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November 9, 2001

FILED³

NOV 09 2001

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Re: Case No. TO-2001-467

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case are an original and eight copies of the Highly Confidential (HC) version and an original copy of the redacted (NP) version of Southwestern Bell Telephone Company's Initial Brief. Also enclosed for filing are an original and eight copies of the Highly Confidential (HC) version and an original copy of the redacted (NP) version of Southwestern Bell Telephone Company's Proposed Findings of Fact and Conclusions of Law. As required by the Protective Order issued in this case, we are filing the HC copies of the Initial Brief and the Proposed Findings of Fact and Conclusions of Law under seal. We have classified these documents HC because they contain marketing analyses or other market-specific information relating to services offered in competition with others, that would cause financial harm if made available to competitors.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

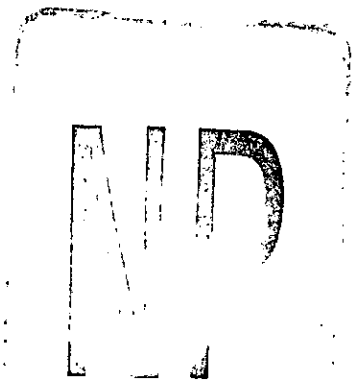
Very truly yours,

Anthony K. Conroy /tm

Anthony K. Conroy

Enclosure

cc: Attorneys of Record



FILED³

NOV 09 2001

Missouri Public
Service Commission

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.)

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW Southwestern Bell Telephone Company (SWBT) and submits its
Proposed Findings of Fact and Conclusions of Law in this case to the Missouri Public Service
Commission:

I. Findings of Fact and Conclusions of Law Applicable Generally to Case

FINDINGS OF FACT

1. This case was established by the Commission on March 13, 2001, in response to the Commission Staff's March 1, 2001, Motion to Open Case. In its Motion to Open Case, the Commission Staff requested that the Commission open a new case to investigate the state of competition in SWBT's exchanges, pursuant to Section 392.245.5 RSMo 2000. In its Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, the Commission found that a new case "should be established for the purpose of investigating the state of competition in SWBT exchanges in accordance with Section 392.245 RSMo 2000." The Commission also made Southwestern Bell and 70 alternative local exchange telecommunications companies parties to this case.

2. In response to the evolving competitive forces shaping the telecommunications industry, the Missouri legislature passed a law in 1996 that authorized competitive local exchange carriers (CLECs) to begin providing basic local telecommunications service in

competition with incumbent local exchange carriers (ILECs).¹ 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.² 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.³

3. 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.⁴ On March 21, 1997, SWBT asked the Commission to determine that SWBT was subject to price cap regulation pursuant to Section 392.245.2 RSMo 2000.⁵ In Case No. TO-97-397, the Commission approved SWBT as a price cap regulated company, effective September 26, 1997.⁶

4. Under price cap regulation, as provided for in Section 392.245, 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

¹ Ex. 16, Hughes Direct, pp. 13-14.

² Id.

³ Ex. 16, Hughes Direct, p. 14.

⁴ Id.

⁵ Id.

⁶ Id.

productivity offset established for telecommunications service by the FCC and adjusted for exogenous factors.⁷ In addition, a price cap regulated company can raise rates on non-basic services by a maximum of 8% for each of the following twelve month periods.⁸

5. Senate Bill 507 also contemplated that 5 years after the initiation of competition in an ILEC's exchange, price cap regulation would be eliminated.⁹ This proceeding was established to 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 environment, unless the Commission determines that effective competition does not exist for a particular service in a particular exchange.

6. Section 392.245.5 RSMo 2000, provides as follows:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such services. 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.

7. "Effective competition" is defined in Section 386.020(13) RSMo and requires the Commission to consider the following objective factors:

⁷ Ex. 16, Hughes Direct, p. 15.

⁸ Id.

⁹ Ex. 16, Hughes Direct, p. 14.

- (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.

Under Section 392.245.5 RSMo 2000, SWBT is entitled to a finding of “effective competition” unless the Commission determines that effective competition does not exist. The statute establishes that SWBT should receive a competitive classification, and the burden is on other parties to demonstrate that SWBT is not entitled to equal regulatory treatment, and to prove that effective competition does not exist.¹⁰

8. Section 392.245.5 RSMo 2000, provides that the Commission must examine the state of competition, with the intent of eliminating price cap regulation, no later than 5 years after a CLEC has been certified to provide service in an exchange.¹¹ 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, 1997.¹² Dial US began providing service in Springfield immediately thereafter. Accordingly, a decision on whether effective competition exists in Springfield must be made no later than January 2002.

9. Competition in most other major exchanges began in the months after January 1997 and now extends to all SWBT exchanges. Under Section 392.245.5, the Commission may examine the status of competition in the exchanges now, utilizing the evidence presented in this

¹⁰ Ex. 16, Hughes Direct, p. 16.

¹¹ Ex. 16, Hughes Direct, p. 17.

¹² Id.

case. While that appears to be the most efficient use of resources, the Commission may choose to conduct hearings for each of SWBT's 160 exchanges over the next several months if it so desires.

10. Legislative action designed to recognize impending competition in Missouri telecommunications markets did not begin with Senate Bill 507. Legislation (House Bill 360) was passed in Missouri in 1987 directing the Commission to reduce regulatory requirements as competition entered the various telecommunications markets.¹³ With the passage of House Bill 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 Under this classification, prices for services could be placed into rate bands that define a minimum and maximum price range.¹⁷ The price for services utilizing rate bands could be adjusted within the approved bands on one day's notice to the Commission.¹⁸ Specialized cost studies were required for all new and existing services for which a transitionally competitive classification was sought.¹⁹ Filings requiring cost support were subject to the standard thirty day Commission approval process.²⁰

¹³ Ex. 16, Hughes Direct, p. 6.

¹⁴ Id.

¹⁵ Id.

¹⁶ Ex. 16, Hughes Direct, p. 7.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

11. Under House Bill 360, full competitive classification for services allowed use of the same rate band flexibility granted with transitionally competitive classification.²¹ However, price increases beyond the maximum rate band are subject to a tariff filing and a ten day advance notice to all affected customers.²² Price decreases below the minimum rate band limit are subject to a seven day Commission notice.²³ In addition, tariff filings may be made without cost support.²⁴

12. Under Section 392.361 RSMo, a telecommunications company seeking either transitionally competitive or competitive classification 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 a transitionally competitive or noncompetitive company as transitionally competitive.²⁵ Under Section 392.370.1, the petitioning telecommunications company is required to show 1) an order had been issued under 392.361 RSMo 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 previously 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.²⁶ House Bill 360 also provided that, unless suspended by the Commission, any service classified as transitionally competitive automatically becomes

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Ex. 16, Hughes Direct, p. 8.

²⁶ Id.

classified as competitive after a 3-year period.²⁷ However, the Commission is authorized to extend the transitionally competitive designation for designated periods.²⁸

13. In 1987, numerous interexchange carriers (IXCs) filed petitions with the Commission pursuant to Section 392.361 RSMo, seeking both service and company classification as either competitive or transitionally competitive.²⁹ On September 15, 1989, the Commission found all services of the IXCs, other than AT&T, to be competitive and therefore declared these IXCs to be competitive carriers.³⁰ The Commission found AT&T's Wide-Area Telecommunications Service (WATS), private line and custom network services to be competitive.³¹ Further, the Commission also found AT&T's Message Telecommunications Service (MTS) and ancillary/complementary services to be transitionally competitive.³²

14. In 1992, SWBT filed a petition seeking classification of MTS, Operator Services, WATS Service and Digital Private Line Services as transitionally competitive.³³ In its petition, SWBT stated that these services met the requirements of Section 392.370.1 RSMo in that they were the same as, substitutable for, or equivalent to competitive services provided by other telecommunications carriers within its service territory.³⁴

15. In its December 21, 1992 Order in Case No. TO-93-116, the Commission found that SWBT's MTS Service was substitutable for IXCs' MTS Services.³⁵ The Commission found

²⁷ Id.

²⁸ Id.

²⁹ Ex. 16, Hughes Direct, p. 9.

³⁰ Id.

³¹ Id.

³² Id.

³³ Ex. 16, Hughes Direct, p. 10.

³⁴ Id.

³⁵ Id.

that SWBT's 800 and MaxiMizer® 800 service were substitutable for the IXC's 800 services.³⁶ The Commission found that SWBT's WATS Service was substitutable for the IXC's WATS Services.³⁷ The Commission found that SWBT's Digital Private Line and Special Access Services were "equivalent" services to IXC provided services.³⁸ Finally, the Commission found that SWBT's Operator Services were substitutable for comparable services provided by IXC's.³⁹ The Commission determined that SWBT's MTS, WATS, MaxiMizer 800, Digital Private Line, special access and Operator Services should be deemed transitionally competitive services.⁴⁰

16. In Case No. TO-93-115, SWBT requested competitive classification for Speed Calling 8 and Speed Calling 30.⁴¹ In that case, the Commission adopted a unanimous stipulation that provided for a competitive classification for Speed Calling 8 and Speed Calling 30.⁴² The evidence in that case indicated that there was a wide array of providers of customer premises equipment (CPE) offering similar services in competition with SWBT's Speed Calling services, at a variety of prices.⁴³

17. Senate Bill 507 was the final step introducing local competition in Missouri. Since 1996, the Commission has routinely classified CLECs as competitive carriers when approving each CLEC's basic local certification.⁴⁴ IXC's are also routinely classified as

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Ex. 16, Hughes Direct, p. 11.

⁴³ Id.

⁴⁴ Ex. 16, Hughes Direct, p. 12.

competitive carriers in Missouri.⁴⁵ With a competitive carrier classification, CLECs and IXC's are able to change their prices (up or down) on short notice to the Commission without the need of providing cost support for the change.⁴⁶ This flexibility allows them to freely modify their offerings to meet customer needs, or respond to the offerings that exist from their competitors (whether SWBT, CLECs, IXC's, or other carriers) in the local market. In this case, SWBT seeks the exact same freedom in pricing flexibility that all of its competitors currently enjoy.⁴⁷

18. As described above, pursuant to Section 386.020(13) RSMo 2000, the first two factors which the Commission must consider in determining whether "effective competition" exists for SWBT's services is the "extent to which services are available from alternative providers in the relevant market," and the "extent to which these services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions." As described below, the Commission finds that SWBT has provided substantial evidence which establishes that, for each of SWBT's regulated service offerings, there are alternative providers who are providing functionally equivalent or substitutable services throughout SWBT's Missouri exchanges, at comparable rates, terms and conditions.

19. The Commission's findings in Case No. TO-99-227 (SWBT's Section 271/M2A case) are relevant to the Commission's analysis in this case. As this Commission found in Case No. TO-99-227, CLECs are currently providing service to customers in all of SWBT's exchanges, and SWBT has fully opened all of its markets to competition. In addition, as described below, the Commission finds that IXC's provide services that are also functionally equivalent to or substitutable for some of SWBT's services, including interexchange services

⁴⁵ Ex. 16, Hughes Direct, p. 13.

⁴⁶ Id.

⁴⁷ Id.

(e.g., interLATA Toll, 800 Services), operator and directory services, and dedicated services (e.g., private line and special access).

20. Furthermore, the Commission finds that there are a number of alternate providers of functionally equivalent or substitutable services for SWBT's 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. The Commission finds that to the extent these companies provide functionally equivalent or substitutable services for the services provided by SWBT, it is appropriate for the Commission to consider the services when evaluation whether SWBT's services are subject to "effective competition."

21. Neither Section 392.245.5 RSMo nor 386.020(13) RSMo 2000 require any quantitative market share loss test to determine whether "effective competition" exists for SWBT's services in Missouri. While specific market share thresholds should not be utilized to determine whether or not SWBT faces effective competition, competition in local telecommunications markets is clearly flourishing in Missouri. As of April, 2001, SWBT conservatively estimates that the local market share gained by CLECs in Missouri is over 15%.⁴⁸ In its March 15, 2001 Order recommending approval of SWBT's Section 271 application in Missouri, the Commission found that CLECs "serve approximately 12% of the access lines in SWBT territory." Order, p. 20. The Commission's findings, however, were based upon data collected from CLECs by the Commission Staff in August, 2000, which is now over one year old. There are CLECs operating in all of SWBT's exchanges in Missouri.⁴⁹ These CLECs are

⁴⁸ Ex. 16, Hughes Direct, p. 26.

