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January 17, 2003

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102


Re: Case No. IO-2003-0012

Dear Mr. Roberts:

Enclosed for filing please find an original and eight (8) copies of the rebuttal testimony of Mr. Robert C. Schoonmaker.

Please see that this filing is brought to the attention of the appropriate Commission personnel. A copy of the attached will be provided to parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,



Sondra B. Morgan

SBM/da

cc: Parties of Record

FILED⁴
JAN 17 2003
Missouri Public
Service Commission

FILED⁴

JAN 17 2003

Missouri Public
Service Commission

EXHIBIT NO.: _____
ISSUE: PRICE CAP
WITNESS: ROBERT C. SCHOONMAKER
TYPE OF EXHIBIT: REBUTTAL TESTIMONY
SPONSORING PARTY: BPS TELEPHONE COMPANY
CASE NO.: IO-2003-0012

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of BPS Telephone
Company's Election to be Regulated
Under Price Cap Regulation as Provided
In Section 392.245, RSMo 2000.

)
) Case No. IO-2003-0012
)
)

AFFIDAVIT OF ROBERT C. SCHOONMAKER

Robert C. Schoonmaker, of lawful age, being duly sworn, deposes and states as follows:

1. My name is Robert C. Schoonmaker. I am employed by GVNW Consulting, Inc. as a Vice President.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony
3. I hereby affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief and that the information contained in the attached schedules is also true and correct to the best of my knowledge and belief.


Robert C. Schoonmaker

Subscribed and sworn to before me this 16th day of January, 2003.

 Notary Public

My Commission expires: 8-8-2006



1 REBUTTAL TESTIMONY OF ROBERT C. SCHOONMAKER

2
3 Q. Would you please state your name and address.

4 A. My name is Robert C. Schoonmaker. My business address is 2270 La Montana
5 Way, Colorado Springs, Colorado 80918.
6

7 Q. By whom are you employed and in what capacity?

8 A. I am a Vice President of GVNW Consulting, Inc., a consulting firm specializing
9 in working with small telephone companies.
10

11 Q. Would you please outline your educational background and business experience.

12 A. I obtained my Masters of Accountancy degree from Brigham Young University in
13 1973 and joined GTE Corporation in June of that year. After serving in several
14 positions in the revenue and accounting areas of GTE Service Corporation and
15 General Telephone Company of Illinois, I was appointed Director of Revenue and
16 Earnings of General Telephone Company of Illinois in May, 1977 and continued
17 in that position until March, 1981. In September, 1980, I also assumed the same
18 responsibilities for General Telephone Company of Wisconsin. In March, 1981, I
19 was appointed Director of General Telephone Company of Michigan and in
20 August, 1981 was elected Controller of that company and General Telephone
21 Company of Indiana, Inc. In May, 1982, I was elected Vice President-Revenue
22 Requirements of General Telephone Company of the Midwest. In July, 1984, I
23 assumed the position of Regional Manager of GVNW Inc./Management (the
24 predecessor company to GVNW Consulting, Inc.) and was later promoted to my

1 present position of Vice President. I have served in this position since that time
2 except for the period between December 1988 and November, 1989 when I left
3 GVNW to serve as Vice President-Finance of Fidelity and Bourbeuse Telephone
4 Companies.

5
6 Q. What are your responsibilities in your present position?

7 A. In my current position, I consult with independent telephone companies and
8 provide financial analysis and management advice in areas of concern to these
9 companies. Specific activities which I perform for client companies include
10 regulatory analysis, consultation on regulatory policy, financial analysis, business
11 planning, rate design and tariff matters, interconnection agreement analysis, and
12 general management consulting.

13
14 Q. Have you previously testified in regulatory proceedings?

