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Southwestern Bell



January 4, 2002

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

FILED³

JAN 04 2002

**Missouri Public
Service Commission**

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 Application for Rehearing. As required by the Protective Order issued in this case, we are filing the HC copies of the Application for Rehearing 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.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Paul G. Lane /tm

Paul G. Lane

Enclosure

cc: Attorneys of Record

FILED³

JAN 04 2002

**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)
Southwestern Bell Telephone Company.)

Case No. TO-2001-467

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
APPLICATION FOR REHEARING**

COMES NOW Southwestern Bell Telephone Company (SWBT) and submits its Application for Rehearing of the Missouri Public Service Commission's (Commission's) December 27, 2001 Report and Order in this case, pursuant to Section 386.500 RSMo. (2000). In support of its Application for Rehearing, SWBT states to the Commission as follows:

1. On December 27, 2001, the Commission issued its Report and Order in this case. 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 Commission found that effective

¹ Report and Order, p. 3.

² Id.

NP

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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" services 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

3. While the Commission did not accept SWBT's position that all of its services in all of its exchanges should be classified as competitive pursuant to Section 392.245.5 RSMo. (2000), the Report and Order is an important first step in recognizing the competitive landscape in Missouri and implementing the regulatory structure envisioned by the legislature. However, in order to effectuate the legislature's intent, at least two modifications should be made to the Report and Order: (1) business switched

³ Id.

⁴ Report and Order, p. 4.

⁵ Id.

⁶ Id.

services and business line-related services should be classified as competitive in the optional tiers of the St. Louis and Kansas City Metropolitan Calling Areas ("MCA") and the Springfield exchange, including the optional MCA tiers and (2) directory assistance and operator services should be classified as competitive on a statewide basis. As discussed herein, SWBT believes that these services are appropriately classified as competitive under the statutes; and the Commission should grant this Application for Rehearing at least with respect to these two items.

Business Switched Services and Business Line-Related Services

4. While the Commission's decision finding that effective competition for SWBT's business switched services and business line-related services exists in the St. Louis and Kansas City exchanges is clearly appropriate, the failure to make this same finding with regard to the Springfield exchange and the optional tiers of the St. Louis, Kansas City and Springfield MCAs is unlawful, unjust and unreasonable. As SWBT established at the hearing, and as the Commission recognized in its Report and Order, competition is clearly greatest in the "more urbanized" areas.⁸ SWBT believes the evidence compels a classification of these services as competitive in these exchanges. The level of competition in suburban urban exchanges adjoining the St. Louis and Kansas City exchanges (and in particular the suburban exchanges located in optional MCA areas surrounding the St. Louis exchange, such as the Fenton, Manchester and Chesterfield exchanges) is substantially the same as that in the St. Louis and Kansas City exchanges and the failure to designate business services as competitive has no basis in fact or law.

⁷ Id.

⁸ Report and Order, p. 13.

Likewise, the Commission's failure to determine that SWBT's business services offered in the Springfield metropolitan area has no basis in fact or law.

5. While SWBT continues to believe that its business services face effective competition throughout all of its Missouri exchanges, there is simply no question that SWBT's business services do face effective competition, at a minimum, throughout the entire St. Louis and Kansas City MCA, and in the relatively urban Springfield exchange. SWBT presented substantial uncontroverted evidence that dozens of CLECs are operating in these areas, and are unquestionably effectively competing for SWBT's business customers.

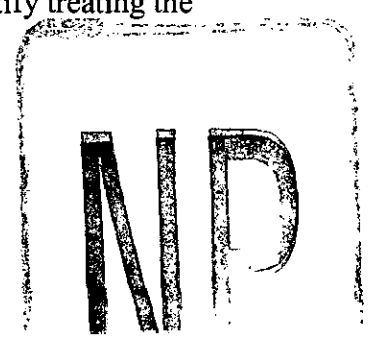
6. As SWBT witness Thomas Hughes described in detail in his direct and surrebuttal testimony, and as SWBT explained in its Initial and Reply Briefs in this case, the competition faced by SWBT for its business services in the optional MCA areas adjoining the St. Louis and Kansas City exchanges and in the Springfield area is particularly striking, and in fact in some instances exceeds the level of competition SWBT's business services face within the St. Louis and Kansas City exchanges. 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 ** %**! Likewise, CLECs in SWBT's Imperial exchange, which is in the optional portion of the St. Louis MCA, have obtained at least ** %** of the business access lines in that exchange! In Manchester and Chesterfield exchanges of suburban St. Louis, which are also optional MCA areas, CLECs have obtained a minimum of ** %** of the total business access:

lines in those exchanges. The CLECs' minimum market share in the Manchester, Chesterfield, Fenton and Imperial exchanges actually exceeds 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.

