

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

In the Matter of Southwestern Bell Telephone,)
L.P., d/b/a SBC Missouri's Request for)
Competitive Classification Pursuant to Section)
392.245.6 RSMo (2005).)
Case No. _____

**SBC MISSOURI'S PETITION
FOR COMPETITIVE CLASSIFICATION**

SBC Missouri,¹ pursuant to Section 392.245.6 RSMo (2005), respectfully Petitions the Missouri Public Service Commission ("Commission") to:

- A. Within 30 days, classify the business services in SBC Missouri's exchanges identified in Exhibit A-1(HC), and the residential services in SBC Missouri's exchanges identified in Exhibit A-2(HC) as competitive, resulting in competitive status for:

51 of 160 exchanges for business services;

28 of 160 exchanges for residential services.

- B. Within 60 days, to classify the business services in SBC Missouri's exchanges identified in Exhibit B-1(HC), and the residential services in SBC Missouri's exchanges identified in Exhibit B-2(HC) as competitive, resulting in competitive status for an additional:

26 exchanges for business services;

49 exchanges for residential services.

I. INTRODUCTION

1. On July 14, 2005, Governor Blunt signed into law Senate Bill No. 237 ("SB 237"), which was overwhelmingly passed by both the Missouri Senate and House of Representatives² and became effective August 28, 2005. Revamping the foundation of the Price

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

² The Senate voted 29 to 3 in favor of SB 237. And it carried the House of Representatives 155 to 3.

Cap Statute,³ SB 237 reinforces the Missouri Legislature’s intent to allow full and fair competition to function as a substitute for regulation by establishing specific and objective criteria for the Commission to employ in determining whether the business and residential services of a price cap regulated Incumbent Local Exchange Company (“ILEC”) should be classified as competitive.

2. SB 237 dramatically changes the process for determining whether the services in an exchange are to be classified as competitive. Before SB 237, the Commission was required to determine whether or not “effective competition” existed for the requested services in the designated exchanges. Under this “effective competition” standard, the Commission was required to review, among other things, the extent of competition in the exchange, whether pricing was reasonably comparable, and whether competitors were offering functionally equivalent or similar services. Under SB 237, however, the Commission no longer must determine whether “effective competition” exists. The Commission does not have to examine the “extent” of competition, make pricing comparisons or examine service comparability issues. Rather, the process established by SB 237 simply requires the Commission to determine if choice is available in the exchange. The new law recognizes that as long as customers have the ability to choose an alternative provider of voice service other than the ILEC, customers are better served by letting competitive forces manage the marketplace. Once customers have choice, the law makes clear that competitive classification must be granted.

3. SB 237 requires the Commission to apply an expedited, two-track procedure when a price cap regulated ILEC seeks competitive classification for its services within one or more exchanges:

³ Section 392.245 RSMo (2000).

A. The 30-day track establishes a competitive “trigger” that focuses solely on the number of carriers providing “basic local telecommunications service” within an exchange.

Under the 30-day track, the Commission must classify the ILEC’s services (business, residential, or both), as competitive in any exchange in which at least two other carriers are also providing such basic local telecommunications services within an exchange:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. . .⁴

For the purpose of the 30-day investigation, the statute requires a commercial mobile radio service (“CMRS” or “wireless”) provider to be considered an entity providing “basic local telecommunications services.”⁵ It also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice”⁶ service “in whole or in part” over facilities in which it or one of its affiliates has an ownership interest.⁷

⁴ Section 392.245.5 RSMo (2005), (emphasis added).

⁵ Section 392.245.5(1) RSMo (2005) (however, only one such non-affiliated provider will be counted as providing basic local telecommunications service within an exchange).

⁶ Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo.”

⁷ Section 392.245.5(2) RSMo (2005).

B. The 60-day track. In addition to the specified competitive triggers under the 30-day track, the statute permits a price cap regulated ILEC to seek competitive classification based on competition from other entities providing “local voice service.” In addition to competition from entities providing local service using their own facilities in whole or in part, the 60 day track also recognizes competition from local voice providers that use the ILEC’s facilities or a third party’s facilities. The statute requires the Commission to grant competitive classification within 60 days unless it determines that such classification is contrary to the public interest:

Notwithstanding any other provision of the subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or 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. The commission shall approve such petition within 60 days unless it finds that such competitive classification is contrary to the public interest.⁸

4. The statute defines “telecommunications facilities” very broadly to include, among other items, “line, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service.”⁹ Thus, the Legislature has clearly provided that any equipment or property used to provide voice service is a telecommunications facility and that use of any such telecommunications facility qualifies as being a provider of basic local service.

