer with a location in the Kansas City exchange but the customer has been given
21 five Excelsior Springs telephone numbers. Staff has been unable to resolve the
22 discrepancy; however it is probably reasonable to expect greater care is used to ensure
23 location accuracy in the 911 data base.

Supplemental Direct Testimony of
John Van Eschen

1 In Staff's opinion, foreign exchange service or a service where the customer is
2 physically not residing in the exchange raises questions as to the appropriateness of
3 granting competitive status to the exchange. Such arrangements are not typically
4 associated with competition within the designated exchange where dial tone is being
5 provided, in this case Excelsior Springs. For this reason Staff recommends the
6 Commission deny competitive status for the Excelsior Springs exchange for the
7 provisioning of business services.

8 Q. Can you summarize your recommendation in this case?

9 A. Yes. I recommend competitive status be granted to the St. Joseph
10 exchange for the provisioning of residential services. Therefore in this 30-day
11 proceeding I recommend competitive status be granted to a total of 25 exchanges for the
12 provisioning of residential services. These exchanges are: Advance, Bell City,
13 Chesterfield, Delta, Eureka, Fenton, Fredericktown, Harvester, Kansas City, Manchester,
14 Monett, Nevada, Pacific, Perryville, Pocohontas-New Wells, Pond, Smithville,
15 Springfield, St. Charles, St. Genevieve, St. Joseph, St. Louis, Valley Park, Washington,
16 and Wyatt. I continue to maintain my recommendation that competitive status be granted
17 to 43 exchanges for the provisioning of business services and as identified in my
18 amended testimony submitted at the hearing on September 16, 2005. In granting
19 competitive status, the Commission should identify the conditions for granting
20 competitive status. In these instances, competitive status is granted on the basis that at
21 least one wireline company is providing local voice service and such service is being
22 provided by the use of switching and/or local loop facilities owned by the provider or an
23 affiliate of the provider.

Supplemental Direct Testimony of
John Van Eschen

1 Q. Do you have any additional comments should the Commission
2 reservations about granting competitive status to the St. Joseph exchange for the
3 provisioning of residential services in the 30-day proceeding?

4 A. Yes. The Commission could address the appropriateness of granting
5 competitive status to the St. Joseph exchange in Case No. TO-2006-0102, the companion
6 case involving SBC's request for competitive classification under the 60-day track.

7 Q. Does this conclude your testimony?

8 A. Yes, it does.