7. Staff did not even address this significant objective evidence of effective competition, for SWBT's business services, or explain why Staff supports competitive classification for the St. Louis and Kansas City exchanges, but does not support competitive classification for adjoining optional MCA exchanges where CLECs have obtained a comparable or greater share of the business access line market. Likewise, Staff did not even address the fact that CLECs have also obtained minimum market share which exceeds ** %** of the business access line market in larger optional MCA exchanges such as Harvester (at least ** %** of the market) and St. Charles (at least ** %** of the market), as well as the Springfield exchange (where CLECs have obtained at least ** %** of the business market). At the hearing, however, Staff conceded that if it performed a more detailed review of this additional evidence, Staff could very well recommend a finding of effective competition in the optional MCA areas and in the Springfield MCA.⁹

8. In its Report and Order, the Commission suggests that the number of CLECs actually providing resold and facilities-based service in an exchange, the number of CLECs certified to provide such service, the "comparative longevity of the companies doing business," and the presence of "CLEC-owned fiber networks" in the St. Louis and Kansas City exchanges are relevant and distinguishing factors which justify treating the

⁹ T. 661-2.



St. Louis and Kansas City exchanges differently than other exchanges (including exchanges located in the optional MCA areas in St. Louis and Kansas City, and in the Springfield MCA) where CLECs are competing just as effectively with SWBT, based on minimum market share gained by the CLECs. None of these "factors," however, withstand objective scrutiny when applied to the optional MCA areas or the Springfield exchange.

9. For example, in SWBT's Fenton exchange, which is located in the optional portion of the St. Louis MCA, there are 27 CLECs serving customers.¹⁰ While it is true that there are 53 CLECs serving customers in the main St. Louis exchange, there has been no evidence presented to or any finding by the Commission that the 53 CLECs competing for business customers in the St. Louis exchange are any more effective competitors - either as a group or individually - than the 27 CLECs serving business customers in the adjoining Fenton exchange. In fact, based on the market share data described above, the evidence in this case is uncontroverted that the 27 CLECs operating in the Fenton exchange are competing just as effectively or even more effectively than the 53 CLECs in the St. Louis exchange. Furthermore, there was no credible evidence presented to or any finding by the Commission in this case that the CLECs operating in the St. Louis exchange had any greater "longevity" as an ongoing business than the CLECs operating in optional MCA exchanges such as the Fenton exchange.

10. The Commission also appears to have been swayed by the presence of CLEC-owned fiber facilities in the St. Louis and Kansas City exchanges. Yet there was

¹⁰ The number of competitors, and the market share obtained by the competitors, is very comparable to that found by the Commission to be sufficient for a competitive designation for residential services in the St. Charles and Harvester exchanges.

no evidence to support the proposition that the mere placement of fiber facilities by a telecommunications carrier leads to any more "effective competition" than facilities-based competition provided by CLECs utilizing UNEs. Nor was there any evidence of whether business switched services were even provided over those facilities, or the market share obtained by use of those facilities. Furthermore, the very maps of fiber facilities submitted by and relied upon by Staff witness Voight (which were provided by SWBT over two years ago in Case No. TO-99-227 in connection with SWBT's request for Section 271 relief) show that competitors have placed fiber facilities in the Springfield exchange and the optional Kansas City and St. Louis MCA areas. The presence of fiber facilities in the locations identified by SWBT in maps submitted by SWBT in the TO-99-227 case, simply does not support a finding that effective competition exists in the St. Louis and Kansas City exchanges but does not extend out to the entire St. Louis and Kansas City optional MCA areas, or does not exist in the Springfield exchange. (See Attachment 1.)

