

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

In the Matter of the Second Investigation)	
into the State of Competition in the Exchanges of)	Case No. TO-2005-0035
Southwestern Bell Telephone, L.P., d/b/a)	
SBC Missouri.)	

**BRIEF OF
SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A SBC MISSOURI**

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BRIEF OF SBC MISSOURI

SBC Missouri¹ respectfully submits this Brief in support of its request for competitive classification for its business, residential and Directory Assistance services.

EXECUTIVE SUMMARY

The Missouri Public Service Commission (“Commission”) should grant competitive classification for business and residential services in all of SBC Missouri’s exchanges where such classification was not previously granted. While competition from Competitive Local Exchange Carriers (“CLECs”) alone warrants competitive classification, the additional level of competitive activity attributable to wireless and Voice over Internet Protocol (“VoIP”) providers also supports competitive classification.

It is time for Missouri regulatory policy to reflect the actual level of competitive activity in the state. No longer does the telecommunications market for local service consist merely of Incumbent Local Exchange Companies (“ILECs”) and CLECs, providing wireline circuit switched telephone service pursuant to authority granted by the Commission.

Today, the market for local telecommunications service is much broader. In addition to traditional ILEC and CLEC wireline carriers, local exchange service is now also being provided

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC” or “SBC Missouri.”

by wireless carriers and VoIP providers, neither of which are regulated by the Commission.

These services are available widely throughout SBC Missouri's exchanges and are substitutable alternatives for customers at comparable rates, terms and conditions. With respect to wireless service:

- Over 10 companies provide wireless service in SBC Missouri's territory.²
- 96% of SBC Missouri customers have access to at least two wireless carriers, excluding SBC Missouri's affiliate Cingular and AT&T Wireless.³
- There are more wireless access lines in Missouri today than SBC Missouri has wireline lines.⁴
- Customers spend as much or more today on wireless service as they do on wireline service.⁵
- 23% of voice minutes in 2003 were from wireless services, compared to 7% in 2000.⁶
- According to a recent Missouri-specific survey, 18% of wireless customers have cut the cord and now exclusively use wireless for their telephone service. Of the remainder surveyed, 64% frequently use their cell phones in their homes to make and receive calls; 16% use their cell phone as their primary home phone; and 72% believe cellular service would be a satisfactory replacement for all calls made and received at home.⁷

On the VoIP side, companies are leaping into the market to provide service. VoIP offers all the traditional telephone features, plus functions beyond those available over the circuit switched network. As reflected in the number of mainstream providers and the

² Ex. 15, Unruh Direct, p. 36, Schedule 14.

³ Ex. 15, Unruh Direct, p.37.

⁴ Ex. 15, Unruh Direct, p.35. (The FCC estimates there are over 2.6 million wireless subscribers in Missouri) SBC estimates there are approximately 1.65 million residential landlines in its service territory.)

⁵ Ex. 15, Unruh Direct, p. 37

⁶ Ex. 1, Aron Direct, p. 31 citing FCC 9th CMRS Report, para 213.

⁷ Ex. 13, Shooshan Direct, pp. 17-18.

rapidly growing VoIP customer base, it is clear that the quality is now very good and the price is right:

- Time Warner is aggressively offering VoIP over its cable systems in Kansas City.⁸
- Charter is aggressively offering VoIP over its cable system in St. Louis.⁹
- Companies like Vonage and Nuvio (which is a Missouri-based company) are offering Broadband services and VoIP.¹⁰
- Z-Tel and other CLECs are shifting customers from circuit switch Wireline technology to VoIP.¹¹
- Verizon, SBC Missouri and others are entering the VoIP market.¹²
- The Yankee Group estimates that close to one million residences nationwide will have VoIP service by the end of this year. By the end of 2008, the penetration will have grown to 17.5 million residences.¹³
- 20% of the larger business customers have either implemented VoIP or plan to implement it in the near future.¹⁴

And obviously, competition from CLECs is very significant and continues to grow.

There are more than 65 CLECs currently offering service in SBC Missouri's territory today.

These CLECs employ more than 30 circuit switches and at least an additional 38 soft switches or other types of equipment in Missouri that are used to provide local service. These switches can serve any part of the state, regardless of where the switches themselves are located. In addition, many CLECs are collocated in numerous SBC Missouri central offices, which shows their

⁸ Ex. 15, Unruh Direct, p. 41.

⁹ Ex. 15, Unruh Direct, p. 41

¹⁰ Ex. 15, Unruh Direct, p. 37.

¹¹ Ex. 2, Aron Surrebuttal, pp. 39-40.

¹² Ex. 15, Unruh Direct, p. 37.

¹³ Ex. 1, Aron Direct, p. 37.

¹⁴ Ex. 1, Aron Direct, p. 35, citing a Deutsche Bank publication.

commitment and intent to provide service using their own facilities. Most significantly, the majority of the competition from CLECs is now from carriers that provide their own switching.¹⁵

Since the Commission's previous grant of competitive classification to SBC Missouri for business services in St. Louis and Kansas City and for residential services in Harvester and St. Charles, competition for local telephone service has continued to accelerate. As the statistics below show, CLECs have almost doubled the number of lines served since the Commission last considered this issue in 2001:¹⁶

	June/July 2001	June 2004	Change	Percentage Change
Minimum CLEC Business Lines	230,528	383,381	152,853	66%
Minimum CLEC Residential Lines	57,509	178,466	120,957	210%
Minimum Total CLEC Lines	288,037	561,847	273,810	95%
Interconnection Trunks	114,785	151,021	36,236	32%
CLEC E-911 Listings	143,444	308,501	165,067	115%
CLEC UNE-P Lines	58,263	230,137	171,874	295%
CLEC Resale Lines	94,046	23,209	(70,837)	-75%
Ported Numbers	253,798	547,399	293,601	116%

¹⁵ Ex. 15, Unruh Direct, pp. 21-24, 27, Schedule 3.

¹⁶ Ex. 15, Unruh Direct, pp. 21-22.

CLECs now have more than 21% of the wireline market in SBC Missouri's territory on a statewide basis. On the business side, they have more than 36% of the market. These statistics, which reflect only CLEC access line estimates and do not attempt to measure the substantial competition from wireless and VoIP providers, demonstrate that competition has continued to flourish since this Commission last examined the market.¹⁷

At the same time, SBC Missouri has experienced significant and continuing losses of lines, both in the business and residential sectors:¹⁸

	June/July 2001	June 2004	Change	Percentage Change
SBC Missouri Business Lines	807,448	691,954	(115,494)	-14%
SBC Missouri Residential Lines	1,735,220	1,475,078	(260,142)	-15%
Total SBC Missouri Lines	2,542,668	2,167,032	(375,636)	-15%

Consistent with the factors listed in Section 386.020(13) RSMo (2000) to be considered in evaluating effective competition, the evidence presented by SBC Missouri confirms the availability of business and residential services from numerous alternative providers; the functional equivalency or substitutability of services provided by other carriers at comparable rates, terms and conditions; the continued advancement of the purposes and policies of Chapter 392; and the lack of barriers to entry.

¹⁷ Ex. 15, Unruh Direct, pp. 21-22, Schedule 3.

¹⁸ Ex. 15, Unruh Direct, p. 22, Schedule 4.

In opposing SBC Missouri's request, Staff and OPC do not focus on the factors identified in Section 386.020(13) RSMo (2000) in evaluating the existence of effective competition. And they disregard nearly all of the evidence that has been presented in this case entitling SBC Missouri to competitive classification for the services at issue. Instead, they improperly focus their analysis almost exclusively on market share/market concentration. Both of these approaches, however, are inconsistent with the framework adopted by the Legislature. In addition, in the Sprint Competitive Classification Order, the Commission noted that the Herfindahl-Hirschman Index relied upon by OPC is utilized in merger cases by the Department of Justice, but is not controlling under the Missouri Legislature's factors to consider in evaluating effective competition.¹⁹ Further, in the prior SBC Missouri competitive classification case, the Commission similarly found that market share was not the sole means to assess the presence of effective competition.²⁰ As the Commission previously found, there is no requirement in the statute for any such type of metric analyses.²¹ Had the Legislature intended to make such an analyses determinative, it would have done so. Instead, the Commission properly treated them simply as individual factors showing the extent to which services are available from alternative providers.

But more egregiously, the market share analysis that Staff did perform grossly understates the level of competitive activity in the state because it ignores some of the largest and most dynamic portions of the market. Not only does it fail to account for wireless and VoIP competition, but it also excludes wireline circuit switch services being provided by CLECs using UNE-P, on the unsupported assertion that this competition is going away under the FCC's

¹⁹ Ex. 43, Sprint Competitive Classification Order, pp. 29-30.

²⁰ Ex. 49, SBC Missouri First Competitive Classification Order, pp. 11-12.

²¹ Id. at pp. 11-12.

Triennial Review Remand Order. This approach is inconsistent with the statute and its previous application by the Commission under which the Commission ruled that consideration should be given to wireless and other providers in evaluating the state of competition.²²

Moreover, Staff's rationale for refusing to consider UNE-P cannot be squared either with the law or the facts. First, the FCC eliminated unbundled local switching (which is a component of UNE-P) because it made the binding determination that CLECs are not impaired without access to it (i.e., the FCC found CLECs do not need unbundled local switching from the ILEC to compete). Second, the undisputed facts here show that many of the CLECs utilizing UNE-P in Missouri are also already using their own switching to provide services in Missouri.²³ Under these circumstances, there is little question that these CLECs are able to migrate their UNE-P customers to their own switches. As Staff's witness admitted when confronted with these facts, it is "highly likely" that these CLECs would do so.²⁴ And CLECs without switches can (1) migrate their UNE-P customers to the switches of another CLEC, such as XO and McLeod, which have both announced their willingness to provide their services to any CLEC as a replacement for UNE-P (MCI has already reached an agreement with McLeod to do so); (2) continue to use SBC Missouri's switching services but at commercially-negotiated rates (rather than at TELRIC prices); (3) purchase their own switch as numerous other CLECs have done; or (4) resell SBC Missouri's services pursuant to Section 251(c)(4) of the Act.

As OPC acknowledged, the best measure of market share is actual use. And that can only be determined by including UNE-P customer lines in the analysis, as even OPC did in its study. When that is done, the evidence overwhelmingly demonstrates the pervasiveness of competition

²² Id. at pp. 15-16.

²³ T. 994-995, T. 1270-1271, Peters

²⁴ T. 951-952, Peters

for business and residence telephone service in every SBC Missouri exchange -- and particularly throughout all of the MCA areas in the state, where competition is extremely intense.

In evaluating SBC Missouri's request for competitive classification, the Commission should note that the most vocal opposition for competitive classification comes not from SBC Missouri's competitors, but from Staff and OPC. Of the 65 CLECs that are competing actively in SBC Missouri's territory today, only two offered witnesses. Most CLECs are not even participating in the case. Not a single wireless carrier is participating in the case. No VoIP provider has offered a witness or otherwise participated. And the opposition presented by the few CLECs that have chosen to participate in this case consists of nothing more than a transparent attempt to maintain the artificial regulatory advantage that asymmetrical regulation currently affords them.

While a grant of competitive classification here will not put SBC Missouri on equal footing with all of its competitors -- as the services provided by wireless carriers and VoIP providers are not regulated at all by the Commission -- it is a step in the right direction. As MCI noted in its recent open letter to state commissions, the convergence of new technologies like wireless and VoIP has radically transformed the competitive landscape and must be reflected in regulatory policy:

It is MCI's view that states should have less of a role in regulating retail telecommunications services and service providers. Simply put, convergence means that telecommunications can no longer be thought of as a traditional state-regulated utility anymore. Attempts to keep such regulation on traditional providers such as MCI or the ILECs simply skew the marketplace by creating an asymmetry of regulation.

Missouri is no different from any other state. The existing system of asymmetrical regulation skews the marketplace and prevents the full benefits of competition from reaching consumers. SBC Missouri therefore asks the Commission to recognize the need to level the

playing field and grant SBC Missouri competitive classification in all of its exchanges for the requested business and residential services.

BACKGROUND

(a) Procedural History.

The Commission established this case on August 12, 2004, in response to a Motion SBC Missouri filed on July 30, 2004 to investigate the state of competition in SBC Missouri exchanges.²⁵

In its Motion, SBC Missouri explained that it had been over two and a half years since the Commission concluded its first investigation into the state of competition in SBC Missouri exchanges and much as happened since then. Competition has continued to accelerate. And the telecommunications marketplace itself has evolved, now offering a multitude of services and providers that span across different forms of technology, ranging from traditional landline providers to wireless providers, cable providers and VoIP providers.²⁶ SBC Missouri asked the Commission to initiate an investigation of the state of competition in its exchanges and to classify as competitive SBC Missouri's business and residence access lines, line-related services, and directory assistance ("DA") services that have not already received a competitive designations.²⁷

In its Order Establishing Case, Directing Notice and Setting Scheduling Conference, the Commission set an intervention deadline of August 31, 2004. Timely applications to intervene

²⁵ Order Establishing Case, Directing Notice and Setting Scheduling Conference, Case No. TO-2005-0035, issued August 12, 2004.

²⁶ Motion to Investigate the State of Competition in SBC Missouri Exchanges, Case No. TO-2005-0035, filed July 30, 2004, p. 1.

²⁷ 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.

were filed by NuVox Communications of Missouri, Inc.; Big River Telephone Company, L.L.C.; Socket Telecom, L.L.C.; MCImetro Access Transmission Services, L.L.C.; and WorldCom Communications, Inc.; Allegiance Telecom of Missouri, Inc.; Fidelity Communications Services III, Inc.; AT&T Communications of the Southwest, Inc. (“AT&T”); TCG Kansas City, Inc.; and TCG St. Louis, Inc. No party objected to these requests for intervention and the Commission granted them intervention on September 10, 2004.²⁸ In addition, pursuant to the Commission’s August 12, 2004 Order Establishing Case, Directing Notice and Setting Scheduling Conference, XO Missouri, Inc. and Intermedia Communications, Inc. filed Notices indicating that they wished to be made parties to this case. The Commission acknowledged their status as parties on September 10, 2004.²⁹ AT&T subsequently withdrew from the case on November 10, 2004.³⁰

Pursuant to the Commission’s Order Adopting Procedural Schedule, SBC Missouri filed direct testimony on October 29, 2004. Staff, OPC, NuVox and Socket Telecom filed rebuttal testimony on December 17, 2004. SBC Missouri, and Staff filed surrebuttal testimony on January 21, 2005. On behalf of the parties, Staff filed a joint list of issues on January 7, 2005. The parties filed their individual position statements on January 24, 2005. The Commission conducted an evidentiary hearing January 31 through February and on February 7, 2005. Expedited transcripts were made available on February 9, 2005. Pursuant to the Senior Regulatory Law Judge’s Order from the bench, the parties’ Briefs and Proposed Findings of Fact and Conclusions of Law are due February 18, 2005.³¹

²⁸ Order Granting Intervention, Case No. TO-2005-0035, issued September 10, 2004.

²⁹ Notice Regarding Intervention, Case No. TO-2005-0035, issued September 10, 2004.

³⁰ At the hearing, some questioned the absence of AT&T from this proceeding and whether it was related to SBC’s proposed acquisition of AT&T, which was recently announced. AT&T’s withdrawal from this case on November 10, 2004, occurred long before negotiations began again in January, 2005 according to media reports.

³¹ Tr. 1355.

(b) The Commission's First Investigation Into The State Of Competition.

In its first investigation into the state of competition in SBC Missouri's exchanges, which the Commission commenced in March 2001,³² the Commission ruled on December 27, 2001 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;
- 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.³³

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:³⁴

- IntraLATA Private Line/Dedicated Services
- IntraLATA Toll Services
- Wide Area Telecommunications Services ("WATS") and 800 Services

³² 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.