⁴⁹ Id.

providing local services and related services to business and residence customers, via resale of SWBT's services, the use of unbundled network elements purchased from SWBT on a wholesale basis, and the use of CLECs' own facilities.⁵⁰

22. Competition is greatest in more urban areas. For example, in the St. Louis Principal and MCA-1 and MCA-2 zones, at least 59 CLECs are providing service.⁵¹ Fifty-one CLECs are providing service in the Kansas City Principal, MCA-1 and MCA-2 zones.⁵² Thirty-seven CLECs are providing service in SWBT's St. Charles exchange, and thirty-six CLECs are providing service in SWBT's Springfield Principal and MCA-1 zone.⁵³ Competition is not only flourishing in the urban areas, however. At least ten CLECs are serving customers in 48% of SWBT's exchanges in Missouri, and at least three CLECs are serving customers in 90% of SWBT's exchanges throughout the state.⁵⁴ SWBT believes there are facilities-based CLECs serving more than 80% of SWBT's exchanges in Missouri.⁵⁵

23. The Commission finds that examining trends in competitive activity on a date certain can understate the degree of competition in markets such as telecommunications undergoing deregulation.⁵⁶ The explosive growth in CLEC activity throughout SWBT's Missouri exchanges provides additional evidence that SWBT faces effective competition throughout its Missouri exchanges.⁵⁷ SWBT presented evidence that based on year over year

⁵⁰ Id.

⁵¹ Ex. 16, Hughes Direct, Sched. 3-1.

⁵² Id.

⁵³ Id.

⁵⁴ Ex. 16, Hughes Direct, p. 27.

⁵⁵ Id.

⁵⁶ Ex. 16, Hughes Direct, p. 27; Ex. 1, Aron Direct, p. 27.

⁵⁷ Ex. 16, Hughes Direct, p. 27.

data, interconnection trunks have grown 53%, E-911 listings have grown 103%, unbundled switch ports (generally meaning UNE-P), have grown over 200%, and collocation arrangements have grown 140%.⁵⁸ These trends demonstrate that not only does facilities-based competition exist in Missouri, such facilities-based competition is growing rapidly.

24. For the period from the first quarter of 1998 through the second quarter of 2001, SWBT presented evidence that interconnection trunks have increased 1,441%, E-911 listings have increased 8,546%, the growth in UNE-P has been 5,826,200%, the growth in the number of resold lines has been 592%, and the growth in "ported" numbers has been 26,392%.⁵⁹

25. Attached to SWBT witness Thomas Hughes Surrebuttal Testimony as Schedules 1-1, 1-2 and 1-3 were maps identifying the number of active CLECs competing in each SWBT exchange throughout Missouri. These maps depict the extensive level of CLEC competition faced by SWBT throughout its Missouri exchanges. In his Surrebuttal Testimony, Mr. Hughes also identified, by exchange, the total lines served by SWBT, and the minimum number of lines served by CLECs.⁶⁰ The Commission finds that the lines identified as CLEC lines by Mr. Hughes represent only a minimum number, and therefore, CLEC market share is likely greater than reported in Mr. Hughes' Schedules.⁶¹ The reason for this is simple. SWBT knows when a CLEC resells SWBT's service and when a CLEC purchases unbundled network elements from SWBT, but can only estimate the number of UNEs served by a CLEC using its own facilities. SWBT can identify the number of E-911 listings that CLECs place in 911 databases, but as Mr. Hughes and Dr. Aron explain in their testimony, this understates the number of lines served by

⁵⁸ Id.

⁵⁹ Ex. 17, Hughes Surrebuttal, p. 7.

⁶⁰ Ex. 17 HC, Hughes Surrebuttal, Schedule 4-1, 4-2, 4-3 and 4-4 HC.

⁶¹ Ex. 17 HC, Hughes Surrebuttal, pp. 5-6.

CLECs on a pure facility basis. The number of CLEC E-911 listings likely significantly understates the number of access lines served by facilities-based CLECs.⁶² For example, only outbound lines have 911 listings associated with them.⁶³ Complex voice services may be only partially represented in the E-911 database.⁶⁴ DSL and cable modem lines may not be reported in the E-911 database.⁶⁵ Furthermore, SWBT simply does not know the number of lines served by CLECs utilizing only CLEC facilities.⁶⁶ Finally, CLEC access lines served by numbers ported from SWBT are not included in E-911 databases.⁶⁷

26. With respect to specific market share for CLECs serving business and residential access lines, Mr. Hughes' surrebuttal testimony provided updated statistics reflecting the minimum CLEC business market share and residential market share throughout SWBT's Missouri exchanges.⁶⁸ As reflected on Hughes' Surrebuttal Schedule 5 HC, the minimum market share for business exchange services gained by CLECs statewide is over ** %.⁶⁹ There are ** ** SWBT exchanges where the minimum CLEC market share of business access lines is ** % or greater.⁷⁰ In addition, there are ** ** exchanges where the minimum CLEC market share of business access lines is ** % or greater.⁷¹ In urban areas, the minimum level of business lines served by CLECs is even higher. In Kansas City, the minimum

⁶² Ex. 17 HC, Hughes Surrebuttal, pp. 5-6; Ex. 2, Aron Surrebuttal, p. 16.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Ex. 17 HC, Hughes Surrebuttal, p. 6.

⁶⁶ Ex. 17HC, Hughes Surrebuttal, p. 6.

⁶⁷ Id.

⁶⁸ See Ex. 17HC, Hughes Surrebuttal, Schedules 5-1 HC through 5-4 HC, Surrebuttal, Schedules 5-1 and 6-1 HC through 6-4 HC.

⁶⁹ Ex. 17 HC, Hughes Surrebuttal, p. 8.

⁷⁰ Id.

⁷¹ Ex. 17 HC, Hughes Surrebuttal, p. 9.

NP

level of business lines served by CLECs is ** %**. In St. Louis, the minimum level of business lines served by CLECs is ** %**, and in Springfield, the minimum level of business lines served by CLECs is ** %**.⁷²

27. With respect to the residential basic local services market, the minimum market share gained by CLECs statewide is over ** %**. In two exchanges where CLECs have chosen to aggressively compete with SWBT, the minimum CLEC residential market share is ** %** in the Harvester exchange, and ** %** in the St. Charles exchange. While CLECs' overall market share for residential access lines is not as great as their market share for business lines, the Commission finds that where CLECs choose to compete with SWBT in residential markets, they are free to do so and are effective. SWBT witness Dr. Debra Aron explained that it is not surprising that CLECs are focusing on higher-margin business customers.⁷³ This focus, however, does not make the competition for the residential access line any less "effective."⁷⁴

28. The most recently available data reflects that there are 62 CLECs that are providing service to business customers, residential customers, or both.⁷⁵ SWBT estimates that these CLECs serve 467,798 lines.⁷⁶ Of these 62 CLECs, 10 are serving at least 10,000 lines in Missouri.⁷⁷ These 10 CLECs alone serve 367,514 lines.⁷⁸

29. Additional evidence of effective competition from CLECs was produced by SWBT. Over the past 18 months, SWBT has experienced a declining trend for retail access

⁷² Id.

⁷³ Ex. 1, Aron Direct, p. 20.

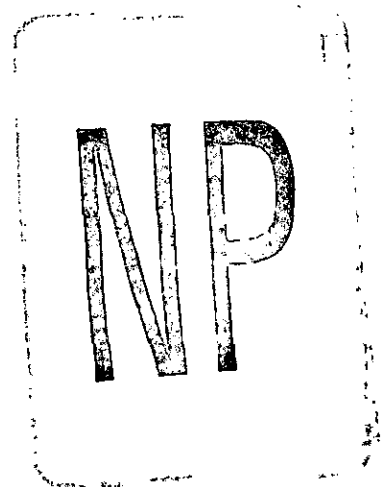
⁷⁴ Id.

⁷⁵ Ex. 17, Hughes Surrebuttal, p. 13.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.



lines.⁷⁹ Over the past 3 quarters, SWBT has experienced a decrease in the total number of retail lines served.⁸⁰ During this same time period, the number of CLEC lines has continued to grow.⁸¹ In addition, there are currently 23 CLEC switches deployed throughout the state of Missouri, and these switches deployed by CLECs in Missouri have the capacity to serve 100% of Southwestern Bell's Missouri customers.⁸² Where CLECs have their own switch, they are able to provide not only basic dial tone to customers, but they are also able to provide vertical services from their switch. With the fact that 23 switches are operational in the state, CLECs are effectively able to compete with SWBT for the provision of both access lines and switch-based vertical services to customers throughout the state of Missouri.⁸³ SWBT also presented evidence that CLECs are actively collocating in SWBT central offices in Missouri. CLECs have now collocated their equipment in SWBT exchanges which represent ** %** of the total lines in the state.⁸⁴

30. Some parties to this case, including the Office of Public Counsel, Staff and AT&T, argue that the Commission should not consider resold services when it evaluates whether "effective competition" exists under Section 386.020(13) RSMo 2000. However, the Commission finds that Dr. Aron is correct when she explained that resold services should be considered as the Commission evaluates whether SWBT's services are subject to effective competition.⁸⁵

⁷⁹ Ex. 17, Hughes Surrebuttal, p. 14.

⁸⁰ Id.

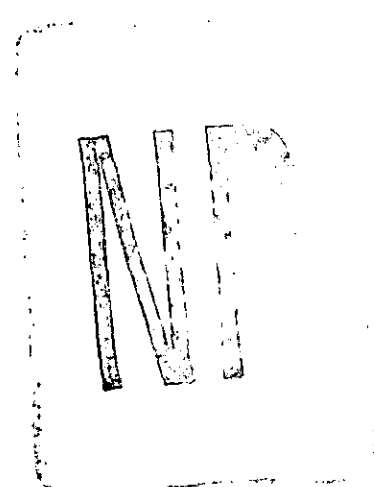
⁸¹ Id.

⁸² Id.

⁸³ Ex. 17, Hughes Surrebuttal, p. 16.

⁸⁴ Ex. 17 HC, Hughes Surrebuttal, p. 16.

⁸⁵ Ex. 2, Aron Surrebuttal, pp. 2-10.



31. The Commission finds that Dr. Aron presented several credible reasons why the Commission should consider resold services. For example, resale promotes competition in the provision of retailing functions.⁸⁶ Resale can provide significant competitive pressure.⁸⁷ If SWBT increases its retail price, a CLEC reselling the service will enjoy an increased profit margin.⁸⁸ Most resellers utilize resale as a component of a “hybrid” approach, utilizing resale when it makes financial sense to do so.⁸⁹ Where prices for UNE loops exceed SWBT’s retail rates for residential service, resale is a viable competitive entry mechanism.⁹⁰ The use of resold services also allows CLECs to easily “bundle” their services to offer “one-stop shopping,” without risking any capital for network infrastructure buildout.⁹¹

32. The Commission finds that competition from CLECs alone is sufficient for the Commission to find that SWBT faces effective competition for all of its services throughout its Missouri exchanges. Section 386.020(13) RSMo 2000, however, also contemplates that competition from non-regulated alternative providers may also be considered. The Commission finds that the legislature could have limited the “services” which the Commission may consider to determine if effective competition exists to “telecommunications services” as defined in Section 386.020(), but it did not do so. Instead, the legislature used the term “service,” which is defined in Section 386.020(47)RSMo 2000, to include a much wider range of services. Moreover, the legislature could have defined “alternative providers” to include only regulated “alternative local exchange telecommunications company” as defined in Section

⁸⁶ Ex. 2, Aron Surrebuttal, p. 3.

⁸⁷ Id.

⁸⁸ Ex. 2, Aron Surrebuttal, p. 4.

⁸⁹ Id.

⁹⁰ Ex. 2, Aron Surrebuttal, p. 7.

⁹¹ Id.

386.020(1)RSMo 2000, but again, the legislature did not do so. The Commission finds that it would not be appropriate for the Commission to limit its analysis to telecommunications services provided by regulated telecommunications companies, where the Missouri legislature has not imposed any such limitation.

33. 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, RSMo, including the reasonableness of rates, as set out in Section 392.185 RSMo, are being advanced.⁹² The purposes and policies of Chapter 392 RSMo are clear. Section 392.185 RSMo outlines that the provision of telecommunications services should be maintained and advanced. The Commission finds that in a competitive marketplace, such as the one that exists throughout SWBT's territory, it is the marketplace that will maintain and advance the services offered to customers. The Commission finds that 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 marketplace.⁹³ An important purpose specified in the statute is to allow for full and fair competition to function as a substitute for regulation.⁹⁴ 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.

