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November 21, 2001

FILED³
NOV 21 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, MO 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 Reply Brief. As required by the Protective Order issued in this case, we are filing the HC copies of the Reply Brief 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

Anthony K. Conroy

Enclosure

cc: Attorneys of Record

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

FILED³

NOV 21 2001

**Missouri Public
Service Commission**

In the Matter of the Investigation of the
State of Competition in the Exchanges of
Southwestern Bell Telephone Company.

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Case No. TO-2001-467

**REPLY BRIEF OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

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November 21, 2001

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

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Reply Brief in this case, states to the Missouri Public Service Commission (Commission) as follows:

In its Initial Brief, SWBT described in great detail the substantial evidence which supports a Commission determination that “effective competition” exists for each of the individual services offered by SWBT throughout its Missouri exchanges.¹ These services were grouped into 17 categories of telecommunications services, which the parties agreed to and identified as separate issues on the Issues List submitted on September 14, 2001. Pursuant to Section 392.245.5 RSMo 2000, the Commission must classify a SWBT service as “competitive,” and grant SWBT the same pricing flexibility enjoyed by other telecommunications companies in Missouri, unless the Commission determines that such service is not subject to “effective competition” as defined in Section 386.020(13) RSMo 2000.

In its Initial Brief, SWBT also described the procedural background of this case, including the deregulatory underpinnings of Senate Bill 507,² along with the history of “competitive classification” in Missouri.³ Finally, SWBT presented a very detailed analysis of the application of the 5 factors contained in Section 386.020 (13) RSMo 2000, which the

¹ Initial Brief of SWBT, pp. 22-88.

² Initial Brief of SWBT, pp. 1-5.

³ Initial Brief of SWBT, pp. 5-9.

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Commission is required to consider when evaluating whether “effective competition” exists with respect to a particular SWBT service in Missouri.⁴

SWBT will not burden this Reply Brief with a complete restatement of its detailed arguments, along with extensive supporting evidence, which support a Commission determination of effective competition and competitive classification for all of SWBT’s services in Missouri. These arguments and this evidence are presented, in detail, in SWBT’s Initial Brief. SWBT would point out, however, that most of the parties filing Initial Briefs in this case⁵ simply chose to ignore the detailed and compelling evidence of widespread competition submitted by SWBT, and instead chose to revert back to the same tired and oft-repeated refrain of, “Don’t give SWBT equal regulatory treatment—protect us from competition.” SWBT submits that the time for such rhetoric has passed.

Other than SWBT, only Staff and the Office of Public Counsel (OPC) even *attempted* to address each of the issues identified in the Proposed List of Issues submitted to the Commission on September 14, 2001. Even then, as described below, Staff and OPC overlook nearly all of the evidence of substantial and effective competition faced by SWBT throughout its Missouri exchanges which was presented to the Commission in this case. In short, the parties to this case simply refuse to acknowledge that the competitive landscape in the telecommunications industry in Missouri has changed, and changed dramatically since the passage of SB507 and the federal

⁴ Initial Brief of SWBT, pp. 5-22.

⁵ The following Initial Briefs were filed in this case: Initial Brief of Staff, Initial Brief of the Office of the Public Counsel (OPC), AT&T Communications of the Southwest, Inc., TCG St. Louis, and TCG Kansas City’s Initial Post-Hearing Brief (AT&T), Sprint’s Post-Hearing Brief, Missouri Independent Telephone Company Group’s (MITG’s) Initial Brief, and NuVox Communications of Missouri, Inc.’s, MCImetro Access Transmission Services, LLC’s, Brooks Fiber Communications of Missouri, Inc.’s and MCI WorldCom Communications, Inc.’s (NuVox/Brooks/MCIWorldCom) Joint Initial Brief.

Telecommunications Act of 1996. These parties' refusal to accept the fact that local competition is thriving in Missouri, however, does not make it any less so.

For example, in their Initial Briefs, no party addressed the fact that CLECs have gained a minimum of over 15% of the local telecommunications market in Missouri.⁶ No party addressed the fact that CLECs are actually operating in all of SWBT's Missouri exchanges, providing local service and related services to businesses and residences, via resale of SWBT's services, unbundled network elements purchased from SWBT, and CLECs' own facilities.⁷ No party addressed the fact that in the St. Louis Principal and MCA-1 and MCA-2 zones, at least 59 CLECs are actually providing competing services, and in the Kansas City Principal and MCA-1 and MCA-2 zones, at least 51 CLECs are actually providing competing services.⁸ No one addressed the fact that in SWBT's St. Charles exchange, there are 37 CLECs competing, and in SWBT's Springfield Principal and MCA-1 zone, 36 CLECs are providing competing services.⁹ In their Initial Briefs, no party addressed the fact that at least 10 CLECs are serving customers in 48 percent of SWBT's exchanges in Missouri, and at least 3 CLECs are serving customers in 90 percent of SWBT's exchanges in Missouri.¹⁰ No party addressed the fact that there are facilities-based CLECs serving more than 80% of SWBT's exchanges in Missouri.¹¹

Likewise, no party addressed the fact that there has been explosive growth in CLEC competitive activity over the past few years. For example, no party addressed the fact that from the first quarter of 1998 through the second quarter of 2001, interconnection trunks have

⁶ Initial Brief of SWBT, p. 11.

⁷ Id.

⁸ Id.

⁹ Id., p. 12

¹⁰ Id.

¹¹ Id.

increased 1,441 percent, E-911 listings have increased 8,546 percent, UNE-P arrangements have increased 5,826,200 percent, resold lines have increased 592 percent, and ported numbers have increased 26,392 percent.¹² Nor did any party address the fact that the minimum market share for business services gained by CLECs statewide is over ** %**, the fact that there are ** ** exchanges where the minimum CLEC market share of business access lines is ** %** or greater, or the fact that in Kansas City, St. Louis and Springfield, the minimum level of business lines served by CLECs is ** %, % and %** respectively.¹³ The reason no party (other than SWBT) addressed this uncontroverted evidence is simple. No objective party can review this evidence and reach any conclusion except that SWBT faces effective competition throughout its Missouri exchanges.

Only SWBT addressed the fact that over the past 18 months, SWBT has experienced a declining trend for retail access lines, and over the past 3 quarters, SWBT has experienced a decrease in the total number of retail lines in service.¹⁴ During this same time period, CLEC access line counts have continued to grow.¹⁵ No party but SWBT addressed the fact that there are currently 23 CLEC switches deployed throughout the state of Missouri, with capacity to handle more lines than SWBT serves throughout all of its Missouri exchanges, and the capacity to serve (and provide switch-based vertical services, toll and access services to) 100% of SWBT's Missouri customers.¹⁶ Finally, no party other than SWBT addressed the fact that collocation arrangements by CLECs have grown 140% based on year over year data,¹⁷ or that

¹² Id., p. 13.

¹³ Id., pp. 14-15.

¹⁴ Id., p. 16.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id., p. 12.



CLECs have now collocated their equipment in SWBT exchanges which represent ** %** of the total lines in the state of Missouri.¹⁸

It should not be surprising to the Commission that parties seeking to maintain the status quo choose to ignore all of the objective evidence of effective competition throughout SWBT's exchanges in Missouri. Less than a week ago, on November 16, 2001, the Federal Communications Commission (FCC) approved SWBT's Application for Section 271 authority to provide in region, interLATA services originating in Missouri.¹⁹ The FCC's decision was based in significant part on this Commission's hard work in reviewing SWBT's successful opening of the local market and satisfying the requirements of Section 271 of the federal Telecommunications Act of 1996.²⁰ The FCC has now explicitly recognized that the Missouri local exchange market is open to competition, that SWBT has satisfied the "competitive checklist," and that SWBT has earned the right to compete on equal footing for Missouri consumers' long distance business.²¹ Likewise, based on the evidence which has been presented in this case, this Commission should permit SWBT to compete in the local market on equal footing with CLECs as well. With the FCC's recent approval of SWBT's long distance application for Missouri, along with this Commission's classification of SWBT's local services as "competitive" pursuant to Section 392.245.5 RSMo. 2000, this Commission will send a clear message to Missouri consumers and the telecommunications industry that a new competitive day

¹⁸ Id., p. 16.

¹⁹ In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, Memorandum Opinion and Order, FCC 01-338 (rel. November 16, 2001).

²⁰ Id., par. 3.

²¹ Id., par. 126.

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has dawned in Missouri, and that from this day forward, Missourians will be free to choose from among many telecommunications companies that compete vigorously, under the same ground rules, for *all* of their business. Thriving competition--not one-sided pricing regulation--should now and forever determine how Missouri consumers choose their provider of long distance *and* local telecommunications services.

II. SWBT'S REPLY TO ANCILLARY ISSUES

In their Initial Briefs, several parties raised arguments relating to ancillary issues which arose at the hearing in this case. SWBT will address each of these ancillary issues below.

A. Burden of Proof

In their Initial Briefs, several parties assert that in this case, SWBT bears the burden of proving that "effective competition" exists for SWBT's services in each of SWBT's Missouri exchanges. For example, Staff recognizes that Section 392.245.5 RSMo 2000 "creates a presumption that effective competition exists in that exchange."²² However, Staff opines that while SWBT does not have an initial burden to produce *any* evidence in this case, once Staff (or any other party) presented evidence regarding what it claims is the lack of effective competition, the burden of proof "shifts" to SWBT, and thereafter, SWBT has the burden to persuade the Commission that "effective competition" does in fact exist.²³

OPC argues that because SWBT "wants to change the status quo," SWBT must come forward with evidence to support the change in regulation.²⁴ Likewise, AT&T argues that since SWBT "is the party advocating for a finding of effective competition," it bears the burden.²⁵ In

²² Initial Brief of Staff, p. 8.

²³ Id., pp. 7-9.

²⁴ Initial Brief of the OPC, pp. 7-8.

²⁵ Initial Brief of AT&T, p. 5.

their Joint Brief, NuVox/MCI/Brooks assert that the issue is “moot,” since the real issue is whether the Commission has competent and substantial evidence of “effective competition.”²⁶ Nevertheless, NuVox/MCI/Brooks also assert that SWBT (and to a lesser extent Staff) bear the burden of proof in this case, since they are seeking relief from the Commission.²⁷ Sprint asserts that it is SWBT’s burden to demonstrate that effective competition exists for its Switched Access Service (the only service for which Sprint opposed competitive classification for SWBT), since SWBT is seeking a competitive designation “prior to the five-year period.”²⁸ The Missouri Independent Telephone Company Group (MITG) takes no position on this issue.

As SWBT described in its Initial Brief, under Section 392.245.5 RSMo 2000, SWBT’s services “shall be classified as competitive” unless the Commission determines that effective competition does not exist in an exchange.²⁹ The clear language of the statute establishes a presumption that SWBT’s services should receive a competitive classification, and the burden is on those who oppose such classification to demonstrate that SWBT is not entitled to equal regulatory treatment, and to prove that effective competition does not exist. No party has met that burden in this case.