³³ Ex. 49, In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order issued December 27, 2001. Aff'd in part and rev'd and remanded in part, State ex rel., Acting Public Counsel John Coffman v. Public Service Commission of the State of Missouri, et al., Case No. 02CV323762 (Cole Co. Cir. Court June 17, 2003); aff'd, State of Missouri, Acting Public Counsel John Coffman, et al. v. Public Service Commission of the State of Missouri, et al., Case Nos. WD63075, WD63092 and WD 63096, (Mo. App. WD September 9, 2004); Request for transfer to Sup. Ct. pending ("SBC Missouri First Competitive Classification Order")

³⁴ This portion of the Commission's December 27, 2001 Report and Order was reversed and remanded by the Courts, Id.

- 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.

(c) **History Of Price Cap Regulation**

In response to the evolving competitive forces shaping the telecommunications industry, the Missouri legislature passed a law in 1996 that authorized CLECs to begin providing basic local telecommunications service in competition with ILECs. In recognizing the advancement of service offerings by new competitors, Senate Bill 507 also included provisions to ensure a level playing field for all providers, by allowing ILECs the opportunity to gain freedom from traditional rate of return regulation. Senate Bill 507 provided for a phased-in approach. The Commission was directed to regulate ILECs via price cap regulation upon the initiation of local competition in the ILEC's service area.³⁵

Under Section 392.245.2 RSMo 2000, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing such service, in any part of a large ILEC's service area. On March 21, 1997, SBC Missouri asked the Commission to determine that SBC Missouri was subject to price cap regulation pursuant to Section 392.245.2

³⁵ Ex. 15, Unruh Direct, pp. 9-10.

RSMo 2000.³⁶ The Commission approved SBC Missouri as a price cap regulated company, effective September 26, 1997.³⁷

Under price cap regulation, as provided for in Section 392.245.4 RSMo, after January 1, 2000, the maximum allowable prices to be charged for exchange access (switched access) and basic local telecommunications services are changed annually by either the change in the telephone service component of the consumer price index (CPI-TS) for the preceding twelve months, or upon request by the company and approval of the Commission, by the change in the gross domestic product price index (GDP-PI) for the preceding twelve months, minus the productivity offset established for telecommunications service by the FCC and adjusted for exogenous factors. In addition, a price cap regulated company can raise rates on non-basic services by a maximum of 8 percent for each of the following twelve month periods.³⁸

Senate Bill 507 also contemplated that 5 years after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated. The legislature recognized that the fullest consumer benefits will be derived from a market where all telecommunications providers are regulated in the same manner.³⁹ With respect to SBC Missouri, the Commission established Case No. TO-2001-467 on March 13, 2001, to examine the parameters of Section 392.245.5 RSMo 2000, which is the portion of Senate Bill 507 designed to effectuate the legislature's intent that after 5 years of price cap regulation, a price cap regulated company shall have the authority to adjust its rates upward or downward as it determines appropriate in a competitive

³⁶ Ex. 15, Unruh Direct, p. 11.

³⁷ In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo (1996), Case No. TO-97-397, issued September 16, 1997.

³⁸ Ex. 15 Unruh Direct, p. 11.

³⁹ Ex. 15, Unruh Direct, p. 10.

environment, unless the Commission determines that effective competition does not exist for a particular service in a particular exchange.

Following this initial investigation, the statute also 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:

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 telecommunications 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 telecommunications company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.⁴⁰

THE APPLICABLE STANDARD

Under Section 392.245.5 RSMo (2000), the Commission is to “investigate the state of competition in each exchange . . . and shall determine . . . whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.” If the Commission determines that effective competition for a service exists in an exchange, it is to confirm competitive classification for that service.

Effective competition is defined in Section 386.020.13 and requires consideration of:

- (a) the extent to which services are available from alternative providers in the relevant market;
- (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) the extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo., are being advanced;
- (d) existing economic or regulatory barriers to entry; and

⁴⁰ Section 392.245.5 RSMo 2000.

- (e) any other factors deemed relevant by the commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

In prior cases, the Commission has interpreted the statute as not requiring a market share test and has noted that market share loss is not determinative in evaluating the state of competition. In Case No. TO-2001-467, the Commission stated: “Neither section 392.245.5 nor section 386.020.13 require any quantitative market share loss test to determine whether effective competition exists for SWB services in Missouri.”⁴¹ Instead, the Commission properly treated market share loss simply as one factor showing the extent to which services are available from alternative providers.⁴² In the Sprint Competitive Classification Case, the Commission found competitive classification for numerous services, including toll and private line service, without any market share analysis. The Commission took the same approach to LIDB/SS7 in Case No. TO-2001-467, finding its services competitive statewide without any evidence of market share.

⁴¹ Ex. 49, SBC Missouri First Competitive Classification Order, p. 11.

⁴² Id.

ARGUMENT

Issue 1: The Commission, pursuant to Section 392.245.5 RSMo. 2000, previously classified SBC Missouri's core business switched and business line-related services in the Kansas City and St. Louis exchanges as competitive in Case No. TO-2001-467. In which additional SBC Missouri exchanges, if any, does effective competition for those services exist, such that SBC Missouri's core business switched and line-related services should be classified as competitive?

Effective competition exists for SBC Missouri's core business switched services⁴³ and its line-related services⁴⁴ throughout SBC Missouri's territory and these services should be classified as competitive in all remaining SBC Missouri exchanges.

Some parties claim that each business service must be evaluated separately for competitive classification. Such an approach, however, is inconsistent with the procedures the Commission followed in the previous SBC Missouri and Sprint competitive classification cases.⁴⁵ It is also inconsistent with the issues list jointly prepared by the parties in this case, which organized the services to be examined into broad groups. Here, the evidence that SBC Missouri presented applies generally across all of its services and SBC Missouri specifically explained how the statutory requirements with respect to its simple and complex business services.

⁴³ SBC Missouri's core business services consist of "non complex" or basic business access services, including exchange access line services, and Basic Rate ISDN (DigiLinesm Service); and "complex" services such as Analog Trunks (PBX trunks), "High Capacity Exchange Access Line Services," including Digital Loop Service, SuperTrunk and Primary Rate ISDN (SmartTrunksm) Service (digital PBX trunks), SelectData®, Reserve Lines and Payphone lines. (Ex. 4, Fernandez Direct, pp. 2, 4, 7-9 and Schedule 2)

⁴⁴ Line-related services, consisting primarily of vertical services, include such services as call waiting, call waiting ID, call forwarding, three-way calling, speed calling, call return, auto redial, priority call, caller ID services, and a number of other services offered by both SWBT and CLECs in all of SWBT's Missouri exchanges. (Ex. 4, Fernandez Direct, pp. 5-6, and Schedule 2).

⁴⁵ See, Ex. 43, Sprint Competitive Classification Order and Ex. 49, SBC Missouri First Competitive Classification Order.

(a) **Core Business And Line-Related Services Are Widely Available From Alternative Providers Throughout SBC Missouri's Territory.**

Uncontested evidence unequivocally demonstrates that there are many alternative providers in every SBC Missouri exchange offering substitutable or functionally equivalent services, at comparable rates, terms and conditions, to the core business switched services and line-related services offered by SBC Missouri. These alternative providers range from certificated CLECs (some of whom are also interexchange carriers or "IXCs")⁴⁶ to non-regulated competitors offering wireless services,⁴⁷ internet-based telephony (i.e., VoIP),⁴⁸ e-mail,⁴⁹ and customer premise equipment ("CPE") providers.⁵⁰

1. **CLECs Aggressively Offer Business Services Across The State.**

CLECs provide an array of telecommunication services using (1) their own facilities; (2) unbundled network elements (UNEs) purchased from SBC Missouri or other CLECs; and (3) resale of SBC Missouri's retail telecommunications services.⁵¹ These competitors utilize aggressive marketing strategies (such as bundling and aggressive and monthly rates) and direct, focused selling tactics (such as direct mail outbound telemarketing, and door-to-door sales). Many also advertise through the mass media (such as print ads, radio or TV), outdoor advertising

⁴⁶ Ex. 4, Fernandez Direct, pp. 16-19

⁴⁷ Ex. 4, Fernandez Direct, p. 21; Ex. 15, Unruh Direct, pp. 35-37, and Schedules 14, 15; Ex. 13, Shooshan Direct, pp. 3-6, Schedule 2.

⁴⁸ Ex. 4, Fernandez Direct, pp. 22-23; Ex. 6, Fernandez Surrebuttal, pp. 3-5, Schedules 3-7; Unruh Direct, pp. 37-42, Schedules 16-17.

⁴⁹ Ex. 4, Fernandez Direct, pp. 16-17.

⁵⁰ Ex. 4, Fernandez Direct, p. 17.

⁵¹ Ex. 15, Unruh Direct, p. 19; Fernandez Direct, p. 9-11.

(such as Birch's billboards) and extensively make use of the Internet to effectively communicate the competitive choices they offer Missouri businesses.⁵²

A. Numerous CLECs Offer Business Services In Each SBC Missouri Exchange.

According to the Commission's own website, there are at least 29 CLECs in each SBC Missouri exchange holding themselves out to provide core business switched and line-related services.⁵³ This figure does not include prepaid providers.

According to SBC Missouri's internal wholesale business records,⁵⁴ CLECs are actually providing service in every SBC Missouri exchange, both urban and rural.⁵⁵ of SBC Missouri 160 exchanges have or more non-prepaid CLECs actively serving customers. exchanges have or more non-prepaid CLECs actively serving customers and of SBC Missouri exchanges have at least CLECs actively serving customers.⁵⁶

And competition within the MCAs is particularly acute. According to SBC Missouri's wholesale business record, there are on an average CLECs that are currently serving customers within the MCA exchanges.⁵⁷ For example, CLECs like NuVox have targeted business customers in the MCAs. Its annual reports demonstrate steady and substantial success

⁵² Ex. 4, Fernandez Direct, pp. 18-21, and Schedule 6 (showing competitor ad spends), Schedule 7 (showing competitor website product material and ads), Schedule 11 (showing direct mail solicitations), Schedule 12 (newspaper ad); see also, Ex. 6, Fernandez Surrebuttal, pp. 3-5, and Schedules 1 and 2 (showing newspaper ads), and Schedule 3 (direct mailers).

⁵³ Ex. 15, Unruh Direct, p. 26, Schedule 7.

⁵⁴ SBC Missouri identified the CLEC as actively serving customers by their purchase of resold lines, purchase of UNE-P, or the presence of an E-911 listing in the 911 database. Ex. 15, Unruh Direct, p. 14.

⁵⁵ Ex. 16, Unruh HC Direct, pp. 30-31, Schedule 6HC, Schedule 13HC (these schedules do not reflect the number of other providers such as wireless or VoIP providers).

⁵⁶ Ex. 16HC, Unruh HC Direct, p. 30, Schedule 9HC.

⁵⁷ Ex. 16HC, Unruh HC Direct, p. 33; see also, Schedules 10HC, 11HC and 12HC.

in expanding its services across the St. Louis, Kansas City and Springfield MCA's; and year-over-year increases in services.⁵⁸

In Case No. TO-2001-467, this Commission previously considered the use of market share data in evaluating the existence of effective competition. In that case, the Commission correctly noted that neither Section 392.245.5 nor Section 386.020(13) require any quantitative market share loss as to determine whether effective competition exists. Instead, the Commission noted that it was one factor to be considered in determining "the extent to which services are available from alternative providers in the relevant market."⁵⁹

To the extent market share data is relevant, it has been presented by SBC Missouri on both an aggregate and an exchange-specific basis. In the aggregate, CLECs have obtained a 21% market share on a statewide basis, including a 36% market share for business services. These market share data do not include wireless or VoIP providers, as these unregulated companies are not required to file annual reports with the Commission or otherwise share highly confidential data. SBC Missouri also presented substantial market share information on an exchange-specific basis, as reflected on Exhibits 10HC-12HC in Mr. Unruh's direct testimony.⁶⁰ A review of these schedules will demonstrate the wide availability of alternative services within all of SBC Missouri's exchanges for both business and residential services. The Commission will note that the number of CLECs serving customers and the minimum market share in SBC Missouri's exchanges are particularly high in the Metropolitan Calling Areas ("MCAs") surrounding the St.

⁵⁸ T. 1101, 1018-1023, Cadieux. See, e.g., Ex. 45HC, 46HC, 47HC, 48HC (NuVox HC Annual Reports for 2001-2003 and HC 2004 line counts).

⁵⁹ Ex. 49, SBC Missouri First Competitive Classification Order, pp. 11-12.

⁶⁰ Several parties noted the proposed AT&T-SBC merger and its impact. AT&T is only one of many competitors providing service in the market. Given the many other alternatives in the market (other CLECs, wireless carriers and VoIP providers), the AT&T-SBC merger should not affect the outcome of this proceeding. T. 93-94

Louis, Kansas City and Springfield areas. There is little question that the availability of alternative providers is clearly established in these MCA areas as well as in the other parts of the state served by SBC Missouri.

B. CLEC Collocations Cover About 88% Of The Lines In SBC Missouri's Territory.

Undisputed evidence shows that CLECs have collocation arrangements in numerous SBC Missouri exchanges throughout the State, including in a significant number of more rural exchanges.⁶¹ Approximately 88% of the traditional landlines in SBC Missouri's territory are in exchanges where CLECs have established collocation arrangements.⁶²

CLECs' widespread use of collocation is important here because it identifies areas where CLECs have deployed equipment to serve customers. For example, a CLEC may have built a collocation cage inside an SBC Missouri central office to house equipment to interconnect with SBC Missouri's facilities. In this example, the CLEC could be purchasing unbundled loops from SBC Missouri, interconnecting those loops to the CLEC's facilities in the collocation cage, and then adding the switching functionality through the CLEC's own switch located in another area.

Staff claims that collocation information does not address the "degree of competition" because it does not demonstrate competition "at the exchange level."⁶³ This approach is short-sighted and incorrect because collocation arrangements, in addition to showing investment and market commitment, show capacity to serve. (Even in isolation, such arrangements show that CLECs have surmounted any technical barriers to entry, should they exist.) Such arrangements,

⁶¹ Unruh Schedule 9HC is a map identifying the specific exchanges in which CLECs have established collocation, and the range in number of CLECs collocating in more rural exchanges (SBC Missouri's affiliate, SBC Advanced Services, Inc., which also collocates in SBC Missouri's central offices, has been excluded from this analysis).

⁶² Ex. 15, Unruh Direct, p. 27.

⁶³ Ex. 22, Peters Rebuttal, p. 20.

even if only serving few customers, exert competitive discipline because the CLEC has the capacity -- at the ready -- to serve more customers.⁶⁴

Moreover, the evidence shows that CLECs who use their own facilities do not have to be collocated in every SBC Missouri central office. CLECs use Enhanced Extended Loops (“EELs”) to serve end user customers located in exchanges where the CLEC does not have collocation. For example, a CLEC with a collocation arrangement in Moberly could use an EEL to serve a customer in the neighboring exchange of Higby.⁶⁵

C. CLECs Employ UNE-P To Provide Business Services In Nearly Every SBC Exchange, And Such Competition Cannot Be Ignored.

Unquestioned evidence demonstrates that CLECs are utilizing UNE-P services obtained from SBC Missouri to provide core business switched services and line-related services in nearly every SBC Missouri exchange. Only *** of the 160 SBC Missouri exchanges do not currently have CLECs providing such business services through UNE-P.⁶⁶ And the portion of the business market these carriers have captured, particularly in the MCAs, is significant.⁶⁷

Staff and the small group of CLECs participating in this case, however, claim that UNE-P-based competitors should be ignored. They base their claim on the FCC’s recent Order finding that CLECs are not impaired without unbundled switching and requiring the elimination of UNE-P.⁶⁸

But such an exclusion has no basis in law or fact, and artificially understates the actual level of competition. The fundamental premise of the FCC’s Order eliminating the availability

⁶⁴ Ex. 2, Aron Surrebuttal, pp. 32-33.