34. The fourth factor which the Commission is required to consider in its evaluation of whether effective competition exists in SWBT's exchanges is existing economic or regulatory barriers to entry.⁹⁵ Given the multitude of providers providing functionally equivalent or

⁹² Ex. 16, Hughes Direct, pp. 20-21

⁹³ Id.

⁹⁴ Id.

⁹⁵ Ex. 16, Hughes Direct, pp. 21-22.

substitutable services that are described in the testimony of SWBT's witnesses in this case, it is clear that there are no barriers to entry that are preventing competitors from offering alternatives in the marketplace.⁹⁶ The Commission's findings in Case No. TO-99-227 concerning SWBT's compliance with Section 271 of the federal Telecommunications Act of 1996 (Act) are instructive in this proceeding. In that case, the Commission determined that SWBT had complied with the Act, and that SWBT's local markets were open to competition. In its March 15, 2001, Order in Case No. TO-99-227, the Commission stated that "SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion." Order, p. 91.

35. The Commission finds that SWBT 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. The availability of resale and unbundled network elements (UNEs), including combinations of UNEs, provide effective ways for CLECs to enter the market with little capital investment. In Case No. TO-99-227, the Commission has already determined that CLECs are providing facilities-based services to both business and residential customers.

36. The Commission finds that customers will ultimately benefit from an environment where all providers are free to compete on equal terms.⁹⁷ It is in this unfettered environment where service innovation flourishes, customer demands dictate outcomes and maximum benefits are derived. The legislature understood this when it passed Senate Bill 507 with the clear intent that

⁹⁶ Id.

⁹⁷ Ex. 16, Hughes Direct, p. 32.

price caps be an interim measure and the real goal was to have providers competing for customers on equal terms.

FINDINGS OF FACT AND CONCLUSIONS OF LAW APPLICABLE TO SPECIFIC ISSUES

Issue 1: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's core business switched services be classified as competitive pursuant to Section 392.245.2 RSMo 2000?

FINDINGS OF FACT

37. The Commission finds that it should classify SWBT's core business switched services as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's core business switched services face effective competition throughout SWBT's exchanges in Missouri, and therefore, should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

38. SWBT's core business switched services include the various basic business access services, including exchange access lines, analog trunks, and Basic Rate ISDN (DigiLineK Service) that SWBT's business customers use to make and receive calls over the public switched telephone network.⁹⁸ SWBT's basic business exchange access line is a line that provides customers the ability to make and receive telephone calls. These lines can be used to make voice telephone calls or to transmit data to or from the public switched telephone network. Analog trunks are used to connect the central office to a private branch exchange (PBX) or key system, located on the customer's premise.

⁹⁸ Exhibit 11, Fernandez Direct, p. 4.

39. There are alternative providers providing substitutable or functionally equivalent services to SWBT's core business switched services throughout Missouri.⁹⁹ SWBT's core business switched services face competition from CLECs' services, IXCs' services, as well as nontraditional forms of competition such as wireless providers, Internet-based telephony, Email, and customer premises equipment (CPE).¹⁰⁰

40. The Commission finds that SWBT's core business switched services face effective competition from CLECs throughout SWBT's Missouri exchanges. For example, in SWBT's Fenton exchange, there are ** ** CLECs serving business customers.¹⁰¹ In the Fenton exchange, CLECs serve a *minimum* of ** ** business lines, which constitute a minimum CLEC market share of the business access line market in the Fenton exchange of ** **.¹⁰² Likewise, in SWBT's Imperial exchange, there are ** ** CLECs serving business customers, and these CLECs serve a minimum of ** ** business access lines.¹⁰³ CLECs in SWBT's Imperial exchange have garnered a minimum of ** %** minimum business market share of the business access lines in the Imperial exchange.¹⁰⁴ CLEC's business access line gains have not been limited to smaller exchanges. For example, in the Kansas City exchange, CLECs have a minimum of ** ** business access lines, which constitute a minimum market share for CLECs of approximately ** %** of the business access lines in that exchange.¹⁰⁵ In the Manchester and Chesterfield exchanges of suburban St. Louis, CLECs have obtained a minimum

⁹⁹ Ex. 11, Fernandez Direct, p. 5.

¹⁰⁰ Ex. 11, Fernandez Direct, p. 5.

¹⁰¹ Ex. 17, Hughes Surrebuttal, Sch. 5-1(HC).

¹⁰² Hughes Surrebuttal, Ex. 17(HC), Sch. 5-1(HC).

¹⁰³ Ex. 17(HC), Hughes Surrebuttal, Sch. 5-1(HC).

¹⁰⁴ Id.

¹⁰⁵ Id.

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market share of over ** %** of the total business access lines in those exchanges.¹⁰⁶ Finally, in the large St. Louis exchange, CLECs have obtained a minimum of ** %** business access lines, which constitutes approximately ** %** minimum market share of business access lines in the St. Louis exchange. These competitive statistics reflect that where CLECs are free to choose to compete vigorously with SWBT for business access lines, CLECs effectively compete with SWBT and have obtained a significant competitive market share in those exchanges. CLECs have the exact same opportunities to compete in other exchanges where they have obtained less significant market share, with lower market share results, including providing competitive services via pure facilities-based competition, unbundled network elements, and resale.

41. The Commission also finds that SWBT's core business switched services face substantial and effective competition from "non-traditional" services, such as wireless service, cable modems, and Internet-based telephony and e-mail.¹⁰⁷ Wireless service is widely available throughout SWBT's exchanges in Missouri.¹⁰⁸ Wireless service is particularly attractive to business customers because the service often includes long distance calling at no charge.¹⁰⁹

42. Another form of non-traditional competition to SWBT's core business switched services is service offered via a cable modem, and DSL services offered by other telecommunications companies. These services eliminate the need for additional access lines.¹¹⁰

¹⁰⁶ Id.

¹⁰⁷ Exhibit 11, Fernandez Direct, p. 13.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Id.

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Through line sharing, alternative carriers are able to provide high speed data services over the same line used to provide the customer with voice services, thereby eliminating the need for additional lines.¹¹¹

43. The Internet is now pervasive and accessible to all business customers in all of SWBT's Missouri exchanges.¹¹² The various Internet-related capabilities such as e-commerce, e-mail, Web Pages, and Internet-based (or IP) telephony provide even more competitive alternatives to SWBT's core business switched services.¹¹³

44. The Commission finds that there are a multitude of services provided by various types of providers that are functionally equivalent to or substitutable for SWBT's core business switched services throughout SWBT's exchanges in Missouri. The services provided by CLECs, as well as other types of providers such as Internet service providers or cable television companies, allow customers to contact, communicate, and complete commercial transactions with business customers, and as such are the functionally equivalent to or substitutable for SWBT's services. In addition, these services are offered at comparable rates, terms and conditions.¹¹⁴ The extent of the CLECs minimum market share in many of SWBT's more urban exchanges in Missouri is concrete evidence that there are no existing economic or regulatory barriers to CLEC entry into this competitive marketplace. There are no less than 40 CLECs with tariffs approved by the Commission to provide core business switched services in every Missouri exchange.¹¹⁵

¹¹¹ Id.

¹¹² Ex. 11, Fernandez Direct, p. 14.

¹¹³ Id.

¹¹⁴ Ex. 11, Fernandez Direct, p. 17.

¹¹⁵ Ex. 11, Fernandez Direct, Sch. 2.

45. Some parties to this case, including Staff,¹¹⁶ assert that resellers of core business switched services do not provide effective competition to SWBT's core business switched access line services. Based on the economic principles established by Dr. Aron, and the marketing realities established by SWBT witness Fernandez, the Commission finds that resellers are a viable alternative and effective competition for SWBT's business customers.¹¹⁷ When resellers provide service to a business customer, the reseller establishes a new business relationship with the customer.¹¹⁸ The customer may not even know that the reseller is reselling SWBT's service, and the customer likely does not care as long as functionally equivalent services are being provided.¹¹⁹ Moreover, the reseller has the ability to sell additional services to its new business customer, such as voicemail, customer premises equipment, Internet access, systems management, and a variety of other business related services.¹²⁰ The new business relationship established by reseller also permits that telecommunications company to transition its new business customer to a facilities-based service, either by purchasing unbundled network elements from SWBT or by using its own facilities.

46. Staff witness William Voight criticizes SWBT's "over-reliance" on non-regulated alternatives such as wireless providers to show the extent of the effective competition that SWBT faces for its core business switched services throughout its Missouri exchanges.¹²¹ SWBT has demonstrated that effective competition for core business switched services exists even without considering wireless and other non-regulated services. But such alternatives should currently be

¹¹⁶ Ex. 18, Voight Rebuttal, p. 5.

¹¹⁷ Ex. 12, Fernandez Surrebuttal, p. 5.

¹¹⁸ Id.

¹¹⁹ Ex. 12, Fernandez Surrebuttal, pp. 5-6.

¹²⁰ Ex. 12, Fernandez Surrebuttal, p. 6.

¹²¹ Ex. 18, Voight Rebuttal, p. 48.

considered. As described above, the statute which defines the factors the Commission is required to consider to determine if effective competition exists throughout SWBT's Missouri exchanges does not limit competitive alternatives to regulated telecommunications companies, as urged by the Staff. Had the legislature wished to limit the Commission's consideration of alternative providers to regulated telecommunications companies, it clearly could have done so. However, it did not do so, and this Commission finds that it can rely upon directly competing services which are available statewide from alternative providers including wireless providers.

47. The Commission finds that there is no question that cellular services are displacing basic business access lines.¹²² Increasingly, studies are showing that more and more wireless customers consider their wireless phone as their only phone.¹²³

48. Staff criticizes SWBT's evidence of effective competition by complaining that SWBT's supporting evidence is "short on demonstrable competition" and long on newspaper articles, promotional advertisements, etc.¹²⁴ However, the Commission finds that SWBT has produced a great deal of empirical, objective evidence which demonstrates the numerous alternatives available to Missouri business access line customers, and the success that CLECs are having in competing with SWBT throughout Missouri for business customers. However, it would be wrong for the Commission to not also consider the total picture of what is going on in the marketplace. Since SWBT considers newspaper articles, promotional advertisements, and sales brochures from competitors in developing its competitive retail strategy, it is appropriate for the Commission to consider these types of competitive materials in this proceeding. News articles, advertisements and sales brochures are direct evidence of the intense competitive

¹²² Ex. 12, Fernandez Surrebuttal, p. 6.

¹²³ Id.

¹²⁴ Ex. 18, Voight Rebuttal, p. 8.

activity taking place throughout SWBT's Missouri exchanges for business access line customers.¹²⁵

49. The Commission finds that the competitive alternatives described above are succeeding in taking business access lines from SWBT. As Ms. Fernandez explained in her surrebuttal testimony, SWBT is now experiencing a net loss of basic access lines, and the rate at which SWBT is losing basic access lines is growing.¹²⁶ As of September, 2001, SWBT had lost ** ** business access lines during 2001, already more than the total lost in 1999.¹²⁷ If the current monthly average line loss continues, SWBT anticipates it could lose another ** ** retail business access lines throughout 2001, for a total loss of approximately ** ** business access lines in 2001.¹²⁸ This line loss information does not include those lines gained by CLECs or other non-traditional providers that were not previously served by SWBT (e.g., additional lines a business customer purchases from a CLEC).¹²⁹ As Schedule 4(HC) to Ms. Fernandez's Surrebuttal testimony shows, competitive losses are not limited to St. Louis and Kansas City, but also include many other exchanges in the MCA and the outlying areas such as Cape Girardeau, Poplar Bluff, Mexico and others.¹³⁰ Schedule 4(HC) to Ms. Fernandez's surrebuttal testimony reveals that competitive disconnects constitute ** %** of all of SWBT's disconnects.¹³¹

¹²⁵ Ex. 12, Fernandez Surrebuttal, p. 8.

¹²⁶ Ex. 12, Fernandez Surrebuttal, p. 9.

¹²⁷ Ex. 12, Fernandez Surrebuttal, p. 10.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Ex. 12, Fernandez Surrebuttal, pp. 11-12.

