

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

In the Matter of the Investigation of the)	
State of Competition in the Exchanges of)	Case No. TO-2001-467
Southwestern Bell Telephone Company.)	

**BRIEF OF SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A AT&T MISSOURI**

Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”)¹ hereby submits its Brief in the above-captioned case:

I. SUMMARY

Based on an extensive record spanning almost twenty years, the Commission should conclude in this case on remand from the Court of Appeals that there is effective competition for each of the AT&T Missouri services at issue in this case, and there was effective competition for each of these services, both when the Commission issued its December 27, 2001, Report and Order in this case and when the Court of Appeals issued its March 3, 2005, mandate reversing in part and remanding the Report and Order to the Commission for further proceedings. This result -- and only this result -- would be consistent with the Court of Appeals mandate and would effectuate the legislature’s de-regulatory intent, as reflected in legislation likewise spanning almost twenty years: House Bill 360 (“H.B. 360”) enacted in 1987; Senate Bill 507 (“S.B. 507”) enacted in 1996; and Senate Bill 237 (“S.B. 237”) enacted in 2005.

The specific services at issue are AT&T Missouri’s intraLATA private line/dedicated services, intraLATA toll/message telecommunications services (“intraLATA toll/MTS services”), Wide Area Telecommunications Services (“WATS”) and 800 services, and certain operator services (i.e., station-to-station, person-to-person, and calling card services). The

¹ All references to AT&T Missouri shall include AT&T Missouri’s predecessors, Southwestern Bell Telephone Company and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, unless otherwise indicated.

Commission first classified each of these services as competitive well over a decade ago, both for interexchange carriers (“IXCs”) in 1989 and for AT&T Missouri in 1992, and confirmed competitive classification for several of them offered by Sprint in 2003. These services could and should have been declared to be competitive pursuant to the statutory regime in existence in March, 2005, when this case was remanded to the Commission. The Commission should now take that step, as it should have been done in March, 2005 in compliance with the Court’s mandate.

The Commission’s doing so would moot the need for any further proceedings in this already protracted case to address the assertion made by a handful of competitive local exchange carriers (“CLECs”) that AT&T Missouri should revise its prices for these services to the extent necessary to comply with the maximum prices that existed as of the effective date of the Report and Order, subject to any intervening adjustments under successive versions of the price cap statute. That proposal is unlawful and beyond the Court of Appeal’s mandate, which directs the Commission to apply the “effective competition” criteria from Section 392.245 of H.B. 507. Even if the CLECs’ position were lawful, it is inconsistent with the facts, as the vast majority of AT&T Missouri’s business and residential access lines and all associated services are classified as competitive under the criteria established in H.B. 237. Moreover, again assuming the CLECs’ position is correct, the bulk of the services at issue are priced within the bounds of the price cap statute.

II. PROCEDURAL BACKGROUND

This case was established by the Commission for the purpose of “investigating the state of competition in [AT&T Missouri] exchanges in accordance with Section 392.245.” In its later

December 27, 2001 Report and Order,² the Commission determined, among other findings,³ that certain AT&T Missouri services which the Commission had declared transitionally competitive in 1992⁴ had automatically become, by operation of law, classified as competitive services throughout AT&T Missouri's exchanges on January 10, 1999, in accordance with Section 392.370.⁵ These services include intraLATA private line/dedicated services, intraLATA toll toll/message telecommunications services ("intraLATA toll/MTS services"), Wide Area Telecommunications Services ("WATS") and 800 services, special access services, and certain operator services (i.e., station-to-station, person-to-person, and calling card services).⁶

On September 28, 2004, the Missouri Court of Appeals for the Western District of Missouri reversed this determination.⁷ The Court held that the Commission had applied the incorrect standard in assessing competitive classification pursuant to Section 392.370, and that the Commission should have assessed competitive classification for the services pursuant to the

² In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, December 27, 2001, 2001 Mo. PSC LEXIS 1770 ("Report and Order"). Page references to LEXIS-cited cases utilize the LEXIS * pagination system.

³ The Commission also determined that effective competition exists for AT&T Missouri's core business services and services related thereto in its Kansas City and St. Louis exchanges. The Commission also found that effective competition exists for AT&T Missouri's core residential services and services related thereto in its Harvester and St. Charles exchanges. Finally, the Commission found that effective competition exists in all of AT&T Missouri's exchanges for Common Channel Signalling/Signalling System 7 and Line Information Database services. Report and Order, p. 3. Based on its determination that these services were subject to effective competition in the exchanges identified, the Commission classified these services as competitive telecommunications services pursuant to Section 392.245. Report and Order, pp. 52-53.

⁴ In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, Case No. 93-116, Report and Order, December 21, 1992, 1992 Mo. PSC LEXIS 23 ("AT&T Missouri Reclassification Order").

⁵ Report and Order, p. 4.

⁶ Report and Order, p. 4.

⁷ State of Missouri ex rel., Acting Public Counsel John Coffman v. Public Service Commission of the State of Missouri, 154 S.W. 3d 316, 329-330 (Mo. App. W.D. 2004). The Court affirmed the Commission's grant of competitive classification for business services in St. Louis and Kansas City, residential services in Harvester and St. Charles, and Common Channel Signalling/Signalling System 7 and Line Information Database services in all of AT&T Missouri's exchanges, under the price cap statute, Section 392.245. 154 S.W.3d at 324.

“effective competition” provisions of Section 392.245. Consequently, the Court remanded the case and ordered the Commission “to re-examine the competitive status of these particular services by applying the ‘effective competition’ factors to the evidence the Commission has already accumulated with regard to these services both from the 1993 ‘transitionally competitive’ hearing in Case No. TO-93-116 as well as from the hearing in this underlying case.”⁸ The Court’s March 3, 2005, mandate thus “reversed and remanded to the Circuit Court of Cole County as to Point II [i.e., the decision concerning the services which were deemed competitive by operation of law under Section 392.370] for further proceedings all in accordance with the opinion of this court.” On March 18, 2005, the Circuit Court of Cole County entered its Order Remanding Case wherein the court remanded the case to the Commission for further proceedings in accordance with the Court of Appeals’ opinion.

Following the filing of various recommendations by the parties as to how best to proceed with the case on remand, the Missouri legislature passed S.B. 237, which was signed by the Governor and became effective on August 28, 2005. The Commission’s November 16, 2005, Order Setting Procedural Conference acknowledged that “statutory changes in Senate Bill 237 are now effective. Moreover, in Case Nos. TO-2006-0093 and TO-2006-0102, the Commission has found that the business and residential services in many of [AT&T] Missouri’s exchanges meet the new statutory standards for competitive classification.” Order Setting Procedural Schedule, p. 2. Thus, the Order directed the parties to identify the issues remaining for Commission determination; what additional evidence, if any, was needed to make that determination; the effects of the new law on the current case; and the effect Case Nos. TO-2005-0035, TO-2006-0093 and TO-2006-0102 have on this case. *Id.*, p. 2. In their December 5, 2005,

⁸ 154 S.W.3d. at 329.

response to the Order, NuVox Communications of Missouri, Inc., XO Communications Services, Inc., MCImetro Access Transmission Services, LLC and MCI Communications, Inc. (collectively, “CLECs”) asserted that AT&T Missouri should be directed to file revised tariffs to “revise its prices to the extent necessary to comply with the maximum prices that existed as of the January 6, 2002, effective date of the Commission’s Report and Order herein, subject to any intervening adjustments to such maximum prices under the price cap statute in its respective versions applicable during such time period.”

On December 14, 2005, AT&T Missouri moved to dismiss the case, explaining that the Commission’s issuance of decisions approving competitive classification for business and residential services in exchanges representing the vast majority of AT&T Missouri’s access lines negated the need for any additional action by the Commission. AT&T Missouri also replied to the CLECs’ December 5, 2005, response, explaining that even if the response were well taken with respect to the services subject to the remand in exchanges not yet declared competitive under the provisions of S.B. 237, very few tariff price changes would be required because, for all but a few services, the current tariff prices do not exceed the maximum allowable prices which would have been permitted under the price cap statute.

Upon denying AT&T Missouri’s motion on October 26, 2006,⁹ the Commission noted that the issue before the Commission now is “whether there is sufficient evidence in the record that the services which the Commission incorrectly determined as competitive by operation of law are competitive.”¹⁰ The Order directed that the parties file proposed findings of fact and conclusions of law, and briefs, directed to “the competitive status of the previously determined

⁹ Order Denying Motion to Dismiss and Directing Filing of Proposed Findings of Fact and Conclusions of Law, October 26, 2006 (“Order”).

