

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

In the Matter of the Review of the Competitive        )  
Classification of the Exchanges of Southwestern        )        Case No. TO-2007-0053  
Bell Telephone, L.P., d/b/a AT&T Missouri.            )

**AT&T MISSOURI'S POSITION STATEMENT**

AT&T Missouri<sup>1</sup> respectfully submits its position on the issues that have been identified for the Missouri Public Service Commission's ("Commission's") determination in this proceeding.

**Issue:** Section 392.245.5(6) RSMo 2005 Supp. provides that the Commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall re-impose price cap regulation upon the incumbent local exchange telecommunications company, in such exchange. Do the conditions for competitive classification continue to exist in AT&T Missouri's competitively classified exchanges?

**AT&T Missouri Position:** Yes. The conditions for competitive classification continue to exist in AT&T Missouri's exchanges that have been previously classified as competitive under both the 30-day and the 60-day criteria. While the Commission must review and make a determination for the exchanges in both categories, continued competitive classification has been contested only with respect to the 60-day exchanges.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri." It previously conducted business as "SBC Missouri."

The Statutory Standard. Senate Bill 237 requires competitive classification whenever two non-affiliated entities are providing basic local telecommunications service within the exchange,<sup>2</sup> with a wireless provider to be counted as only one of the entities.<sup>3</sup> Under the 30-day track, the entities to be considered are those utilizing their own facilities, in whole or in part.<sup>4</sup> The 60-day track is much broader. In addition to entities using their own facilities in whole or in part, the 60-day track also requires counting entities using “the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company, as well as providers that rely on an unaffiliated third party Internet service.”<sup>5</sup> In a 60-day case, once the requisite number of the competitors has been identified, the Commission must confer competitive status “unless it finds that such competitive classification is contrary to the public interest.”<sup>6</sup>

The 30-Day Exchanges. The evidence presented by Staff<sup>7</sup> and AT&T Missouri<sup>8</sup> demonstrates that the required conditions continue to exist in each of the exchanges the Commission previously classified as competitive under the 30-day criteria (26 exchanges for residential service; 45 exchanges for business service).

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<sup>2</sup> Section 392.245.5 (business and residential services are to be examined separately).

<sup>3</sup> Section 392.245.5(1).

<sup>4</sup> Section 392.245.5.

<sup>5</sup> Section 392.245.5(6) RSMo 2005 Supp.

<sup>6</sup> Id.

<sup>7</sup> See Staff Report filed in Case No. TO-2007-0053 on August 8, 2006, at p. 2; the attached Memorandum from Staff at pp. 1, 3-7; and Appendix C(HC) and Appendix D(HC) to Staff’s Memorandum. See also Rebuttal testimony of Staff witness John Van Eschen filed January 18, 2007 at pp. 2, 14 and Schedules 3(HC) and 4(HC), which correct Appendix C(HC) and Appendix D(HC) from Staff’s August 8, 2006 Report.

<sup>8</sup> See Rebuttal testimony of AT&T Missouri witness Craig Unruh filed January 18, 2007 at pp. 2, 9-12 and Schedules 4(HC) and 5(HC).

No party objects to or otherwise challenges continued competitive classification for the AT&T Missouri exchanges previously receiving that designation under the 30-day track. By an October 5, 2006, Stipulation jointly filed in this case, Staff, OPC and AT&T Missouri have agreed “to narrow the contested issues in this case to a determination of whether competitive conditions continue to exist in those exchanges granted competitive classification under the 60-day track.”<sup>9</sup> The Stipulation reflects Staff and AT&T Missouri’s agreement that Staff’s August 8, 2006, Report demonstrates that the competitive conditions for the 30-day exchanges continue to exist and that those exchange should remained classified as competitive. While OPC did not join that part of the Stipulation, OPC agreed not to object to it and agreed not to offer any evidence in opposition to that Stipulation.<sup>10</sup> Accordingly, the Commission should reaffirm competitive classification in all of AT&T Missouri’s 30-day competitive exchanges.

