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Issues: Basic Local Service

Witness: Bill Peters

Sponsoring Party: MO PSC Staff

Type of Exhibit: Rebuttal Testimony

Case No.: TO-2005-0035

Date Testimony Prepared: December 17, 2004

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

BILL PETERS

**SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SBC MISSOURI**

CASE NO. TO-2005-0035

**Jefferson City, Missouri
December 2004**

****Denotes Highly Confidential Information****

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

In the Matter of the Second Investigation)
into the State of Competition in the)
Exchanges of Southwestern Bell)
Telephone, L.P., d/b/a SBC Missouri)

Case No. TO-2005-0035

AFFIDAVIT OF BILL PETERS


STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Bill Peters, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 24 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



Bill Peters

Subscribed and sworn to before me this 16th day of December, 2004.



Notary Public



My commission expires _____

DAWN L. HAKE
Notary Public - State of Missouri
County of Cole
My Commission Expires Jan 9, 2005

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1 returning from the Peace Corps, I completed a four-month internship at the Citizens
2 Utility Board, a consumer advocacy organization, in Chicago, Illinois.

3 **Q. What are your duties at the Commission?**

4 A. Since beginning employment with the Commission, I have reviewed,
5 analyzed and written recommendations for various case filings, tariff filings and
6 interconnection agreements, worked on special projects such as a report on Voice Over
7 Internet Protocol (VoIP), and filed testimony in contested proceedings before the
8 Commission. Filings are reviewed and recommendations are written to ensure
9 consistency with the public interest, Missouri and Federal rules and regulations. I have
10 also reviewed various cost studies and conducted general research related to
11 telecommunications and economics.

12 **Q. Have you previously testified before the Commission?**

13 A. Yes, I testified in Case No. TO-2002-222, *In the Matter of the Petition of*
14 *MCImetro Access Transmission Services LLC, Brooks Fiber Communications of*
15 *Missouri, Inc., and MCI WorldCom Communications, Inc., for Arbitration of an*
16 *Interconnection Agreement With Southwestern Bell Telephone Company Under the*
17 *Telecommunications Act of 1996*, and in Case No. IT-2004-0015, *In the Matter of*
18 *Southwestern Bell Telephone Company, d/b/a SBC Missouri's Proposed Revised Tariff*
19 *Sheet Intended to Increase by Eight Percent the Rates for Line Status Verification and*
20 *Busy Line Interrupt as Authorized by Section 392.245, RSMo, the Price Cap Statute*. I
21 also filed testimony in Case No. TC-2002-1076, *Staff of the Missouri Public Service*
22 *Commission, Complainant, v. BPS Telephone Company, Respondent*.

1 **Q. What is the purpose of your Rebuttal Testimony in this proceeding?**

2 A. My testimony presents economic analysis that responds to concepts in the
3 SBC Direct Testimonies of Craig Unruh and Dr. Debra Aron. Specifically, I will address
4 the issue of where SBC is facing effective competition for basic local
5 telecommunications service. The testimony of Staff witness Walter Cecil will address
6 SBC's request to have its directory assistance services declared subject to effective
7 competition. Staff witness Adam McKinnie will address SBC's request to have specific
8 access-line related services deemed subject to effective competition and will analyze the
9 impact of alternative technologies on competition for basic local telecommunications
10 services.

11 **Q. In Staff's opinion, after reviewing the evidence presented in this case,**
12 **where does SBC face effective competition?**

13 A. In the residential market, SBC continues to face effective competition for
14 its residential access-line and line-related services in the exchanges of Harvester and
15 St. Charles. In the business market, the evidence of competition indicates that SBC
16 Missouri continues to face effective competition for its business access-line and line-
17 related services in the exchanges of St. Louis and Kansas City, and now faces effective
18 competition for business access lines (and related line services) in the 17 exchanges of
19 Farley, Harvester, Fenton, Chesterfield, Springfield, Greenwood, Valley Park,
20 Manchester, St. Charles, Grain Valley, Marionville, Pond, Smithville, Eureka, Imperial,
21 High Ridge, Maxville.

1 **Q. How did Staff determine when the criteria for effective competition**
2 **had been met?**

3 A. Staff considered the evidence available and concluded that evidence of
4 significant exchange-specific facilities-based market penetration, along with information
5 on the availability of wireless, cable and VoIP services, as discussed in the testimony of
6 Staff witness Adam McKinnie, is sufficient to meet the threshold definition of effective
7 competition. Staff's determination of 'significant' market penetration is admittedly
8 similar to a grading on a curve. Where the measured market penetration was zero, when
9 looking at the e911 proxy of facilities-based competition, Staff was not confident that the
10 mere possibility of competition from VoIP, cable modem and/or wireless is sufficient to
11 meet the standard of effective competition. However, Staff recognizes that these services
12 do provide some competition and took this into account when analyzing those exchanges
13 with facilities-based competitive local exchange carriers.

