

² SBC Missouri is not seeking a competitive classification for switched access service or for a number of more obscure services, but rather will focus on the major services offered to the general public including access line services, line-related and vertical services, and directory services.

marketplace is also being driven by alternative forms of technology-based competition (e.g., expansion of wireless services and technologies and newer VoIP offers).

- Providers now compete across alternate technology platforms (what is sometimes called intermodal competition) for the same customer base. Recent history has seen the emergence of new competitive plans that blur the historical “silo-based, service-specific ” offers that previously defined the telecommunications marketplace (e.g., separate local plans offered by traditional local landline companies, separate long distance plans offered by traditional landline-based long distance companies, and separate wireless plans offered by wireless carriers). Today, customers can buy plans that meet their local and long distance calling needs from several intermodal competitors including ILECs, CLECs, cable companies, wireless companies and VoIP providers.
- Accelerated competition and marketplace evolution makes it critical that SBC Missouri be given the opportunity to fully compete in the marketplace and a competitive classification is an important component of being treated more like SBC Missouri’s competitors³.

2. Accordingly, SBC Missouri respectfully requests that the Commission, in its deliberations, give substantial weight to the evolving competitiveness of the marketplace and recognize that promoting competitive policies and limited regulation ultimately maximizes the benefits to customers by letting the marketplace, rather than government, dictate marketplace outcomes including plan availability, technology innovation, proper investment, pricing, and job levels.

BACKGROUND

3. Southwestern Bell Telephone, L.P., is a Texas limited partnership,⁴ with its principal Missouri office at One SBC Center, Room 3500, St. Louis, Missouri 63101.

³ Obviously, even with a competitive classification, SBC Missouri will not be regulated in the same manner as its competitors in that SBC Missouri would retain the obligation to abide by a number of regulations that its CLEC, wireless, cable and VoIP competitors are not bound by.

⁴ A copy of the Partnership Agreement for Southwestern Bell Telephone, L.P. was filed with the Commission on October 15, 2003. See, In the Matter of the Application of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Review and Reversal of North American Number Plan Administrator’s Decision to Withhold Numbering Resources, Case No. TO-2004-0170.

Southwestern Bell Telephone, L.P. is authorized to do business in Missouri,⁵ and its fictitious name "SBC Missouri" is duly registered with the Missouri Secretary of State.⁶ SBC Missouri is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri as each of those phrases are defined in Section 386.020, RSMo. 2000.

4. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

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The electronic mail address, fax number, and telephone number of SBC Missouri's attorneys are contained in the signature block of this Motion.

5. In its first investigation into the state of competition in SBC Missouri's exchanges, which the Commission commenced in March 2001,⁷ the Commission found that the following SBC Missouri services should be designated as competitive:

- In the Kansas City and St. Louis exchanges for core business switched services, business line-related services, directory assistance services for business customers, and the operator services of Busy Line Verification and Busy Line Interrupt for business customers;

⁵ A certificate from the Missouri Secretary of State certifying that Southwestern Bell Telephone, L.P. is authorized to do business in Missouri was filed with the Commission on October 15, 2003. See, In the Matter of the Application of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Review and Reversal of North American Number Plan Administrator's Decision to Withhold Numbering Resources, Case No. TO-2004-0170.

⁶ A copy of the registration of the fictitious name "SBC Missouri" was filed with the Commission on January 17, 2003. See, In the Matter of the Name Change of Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone company to Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, Case No. In-2003-0247.

⁷ Following a March 1, 2001 Motion by Staff to open a case, the Commission on March 13, 2001, issued its Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order.

- In the Harvester and St. Charles exchanges for residential access lines services, residential access line-related, Optional Metropolitan Calling Area service, directory assistance services for residential customers and Busy Line Verification and Busy Line Interrupt for residential customers;
- In all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 ("SS7") and Line Information Database ("LIDB") services.

The Commission also confirmed that certain services that had been declared transitionally competitive in Case No. TO-93-116 were now competitive services in accordance with Section 392.370 RSMo (2000) in all SBC Missouri's exchanges:

- IntraLATA Private Line/Dedicated Services
- IntraLATA Toll Services
- Wide Area Telecommunications Services ("WATS") and 800 Services
- Special Access Services
- Station-to-Station, Person-to-Person and Calling Card Services

In addition, the Commission recognized that Section 392.200.8 authorized SBC Missouri to price high-capacity exchange access lines services and Plexar® services on an individual customer basis. The Commission, however, declined to grant competitive classification for all other services offered by SBC Missouri in its remaining exchanges.

