

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
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In the Matter of the Investigation of the)
State of Competition in the Exchanges of)
Southwestern Bell Telephone Company.)

Case No. TO-2001-467

Missouri Public
Service Commission

RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Response to the joint Application for Rehearing filed by NuVox Communications of Missouri, Inc. (NuVox), MCImetro Access Transmission Services, LLC (MCImetro), Brooks Fiber Communications of Missouri, Inc. (Brooks), and MCI WorldCom Communications, Inc. (MCIWC), and the Office of Public Counsel's (OPC's) Motion for Rehearing, states to the Missouri Public Service Commission (Commission) as follows:

1. The Commission issued its Report and Order in this case on December 27, 2001, with an effective date of January 6, 2002. In its Report and Order, the Commission found that "effective competition" exists for the following SWBT services, and as a result, these services should be designated as competitive: SWBT's core business switched services, business line-related services, directory assistance services and the operator services of Busy Line Verification and Busy Line Interrupt for business customers in the St. Louis and Kansas City exchanges.¹ The Commission also found that effective competition exists for SWBT's residential access line services, residential access line-related services, Optional Metropolitan Calling Area service, directory assistance services and the operator services of Busy Line Verification and Busy Line Interrupt for residential customers in SWBT's Harvester and St. Charles exchanges.² Finally, the

¹ Report and Order, p. 3

² Id.

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Commission found that effective competition exists in all of SWBT's Missouri exchanges for Common Channel Signaling/Signaling System 7 (SS7) and Line Information Database (LIDB) services.³

2. In its Report and Order, the Commission also confirmed that certain SWBT services which the Commission had previously declared transitionally competitive are competitive throughout SWBT's Missouri exchanges, in accordance with Section 392.370 RSMo. 2000.⁴ These services include intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, special access services, and operator services other than Busy Line Verification and Busy Line Interrupt (including station-to-station, person-to-person, and calling card services).⁵ In addition, the Commission determined that Section 392.200.8 RSMo. (2000) authorizes SWBT to price high capacity exchange access line services and Plexar services on an individual customer basis (ICB).⁶ Finally, the Commission determined that SWBT's Local Plus and switched access services are not subject to effective competition in any SWBT exchange.⁷

NuVox/MCImetro/Brooks/MCIWorldCom Application for Rehearing

3. NuVox/MCImetro/Brooks/MCIWC challenge the Commission's determination that SWBT's core business switched services, business line-related services, directory assistance services and the operator services of busy line verification and busy line interrupt for business customers in the Kansas City and St. Louis exchange face effective competition and should be

³ Id.

⁴ Report and Order, p. 4.

⁵ Id.

⁶ Id.

⁷ Id.

classified as competitive pursuant to Section 392.245.5 RSMo. (2000).⁸

NuVox/MCImetro/Brooks/MCIWC assert that “[O]n rehearing the Commission should reverse its decision and find and conclude that there is insufficient evidence that those services are subject to effective competition.”⁹

4. NuVox’s/MCImetro’s/Brooks’/MCIWorldCom’s claim has no merit. Clearly, there was sufficient (if not compelling) competent evidence presented at the hearing in this case from which the Commission could conclude, as it did in its Report and Order, that SWBT’s core business switched services, business line-related services, directory assistance and certain operator services face “effective competition” in SWBT’s Kansas City and St. Louis exchanges. In fact, as SWBT pointed out in its Application for Rehearing, the uncontroverted evidence presented in this case establishes, at a minimum, that SWBT’s core business switched services and business line related services not only face “effective competition” in the St. Louis and Kansas City exchanges, but also throughout the optional tiers of the St. Louis and Kansas City Metropolitan Calling Areas (MCAs) and the Springfield exchanges.¹⁰ Furthermore, the uncontroverted evidence also establishes that SWBT’s directory assistance and operator services face “effective competition” throughout the State of Missouri, not just in the Kansas City and St. Louis exchanges for business customers and the Harvester and St. Charles exchanges for residential customers.¹¹ But for any party to claim that there was insufficient evidence from which the Commission could conclude that SWBT’s core business switched services, business line-related services, business directory assistance services and busy line verification and busy

⁸ Application for Rehearing, pp. 1-2.

⁹ Application for Rehearing, p. 2.

¹⁰ SWBT Application for Rehearing, pp. 3-8.