⁶⁵ Ex. 15, Unruh Direct, pp. 27-28.

⁶⁶ Ex. 15HC, Unruh HC Direct, Schedule 13HC.

⁶⁷ Id.

⁶⁸ See, e.g., Ex. 22, Peters Rebuttal, pp. 13-15; Ex. 32, Kohly Amended Rebuttal, p. 26.

of UNE-P is based on the FCC's binding determination that CLECs can effectively compete without unbundled switching obtained from the incumbent LEC at TELRIC-based prices. Staff and the CLECs ask the Commission to ignore this finding, and to assume, without any evidentiary basis, that all the customers served via UNE-P will revert to SBC Missouri.

The uncontested evidence before the Commission in this proceeding concerning the number of switches deployed by CLECs in the state and how they are being used bears the FCC's determination out. Competition from CLECs currently utilizing UNE-P is simply not going to go away. First, the FCC in its Order established a 12-month transition period during which the CLECs will be able to continue their use of UNE-P until they make other switching arrangements for their customers' traffic. This transition period recognizes the significant investment these CLECs have made in acquiring this segment of their customer base and provides ample time for them to establish other switching arrangements and migrate their customers on an orderly basis. Second, UNE-P CLECs have several viable and readily-available alternatives to UNE-P:

- Both during the transition and afterwards, CLECs can use their own switching.⁶⁹ Uncontested evidence in this proceeding establishes that sufficient alternative switching capacity already exists in the state to handle CLEC customers currently being served via UNE-P (and many, many more). According to the Local Exchange Routing Guide ("LERG"), there are at least 30 traditional switches and another 38 alternative switches or switch-like equipment in Missouri.⁷⁰
- CLECs can also use switching capacity provided by other CLECs. In fact, this is already occurring in Missouri. There are at least two CLECs that are now actively offering their switching and other facilities on a wholesale basis to other CLECs in Missouri. For example, McLeodUSA has announced agreements with AT&T and MCI under which AT&T and MCI will move services from SBC Missouri's UNE-P to a similar

⁶⁹ Ex. 17, Unruh Surrebuttal, pp. 4-6.

⁷⁰ Ex. 17, Unruh Surrebuttal, p. 6; Ex. 15, Unruh Direct, pp. 22-23, and Schedule 5.

arrangement provided through McLeod's network.⁷¹ Likewise, XO Communications, which purchased Allegiance Telecom, announced that it has launched a wholesale local voice service as an alternative to LEC-provided UNE-P arrangements in 36 markets, including St. Louis. XO has agreements with at least nine other carriers across the country showing the viability of using XO's network.⁷² And Covad Communications has launched a new telephone service that will allow its partners, such as AT&T, MCI, EarthLink and American On Line, to offer telephone service over regular copper lines but with all the features of Internet telephone technology.⁷³

- SBC Missouri remains willing to continue providing switching services to CLECs at commercially reasonable wholesale prices. For example, SBC has reached agreements with Sage Communications under which SBC will sell Sage network capacity that will replace UNE-P. Most significantly, this arrangement is being provided pursuant to commercially negotiated prices, rather than government-dictated TELRIC prices. And as should be expected in a competitive market, the prices SBC Missouri offers for its switching services will be going head-to-head with prices offered by XO Communications and McLeod (and likely others) for similar switching services.⁷⁴

Clearly the assertion that competition will cease to exist upon the elimination of UNE-P is without merit and should be summarily dismissed.

In contrast to this Commission's prior decisions in the SBC Missouri's First Competitive Classification Case and the Sprint Competitive Classification Case, Staff makes market share the determinant factor in its recommendation. While Staff attempted to deny that it was applying a

⁷¹ Under this arrangement, McLeod will be purchasing unbundled loops from incumbents, like SBC Missouri, and then using its own switch to provide switching functions for other carriers like AT&T and MCI. Copies of press releases describing these migration plans are attached to Ex. 17, Unruh-Surrebuttal, Schedule 1. See also, Highly Confidential data request response from MCI confirming that the MCI/McLeodUSA covers Missouri attached to SBC Missouri witness Debra Aron's Surrebuttal Testimony, (Ex. 3HC) as Schedule 1HC. See, p. 3 of 14.

⁷² Copies of press releases from XO Communications and material from its website describing its offering are attached to Ex. 17, Unruh Surrebuttal, Schedule 2.

⁷³ See, Ex. 17, Unruh Surrebuttal, Schedule 3.

⁷⁴ Ex. 17, Unruh Surrebuttal, p. 8.

market share test, its actions belie its words. Staff failed to conduct or present a factor by factor analysis of Section 386.020(13).⁷⁵ Staff gave little or no weight to wireless competition or VoIP competition, partially on the basis that no Missouri exchange-specific information was available.⁷⁶ At the end of its analysis, the only factor which differed from exchange-to-exchange was the CLEC market share in that exchange. Where the CLEC market share was 9% or greater, Staff recommended a competitive classification be granted. In all other cases, Staff opposed the grant of competitive classification.

After elevating market share to the status of being the determinant factor, Staff creates a market share analysis that bears no relationship to the market itself. Staff's market share analysis excludes both resale and UNE-P access lines from its analysis. The exclusion of this level of competition is both disturbing and illogical. Many of the CLECs operating in Missouri utilize a combination of resale, UNE-P and their own facilities (including their own switching facilities) to serve customers. Staff's analysis assumed that customers served via UNE-P would simply return to SBC Missouri once the FCC's decision eliminating unbundled local switching as a UNE took effect. Staff provides no evidentiary support for this assumption. Moreover, when its witness realized that the same CLECs utilizing UNE-P also utilized their own switching in Missouri today, he conceded that it was "highly likely" that the CLECs would continue to serve their UNE-P customers with their own switch.⁷⁷ In fact, the large majority of the business lines served via UNE-P today are provided by CLECs that are already using their own switches to provide service to other Missouri customers.⁷⁸ Moreover, nearly half of UNE-P residential lines

⁷⁵ T. 912-913, Peters; T. 884-886, McKinnie

⁷⁶ T. 939, Peters.

⁷⁷ T. 951-952, Peters.

⁷⁸ T. 1271, Peters.

are also served by CLECs who are using their own switches to provide service to other Missouri customers.⁷⁹ And one large UNE-P provider which does not have its own switch is, in Staff's view, unlikely to leave its Missouri customer base.⁸⁰ Under these circumstances, there can be little question but that Staff's analysis completely misses the mark. Had Staff not entered into the proceeding with an apparent predisposition against the grant of relief, it surely would have come to a different recommendation. Staff admits that, had it given in eight to UNE-P, it would have significantly influenced its results and recommendations to the Commission.⁸¹

D. Use of E-911 Data Results In A Conservative Estimate Of CLEC Access Lines.

SBC Missouri's market share data is built upon the combination of resale lines, UNE-P lines and an estimated number of CLEC facilities-based access lines. The first two categories are beyond assail, as they are based on SBC Missouri's own data.⁸² The last category, however, requires an estimate of the facilities-based lines served by CLECs since SBC Missouri does not have access to that data.⁸³ SBC Missouri utilized E-911 data to develop the estimate, and explained to the Commission that the use of the E-911 data was actually very conservative since access lines utilized for incoming calls would not be included in the database and hence would understate the number of lines actually served by CLECs. The Commission has previously noted that the use of E-911 data is a conservative estimate of the access lines served by CLECs for the same reasons given by SBC Missouri.⁸⁴

⁷⁹ T. 1270, Peters.

⁸⁰ T. 957-958, Peters.

⁸¹ T. 943-944, Peters.

⁸² T. 972, Peters.

⁸³ T. 973, Peters.

⁸⁴ Ex. 49, SBC Missouri First Competitive Classification Order, pp. 14-15.

In this case, however, Socket's witness asserted that the use of E-911 data may actually overstated the number of access lines served by CLECs.⁸⁵ Mr. Kohly claimed that Socket actually reports more numbers into the E-911 database than it had access lines.⁸⁶ In surrebuttal, Dr. Aron pointed out that, if Socket were actually reporting all numbers into the E-911 database, it was doing so in violation of the applicable National Emergency Number Association rules.⁸⁷ Staff, however, accepted the claims from Socket and used them to ratchet down its proposed relief from 17 exchanges to 13 exchanges. At the hearing, however, it became readily apparent that Socket's assertion was simply incorrect with regard to the data presented in this case. As Staff's witness Mr. Peters was forced to admit at the hearing, Socket had reported only ** ** E-911 listings into the database which both SBC and Staff utilized to make market share estimates.⁸⁸ In fact, the data indicated that Socket actually served some ** ** lines in Missouri.⁸⁹ Thus, rather than E-911 data overstating the number of access lines served by Socket, the E-911 database results in a very substantial understatement of the actual access lines served. This is, of course, entirely consistent with SBC Missouri's position in this case and is equally consistent with this Commission's prior findings that E-911 data results in a minimum access line analysis. Thus, regardless of any concerns Socket may have about E-911 data, Staff concedes there is no data which supports the concern in this case.⁹⁰

As a result of the allegations concerning E-911 data advanced by Socket, the Staff reduced the number of exchanges for which it recommended competitive classification. Staff did

⁸⁵ Ex. 32, Kohly Amended Rebuttal, pp. 12-13.

⁸⁶ Id.

⁸⁷ Ex. 2, Aron Surrebuttal, pp. 56-57.

⁸⁸ T 971, Peters.

⁸⁹ T. 970, Peters.

⁹⁰ T. 1258-1259, Peters.

so based upon Mr. Peters' Exhibit 12HC, which purports to be a listing of access lines by exchange for each CLEC operating in Missouri. Based upon the information that proves that Socket's E-911 data did not result in an overstatement of its access lines served, the Commission need go no farther in considering Staff's proposed adjustment to its recommendation. Nevertheless, SBC Missouri believes it important to point out to the Commission that Mr. Peters' Exhibit 12HC does not provide a supportable evidentiary basis for Commission analysis. Mr. Peters conceded that the information contained in Exhibit 12HC was inaccurate and incomplete.⁹¹ The problems with Exhibit 12HC are many, but include: (1) the data is from December 31, 2003, while the rest of Staff's data is from the end of June, 2004; (2) there are a number of companies which operate in Missouri and are serving customers that are not listed on Exhibit 12HC apparently because they did not submit annual reports;⁹² and (3) even where reports were submitted, they were clearly inaccurate as they did not break the information down properly by exchange.⁹³

2. Non-Regulated Carriers Provide Attractive Alternatives To Business Customers.

As the Commission has seen from evidence presented in this case and in its day-to-day oversight of the industry, the telecommunications marketplace is rapidly changing. The market is now characterized by converging technologies, services, and providers. Such convergence requires changes to public policy and regulation, which has focused on traditional wireline services, and primarily on incumbent telephone companies like SBC Missouri.

⁹¹ T. 1251, Peters.

⁹² Less than thirty companies are listed on Schedule 12HC, while more than 65 CLECs are actually operating in SBC Missouri's territory. T. 1253, Peters.

⁹³ T. 1266-1267, Peters.

A. Business Customers Are Increasingly Using Wireless Service As A Substitute For Wireline Service.

Undisputed evidence demonstrates that wireless services are widely available throughout SBC Missouri's exchanges. Based on the FCC's latest information, there are over 2,691,255 wireless subscribers in Missouri.⁹⁴ Excluding both Cingular and AT&T Wireless, 75% of SBC Missouri's exchanges have two or more wireless providers. And at least 96% of landline customers in SBC Missouri's service territory have access to at least two wireless carriers, even after excluding Cingular and AT&T Wireless.⁹⁵

Increasingly, the business customer is choosing to reduce the number of wireline business access lines and instead utilize wireless services. Besides the obvious applications of "mobile" users such as outside sales people and real estate agents, many diverse small businesses have adopted wireless service as their only means to stay in contact with their customers. For example, a landscape architect can supervise work in the field and still be able to receive calls allowing him or her to schedule additional jobs. And wireless services are particularly attractive to business customers because the service often includes long distance calling at no extra charge.⁹⁶

And wireless substitution for business landline service is not limited to small business customers. Recently, Sprint Corporation announced that it had signed a deal to provide wireless phone service for 8,000 of Ford Motor Company's product engineers. This service, which will include Sprint's walkie-talkie style service called Ready Link, will replace the workers' land-line

⁹⁴ FCC Local Competition Report - June 18, 2004, Table 13, cited in Ex. 15, Unruh Direct, p. 35.

⁹⁵ Ex. 15, Unruh Direct, pp. 36-37.

⁹⁶ Ex. 4, Fernandez Direct, pp. 21-22.

desk phones. In its announcement of the deal, Sprint stated that Ford was breaking new ground by enabling employees to become completely mobile:

These wirelessly empowered employees will be able to spend more productive time with the right people and in the right places, rather than behind a desk . . . we are bringing new speed, spontaneity and interaction to the Ford workplace wherever it may be and eliminating tethers to the traditional office phone.⁹⁷

Ford explained the attractiveness of this wireless alternative stating that “the change would give product engineers more flexibility to be at testing facilities, training sites and manufacturing plants as the company rolls out several new products.”⁹⁸

B. VoIP Service Has Gone Mainstream In The Business Service Space.

VoIP service is an immediate and growing competitive alternative to SBC Missouri’s traditional circuit switched core telecom services such as basic business access lines, ISDN and others. Business customers are increasingly buying VoIP services, particularly because of the reduced cost of administering only one network rather than the historical need to manage both a voice network and a dated network.⁹⁹

Business VoIP service is being offered in Missouri by numerous providers including Delta 3, Global Crossing, IDT Net 2 Phone Corporate Solutions, i2 Telecom, Time Warner, Vonage, Nuvio, Covad,¹⁰⁰ and McLeodUSA.¹⁰¹ The evidence shows that Time Warner has been aggressively promoting its Road Runner business class service in the Kansas City metro area

⁹⁷ Ex. 37.

⁹⁸ Ex. 37.

⁹⁹ Ex. 15, Unruh Direct, p. 38; see, also, Unruh Schedule 16, which is a map depicting where a selected set of VoIP providers offer service.

¹⁰⁰ Ex. 4, Fernandez Direct, pp. 22-23.

¹⁰¹ Ex. 6, Fernandez Surrebuttal, pp. 4-5. A copy of McLeodUSA’s press release concerning its VoIP services is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 6.

where it is the dominant CableTV provider.¹⁰² Similarly, EarthLink and Covad have been jointly marketing various business offerings with high speed business DSL service.¹⁰³ Covad also announced in October, 2004, that its business VoIP service is now available in the St. Louis and Kansas City markets.¹⁰⁴ And AT&T has a version of its Call Vantage VoIP Service targeted to small businesses and home office workers. AT&T recently expanded its distribution for CallVantage through a retail marketing agreement with Staples under which Staples is now offering AT&T Call Vantage service in its 1,200 retail stores nationwide and specifically targeting small business and home office workers.¹⁰⁵

(b) Alternative Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Core Business And Line-Related Services..

