

FILED

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

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

REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company (SWBT), and for its Reply to the Response of MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, and MCIWorldCom Communications, Inc. (WorldCom companies) and NuVox Communications of Missouri, Inc. (NuVox) to SWBT's Application for Rehearing, states to the Missouri Public Service Commission (Commission) as follows:

1. As SWBT explained in its Application for Rehearing, the Commission's determination in its Report and Order that SWBT's core business switched services and business line-related services face "effective competition" and should therefore be classified as competitive in SWBT's St. Louis and Kansas City exchanges is supported by substantial evidence presented by SWBT and other parties in this case.<sup>1</sup> However, the Commission's failure to make this same finding with respect to the optional tiers of the St. Louis and Kansas City Metropolitan Calling Areas (MCAs) and the Springfield exchange and its optional MCA is unlawful, unjust and unreasonable.<sup>2</sup> SWBT also explained that the Commission's determination that SWBT's directory assistance services, and busy line verification and busy line interrupt operator services face effective competition in only the St. Louis and Kansas City exchanges (for business customers)

<sup>1</sup> SWBT Application for Rehearing, p. 3.

<sup>2</sup> Id.

and in SWBT's Harvester and St. Charles exchanges (for residential customers) is also unlawful, unjust and unreasonable. The evidence submitted in this case establishes that these services face effective competition throughout SWBT's Missouri exchanges.<sup>3</sup> Finally, SWBT explained that under the statutory standard contained in Sections 386.020(13) and 392.245.5 RSMo. 2000, the Commission should find on rehearing that all of SWBT's services face "effective competition" throughout Missouri and should be classified as competitive.

2. In their Response to SWBT's Application for Rehearing, the WorldCom companies and NuVox challenge only one portion of SWBT's Application for Rehearing. The WorldCom companies and NuVox argue that the Commission should discard its 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 should be classified as competitive pursuant to Section 392.245 RSMo. 2000 in those two exchanges. The WorldCom companies and NuVox do not address or contest the portions of SWBT's Application for Rehearing relating to the Commission's determination regarding directory assistance services and the operator services of busy line verification and busy line interrupt, or SWBT's position that the Commission should find on rehearing that all of SWBT's services in all of its Missouri exchanges face "effective competition" and should be classified as competitive pursuant to Section 392.245.5 RSMo. 2000.

3. In their Response to SWBT's Application for Rehearing, the WorldCom companies and NuVox argue that "SWBT's own arguments confirm that the Commission

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<sup>3</sup> SWBT Application for Rehearing, p. 8.

should grant the request of NuVox, MCImetro, Brooks and MCIWorldCom for rehearing of the Report and Order regarding the decisions on core business switched services and related services.”<sup>4</sup> The WorldCom companies and NuVox conclude that since SWBT questioned the Commission’s reliance upon the presence of CLEC fiber facilities in the St. Louis and Kansas City exchanges to distinguish these exchanges from the optional tier MCA areas surrounding these exchanges, that SWBT somehow does not believe the presence of CLEC fiber facilities is a relevant factor for the Commission to consider. The WorldCom companies and NuVox are incorrect. As SWBT explained in its Application for Rehearing, the presence of CLEC fiber facilities can be a factor for the Commission to consider in its analysis of whether “effective competition” exists.<sup>5</sup> The presence of CLEC fiber facilities, however, standing alone, does not warrant treating the St. Louis and Kansas City exchanges differently than the optional MCA areas surrounding the St. Louis and Kansas City exchanges, particularly where there is also evidence that CLEC fiber facilities are also located in optional MCA areas outside of exchange boundaries and in the Springfield exchange!<sup>6</sup>

4. As they did in their Application for Rehearing, in their Response to SWBT’s Application for Rehearing, the WorldCom companies and NuVox assert 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 their related services, are

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<sup>4</sup> WorldCom companies’ and NuVox’s Response, par. 2.

<sup>5</sup> SWBT Application for Rehearing, pp. 5-7.

<sup>6</sup> SWBT Application for Rehearing, p. 7.

subject to effective competition in the St. Louis and Kansas City exchanges.”<sup>7</sup> However, as SWBT described in detail in its Response to the WorldCom companies’ and NuVox’s Application for Rehearing, the Commission’s Report and Order in this case reflects that the Commission appropriately considered numerous factors, as specifically contemplated by Section 386.020(13) RSMo. 2000, to correctly determine that SWBT’s business core switched services and related services face “effective competition” in both the St. Louis and Kansas City exchanges.<sup>8</sup> In fact, as SWBT pointed out in its Application for Rehearing, the evidence presented to the Commission in this case supports the conclusion that SWBT’s core business switched services and related services face effective competition throughout the entire State of Missouri, not just in the St. Louis and Kansas City exchanges. At a minimum, however, the evidence in this case (including but not limited to SWBT’s market share loss and the presence of CLEC fiber facilities) establishes that in addition to the St. Louis and Kansas City exchanges, SWBT’s core business switched services and related services face effective competition in the optional tiers of the St. Louis and Kansas City Metropolitan Calling Areas (MCAs) and the Springfield exchange, including the optional MCA tiers.<sup>9</sup>

5. The WorldCom companies and Nuvox claim that the Commission should not have determined that effective competition exists for SWBT’s core business switched services and related services in the optional MCA areas identified in SWBT’s Application for Rehearing because “SWBT must first provide competent and substantial evidence that competition is actually exerting sustainable discipline on its prices and

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<sup>7</sup> WorldCom companies’ and NuVox’s Response, par. 4.