¹¹ SWBT Application for Rehearing, pp. 8-15.

line interrupt operator services face effective competition in the Kansas City and St. Louis exchanges is incredulous.

5. The crux of NuVox's/MCImetro's/Brooks'/MCIWC's challenge to the Commission's Report and Order is that "the Commission relied solely upon what it described as SWBT's 'substantial market share loss' resulting from a number of alternative carriers and their facilities in reaching its conclusion that SWBT's core business switched services, and the related services, are subject to effective competition in the St. Louis and Kansas City exchanges."¹² As the Commission's detailed analysis contained in its Report and Order reveals, however, the evidence of "effective competition" was not limited to SWBT's market share loss, and NuVox/MCImetro/Brooks/MCIWC are simply wrong on this claim.

6. In its Report and Order, the Commission first described its general Findings of Fact and Conclusions of Law applicable to this case.¹³ Included in this section of the Commission's Report and Order is a general discussion of the evidence considered by the Commission in connection with its analysis of "effective competition" for SWBT's services throughout its Missouri exchanges.¹⁴ As the Commission pointed out, the Missouri legislature identified in Section 386.020(13) RSMo. (2000) the factors which the Commission should consider to determine whether "effective competition" exists.¹⁵ These factors include:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

¹² NuVox/MCImetro/Brooks/MCIWC Application for Rehearing, p. 2.

¹³ Report and Order, pp. 5-20.

¹⁴ Report and Order, pp. 9-20.

¹⁵ Report and Order, p. 9.

- (c) The extent to which the purposes and policies of Chapter 392, RSMo. including the reasonableness of rates, as set out in Section 392.185, RSMo. are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

7. Although as described in SWBT's Application for Rehearing, SWBT disagrees with the Commission's decision that "effective competition" exists for SWBT's core business switched services and related services in only the St. Louis and Kansas City exchanges, there is simply no question that the Commission considered each of the five factors listed in Section 386.020(13) RSMo. (2000), and considered evidence relating to each of these five factors, when it determined that SWBT's core business switched services and related services face "effective competition" in the St. Louis and Kansas City exchanges. There is likewise no question that while evidence of SWBT's loss of market share for particular services is significant and important evidence relating to several of the five factors listed above, this evidence is not the only evidence presented by SWBT or other parties which supports a finding of "effective competition" for SWBT's core business switched services and related services in the St. Louis and Kansas City exchanges. Nor did the Commission rely solely on this evidence to find "effective competition" for these services.

8. Evidence of SWBT's substantial loss of market share for its core business switched services and related services is clearly significant under the first factor identified in Section 386.020(13) RSMo. 2000, i.e., "The extent to which services are available from alternative providers in the relevant market." At the hearing, SWBT presented extensive evidence regarding its minimum loss of market share in the business market throughout Missouri. The evidence of market share loss was particularly compelling in the St. Louis and

Kansas City MCAs, which of course include the St. Louis and Kansas City exchanges. The specific evidence regarding market share loss was described in Mr. Hughes' testimony, and summarized in SWBT's Initial Brief in this case.¹⁶ SWBT agrees that "specific market thresholds should not be utilized to determine whether or not Southwestern Bell faces effective competition."¹⁷ However, there can be no question that significant loss of market share by SWBT is compelling evidence of "effective competition" and should be given substantial weight by the Commission. As the Commission stated in its Report and Order, loss of market share "is one factor which the Commission finds particularly determinative of 'the extent to which services are available from alternative providers in the relevant market.'"¹⁸

9. In addition, however, as the Commission described in its general Findings of Fact and Conclusions of Law, the Commission considered other relevant factors as it conducted its analysis of whether SWBT's services, including SWBT's core business switched services and related services, face "effective competition." For example, the Commission identified the second factor listed in Section 386.020(13) RSMo. (2000) ("The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions"), and correctly found that it was "appropriate for the Commission to consider" alternative services (including wireless carriers, cable TV providers, Internet service providers, fixed satellite providers, and customer premises equipment manufacturers) on which SWBT presented evidence when evaluating all the relevant factors of effective competition.¹⁹ The Commission also addressed the third statutory "effective competition" factor ("The extent to

¹⁶ See, Initial Brief of SWBT, pp. 22-38.

¹⁷ Report and Order, p. 11.

¹⁸ Report and Order, pp. 11-12.