¹³¹ Ex. 12, Fernandez Surrebuttal, p. 12:Sch. 4(HC)

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50. The Commission finds that the number of business access lines lost to competition supports the inescapable fact that effective competition exists for SWBT's core business switched services throughout all SWBT exchanges in Missouri. As a result, the Commission finds that these services should be classified pursuant to Section 392.245.5 RSMo 2000.

CONCLUSIONS OF LAW

51. The Commission concludes that applying the factors contained in Section 386.020(13), SWBT's core business switched services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to section 392.245.5 RSMo 2000, these services should be classified as competitive.

Issue 2: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's business line related services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

52. The Commission finds that SWBT's business line related services, like SWBT's core business switched services described above, face effective competition throughout SWBT's exchanges in Missouri, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

53. Line related (or "vertical services"), are services a business customer may add to their business access line and which provide additional functionality.¹³² Examples of line related services include services such as call waiting, return call, three-way calling, call forwarding, caller I.D. and speed calling.

¹³² Ex. 11, Fernandez Direct, p. 11.

54. CLECs are the most prevalent type of competitor for business access line customers, providing business access line related services that are substitutable or functionally equivalent to SWBT's services.¹³³ As the Commission has already found, SWBT's core business services face effective competition from CLECs throughout Missouri exchanges. Where SWBT's core business switched services face effective competition from CLECs, which as described above is throughout all of SWBT's Missouri exchanges, SWBT's line related services also necessarily face effective competition. CLECs offer their customers the same line related services as those offered by SWBT.¹³⁴

55. The Commission also finds that customer premises equipment (CPE) provides a substitute for business line related services.¹³⁵ CPE will perform the same functions as many of SWBT's line related services.¹³⁶ For instance, call forwarding is available on CPE and automatic redial is programmed on most telephone handsets currently available at the retail level.¹³⁷ This feature is comparable to SWBT's autoredial service that allows the last outgoing number to be redialed.¹³⁸ Some business telephones have a conferencing feature that allows the user to conduct a conference call without operator assistance.¹³⁹ This feature is comparable to SWBT's 3-way calling feature.¹⁴⁰

¹³³ Id.

¹³⁴ Ex. 11, Fernandez Direct, p. 14.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Ex. 11, Fernandez Direct, p. 15.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.

56. CLECs resell SWBT's business access line related services.¹⁴¹ Examples of tariffs under which CLECs offer resold access line related services are attached to the Direct Testimony of SWBT witness Tom Anvin.¹⁴² When SWBT loses an access line to a competitor, it also loses the line related services that were associated with that line.¹⁴³ CLECs that do not resell SWBT's business access line related services provide line related services using their own facilities, or they can utilize SWBT's unbundled network elements, over which the line related services can be provisioned.¹⁴⁴ SWBT's business line related services face the same types of effective competition from CLECs throughout SWBT's Missouri exchanges as described in the preceding section of this brief addressing SWBT's core business switched services. The business line related features are offered by CLECs at comparable rates to the rates charged for such features by SWBT.¹⁴⁵

57. In summary, SWBT's business line related services face the same effective competition that SWBT's core business switched services face throughout SWBT's exchanges in Missouri. Staff recognizes that SWBT's business line related services should be classified as competitive if the underlying basic local services are classified as competitive.¹⁴⁶ Because Staff takes the position that SWBT's core business switched services should only be classified as competitive in the Kansas City and St. Louis exchanges, Staff takes the position that SWBT's business line related services should, likewise, only be classified as competitive in the Kansas

¹⁴¹ Id.

¹⁴² See Ex. 15.

¹⁴³ Ex. 11, Fernandez Direct, p. 15.

¹⁴⁴ Ex. 11, Fernandez Direct, p. 16.

¹⁴⁵ Ex. 11, Fernandez Direct, p. 17.

¹⁴⁶ Ex. 18, Voight Rebuttal, p. 5.

City and St. Louis exchanges. However, as described above, SWBT's core business switched access line services face effective competition throughout all of SWBT's Missouri exchanges.

58. The Commission finds that SWBT's business line-related services face effective competition throughout SWBT's Missouri exchanges. The Commission finds that SWBT's business line-related services should be classified as competitive pursuant to Section 392.245.5 RSMo.

CONCLUSIONS OF LAW

59. The Commission concludes that applying the factors contained in Section 286.020(13) RSMo 2000, SWBT's business line-related services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5 RSMo 2000, the Commission concludes that SWBT's business line-related services should be classified as competitive.

Issue 3: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's high capacity exchange access line services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

60. SWBT's high capacity exchange access line services provide customers with up to 24 56/64 Kbs channels of switched access to the local switched telephone network on a single DS-1 (1.544 megabytes per second) transport facility.¹⁴⁷ There are generally 3 types of high capacity exchange access line services offered by SWBT throughout Missouri.¹⁴⁸ The first type

¹⁴⁷ Ex. 11, Fernandez Direct, p. 20.

¹⁴⁸ Ex. 11, Fernandez Direct, p. 20.

utilizes ISDN Primary Rate Interface (PRI) as the underlying technology.¹⁴⁹ ISDN PRI-based services include SmartTrunk and Select Video Plus.¹⁵⁰ The second type of high capacity exchange access line services offered by SWBT throughout Missouri utilizes simple time division multiplexing (TDM) for digital trunking over a DS-1.¹⁵¹ TDM DS-1 digital trunking services include SuperTrunk and Digital Loop Service.¹⁵² The third type of high capacity exchange access line services offered by SWBT throughout Missouri exchanges is known as Integrated Access (IA).¹⁵³ Integrated Access service also utilizes simple time division multiplexing and DS-1 technologies. The Integrated Access high capacity exchange access service offered by SWBT in Missouri is known as Access Advantage Plus.¹⁵⁴

61. Like SWBT's core business switched services and business line related services, the Commission finds that SWBT's high capacity exchange access line services face effective competition in all of SWBT's Missouri exchanges and should be classified by the Commission as competitive throughout Missouri. SWBT presented substantial and credible evidence that there are alternative providers providing substitutable or functionally equivalent services to SWBT's high capacity exchange access line services throughout Missouri.¹⁵⁵ Missouri business customers have many competitive alternatives to SWBT's high capacity exchange access

¹⁴⁹ Id.

¹⁵⁰ Ex. 11, Fernandez Direct, p. 21.

¹⁵¹ Ex. 11, Fernandez Direct, p. 20.

¹⁵² Ex. 11, Fernandez Direct, p. 21.

¹⁵³ Ex. 11, Fernandez Direct, p. 20.

¹⁵⁴ Ex. 11, Fernandez Direct, p. 21.

¹⁵⁵ Ex. 11, Fernandez Direct, pp. 21-22.

services, including services provided by CLECs (including AT&T, Birch, MCI WorldCom, Sprint, and Allegiance).¹⁵⁶ PRI and Digital Trunking services are purchased predominantly by large business and Internet service provider (ISP) customers.¹⁵⁷ PRI and Digital Trunking services are standard services for CLECs selling to the large business PBX market or the ISP inbound dial access networking market.¹⁵⁸ CLECs are SWBT's main competitors in these markets.¹⁵⁹ CLECs have been reselling SWBT's retail high capacity exchange access line services like SuperTrunk and SmartTrunk at discounted rates to business customers since the Act was passed.¹⁶⁰ In addition to reselling SWBT's high capacity exchange access lines services, CLECs who compete for large business and ISP sales offer functionally equivalent services to SmartTrunk, SWBT's ISDN PRI service.¹⁶¹ CLECs also offer functionally equivalent services to SuperTrunk and Digital Loop Service, which are digital services.¹⁶² SWBT presented evidence of comparable high capacity exchange access services offered by CLECs on a facilities basis, including providing Section 7 of AT&T's tariff, which was attached to the Direct Testimony of SWBT witness Tom Anvin.¹⁶³

62. PRI is a mature telecommunications technology and in addition to substitutable services offered by CLECs, nonregulated substitutions are merging and competing for customer share in the high capacity exchange access line market.¹⁶⁴ As Ms. Fernandez discusses in her

¹⁵⁶ Id.

¹⁵⁷ Ex. 11, Fernandez Direct, p. 22.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ See, Ex. 15, Anvin Direct, Sched. 10.

¹⁶⁴ Ex. 11, Fernandez Direct, p. 23.

direct testimony, increases in sales of voice over IP, voice over ATM, and DSL are beginning to replace demand for PRI in the PBX market.¹⁶⁵ An example of these alternatives are attached to Ms. Fernandez's Direct Testimony as Schedule 7.

63. The Commission finds that there is no functional difference between SWBT's high capacity exchange access lines services and the high capacity exchange access services offered by CLECs.¹⁶⁶ Digital Trunking services from CLECs and SWBT's DS-1 based Digital Trunking services are functionally the same.¹⁶⁷ There is no functional difference between SmartTrunk (ISDN PRI) and a CLEC's PRI offering. The number and type of switch features (i.e., PRI, 2 B-Channel Transfer) may vary from CLEC to CLEC and between CLEC and SWBT, but the basic products provide the same functionality to the customers.¹⁶⁸ In addition, SWBT presented evidence and the Commission finds that CLECs offer their high capacity exchange access line services at rates that are comparable to SWBT's rates.¹⁶⁹

64. Staff agrees that SWBT's high capacity exchange access services face effective competition in the St. Louis and Kansas City exchanges, and may be classified as competitive in those exchanges.¹⁷⁰ However, the Commission finds that Staff's analysis is too narrow because it fails to consider the full extent of the competitive alternatives available in SWBT's Missouri exchanges.

¹⁶⁵ Ex. 11, Fernandez Direct, p. 23.

¹⁶⁶ Ex. 11, Fernandez Direct, p. 24.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Ex. 11, Fernandez Direct, p. 25; See Sched. 9 for an example price comparison of ISDN PRI Services.

¹⁷⁰ Ex. 18, Voight Rebuttal, p. 50.

65. The Commission finds that SWBT's high capacity exchange access line services are subject to effective competition throughout SWBT's Missouri exchanges.

CONCLUSIONS OF LAW

66. The Commission concludes that SWBT's high capacity exchange access line services are subject to effective competition throughout all of SWBT's Missouri exchanges. The Commission concludes that pursuant to Section 392.245.5 RSMo 2000, these services should be classified as competitive.

Issue 4: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Plexar services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

67. Plexar is a central office based communications system that allows business customers to use SWBT's central office technology instead of purchasing their own switching equipment.¹⁷¹ The Plexar family of services offered by SWBT includes Plexar I, Plexar Express, Plexar II, and Plexar-Custom.¹⁷² The telecommunications industry often refers to services such as SWBT's Plexar services as "Centrex" services.¹⁷³ Plexar service provides basic call processing capabilities, such as call hold, call transfer, and three-way calling.¹⁷⁴ 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.¹⁷⁵

¹⁷¹ Ex. 11, Fernandez Direct, p. 26.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

68. The Commission finds that business customers in Missouri have had competitive alternatives to SWBT's Plexar services for decades.¹⁷⁶ One of the earliest examples of competitive alternatives to SWBT's Plexar services were key telephone systems and PBXs.¹⁷⁷ Key telephone systems and PBXs were developed and offered to business customers to replace some of the central office based offerings for larger business customers.¹⁷⁸ PBXs and key telephone systems continue to be an attractive competitive alternative for business customers that choose to own their own system.¹⁷⁹ Some of the major equipment-based competition for SWBT's Plexar services are provided by Lucent (for key and PBX systems), Northern Telecom (for key and PBX systems), Toshiba (for key systems), and Rolm/Siemens (for PBX systems).¹⁸⁰

69. The Commission also finds that in addition to the equipment based competition faced by SWBT's Plexar services, several CLECs in Missouri also have tariffed central office based Centrex offerings that are functionally equivalent to or substitutable for Plexar.¹⁸¹ These CLECs include KMC Telecom II, Inc. and Birch Telecom. KMC's Missouri Tariff specifies that it provides its Centrex service throughout the state.¹⁸² CLECs' Centrex services generally provide the same features and services as SWBT's Plexar service.¹⁸³ For example, Birch

¹⁷⁶ Ex. 11, Fernandez Direct, p. 26.

¹⁷⁷ Ex. 11, Fernandez Direct, pp. 26-27.

¹⁷⁸ Ex. 11, Fernandez Direct, p. 27.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Ex. 11, Fernandez Direct, p. 28.

¹⁸² Id.

¹⁸³ Ex. 11, Fernandez Direct, p. 30.