¹⁰ Order, p. 2.

transitionally competitive services which have not yet been declared competitive.”¹¹ The Order also stated that the findings of fact should also “set out which services in which exchanges have now been designated as competitive under the new law, and which ones remain to be determined.”¹²

III. LEGISLATIVE AND REGULATORY BACKGROUND

The legislature has long fostered and helped put in place effective and robust telecommunications services competition in Missouri. With regard to the specific services at issue here, such competition existed both when the Commission issued its Report and Order and when the Court of Appeals’ mandate returned the case to the Commission.

For example, H.B. 360, passed in 1987, directed the Commission to reduce regulatory requirements as competition expanded in the various telecommunications markets.¹³ With the passage of H.B. 360, the Missouri legislature provided the Commission with the authority to begin recognizing services and service providers as competitive.¹⁴ The legislature enacted procedures to allow a company to seek classification of its services or itself (as a company) as either transitionally competitive or as competitive.¹⁵ Companies began seeking transitionally competitive classification for services in 1987.¹⁶

¹¹ Order, p. 2.

¹² Order, p. 3.

¹³ Ex. 16, Hughes Direct, p. 6. All references to exhibits and testimony herein shall mean to refer to exhibits and testimony admitted into the record in Case No. TO-2001-467, unless otherwise indicated.

¹⁴ Ex. 16, Hughes Direct, p. 6.

¹⁵ Ex. 16, Hughes Direct, p. 6.

¹⁶ Ex. 16, Hughes Direct, p. 7.

Under Section 392.361, enacted as part of H.B. 360, a telecommunications company seeking either transitionally competitive or competitive classification status for a service is required to show, based upon all relevant factors, that the service is subject to sufficient competition to justify a lesser degree of regulation. Once a service is found to be competitive or transitionally competitive, the Commission must classify the same telecommunications services of another company as transitionally competitive or competitive by relying on the finding of fact made in the original proceedings.¹⁷ Under Section 392.370.1, the petitioning telecommunications company is required to show (1) an order had been issued under 392.361 that finds the service has been classified as competitive or transitionally competitive; (2) that the service of the petitioning company is the same as, substitutable for, or equivalent to the service classified as either transitionally competitive or competitive; and (3) the competitive or transitionally competitive service is authorized to be provided in the petitioning company's service area.¹⁸

The continued development of effective and robust competition led to the 1996 enactment of S.B. 507, which authorized CLECs to begin providing basic local telecommunications service in competition with ILECs.¹⁹ In recognizing the advancement of service offerings by new competitors, S.B. 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.²⁰ S.B. 507 provided for a phased-in approach. The Commission was directed to regulate ILECs via price cap regulation upon the initiation of local competition anywhere in

¹⁷ Ex. 16, Hughes Direct, p. 8.

¹⁸ Ex. 16, Hughes Direct, p. 8.

¹⁹ Ex. 16, Hughes Direct, pp. 13-14.

²⁰ Ex. 16, Hughes Direct, pp. 13-14.

the ILEC's service area.²¹ Under Section 392.245.2, 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.²² On March 21, 1997, AT&T Missouri asked the Commission to determine that it was subject to price cap regulation pursuant to Section 392.245.2.²³ In Case No. TO-97-397, the Commission approved AT&T Missouri as a price cap regulated company, effective September 26, 1997.²⁴

S.B. 507 also contemplated that after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated.²⁵ The legislature recognized that the fullest consumer benefits will be derived from a market where all telecommunications providers are regulated in the same manner.²⁶

Section 392.245.5 RSMo 2000 provides in pertinent part as follows:

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.²⁷ (emphasis added).

²¹ Ex. 16, Hughes Direct, p. 14.

²² Ex. 16, Hughes Direct, p. 14.

²³ Ex. 16, Hughes Direct, p. 14.

²⁴ Ex. 16, Hughes Direct, p. 14.

²⁵ Ex. 16, Hughes Direct, p. 14.

²⁶ Ex. 16, Hughes Direct, p. 14.

²⁷ Communications Cable-Laying Company d/b/a Dial US became the first CLEC certificated in Missouri when its tariffs were approved by the Commission in January, 1997. Dial US began providing service in Springfield thereafter. Ex. 16, Hughes Direct, p. 17.

The legislature also provided the Commission the factors it was to use in determining if “effective competition” existed for a particular service. Section 386.020(13) states: “‘Effective competition’ shall be determined by the [C]ommission based on:

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

Against this backdrop, the task before the Commission is clear. The Commission is to determine whether in March, 2005, when the mandate remanding this case to the Commission was issued, sufficient evidence existed to find the services at issue to be competitive pursuant to the then applicable statutory standard. The AT&T Missouri services which are the subject of the remanded case are intraLATA private line/special access services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, and certain operator services (i.e., station-to-station, person-to-person, and calling card services). As the Court of Appeals directed, the Commission must “re-examine the competitive status of these particular services by applying the ‘effective competition’ factors to the evidence the Commission has already accumulated with regard to these services both from the 1993 ‘transitionally competitive’ hearing in Case No. TO-93-116 as well as from the hearing in this underlying case.”²⁸ This is the course the Commission should have undertaken in March, 2005 following the remand by the Court of Appeals. Had it

²⁸ 154 S.W.3d. at 329.

done so, the Commission would have concluded, as it should now, that the then existing statutory criteria for competitive classification had been satisfied.

As AT&T Missouri explains below, the evidence compiled in Case No. 93-116, which led to the Commission's 1992 AT&T Missouri Reclassification Order, and the evidence compiled in this case, which led to the Commission's 2001 Report and Order, make it abundantly clear that with respect to each of the services at issue, effective competition existed in all exchanges for these services both when the Commission issued its Report and Order and when the Court issued its mandate in March, 2005. While not necessary to sustain a finding of effective competition for each service, the Commission may also take notice of and consider its September 15, 1989, IXC Service Classification Order (Case No. TO-88-142) as well as its 2003 Sprint Report and Order (Case No. IO-2003-02), both of which involve many of the same services as are involved here and in which the Commission classified these services as competitive on a statewide basis. These services remain classified as competitive even after the 2006 legislative changes to Section 392.245.

IV. "EFFECTIVE COMPETITION" ANALYSIS

The Court of Appeal's mandate directed the Commission to determine whether the services at issue met the criteria in S.B. 507 for effective competition. Under S.B. 507, the first two criteria by which to assess whether effective competition exists for a service are (a) the extent to which services are available from alternative providers in the relevant market and (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions. The evidence shows that for each of AT&T Missouri's services at issue here, functionally equivalent or substitutable services offered by multiple alternative providers at comparable rates, terms and conditions have been available

in all of AT&T Missouri's exchanges for many years. Additional criteria include the extent to which the purposes and policies of Chapter 392, including the reasonableness of rates, as set out in Section 392.185, are being advanced; existing economic or regulatory barriers to entry; and other relevant factors. The evidence shows that for each of AT&T Missouri's services at issue here, each of these criteria demonstrate that effective competition exists throughout AT&T Missouri's exchanges. Accordingly, the Commission should determine that these services met the criteria for effective competition in S.B. 507.

A. The IXC Service Classification Order and AT&T Missouri Reclassification Order

In 1987, numerous IXCs filed petitions with the Commission pursuant to Section 392.361, seeking both service and company classification as either competitive or transitionally competitive.²⁹ On September 15, 1989, in the resulting IXC Service Classification Order (Case No. TO-88-142), the Commission found all services of the IXCs, except for AT&T Communications of the Southwest, Inc. ("AT&T-C"), to be competitive and thereby declared these IXCs to be competitive carriers.³⁰ The Commission found then AT&T-C's WATS, private line and custom network services to be competitive, and further found its MTS and ancillary/complimentary services to be transitionally competitive.³¹

Three years later, in September, 1992, AT&T Missouri filed a petition seeking classification of its MTS, Operator Services, 800 services, WATS, Special Access and Digital Private Line Services as transitionally competitive on the basis that each met the requirements of Section 392.370.1 in that they were the same as, substitutable for, or equivalent to competitive

²⁹ Ex. 16, Hughes Direct, p. 9.

³⁰ Ex. 16, Hughes Direct, p. 9.