¹⁹ Report and Order, pp. 15-16.

which the purposes and policies of Chapter 392, RSMo. 2000, including the reasonableness of rates, as set out in Section 392.185 RSMo. 2000, are being advanced”) and the fourth factor (“existing economic or regulatory barriers to entry”) and stated that the “Commission finds that the evidence presented by Southwestern Bell in the form of a count of the number of CLECs or IXCs certified or tariffed in the state or in any particular exchange is evidence of competition.”²⁰ The Commission pointed out that this evidence (which SWBT provided on an exchange basis, and which reflected a large number of CLECs operating in the St. Louis and Kansas City exchanges) “by itself does not persuade the Commission that effective competition exists.”²¹ As the Commission is aware, however, with respect to the evidence presented by SWBT regarding the level of competition in the St. Louis and Kansas City exchanges, the evidence of the number of CLECs authorized to provide service clearly does not stand “by itself.” In addition, as noted by the Commission in its Report and Order, the Commission’s finding in Case No. TO-99-227 (SWBT’s Section 271 case) that SWBT had complied with Section 271 of the federal Telecommunications Act of 1996 was relevant to its analysis of existing regulatory barriers to entry.²²

10. Finally, in its general Findings of Fact and Conclusions of Law, the Commission identified the fifth statutory “effective competition” factor (“any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392 RSMo. 2000”) and stated that the “Commission considers alternative communications that are not regulated by the Commission, such as e-mail, cable broadband, and mobile phones as ‘other

²⁰ Report and Order, p. 17.

²¹ Id.

²² Report and Order, p. 18.

factors' under Subsection 386.020(13)(e)..."²³ The Commission went on to state that "the evidence did not persuade the Commission that the generalized presence of such alternative communications throughout the state constitutes, in the absence of CLEC-owned, facilities-based competition, effective competition to Southwestern Bell's telecommunications services."²⁴

11. In addition to the general Findings of Fact and Conclusions of Law contained at the beginning of the Commission's Report and Order, the Commission also issued Findings of Fact and Conclusions of Law specifically applicable to each of the issues identified by the parties,²⁵ including the issue of whether "effective competition" exists for SWBT's core business switched services and related services.²⁶ In its Report and Order, the Commission found that "Southwestern Bell has experienced a substantial market share loss in the St. Louis and Kansas City exchanges for core business services."²⁷ The Commission found that "this market share loss is due to alternative providers providing substitutable or functionally equivalent services to Southwestern Bell's core business switched services in these exchanges."²⁸ There can be no question that this finding is supported by substantial, uncontroverted evidence presented by SWBT, and supported by Staff.²⁹ The Commission went on to find "that there was some evidence presented, although not strong evidence, of competition throughout Southwestern Bell's exchanges from entities not regulated by the Commission."³⁰ The Commission also

²³ Report and Order, p. 22.

²⁴ Id. (emphasis added).

²⁵ Report and Order, pp. 21-52.

²⁶ Report and Order, pp. 21-31.

²⁷ Report and Order, p. 19.

²⁸ Id.

²⁹ See Ex. 17 (HC), Hughes Surrebuttal, and Sched. 5 (HC) thereto.

³⁰ Report and Order, p. 22.

found, based on uncontroverted evidence presented by Staff,³¹ that “there are CLEC-owned facilities, specifically fiber networks, within 1,000 feet of a significant quantity of business and residential customers” in the St. Louis and Kansas City exchanges.³²

12. Contrary to the assertion of NuVox/MCImetro/Brooks/MCIWorldCom, the Commission expressly did not rely “solely upon what it described as SWBT’s ‘substantial market share loss’ resulting from a number of alternative carriers and their facilities in reaching its conclusion that SWBT’s core business switched services, and the related services, are subject to effective competition in the St. Louis and Kansas City exchanges.”³³ Although SWBT believes that the detailed evidence of substantial market share loss it presented in this case could, standing alone, support a Commission finding of effective competition for SWBT’s core business switched services and related services in SWBT’s St. Louis and Kansas City exchanges, along with other exchanges, the Commission clearly did not rely solely on this evidence in finding that SWBT’s core business switched services and related services face effective competition in those two exchanges.