14 Based on Staff's review, SBC provided evidence that 19 of SBC Missouri's 160
15 exchanges face significant facilities-based competition in the market for business wire
16 line products. For residential lines, the data provided by Mr. Unruh show only two
17 exchanges with greater than a four percent facilities-based share of the market, 10
18 exchanges with slight evidence of facilities-based competition, while the remaining
19 exchanges exhibit varied UNE-P and resale penetration.

20 There were instances where some exchanges exhibited a relatively small degree
21 of facilities-based competition but still did not meet the criteria of effective competition.
22 For example, in the residential market, Staff views a four percent facilities-based market
23 penetration as insignificant compared to penetration levels exhibited in St. Charles and

Rebuttal Testimony of
Bill Peters

1 Harvester. In the business market, a facilities-based penetration rate of at least nine
2 percent was sufficient to meet the standard of effective competition, especially when
3 considering the higher prices commanded in the business market.

4 Herculaneum-Pevely, which is an example of an exchange where, in Staff's
5 opinion, SBC does not face effective competition, the data shows the exchange to have a
6 minimal amount of facilities-based competition. The data show ** HC** CLEC business
7 e911 listings in Herculaneum-Pevely, which represents that facilities-based competitors
8 have ** HC--** percent of facilities-based business lines reported in that exchange. Staff
9 is not confident in the sustainability of competition in that exchange, or any other
10 exchange, exhibiting a small sum of facilities-based CLEC lines and minimal market
11 penetration. At some point, the evidence is simply less compelling and does not meet the
12 criteria of effective competition.

13 **Q. Are you aware of any well know economic methodologies that set**
14 **standards to measure 'effective competition' as defined in RSMo 386.020 (13)?**

15 A. No, I am not. Recognizing effective competition is not a simple task that
16 is easily defined, the best we can do in a situation such as this is to attempt a dutiful
17 interpretation of its statutory definition with guidance of previous Commission Orders
18 and from our legal counsel.

19 The Missouri Public Service Commission was particularly interested in a local
20 analysis in its previous orders regarding effective competition. For instance, in the first
21 SBC effective competition case (Case No. TO-2001-467), the Commission made the
22 following statements:

23 *While specific market share thresholds should not be utilized to*
24 *determine whether or not Southwestern Bell faces effective*

1 *competition, it is one factor, which the Commission finds*
2 *particularly determinative of “[t]he extent to which services are*
3 *available from alternative providers in the relevant market.”*
4

5 *The Commission finds that the evidence presented by Southwestern*
6 *Bell in the form of a count of the number of CLECs or IXC’s*
7 *certified or tariffed in the state or in any particular exchange is*
8 *evidence of competition; however, the mere existence of such*
9 *“paper competition” by itself does not persuade the Commission*
10 *that effective competition exists.*
11

12 *The Commission considers alternative communications that are*
13 *not regulated by the Commission, such as e-mail, cable*
14 *broadband, and mobile phones as “other factors” under*
15 *Subsection 386.020(13)(e) that might be “relevant . . . and*
16 *necessary to implement the purposes and policies of Chapter 392.”*
17 *However, the evidence did not persuade the Commission that the*
18 *generalized presence of such alternative communications*
19 *throughout the state constitutes, in the absence of CLEC-owned,*
20 *facilities-based competition, effective competition to Southwestern*
21 *Bell’s telecommunications services.*
22

23 *While the Commission considers resale a form of substitutable*
24 *service, the mere presence of resellers is not substantial evidence*
25 *for the Commission to determine that effective competition exists.*
26

27 *With due consideration to all factors set forth under Section*
28 *386.020(13), the Commission finds that Southwestern Bell’s*
29 *residential access line services in Southwestern Bell’s other*
30 *exchanges do not face effective competition. In particular, the*
31 *evidence did not establish that a substantial number of residential*
32 *customers were being provided service from widely available*
33 *CLEC-owned facilities in any of Southwestern Bell’s other*
34 *exchanges.*
35

36 Similarly, in the Sprint effective competition case (Case No. IO-2003-0281), the
37 Commission said:

38 *Although ExOp is an ETC in Platte City, and may someday be able*
39 *to serve a larger proportion of the customers in that exchange, its*
40 *status as an ETC does not immediately make it an effective*
41 *competitor for Sprint. The Commission must decide whether there*
42 *is effective competition now, not whether there will be competition*
43 *someday. The Commission concludes that effective competition*
44 *does not exist in the Platte City exchange.*

1 Staff, maintains that evidence for ‘effective competition’ must be analyzed on an
2 exchange basis, service-by-service. Staff also maintains that several factors, including
3 such things as market share, extent of facilities-based competition and the comparability
4 of services actually offered by alternative providers are relevant to an analysis of
5 effective competition.