⁸ Section 392.245.5 RSMo (2005), emphasis added.

⁹ Section 386.020(52) RSMo (2005).

5. These new statutory requirements have dramatically changed the Commission's role in determining the competitive classification for a price cap regulated ILEC. By removing the provisions from Section 392.245 that previously required the Commission to "investigate the state of competition" and to "determine whether effective competition exists in the exchange,"¹⁰ and replacing them with strict numerical triggers, the Legislature has made clear its understanding that where customers have a choice, competition exists.

6. The legislative intent favoring the Commission's widespread grant of competitive authority is also reflected in the checks and balances SB 237 adds to the Price Cap Statute under which the Commission retains the ability and obligation to monitor whether the conditions upon which competitive classification was granted continue to exist:

. . . 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 reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.¹¹

¹⁰ Compare Section 392.245.5 RSMo (2000).

¹¹ Section 392.245.5(6) RSMo (2005), (emphasis added).

7. As a result of the Missouri Legislature's passage of SB 237 during the 2005 legislative session and SB 237's significant modifications to the standards for obtaining competitive classification, the Commission has, since June 14, 2005, held in abeyance any decision on SBC Missouri's July 30, 2004 request for competitive classification in Case No. TO-2005-0035.

8. Now that SB 237 has gone into effect, SBC Missouri respectfully requests the Commission, in furtherance of the competitive policies articulated by the Legislature, to apply the standards set out in SB 237 and grant the requested competitive classifications for SBC Missouri's business and residential services within the respective 30 and 60-day statutory timeframes as set out with particularity in this Petition. Concurrent with the filing of this Petition, SBC Missouri is filing proposed tariffs, with thirty and sixty day effective dates, reflecting grants of the requested competitive classification.

9. In the event the Commission rejects SBC Missouri's request for competitive classification for business or residential service in any of the SBC Missouri exchanges identified in Exhibit A-1 or A-2 during its 30-day investigation, SBC Missouri respectfully petitions the Commission to include those services and exchanges in its 60-day investigation and to grant competitive classification in that proceeding.

II. BACKGROUND

10. Background on SBC Missouri. Southwestern Bell Telephone, L.P., is a Texas limited partnership,¹² with its principal Missouri office at One SBC Center, Room 3520, St. Louis, Missouri 63101. Southwestern Bell Telephone, L.P. is authorized to do business in

¹² A copy of the Partnership Agreement for Southwestern Bell Telephone, L.P. was filed with the Commission on October 15, 2003. See, In the Matter of the Application of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Review and Reversal of North American Number Plan Administrator's Decision to Withhold Numbering Resources, Case No. TO-2004-0170.

Missouri,¹³ and its fictitious name "SBC Missouri" is duly registered with the Missouri Secretary of State.¹⁴ SBC Missouri is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri as each of those phrases are defined in Section 386.020, RSMo. 2000.

11. SBC Missouri is a large incumbent local exchange carrier which became subject to price cap regulation under Section 392.245 on September 26, 1997.¹⁵

12. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

Paul G. Lane
Leo J. Bub
Robert J. Gryzmala
Mimi B. MacDonald
Attorneys for Southwestern Bell Telephone, L.P.,
d/b/a SBC Missouri
One SBC Center, Suite 3520
St. Louis, Missouri 63101

The electronic mail address, fax number, and telephone number of SBC Missouri's attorneys are contained in the signature block of this Petition.

13. SBC Missouri does not have any pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of this Application.

¹³ A certificate from the Missouri Secretary of State certifying that Southwestern Bell Telephone, L.P. is authorized to do business in Missouri was filed with the Commission on October 15, 2003. See, In the Matter of the Application of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, for Review and Reversal of North American Number Plan Administrator's Decision to Withhold Numbering Resources, Case No. TO-2004-0170.

¹⁴ A copy of the registration of the fictitious name "SBC Missouri" was filed with the Commission on January 17, 2003. See, In the Matter of the Name Change of Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone company to Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, Case No. IN-2003-0247.

¹⁵ In Case No. TO-97-397, the Commission approved SBC Missouri's request for price cap status effective September 26, 1997.