15 A. Yes, I have testified on regulatory policy, local competition, rate design,
16 accounting, compensation, tariff, interconnection agreements, and separations
17 related issues before the Illinois Commerce Commission, the Public Service
18 Commission of Wisconsin, the Michigan Public Service Commission, the Iowa
19 Utilities Board, the Tennessee Public Service Commission, the New Mexico
20 Public Regulation Commission and the Missouri Public Service Commission
21 ("MPSC"). In addition, I have filed written comments on behalf of our firm on a
22 number of issues with the Federal Communications Commission (FCC) and have
23 testified before the Federal-State Joint Board (Joint Board) in CC Docket #96-45

1 on Universal Service issues. I was also appointed by the FCC to serve on the
2 Rural Task Force (RTF) which was formed to make recommendations to the
3 Universal Service Joint Board on implementation of the Federal USF for rural
4 telephone companies.

5
6 Q. Who are you representing in this proceeding?

7 A. I am responding on behalf of BPS Telephone Company ("BPS").
8

9 Q. What is the purpose of your testimony?

10 A. I will respond to the testimony of Mr. William R. Voight of the MPSC Staff
11 ("Staff") and Ms. Barbara Meisenheimer of the Office of The Public Counsel
12 ("Public Counsel") regarding the statutory requirements for BPS to make a valid
13 election of price cap status.

14
15 Q. Could you first of all respond generally to the testimony of Mr. Voight and Ms.
16 Meisenheimer?

17 A. Much of their discussion and argument to the Commission for denying BPS's
18 election of price cap status is centered around the question of whether there is
19 effective competition from Missouri State Discount telephone ("MSDT") in the
20 BPS operating area. While this discussion may be interesting from an economic
21 viewpoint, it is simply not relevant to the statutory test for election of price cap
22 status. The statute does not impose an "effective competition" test for electing
23 price cap status. Rather it is a much more limited test specific to whether a

1 competitor has a certificate to provide basic local telecommunications service and
2 whether that competitor is "...providing such service in any part of the small
3 incumbent company's service area." Therefore, I find much of their discussion
4 related to effective competition or the economic rationale for price cap regulation
5 to address what they apparently believe the statute should have said, rather than
6 what it actually says.

7
8 Q. Can you review the statute language and your understanding as a regulatory
9 consultant how the statute applies to BPS's circumstances?

10 A. Yes. The portion of Section 392.245(2) related to small telephone companies
11 states:

12 A small incumbent local exchange telecommunications company may elect
13 to be regulated under this section upon providing written notice to the
14 commission if an alternative local exchange telecommunications company
15 has been certified to provide basic local telecommunications service and is
16 providing such service in any part of the small incumbent company's service
17 area, and the incumbent company shall remain subject to regulation under
18 this section after such election.
19

20 There seems to be no dispute that BPS Telephone Company is a small incumbent
21 local exchange telecommunications company. As I understand the language of
22 the statute, BPS may elect to be regulated under the price cap statute. In order to
23 make that election effective, BPS has to give written notice to the Commission.
24 As indicated and demonstrated in the direct testimony of David Carson, BPS has
25 made that election and has properly notified the Commission. The statute also
26 conditions BPS's ability to make this election based on two conditions. First an
27 alternative local exchange telecommunications company must be certificated to

1 provide "basic local telecommunications service" in BPS service area. Second,
2 that alternative carrier must be "providing such service in any part of" BPS's
3 service area.

4
5 Q. Does the statute indicate that such an election by a small local exchange company
6 is only effective after review and approval of the Commission?

7 A. The statute contains no such provision nor does it discuss any Commission
8 approval requirement or process. This is different from the portion of the statute
9 related to large telephone companies where their adoption of price cap regulation
10 is based on "a determination by the Commission." My reading of the statute is
11 that BPS's election becomes effective upon notification of that election to the
12 Commission.

13
14 Q. Does that mean you believe the Commission can't inquire as to whether the two
15 conditions required for BPS to make such an election have been met?

16 A. No. I believe that the Commission can rightfully make that inquiry if the election
17 made by BPS is challenged on that basis. However, it is my opinion that BPS's
18 election would remain in place until such time as the Commission has determined
19 that BPS's election is invalid because those conditions have not been met.

20
21 Q. How does your interpretation of this part of the statute differ from that of Ms.
22 Meisenheimer?