Although the statute makes clear that the burden is not on SWBT to establish that effective competition exists for its services, SWBT has in fact submitted substantial, credible evidence which establishes, under the factors contained in Section 386.020(13) RSMo 2000, that “effective competition” exists for all SWBT services in all of its exchanges. This evidence consists of voluminous and uncontroverted market share loss data, evidence regarding

²⁶ Joint Brief of NuVox/MCI/Brooks, pp. 24-25.

²⁷ Id., p. 25.

²⁸ Sprint’s Post-Hearing Brief, p. 2.

²⁹ Initial Brief of SWBT, p. 4.

competitive alternatives available in the marketplace, rates for comparable competitive services, and various other indices of a competitive marketplace. Clearly, there is substantial and competent evidence upon which the Commission can and should conclude that “effective competition” exists for all of SWBT’s services throughout its Missouri exchanges.

B. Types of Competitive Services Which May be Considered by the Commission

In their Initial Briefs, some parties take the position that in connection with the Commission’s evaluation as to whether SWBT’s telecommunications services face “effective competition” throughout its Missouri exchanges, the Commission may only consider the extent to which functionally equivalent or substitutable *telecommunications* services are available from alternative providers in the relevant market. For example, Staff states that it “reads” the word “services” in subsections (a) and (b) of Section 386.020(13) RSMo 2000 as “synonymous with regulated telecommunications services,” which is separately defined in Section 386.020.³⁰ Likewise, OPC asserts that the term “services” used in Section 386.020(13) really means “telecommunications services” as defined in Section 386.020(53).³¹ Finally, although not taking a firm position, AT&T appears to agree with Staff that the Commission should only consider “telecommunications services” when evaluating whether SWBT faces effective competition under Section 386.020(13) RSMo 2000.³²

Sprint, on the other hand, agrees with SWBT that “the Commission should consider services beyond those provided by certified telecommunication providers.”³³ Sprint argues that if the Missouri legislature had meant to limit the Commission’s evaluation to services provided

³⁰ Initial Brief of Staff, p. 3.

³¹ Initial Brief of OPC, pp. 5-7.

³² Initial Brief of AT&T, pp. 8-9.

³³ Sprint’s Post-Hearing Brief, p. 4.

by CLECs, Section 386.020(13) RSMo 2000 could have included the more limited, defined term of “telecommunications service” and accomplished that intent.³⁴ However, the legislature did not do so. MITG and NuVox/MCI/Brooks take no position on this issue.

The evidence presented by SWBT in this case regarding the level of functionally equivalent or substitutable services being provided by CLECs is sufficient, standing alone, for the Commission to find that SWBT faces “effective competition” for all of its services throughout its Missouri exchanges.³⁵ Nothing in Section 386.020(13) RSMo 2000, however, even remotely suggests that competition from non-regulated alternative providers should not also be considered by this Commission. The Commission should consider the overall competitive landscape in Missouri, and not limit itself to competition provided by CLECs. As Sprint pointed out, the Missouri legislature could have limited the “services” which the Commission should consider to determine if effective competition exists to “telecommunications services” (as defined in Section 386.020(53)), but it clearly 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 regulated *and* nonregulated services. Moreover, the legislature could have defined “alternative providers” to include only a regulated “alternative local exchange telecommunications company” (as defined in Section 386.020(1) RSMo 2000), but again, the legislature did not do so. Under these circumstances, it clearly would not be appropriate for the Commission to limit its analysis of competition to “regulated telecommunications services” provided by “regulated telecommunications companies.” Even if the legislature had chosen to limit the analysis of functionally equivalent or substitutable services to “telecommunication”

³⁴ Id.

³⁵ Initial Brief of SWBT, p. 17.

services, the Commission certainly could consider such evidence under the broad discretion to consider other factors in Section 386.020(13)(e).

In the current marketplace in Missouri, customers have their choice of receiving functionally equivalent or substitutable services from a wide range of providers, some of whom are regulated by this Commission, and many of whom are not. The absence of Commission oversight over their activities does not make competition from these providers any less real, nor does it make these competitors any less "effective" when they compete against SWBT. As SWBT described in detail in its Initial Brief, non-traditional forms of competition are available throughout SWBT's Missouri exchanges,³⁶ and their availability should be considered by the Commission as it evaluates whether SWBT's services are subject to "effective competition" under Section 386.020(13) RSMo 2000, and should be classified as "competitive" pursuant to Section 392.245.5 RSMo 2000.

C. The Relevance of "Rate Rebalancing" in This Case

In its March 13, 2001, Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, the Commission established this case "for the purpose of investigating the state of competition in SWBT exchanges in accordance with Section 392.245, RSMo 2000." One party, AT&T -- a party that also takes the extreme position that the Commission should find that SWBT does not face effective competition for *any* of its services in *any* exchange -- attempts to make "rate rebalancing" an issue in this case. AT&T argues that SWBT needs no pricing flexibility to lower its intrastate switched access rates, because under Section 392.245.8 and .9 RSMo 2000, SWBT is already authorized to rebalance rates, i.e., reduce its switched access rates, and increase its maximum allowable rates for basic local

³⁶ Id., pp. 17-19.

telecommunications service by an amount not to exceed \$1.50 per month. Even if AT&T's interpretation of Sections 392.245.8 and .9 RSMo 2000 were correct, which SWBT does not believe, that issue is irrelevant in this case. The Commission's focus in this case should be consistent with Section 392.245.5 RSMo 2000, and should be limited to an evaluation of whether SWBT's telecommunications services are subject to "effective competition," and as a result, should be classified as competitive. The issues regarding rate rebalancing which AT&T seeks to litigate in connection with this case are simply not relevant to that determination.

III. SWBT'S REPLY ON SPECIFIC ISSUES

In this section of its Reply Brief, SWBT will respond to each of the arguments made by other parties relating to the specific issues which were previously identified and agreed to by the parties and included in the Issues List submitted on September 14, 2001.

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 392.245.5 RSMo 2000?

SWBT's core business switched services were described in SWBT's Initial Brief, as well as in SWBT witness Sylvia Fernandez' direct testimony (Exhibit 11). These services include various basic business services, including exchange access lines, which SWBT's business customers use to make and receive calls over the public switched telephone network. As SWBT described in its Initial Brief, SWBT's core business switched services face effective competition throughout SWBT's Missouri exchanges and, as a result, the Commission should classify all such services as competitive pursuant to Section 392.245.5 RSMo 2000 in all of SWBT's Missouri exchanges.

Only Staff and OPC addressed this specific issue in their Initial Briefs. Staff agrees that SWBT's core business switched services, should be classified as competitive pursuant to Section

392.245.5 RSMo 2000, but only in SWBT's Kansas City and St. Louis exchanges, including the mandatory areas of the MCA.³⁷ Staff reasons that because of "the presence of alternative fiber optic distribution cables, corresponding CLEC central office switches, and the number of access lines actually being served by competitors with these facilities," the majority of all business customers in the St. Louis and Kansas City exchanges have "viable choices" for local telephone service.³⁸ Staff also asserts that for business customers in St. Louis and Kansas City who as yet are unable to connect directly to one of the alternative fiber networks, Staff believes such customers can be "effectively served through the use of an unbundled loop or through the UNE-Platform."³⁹ Staff does not agree, however, that SWBT faces effective competition for its core business switched services in the remainder of the state.⁴⁰ Staff's position with respect to the remainder of the state is based primarily on Staff's argument that resale competition cannot constitute "effective" competition, and that non-regulated alternative providers should not be considered when the Commission evaluates effective competition.

SWBT recognizes and appreciates Staff's support of competitive classification for SWBT's core business switched services in the Kansas City and St. Louis exchanges. However, the very same evidence upon which Staff relies to support competitive classification for SWBT's core business switched services in the Kansas City and St. Louis exchanges also compels a conclusion that SWBT's core business services should be classified as competitive in many other exchanges throughout the state, including all exchanges located in the optional Metropolitan Calling Areas (MCAs) surrounding St. Louis and Kansas City, and the mandatory and optional

³⁷ Initial Brief of Staff, p. 9.; T. 643-44, Voight.

³⁸ Id., p.10.

³⁹ Id.

⁴⁰ Id.

areas of the Springfield exchange. Furthermore, as SWBT described in its Initial Brief, Staff's "effective competition" analysis is far too narrow, and fails to take into consideration numerous competitive alternatives available for business access line services throughout the state of Missouri. As SWBT described in its Initial Brief, SWBT's core business switched services face effective competition from services provided by CLECs, but also face effective competition from services provided by interexchange carriers, as well as non-traditional (but still effective) forms of competition such as wireless providers, Internet-based telephony, customer premises equipment, and other alternatives.⁴¹ Staff offers no policy rationale for why these competitors should not be included in the Commission's analysis.

With respect to competition from CLECs, SWBT presented substantial evidence in this case that SWBT faces effective competition from CLECs throughout all of SWBT's Missouri exchanges. This competition was not limited to the St. Louis and Kansas City exchanges. The extent of competition in the optional MCA areas is particularly striking. For example, in SWBT's Fenton exchange, which is in the optional portion of the St. Louis MCA, there are 27 CLECs serving customers. These 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 nearly ** %**!⁴² Likewise, CLECs in SWBT's Imperial exchange in the St. Louis MCA, have obtained at least ** %** of the market for business access lines! In the Manchester and Chesterfield exchanges of suburban St. Louis, which are also optional MCA areas, CLECs have obtained a minimum market share of over ** %** of the total business access lines in those exchanges. The CLECs' minimum market share in the Manchester,

⁴¹ Initial Brief of SWBT, p. 24.

⁴² Initial Brief of SWBT, p. 24.

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Chesterfield, Fenton and Imperial exchanges actually exceed the minimum market share CLECs have obtained in the St. Louis exchange, where CLECs have obtained a market share of at least ** %** of the business access lines. Staff does not even address this significant objective evidence of effective competition in their Initial Brief, nor explain why Staff supports competitive classification for the St. Louis and Kansas City exchanges, but does not support competitive classification for nearby optional MCA exchanges where CLECs have obtained an even greater share of the business access line market. Likewise, Staff does not even address the fact that CLECs have also obtained minimum market share which exceeds ** %** of the business access line market in several other exchanges, including larger optional MCA exchanges such as Harvester (at least ** %** of the market) and St. Charles (at least ** %** of the market) and the Springfield exchange (at least ** %** of the market).⁴³ At the hearing, Staff conceded that a consideration of this additional information could very well lead it to recommend a finding of effective competition in the optional MCA areas.⁴⁴ Furthermore, smaller exchanges are also subject to substantial CLEC competition. For example, in SWBT's Clarksville exchange, CLECs have obtained at least ** %** of the business access lines.⁴⁵

While SWBT does not believe that the Commission should adopt a minimum market share or access line count metric to determine whether "effective competition" exists throughout its Missouri exchanges, the minimum market shares CLECs have in fact unquestionably obtained throughout SWBT's Missouri exchanges for core business switched services are compelling and reflect that where CLECs choose to compete with SWBT for business access lines, CLECs do so

⁴³ See, Ex. 17HC, Hughes' Surrebuttal, Sch. 5-1HC.