When products or services are reasonably good substitutes, they are considered to be in the same product market and they compete with one another. Substitutable products serve to constrain one another's prices, because if one product were to experience a price increase, consumers would purchase other products that are close substitutes.¹⁰⁶

The standard economic approach to assessing whether two services are in a same market is to determine whether a substantial number of customers, over a period of time, would be willing to switch to the other service if the price of the service they are currently buying were to

¹⁰² Ex. 6, Fernandez Surrebuttal, p. 4. Copies of some of Time Warner's print ads directed to business customers are attached to Ms. Fernandez Surrebuttal Testimony as Schedules 1 and 2.

¹⁰³ Ex. 6, Fernandez Surrebuttal, p. 4. Copies of direct mailings from EarthLink and Covad are attached to Mr. Fernandez Surrebuttal Testimony as Schedule 3.

¹⁰⁴ Ex. 6, Fernandez Surrebuttal, p. 4. A copy of Covad's news release describing this announcement is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 4.

¹⁰⁵ Ex. 6, Fernandez Surrebuttal, p. 5. A copy of AT&T's press release concerning its Call Vantage VoIP marketing agreement with Staples is attached to Ms. Fernandez Surrebuttal Testimony as Schedule 7.

¹⁰⁶ Exhibit 1, Aron Direct, p. 16.

increase by a small but significant and non-transitory amount.¹⁰⁷ Because in many cases it is difficult to determine quantitatively how responsive consumers are in their purchases of one product to a change in a price of another, economists and the Courts focus on the products' "reasonable interchangeability of use."¹⁰⁸ To make this determination, courts examine such factors as whether the services appear to serve the same or similar function from the customers' standpoint; whether customers view them as reasonably equivalent; whether they are sold in same marketing channels; or whether competitors market their services as a substitute for one another.¹⁰⁹

What is critical from an economic standpoint, and what the courts have recognized, is that the ultimate determinant of whether products are competitive substitutes is whether they "have the ability – actual or potential – to take significant amounts of business away from each other."¹¹⁰ And in fact, this is the standard of the Commission itself has employed, holding services or substitutable "if they have the actual or potential ability to take away significant amounts of business from each other."¹¹¹

Here, the evidence unequivocally demonstrates that the business and line related services being offered by other competing carriers are reasonably interexchangeable with those offered by SBC Missouri. And, in fact, the evidence has demonstrated that not only do these competing

¹⁰⁷ Department of Justice and Federal Trade Commission Courts Merger Guidelines, April 2, 1992, Section 1.11. Exhibit 1, Aron Direct, p. 16.

¹⁰⁸ Brown Shoe Co. vs. the United States, 370 US 294, 325 (1962) Adopting the "reasonable interchange"ability of use" standard to determine whether two services are in the same market for the purpose of antitrust case law analysis. Exhibit 1, Aron Direct, p. 18.

¹⁰⁹ Exhibit 1, Aron Direct, pp. 18-19.

¹¹⁰ SmithLine Corp. vs. Eli Lilly & Co., 575F 2nd 1056, 1063 3rd Circuit, cert. denied, 439 US 838 (1978) (emphasis added). Exhibit 1, Aron Direct, p. 20.

¹¹¹ Ex. 43, Sprint Competitive Classification Order, p. 40.

services have the potential to displace significant SBC Missouri's business service, they have in fact actually done so.

1. Competitors Offer The Same Types Of Business Services As SBC Missouri.

Uncontested evidence shows that SBC Missouri's CLEC competitors are providing business and line related services that are nearly identical to SBC Missouri's noncomplex¹¹² and complex services.¹¹³

These CLECs offer a variety of basic business access services that may be combined with business long distance services as well as vertical features, data services, and internet services.¹¹⁴ In addition to their certification by the Commission and Commission-approved tariffs, CLECs which provide core business switched services are listed in every white pages directory throughout SBC Missouri exchanges,¹¹⁵ and advertise their services throughout Missouri.¹¹⁶ While OPC disputes the accuracy of the White Pages listing data,¹¹⁷ there is no question that the listed CLECs asked to be included in the directory and represented themselves as providing service. But more importantly, OPC failed to address the more specific evidence SBC Missouri presented of its competitors actually providing service in each SBC Missouri exchange.

¹¹² Noncomplex or basic business access line services include exchange access line services, Basic Rate (ISDN DigiLine (service mark) Service), and other line related services and features such as Hunting, Caller ID and the tariff packages that include these features. Exhibit 4, Fernandez Direct, p. 2.

¹¹³ Complex services include Analog Trunks (PBX Trunks), High Capacity Exchange Access Line Services, Digital Loop Services, SuperTrunk and Primary Rate ISDN Service (Digital PBX Trunks), SelectData and Plexar Centrex Service. Exhibit 4, Fernandez Direct, p. 2.

¹¹⁴ Ex. 4, Fernandez Direct, p. 6.

¹¹⁵ Ex. 15, Unruh Direct, p. 26, Schedule 8.

¹¹⁶ Ex. 4, Fernandez Direct, pp. 18-20, and Schedules 6P, 7, 9-12; Ex. 6, Fernandez Surrebuttal, pp. 2-3, Schedules 1 and 2..

¹¹⁷ Ex. 26, Meisenheimer Rebuttal, pp. 13, 23-24.

Additionally, alternatives such as CPE will perform many of the same functions as many of SBC Missouri's line-related services.¹¹⁸

While CLECs generally offer the same individual services as SBC Missouri, CLECs focus on marketing of bundled solutions, bundling local business line service with vertical features, or messaging, or long distance. CLECs are also creating "super bundles," which are bundles of local services (lines and features), broadband with Internet access, long distance, and wireless service -- all provided at a discount. For example, AT&T, Birch, MCI, McCloud USA, Sage, Sprint, and Vonage all offer business voice packages bundled with various vertical features, which are comparable to SBC Missouri's custom BizSaver bundle currently priced at \$38.99.¹¹⁹

Competitors' offerings that add long distance to the local service bundle are also similar to what SBC Missouri offers.¹²⁰ For example, MCI Business Complete Advantage Plan, priced at \$39.99 per month for the first line (and \$27.99 per month for each additional line) offers unlimited local calling, a flat six cent per minute rate on all interstate and intrastate long distance calls, and several popular calling features including CallerID, Call Waiting, Speed Dial 8, Three-Way Calling and Call Forwarding.¹²¹ And for an additional \$20.00 per month, MCI will upgrade customers to its Business Complete Unlimited Plan, which includes unlimited intra and interstate long distance calling.¹²²

¹¹⁸ Ex. 4, Fernandez Direct, pp. 3, 14-16.

¹¹⁹ Ex. 4, Fernandez Direct, Schedule 9 (Birch charges \$38.00, MCI charges \$34.99, McCloud USA charges \$36.95, Sage charges \$34.00, Sprint charges \$39.95 and Vonage charges \$39.99).

¹²⁰ Ex. 4, Fernandez Direct, Schedule 10. For example, AT&T charges \$52.95, MCI charges \$59.99, Sprint charges \$54.00.

¹²¹ Ex. 4, Fernandez Direct, Schedule 11.

¹²² Id.

In the large business segment of the market, most if not all CLECs with whom SBC Missouri competes offer services that are functionally the same as SBC Missouri's ISDN PRI services (e.g., SmartTrunks) and SBC's Digital Trunking Services (e.g., SuperTrunk and Digital Loop Service).¹²³ The CLEC's pricing in this segment is very aggressive. For example, typical CLEC monthly rates for PRI services range from \$540.00 to \$850.00, which is significantly less than SBC Missouri's equivalent pricing which is typically in the one thousand dollar per month range.¹²⁴

2. SBC Missouri's Business Line Loss And The Growth Of CLEC Business Market Share Demonstrates Widely Available Alternatives That Are Substitutable For SBC Missouri's Services.

Although the statute does not require SBC Missouri to experience any particular level of market share loss in order to have its services classified as competitive, a very substantial portion of the market has shifted to SBC Missouri's competitors. As of June, 2004, on a statewide basis, CLECs alone now serve a minimum of over 383,000 business lines, which represents a 36% share of the business access lines market.¹²⁵ (SBC Missouri also presents highly confidential exchange-specific market share in Schedules 10HC-12HC in Mr. Unruh's direct testimony.) As the tables below illustrate, the evidence demonstrates substantial competitive activity throughout each of SBC Missouri's exchanges and particularly in each of the MCA areas where competition is strong:¹²⁶

	Minimum Estimated CLEC Business Market Share of the	Minimum Estimated CLEC Residential Market Share of the Traditional
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¹²³ Ex. 4, Fernandez Direct, pp. 10-11.

¹²⁴ Ex. 4, Fernandez Direct, pp. 10-11.

¹²⁵ Ex. 15, Unruh Direct, p. 21, Schedules 3, 4, and 12HC.

¹²⁶ Ex. 15, Unruh Direct p. 32.

	Traditional Landline Market	Landline Market
St. Louis MCA without exchanges that are already competitively classified	** _ **	** _ **
Kansas City MCA without exchanges that are already competitively classified	** _ **	** _ **
Springfield MCA (no exchanges are competitively classified)	** _ **	** _ **

Competition is not limited to the MCAs:¹²⁷

Exchanges Outside the MCAs	Number of Active non- prepaid CLECs	Estimated Minimum CLEC Market Share of Traditional Landline Market	Estimated Minimum CLEC Business Market Share of Traditional Landline Market	Estimated Minimum CLEC Residential Market Share of Traditional Landline Market
** _ **	** _ **	** _ **	** _ **	** _ **
** _ **	** _ **	** _ **	** _ **	** _ **
** _ **	** _ **	** _ **	** _ **	** _ **
** _ **	** _ **	** _ **	** _ **	** _ **
** _ **	** _ **	** _ **	** _ **	** _ **

And vibrant competition also exists in more rural exchanges:¹²⁸

Exchange	Number of Active non-prepaid CLECs	Minimum Estimated CLEC Business Market Share of the Traditional Landline Market
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **
** _ **	** _ **	** _ **

¹²⁷ Ex. 15, Unruh Direct, p. 33.

¹²⁸ Ex. 15, Unruh Direct, p. 34.

(c) **Granting Competitive Status Will Advance The Purposes And Policies Of Chapter 392.**

The purposes and policies of Chapter 392 will be advanced by granting competitive classification to SBC Missouri's business access line and line-related services in all exchanges.

1. **Competition Advances The Legislative Policy Goals Of Chapter 392**

The broad telecommunications policy goals of the Missouri Legislature are set out in Section 392.185. There, the Legislature expressed the desire to promote universally-available, efficiently-supplied, and reasonably priced telecommunications services.¹²⁹ The Legislature also sought to promote diversity in the supply of telecommunications services, and to allow competition to function as a substitute for regulation whenever possible and consistent with the other goals of the statute.¹³⁰ And finally, the Legislature sought to promote parity of urban and rural telecommunications services, promote economic and other enhancements and protect consumer privacy.¹³¹

Chapter 392 specifically articulates a preference for competition over regulation whenever possible and consistent with the statutes' other goals. When there is competition in a market, it is both unnecessary and undesirable to impose artificial regulatory requirements on participants in the market. It is unnecessary because markets function more effectively to protect consumers than can regulators. More importantly, it is undesirable because regulator restrictions are not innocuous in competitive markets. By preventing or hindering providers from quickly raising, lowering, restructuring, targeting, bundling or otherwise changing prices, providers are impeded in their ability to respond to competition, to differences in the cost of service, to

¹²⁹ Section 392.185 (1), (2) and (4) (2000).

¹³⁰ Section 392.185 (3), (5) and (6) (RSMo 2000).

¹³¹ Section 392.185 (7-9), (RSMo 2000).

customer-specific demands and preferences, and to changing market conditions to the detriment of social welfare and economic efficiency. Moreover, regulation can prevent a company from correcting prices that have been distorted by years of regulatory oversight. If such a company cannot price and respond to these legitimate market factors, the company is restricted in its ability to effectively meet customer demand, and customers suffer.¹³²

2. Lifting Price Cap Regulation Encourages Innovation And New Investment In Facilities.

Lifting price cap regulation when effective competition exists in an exchange is particularly important for achieving dynamic efficiency, which refers primarily to how firms invest in innovation and technologies that help reduce costs, and that are capable of creating new kinds of products and further advancing economic progress.¹³³

Permitting pricing flexibility makes it feasible for a firm to justify investments in innovation, which is inherently risky.¹³⁴ Permitting an incumbent carrier flexibility to price its services encourages investment in new facilities, and competitive markets provide the incentive to accelerate the deployment of advanced technologies. Maintaining a level of investment in innovation in a telecommunications infrastructure in Missouri is critical to maintaining the vibrancy of many industries in the state and preserving the status of the state as a place where businesses want to locate and talented workers want to live. Maintaining incentives to innovate

¹³² Exhibit 1, Aaron Direct, p. 72.

¹³³ Exhibit 1, Aaron Direct, pp. 73-74. “Dynamic efficiency” is to be distinguished from “static efficiency,” which refers to the optimal allocation of society’s resources, in the sense that such resources produce the products that consumers want in the proportions that they want them, given their willingness to pay for them. In other words, firms will produce products in a way that economizes on a resource use, and their mix of resources used will reflect their with relative values to society. Both static and dynamic efficiency drives societies on-going economic progress. Id. p. 73.

¹³⁴ Exhibit 1, Aaron Direct, p. 74.

and invest in telecommunications infrastructure is the most important factor for achieving the legislative goal of promoting “economic... enhancements” in the state.¹³⁵

On the other hand, firms will not choose to enter a market and deploy facilities unless they believe they will have a reasonable chance to recoup their investment. Lifting price cap regulation provides a signal to potential competitors that the incumbent’s prices will not be forced below those that would prevail in a competitive market. If this commitment by the regulator is credible, and it is not expected to be reversed during the time in which the competitor hopes to recoup its investment, the deployment of new facilities would be encouraged.¹³⁶

3. Lifting Price Cap Regulation Promotes Price Competition.

The Commission in the Sprint Competitive Classification Order recognized that competition cannot fully perform its function in the presence of price cap regulation, because that regulation dampens the regulated carrier’s ability to change its price in response to competition.¹³⁷ Current price cap regulation requires SBC Missouri to announce price changes 30 days in advance on a tariffed price change. By requiring it to signal its moves by filing 30 days in advance of its price changes (which is further amplified by an additional 30 day CLEC notification requirement), SBC Missouri is discouraged from decreasing prices and is handicapped from competing for specific customer business. If competitors have advance warning of SBC Missouri’s price changes, they can use the 60 day period to counteract the change with their own price changes or marketing efforts in advance of SBC Missouri’s price

¹³⁵ Exhibit 1, Aaron Direct, p. 78-79.

¹³⁶ Exhibit 1, Aaron Direct, p. 79. In addition, the prospect of having sufficient flexibility to maintain prices that are enumerative level, to the extent permitted by competition, and the prospect of competitive investment by CLECs and other competitors will also encourage efficient investment by incumbent LECs as well.

¹³⁷ Ex. 39, Sprint Competitive Classification Order, p. 31.

change becoming effective. Knowing that a price decrease could be preempted discourages SBC Missouri from making the decrease. Such an outcome dampens competition and harms customers. While SBC Missouri would still be saddled with a 30 day CLEC notification requirement in many cases, removing at least 30 of the 60 days' prior notification obligation advances and strengthens competition and benefits customers by helping to remove some constraint that discourages competition price reduction.¹³⁸

During the hearing, several parties inquired about possible plans SBC Missouri may have for its services in the event competitive classification is given. SBC Missouri testified that it had not made such plans. It explained that it is appropriately waiting to receive the Commission's Order in this case identifying the specific competitive authority being granted for specific services. In a dynamic competitive market like Missouri, it is necessary to evaluate the competitive landscape that exists at that moment and react to the situation presented.