13. Rather, as the Commission discussed in its Report and Order, the Commission determined that SWBT’s core business switched services and related services face “effective competition” based on what the Commission considered to be “all the relevant factors.”³⁴ The Commission listed these factors in its Report and Order:

However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing both resale and facilities-based service in the exchanges, the overwhelming number of carriers certified to do business in the St. Louis and Kansas City exchanges, the

³¹ Ex. 18, Voight Rebuttal, pp. 52-53 and Schedule 6 thereto.

³² Report and Order, p. 22.

³³ NuVox/MCImetro/Brooks/MCIWorldCom Application for Rehearing, p. 2.

³⁴ Report and Order, p. 22.

comparative longevity of the companies doing business, and CLEC-owned fiber networks, the Commission determines that effective competition exists in those two exchanges.³⁵

14. NuVox/MCImetro/Brooks/MCIWorldCom are simply wrong in their assertion that the Commission relied solely on the uncontroverted and substantial evidence of the market share loss suffered by SWBT for its core business switched services and related services in making its determination that these SWBT services face effective competition in SWBT's St. Louis and Kansas City exchanges. While SWBT believes the uncontroverted evidence in this case requires a Commission determination that SWBT's core business switched services and related services also face "effective competition" in at least the optional tiers of St. Louis and Kansas City MCAs and the Springfield exchanges,³⁶ and that SWBT's Directory Assistance and Busy Line Verification and Busy Line Interrupt operator services face "effective competition" throughout all of SWBT's Missouri exchanges,³⁷ there can be no question that the Commission's determination that SWBT's core business switched services and related services face "effective competition" in the St. Louis and Kansas City exchanges is supported by substantial and competent evidence, and is not unlawful, unjust or unreasonable. As a result, the Commission should deny the Application for Rehearing filed by NuVox/MCImetro/Brooks/MCIWC.

OPC Motion for Rehearing

15. In its Motion for Rehearing, OPC first asserts that the Commission's determination in its Report and Order classifying any of SWBT's services (except IntraLATA toll service measured by minutes of use) as competitive is "unlawful, unjust, and is unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against

³⁵ Report and Order, p. 22.

³⁶ See, SWBT's Application for Rehearing, pars. 3-12.

³⁷ See, SWBT's Application for Rehearing, pars. 13-26.

the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, made upon an unlawful procedure and without a fair trial, and constitutes an abuse of discretion.”³⁸ However, OPC offers no specifics relating to this broad claim.

16. Next, OPC asserts that the Commission “misapplied the law and overlooked the relevant and material facts when it ruled that those services that had been declared to be transitionally competitive in Case No. TO-93-116 are now competitive services by operation of law in accordance with Section 392.370, RSMo. 2000.”³⁹ According to the Commission, those services include intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, special access services, station-to-station, person-to-person, and calling card services.⁴⁰ OPC claims that because SWBT is now subject to price-cap regulation under Section 392.245 RSMo. 2000, the Commission is somehow precluded as a matter of law from recognizing and confirming that the Commission previously determined that SWBT’s intraLATA private line/dedicated services, intraLATA toll services, WATS and 800 services, special access services, station-to-station, person-to-person and calling card services were “transitionally competitive,” and that following the initial three-year period of “transitionally competitive” status required under Section 392.370.1 RSMo. 2000, and a three-year extension of that status pursuant to Section 392.370.2 RSMo. 2000, these services automatically became classified as a “competitive telecommunications service” pursuant to Section 392.370.1 RSMo. 2000.

³⁸ OPC Motion for Rehearing, p. 1.

³⁹ OPC Motion for Rehearing, p. 2.

⁴⁰ Report and Order, p. 4.

17. OPC's position has no merit. Had the Missouri legislature intended to completely replace the mechanism contained in Section 392.361 RSMo. 2000 for having services offered by a noncompetitive telecommunications company classified as "transitionally competitive," and the mechanism contained in Section 392.370 RSMo. 2000 for a transitionally competitive service offered by a noncompetitive telecommunications company to automatically become classified as "competitive" after the passage of three (3) years (and up to two additional three (3)-year extensions, but only if the Commission finds that competitive classification is not in the public interest or not consistent with the purposes and policies of Chapter 392),⁴¹ the Missouri legislature could have attempted to do so by including appropriate language in Section 392.245 RSMo. 2000 (the price cap statute) when it was enacted in 1996. Since the Missouri legislature did not do so, however, it would be unlawful, unjust and unreasonable for the Commission to assume that the legislature intended the provisions of Section 392.245 RSMo. 2000 to completely displace the mechanisms contained in Sections 392.361 and 392.370 RSMo. 2000.