6 **Q. How does Mr. Unruh, throughout his Direct Testimony, come to**
7 **conclude that effective competition exists for SBC’s services?**

8 A. Rather than present a local analysis of competition in its exchanges, SBC
9 takes a more global approach when presenting evidence to justify its case. UNE-P, resold
10 and evidence of non-SBC e911 listings are presented on an exchange basis, however,
11 SBC fails to mention any specifics for those exchanges. It fails to identify its key
12 competitors in those exchanges and instead relies on generic data that identifies, in effect,
13 *possible* competition. Mr. Unruh presents a survey of the capabilities of technology (for
14 example, one switch may be able to serve the entire globe from a collocation cage in St.
15 Louis, MO) in an effort to prove effective competition by proxy of potential. While I do
16 not necessarily disagree that there may be a degree of potential energy in the
17 telecommunications market, I cannot reasonably predict when and to what extent that
18 competition may manifest itself. SBC provides schedules that purportedly outline where
19 CLEC switches are located and where wireless providers are providing service, but
20 makes it difficult for the reader to assess the validity of this information¹. Mr. Unruh and
21 other SBC witnesses have simply asserted that effective competition exists and have not
22 engaged in the granular analysis contemplated by the Missouri statutes; the sort of
23 analysis Staff considers is required.

¹ See SBC’s response to Staff DR 39, attached as Schedule 5.

1 **Q. Mr. Unruh argues (page 5 of Direct) that SBC should be regulated in**
2 **the same fashion as other regulated telecommunications companies. Is his position**
3 **relevant to this case?**

4 A. No, Mr. Unruh states in his Direct Testimony on Page 5 lines 8-10,
5 “...SBC Missouri faces more onerous regulations than does its traditional landline
6 competitor.” Clearly, SBC and other like telecommunications companies (incumbent
7 local exchange carriers or ILECs) are treated differently than competitive local exchange
8 carriers (CLECs) by Missouri and Federal law. This proceeding’s only objective is to
9 evaluate the extent of competition for SBC services in its Missouri exchanges as set forth
10 in RSMo 386.020 (13).

11 **Q. Do you agree with Mr. Unruh that a competitive classification would**
12 **move the regulation of SBC’s service closer in line with CLEC regulation²?**

13 A. Yes, a primary difference between these companies is that SBC is subject
14 to price cap regulation and CLECs are allowed, within some limited constraints, to price
15 services as they see fit.

16 **Q. Would you agree with Mr. Unruh that whatever decision the Missouri**
17 **Commission makes regarding effective competition does not affect other aspects of**
18 **the Commission’s regulatory authority over SBC?**

19 A. Yes, if the Commission finds effective competition, the Missouri PSC still
20 retains authority over such things as terms and conditions for retail services, quality of
21 service, and wholesale arrangements such as interconnection agreements, interconnection
22 agreement arbitrations, and setting UNE prices. A finding of effective competition

² See the Direct Testimony of Craig Unruh, Pages 46-47.

Rebuttal Testimony of
Bill Peters

1 means the company will gain pricing flexibility and will no longer be limited by the
2 constraint of price cap regulation.

3 If a service is deemed subject to effective competition, SBC will be free from the
4 price constraints of price cap regulation. SBC would then be able to raise prices outside
5 of those constraints, and submit 10-day tariff filings for price changes on existing
6 services. SBC would be able to lower prices outside those constraints, and submit seven-
7 day tariff filings for price changes on existing services. The company would still be
8 required to submit 30-day tariffs for new services.

9 **Q. According to SBC, "...pricing flexibility...will enhance competition."**
10 **Does Staff agree with this statement?**

11 A. Not necessarily. Staff would argue that a competitive market enjoys
12 pricing flexibility, and the latter doesn't automatically produce the former. Pricing
13 flexibility, in this case, means a lack of pricing constraints³. This pricing freedom may
14 result in various price changes; some may be substantial increases, some substantial
15 decreases, and some prices may change little if at all. SBC has provided little evidence
16 that the ability to price flexibly will necessarily lead to a competitive market. In fact, it is
17 entirely possible, especially in the lower-priced residential wire line market that the
18 company could lower prices for a period of time in order to squeeze out any current
19 competition and subsequently raise prices until there are no longer economic rents
20 available in the market⁴. To the extent there is sufficient competitive activity for a
21 service, exchange, and/or class of services, Staff supports SBC's request for pricing

³ This case contemplates removing the regulatory ceilings on current prices, and a slightly reduced tariffing deadline required to reduce prices on existing services.