4. Grants Of Competitive Classification Are Not Irreversible And The Statute Allows Re-Imposition Of Price Caps If Conditions Change.

While Section 392.245.5 sets out the process for deregulating telecommunications services of price cap regulated LECs, it also contains a "safety valve" allowing the Commission to re-evaluate previously-granted competitive classification in the future if conditions warrant. Specifically, the statute allows the Commission to rescind competitive classification and re-impose price caps in an exchange if it finds that effective competition no longer exists in the exchange:

The Commission shall from time to time, but no less than every five years, review the state of competition in those exchanges where it has previously found the existence of effective competition, and if the commission determines, after hearing, that effective competition no longer exists for the incumbent local exchange telecommunications company in such exchange, it shall re-impose upon

¹³⁸ Exhibit 1, Aron Direct, p. 77.

the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices is established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

This ability to re-impose price caps should alleviate any concerns the Commission may have that a decision to grant competitive classification is irreversible (when it is otherwise convinced that effective competition exists). The legislature's provision of this "safety valve" to adjust the level of regulation in the event of deterioration in the competitive landscape demonstrates the legislature's intent to encourage the Commission to make competitive reclassifications in order to allow the market to work and competition to develop unfettered by asymmetric price regulations.¹³⁹

5. Predatory Pricing Is Not A Legitimate Concern In This Case.

In their rebuttal testimony, two witnesses raised an alleged issue concerning predatory pricing. On behalf of Socket, Mr. Kohly included one paragraph in which he alleged a concern that "SBC will increase retail rates in geographic areas or for services that do not face effective competition in order to engage in predatory pricing by lowering rates below cost for particular customers, for a particular geographic area, or for certain services where SBC may face a competitor."¹⁴⁰ At the hearing, it was alleged that SBC Missouri would be able to raise rural rates above the competitive level while reducing prices to a predatory level in the remaining areas of the state. Similarly, Staff witness Mr. Peters made a passing reference to a claim of

¹³⁹ Exhibit 1, Aaron Direct, p. 80.

¹⁴⁰ Ex. 32, Kohly Amended Rebuttal, p. 3.

predatory pricing by asserting that SBC Missouri “could lower prices for a period of time in order to squeeze out any current competition and subsequently raise prices such that there are no economic rents available in the market.”¹⁴¹ It is not surprising that these witnesses devoted so little time to this theory in their prefiled testimony as it does not withstand rigorous analysis.

As Dr. Aron explained in her surrebuttal testimony, predatory pricing as a result of competitive reclassification is unlikely to be attempted because the market structure would simply not support it.¹⁴² In order to be successful, any attempt at predatory pricing requires that (1) SBC Missouri drive out all competitors from the market by pricing below cost, (2) after all competitors are driven from the market, SBC Missouri must increase its retail prices sufficiently and for a long enough period of time to recoup its losses and (3) SBC Missouri must do all of this without attracting the attention of the antitrust authorities and regulators.¹⁴³ On its face, it is apparent that SBC Missouri could not successfully engage in such a practice even if it were so inclined.

Economists recognize that it is very difficult to drive competitors from a market through predatory pricing when the competitor has sunk costs in the form of facilities. Accordingly, it would be extremely difficult to drive wireless companies and cable companies out of the market since they have sunk costs which translate to low incremental costs of staying in the market in the short run.¹⁴⁴ Even those carriers which utilize unbundled loops with their own switching

¹⁴¹ Ex. 22, Peters Rebuttal, p. 9.

¹⁴² Ex. 2, Aron Surrebuttal, p. 22.

¹⁴³ Id.

¹⁴⁴ Id. at pp. 22-23.

would be extremely difficult to drive out, as these carriers also have the sunk investment plus the availability of UNE-loops at regulated rates.¹⁴⁵

Even if SBC Missouri were successful at driving competitors with sunk investments out of the market, it is highly unlikely that SBC Missouri would be able subsequently to raise rates above the competitive level in order to recoup its losses. Facilities-based firms like wireless and cable companies would continue to have sunk investment that would make the cost of reentry very low. Similarly, competitors with the sunk cost of their own switching equipment would have the ability to reenter at a low cost, plus the availability of UNE-loops at Commission-established prices.¹⁴⁶ Under these circumstances, SBC Missouri would not have the ability to raise rates above the competitive level in order to recoup the losses it previously experienced in driving the competitors from the market.

The third prong necessary for a successful predation attempt -- the ability to drive competitors out of the market and prevent reentry without attracting the attention of antitrust and regulatory authorities -- is also unlikely to occur. In an unregulated market, it is unlikely that such a strategy would be successful, and it is even more unlikely in regulated markets like telecommunications.¹⁴⁷ If all competitors evacuated the business and/or residential markets in the urban areas of Missouri as a result of alleged predation, it is highly unlikely that antitrust authorities and regulatory authorities would sit idly by. In SBC Missouri's situation, this Commission would retain the authority to declare that effective competition no longer existed in those exchanges where prices were raised above a competitive level and to re-impose price cap regulation, thus precluding any success in recouping the lost revenues.

¹⁴⁵ Id. at p. 23.

¹⁴⁶ Id. at p. 23.

¹⁴⁷ Id. at pp. 23-24.

Because of the enormous difficulties in driving competitors out of the market and keeping them out of the market during the recoupment period without attracting the attention of antitrust and regulatory authorities, the Supreme Court has noted that such predation attempts are rarely attempted and even more rarely successful.¹⁴⁸ Moreover, both antitrust experts and the U.S. Supreme Court have warned that claims of predation should be carefully examined as such claims often consist of competitors attempting to protect themselves from offering lower prices to consumers.¹⁴⁹

The claim that SBC Missouri would be able to achieve the predation by increasing rates in rural areas also lack substantive merit. This purported “strategy” suffers from the same deficiencies as identified above. SBC Missouri would not be able to increase rates in rural areas unless the Commission found that effective competition existed. If, after a finding of effective competition in these rural areas, rates were raised above the competitive level, wireless, VoIP providers and CLECs would be able to increase their customer base by maintaining or lowering their prices to consumers. Accordingly, such a “strategy” could not succeed. But even assuming SBC Missouri were able to raise rates above the competitive level in rural exchanges, there is little question but that the Commission would re-impose price cap regulation as it is permitted to do under Section 392.245.5 RSMo (2000). Again, the purported “strategy” simply could not succeed.

Further, the claim that SBC Missouri would be able to raise its rates in rural areas in order to price below cost in urban areas fails to take into account the relative size of these markets. While SBC Missouri serves a substantial number of lines in rural Missouri, it serves

¹⁴⁸ Matsushita Electric Industrial Co., Inc., et al. v. Zenith Radio Corp., et al., 475 U.S. 574, 589 (1986)

¹⁴⁹ Ex. 2, Aron Surrebuttal, p. 25.

many times that number in its urban and suburban exchanges. The total number of SBC Missouri lines in each exchange are depicted in Schedule 10HC to Mr. Unruh's direct testimony, while a further breakdown into business and residential lines is provided in Schedules 11HC and 12HC. Even if it were not constrained by market forces, it would be impossible for SBC Missouri to raise the price in an amount sufficient to cover the lost revenue it would experience by engaging in predatory pricing in the urban and suburban area. The relative size of the markets simply would not permit this to occur.

(d) No Material Economic Or Regulatory Barriers To Entry Exist.

There are no substantial barriers to competitors offering business services, as demonstrated by the substantial number of competitors actually operating in each exchange and the substantial market share obtained.

1. Technological Changes Have Reduced Barriers To Entry.

Technology has had profound impacts on the nature and extent of competitive entry into the local exchange markets by reducing entry barriers. Services provided over a number of new technologies or alternative technologies are increasing competitive pressure on traditional ILEC wireline services. Such technological changes have reduced the "specificity" of the capital investment in communications facilities, diminishing the sunk costs as barrier to entry. For example, investment in CableTV facilities now can be expected to generate a return not only from providing pay television service, but also from providing cable telephony or VoIP service.¹⁵⁰

¹⁵⁰ Ex. 1, Aron direct, pp. 54-55.

2. The Telecommunications Act Of 1996 Has Substantially Reduced Barriers To Entry.

The Telecommunications Act of 1996 has substantially reduced the barriers to entry into the local exchange business. The provisions of the Act are remarkable in their scope and in their requirement for the incumbent to open the door and “lend a hand” to competitors. Under the Act, incumbent LECs face special obligations to help their competitors far beyond those normally imposed on unregulated firms. ILECs must interconnect with competing carriers; they must unbundle their network and provide certain network elements to their competitors at cost-based rates; they must provide end-to-end service for the resale of telecommunications services to their competitors at avoided-costs wholesale rates; and they must permit their competitors to collocate equipment in their central office.¹⁵¹

Each of these requirements reduces entry barriers and facilitates entry into the local exchange market.¹⁵² During SBC Missouri’s Section 271 proceeding, in which the Missouri Commission recommended approval of SBC Missouri’s application for in-region interLATA services relief, the Commission found that SBC Missouri had satisfied the federally mandated checklist that is intended to reduce barriers to entry into the local exchange market. In its Order, the Commission stated that “SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion.”¹⁵³ In providing this nondiscriminatory access to the checklist items, SBC Missouri showed that it had opened its network to competitors seeking to lease UNEs or to provide services by resale. And indeed, the Missouri Commission correctly

¹⁵¹ Federal Telecommunication Act of 1996, Section 251(c)(1)-(6).

¹⁵² Ex. 1, Aron Direct, p. 56.

¹⁵³ Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri 271 Interconnection Agreement (M2A), Case No. TO-99-227, issued March 16, 2001.

acknowledged SBC Missouri's First Competitive Classification case that resale, as well as UNEs and combinations of UNEs provide:

Effective ways for CLECs to enter the market with little capital investment. Given the multitude of companies providing services, it is clear that the regulatory barriers that once prevented competitors from offering alternatives in the marketplace are disappearing.¹⁵⁴

Some in this proceeding have claimed that the Commission's prior conclusions regarding entry barriers was "contingent" on the continued availability of UNEs and combination of UNEs.¹⁵⁵ This claim is misplaced. First, it is incorrect as a factual matter to imply that UNEs have been eliminated from the market. Based on the FCC's recent unbundling order, most UNEs will be retained, including all voice grade copper loops and most DS1 loops, and resale will continue to be available for all telecommunication services. Carriers will thus still have the ability to use UNEs and resale to overcome any entry barriers that would otherwise exist.¹⁵⁶ It is also patently incorrect, as explained under Issue 1, Section (a)(1)(C) above, to imply that the removal of UNE-P from the market creates an entry barrier. Moreover, SBC Missouri, as in its previous competitive classification case, has similarly supplied evidence of a multitude of companies providing services, including a large number who are facility-based.¹⁵⁷

The future expiration of SBC Missouri's M2A agreement also does not create a barrier to entry. SBC Missouri notified all CLECs well in advance of the agreement's pending expiration and outlined various options for CLECs to obtain a replacement agreement. This process ensures no gap in the availability of an interconnection agreement.

¹⁵⁴ SBC Missouri's First Competitive Classification Order, p. 28.

¹⁵⁵ Ex. 32, Kohly Amended Rebuttal, p. 26.

¹⁵⁶ Ex. 2, Aron Surrebuttal, p. 66.

¹⁵⁷ See, e.g., Ex. 16, Unruh HC Direct, Schedule 13HC.

3. To The Extent Any Barriers To Entry Exist, Competitors Are Actively Overcoming Them.

Given the multitude of carriers that are actually providing functionally equivalent or substitutable services in every SBC Missouri exchange, it is clear that there are no barriers to entry preventing competitors from offering alternatives in the marketplace.¹⁵⁸ And to the extent that any barriers to entry or expansion exist, this evidence demonstrates that SBC Missouri's competitors are actively overcoming them.¹⁵⁹

Issue 2. In which SBC Missouri exchanges, if any, does effective competition exist for SBC Missouri's Plexar services such that those services should be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

Effective competition exists for SBC Missouri's Plexar® brand of Centrex services¹⁶⁰ throughout its territory and these services should be classified as competitive in each SBC Missouri exchange pursuant to Section 392.245.5 RSMo. 2000.

(a) **Competing Services Are Widely Available From Alternative Providers Throughout The State.**

1. The Commission Has Previously Found Centrex To Be Competitive On A Statewide Basis.

¹⁵⁸ Ex. 15, Unruh Direct, p. 44. See also, Schedule 3 (showing growth of CLEC services being provided over CLEC-owned switches), Schedule 5 (showing competitive switch sites and numbering resources in SBC Missouri exchanges), Schedule 6HC (showing number of active CLECs operating within individual SBC Missouri exchanges), Schedule 7 (showing individual CLECs offering service in each SBC Missouri exchange based on MoPSC website), Schedule 9HC (showing CLEC collocation sites), Schedules 10HC-13HC (showing minimum estimated CLEC market share by exchange).

¹⁵⁹ Ex. 1, Aron Direct, p. 57.

¹⁶⁰ Plexar is the trademarked brand under which SBC Missouri sells its Centrex service. Centrex is a central office based communications system that allows business customers to use SBC Missouri's central office technology instead of purchasing their own premise-based switching equipment. The Plexar family of services includes Plexar-1, Plexar Express, Plexar II and Plexar-Custom. Like other Centrex systems, Plexar services provide basic call processing capabilities, such as call hold, call transfer, and three-way calling. Additionally, some Plexar services also offer advanced voice and data call handling, such as basic rate interface (BRI) and integrated service digital network (ISDN) capabilities. Ex. 4, Fernandez Direct, p. 12.

The Commission has already recognized that LEC-provided Centrex services are subject to effective competition across the state. The Commission made this determination in the Sprint Competitive Classification Order based on the wide-spread competition it identified from (1) the ability of other competing telecommunications companies to provide Centrex services and (2) from non-regulated companies supplying switching equipment installed on the business customer's premises that provides similar functionality:

Other competitive local exchange companies can offer this service in competition with Sprint, but much of Sprint's competition comes from companies that sell switching equipment, such as PBX (primary branch exchange) and key system hardware, to individual customers. Such customer-owned equipment manages calls between stations on the customer's premises without utilizing the central office switch, and handles calls to and from the public switched network. The availability of such equipment allows a business customer to choose to pay Sprint to provide a Centrex service for its switching needs; or it can choose to satisfy its need for that function by purchasing the necessary equipment from any one of several companies willing to sell that equipment . . . Because Sprint's competition for its Centrex service is coming from equipment sellers rather than competing service providers, that competition is not limited to specific exchanges.¹⁶¹

Based on these findings, the Commission granted state-wide competitive classification to Sprint's Centrex services.¹⁶² On the same basis, Staff supports a competitive classification here for SBC Missouri's Plexar services.¹⁶³

2. CLECs Offer Competing Centrex Service.

Undisputed evidence in this case shows that several CLECs in Missouri offer tariffed central office based Centrex services in Missouri that are similar to Plexar. These CLECs provide such services using their own switching equipment or that of another CLEC, UNEs from

¹⁶¹ Ex. 49, Sprint Competitive Classification Order, pp. 15-16 (emphasis added).

¹⁶² Ex. 43, 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, issued December 4, 2003 at pp. 39-41 ("Sprint Competitive Classification Order")

¹⁶³ Ex. 20, McKinney Rebuttal, pp. 13-14.

SBC Missouri, or by reselling SBC Missouri's Plexar services to their end-user customers.