⁴⁴ T. 661-2, Voight.

⁴⁵ Id.

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effectively. CLECs have the exact same opportunities to compete in all exchanges, and may (and do) compete via a variety of methods including pure facilities based competition, unbundled network elements, and resale. Staff chooses to ignore the CLEC market share statistics, which were attached to SWBT witness Thomas Hughes' surrebuttal testimony (Exhibit 17HC), which contained exchange-specific information. This detailed exchange-specific information includes minimum overall CLEC market share based on resold lines, UNE-P and E-911 listings (Hughes' Schedules 2HC and 4HC), and minimum CLEC market share for the business access line market (Hughes' Schedule 5HC).

As Staff noted, customers in St. Louis and Kansas City can be "effectively served" through the use of an unbundled loop or through the UNE-Platform.⁴⁶ While Staff agreed this was the case for the St. Louis and Kansas City exchanges, it is also unquestionably true for all of SWBT's Missouri exchanges. Since SWBT utilizes the same Operations Support Systems (OSS) throughout the state, CLECs can utilize unbundled network elements, either on a stand alone basis such as an unbundled loop, or together such as the UNE-Platform (UNE-P), to provide local service to all customers in Missouri.⁴⁷ As demonstrated in Schedule 4HC to SWBT witness Thomas Hughes' Surrebuttal Testimony (Exhibit 17HC), CLECs are in fact doing so today.

Staff refuses to consider resold lines in its analysis of effective competition throughout SWBT's Missouri exchanges. As SWBT witness Dr. Debra Aron explained in her surrebuttal testimony, as well as during cross examination at the hearing in this case, resold services should definitely be considered by the Commission as it evaluates whether "effective competition"

⁴⁶ Initial Brief of Staff, p. 10.

⁴⁷ Exhibit 17HC, Hughes Surrebuttal, pp. 20-21.

exists under Section 386.020(13) RSMo 2000. As Dr. Aron noted, resale promotes competition in the provision of retailing functions, and can provide significant competitive pressure.⁴⁸ As Dr. Aron explained at the hearing, even if SWBT increases its retail price for a service, a CLEC reselling that service will enjoy an *increased* profit margin.⁴⁹ As Dr. Aron also explained, most competitors utilize resale as a component of a “hybrid” approach, and utilize resale in connection with this hybrid approach only when it makes financial sense to do so.⁵⁰ For example, where prices for UNE loops exceed SWBT’s retail rates for residential service, resale is a very viable competitive entry mechanism.⁵¹ 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 buildup.⁵² Resale can also be used as an early market entry mechanism while a carrier’s own facilities are being deployed. Staff does not even attempt to refute Dr. Aron’s cogent analysis of why resold services should be considered by the Commission to determine whether “effective competition” exists under Section 386.020(13) RSMo 2000.

As described above and in SWBT’s Initial Brief, competition from CLECs alone is sufficient for the Commission to determine that SWBT faces effective competition for its core business switched services throughout its Missouri exchanges. However, Section 386.020(13) RSMo 2000 certainly contemplates that the Commission should also consider competition from non-regulated alternative providers, as SWBT describes in Section II of this brief. Staff, however, refuses to accept the basic and essentially undisputed position that non-regulated forms

⁴⁸ Exhibit 2, Aron Surrebuttal, p. 3.

⁴⁹ Id., T. 95.

⁵⁰ Exhibit 2, Aron Surrebuttal, p. 4.

⁵¹ Id., p. 7.

⁵² Id.

of competition (e.g., wireless service) are a very effective form of competition for SWBT's core business switched business services. In short, although Staff recognizes that SWBT's core business switched services face effective competition in St. Louis and Kansas City, it fails to apply the same analysis to the optional MCA areas of the St. Louis and Kansas City exchanges, to the Springfield MCA areas, and to the rest of the state.

OPC is the only other party that addressed the specific issue of whether SWBT's core business switched services face effective competition in its Initial Brief. OPC takes an even more extreme and unreasonable position than Staff, however, and argues that SWBT's core business switched services do not face effective competition in *any* SWBT exchange in Missouri. OPC's position completely ignores the extensive, undisputed, objective evidence of CLEC market share which SWBT provided to the Commission in this case. In its Initial Brief, OPC does not even address the business access line gains by CLECs throughout SWBT's Missouri exchanges, which are highlighted above. OPC's position is simply not based on the evidence presented to the Commission in this case. Rather, OPC's position is based on its desire to maintain artificial regulatory constraints on SWBT which hamstring SWBT's ability to compete in Missouri. The Commission should reject OPC's extreme position which, as described above, is not supported by any evidence in this case.

No other parties addressed this specific issue in their Initial Briefs. The extensive and undisputed evidence of effective competition provided by CLECs in SWBT's exchanges throughout Missouri for SWBT's core switched business services compels a conclusion that SWBT's core business switched services face effective competition and should be classified as competitive in all of SWBT's Missouri exchanges. No other conclusion is supported by the evidence. SWBT respectfully requests the Commission to classify SWBT's core business

switched services as competitive throughout SWBT's Missouri exchanges, pursuant to Section 392.245.5 RSMo 2000.

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?

As SWBT described in its Initial Brief, SWBT's "business line related services" are those services (often referred to as "vertical services") which a business customer may add to its business access lines and which provide additional functionality.⁵³ Examples of line related services include call waiting, return call, three-way calling, call forwarding, caller I.D. and speed calling.

As described above, SWBT's core business services face effective competition from services provided by CLECs throughout SWBT's Missouri exchanges. Certainly, 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 business line *related* services also face effective competition. In addition, however, even if the Commission were to somehow determine that SWBT's core business services did not face effective competition throughout SWBT's Missouri exchanges, the Commission could still determine that SWBT's vertical services face effective competition. In either event, the Commission should find that SWBT's business line related services face effective competition throughout its Missouri exchanges, and classify such services as competitive pursuant to Section 392.245.5 RSMo 2000.

Only two parties, Staff and OPC, address this specific issue in their Initial Briefs. Staff states that SWBT's business line related services should be classified as competitive pursuant to Section 392.245.5 RSMo 2000 in only the Kansas City and St. Louis exchanges, if the

⁵³ Initial Brief of SWBT, pp. 31-32.

underlying basic local services are classified as competitive as recommended by Staff.⁵⁴ In Staff's view, there is little or no point in separating SWBT's core business switched services from its business line related services.⁵⁵ As described above, however, Staff's analysis with respect to SWBT's core business switched services is far too narrow, and ignores the substantial and undisputed objective evidence provided by SWBT regarding CLEC market share for business access lines throughout SWBT's exchanges in Missouri, as well as uncontroverted evidence regarding competition from other types of providers and services. Utilizing Staff's approach, if the Commission determines, as the evidence compels, that SWBT's core business switched services face effective competition throughout all of SWBT's Missouri exchanges, or throughout a larger group of exchanges, then SWBT's business line related services in those additional exchanges should also be classified as competitive. As described above, since SWBT believes the evidence is compelling that SWBT's core business switched services face effective competition throughout all of SWBT's exchanges in Missouri, under Staff's logic, SWBT's business line related services should also be classified as competitive throughout all of SWBT's Missouri exchanges.

Again, OPC's position is even more extreme. OPC argues that since SWBT should not receive competitive classification for its core business switched services for any SWBT exchange in Missouri, OPC reasons that it should likewise not receive competitive classification for its business line related services in any exchange in Missouri. As described above, however,

⁵⁴ Initial Brief of Staff, p.11.

⁵⁵ Id.

OPC's position ignores, and in fact is contrary to the undisputed objective evidence regarding the high level of effective competition which CLECs' services provide to both SWBT's core business switched services and business line related services throughout the state of Missouri.

It is not surprising that both Staff and OPC also refuse to consider non-traditional forms of competition in their "analysis." However, as SWBT pointed out in its Initial Brief, customer premises equipment (CPE) will clearly perform some of the same functions as SWBT's line related services. Neither Staff nor OPC explain why a call forwarding feature available on CPE does not provide "effective competition" for a directly comparable SWBT line related service. Staff's and OPC's refusal to consider the impact of non-regulated forms of competition also runs counter to the Commission's prior decisions concerning classification of services as competitive pursuant to Section 392.361 RSMo. In Case No. TO-93-115, the Commission declared SWBT's Speed Calling and Speed Calling 30 line related services competitive based largely on evidence that unregulated CPE providers offered similar services through their equipment. The Commission should not ignore the same type of evidence here.

In short, SWBT's business line related services, like its core business switched services, face "effective competition" throughout all of SWBT's Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000 in all of SWBT's Missouri exchanges.

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?

As SWBT explained in its Initial Brief, SWBT's high capacity exchange access line services provide customers with high speed, switched access to the local switched telephone network on a single DS-1 transport facility. The various types of SWBT's high capacity

exchange access line services were described in SWBT's Initial Brief.⁵⁶ SWBT's high capacity exchange access line services face effective competition throughout SWBT's Missouri exchanges. As a result, the Commission should classify SWBT's high capacity exchange access line services as competitive pursuant to Section 392.245.5 RSMo 2000.

Only Staff and OPC address this specific issue in their Initial Briefs. Staff states that Section 392.200.8 RSMo 2000 permits SWBT to have individual case basis (ICB) pricing for high capacity exchange access lines services in all of its exchanges throughout Missouri, and proposes that the Commission simply recognize that fact in its Report and Order in this case.⁵⁷ Staff presents no analysis as to whether the Commission should explicitly find that SWBT's high capacity exchange access line services face effective competition throughout its Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000. Presumably, Staff does support a finding of effective competition for these services, as the legislature has recognized the competitive nature of this market by granting ICB pricing authority, which is the highest degree of pricing flexibility available. In its Initial Brief, OPC states that it does not support reclassification. OPC states that "[J]ust because individual case basis pricing was authorized for this service does not automatically mean that the requirements of effective competition have been met."⁵⁸ But OPC provides no analysis at all of the extensive evidence presented by SWBT concerning the level of competition for high capacity services, and makes only the erroneous and unsupported assertion that the record lacks "clear

⁵⁶ Initial Brief of SWBT, pp. 34-35.

⁵⁷ Initial Brief of Staff, p. 11.