<sup>8</sup> SWBT Application for Rehearing, pp. 3-8.

<sup>9</sup> Id.

moving them to the competitive level of true economic cost.”<sup>10</sup> The Commission must reject this claim. What the WorldCom companies are really trying to do is rewrite Sections 392.245.5 and 386.020(13) RSMo. 2000 to require an additional showing which is not required under the statutes.

6. SWBT presented substantial uncontroverted evidence regarding the “effectiveness” of the competition it faces for its core business switched services and related services throughout the entire St. Louis, Kansas City and Springfield metropolitan areas, as well as other areas of the State of Missouri. This evidence was not limited to the St. Louis and Kansas City exchanges. However, with respect to the St. Louis and Kansas City exchanges, the evidence presented by SWBT clearly establishes that SWBT’s core business switched services and related services face effective competition. In reaching its determination that SWBT’s core business switched services and related services face effective competition in those two exchanges, the Commission was certainly entitled to rely upon, as Section 386.020(13) specifically contemplates, the extent to which services are available from alternative providers in the relevant market, the extent to which these services are functionally equivalent or substitutable at comparable rates, terms and conditions, the extent to which the purposes and policies of Chapter 392, RSMo., including the reasonableness of rates, are being advanced and the existing economic or regulatory barriers to entry. These are the very factors contained in Section 386.020(13) which the Missouri legislature directed the Commission to consider when making its determination as to “effective competition,” and these are the factors which the Commission relied upon in this case.

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<sup>10</sup> WorldCom companies’ and NuVox’s Response, par. 8.

7. The evidence presented by SWBT included a significant loss of market share, a large number of alternative carriers, including resellers, actually providing both resale and facilities-based service in the St. Louis and Kansas City exchanges (as well as in the Springfield exchange and the optional MCA areas surrounding the St. Louis, Kansas City and Springfield exchanges), a large number of carriers certified to do business in the St. Louis and Kansas City exchanges (as well as other exchanges), and the comparative longevity of the companies doing business, and a description of tariffed services offered in these areas by CLECs. The Commission appropriately relied upon this and other evidence to make its determination that SWBT's core business switched services and related services face effective competition in the St. Louis and Kansas City exchanges.<sup>11</sup> As SWBT described in its Application for Rehearing, this same type of evidence supports a determination that SWBT's core business switched services and related services also face effective competition in other areas of the state, and particularly the optional tiers in the St. Louis and Kansas City MCAs, and the Springfield exchanges and its optional MCA tier. But with respect to the St. Louis and Kansas City exchanges, the overwhelming weight of the evidence presented by SWBT (and other parties including the Commission Staff) unquestionably supports the Commission's determination that SWBT's core business switched services and related services face effective competition.

8. The Commission should reject the WorldCom companies' and NuVox's attempt to rewrite the Missouri statutes to change and increase SWBT's evidentiary burden in this case. The evidence in this case establishes that numerous competitors,

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<sup>11</sup> Report and Order, p. 22.

including the WorldCom companies and NuVox, offer the same or substitutable services for SWBT's core business switched services and related services, are prevalent in the St. Louis and Kansas City exchanges, as well as throughout the St. Louis, Kansas City, and Springfield metropolitan areas, and are competing head-on with SWBT and winning customers away from SWBT. 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 recognizes this undisputed fact. The WorldCom companies and NuVox would have the Commission ignore this undisputed evidence of real and effective competition. In effect, the WorldCom companies and NuVox seek to have the Commission protect them from competition from SWBT. That is the exact opposite result of what the Missouri legislature intended when it enacted Section 392.245 RSMo. 2000.

9. As SWBT described in its Application for Rehearing, SWBT continues to believe that all of its services, in all of its exchanges, face effective competition and should be classified as competitive. The reclassification of SWBT's core business switched services and related services in Springfield and the optional MCA areas surrounding the St. Louis and Kansas City exchanges, however, as well as operator services and directory assistance services on a statewide basis, are the areas of most pressing concern to SWBT.<sup>12</sup> For the reasons described in SWBT's Application for Rehearing, the Commission should grant SWBT's Application for Rehearing, and determine that, at a minimum, SWBT's core business switched services and related services should be classified as competitive in the optional tiers of the St. Louis and

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<sup>12</sup> SWBT Application for Rehearing, p. 15.

Kansas City MCAs and the Springfield exchange and its optional MCA tier, and that SWBT's directory assistance and operator services of busy line interrupt and busy line verification should be classified as competitive on a statewide basis.

WHEREFORE, Southwestern Bell respectfully requests that the Commission grant SWBT's Application for Rehearing.

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 January 22, 2002.

  
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