CLECs offering Centrex include Everest Communications, IDT, MCI, XO Communications, Big River Telephone and Nuvio.¹⁶⁴

3. Non-Regulated Equipment Suppliers Provide Alternatives To Centrex.

Here, SBC Missouri has demonstrated that its business customers have had competitive alternatives to its Plexar brand of Centrex services for decades. Key telephone systems and PBXs were developed and offered to business customers to replace central office based service offerings for larger business customers, and continue to be an attractive competitive alternative for business customers that choose to own their own voice system.¹⁶⁵ And new Internet Protocol ("IP") technology has energized the PBX market.¹⁶⁶

Some of the major equipment-based competitors SBC Missouri faces are Avaya (for key and PBX systems), Nortel (for key and PBX systems), NEC (for key and PBX systems), Toshiba (for key systems), and Siemens (for PBX systems).¹⁶⁷

(b) Alternate Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Plexar Brand Of Centrex.

Both CLEC and non-regulated equipment vendors provide alternatives to SBC Missouri Plexar services which are functionally the same as or substitutable for SBC Missouri's Plexar services, and are offered at comparable rates, terms and conditions. Although there is no statutory requirement to experience any level of market share loss to obtain competitive classification, SBC Missouri's Centrex market share has declined substantially and is projected

¹⁶⁴ Ex. 4, Fernandez Direct, pp. 12-13.

¹⁶⁵ Ex. 4, Fernandez Direct, pp. 14-16.

¹⁶⁶ Ex. 4, Fernandez Direct, pp. 15-16.

¹⁶⁷ Ex. 4, Fernandez Direct, Schedule 5.

to decline even further, in line with national trends,¹⁶⁸ demonstrating that business customers are in fact substituting these alternatives for SBC Missouri's Plexar service.

1. CLEC Centrex And Non-Regulated PBX Equipment Provide Equivalent Or Substitutable Services.

CLEC's Centrex services generally provide the same features and services as SBC Missouri's Plexar service, such as call forwarding-busy line-all calls, call forwarding-don't answer-all calls, call forwarding-variable, call hold, call pick-up, call transfer-all calls, Direct Inward Dialing (DID), Direct Outward Dialing (DOD), Hunting-Basic, Station-To-Station (Intercom Dialing), Three Way Calling and Touch Tone Dialing. These services are offered at comparable rates, terms and conditions as SBC Missouri Plexar service.¹⁶⁹

PBX or key telephone systems are likewise substitutable for, or functionally equivalent to SBC Missouri's Plexar Service. In fact, these systems were developed by manufacturers to replace the central office based offerings that telephone companies provided to larger business customers. And they are specifically marketed by various vendors as a "functionally equivalent substitute" for LEC-provided Centrex services. Over time, the prices for PBX systems have been driven down by competition and by advances in switch technology. Evidence presented in this case shows that PBXs and key telephone systems continue to be attractive alternatives for business customers that wish to "own" their voice system.¹⁷⁰

¹⁶⁸ Ex. 5, Fernandez HC Direct, p. 15.

¹⁶⁹ Ex. 4, Fernandez Direct, pp. 12-13, 15-16.

¹⁷⁰ Ex. 4, Fernandez Direct, p. 14.

2. Significant Declines In SBC Missouri's Plexar Business Demonstrates Business Customers' Substitution Of These Other Alternative For Plexar.

The Commission has, consistent with well-accepted economic principles, previously ruled that goods or services are substitutable: "if they have the actual or potential ability to take away significant amounts of business from each other."¹⁷¹

Here, uncontested evidence shows that business customers are in fact actually substituting PBXs and key systems for SBC Missouri's central office based Plexar service. For example, large business customers such as Washington University, Bi-State Development Agency, and the Edward Jones brokerage firm have opted to construct private networks using PBXs to handle their communications needs.¹⁷²

In the Sprint Competitive Classification Order, the Commission found that Sprint's loss of a significant portion of its Centrex business demonstrated the substitutability of PBX and other customer-owned equipment for Centrex:

The evidence indicates that Sprint has lost 20% of its CENTREX business since June of 2001. It is reasonable to attribute most of this business loss to competition from customer-owned equipment . . . potential customers realize they can use either alternative to satisfy the demand for switching services. As a result, customer-owned equipment is substitutable for Sprint's CENTREX service and satisfies the second consideration.¹⁷³

Here, the substitutability of CLEC Centrex and non-regulated customer-owned equipment for SBC Missouri's Plexar services can similarly be seen in the steady decline in SBC Missouri's Plexar business. From January, 2002 until September, 2004, SBC Missouri lost

** ** Plexar lines, which represents approximately ** ** of its Plexar business.¹⁷⁴ These

¹⁷¹ Ex. 43, Sprint Competitive Classification Order, p. 40.

¹⁷² Ex. 4, Fernandez Direct, p. 17.

¹⁷³ In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, p. 40.

¹⁷⁴ Ex. 5HC, Fernandez HC Direct, p. 15, and Schedule 4HC.

Plexar service losses are in line with national industry trends, which show Centrex line growth to be declining while other forms of business service, such as VoIP, to be increasing.¹⁷⁵

(c) **Granting Competitive Classification Will Advance The Purposes and Policies of Chapter 392.**

In the Sprint Competitive Classification Case, the Commission found the purposes and policies of Chapter 392 were satisfied with respect to Sprint's Centrex service based on the effect of the unregulated PBX and key system market on the price for LEC-provided Centrex service;

Customer-owned switch equipment is sold by unregulated competitors in an unregulated market. Therefore, the market determines the price charged for that equipment. If Sprint wishes to compete for that business, the prices it can charge for its services will be determined by that market as well. The third consideration is therefore satisfied.¹⁷⁶

Here, the prices SBC Missouri can charge for its Plexar services are subject to the same competitive forces exerted by the unregulated customer equipment market. Accordingly, this element of the statutory test should similarly be satisfied. And Staff concurs, as it supports SBC Missouri's request for a competitive classification of SBC Missouri's Plexar services in all SBC Missouri exchanges in Missouri.¹⁷⁷

(d) **No Material Economic Or Regulatory Barriers To Entry Exist.**

In the Sprint Competitive Classification Case, the Commission found that no economic or regulatory barriers to entry existed because "the competition for Sprint's Centrex services is coming from the unregulated market for equipment."¹⁷⁸ Here, SBC Missouri's Plexar brand of Centrex service is subject to the same competition coming from the unregulated market for equipment. Accordingly, no economic or regulatory barriers to entry should be found to exist.

¹⁷⁵ Ex. 4, Fernandez Direct, p. 15, Schedule 5P.

¹⁷⁶ Ex. 43, Sprint Competitive Classification Order, pp. 40-41.

¹⁷⁷ Ex. 20, McKinney Rebuttal, pp. 13-14..

¹⁷⁸ Ex. 43, Sprint Competitive Classification Order, p. 41.

Issue 3. The Commission, pursuant to Section 392.245.5 RSMo. 2000, previously classified SBC Missouri's residential access line and residential line-related services in the Harvester and St. Charles exchanges as competitive in Case No. TO-2001-467. In which additional SBC Missouri exchanges, if any, does effective competition exist, such that SBC Missouri's residential access line and residential line-related services should be classified as competitive?

Effective competition exists for SBC Missouri's residential access line services¹⁷⁹ and its line-related services¹⁸⁰ throughout its territory and these services should be classified as competitive in all remaining SBC Missouri exchanges.

(a) **Residential Access Line And Line-Related Services Are Widely Available From Alternative Providers Throughout SBC Missouri's Territory.**

Numerous CLECs provide tariffed residential telecommunications services throughout SBC Missouri's service territory that are functionally equivalent to or directly substitutable for SBC Missouri's residential access line and line-related services. The evidence also shows that such services are also widely available from non-regulated providers such as wireless carriers, cable companies, and VoIP service providers.

CLECs provide such services by purchasing UNEs from SBC Missouri, or by utilizing their own facilities or those of another CLEC.¹⁸¹ CLECs offer such services at rates that are

¹⁷⁹ Residential access line services includes those services that provide basic voice access to the telecommunications network. For residential service, the most typical service is flat rate telephone service. In addition, there are other forms of access including measured service and message rate service. (Ex. 10, Stoia Direct, p. 10.)

¹⁸⁰ SBC Missouri's residential access line related services include vertical services and custom calling features such as calling waiting, auto redial, three-way calling, call blocker, caller ID with name delivery, caller ID with number delivery, speed dial 8 and call waiting ID. (Ex. 10, Stoia Direct, p.21).

¹⁸¹ Ex. 10, Stoia Direct, pp. 3, 10-13; Ex. 15, Unruh Direct, p. 19.

comparable to SBC Missouri's rates,¹⁸² and offer the same local calling scopes.¹⁸³ CLECs are also actively marketing their residential line services in Missouri.¹⁸⁴

Wireless service is now a viable substitute for landline service and a survey of Missouri metropolitan area wireless users indicates 18% of wireless users do not have a landline phone.¹⁸⁵ Cable telephony, which uses cable TV wiring, is a direct substitute for SBC Missouri's landline telephone services as are VoIP providers.¹⁸⁶ Both cable telephony and VoIP provide the same service and basic features as SBC Missouri's residential access line and line-related services.¹⁸⁷

1. CLECs Aggressively Offer Residential Access Line And Line-Related Services In Every SBC Missouri Exchange.

The most recognizable form of competition today comes from CLECs in Missouri providing the exact same types of residential access lines and line-related services that SBC Missouri provides. Based on the number of CLECs passing wholesale orders to SBC Missouri during recent months, there are over 65 CLECs actively competing in SBC Missouri's service territory throughout the state, and there are CLECs operating in each SBC Missouri exchange.¹⁸⁸ Based on information provided on the Commission's own website, there appears to be at least 21 CLECs in each SBC Missouri exchange that hold themselves out to provide residential service (excluding prepaid providers).¹⁸⁹

¹⁸² Ex. 10, Stoia Direct, pp. 11-12

¹⁸³ Ex. 10, Stoia Direct, pp. 12-13.

¹⁸⁴ Ex. 10, Stoia Direct, p. 13, and Schedule 7.

¹⁸⁵ Ex. 13, Shooshan Direct, pp. 4, 17-18; Ex. 10, Stoia Direct, pp. 13-15, Schedule 8.

¹⁸⁶ Ex. 10, Stoia Direct, pp. 4, 16-18.

¹⁸⁷ Ex. 10, Stoia Direct, pp. 16-18.

¹⁸⁸ Ex. 15, Unruh Direct, p. 21.

¹⁸⁹ Ex. 15, Unruh Direct, p. 26, Schedule 7.

SBC Missouri has presented very detailed information identifying the minimum number of CLECs that are actually providing service in each SBC Missouri exchange. For example, SBC Missouri presented maps showing the range (i.e., 1-2 CLECs, 3-5 CLECs, 6-9 CLECs, 10+ CLECs) of the number of CLECs actively serving customers in each SBC Missouri exchange. These maps geographically depict information contained in SBC Missouri's wholesale records, such as the number of resold lines, CLECs' purchase of UNE-P, or the presence of an E-911 listing in the 911 database.¹⁹⁰ SBC Missouri also provided a spreadsheet identifying the minimum number of CLECs actively serving customers in each SBC Missouri exchange and the breakdown of CLEC-served lines by the method of provisioning.¹⁹¹

In addition, SBC Missouri demonstrated the specific exchanges in which CLECs have obtained numbering resources (entire NXX codes or 1000 blocks). This information was obtained from the Local Exchange Routing Guide ("LERG"), which is an industry database used for routing traffic between carriers. Having numbering resources in an exchange allows, a CLEC to provide voice service to customers in that exchange and signifies the CLECs use of its own switching facilities (or those of a third party other than SBC Missouri). SBC Missouri demonstrated where CLECs have switches and points of interconnection where those numbering resources are located.¹⁹² SBC Missouri also identified the specific exchanges in which CLECs (information excluding SBC Missouri's affiliate ASI) have established collocation, which shows the approximately 88% (where CLECs have deployed facilities to customers of the traditional

¹⁹⁰ Ex. 15, Unruh Direct, p. 24 and Schedule 6HC.

¹⁹¹ Ex. 16, Unruh HC Direct, Schedule 13HC.

¹⁹² Ex. 15, Unruh Direct, p. 22-23, Schedule 5.

landlines in SBC Missouri's territory are in exchanges where CLECs have established collocation arrangement.)¹⁹³

According to SBC Missouri's internal wholesale business records,¹⁹⁴ CLECs are actually providing service in nearly every SBC Missouri exchange, both urban and rural.¹⁹⁵ of SBC Missouri 160 exchanges have or more non-prepaid CLECs actively serving customers. exchanges have or more non-prepaid CLECs actively serving customers and of SBC Missouri exchanges have at least CLECs actively serving customers.¹⁹⁶

And competition within the MCAs is particularly acute. According to SBC Missouri's wholesale business record, there are on an average CLECs that are currently serving customers within the MCA exchanges.¹⁹⁷

2. Numerous Non-Regulated Carriers Provide Very Desirable Alternatives To Residential Wireline Services.

While CLECs continue to provide significant competition in the residential telecommunications services market, SBC Missouri now also faces significant competition from non traditional and non-regulated service providers such as wireless carriers, CableTV providers and VoIP service providers. The evidence presented demonstrates that these services represent

¹⁹³ Ex. 15, Unruh Direct, p. 27, Schedule 9HC.

¹⁹⁴ SBC Missouri identified the CLEC as actively serving customers by their purchase of resold lines, purchase of UNE-P, or the presence of an E-911 listing in the 911 database. Ex. 15, Unruh Direct, p. 14.

¹⁹⁵ Ex. 16, Unruh HC Direct, pp. 30-31, Schedule 6HC, Schedule 13HC (these schedules do not reflect the number of other providers such as wireless or VoIP providers).

¹⁹⁶ Ex. 16HC, Unruh HC Direct, p. 30, Schedule 9HC.

¹⁹⁷ Ex. 16HC, Unruh HC Direct, p. 33; see also, Schedules 10HC, 11HC and 12HC. Tables displaying minimum CLEC market share within the MCAs and representative areas outside the MCA are set out under Issue 1, Section (b)(2) above.

not just potential competition, but actual competition, as the evidence shows that these services are actually displacing wireline telephone services.

A. Residential Customers Are Increasingly Using Wireless Service As A Substitute For Wireline Service.

Increasingly, consumers are opting to substitute their wireless service for traditional residential wireline service. Wireless service can more efficiently meet the multifaceted needs of the growing population of technology savvy consumers.

As demonstrated Under Issue 1, Section (a)(2)(A) of this Brief above, undisputed evidence demonstrates that wireless services are widely available throughout SBC Missouri's exchanges (excluding both Cingular and AT&T Wireless). 75% of SBC Missouri exchanges have two or more wireless providers, and at least 96% of SBC Missouri's customers have access to at least two wireless carriers (again excluding Cingular and AT&T wireless).¹⁹⁸

In many cases, residential consumers have decided that they no longer need a landline telephone, and instead rely primarily or even exclusively on their wireless phone to make calls to friends and family. According to a Missouri-specific survey conducted in September and October, 2004, 18% of wireless consumers (distributed across all age groups) have cut the cord and now exclusively use wireless for their telephone service. Of the remainder surveyed, 64% frequently use their cell phones in their homes to make and receive calls 16% use their cell phone as their primary home phone. And 72% believe cellular service would be a satisfactory replacement for all calls made and received at home.¹⁹⁹

¹⁹⁸ See, Section Issue 1(a)(2)(A).

¹⁹⁹ Ex. 13, Shooshan Direct, pp. 4, 17-18.

