

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

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| In the Matter of the Review of the Competitive  | ) |                       |
| Classification of the Exchanges of Southwestern | ) | Case No. TO-2007-0053 |
| Bell Telephone, L.P., d/b/a AT&T Missouri.      | ) |                       |

**AT&T MISSOURI'S REPLY TO  
OPC CONCERNING STAFF REPORT**

AT&T Missouri<sup>1</sup> respectfully submits the following Reply to the Office of the Public Counsel's ("OPC's") August 18, 2006 Response to the Missouri Public Service Commission ("Commission") Staff's Report, which concluded that the conditions for competitive classifications continue to exist in all of AT&T Missouri's competitively classified exchanges.

**I. OPC HAS PROVIDED NO INFORMATION  
TO CONTEST STAFF'S REPORT.**

On August 8, 2006, the Commission's Staff filed a report pursuant to Section 392.245.5 RSMo (2005 C. Supp.) concluding that the conditions for competitive classification continue to exist in the exchanges in which AT&T Missouri's business and residence services received competitive classification. Staff based its conclusion on a comprehensive review and analysis of the 2005 Annual Reports filed with the Commission by all of the competitive local exchange companies ("CLECs") operating in AT&T Missouri's operating territory. These reports identify the number of voice-grade equivalent lines each CLEC provides on an exchange-specific basis and supply self-reported data confirming that the requisite number of competitive carriers were actually providing service in each exchange. In the limited number of instances in which Staff had questions about the filed data, Staff directly contacted the CLEC and AT&T Missouri for clarification or additional information to confirm competitive status.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri." It previously conducted business as "SBC Missouri."

On August 18, 2006, OPC filed a response to Staff's report merely expressing its disagreement with Staff's conclusions. OPC, however, provided no information to contradict or otherwise contest the comprehensive data Staff submitted in its report, or on the conclusions Staff drew from data.

## **II. OPC INVITES THE COMMISSION TO MISAPPLY THE STATUTORY STANDARD.**

Pointing to the modest increases AT&T Missouri recently made to its basic local service rates for business and residence customers,<sup>2</sup> OPC claims that "the increases in these exchanges are inconsistent with the often promised benefits of competition of low prices, better service and more choices for consumers."<sup>3</sup>

From a factual perspective, AT&T Missouri would first note that even after these increases, Missouri residential prices will still be among the lowest in the nation. And customers subscribing to currently-offered packages<sup>4</sup> did not experience a rate increase because rates for such packages were not increased. Moreover, AT&T Missouri's residential prices were lower than they were in 1984. Even after the modest increase, customers are still paying less than a dollar more than they were over 20 years ago for residential basic local telephone service.

But more importantly, OPC misapplies the statutory standard. In focusing on isolated price increases, OPC inappropriately invites the Commission to attempt to evaluate whether or not competition is effective in the designated exchanges, which is inconsistent with the Legislature's mandatory directive.

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<sup>2</sup> Effective March 3, 2006, AT&T Missouri increased its rates for business access lines by \$1 per access line. Effective July 21, 2006, AT&T Missouri raised its residential basic local service prices for rate groups B, C and D. These increases ranged from 93¢ to \$1.26 per access line.

<sup>3</sup> OPC Response to Staff Report, p. 1.

<sup>4</sup> AT&T Missouri did increase rates for some grandfathered packages, which are not available to new subscribers.

As the Commission is well aware, Senate Bill No. 237 (“SB 237”)<sup>5</sup> dramatically changed the process for determining whether the services in an exchange are to be classified as competitive. Before SB 237, the Commission was required to determine whether or not “effective competition” existed for the requested services in the designated exchanges. Under that standard, the Commission considered, among other things, the extent of competition in the exchange, whether pricing was reasonably comparable, and whether competitors were offering functionally equivalent or similar services. Under SB 237, however, the Commission is not authorized to determine whether “effective competition” exists. Instead, SB 237 requires the Commission to apply a simple, expedited, two-track procedure when a price cap regulated ILEC seeks competitive classification for its services within one or more exchanges.