14. SBC Missouri does not have any annual report or assessment fees that are overdue in Missouri.

15. Procedural Background. In its first investigation into the state of competition in SBC Missouri's exchanges, which the Commission commenced in March 2001,¹⁶ the Commission on December 27, 2001, found that SBC Missouri services should be designated as competitive:

- In the Kansas City and St. Louis exchanges for core business switched services, business line-related services, directory assistance services for business customers, and the operator services of Busy Line Verification and Busy Line Interrupt for business customers;
- In the Harvester and St. Charles exchanges for residential access lines services, residential access line-related, Optional Metropolitan Calling Area service, directory assistance services for residential customers and Busy Line Verification and Busy Line Interrupt for residential customers;
- In all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 ("SS7") and Line Information Database ("LIDB") services.¹⁷

16. On July 30, 2004, SBC Missouri filed a Motion with the Commission asking it to open a case to investigate the state of competition in SBC Missouri's exchanges pursuant to Section 392.245.5, RSMo (2000). SBC Missouri also asked the Commission to classify as competitive SBC Missouri access line and related services and its operator and directory services that had not already received a competitive classification. The Commission issued an order establishing Case No. TO-2005-0035 for this investigation on August 12, 2004.¹⁸ In accordance with the procedural scheduled adopted by the Commission on September 21, 2004, extensive

¹⁶ Following a March 1, 2001 Motion by Staff to open a case, the Commission on March 13, 2001, issued its Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order.

¹⁷ Report and Order, Case No. TO-2001-467, issued December 27, 2001, p. 3.

¹⁸ Order Establishing Case, Directing Notice and Setting Scheduling Conference, Case No. TO-2005-0035, issued August 12, 2004.

prefiled testimony was submitted to the Commission and a hearing was held from January 31, 2005 to February 7, 2005. The parties filed briefs and proposed findings of fact and conclusions of law on February 18, 2005.

17. During the 2005 state legislative session, the Missouri Legislature passed SB 237, which significantly modified the standards by which telecommunications services are considered to be competitive. Pursuant to a directive from the Commission, SBC Missouri, Staff, OPC and various CLECs on (or about) May 25th filed pleadings regarding the impact of SB 237 on the case. Indicating that those statutory changes were expected to become effective on August 28, 2005, the Commission found it to be in the public interest to postpone making a decision in Case No. TO-2005-0035 until after August 28, 2005. It therefore notified the parties on June 14, 2005, that the case was to be held in abeyance until otherwise ordered.¹⁹ Case No. TO-2005-0035 remains in abeyance.

III. PETITION FOR COMPETITIVE STATUS

A. 30-DAY PROCEEDING - REQUEST FOR COMPETITIVE CLASSIFICATION

18. SBC Missouri requests the Commission to conduct a 30-day competitive classification review pursuant to Section 392.245.6 RSMo. This statutory provision requires the Commission, within 30 days, to determine whether the requisite number of entities are providing basic local telecommunications services to business or residential customers, or both, in the requested exchange and to approve tariffs designating services as competitive if such a determination is made:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether

¹⁹ Order of Abeyance, Case No. TO-2005-0035, issued June 14, 2005.

the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange.

19. In support of this request, SBC Missouri has appended to this Petition the following Highly Confidential Exhibits (which it requests be treated pursuant to Section 386.480 RSMo (2000) until a Protective Order is issued in this case, at which time the Protective Order would govern), and two maps:

Exhibit A-1(HC), which identifies the SBC Missouri exchanges in which at least two non affiliated entities are providing basic local telecommunications service to business customers; the names of two entities providing such service in each exchange; and the method through which SBC Missouri confirmed those carriers' provision of such service in each exchange.

Exhibit A-2(HC), which identifies the SBC Missouri exchanges in which at least two non affiliated entities are providing basic local telecommunications service to residential customers; the names of two entities providing such service in each exchange; and the method through which SBC Missouri confirmed those carriers' provision of such service in each exchange.

Exhibit A-3, which is a map geographically depicting the exchanges identified in Exhibit A-1(HC).

Exhibit A-4, which is a map geographically depicting the exchanges identified in Exhibit A-2(HC).

20. SBC Missouri identified the carriers listed in Exhibits A-1(HC) and A-2(HC) and determined the exchanges in which each carrier provided service through:

- Contacting the company by phone - SBC Missouri, in cases where it could not find published information confirming a company's provision of business or residence services in a particular exchange, directly contacted the company by telephone and inquired whether it provided business service, residence service, or both in a particular exchange.
- Let'sTalk.com - A publicly available website that lists, for any Zip Code entered, the wireless carriers providing service in that area and various wireless rate plans offered by each carrier.