⁴ If residential services are truly under priced and UNE prices increase, a decrease in prices may not even be necessary. SBC could potentially price-squeeze competitors out of the market by maintaining their current residential prices.

1 flexibility. Without sufficient evidence of competition, I am hesitant to recommend the
2 Commission surrender its oversight of SBC's prices.

3 **Q. In Staff's opinion, will SBC raise prices for all of its services if the**
4 **Commission were to find those services subject to effective competition?**

5 A. No, Staff tends to predict that prices for some services would increase and
6 others would decrease. Unfortunately, there is no way to know for sure the exact changes
7 SBC would make to its schedule of prices. In a response to a Data Request where Staff
8 asked for any formal plans of the company's intentions, SBC replied, "SBC Missouri has
9 not determined what marketing programs it would initiate as a result of an expansion of
10 competitive classification. Analysis needs to be performed to determine how customers
11 desires can be better served with new flexibility.⁵" This response leads Staff to conclude
12 that even SBC doesn't have formal plans of how it would proceed if it were freed from
13 the constraints of price cap regulation.

14 However, SBC has dropped some meaningful hints during the process of this
15 case. In the Direct Testimonies' of both Mr. Unruh and Dr. Debra Aron⁶, SBC alleges
16 that its current structure of prices, which came about due to the consequence of historic
17 telecommunications regulation, subsidizes basic local prices with revenues from other
18 services.⁷ From SBC's testimony, it appears to Staff that SBC would lower some prices
19 at the expense of higher prices for basic local service. I would caution the reader to note
20 that this analysis is Staff's interpretation of the testimony provided in this case, and to

⁵ See Schedule 6 (DR 35 and response).

⁶ See Aron Direct, Pages 53 and 69, Question 41 and 60; Unruh Direct, Page 45.

⁷ This structure of pricing was implemented historically to maintain and improve universal service, which is an important policy obligation of both the FCC and the MoPSC. In Case No. 18,309, the Commission set forth a pricing philosophy that encouraged certain categories of services to be priced at high levels in order to support basic local service. In other words, prices for basic local service were kept low by pricing other services at high levels.

1 also keep in mind that even SBC does not appear to have any tentative plans for price
2 changes. It could be that nothing at all happens, but I think that scenario is highly
3 unlikely, and the aforementioned scenario much more likely. For the few services which
4 SBC can price flexibly it has done little as yet, but with no formal plans it is almost
5 impossible to predict exactly how SBC might use newfound pricing flexibility. It could
6 be that the company is waiting for a wider array of pricing flexibility before making
7 many changes.

8 **Q. On Page 45 of Mr. Unruh's testimony he says, "Dr. Aron recommends**
9 **that the Commission should consider whether the currently regulated prices are**
10 **below what would likely prevail in a competitive market because that could mask**
11 **the degree to which the market is open to competition. I believe that to be the case**
12 **in the residential basic local service market where prices were kept artificially low**
13 **to promote universal service." Are these conclusions reflected in the data SBC has**
14 **provided to support its testimony, and what are the competitive implications?**

15 A. Yes. However, the fact that a rational business will tend to engage a
16 market where economic rents are available does not provide any specific evidence of
17 effective competition in and of itself. The main consequence of the historic pricing
18 disparity between residential and business services is that there is significantly more
19 money to be had in the business market than the residential market. A rational
20 competitor will compete in the segment of the market that exhibits higher prices, the
21 market for business access lines. Dr. Aron states on page 53 of her testimony, "One
22 reason that competitors might serve only a negligible portion of consumers is that, at the
23 prices currently charged to those consumers, the market might be unattractive." While

Rebuttal Testimony of
Bill Peters

1 this assumption may be reflected in the data, it is not indicative of the existence of
2 effective competition. Using SBC's data on non-SBC e911 listings, ** HC-----
3 HC----- ** total listings are classified as business⁸. However, this data at the aggregate
4 level does not demonstrate the extent of competition in any specific SBC Missouri
5 exchange, a necessary component when examining effective competition on an
6 exchange-by-exchange level.

7 **Q. For which services does SBC Missouri seek competitive status?**

8 A. SBC Missouri is claiming effective competition to exist in all of its
9 Missouri exchanges for its business and residential access line services, their related line
10 services, and directory assistance services. From a reading of Mr. Unruh's Direct
11 Testimony⁹, SBC claims that effective competition exists in all of its Missouri exchanges
12 for its business and residential access line services and their related line services like
13 caller ID, call waiting, etc. SBC Missouri also claims that its directory assistance
14 services face effective competition in all of its Missouri exchanges. Although SBC
15 seems to be claiming effective competition for most all of its services, aside from
16 switched access service which SBC explicitly excludes, page 18 of Mr. Unruh's Direct
17 Testimony affirmatively asserts that SBC Missouri believes the statutory definition of
18 effective competition has been met only for those services listed in schedule 2.