BASIS FOR COMMISSION JURISDICTION

5. SBC Missouri requests the Commission to open this case to investigate the status of competition in SBC Missouri's exchanges pursuant to Section 392.245.5 RSMo (2000). This statutory provision requires the Commission periodically to investigate the state of competition in each exchange where a CLEC has been certified to provide local exchange telecommunications service and determine whether effective competition exists in the exchange for the various services of the incumbent:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the Commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The Commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company investigate the state of competition in each exchange where an alternative local exchange telecommunication 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 telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company. . . .

6. SBC Missouri is a large incumbent local exchange carrier subject to price cap regulation under Section 392.245. SBC Missouri sought price cap status on March 21, 1997 in Case No. TO-97-397. SBC Missouri based its application for price cap status on the Commission's granting Communications Cable-Laying Company, d/b/a Dial U.S. certification to provide telecommunication services in SBC Missouri's exchanges, effective December 31, 1996. In Case No. TO-97-397, the Commission approved SBC Missouri's request for price cap status effective September 26, 1997.

BASIS FOR INITIATING AN INVESTIGATION INTO THE STATUS OF COMPETITION

7. In the more than two and a half years since the Commission concluded its last investigation into the state of competition in SBC Missouri's exchanges, competition has continued to accelerate:

- CLEC access lines have grown 84% since July 2001 when competitive data for SBC Missouri's exchanges was last presented to the Commission in Case No. TO-2001-467.
- There are currently at least 67 CLECs actively passing wholesale orders to SBC Missouri.

- CLECs have deployed over 40 digital switches to serve Missouri. These switches are capable of serving broad geographic areas and give CLECs the switching capacity to serve more lines than currently exist in the state.
- CLEC switches are now serving at least 292,000 access lines in SBC Missouri's territory, which is an increase of 109% since July 2001 (approximately 73% of CLEC business lines are served via a CLEC switch).
- CLECs have captured a substantial share of the business market. In numerous SBC exchanges throughout Missouri, CLECs have gained significant shares of the business market including up to 70% of the traditional landlines in the exchange.
- CLECs have also made significant gains in the residential market. In many SBC Missouri exchanges, CLECs have gained between 10 and 30% of the traditional landlines in the exchange.
- CLECs target higher value customers so these landline market share estimates understate the competitive impact to SBC Missouri.
- These landline market share estimates also do not take into account competition from intermodal competitors such as the dramatic effect the popularity of wireless service is having on the traditional landline market.
- There are more than 2.7 million wireless subscribers in Missouri.
- Cable companies are now increasing their movement into telephone service. For example, Charter Communications now provides telephone service in the St. Louis area⁸ and Time Warner now provides telephone service in Kansas City.
- And now VoIP services are available in Missouri from companies such as AT&T, Vonage and Nuvio.

PROPOSED PROCEDURAL SCHEDULE

8. Before filing this Motion, SBC Missouri contacted the Staff of the Missouri Public Service Commission to advise them of the anticipated filing and to discuss the possibility of including a jointly proposed procedural schedule with this Motion. Based on these discussions, SBC Missouri and Staff have agreed to recommend the following proposed procedural schedule:

⁸ During the last competitive classification case, Charter was providing service in the Harvester and St. Charles exchanges.

Motion to Establish Case and Motion for Protective Order	July 30, 2004
Order Establishing Case, Joining Parties, Directing Notice and Granting Protective Order	August 10, 2004
Intervention Deadline	August 24, 2004
Scheduling Conference	September 1, 2004
Direct Testimony	September 10, 2004
Rebuttal Testimony	October 29, 2004
Surrebuttal Testimony	November 16, 2004
Hearing	November 29- December 3, 2004

9. Key to the efficient processing of this case and the success of this mutually-agreeable procedural schedule is the prompt issuance of the Order establishing the case, the processing of intervention requests and the issuance of a protective order. Once these initial procedural matters are completed, the parties can begin sharing their respective evidence and this case can proceed with the speed and efficiency that the Commission is striving for as it reviews its case management processes.

