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Witness: Craig A. Unruh
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d/b/a/ SBC Missouri
Case No.: TO-2006-0102
Date Testimony Prepared: October 3, 2005

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a
SBC MISSOURI

CASE NO. TO-2006-0102

REBUTTAL TESTIMONY

OF

CRAIG A. UNRUH

St. Louis, Missouri




In the Matter of the Request of)
Southwestern Bell Telephone, L.P. d/b/a)
SBC Missouri, for Competitive) Case No. TO-2006-0102
Classification Pursuant to Section)
392.245.6, RSMo 2005 – 60-day Petition.)

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

1. My name is Craig A. Unruh. I am Executive Director-Regulatory for Southwestern Bell Telephone. L.P., d/b/a SBC Missouri.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this 3rd day of October, 2005.



Notary Public

My Commission Expires: 10/9/2007

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CASE NO. TO-2006-0102
SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A/ SBC MISSOURI
REBUTTAL TESTIMONY OF CRAIG A. UNRUH

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Craig A. Unruh and my business address is One SBC Center, Room
3528, St. Louis, Missouri, 63101.

**Q. ARE YOU THE SAME CRAIG A. UNRUH THAT FILED DIRECT
TESTIMONY IN THIS CASE?**

A. Yes.

PURPOSE AND MAIN POINTS OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony responds to the testimony filed by Mr. John Van Eschen on behalf
of the Commission Staff (“Staff”). My testimony also updates the schedules from
my direct testimony to include information for the exchanges not granted a
competitive classification in SBC Missouri’s 30 day case (TO-2006-0093).
Additionally, pursuant to Commission Order,¹ my testimony provides revised

¹ Order Directing Filing, Issued September 30, 2005. The Order directs SBC Missouri to file no later than October 4 updated exhibits from SBC Missouri’s Petition, an exhibit that identifies the names of each of the competitors counted by SBC Missouri, and an exhibit that identifies the sources of data for each of the named competitors. I previously identified the names of the competitors in my direct testimony in Unruh – Schedule 2(HC) and Unruh – Schedule 3(HC). I have updated these schedules in my rebuttal testimony to identify the sources of data for each of the competitors.

1 schedules² which identify the source data for the competitors named by SBC
2 Missouri.

3 **Q. WHAT ARE THE MAIN POINTS THE COMMISSION SHOULD**
4 **UNDERSTAND ABOUT YOUR TESTIMONY?**

5
6 A. The Commission should understand the following points about my testimony and
7 this case in general:

- 8 • SB 237 significantly changed the manner in which the Commission is to
9 evaluate requests for competitive classifications.
- 10 • The Commission no longer determines whether “effective competition” exists
11 and is not to review the “extent” of competition or make pricing and service
12 comparisons.
- 13 • The focus of the statute is now on “choice.” The law recognizes that as long
14 as there is choice for consumers, the competitive marketplace should be
15 permitted to work.
- 16 • The law requires that the Commission grant the requested competitive
17 classifications within 60 days unless the Commission finds that a competitive
18 classification is contrary to the public interest.
- 19 • No party has presented any legitimate or sufficient evidence for the
20 Commission to find that granting SBC Missouri’s request for competitive
21 classification is contrary to the public interest.

22

² Revised Unruh – Schedule 2(HC) and Revised Unruh – Schedule 3(HC).

**NO SUFFICIENT EVIDENCE HAS BEEN PRESENTED TO FIND THAT SBC
MISSOURI'S REQUEST IS CONTRARY TO THE PUBLIC INTEREST**

**Q. DO YOU UNDERSTAND THE LAW TO REQUIRE THAT THE
COMMISSION GRANT COMPETITIVE CLASSIFICATION UNLESS IT
FINDS THAT DOING SO WOULD BE CONTRARY TO THE PUBLIC
INTEREST?**

A. Yes. As SBC Missouri explained in its Petition and will explain in its Brief, the law requires the Commission to grant SBC Missouri's request for competitive classification unless it finds that doing so is contrary to the public interest.