⁸ That comes to a little over 94% business. (These e911 data are the closest approximation available to estimate a minimum level of facilities-based competition.)

⁹ See Unruh Direct, Page 8, Case Overview.

1 **Q. On page 19 of his Direct Testimony, Mr. Unruh states, “The FCC in**
2 **its First Report and Order at paragraph 332 discusses that CLECs offering services**
3 **via resale are offering the same service that the incumbent is offering at retail. This**
4 **demonstrates that CLECs are providing substitutable services when they are**
5 **reselling SBC Missouri’s services.” Does this lead Staff to conclude resale of SBC**
6 **Missouri’s services represent effective competition for those same services?**

7 A. No, in fact, Staff draws the exact opposite conclusion. The fact the two
8 “would-be” competitive services are both provided by SBC Missouri, leads Staff to
9 conclude that resale offers essentially no competition for SBC Missouri’s retail services.
10 Since resale prices are derived from retail prices, meaning they change proportionally,
11 and in concert with retail prices, it is difficult to accept a scenario where the former
12 influences the latter. If there is a disagreement between Staff and SBC on this matter, it
13 is essentially rendered moot since Mr. Unruh concedes, “...the vast majority of CLEC
14 competition in SBC Missouri’s exchanges is from service providers using their own
15 facilities or SBC Missouri’s UNEs.”¹⁰ Even then, SBC still presents resale as part of its
16 calculations for minimum CLEC lines in its schedules.

17 **Q. On Page 28 of Dr. Aron’s Direct Testimony, while explaining why she**
18 **reasons that resold and UNE-P services compete for SBC’s service, she states,**
19 **“UNE-P-based service is also functionally equivalent insofar as it rides the same**
20 **network end-to-end as the incumbent’s.” Why does Staff discount evidence of**
21 **UNE-P and resale lines as reliable proxies for effective competition?**

22 A. The mere repackaging of SBC service is not representative evidence of
23 effective competition. Further, the UNE Platform, where the CLEC purchases essentially

¹⁰ Page 19, lines 11 - 13. Craig Unruh’s Direct Testimony.

Rebuttal Testimony of
Bill Peters

1 an end-to-end service from the ILEC, is a thinly veiled resale product. The only
2 ostensible difference between resale and UNE-P is that UNE prices are set by the
3 Commission under TELRIC as required by the FCC. Even this admittedly important
4 distinction is not enough, in Staff's opinion, to give UNE-P any more credence than
5 resale, since the future of the UNE Platform is quite uncertain at this point in time and is
6 likely doomed to extinction.

7 With the FCC's UNE rules thrice struck down by the judiciary, it is difficult to
8 accept UNE-P lines as competition to SBC's wire line product, no matter how substantial
9 they may be. Since the FCC's latest judicial remand, the continued existence of UNE-P
10 remains questionable. The FCC addressed its unbundling rules at its December 15, 2004
11 open meeting. If additional information is obtained prior to Surrebuttal, Staff will
12 provide that information as part of its Surrebuttal Testimony.

13 Staff is further convinced that UNE-P access lines do not represent effective
14 competition, since AT&T reported, shortly after the future of UNE-P became unclear,
15 that it would not take new residential customers¹¹.

16 SBC's own 2004 Q3 earnings report, which is available to the public on their
17 website, reports that in the third quarter on 2004 SBC saw its first ever quarterly decline
18 in wholesale (UNE-P and Resale) lines. SBC reported a decline of 213,000 lines across
19 the company. This report follows the recent expectation that UNE-P may be phased out

¹¹ In a July 22, 2004 News Release, AT&T states, "As a result of recent changes in regulatory policy governing local telephone service, AT&T will no longer be competing for residential local and standalone long distance (LD) customers." This News Release is attached to my testimony as Schedule 7. Staff is fully aware of AT&T's subsequent introduction of its CallVantage broadband-based telephone product, which is not relevant to the discussion in this question.

1 and the exit of AT&T from the residential access line market and competitive concerns
2 expressed by companies like MCI.¹².

3 **Q. On Page 20 of his testimony, Mr. Unruh states, “As explained by**
4 **Dr. Aron in her Direct Testimony, requiring a certain threshold, or level, of**
5 **competition as defined by something such as market share is inappropriate because**
6 **such measures may not accurately reflect the level of competition.” Does data that**
7 **measures the extent or level of competition accurately reflect the level of**
8 **competition?**

9 A. Yes, although that data may not act as a precise barometer of competitive
10 activity, such data certainly provides actual market observations that should be taken
11 seriously. What that data may lack in the way of substantiating competition from
12 wireless providers, cable Internet providers, VoIP, or instant messaging should certainly
13 not be a reason to discard the data entirely. In fact, without such data, we would be
14 arguing this case at an almost purely speculative level.