Telecom's "Centrex Express" service provides the same features as SWBT's "Plexar Express".¹⁸⁴ CLECs provide their Centrex services at comparable rates, terms and conditions.¹⁸⁵

70. The Commission finds that SWBT's Plexar services are subject to effective competition throughout SWBT's Missouri exchanges. The Commission Staff supports SWBT's request for a competitive classification of SWBT's Plexar services in all SWBT exchanges in Missouri.¹⁸⁶

CONCLUSIONS OF LAW

71. The Commission concludes that SWBT's Plexar services are subject to effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5 RSMo 2000, the Commission classifies SWBT's Plexar services as competitive in each SWBT Missouri exchange.

Issue 5: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA private line/dedicated services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

72. The Commission finds that it should confirm that SWBT's private line services have been classified as competitive in all of SWBT's Missouri exchanges. As described below, SWBT's private line services face effective competition throughout SWBT's exchanges in Missouri. The Commission should therefore confirm their competitive classification pursuant to Section 392.245.5 RSMo 2000.

¹⁸⁴ Ex. 11, Fernandez Direct, pp. 30-31.

¹⁸⁵ Ex. 11, Fernandez Direct, p. 31.

¹⁸⁶ Ex. 18, Voight Rebuttal, p. 4.

73. Private line services are nonswitched, dedicated circuits, for which SWBT furnishes the requisite facilities, including channels and network terminating equipment, to enable customers and authorized users to communicate between specified locations within a LATA on a continuous basis. They are most frequently utilized for data transmissions, but are also utilized for transporting voice or integrated data/voice communications in private networks.

¹⁸⁷ Private line services include Analog Service; DS0 Service; DS1 Service; DS3 Service; Network Reconfiguration Service ("NRS"); and GigaMAN Service.

74. SWBT contends that its intraLATA private line/dedicated services should be classified as competitive in all of its Missouri exchanges due to prior determinations made by the Legislature and this Commission and the extensive nature of competition for private line services.

75. Staff agrees that the Commission should confirm a competitive classification for these services.¹⁸⁸ No party presented any evidence with respect to these services to support a different conclusion.

76. The Commission finds that significant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years. Undisputed evidence shows that many alternative providers, such as AT&T, Sprint, MCI and numerous CLECs offer non-switched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to SWBT's private line services. These alternatives, against which SWBT competes, are either not regulated by the Commission or at least not price regulated in the same manner as SWBT.¹⁸⁹

¹⁸⁷ Ex. 3, DeHahn Direct, pp. 3-5.

¹⁸⁸ Ex. 18, Voight Rebuttal, p. 54.

¹⁸⁹ Ex. 3, DeHahn Direct, pp. 2, 5-11 and Schedules 1 and 2.

77. In addition to direct competition for traditional private line services, the Commission finds that 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 SWBT's wireline private line services such as fast-packet, frame relay and cell relay services; Internet based access; and fixed wireless CPE solutions.¹⁹⁰

CONCLUSIONS OF LAW

78. In 1996, the Missouri Legislature recognized the private line market to be sufficiently competitive to permit all carriers, including SWBT, to freely price private line services:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange ("PBX") services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.¹⁹¹

79. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "equivalent" and completely interchangeable with SWBT's private line services and the Commission granted SWBT's request for classification of private line services as "transitionally competitive."¹⁹²

80. Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after private line services were declared transitionally competitive (January

¹⁹⁰ Ex. 3, DeHahn Direct, pp. 8-9.

¹⁹¹ Section 392.200(8) RSMo (2000).

¹⁹² Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

10, 1996), the Commission, with SWBT's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, private line service became classified as competitive on January 10, 1999 by operation of law.¹⁹³

81. Given the extensive nature of competition for private line services and the prior determinations of competitive status, the Commission concludes that applying the factors contained in Section 386.020(13), SWBT's private line services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5, the Commission confirms these services should be classified as competitive in all of SWBT's Missouri exchanges.

Issue 6: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

82. Residential access line services provide basic voice access for residences to the telecommunications network.¹⁹⁴ The most typical form of residential access line service is "flat rate" telephone service.¹⁹⁵ Flat rate service is an exchange service furnished for a specified sum without regard to the amount of use. These lines may be used to make voice telephone calls or to transmit data to or from the public switched network.¹⁹⁶ Measured service is another form of

¹⁹³ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-10.

¹⁹⁴ Ex. 13, Fite Direct, p. 8.

¹⁹⁵ Id.

¹⁹⁶ Ex. 13, Fite Direct, Sch. 1.

residential access line service.¹⁹⁷ In addition, message rate service is another form of residential access line service offered by SWBT.

83. Based on the evidence presented in this case, the Commission finds that competition exists for SWBT's residential access line services throughout its Missouri exchanges, and that these services should be classified as competitive pursuant to Section 392.245.5 RSMo 2000. SWBT's residential access line services are subject to effective competition in SWBT's exchanges throughout the state because there are alternative providers offering substitutable or functionally equivalent services throughout the state.¹⁹⁸ The data contained in Schedule 6(HC) to SWBT witness Hughes' surrebuttal testimony reflects that where CLECs choose to compete with SWBT's basic residential voice services, CLECs are an extremely effective competitor to SWBT. For example, in SWBT's Harvester and St. Charles exchanges, there are 27 and 31 CLECs serving residential customers, respectively. CLECs in the Harvester exchange have garnered a minimum residential market share of approximately ** %** of the existing residential access lines in the exchange. CLECs in the St. Charles exchange have garnered a minimum market share of approximately ** %** of the market share for residential access lines in that exchange.¹⁹⁹ Overall, the minimum market share gained by CLECs statewide in the residential access line market throughout SWBT's exchanges is over ** %**. Based on market share data alone, CLECs are very effectively competing with SWBT's residential access line services in the Harvester and St. Charles exchanges in Missouri. The Commission also finds that the large market share percentages gained by CLECs in these two exchanges do not foreclose the Commission from finding that SWBT's residential access

¹⁹⁷ Ex. 12, Fite Direct, p. 8.

¹⁹⁸ Ex. 17(HC), Hughes Surrebuttal(HC), p. 10.

¹⁹⁹ Ex. 17(HC), Hughes Surrebuttal(HC), Sch. 6-1(HC).

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line services face effective competition in other exchanges where CLECs have not gained as significant a market share of the residential access line market. In other exchanges, alternate providers provide functionally equivalent or substitutable services at comparable rates, terms and conditions.²⁰⁰ CLECs are free to determine what markets they wish to serve and what markets they do not wish to serve.²⁰¹ This allows CLECs to “cherry pick” the best residential customers in a particular market.²⁰²

84. The Commission finds that there are various forms of existing and effective competition for SWBT’s residential access lines services. As described above, the most well-known type of competition for residential access line services is from CLECs providing tariffed services that are currently available and directly substitutable for SWBT’s residential access line services.²⁰³ There are three different types of platforms that allow CLECs to provide residential access line service. These platforms are resale, unbundled network elements, or facilities-based providers.²⁰⁴ Resellers can simply purchase residential services from SWBT at a discount and in turn sell the service to their customers, often at a discount from SWBT’s retail price. Other CLECs utilize the UNE platform, which allows them to purchase unbundled network elements from SWBT and to completely duplicate the services offered by SWBT. Other CLECs may choose to provide service by combining unbundled network elements purchased from SWBT with their own facilities.²⁰⁵ By purchasing a UNE loop, the CLEC can reach the end-user

²⁰⁰ Ex. 17, Hughes Surrebuttal, p. 11.

²⁰¹ Id.

²⁰² Id.

²⁰³ Ex. 13, Fite Direct, p. 8.

²⁰⁴ Ex. 13, Fite Direct, p. 9.

²⁰⁵ Ex. 13, Fite Direct, p. 9.

without having to invest in the last mile of infrastructure.²⁰⁶ All of these alternatives are available throughout SWBT's Missouri exchanges.

85. The Commission finds that CLECs offer residential access line services in Missouri. The local exchange services tariff for AT&T and LDD were attached to SWBT witness Thomas Anvin's testimony.²⁰⁷ The service descriptions provided in those tariffs are completely consistent with the description of residential access line services contained in SWBT's local exchange tariff. These tariffs reflect that the residential access line services provided by these CLECs are substitutable for or functionally equivalent to SWBT's residential access line service. In addition, as described in Schedule 5 to SWBT witness Fite's direct testimony, the rates at which CLECs are offering residential access services in Missouri are directly comparable to the rates SWBT charges for those services.

86. The Commission also finds that CLECs are marketing their residential access line services throughout the state of Missouri.²⁰⁸ SWBT submitted examples of some of these advertisements. These advertisements leave no question that CLECs are advertising their resident services as substitutes for SWBT's residential services.

87. The Commission also finds that SWBT's residential access line services also face competition from non-traditional sources such as wireless services. Again, advertisements from wireless companies make it clear that these companies are encouraging customers to substitute wireless service for their existing residential wireline service. Examples of these advertisements were attached to Ms. Fite's direct testimony as Schedule 7. Wireless providers are offering plans with no roaming charges and no additional domestic long distance charges, and include free

²⁰⁶ Id.

²⁰⁷ Ex. 15, Anvin Direct.

²⁰⁸ Ex. 13, Fite Direct, p. 12.

Caller I.D. and free Call Waiting. Wireless service offers the same ability to make and receive calls. Other non-traditional sources of competition for SWBT's residential access line services exist throughout the state of Missouri, including cable telephony, which uses the cable wiring traditionally used to provide cable television. This service is a direct substitute for the SWBT residential access line.²⁰⁹ The Commission finds that a CLEC tariffs indicate that they provide residential access line services in all of SWBT's exchanges in Missouri.²¹⁰ SWBT submitted a map which demonstrated the number of CLECs which have filed tariffs in SWBT's exchanges.

88. Based on the evidence presented, the Commission finds that SWBT's residential access line services face effective competition throughout all of SWBT's exchanges in Missouri. Substitutable or functionally equivalent services to the residential access line services provided by SWBT are available throughout the state of Missouri. These services are available at comparable rates, terms and conditions. The Commission should find that SWBT's residential access line services throughout Missouri are subject to effective competition, and classify SWBT's residential access line services as competitive pursuant to 392.245.5 RSMo 2000.

CONCLUSIONS OF LAW

89. The Commission concludes that SWBT's residential access line services are subject to effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5 RSMo 2000, the Commission classifies such services as competitive in each SWBT exchange in Missouri.

²⁰⁹ Id.

²¹⁰ Id.: Sched. 3.

Issue 7: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line related services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

90. SWBT's residential line-related vertical services offer features that can be added to residential access lines to make the line more functional.²¹¹ The residential line related vertical services offered by SWBT are called EasyOptions® services and include vertical and custom calling features.²¹² These services include, but are not limited to, services such as Call Waiting, Auto Redial, 3-Way Call, Call Blocker, Caller I.D. with Name Delivery, Caller I.D. with Number Delivery, Speed Dial 8, and Call Waiting I.D.

91. The Commission finds that various forms of competition exist for SWBT's residential line related services. The most apparent type of effective competition for SWBT's residential line related services is from CLECs that either resell SWBT's residential access lines and line related vertical services, or offer comparable services via their own facilities or unbundled network elements purchased from SWBT.²¹³ Residential line-related vertical services offered by CLECs in Missouri are offered pursuant to tariff.²¹⁴ These tariffs demonstrate that CLECs are providing these same types of vertical services that SWBT provides.²¹⁵ For example, McLeodUSA resells SWBT's residential services throughout Missouri.²¹⁶ McLeod offers residential services in all of SWBT's Missouri exchanges.²¹⁷ McLeodUSA's tariff reveals that

²¹¹ Ex. 13, Fite Direct, p. 17.

²¹² Id.

²¹³ Id.

²¹⁴ Ex. 13, Fite Direct, p. 19.

²¹⁵ Id.

²¹⁶ Id.

²¹⁷ Id.