11. Facilities based CLECs may choose to utilize UNEs or their own switch and loop facilities to compete. The price of UNEs is controlled by the Commission pursuant to its authority under Section 252 of the federal Telecommunications Act of 1996, and the TELRIC pricing standard guarantees a price that is typically lower than the CLEC could place in its own facilities. It is little wonder that CLECs often choose to use those low price UNEs, as CLECs obtain low cost facilities without the risk of investing their own capital. To the extent that the Commission's decision is based on a belief that UNE competition is less "effective" than CLEC owned facilities competition, such a position finds no basis in fact or law. CLECs make their own choices of method to

compete based on their own financial interest, and the Commission should not “second guess” the competitions’ own economic choice. Whether the CLEC uses UNEs or owned facilities, the customers are served by the CLEC, not SWBT, and all of the revenue from the customer (including local, vertical services, access and toll) flow to the CLEC.

12. For the reasons described above, the Commission’s determination that effective competition for SWBT’s business and related services is limited to only the St. Louis and Kansas City exchanges is unlawful, unjust and unreasonable. While SWBT believes effective competition exists for SWBT’s business in the state and related services throughout Missouri, at a minimum, “effective competition” for SWBT’s business and related services clearly exists in the Springfield exchange and the optional MCA areas. Section 392.245.5 compels such a finding. A revised decision would permit the benefits of increased competition to flow to the business customers in these exchanges.

Operator Services and Directory Assistance

13. Similarly, 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) and in SWBT’s Harvester and St. Charles exchanges (for residential customers) rather than in all of SWBT’s exchanges is also unlawful, unjust and unreasonable and contrary to the evidence and Section 392.245.5.

14. In its Report and Order, the Commission found, with respect to both directory assistance services and Busy Line Verification and Busy Line Interrupt operator services, that these services “are too closely related to the provision of basic local service

to be considered subject to effective competition where the underlying basic local service is not also subject to effective competition.¹¹ In reaching this conclusion, the Commission relied upon its understanding of how customers have “historically” accessed SWBT’s directory assistance and operator services.¹² The Commission’s reliance upon how customers may have accessed directory assistance and operator services 10 or 20 years ago, however, is irrelevant under the applicable statutory standard and completely ignores the uncontroverted evidence presented by SWBT in this case regarding how customers are currently accessing the multitude of competitive alternative directory assistance and operator services being offered by a slew of SWBT competitors on a statewide basis in Missouri and the tremendous market share loss SWBT has experienced.

15. As a matter of both fact and law, SWBT’s directory assistance services and operator services are clearly no longer “so closely related to basic local service” that they “cannot be subject to effective competition where basic local is not subject to effective competition,”¹³ and have not been so closely related for some time. Even if directory assistance and operator services were appropriately tied to basic local, as SWBT described above, the Commission erroneously limited its finding of effective competition for SWBT’s business and related services to the St. Louis and Kansas City exchanges. Even under the incorrect standard, at a minimum, SWBT’s business and business-related services face effective competition not only in the St. Louis and Kansas City exchanges, but also in the Springfield exchange and the optional MCA areas.

¹¹ Report and Order, p. 51.

¹² Report and Order, p. 49.

¹³ Report and Order, p. 49.

Moreover, SWBT presented substantial and uncontroverted evidence that its directory assistance and operator services face “effective competition” from numerous well-heeled competitors throughout Missouri, that offer competitive alternatives to SWBT’s directory assistance and operator services and are not related to the presence or absence of local competition. SWBT also submitted compelling and undisputed evidence regarding its decrease in market share and revenues related to these services.

16. With respect to directory assistance services, SWBT presented comprehensive and uncontroverted evidence of a wide variety of competitive alternatives, including both “00” and “Area Code-555-1212” services provided throughout Missouri by AT&T, MCI WorldCom and other established companies (which services connect a caller to directory assistance services provided by the caller’s presubscribed interexchange carrier), “10-10” services provided throughout Missouri by AT&T (10-10-ATT-00) and MCI WorldCom (10-10-9000) which connect a caller to the directory assistance services provided by these companies, and which may be accessed from any telephone without regard to whether SWBT or a CLEC provides the local services, comparable directory assistance services offered by wireless carriers and numerous other competitive alternatives.¹⁴ The Commission, however, appears to have either overlooked or ignored this compelling evidence of effective statewide competition.