The 30-Day Track. The 30-day track<sup>6</sup> establishes a competitive “trigger” that focuses solely on whether the requisite number of carriers are providing “basic local telecommunications service” within an exchange:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange.

Under the 30-day track, the Commission must classify the ILEC’s services (business, residential, or both), as competitive in any exchange in which at least two other carriers are also providing such basic local telecommunications services within an exchange:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange

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<sup>5</sup> Governor Blunt signed SB 237 into law on July 14, 2005, after it was overwhelmingly passed by both the Missouri Senate (29 to 3) and House of Representatives (155 to 3). It became effective August 28, 2005.

<sup>6</sup> Section 392.245.5.

company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. . .<sup>7</sup>

For the purpose of the 30-day investigation, the statute provides that one commercial mobile radio service (“CMRS” or “wireless”) provider is to be considered an entity providing “basic local telecommunications services”<sup>8</sup> in an exchange. It also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice”<sup>9</sup> service “in whole or in part” over facilities in which it or one of its affiliates has an ownership interest.<sup>10</sup>

The 60-Day Track. SB 237 also provides an equally objective criteria for the 60-day track. Recognizing that there are additional forms of competition, the Legislature directed the Commission under the 60-day track, to count additional types of competitors in determining whether two non-affiliated entities are providing local voice service. Not only must the Commission count the types of carriers eligible for counting in a 30-day case, but the Commission must also count other competitors, such as those using UNE-P or commercial wholesale services from the incumbent

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<sup>7</sup> Section 392.245.5 RSMo (2005), (emphasis added).

<sup>8</sup> Section 392.245.5(1) RSMo (2005) (however, only one such non-affiliated provider will be counted as providing basic local telecommunications service within an exchange).

<sup>9</sup> Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo.”

<sup>10</sup> Section 392.245.5(2) RSMo (2005).

LEC,<sup>11</sup> or those providing services over a third party's broadband network (e.g., VoIP providers).<sup>12</sup>

While the 60-day track also accords some discretionary authority to the Commission to deny competitive classification if it determines that such a grant would be contrary to the public interest,<sup>13</sup> an evaluation of whether "effective competition" remains outside the scope of the Commission's authority under the statute.

Accordingly, OPC's invitation to examine the purported "erosion" and "dilution" of competition should be categorically rejected as contrary to the directive of the Legislature. OPC implicitly concedes that its proposal is beyond the Commission's authority by suggesting that the Commission seek legislation that would give it what OPC considers "appropriate tools." This Commission's role, however, is not to override the Legislature's directives. Instead the Commission must follow the statutes as written and must find here that the statutory conditions for competitive classification continue to exist.

### **III. Conclusion**

The new requirements prescribed by SB 237 have dramatically changed the Commission's role in determining the competitive classification for a price cap regulated ILEC. By removing the provisions from Section 392.245 that previously required the Commission to "investigate the state

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<sup>11</sup> Section 392.245.5(6) provides:

Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunication facilities or other facilities or the telecommunication facilities or other facilities of a third party, including those of the incumbent local exchange company...

<sup>12</sup> Section 392.245.5(b) provides:

Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunication facilities or other facilities or the telecommunication facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service.

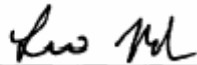
<sup>13</sup> Section 392.245.5(2) states: "The Commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest."

of competition” and to “determine whether effective competition exists in the exchange,”<sup>14</sup> and replacing them with strict numerical triggers, the Legislature has made clear that where customers have a choice, competitive classification must be granted.

The data contained in Staff’s August 8, 2006 report confirms that the business and residence customers in the competitively designated exchanges continue to have sufficient choice under the statutory criteria. OPC has neither contested this data nor proffered any information that would contradict Staff’s conclusion. Accordingly, the Commission should endorse Staff’s report and find that the conditions for competitive classifications in those exchanges identified in Case Nos. TO-2006-0093 and TO-2006-0102 continue to exist.

Respectfully submitted,

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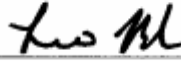
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<sup>14</sup> Compare Section 392.245.5 RSMo (2000).

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on August 24, 2006.



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