³¹ Ex. 16, Hughes Direct, p. 9.

services provided by other telecommunications carriers within its service territory.³² In its December 21, 1992 AT&T Missouri Reclassification Order, the Commission granted AT&T Missouri's petition, finding that while its 1989 IXC Service Classification Order had spoken "largely in terms of interLATA service," not intraLATA service, the Commission nevertheless "was addressing a statewide market."³³ Thus, focusing on the first element of Section 392.370.1 (i.e., whether an order has been issued under Section 392.361 that finds the service has been classified as competitive or transitionally competitive), the Commission found that "[t]he services for which [AT&T Missouri] is seeking transitionally competitive classifications were addressed and found to be subject to sufficient competition to justify a lesser degree of regulation in an order in Case No. TO-88-142."³⁴

Focusing on the second element of Section 392.370.1 (i.e., whether the service of the petitioning company is the same as, substitutable for, or equivalent to the service classified as either transitionally competitive or competitive), the Commission found the following with respect to the services for which AT&T Missouri sought transitionally competitive status -- the same services once again before the Commission in this case:

- The Commission found that AT&T Missouri's Digital Private Line and Special Access Services were "equivalent" services to IXC's provided services.³⁵ It noted that "[t]he private line services and virtual private networks (VPNs) of IXC's, including those IXC's considered competitive access providers (CAPs), have been classified as competitive by the Commission."³⁶ It found that services "which are functionally equivalent

³² Ex. 16, Hughes Direct, p. 10.

³³ See, In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, Case No. 93-116, Report and Order, December 21, 1992, 1992 Mo. PSC LEXIS 23 ("AT&T Missouri Reclassification Order"), pp. 4, 11 (emphasis added).

³⁴ AT&T Missouri Reclassification Order, p. 12.

³⁵ Ex. 16, Hughes Direct, p. 10.

³⁶ AT&T Missouri Reclassification Order, p. 31.

and completely interchangeable in use are equivalent under the statute”³⁷ and that “[b]ased upon the finding that the dedicated private line services of IXC’s and [AT&T Missouri’s] dedicated private line services and special access service are equivalent, the Commission will classify these [AT&T Missouri] services as TC.”³⁸

- The Commission found that AT&T Missouri’s MTS was substitutable for IXC’s state-wide MTS Service.³⁹ Noting, among other things, that “[t]here are at least seventy IXC’s authorized to provide intraLATA MTS[.]”⁴⁰ the Commission recounted the extensive evidence that AT&T Missouri’s MTS and the IXC’s MTS are substitutable: “Customer acceptance of one service for another as indicated by market share, customer perceptions that the services are substitutable, economic analysis of the markets, the number of providers in the market, the revenues generated by each provider, all provide important information. In this instance, none of the criteria individually is determinative, but when all are considered they indicate that IXC MTS and [AT&T Missouri] MTS are substitutable services for purposes of complying with Section 392.370 and the Commission will grant [AT&T Missouri] TC classification for its MTS service.”⁴¹
- The Commission found that AT&T Missouri’s 800 and Maximizer® 800 services were substitutable for IXC’s 800 service.⁴² The Commission noted that 59 IXC’s provided 800 service and that “[t]hese 800 services have all been classified as competitive and are being provided within [AT&T Missouri’s] service territory.”⁴³ The Commission determined “that [AT&T Missouri’s] 800 services and the IXC’s are substitutable for each other and that because of [AT&T Missouri’s] restriction to intraLATA, [AT&T Missouri’s] 800 services could arguably be found to be an inferior product for those customers seeking a statewide 800 service. Based upon this evidence that [AT&T Missouri’s] 800 services are substitutable for IXC’s 800 service, the Commission will classify the two 800 services of [AT&T Missouri] as TC.”⁴⁴ The restriction referenced by the

³⁷ AT&T Missouri Reclassification Order, p. 32.

³⁸ AT&T Missouri Reclassification Order, p. 33.

³⁹ Ex. 16, Hughes Direct, p. 10.; AT&T Missouri Reclassification Order, pp. 18-24.

⁴⁰ AT&T Missouri Reclassification Order, p. 19.

⁴¹ AT&T Missouri Reclassification Order, p. 24.

⁴² Ex. 16, Hughes Direct, p. 10.

⁴³ AT&T Missouri Reclassification Order, p. 26.

⁴⁴ AT&T Missouri Reclassification Order, pp. 27-28.

Commission in 1992 was removed in 2001.⁴⁵ The Commission had noted that “without the MFJ restriction these services would be at least equivalent.”⁴⁶

- The Commission found that AT&T Missouri’s WATS Service was substitutable for IXC’s WATS Service.⁴⁷ The Commission noted that 60 IXCs had tariffs in place to provide WATS and that “[t]hese IXC WATS services have been classified as competitive and are provided both intraLATA and interLATA.”⁴⁸ It determined that “[AT&T Missouri’s] WATS and IXC WATS are substitutable. Customer acceptance of the IXC services as a suitable alternative to [AT&T Missouri] WATS is demonstrated by the decrease in hours, lines and revenue of [AT&T Missouri] while IXCs’ volumes have increased and the market has expanded. The Commission will therefore classify [AT&T Missouri] WATS as TC.”⁴⁹ As in the case of AT&T Missouri’s 800 services, the Commission also found that “because of the MFJ restriction [which was removed in 2001], [AT&T Missouri’s] WATS and IXCs’ WATS are not the ‘same’ or ‘equivalent.’”⁵⁰
- Finally, the Commission found that certain of AT&T Missouri’s Operator Services (i.e., Station to Station, Person to Person and Calling Card) were substitutable for comparable services provided by IXCs.⁵¹ It noted that “[t]here are eight IXCs which offer only credit card billing and there are thirty-one IXCs which offer station to station, person to person, and credit card billing.”⁵² Relying primarily upon, among other things, evidence indicating that “[c]ustomer perception that the services are substitutable” and that “IXC operator services providers market their products as substitutable for [AT&T Missouri’s] services[,]”⁵³ the Commission determined that these factors “demonstrate[] that IXC operator services and [AT&T Missouri] operator services (Station to Station, Person to

⁴⁵ Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001).

⁴⁶ AT&T Missouri Reclassification Order, p. 26.

⁴⁷ Ex. 16, Hughes Direct, p. 10.

⁴⁸ AT&T Missouri Reclassification Order, p. 28.

⁴⁹ AT&T Missouri Reclassification Order, p. 29.

⁵⁰ AT&T Missouri Reclassification Order, p. 29.

⁵¹ Ex. 16, Hughes Direct, p. 10.

⁵² AT&T Missouri Reclassification Order, p. 34.

⁵³ AT&T Missouri Reclassification Order, pp. 37-38.

Person and Calling Card) are substitutable, [and that] the Commission will classify these services as TC.”⁵⁴

In sum, based on the Commission’s conclusion that a grant of transitionally competitive classification to all of these services was consistent with the Section 392.370, the Commission determined, almost 15 years ago, that AT&T Missouri’s MTS, 800 (800 and Maximizer® 800) services, WATS, private line and special access services, and AT&T Missouri’s station-to-station, person-to-person and calling card operator services should be classified as transitionally competitive services.⁵⁵ The competitive nature of each of these services continued unabated, as shown by the evidence presented in the case below.

B. The Report and Order

There can be no serious question that for each of AT&T Missouri’s services, functionally equivalent or substitutable services offered by multiple alternative providers at comparable rates, terms and conditions have been available in all of AT&T Missouri’s exchanges for many years. Even if this question was not fully answered in the affirmative by the evidence culminating in the AT&T Missouri Reclassification Order, the evidence in the record leading to the Report and Order leaves no remaining doubt.

1. Service-specific Evidence -

(a) Effective competition exists for AT&T Missouri’s intraLATA private line/ dedicated services in all of AT&T Missouri’s exchanges.

Effective competition exists for AT&T Missouri’s intraLATA private line/dedicated services.⁵⁶ Staff agreed in the case below that the Commission should confirm a competitive

⁵⁴ AT&T Missouri Reclassification Order, p. 39.

⁵⁵ AT&T Missouri Reclassification Order, pp. 42-43.

⁵⁶ These services are more fully described above in connection with Case No. 93-116 and in the Commission’s December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, p. 29.

classification for these services,⁵⁷ and no party presented any evidence supporting a different conclusion. Both the legislature and the Commission have found the private line market to be competitive.

In 1996, the Missouri legislature recognized the private line market to be sufficiently competitive to permit all carriers, including AT&T Missouri, to freely price private line services. Section 392.200.8 states (in its current form):

Customer-specific pricing is authorized on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies for: (1) Dedicated, nonswitched, private line and special access services; (2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services; and (3) Any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under section 392.245. (emphasis added).