15 **Q. On Page 13 of Direct Testimony, Mr. Unruh stated that SBC has**
16 **simplified toll prices and restructured business pricing as a result of competitive**
17 **classifications and made few other changes. What did SBC fail to mention?**

18 A. Recently the company has amended its residential tariff so that customers
19 in Harvester and St. Charles are subject to a higher late fee, \$5 instead of \$1.60, than in
20 other SBC Missouri exchanges. This is another instance Staff found where SBC utilized

¹² In a March 2, 2004 press release regarding a judicial review of the FCC’s Triennial Review Order, MCI states, “The court sharply restricted the ability of MCI and other companies to offer local phone service to residential customers by denying competitors the right to lease the facilities still controlled by local Bell monopolies. Without access to those facilities, MCI and others simply cannot continue to offer lower prices and better residential services.” This publicly available News Release is attached as a Schedule 8 to my testimony.

1 competitive pricing flexibility. SBC PSC MO No. 35, Section 17, 8th Revised Sheet
2 12.01 is attached to my testimony as Schedule 1. The tariff page was effective
3 September 12, 2004, and the exchange-specific fee increase was effective October 25,
4 2004.

5 **Q. Should the preceding evidence be accepted as a predictor of future**
6 **pricing decisions?**

7 A. No, the instances where SBC has used its pricing flexibility are a very small
8 sample and do not provide Staff with any assurances of future pricing behavior of the
9 company, if left unrestrained by price cap regulation. The sample was merely provided
10 as guidance to the Commission of past SBC activity in areas where services and
11 exchanges were found to be subject to effective competition.

12 **Q. Mr. Unruh states SBC is not aware of any complaints because**
13 **customers thought they were being harmed by SBC Missouri's competitive**
14 **classifications. Dr. Aron also talks about a lack of customer complaints or other**
15 **problems related to and previous finding of effective competition. Does this indicate**
16 **that no customers have or may be harmed by competitive classification?**

17 A. No, even if this evidence were quantifiable, I would expect a relatively
18 low number of complaints on the matter, since the company has done very little with
19 competitive classification thus far. Additionally, the unfavorable price change mentioned
20 above, the increase in late fees, has only recently been implemented.

21 **Q. Does Staff consider all CLECs to be equally competitive?**

22 A. No, Staff finds most relevance in data detailing the extent to which
23 facilities-based competitors have gained a foothold in SBC exchanges simply because it

Rebuttal Testimony of
Bill Peters

1 is the most tangible evidence. Resold and UNE-P competition is not indicative of strong
2 competition. Resold telecommunications, where wholesale prices are tied to SBC retail
3 prices do not offer substantial competition for SBC wire line products, even though they
4 are, at core, the same product. This is, in fact, why resold telephone service offers, in
5 Staff's opinion, a negligible amount of competition. And although, UNE-P-based
6 competitors have gained a foothold in many SBC exchanges, the expectation that the
7 UNE platform will soon be priced much higher if not eliminated entirely, makes its
8 future, and the underlying CLEC service, quite uncertain. Additionally, the Missouri 271
9 Agreement (M2A) expires in March of 2005. CLECs will have to renegotiate
10 replacement agreements. It is unclear whether such negotiations will result in arbitrations
11 and how decisions at the FCC may affect the outcome of any negotiations and/or
12 arbitrations. Staff is not comfortable granting very much credibility to UNE-P
13 competition. With the degree of uncertainty attached to it, predicting its sustainability is
14 nearly impossible at this point in time. The most relevant CLEC data in this proceeding
15 is the data on non-SBC e911 listings in Unruh Schedule 13 HC and CLEC-Specific e911
16 listings included as a HC Schedule 2 to my testimony.

17 **Q. How did Staff analyze Unruh Schedule 13 HC?**

18 A. Attached to my testimony are HC Schedules 3 and 4 where I have
19 consolidated and added to the data in Unruh's Schedule 13HC. There are two schedules,
20 one each for the residential and business markets (HC Schedules 3 and 4, respectively).

21 Since I was particularly interested in the facilities-based information contained in
22 the schedule, I added an additional column to represent estimated CLEC market share
23 without considering UNE-P and resold data. In Staff's opinion, these columns provide

Rebuttal Testimony of
Bill Peters

1 the greatest insight when determining those areas where effective competition exists since
2 Staff discounted the applicability of competition for resale and UNE-P as more fully
3 explained throughout my testimony.