McLeod offers the same vertical services (EasyOptions) as the line related vertical services listed in SWBT's general exchange tariff.²¹⁸

92. The Commission finds that the prices at which CLECs offer competing residential line related services are comparable to SWBT's prices.²¹⁹ In Schedule 5 to her Direct Testimony, SWBT witness Aimee Fite provides several examples demonstrating that the prices charged by CLECs for residential line related vertical services generally compare to the prices charged by SWBT.²²⁰ For example, McLeodUSA's tariff contains a monthly rate for Call Forwarding of \$2.85. The monthly rate that SWBT charges for this service is \$3.24. In addition, McLeod offers Call Blocker service for \$2.85 per month, while SWBT offers this service for \$3.00 per month. LDD offers Call Blocker and Call Forwarding for the same price as McLeod.²²¹

93. The Commission also finds that other less traditional forms of competition exist for SWBT's residential line related vertical services. For example, residential consumers may substitute wireless service for their traditional residential access line service. When they do so, these customers can obtain a full range of vertical services from their wireless provider.²²² In addition, residential access line customers can easily and inexpensively obtain customer premises equipment (CPE) that will perform the exact same functions as some residential line related services offered by SWBT.²²³ The customer pays a one-time charge for the purchase of this

²¹⁸ Ex. 13, Fite Direct, pp. 19-20.

²¹⁹ Ex. 13, Fite Direct, p. 20.

²²⁰ Id.

²²¹ Id.

²²² Ex. 13, Fite Direct, p. 18.

²²³ Id.

CPE, which eliminates the need to pay additional monthly fees for line related services added to the telephone line.²²⁴

94. Staff agrees that SWBT's residential line related vertical services should be classified as competitive, but only in the Harvester and St. Charles exchanges. Staff's focus on market share loss in these two exchanges places too much emphasis on one form of competition, and ignores all other forms of competition which under the statute the Commission is free to consider.

95. The Commission finds that SWBT's line-related vertical services face effective competition in all SWBT exchanges in Missouri, and should be classified as competitive in all of SWBT's exchanges.

CONCLUSIONS OF LAW

96. The Commission concludes that SWBT's residential access line-related services are subject to effective competition throughout all of SWBT's Missouri exchanges pursuant to Section 386.020(13) RSMo 2000. Pursuant to Section 392.245.5 RSMo, the Commission classifies such services as competitive in each SWBT exchange in Missouri.

Issue 8: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA toll services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

97. The Commission finds that it should confirm that SWBT's intraLATA toll services have been classified as competitive in all of SWBT's Missouri exchanges. As described below, SWBT's intraLATA toll services face effective competition throughout SWBT's

²²⁴ Id.

exchanges in Missouri. The Commission should therefore confirm their competitive classification pursuant to Section 392.245.5 RSMo 2000.

98. IntraLATA toll service furnishes telecommunications between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA.²²⁵

99. SWBT requests that its intraLATA toll services be classified as competitive in all SWBT exchanges based on prior Commission determinations and the extensive nature of competition in the intraLATA toll market.

100. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's intraLATA toll services.²²⁶ OPC also agrees that with the exception of flat-rated interexchange services discussed below, SWBT's intraLATA toll services should be classified as competitive.²²⁷

101. 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.²²⁸ There, 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.²²⁹

102. Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri.²³⁰ These include AT&T, MCI, Sprint and many others. The

²²⁵ Ex. 9, Jablonski Direct, p. 5.

²²⁶ Ex. 18, Voight Rebuttal, pp. 3-4, 65

²²⁷ State of Position of the Office of Public Counsel, filed September 18, 2001.

²²⁸ Case No. TO-94-222, et al., Report and Order, issued July 24, 1986.

²²⁹ Id.; Ex. 16, Hughes Direct, p. 5.

²³⁰ Ex. 9, Jablonski Direct, p. 6 and Schedule 2, which is a list of IXC's certified in Missouri.

intraLATA toll services provided by these carriers are equivalent to or substitutable for SWBT's intraLATA toll service.²³¹ This large number of certified IXC's indicates that customer choices for these services are widely available and reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.²³²

103. With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the same ability as SWBT offers to make intraLATA toll calls without dialing extra digits. In every SWBT exchange, there are a minimum of 73 IXC's available to be selected by the customer as a 1+ intraLATA toll provider. Some exchanges have up to 140 IXC's. Based on a number of available IXC's in each SWBT exchange, the services they offer, and the prices, terms and conditions under when they are offered, the Commission finds effective competition exists for SWBT's intraLATA toll services.²³³

104. Even if customers retains SWBT as their 1+ intraLATA toll provider.), they can dial around SWBT using 101XXXX (e.g., 10-10-AT&T), permitting them to use the IXC of their choice on a call-by-call basis.²³⁴

105. In addition to the traditional forms of competition from IXC's and CLECs, SWBT customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and the Internet.²³⁵

²³¹ Ex. 9, Jablonski Direct, p. 9.

²³² Ex. 9, Jablonski Direct, pp. 6-7.

²³³ Ex. 9, Jablonski Direct, p. 9 and Schedule 3, which is a list of the number of IXC's that are available in each SWBT exchange.

²³⁴ Ex. 9, Jablonski Direct, p. 7.

²³⁵ Ex. 9, Jablonski Direct, pp. 8-9.

CONCLUSIONS OF LAW

106. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "substitutable" for SWBT's intraLATA toll services and granted SWBT's request for classification of its toll services as "transitionally competitive."²³⁶

107. Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after intraLATA toll services were declared transitionally competitive (January 10, 1996), the Commission, with SWBT's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). Since the Commission did not further extend it, SWBT's intraLATA toll service became classified as competitive on January 10, 1999 by operation of law.²³⁷

108. Given the extensive nature of competition for intraLATA toll services and the prior determinations of competitive status, the Commission concludes that applying the factors contained in Section 386.020(13), SWBT's intraLATA toll services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5, the Commission confirms these services should be classified as competitive in all of SWBT's Missouri exchanges.

²³⁶ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 3, DeHahn Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

²³⁷ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-10.

Issue 9: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Local Plus services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

109. The Commission finds that it should classify SWBT's Local Plus service as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's Local Plus service faces effective competition throughout SWBT's exchanges in Missouri and therefore should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

110. Local Plus is an optional one-way outbound expanded calling plan that for an additional monthly charge provides subscribers flat-rate unlimited calling to all customers within the LATA. Local Plus is available to both business and residence customers.²³⁸

111. SWBT requests that its Local Plus® service to be classified as competitive in all of SWBT's exchanges. All other parties to the case oppose this request.

112. The Commission finds that Local Plus faces the same extensive competition from services offered by IXC's, which customers can and do purchase instead of Local Plus.²³⁹ IXC's intraLATA toll calling plans are substitutable for Local Plus as they provide customers the ability to call outside their local calling scope, but within the LATA. In addition, IXC's can resell SWBT's Local Plus service which represents an additional form of competition.²⁴⁰

113. CLECs also offer competitive alternatives to SWBT's Local Plus service. CLECs have the option of reselling SWBT's Local Plus service, and many CLECs are reselling Local

²³⁸ Ex. 9, Jablonski Direct, p. 12.

²³⁹ Ex. 9, Jablonski Direct, p. 13.

²⁴⁰ Ex. 6, Hughes Surrebuttal, pp. 31-32.

Plus today. CLECs can also provide a service like Local Plus using their own switch or unbundled network elements ("UNEs"). These facility-based CLECs can create their own expanded local calling plans, equal to or even larger than the Local Plus calling scope.²⁴¹ The Commission finds such services substitutable for SWBT's Local Plus service.

114. In addition to competition from numerous CLECs and IXC's, the Commission finds that Local Plus faces competition from other competitors such as wireless providers and Internet service providers.²⁴²

CONCLUSIONS OF LAW

115. The Commission concludes that applying the factors contained in Section 386.020(13), SWBT's Local Plus service faces effective competition throughout all of SWBT's Missouri exchanges. Pursuant to section 392.245.5 RSMo 2000, this service should be classified as competitive in all of SWBT's Missouri exchanges.

Issue 10: In Which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Optional Metropolitan Calling Area (MCA) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

116. The Commission finds that it should classify SWBT's optional MCA service as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's optional MCA service faces effective competition throughout

²⁴¹ Ex. 9, Jablonski Direct, pp. 13-14, Ex. 6, Hughes Surrebuttal, pp. 31-32.

²⁴² Ex. 9, Jablonski Direct, pp. 8, and 14.

SWBT's exchanges in Missouri and therefore should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

117. MCA is an optional interexchange plan available in three distinct areas in Missouri: the St. Louis MCA, the Kansas City MCA and the Springfield MCA. This optional plan provides subscribers with a calling area that includes their respective metropolitan exchange and certain customers in other exchanges where MCA service is also available. MCA service was created by the Commission in Case No. TO-92-306 to address customer requests for expanded calling scopes in the areas surrounding the three major metropolitan areas of St. Louis, Kansas City and Springfield. The existing calling scopes were modified to address the changing demographics of the metropolitan areas by creating an optional service that expands the local calling scopes for a flat-rated monthly charge.²⁴³

118. SWBT requests that its Optional MCA services be classified as competitive in all SWBT exchanges where the service is offered (the St. Louis MCA, the Kansas City MCA and the Springfield MCA).

119. With on exception, all other parties to the case oppose SWBT's request. Although Staff generally opposes this request, it agrees that competitive classification should be granted for optional MCA service for residential customers in Harvester and St. Charles.²⁴⁴

120. The Commission finds that many other carriers offer their own optional MCA and other services in competition with SWBT. CLECs, both facility-based and resellers, provide

²⁴³ Ex. 9, Jablonski Direct, pp. 10-11, and Schedules 5, 6 and 7, which show the exchanges included in the optional MCA service, the rates charged for this service, and the calling scopes.

²⁴⁴ Ex. 18, Voight Rebuttal, p. 70.

Optional MCA service to customers in competition with SWBT and the Commission has approved their participation in the MCA plan.²⁴⁵

121. In addition to facility-based and resale competition from CLECs, optional MCA service faces competition from the whole range of interexchange services offered by IXC's. These are described above in Issue 8 (IntraLATA Toll Service).²⁴⁶ While the IXC's' service might be billed on a per minute basis, it is still providing the same ability to call customers located in other exchanges. And IXC's, as well as CLECs, are certainly free to establish their own flat-rated calling plans if they so choose.²⁴⁷

122. Optional MCA service also faces competition from non-traditional competitors such as wireless providers and Internet-based communications as described in Section 8 above.²⁴⁸

CONCLUSIONS OF LAW

123. The Commission concludes that applying the factors contained in Section 386.020(13), SWBT's optional MCA service faces effective competition throughout all of SWBT's Missouri exchanges. Pursuant to section 392.245.5 RSMo 2000, this service should be classified as competitive in all of its Missouri exchanges.

²⁴⁵ Ex. 10, Jablonski Surrebuttal, p. 3.

²⁴⁶ Ex. 9, Jablonski Direct, p. 11.

²⁴⁷ Ex. 10, Jablonski Surrebuttal, p. 3.

²⁴⁸ Ex. 9, Jablonski Direct, pp. 11-12.

Issue 11: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services (WATS) and 800 services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

124. The Commission finds that it should confirm that SWBT's WATS and 800 services have been classified as competitive in all of SWBT's Missouri exchanges. As described below, SWBT's WATS and 800 services face effective competition throughout SWBT's exchanges in Missouri. The Commission should therefore confirm their competitive classification pursuant to Section 392.245.5 RSMo 2000.

125. Wide Area Telecommunications Services ("WATS") includes both 800 service and outward WATS ("OUTWATS"). 800 service provides the subscribers with the ability to receive incoming intraLATA interexchange calls that are toll-free to the calling party. OUTWATS service provides subscribers with the ability to place for outgoing intraLATA, interexchange calls that are billed on a usage sensitive basis.²⁴⁹

126. SWBT requests that its WATS and 800 services be classified as competitive in all SWBT exchanges.

127. Staff agrees that the Commission should approve a statewide competitive classification for SWBT's WATS service.²⁵⁰ No party presented any evidence with respect to these services that would support a different conclusion.

128. 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

²⁴⁹ Ex. 9, Jablonski Direct, p. 15.+

²⁵⁰ Ex. 18, Voight Rebuttal, pp. 4, 74.

services to customers. CLECs can also offer WATS and 800 service.²⁵¹ These providers have the advantage of offering both intraLATA and interLATA calling capabilities, which provides a significant advantage over SWBT's services. These services provided by IXC's and CLECs are functionally equivalent to and substitutable for SWBT's WATS and 800 service.