**Q. DID ANY PARTY PRESENT TESTIMONY ARGUING THAT
GRANTING SBC MISSOURI'S REQUEST WOULD BE CONTRARY TO
THE PUBLIC INTEREST?**

A. Staff is the only other party that filed direct testimony. In that testimony, Staff attempted to argue that granting competitive classification would be contrary to the public interest.

**Q. IN ITS TESTIMONY, STAFF SUGGESTS THAT GRANTING SBC
MISSOURI'S REQUEST FOR COMPETITIVE CLASSIFICATION
UNDER THE 60 DAY TRACK WOULD BE CONTRARY TO THE
PUBLIC INTEREST BECAUSE SBC MISSOURI IDENTIFIES AS
COMPETITORS CLECS WHO USE SBC MISSOURI'S NETWORK (AS
OPPOSED TO USING THEIR OWN NETWORKS), WIRELESS
CARRIERS, AND VOICE OVER INTERNET PROTOCOL (VOIP)
PROVIDERS.³ DO YOU AGREE THAT THESE TYPES OF
COMPETITORS SHOULD NOT BE CONSIDERED BY THE
COMMISSION?**

A. No, I do not. Staff's position has no basis in the statute. The law makes clear that the Commission is to consider these types of providers as competitors. The

1 legislature recognized that competition comes in many forms and crafted the law
2 accordingly. For competition from carriers using their own facilities in whole or
3 in part, the legislature created an automatic trigger based on certain statutory
4 criteria under the 30 day track. For that form of competition, there is no provision
5 for the Commission to find that granting a competitive classification is contrary to
6 the public interest. It is automatic. However, the legislature recognized that there
7 are additional forms of competition so it created the 60 day track. For this track,
8 the law directs the Commission to consider other forms of competition in addition
9 to competition from companies using their own facilities in whole or in part.
10 Under the 60 day track, the Commission is also required to consider competition
11 from entities providing local voice service using the facilities of a third-party,
12 including the incumbent's facilities, as well as providers that rely on an
13 unaffiliated third-party Internet service. If the legislature did not intend for the
14 Commission to consider these other forms of competition, then it would not have
15 created the 60 day track. This 60 day track is designed to grant competitive
16 classification where the petitioning party has shown it faces competition unless
17 the Commission finds that doing so would be contrary to the public interest.
18 Staff's opposition to considering certain types of competition is not a legitimate
19 nor sufficient reason to find that SBC Missouri's request is contrary to the public
20 interest.

21 **Q. STAFF APPEARS TO IMPLY THAT GRANTING SBC MISSOURI'S 60**
22 **DAY REQUEST WOULD MAKE IT EASIER FOR OTHER ILECS TO**

³ Van Eschen Direct Testimony, pp. 19-23.

1 **GAIN COMPETITIVE CLASSIFICATIONS.⁴ DO YOU AGREE WITH**
2 **STAFF'S CONCERN?**

3
4 A. No. Staff indicates that if the Commission grants a competitive classification
5 based solely on competition from wireless carriers or VoIP providers, then other
6 ILECs could use the same basis for gaining competitive classification. But Staff's
7 concern is not an issue in this case, as SBC Missouri has not requested
8 competitive classification for any exchange based solely on competition from
9 wireless carriers or VoIP providers. All of the exchanges requested by SBC
10 Missouri have multiple CLECs operating in them.