- CLEC Annual Report filed with MoPSC - The Commission requires every certificated CLEC offering local service in Missouri to file a report each year specifically quantifying the amount of business and residence service it is actually providing in each exchange served. The Commission's report requires CLECs to separately state for residential and business customers the voice grade equivalent lines it provides using the pure resale, UNE-L, UNE-P, and full facility-based methods of provisioning service. While many CLECs file this report with the Commission on a Highly Confidential basis, other CLECs do not request such protection and file them on a Non-Proprietary basis. To the extent SBC Missouri was able to locate such Non-Proprietary CLEC Annual Reports, SBC Missouri utilized that data to help identify CLECs providing business service, residential service or both in an exchange.
- Migrations from UNE-P to CLEC facilities - When a CLEC migrates from UNE-P (under which a CLEC purchases switching and loop elements from an incumbent LEC) to a CLEC's own facilities (or those of another CLEC), SBC Missouri's internal business records reflect the disconnection of a particular CLEC customer's loop from SBC Missouri's switch. For the purpose of these exhibits, SBC Missouri included UNE-L CLECs that ported UNE-P customer telephone numbers to the UNE-L provider's switch (i.e., CLECs migrating a telephone number and a loop); and CLECs utilizing only Local Number Portability (i.e., CLECs migrating a telephone number without an associated UNE loop or switch port). Using the LERG, SBC Missouri validated that each CLEC had NPA-NXXs for each exchange identified.²⁰
- E-911 Listings - The appearance of a CLEC's customer in the E-911 database reflects the CLEC's provision of service in an exchange utilizing its own switching.
- Directory Listings for companies providing service using their own facilities - starting with CLECs listed in the LERG as having switching facilities,²¹ SBC Missouri cross-referenced those CLECs in the directory listing database to confirm that the NPA-NXXs assigned to them for SBC Missouri exchanges (or ported by them from another carrier) were actually being used by them to serve customers.

²⁰ Exhibit A-5 shows CLEC switch and POI locations.

²¹ Exhibit A-5 shows CLEC switch and POI locations.

21. SBC Missouri respectfully requests the Commission, in furtherance of the competitive policies articulated by the Legislature, to apply the standards set out in SB 237 and grant the requested competitive classifications for SBC Missouri's business and residential services in the exchanges listed in Exhibits A-1(HC) and A-2(HC) within the 30-day statutory timeframe. If the Commission determines that there are additional exchanges in which SBC Missouri's business or residential services qualify for competitive classification under this section of the statute based on data unavailable to SBC Missouri (e.g., the Commission's review of its own records as is required by HB 237), SBC Missouri respectfully requests the Commission also to classify the services in those exchanges as competitive.

22. In the event the Commission rejects SBC Missouri's request for competitive classification for business or residential service in any of the SBC Missouri exchanges identified in Exhibit A-1(HC) or A-2(HC) during its 30-day investigation, SBC Missouri respectfully petitions the Commission to include those services in its 60-day investigation and to grant competitive classification in that proceeding.

23. In the event the Commission finds that one or more of the companies identified as a 30 day trigger company does not meet the criteria spelled out in 392.245.5 for the 30 day process, then SBC Missouri respectfully requests the Commission to utilize its own resources to determine if another company or companies would meet the criteria spelled out in 392.245.5 as there may be more than two providers in the requested exchange that meet the specified criteria for the 30 day process.

B. 60-DAY PROCEEDING - PETITION FOR COMPETITIVE CLASSIFICATION

24. SBC Missouri Petitions the Commission to conduct a 60-day competitive classification review pursuant to Section 392.245.6 RSMo (2000). This statutory provision requires the Commission, within 60 days, to approve a petition for competitive classification in an exchange unless it finds that such classification is contrary to the public interest:

Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or 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. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest.²²

25. In conducting the 60-day review, the statute permits the Commission to consider data pertinent in a 30-day review (e.g., the number of carriers providing basic local telecommunications service in an exchange that meet the criteria spelled out in 392.245.5(1)-(5)). But the relevant and mandatory inquiry is much broader: 60-day petitions can be based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or 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. Thus, for the 60-day investigation, the Commission must consider and count service being provided by:

- Companies providing service using their own facilities;
- Companies providing service using their own facilities and facilities of the ILEC;

²² Section 392.245.5(6) RSMo (2005).

- Companies providing service using facilities from an unaffiliated carrier (e.g., another CLEC) and facilities from the ILEC;
- Companies providing service using only facilities from the ILEC (either through UNE-P or a commercial agreement);
- Companies providing service using their own facilities and facilities from an unaffiliated carrier;
- Wireless carriers;
- VoIP providers.