Staff concedes that substitutability must be measured from the perspective of the consumer, not the supplier.²⁰⁰ And at the hearing, Staff also conceded that wireless did act as a substitute for wireline, at least for some consumers.²⁰¹ As Mr. Shooshan noted, the issue is not whether all consumers consider wireless as a substitute for wireline, but is instead whether enough perceive wireless as a substitute that it constrains wireline pricing.²⁰²

B. CableTV Companies Are Offering Residential Telephone Service.

The evidence in this case shows that CableTV companies are now providing telephone service over their existing cable networks. These carriers bundle CableTV and Cable Telephony at a discounted price point. For example, Time Warner offers digital phone service that includes unlimited local intra and interstate long distance calling for “as low as \$39.95 per month.” This offer includes not only local service, but also popular features such as CallerID, Call Waiting, Call WaitingID, enhanced 911, free installation and reporting of the customer’s current telephone number.²⁰³

Cable companies that offer telephone service in Missouri include Time Warner, Charter and Comcast. In the previous SBC Missouri competition case, the Commission recognized the competitive force being exerted by Charter Cable in the market for residential telecommunications services in the St. Charles and Harvester exchanges and granted competitive classification based on that competition. The Commission should note that Charter has greatly expanded its operations and now actively provides residential telephone service in the following SBC Missouri exchanges:

²⁰⁰ T. 888, McKinnie.

²⁰¹ T. 891-893, McKinnie.

²⁰² T. 247, Shooshan.

²⁰³ Ex. 10, Stoia Direct, p. 4.

St. Charles	High Ridge
Harvester	Sappington
Chesterfield	Webster Groves
Pond	Kirkwood
Manchester	Mehlville
Eureka	St. Louis
Valley Park	Ladue
Fenton	Creve Coeur ²⁰⁴
Pacific	

C. Residential Customers Are Increasingly Using VoIP Service As A Replacement For Traditional Circuit Switched Telephone Service.

The newest competitor to enter the residential marketplace are VoIP providers. These competitors provide telecommunications services via the Internet. With VoIP service, consumers can receive the same type of services they receive from traditional local exchange carriers, but without limits on calling scopes.²⁰⁵

All that is required to establish VoIP service is an easy-to-connect plug-in telephone adapter that is usually provided by the VoIP provider (or its retail outlet), a broadband Internet connection, and a regular telephone supplied by the consumer. According to industry press releases, VoIP service is simple to use and easy for customers to install, typically in 10 minutes.²⁰⁶

Such competition from VoIP providers should not be ignored in areas where SBC provides DSL service. First, broadband services are available via cable modem services to 71% of SBC Missouri's customers, compared to 65% for DSL.²⁰⁷ Thus, such an argument, even if accepted, would not apply to the vast majority of SBC Missouri's service area. And second,

²⁰⁴ Charter FiberLink-Missouri L.L.C. Local Exchange Tariff, 4th Revised Title Page, Effective June 21, 2004); see, Ex. 10, Stolia Direct, Schedule 12, p. 1 of 62.

²⁰⁵ Ex. 10, Stolia Direct, p. 4.

²⁰⁶ Ex. 10, Stolia Direct, p. 6.

²⁰⁷ E. 10, Stolia Direct, Schedule 4P.

SBC Missouri is not the only carrier actively providing DSL service. xDSL loops are available to any CLEC and other carriers, such as Covad, purchase them to provide their own DSL to customers.²⁰⁸

Carriers offering VoIP service to residential customers in Missouri include Charter, AT&T, Time Warner ComCast, CableVision, Level 3 Communications, Vonage, Nuvio, and Packet 8.²⁰⁹

(b) **Alternate Providers Offer Functionally Equivalent Or Substitutable Services To SBC Missouri's Residential And Line-Related Services.**

The evidence demonstrates that residential services offered both by regulated CLECs and non-regulated wireless, CableTV and VoIP providers are directly substitutable for or functionally equivalent to, at comparable rates, terms and conditions, the residential switched access lines services and line-related services offered by SBC Missouri. The substitutability of these alternatives is confirmed by the fact that they are actually displacing wireline residential service. On statewide basis, and looking only at CLEC competitors, SBC Missouri has lost approximately 11% of residential access lines. (SBC Missouri also presents highly confidential exchange-specific market share information in Mr. Unruh's direct testimony.)²¹⁰ In the three years since the last competitive classification case, CLEC residential lines have more than tripled.²¹¹

²⁰⁸ T. 320, Stoia.

²⁰⁹ Ex. 10, Stoia Direct, p. 20.

²¹⁰ Ex. 15, Unruh Direct, pp. 21, 43, Schedules 3, 4, 13HC and 18.

²¹¹ Ex. 15, Unruh Direct, p. 21.

1. Competitors Offer The Same Type Of Residential Telephone Service As SBC Missouri, And In Many Cases Offer More Features.

As reflected in approved tariffs filed with the Commission, the residential telephone service being provided by CLECs in Missouri are essentially the same as what SBC Missouri offers its own residential customers.²¹² In addition to the individual access line and individual features, CLECs offer bundled services to residential customers in which they package local service, popular calling features and often long distance. These bundles offer similar services as those offered by SBC Missouri at comparable prices.²¹³

Local calling scopes offered by CLECs are also comparable to those offered by SBC Missouri. At a minimum, CLECs typically match SBC Missouri's local calling scopes. However, in the areas where optional MCA is available, CLECs sometimes do not assess their customers a separate charge for MCA service. For example, Sage includes the MCA calling plan as part of its bundled offering and does not charge an additional fee for the extended calling like SBC Missouri charges. As a result, SBC Missouri has lost a significant number of residential customers in these optional MCA areas.²¹⁴

CableTV providers, such as Charter and Time Warner, also provide the same service and basic features as traditional residential phone service provided by SBC Missouri. These carriers also offer bundled residential service similar to that offered by SBC Missouri.²¹⁵

²¹² See, Sage Telecom, Inc. Local Exchange Telecommunications Service Tariff, MoPSC No. 1, Section 3, Description of Services and Section 4 Rates and Charges, effective February, 2002, attached as Schedule 11 to Ex. 10, Stoia Direct.

²¹³ Ex. 10, Stoia Direct, p. 11, Schedule 6 (a price comparison of packages offered by Charter, SBC Missouri, Sage, VarTec and AT&T). See also, Schedule 9 (comparison of competitive calling bundled prices and features comparing CLEC, VoIP, and wireless bundle offerings with those of SBC Missouri).

²¹⁴ Ex. 10, Stoia Direct, pp. 12-13.

²¹⁵ See, Charter FiberLink Local Exchange Tariff, Section 1.8, Local Exchange Service - Description and Rates; Ex. 10, Stoia Direct, p. 16, Schedule 12

Wireless service is also a viable substitute for landline residential service. In addition to offering individual calling features that are similar to those offered by landline telephone companies, wireless providers have devised several creative marketing initiatives that encourage increased wireless usage, leading to further landline displacement. Some usage plans allow customers to carry unused minutes over to the next month. “Group/Family Plans” allow families or groups to talk for free or share minutes, encouraging groups of customers to subscribe to service together. In addition to mobility that SBC Missouri residential wireline service cannot provide, wireless service also usually offers much larger calling scopes than SBC Missouri provides. And like SBC Missouri, wireless carriers typically bundle their services into attractive packages. For example, Verizon Wireless offers its “America’s Choice” plan in Missouri. Pricing for these plans begins at \$34.99 and includes unlimited night and a weekend home calling, 3-Way Calling, 411 Connect, Call Forwarding, Call Waiting, CallerId, Voice Mail and Text Messaging.²¹⁶

And VoIP providers offer not only the traditional local service and telephone service features like Call Waiting, 3-Way Calling and CallerID, VoIP providers offer more advanced features like “Call Logs” to track incoming and outgoing calls; “Do Not Disturb” to receive calls only when wanted; “Locate Me” which rings up to five phones all at once or sequentially; “Voice Mail With eFeatures” to listen to messages from any phone or PC and then forward them to anyone on the web; and “Personal Conferencing” to set up meetings with up to nine additional callers.²¹⁷

²¹⁶ Ex. 10, Stoia Direct, pp. 3-4.

²¹⁷ Ex. 10, Stoia Direct, p. 5.

While some have suggested that these alternatives might not be considered substitutes by everyone, it is the existence of these alternative that serves to constrain the incumbent's pricing. It is not necessary that all view them as substitutes. As long as a substantial number consider the services substitutable, the "check and protection" on pricing is provided.²¹⁸

2. SBC Missouri's Residential Line Loss And The Growth Of CLEC Residential Market Share Demonstrate Substitutability.

Although the statute does not require SBC Missouri to experience any particular level of market share loss in order to have its services classified as competitive, SBC Missouri has lost a significant portion of its business in the residential service market. In the three years since SBC Missouri's last competitive classification case, SBC Missouri has lost over 260,000 residential access lines. SBC Missouri has lost lines to traditional CLECs, cable companies, wireless companies, and VoIP providers.²¹⁹

But simply looking at line loss numbers, or line-based market share estimates, understates the level of success CLECs have had in the marketplace. That is due to the fact that competitors target SBC Missouri customers who have a higher monthly spend. On average, the customers SBC Missouri loses to competition on average spend ** ** on a monthly basis. This conclusion that competitors are not interested in targeting a low end of the market can also be seen from the fact that they do not market ala carte features or naked access lines.²²⁰ On the other hand, SBC Missouri has products and services available for all customer segments, including naked access lines ala carte features, service packages and bundles. SBC Missouri

²¹⁸ T. 247, Shooshan.

²¹⁹ Ex. 10, Stoia Direct, p. 9. The growth in residential CLEC access lines is shown in the table presented in the Executive Summary of this Brief.

²²⁰ Ex. 11, Stoia HC Direct, Schedule 5HC; Ex. 2, Aron Surrebuttal, p. 19.

offers service to all customers, including those who purchase few services that the CLECs do not appear to want to serve.²²¹

3. Competitor Advertising Demonstrates The Substitutability Of Their Services For SBC Missouri's Residential Wireline Services.

The marketing efforts of SBC Missouri's competitors throughout the state reflect the substitutability of these competitors' products for residential wireline services offered by SBC Missouri. These offers make it clear that these competitors are advertising their services as substitutes for SBC Missouri's residential services and their advertisements seek to entice consumers to disconnect SBC Missouri's residential service and purchase the competitors' service instead.²²²

(c) Granting Competitive Status Will Advance The Purposes And Policies Of Chapter 392.

For the reasons set out in detail under Issue 1, Section (c), the purposes and policies of Chapter 392 will be advanced by the Commission's grant of competitive classification to SBC Missouri's residential access line and line-related services. SBC Missouri also addressed the purposes and policies of Chapter 392 in Issue 1(c)(1)-(5). Rather than repeat that discussion here, SBC Missouri respectfully incorporates it by reference herein.

(d) No Material Economic Or Regulatory Barriers To Entry Exist.

For the reasons set out in detail under Issue 1, Section (d), there are no substantial barriers to entry in the residential access line market. SBC Missouri also addressed barriers to entry in Issue 1(d). Rather than repeat that discussion here, SBC Missouri respectfully incorporates it by reference herein.

²²¹ Ex. 10, Stoia Direct, p. 10.

²²² Ex. 10, Stoia Direct, p. 13, Schedule 7 (showing advertisements from MCI, Everest Communications, VarTec, Time Warner, Sage, Charter, AT&T, Sprint, Vonage, and McLeodUSA); Ex. 13, Shooshan Direct, Schedule 2 (showing wireless plan summaries, product materials from the web, and wireless carrier advertising).

Issue 4. In which SBC Missouri exchanges, if any, does effective competition exist for SBC Missouri's directory assistance (DA) services such that those services should be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

Effective competition exists for SBC Missouri's Directory Assistance ("DA") services²²³ throughout its territory. Accordingly, these services should be classified as competitive in each SBC Missouri exchange in Missouri pursuant to Section 392.245.5 RSMo. 2000. It is important to note that even if SBC Missouri provides local service to the end user, the end user can still choose to use any one of a number of alternative providers of directory assistance service.²²⁴

(a) DA Services Are Widely Available From Alternate Providers Throughout The Entire State.

1. There Are Numerous Competitive DA Providers.

Numerous competitive DA providers offer services that are functionally equivalent to, or substitutable for, SBC Missouri's DA service at comparable rates and terms throughout Missouri, including all SBC Missouri exchanges. These competitors include regulated telecommunications companies, like long distance carriers and CLECs (who provide directory services to their customers through their own facilities, through a combination of their own facilities and UNEs purchased from SBC Missouri, or by reselling SBC Missouri's services); as well as non-regulated wireless service providers, internet content providers, directory publishers, independent directory services providers, software companies and others.²²⁵

²²³ Directory Assistance ("DA") Services provide callers with assistance in obtaining telephone listing information. SBC Missouri's DA services include local directory assistance (which provides callers with listed telephone numbers of subscribers who are located in the same local calling area and in the calling customers' home numbering plan area), directory assistance call completion provides the customer the option of having local or intraLATA long distance calls automatically completed by pressing "1" after the listed telephone number is received from directory assistance, and National Directory Assistance and telephone listing information for areas outside the customer's local calling area. (Moore Direct, p. 3).

²²⁴ Id.

²²⁵ Ex. 5, Moore Direct, p. 4.

A. “00” Information service.

“00” services provide end users with local and national directory assistance, call completion, category searches and search by telephone number. To access this service, the caller simply dials “00” and the call is routed to the customer’s pre-subscribed interexchange carrier and their directory assistance service. AT&T’s “00” Service was first introduced in SBC Missouri’s Missouri region in February, 1999. The service is available statewide to AT&T’s residence and business end users where AT&T is the presubscribed interexchange carrier. AT&T promotes its service via mass marketing. MCI WorldCom also offers statewide “00” information service.²²⁶

B. 10-10-ATT-00 Service.

10-10-ATT-00 service is available to all end users within the state of Missouri regardless of whether AT&T is the subscriber’s prescribed interexchange carrier. Callers simply dial 10-10-ATT-00 to reach AT&T’s directory services, including local and national directory assistance, call completion, category searches and search by telephone number. This alternative service is available statewide in Missouri, and is an alternative to SBC Missouri’s local and national directory assistance and call completion service.²²⁷

C. MCI WorldCom’s 1010-9000 Service.

MCI’s 1010-9000 service provides end users throughout the state of Missouri with local and national directory assistance services and call completion.²²⁸ Like AT&T’s 1010-ATT-00 Service, MCI has also promoted its service through mass advertising and direct mail.²²⁹

²²⁶ Ex. 5, Moore Direct, pp. 6-7, Schedule 3 (AT&T’s web materials on its “00” service)..

²²⁷ Ex. 5, Moore Direct, p. 6..

²²⁸ Id.

²²⁹ Ex. 5, Moore Direct, pp. 7-8.

D. Infone's 1-888-411-1111.

Infone's service provides callers throughout the Missouri with local and national directory services, call completion, category searches and other enhanced services such as event times and locations, restaurant reservations, hotel reservations, flight information, driving directions and roadside assistance.²³⁰

E. LSSI's Easy 411

LSSI's service, which is targeted at mobile users, provides local and national directory services and search by telephone number (i.e., reverse directory assistance).²³¹

F. "Area Code-555-1212" Service.

When an end user dials an area code plus 555-1212 and the area code is outside the caller's local calling area, the directory assistance call is routed to the end user's presubscribed interexchange carrier's directory assistance service. For example, if a customer residing in the 314 area code dials 816-555-1212 for directory assistance information, the call is routed to the calling customer's presubscribed interLATA interexchange carrier. This service is provided by toll providers throughout Missouri, including AT&T, MCI and Sprint. Currently, there are over 600 interexchange service providers certificated to provide service in the state of Missouri.²³²

G. Wireless DA.

Wireless carriers offer directory assistance services throughout Missouri, including local and national directory assistance, call completion, category searches, search by telephone number, and various information services. Typically, wireless customers access their wireless carriers' directory assistance by dialing 411 or 1-555-1212. Wireless providers have the option

²³⁰ Exhibit 5, Moore Direct, pp. 6-7. See also, Schedule 4 for additional information on Infone's service.