The 60-Day Exchanges. The evidence presented by Staff<sup>11</sup> and AT&T Missouri<sup>12</sup> demonstrates that the required conditions continue to exist in each of the exchanges the Commission previously classified as competitive under the 60-day criteria (51 exchanges for residential service; 30 exchanges for business service). No evidence has been presented showing otherwise.<sup>13</sup> While the statute requires that wireless providers be included in the competitor count, there are more than enough traditional wireline competitors (e.g. CLECs) in each of the

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<sup>9</sup> Joint Motion to Establish Procedural Schedule and Stipulation as to 30-Day Exchanges, filed October 5, 2006, at p. 3.

<sup>10</sup> Id.

<sup>11</sup> See Staff Report filed in Case No. TO-2007-0053 on August 8, 2006, at p. 2; the attached Memorandum from Staff at pp. 1, 3-7; and Appendix A(HC) and Appendix B(HC) to Staff’s Memorandum. See also Rebuttal Testimony of Staff witness John Van Eschen filed January 18, 2007 at pp. 2, 14 and Schedules 1(HC) and 2(HC), which correct Appendix A(HC) and Appendix B(HC) from Staff’s August 8, 2006 Report.

<sup>12</sup> See Rebuttal Testimony of AT&T Missouri witness Craig Unruh filed January 18, 2007 at pp. 2, 9-13 and Schedules 2(HC) and 3(HC).

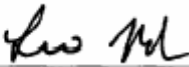
<sup>13</sup> Unruh Rebuttal Testimony, p. 7

60-day exchanges even without counting the presence of wireless carriers.<sup>14</sup> And the evidence shows expanded facility-based competition, as most of the exchanges could now qualify under the 30-day criteria (specifically, at least 27 of the 51 residential exchanges, and at least 27 of the 30 business exchanges qualify under the 30-day criteria).<sup>15</sup>

With this uncontroverted evidence, Section 392.245.5 requires the Commission to confirm competitive classification for AT&T Missouri's exchanges previously classified as competitive under the 60-day criteria. Any party contending that such classification is "contrary to the public interest," has the burden of proving that assertion.<sup>16</sup> Only OPC has made such a claim, but it has not presented substantial and competent evidence in support of its claim.<sup>17</sup> Accordingly, the Commission should reaffirm competitive classification in all of AT&T Missouri's 60-day competitive exchanges.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,  
D/B/A AT&T MISSOURI

BY   
TIMOTHY P. LEAHY #36197  
LEO J. BUB #34326  
ROBERT J. GRYZMALA #32454

Attorneys for AT&T Missouri  
One AT&T Center, Room 3518  
St. Louis, Missouri 63101  
314-235-2508 (Telephone)/314-247-0014(Facsimile)  
[leo.bub@att.com](mailto:leo.bub@att.com)

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<sup>14</sup> Van Eschen Rebuttal Testimony, pp. 9 and 14 (showing that each of the 51 residential and 30 business exchanges have three or more CLECs providing service on a full facility, partial facility or other qualifying resale basis); and Unruh Rebuttal Testimony, Schedules 2(HC) and 3(HC).

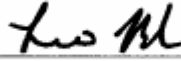
<sup>15</sup> Unruh Rebuttal Testimony, p. 13, Schedule 2(HC) and 3(HC), and Unruh Surrebuttal Testimony, p. 8; see also Van Eschen Rebuttal Schedule 1 (showing 15 of the 51 residential exchanges meet the 30-day criteria) and Schedule 2 (showing 23 out of the 30 business exchanges now meet the 30-day criteria).

<sup>16</sup> Dycus v. Cross, 869 S.W.2d 745, 749 (Mo. banc 1994) ("The party asserting the positive of a proposition bears the burden of proving that proposition"). See also Report and Order, issued September 26, 2005 in MoPSC Case No. TO-2006-0093, at p. 26, quoting Dycus.)

<sup>17</sup> Unruh Rebuttal Testimony, pp. 13-19.

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on March 1, 2007.



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Leo J. Bub

William Haas  
General Counsel  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, MO 65102  
[William.Haas@psc.mo.gov](mailto:William.Haas@psc.mo.gov)  
[general.counsel@psc.mo.gov](mailto:general.counsel@psc.mo.gov)

Michael F. Dandino  
Public Counsel  
Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102  
[mike.dandino@ded.mo.gov](mailto:mike.dandino@ded.mo.gov)  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)