11

12 **Q. STAFF ALSO ATTEMPTS TO ARGUE THAT GRANTING SBC**
13 **MISSOURI'S REQUEST FOR COMPETITIVE CLASSIFICATION IS**
14 **CONTRARY TO THE PUBLIC INTEREST BECAUSE IT MAY BE**
15 **DIFFICULT TO REVOKE COMPETITIVE CLASSIFICATION IN THE**
16 **FUTURE.⁵ IS THIS AN APPROPRIATE GROUND FOR DENYING**
17 **COMPETITIVE CLASSIFICATION UNDER THE STATUTE?**

18
19 A. No. This is not a legitimate reason to find SBC Missouri's request to be contrary
20 to the public interest. The legislature structured the law in the way that it did for a
21 reason. The legislature clearly intends for competitive classifications to be
22 granted. Where companies demonstrate they have competitors, the intention is
23 for the request to be granted. The legislature did leave opportunity, though, for a
24 competitive classification decision to be reevaluated in the future. In the event the
25 conditions for competitive classification no longer exist, the Commission is
26 empowered to remove the competitive classification. The relative ease or

⁴ Van Eschen Direct Testimony (p. 23).

⁵ Van Eschen Direct Testimony (pp. 23-25).

1 difficulty of some future Commission action is not a legitimate reason for finding
2 that SBC Missouri's request today is contrary to the public interest.

3

4 **Q. MOREOVER, STAFF ATTEMPTS TO ARGUE THAT IT IS CONTRARY**
5 **TO THE PUBLIC INTEREST TO GRANT SBC MISSOURI'S REQUEST**
6 **BECAUSE SB 237 ADDS PRICING FLEXIBILITY FOR BUNDLES (OR**
7 **PACKAGES OF SERVICES).⁶ IS THIS AN APPROPRIATE BASIS FOR**
8 **DENYING COMPETITIVE CLASSIFICATION UNDER THE STATUTE?**

9

10 A. No. Again, this is not a legitimate reason to find that SBC Missouri's request is
11 contrary to the public interest. The fact that the legislature has provided this
12 pricing flexibility to all traditional landline regulated competitors should have no
13 bearing on SBC Missouri's request. Had the legislature intended for this
14 packaging flexibility to restrict a carrier's ability to seek competitive
15 classification, there would have been no need to create the 60 day track now in the
16 law.

17

18 **Q. HAS STAFF PRESENTED SUFFICIENT EVIDENCE FROM WHICH**
19 **THE COMMISSION COULD CONCLUDE THAT GRANTING SBC**
20 **MISSOURI'S REQUEST FOR COMPETITIVE CLASSIFICATION**
21 **WOULD BE CONTRARY TO THE PUBLIC INTEREST?**

22

23 A. No. Staff presents no legitimate reason why granting SBC Missouri's request is
24 contrary to the public interest.

25

26 **SBC MISSOURI'S EVIDENCE OF COMPETITION FOR EXCHANGES**

27 **REJECTED IN SBC MISSOURI'S 30 DAY CASE (TO-2006-0093)**

28

1 **Q. DID SBC MISSOURI RECEIVE A COMPETITIVE CLASSIFICATION**
2 **FOR EVERYTHING IT REQUESTED IN ITS 30 DAY CASE (TO-2006-**
3 **0093)?**
4

5 A. No. The Commission rejected SBC Missouri's Petition in part. Specifically, the
6 Commission rejected SBC Missouri's request in two residential exchanges⁷ and
7 one business exchange⁸ that were specifically identified in SBC Missouri's
8 Petition in Case No. TO-2006-0093. Additionally, SBC Missouri's request that
9 16 exchanges found by Staff to meet the 30 day criteria, even though SBC
10 Missouri had not specifically named them, be granted a competition classification
11 was rejected in TO-2006-0093.⁹
12

13 **Q. ARE THESE 19 EXCHANGES TO BE CONSIDERED IN THIS CASE?**

14 A. Yes. The Order in TO-2006-0093 indicates that these 19 exchanges are to be
15 considered in this case.

16
17 **Q. WERE SOME OF THESE 19 EXCHANGES ALREADY REQUESTED BY**
18 **SBC MISSOURI UNDER THE 60 DAY TRACK?**
19

20 A. Yes. At the time SBC Missouri filed its Petition, SBC Missouri was unaware that
21 13 of the exchanges requested as part of the 60 day track actually met the 30 day
22 criteria. As explained, Staff subsequently presented evidence that 16 of the
23 exchanges requested by SBC Missouri for the 60 day track actually met the 30
24 day criteria.