Further, as noted earlier, the Commission recognized the existence of competition in the intraLATA private line market in its December 1992 AT&T Missouri Reclassification Order, when it found that services provided by IXC's were "equivalent" and completely interchangeable with AT&T Missouri's private line services and thus classified AT&T Missouri's intraLATA private line services as transitionally competitive.⁵⁸

In addition, other evidence in this case demonstrated that competition in the private line market has existed for years. Significant competition in the retail intraLATA private line market in Missouri dates back to the emergence of competitive access providers ("CAPs") in the mid-1980s. CAPs initially focused on providing alternative access to long distance companies. They also targeted commercial business customers as they completed their fiber ring build outs and gained access to multi-tenant buildings with their own facilities. In the late 1980s, the major

⁵⁷ Ex. 18, Voight Rebuttal, pp. 4, 54.

⁵⁸ AT&T Missouri Reclassification Order, pp. 29-33; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

interexchange carriers also began to compete for retail intraLATA private line services as they bid on data networks covering intrastate services as well as interstate long haul services.⁵⁹

Undisputed evidence showed that many alternative providers offer non-switched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to AT&T Missouri's private line services. These alternatives, against which AT&T Missouri competes, are either not regulated by the Commission or at least not price regulated in the same manner as AT&T Missouri.⁶⁰

The evidence also showed that in addition to direct competition for traditional private line services, there are many service providers in the marketplace offering a variety of networking solutions, with different technologies, that can meet the same transport needs as AT&T Missouri's wireline private line services. The evidence showed, for example, that traditional private line networks, such as those offered by AT&T Missouri and numerous other providers, are rapidly being replaced by fast-packet, frame relay and cell relay services. Internet based access for branch offices or small businesses are being used to substitute for analog and DS0 private line circuits as customers are increasingly sending files via the Internet, rather than incurring the monthly expense of maintaining a private line circuit. Too, the availability of fixed wireless CPE solutions has been displacing wire line DS1s in campus settings, such as school districts, in the education market.⁶¹

Given this extensive evidence, the Commission's 2001 Report and Order specifically found that:

[S]ignificant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years. Undisputed evidence shows that many alternative

⁵⁹ Ex. 3, DeHahn Direct, p. 5.

⁶⁰ Ex. 3, DeHahn Direct, pp. 2, 5-11 and Schedules 1 and 2.

⁶¹ Ex. 3, DeHahn Direct, pp. 8-9.

providers, such as [then] AT&T, Sprint, MCI and numerous CLECs offer nonswitched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to [AT&T Missouri's] private line services. These alternatives, against which [AT&T Missouri] competes, are either not regulated by the Commission or at least not price regulated in the same manner as [AT&T Missouri]. In addition to direct competition for traditional private line services, there are many service providers in the marketplace offering a variety of networking solutions, with different technologies, that can meet the same transport needs as [AT&T Missouri's] private line services.⁶²

(b) Effective competition exists for AT&T Missouri's intraLATA special access services in all of AT&T Missouri's exchanges.

Effective competition exists for AT&T Missouri's intraLATA special access services⁶³

Staff agreed in the case below that the Commission should confirm a competitive classification for these services pursuant to Section 392.200.8,⁶⁴ and no party presented any evidence supporting a different conclusion.

As in the case of the private line market, both the legislature and the Commission have found the special access market competitive. For example, in 1996, the Missouri legislature recognized the special access market to be sufficiently competitive to permit all carriers, including AT&T Missouri, to freely price special access services. Section 392.200.8 states:

Customer-specific pricing is authorized on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies for: (1) Dedicated, nonswitched, private line and special access services; (2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services; and (3) Any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under section 392.245. (emphasis added).

⁶² Report and Order, pp. 44-45.

⁶³ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 65-66.

⁶⁴ Ex. 18, Voight Rebuttal, pp. 4, 54.

Further, as was noted earlier, the Commission's 1992 AT&T Missouri Reclassification Order recognized the existence of competition in the intraLATA special access market. There, the Commission found that services provided by IXC's were "equivalent" and completely interchangeable with AT&T Missouri's special access services and thus classified AT&T Missouri's special access services as transitionally competitive..⁶⁵

Finally, the additional considerations reflected in the discussion of private line services equally demonstrate that competition in the special access market has existed for years. AT&T Missouri's and Staff's testimony in the case below, and the Commission's discussion in its 1992 AT&T Reclassification Order was likewise directed to the category of private line services specifically included special access, i.e., non-switched High-Capacity Service.⁶⁶

(c) Effective competition exists for AT&T Missouri's intraLATA toll/MTS services in all of AT&T Missouri's exchanges.

Effective competition exists for AT&T Missouri's intraLATA toll/MTS services.⁶⁷ Staff agreed in the case below that the Commission should confirm a competitive classification for these services,⁶⁸ and no party presented any evidence supporting a different conclusion.

Competition in the intraLATA toll market has existed since as early as 1986 when the Commission authorized intraLATA toll competition in Missouri.⁶⁹ The Commission found that intraLATA toll competition was in the public interest and would result in new and improved

⁶⁵ AT&T Missouri Reclassification Order, pp. 29-33; Ex. 7, Douglas Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

⁶⁶ Ex. 7, Douglas Direct, pp. 6-9; Ex. 3, DeHahn Direct, pp. 5-11; Voight Rebuttal, pp. 4, 54; AT&T Missouri Reclassification Order, pp. 29-33.

⁶⁷ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 53-56.

⁶⁸ Ex. 18, Voight Rebuttal, pp. 3-4, 65-67.

⁶⁹ Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

services, lower prices and faster responses to customers' needs.⁷⁰ Later, in its December 1992 AT&T Missouri Reclassification Order, the Commission found that services provided by IXC's were "substitutable" with AT&T Missouri's intraLATA toll services, and thus classified AT&T Missouri's intraLATA toll services as transitionally competitive.⁷¹

The record establishes that there are many regulated providers, including IXC's and CLECs and unregulated/non-traditional providers (such as wireless and Internet providers) offering interexchange services that are functionally equivalent to and/or substitutable for AT&T Missouri's intraLATA toll services.⁷² Evidence in this case demonstrated that there were over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri.⁷³ The intraLATA toll services provided by these companies and other IXC's are equivalent to or substitutable for AT&T Missouri's intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls.⁷⁴ This large number of certified IXC's indicates that customer choices are widely available and reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.⁷⁵

With the July, 1999 implementation of intraLATA presubscription, IXC's began offering their customers the ability to make intraLATA toll calls without dialing extra digits. (Even prior to presubscription, customers had the ability to program their PBX's and key systems to automatically route intraLATA toll calls to the IXC of their choice or to dial around the incumbents' interLATA toll services by using 10XXX dialing. Now, customers can dial around

⁷⁰ Id.; Ex. 16, Hughes Direct, p. 5.

⁷¹ AT&T Missouri Reclassification Order, pp. 18-24; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

⁷² Ex. 9, Jablonski Direct, pp. 3, 6-10.

⁷³ Ex. 9, Jablonski Direct, p. 6 and Schedule 2.

⁷⁴ Ex. 9, Jablonski Direct, p. 9.

⁷⁵ Ex. 9, Jablonski Direct, pp. 6-7.

using 10XXX to use the IXC of their choice, even if they retain AT&T Missouri as their 1+ intraLATA toll provider.)⁷⁶ The evidence showed, in every AT&T Missouri exchange, a minimum of 73 IXCs available to be selected by the customer as a 1+ intraLATA toll provider. It is very apparent that robust competition exists for AT&T Missouri's intraLATA toll services.⁷⁷

In addition to more traditional forms of competition from IXCs and CLECs, AT&T Missouri's customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and the Internet. For example, many wireless providers offer free long distance packages, or unlimited long distance for a flat-rate bundled fee. Internet-enabled capabilities include Internet telephony, e-mail and instant messaging. And the use of Internet telephony is growing. The ability to make free, or at least very inexpensive, calls to other people outside a person's local calling scope, but within the LATA, makes Internet telephony an attractive substitute for AT&T Missouri's intraLATA toll service.⁷⁸

Based on the evidence presented, the Commission made the following findings of fact in its Report and Order:

The Commission finds that competition has existed in the intraLATA toll market since July 24, 1986, when the Commission authorized intraLATA toll competition in Missouri. In that case, the Commission found that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster responses to customers' needs.

Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri. These include many that offer both intraLATA and interLATA toll service. The intraLATA toll services provided by [then] AT&T, MCI, Sprint, WorldCom, and other IXCs are equivalent to or substitutable for [AT&T Missouri's] intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls. The large number of certified IXCs supports [AT&T Missouri's] contention that customer choices are

⁷⁶ Ex. 9, Jablonski Direct, p. 7.