1 A. While we both agree that the Commission can rightfully inquire into whether
2 BPS's election is valid, we disagree on the status of BPS as being under price cap
3 regulation or under rate-of-return regulation while that inquiry is being conducted.
4 Ms. Meisenheimer indicates on Page 4 of her testimony that until the Commission
5 positively determines that BPS satisfies the requirements for price cap regulation
6 it should continue to be subject to rate-of-return regulation. That is not consistent
7 with my understanding of the statute.

8
9 Q. Do you agree with Ms. Meisenheimer's statement "...that economic and public
10 policy considerations make it appropriate for the Commission to verify that the
11 statutory conditions are met before BPS is allowed to operate under price cap
12 regulation?"¹

13 A. No. I disagree with her statement. I see nothing in the statute that delays the
14 effectiveness of the election made by BPS until the Commission has conducted
15 such a verification. The statute says that such election is effective "...upon
16 providing written notification to the commission..." This is different from the
17 statutory conditions for large telephone companies where such companies become
18 subject to regulation, "...upon a determination by the commission" of the same
19 two requirements as those for small companies.

20
21 Q. On a related issue, on page 15 of her testimony, Ms. Meisenheimer characterizes
22 BPS's filing as a "...request for price cap regulation..." which the Commission
23 may grant. Do you agree with this characterization?

1 A. Definitely not. While the Commission may have authority to verify that the two
2 statutory conditions claimed by BPS have been met, the statute says nothing about
3 the Commission “granting” a request by BPS. BPS has made no “request” for
4 price cap election. It has, in accordance with the statute “elected” that status by
5 giving written notice to the Commission.
6

7 Q. Ms. Meisenheimer’s testimony also discusses concerns about the “void of
8 sufficient price competition,”² “market conditions that ensure the development of
9 effective competition,”³ the absence of “...strong interfirm rivalry,
10 nondifferentiated products and minimal barriers,”⁴ and “competition sufficient to
11 ensure competitive outcomes”⁵ as areas that should concern the Commission in
12 considering BPS’s price cap election. Do you believe these are valid inquiries or
13 concerns under the Missouri statute?

14 A. No, they are not valid considerations under the statute. While the statute could
15 have been written to direct the Commission to concern itself with such economic
16 policy conditions, it is not. The statute was written to be much more specific and
17 limited than the issues that Ms. Meisenheimer discussed. It is limited to the two
18 specific factual conditions specified in Section 392.245(2).
19

20 Q. Has the Commission previously determined in a similar case that it does not need
21 to consider competitive issues?

¹ Direct Testimony of Barbara A. Meisenheimer, Case No. IO-2003-0012, Page 2, lines 14-17.

² Ibid. page 8, lines 21-22.

³ Ibid. page 10, lines 2-3.

⁴ Ibid. page 11, lines 20-21.

1 A. Yes. In its order in Case No. TO-97-397, where Southwestern Bell Telephone
2 Company was determined to be subject to price cap regulation, the Commission
3 addressed this issue. Specifically in its Report and Order in that case the
4 Commission stated:

5 With respect to the prerequisites of Section 392.245.2, the parties opposing
6 SWBT's petition appear to want to imprint upon that statute requirements that
7 are not there. "Provisions not plainly written in the law, or necessarily
8 implied from what is written, should not be added by a court under the guise
9 of construction to accomplish an end that the court deems beneficial. 'We are
10 guided by what the legislature says, and not by what we think it meant to
11 say.'" Wilson v. McNeal, 575 S.W.2d 802, 809 (Mo. App. 1978) (citations
12 omitted). As previously indicated, nowhere in Section 392.245 is there a
13 requirement that "effective competition" preceded price cap regulation.
14 Conversely, such a requirement must be met before an incumbent can be
15 classified as competitive in a given exchange, per Section 392.245.5.