⁵⁸ Initial Brief of OPC, p. 12.

evidence” of effective competition.⁵⁹ OPC may choose to ignore the evidence, but the Commission certainly cannot.

Like SWBT’s core business switched services and business line related services described in the preceding two sections of this brief, SWBT’s high capacity exchange access line services face effective competition throughout all of SWBT’s Missouri exchanges and should be classified by the Commission as competitive throughout Missouri. As SWBT described in its Initial Brief, there are alternative providers providing substitutable or functionally equivalent services to SWBT’s high capacity exchange access line services throughout Missouri.⁶⁰ Staff recognizes that SWBT’s high capacity exchange access line services should enjoy the pricing flexibility afforded competitive classification. OPC, on the other hand, offers no evidence or analysis to support its conclusion that SWBT’s high capacity exchange access line services do not face effective competition throughout Missouri. The Commission should reject OPC’s extreme position on this issue, which is unsupported by the evidence, and find that SWBT’s high capacity exchange access line services face effective competition throughout its Missouri exchanges, and classify such services as competitive pursuant to Section 392.245.5 RSMo 2000.

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?

As SWBT described in its Initial Brief, SWBT’s Plexar® service 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.⁶¹ Services such as SWBT’s Plexar®

⁵⁹ Id.

⁶⁰ Initial Brief of SWBT, pp. 35-37.

⁶¹ Initial Brief of SWBT, p. 38.

service are commonly referred to as “centrex” services.⁶² As SWBT described in its Initial Brief, key telephone systems and PBXs provide equipment based competitive alternatives to SWBT’s Plexar® service.⁶³ In addition, several CLECs in Missouri offer tariffed centrex services to business customers that are substitutable for SWBT’s Plexar® service, at comparable rates.⁶⁴ SWBT’s Plexar® service faces effective competition throughout its Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

Only Staff and OPC address this specific issue in their Initial Briefs. Staff suggests, as it did with respect to SWBT’s high capacity exchange access line services, that Section 392.200.8 RSMo 2000 allows SWBT individual case basis pricing for its Plexar® services, and that the Commission’s Report and Order in this case should merely acknowledge this fact. However, as with SWBT’s high capacity exchange access line services, Staff presents no analysis as to whether the Commission should explicitly find that SWBT’s Plexar® services face effective competition throughout SWBT’s Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000. Given that ICB pricing is the highest form of pricing flexibility, SWBT presumes that Staff intends to support a competitive classification for Plexar® services. In its Initial Brief, OPC states that the statute authorizing individual case basis pricing does not excuse SWBT from demonstrating effective competition.⁶⁵ But OPC provides no analysis of why the legislative grant of ICB authority is not sufficient to find effective competition, nor does it even discuss the significant evidence of effective competition which SWBT proffered.

⁶² Id.

⁶³ Id., p. 39.

⁶⁴ Id.

⁶⁵ Initial Brief of OPC, p. 13.

SWBT has affirmatively demonstrated that its Plexar® services face effective competition throughout all of its Missouri exchanges, and the Commission should therefore classify these services as competitive pursuant to Section 392.245.5 RSMo 2000. Staff recognizes that SWBT's Plexar® services should enjoy the pricing flexibility afforded by competitive classification. OPC takes the same extreme and predictable anti-SWBT position on this competitive service as it does on other competitive SWBT services. The Commission should reject OPC's position, which is unsupported by the evidence in this case, and classify SWBT's Plexar® services as competitive.

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?

The evidence presented in this proceeding has established that SWBT's intraLATA private line/dedicated services, which provide customers with nonswitched dedicated circuits (primarily used for data and integrated private networks), are subject to effective competition.⁶⁶ As SWBT explained in its Initial Brief, both the Missouri legislature and the Commission have previously found the private line market to be competitive. The Commission should therefore confirm the competitive classification of these services pursuant to Section 392.245.5 RSMo 2000. No party presented any evidence to support a different conclusion.

Only Staff and OPC addressed this issue in their Initial Briefs. And only OPC questioned the appropriateness of extending competitive classification to private line services. Without any analysis or any showing of its own, OPC simply suggested that the evidence may not be sufficient and stated that ICB pricing under Section 392.200.8 does not "automatically mean

⁶⁶ Initial Brief of SWBT, pp. 40-43.

competitive status.”⁶⁷ OPC’s conclusory assertions are no substitute for the analysis required by the statute and should be given no weight here. Staff, on the other hand, appears to concur with SWBT that private line services should be subject to the pricing flexibility afforded competitiveclassification. It states that Section 392.200.8 RSMo 2000 permits SWBT to have individual case basis pricing for private line services in all of its Missouri exchanges, and proposes that the Commission recognize that fact in its Report and Order in this proceeding.⁶⁸ Staff, however, presents no analysis as to whether the Commission should explicitly find that SWBT’s private line services face effective competition throughout its Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

SWBT’s private line services, like its high capacity business services and special access services, face effective competition throughout its Missouri exchanges and should be classified by the Commission as competitive throughout Missouri. As SWBT described in its Initial Brief, there are numerous alternative providers that have for years been providing substitutable or functionally equivalent services to SWBT’s private line services throughout Missouri.⁶⁹ Given the previous determination both by the legislature and the Commission concerning the extensive nature of competition in the private line market, the Commission should confirm that SWBT’s intraLATA private line/dedicated services have been classified as competitive in all of its Missouri exchanges.

The legislature granted individual case base pricing for these services precisely because SWBT (and other ILECs) face substantial competitive pressure from facilities based providers including competitive access providers (CAPs). OPC’s opposition, consisting only of two

⁶⁷ Initial Brief of OPC, p. 13.

⁶⁸ Initial Brief of Staff, p. 12.

⁶⁹ Initial Brief SWBT, pp. 42-43.

conclusory sentences with no citations to the record evidence, provides no basis to refuse to grant a competitive classification for these services.

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?

As SWBT described in its Initial Brief, SWBT's residential access line services consist of services that provide basic voice access for residential customers to the telecommunications network.⁷⁰ SWBT's residential access line services face effective competition throughout SWBT's Missouri exchanges, and as a result, the Commission should classify SWBT's residential access line services as competitive pursuant to Section 392.245.5 RSMo 2000.⁷¹

As SWBT explained in its Initial Brief, and as SWBT witness Thomas Hughes described in his surrebuttal testimony (Exhibit 17HC), SWBT's residential access line services are subject to effective competition in SWBT exchanges throughout the state because there are alternative providers offering substitutable or functionally equivalent services throughout the state, at comparable rates.⁷² As the uncontroverted objective evidence submitted by SWBT shows, where CLECs choose to exercise their existing right to compete with SWBT's basic residential voice services, CLECs are extremely effective competitors to SWBT. CLECs operating in the Harvester exchange have obtained a market share of at least ** %** of the existing residential access lines in the exchange.⁷³ CLECs in the St. Charles exchange have obtained a market share of at least ** %** of the residential access lines in that exchange.⁷⁴ CLEC activity in the

⁷⁰ Initial Brief of SWBT, p.44.

⁷¹ Id.

⁷² Id.; Exhibit 17HC, Hughes Surrebuttal, p.10.

⁷³ Initial Brief of SWBT, p. 45, Exhibit 17HC, Sch. 6-1(HC), Hughes.

⁷⁴ Id.

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residential access line market is not limited to the Harvester and St. Charles exchanges, however. CLECs are actively competing in the residential access line market throughout SWBT's Missouri exchanges. As reflected on Schedule 6HC to Mr. Hughes' surrebuttal testimony, there is at least one CLEC providing service in every SWBT exchange in Missouri, and CLECs are serving residential customers in 95% of SWBT's exchanges, which serve more than 99.5% of SWBT's residential access lines. As in the business market, CLECs utilize three different types of platforms to provide residential access line services throughout SWBT's Missouri exchanges.⁷⁵ These platforms include resale, unbundled network elements, and CLECs utilizing their own facilities.⁷⁶ Many CLECs provide service utilizing both resale and UNE-P, allowing these CLECs to offer service in all SWBT exchanges with little or no capital investment. CLECs offer residential access line services in Missouri pursuant to tariffs, which SWBT submitted as evidence in this case.

Staff agrees that SWBT's residential access line services should be classified as competitive in the St. Charles and Harvester exchanges.⁷⁷ In these two exchanges, Staff states that it believes data show that most residential end users in those two exchanges have a "viable choice" in their local service provider.⁷⁸ Staff goes on to state that "[T]hese two exchanges represent the only known instances where a competitor has installed its own facilities to compete with SWBT for residential basic local service."⁷⁹ Staff does not support competitive

⁷⁵ Id., p. 46.

⁷⁶ Id.

⁷⁷ Initial Brief of Staff, p. 12.

⁷⁸ Id., p.13.

⁷⁹ Id.

classification for residential access line services in SWBT's remaining exchanges throughout Missouri.

SWBT believes that Staff's reliance on pure facilities-based competition in the St. Charles and Harvester exchanges is far too narrow. Clearly, in those two exchanges, SWBT's residential access line services face effective competition and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000. Nowhere in Section 386.020(13) RSMo 2000, however, is pure facilities-based competition a prerequisite to a finding of effective competition. In fact, that position is inconsistent with Staff's own position in its business access line analysis, where Staff agreed that SWBT's business access lines in the St. Louis and Kansas City exchanges should be classified as competitive based in part on the availability of UNE-P. Staff ignores the extensive objective evidence submitted by SWBT, described above, which clearly establishes that there is effective competition for residential access line services throughout SWBT's exchanges in Missouri, not just in the Harvester and St. Charles exchanges.

Had the legislature sought to condition a finding of "effective competition" on the presence of one or more facilities based providers, it could easily have done so. But it did not, as the legislature recognized that other forms of competition can be "effective". Both resale and the use of UNEs provide alternatives to CLECs wishing to compete. The availability of UNEs, which must be priced pursuant to the FCC's TELRIC rules at a level that is typically below what it would cost the new entrant to place its own facilities, provides a strong competitive alternative to SWBT. It would be perverse logic to require SWBT to provide UNEs at a price lower than its competitors could place their own facilities and yet deny SWBT the right to compete on equal terms on the basis that CLECs have not placed their own facilities. In any event, the legislature

did not authorize the use of such perverse logic, as the definition of “effective competition” does not include a requirement that CLECs place their own facilities.