4 The schedules include data by exchange for SBC Residential Access Lines,
5 Resold CLEC lines, UNE-P CLEC lines, and non-SBC e911 listing. The schedule also
6 includes SBC's estimates of CLEC lines and market share by exchange. The right
7 column, labeled 'MKT Share Minus UNEp and Resold', is Staff's calculation of the
8 degree of facilities-based competition (facilities based CLEC lines as a ratio of total
9 facilities-based lines in the exchange) in each exchange. I have sorted those schedules so
10 that the exchanges with the highest degree of facilities-based competition come first.

11 **Q. On page 20 of Mr. Unruh's Direct Testimony, SBC seems to discount**
12 **market share as an indication of competition because, "...such measures may not**
13 **accurately reflect the level of competition." Does Staff agree with this analysis?**

14 A. No. SBC appears to contend the potential for competition, which in
15 SBC's testimony is purely speculative, is sufficient to meet the statutory definition of
16 effective competition. SBC argues that tangible evidence such as market share should be
17 thrown aside and trumped by subjective speculation because market share can merely
18 offer the Commission a 'perceived' level of competition at a certain point in time. Staff
19 understands that the Commission is interested in Missouri-specific evidence of
20 competition, as it now exists¹³, and market share information is one of the few pieces of
21 objective data available. As the Commission stated in the Sprint effective competition
22 case, "The Commission must decide whether there is effective competition now, not
23 whether there will be competition someday." Therefore, Staff would rather rely on

¹³ Missouri Public Service Commission's Report and Order in Case No. IO-2003-0281, page 35.

1 tangible evidence than on speculation when making its recommendations to the
2 Commission.

3 **Q. Does this mean that market share information should be the sole**
4 **indicator of effective competition?**

5 A. No, other evidence should most certainly be considered when deciding
6 whether effective competition exists. However, without evidence of CLEC market share
7 by type and by exchange, it is difficult to recognize effective competition from the
8 remaining evidence presented by SBC in this case.

9 **Q. On page 21 of his Direct Testimony, Mr. Unruh sets forth SBC's 2004**
10 **statewide estimate of CLEC access lines in Missouri, along with the corresponding**
11 **numbers for 2001. Please explain Staff's analysis of this particular evidence.**

12 A. Although statewide SBC Missouri evidence is useful to get an overall
13 picture of the telephone access line market in SBC's Missouri exchanges as a whole, it is
14 not particularly useful when analyzing any specific exchange. Mr. Unruh himself states,
15 "...The CLEC market share in many of the exchanges is much higher than these state-
16 wide numbers reflect." As we see when these numbers are disaggregated at the exchange
17 level, the data indicate that a few SBC exchanges appear to be experiencing a much
18 higher level of competition than the remainder. Additionally, since these aggregate
19 numbers represent the sum of UNE-P, resale, and a minimum estimate of CLEC access
20 lines (based on e911 listing information), Staff has further reason to discount the insight
21 provided by these aggregate SBC estimates. In Staff's opinion, resale and UNE-P
22 estimates should be given only a minimum amount of credit when evaluating whether
23 effective competition exists.

1 Additionally, if this data had been presented on an exchange-by-exchange basis,
2 the information could have provided insight on the sustainability of competition. For
3 instance, if an exchange had only a minimal amount of competition in 2001, but that
4 same exchange now had significant competition, it might indicate that competition was
5 viable in the exchange. The data might also have been useful in showing where
6 competition does not appear viable.

7 **Q. Does evidence of CLEC switches and CLEC collocation arrangements**
8 **represents evidence of effective competition?**

9 A. Although this information, at a very high level, is useful to begin to
10 analyze the potential for competition, it does not address the degree of competition for
11 SBC wire line products at the exchange level. Without data that shows actual service to
12 customers in SBC Missouri exchanges, Staff finds little reason to grant much authority to
13 these global data.

14 In order to consider collocation as evidence of effective competition, Staff would
15 need to see additional evidence detailing whether and to what extent collocators were
16 actively providing wire line telephone products in competition with SBC Missouri
17 products. SBC testifies that with collocation, CLECs *can* provide service by using
18 UNEs. Staff finds it necessary to consider evidence of active UNE purchase rather than
19 potential use. In other words, we would like to know if these arrangements are being
20 used to compete with SBC Missouri. If a CLEC has deployed equipment that *can* serve
21 customers, there is a distinct possibility that they are serving few, if any, customers at all.

1 **Q. Mr. Unruh presents data on CLEC numbering resources from the**
2 **LERG (Local Exchange Routing Guide). Does this represent evidence of effective**
3 **competition?**

4 A. No, this ‘evidence’ is yet another attempt at establishing effective
5 competition by proxy of competitive potential. Even if a CLEC has numbering resources
6 in an exchange, this information does not indicate how many customers are actually
7 being served with those numbering resources.