17. The Commission also either overlooked or ignored the evidence presented by SWBT regarding the direct competitive impact the multitude of competitive directory assistance providers are having on SWBT. At the hearing, SWBT presented uncontroverted evidence that SWBT’s directory assistance call volumes have

¹⁴ See, Initial Brief of SWBT, pp. 75-78; Ex. 5, Moore Direct, pp. 6-12.

significantly declined since 1996, although the overall directory assistance marketplace has grown during this period. Since 1996, SWBT's directory assistance call volume has decreased ** %**!¹⁵ During this same period, established competitors such as AT&T and MCI WorldCom have launched and spent hundreds of millions of dollars promoting competitive alternatives to SWBT's directory assistance services, which are available today throughout Missouri.¹⁶ The Commission's decision to inextricably link directory assistance services with basic local service is not supported by the evidence in this case, and is simply wrong.

18. Finally, the Commission's failure to conclude that SWBT's directory assistance services face effective competition throughout Missouri is inconsistent with the FCC's determination, on several occasions, that the directory assistance services marketplace is competitive.¹⁷ As SWBT described in its Initial Brief, in its UNE Remand Order, the FCC removed directory assistance services from the list of unbundled network elements which incumbent LECs must provide to competitors.¹⁸ On several other occasions, the FCC has noted the competitive nature of the directory assistance marketplace.¹⁹ Likewise, several other states, including Illinois, Kansas and Texas, have price deregulated SWBT's directory assistance services.²⁰

19. For the reasons described above, and as described in detail in SWBT's Initial and Reply Briefs in this case, the Commission's determination that SWBT's

¹⁵ Id.

¹⁶ Id.

¹⁷ Ex. 5, Moore Direct, pp. 15-16.

¹⁸ See Initial Brief of SWBT, p. 80.

¹⁹ Ex. 5, Moore Direct, pp. 15-16.

²⁰ Ex. 5, Moore Direct, p. 17.



directory assistance services only face effective competition in only the St. Louis and Kansas City exchanges (for business customers) and in only the Harvester and St. Charles exchanges (for residential customers) is unlawful, unjust and unreasonable. The overwhelming and largely uncontroverted evidence in this case compels a finding that SWBT's directory assistance services face effective competition and should be classified as competitive throughout the entire State of Missouri.

20. Likewise, SWBT's Busy Line Verification and Busy Line Interrupt operator services are clearly no longer "so closely related to basic local service" that they cannot be subject to effective competition in areas where SWBT's basic local services are not determined by the Commission to face effective competition, and have not been "so closely related" for some time.

21. SWBT presented substantial and uncontroverted evidence that all of its operator services face effective competition from established competitors throughout the State of Missouri. For example, the same "00" services provided by interexchange carriers described above may be used throughout Missouri and provide callers with a complete range of operator services provided by the caller's presubscribed IXC, including calling card, third number billing collect, and person-to-person calling options, including specifically busy line verify and interrupt services.²¹ Other competitive alternatives available throughout Missouri include AT&T's "1-800-CALL-ATT" service, MCI WorldCom's "1-800-Collect" service and Sprint's "1-800-2Sprint" service, all of which offer line status verification and busy interrupt services.²² Wireless providers also

²¹ Ex. 5. Moore Direct, p. 22.

²² Ex. 5, Moore Direct, pp. 22-23.

provide directly competitive operator services throughout Missouri.²³ In its Initial Brief, SWBT described the uncontroverted evidence of several other competitive alternatives to SWBT's operator assistance services.²⁴ All of this uncontroverted evidence leads to only one reasonable conclusion -- that all of SWBT's operator services, including Busy Line Verification and Busy Line Interrupt operator services, face effective competition throughout Missouri.

22. Like directory assistance services, the highly competitive nature of the operator services marketplace has directly impacted SWBT's operator services call volumes, yet the Commission appears to have overlooked this evidence. As SWBT witness Ms. Moore testified, since 1996, SWBT's operator service call volumes have declined ** %**!²⁵ This dramatic decline in SWBT's operator services call volume is directly attributable to the competitive alternatives that exist throughout Missouri for all of SWBT's operator services.