Staff appears to believe that SWBT is relying only on resale to establish effective competition in exchanges other than Harvester and St. Charles.⁸⁰ In its Initial Brief, Staff states that in “other SWBT exchange areas, SWBT appears to rely on resale as a basis for its claim that effective competition exists for residential service.”⁸¹ Staff is mistaken. As reflected on Schedule 2HC to SWBT witness Thomas Hughes’ surrebuttal testimony, CLECs provide residential access line services in SWBT’s exchanges utilizing a variety of platforms, including the use of unbundled network elements. For example, in SWBT’s Cape Girardeau exchange, CLECs provide residential service to ** ** residential customers using unbundled network elements. Likewise, in the Chesterfield exchange, CLECs provide residential service to ** ** residential customers using unbundled network elements.⁸² In SWBT’s Kansas City exchange, CLECs provide residential service to ** ** residential customers utilizing unbundled network elements, and to a total of ** ** residential customers using CLECs’ own facilities.⁸³ CLECs provide residential service to ** ** residential customers in the Springfield exchange utilizing unbundled network elements. Finally, CLECs provide residential access line services to ** ** residential customers in the St. Louis exchange utilizing unbundled network elements. While these examples do not reflect *as much* facilities based competition as is present in the business arena, clearly this uncontroverted market data reflects that CLECs are serving residential customers in various SWBT exchanges, utilizing a combination of unbundled network

⁸⁰ Initial Brief of Staff, p. 13.

⁸¹ Id.

⁸² Hughes Sch. 2-1HC.

⁸³ Id.



elements, resold services, and their own facilities. And these are the same unbundled network elements via which customers can be “effectively served,” as Staff acknowledged in its Initial Brief at p. 10 with respect to business customer choices. Staff’s complete disregard for the effective competition provided by resale is not reasonable, as Dr. Aron described in her testimony and at the hearing in this case. Furthermore, Staff’s position fails to take into consideration non-traditional alternatives to SWBT’s residential access line services, which as described above, the Commission should also consider in its evaluation of whether SWBT’s residential access line services face “effective competition.”

Once again, OPC’s position is even more extreme. In its Initial Brief, OPC states that “effective competition for residential customers is barely at the infant stage.”⁸⁴ OPC does not explain, however, how a CLEC obtaining nearly ** of the residential access line market in the Harvester and St. Charles exchanges can be considered as providing anything but effective competition. Clearly, in at least these two exchanges, competition for residential access lines services is not at the “infant” stage. Yet, OPC refuses to acknowledge the uncontroverted evidence in this case of CLEC competition in the residential access line market, even where such evidence, which is uncontroverted, establishes a very high level of competition. Instead, OPC simply labels this competition as “a trial program” which has not “matured to the level of effective competition.”⁸⁵

Neither Staff nor OPC acknowledges the substantial evidence of effective competition for residential access lines services throughout SWBT’s exchanges. Staff’s and OPC’s refusal to acknowledge this uncontroverted evidence, however, should not result in the Commission failing

⁸⁴ Initial Brief of OPC, p. 13.

⁸⁵ Id., pp. 13-14.

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to recognize this compelling evidence. Based on the entirety of the record in this case, SWBT's residential access line services clearly face effective competition throughout SWBT's exchanges in Missouri, and should be deemed "competitive" pursuant to Section 392.245.5 RSMo 2000.

SWBT recognizes that the Commission may well be reluctant to grant competitive status to SWBT's residential services outside of the Harvester and St. Charles exchanges as proposed by Staff. But in considering this decision, the Commission should keep in mind that it continues to control the price of unbundled network elements which SWBT charges to CLECs, as well as the resale discount to which CLECs are entitled under the federal Telecommunications Act of 1996. Moreover, the Commission retains the right to reimpose price cap regulation if it subsequently determines that effective competition no longer exists in an exchange. These are powerful tools on which the Commission can rely to ensure that residential customers are not disadvantaged by a determination of effective competition. Further, the availability of a low income/disabled customer universal service fund will act as a safety net to ensure that customers who cannot afford basic local service at the tariffed rate can nevertheless retain basic local service.

Almost all parties recognize that basic local residential service is priced below cost in many areas of the state, particularly in more rural areas. While the availability of vertical service and access charge revenue must also be factored into a CLEC's decision to serve residential customers, the greater revenue and profit potential from business customers make such customers the preferred approach to enter the market for many CLECs. A finding of effective competition with the attendant pricing flexibility will result in increased competition for both business and residential customers as prices tend to move toward cost. It is in SWBT's interest to move cautiously with regard to adjusting prices for residential services, not only because it

wishes to keep its customers satisfied but also because it recognizes that unreasonable increases will spur competitive losses and may cause the Commission to reconsider the competition classification. It is important that the Commission allow the competitive market to work as a substitute for regulation, as the legislature envisioned in outlining the purposes of the chapter in Section 392.185(6) RSMo 2000, and a finding of effective competition is the best way to achieve that goal.

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?

As SWBT described in its Initial Brief, SWBT's residential access line related services include numerous vertical services and may also include such things as "hunting" which allows calls to hunt from a busy line to another line which is not busy. The residential line related vertical services offered by SWBT are called EasyOptions® services and include vertical and custom calling features such as call waiting, auto redial, three-way call, call blocker, etc.⁸⁶ SWBT's residential access line related services, like SWBT's residential access lines, face effective competition through SWBT's Missouri exchanges, and the Commission should therefore classify SWBT's residential access line related services as competitive pursuant to Section 392.245.5 RSMo 2000.

As SWBT described in the preceding section of this brief and in its Initial Brief, SWBT's underlying residential access line services face effective competitive throughout SWBT's exchanges in Missouri.⁸⁷ The level of competition for SWBT's residential access line services directly impacts SWBT's residential access line *related* services. For example, when a

⁸⁶ Initial Brief of SWBT, pp. 50-51.

⁸⁷ Initial Brief of SWBT, p. 51.

competitor wins a residential access line customer, the competitor also wins the opportunity to sell that customer residential access line related services, such as vertical services. When CLECs directly compete with SWBT in the provision of residential lines, they also compete with SWBT in the provision of residential line related services. The residential line related vertical services offered by CLECs in Missouri are offered pursuant to tariff.⁸⁸ These tariffs, which SWBT submitted as evidence in this proceeding, demonstrate that CLECs are providing the same types of vertical services that SWBT offers throughout Missouri. SWBT also provided uncontroverted evidence that the prices at which CLECs offer competing services are comparable to SWBT's prices.⁸⁹ In addition, as is the case with business access line related services, other less traditional forms of competition exist for SWBT's residential line related vertical services. For example, residential customers substitute wireless service for the traditional residential access line service. When they do so, these customers can obtain a full range of vertical services from their wireless provider.⁹⁰ In addition, residential access line customers can easily and inexpensively obtain CPE that will perform the exact same functions as residential line related services offered by SWBT, including redial.⁹¹

Staff and OPC are the only parties that address this specific issue in their Initial Briefs. Staff states that SWBT's residential access line related services should only be classified as competitive in the St. Charles and Harvester exchanges, since vertical services and custom calling features are "inseparable from dial tone."⁹² Thus, as is the case with Staff's position with

⁸⁸ Id. pp. 51-52.

⁸⁹ Id. p. 52.

⁹⁰ Id.

⁹¹ Id.

⁹² Initial Brief of Staff, p. 15.

respect to business access line related services, if the Commission determines that SWBT's underlying residential access line services are subject to effective competition in other (or all) SWBT exchanges, Staff's position is that the residential access line related services should also be deemed competitive in those additional exchanges. As described above, the evidence in this case establishes that SWBT's residential access line services are subject to effective competition throughout SWBT's Missouri exchanges and, under Staff's logic, SWBT's residential access line related services should be likewise deemed competitive throughout SWBT's Missouri exchanges.

OPC, on the other hand, does not believe that SWBT's residential access line related services should be deemed competitive in any of SWBT's Missouri exchanges.⁹³ Again, however, OPC's position is based on its extreme position that SWBT's residential access line services are not subject to effective competition. As described above, SWBT believes OPC is simply ignoring the evidence in this case in taking this position. SWBT's residential access line services do face effective competition throughout SWBT's Missouri exchanges, and should therefore be deemed competitive pursuant to Section 392.245.5 RSMo 2000. Under OPC's rationale, if the Commission determines that SWBT's residential access line services are subject to effective competition throughout SWBT's Missouri exchanges, the Commission should also deem SWBT's residential access line related services as competitive throughout SWBT's Missouri exchanges.

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?

⁹³ Initial Brief of OPC, p. 14.

The evidence presented during this proceeding demonstrates that SWBT's intraLATA toll services are subject to effective competition and support confirmation of competitive status for these services in all SWBT exchanges.⁹⁴ As SWBT explained in its Initial Brief, the legislature and the Commission have previously found the intraLATA toll market to be competitive.⁹⁵ No party presented any evidence to the contrary.

Even OPC, which has opposed granting competitive classification for most of the services at issue here, acknowledged the existence of effective competition for these services:

There is evidence that would allow the PSC to make a finding of effective competition for some of SWBT's long distance service offerings. SWBT's per-minute price toll service and block-of-time toll package offerings may be subject to sufficient competition to contain the prices charged to customers and, therefore, may be classified as competitive. It appears that there is a sufficient level of intraexchange competition in all of the SWBT exchanges to allow reclassification for all SWBT exchanges.⁹⁶

Staff, in its Initial Brief, concurred. And it dispelled any notion of conflict between previous grants of transitionally competitive status and competitive status under Section 392.245 RSMo 2000, stating that "there is no inconsistency for SWBT's previously declared transitional and competitive services to have achieved competitive classification following SWBT's conversion to a price cap regulated company."⁹⁷ Staff also agrees that, under Section 392.370.3 RSMo 2000, a decision finding SWBT's intraLATA toll services not to be competitive requires the Commission to impose similar regulation on all intraLATA toll providers.⁹⁸ AT&T, however, opposes competitive classification for SWBT's intraLATA toll services

⁹⁴ Initial Brief of SWBT, pp. 55-58.

⁹⁵ Initial Brief of SWBT, pp. 56-57.

⁹⁶ Initial Brief of OPC, p. 14.

⁹⁷ Initial Brief of Staff, pp. 16-17.

⁹⁸ Section 392.370.3 RSMo 2000; T. 627, Voight.

(although AT&T and all other IXC's have that classification themselves). It states that "if SWBT's usage sensitive toll is classified as competitive, statutory protections against below cost pricing will be eliminated for that service," and argues that the Commission should impose imputation requirements on a service specific basis for SWBT's intraLATA toll services.⁹⁹

AT&T's claim, however, ignores the statutory test. Under Section 392.245.5 RSMo 2000, competitive classification must be granted "unless the commission determines, after notice and hearing, that effective competition does not exist in the exchange for such service." The fact that AT&T pays access charges on its customers' intraLATA toll calls is irrelevant in determining whether SWBT's intraLATA toll services are subject to effective competition. AT&T has been paying switched access charges on its intraLATA toll services since divestiture and this fact did not prevent SWBT's intraLATA toll service from being declared transitionally competitive.¹⁰⁰

From the end user's perspective, AT&T's and SWBT's intraLATA toll services are functionally equivalent as either will allow customers to complete intraLATA toll calls. The evidence has shown that customers certainly perceive these services as similar. This is demonstrated by the fact that in the two years since SWBT has implemented dialing parity in Missouri, IXC's have gained over ** %** of the LPICs on SWBT's lines.¹⁰¹

Moreover, the availability of SWBT's intraLATA toll services for resale by other carriers obviates any need for imputation. As the Commission has previously recognized, imputation of switched access charges is unnecessary where interexchange services are made available for

⁹⁹ Initial Brief of AT&T, pp.16-17.