⁶ Van Eschen Direct Testimony (p. 25).

⁷ San Antonio and Sikeston.

⁸ Excelsior Springs.

⁹ During the proceeding in TO-2006-0093, Staff presented evidence that one residential exchange and 15 business exchanges met the 30 day criteria.

1

2 **Q. SHOULD THESE 16 EXCHANGES BE GRANTED A COMPETITIVE**
3 **CLASSIFICATION?**

4

5 A. Yes. Staff has provided evidence that there is at least one CLEC providing
6 service in these exchanges using its own facilities in whole or in part.
7 Additionally, Revised Unruh – Schedule 2(HC) and Revised Unruh – Schedule
8 3(HC) show that there is at least one wireless carrier providing service in each of
9 these exchanges. Since this meets the requirements of the statute, that is
10 sufficient to grant competitive classification.

11

12 **Q. HAS SBC MISSOURI PRESENTED ADDITIONAL EVIDENCE**
13 **DEMONSTRATING THAT THESE 16 EXCHANGES SHOULD BE**
14 **CLASSIFIED AS COMPETITIVE?**

15

16 A. Yes. SBC Missouri has also presented additional evidence of competition from
17 several providers in each of these exchanges. While Staff's evidence of a CLEC
18 using its own facilities in whole or in part and SBC Missouri's evidence of at least
19 one wireless provider is sufficient, the additional evidence presented by SBC
20 Missouri is also sufficient to grant competitive classification.

21

22 **Q. DOES STAFF SUPPORT COMPETITIVE CLASSIFICATION FOR**
23 **THESE 16 EXCHANGES?**

24

25 A. Yes.

26

27 **Q. ARE THERE EXCHANGES NOW BEING CONSIDERED THAT WERE**
28 **NOT SPECIFICALLY IDENTIFIED FOR THE 60 DAY TRACK IN SBC**
29 **MISSOURI'S PETITION AND YOUR DIRECT TESTIMONY?**

30

1 A. Yes. There are two residential¹⁰ exchanges and four business exchanges¹¹ that
2 were not specifically identified in SBC Missouri's Petition for the 60 day track or
3 in my direct testimony. As discussed previously, three of these exchanges were
4 requested by SBC Missouri in the 30 day proceeding and three were identified by
5 Staff in the 30 day proceeding based on information available to Staff.

6

7 **Q. HAVE YOU UPDATED THE SCHEDULES IN YOUR DIRECT**
8 **TESTIMONY TO SPECIFICALLY IDENTIFY THESE EXCHANGES**
9 **AND TO PROVIDE INFORMATION ON COMPETITION IN THESE**
10 **EXCHANGES?**

11

12 A. Yes. I have revised the schedules provided in my direct testimony to include
13 information on these six exchanges.

14

15 **Q. HAS STAFF PRESENTED EVIDENCE THAT THREE OF THESE**
16 **EXCHANGES MEET THE CRITERIA FOR COMPETITIVE**
17 **CLASSIFICATION?**

18

19 A. Yes. Staff has provided evidence that there is a CLEC using its own facilities in
20 whole or in part to serve business customers in the Chaffee, Linn and
21 Montgomery City exchanges. Revised Unruh - Schedule 2(HC) provides the
22 names of one or more wireless carriers that also provide service in these
23 exchanges. This evidence is sufficient to grant a competitive classification for
24 business services in these exchanges.

25

¹⁰ San Antonio and Sikeston.

¹¹ Chaffee, Excelsior Springs, Linn, and Montgomery City.