10. SBC Missouri also requests that the Commission join the following carriers to this proceeding:

Allegiance Telecom of Missouri, Inc.
 ALLTEL Communications, Inc.
 Ameritel Missouri, Inc.
 AT&T Communications of the Southwest, Inc.
 Big River Telephone Company, L.L.C.
 Birch Telecom of Missouri, Inc.
 Brooks Fiber Communications of Missouri, Inc.
 CD Telecommunications, L.L.C.
 CenturyTel Fiber Co. II, L.L.C. d/b/a LightCore, a CenturyTel Company
 CenturyTel Solutions, L.L.C.
 Charter Fiberlink Missouri, L.L.C.
 Davidson Telecom, L.L.C.
 DIECA Communications, Inc. d/b/a Covad Communications Company

Everest Midwest Licensee, L.L.C.
Excel Telecommunications, Inc.
Fidelity Communications Services, III, Inc.
Global Crossing Local Services, Inc. (formerly Frontier Local Services, Inc.
Global Crossing Telegmanagement, Inc. (formerly Frontier Telemanagement, Inc.
Intermedia Communications, Inc.
IONEX Communications, Inc.
KMC Telecom III, Inc.
KMC Telecom V, Inc.
Level 3 Communications, L.L.C.
McLeodUSA Telecommunications Services, Inc.
MCI WorldCom Communications, Inc.
MCImetro Access Transmission Services, L.L.C.
Missouri Telecom, Inc.
Navigator Telecommunications, L.L.C.
NuVox Communications of Missouri, Inc.
Qwest Communications Corporation
Sage Telecom, Inc.
Socket Telecom, L.L.C.
Sprint Communications Company, L.P.
TCG St. Louis, Inc.
TCG Kansas City, Inc.
VarTec Telecom, Inc.
Winstar Wireless, Inc.
Xspedius Communications, L.L.C.
Xspedius Management Co. Switched Services, L.L.C.
Xspedius Management Co. Kansas City, L.L.C
XO Missouri, Inc.
Z-Tel Communications, Inc.

These carriers are the carriers that are active in SBC Missouri exchanges. In addition, SBC recommends that the Commission give formal written notice of the filing of this Motion to all certificated telecommunications companies in the State advising that they must file an application to intervene by a specific date if they wish to participate in this case.

11. In Case No. TO-2001-467, the Commission made SBC Missouri and approximately 70 CLEC parties in its Order establishing the case.⁹ From an administrative perspective, this large number of parties proved to be very unwieldy for those parties actively participating in the case and most likely for the Commission itself (e.g., copies of all pleadings,

orders, testimony and other documents filed in the case were required to be served on each of the 70 companies that had been made parties). And the fact that nearly all the testimony and a substantial number of the filings in the case contained proprietary or highly confidential information presented further problems. SBC Missouri and its CLEC competitors shared serious concerns about the wide dissemination of their respective competitive data to numerous inactive parties with little assurance that their data would receive proper protection. The Commission remedied these concerns by dismissing 59 of the parties because of their failure to participate.¹⁰

12. In the investigation into the state of competition in the Sprint case, the Commission joined only three CLECs when it established the case and required other interested parties to file applications to intervene by a specified date (six other parties sought and were granted intervenor status).¹¹ From an administrative perspective, the approach taken in the Sprint case was much more manageable for all and SBC Missouri recommends a similar approach be taken here.

CONCLUSION

13. Consumers will ultimately benefit from an environment where all providers are free to compete on equal terms. Such an environment will produce maximum benefit to consumers in that service innovation flourishes and customer demands dictate outcomes. Understanding these benefits, the legislature intended price caps to be only an interim method of regulation. Regulation was then to be reduced to achieve the goal of having all providers competing for customers' services on equal terms.

⁹ See, Order Establishing Case, Directing Notice, Joining Parties and Granting Protective Order, issued March 13, 2001 in Case No. TO-2001-467.

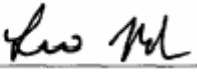
¹⁰ See, Order Dismissing Parties, issued October 23, 2001 in Case No. TO-2001-467.

¹¹ See, Report and Order, issued December 4, 2003 in Case No. IO-2003-0281.

WHEREFORE, SBC Missouri respectfully requests the Commission to initiate an investigation of the state of competition in SBC Missouri's exchanges and to grant competitive classification to the SBC Missouri services that have not yet been declared competitive.

Respectfully submitted,

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