18. Furthermore, even if OPC were correct in its position that somehow Section 392.245 RSMo. 2000 had "silently" removed the reclassification mechanisms contained in Sections 392.361 and 392.370 RSMo. 2000, which it is not, OPC overlooks the fact that the Commission had applied that statutory mechanism to SWBT's services identified above several years prior to Section 392.245 RSMo. 2000 becoming effective in August, 1996. As the Commission discussed in its Report and Order, these services were classified as "transitionally competitive" by a Commission Order effective December 21, 1992.⁴² On January 10, 1996, three years after the effective date of "transitionally competitive" status for these services, (and before the effective date of Section 392.245 RSMo. 2000) the Commission -- with SWBT's

⁴¹ See, Section 392.370.2 RSMo. 2000.

agreement -- extended the transitionally competitive status for an additional three (3) years, until January 10, 1999.⁴³ No further extension of transitionally competitive status was ordered by the Commission. However, both the initial Commission determination that these services should be classified as "transitionally competitive," as well as the three- (3) year extension of this classification, occurred before Section 392.245 RSMo. 2000 was enacted by the Missouri legislature in August, 1996. Pursuant to Section 392.370.2 RSMo. 2000, no further action by the Commission was necessary in order for these services to automatically become classified as "competitive" telecommunications services pursuant to Section 392.370.1 RSMo. 2000. In its Report and Order, the Commission merely confirmed the change in status which had already occurred as a matter of law on January, 1999, nearly two years ago.

19. OPC claims that "the two systems of regulation as to the classification of services are not compatible" and that "[E]ach regulatory method has its own separate process to commence the reclassification of service and to determine when and how a service can be classified as competitive."⁴⁴ As described above, however, even if OPC were correct (which it is not), the Commission commenced and concluded its review in Case No. TO-93-116 regarding the status of the services identified above several years prior to Section 392.245 RSMo. 2000 being enacted, and took no action with respect to the classification of those services after January, 1996.

20. OPC also claims that because SWBT may have inadvertently included price changes relating to the services which the Commission already determined should be classified as transitionally competitive in Case No. TO-93-116, and which automatically became classified

⁴² Report and Order, p. 4, fn. 1.

⁴³ Report and Order, p. 26.

⁴⁴ OPC Motion for Rehearing, p. 3.

as competitive in January, 1999, in its annual price adjustment filing made pursuant to Section 392.245.4 RSMo. 2000, SWBT somehow “abandoned” its “legal position” that the services classified by the Commission as transitionally competitive in Case No. TO-93-116 automatically became classified as competitive pursuant to Section 392.370.1 RSMo. 2000, on January 10, 1999. OPC’s argument misses the point. There is no “legal position” for SWBT to “abandon.” As the Commission appropriately recognized in its Report and Order, as a matter of law, as of January 10, 1999, the services which the Commission determined to be transitionally competitive in Case No. TO-93-116 were automatically reclassified as competitive pursuant to Section 392.370.1 RSMo. 2000. SWBT’s inclusion of any of these services in a price cap adjustment filing does not change that status. OPC’s claims regarding the services which the Commission previously determined in Case No. TO-93-116 to be transitionally competitive, and which services automatically became classified as competitive on January 10, 1999, have no merit and should be rejected by the Commission.

21. OPC also claims that the Commission’s determination that SWBT’s core business switched services and related services are subject to effective competition in the St. Louis and Kansas City exchanges, and the Commission’s determination that SWBT’s residential access line services and related services are subject to effective competition in SWBT’s Harvester and St. Charles exchanges, are “unlawful, unreasonable, unjust, arbitrary and capricious, ...not supported by competent and substantial evidence on the whole record, and constitutes an abuse of discretion.”⁴⁵ Like NuVox/MCImetro/Brooks/MCIWorldCom, OPC claims that the Commission

⁴⁵ OPC Motion for Rehearing, pp. 5-6.

relied too heavily on the substantial and uncontroverted evidence regarding SWBT's loss of market share relating to these services in the exchanges identified.⁴⁶