8 **Q. According to Mr. Unruh, “SBC Missouri lost over 375,000 lines**
9 **during the past three years while CLECs gained over 273,000 lines during the same**
10 **three year period.” Is this evidence of effective competition across all of SBC’s**
11 **exchanges for all of its services?**

12 A. Unfortunately, those data are too broad to draw any conclusions about
13 specific SBC exchanges or services. In fact, the disaggregated data show that facilities-
14 based CLEC competition is concentrated in just a few of SBC’s exchanges. Staff does
15 not agree that competition in some exchanges is the equivalent of competition in all
16 exchanges.

17 **Q. Is prepaid telephone service an issue in this case?**

18 A. Since SBC has chosen to consciously exclude prepaid CLEC information,
19 it is not an issue in this case.

1 **Q. Mr. Unruh states, “We identify a CLEC as actively serving customers**
2 **by their purchase of resold lines, purchase of UNE-P, or the presence of an E-911**
3 **listing in the 911 database...Schedule 13HC, as described more fully below,**
4 **identifies the actual minimum number of CLECs actively serving customers in each**
5 **SBC Missouri exchange...Based on the number of CLECs passing orders during**
6 **recent months, there are over 65 CLECs actively competing in SBC Missouri’s**
7 **service territory throughout the state.” How does Staff interpret this data?**

8 A. The SBC data mentioned above is not a clear indication of the extent to
9 which those CLECs are competing in each SBC Missouri exchange. Simply aggregating
10 the number of active CLECs, even if we use SBC’s definition of “active”, provides very
11 little indication of the extent of competition in any of SBC’s exchanges. Without
12 additional exchange-specific measures that identify CLEC penetration by type, Staff does
13 not find data on the total number of CLECs useful. Based on an HC response¹⁴, to Staff
14 Data request 26, Staff has learned that only 16 CLECs are represented in the e911 data,
15 which indicates at least some degree of CLEC facilities, while the remaining 46 ‘active’
16 CLECs provide service via resale and UNE-P. Of that e911 data, about 93% of those
17 access lines are business access lines. Of 21,714 e911 listings for residential customers,
18 ** HC----- ** are held by Charter Communications in the Harvester exchange and
19 ** HC----- ** are Charter lines in St Charles. Substantial evidence of residential
20 competition remains concentrated in St. Charles and Harvester. Staff continues to
21 recognize effective competition in the residential access line market in the Harvester and
22 St. Charles exchanges, but notes that facilities-based competition is markedly limited in

¹⁴ This SBC response is attached to my testimony as HC Schedule 2. HC Schedule 9 identifies the 16 unique company identifiers in the e911 database information supplied in HC Schedule 2. HC Schedule 10 and 11 provide CLEC specific subtotals and totals by exchange alongside exchange-wide information.

1 the other 158 SBC exchanges. Although the 10 exchanges of Pond, Eureka, Manchester,
2 Chesterfield, Fenton, Valley Park, Pacific, Kansas City, Springfield, and St. Louis show
3 at least nascent signs of facilities-based competition, those exchanges have not yet met
4 the standard of effective competition when considering all evidence Staff reviewed.

5 **Q. Is CLEC information from the Commission's website or the white**
6 **pages evidence of effective competition?**

7 A. No. This is another example where SBC places the cart before the horse
8 and purports that the possibility of competition is synonymous with effective
9 competition. The information on the Commission's website represents those CLECs that
10 have met all the requirements (approved certification, tariffs and interconnection
11 agreements) of providing service. Similarly, the presence of a CLEC in the white pages
12 indicates that CLEC is interested in providing service in an area. Neither source indicates
13 the CLEC is actually providing service. Without additional exchange specific evidence,
14 this information is of little use.

15 **Q. Please summarize your recommendation for a finding of effective**
16 **competition.**

17 A. Based on an analysis of all evidence presented, Staff continues to support
18 effective competition for SBC's business access line and line-related services in the
19 exchanges of St. Louis and Kansas City, and additionally recommends the Commission
20 support SBC's request for a finding of effective competition for the business access lines
21 and access line-related services in the 17 exchanges of Farley, Harvester, Fenton,
22 Chesterfield, Springfield, Greenwood, Valley Park, Manchester, St. Charles, Grain
23 Valley, Marionville, Pond, Smithville, Eureka, Imperial, High Ridge, Maxville.

Rebuttal Testimony of
Bill Peters

1 Staff continues to support effective competition for the residential access lines
2 and access line-related services in the Harvester and St. Charles exchanges. Staff does
3 not support SBC's request for a finding of effective competition for any other residential
4 access lines or access-line related services.

5 **Q. Does this conclude your Rebuttal Testimony?**

6 A. Yes it does.