16
17 Likewise, nowhere in Section 392.245 is there a requirement that the
18 alternative local exchange telecommunications company be facilities-based
19 rather than a reseller before price cap regulation can be employed.⁶
20

21 The Commission reiterated this position in its Order Denying Applications for
22 Rehearing in Case No. TO-97-397, where the Commission opined:

23 OPC contends that since Communications Cable-Laying Company, Inc. d/b/a
24 Dial U.S. (Dial U.S.) is a reseller rather than a facilities-based provider, with only
25 a "trivial" presence in SWBT's territory, "[t]he Commission's finding that this
26 constitutes competition such as to justify and require subjecting Bell to price cap
27 regulation is unreasonable and is not based upon substantial and competent
28 evidence and is arbitrary and capricious." OPC also states that the Commission
29 mischaracterized its position as advocating an "effective competition" standard.
30 The Commission, however, made no finding that the presence of Dial U.S. in
31 SWBT's territory constituted competition, effective or otherwise. Nor was the
32 Commission required to make such a finding, since Section 392.245.2 contains no
33 reference to "competition."⁷ (Emphasis added.)
34

⁵ Ibid. page 15, lines 4-5.

⁶ Report and Order, Case No. TO-97-397, issued September 16, 1997, p. 21.

⁷ Order Denying Applications for Rehearing, Case No. TO-97-397, dated November 18, 1997, p. 2.

1 Q. If an inquiry into the competition faced by BPS was to be considered appropriate,
2 are Ms. Meisenheimer's and Mr. Voight's discussions of the competition faced by
3 BPS complete from an economic point of view?

4 A. No, they are not. In their discussions regarding the level of competition faced by
5 BPS, neither of them discusses the competition provided by wireless carriers.
6 Competition from these carriers, while very real, is not a valid consideration in
7 conjunction with the statutory provisions that focus on carriers that have been
8 issued a certificate by the Commission. Wireless carriers are not subject to
9 certification by the Commission. However, from an economic viewpoint they
10 definitely provide competition for BPS's basic local service. That competition is
11 clearly facilities-based competition where Mr. Voight focuses some of his
12 discussion.

13
14 Q. Is that competition substantial?

15 A. Yes. Competition from wireless carriers is expanding significantly both in
16 Missouri and nationally. In recent comments before the FCC, the National
17 Telephone Cooperative Association provided the following summary of wireless
18 traffic growth:

19 In 1998, the average wireless customer's monthly minutes-of-use was only 89
20 minutes per month. As of third quarter 2001, the average wireless customer's
21 usage has more than quadrupled to 363 minutes per month. As of April 2002,
22 wireless customers spend an average of 550 minutes on their wireless phone per
23 month and this figure continues to grow. Today, many carriers estimate that the
24 usage is between 600-650 minutes per month per customer.⁸
25

⁸ NTCA Initial Comments, October 18, 2002 in FCC CC Docket No. 01-92, DA 02-2436, p. 8.

1 Terminating wireless traffic reported to BPS increased by 29% in 2001 and by
2 76% in 2002. Correspondingly, telephone companies' access line growth has
3 been reduced, and in many parts of the country including rural areas, companies
4 are actually experiencing access line reductions. Total USF loops reported by
5 NECA dropped from 197.5 million in 2000 to 193.6 million in 2001, a drop of
6 nearly 2%. BPS saw access line growth of 98 lines in 2001, but only 14 in 2002.
7 Access minute growth has declined and in many areas, including rural areas,
8 access minute reductions are being experienced. Originating access traffic for
9 BPS increased by 4% in 2001, but decreased by 4% in 2002. National reports
10 indicate that a growing number of end users are eliminating wireline service and
11 are using wireless service as their sole voice communications service. Service
12 packages provided by wireless carriers frequently include regional or national
13 calling packages. While the changes in usage described above are due to a variety
14 of factors, wireless competition is a significant contributor to these trends. Thus,
15 there will be competitive forces that will place market constraints on BPS's
16 pricing flexibility under a price cap plan.

17
18 Q. Does the statute recognize that the standards for adopting price cap regulation are
19 different from an "effective competition" standard?