23. Like directory assistance services, the FCC has also found the operator services market to be competitive.²⁶ In its UNE Remand Order, the FCC eliminated operator services from the list of unbundled network elements based on the competitive nature of operator services.²⁷ SWBT's operator services have also been price deregulated in Arkansas, Texas and Kansas.²⁸

²³ Id.

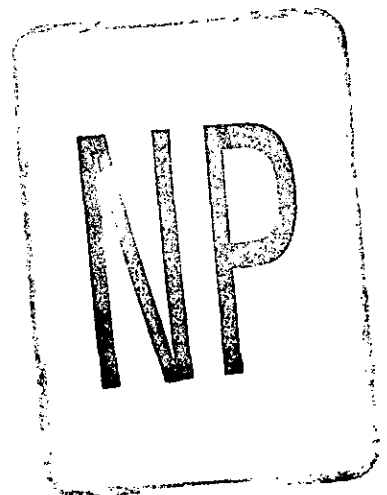
²⁴ See, Initial Brief of SWBT, pp. 84-86.

²⁵ Ex. 6(HC), Moore Surrebuttal, Sched. 1 (HC).

²⁶ Ex. 5, Moore Direct, p. 28.

²⁷ Id.

²⁸ Id.



24. Finally as the Commission recognized in its Report and Order, most of SWBT's operator services, including station-to-station, person-to-person and calling card services, were previously determined by the Commission to be transitionally competitive throughout SWBT's exchanges in Missouri in Case No. TO-93-116.²⁹ The Commission appropriately recognized that those services were classified as competitive as of January 10, 1999.³⁰ The Commission's decision in Case No. TO-93-116 was not limited to those exchanges where SWBT's underlying business and residential basic local services were found to face effective competition. The Commission did not find in Case No. TO-93-116 that SWBT's operator services (other than Busy Line Verification and Busy Line Interrupt services) were "too closely related to the provision of basic local service to be considered subject to effective competition where the underlying basic local service is not also subject to effective competition," as the Commission did in this case with respect to a limited subset of SWBT's Busy Line Verification and Busy Line Interrupt services.³¹ No such linkage is supported by the evidence in this case either.

25. For the reasons described above, and as described in detail in SWBT's Initial and Reply Briefs in this case, the Commission's determination that SWBT's Busy Line Verification and Busy Line Verification Interrupt operator services face effective competition in only the St. Louis and Kansas City exchanges (for business customers) and in only the Harvester and St. Charles exchanges (for residential customers) is unlawful, unjust and unreasonable. The overwhelming uncontroverted evidence in this case compels a finding that the remaining operator services (consisting of Busy Line

²⁹ Report and Order, p. 51.

³⁰ Id.

³¹ Id.

Verification and Busy Line Interrupt) face effective competition and should be classified as competitive under Section 392.245.5 throughout the entire State of Missouri.

26. SWBT continues to believe that all of its services in all of its exchanges should be classified as competitive. While the reclassification as competitive of (1) business services in Springfield and the optional MCA area and (2) operator services and directory assistance services on a statewide basis are the areas of most pressing concern, SWBT respectfully requests the Commission to reconsider granting competitive status to all services in all exchanges. In this case, SWBT presented substantial evidence establishing that for each of SWBT's regulated service offerings in Missouri, there are competitors -- both regulated and unregulated -- that are offering and providing functionally equivalent or substitutable services throughout SWBT's Missouri exchanges, at comparable rates, terms and conditions, and have been for several years.³² Under the statutory standard applicable under Section 392.245.5 in this case, the Commission should find that all of SWBT's services face "effective competition" throughout Missouri, and should receive competitive classification.

³² See, Ex. 16, Hughes Direct, pp. 18-19.

WHEREFORE, for the reasons described above, SWBT respectfully requests that the Commission grant its Application for Rehearing in this case.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY

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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 4, 2002.