¹⁰⁰ Exhibit 10, Jablonski Surrebuttal, pp. 7-8.

¹⁰¹ Exhibit 10, Jablonski Surrebuttal, p. 7.

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resale by other carriers.¹⁰² Therefore, the Commission should reject AT&T's position on this issue.

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?

The evidence presented in this proceeding has established that SWBT's Local Plus® service, which provides subscribers flat-rated, unlimited calling to all customers within a LATA, is subject to effective competition throughout SWBT's Missouri exchanges. Therefore, the Commission should classify SWBT's Local Plus® service as competitive pursuant to Section 392.245.5 RSMo 2000 in all SWBT's Missouri exchanges.

MITG, Staff and OPC oppose the grant of competitive classification for Local Plus®. MITG and Staff point to the Commission's ruling in Case No. TO-2000-667 that "SWBT has not made its Local Plus service available for resale by companies providing service to their customers through the use of UNEs or through the use of their own facilities."¹⁰³ These parties note that SWBT has appealed this ruling and argue that the Commission should refrain from making a determination on the competitive classification of this service until there is a final resolution of the appeal.¹⁰⁴ These parties, however, ignore the statutory test. Under Section 392.245.5 RSMo 2000, competitive classification must be granted "unless the Commission

¹⁰² In the matter of Southwestern Bell Telephone Company's Tariffs Designed to Revise PSC Mo. - No. 26 Long Distance Message Telecommunications Services, to Introduce Designated Number Optional Calling Plan, TT-96-268, Report and Order, issued December 20, 1996, p. 8 ("the Commission finds that the elimination of the resale restrictions with corresponding wholesale rates resolves any concerns which may have existed regarding imputation."); In the matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-wide Extended Area Service (EAS) called Local Plus, and a One Way COS Plan, Case No. TT-98-351, issued September 17, 1998, p. 38 ("imputation of access charges would not be necessary if this type of service is available for resale and wholesale discount to CLECs and IXCs").

¹⁰³ Initial Brief of Staff, p. 18.; Initial Brief of MITG, p. 3.

¹⁰⁴ Initial Brief of Staff, p. 18; Initial Brief of MITG, p. 1.

determines, after notice and hearing, that effective competition does not exist in the exchange for such service.” Disputes over how SWBT has made Local Plus® available for resale to other carriers has no relevance in determining whether that service is subject to effective competition.

OPC also claims that the “lack of unlimited, flat rate LATA-wide calling plans by IXC competitors indicates that this is not a competitive service.”¹⁰⁵ The evidence, however, has shown that Local Plus® faces the same extensive competition from services offered by IXCs as described under Issue 8 (intraLATA toll service). These carriers’ calling plans are substitutable for Local Plus® as they provide customers the ability to call outside their local calling scope, but within the LATA. IXCs have many different toll calling plans that customers can and do purchase instead of Local Plus®.¹⁰⁶ In addition to their own calling plans, IXCs can also resell SWBT’s Local Plus® service.¹⁰⁷

CLECs also offer competitive alternatives to SWBT’s Local Plus® service. They have the option of reselling SWBT’s service (which many are doing today), or they can use their own switch or unbundled network elements to create their own expanded calling plans, equal to or even larger than the Local Plus® calling scope.¹⁰⁸ In addition to competition from numerous CLECs and IXCs, Local Plus® also faces competition from other competitors such as wireless providers and Internet service providers.¹⁰⁹ Although these various calling plans may vary in their structure (e.g., flat rate, block of time), they all offer the same basic service and function to

¹⁰⁵ Initial Brief of OPC, p. 16.

¹⁰⁶ Initial Brief of SWBT, p. 59; Exhibit 9, Jablonski Direct, p. 13.

¹⁰⁷ Exhibit 6, Hughes’ Surrebuttal, pp. 31-32.

¹⁰⁸ Exhibit 9, Jablonski Direct, pp. 13-14, Exhibit 6, Hughes’ Surrebuttal, pp. 31-32.

¹⁰⁹ Exhibit 9, Jablonski Direct, p. 8, 14.

the customer of allowing subscribers to complete calls to other customers located outside the subscriber's traditional basic calling scope.¹¹⁰

Given the extensive nature of competition for Local Plus® service, the Commission should confirm competitive classification for SWBT's Local Plus® service in all of its 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?

In its Initial Brief, SWBT described in detail the evidence demonstrating that facilities-based CLECs and resellers provide optional MCA service to customers in competition with SWBT at comparable (or lower) rates.¹¹¹ SWBT also described the competition its MCA service faces from toll services offered by interexchange carriers and wireless services offered by wireless providers.¹¹² In their Initial Briefs, parties opposing the classification of optional MCA service as competitive failed to address the significant competition for MCA service from CLECs, IXC's and wireless providers. Instead, these parties raise irrelevant and erroneous assertions with little or no factual analysis.

MITG provided no analysis of whether MCA service is subject to effective competition as defined in Section 386.020(13); instead MITG asserts that the Commission should postpone its determination until it reaches a decision concerning SWBT's proposed promotional MCA offering at issue in Case No. TT-2002-108. MITG does not explain why the Commission should withhold making its determination as to whether MCA service is competitive based on the

¹¹⁰ Exhibit 9, Jablonski Direct, p. 15.

¹¹¹ SWBT Initial Brief, pp. 61-63.

¹¹² Id.

promotional tariff, nor is the benefit of such an approach apparent on its face. This Commission needs to determine whether optional MCA service is subject to effective competition as defined in Section 386.020(13), and a decision under Case No. TT-2002-108 will not resolve the proper status of optional MCA service pursuant to Section 392.245.5. MITG's position should be rejected.

OPC contends that optional MCA service is a flat-rated unlimited use toll offering that should not receive a competitive classification.¹¹³ Optional MCA service is not classified as a toll service pursuant to the Commission's Order in Case No. TO-92-306. In that case, the Commission classified MCA as local and the tariff filed by SWBT reflected that classification.¹¹⁴ OPC provides no justification for its proposal to treat MCA service as a toll offering or for its recommendation to deny competitive classification other than a claim that SWBT previously engaged in conduct which prevented competition from developing in the MCA areas.¹¹⁵ AT&T made a similar contention of "regulatory gamesmanship" with regard to MCA service.¹¹⁶ The contention of improper treatment is flatly wrong, as is the contention that SWBT's action impeded the development of competition in the MCA arena.

While OPC, AT&T and other parties asserted that SWBT's treatment of CLECs within the MCA was unlawful, SWBT vigorously disputed that assertion. SWBT treated calls to CLEC customers the same as calls to SWBT and ILEC customers who did not subscribe to MCA service -- in both cases, SWBT's customers (not the CLEC's customers) were charged a toll call. SWBT further notes that CLEC customers using ported numbers from SWBT (i.e., the MCA

¹¹³ OPC Initial Brief, p. 16.

¹¹⁴ TO-92-306, Report and Order, December 23, 1992, p. 28.

¹¹⁵ OPC Initial Brief, p. 16.

¹¹⁶ AT&T Initial Brief, pp. 9-10.

customer moved to the CLEC without changing its phone number), served via the UNE-platform, or served via resale of MCA service continued to receive calls on a toll-free basis. In any event, there was nothing improper in SWBT's treatment of CLEC non-MCA subscribers on the same basis as it treated SWBT non-MCA subscribers. In its Report and Order in Case No. TO-99-483, the Commission unequivocally held that it was not making any determination with regard to the claims of past misconduct, but was setting rules solely for application on a prospective basis.¹¹⁷ Contrary to the claims and demands of CLECs, the rules adopted by the Commission in Case No. TO-99-483 required CLECs to follow the same terms and conditions for MCA service as ILECs, with the exception of pricing. Moreover, while the Commission indicated that any claims of past misconduct could be raised in a complaint case, no CLEC has raised any such complaint since the issuance of the Commission's Report and Order more than one year ago. To continue to claim that SWBT acted improperly with regard to the MCA is simply incorrect.

Moreover, claims that SWBT's alleged improper actions prevented CLECs from competing within the MCA are simply incorrect. As demonstrated in Mr. Hughes surrebuttal testimony, several of the MCA exchanges exhibit a minimum CLEC market share penetration rate in excess of that in the St. Louis exchange. Where market penetration is higher in the optional MCA zones, claims that SWBT's action hindered the development of competition are simply incorrect. CLECs utilize their own facilities, UNEs and resold services to offer optional MCA services in competition with SWBT, and the facts clearly support a finding of effective competition.

Issue 11: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services

¹¹⁷ Id., p. 18.

(WATS) and 800 services be classified as competitive pursuant to Section 392.245.5 RSMo 2000?

The evidence presented during this proceeding demonstrates that SWBT's WATS and 800 services have been subject to effective competition for years and supports confirmation of competitive status for these services in all SWBT exchanges.¹¹⁸ As SWBT explained in its Initial Brief, the Commission has previously found the WATS and 800 Service market to be competitive.¹¹⁹ No party presented any evidence to the contrary.

Only Staff and OPC addressed this issue in their Initial Briefs. OPC stated that it "does not oppose this service receiving a competitive classification in any of the SWBT exchanges."¹²⁰ Staff appears to agree that WATS and 800 Service should be subject to the pricing flexibility afforded competitively classified services. It states that:

SWBT's WATS and 800 Services were previously declared transitionally competitive in Case No. TO-93-116... In Case No. TC-95-246, the Commission extended the initial three year period for the transitionally competitive classification from January 10, 1996 to January 10, 1999, when the services became classified as competitive.¹²¹

As SWBT described in its Initial Brief, there are numerous alternative providers that have for years been providing substitutable or functionally equivalent services to SWBT's WATS and 800 Services throughout Missouri.¹²² Given the Commission's previous determination concerning the extensive nature of competition in the WATS and 800 service market, the Commission should confirm that SWBT's WATS and 800 services are subject to a competitive classification in all of SWBT's Missouri exchanges.

¹¹⁸ Initial Brief of SWBT, pp. 63-65.

¹¹⁹ Initial Brief of SWBT, pp. 63-64.

¹²⁰ Initial Brief of OPC, p. 16, citing Exhibit 21, Meisenheimer Surrebuttal, p. 9.

¹²¹ Initial Brief of Staff, p. 19, citing Exhibit 32, Report and Order, p. 26; and Exhibit 18, Voight Rebuttal, pp. 4, and 65-67.