⁷⁷ Ex. 9, Jablonski Direct, p. 9 and Schedule 3, which is a list of the number of IXCs that are available in each AT&T Missouri exchange.

⁷⁸ Ex. 9, Jablonski Direct, pp. 8-9.

widely available and it reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.

With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the ability to make intraLATA toll calls without dialing extra digits. In every [AT&T Missouri] exchange, there is a minimum of 73 IXC's certified to provide 1+ intraLATA toll services. Some exchanges have up to 140 IXC's. While the number of certificated carriers is not by itself determinative of this issue, based on the large numbers of available IXC's in each [AT&T Missouri] exchange, it is very apparent that robust competition exists for [AT&T Missouri's] intraLATA toll services.

In addition to the traditional forms of competition from IXC's and CLECs, [AT&T Missouri] customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and Internet telephony.⁷⁹

(d) Effective competition exists for AT&T Missouri's Wide Area Telecommunications Services ("WATS") and 800 services in all of AT&T Missouri's exchanges.

Effective competition exists for AT&T Missouri's WATS and 800 services, and these services should be classified as competitive in all of AT&T Missouri's exchanges, pursuant to Section 392.245.5.⁸⁰ Staff agreed in the case below that the Commission should confirm a competitive classification for WATS,⁸¹ and no party presented any evidence supporting a different conclusion.

The Commission has previously found WATS and 800 service to be competitive. The Commission recognized the existence of substantial competition in the WATS and 800 service markets in the early 1990s. In its December 1992 AT&T Missouri Reclassification Order, the Commission found that WATS and 800 service provided by IXC's was "substitutable" for AT&T

⁷⁹ Report and Order, pp. 54-55.

⁸⁰ These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, pp. 62-65.

⁸¹ Ex. 18, Voight Rebuttal, pp. 4, 65, 73-74.

Missouri's WATS and 800 services, and thus classified AT&T Missouri's intraLATA toll services as transitionally competitive.⁸²

In fact, competition has long existed in the WATS and 800 service markets. IXC's are the dominant WATS and 800 service competitors. The evidence indicated over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800 service. These services provided by IXC's and CLECs are functionally equivalent to and substitutable for AT&T Missouri's WATS and 800 service. This large number of certified companies indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.⁸³

AT&T Missouri's WATS and 800 services also face competition from nontraditional competitors. Many companies are utilizing various e-commerce methods to communicate with their customers. For instance, consumers can purchase airplane tickets, rent cars, or check the balance on their credit card via the Internet, making calls to a company's 800 number unnecessary.⁸⁴

Based on the evidence presented, the Commission made the following findings of fact in its Report and Order:

There are over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800 service. The services provided by IXC's and CLECs are functionally equivalent to and substitutable for [AT&T Missouri's] WATS and 800 service. The Commission finds that the large number of certified companies indicates that customer choices

⁸² AT&T Missouri Reclassification Order, pp. 64-65; Ex. 9, Jablonski Direct, pp. 15-16; Ex. 16, Hughes Direct, pp. 9-10.

⁸³ Ex. 9, Jablonski Direct, p. 16.

⁸⁴ Ex. 9, Jablonski Direct, pp. 16-17.

are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.

In addition to IXC's and CLECs, WATS and 800 service faces competition from nontraditional competitors. Many companies are utilizing various e-commerce methods to communicate with their customers. For instance, consumers can purchase airplane tickets, rent cars, or check the balance on their credit card via the Internet, making calls to a company's 800 number unnecessary.⁸⁵

(e) Effective competition exists for AT&T Missouri's Station to Station, Person to Person and Calling Card operator services in all of AT&T Missouri's exchanges.

Effective competition exists for AT&T Missouri's Station to Station, Person to Person and Calling Card operator services. Consequently, these services should be classified as competitive in all of AT&T Missouri's exchanges.⁸⁶

The Commission has previously found these operator services service to be competitive. For example, in its December 1992 AT&T Missouri Reclassification Order, the Commission found that "IXC operator services and [these AT&T Missouri] operator services are substitutable[.]"⁸⁷ and thus classified AT&T Missouri's services as transitionally competitive.⁸⁸

The additional evidence in this case also demonstrated numerous competitive alternatives to AT&T Missouri's operator services which are available throughout AT&T Missouri's exchanges.⁸⁹ These alternatives are provided by numerous local and toll telecommunication providers, as well as wireless service providers, specialized operator service providers, pay

⁸⁵ Report and Order, pp. 63-64.

⁸⁶ Ex. 16, Hughes Direct, p. 10. These services are more fully described above in connection with Case No. 93-116 and in the Commission's December 27, 2001, Report and Order, in Case No. TO-2001-467. Report and Order, p. 75-76.

⁸⁷ AT&T Missouri Reclassification Order, p. 37.

⁸⁸ AT&T Missouri Reclassification Order, pp. 38-39.

⁸⁹ Ex. 5, Moore Direct. p. 21.

telephone providers, pre-paid and post-paid calling card providers and others.⁹⁰ Considering both function and price, end users throughout Missouri have substitutable and functionally equivalent alternatives for operator services, offered by numerous providers, including cellular telephone service, pre-paid calling cards, and personal 800 numbers. These services compete directly with AT&T Missouri's operator services.⁹¹

For example, "00" service was established as a dialing pattern in order to route calls to the operator of a customer's presubscribed interexchange carrier.⁹² "00" service may be used to provide end users throughout the state of Missouri with the complete range of calling card, third number billing, collect and person-to-person calling options, as well as other types of operator assistance, such as busy line, verify and interrupt services, and call completion services. The evidence showed over 600 interexchange service providers certificated to provide service in Missouri.⁹³

The evidence also showed that competitive alternatives are offered by MCI and Sprint. MCI's 1-800-Collect Service is also available to all end users throughout Missouri, irrespective of their choice of local or toll carrier.⁹⁴ This service provides end users the ability to make collect calls from anywhere in the United States. Callers also have access to a complete range of other services including calling cards, bill to a third number, person-to-person service, line status verification, and busy interrupt. Sprint's 1-800-2Sprint is similar to the MCI competitive

⁹⁰ Ex. 5, Moore Direct, p. 21.

⁹¹ Ex. 5, Moore Direct, p. 22.

⁹² Ex. 5, Moore Direct, p. 22.

⁹³ Ex. 5, Moore Direct, p. 22.

⁹⁴ Ex. 5, Moore Direct, p. 22.

alternatives.⁹⁵ Both MCI and Sprint extensively promote their operator services, which compete directly with AT&T Missouri's operator services.⁹⁶

Operator services, including collect, bill to a third number, person-to-person service, line status verification, and busy interrupt are also available from wireless carriers throughout Missouri. Typically, wireless customers access their wireless carrier's operator services by dialing "0" from their wireless phone.⁹⁷ Moreover, wireless service, itself, has become a significant, competitive alternative to operator services, particularly for operator services originating from pay telephones.⁹⁸ Before wireless services became ubiquitous, customers who are away from their home or business telephone frequently used the alternative billing arrangements through operator services to place calls.⁹⁹

Another competitive alternative for operator services is "0+" and "0-" services from pay telephones.¹⁰⁰ Pay telephone providers have the option of selecting the operator service provider of their choice for specific pay telephone locations.¹⁰¹ Customers can, in effect, choose an operator service provider through their choice of a payphone provider.¹⁰² Prepaid calling cards have also become an increasingly popular choice for alternative billing arrangements historically provided by operator service providers.¹⁰³ Prepaid calling cards are sold at a variety of outlets.¹⁰⁴

⁹⁵ Ex. 5, Moore Direct, pp. 22-23.

⁹⁶ Ex. 5, Moore Direct, p. 23: See Scheds. 10-11.

⁹⁷ Ex. 5, Moore Direct, p. 23.

⁹⁸ Ex. 5, Moore Direct, p. 23.

⁹⁹ Ex. 5, Moore Direct, p. 23.

¹⁰⁰ Ex. 5, Moore Direct, p. 24.

¹⁰¹ Ex. 5, Moore Direct, p. 24.

¹⁰² Ex. 5, Moore Direct, p. 24.

¹⁰³ Ex. 5, Moore Direct, p. 24.

¹⁰⁴ Ex. 5, Moore Direct, p. 24.

Live or automated operator assistant is typically available as required to assist in call completion relating to prepaid calling cards.¹⁰⁵ Prepaid cards are frequently branded in the name of well known retail establishments, and are offered by all major telecommunication carriers, as well as hundreds of other lesser known companies.¹⁰⁶ Examples of prepaid card providers were provided in Schedule 12 to Ms. Moore's direct testimony in the prior proceedings in this case.