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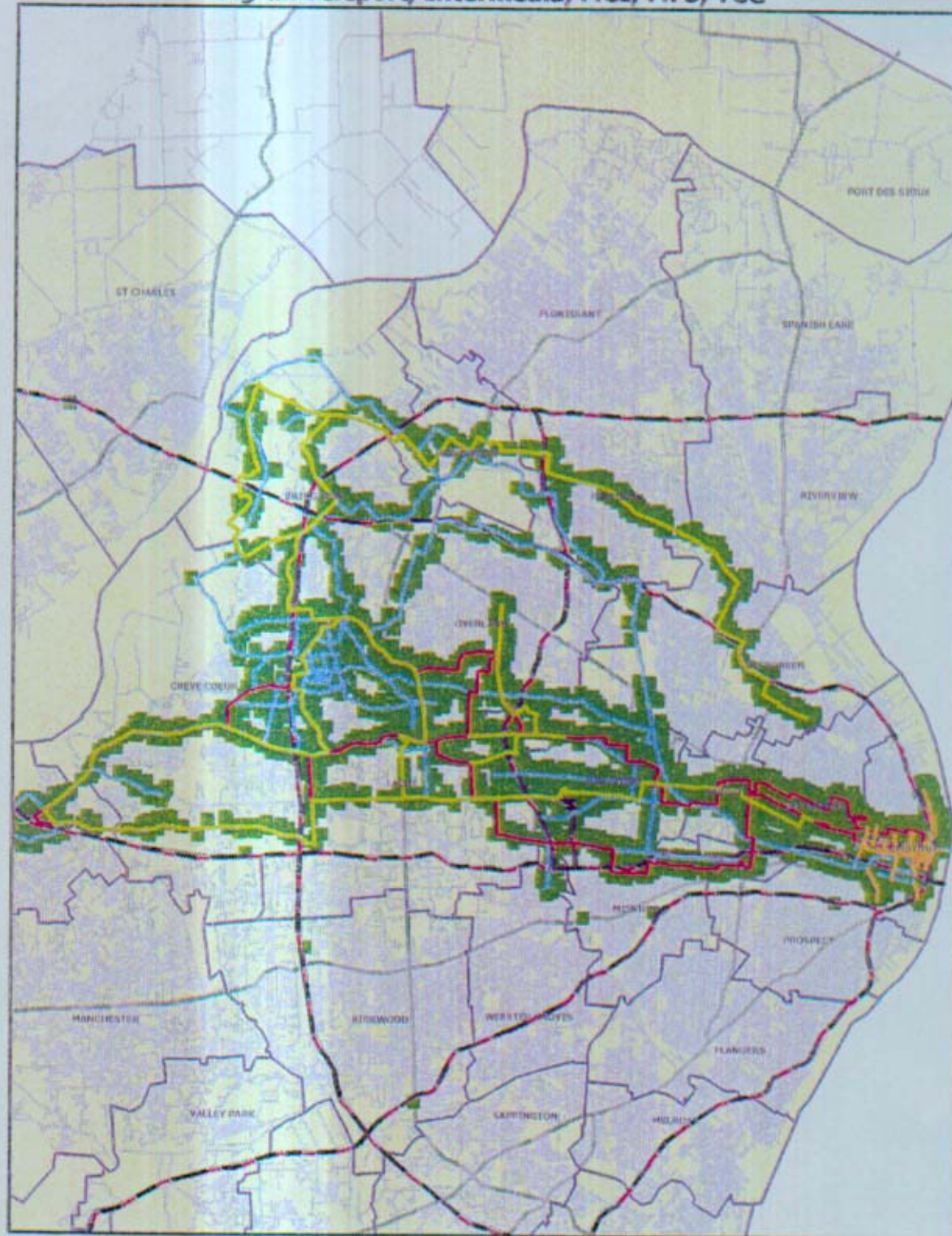
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COMPETITIVE FIBER NETWORKS - ST. LOUIS, MO