1 **Q. HAS SBC MISSOURI PRESENTED ADDITIONAL EVIDENCE**
2 **DEMONSTRATING THAT THESE THREE EXCHANGES SHOULD BE**
3 **CLASSIFIED AS COMPETITIVE?**
4

5 A. Yes. SBC Missouri has provided additional information, consistent with the
6 information presented for the other 60 day exchanges, showing that there are
7 additional competitors in these exchanges as well.
8

9 **Q. DOES STAFF SUPPORT A COMPETITIVE CLASSIFICATION FOR**
10 **BUSINESS SERVICES FOR THESE THREE EXCHANGES?**
11

12 A. Yes.
13

14 **Q. WERE THE REMAINING THREE EXCHANGES NOT DISCUSSED**
15 **ABOVE REJECTED BY THE COMMISSION IN CASE NO. TO-2006-**
16 **0093?**
17

18 A. Yes. The Commission found insufficient evidence to conclude that the 30 day
19 criteria were met for residential services in the San Antonio and Sikeston
20 exchanges and for business services in the Excelsior Springs exchange.
21

22 **Q. HAVE YOU PRESENTED ADDITIONAL INFORMATION TO SHOW**
23 **COMPETITION FROM OTHER TYPES OF COMPETITORS FOR**
24 **THESE THREE EXCHANGES?**

25 A. Yes. My revised schedules show the minimum number of competitors in each of
26 these exchanges as well as who those competitors are. As one can see, SBC
27 Missouri faces competition in these exchanges from several competitors. The
28 information provided by SBC Missouri in this case demonstrates that SBC
29 Missouri faces competition in these exchanges and, therefore, competitive
30 classification should be granted under the 60 day track.

1

2 **Q. DO YOU HAVE ADDITIONAL INFORMATION BEYOND THAT**
3 **PRESENTED IN SBC MISSOURI'S 30 DAY CASE DEMONSTRATING**
4 **THAT RESIDENTIAL SERVICES IN THE SIKESTON EXCHANGE**
5 **SHOULD BE CLASSIFIED AS COMPETITIVE?**
6

7 A. Yes. It appears the Commission rejected granting a competitive classification for
8 residential services in the Sikeston exchange because it mistakenly believed that
9 SBC Missouri was basing its request on Big River providing residential service
10 through the use of UNE-P. This is incorrect. SBC Missouri did not request
11 competitive classification in its 30 day case (TO-2006-0093) for the Sikeston
12 exchange, or any other exchange, based on the presence of competitors using
13 UNE-P. SBC Missouri requested competitive classification for residential
14 services in the Sikeston exchange based on directory listings placed by Big River
15 from its own NPA-NXX, thereby establishing that Big River was using its own
16 facilities to provide service. Subsequent to the Commission's Order in SBC
17 Missouri's 30 day case (TO-2006-0093), SBC Missouri has reviewed additional
18 migration orders for the Sikeston exchange. This review shows that SBC
19 Missouri has recently completed several migration orders for **_____**
20 where **_____** has ported Sikeston residential telephone numbers to its
21 own switch.¹² This demonstrates that **_____** is using its own facilities in
22 whole or in part to provide service to residential customers in the Sikeston
23 exchange. Additionally, SBC Missouri has presented information demonstrating
24 that there are several competitors for residential service in the Sikeston exchange.

The logo consists of the letters 'NP' in a stylized, bold font. The 'N' is blue with a red outline, and the 'P' is red with a blue outline. They are positioned side-by-side.

¹² Unruh – Schedule 4 (HC) provides samples of these migration orders.

1 **SUMMARY**

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 A. My rebuttal testimony, along with the evidence presented in my direct testimony,
4 demonstrates that SBC Missouri faces competition in the requested exchanges.
5 Customers are able to choose among alternative providers in each of the
6 exchanges. My testimony also shows that no party has presented any basis for
7 finding that granting SBC Missouri's request for competitive classification would
8 be contrary to the public interest. Therefore, since SBC Missouri has
9 demonstrated that it faces competition in the requested exchanges from a
10 multitude of providers and no party has provided sufficient or legitimate evidence
11 showing that the request is contrary to the public interest, the Commission should
12 grant the requested competitive classifications by October 29, 2005 (i.e., within
13 60 days of the request).

14

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes, it does.