26. SBC Missouri bases its Petition for competitive classification under the 60-day review procedure on competition reflected in the following Highly Confidential Exhibits (which it requests be treated pursuant to Section 386.480 RSMo (2000) until a Protective Order is issued in this case, at which time the Protective Order would govern), and two maps:

Exhibit B-1(HC), which identifies for each SBC Missouri exchange for which competitive classification is being sought under the 60-day trigger, the minimum number of carriers providing local voice service to business customers using each of the following methods of providing service:

- Use of wholesale services from SBC Missouri (i.e., replacement for UNE-P) under a commercial agreement;
- UNE-P from SBC Missouri;
- Wireless carrier;
- VoIP provider.

Exhibit B-2(HC), which identifies for each SBC Missouri exchange for which competitive classification is being sought under the 60-day trigger, the minimum number of carriers providing local voice service to residential customers using each of the following methods of providing service:

- Use of wholesale services from SBC Missouri (i.e., replacement for UNE-P) under a commercial agreement;
- UNE-P from SBC Missouri;
- Wireless carrier;
- VoIP provider.

Exhibit B-3, which is a map geographically depicting the exchanges identified in Exhibit B-1(HC);

Exhibit B-4, which is a map geographically depicting the exchanges identified in Exhibit B-2(HC).

27. The data in Exhibits B-1(HC), B-2(HC), B-3 and B-4 reflect only the minimum number of competitors in each of the designated exchanges since there may be additional competitors who are providing service in the exchange.²³ SBC Missouri respectfully requests the Commission, in furtherance of the competitive policies articulated by the Legislature, to apply the standards set out in SB 237 and grant the requested competitive classifications for SBC Missouri's business and residential services in the exchanges listed in Exhibits B-1(HC) and B-2(HC) within the 60-day statutory timeframe, along with the business and residential services in any exchange which the Commission determines does not meet the requirements for 30-day approval.

IV. COMMISSION USE OF ITS OWN DATA

28. Unlike the prior Price Cap Statute, SB 237 requires the Commission to maintain and consider its own records concerning the methods carriers whom it regulates use to provide local voice services in an exchange; and that the Commission consider such records in reviewing an ILEC's request for competitive status:

. . . The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities. . . .²⁴

²³ For example, SBC Missouri has focused only on six of the over 400 carriers that offer VoIP service and only counts the VoIP providers in exchanges where cable modem service is available (i.e., excluding DSL) and only if the customer in that exchange can port their telephone number or obtain a new local telephone number in the exchange; it relies only on wireless carriers who use their own facilities (ignoring Mobile Virtual Network Operators, or MVNOs, such as Virgin Mobile); and it does not include any competitive services currently being offered by AT&T or its affiliates, prepaid carriers or resellers. The information presented also excludes SBC Missouri affiliates such as Cingular.

²⁴ Section 392.245.5(6) RSMo (2005).

29. In addition, SBC 237 requires the Commission to go beyond the data carriers provide it in the ordinary course of business and pro-actively seek other necessary and appropriate data from carriers it regulates as part of its investigation:

. . . In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission . . . shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange.²⁵

30. As part of the Commission's review, both in the 30-day and the 60-day proceedings, SBC Missouri directs the Commission's attention to the following information contained in its own records reflecting the ownership of facilities and the presence of regulated providers of local voice service and basic local telecommunications service in SBC Missouri exchanges:

- All CLEC Annual Reports to the MoPSC;
- Staff witness Bill Peters' HC Rebuttal Testimony - Case No. TO-2005-0035, filed December 17, 2004:
 - Schedule 2(HC) - SBC Missouri response to Staff DR 26(HC), showing the number of E-911 listings of each CLEC in each SBC Missouri exchange as of June, 2004;
 - Schedule 3(HC) - Showing, for each SBC Missouri exchange, residential UNE-P lines, residential E-911 listings for CLECs, a minimum estimated number of CLEC residential lines, and an estimated residential market share;
 - Schedule 4(HC) - Showing, for each SBC Missouri exchange, business UNE-P lines, business E-911 listings for CLECs, a minimum estimated number of CLEC business lines, and an estimated business market share;
 - Schedule 10(HC) - Provides, by CLEC, the SBC Missouri exchanges in which they operate along with the total number of lines it has in each exchange, the number E-911 business listings in each exchange and the number of UNE-P business services in each exchange;

²⁵ Section 392.245.5(6) RSMo (2005).