20 A. Yes. A later section of the price cap statute, §392.245.5 contains a provision for
21 the Commission to review the adoption of price cap status after five years. The
22 statute requires the Commission to apply an "effective competition" standard at
23 that point in time. If there is "effective competition" the statute then provides that

1 the ILEC's service will be classified as "competitive" and will be effectively
2 deregulated. Significantly, if there is no effective competition, the ILEC does not
3 return to rate base/rate of return regulation, but remains subject to price cap
4 regulation. Thus the statute recognizes a role for the determination of "effective
5 competition," but a different role than that suggested by Ms. Meisenheimer in her
6 testimony. Rather than using "effective competition" as a measure to determine
7 eligibility for price cap status, as Ms. Meisenheimer suggests, the statute applies
8 that test to determine whether services should be classified as "competitive" and
9 deregulated. The use of an "effective competition" test in this manner further
10 emphasizes that the statute intends the price cap eligibility to be determined solely
11 on the two specific tests contained in the statute.

12
13 Q. On page 6 of her testimony, Ms. Meisenheimer indicates that, "The goal of price
14 cap regulation is to allow the regulated carrier flexibility to respond...to
15 competitive pricing strategies of rival firms..."⁹ From your viewpoint is this the
16 only goal of price cap regulation?

17 A. No. Another significant goal of price cap regulation is to encourage greater
18 operating efficiency and productivity, by simulating some of the beneficial
19 incentives of competition. This was the primary motivation for the FCC in
20 adopting price cap regulation. The FCC summarized this as follows:

21 Price cap regulation seeks to replicate the beneficial incentives of competition in
22 the provision of interstate access services while striking a reasonable balance
23 between the interests of ratepayers and stockholders. Price cap regulation is
24 intended to encourage growth in productivity by permitting incumbent LECs that
25 increase their productivity to earn higher profits, while at the same time ensuring

⁹ Meisenheimer, op. cit., page 6, lines 13-14.

1 that interstate access customers share in the benefits of productivity growth in the
2 form of lower rates. The price cap formula was designed to ensure that “[b]oth
3 carriers and customers will be better off” under price cap regulation.¹⁰
4

5 Q. Does the Missouri price cap statute contain provisions that also cause a sharing of
6 benefits of greater productivity between the telephone company and the rate
7 payers?

8 A. Yes, it does. The statute contains two alternative methods for adjusting the
9 maximum rate, both of which provide benefits to both the company and the
10 customers based on national factors reflecting changes in costs and productivity at
11 a national level.
12

13 Q. Let’s now turn to the first of the conditions that must be met before BPS can elect
14 price cap regulation. The first condition is that “an alternative local exchange
15 telecommunications company has been certified to provide basic local
16 telecommunications service” in BPS’s service area. Do any of the witnesses
17 challenge the fact that MSDT has the correct certificate?

18 A. No. Although Ms. Meisenheimer does not discuss this issue, Mr. Voight
19 acknowledges that MSDT has such a certificate and includes the Commission’s
20 order granting the certificate as Schedule 7 to his testimony.
21

22 Q. Is there any disagreement on the fact that MSDT provides service in BPS’s
23 service area?

¹⁰ Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Released May 21, 1997, FCC 97-159, paragraph 2.

1 A. There does not appear to be any disagreement on this issue. Mr. Carson of BPS
2 asserts that MSDT provides service in BPS's area, and he is in a position to know
3 that since MSDT is reselling BPS's service. Mr. Voight cites the annual report of
4 MSDT and agrees that MSDT is providing service in the Steele exchange of
5 BPS's service area. Admittedly, the number of customers being served by MSDT
6 is small, but the extent of service being provided is not an appropriate criteria
7 under the statute.

8
9 Q. Is there disagreement among the parties as to whether MSDT is providing basic
10 local telecommunications service?

11 A. Yes, there is. Mr. Carson and Ms. Meisenheimer both cite § 386.020(4), the
12 statutory definition of "basic local telecommunications service" in addressing the
13 issue of whether MSDT is providing this service. Ms. Meisenheimer's discussion
14 on pages 12 and 13 of her testimony concludes that of the eight specific services
15 listed in the statute, MSDT provides four of them. She concludes that this is
16 insufficient to "...consider the service an adequate basic local service."¹¹

17
18 Q. Do you believe that her conclusion is consistent with the statute that she cites?