²³¹ Exhibit 5, Moore Direct, p. 7. See also, Schedule 5 for additional information on LSSI's Easy 411 service.

²³² Ex. 5, Moore Direct, p. 7.

of providing this service by using their own facilities or by using a third party wholesale provider.²³³

H. Internet DA Providers.

The Internet also provides comparable alternatives to traditional directory assistance services, and continues to experience rapid growth as a result of increased Internet usage. The number of online searches for telephone numbers has increased by 3.9 billion since 2001, representing 240% growth in just three years. Services provided over the Internet include local and national directory assistance, category search, and search by telephone number, and these services are available throughout the state of Missouri. Some Internet sites also offer call completion and various information services. There are hundreds of companies providing directory assistance listing information on the Internet. Internet-based directory assistance services are offered by all major Internet search engines and portals, telecommunications providers, directory publishers, and a host of new Internet companies. Companies offering Internet-based directory assistance services include AT&T, Switchboard, AOL, Verizon/GTE, BellSouth, Quest, Yahoo!, Infospace, Whitepages.com, Bigfoot, 555-1212.com, 911, INC along with several other companies. These services are typically offered at no charge to the end-user.²³⁴

I. DA Software For Residence And Business Customers.

In addition to the Internet, residential and business end-users can also purchase directory software with a comprehensive database of local and national listed telephone numbers. For

²³³ Ex. 5, Moore Direct, pp. 7-8.

²³⁴ Ex. 5, Moore Direct, pp. 8-10, Schedule 6.

example, Phonebook USA 2004 software is available for \$180.19 and Powerfinder software is available for \$301.12.²³⁵

J. White And Yellow Page Directories.

White and yellow page directories offered and distributed throughout Missouri are also comparable alternatives to SBC Missouri's local directory assistance services for Missouri consumers, and are generally made available to consumers for no charge.²³⁶

K. CLEC DA Services.

CLECs also provide directory services to their local customers, either through their own facilities, through a combination of their own facilities and SBC Missouri's unbundled network elements, or by reselling SBC Missouri's services. If a Missouri customer chooses a CLEC to provide local services, the end user has directory service options available from its CLEC. SBC Missouri also provides CLECs' end users access to SBC Missouri's directory assistance services as SBC Missouri's retail end users customers, as part SBC Missouri's resold local telecommunications services. However, a CLEC which resells SBC Missouri services may also provide its own directory assistance services, or use a third party directory assistance service provider, and custom route its end user directory assistance calls to itself or to the third party provider it designates.²³⁷

²³⁵ Ex. 5, Moore Direct, p. 11.

²³⁶ Ex. 5, Moore Direct, pp. 11-12.

²³⁷ Ex. 5, Moore Direct, pp. 11-13. See also, Schedule 8 for a summary of various CLEC DA offerings and tariffs filed by other DA providers..

2. Market Share Data Reflects The Widespread Use Of Other DA Alternatives.

The Commission has, consistent with well-accepted economic principles previously ruled that goods or services are substitutable: “if they have the actual or potential ability to take away significant amounts of business from each other.”²³⁸

Here, uncontested evidence shows that SBC Missouri customers are in fact actually substituting these other directory assistance alternatives for SBC Missouri’s DA services.²³⁹ The evidence shows that SBC Missouri’s directory assistance call volumes have significantly declined since 1998, although the overall directory assistance marketplace has grown. During this time, SBC Missouri’s total local directory assistance call volume has decreased ** **.²⁴⁰ There can be no question that there is a healthy and effective, competitive marketplace for directory assistance services throughout Missouri.

Moreover, substitution of these other DA alternatives for SBC Missouri’s DA service is confirmed by a comprehensive market research study SBC Missouri commissioned to study customer usage of various directory assistance alternatives.²⁴¹ On a SBC twelve-state basis, this study showed the following market share results:

White/Yellow Page Directories	<u>**</u>	<u>**</u>
411/555-1212	<u>**</u>	<u>**</u>
Internet Directory Sites	<u>**</u>	<u>**</u>
Wireless	<u>**</u>	<u>**</u>
NPA-555-1212	<u>**</u>	<u>**</u>
Other	<u>**</u>	<u>**</u>

²³⁸ Ex. 43, Sprint Competitive Classification Order, p. 40.

²³⁹ Ex. 6, Moore Surrebuttal, p. 4.

²⁴⁰ Ex. 5HC, Moore Direct, pp. 20-22.

²⁴¹ This study surveyed customers via telephone interviews throughout 12 SBC states to determine how customers obtain directory assistance listing information. 3,262 interviews were conducted (250 in each state, except California where 501 interviews were conducted). This study screened for customers who had utilized a phone source or an on-line source of directory assistance within the last 3 months. Exhibit 5, Moore Direct, pp. 18-19.

²⁴² Exhibit 5, Moore Direct, p. 19.

The market share results specifically for the state of Missouri were:

White/Yellow Page Directories	**	**
411/555-1212	**	**
Internet Directory Sites	**	**
Wireless	**	**
NPA-555-1212	**	**
Other	**	** ²⁴³

The results of this study clearly indicate that competition exists for directory assistance listings and competitive alternatives do in fact include non-phone sources for obtaining this type of information.

3. DA Competition Is Independent Of Competition For Phone Service.

The evidence in this case demonstrates that there is no link between competition for DA services and the level of competition for the underlying access line. Although the Commission in SBC Missouri's previous competitive classification case denied state-wide competitive classification for DA services because it found competition for DA services to be "tied" to competition for the underlying access line, no such evidence has been presented in this case. In fact, all the evidence is to the contrary.

Regardless of the level of competition for local service, SBC Missouri's local customers have numerous choices besides SBC Missouri's 411 service for DA service. If an SBC Missouri local customer is dissatisfied with SBC Missouri's DA service or its price, the customer can easily access numerous competitive alternatives that exist independent of the customer's choice of local service provider.²⁴⁴

Aside from SBC Missouri, only Staff substantively addresses this issue in its testimony. And Staff supports competitive classification for SBC Missouri's DA services. Acknowledging

²⁴³ Exhibit 5, Moore Direct, p. 19.

²⁴⁴ Ex. 5, Moore Direct, pp. 12-16.

the Commission's prior denial of competitive classification and its basis for doing so, Staff testified that the "close link between DA and basic local telecommunications service" has "diminished."²⁴⁵ Based on its review and analysis of the evidence supplied by SBC Missouri and its own independent research and analysis, Staff found:

- DA services are widely available from numerous providers using alternative technologies as well as traditional wire line telecommunications service;
- DA services provided by competitors are functionally equivalent and are provided at comparable rates, terms and conditions;
- Barriers to entry, economic and regulatory, are not inappropriately indiscriminatory.²⁴⁶

Accordingly, Staff found that the various DA services being offered in the state "are highly substitutable to one another, especially when many of them are free."²⁴⁷

No other party addressed this specific issue on a substantive basis in its testimony. In its surrebuttal testimony, OPC referenced the Commission's prior denial of competitive classification based on DA being "closely linked to the competitiveness of basic service."²⁴⁸ And the CLECs merely reiterated this bare claim in their position statement. But no party offered any evidence to support the existence of such a "link" nor did anyone offer any evidence in opposition to a grant of competitive classification for DA services.

OPC and the CLECs' unsupported claim completely ignores the voluminous evidence of competitive alternatives available to SBC Missouri's DA services. Both SBC Missouri and Staff showed that there are a multitude of competing providers of DA services which are available to

²⁴⁵ Ex. 18, Cecil Rebuttal, p. 5.

²⁴⁶ Ex. 18, Cecil Rebuttal, pp. 7-8.

²⁴⁷ Ex. 18, Cecil Rebuttal, pp. 8-9.

²⁴⁸ Ex. 28, Meisenheimer Surrebuttal, p. 4.

end users which do not depend on the end user's choice of a local carrier. OPC and the CLECs completely disregard this evidence. OPC and the CLECs' position also ignores the fact that the FCC has found the DA services marketplace to be competitive.²⁴⁹ In addition, OPC and the CLECs' position ignores the undisputed evidence that SBC Missouri's DA services have been directly impacted by the increasingly competitive DA marketplace.

In its position statement, OPC states that it does not believe SBC Missouri has demonstrated that these Directory Assistance Services are subject to effective competition.” However, OPC fails to identify how SBC Missouri's evidence of effective competition is lacking, if at all.

OPC and the CLECs' narrow view of the competitive alternatives available to SBC Missouri's DA services is not supported by the evidence, and is completely inconsistent with the reality of the DA marketplace. Alternative DA service providers exist in each SBC Missouri exchange throughout the state and customers clearly have a choice between multiple DA service providers. The evidence in this case reflects that end users are simply no longer dependent on their local service provider for DA services. The Commission should recognize this competitive reality and find that all of SBC Missouri's DA services throughout Missouri are subject to effective competition, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

²⁴⁹ Initial Brief of SWBT, p. 80.

(b) **Competitive DA Providers Offer Functionally Equivalent Or Substitutable Services.**

The comparable alternatives discussed above and described in Ms. Moore's direct testimony in detail offer the same, and sometimes expanded functionality, as the directory assistance services provided by SBC Missouri.²⁵⁰ For example, many wireless providers offer information services, such as directions, stock quotes, weather and traffic reports, all via their directory assistance service.²⁵¹ Likewise, AT&T's "00" Information Service and Internet sites provide business category searches as well.²⁵² Furthermore, the rates available from comparable, alternative service providers are competitive with SBC Missouri's rates for directory assistance services.²⁵³ Many of the alternatives described above and in more detail in Ms. Moore's direct testimony are not regulated by the Commission. However, all of the alternatives described above and in more detail in Ms. Moore's direct testimony are available in every SBC Missouri exchange throughout the state of Missouri.²⁵⁴

The Commission should also take into consideration that the FCC has repeatedly found the directory assistance services marketplace to be competitive.²⁵⁵ In its UNE Remand Order,²⁵⁶ the FCC removed directory assistance services from the list of unbundled network elements which incumbent LECs must provide to competitors.²⁵⁷ On several other occasions, the FCC has

²⁵⁰ Ex. 5, Moore Direct, p. 14.

²⁵¹ Id.

²⁵² Id.

²⁵³ Id. See Schedule 8.

²⁵⁴ Ex. 5, Moore Direct. P. 15.

²⁵⁵ Id.

²⁵⁶ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 3rd Report and Order, FCC 99-238, pars. 438-464, rel. Nov. 5, 1999.

²⁵⁷ Ex. 5, Moore Direct, p. 15.

noted the competitive nature of the directory assistance marketplace.²⁵⁸ Finally, directory assistance services have been price deregulated in at least 15 states, including Illinois, Kansas, and Texas.²⁵⁹

(c) **Granting Competitive Classification Will Advance The Purposes And Policies Of Chapter 392.**

1. The FCC Has Found The DA Services to Be Competitive.

The FCC on numerous occasions has found the DA services marketplace to be competitive. In its UNE remand order, the FCC removed directory assistance services from the list of unbundled network elements on the basis that such services were available from other providers on a competitive basis. The FCC stated that “competition in a provision of... directory assistance has existed since divestiture...[s]uch competition has accelerated in the directory assistance market as a result of the Supreme Court’s decision to allow copying of carriers’ white page listings in their entirety.”²⁶⁰

Similarly, in its declaratory ruling on Qwest’s provision of national directory assistance service, the FCC found that there were a large and increasing number of players in the directory assistance services market. In particular, when the FCC evaluated Qwest’s request for forbearance from federal 272 separation requirements for non-local directory assistance, the FCC found that the company faced competition from numerous sources, including CLECs, AT&T, and MCI WorldCom.²⁶¹ And in its Notice of Proposed Rulemaking regarding the provision of

²⁵⁸ See, Ex. 5, Moore Direct, pp. 15-16.

²⁵⁹ Ex. 5, Moore Direct, p. 17.

²⁶⁰ Feist Publications, Inc. vs. Rural Service Co., 499 US 340 (1991).

²⁶¹ Ex. 5, Moore Direct, p. 16, citing In the Matter of Petition of US West Communications, Inc. for a declaratory ruling regarding the provision of national directory assistance, petition of US West Communications, Inc. for forbearance, CC Docket No. 97-172; the use of N11 codes and other abbreviated dialing arrangements, CC Docket No. 92-105, September 27, 1999.

directory listing information under the Act, the FCC again stated that “the provision of directory assistance has become increasingly competitive.”²⁶²

2. Numerous Other States Have Deregulated Directory Assistance Services.

Directory assistance services have been officially recognized as being competitive, deregulated, nonbasic or have been granted complete pricing flexibility in at least 33 states. These include Alabama, Arizona, Arkansas, Colorado, Delaware, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Ohio, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming.²⁶³

3. Customers Will Benefit From Classifying DA Services As Competitive.

The fact that SBC Missouri’s prices are constrained by regulation limits its ability to respond to changes in customer demands and to changing competitive markets. Customers will be the benefactors if competitive classification for SBC Missouri’s directory assistance services is granted. With such classification, for its DA services, SBC Missouri will be able to respond more quickly to the competitive marketplace, offering new products when appropriate at prices in line with those offered by its competitors. Such an environment will allow for unfettered competition to drive product innovation. All competitors in today’s competitive market should be permitted to operate on a level playing field, thus allowing for open competition to drive product innovation.²⁶⁴

²⁶² Id. citing FCC Notice of Proposed Rulemaking, CC Docket No. 99-273, September 9, 1999.

²⁶³ Exhibit 5, Moore Direct, p. 18.

²⁶⁴ Exhibit 5, Moore Direct, p. 20.

(d) **No Material Economic Or Regulatory Barriers To Entry Exist In The DA Services Market.**

The Directory Assistance services marketplace is characterized by the lack of market entry barriers.²⁶⁵ Directory listings are available to local exchange and toll carriers on reasonable and nondiscriminatory terms under Section 251(B)(3) of the federal Telecommunications Act of 1996.²⁶⁶ All directory assistance service providers obtain listings from a variety of sources, including incumbent LECs such as SBC Missouri, in order to maintain accurate databases.²⁶⁷ The sources include the providers' own listings, listings of other local exchange companies, and commercially available listing information. Providers of directory assistance services and other functionally equivalent services are able to freely copy white pages directories without copyright restrictions.²⁶⁸

In short, SBC Missouri's residential and business customers throughout SBC Missouri's Missouri exchanges have multiple alternatives, substitutable in both function and price, to using SBC Missouri's directory assistance services. As a result, SBC Missouri's directory assistance services are subject to "effective competition" as defined in Section 386.020(13), RSMo 2000 and these services should be declared to be competitive pursuant to Section 392.245.5 RSMo 2000.

²⁶⁵ Ex. 5, Moore Direct, p. 5.

²⁶⁶ Provision of Directory Listing Information under the Telecommunications Act of 1934, as amended, First Report and Order, FCC 01-27, par. 10, January 23, 2001.

²⁶⁷ Ex. 5, Moore Direct, p. 6.

²⁶⁸ Feist Publications, Inc., v. Rural Service Co., 499 U.S. 340 (1991).

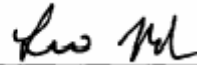
CONCLUSION

For the reasons described above, SBC Missouri respectfully requests that the Commission issue an order finding that all of SBC Missouri's services face effective competition throughout SBC Missouri's Missouri exchanges, and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

BY

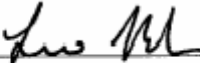


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on February 18, 2005.



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