PROXIMITY ANALYSIS - BUSINESS

Digital Teleport, Intermedia, MCI, MFS, TCG



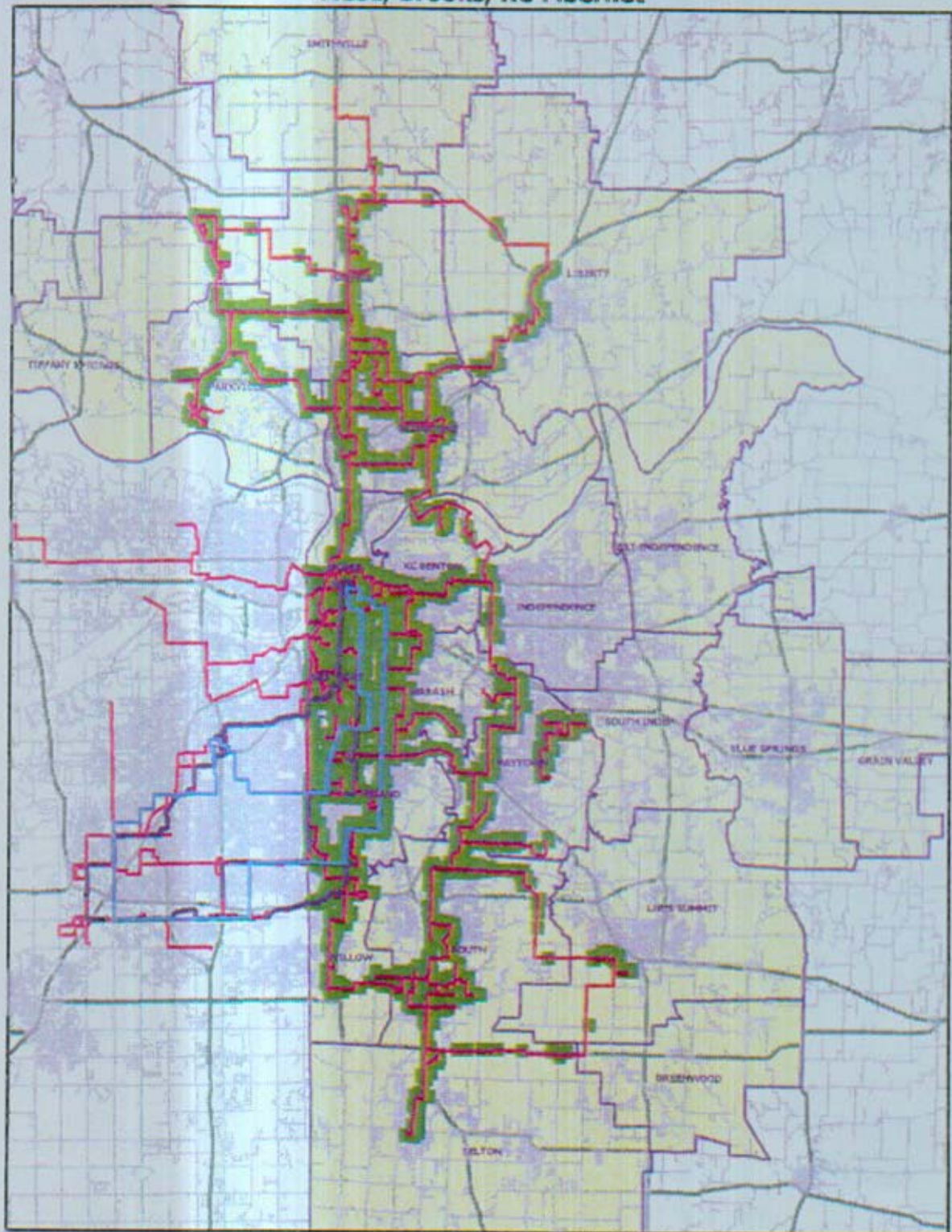
- Digital Teleport Fiber
- Intermedia Fiber
- MCI Metro Fiber
- MFS Fiber ✓
- TCG Fiber ✓
- Highways
- Streets
- SWBT Wire Centers - St Louis, MO
- Businesses within 1000 feet of fiber



COMPETITIVE FIBER NETWORKS - KANSAS CITY, MO

PROXIMITY ANALYSIS - BUSINESS

ACSI, Brooks, KC Fibernet



- ACSI Fiber
- Brooks Fiber
- KC Fibernet Fiber
- Highways
- Streets
- SWBT Wire Centers - Kansas City, MO