¹²² Initial Brief of SWBT, pp. 63-65.

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?

The evidence presented in this proceeding has established that SWBT's intraLATA special access services, which provide customers with dedicated nonswitched circuits to connect their premises with an IXC's location, are subject to effective competition.¹²³ As SWBT explained in its Initial Brief, both the Missouri legislature and the Commission have previously found the special access market to be competitive.¹²⁴ The Commission should therefore confirm the competitive classification of these services pursuant to Section 392.245.5 RSMo 2000. No party presented any evidence to support a different conclusion.

Only Staff and OPC addressed this issue in their brief. And only OPC questioned the appropriateness of extending competitive classification to special access services. Without any analysis or any showing of its own, simply OPC suggested that the evidence may not be sufficient to "make a clear determination of the existence of effective competition."¹²⁵ OPC's conclusory assertions are no substitute for the analysis required by the statute and should be given no weight here. Staff, on the other hand, appears to concur with SWBT that special access services should be subject to the pricing flexibility afforded competitive classification. It states that Section 392.200.8 RSMo 2000 permits SWBT to have individual case basis pricing for special access services in all of its Missouri exchanges, and proposes that the Commission recognize that fact in its Report and Order in this proceeding.¹²⁶ Staff, however, presents no analysis as to whether the Commission should explicitly find that SWBT's special access

¹²³ Initial Brief of SWBT, pp. 65-68.

¹²⁴ *Id.*, pp. 66-67.

¹²⁵ Initial Brief of OPC, p. 17.

¹²⁶ Initial Brief of Staff, p. 19.

services face effective competition throughout its Missouri exchanges, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

SWBT's special access services, like its high capacity business services and private line services, have for years faced effective competition throughout its Missouri exchanges and should be classified by the Commission as competitive throughout Missouri. As SWBT described in its Initial Brief, there are numerous alternative providers that have long been providing substitutable or functionally equivalent services to SWBT's special access services throughout Missouri.¹²⁷ Given the previous determination both by the legislature and the Commission concerning the extensive nature of competition in the special access line market, the Commission should confirm that SWBT's intraLATA special access services have been classified as competitive in all of its Missouri exchanges.

The legislature granted individual case base pricing for these services precisely because SWBT (and other ILECs) face substantial competitive pressure from facilities based providers including competitive access providers (CAPs). OPC's opposition, consisting only of two conclusory sentences with no citation to the record evidence, provides no basis to refuse to grant a competitive classification for these services.

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?

Several parties raise concerns regarding the classification of SWBT's switched access services as competitive. Sprint states that its sole purpose in participating in this case is to prevent SWBT's switched access service from receiving a competitive designation.¹²⁸ AT&T

¹²⁷ Initial Brief SWBT, pp. 67-68.

¹²⁸ Sprint Initial Brief, p. 1.

contends that SWBT should not receive a competitive classification for its switched access service on the theory that it is a locational monopoly.¹²⁹ Staff and OPC also contend that SWBT's switched access services should not be classified as competitive based on the assertion that switched access is a situational monopoly.¹³⁰

In its surrebuttal testimony, SWBT clarified that it was seeking only to have treatment equal to that of the CLECs with regard to switched access services.¹³¹ Under SWBT's proposal, switched access would be classified as competitive, but its rates would remain capped pursuant to the price cap statute, although SWBT would have the same authority as CLECs to restructure switched access rates on a revenue neutral basis. SWBT's position is based on the irrefutable proposition that its switched access services are no different than any CLEC's switched access services with regard to the claim that such service is a locational monopoly.¹³² The validity of SWBT's position is confirmed by AT&T and Sprint, each of which concede that SWBT's switched access service is no different than that of its competitors. AT&T concedes "that switched access is a locational monopoly for all carriers who serve the end-user,"¹³³ while Sprint concedes that "switched access is a bottleneck byproduct a LEC gains when it sells switched local service to the end-user."¹³⁴

While all parties which address this issue concede that SWBT's switched access service is no different than that offered by CLECs with regard to the locational monopoly contention, the parties nevertheless appear to assume that it is just and reasonable to treat SWBT's switched

¹²⁹ AT&T Initial Brief, pp. 14-15

¹³⁰ Staff Initial brief, pp. 20-21; OPC Initial Brief, p. 17.

¹³¹ Ex. 20, Douglas Surrebuttal, pp. 3-4.

¹³² T. 263-264, Douglas.

¹³³ AT&T Initial Brief, p. 14.

¹³⁴ Sprint Initial Brief, p. 7.

access services in a different fashion. No justification, either from a legal or a policy perspective has been advanced to justify the proposal for disparate regulatory treatment. Sprint contends that different treatment is appropriate because CLECs gain competitive status under Section 392.361.3 while SWBT is proceeding pursuant to Section 392.245.5.¹³⁵ AT&T appears to make a similar argument.¹³⁶ But whether the Commission needs to determine that switched access is a “competitive telecommunications service” under Section 392.361.3 or is subject to “effective competition” under Section 392.245.5 is a distinction without a difference. The switched access service provided by SWBT and CLECs is identical and if it is “competitive” when offered by a CLEC, it is “effectively competitive” when offered by SWBT.

No party has presented any legitimate basis to support disparate regulatory treatment of switched access services. The Commission should determine that SWBT is entitled to the same regulatory treatment as its CLEC competitors, *i.e.*, switched access will be deemed competitive but subject to continued price cap regulation with the right to restructure rates under the cap. The Commission clearly may grant this relief pursuant to the provisions of Section 392.361 if it prefers to proceed under this portion of the statute rather than Section 392.245.5.

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?

The evidence presented in this proceeding demonstrates that SWBT's SS7 service, which provides a dedicated two-way signaling path between a customer and SWBT's signal transfer point and provides access to SWBT's SS7 network, is subject to effective competition.

¹³⁵ Sprint Initial Brief, p. 9.

¹³⁶ AT&T Initial Brief, pp. 15-16.

Therefore, the Commission should classify SWBT's SS7 service as competitive pursuant to Section 392.245.5 RSMo 2000 throughout all of SWBT's Missouri exchanges.

Only Staff and OPC addressed this issue in their Initial Briefs. Based on its analysis of the evidence presented, Staff concluded that "the competition for SS7 is significant," and "recommends statewide pricing deregulation for these services."¹³⁷ However, OPC, without any analysis or citing any evidence of its own, recommends against reclassification, stating that it "does not believe that there is sufficient evidence to make a clear determination of the existence of effective competition for this service."¹³⁸ OPC's opposition, consisting of only two conclusory sentences with no citation to the record evidence, provides no basis to refuse to grant a competitive classification for this service. OPC's position should be rejected and the Commission should classify SWBT's SS7 service as competitive pursuant to Section 392.245.5 RSMo 2000 in all of SWBT's 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?

The evidence presented in this proceeding demonstrates that SWBT's LIDB service, which provides the ability to query billing validation data in SWBT's database (e.g., to support alternate billing services such as calling cards), is subject to effective competition. Therefore, the Commission should classify SWBT's LIDB service as competitive pursuant to Section 392.245.5 RSMo 2000 throughout all of SWBT's Missouri exchanges.

Only Staff and OPC addressed this issue in their Initial Briefs. Based on its analysis of the evidence presented, Staff concluded that "the competition for LIDB is significant," and

¹³⁷ Initial Brief of Staff, p. 21, citing Exhibit 7NP, Douglas Direct, p. 18, Sch. 13; and Exhibit 18, Voight Rebuttal, p. 4, and 43.

¹³⁸ Initial Brief of OPC, p. 17.

“recommends statewide pricing deregulation for these services.”¹³⁹ However, OPC, without any analysis or citing any evidence of its own, recommends against reclassification stating that it “does not believe that there is sufficient evidence to make a clear determination of the existence of effective competition for this service.”¹⁴⁰ OPC’s opposition, consisting of only two conclusory sentences with no citations to the record evidence, provides no basis to refuse to grant a competitive classification for this service. OPC’s position should be rejected and the Commission should classify SWBT’s LIDB service as competitive pursuant to Section 392.245.5 RSMo 2000 in all of SWBT’s Missouri exchanges.

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?

As SWBT described in its Initial Brief, SWBT’s directory assistance (DA) services provide callers with assistance in obtaining telephone listing information.¹⁴¹ The DA services currently offered by SWBT include local directory assistance, directory assistance call completion and national directory assistance. As SWBT described in its Initial Brief, SWBT’s DA services face effective competition throughout the state of Missouri, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

There are a large number of alternative providers of DA services operating throughout the state of Missouri today. As SWBT described in its Initial Brief, alternatives to SWBT’s DA services are provided statewide by various local and toll telecommunications providers, including AT&T and MCIWorldCom, as well as several wireless service providers, Internet

¹³⁹ Initial Brief of Staff, pp. 21-22, citing Exhibit 7NP, Douglas Direct, p. 18, Sch. 13; and Exhibit 18, Voight Rebuttal, p. 4, and 43.

¹⁴⁰ Initial Brief of OPC, pp. 17-18.

¹⁴¹ Initial Brief of SWBT, p.73.

content providers, directory publishers, and others.¹⁴² For example, customers may dial “00” for directory assistance and receive local and national DA services from their presubscribed interexchange carrier.¹⁴³ AT&T and MCIWorldCom offer this service statewide in Missouri. AT&T also offers “10-10-ATT-00” service. This service is available to all end users within the state of Missouri irrespective of whether AT&T is the end user’s presubscribed interexchange carrier. This service provides DA services, including local and national directory assistance, call completion, category searches and search by telephone number. MCIWorldCom offers a similar “10-10-9000” DA service. Both AT&T and MCIWorldCom promote their alternative DA services through mass advertising and direct mail.¹⁴⁴

As described in SWBT’s Initial Brief, there are other alternative DA services available throughout Missouri which are substitutable for SWBT’s DA services.¹⁴⁵ Each of these alternatives to SWBT’s DA services is independent of a customer’s choice of a local telecommunications carrier. In addition, however, CLECs also provide DA services to their own local customers, either through their own facilities, through a combination of their own facilities and SWBT’s unbundled network elements, or by reselling SWBT services. These DA services are in addition to the DA services described above.¹⁴⁶

Staff and OPC are the only parties that address this specific issue in their Initial Briefs. Staff states that SWBT’s DA services should be classified as competitive only if the underlying basic local service is classified as competitive. Staff states that these services are a form of

¹⁴² Initial Brief of SWBT, pp.74-75.

¹⁴³ Initial Brief of SWBT, pp.75-76.

¹⁴⁴ Id.

¹⁴⁵ Id., pp.76-78.

¹⁴⁶ Id., pp.78-79.