- Schedule 11(HC) - Provides, by CLEC, the SBC Missouri exchanges in which they operate along with the total number of lines it has in each exchange, the number E-911 residential listings in each exchange and the number of UNE-P residential services in each exchange.
- Staff witness Bill Peters' HC Surrebuttal Testimony - Case No. TO-2005-0035, filed January 21, 2005:
 - Schedule 12(HC) - Aggregates CLEC access lines reported, by method of provision (CLEC provided access lines, UNE-L-based access lines; UNE-P-based access lines), in SBC Missouri exchanges;
 - Schedule 13(HC) - Aggregates CLEC access lines reported, by method of provision (CLEC reported residential facility-based access lines, CLEC reported essentially UNE-L-based access lines; CLEC reported residential UNE-P-based access lines), in SBC Missouri exchanges;
- Socket witness Matt Kohly's Testimony - Case No. TO-2005-0035 from February 7, 2005 Hearing, transcript pp. 1011-1023 - describing Socket's provision of service using its own facilities in various SBC Missouri exchanges.
- NuVox witness Ed Cadieux's Testimony - Case No. TO-2005-0035 from February 3, 2005 Hearing - describing NuVox' provision of service using its own facilities in various SBC Missouri exchanges.

While the Commission should consider the information cited above, it should not limit its investigation to that data, as the statute requires the Commission to proactively seek out additional information from the companies it regulates (e.g., CLECs).

V. CONFIDENTIALITY OF DATA

31. Due to the Highly Confidential nature of some of the supporting data SBC Missouri is providing with this Petition, SBC Missouri is filing two versions of this Petition:

- A Non Proprietary version of the Petition (with the Highly Confidential data redacted); and
- A Highly Confidential version, which SBC Missouri is filing with the Commission subject to protection under Section 386.480 RSMo (2000)

until such time as a Protective Order is issued at which time the Protective Order would govern.²⁶

32. In order to facilitate the efficient processing of this case, SBC Missouri has, with the filing of this Petition, filed a Motion for the Commission to issue its Standard Protective Order. Once the Standard Protective Order has been issued by the Commission, SBC Missouri would respectfully request that the information it has provided with this Petition be governed by the terms of the Commission's Standard Protective Order.

VI. CONCLUSION

33. Consumers will ultimately benefit from an environment where all providers are free to compete on equal terms. Such an environment will produce maximum benefit to consumers in that service innovation flourishes and customer demands dictate outcomes. Understanding these benefits, the Legislature has revised the Price Cap Statute to require the Commission, with appropriate checks and balances, to make wide-spread grants of competitive classification where customers now have a choice of service providers.

WHEREFORE, SBC Missouri respectfully requests the Commission to:

- A. Within 30 days, classify the business services in SBC Missouri's exchanges identified in Exhibit A-1(HC), and the residential services in SBC Missouri's exchanges identified in Exhibit A-2(HC) as competitive (along with the services in any additional exchanges found competitive based on data available to the Commission as required by the statute); and

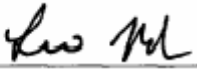
²⁶ Section 386.480 RSMo (2000) provides:

Information not to be divulged - exception - penalty. - No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610 RSMo, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section divulges any such information shall be guilty of a misdemeanor.

- B. Within 60 days, to classify the business services in SBC Missouri's exchanges identified in Exhibit B-1(HC), and the residential services in SBC Missouri's exchanges identified in Exhibit B-2(HC) as competitive (along with the services in any exchanges found not to meet the requirements of the 30-day trigger, but which qualify for competitive classification under the 60-day process).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

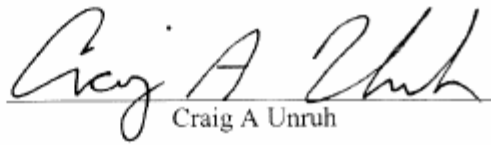
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VERIFICATION OF PETITION

I, Craig A. Unruh, Executive Director-Regulatory for Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, hereby swear and affirm that I am authorized to speak on behalf of the Petitioner SBC Missouri and that the statements contained in this Petition are true and correct to the best of my knowledge, information and belief.


Craig A Unruh

I, Maryann Purcell, a Notary Public, do hereby certify that on this 30th day of August, 2005, personally appeared before me Craig A. Unruh, who under oath declared that all of the information contained in the foregoing Petition above is true and correct to the best of his knowledge, information and belief.


Notary Public

My Commission Expires: January 5, 2008

MARYANN PURCELL
Notary Public - Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: Jan. 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 30, 2005.



Leo J. Bub

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