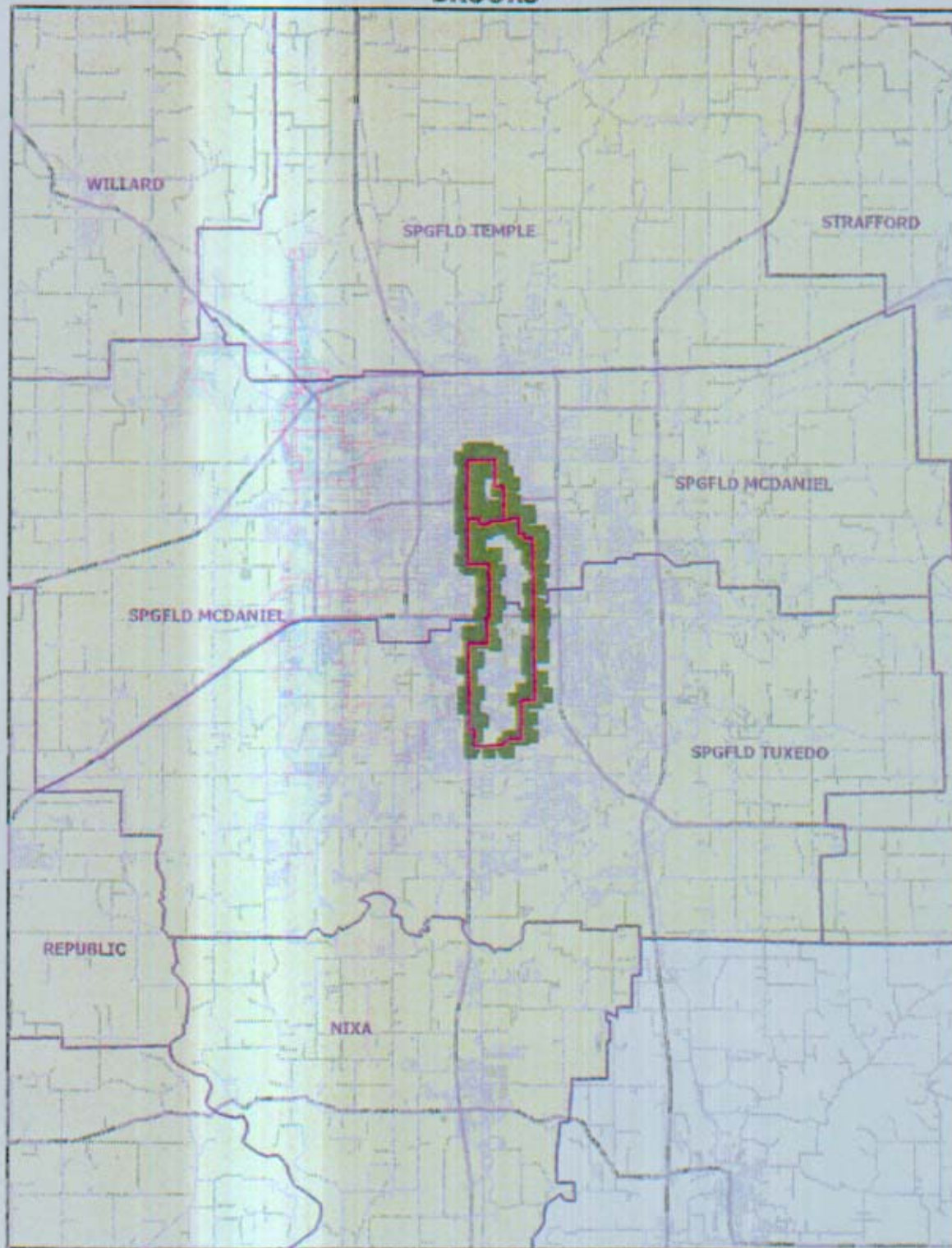
■ Businesses within 1000 feet of fiber








COMPETITIVE FIBER NETWORKS - SPRINGFIELD, MO

PROXIMITY ANALYSIS - BUSINESS

BROOKS



2 0 2 4 Miles

-  Brooks Fiber
-  Highways
-  Streets
-  SWBT Wire Centers - Springfield, MO
-  Businesses within 1000 feet of fiber