19 A. No. It is not. The statute states that basic local telecommunications service is a
20 "...two-way switched voice service within a local calling scope as determined by
21 the commission comprised of any of the following services and their recurring
22 and nonrecurring charges:" (Emphasis added.) Based on Ms. Meisenheimer's

¹¹Meisenheimer, op. cit., page 12, lines 6-7.

own analysis, MSDT provides four of the eight specific services, thus clearly falling within the minimum requirement of the statute.

Q. Does Mr. Voight disagree with the use of the statutory definition of basic local telecommunications service?

A. Yes. He states that, "The statute does not define basic local telecommunications service with sufficient clarity to determine what constitutes basic local telecommunications service."¹²

Q. Do you agree with this criticism and characterization?

A. I do not. I believe the statute is quite clear. The analysis presented by Ms. Meisenheimer on pages 12 and 13 of her testimony demonstrates that the statute is sufficiently clear to analyze the provision of services in regard to the statutory criteria.

Q. Mr. Voight discusses the Commission's decision in Case No. TT-99-237 in support of a position that the issue at stake in that proceeding was, "What is the definition of basic local telecommunications service"¹³ Do you agree with this characterization?

A. No. While Staff may have been making such a contention, the Commission made no decision as to the definition of basic local telecommunications service. It appears that AT&T's argument was that it was not claiming that the service being

¹² Direct Testimony of William L. Voight, Case No. IO-2003-0012, page 5, lines 19-21.

¹³ Ibid., page 9, lines 13-14.

1 offered was a basic service. In fact, AT&T represented that it would offer the
2 service as a non-basic service. AT&T further stated that subscribers to the AT&T
3 Digital Link Service were required to be subscribers to basic local service from an
4 incumbent or competitive LEC as a condition for purchasing Digital Link Service.
5 The Commission order, Schedule 5 of Mr. Voight's testimony, does not discuss at
6 all a Commission decision regarding the definition of basic local
7 telecommunications service, but simply states that, "The Commission finds that
8 the tariff sheets proposed are reasonable and should not be suspended."¹⁴
9

10 Q. Mr. Voight discusses in his testimony the type of competition faced by SWBT,
11 Verizon, and Sprint at the time their price cap "determinations" were made. Is the
12 type of competition relevant under the statutory provisions?

13 A. No. The statute says nothing about the type of competition being provided. This
14 issue was, in fact, raised in regard to the initial SWBT request for price cap status.
15 Dial US was only providing resale service at the time and to a very limited
16 number of customers. OPC raised arguments in its comments that there was not a
17 sufficient level of competition to warrant granting price cap status.
18

19 Q. On page 21 of his testimony, Mr. Voight opines that if BPS is granted price cap
20 status that "most, if not all, incumbent carriers will request price cap status."¹⁵ Do
21 you agree with this opinion?

¹⁴ Order Denying Motion to Suspend Tariff, Case No. TT-99-237, page 4.

¹⁵ Voight, op. cit., page 21, line 10.

1 A. No. I regularly consult with many of the small incumbent LECs in Missouri and
2 have heard very little interest in, or discussion about, requesting price cap status.
3 While there are certain advantages to being subject to price cap regulation, there
4 are also potential significant disadvantages. These include the need to make
5 annual calculations of the maximum rates and the limits on increasing rates that
6 are included in the price cap statute. In a time where the companies are facing
7 increased competition from wireless and other providers and are experiencing
8 slowing growth or losses in both access lines and access minutes, these are
9 substantial concerns. Price cap regulation would also not be advantageous where
10 a company expects to incur substantial increases in plant or expenses due, for
11 example, to a modernization effort. My opinion is that there would be very few,
12 if any, companies who would elect price cap status in the near term if the
13 Commission affirms BPS's election of price cap status.

14
15 Q. Does this conclude your rebuttal testimony?

16 A. Yes, it does.