Finally, irrespective of the presubscribed carrier on a particular telephone line, end users can always reach the operator service provide of their choice by dialing "10-10-XXX-00." The XXX selected by the end user routes the call to the appropriate IXC.¹⁰⁷ Many telecommunication carriers, including MCI and Sprint also offer personal 800 numbers. These numbers function as a competitive alternative to one type of operator services, i.e., collect calls.¹⁰⁸

Most if not all of the competitive alternatives described above are available to an end user customer, irrespective of whether that customer is an AT&T Missouri local customer or a CLEC's local customer. However, if the customer is a CLEC local customer, the customer will likely also have a competitive alternative of operator services provided by that CLEC.¹⁰⁹ Moreover, operator services are provided by facilities-based interexchange carriers, resale and switched-base CLECs and specialized operator service providers that utilize their own facilities to provide operator services directly to end users or other providers, pay telephone providers, and places of public accommodation. All of these operator services directly compete with AT&T

¹⁰⁵ Ex. 5, Moore Direct, p. 25.

¹⁰⁶ Ex. 5, Moore Direct, p. 25.

¹⁰⁷ Ex. 5, Moore Direct, p. 25.

¹⁰⁸ Ex. 5, Moore Direct, p. 26.

¹⁰⁹ Ex. 5, Moore Direct, p. 26.

Missouri's operator services throughout Missouri, and offer substitutable or functionally equivalent operator services to the operator services provided by AT&T Missouri.

The FCC has likewise found the operator services market place to be competitive.¹¹⁰ In its UNE Remand Order, the FCC eliminated operator services from the list of unbundled network elements based on the competitive nature of the operator services market place.¹¹¹ In the UNE Remand Order, the FCC stated that incumbent LECs "need not provide access to its operator services and directory assistance as an unbundled network element."¹¹² The evidence also demonstrated that operator services had been price deregulated in Arkansas, Texas and Kansas, among other states.¹¹³

Finally, the highly competitive nature of the operator services market place has directly impacted AT&T Missouri's operator services call volumes. The evidence showed that since 1996, AT&T Missouri's operator services call volumes had declined 71 percent.¹¹⁴ This decline can be directly attributed to competitive alternatives that exist in the market place, described above.¹¹⁵

2. Other Evidence

With the advent of local competition under S.B. 507, moreover, functionally equivalent or substitutable services being provided by alternative providers have increased substantially. As this Commission found in Case No. TO-99-227, CLECs are currently providing service to customers in all of AT&T Missouri's exchanges, and AT&T Missouri has fully opened all of its

¹¹⁰ Ex. 5, Moore Direct, p. 28.

¹¹¹ Ex. 5, Moore Direct, p. 28.

¹¹² UNE Remand Order, para. 441.

¹¹³ Ex. 5, Moore Direct, p. 28.

¹¹⁴ Ex. 6(HC), Moore Surrebuttal(HC), Sched. 1(HC).

¹¹⁵ Ex. 6, Moore Surrebuttal, p. 6.

markets to competitors.¹¹⁶ In addition, IXCs provide services that are also functionally equivalent to or substitutable for some of AT&T Missouri's services, including interexchange services (e.g., interLATA Toll, 800 Services), operator and directory services, and dedicated services (e.g., private line and special access).¹¹⁷ Furthermore, there are a number of alternate providers of functionally equivalent or substitutable services that are not under the jurisdiction of this Commission. Some of these alternate providers include, but are not limited to, wireless carriers, cable TV providers, Internet service providers, fixed satellite providers and customer premises equipment (CPE) manufacturers.¹¹⁸

Other indicators likewise demonstrate effective and robust competition. Indeed, while neither Section 392.245.5 nor 386.020(13) required any quantitative market share loss test to determine whether "effective competition" existed for AT&T Missouri's services in Missouri, the record in this case reflects AT&T Missouri's belief that there were facilities-based CLECs in more than 80% of AT&T Missouri's exchanges in Missouri.¹¹⁹ AT&T Missouri presented evidence that for the period from the first quarter of 1998 through the second quarter of 2001, E-911 listings had increased 8,546 percent and the growth in "ported" numbers was 26,392 percent.¹²⁰ While AT&T Missouri identified, by exchange, the total lines served by AT&T Missouri, and the minimum number of lines served by CLECs,¹²¹ these lines represent only a minimum number, and therefore, CLEC market share is likely greater than reported in Mr.

¹¹⁶ Ex. 16, Hughes Direct, p. 19.

¹¹⁷ Ex. 16, Hughes Direct, p. 19.

¹¹⁸ Ex. 16, Hughes Direct, p. 19.

¹¹⁹ Ex. 16, Hughes Direct, p. 27.

¹²⁰ Ex. 17, Hughes Surrebuttal, p. 7.

¹²¹ Ex. 17 HC, Hughes Surrebuttal, Schedule 4-1, 4-2, 4-3 and 4-4 HC.

Hughes' Schedules.¹²² This is because AT&T Missouri knows when a CLEC resells AT&T Missouri's service and when a CLEC purchases unbundled network elements from AT&T Missouri, but it does not know the number of lines served by CLECs utilizing only CLEC facilities.¹²³

Additionally, AT&T Missouri can identify the number of E-911 listings that CLECs place in 911 databases, but the number of CLEC E-911 listings likely significantly understates the number of access lines served by facilities-based CLECs.¹²⁴ For example, only outbound lines have 911 listings associated with them.¹²⁵ Complex voice services may be only partially represented in the E-911 database.¹²⁶ DSL and cable modem lines may not be reported in the E-911 database.¹²⁷

Additional evidence of effective competition from CLECs was produced by AT&T Missouri. Over the 18-month period prior to November, 2001, AT&T Missouri had experienced a declining trend for retail access lines.¹²⁸ Over the three quarters prior to November, 2001, AT&T Missouri had experienced a decrease in the total number of retail lines sold.¹²⁹ During this same time period, the number of CLEC lines continued to grow.¹³⁰ In addition, there were

¹²² Ex. 17 HC, Hughes Surrebuttal, pp. 5-6.

¹²³ Ex. 17HC, Hughes Surrebuttal, p. 6.

¹²⁴ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

¹²⁵ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

¹²⁶ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

¹²⁷ Ex. 17 HC, Hughes Surrebuttal, p. 6.

¹²⁸ Ex. 17, Hughes Surrebuttal, p. 14.

¹²⁹ Ex. 17, Hughes Surrebuttal, p. 14.

¹³⁰ Ex. 17, Hughes Surrebuttal, p. 14.

23 CLEC switches deployed throughout the state of Missouri, and these switches deployed by CLECs in Missouri had the capacity to serve 100 percent of AT&T Missouri's customers.¹³¹

The Commission's findings in Case No. TO-99-227 concerning AT&T Missouri's compliance with Section 271 of the Act are also instructive in this regard. There, the Commission determined that AT&T Missouri had complied with the Act, and that AT&T Missouri's local markets were open to competition. In its March 15, 2001, Order the Commission determined that AT&T Missouri had met the "competitive checklist" requirements set forth by Section 271 of the Act¹³² and, in particular, that AT&T Missouri "is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion."¹³³ CLECs offer services which are functionally equivalent or substitutable at comparable rates, terms and conditions. Even apart from the availability of resale and UNEs, in Case No. TO-99-227, the Commission had determined that CLECs are providing facilities-based services to both business and residential customers.

The evidence demonstrated the existence of a multitude of alternate providers of the services for which AT&T Missouri seeks a competitive classification, including over 600 interexchange carriers providing interexchange service in Missouri¹³⁴ and over 60 CLECs providing a wide range of services, including local services, in Missouri.¹³⁵ In this case, AT&T Missouri has presented substantial evidence, both from a wholesale and retail perspective, that alternative providers are offering services which are functionally equivalent or substitutable at comparable rates, terms and conditions. Customers will ultimately benefit from an environment

¹³¹ Ex. 17, Hughes Surrebuttal, p. 14.

¹³² Mo PSC 271 Order, p. 6.

¹³³ Mo PSC 271 Order, p. 91.

¹³⁴ Ex. 16, Hughes Direct, p. 22.

¹³⁵ Ex. 16, Hughes Direct, p. 22.

where all providers are free to compete on equal terms.¹³⁶ It is in this unfettered environment where service innovation flourishes, customer demands dictate outcomes and maximum benefits are derived.