22. OPC claims that the Commission did not consider "the nature of the competition and how the CLEC market share was divided among a number of CLECs."⁴⁷ As described above, however, in paragraphs 3-14 of SWBT's Response to the NuVox/MCImetro/Brooks/MCIWorldCom Application for Rehearing, which Response is incorporated herein by this reference, the Commission could not have been clearer in its Report and Order that it did examine -- in great detail -- the nature of the competition for SWBT's core business switched services and related services in SWBT's St. Louis and Kansas City exchanges. Ironically, OPC's claim with respect to competition for SWBT's business services appears to be that there are too many competitors for any one CLEC to be effective,⁴⁸ while OPC's complaint with respect to competition for SWBT's residential services in the Harvester and St. Charles exchanges is that there is only one significant competitor.⁴⁹

23. As described above, there was substantial and competent evidence presented to the Commission in this proceeding, most of which was uncontroverted, establishing that SWBT's core business switched services and related services are currently subject to effective competition throughout all tiers of the St. Louis and Kansas City MCAs and the Springfield exchanges, and that effective competition for SWBT's core business switched services is not limited to the St. Louis and Kansas City exchanges. But without question, under the factors identified in Section 386.020 (13) RSMo. 2000, and applied by the Commission in this case,

⁴⁶ OPC Motion for Rehearing, p. 6.

⁴⁷ Id.

⁴⁸ OPC Motion for Rehearing, p. 6.

⁴⁹ OPC Motion for Rehearing, p. 7.

there was substantial if not compelling evidence supporting the Commission's determination that effective competition does exist in the St. Louis and Kansas City exchanges for SWBT's core business switched services and related services. OPC's claim that the Commission's determination that SWBT's core business switched services and related services do not face effective competition in the St. Louis and Kansas City exchanges is unlawful, unjust or unreasonable should be rejected by the Commission.

24. The Commission's determination that effective competition exists for SWBT's residential access line services and related services in SWBT's Harvester and St. Charles exchanges is also supported by the evidence presented to the Commission in this case. As described by the Commission in its Report and Order, the uncontroverted evidence in this case was that "a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely-available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges."⁵⁰ Furthermore, there are 27 CLECs serving residential customers in SWBT's Harvester exchange, and 31 CLECs serving residential customers in the St. Charles exchange.⁵¹ CLECs in the Harvester exchange have garnered at least ** %** of the existing residential access lines in that exchange, and at least ** %** of the existing residential access lines in the St. Charles exchange.⁵² As the Commission stated in its Report and Order, "[W]hen considered with all the other factors of effective competition, the Commission finds that most residential customers in these two exchanges have not only the many choices from resale providers, but also a choice of CLEC-

⁵⁰ Report and Order, p. 26.

⁵¹ Id.

⁵² Ex. 17 (HC), Hughes Surrebuttal, p. 10.

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owned, facilities-based providers.⁵³ This evidence, combined with evidence of competition from entities not regulated by the Commission, clearly was sufficient and competent evidence to support the Commission's finding that SWBT's residential access line services⁵⁴ and related services⁵⁵ face effective competition in the St. Charles and Harvester exchanges and should be classified as competitive.

25. Like its analysis and determination that SWBT's core business switched services and related services face "effective competition," the Commission's determination that SWBT's residential access line services and related services are subject to "effective competition" and should be classified as competitive in the St. Louis and Harvester exchanges is not only supported by the evidence, but is correct. The Commission applied the "effective competition" factors contained in Section 386.020(13) RSMo. 2000, to the residential market in the Harvester and St. Charles exchanges, and appropriately concluded:

However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing service both resale and facilities-based in the exchanges, the large number of carriers certified to do business in the exchanges, the comparative longevity of those companies, and CLEC-owned fiber networks, the Commission determines that effective competition exists in the Harvester and St. Charles exchanges.⁵⁶

OPC's claim that the Commission's determination that SWBT's residential access line services and related services are subject to effective competition in SWBT's Harvester and St. Charles exchanges is somehow unlawful, unjust or unreasonable should be rejected by the Commission.

WHEREFORE, for the reasons described above, SWBT respectfully requests that the Commission deny the Application for Rehearing filed by

⁵³ Report and Order, p. 32.

⁵⁴ Id.

⁵⁵ Report and Order, pp. 34-35.

⁵⁶ Report and Order, p. 33.

NuVox/MCImetro/Brooks/MCIWorldCom, and the Motion for Rehearing filed by the Office of the Public Counsel.

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 or hand-delivery on January 14, 2002.


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