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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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

Case No. TO-2001-467

OFFICE OF THE PUBLIC COUNSEL'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

COMES NOW the Office of the Public Counsel and suggests the following as its proposed findings of fact and conclusions of law:

FINDINGS OF FACT

1. Based upon consideration of all the competent and substantial evidence in the record, the Commission finds that there is not effective competition for the following Southwestern Bell Telephone Company services in any SWBT exchange and, therefore, the Commission finds that it is not proper to grant competitive status for the following services in any SWBT exchange:

1. business switched services
2. business line related services
3. Plexar services
4. residential access line services
5. residential access line related services
6. Local Plus services
7. MCA services
8. switched access services
9. Directory Assistance service
10. operator services

2. The Commission finds that the competent and substantial evidence adduced by SWBT to show that effective competition exists for the following services in SWBT exchanges

is inconclusive and does not permit the PSC to make a finding of effective competition required by Section 392.245.%, RSMo. Therefore, the Commission declines to make the required finding and declines to reclassify the following services in any SWBT exchange:

1. high capacity access line service
2. private line/dedicated services
3. special access service
4. SS7
5. LIDB

3. The Commission finds that there was substantial and competent evidence of effective competition for SWBT's WATS and 800 services in SWBT's exchanges.

4. The Commission finds that there was substantial and competent evidence of effective competition in SWBT's exchanges for its Measured Telecommunications Service IntraLATA toll where the toll products for residential and business customers are priced on a per minute and block of time basis. in Southwestern Bell's exchanges. This finding of effective competition does not extend to any SWBT toll product that is priced on a flat rate, unlimited call basis.

5. The Commission finds that effective competition does not exist in any SWBT exchange for SWBT's MCA service and it shall not be granted competitive classification

6. The Commission finds that effective competition does not exist in any SWBT exchange for SWBT's Local Plus and Designated Number service and it shall not be granted competitive classification.

7. The Commission finds that SWBT remains in monopoly control of the local loop through all its exchanges and has approximately 85% of the local exchange market share.

8. The Commission finds that market share is not the controlling consideration, but is a significant factor in the Commission's determination that effective competition does not exist for business and residential local exchange service.

9. The Commission finds that the ability of the consumer to select a provider of business and residential access line related services is so linked and interrelated to the underlying provider of local basis service that the lack of effective competition in local service shall extend to the finding of lack of effective competition for those services.

10. The Commission finds that the ability of the consumer to select a provider of operator services and directory assistance so linked and interrelated to the underlying provider of local basis service that the lack of effective competition in local service shall extend to the finding of lack of effective competition for those services.

11. The Commission finds that the inability of competitors to avoid or by-pass SWBT's switched access service is so restricted that there are few meaningful alternatives and, therefore, SWBT's service is not subject to effective competition.

12. The Commission finds that the proximity of fiber loop facilities is not persuasive evidence that effective competition exists for business local service and related services in the St. Louis and Kansas City metropolitan areas or in any SWBT exchange.

13. The Commission finds that the testimony and analysis presented by the Office of the Public Counsel on the status of effective competition in the business and residential local service market in SWBT exchanges is competent and substantial and persuasive evidence that the Commission finds credible to support its findings that effective competition does not exist for local service and the related services, operator services and directory assistance.

14. The Commission finds that the testimony presented by SWBT witnesses as to the status of effective competition of various services in SWBT exchanges is not credible and is not persuasive. The Commission further finds that their testimony was not competent and substantial evidence of the existence of effective competition in that the witness had little first hand or detailed knowledge of the Missouri telecommunications market or history of competition in the state. The witnesses had little direct, specific information about Missouri and based their testimony on national publications, general trends in the communications industry, and unverified sources.

15. The Commission finds that a count of the number of CLECs or IXC's certified or tariffed in the state or in any particular exchange is not substantial, competent and persuasive evidence of the existence of effective competition. The Commission finds that Ms. Meisenheimer's investigation into the actual operations of IXC's and CLECs in Missouri is competent, substantial, and persuasive evidence of the competitors operating in the state.

16. The Commission finds that SWBT is a price cap company governed by the provisions of Section 392.245, RSMo. and the prices of all its services are governed by that Section.

17. The Commission finds that SWBT shall continue to be governed by the price cap restrictions on its pricing of services under Section 392.245, RSMo., until such further order of the Commission. The only exception to this findings in that SWBT may price WATS and 800 service as competitive services as provided by law and it may price its IntraLATA toll products that are priced on a per minute or block of time basis as a competitive service as provided by law.

CONCLUSIONS OF LAW

1. The Commission concludes that for purposes of Section 392.245.5, RSMo. 2000 "effective competition" does not require a direct comparison of Southwestern Bell's telecommunications services with all communications services, but rather effective competition should be determined by consideration of competition with services defined as telecommunications services in Section 386.020 (53).

2. The Commission concludes that it must use the factors outlined in Section 386.020 (13) to determine whether effective competition is present and look to the legislative purposes set forth in Section 392.185, RSMo. to determine whether approving the SWBT's competitive status is consistent with the advancement of those purposes and the public interest.

3. The Commission concludes that Public Counsel submits that SWBT has the burden to come forward with competent, substantial, and persuasive evidence to effect a change in its regulatory status for its services. In absence of such evidence for each service in each exchange, the present regulatory status of price cap regulation shall continue until further order of the Commission.

4. The Commission concludes that Section 392.245.5, RSMo. requires the PSC to make the following findings prior to reclassifying SWBT's services as competitive:

(1) at least one alternative local exchange telecommunications company has been certified under Section 392.455 (relating to competitive local exchange companies) in the specific exchange which is under review.

(2) that alternative local exchange telecommunications company has provided basic local telecommunications service in that exchange for at least five years.

(3) that effective competition exists in that exchange for the various telecommunication services of the incumbent for which competitive classification is sought. Prior to reclassifying a service in a specific exchange as competitive, the PSC must make a finding of effective competition for that service in that exchange.

5. The Commission concludes that Section 392.245.5, RSMo. requires it to determine if a CLEC has been providing service in an exchange for five years. This means that the PSC must look at the date when a CLEC first commenced actual operations in an exchange in order to determine whether that exchange meets the five year initial threshold to qualify for reclassification under Section 392.245.5.

6. The Commission concludes that Section 392.245. 9, RSMo. does not allow SWBT to "rebalance" its rate structure by lowering switched access rates and increase other rates, such as local basic service. SWBT falls under the exclusion for price cap companies that have interstate access rates less than 150% of intrastate access rates.

7. The Commission concludes that the issue of whether or not SWBT can or cannot rebalance rates under Section 392.245, RSMo. is not relevant to the determination of the existence of effective competition in this case.

8. The Commission concludes that the question of whether or not local basic residential rates are priced at, below or above its cost this is not an issue for the PSC to decide in order to determine whether effective competition exists in this case.

9. The Commission concludes that Section 392.245, RSMo. 2000 governs the regulatory plan for SWBT's intrastate regulated services, including the ability to change prices. It also provides for the process for designating services offered by SWBT as competitive. After the PSC granted SWBT's petition for price cap regulation, Section 392.245.5 became the controlling statutory authority for SWBT to change any of its services to a competitive service classification.

Respectfully submitted,

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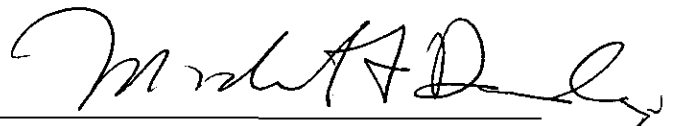
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 9th day of November 2001.



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