The third factor which the Commission is required to consider in connection with its evaluation of whether effective competition exists is the extent to which the purposes and policies of Chapter 392, including the reasonableness of rates, as set out in Section 392.185, are being advanced.¹³⁷ The purposes and policies of Chapter 392 are clear. Section 392.185 outlines that the provision of telecommunications services should be maintained and advanced. In a competitive market place, it is the market place that will maintain and advance the services offered to customers. When all competitors who serve the same market are allowed to compete on equal footing, customers will benefit from the competitor's ability to quickly adapt to a changing market place.¹³⁸ An important purpose specified in the statute is to allow for full and fair competition to function as a substitute for regulation.¹³⁹ The statute the Commission is implementing in this proceeding is the mechanism that legislators gave to the Commission to permit this express purpose to be achieved.

The fourth factor which the Commission is required to consider in its evaluation of whether effective competition exists is existing economic or regulatory barriers to entry.¹⁴⁰ As noted above, AT&T Missouri is providing competing carriers nondiscriminatory access to all of the checklist items contained in the federal Act, and thus, each of these carriers has a meaningful

¹³⁶ Ex. 16, Hughes Direct, p. 32.

¹³⁷ Ex. 16, Hughes Direct, pp. 20-21.

¹³⁸ Ex. 16, Hughes Direct, pp. 20-21.

¹³⁹ Ex. 16, Hughes Direct, pp. 20-21.

¹⁴⁰ Ex. 16, Hughes Direct, pp. 21-22.

opportunity to compete with AT&T Missouri. Furthermore, given the multitude of providers providing functionally equivalent or substitutable services, as reflected in the discussion of evidence underlying the IXC Service Classification Order, the AT&T Missouri Reclassification Order, the Report and Order below, and the Sprint Report and Order discussed below, it is clear that there are no barriers to entry that are preventing competitors from offering alternatives in the market place.¹⁴¹

C. The Sprint Report and Order

On December 4, 2003, the Commission issued its Sprint Report and Order in which it concluded, among other things that several services that are the subject of this case and which are likewise provided by Sprint throughout its Missouri exchanges are subject to effective statewide competition and may be classified as competitive pursuant to Section 392.245 and are no longer subject to price cap regulation.¹⁴² The conclusions reached by the Commission in its Sprint Report and Order reinforce AT&T Missouri's own ample evidence related to effective competition for the services at issue in this case, particularly because it was the Commission's reliance on the existence of statewide, not exchange-specific, competition for these services that led the Commission to grant Sprint competitive classification for them in all of its Missouri exchanges.

1. IntraLATA Private Line Services

The Commission found that Sprint's competition for intraLATA private line services comes from a variety of competitors providing services which are not limited to a specific exchange, and that the legislature has recognized the existence of competition for this service by

¹⁴¹ See also, Ex. 16, Hughes Direct, pp. 21-22.

¹⁴² In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc., Case No. IO-2003-0281, December 4, 2003, 2003 Mo. PSC LEXIS 1560 ("Sprint Report and Order"), pp. 2, 23.

allowing for customer-specific pricing for private line services pursuant to Section 392.200.8.¹⁴³

The Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA private line services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁴⁴

Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case.

2. IntraLATA Toll/MTS Services

The Commission found that Sprint faces a great deal of competition for the provisioning of this service, noting that there were at least 586 interexchange carriers certified in Missouri that can offer this service in competition with Sprint, and that there were 52 different carriers actually providing intrastate toll services to Sprint's local customers. The Commission also found that as a result of intraLATA presubscription, which Sprint instituted in August 1997, Sprint's local customers can utilize the interexchange carrier of their choice without dialing any extra

¹⁴³ Sprint Report and Order, pp. 25-26.

¹⁴⁴ Sprint Report and Order, pp. 66-67.

numbers.¹⁴⁵ Consequently, the Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA MTS services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁴⁶

Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order likewise mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case.

3. IntraLATA WATS and 800 Services

The Commission found these services were essentially intraLATA toll services that are merely billed in a different way, and that, as such, they are subject to competition from the same competitors as intraLATA toll services. It also found that Sprint's competition for intraLATA WATS and 800 services comes from competitors that are not limited to a specific exchange.¹⁴⁷ The Commission concluded that effective competition exists for these services and that they should be classified as competitive in all of Sprint's exchanges pursuant to Section 392.245:

¹⁴⁵ Sprint Report and Order, p. 27.

¹⁴⁶ Sprint Report and Order, pp. 68-69.

¹⁴⁷ Sprint Report and Order, p. 28.

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA WATS services and 800 services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.¹⁴⁸

Just as the existence of statewide competition supports the determination of effective competition in Sprint's exchanges, the same statewide competition mandates a finding of effective competition for the same services in all of AT&T Missouri's exchanges. The conclusions in the Sprint Report and Order mirror those the Commission should reach based on the evidence adduced and the conclusions reached by the Commission in its AT&T Missouri Reclassification Order and its Report and Order in this case. Equally important, Sprint retains the competitive classifications it obtained in the Sprint Report and Order, even though, as is discussed below, Section 392.245 (the statute on which Sprint relied) has been amended yet again and even though Sprint (like AT&T Missouri) also has a number of exchanges which qualify as competitive under the new law.¹⁴⁹

V. SENATE BILL 237/CASE NOS. TO-2006-0093 AND TO-2006-0102

As previously noted, on December 14, 2005, AT&T Missouri moved to dismiss the case on the basis that new legislation (S.B. 237, which became effective on August 28, 2005), essentially mooted the need for remand proceedings. In its motion, AT&T Missouri noted that the passage of S.B. 237 and the issuance of decisions by the Commission approving competitive

¹⁴⁸ Sprint Report and Order, pp. 69-70.

¹⁴⁹ See, e.g., Embark Missouri, Inc. P.S.C. MO.-No. 22, General Exchange Tariff, Third Revised Page 23 and P.S.C. MO.-No. 23, Message Telecommunications Service, Statement of Service Classifications, Sixth Revised Page 36 (both referencing competitive service classifications "pursuant to [the Commission's] Order of December 4, 2003, in Case No. IO-2003-0281").

classification for business and residential services in exchanges representing the vast majority of AT&T Missouri's access lines negated the need for any additional action by the Commission.

The CLECs and OPC, however, argue that certain rates charged by AT&T Missouri for the services which the Commission classified as competitive by operation of law under Section 392.370 must be revised on a prospective basis pursuant to the mandate issued by the Court of Appeals.¹⁵⁰ However, the Court of Appeals did not address the rates for any service offered by AT&T Missouri, nor did it direct the Commission to review any rate for service offered by AT&T Missouri. Instead, the Court of Appeals directed the Commission to consider whether the services at issue should have been classified as competitive pursuant to the "effective competition" standard of Section 392.245.5.

Regardless, as AT&T Missouri explains in greater detail below, the Commission need not conduct an analysis of these services under the S.B. 237 criteria. First, the services which are the subject of this remand (indeed, all of AT&T Missouri's telecommunications services, excluding exchange access) are already classified as competitive in exchanges serving the overwhelming majority of access lines -- in excess of ** __% ** of business lines and ** __% ** of residence lines). Second, while there is no authority for a retroactive revision of the rates for the services at issue here, AT&T Missouri's current rates for these services do not exceed (except in a very small number of cases) those rates that could be in place if the services in question had never been declared competitive and had always been under price caps.

Several months after the Court of Appeals issued its mandate on March 3, 2005, the Missouri legislature passed Senate Bill 237 ("S.B. 237"), which was next signed by the Governor

¹⁵⁰ No party seeks a retroactive revision of the rates for these services, and it is clear that any such revisions would be unlawful retroactive ratemaking. State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W.2d 41, 58 (Mo. banc 1979); Lightfoot v. City of Springfield, 236 S.W.2d 348, 353 (Mo. 1951); State ex rel. Barvick v. Public Service Commission, 606 S.W.2d 474, 476 (Mo. App. 1980).

and became effective on August 28, 2005. Section 392.245.5, amended as a result of this legislation, provides in pertinent part as follows:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. . . .

Section 392.245(6) provides, in pertinent part:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange. Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. . . .

Following the passage of S.B. 237, AT&T Missouri applied for competitive classification pursuant to its various provisions. In Case No. TO-2006-0093, the Commission determined that competitive classification should be granted for business services in 45 AT&T Missouri exchanges and residential services in 26 AT&T Missouri exchanges. In Case No. TO-2006-0102, the Commission determined that competitive classification should be granted for business

services in an additional 30 AT&T Missouri exchanges (i.e. 75 in total) and for residential services in an additional 51 AT&T Missouri exchanges (i.e. 77 in total).