129. The large number of certified companies offering WATS and 800 service indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.²⁵²

130. 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.²⁵³

CONCLUSIONS OF LAW

131. In a December 1992 Order, the Commission found that WATS and 800 service provided by IXC's was "substitutable" for SWBT's WATS and 800 services. Accordingly, the Commission granted SWBT's request for classification of its WATS and 800 service as "transitionally competitive."²⁵⁴

132. Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation

²⁵¹ See, e.g., Section 4.7 of Excel Telecommunication, Inc. tariff, PSC Mo.-No. 2.

²⁵² Ex. 9, Jablonski Direct, p. 16.

²⁵³ Ex. 9, Jablonski Direct, pp. 16-17.

²⁵⁴ Case No. TO-93-116, Report and Order, issued December 21, 1992; Ex. 9, Jablonski Direct, pp. 15-16; Ex. 16, Hughes Direct, pp. 9-10.

unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after WATS and 800 services were declared transitionally competitive (January 10, 1996), the Commission with SWBT's agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, SWBT's WATS and 800 services became classified as competitive on January 10, 1999 by operation of law.²⁵⁵

133. Given the extensive nature of competition for WATS and 800 services and the prior determinations of competitive status, the Commission concludes that applying the factors contained in Section 386.020(13), SWBT's WATS and 800 services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5, the Commission confirms these services should be classified as competitive in all of SWBT's Missouri exchanges.

Issue 12: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's special access services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

134. The Commission finds that it should confirm that SWBT's special access services have been classified as competitive in all of SWBT's Missouri exchanges. As described below, SWBT's special access services face effective competition throughout SWBT's exchanges in Missouri. The Commission should therefore confirm their competitive classification pursuant to Section 392.245.5 RSMo 2000.

²⁵⁵ Ex. 9, Jablonski Direct, p. 16; Ex. 16, Hughes Direct, pp. 9-10.

135. Special access services are dedicated, nonswitched services used to connect one or more end-user customer premises with an IXC's location, commonly referred to as a point of presence ("POP"). Special access services are used to carry voice and data applications and, at higher speeds, video. SWBT offers eight categories of special access services: Metallic, Telegraph Grade, Voice Grade, Wideband Analog, Wideband Data, MegaLink Data (DS1), High Capacity (DS3), and DovLink service (data over a voice grade facility).²⁵⁶

136. SWBT requests that its special access services should be classified as competitive in all SWBT exchanges.

137. Staff supports confirmation of this status pursuant to Section 329.200.8 RSMo (2000).²⁵⁷ No party presented any evidence with respect to these services that would support a different conclusion.

138. The evidence has shown that competition for special access service is well established. There are numerous providers such as AT&T, Sprint, MCI and numerous CLECs offering special access services that are substitutable for or functionally equivalent to SWBT's special access services.²⁵⁸

CONCLUSIONS OF LAW

139. In 1996, the Missouri Legislature recognized the special access market to be sufficiently competitive to permit all carriers, including SWBT, to freely price special access services:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange ("PBX") services,

²⁵⁶ Ex. 7, Douglas Direct Schedule 2, pp. 4-8.

²⁵⁷ Ex. 18, Voight Rebuttal, p. 4.

²⁵⁸ Ex. 7, Douglas Direct, pp. 6-9; Ex. 3, DeHahn Direct, pp. 5-11.

provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.²⁵⁹

140. In a December 1992 Order, the Commission found that services provided by interexchange carriers ("IXCs") were "equivalent" and completely interchangeable with SWBT's special access services. Accordingly, the Commission granted SWBT's request for classification of special access services as "transitionally competitive."²⁶⁰

141. Under Section 392.370.1 and 2 RSMo (2000), a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after special access services were declared transitionally competitive (January 10, 1996), the Commission with SWBT's agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). Since the Commission did not further extend it, SWBT's special access service became classified as competitive on January 10, 1999 by operation of law.²⁶¹

142. Given the extensive nature of competition for special access services and the prior determinations of competitive status, the Commission concludes that applying the factors contained in Section 386.020(13), SWBT's special access services face effective competition throughout all of SWBT's Missouri exchanges. Pursuant to Section 392.245.5, the Commission confirms these services should be classified as competitive in all of SWBT's Missouri exchanges.

²⁵⁹ Section 392.200(8) RSMo (2000).

²⁶⁰ Report and Order, Case No. TO-93-116, issued December 21, 1992; Ex. 7, Douglas Direct, p. 6; Ex. 16, Hughes Direct, pp. 9-10.

²⁶¹ Ex. 3, DeHahn Direct, pp. 2, 6 and 13; Ex. 16, Hughes Direct, pp. 9-12.

Issue 13: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's switched access services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

143. The Commission finds that it should classify SWBT's switched access services as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's switched access services face effective competition throughout SWBT's exchanges in Missouri and therefore should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

144. Switched access service refers to the line of services sold to IXC's that wish to access the local public switched network in order to provide long distance service to end-users. It enables IXC's to originate or terminate their customers' long distance calls from an end-user's premise. Switched access has four categories of service differentiated by their technical characteristics and how an end-user accesses each of these services: Feature Group A, which is a line side connection; Feature Group B, which is a trunk side connection accessed via the 950 access code; Feature Group C and Feature Group D, which are both trunk side connections allowing 1+ dialing of long distance calls. Switched access has three major components: the common line element, the end office element and the transport element.²⁶²

145. SWBT requests that its switched access services be classified as competitive in all SWBT exchanges. SWBT indicates, however, that this classification would be subject to the same conditions applicable to CLEC provision of switched access service, *i.e.*, switched access service would remain subject to price caps, but SWBT would have the same authority as CLECs do today to restructure rates under that cap.

²⁶² Ex. 7, Douglas Direct, p. 3, Schedule 3, p. 1.

146. The Commission finds that competition does exist for switched access services. There are approximately 31 facility-based CLECs which have service areas within SWBT's Missouri service area. These facility-based CLECs can bypass part or all of SWBT's switched access service to originate and terminate long distance calls using facilities they own or lease from another carrier. CLECs may also purchase unbundled switching and other facilities which enable a CLEC to provide local service to end-user customers (using the incumbent LEC's switch) and gives the CLEC the right to receive access on interexchange calls to or from the CLEC's customers.²⁶³

147. Several competitors, such as 2nd Century Communications, Inc., Birch Telecom of Missouri, Inc., NuVox, KMC Telecommunications, Inc. and McLeod, have been assigned common language location identifier ("CLLI") codes which indicate that they are capable of providing FGA, FGB and FGD (1+ dialing) to customers in Missouri.²⁶⁴

148. Collocation also allows facility-based CLECs to provide alternatives to SWBT's switched access services. Collocation allows other carriers to place equipment in SWBT's end office that enable the origination and termination of their customers' long distance calls.²⁶⁵

149. Collocation hotels, which are alternative collocation providers, also represent competitive alternatives to SWBT's switched access service. Collocation hotels facilitate bypass of SWBT's switched access transport by providing a single location for IXC's, CLECs, wireless providers, ISPs and large users to interconnect. The evidence shows that collocation hotels are being actively operated in both the St. Louis and Kansas City area.²⁶⁶

²⁶³ Ex. 7, Douglas Direct, p. 9.

²⁶⁴ See, National Exchange Carrier Association ("NECA") tariff FCC No. 4, effective May 1, 2001; Ex. 7, Douglas Direct, pp. 10-17 and Schedules 5 and 6.

²⁶⁵ *Id.*, pp. 11-12.

²⁶⁶ *Id.*, p. 15, Schedules 8 and 9.

150 Wireless service offerings also compete with switched access transport and usage. As wireless carriers have begun to offer free and flat-rated regional and nationwide long distance calling plans, end-users are incented to use their wireless service instead of their landline long distance service. When cellular services are used to complete calls that would otherwise be interexchange calls on a landline telephone, SWBT's switched access services are for the most part bypassed.²⁶⁷

151. Voice over Internet protocol ("IP") offerings also compete with switched access transport end usage. As technology has improved, ISPs have been increasingly able to transmit voice calls over the Internet, free from switched access charges.²⁶⁸

152. In addition, ISPs' end-users are able to use e-mail to communicate rather than making long distance calls. And e-commerce allows an end-user to conduct transactions over the Internet rather than calling the business' order center.

CONCLUSIONS OF LAW

153. Pursuant to the Commission's decision in Case No. TO-99-596, CLECs' switched access rates are capped at the rate of the incumbent local exchange company in whose territory the CLEC competes. The CLECs, however, are not required to match the ILECs rate structure so long as the overall average is within the cap.

154. The Commission has allowed CLECs a certain degree of pricing flexibility in structuring their access rates:

ILECs in Missouri have not restructured local transport and do not use rate elements such as interconnection charges and entrance facilities. However, the Commission has approved tariffs of competitive local exchange carriers who do utilize local transport restructuring. In such instances, the Staff will make

²⁶⁷ Id., p. 17.

²⁶⁸ Id., p. 18.

calculations to ensure that the competitors restructured rates are no greater in the aggregate than the incumbents rates utilizing the equal charge method of providing switched access. In such instances the Staff will question any competitive rate element which appears to be residually priced.²⁶⁹

155. In this case, SWBT is seeking the same degree of pricing flexibility in structuring its access charges as the Commission has granted to CLECs.

156. Given the level of competition that exists in the switched access market and the degree of pricing flexibility the Commission has provided for CLEC access services, the Commission, applying the factors contained in Section 386.020(13), concludes that like CLECs, SWBT should be granted competitive classification for its switched access services in all SWBT exchanges. This competitive classification, however, should be subject to the same conditions applicable to CLEC provision of switched access service. Specifically, SWBT's switched access service should remain subject to price caps, but SWBT should have the same authority as CLECs to restructure its rates under that cap. In evaluating any access rate structure change SWBT may make in the future, Staff should apply the same criteria in evaluating those changes as it currently applies to CLEC access rate structures.

Issue 14: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Common Channel Signaling/Signaling System 7 (SS7) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

157. The Commission finds that it should classify SWBT's SS7 service as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described

²⁶⁹ Section 3.4 of the PSC's Guidelines for Completing Applications for Certificate of Service Authority for CLECs' Service, posted on the Commission's website; Ex. 7, Douglas Direct, pp. 19-20; Ex. 20, Douglas Surrebuttal, pp. 3-4.

below, SWBT's SS7 service faces effective competition throughout SWBT's exchanges in Missouri and therefore should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

158. SS7 provides a dedicated two-way signaling path between a customer and SWBT's Signal Transfer Point ("STP") and provides access to SWBT's SS7 network. Where available, SS7 signaling is used with switched access service to carry the signals associated with a call on a transmission path that is separate from the voice path. In addition, SS7 is utilized to access SWBT's line information database ("LIDB") and switched access 800 number portability access service.²⁷⁰

159. SWBT requests that its SS7 service be classified as competitive in all SWBT exchanges. Staff supports competitive classification for SWBT's SS7 service.²⁷¹ No party presented any evidence with respect to this service supporting any other conclusion.

160. SWBT's SS7 service faces significant competition from SS7 service providers that offer signaling connectivity and transport on a nationwide basis. For example, Illuminate, TSI Telecommunications Services, Inc., and IDN offer SS7 services in Missouri and on a nationwide basis.²⁷²

CONCLUSIONS OF LAW

161. The Commission concludes that applying the factors contained in Section 386.020(13), SWBT's SS7 service faces effective competition throughout all of SWBT's

²⁷⁰ Ex. 7, Douglas Direct, p. 5.

²⁷¹ Ex. 18, Voight Rebuttal, p. 43.

²⁷² Ex. 7, Douglas Direct, p. 18, Schedule 13.

Missouri exchanges. Pursuant to section 392.245.5 RSMo 2000, this service should be classified as competitive in all of its Missouri exchanges.

Issue 15: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Line Information Database (LIDB) services be classified as competitive pursuant to Section 392.245.5 RSMo. 2000?

FINDINGS OF FACT

162. The Commission finds that it should classify SWBT's LIDB service as competitive pursuant to Section 392.245.5 RSMo 2000, in all of SWBT's Missouri exchanges. As described below, SWBT's LIDB service faces effective competition throughout SWBT's exchanges in Missouri and therefore should be classified as competitive, pursuant to Section 392.245.5 RSMo 2000.

163. LIDB provides the customer the ability to query billing validation data in SWBT's database in support of alternate billing services, such as Calling Card, collect and third number billing. Alternate billing services allow telecommunications companies to bill calls to an account that might not be associated with the originating line.²⁷³

164. SWBT request its LIDB service be classified as competitive in all SWBT exchanges. Staff supports competitive classification for SWBT's LIDB service.²⁷⁴ No party presented any evidence with respect to this service supporting any other conclusion.