“situational monopoly” associated with basic local service. However, Staff looks only to DA services accessed when customers dial “411.”¹⁴⁷ Staff believes that DA services are too closely linked to basic local services to “stand independently.”¹⁴⁸

Staff’s analysis completely ignores the voluminous evidence of competitive alternatives available to SWBT’s DA services. As SWBT described above, SWBT’s business access line services and residential access line services face effective competition throughout SWBT’s exchanges, and therefore under Staff’s logic, SWBT’s DA services should, like SWBT’s business and residential access line services, be classified as competitive pursuant to Section 392.245.5 RSMo 2000. However, even if the Commission determines that SWBT’s business and residential access line services are not subject to effective competition, the evidence in this case is that there are a multitude of competing providers of DA services which are available to end users which do not depend on the end user’s choice of a local carrier. Staff completely disregards this evidence. Staff’s position also ignores the fact that the FCC has found the DA services marketplace to be competitive.¹⁴⁹ In addition, Staff’s position ignores the undisputed evidence that SWBT’s DA services have been directly impacted by the increasingly competitive DA marketplace. As SWBT described in its Initial Brief, since 1996, SWBT’s DA call volume has decreased ** %** while the DA marketplace has continued to grow at a moderate pace.¹⁵⁰ During this time period, CLECs have increasingly become effective competitors and various DA providers have launched and heavily promoted new DA service offerings.¹⁵¹

¹⁴⁷ Initial Brief of Staff, pp. 22.

¹⁴⁸ Id.

¹⁴⁹ Initial Brief of SWBT, p. 80.

¹⁵⁰ Id., pp. 80-81.

¹⁵¹ Id., p. 81.



OPC states that it “does not believe that the evidence demonstrates that there is effective competition for directory assistance in any of the SWBT exchanges.”¹⁵² However, OPC does not identify what evidence it relies upon to reach this conclusion, or where SWBT’s evidence of effective competition is lacking, if at all. In fact, as described above, the uncontroverted evidence in this case is that there is intense competition in the DA marketplace throughout the state of Missouri. OPC states that SWBT’s directory assistance service is “tied to its monopoly local service.”¹⁵³ OPC relies on a single fact – the fact that when SWBT customers dial “411” they are connected to SWBT’s DA services – to support its conclusion that SWBT’s DA services are not subject to effective competition. OPC’s superficial analysis ignores nearly all of the uncontroverted evidence on this issue. OPC ignores the fact that when a CLEC end user dials “411,” the end user is connected with the DA services provided by the CLEC. Likewise, OPC simply ignores the uncontroverted evidence of numerous competing providers of DA services, available throughout SWBT’s Missouri exchanges, irrespective of the end user’s choice of a local service provider. Finally, SWBT would point out that the Oklahoma Corporation Commission, when recently faced with a similar issue, has determined that SWBT’s national DA services should be classified as fully competitive.

Staff’s and OPC’s narrow view of the competitive alternatives available to SWBT’s DA services is not supported by the evidence, and is completely inconsistent with the reality of the DA marketplace. Alternative DA service providers exist throughout the state and customers clearly have a choice between multiple DA service providers. The evidence in this case reflects that end users are simply no longer dependent on their local service provider for DA services.

¹⁵² Initial Brief of OPC, p.18.

¹⁵³ Id.

The Commission should recognize this competitive reality and find that all of SWBT's DA services throughout Missouri are subject to effective competition, and should therefore be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

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?

SWBT's operator services (OS) include a variety of call completion services that SWBT offers its customers in Missouri. SWBT's OS in Missouri include collect calls, calls billed to a third number, sent-paid calls, person-to-person, line status verification, and busy line interrupt service.¹⁵⁴ As SWBT described in its Initial Brief, a customer may use OS by dialing "0" or "0 plus number" from any telephone, but generally customers utilize OS when placing a call away from their home or office.¹⁵⁵

There are numerous competitive alternatives to SWBT's OS which are available throughout SWBT's exchanges in Missouri. These alternatives are provided by numerous local and interexchange telecommunications providers, including AT&T, Sprint, and MCIWorldCom, as well as alternative providers such as wireless service providers, specialized operator services providers, prepaid telephone providers, calling card providers, and others.¹⁵⁶ All of these services compete directly with SWBT's OS in the state of Missouri.¹⁵⁷

For example, "00" service was established as a dialing pattern to route OS calls to the operator of a customer's presubscribed interexchange carrier.¹⁵⁸ "00" service may be used by

¹⁵⁴ Initial Brief of SWBT, p. 82.

¹⁵⁵ Id., pp. 82-83

¹⁵⁶ Id., p. 83.

¹⁵⁷ Id.

¹⁵⁸ Id.

end users throughout the state of Missouri to access a complete range of calling card, third number billing, collect and person-to-person calling options, as well as other types of OS provided by presubscribed interexchange carriers.¹⁵⁹ There are over 600 interexchange carriers certificated to provide service in Missouri. Another competitive alternative is AT&T's "1-800-Call ATT" service. This service is available to all end users throughout Missouri. This service enables customers, irrespective of their choice of local or toll provider, to obtain OS services directly from AT&T, including alternative billing services, such as calling cards, collect, bill to a third number, person-to-person service, line status verification, busy interrupt, and AT&T customer service. Similar competitive alternatives are offered by MCIWorldCom and Sprint.¹⁶⁰

The FCC has found the OS marketplace to be competitive.¹⁶¹ The FCC has eliminated OS from the list of national unbundled network elements based on the competitive nature of the OS marketplace.¹⁶² Other states have also recognized the competitive nature of the OS marketplace. OS are currently price deregulated in Arkansas, Texas and Kansas, among other states.¹⁶³

As described in SWBT's Initial Brief, SWBT's station-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in 1992 by the Commission in Case No. TO-93-116. Subsequent to that finding, and following a three year extension of the transitionally competitive classification period, these OS have become classified as competitive as of January 10, 1999. SWBT would also point out that like its DA services

¹⁵⁹ Id.

¹⁶⁰ Id., p. 84.

¹⁶¹ Id., p. 86.

¹⁶² Id.

¹⁶³ Id., p. 87.

described above, the highly competitive nature of the OS marketplace has directly impacted SWBT's OS call volumes. Since 1996, SWBT's OS call volumes have declined ** %**, which Staff itself concedes is dramatic.¹⁶⁴ This decline in SWBT's OS call volume can be directly attributed to competitive alternatives that exist in the marketplace as described herein.

Staff and OPC are the only parties that addressed OS in their Initial Briefs. Staff agrees that SWBT's station-to-station, person-to-person and calling card services have automatically become classified as competitive based on the Commission's decision in Case No. TO-93-116.¹⁶⁵ With respect to SWBT's other OS (identified by Staff as busy line verification and busy line verification interrupt), Staff believes that these OS are "too closely linked to basic local service to stand independently."¹⁶⁶ Staff states that these other OS should be classified as competitive pursuant to Section 392.245.5 RSMo 2000, only "if the underlying basic local service is classified as competitive."¹⁶⁷

Staff fails to explain why SWBT's busy line verification and busy line verification interrupt OS should be classified differently, and be subject to far less pricing flexibility, than the rest of SWBT's other OS, which Staff concedes have already been declared competitive. Furthermore, Staff fails to explain why SWBT's OS are "too closely linked to basic local service to stand independently." As described above, the evidence in this case is that there are numerous competitive alternatives to SWBT's OS available throughout Missouri, which do not depend on a customer's choice of a local service provider. At the hearing, Staff conceded this to be true.¹⁶⁸

¹⁶⁴ T. 633-4, Voight.

¹⁶⁵ Initial Brief of Staff, p. 22.

¹⁶⁶ Id.

¹⁶⁷ Id., p. 23.

¹⁶⁸ T. 629-630, Voight.

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SWBT's significantly reduced OS call volumes confirm that the OS marketplace is subject to significant and effective competition. While Staff has accurately characterized SWBT's station-to-station, person-to-person, and calling card services as having been automatically classified as competitive on January 10, 1999, the Commission should reject Staff's assertion that SWBT's busy line verification and busy line verification interrupt OS are not subject to effective competition and should not be classified as competitive pursuant to Section 392.245.5 RSMo 2000. Clearly, all of SWBT's operator services are subject to effective competition throughout the state of Missouri, and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

Likewise, OPC asserts that SWBT's operator services should not be classified as competitive in any exchange. OPC claims that SWBT's "advantage in the local service market gives it a high degree of competitive advantage for operator services."¹⁶⁹ Once again, however, OPC simply chooses to ignore the overwhelming evidence contrary to its position in this case. First, as SWBT described in preceding sections of this Brief, there is effective competition for SWBT's residential and business access line services throughout the state of Missouri. In addition, SWBT presented uncontroverted evidence of significant and effective competition for SWBT's OS, which are available to end users irrespective of an end user's choice of a local service provider. OPC's position on this issue, like so many others, ignores the evidence in favor of the anti-SWBT result preferred by OPC. An objective review of the uncontroverted evidence in this case, however, compels the conclusion that SWBT's OS, including the OS which were previously determined to be transitionally competitive by the Commission, are subject to

¹⁶⁹ Initial Brief of OPC, p. 18.

effective competition throughout Missouri and should be classified as competitive pursuant to Section 392.245.5 RSMo 2000.

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)?

As SWBT stated in its Initial Brief, the Commission must determine whether SWBT's services in the Springfield exchange are subject to effective competition by January, 2002.¹⁷⁰ Competition in other SWBT exchanges began shortly thereafter, with CLECs initially focusing on the major metropolitan areas of St. Louis and Kansas City.¹⁷¹ Under the statute, the Commission may consider the existence of effective competition for SWBT's services in all other exchanges in this proceeding, or it could 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. As SWBT stated in its Initial Brief, SWBT believes the Commission's resources are best served by making determinations regarding effective competition in this proceeding.

Staff asserts that no alternative local exchange telecommunications company has been certified in providing basic local telecommunications service for at least five years in any exchange. However, Section 392.245.5 requires the Commission to complete its review prior to the expiration of 5 years. Likewise, OPC states that at the time of the hearing in this case, no alternative local exchange company was both certified and providing basic local telecommunications service in any SWBT exchange for 5 years. Again, the statute does not

¹⁷⁰ Initial Brief of SWBT, p. 88.

¹⁷¹ Id.

require 5 years to have elapsed prior to the Commission conducting its review of competition throughout SWBT's Missouri exchanges. As stated above, if the Commission wishes to conduct an exchange-specific review of the effectiveness of competition in each exchange, it may certainly do so. However, such a process would certainly tax the Commission's resources, as well as the resources of the parties involved in this case, and would not appear to serve any specific purpose.

IV. CONCLUSION

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

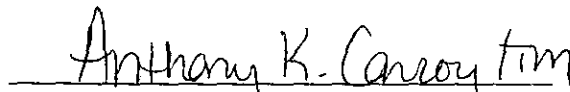
Respectfully submitted,

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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 21, 2001.


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