Consequently, pursuant to Section 392.245.5, all of the AT&T Missouri business services other than exchange access are deemed competitive in the 75 exchanges where basic local business services have been declared competitive and all residential services other than exchange access are deemed competitive in the 77 exchanges where basic local residential services have been declared competitive. These exchanges, and the applicable type of competitive classification associated with each, are listed on Exhibit 1 to AT&T Missouri's proposed findings of fact and conclusions of law submitted herewith.

The Commission must reject the CLECs' assertion that AT&T Missouri should be directed to file revised tariffs to revise its prices to the extent necessary to comply with the maximum prices that existed as of the effective date of the Commission's Report and Order, subject to any intervening adjustments to such maximum prices under the price cap statute. This assertion would be entirely mooted were the Commission to conclude, as it should, that effective competition for all of the services which are the subject of this remand proceeding existed both as of the December 27, 2001 Report and Order and the March 3, 2005, mandate issued by the Court of Appeals. However, even if the Commission does not so conclude, as a result of the Commission's decisions in Case Nos. TO-2006-0093 and TO-2006-0102, the vast majority of AT&T Missouri's lines have now been declared competitive. The percentage of AT&T Missouri's business services lines which lie in the 75 exchanges wherein competitive classification was granted for business services is approximately ****__%****; the percentage of AT&T Missouri's residential services lines which lie in the 77 exchanges wherein competitive classification was granted for residential services is approximately ****__%****. Clearly, any

Commission action that would purport to require rate adjustments could not be imposed in exchanges which have been declared to be competitive under the provisions of S.B. 237.

Moreover, even as to the small percentage of lines that have not been yet declared to be competitive, as AT&T Missouri previously explained in its December 14, 2005, motion to dismiss,¹⁵¹ AT&T Missouri's current rates for the services which are the subject of this remand do not exceed (except in very few cases) those rates that could be in place if the services in question had never been declared competitive and had always been under price caps.

The tariff prices for all intraLATA private line/dedicated services, WATS and 800 services, special access services and operator services do not exceed the maximum allowable prices derived by application of the provisions of Section 392.245.11 to the prices which existed as of the effective date of the Report and Order on January 6, 2002. The current tariff prices for all these services do not exceed the prices that would result from an 8% annual increase as permitted for non-basic services under the price cap statute.¹⁵²

The rate structure for all intraLATA Message Telecommunications Services ("MTS") was substantially revised effective April 2, 2002. Prior to that date, intraLATA MTS toll was subject to a per minute of use charge that varied according to the time of day, day of week, and distance the call was carried. Within each of these classifications, each call was subject to a charge for the initial minute and a different charge for each additional minute. In response to consumer preference and market factors, AT&T Missouri substantially revised its MTS toll offerings in April, 2002, moving to a simplified plan under which each call was billed on a per minute basis, varying only by whether it was made during the day, the night or on the weekend.

¹⁵¹ AT&T Missouri's Motion to Dismiss, December 14, 2005, pp. 5-7.

¹⁵² Effective August 28, 2005, the annual increase for non-basic services subject to the price cap statute was reduced from 8% to 5%.

The restructured MTS prices for residential customers did not, on a weighted average basis, exceed the prices which would result from application of the permitted 8% increase to the old prices. The restructured business MTS prices did, on a weighted average basis, exceed the rates which would result from application of the permitted 8% increase to the old rate structure. But, even if it were permissible to do so, no modification to business MTS prices would be necessary as the restructure would constitute a new service under the price cap statute and revised prices do not exceed those that would have permitted if price caps had applied on a prospective basis.¹⁵³

Since the time the restructured residential MTS prices went into effect on April 2, 2002, AT&T Missouri has revised the prices. Except for the evening prices, the current prices do not exceed the levels derived by application of the annual price cap increases under Section 392.245.11 to the prices as they existed on April 2, 2002. The evening price of 22 cents/minute is 1 cent/minute higher than the price which would result from application of the general price cap increases to the April 2, 2002 evening price. With regard to business MTS prices, the current prices do not exceed the level which would result from applying the permitted annual increase for non-basic services¹⁵⁴ to the restructured prices as they existed on April 2, 2002.

Revisions to the prices for certain Residence and Business 1+ Saver rates would be necessary if, contrary to AT&T Missouri's view, the CLECs' assertion were well taken. First, the current price for Residence 1+ Saver, which provides a 15% discount off of MTS prices, is \$2.50, compared to a price of \$2.04 which would result from the application of annual price increases for non-basic services under Section 392.245.11 to the rates in effect on January 6, 2002. Second, the current price for Residence 1+ Saver, which provides a 20% discount off of

¹⁵³ See, Section 392.245.11 ("This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services.").

¹⁵⁴ The permissible increase was reduced 8% per year to 5% per year effective August 28, 2005.

MTS prices, is \$3.50, compared to a price of \$3.40 which would result from application of annual price cap increases for non-basic services to the price which existed as of January 6, 2002. Third, the price of an additional number under the Business 1+ Saver tariff is \$14.00, compared to a price of \$13.60, which would result from application of an annual increase for non-basic services to the price which existed as of January 6, 2002.

In short, the rates for these few services would be subject to reduction only in the exchanges representing a small minority of AT&T Missouri's residential and business access lines and only if the CLECs were correct in their claims which, for the reasons explained above, they are not.

The Court of Appeals' decision certainly did not address the rates for any service offered by AT&T Missouri, nor did it direct the Commission to review any rate for service offered by AT&T Missouri. Instead, as noted above, the Court of Appeals directed the Commission to consider whether the services at issue should have been classified as competitive pursuant to the "effective competition" standard of Section 392.245.5. Nor would it have been appropriate for the Court of Appeals to address rates, since no rates were established in Case No. TO-2001-467 and the appeal did not address the rates for any service. Moreover, rates for the services that are the subject of this proceeding were changed in subsequent tariff filings over the last several years, none of which were the subject of any appeal or any request for stay by the CLECs, OPC or any other party. No one has provided any legal rationales that would permit the Commission to override tariffs previously approved without objection.

For the reasons presented herein, the Commission should determine that the services at issue are competitive on a statewide basis pursuant to the criteria in Section 392.245.5 as it existed when the mandate issued. Under no circumstance, however, may the Commission

penalize AT&T Missouri by requiring an adjustment of rates for services which should have been declared competitive in either December, 2001, or March, 2005.

As noted, rate changes for the services at issue were approved in subsequent proceedings without objection by either the CLECs or OPC. Had the Commission applied the standard of Section 392.245.5 in its December 27, 2001, Report and Order, it is clear that the price changes could not have been rejected by the Commission. Similarly, the rates would have been permitted to remain in effect had the Commission undertaken the review directed by the Court of Appeals in March, 2005. In any event, no party cites any authority for the extraordinary proposition that the Commission may revise those rates when no party appealed the Commission's decision nor sought a stay of the Commission's decisions approving tariff price changes since the December, 2001 Report and Order. To the contrary, Section 386.270 provides that all rates shall be in force and be prima facie lawful until found otherwise in a suit brought for that purpose pursuant to the provisions of Chapter 386. No such suit has been initiated.

The Commission is without authority to change rates for any service in this proceeding. The rates for the services at issue here were not changed in the Report and Order, but were changed in subsequent cases which no party appealed or sought a stay of implementation. Attempted revision of those rates is not required by the mandate of the Court of Appeals; instead, the mandate requires the Commission to assess competitive classification for the services at issue under the standard as it existed in Section 392.245.5.

VI. CONCLUSION

The Commission should find and conclude that effective competition for each of the services which are the subject of this remand proceeding -- intraLATA private line/dedicated services, intraLATA toll/MTS services , WATS and 800 services, special access services, and

certain operator services (i.e., station-to-station, person-to-person, and calling card services) -- existed in all of AT&T Missouri's exchanges under the standard as it existed in Section 392.245.5 as of the Commission's December 27, 2001 Report and Order and as it existed as of the March 3, 2005, issuance of the Court of Appeals' mandate. No further action is necessary or appropriate.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

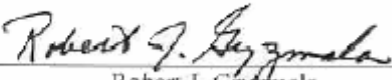
BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

Attorneys for Southwestern Bell Telephone, L.P.,
d/b/a AT&T Missouri
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)
314-247-0014 (Facsimile)
robert.gryzmala@att.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on each party shown on the Commission's Data Center Service List, either by electronic mail or by first-class, postage prepaid, U.S. Mail, on December 11, 2006.


Robert J. Gryzmala