165. SWBT's LIDB service faces significant competition from LIDB service providers that offer signaling connectivity and transport on a nationwide basis. For example, TSI

²⁷³ Ex. 7, Douglas Direct, p. 5.

²⁷⁴ Ex. 18, Voight Rebuttal, p. 43.

Telecommunications Services, Inc. and IDN offer LIDB services in Missouri and on a nationwide basis.²⁷⁵

CONCLUSIONS OF LAW

166. The Commission concludes that applying the factors contained in Section 386.020(13), SWBT's LIDB service faces effective competition throughout all of SWBT's Missouri exchanges. Pursuant to section 392.245.5 RSMo 2000, this service should be classified as competitive.

Issue 16: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's directory assistance (DA) services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

167. Directory Assistance Services provide callers with assistance in obtaining telephone listing information.²⁷⁶ The directory assistance services currently offered by SWBT locally include local directory assistance, directory assistance call completion (including AutoConnect) and national directory assistance.²⁷⁷ Local directory assistance provides callers with listed telephone numbers of subscribers who are located in the same local calling area and in the calling customer's home numbering plan area.²⁷⁸ 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.²⁷⁹ AutoConnect is another form of call completion service available to callers to

²⁷⁵ Ex. 7, Douglas Direct, p. 18, Schedule 13.

²⁷⁶ Ex. 5, Moore Direct, p. 4.

²⁷⁷ Id.

²⁷⁸ Id.

²⁷⁹ Id.

directory assistance. Finally, national directory assistance is a service whereby customers may obtain telephone listing information for areas outside their local calling area.²⁸⁰

168. The Commission finds that the uncontroverted evidence in this case establishes that there are a large number of alternative providers of directory assistance services operating throughout the state of Missouri today.²⁸¹ The services provided by these alternative providers of directory assistance services are functionally equivalent or substitutable to the directory assistance services provided by SWBT in Missouri, and are provided at comparable rates, terms and conditions. SWBT's residential and business customers throughout SWBT's Missouri exchanges have multiple alternatives, substitutable in both function and price, to using SWBT's directory assistance services. For example, "00" Information service provides 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.²⁸² AT&T's "00" Service was first introduced in SWBT'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.²⁸³ AT&T promotes its service via mass marketing. MCI WorldCom also offers statewide "00" information service.²⁸⁴

169. Another alternative directory assistance service available statewide in Missouri is 10-10-ATT-00 Service.²⁸⁵ This service is available to all end users within the state of Missouri

²⁸⁰ Id.

²⁸¹ Ex. 5, Moore Direct, p. 5: Sched. 1.

²⁸² Ex. 5, Moore Direct, p. 6.

²⁸³ Ex. 5, Moore Direct, p. 7.

²⁸⁴ Id.

²⁸⁵ Id.

regardless of whether AT&T is the subscriber's prescribed interexchange carrier. Subscribers 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 SWBT's local directory assistance service.

170. SWBT presented evidence regarding other alternatives to SWBT's directory assistance services which are substitutable for SWBT's services.

171. Each of the alternatives to SWBT's directory assistance services are independent of the local customer's choice of a local telecommunications carrier. In addition to these alternatives, CLECs also provide directory assistance services to their local customers, either through their own facilities, through a combination of their own facilities and SWBT's unbundled network elements, or by reselling SWBT's services. If a Missouri customer chooses a CLEC to provide local services, the end user has directory service options available from its CLEC.²⁸⁶ Similarly, wireless carriers provide directory assistance services through their own facilities or by routing directory assistance calls to their directory assistance provider of choice.²⁸⁷

172. 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 SWBT.²⁸⁸ For example, many wireless providers offer information services, such as directions, stock quotes, weather and traffic reports, all via their

²⁸⁶ Ex. 5, Moore Direct, p. 12.

²⁸⁷ Ex. 5, Moore Direct, pp. 12-13.

²⁸⁸ Ex. 5, Moore Direct, p. 14.

directory assistance service.²⁸⁹ Likewise, AT&T's "00" Information Service and Internet sites provide business category searches as well.²⁹⁰ Furthermore, the rates available from comparable, alternative service providers are competitive with SWBT's rates for directory assistance services.²⁹¹ Many of the alternatives described above and in more detail in Ms. Moore's direct testimony are not regulated by the Commission.

173. The Commission finds that the FCC has found the directory assistance services marketplace to be competitive.²⁹² In its UNE Remand Order,²⁹³ the FCC removed directory assistance services from the list of unbundled network elements which incumbent LECs must provide to competitors.²⁹⁴ On several other occasions, the FCC has noted the competitive nature of the directory assistance marketplace.²⁹⁵ Finally, directory assistance services have been price deregulated in at least 15 states, including Illinois, Kansas, and Texas.²⁹⁶

174. The Commission also finds that SWBT's directory assistance services have been directly impacted by the increasingly competitive directory assistance marketplace.²⁹⁷ SWBT's directory assistance call volumes have significantly declined since 1996, although the overall

²⁸⁹ Id.

²⁹⁰ Id.

²⁹¹ Id.: See Sched. 8.

²⁹² Id.

²⁹³ *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.

²⁹⁴ Ex. 5, Moore Direct, p. 15.

²⁹⁵ See, Ex. 5, Moore Direct, pp. 15-16.

²⁹⁶ Ex. 5, Moore Direct, p. 17.

²⁹⁷ Ex. 6, Moore Surrebuttal, p. 4.

directory assistance marketplace has grown.²⁹⁸ During this time, SWBT's directory assistance call volume has decreased ** %**, which is direct evidence of increasing directory assistance service competition.²⁹⁹ During this time, the directory assistance marketplace has continued to grow at a moderate pace.³⁰⁰

175. Based on the evidence presented in this proceeding, the Commission finds that SWBT's directory assistance service offerings are subject to effective competition throughout the State of Missouri.

CONCLUSIONS OF LAW

176. The Commission concludes that SWBT's directory assistance services are subject to effective competition throughout the State of Missouri. Pursuant to Section 392.245.5 RSMo, the Commission classifies such services as competitive in each SWBT exchange in Missouri.

Issue 17: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's operator services (OS) be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

FINDINGS OF FACT

177. Operator Services refer to a variety of call completion services that SWBT offers its customers in Missouri.³⁰¹ These services facility the completion of a call, often using live operators or through an automated Interactive Voice System.³⁰² SWBT's operator services in Missouri include calling cards, collect calls, calls billed to a third number, sent paid calls,

²⁹⁸ Ex. 6, Moore Surrebuttal, pp. 4-5.

²⁹⁹ Ex. 6, Moore Surrebuttal, p. 5.

³⁰⁰ Id.

³⁰¹ Ex. 5, Moore Direct, p. 20.

³⁰² Id.

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person-to-person, line status verification, and busy line interrupt service.³⁰³ A customer may use operator services by dialing "0" or "0 + number" from any telephone, but generally customers utilize operator services when placing a call when away from their home or office.³⁰⁴

178. The Commission finds that there are numerous competitive alternatives to SWBT's operator services which are available throughout SWBT's exchanges in Missouri.³⁰⁵ These alternatives are provided by local and toll telecommunication providers, including AT&T, Sprint and MCIWorldCom, as well as wireless service providers, specialized operator service providers, pay telephone providers, pre-paid and post-paid calling card providers and others.³⁰⁶ Considering both function and price, end users throughout Missouri have substitutable and functionally equivalent alternatives for SWBT's operator services.

179. 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.³⁰⁷ "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. Another competitive alternative is AT&T's 1-800-Call ATT Service. This service is available to all end users throughout Missouri.³⁰⁸ Dialing 1-800-Call ATT enables customers, irrespective of their choice of local or toll provider to obtain alternative billing services, such as calling cards,

³⁰³ Id.

³⁰⁴ Id.

³⁰⁵ Id.

³⁰⁶ Id.

³⁰⁷ Id.

³⁰⁸ Id.

collect, bill to a third number, person-to-person service, line status verification, busy interrupt, and AT&T customer service.³⁰⁹

180. Similar competitive alternatives are offered by MCIWorldCom and Sprint. Both MCI and Sprint extensively promote their operator services, which compete directly with SWBT's operator services.³¹⁰ 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. Yet another competitive alternative for operator services is "0+" and "0-" services from pay telephones.³¹¹ Prepaid calling cards have also become an increasingly popular choice for alternative billing arrangements historically provided by operator service providers.³¹²

181. The Commission also finds that most if not all of the competitive alternatives to SWBT's operator services are available to an end user customer, irrespective of whether that customer is a SWBT local customer or is a local customer of a CLEC. 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.³¹³ 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 SWBT's operator services throughout Missouri, and

³⁰⁹ Id.

³¹⁰ Ex. 5, Moore Direct, p. 23: See Scheds. 10-11.

³¹¹ Ex. 5, Moore Direct, p. 24.

³¹² Id.

³¹³ Id.

offer substitutable or functionally equivalent operator services to the operator services provided by SWBT in Missouri.

182. The Commission also finds that the FCC has found the operator services marketplace to be competitive.³¹⁴ 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 marketplace.³¹⁵ 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.”³¹⁶ Operator services are currently price deregulated in Arkansas, Texas and Kansas, among other states.³¹⁷

183. The Commission finds that SWBT’s station-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in 1992 in Case No. TO-93-116. Subsequent to that finding, and following a three year extension of the transitionally competitive classification, these services have become classified as competitive as of January 10, 1999.³¹⁸ Staff agrees with this finding.

184. The Commission finds the highly competitive nature of the operator services marketplace has directly impacted SWBT’s operator services call volumes. Since 1996,

³¹⁴ Ex. 5, Moore Direct, p. 28.

³¹⁵ Id.

³¹⁶ UNE Remand Order, par. 441.

³¹⁷ Ex. 5, Moore Direct, p. 28.

³¹⁸ Ex. 5, Moore Direct, pp. 28-29.

SWBT's operator services call volumes have declined ** %**.³¹⁹ This decline in SWBT's operator service call volume can be directly attributed to competitive alternatives that exist in the marketplace, described above.³²⁰

185. For those operator services offered by SWBT which did not become classified as competitive on January 10, 1999, the Commission finds that these services, along with all of SWBT's operator services, are subject to effective competition throughout the State of Missouri.

CONCLUSIONS OF LAW

186. The Commission concludes that in a previous case (TO-93-116), SWBT's station-to-station, person-to-person and calling card operator services were found to be "transitionally competitive." Subsequent to that determination, and following a three year extension of the "transitionally competitive" classification, these services became classified as competitive.

187. The Commission concludes that SWBT's operator services are subject to effective competition pursuant to Section 386.020(13) RSMo 2000 throughout all of SWBT's exchanges in Missouri. Pursuant to Section 392.245.5 RSMo 2000, the Commission classifies all of SWBT's operator services as competitive in each SWBT exchange in Missouri.

³¹⁹ Ex. 6(HC), Moore Surrebuttal(HC), Sched. 1(HC).

³²⁰ Ex. 6, Moore Surrebuttal, p. 6.

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Issue 18: In each exchange served by SWBT, which if any alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years (or if none, what is the longest period of time that a certified alternative local exchange company has provided basic local telecommunications service in that exchange)?

FINDINGS OF FACT

188. The Commission finds that Dial US was certificated to provide basic local exchange telecommunications service and began providing such service in the Springfield exchange in January, 1997. Accordingly, the Commission must determine whether SWBT's services in the Springfield exchange are subject to effective competition by January, 2002.

189. The Commission further finds that competition in other SWBT exchanges began shortly thereafter, with an initial focus in the major metropolitan areas of St. Louis and Kansas City. The Commission finds that competition now exists in each SWBT exchange in this proceeding, or it can choose to consider effective competition in a series of exchange specific proceedings over the next several months, taking care to reach its decision within the five year window for each exchange. The Commission concludes that the Commission's resources are best utilized by reaching a decision on the existence of effective competition in each of SWBT's exchanges in this proceeding.

CONCLUSIONS OF LAW

190. Pursuant to Section 392.245.5, the Commission concludes that it must determine whether competition exists for each SWBT service in the Springfield exchange by January, 2002.

191. The Commission concludes that, with regard to all SWBT exchanges other than Springfield, it may determine the existence of effective competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class, postage prepaid, U.S. Mail on November 9, 2001.

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